NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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REGULAR SESSION

LT. GOVERNOR DAVID A. PATERSON, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate came to order without a gavel. That's very good.

I would ask all assembled to please rise and join with me in reciting the Pledge of Allegiance.

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

THE PRESIDENT: Our invocation today will be delivered by the Reverend Peter G. Young, of Mother Theresa Community in Albany.

REVEREND YOUNG: Dear God, we welcome our new Senator to this hall.

The State Seal that has demonstrated our loyalty to the state, again, it was replaced and replacing the crown in 1777 that is above our dais. It was Lady Liberty with a peasant cap, representing democratic rule, with her left foot stepping on the crown, representing the rejection of royalty.

That as citizens of the Empire State we have been the leader, with our constitution 12 years before the federal

Constitution. As a national leader, You have given these Senators a great power, O God, and an enormous responsibility. So, God, we pray that they will always work in Your image and Your honor for all of those that will carry on this good name.

We pray too for our Senator who has been here with us for 23 years, Senator Don Halperin. May he be able to rest with peace now and forevermore.

Amen.

THE PRESIDENT: Thank you, Father Young, who has delivered invocations to the Legislature for 48 years. And as we can close determine, over 3,000 invocations he's delivered to us.

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, February 11, the Senate met pursuant to adjournment. The Journal of Saturday, February 10, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Smith for an introduction.

THE PRESIDENT: Thank you, Senator Skelos.

Senator Smith.

SENATOR SMITH: Thank you very much, Senator Skelos.

To my colleagues, to our friends in the gallery, to the staff that is here, today, on February 12th -- which is actually my daughter's birthday -- there are two reasons to celebrate. One obviously is her birthday, which I am happy to celebrate, and hopefully she hears this one day.

But secondly, we recently had an election in Nassau County, a county where for a hundred years they had had a particular representation that was different from that which they have today. Many people after this particular election indicated that they thought this was a great day for Nassau County.

I would only say that while it was, yes, a great day for Nassau County, it was

also a great day for each and every one of you who are in this chamber, each and every one of you who are in the audience, because it made a very clear statement and a very clear message that the people of this state have decided that they want to see some change this government, some change in how we proceed, and that change has a lot to do with reforming the way we do business as a body.

There was a young man who took up the mantle of wanting to place himself, as I would put it, up for sacrifice. He put himself out there as a county legislator, not knowing what the future would hold. His wife, Elizabeth, who is here today, sat with him, his two sons; they talked about it. And they agreed this is something that as a family they would do.

All of you who are in public office know exactly what it means when you make a decision in the middle of your life, in the middle of your career, to do something different. Running for office is never an easy thing, especially when you're running for office in a district that has been challenged

in a very heavy way for a long-term period.

This young man and his wife came together and agreed that he should pursue this office.

Craig Johnson is a young man who is an attorney; he distinguished himself in the county legislature as chair of Finance. What he will bring to this body with regard to intellect, with regard to someone who in his heart wants to make sure that the people of this state get their fair, just due in the area of tax relief, in the area of healthcare services, in the area of economic development.

This young man, who I had the pleasure of knowing and met during this season, is a phenomenal young man. His wife, his partner, is someone who I have joked with him about and said, "It's a good thing you ran and it's a good thing she decided not to, because it might have been a little bit difficult for the people."

He's a young man that Lieutenant Governor Paterson, who set us on a course two years ago, is very proud of, someone who he and I both know will be a great partner in

this chamber.

You will find out in a very short period of time how smart this young man is, and you will also find out how great his family is.

He is joined today by his father, Stuart Johnson, who is also in the chambers with us. He's joined by his sister, Karen Campbell, who is here. Where is Karen? Karen trying to jump back there. He is also joined by his father-in-law -- DeFrancisco, you would like this -- Judge John Kase, who is also in the audience, and also his mother-in-law, Arlene Kase.

It is a family affair, and it is a family who is very proud of this young man, who I will tell you is the face of new leadership in the State of New York. I am proud of him. Our Governor is very proud of him, Eliot Spitzer, who we thank for all his effort and support.

And I thank all of my colleagues as well. Many of you worked very hard, along with this young man. Each and every one of you sacrificed your time. The staff worked

very hard, Doug Ferran.

And to my colleagues even on the other side of the aisle, I thank you also for the effort that you placed in this particular election, which also told the people of this state that we're serious about what we want done here.

And the effort that you put forward, while it was for a different individual, it also meant that you know that when we look to govern, we look to make sure that we have the best. And everybody put their best foot forward in trying to make sure that that individual came to bear.

Craig Johnson is the individual who is sitting in this chamber today. Craig Johnson is the young man who is going to be part of the leadership team of this state. Craig Johnson is the young man that his wife and his family is very proud of.

Craig Johnson is the young man that I am happy to call our new Senator, our new colleague, someone joining the phenomenal Democratic conference in the State Senate of New York, Senator Craig Johnson.

(Extended applause.)

THE PRESIDENT: Thank you, Senator Smith.

On behalf of Senator Bruno, the leader of the Senate, we welcome Senator Johnson, his wife Elizabeth, and the rest of their family to the chamber.

And Senator Bruno and all of the Senators wish Senator Johnson well in his endeavors.

We will now turn to the order of business.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a resolution at the desk, 432, by Senator Seward. If we could have it read in its entirety and move for its immediate

adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Seward, Legislative Resolution Number 432, congratulating the Marathon High School Field Hockey Team and Coach Karen Funk upon the occasion of capturing the 2006 New York State Class C Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success and developing a sense of fair play and competition; and

"WHEREAS, The Marathon High School Olympians Field Hockey Team are the 2006 New York State Class C champions after

defeating East Rochester High School 2-1 in the second sudden-death overtime, to finish the year with 24-1 record; and

"WHEREAS, The standout performers for the Olympians this season were New York State Public High School Athletic Association All-Tournament Team members and Section IV Conference Division III First Team All-Stars Meghan Dean, Samantha Parker, and Hannah Griep; Section IV Division III First Team All-Stars Roni Allen, Kelley Braman and Marta Malmberg, and Second Team All-Stars Whitney Stephens and Tessa Knapp; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coach Karen Funk, a skilled and inspirational tutor, respected for her ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends, and the community at large; and

"WHEREAS, The hallmarks of the Marathon High School Field Hockey Team, from

the opening game of the season to participation in the championship, were a sisterhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school; and

"WHEREAS, Coach Karen Funk has done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Karen Funk and the outstanding athletes of the Marathon High School Field Hockey Team have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Marathon High School Field

Hockey Team, its members -- Roni Allen, Brittany Bell, Kaitlyn Bliss, Kelley Braman, Jessica Burlingame, Meghan Dean, Renee Drake, Stephanie Fiske, Gabrielle Gates, Hannah Griep, Nicole Gurewich, Amber Hines, Tessa Knapp, McKenna Light, Marta Malmberg, Cassandra Palmer, Samantha Parker, Mallorie Pendell, Lacey Pitman, Whitney Stephens, Michelle Stevens -- Scorekeeper Courtney Mathers and Coach Karen Funk on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Marathon High School Field Hockey Team and to Coach Karen Funk."

