

1 NEW YORK STATE SENATE

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4 THE STENOGRAPHIC RECORD

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9 ALBANY, NEW YORK

10 February 9, 2010

11 12:21 p.m.

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14 REGULAR SESSION

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18 LIEUTENANT GOVERNOR RICHARD RAVITCH, President

19 ANGELO J. APONTE, Secretary

1 P R O C E E D I N G S

2 THE PRESIDENT: The Senate will  
3 please come to order.

4 I ask everyone present to rise and  
5 recite with me the Pledge of Allegiance to our  
6 Flag.

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

9 THE PRESIDENT: In the absence of  
10 clergy, may we all bow our heads for a moment  
11 of silence.

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

14 THE PRESIDENT: The reading of  
15 the Journal.

16 The Secretary will read.

17 THE SECRETARY: In Senate,  
18 Monday, February 8, the Senate met pursuant to  
19 adjournment. The Journal of Sunday,  
20 February 7, was read and approved. On motion,  
21 Senate adjourned.

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

25 Presentation of petitions.

1                   Messages from the Assembly.  
2                   Messages from the Governor.  
3                   Any reports of standing committees.  
4                   Reports of select committees.  
5                   Communications and reports from  
6           state officers.  
7                   Motions and resolutions.  
8                   Senator Klein.  
9                   SENATOR KLEIN:     Mr. President, I  
10           believe Senator Smith has a resolution at the  
11           desk. I ask that the title of the resolution  
12           be read and move for its immediate adoption  
13           and allow Senator Smith to speak on his  
14           resolution.  
15                   THE PRESIDENT:     Senator Klein,  
16           has this resolution been deemed privileged and  
17           submitted by the office of the Temporary  
18           President?  
19                   SENATOR KLEIN:     Yes, it has,  
20           Mr. President.  
21                   THE PRESIDENT:     The Secretary  
22           will read.  
23                   THE SECRETARY:     By Senator Smith,  
24           legislative resolution honoring Wanda  
25           Best-DeVeaux, MA, MPA, of Queens Village, for

1 her steadfast devotion and selfless service to  
2 her community.

3 THE PRESIDENT: Senator Smith.

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

6 Mr. President, every so often you  
7 get a chance to speak on behalf and honor  
8 someone who has devoted much of their time in  
9 a volunteer way towards the betterment of  
10 their neighborhood. Ms. DeVeaux has been the  
11 director of our Dove House. It is a program  
12 for victims of domestic violence. And also  
13 she serves on the New Hope Family Shelter.

14 She has done a tremendous amount of  
15 work with Citizens Against Recidivism. It's a  
16 young lady who is an unsung hero. And I'm  
17 just glad today that we pause at this moment  
18 on this day to honor Ms. DeVeaux for the  
19 services that she's rendered to victims of  
20 domestic violence as well as individuals who  
21 are within the recidivism program.

22 Thank you very much, Mr. President.

23 THE PRESIDENT: Anyone else wish  
24 to be heard on the resolution?

25 The question is on the resolution.

1 All those in favor please indicate by saying  
2 aye.

3 (Response of "Aye.")

4 THE PRESIDENT: Opposed?

5 (No response.)

6 THE PRESIDENT: The resolution is  
7 adopted.

8 Senator Smith has indicated that he  
9 would like to open the resolution to the  
10 entire body for cosponsorship. Any Senator  
11 wishing to not be on the resolution please  
12 inform the desk.

13 Senator Klein.

14 SENATOR KLEIN: Mr. President, I  
15 believe that Senator Smith has a second  
16 resolution at the desk. I ask that the title  
17 of the resolution be read and move for its  
18 immediate adoption.

19 THE PRESIDENT: Senator Klein,  
20 has this privilege been deemed privileged and  
21 submitted by the office of the Temporary  
22 President?

23 SENATOR KLEIN: Yes, it has,  
24 Mr. President.

25 THE PRESIDENT: The Secretary

1 will read.

2 THE SECRETARY: By Senator Smith,  
3 legislative resolution honoring Denean D.  
4 Ferguson of Far Rockaway, Queens, for her  
5 steadfast devotion and selfless service to her  
6 community.

7 THE PRESIDENT: Senator Smith.

8 SENATOR SMITH: Thank you,  
9 Mr. President. I think the description of the  
10 resolution is sufficient in honoring  
11 Mrs. Ferguson. Thank you.

12 THE PRESIDENT: Are there any  
13 Senators that wish to be heard on this  
14 resolution?

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

18 (Response of "Aye.")

19 THE PRESIDENT: Opposed?

20 (No response.)

21 THE PRESIDENT: The resolution is  
22 adopted.

23 Senator Klein.

24 SENATOR KLEIN: Mr. President, I  
25 believe that Senator Leibell has a resolution

1 at the desk. I ask that the resolution be  
2 read in its entirety and move for its  
3 immediate adoption.

4 THE PRESIDENT: Senator Klein,  
5 has this resolution been deemed privileged and  
6 submitted by the office of the Temporary  
7 President?

8 SENATOR KLEIN: Yes, it has,  
9 Mr. President.

10 And I believe Senator Leibell wants  
11 to speak on his resolution.

12 THE PRESIDENT: The Secretary  
13 will read.

14 THE SECRETARY: By Senator  
15 Leibell, legislative resolution urging the  
16 federal government to reverse its decision to  
17 hold civilian trials of terrorists Khalid  
18 Sheikh Mohammed, Walid Muhammed Salih Mubarak  
19 Bin Attash, Ramzi Bin Al Shibh, Ali Abdul-Aziz  
20 Ali, and Mustafa Ahmed Al Hawsawi in Manhattan  
21 federal court.

22 "WHEREAS, Throughout the course of  
23 our nation's history, from the time of George  
24 Washington to the present day, the United  
25 States has recognized that these terrorists,

1 captured with the intent to attack the United  
2 States, its people and/or its interests, and  
3 which present a serious and immediate threat  
4 to the nation and its people, should not be  
5 afforded the same constitutional criminal  
6 justice protections reserved for United States  
7 citizens; and

8 "WHEREAS, Attempting to apply the  
9 same constitutional criminal justice  
10 protections reserved for United States  
11 citizens, and attempting to apply the  
12 principles of our civilian courts to these  
13 terrorists, which have openly espoused,  
14 planned and/or conducted acts of terrorism,  
15 war and mass murder and destruction against  
16 the United States, its people and/or its  
17 interests, is contradictory to the rules of  
18 war followed by our soldiers during the  
19 capture of these individuals, and is  
20 inherently inapplicable to the prosecution and  
21 administration of justice; and

22 "WHEREAS, Permitting these  
23 terrorists to enjoy the same constitutional  
24 criminal justice protections reserved for  
25 United States citizens, and awarding them the



1 rules and procedures of our civilian federal  
2 courts, will place a great risk on our  
3 nation's most vital intelligence information,  
4 offer a platform for the inspiration of hatred  
5 of the United States, and encourage fellow  
6 terrorists to commit further acts of war and  
7 violence against this nation and this state;  
8 and

9 "WHEREAS, The means necessary to be  
10 employed to effectively stop the activities of  
11 these terrorists before they fulfill their  
12 missions to espouse, plan, and conduct acts of  
13 terrorism, war and mass murder and destruction  
14 against the United States, its people and/or  
15 its interests, are not consistent with the  
16 means to afford these individuals the same  
17 constitutional criminal justice protections  
18 reserved for United States citizens, or to  
19 obtain a successful prosecution of these  
20 individuals in a civilian federal criminal  
21 court; and

22 "WHEREAS, Despite these issues, in  
23 February 2009 the United States Department of  
24 Justice stayed the prosecution before a  
25 military commission tribunal of five of the

1 most infamous, dangerous and devoted Al Qaida  
2 terrorists in world history, Khalid Sheikh  
3 Mohammed, Walid Muhammed Salih Mubarak Bin  
4 Attash, Ramzi Bin Al Shibh, Ali Abdul  
5 Aziz-Ali, and Mustafa Ahmed Al Hawsawi; and

6 "WHEREAS, The government of the  
7 United States of America announced on  
8 November 13, 2009, through U.S. Attorney  
9 General Eric Holder, plans to prosecute avowed  
10 Al Qaida terrorists Khalid Sheikh Mohammed,  
11 Walid Muhammed Salih Mubarak Bin Attash, Ramzi  
12 Bin Al Shibh, Ali Abdul-Aziz Ali and Mustafa  
13 Ahmed Al Hawsawi in federal district court in  
14 Lower Manhattan; and

15 "WHEREAS, All of these avowed  
16 terrorists to be so prosecuted in federal  
17 court have been directly linked to the attacks  
18 of September 11, 2001, which saw the deaths of  
19 nearly 3,000 people on New York soil; and

20 "WHEREAS, The proposed location of  
21 this trial, in the very shadow of where the  
22 World Trade Center once stood, and in the  
23 heart of New York City's financial and  
24 commercial district, poses unacceptable and  
25 significant risk, harm, and threat to the

1 safety and security of millions of Americans  
2 and New Yorkers residing and working in the  
3 vicinity of the federal district courthouse in  
4 Manhattan; and

5 "WHEREAS, The risk, potential harm,  
6 threat and danger that will be brought to  
7 New York State and New York City and its  
8 citizens, as a result of the federal  
9 government's decision to give these avowed  
10 terrorists a civilian trial in federal  
11 district court in Manhattan, will cause  
12 New York City, New York State and its citizens  
13 to bear not only the huge burden of such risk,  
14 potential harm, threat and danger but also  
15 bear, in the midst of a deep economic  
16 recession and state fiscal crisis, an  
17 unprecedented security cost which officials  
18 have estimated could reach nearly \$1 billion;  
19 and

20 "WHEREAS, It is further  
21 contemplated that these trials will cause the  
22 State of New York, the City of New York, and  
23 its citizens, many of whom experienced the  
24 horrific events of September 11, 2001,  
25 firsthand, further unprecedented disturbance,

1 emotional trauma and economic hardship with  
2 the institution of required security measures  
3 by state and local law enforcement agencies  
4 which would need to be taken in Lower  
5 Manhattan for a period which has been  
6 estimated to be years before completion of  
7 such trials; and

8 "WHEREAS, New York Governor David  
9 A. Paterson, New York City Mayor Michael  
10 Bloomberg, and Julie Menin, chairwoman of  
11 Community Board 1, representing the  
12 neighborhoods surrounding the federal  
13 courthouse for Lower Manhattan, have all  
14 expressed serious concern and opposition to  
15 the federal government's plan to prosecute  
16 these avowed terrorists in New York City and  
17 cause undue and unprecedented financial  
18 hardship and burden on the people and law  
19 enforcement agencies in the State of New York  
20 and its political subdivisions in and around  
21 New York City; now, therefore, be it

22 "RESOLVED, That President Barack  
23 Obama and Attorney General Eric Holder are  
24 hereby strongly urged by this Legislative Body  
25 to reserve their decision to prosecute Khalid

1 Sheikh Mohammed, Walid Muhammed Salih Mubarak  
2 Bin Attash, Ramzi Bin Al Shibh, Ali Abdul-Aziz  
3 Ali, and Mustafa Ahmed Al Hawsawi in federal  
4 district court in Manhattan, over the  
5 objections of our state and local government  
6 officials, and be it further

7 "RESOLVED, That will copies of this  
8 resolution, suitably engrossed, be transmitted  
9 to President Barack Obama, U.S. Attorney  
10 General Eric Holder, and all members of the  
11 New York State Congressional delegation."

12 THE PRESIDENT: Senator Leibell.

13 SENATOR LEIBELL: Thank you,  
14 Mr. President.

15 A few months ago the Attorney  
16 General of the United States announced that  
17 terrorist trials would be held in the Southern  
18 District of New York in Lower Manhattan. His  
19 decision was supported by the President of the  
20 United States.

21 Now, I will begin my comments by  
22 saying that I personally believe that we  
23 should not be using the civilian criminal  
24 justice system to deal with these terrorists.  
25 And in fact we should be using a military

1        commission tribunal, for which there is a long  
2        history in this country, going back over  
3        200 years to George Washington's day. In  
4        fact, in World War II, President Franklin  
5        Roosevelt used them.

6                    And who are the people that we are  
7        discussing and describing? They are enemy  
8        military combatants engaged in active military  
9        combat against the citizens of the United  
10       States of America. They are the worst of the  
11       worst. They kill, they maim, they torture,  
12       they burn, they behead. If any group of  
13       individuals was ever eligible to be considered  
14       to be tried by a military tribunal, it is  
15       these individuals.