THE PRESIDENT: On the resolution, Senator Seward.

SENATOR SEWARD: Thank you, Mr. President.

I'm delighted to stand to salute and congratulate a group of truly outstanding young women, the Marathon High School Olympians Field Hockey Team, the 2006 New York State Class C champions.

Marathon is a community located in Cortland County, and we like to say right in the heart of New York State.

This is truly an outstanding and well-rounded group of members of this team. Obviously they have athletic ability, but they also represent all the best in good character, good sportsmanship, teamwork, all of those fine qualities.

And also, in addition to all of this, they're an outstanding group not only of athletes but student-athletes. A full two-thirds of the team have been so designated as student-athletes, with a team academic average of 92.

And certainly a great deal of the credit for the success of this team belongs to their coach, Karen Funk, who for the last 33 years has coached the field hockey team at Marathon. And in that 33 years, she has helped produce no fewer than 14 sectional championship teams and no fewer than seven state championship teams, this group being her seventh win at the state level. So we have a real dynasty when it comes to field hockey at

Marathon.

So, Mr. President, I'm delighted to sponsor this resolution and salute this group, who truly does epitomize all the best in the youth of New York State. When I look at this fine group, I have a great deal of confidence in the future of our state.

Thank you, Mr. President. And congratulations to this great team.

THE PRESIDENT: Thank you, Senator Seward.

The question is on the resolution. All those in favor please indicate so by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Karen Funk, coach of the Marathon High School Field Hockey Team, may all of you who have been victorious so many times go back to Cortland County with another victory and another championship. In the spirit of New York, leading the nation in all types of

sporting endeavors, your contribution to field hockey has excelled beyond that of really any other high school, with your tremendous record over the last few years.

On behalf of Senator Bruno, the leader of the Senate, and all Senators here -- and particularly Senator Seward, who sponsored this resolution -- we congratulate you and welcome you to the New York State Senate chamber.

(Applause.)

THE PRESIDENT: The chair recognizes Senator Skelos.

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

If we could have it read at this time.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Judiciary, reports the following nomination.

As associate judge of the Court of Appeals, The Honorable Theodore T. Jones, Jr., of New City.

THE PRESIDENT: Senator DeFrancisco, on the nomination.

SENATOR DeFRANCISCO: Mr. President, I'm proud to move the nomination of Theodore T. Jones, Jr., of New City, as associate judge of the Court of Appeals.

This year, as in all years, we review the qualifications of the various judges. In view of the fact of some recent events not involved with Judge Jones in any way, he was even looked at with more scrutiny concerning some recent developments in his area of the state -- more scrutiny not only on that, more scrutiny on his decisions, more scrutiny on everything about his background.

And I can tell you unequivocally that he is well-qualified, that he is an individual of utmost integrity, and that his decisions are well-reasoned and fair. He calls 'em the way he sees 'em. And we're happy that Governor Spitzer sent this nomination here to the full Senate.

In moving this nomination, I just want to mention that his wife, Joan Hogans Jones, is here; his sons, Theodore Jones, III, and Wesley Jones; and many colleagues and friends, all of whom are, I'm certain, very proud of Judge Jones.

And in moving his nomination, I simply want to say that this is the best type of nominee we could possibly have -- an individual that has tried cases, that has clerked for a judge, that has been on a grievance committee reviewing the conduct of attorneys, and has an overall understanding of the law second to none.

So, Mr. President, I'm happy to move his nomination and request that you call on Senator Maltese for a second.

THE PRESIDENT: The chair recognizes, on the nomination, Senator Maltese.

SENATOR MALTESE: Mr. President, I rise today to speak about the American dream, the realization of the American dream. In seconding the nomination of Judge Jones, truly this exemplifies everything that's fine

and great about our wonderful country.

Judge Jones grew up in the streets of Queens County, attended John Adams High School, 10101 Rockaway Boulevard, which happens to be in my Senate district. What a fine example for the young men and women attending John Adams, that one of their graduates could go on to rise as an associate judge of the Court of Appeals, the highest court in the State of New York and certainly recognized as second only to the United States Supreme Court in Washington, D.C.

This is the type of individual that we have before us for nomination to our Court of Appeals. A Vietnam veteran, a man who understands what it is to rise from modest beginnings and become a judge of the Supreme Court from Kings County, serving in that capacity for 15 years without any impugning of his integrity, a man recognized as calling them as he sees them.

Recent decisions of his in connection with the subway strike were made, calling it balanced, fair. And, while during our judicial committee screenings he was

subject to many questions, at the same time described as courageous, but shunning that appellation, saying that he called it as he saw it. He denied being courageous in that respect. But during all the hubbub, all the furor about that decision, not one person attacked his integrity.

This is a man of great integrity who was in private practice for 15 years and had members of the Bar Association here today testifying on his behalf, a man who managed within four short months to receive the highest awards from the Women's Bar Association, the Jewish Bar Association, and the Catholic Lawyers Guild.

A man who manages, through all the years and all of his public service, to have that same fine reputation for integrity.

Mr. President, certainly his background in legal aid, his background in private practice, his 15 years' experience on the bench have well suited him for this high judicial office. I'm proud to second the nomination of Judge Theodore Jones as an associate judge of the Court of Appeals of the

State of New York.

THE PRESIDENT: On the nomination, the chair recognizes Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I rise to support the nomination of Justice Jones to this high office.

This morning we had the opportunity to ask a series of questions of Justice Jones. And I have to agree with my colleagues that while sometimes the questions were very pointed, at no time did he become ruffled, nor did he unravel, but, rather, answered the question that led us to believe that the kind of justice that he would provide from the bench would be fair and balanced.

He has made some very difficult decisions in his career. And when asked of which one he was the proudest, he thought for a moment and then he responded. But the pride came, I think, from his knowledge of law and how, no matter what the public may have thought of his decision, he felt that he made it for the right reasons.

And so therefore I support my colleagues in this nomination and I thank the Governor for putting forth the name of an exceptional gentleman. And I don't use that word often. In this instance, it is totally appropriate to put forth the nomination of Justice Theodore Jones for this Supreme Court position.

I thank you, Mr. President.

THE PRESIDENT: On the nomination, Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I rise to join my colleagues in seconding the nomination of Judge Theodore Jones. I will say that out of all the people that I know, he certainly is one of those people -- not simply because he does come from the County of Queens; he has lived in Brooklyn for many, many years; he was a neighbor for years; I know his wife and his family. So -- but that's really not why he would be one of the people that I would favor most.

It's because the qualities that he brings, I think, and his temperament are just

exactly what we would like to see and the kind of person that we need as judge in such a high court.

So I'm very, very happy to vote for him, to nominate him, and certainly I compliment my colleagues and the leaders for making a very, very wise choice in Judge Jones. And I look forward to him sitting in that position for many years.

Thank you, Mr. President.

THE PRESIDENT: On the nomination, Senator Sampson.

SENATOR SAMPSON: Thank you very much, Mr. President.

I rise in support of this nomination, but most of all I want to congratulate the Governor for appointing an esteemed individual. I have had the opportunity to appear before Justice Jones and have had the opportunity to see how he, as chief administrator in the County of Kings, has done an excellent job.

But this is really a bright day for Kings County, a bright day for Brooklyn when, you know -- unfortunately, clouds have been

cast on our Borough of Brooklyn and our County of Kings. And while to some it may seem that it may be unjust that these clouds have been cast, but, Justice Jones, you bring a stream of sunlight to Brooklyn and let everyone know that out of Brooklyn, great things happen.

And I want to congratulate you not only on your impeccable character and integrity, but you are a person who I believe you call it as you see it. And just because of that, Judge Jones, that's why you are admired and respected about by all members of the judiciary.

Once again, congratulations. And I look forward to voting on your nomination to the Court of Appeals.

THE PRESIDENT: On the nomination, Senator Perkins.

SENATOR PERKINS: Thank you very much.

I also want to join in echoing my support for Judge Jones and his extraordinary career. I guess for me what really is most significant is that he's been tested in fire, that he has been involved in some of the most

controversial cases, not the least of which was the one involving the strike in New York City of the Transit Authority.

And whether or not we agree with the way he ultimately made a decision, one can feel comfortable that he made it with integrity, he made it on the basis of his understanding of the law, that he gave it fairness, and that he was balanced and forthcoming as to how he made his decision.

And so I think that the Governor should be complimented for having the foresight to find someone like him to make as his first choice in this Black History Month. It has a special significance for some of us throughout this state, for that matter.

And I think that we as a body should feel good that we are going to select someone that will truly represent the best of the judicial profession that we can have. So thank you very much. I'm glad to support this nomination.

THE PRESIDENT: On the nomination, the chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, I rise as a member of this house and as a member of the Judiciary Committee. And today, as we deliberated upon the nominee's qualifications, it was very clear that his broad background of experience will suit the court extremely well and the citizens of this state extremely well.

I wish to also thank Judge Jones for his service to our nation as a member of the military and as a participant in the Vietnam conflict. For that, we should be grateful.

During our conversation, his testimony, in response to questions, it was clear to me and I feel assured that his construction of the law will be in the strictest sense. And that he, in past dealings, some of which were mentioned today, did not shy away from making a hard decision if that was in fact the dictate of the law.

Having respect for the law, having respect for the legislators in this state in both this house and the Assembly who make the

law, was certainly prominent in Judge Jones's description of his approach to judicial philosophy.

We hope that he will continue on that score and not in effect shy away from making a hard decision when it in fact is relevant to a statute that the elected representatives of the people -- that's the people in this room and the people down the hall -- have made as our state policy.

For that, Judge Jones, we wish you a long and a very healthy tenure on New York State's highest court.

Thank you, Mr. President. I support this nomination.

THE PRESIDENT: On the nomination, Senator Volker.

SENATOR VOLKER: Mr. President, as I told the nominee at the hearing, I've been through a great many confirmation hearings over the years. Over the last -- particularly the last few years, I've been especially conscious of our responsibility to review any Court of Appeals judges. And, you know, part of I guess is as I've gotten a

little older, I've felt a responsibility to be especially careful.

I have to admit, because of some of the problems of Kings County -- and I will not get into it. I was chided by a couple of judges from Kings County that maybe I was a little harsh on Kings County, a little bit on Brooklyn.

But I pointed out to them I wasn't referring to them, I was just referring -- we know the various problems the county's having. And that obviously what's happened because of Brooklyn, frankly, the -- we've had a court case that changed the system.

So I admit to you, when I looked at Judge Jones's background, I kind of was looking for a smoking gun. Not only did I not find the smoking gun -- and I did a rather extensive dossier on him -- I didn't find hardly anything uncomplimentary. And sometimes for us upstaters, that's a little frustrating. But that's okay.

In all honesty, what I found was that he has a very solid background. Now, as I honestly said, I said probably he's a little

bit to the liberal of me, but then that would account for about 90 percent of all the people in this state -- and that's irrelevant -- including my wife.

But I have to say that I was impressed, I was impressed by his testimony, I was impressed by his background. And personally, I think -- and as I say, I had a few misgivings. I mean, we are having a few little problems now with the person that appointed Judge Jones, but so be it. It's our job to give advice and consent.

And I can't find -- I could find nothing in Judge Jones's background. In fact, I did find something I didn't realize, and that is that he was with Howard Jones, Judge Jones, who I knew. Because remember, I was there when the Rockefeller Drug Laws were passed, and Judge Jones I think was one of the first Court of Claims judges. The Court of Claims was set up basically as part of the drug situation.

And Howard Jones was a super guy. I had quite a bit of dealings with him way back when. And the fact that this Judge

Jones -- who is no relation -- was part of his office and was very close to Judge Jones, frankly, was a big plus in his favor.

So my congratulations to you, my congratulations to the Governor for sending his first judicial nomination. I think the one thing about George Pataki, he had excellent judicial nominations. And this is a good one.

Congratulations and good luck on the Court of Appeals.

THE PRESIDENT: On the nomination, Senator Smith.

SENATOR SMITH: Thank you very much, Mr. President.

Allow me to also rise to congratulate my colleagues who are sitting on the Judiciary Committee -- Senator Ruth Hassell-Thompson, who is the ranking member, for her diligent work and effort; to the committee chair, Senator DeFrancisco, for his work as well. But more importantly, let me thank the Governor for the selection of Justice Jones.

I can remember about a year ago,

when I was ranking on that committee, Justice Jones came to see me, along with some other judges, and the subject matter had more to do with raises. Well, Judge Jones, while we couldn't give you a raise today, we did raise something for you. We raised the bench which you are now sitting on.