16                   I would urge the administration to  
17        reconsider their position on where they should  
18        be tried. The subject of this resolution  
19        today deals with the venue and where they  
20        should be tried, in what court, what location.  
21        I'm going to suggest to you that trying these  
22        individuals in Lower Manhattan goes beyond the  
23        pale. There is no area of our country that  
24        has suffered more than those few square  
25        blocks. They have suffered in terms of lost

1       lives, lost dreams, and of course the economy.

2               Mayor Bloomberg has said that this  
3       trial or trials will cost in excess of a  
4       billion dollars. In fact, that may very well  
5       be a low figure. I had the chance a few weeks  
6       to walk through Lower Manhattan, to go through  
7       the federal court buildings, to try and get  
8       some sense of the great inconvenience, the  
9       great cost that will be placed on the  
10      residents and those who work within that area,  
11      trials that in fact could last for years.

12              I think we should listen to Mayor  
13      Bloomberg. I think we should listen to  
14      New York City's police commissioner, Ray  
15      Kelly. I think we should listen to those who  
16      are active in that community and those who  
17      live in that community and work there.

18              Through this resolution -- and I'm  
19      grateful that it has been brought to the  
20      floor -- we have an opportunity today as a  
21      legislative body to urge the President and the  
22      Attorney General to reconsider their previous  
23      decision. It was a mistake. But there is  
24      time to correct that mistake.

25              It is not correct to have these

1 trials in Manhattan. It is not correct to  
2 have them in New York City. We serve no  
3 purpose by doing that. In fact, we will only  
4 put at risk many people's lives, not the least  
5 of which will be the jurors who could be  
6 selected, the judges who may be involved, the  
7 police authorities who will work to attempt to  
8 protect people.

9 If we wish to be politically  
10 correct, especially with this type of enemy,  
11 we as Americans can be politically correct all  
12 the way to the cemetery. There are ways to  
13 assure fair trials and there are locations  
14 where that can be accomplished. I'm going to  
15 suggest to you, my colleagues, that New York  
16 City and New York State is not the correct  
17 location.

18 Thank you, Mr. President.

19 THE PRESIDENT: Thank you,  
20 Senator Leibell.

21 SENATOR LEIBELL: I'd like to  
22 open up this resolution for sponsorship -- I  
23 believe there are 30 names on it already, but  
24 to anyone who would wish to join.

25 THE PRESIDENT: Thank you.



1                   Do other Senators wish to be heard  
2           on this?

3                   Senator Squadron.

4                   SENATOR SQUADRON:     Thank you very  
5           much, Mr. President.

6                   The problems and the challenges and  
7           the devastating burden of these trials for the  
8           community is not dearer to anyone's heart in  
9           this room than my own. This is my district,  
10          this is my community in Lower Manhattan.

11                  And so I appreciate Senator  
12          Leibell's highlighting just what a burden  
13          putting these trials in the federal courthouse  
14          in Lower Manhattan would be. We know what a  
15          burden it would be because immediately after  
16          it was announced that they were considering  
17          the federal courthouse in Lower Manhattan, I  
18          asked the NYPD to present to the local  
19          community what it would take to make sure to  
20          do these trials safely in Lower Manhattan.

21                  Because a very important value that  
22          was being raised was one that I and my  
23          community in Lower Manhattan, the community  
24          board and others, wanted to support, which was  
25          civilian trials for these accused terrorists.

1 But if the burden of those civilian trials was  
2 going to be too great for our community that  
3 has handled so much, has risen to so many  
4 challenges since September 11th, since 1993,  
5 then those civilian trials in that courthouse  
6 would not be possible.

7 And what we found when the NYPD did  
8 as they do, their unparalleled quality when it  
9 comes to telling us what it will take to make  
10 us safe, we saw that the burden in the Lower  
11 Manhattan community would be too great to  
12 bear.

13 And that's why I, along with  
14 Congressman Nadler and Speaker Silver,  
15 Councilmember Chin, all of the local  
16 advocates -- chair of the community board  
17 Julie Menin, as has been mentioned -- have  
18 come together and said we can't do this in  
19 Lower Manhattan at this courthouse.

20 We can't do it because this  
21 community, which has been at the epicenter of  
22 an international fight, at this point needs to  
23 be able to survive and thrive and continue to  
24 be the community that it was and has  
25 miraculously become since September 11th.

1                   However, I'm not able to vote for  
2                   this resolution that's been put forward today  
3                   because, as I read this resolution, it says  
4                   that these trials should not happen in  
5                   civilian court. And when I listened to  
6                   Senator Leibell just now describe the  
7                   resolution, it sounded to me like he was  
8                   calling for the United States to take these  
9                   trials out of civilian court and put them in  
10                  military tribunals.

11                  And the fact is that at my core, at  
12                  our core as Americans and New Yorkers and in  
13                  the community of Lower Manhattan, that idea,  
14                  the idea that our justice system can't rise to  
15                  the challenge of what happened September 11th,  
16                  is contradictory.

17                  And so that's why we are going to  
18                  as a body have the opportunity to stand with  
19                  the Lower Manhattan community that I am so  
20                  proud to represent to make clear that we're  
21                  not going to have any community, whether in  
22                  Lower Manhattan or anywhere else in this  
23                  state, bear an unbearable burden for these  
24                  trials. However, we are not going to turn our  
25                  back on the fundamental tenets of this

1 country, of due process, of the civilian court  
2 system in order to do it.

3 So let me be very clear on my no  
4 vote on this resolution. I appreciate Senator  
5 Leibell's concern for the Lower Manhattan  
6 community, and I hope that you will maintain  
7 that concern as we have further resolutions.  
8 I appreciate the concern of everyone in this  
9 room when it comes to the extraordinary and  
10 heroic way that the Lower Manhattan community  
11 has dealt with these issues. And we should  
12 stand with the community as a legislative  
13 body.

14 However, we also must stand with  
15 the fundamental tenets and principles of our  
16 nation and our Constitution. And that's why  
17 I'll be voting no today.

18 Thank you, Mr. President.

19 THE PRESIDENT: Senator Adams.

20 SENATOR ADAMS: Thank you.

21 First, before speaking on the  
22 resolution, I would just like to take a moment  
23 just to acknowledge the absence of one of our  
24 colleagues, Senator Morahan. And I just hope  
25 for his family and for the Senator he's all in

1       our thoughts and he's all in our prayers as he  
2       recovers over this unfortunate incident that  
3       has come into his life.

4               No matter which side of the aisle  
5       we are on and no matter how much we debate  
6       here on the Senate floor, there is a level of  
7       collegial atmosphere that we do care for each  
8       other. And I care for the members of this  
9       body no matter on what chair they sit or where  
10      they are in proximity of what party they  
11      belong to.

12             So our hearts and our family goes  
13      to the empty chair that's here. We hope our  
14      Senator returns with us to participate in  
15      improving our state.

16             Speaking to the resolution, I share  
17      the support of this resolution, as my  
18      colleague Senator Leibell pointed out. And I  
19      respect the concerns of my colleague Senator  
20      Dan Squadron.

21             We are on unchallenged and  
22      unchartered waters. Our country is under an  
23      unprecedented level of attacks. Those who  
24      wish to harm Americans every day are becoming  
25      more and more creative in the methods that

1       they use to disrupt our way of life. If we do  
2       not change with them, if we do not find ways  
3       to stay ahead of their diabolical creativity,  
4       then we will find ourselves having to address  
5       this issue year after year, day after day.

6               Our criminal justice system cannot  
7       support trying cases in civilian courts of  
8       this magnitude. As a person who walked the  
9       ground of our Center of Trade when it was  
10      attacked on September 11th as a police  
11      officer, I understand how much it takes to  
12      secure that area. The billions of dollars  
13      that would have been needed or will be needed  
14      to protect the geographical area of a  
15      courtroom during the trial of a terrorist is  
16      just too costly for our systems to bear.

17             By having a military tribunal, it  
18      does allow one due process. And I want to be  
19      clear on my position. Individuals who blow up  
20      planes, who take down buildings, who attempt  
21      to disrupt our way of life in this fashion,  
22      they are enemy combatants. They should be  
23      treated in a military atmosphere because  
24      they're taking a military action against the  
25      people of this state.

1                   We cannot compare a person that  
2                   takes down the Trade Center with the person  
3                   that snatches a pocketbook. That is not a  
4                   reality. And we cannot continue to  
5                   romanticize and live in a make-believe society  
6                   where there's just one or two people that are  
7                   attempting to hurt Americans.

8                   People want to harm us. And I'm  
9                   extremely clear on this. Because we don't  
10                  hear about all the reports, don't believe it's  
11                  not happening. That's why they're called  
12                  sleeper cells. There was a seven-year gap  
13                  between the first attack on the Trade Center  
14                  and the collapse of the Trade Center. While  
15                  we are moving further and further away from an  
16                  attack, we become more and more comfortable,  
17                  but a countless number of men and women all  
18                  across America are attempting to foil, stop,  
19                  prevent, and apprehend individuals who are  
20                  carrying out these attacks.

21                  These individuals should not be in  
22                  our criminal justice system, they should be  
23                  removed from our criminal justice system, and  
24                  they should be treated as they are. They are  
25                  enemy combatants to wars on the United States.

1       And if we fail to treat them that way, if we  
2       allow them the luxury of going through the  
3       criminal justice system and waiting it out and  
4       further endangering the lives of Americans by  
5       putting them in a criminal justice system,  
6       we're making the wrong decision, in my  
7       position.

8                Their attack is a military attack.  
9       If they are apprehended, they should be  
10      apprehended as a person of a military status.  
11      You don't have to don green fatigues to be in  
12      the army of hate. These are men who have  
13      decided, they have declared war on America.  
14      And if we continue to treat them as merely  
15      insignificant criminals that are standing on  
16      the corner selling a nickel bag or a dime bag,  
17      that's a mistake. You treat enemies of war as  
18      enemies of war, and you make sure they have  
19      the necessary prosecution that a wartime  
20      criminal deserves and should receive.

21               I support this resolution, and I  
22      thank you, Senator Leibell, for bringing it to  
23      the floor.

24               THE PRESIDENT:       Senator Volker.

25               SENATOR VOLKER:       Mr. President,



1       it's kind of interesting that in a time of  
2       severe fiscal emergency that we are in -- and  
3       we know we're in that. The issue of how much  
4       and all that is one thing. But at a time like  
5       this, when the budget that we are looking at  
6       is a rather enormous decline in the numbers of  
7       State Police -- we just in this budget would  
8       cancel another class. And there's a reason  
9       I'm saying this, and Senator Leibell knows why  
10      I'm saying this.

11               If these trials are held in  
12      New York City, we will go to the highest  
13      level, that is the highest level of security  
14      for all of downstate New York. What happens  
15      when that happens is a substantial number of  
16      State Police and other law enforcement people  
17      are virtually automatically moved down to the  
18      city. This does not just involve Ray Kelly  
19      and -- who, by the way, is a very courageous  
20      guy. I know him personally. And the New York  
21      City police are ready to do anything they have  
22      to do.

23               But let's remember, if these trials  
24      are held, we are going to have an enormous  
25      commitment of State Police as well as city

1 police in New York City, and we'll have a  
2 situation that's going to go on for a long  
3 period of time.

4 As I thought about this  
5 situation -- and I formally was in charge of  
6 homeland security in the Senate hear several  
7 years ago -- it dawned on me that this will do  
8 far more than just create a problem with  
9 security, it will create havoc with the City  
10 of New York, its economic and social fiber,  
11 and may in fact encourage a lot of people to  
12 leave the City of New York. Which is the last  
13 thing that we need, is for people to leave  
14 this state.

15 You have to be reasonable when  
16 you're dealing with this sort of a situation.  
17 I don't think that Attorney General Holder  
18 thought this entirely through. I know he was  
19 making some sort of statement. And let's  
20 remember, by the way, that the Constitution of  
21 the United States is for the citizens of this  
22 country. Enemy combatants are not included in  
23 the protections of the Constitution of the  
24 United States. That issue is under a whole  
25 different issue.

1                   These are people that are willing  
2           to kill in my area of the state -- I live in  
3           Western New York, second biggest target after  
4           New York City. Interestingly enough, the law  
5           enforcement people will move from other parts  
6           of New York to help out with New York City.  
7           Especially if we pass this budget the way it  
8           is, the State Police in this state will be  
9           short everywhere. We are headed, by the way,  
10          for the lowest number of State Police since  
11          well before 9/11. After 9/11, we increased  
12          the number of troopers substantially.