But let me also say, to put this in some historical perspective, in 1846, the constitutional amendment, was when the Court of Appeals came about. In 1847, they sat and heard their first case. 160 years later, through 133 judges on the Court of Appeals, only three were African-American: Fritz Alexander, Harold Stevens, and George Bundy Smith.

Today we are confirming the fourth African-American judge in 160 years since that court has been established. You need to understand the significance of what that means not only to the State of New York, which now senses that there will be diversity on the bench, but what it says about the character and the St. John's Law School intellect of Judge -- Justice, I should say -- Theodore

Jones.

We should be very proud of our Governor's selection. We should be very proud of his 34-year legal career. He has been, I would say to many, a pleasure to not only work with, but he has been someone who had an impeccable career. You heard my good colleague Senator Volker talked about looking for a smoking gun. He could not only not find the gun, he couldn't find no smoke neither.

(Laughter.)

SENATOR SMITH: But this is a proud day for many of us. Court of Appeals Justice Theodore Jones, you should know that all the people around the State of New York are not only proud of you today but proud of also your family for the time and effort that you put and what you had to deal with as an individual, as he moved through his career, as he moved through criticism, and as he moved through growth as a jurist.

So it is with great pleasure today that I stand here on the floor of this body in the Senate of New York and congratulate his family and also congratulate you on this

nomination.

THE PRESIDENT: The question is on the nomination of Justice Theodore T. Jones, Jr., to the New York State Court of Appeals. All those in favor please indicate so by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nomination is confirmed.

Judge Jones -- joined today by your wife, Joan; your sons, Theodore, III, and Wesley -- we congratulate you and wish you the greatest service to the New York State constituency serving on our New York State Court of Appeals.

You have already distinguished yourself with your service in the military, as a lawyer, as a Supreme Court judge, and most recently on the appellate division.

On behalf of Senator Joseph Bruno, the leader of the Senate, all the Senators have confirmed you unanimously. We wish you well. And congratulations.

(Standing ovation.)

THE PRESIDENT: The chair recognizes Senator Skelos.

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

THE PRESIDENT: There will be an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

SENATOR SKELOS: And if we could return to the order of motions and resolutions, there's a Resolution 431 at the desk, by Senator Volker.

If we could have it read in its entirety.

THE PRESIDENT: The Secretary will read Resolution 431, sponsored by Senator Volker.

THE SECRETARY: By Senator Volker, Legislative Resolution Number 431, mourning the death of The Honorable Donald M. Halperin, distinguished citizen and devoted member of his community.

"WHEREAS, It is with great sorrow

and deep regret that this Legislative Body records the passing of The Honorable Donald M. Halperin, noting the significance of his purposeful life and accomplishments; and

"WHEREAS, A graduate of Rutgers University and Brooklyn Law School, Donald M. Halperin was a partner in the law firm of Kantor, Davidoff, Wolfe, Mandelker & Kass, PC, and represented the shoreline communities of Brooklyn in the New York State Senate for 23 years; and

"WHEREAS, The youngest person ever to be elected to the New York State Senate at the age of 24, Donald M. Halperin had friends on all sides of the political spectrum, and his strong work ethic and dedication to the people of the State of New York earned him the respect of all of his colleagues; and

"WHEREAS, The ultimate consensus-builder, Donald M. Halperin was a skilled negotiator who had the uncanny ability to relate to all people, bringing the most diverse and opposing factions together to reach a satisfying resolution to thorny issues and debates; and

"WHEREAS, During his 23-year career in the New York State Senate, Donald M. Halperin was the author of the law requiring Braille and audio signals in elevators to assist the visually impaired, responsible for recodifying the Juvenile Justice Code, one of the original authors of the MTA Capital and Operating Financing package enacted in 1982, leader in developing legislation to create a paratransit system which made mass transit more accessible to the disabled, a pioneer in developing legislation to revamp the New York State Reverse Mortgage Law, and a leading advocate for child welfare and criminal justice; and

"WHEREAS, Furthermore, Donald M. Halperin was named to the dual positions of Commissioner of the Division of Housing and Community Renewal and the cabinet-level position of Housing 'Czar' in 1993, where he was responsible for coordinating the operations of the Division of Housing and Community Renewal, the Roosevelt Island Operating Authority, the State of New York Mortgage Agency, the Housing Finance Agency,

and the Medical Care Facilities Financing Corporation; and

"WHEREAS, Donald M. Halperin is survived by his wife, Brenda; children, Jeremy and Rebecca; mother, Gladys; sister and brother-in-law Susan and Alan Gorman; nephew, Sam; and son-in-law Joshua Burch; and

"WHEREAS, Armed with a humanistic spirit, imbued with a sense of compassion, and comforted by a loving family, Donald M. Halperin leaves behind a legacy which will long endure the passage of time and remain as a comforting memory to all he served and befriended; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to mourn the death of The Honorable Donald M. Halperin, distinguished citizen and devoted member of his community; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the family of The Honorable Donald M. Halperin."

THE PRESIDENT: On the resolution, Senator Volker.

SENATOR VOLKER: Mr. President, Don Halperin was a close personal friend of mine for a very long time.

And as Mr. President knows, he and myself and the present Minority Leader were trying to work out this resolution. By that I mean we had agreed that we were going to do it last year, and for various reasons we could never work it out.

Today, by the way, Don's wife, Brenda, and his family decided that it was just too much for them to come up for this because they just didn't feel comfortable doing it. I had consulted with former Senator Montalto and Jeremy Weinstein and several others about doing this, and we frankly decided that we should go ahead with it today. There might be another time that Brenda may come up, and some of the other family.

You know, Don Halperin was one of the most interesting characters that I've ever met up here. As you can see in the resolution, he was the youngest person ever to serve in the Senate at the time. We became very close friends.

And I will tell you a story that is not well known. He had a law partner who was a very, very prominent judge later, who shall remain nameless, a Democrat. And through Don, I became very close to that Democratic judge, who ended up on the Court of Appeals.

That judge had all sorts of wonderful ideas. And there was a time when I was invited over to the Court of Appeals to have lunch with him on a number of occasions. And the reason was that -- although I suppose today it would be considered unethical -- he had a plan that I was to run for Lieutenant Governor with Sol Wachler, who was seriously considering running at the time. And I'm not supposed to tell any of these stories now, but I will anyways. The statute of limitations is gone, and who cares.

We actually had quite a plan, and I would get the conservative endorsement for Wachler. Of course the judge I was talking about would then become, I believe, the chief judge of the Court of Appeals. I'm sure that had nothing to do with this plan.

But as you know, I think Governor

Cuomo sensed there was something up and named Wachler to be head of the Court of Appeals. I strongly suspect he was a little concerned about Wachler running against him.

But the only reason I mention that story is I think it gives you an idea of how close in many ways we were. We traveled together quite a bit at night. He was a super guy. Pretty conservative, really, for a person from downstate and so forth. And -- but more than that, he had a wonderful heart, he was a good man.

The interesting thing about Don Halperin, he was a physical -- he was a freak about health. I mean, anybody that knows him knows that he always ate well and very careful and was amazingly -- he didn't smoke; you know, nothing -- and yet, in the end, he was riddled with cancer. And it was what brought him down eventually. Cancer started out, I believe, in his pancreas or whatever, and ended up in the brain cancer.

And in the end, it was pretty tough. I spoke to him on many occasions down in the city. And I know Joe did, who's here,

Joe Montalto, and Jeremy and a lot of us. It was a difficult ending for a wonderful man, who later not only was in the administration but also was a very good lobbyist.

And I just must say -- and I want to thank Senator Smith for allowing me to in effect be the introducer of this. Because I said to him, normally speaking, with a minority Senator, it would be the Minority Leader to do it. But as he said, "You go ahead and do it, and I certainly will be part of it."

And when this is done, everybody is invited to be on, obviously. And I don't think we bothered to send it around, because everybody will be on it.

But at some point we're going to work out something else to honor Donald. But for the time being, I would say this. There's going to be, at the Crowne Plaza tonight at about 7 o'clock, in case anybody -- because there's a number of people that are here. I saw John Dunne and a number of people. If you'd like to go down there and just meet. Initially we thought that Brenda Halperin

would be there, but as I say, she didn't feel up to it.

So I just want to tell you, personally I think that of the legislators I've known over the years, Don was one of the real class acts. Don, Joe Galiber, so many of the people who are gone. And I miss them dearly. And these are wonderful people, and Don certainly was one of them.

THE PRESIDENT: On the resolution, Senator Stachowski.

SENATOR STACHOWSKI: Thank you, Mr. President.

I'd also like to rise and say a few words about my friend Don Halperin. Don was ranking on Finance when I got here, and a very interesting guy.

Obviously, most things with Donald centered around eating. And for a guy that was in pretty good shape, I never saw anybody eat that much food.

And for those of you that saw the movie "Harry Met Sally," you know how they were so picky about how they ordered things? They would be the average person compared to

Halperin. He would make the waitress go through this whole interrogation. And then if he wasn't satisfied with the answers, he would go in the kitchen and start quizzing the chef on what he used and what he cooked in and what kind of oil. But that was Donald, and that's the way Donald was.

Donald also got a group of us together to take karate lessons, another great episode. Eight lessons and everybody quit. And that's a true story. Everybody quit. There were athletic people involved, but we just didn't want to get up that early.

Donald was also an integral part of the softball team, because Donald always organized where we'd go eat after.

And one of the great nights -- and for those of who know John Dunne, you know, a very proper guy, prim and proper. Donald Halperin had John Dunne and everybody else at Chuckie Cheese, playing all the games that the kids play. I mean, that's just Donald. That's typical of the things he would set up.

And one of the great events ever staged here was the time that Donald Halperin

put together now Judge Marty Solomon's birthday party. It was at a little Chinese restaurant on the other side of the river, a handful of people. But Marty Solomon, who didn't drink -- or at least not often -- decided he was going to try a zombie, at Donald's suggestion. And he had a couple of those.

And in the process, the evening was unbelievable and topped off by Marty slamming a wooden cigar box over Donald's head as he drove home from the restaurant. So Donald showed that out of the eight lessons, he got the lesson of containing oneself under great duress, not to be bothered by the fact that this wooden cigar box just smashed over his head as he tried to drive.

Donald's food and everything had such an effect that when Donald stopped taking his entourage, Cavaleri's closed. The restaurant is gone. They sold it. But Donald used to have his big team meal there all the time.

And for those of you that aren't familiar, a lot of the Halperin team is

sitting up in the balcony. And he used to get everybody together once a year, even after he left, to go out to dinner and share friendship and laughs. And the group is still here, and they're here today too. And I think that's important.

One of the other highlights -- and I see Tony Masiello's up there also -- is Tony and I got Donald and Manny Golden and a couple of others to come to a Jets-Bills Monday night game in Buffalo. Which they came in in a limousine, and everybody thought it was important people. It wasn't. But Donald really was touched by it.

And the thing he liked the most was the people tailgating would knock on the window, they'd roll the window down and they'd hand in a sandwich or whatever they were grilling. And Donald ate most of those.

And he also did a thing that was very unusual and showed that he wasn't a regular attender at a football game. He started drinking these large beers in the first quarter. And the rest of the night was a blur for him, but it was a wonderful evening

for everybody else, because he was very entertaining. Very, very entertaining.

So with that, I pay my salute to Don Halperin, thank him for all the memories, and close with one last story. Donald told me this story, because I wasn't here yet.

It was his first time to debate. And in those days, when he first got here, it was very proper in here. And all the reporters sat in the front, they didn't stay up in the second floor listening on a squawk box. And everybody was speaking, and he was one of the youngest guys, so this is like a long, long debate. And it was a Senator Donovan bill, and it was about raising the age of people, young people, to buy prophylactics.

And Donald is waiting his time and waiting his time, and some of the news guys were starting to doze off. And Donald finally got to debate, after about two and a half hours. And he got up and he said, "Let me make this simple and concise. We let people buy -- you know, it's okay that they buy beer at 18" -- they wanted to make this 21 -- "and we let them buy cigarettes at 18, and we let

them go to the Army." He said, "This question here on the floor isn't whether they have the guns. They got the guns. We're just trying to get them the holsters."

(Laughter.)

SENATOR STACHOWSKI: Thank you, Mr. President.

THE PRESIDENT: Senator Klein, on the resolution.

SENATOR KLEIN: Thank you, Mr. President.

I want to thank Senator Volker for bringing this resolution to the floor today. Everyone who knows Don Halperin I think quickly realizes his intelligence, his quick wit. He's someone who I think we all consider to be a public man, who dedicated his life to public service, first as a state senator, then as commissioner of DHCR.

And I got to know Donald in his sort of second life as a lobbyist. But even as a lobbyist, whether representing affordable housing groups or the taxi industry or the dry cleaning industry, he was always truly an advocate. He always had an encyclopedic

knowledge of all the legislation, all the issues that represented his clients, I think, in a very, very good way.

I think sometimes lobbyists don't always get the best PR, especially in this day and age. But someone like Don Halperin was very, very passionate about the issues. He was always prepared. He took it upon himself to know each and every issue affecting his clients.