13                   I think Senator Leibell's  
14          resolution is about as common-sense as  
15          anything I've seen this year before our house.  
16          We have to look at things logically. And  
17          that's especially true when the fiscal  
18          situation of the state and the country is in  
19          the situation that we're in.

20                   I thank Senator Leibell, I thank  
21          Senator Adams and all those who support this  
22          resolution. And I would appeal to the  
23          President of the United States. This is not a  
24          political issue, really. It's a real issue,  
25          as I call it. It's an issue of fairness to

1 the City of New York, of fairness to everyone.

2 And it seems to me that what we  
3 need to do is realize that criminals are  
4 criminals, but enemy combatants are altogether  
5 different. They don't follow the same rules,  
6 and they shouldn't be covered under the same  
7 rules.

8 So it seems to me every piece of  
9 logic that I can think of says these trials  
10 should be moved out of New York City and out  
11 of this state.

12 THE PRESIDENT: Senator Golden.

13 SENATOR GOLDEN: Thank you,  
14 Mr. Lieutenant Governor, Mr. President. I  
15 rise to talk on this resolution here today.

16 Senator Vinnie Leibell, thank you.  
17 Thank you all of the Senators -- Senator  
18 Adams, for your comments, Senator Squadron,  
19 Senator Volker, and many others that will  
20 speak on this bill.

21 Senator Adams pointed out the seven  
22 years between 1994 and 2001. Those sleeper  
23 cells, ladies and gentlemen, lived in Brooklyn  
24 New York. They lived here. They were part of  
25 our communities. And they came out and did

1       this.  Mohammad Atta was, in 1997, in  
2       Brooklyn.  He was the head of those 19 that  
3       flew the planes into the World Trade Center.

4               It's not all right for us to move  
5       the trial someplace else and respectfully say,  
6       Well, we don't want it here because it  
7       shouldn't be here, and give it to another  
8       community.  I think that's plain wrong.  I  
9       think this trial belongs where it does belong,  
10      in a military court.  Not in someone else's  
11      backyard.  Not so somebody else in this great  
12      country can get hurt.

13             President Obama himself, he said we  
14      are at war.  He said it.  And you know what's  
15      important about this resolution today?  It's  
16      because President Obama even said the other  
17      day, that he says, you know, it's going to be  
18      a little difficult, he says, because Mayor  
19      Michael Bloomberg is against it and the police  
20      commissioner is against it.

21             Well, that's why this resolution is  
22      so important today.  Because this is the  
23      legislative body that represents the  
24      19.5 million people of this great state.  And  
25      we, the people of the State of New York, do

1 not want that trial here. That trial belongs  
2 in a military court.

3 None of us can forget and let us  
4 never forget Police Officer Riches, Police  
5 Officer O'Berg -- I'm sorry, Fireman O'Berg,  
6 chief of the Fire Department Jimmy Riches.  
7 Police Officer Moira Smith, the first woman  
8 killed. Thirty-seven Port Authority police  
9 officers, 23 New York City police officers,  
10 343 fireman all perished that day.

11 Do you remember the smell, the odor  
12 of the dead bodies and the burning metal and  
13 twisted metal that day and the almost 3,000  
14 people that perished that day? Ladies and  
15 gentlemen, we can't regurgitate that. We as a  
16 society cannot take that back into the City of  
17 New York and allow our people to go through  
18 that again.

19 The businesses that were closed.  
20 You couldn't go down blocks, you couldn't get  
21 into buildings. That all happens again. You  
22 couldn't get over bridges and through the  
23 tunnel. That all happens again. Do we want  
24 that? No, ladies and gentlemen, we don't want  
25 that.

1 I see, up in the audience, Lou  
2 Matarazzo and Ben Marquis. They were police  
3 officers years ago, as I was, as some of you  
4 here in this room. Think about it, trying to  
5 protect the City of New York with 35,000  
6 New York City police officers, already 5,000  
7 to 6,000 police officers less than what they  
8 should have. Think about it. State troopers,  
9 National Guard, where are we going to get the  
10 people? How are we going to get the New York  
11 City Police Department to be part of this  
12 surveillance and this setting up of security?

13 It is a nightmare, it is a logistic  
14 nightmare. If the commissioner of the  
15 New York City Police Department, Ray Kelly,  
16 has to do it, he will. And if the mayor,  
17 Mayor Bloomberg, is forced to do it, we will.  
18 But ladies and gentlemen, it would be a  
19 travesty to every living American in this  
20 great state and in the tristate area. And the  
21 cost would be so overwhelming that we'd never  
22 be able to recoup it.

23 As I opened up, cells were living  
24 here in the City of New York, in Brooklyn,  
25 where cells today, ladies and gentlemen,

1 across this state and across this nation still  
2 live. It's only a matter of time. We do not  
3 need to give them a venue. We've given and  
4 protected this great country since 2001 from  
5 any attack. We should not, ladies and  
6 gentlemen, open that door just a little bit to  
7 give any terrorist an opportunity to hurt or  
8 kill or maim another American.

9 That's why that belongs in a  
10 military tribunal. That's why they do not  
11 belong here in the City of New York. We can  
12 never lose sight of how long the day, the  
13 week, the months, the years that we toiled in  
14 and out of Manhattan, the volunteers that went  
15 down to that site, the truckloads of equipment  
16 and people that we sent into that. Never,  
17 ever let us forget the loss of those lives,  
18 the loss of those lives in Washington, D.C.,  
19 the loss of those lives in Pennsylvania. We  
20 can never, ever, ever forget.

21 So I commend you, Senator Leibell.  
22 And God, I hope You're looking and listening  
23 and somehow we have the ability of making sure  
24 that that trial does not come to this great  
25 city and this great state.



1                   Thank you Senator. Thank you, my  
2                   colleagues. Thank you.

3                   THE PRESIDENT:       Senator LaValle.

4                   SENATOR LaVALLE:       Thank you,  
5                   Mr. President.

6                   I'd like to thank Senator Leibell  
7                   for putting this resolution before the body.  
8                   To Senator Adams, thank you for your  
9                   thoughtfulness both in talking about Senator  
10                  Morahan and your thoughtful remarks on the  
11                  resolution, as well as Senator Volker and  
12                  Senator Golden.

13                  Senator Leibell, my eighth-grade  
14                  English teacher would have been very proud of  
15                  you, because the topic sentence, first  
16                  sentence in your resolution says it all and  
17                  without anything else being said, talks about  
18                  the heart of what you want to do.

19                  "Whereas throughout the course of  
20                  our nation's history, from the time of George  
21                  Washington to the present day, the United  
22                  States has recognized that these terrorists,  
23                  captured with the intent to attack the United  
24                  States, its people and/or its interests, and  
25                  which present a serious and immediate threat

1 to the nation and its people, should not be  
2 afforded the same constitutional criminal  
3 justice protections reserved -- reserved --  
4 for the United States citizens." That says it  
5 all. It says it all. It goes to the heart of  
6 what we're talking about.

7 For those who have had the  
8 opportunity to read, there are a number of  
9 recent biographies on George Washington, the  
10 father of our country and the commander of the  
11 Continental Army. It is very clear that he  
12 knew and understand that criminal combatants  
13 as well as those who may have committed  
14 treason were treated to a tribunal and then  
15 very quickly hung. That was it.

16 That methodology, as the resolution  
17 talks about, from the beginning, from George  
18 Washington forward, has been what this country  
19 has done with criminal combatants.

20 Senator Volker said it -- you know,  
21 it's common sense. People that I talk to in  
22 my district are really befuddled by this whole  
23 action. As a good friend of mine says, What  
24 were they thinking? What were they thinking  
25 when they moved this trial to New York City

1       and afford these terrorists the same  
2       constitutional rights as our citizens?

3               And I'll tell you, my colleagues,  
4       that is what is very troubling to the people  
5       that we represent. We talk about it costing a  
6       billion dollars at a time when we have  
7       deficits, we're cutting programs and  
8       education, higher education, healthcare,  
9       programs for our youth. We're spending a  
10      billion dollars? It's ridiculous, absolutely  
11      ridiculous. And to traumatize the people who  
12      have gone through this whole attack on our  
13      soil just goes beyond the pale.

14             And so I'm glad we have this  
15      resolution, that we're discussing it, debating  
16      it. And hopefully we will send a message on  
17      behalf of the 19 million people that live in  
18      this state that I don't believe it belongs  
19      anywhere but in a military setting in a  
20      military trial. So for one, I'm not for  
21      pushing this no of New York, but push it to  
22      some other state, some other place.

23             Senator Leibell, again, thank you  
24      for your vigilance in allowing the body to  
25      vote on this resolution.

1 THE PRESIDENT: Senator  
2 Marcellino.

3 SENATOR MARCELLINO: Thank you,  
4 Mr. President.

5 And I want to thank my colleagues.  
6 And Senator Adams, thank you for your  
7 comments. They were excellent. You usually  
8 do speak well, but that was probably the best  
9 I've heard him speak. And Senator Volker and  
10 all the other speakers who have gotten up and  
11 said this very important message.

12 These trials are not typical  
13 trials. This country is at war. I don't  
14 think anybody has any doubt of that. If you  
15 do, you're living in a dreamland. We are at  
16 war. There are people out there who want to  
17 hurt us. They want to do more than that, they  
18 want to destroy our way of life. These people  
19 want to destroy our way of life. They don't  
20 believe in our Constitution. They don't  
21 believe in the protections. They believe we  
22 deserve to die.

23 The 3,000 people that died on 9/11  
24 in those buildings did not deserve to die.  
25 They didn't do anything wrong. They went to

1 work that morning. They woke up, got dressed,  
2 had their breakfast, tended to their families,  
3 and went off to work on a normal day. And it  
4 was their last day, because these people  
5 perpetrated a horrendous act on this nation,  
6 an a act of war.

7 These are not common trials. And  
8 we do not have anything to prove to anybody.  
9 I've heard it said and I've read in the papers  
10 that we have to prove that our criminal  
11 justice system is the greatest, the fairest in  
12 the world, that our Constitution is fearless,  
13 and that we don't worry about the threats of  
14 other people, the threats of a few terrorists.  
15 Nonsense. We have nothing to prove here in  
16 this country.

17 We are the fairest country in the  
18 world. We are the only country right now  
19 standing up for the rights of human beings.  
20 Who else is in Haiti? Who else is down in  
21 Haiti right now keeping order, distributing  
22 food, and doing the best it can? This  
23 country. Our troops are down there  
24 maintaining order, distributing food, and  
25 doing the best they can to help those poor

1 people.

2 We don't have to prove we are a  
3 great nation. We are a great nation. And  
4 these are not typical criminals. As Senator  
5 Adams said, these are not guys you picked up  
6 on the street corner selling a nickel bag.  
7 This is not a common criminal act. These  
8 people took 3,000 lives without even thinking,  
9 without batting an eye.

10 What are you going to do to the  
11 judges? What are you going to do to the  
12 jurors? How are you going to protect all  
13 these people? The Lower Manhattan area is one  
14 of the most congested areas in our state. To  
15 try to put through and to try to put security  
16 for all of the people that have to be  
17 secured -- including, including these  
18 terrorists, because they have to be  
19 protected -- can you imagine the hue and cry  
20 that would come off if one of our police  
21 officers is killed, maimed, or in any way hurt  
22 defending or protecting the lives of one of  
23 these terrorists? My God, why would you want  
24 to do that?

25 We have a system. The military

1 tribunals were set up for this stuff. We have  
2 courthouses in Guantanamo built to try these  
3 people under safe circumstances. Use them.  
4 Bring these people back where they belong.

5 This country has nothing to prove.  
6 We have nothing to prove. We have nothing to  
7 demonstrate to the rest of the world. We are  
8 the greatest nation in the world, and we  
9 should treat all who come to this land and  
10 attack us and kill our people just like the  
11 animals they are. They are not deserving of  
12 the protections of the Constitution of this  
13 country. They do not deserve it. And to  
14 pretend that they do is farcical.

15 The President is wrong. His  
16 Attorney General has made a bad decision, and  
17 it should be retracted. It should be  
18 retracted. We should not be carrying this  
19 forth to save somebody's face. This is a  
20 mistake. It should never have been decided in  
21 this way. It should never go forward. They  
22 should be sent to Guantanamo and tried under  
23 safe conditions, under proper military  
24 tribunals. And let that be the act.