But I think the fondest memories of Don Halperin is all the political conversations and talks of government that we used to have, mostly in Chinese restaurants or even in Russian nightclubs in Brighton Beach in his district, or his annual canoe trip, where I attended on many occasions, as well as Assemblyman Steve Cymbrowitz, also several judges. Judge Solomon, one year, who Don Halperin used to refer to that trip as "Jews in canoes."

(Laughter.)

SENATOR KLEIN: But at the same time, we got an opportunity to talk about his love of government, his love of this process.

And it always struck me that as someone who served all those years in the minority, how much he got accomplished. I think it could be said -- and I know Marty Connor always talks about this -- there was a less partisan atmosphere 15 years ago or maybe even 20 years ago.

But I think it has more to do with Don Halperin's very special talents, his sense of humor and his ability, I think, to convince everyone.

I know he's going to be missed. But I do know he's looking down at us today with a smile, because he's being memorialized before the legislative body which I think each and every day of his life he was proud to serve in.

Thank you, Mr. President.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Thank you, Mr. President.

I too rise to join my colleagues in paying a special tribute to a very, very dear friend of mine. I think Stack hit it on the head about the wonderful evenings that we had.

Because one of Donald's favorite pastimes was going out to dinner. And when you had Donald and Senator Solomon, it was complete night-and-day. Senator Solomon was a complete health freak and always completely telling us: "Don't eat that, don't eat that, don't eat that, don't eat that." And Senator Halperin says, "Whatever youse don't eat, I'll eat. Don't worry about it."

And he made it a point to sit next to me. So did Stack. Because between the two of them -- I'm a very small eater, and I never finish anything that I order. So it was a little bit of a battle between Donny and Billy Stachowski, and occasionally Masiello would get in on the act too: "Aren't you going to finish that, George? I'll take it."

But he was a wonderful sportsman. And Billy mentioned, in fact, that they went on that canoe trip. And who do you think that they had to guide them along the treacherous rapids? Our Lieutenant Governor. Senator Paterson was the guide to guide them along those treacherous rapids. And after they hit a rock, Senator Paterson would indicate: "We

just hit a rock."

(Laughter.)

SENATOR ONORATO: I think the other thing was, Donny loved to go bowling. And he had his own equipment all the time with him. He had his bowling shoes, his bowling ball, and we went to the bowling alley. And who was there? Most of us in the old-timers -- Senator Gold, Senator Stachowski, Senator Masiello. Who else was there? Joe Montalto.

And we're down there, and we're starting to bowl. And Donny, down there with his thing, with the perfect form, isn't doing too well. And David Paterson was there with us, and he was bowling. And he would throw the ball down, they'd guide him, and he's starting to beat Donny Halperin. Now, Donny is getting frustrated at this.

So I says: "Donny, don't get excited. I'll take care of this. I'll guide him now." Senator Paterson, he had the 6-8 pins standing. He says, "What's standing, George?" "The 8-10."

(Laughter.)

SENATOR ONORATO: I did that for four frames. And then Senator Paterson says, "Get Onorato out of there. I'll do my own choice. Don't let him guide me at all."

But we really enjoyed his sense of humor. But he was also such a wonderful man on the floor here. Years ago, there was a great many opportunities of actually passing legislation, and Donny did pass quite a bit of legislation, worthwhile legislation.

And everybody recognized the talent that he had, and were all so pleased when Governor Cuomo appointed him to the Housing Czar. And he did an outstanding job of that.

So he is really sorely missed. And to his family, I want you to know that I loved every moment that I shared with him, and I share those memories with you.

Thank you, and God bless you.

THE PRESIDENT: On the resolution, Senator Stavisky.

SENATOR STAVISKY: Yes, thank you, Mr. President.

I think everyone has noticed the warmth and affection with which everybody has

spoken such great regard for Senator Halperin -- his humor, his what sounds like food fights over Senator Onorato's plate.

But let me just mention one other thing, and that is his role as a lobbyist. He was extremely kind to my son. They would have lunch together periodically, they referred clients as my son was first starting out in the lobbying business. And it was appreciated.

Donald served with my husband in the Senate. But the kindness that he showed to my son was appreciated then, and it will be appreciated by the Stavisky family for the years to come.

Thank you, Mr. President. And I wish I had been invited on the canoe trips.

THE PRESIDENT: On the resolution, Senator Hannon.

SENATOR HANNON: Thank you.

I guess I'm not as good at reciting all the things why I was always in high admiration of Don Halperin. I had worked with him when I was in the Assembly; I worked with him when I was chair of the Housing Committee,

both in his role as Senator and then when he became Commissioner of DHCR.

I think what he did is epitomize a dedicated approach to government, a dedicated approach to reasoning together on policy. He did it also, obviously, with a great sense of humor, of always finding the irony in any given situation.

He told me this story of one of his big discoveries when he just got to DHCR, helping to move a desk. And in the course of moving the desk, a number of letters from Senators and Assemblymen fell out of the top drawer. Unanswered. And his was the first among that stack that fell out. So he knew that he had a lot of work to do.

And I think we collectively accomplished a great deal when he was there, even going back to saying what's the whole theory of the department, what are its goals, and where is it going.

He's going to be sorely missed. The spirit that he drove in regard to public policy, the spirit that he drove in regard to bringing some of his clients as lobbyists was

certainly refreshing, certainly inspiring. And it is one of the saddest things to have to speak on this floor of his memory because he did so much for all of us.

Thank you, Mr. President.

THE PRESIDENT: On the resolution, Senator LaValle.

SENATOR LaVALLE: Thank you, Mr. President.

It's really a privilege to speak on this resolution. Don Halperin was a very good and decent human being. He was an exceedingly bright individual and had skills, social skills that he utilized to get an awful lot done.

I remember many years ago he was the vice-chair of the commission, with Senator Joe Pisani, on children and families. And I think during that session, when the commission had made recommendations, he passed and had signed into law somewhere between six, ten, twelve bills in which he shared, Senator Pisani passing another large number of bills.

He was a member of the Higher Education Committee and was very interested

and influential on an issue that is very near and dear to me, and that's truth-in-testing law. And he and I together went down to Washington to testify on that issue.

He really was an individual who got into policy, was successful in what he did, and did it in a way that was just great.

Senator Klein, regardless of what period of time, whether it be the past or the present, Don Halperin would have navigated the politics in a great way and would have gotten results and would not have disturbed, upset other individuals on the other side in going about his business, because it was good for the public.

So those of us who knew Don Halperin, really, he leaves a great legacy, being one of the youngest Senators elected at that time -- I don't know if anyone else has beat age 26 coming into this chamber -- but also an incredible record of accomplishment.

And I guess the greatest legacy that we leave is being a good and decent human being.

THE PRESIDENT: Senator

Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I rise to express my gratitude to Senator Dale Volker and my colleagues for giving us an opportunity to express our -- share our memories with Donald Halperin.

He was the head of the Brooklyn delegation when I first came here and took the time to come and take me out to lunch and talk and really welcome me into the organization so to speak, and that was really very special.

We went to Chinatown, to some restaurant I'd never heard of, and he suggested that I order duck. I'd never had duck before. And it turms out he ate half the duck. But that was my introduction to Donald Halperin.

And he was just impeccably dressed always, very, very full of life, great sense of humor, and we had many, many laughs. My heartiest laugh was when he told me jokes about how Marty Markowitz wore bunny suits and greeted his people in his district in bunny suits and Santa Claus suits.

But he really shared a very, very special sensitivity to people that I appreciated and was extremely supportive as a colleague. And he was a very, very wonderful human being as well as all of what's been said about what a wonderful legislator he was.

I really -- I was at the funeral of Donald Halperin, and I guess the best part of that funeral was the fact that, one, it was so crowded I couldn't even get into the room. But the other important part was what the rabbi said about Donald. I felt so inspired by that. Because all of the things that we have expressed here, the rabbi was able to sum up. And it just seems that he touched so many people in a very special way.

So I am very, very happy to have been here with him and to have lived to experience the wonderfulness of this absolutely wonderful man.

Thank you, Mr. President.

THE PRESIDENT: Senator Flanagan.

SENATOR FLANAGAN: Thank you, Mr. President. Four quick observations.

I was lucky to have someone who was

my predecessor in the Assembly who is revered for his intellect, his wit and his talent, and that was my father. And I think I could use those words to describe Don Halperin as well. And before anyone says anything, I know those characteristics skip a generation.

But the other three things I wanted to mention is that Don Halperin was very close to my predecessor here, Jim Lack. And I believe I can go out on a limb and speak to the fact that Jim Lack would want to have everybody know how dear a friend he considered him to be, and that his loss is tremendous for people who no longer even serve here.

I would also add that, along the line of what Senator Stavisky said, in terms of Don's career as a lobbyist, that's really how I got to know him.

And this will tell you what a fabulous lobbyist he was, because he came in and lobbied about dry cleaning regulations. And you have to have real talent to make that sound anywhere near interesting. And he could do that, and he did it well.

And finally, to I think people

generally, it's very easy to note that someone is a friend and a colleague and is very good at what they do. But I also feel how someone who is a sitting member treats the staff that we work with speaks volumes about who they are as a person.

And John Conklin, who works with me, loved Don Halperin. He considered him an absolute dear, close, personal friend, and his life was blessed by knowing him. And I think all of us were in the same regard. And I would be remiss if, at least on behalf of someone I enjoy working with now, I don't say what a terrific man Don Halperin was.

Thank you.

THE PRESIDENT: Does any other member wish to be heard on this bill?

The question occurs on the resolution honoring the memory of our former colleague Donald Halperin. Would all those in favor please indicate so by saying aye.

(Response of "Aye.")

THE PRESIDENT: Those opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

To his wife, Brenda, to his son, Jeremy, to his daughter, Rebecca, to his mother, Gladys, to his former colleagues who came here today -- Senator Montalto, Senator Masiello, Senator Solomon, and Senator Dunne -- to his former staff members who are here today -- Mona DeMay, Patty Tinto, Alton Landsman, and Stacy Brown -- we all miss Senator Halperin.

If you didn't know Senator Halperin and were just listening today, you would think he weighed 450 pounds. But the fact is he was of average size and outstanding physical condition. So no one ever knew what happened to the food that he ate.

Remember when your parents told you eat everything on your plate? When you went to dinner with Senator Halperin, you didn't have to worry. If you didn't eat it, he would do it for you.

The reality is that he had such a tremendous effect on other people. He was often the brightest star in any gathering in

which he engaged -- that even in this mournful time, even in this sad time, most of the Senators who addressed us today thought of happy times.

So let me point out to Senator Onorato that I beat him and Halperin in those bowling games, even though they used typical Senate Minority tactics, which I now disassociate myself from.

(Laughter.)

THE PRESIDENT: And let me talk about the time Senator Halperin saved either my life or part of my life, when we were canoeing down the Delaware River with Senator Jerry Weinstein, whose canoe capsized. So I got out and I helped Senator Weinstein turn it over and helped him back into his canoe, and I was sitting on a rock waiting for Senator Halperin to pick me up.

I didn't see the canoe coming. At the last minute, he screamed. It was the scream more than anything else that made me get up out of the way, and the edge of the canoe hit the spot that I vacated.

So I will always thank Senator

Halperin that I became the proud father that I am today.

(Laughter.)

THE PRESIDENT: From his service in 1970 to his accession to ranker on the Finance Committee in 1981, to his candidacy for Public Advocate in 1993 -- against an inferior collection, of which yours truly was a member -- to his service as Commissioner of DHCR in 1994 and his outstanding work as a lobbyist for the remaining 11 years of his life, we all miss him, we all cherish that we were around him, and we all will never forget the times we spent with him.

The fact that this resolution was offered by a member of the adversarial party is a testament to the collective love that streams through this chamber for Senator Halperin. He would have those dinners, as Senator Flanagan described, with members of the opposite party, Senator Lack often joining us, Senator Donovan, and the regular crew from the Senate Minority.

Sometimes those days seem so far away. But maybe from this moment that we have

shared remembering Senator Halperin, it will reignite our understanding that all of us, even though it's at times adversarial, are really trying to fulfill our own dreams, which is his dream.

They say that the service to others is the rent we pay for our space on earth. Senator Halperin looks down on us today paid in full. Let us never let him look down and find any of us in arrears.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, if we could use the usual procedure of the house to put all members on the resolution unless they would prefer not to be.

THE PRESIDENT: This resolution will be unanimous. Anyone indicating otherwise can indicate so at the desk.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. I believe there's a report of Rules Committee at the desk. Can I ask that it be read at this time.

THE PRESIDENT: The Secretary will read the report of the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following:

By Senator Johnson, Concurrent Resolution Number 459, amending Permanent Joint Rules of the Senate and Assembly;

And Senate Print 2131, by the Senate Committee on Rules, an act to amend the Tax Law.

Said bill ordered direct to third reading.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: May we accept the Rules Committee report.

THE PRESIDENT: All those in favor.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

SENATOR MARCELLINO: Mr. President, can we at this time take up Concurrent Resolution Number 459.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: The Assembly sends for concurrence Assembly Concurrent Resolution Number 147. Senator Bruno moves to substitute Senate Concurrent Resolution Number 459 for Assembly Concurrent Resolution Number 147.