25 Senator Leibell, thank you for to

1 resolution. I intend to vote aye. And I  
2 would hope that this resolution, as a  
3 demonstration of this Legislature's feelings  
4 towards these terrorists, that our act and our  
5 vote would be unanimous, to condemn these  
6 people and to condemn their vile acts for what  
7 they are, an act of war.

8 Thank you, Mr. President.

9 THE PRESIDENT: Senator Larkin.

10 SENATOR LARKIN: Thank you,  
11 Mr. President.

12 A lot of my colleagues have stole  
13 my thunder. But, Vince, I've served with you  
14 for over 20 years. I think your presentation  
15 on behalf of the people of this great nation  
16 of ours was outstanding. And I thank you from  
17 the bottom of my heart.

18 I listen to people talk about 9/11,  
19 and I listen to people talk about Lower  
20 Manhattan. Two weeks ago I went to Lower  
21 Manhattan, because we have some priest  
22 friends, Maridols {ph}. You probably know  
23 where that's at, Mr. President. And they were  
24 crying out what this would do to the community  
25 the second time around.



1                   And I don't think somebody in  
2           Washington is listening. I served my country  
3           for 23 years, and one thing I remember, the  
4           commander in chief has a responsibility to  
5           defend this nation and its people.

6                   Now, the President said sometime  
7           ago, "I didn't make this decision. The  
8           Attorney General, Eric Holder, made this  
9           decision." Well, I got news for you. When  
10          you've ever been in a position of  
11          responsibility and command, somebody goofs off  
12          that bad, it doesn't take long to cut his legs  
13          off and make sure somebody else is there. I  
14          don't believe that Holder did this by himself.  
15          I think the President was up to his ears with  
16          it.

17                  But what are we talking about? We  
18          had 3,000 people killed, killed in combat. If  
19          you don't think this is combat, maybe I'll  
20          send you a couple of books on war. Those of  
21          us who fought -- you're talking about  
22          noncombatants, they say. They're not  
23          noncombatants. Their mission was to kill us.  
24          If you've ever been in a unit, whether it's  
25          air, sea, or ground, and you came in touch

1 with combat units, your mission was to kill  
2 them before they killed you. And if you took  
3 them as prisoners, they went to a prisoner-of-  
4 war camp, and then you took it on from there.

5 The Supreme Court said we could  
6 have the military tribunals. My friend  
7 Senator Padavan reminded me and all those who  
8 have ever been in the service, there's a  
9 Uniform Code of Military Justice. Read it.  
10 We can try them at Guantanamo. That's the  
11 right place. I don't want to see them go to  
12 Illinois, Montana, or someplace else.

13 They've recommended an alternate,  
14 my area. West Point. What a disgrace. A  
15 university that's been cited as one of the  
16 greatest in this country. And then you're  
17 going to put these combatants. And I want  
18 everybody to stop calling them noncombatants.

19 And my friend Senator Squadron  
20 talks about he can't vote for this because of  
21 this change to do that. I'm not a lawyer, but  
22 they tell me where the crime was committed and  
23 that, you're going to have to try them in that  
24 same venue. I don't know anything about that.  
25 All I do know is this. They killed 3,000

1 Americans.

2 Just last week in this chamber we  
3 had a resolution honoring the 59 Americans  
4 that were killed in Iraq or Afghanistan in the  
5 year 2009. 9/11, 49 people from my district  
6 were killed at 9/11. What are we saying here?  
7 Who are we trying to please? Who are we  
8 trying to say we want to be nice to you? Nice  
9 for what? You killed 3,000 Americans. You've  
10 killed probably 10,000 or 12,000 in combat in  
11 two wars.

12 We don't need to apologize to  
13 anybody. What we need to do is unite as a  
14 body here and tell the President and his  
15 Attorney General and our Congressional  
16 delegation that this is not acceptable not  
17 only to New York but to the United States of  
18 America.

19 These people have pled guilty.  
20 They want to be martyrs so that someone can  
21 look at them. It gives them incentive for  
22 taking people from Yemen, Pakistan, Iraq, Iran  
23 to come to America and kill more Americans.

24 I ask you to think twice if you're  
25 going to vote against this resolution.

1       Because if you are, you're voting against the  
2       men and women who are in harm's way today  
3       defending our country. Why should they be  
4       over there in a lost way when you're saying,  
5       oh, bring them to New York City. I've heard  
6       dozens of lawyers -- and I'm not a lawyer --  
7       say what a field day I will have. I will  
8       bring it up that the President of the United  
9       States said they'll be found guilty and  
10      they'll be murdered.

11               For what? Why should we expend all  
12      this money when we're talking around here  
13      about everybody we meet, there's no money for  
14      this, there's no money for that. But here  
15      we're willing to blow \$2 million to \$5 billion  
16      on a trial that should never occur in the  
17      United States of America. Don't we have any  
18      guts here or any guts in Washington to say  
19      stop?

20               And anybody who's been in combat  
21      knows it's a hell of a life. It's serious.  
22      When you've been in combat, your worry is not  
23      only your own but your worry -- am I right,  
24      Hiram? -- your worry is your surrounding.  
25      Because they're worrying about you and you're

1 worried about them.

2 So let's sit down here today and  
3 say, on behalf of those who have given so much  
4 and made the major supreme sacrifice, let us  
5 vote on behalf of them and vote to say try  
6 this in a military tribunal where it's  
7 authorized, it's sanctioned, we don't have to  
8 blow up anybody, we Don't have to lose any  
9 money, we don't have to start funneling  
10 around, we just all have to have the guts to  
11 say this should not happen in the United  
12 States of America.

13 Again, I thank my colleagues for  
14 their comments.

15 THE PRESIDENT: Thank you.  
16 Senator Farley.

17 SENATOR FARLEY: Thank you,  
18 Mr. President.

19 I rise in support of this and again  
20 thank Senator Leibell for bringing this  
21 forward. I don't know of a single New Yorker  
22 that is anxious to have this trial in  
23 New York.

24 You know, we do a lot of  
25 resolutions. This one has significance in

1       that the President is vacillating where this  
2       will be held and so forth. And I think this  
3       could be meaningful.

4                You know, Senators Schumer,  
5       Gillibrand, the mayor, Commissioner Kelly, so  
6       many of our Congresspeople are all united  
7       against bringing this to New York City.

8                Let me just say I want to just  
9       approach it from a little different point of  
10      view, the pain that happens to the families  
11      that suffered these murders. I had a first  
12      cousin, the father of five children, that was  
13      killed in this terrible tragedy. And I knew a  
14      score of people personally that died in this  
15      gruesome murder.

16              I think that every one of us should  
17      rise up and say we should not be bringing this  
18      back to this venue so close and go through  
19      this pain -- so many of these towns and so  
20      forth on Long Island and so forth that knew so  
21      many, many people that were murdered, 3,000  
22      people. My colleague here was saying I think  
23      that's even more than were killed in Pearl  
24      Harbor. Just unbelievable that we should even  
25      consider bringing this back to New York City

1       for not only for a show trial but something  
2       that's going to spend a billion or more  
3       dollars.

4                   I support this resolution, and I  
5       just wish the President of the United States  
6       could have heard some of these remarks made by  
7       my colleagues.

8                   Thank you, Mr. President.

9                   THE PRESIDENT:     Thank you.

10                  Senator Krueger.

11                  SENATOR LIZ KRUEGER:     Thank you  
12       very much.

13                  So I'm a little bit farther to the  
14       north than Senator Squadron, where the bombing  
15       of the World Trade Center took place.  
16       Although I guess I don't have much of the  
17       privilege of representing the district that  
18       had the largest number of people in my zip  
19       codes who died in the World Trade Center  
20       bombing.

21                  And I support not having the trial  
22       in New York, as everyone here has spoken  
23       about. And in fact pretty much everyone who  
24       represents New York State at the federal level  
25       has made it clear that they too don't think

1 Lower Manhattan is the right place to have the  
2 trial. And so I think the good news for all  
3 of us here today who share that view is I  
4 don't think we're going to have the trial in  
5 Lower Manhattan. It's the wrong place.

6 But I have to disagree with my  
7 colleagues, respectfully, if they say they  
8 don't think the federal court system can  
9 handle the trials and come to swift, extreme  
10 punishment of the guilty parties. I believe  
11 in the Constitution of the United States, and  
12 I believe that our federal court system is up  
13 to any challenge to protect our constitutional  
14 rights and protect us.

15 I worry about this expression  
16 "military tribunal." President Bush proposed  
17 them. No one ever really defined them. The  
18 U.S. court system is the fundamental  
19 protection of democracy that we all have and  
20 live under. We have fought wars protecting  
21 our right to democracy. Our young men and  
22 women go to wars on foreign soil to protect  
23 our Constitution and our right to continue to  
24 live under the democracy that we designed.

25 I believe the U.S. federal court



1       system is the place to process guilty people,  
2       whether it is this situation or others that we  
3       may face. We've faced a lot of tough things  
4       in our history. We have had wars in our  
5       history. We have had the federal court system  
6       try criminals, war criminals, and successfully  
7       do the right thing and bring swift justice.

8               I think it is dangerous, dangerous  
9       under the belief that somehow this is  
10       different enough that we should violate the  
11       sanctity of our constitutional faith in a  
12       federal court system to solve this quickly,  
13       correctly, and in the best interests of the  
14       United States and all 300 million citizens.

15              So I urge my colleagues, don't walk  
16       away from the Constitution in your desire --  
17       which is my desire -- to make sure justice is  
18       swift and is not in Lower Manhattan. We can  
19       have a correct, fair, constitutional process.  
20       We can find them guilty. We cannot have it in  
21       Lower Manhattan. And again, these numbers,  
22       \$3 billion to \$5 billion for a trial, that's a  
23       new one on me.

24              So I urge my colleagues to continue  
25       your passionate support for all our federal

1       elected officials in New York State calling  
2       for us not to have the trial in Lower  
3       Manhattan, but to not let go of your belief in  
4       the Constitution.

5               And because of that, I will vote no  
6       on this resolution. Thank you.

7               THE PRESIDENT:       Senator  
8       Schneiderman.

9               SENATOR SCHNEIDERMAN:       Thank you,  
10       Mr. President.

11              Very, very briefly, I will be  
12       voting in support of this resolution. I  
13       appreciate the passion with which many of my  
14       colleagues have spoken.

15              I do so, however, just because the  
16       "resolved" clause which calls on the federal  
17       government not to hold the trial in federal  
18       district court in Manhattan is something I  
19       agree with.

20              I do have issues with some of the  
21       "whereas" clauses. And I share Senator  
22       Liz Krueger's concern that we put aside the  
23       constitutional protections that we all enjoy  
24       at our peril, and it should be done with  
25       great, great care.

1 I actually believe that we have  
2 work to do in restoring the credibility of the  
3 United States around the world as the nation  
4 that is different, as the nation that does  
5 provide protections to the innocent and the  
6 guilty alike.

7 I think that after the last  
8 administration, quite frankly, and what's come  
9 out about torture and what's come out about  
10 abuses of process, we have some work to do.

11 And I know people who have said,  
12 oh, lawyers will have a field day. I think  
13 this is an opportunity for our lawyers, those  
14 representing the United States government, to  
15 also make a presentation that would say to the  
16 rest of world no one is more determined to  
17 fight terror, but that we remember why we are  
18 fighting that terror so that we do not have to  
19 live under the sort of oppressive systems  
20 represented by and advocated for by the people  
21 who will be on trial.

22 I'm voting yes, Mr. President, but  
23 with that caveat. And I appreciate the  
24 passion and the sentiment of all concerned on  
25 this very serious issue.

1 THE PRESIDENT: Senator Saland.

2 SENATOR SALAND: Thank you,  
3 Mr. President.

4 I've listened very carefully to all  
5 of those who have engaged in this dialogue or  
6 debate here today. Each of us in this chamber  
7 has certain responsibilities as either a chair  
8 or a ranker of a particular committee. And  
9 each of us within that particular venue is  
10 responsible for some greater degree of  
11 expertise than perhaps the members at large.

12 And I heard two gentlemen,  
13 different sides of the aisle, the one  
14 currently the ranker on the committee that  
15 deals with homeland security -- Senator  
16 Leibell, the former chair -- I heard the  
17 current chair, Senator Adams, both speak  
18 rather eloquently not only about the need to  
19 avoid having this trial held here in New York,  
20 but, every bit as importantly, that these  
21 people who are the subject of these trials are  
22 enemy combatants.