THE PRESIDENT: Substitution ordered.

The Secretary will read.

THE SECRETARY: Concurrent Resolution Number 459, amending the Permanent Joint Rules of the Senate and Assembly, in relation to establishing a budget consideration schedule and joint budget conference committees.

THE PRESIDENT: On the resolution, all those in favor please indicate by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. At this time can we have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read the calendar.

THE SECRETARY: Calendar Number 7, by Senator Padavan, Senate Print 131, an act to amend the Penal Law, in relation to the crime of trademark counterfeiting.

THE PRESIDENT: The Secretary will please read the last section of the bill.

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

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 7 are Senators Montgomery, Parker, Perkins, and Thompson.

Ayes, 55. Nays, 4.

THE PRESIDENT: The bill is

passed.

The Secretary will read.

THE SECRETARY: Calendar Number 40, by Senator Maziarz, Senate Print 550, an act to amend the Judiciary Law, in relation to appointment.

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 42, by Senator DeFrancisco, Senate Print 787, an act to amend the Surrogate's Court Procedure Act, in relation to computation.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 53, by Senator Marcellino, Senate Print 616, an act to amend the Penal Law, in relation to including.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Thank you, Mr. President.

Since 1999 we have passed this bill in this house many times unanimously. And recently I learned that some concerns have been raised about the fact that the bill is limited to dogs and cats. It raises the penalty for the theft of these creatures to a Class E felony, with one to four years possible service and up to a $5,000 fine.

One of the reasons we have done this is because there at least a couple of million pets a year are stolen and used for all kinds of evil things. And because of the limited liability of the crime and the inability to actually put a value on these creatures, police forces have never really paid much attention to it.

I've always thought that that was a bad thing and we want them to do more in protecting the pets that people hold as part of their family and priceless. These creatures are priceless when they're yours.

I'd like to expand this bill to as many creatures as we possibly could, but we can't even get dogs and cats, the theft of dogs and cats, through the other house. I would like to.

So I would ask my colleagues on the other side who would like to see this bill expanded, as I would, to go to the other house and get the bill expanded so that it can come to the floor even as it is now. Assemblywoman Glick has been carrying the bill. She can't get it out for a vote.

This bill is a no-brainer, quite frankly, Mr. President. And I urge everyone to support it and seek help from the other house, as I intend to, to get this bill passed in the other house so it finally become law. And we can expand it and amend it once it's passed into law.

Thank you. I vote aye.

THE PRESIDENT: Senator Marcellino will be recorded in the affirmative on Calendar Number 53, Senate 616.

Senator Hassell-Thompson, to explain --

SENATOR HASSELL-THOMPSON: Senator Thompson. Without the "Hassell."

THE PRESIDENT: Without the "Hassell," Senator Thompson, to explain his vote.

SENATOR THOMPSON: Yeah, initially I wasn't going to support this bill. But I think, after thinking about some of the issues from being on the Buffalo City Council, in terms of dogs being stolen and used for dog fighting, which is a very big problem -- and I know that on the City Council in Buffalo we've

dealt with that a lot as well.

So I don't know where the bill will go, but I'm glad to support it, and anything I can do to support this effort.

Thanks.

THE PRESIDENT: Senator Thompson will be recorded in the affirmative on Calendar Number 53.

To explain her vote, Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, thank you. To explain my vote, which I wasn't going to do.

But just so that I think we're not confused, this law does not specifically cover those situations that Senator Thompson pointed out. In fact, it's just generally if a pet is stolen.

Now, obviously we don't want to see pets stolen. But I think that we all understand too that pets have varying degrees of pedigree, and some of them are just common ordinary street cats and whatnot; they come in, and they become pets. And if a child takes it or a youngster takes a cat -- maybe

the cat has a collar, maybe it doesn't; maybe the dog has a dollar, maybe it doesn't -- but grand larceny is pretty serious.

And I think that we need to be much more careful about tagging every single action as a felony, because sometimes this catches people who really are not looking to do something dreadfully harmful, but maybe they want to take -- they would like a pet, they don't have one and they see a pet that looks stray and they take it in and, bang, they've committed grand larceny and they have an E felony charge.

So I think we should be more careful. If we are talking about specific criminality associated with taking a pet, we should say that in the statute so that it's very clear that we are not talking about someone who mistakenly takes an animal into their home thinking that that's a stray animal and that person is committing a crime and gets labeled for the rest of their lives and cannot get a job for the rest of their lives.

So I'm specifically voting no on this for that reason.

THE PRESIDENT: Senator Montgomery will be recorded in the negative on Calendar Number 53.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 53 are Senators Hassell-Thompson, Montgomery, Parker, and Perkins.

Ayes, 55. Nays, 4.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 61, by Senator Winner, Senate Print 897, an act to amend the Penal Law, in relation to the discharge of a gun or firearm.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Yes, thank

you, Mr. President.

I just wanted to say that this is a very moderate but commonsense piece of legislation relating to the problems of gun violence and injury related to firearms.

I appreciate the fact that Senator Winner has sponsored it. He's in a district that many people would think makes it difficult to do anything that challenges the hegemony of those who would not have us pass any legislation related to firearms. And I'm hoping that maybe it is an indication that this year we can move forward on the backlog of items that relate to gun safety.

This bill simply requires that if you discharge a firearm and injure or kill someone, you're required to report it. There are a variety of pieces of legislation like this that would make New York a safer state for all of the people of the state, for all of our children. And I hope that this is a good sign that maybe we can move forward with that agenda.

I vote yes. Thank you.

THE PRESIDENT: Senator

Schneiderman will be recorded in the affirmative.

Results.

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 89, by Senator Maziarz, Senate Print 1694, an act to amend the Labor Law, in relation to contracts.

THE PRESIDENT: Last section.

THE SECRETARY: Section 6. 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 95, by Senator Saland, Senate Print 1147, an act to amend Chapter 698 of the Laws of 1996 amending the Education 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 PRESIDENT: Results.

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

That completes the noncontroversial calendar, Senator Marcellino.

SENATOR MARCELLINO: Mr. President, is there any further business at the desk?

THE PRESIDENT: We have a motion by Senator Farley.

SENATOR MARCELLINO: Can we recognize Senator Farley.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Maziarz, on page 8 I offer the following amendments to Calendar Number 39, Senate Print 521, and I ask that this 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 Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I move that we adjourn until Tuesday, February 13th, at 3:00 p.m.

THE PRESIDENT: The Senate stands adjourned until Tuesday, February 13th, at 3:00 p.m.

(Whereupon, at 4:55 p.m., the Senate adjourned.)