23 And this is not about whether our  
24 federal court system can handle these trials.  
25 It's about whether a component of our federal

1 court system, which is the military component,  
2 should be handling these trials. It's all  
3 part of the same federal court system.

4 So it's not that it can't be  
5 handled in the federal court system. It can  
6 be. The question is whether it should be  
7 handled in the federal district court in  
8 New York -- or, for that matter, in federal  
9 district court in any other venue in any other  
10 part of this country -- or whether it should  
11 be handled in the federal military component  
12 of our federal court system.

13 Now, there's nobody here who  
14 doesn't remember where they were on  
15 September 11. There's nobody here who doesn't  
16 know, either through family or friends,  
17 somebody who lost their lives or a number of  
18 somebodies who lost their lives. I can well  
19 recall my wife and I trying reach my son, who  
20 was an assistant district attorney in  
21 Manhattan at the time and how she was driven  
22 to tears because hours and hours and hours  
23 went by and she could not get through to him  
24 and literally was crying -- excuse me.

25 (Pause.) Ultimately, we were able

1 to reach him on his home phone, where he had  
2 the good sense to leave a message that he and  
3 his roommate were safe and that they would get  
4 back to us whenever they could.

5 This was an act of carnage that was  
6 premeditated. And one of the very reasons  
7 that this act was premeditated was because  
8 this nation represents the very things that  
9 some of you have referred to earlier. We're  
10 the bastion of democracy. We believe in  
11 freedom of expression. We cherish our  
12 Constitution and its Bill of Rights, all of  
13 which are an anathema to the people who sought  
14 to wreak this horrid devastation on the City  
15 of New York, on our nation's capital, and Lord  
16 only knows where else that plane that  
17 ultimately destructed in Pennsylvania would  
18 have wound up.

19 The simple fact of the matter is  
20 they vilify our Constitution, they vilify  
21 everything we represent. It's a credo. It is  
22 a way of life. These are not civilians.  
23 These are soldiers in a war against this  
24 nation and everything we believe in. They may  
25 not necessarily be smartly attired in uniform,

1 but these are soldiers, soldiers of death and  
2 destruction. Soldiers that believe that under  
3 any circumstance, to the point of giving up  
4 and sacrificing their lives, they must bring  
5 this nation to its knees in any way that they  
6 can.

7 To afford them the opportunity for  
8 a civilian trial is really to compound the  
9 injury that they've already imposed upon us.  
10 They in fact should be subjected to no more or  
11 no less than any other military combatant.  
12 They should be tried before a military  
13 tribunal. They should be entitled to the same  
14 degree of justice that we would afford any  
15 other in that situation. And yes, there is,  
16 believe it or not, a series of justice that  
17 does occur in our military courts.

18 They should not impose the anguish,  
19 the fear upon any community in which they  
20 might located in this country, whether it's  
21 here, whether it's in Montana, whether it's in  
22 Chicago. We should make the statement that it  
23 is simply unacceptable to degrade ourselves in  
24 order to somehow or other make the  
25 international community feel that we're

1       apologizing to them. And that's basically the  
2       only justification that can be offered for  
3       conducting a civilian trial somewhere here in  
4       this country.

5               I want to commend Senator Leibell  
6       for bringing forth this resolution.

7               And incidentally, when I mentioned  
8       each of us has an area of expertise, as far as  
9       I know the only two people that are routinely  
10      briefed and briefed, by statute under the law  
11      of New York, by those in charge of homeland  
12      security here in New York -- and also  
13      including, from time to time, I believe,  
14      federal officials as well -- are the Senator  
15      who chairs the Homeland Security Committee and  
16      the ranker.

17              So I suspect that they've been  
18      privy to information that the remain remaining  
19      60 of us have not. And in their judgment, in  
20      their well-qualified opinion, military  
21      tribunals are the appropriate places for these  
22      people -- and in many respects I think I  
23      stretch and accommodate to consider these  
24      people just that, people -- should be tried in  
25      a military tribunal.



1                   Thank you, Mr. President. Thank  
2                   you, Senator Leibell. Thank you, Senator  
3                   Adams.

4                   THE PRESIDENT:     Senator Lanza.

5                   SENATOR LANZA:     Thank you,  
6                   Mr. President.

7                   I rise in support of this  
8                   resolution, and I want to thank Senator  
9                   Leibell for bringing it to the floor today.  
10                  And I want to especially commend Senator  
11                  Leibell and Senator Adams for their very  
12                  poignant comments today.

13                  And I added my name to the list  
14                  late here because I knew my colleagues would  
15                  do an excellent job in speaking in support of  
16                  this resolution, and you have. And I want to  
17                  associate myself with those remarks.

18                  But I rise to respond to a couple  
19                  of statements that were made by two of my  
20                  colleagues that somehow a belief in our  
21                  Constitution requires that we afford enemy  
22                  combatants greater rights than United States  
23                  soldiers.

24                  I not only believe in our  
25                  Constitution, but I've read it. And nowhere,

1       nowhere in the United States Constitution does  
2       it say that we should give greater rights to  
3       foreign attackers who take, in one fell swoop,  
4       3,000 innocent lives, that we should somehow  
5       give them more rights than we do an American  
6       soldier. Because that's what a civil trial  
7       would do.

8               It was said that they should be  
9       afforded the same rights as any citizen in  
10      this country. We can discuss and debate that.  
11      I disagree. But that's not what a civil trial  
12      would do. It would afford greater rights to  
13      these enemy combatants.

14             And I am a bit perplexed by the  
15      notion that a civil trial would be too  
16      dangerous and too expensive for New York City,  
17      and because of that we should move it. My  
18      question is, which town, which hamlet, which  
19      city, which neighborhood in this state or any  
20      other should be exposed to that danger and  
21      that expense?

22             My colleague Senator Farley  
23      mentioned Pearl Harbor. The enemy combatants  
24      who attacked Pearl Harbor and dropped those  
25      bombs were not afforded a civil trial. Is

1 anyone suggesting that that's what should have  
2 happened?

3 On the battlefield in Europe,  
4 Americans were killed in combat by our  
5 enemies -- the Germans, the Italians. Is  
6 anyone suggesting that our country would be  
7 stronger had we afforded those enemies a civil  
8 trial? I would suggest to you that if we had,  
9 America might not still be the greatest,  
10 freest nation on the face of the earth today.

11 It is twisted logic to suggest that  
12 making America weaker somehow makes her  
13 stronger. It does not. A civil trial would  
14 afford our enemies with the intelligence that  
15 they would use -- because they said they  
16 would -- to wage additional attacks against  
17 this country. It would make it easier for  
18 them to do what they have vowed to do, and  
19 that is to attack and destroy us. Doing that  
20 would not make America stronger. It would  
21 make us weaker. It would endanger our  
22 citizens.

23 I want to thank Senator Saland for  
24 reminding us of the human face of what  
25 happened that day. I lost, as some here had,

1       very dear friends, very dear friends in that  
2       attack. They deserved justice. America  
3       deserves justice.

4               And you know, if a military trial  
5       is good enough for a United States soldier,  
6       it's too good, it's too good for those who  
7       attacked us that day.

8               And so I want to thank you, Senator  
9       Leibell, Senator Adams, for bringing this  
10      resolution to the floor. It is unconscionable  
11      for us to even debate whether or not we ought  
12      to give those who attacked America on that day  
13      a civil trial.

14              And yes, Senator Krueger, we can  
15      handle it. There's no doubt about that. But  
16      it's not a matter of whether or not we could  
17      handle it, it's a matter of whether or not we  
18      are going to stand for American freedom. And  
19      I think this resolution does that.

20              Thank you.

21              THE PRESIDENT:     Senator Diaz.

22              SENATOR DIAZ:     Thank you,  
23      Mr. President.

24              Just, just to ask myself here in  
25      public, why is it, Mr. President, why is it

1       that we are always giving the Republicans the  
2       opportunity to paint us Democrats as  
3       anti-American?

4               It is just a simple, a simple  
5       resolution. Why is it that we always have to  
6       be looking like the bad guys, like that we  
7       hate America? A simple resolution, yes. Why  
8       do we have to go against this resolution to  
9       give them the opportunity to look like great  
10      Americans and we stupid dummies, that we hate  
11      America? Simple. It's a good resolution.

12             I was in the Army. Many of my  
13      colleagues never went to the Army. Many of my  
14      colleagues never went into the armed forces.  
15      I was into the Army. Do you know what  
16      happened when one soldier violated the law?  
17      Do you know where he or she would be tried?  
18      In a military tribunal. Any soldier that  
19      violates the law, they are tried, in the Army,  
20      in the military tribunal.

21             So why do we have to give the  
22      terrorists such a privilege? Let them be  
23      tried in the tribunal. Let them be tried  
24      there. Let them be just like they are,  
25      military.

1                   So, ladies and gentlemen, we  
2           Democrats, we are great Americans too. So  
3           yes, I am supporting that resolution.

4                   And even though Senator Squadron  
5           says that he is the one representing the Lower  
6           Manhattan and the people, hey, we all  
7           represent Lower Manhattan here. We all  
8           represent the City of New York. We all  
9           represent the State of New York, especially  
10          when we are attacked like we were attacked on  
11          9/11. Let them feel the power and the justice  
12          of the military tribunal.

13                  So I'm here to tell you that I am a  
14          great American and that I support America and  
15          that this is a good resolution and that we  
16          should stop talking about it and approve the  
17          resolution and stop giving the Republican side  
18          the opportunity to be painted as the great  
19          Americans, because we are all great Americans.

20                  Thank you very much.

21                  THE PRESIDENT:     Senator Owen  
22          Johnson.

23                  SENATOR OWEN JOHNSON:     I'd like  
24          to thank Senator Leibell for bringing this  
25          resolution before the body today, and all the

1 members who spoke in support of not doing it  
2 in New York City.

3 I think the President and the  
4 Attorney General made a thoughtless decision  
5 when they wanted to put this trial in New York  
6 City, the greatest city of the world. It  
7 should not have been thought of in the first  
8 place. This mistake will concentrate the  
9 world's attention on this trial, and they and  
10 their left-wing attorneys will put the United  
11 States on trial if it's in New York City.

12 Can you imagine how deeply they  
13 would dig into the fact of the apprehension  
14 and treatment of these terrorists, the  
15 methods, torture they endured, by them, to  
16 which the world's media would flock with  
17 enthusiasm, to repeat and say terrible things  
18 about the United States?

19 This trial should take place in  
20 Gitmo and not give America's enemies any  
21 propaganda victory by putting them on trial  
22 here. The foreign nations who hate America,  
23 they'll have a field day by repeating all the  
24 things that they said at the trial, trying to  
25 indict America when they are the criminals.

1 I think that -- well, I can't keep  
2 talking. I think that the fact is that we  
3 don't think it should be in New York City and  
4 we don't want America's enemies to celebrate  
5 this, we don't want to make a slide show out  
6 of it. The trial then should go back to Gitmo  
7 and have a military tribunal.

8 Thanks.

9 THE PRESIDENT: Thank you.

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

13 SENATOR LIBOUS: Mr. President.

14 THE PRESIDENT: Senator Libous.

15 SENATOR LIBOUS: Could I please  
16 request that we vote on the resolution by a  
17 show of hands.

18 THE PRESIDENT: The Secretary  
19 will ring the bell, please.

20 (Pause.)

21 THE PRESIDENT: All those in  
22 favor of the resolution please indicate by  
23 raising your hand.

24 Members will have to leave their  
25 hands up to make sure the Secretary gets an



1 accurate count, please.

2 SENATOR LIBOUS: Mr. President.

3 THE PRESIDENT: Senator Libous.

4 SENATOR LIBOUS: Sir, while the  
5 roll is being called, if I could just also  
6 state that we have two members that are in  
7 committee meetings. And under Rule 9,  
8 Section A, they have until 5 o'clock to vote.

9 Do you want me to state that for  
10 the record? We have Senator DeFrancisco and  
11 Senator Hannon.

12 THE PRESIDENT: Under Rule 9,  
13 they have until 5:00 p.m. to vote.

14 SENATOR LIBOUS: Thank you,  
15 Mr. President. I just wanted to make note of  
16 that so they're not recorded as absent.

17 SENATOR KLEIN: Mr. President.

18 THE PRESIDENT: Senator Klein.

19 SENATOR KLEIN: Mr. President, I  
20 certainly agree with that. We have, I think,  
21 one or two members also who are at committee  
22 meetings that would like to cast a vote on  
23 this.

24 THE PRESIDENT: The same rule  
25 applies.

1 Senator Valesky.

2 SENATOR VALESKY: Yes. I just  
3 wanted to -- Senator Leibell, I believe, in  
4 his presentation of this resolution indicated  
5 that the resolution is open to cosponsorship  
6 by any member of the Senate who wishes to  
7 cosponsor. I just wanted to confirm that with  
8 the desk.

9 Thank you.

10 THE PRESIDENT: It's confirmed.

11 All those voting nay, please raise  
12 your hand.

13 The Secretary will announce the  
14 results.

15 THE SECRETARY: Ayes, 53.

16 THE PRESIDENT: The resolution is  
17 adopted.

18 Senator Klein.

19 SENATOR KLEIN: Mr. President, at  
20 this time I move that we pass the Resolution  
21 Calendar in its entirety, with the exceptions  
22 of Senate Resolutions 3811, 3855, and 3791.

23 ACTING PRESIDENT BRESLIN: All  
24 those in favor of passing the Resolution  
25 Calendar in its entirety, with the exceptions

1 of Senate Resolutions 3811, 3855, and 3791,  
2 please signify by saying.

3 (Response of "Aye.")

4 ACTING PRESIDENT BRESLIN: Those  
5 opposed, nay.

6 (No response.)

7 ACTING PRESIDENT BRESLIN: The  
8 Resolution Calendar is adopted.

9 Senator Klein.

10 SENATOR KLEIN: Mr. President, at  
11 this time can we take up Senate Resolution  
12 3811, by Senator Stavisky. I ask that the  
13 title of the resolution be read and move for  
14 its immediate adoption.

15 ACTING PRESIDENT BRESLIN: The  
16 Secretary will read.

17 THE SECRETARY: By Senator  
18 Stavisky, Legislative Resolution Number 3811,  
19 honoring New York State Higher Education  
20 Opportunity Programs whose achievements and  
21 endeavors further enhance excellence in  
22 education.

23 ACTING PRESIDENT BRESLIN:  
24 Senator Stavisky.

25 SENATOR STAVISKY: Thank you,

1 Mr. President.

2 Very, very briefly, the Opportunity  
3 Programs in higher education enable young  
4 people to achieve a degree, to benefit their  
5 career and advance, and ultimately hopefully  
6 they'll stay in New York State and they'll pay  
7 their taxes and everybody will benefit.

8 This is the 35th anniversary of  
9 TAP, the Tuition Assistance Program. And I'd  
10 like to remind my colleagues that nearly  
11 30 percent of the New Yorkers who are enrolled  
12 in TAP come from families whose income is  
13 lower than \$40,000 a year, and 11 percent have  
14 a family income of less than \$20,000 a year.

15 And the same numbers are true for  
16 HEOP, which is the Higher Education  
17 Opportunity Program, and they are celebrating  
18 their 40th anniversary. In this case,  
19 80 percent of the students come from  
20 low-income families.

21 And there are other opportunity  
22 programs. We have the STEP program, which is  
23 the Science and Technology Entry Program, the  
24 CSTEP, which is for college students, and the  
25 STEM, the Science, Technology, Engineering and

1 Math programs, the Liberty Partnerships and  
2 all of the other programs. These are  
3 celebrating a significant anniversary.

4 TAP is such an important part of  
5 our state program of service to higher  
6 education. It's such an important ingredient  
7 for students, for their success in the future.  
8 They benefit from these programs, and we'd  
9 like to recognize their achievements.

10 We have some students from some of  
11 the colleges and universities in the gallery,  
12 and we pay tribute to those students who have  
13 benefitted from TAP, the thousands and  
14 thousands of students who are enrolled in the  
15 public and private colleges of New York State.  
16 And we recognize them in the gallery.

17 Thank you, Mr. President.

18 ACTING PRESIDENT BRESLIN: Thank  
19 you, Senator Stavisky.

20 Are there any other Senators  
21 wishing to be heard?

22 Senator LaValle.

23 SENATOR LaVALLE: Thank you,  
24 Mr. President.

25 I rise to support to Senator

1       Stavisky's resolution, and I hope that it  
2       might be opened up for whoever wants to  
3       sponsor that.

4               I think New York State without a  
5       doubt has clearly been a leader in student  
6       financial aid. Access and choice have been  
7       very critically important to our colleges and  
8       universities, but most importantly to the  
9       students and parents, to have that choice and  
10      that access available to them.

11             Only through student financial aid  
12      are we able to maintain the access and choice  
13      that really thousands of students have in this  
14      state. So I rise to support the resolution.

15             ACTING PRESIDENT BRESLIN:     Thank  
16      you, Senator LaValle.

17             Are there any other Senators  
18      wishing to be heard?

19             Senator Johnson.

20             SENATOR OWEN JOHNSON:     I'm sorry  
21      I forgot the birthday of my baby. The Tuition  
22      Assistance Program was my baby. Senator  
23      Ronald Stafford was the chairman of the  
24      committee; we worked together to create that  
25      program and worked together to improve it over

1       many years.

2               But thank you, Senator Stavisky,  
3       for reminding us.

4               ACTING PRESIDENT BRESLIN:     Thank  
5       you, Senator Johnson.

6               Are there any other Senators  
7       wishing to be heard?

8               The question is then on the  
9       resolution. All those in favor please signify  
10      by saying aye.

11              (Response of "Aye.")

12              ACTING PRESIDENT BRESLIN:  
13      Opposed, nay.

14              (No response.)

15              ACTING PRESIDENT BRESLIN:     The  
16      resolution is adopted.

17              Senator Stavisky has indicated that  
18      the resolution is open to total sponsorship  
19      unless someone would come to the desk and  
20      indicate they do not wish to be on it.

21              Senator Klein.

22              SENATOR KLEIN:     Mr. President,  
23      can we please take up Senate Resolution 3855,  
24      by Senator Monserrate. I ask that the title  
25      of the resolution be read and move for its

1 immediate adoption.

2 ACTING PRESIDENT BRESLIN: The  
3 Secretary will read.

4 THE SECRETARY: By Senator  
5 Monserrate, Legislative Resolution Number  
6 3855, honoring Doris "Dorie" Miller  
7 posthumously for special recognition, and  
8 noting the significance of his purposeful life  
9 and his accomplishments as a member of the  
10 United States Navy.

11 ACTING PRESIDENT BRESLIN:  
12 Senator Monserrate.

13 SENATOR MONSERRATE: Thank you  
14 very much, Mr. President.

15 I rise to introduce formally a  
16 resolution honoring the life of Dorie Miller.  
17 Dorie Miller is a very distinguished name in  
18 the community I represent in Corona.  
19 Currently his name is placed on a  
20 300-apartment complex called the Dorie Miller  
21 Co-ops, predominantly African-American and one  
22 of the first African-American co-ops  
23 established in the United States.

24 But Dorie Miller is a true  
25 all-American hero. In fact, he is the first



1 African-American to win a Navy Cross, the  
2 highest honor given to members of the Navy and  
3 the United States Marine Corps. His heroics  
4 happened during the Second World War, the  
5 attack on Pearl Harbor on December 7, 1941.

6 And just last week the United  
7 States federal government bestowed upon him  
8 the honor of a postage stamp. So I encourage  
9 you all to purchase that and keep it.

10 And let's always remember Dorie  
11 Miller, his family, and the community he  
12 represented. Semper Fi.

13 Thank you very much.

14 ACTING PRESIDENT BRESLIN: Thank  
15 you, Senator Monserrate.

16 Are there any other Senators  
17 wishing to be heard on the resolution?

18 The question is then on the  
19 resolution. All those in favor please signify  
20 by saying aye.

21 (Response of "Aye.")

22 ACTING PRESIDENT BRESLIN:  
23 Opposed, nay.

24 (No response.)

25 ACTING PRESIDENT BRESLIN: The

1 resolution is adopted.

2 Senator Monserrate has indicated  
3 that he would like to open this resolution to  
4 cosponsorship by the entire body. Anyone not  
5 wishing to be on the resolution please  
6 indicate so by coming to the desk.

7 Senator Klein.

8 SENATOR KLEIN: Mr. President,  
9 can we take up Senate Resolution 3791, by  
10 Senator Squadron. I ask that the title of the  
11 resolution be read and move for its immediate  
12 adoption.

13 ACTING PRESIDENT BRESLIN: The  
14 Secretary will read.

15 THE SECRETARY: By Senator  
16 Squadron, Legislative Resolution Number 3791,  
17 memorializing Governor David A. Paterson to  
18 proclaim March 11, 2010, as PKD Day in the  
19 State of New York.

20 ACTING PRESIDENT BRESLIN:  
21 Senator Squadron.

22 SENATOR SQUADRON: Thank you,  
23 Mr. President.

24 Polycystic kidney disease is one of  
25 the most common deadly genetic diseases in

1       this country. Over 600,000 Americans have it.  
2       More Americans are afflicted with polycystic  
3       kidney disease than cystic fibrosis and  
4       Down syndrome combined.

5               It's often considered the silent  
6       scourge, though, among genetic diseases,  
7       because families or those afflicted with it  
8       don't know they have it until a tragedy  
9       occurs.

10              Polycystic kidney disease over time  
11       basically creates kidney failure for those  
12       whoa have it, and kidney failure leads to all  
13       sorts of other issues -- high blood pressure,  
14       problems with other organs. And so for many  
15       families, they don't know they're afflicted  
16       with polycystic kidney disease until someone  
17       in their family suffers a major event.

18              This is a disease that is not  
19       curable right now, it's not preventable right  
20       now, but it's a disease that we can do  
21       something being it and make less painful for  
22       those afflicted with it, with increased  
23       knowledge about the disease, increased  
24       research, and more organ donations.

25              Over 50 percent of people who get

1 diagnosed with polycystic kidney disease end  
2 up going into kidney failure, which means they  
3 either need to live in dialysis, with all of  
4 the costs that come with dialysis, or in order  
5 to survive they need an organ transplant, they  
6 need a new kidney.

7 With a new kidney, though, people  
8 with polycystic kidney disease can live for  
9 two, three, even four decades. Without it,  
10 the prognosis is not very good at all.

11 Also, with additional research  
12 dollars and additional knowledge about the  
13 disease, there's a belief that we can stop its  
14 effects on the kidneys before you've created  
15 that sort of crisis situation. It would save  
16 lives, it would save donations, it would also  
17 save money for our medical professions.

18 I bring this resolution because a  
19 constituent of mine, Amy Epstein, had a  
20 husband who was afflicted with polycystic  
21 kidney disease. He lived with it, he overcame  
22 it, he was on dialysis. Eventually he did  
23 succumb to the disease. She reached out to my  
24 office and asked for this joint resolution to  
25 ensure that March 11th would be PKD Day in the

1 State of New York, to help raise awareness, to  
2 help raise funding, to help encourage organ  
3 donation.

4 Little did she know when she called  
5 my office that I knew exactly what she was  
6 talking about, because my sister has  
7 polycystic kidney disease. And in fact today,  
8 right now, my sister is looking for a kidney  
9 donation because she is beginning to go into  
10 the process of kidney failure.

11 It's not really that big a  
12 surprise, though, is it, that I had a  
13 constituent and that I myself and my family  
14 are so deeply affected by this disease --  
15 because it is that common. If you look around  
16 this room, I'm sure that almost every person  
17 in this room has a family member or a friend  
18 or a friend of a friend who has this disease.  
19 They may not know it, because we don't test  
20 for it, we're not aware of it. But believe  
21 me, it is overwhelmingly likely that that's  
22 the case.

23 And it is undeniable that if we had  
24 more available kidneys, more people willing to  
25 donate and join organ registries, that if we

1        had more awareness about the disease so that  
2        people could catch it early and help to slow  
3        its effects, and if we had more dollars for  
4        research, events like that that happened to  
5        Amy Epstein's husband or that are happening to  
6        my family right now would be much, much less  
7        likely. We would literally save lives on a  
8        disease that afflicts more than half a million  
9        Americans.

10                That's why having March 11th be  
11        PKD Day in the State of New York is so  
12        important and why I urge my colleagues to  
13        cosponsor the resolution.

14                Thank you, Mr. President.

15                ACTING PRESIDENT BRESLIN:        Thank  
16        you, Senator Squadron.

17                The question is on the resolution.  
18        All those in favor please signify by saying  
19        aye.

20                (Response of "Aye.")

21                ACTING PRESIDENT BRESLIN:  
22        Opposed, nay.

23                (No response.)

24                ACTING PRESIDENT BRESLIN:        The  
25        resolution is adopted.

1                   Senator Squadron has indicated that  
2                   he would like to open this resolution up to  
3                   the entire body for cosponsorship. Any  
4                   Senator wishing not to be on the resolution  
5                   please inform the desk.

6                   Senator Klein.

7                   SENATOR KLEIN:     Mr. President, I  
8                   believe there's a report of the Judiciary  
9                   Committee at the desk.

10                  ACTING PRESIDENT BRESLIN:     There  
11                  is a report from the Judiciary Committee at  
12                  the desk.

13                  The Secretary will read.

14                  THE SECRETARY:     Senator Sampson,  
15                  from the Committee on Judiciary, reports the  
16                  following nomination. As a judge of the Court  
17                  of Claims, Mark R. Dwyer, of Brooklyn,  
18                  New York.

19                  ACTING PRESIDENT BRESLIN:  
20                  Senator Klein.

21                  SENATOR KLEIN:     Mr. President, on  
22                  behalf of the chairman of the Judiciary  
23                  Committee, Senator Sampson, I had a chance to  
24                  look over Mr. Dwyer's resume.

25                  And sometimes in life we prepare

1       for the job we're ultimately going to take  
2       very carefully. And certainly Mr. Dwyer has  
3       certainly done that. A graduate of Princeton  
4       University, he has a law degree from Yale Law  
5       School, a very extensive history at the DA's  
6       office in New York County, someone who really  
7       served his entire legal career for the public  
8       good.

9               I would just like to say also he  
10       was at one point in his illustrious career a  
11       clerk to a United States District Court judge.

12              He's someone who throughout his  
13       career used his intelligence, his law degree,  
14       his experience to help the public good. And I  
15       will say that when Mark Dwyer assumes his  
16       position as judge of the Court of Claims,  
17       justice will be done.

18              ACTING PRESIDENT BRESLIN:     Thank  
19       you, Senator Klein.

20              Senator Maziarz.

21              SENATOR MAZIARZ:     Thank you very  
22       much, Mr. President.

23              Mr. President, I had the  
24       opportunity and the pleasure to meet with  
25       Mr. Dwyer as part of the Judiciary Committee



1 pre-meeting today.

2 And as my colleague Senator Klein  
3 pointed out, this nominee is very qualified  
4 for this position. I think he would do a  
5 great job. We talked a little bit about his  
6 background in the Manhattan DA's office.

7 And I would strongly recommend that  
8 this nominee be confirmed, and I second the  
9 nomination.

10 Thank you, Mr. President.

11 ACTING PRESIDENT BRESLIN: Thank  
12 you, Senator Maziarz.

13 Are there any other Senators  
14 wishing to be heard on the nomination?

15 The question is then on the  
16 nomination of Mark Dwyer as a justice of the  
17 Court of Claims. All those in favor please  
18 signify by saying aye.

19 (Response of "Aye.")

20 ACTING PRESIDENT BRESLIN:  
21 Opposed, nay.

22 (No response.)

23 ACTING PRESIDENT BRESLIN: The  
24 motion carries. The nomination of Mark Dwyer  
25 to the Court of Claims is hereby confirmed.

1                   Judge Dwyer, congratulations to you  
2                   and to your wife Anne Ryan and to your  
3                   daughter Mary Kate Dwyer.

4                   (Applause.)

5                   ACTING PRESIDENT BRESLIN:  
6                   Senator Klein.

7                   SENATOR KLEIN:     Mr. President, at  
8                   this time could we please move to a reading of  
9                   the calendar.

10                  ACTING PRESIDENT BRESLIN:     The  
11                  Secretary will read.

12                  THE SECRETARY:     Calendar 57, by  
13                  Senator Dilan, Senate Print 5174, an act to  
14                  amend the Vehicle and Traffic Law, in relation  
15                  to emergency rule.

16                  ACTING PRESIDENT BRESLIN:     Read  
17                  the last section.

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

20                  ACTING PRESIDENT BRESLIN:     Call  
21                  the roll.

22                  (The Secretary called the roll.)

23                  ACTING PRESIDENT BRESLIN:  
24                  Senator Little, to explain her vote.

25                  SENATOR LITTLE:     Thank you,

1 Mr. President. I would like to explain my  
2 vote.

3 I did vote for this last year. But  
4 we've had a recent incident in my town where  
5 we are finding that really getting to gross  
6 negligence is very, very difficult.

7 And I support this bill in that it  
8 affects I-95, but I would like to see the bill  
9 amended so it did not affect all roads in  
10 New York State. And I would ask Senator Dilan  
11 to consider that amendment to the bill.

12 But at the current time, I vote no.  
13 Thank you.

14 ACTING PRESIDENT BRESLIN:  
15 Senator Little will be recorded in the  
16 negative.

17 Announce the results.

18 THE SECRETARY: Ayes, 60. Nays,  
19 1. Senator Little recorded in the negative.

20 ACTING PRESIDENT BRESLIN: The  
21 bill is passed.

22 The Secretary will read.

23 THE SECRETARY: Calendar Number  
24 58, by Senator Aubertine, Senate Print 6237,  
25 an act to amend the Highway Law, in relation

1 to designating.

2 ACTING PRESIDENT BRESLIN: Read  
3 the last section.

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

6 ACTING PRESIDENT BRESLIN: Call  
7 the roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT BRESLIN:  
10 Announce the results.

11 THE SECRETARY: Ayes, 61.

12 ACTING PRESIDENT BRESLIN: The  
13 bill is passed.

14 Senator Klein, that completes the  
15 reading of the noncontroversial calendar.

16 SENATOR KLEIN: Mr. President,  
17 there will be an immediate meeting of the  
18 Transportation Committee in Room 124 of the  
19 Capitol, followed by a meeting of the  
20 Investigations and Government Operations  
21 Committee also in the Capitol, Room 124.

22 Mr. President, may we please stand  
23 at ease.

24 ACTING PRESIDENT BRESLIN: The  
25 Senate will stand at ease. There is an

1 immediate meeting of the Transportation  
2 Committee in Room 124 of the Capitol, followed  
3 by an immediate meeting thereafter of the  
4 Investigations Committee in the same room,  
5 Room 124.

6 The Senate will stand at ease.

7 (Whereupon, the Senate stood at  
8 ease at 2:13 p.m.)

9 (Whereupon, the Senate reconvened  
10 at 9:19 p.m.)

11 THE PRESIDENT: Senator Klein.

12 SENATOR KLEIN: Mr. President,  
13 can we return to the reports of select  
14 committees. I believe there's a report at the  
15 desk.

16 THE PRESIDENT: The Secretary  
17 will read the title of this report.

18 THE SECRETARY: "Report of the  
19 New York State Select Committee to Investigate  
20 the Facts and Circumstances Surrounding the  
21 Conviction of Hiram Monserrate on October 15,  
22 2009."

23 THE PRESIDENT: The question is  
24 on the acceptance of the report of the select  
25 committee. All those in favor please indicate

1 by saying aye.

2 (Response of "Aye.")

3 THE PRESIDENT: Any opposed?

4 (No response.)

5 THE PRESIDENT: The report is  
6 accepted and will be entered into the Journal.  
7 Senator Klein.

8 SENATOR KLEIN: Mr. President, if  
9 we could at this time return to the order of  
10 motions and resolutions, I believe Senator  
11 Foley has a resolution at the desk.

12 I ask that the resolution be read  
13 in its entirety and move for its immediate  
14 adoption.

15 THE PRESIDENT: Senator Klein,  
16 has this resolution been deemed privileged and  
17 been submitted by the office of the Temporary  
18 President?

19 SENATOR KLEIN: Mr. President,  
20 just a clarification. Can we just read the  
21 title of Senator Foley's resolution.

22 THE PRESIDENT: The Secretary  
23 will read.

24 THE SECRETARY: By Senator Foley,  
25 Senate resolution condemning the conduct and

1       calling for the expulsion of Senator Hiram  
2       Monserrate.

3               THE PRESIDENT:     Senator Klein, I  
4       asked you earlier, has this resolution been  
5       deemed privileged and submitted by the office  
6       of the Temporary President?

7               SENATOR KLEIN:     Yes, it has,  
8       Mr. President.

9               THE PRESIDENT:     Are there any  
10      other Senators that wish to be heard on this  
11      resolution?

12              (No response.)

13              THE PRESIDENT:     The question is  
14      on the resolution. All those in favor --

15              SENATOR LIBOUS:     Mr. President,  
16      could I ask for a show of hands on the vote,  
17      please.

18              THE PRESIDENT:     All those in  
19      favor please signify by raising your hands.

20              (Senators raised their hands.)

21              THE PRESIDENT:     Senator Diaz, to  
22      explain his vote.

23              SENATOR DIAZ:     Thank you,  
24      Mr. President.

25              Today we are getting even. There

1        was a process here back in November when  
2        Malcolm Smith wanted to be president of the  
3        Senate. And then there was a coup when Hiram  
4        Monserrate brought the Senate to a halt. So  
5        today we stand to get even. So we formed a  
6        committee, a committee to go and find out  
7        things that the Queens district attorney and  
8        the judges and the court system, according to  
9        the committee, didn't found.

10                But there was a guy here in this  
11        chamber, a guy by the name Marty Markowitz,  
12        long time ago. And he was convicted for money  
13        laundering, misdemeanor. And when he came  
14        back, he was received as a hero. They didn't  
15        form a committee to go after Marty Markowitz.  
16        But they formed a committee to go after the  
17        Hispanic one and get even.

18                So, ladies and gentlemen, go ahead,  
19        get even. Enjoy it. But that was not done  
20        before. It's only done to the minority  
21        Hispanic.

22                And by the way, if you see in my  
23        Democratic conference, all the whites. Only  
24        one Puerto Rican, Jose Serrano, and the lady  
25        in the -- in the -- what's your lady's name?



1       Andrea Stewart-Cousins.

2               So yes, time to get even. And you  
3 might feel good. The Republicans feeling good  
4 because, aha, you came to us, you jumped back,  
5 now we getting you.

6               The Democrats, they was begging  
7 Monserrate to come back. The same people.  
8 You got to see, you got to see, Mr. President,  
9 Eric Schneiderman, how he was begging  
10 Monserrate to come back when he was on the  
11 other side. He was a great guy. He was,  
12 oh -- he was, "Oh, come back, come back." All  
13 of us: Come back, come back. Just to make  
14 fun of him and to put him to shame and to do  
15 this to him.

16              And you got to see how our leader  
17 have no leadership. You got to see the  
18 mockery. You got to see how his closest  
19 lieutenant, his closest lieutenant goes  
20 against him.

21              And then they're going to call us  
22 to be a united front, a united Democrat party,  
23 a united thing.

24              Go ahead, enjoy your victory.  
25 Republicans on the other side, enjoy it. You

1        got it.  Whatever he did to you in the summer,  
2        now it's time to get even.  And you Democrats,  
3        Eric Schneiderman, good, good public relations  
4        to become AG.  Go ahead.

5                THE PRESIDENT:        Senator Diaz, how  
6        do you vote, sir?

7                SENATOR DIAZ:        How am I vote?  
8        You asking me how am I vote?  You asking me  
9        how am I vote?

10               THE PRESIDENT:       We were on a  
11       vote -- we were on a vote, sir, at this --

12               SENATOR DIAZ:       I vote against all  
13       these people here.  Thank you.

14               THE PRESIDENT:       Senator Espada.

15               SENATOR ESPADA:       Thank you,  
16       Mr. President.

17               Let me strike a different tone.  
18       Although I consider Senator Diaz my friend, I  
19       do want to acknowledge my continued support  
20       for a fair and just leader, Senator Sampson.

21               We were in conference.  Our  
22       conference met privately.  And those thoughts  
23       and points of view will remain private.

24               But these thoughts are my own.  I  
25       proffered legislation and unveiled it

1       yesterday that would have removed the  
2       ambiguity concerning this matter into the  
3       future. But we are focused on the so-called  
4       Senator Monserrate expulsion decision here  
5       tonight.

6               Earlier today, Senator Leibell  
7       produced a resolution and there was intense  
8       debate about what kinds of rights we would  
9       confer upon terrorists. And there were many  
10      that were voting today -- or voted already in  
11      favor of allowing civil trials. That is, the  
12      Constitution that serves us so well for  
13      hundreds of years, we confer upon terrorists  
14      the rights to enjoy their due process in our  
15      court system.

16             That due process, by the very same  
17      people that supported it for the terrorists,  
18      did not find themselves capable of supporting  
19      Senator Monserrate's due process rights. And  
20      that is a fundamental reason why I must vote  
21      no on this resolution.

22             Thank you, Mr. President.

23             THE PRESIDENT:     Thank you,  
24      Senator Espada.

25             We were in the middle of a roll

1 call vote. Mr. Secretary, have you counted  
2 all the votes?

3 Excuse me. Senator Monserrate.

4 SENATOR MONSERRATE: Thank you,  
5 Mr. President. Good evening to you, to my  
6 colleagues on this very somber evening.

7 I stand before you today, in front  
8 of my 61 fellow colleagues, facing a vote on  
9 expulsion. The basis for this, an act that  
10 took place even before I was sworn in as a  
11 Senator. Behavior that is unbecoming of a  
12 State Senator.

13 Many questioned if the Senate even  
14 has the right to expel a sitting member,  
15 particularly one who is eligible to be seated.  
16 Ultimately, whatever action this body  
17 undertakes, it should adhere to the principles  
18 of fairness, process, and obviously the rule  
19 of law.

20 Let me remind everyone that a new  
21 election cycle is right around the corner. If  
22 my sins are of such magnitude that the voters  
23 of the 13th Senatorial District feel that they  
24 can no longer support my continued service to  
25 them, then so be it. But it should be up to

1       them.

2                   Not one of the members in this  
3       Senate took place in any of the elections that  
4       I have participated in since 2000. I think  
5       it's the height of arrogance for someone who  
6       has never pulled a lever in my community --  
7       that never saw the narcotics sales on  
8       Roosevelt Avenue, that never saw the lack of  
9       services that my community receives -- to  
10      think that today they have more power than the  
11      constituent voters who sent me here to  
12      represent them.

13                  All of us here are here as a  
14      privilege, because the people have decided to  
15      send us here to represent them. Moreover,  
16      there are legitimate questions, legitimate,  
17      under our State Constitution and our legal  
18      system, if this Senate, if this body currently  
19      has the power to expel members.

20                  But even if the Senate had the  
21      right to, even if they had the right -- which  
22      I believe they do not -- this process has  
23      deprived my constituent voters and me of due  
24      process.

25                  It was eloquent today when I heard

1 Senator Squadron speak about due process when  
2 he talked about the Taliban terrorists. And  
3 even Senator Liz Krueger from Manhattan stood  
4 up and rose and spoke boldly about an America  
5 that would protect the rights of even  
6 terrorists.

7 Well, ladies and gentlemen, I was  
8 denied basic due process, rules of evidence,  
9 and the like during this inquiry.

10 It is clear that outside of the  
11 felony conviction, there are no standards or  
12 rules that delineate an act of expulsion.  
13 Prior to 1821, there were provisions regarding  
14 the purging of members of the legislature.  
15 But in the Constitutional Convention of 1821,  
16 they were taken out, and with good reason.

17 Respectfully, my colleagues, we  
18 don't have the power to expel a member. This  
19 action would be unconstitutional, illegal, and  
20 contrary to precedent.

21 So what is it that we are doing  
22 here? We are all here doing the people's  
23 business because of one salient reason: The  
24 people have afforded us the privilege of  
25 serving. Expulsion, therefore, is an extreme

1       action that clearly abrogates the rights of  
2       people who exercise their democratic rights to  
3       vote.

4               Now, over the years we have  
5       witnessed on numerous occasions how some of  
6       the people's representatives have abused their  
7       privilege, lining their own pockets at the  
8       expense of the public interest that they have  
9       sworn to uphold. Just recently, a leader of  
10      this very body for many years was convicted of  
11      corruption, using his office for personal gain  
12      at the expense of the taxpayers and this great  
13      state.

14              We have also seen a long list of  
15      others who were convicted or even pled to  
16      misdemeanors. Senator Diaz mentioned one, but  
17      there are countless others -- dozens, if we  
18      include the New York State Assembly. Many of  
19      them negotiated pleas to avoid felony  
20      convictions.

21              Ladies and gentlemen, I was facing  
22      four felony charges and prison time. I  
23      believe so much in my innocence that I went  
24      into a courtroom with my attorney and we  
25      fought a legal battle to prove my innocence.

1 Today we are in appeals process of the sole  
2 reckless charge.

3 I want to underscore that. For  
4 those of you who are members of the bar --  
5 including the Democrats who somehow forgot  
6 their ethical guidelines along the way --  
7 there was no mens rea here. There was no  
8 intent. There was a reckless act. And for  
9 that, I am sorry. I'm also very sorry for all  
10 the pain and the upset that has occurred as a  
11 result of that to this body.

12 But let's be clear what we're  
13 dealing with here and what the offense was.  
14 In all the time that all these things were  
15 occurring, with other elected officials being  
16 arrested and convicted, corruption scandals,  
17 who knows how certain individuals and their  
18 friends get contracts in this house -- with  
19 all of that going on, no one from the  
20 Democratic Conference stood up and said  
21 "Enough is enough." Even when the behavior  
22 became common knowledge.

23 Before I arrived to Albany, two of  
24 our colleagues, one on each side of the aisle,  
25 were convicted of using their office for



1 corrupt purposes. Is it any wonder that we  
2 have earned the label of "dysfunctional" that  
3 has been bestowed upon us?

4 Yet with all this history of  
5 corruption, suspect behavior, no Senator has  
6 ever been forced to face the prospect of  
7 expulsion -- not one -- until now. Why now?  
8 What is happening at this time that makes the  
9 current effort to expel me so compelling?

10 At every turn, we as a body are  
11 facing charges of failing to adequately  
12 represent the public interest. Editorials  
13 written by billionaire publishers single out  
14 lists of elected officials who it is alleged  
15 have violated their oath of office. It is a  
16 climate that paints us all with a very wide  
17 and broad brush -- but everyone in this body  
18 stands accused.

19 In response, we rush to craft an  
20 ethics bill -- someone pounding on the table  
21 about how important the first step is -- to  
22 signal to the public that we begin to approach  
23 the people's business differently. But at the  
24 same time, let's make sure the lawyers in the  
25 room can hide whatever business they have

1       going on -- that's okay. The same individuals  
2       who are so pompous and stand on the ethical  
3       bully pulpit.

4               Make no mistake about this. This  
5       is about, in a dramatic and public manner, the  
6       effort by some in this body to demonstrate  
7       that they are going to expiate all its sins by  
8       making Hiram Monserrate the scapegoat. Now  
9       we're going to clean up the house. We're  
10      going to put on our suits and our ties, we're  
11      going to look sharp, and we're going to say  
12      what we're doing to clean up the house.

13             My colleagues, it has been now over  
14      14 months since I entered these chambers as a  
15      Senator. I have voted with you on hundreds if  
16      not thousands of bills. I have worked with  
17      you. Many times, on more than one occasion,  
18      to my great colleagues in the Democratic  
19      conference, I provided the 32nd vote on so  
20      many important pieces of legislation -- bills  
21      introduced by Senator Klein and Malcolm Smith  
22      and Diane Savino, my good friend Senator Eric  
23      Adams, even Tom Duane.

24             So many times we worked and we  
25      battled against differences of opinion from

1       the other side of the aisle with respect to  
2       budgetary constraints, budget reduction bills,  
3       member items, capital projects. We have dealt  
4       with the MTA bailout, we've protected  
5       homeowners, and yes, even enacted some pretty  
6       significant rules reform that I think I should  
7       take some of the credit for -- right, Pedro?

8               SENATOR ESPADA:       Absolutely.

9               SENATOR MONSERRATE:       Some of the  
10       rules reform that equalized the resources of  
11       this house so that the minority party could  
12       also benefit and be treated like what they  
13       are, legislators serving the public, to reduce  
14       a little bit of this partisanship that so many  
15       times provides for gridlock. Not that losing  
16       the 32nd vote in this conference will help  
17       much towards that.

18               During this same period of time, my  
19       office has serviced thousands upon thousands  
20       of constituents, many of them new Americans  
21       and people of color who need the services that  
22       my district office has provided for them.

23               Clearly, I am not being judged for  
24       violating my oath of office. I'm not being  
25       judged because I had no-show jobs in my

1 office. I'm not being judged because  
2 something went wrong with whatever public  
3 funds were at risk during the process of the  
4 budget.

5 But for whatever reasons, ladies  
6 and gentlemen, my colleagues, the actions that  
7 I have committed, that I've been involved  
8 with, do not rise to the level of expulsion.  
9 And the process that this body has used has  
10 not only deprived me of my due process but in  
11 fact is disenfranchising the voters of my  
12 majority minority district.

13 When the committee whose report is  
14 the basis of the expulsion action was  
15 constituted, the underlying charges were and  
16 are the basis of an appeal. This report,  
17 which is full of material omissions, legal  
18 inaccuracies, and factual distortions, has  
19 really amounted to a self-serving document  
20 designed solely to justify a result of this  
21 committee desired before even commencing its  
22 investigation.

23 Sadly, I learned recently that the  
24 committee didn't even receive vital evidence  
25 from the district attorney's office that was

1 in their possession and supposedly, under  
2 court order, agreed to be received by the  
3 distinguished members of the committee, their  
4 chair, and their legal counsel.

5 Despite never hearing from the only  
6 two people involved in the incident that I was  
7 involved in on December 18, 2008, the  
8 committee proceeded anyway. And its report,  
9 written as a prosecutorial brief, lacks both  
10 balance and fairness. In this way, it is what  
11 the jury hears before the defense counsel even  
12 has a chance to speak. Yet this is what has  
13 been used and what this body has prepared to  
14 use as the basis to expel me from the Senate.

15 I therefore stand before you today  
16 to ask for your forbearance and, yes, in many  
17 respects your forgiveness. Forgiveness is  
18 important, isn't it, Reverend Diaz? That's  
19 what the Scripture teaches us.

20 I know that my behavior has brought  
21 unwelcome discredit to this chamber. And for  
22 that, again, as I've earlier stated, I am  
23 sorry. But as Reverend Jesse Jackson once  
24 said: "God isn't through with me yet." He's  
25 got a lot of work to do.

1           Let the people, come next fall, if  
2           they decide that I can no longer effectively  
3           serve them, let them be the final word on the  
4           matter of Hiram Monserrate.

5           I thank you for the time and the  
6           opportunity to speak here on my behalf, and  
7           for the privilege that I have had to represent  
8           the people of Corona, Elmhurst, Jackson  
9           Heights, East Elmhurst, Woodside, and Lefrak  
10          City, USA.

11          I thank you all, and I'll close  
12          solely by saying that this clearly is a much,  
13          much bigger issue than just me. This is about  
14          the process and the rule of law. I really  
15          hope that no one in this chamber, ever in  
16          their life, in their public-service career,  
17          that they ever find themselves in a situation  
18          similar to me -- that on one evening or one  
19          day, something goes awry and you find yourself  
20          at the mercy of certain colleagues with  
21          unfortunate political agendas.

22          I will be voting no on this  
23          resolution. I would encourage every member of  
24          this chamber who believes in fundamental  
25          fairness and can put to the side the politics

1       and the heated discussion of the issue and say  
2       "It's Hiram Monserrate today, it can  
3       definitely be me tomorrow."

4               Clearly, Senator Espada, in his  
5       effort to bring some clarity to this  
6       situation, has proposed legislation which I  
7       think would be an important first step. But I  
8       want to just remind everyone that when you  
9       have a process with no rules, no boundaries,  
10      no parameters, we could all find ourselves  
11      being judged for the wrong reasons at the  
12      wrong time.

13              Thank you very much, Mr. Chair.  
14      I'll be voting no. Thank you.

15              THE PRESIDENT:     Senator  
16      Monserrate will be recorded in the negative.

17              Mr. Secretary, would you please  
18      read the results?

19              THE SECRETARY:     Ayes, 53. Nays,  
20      8.

21              THE PRESIDENT:     The resolution is  
22      adopted.

23              Senator Klein.

24              SENATOR KLEIN:     Mr. President, is  
25      there any further business at the desk?

1                   THE PRESIDENT:     Senator Klein,  
2     the desk is clear.

3                   SENATOR KLEIN:     There being none,  
4     Mr. President, I move that we adjourn until  
5     Monday, February 22nd, at 3:00 p.m.,  
6     intervening days to be legislative days.

7                   THE PRESIDENT:     There being no  
8     further business to come before the Senate, on  
9     motion, the Senate stands adjourned until  
10    Monday, February 22nd, at 3:00 p.m.,  
11    intervening days being legislative days.

12                   (Whereupon, at 9:46 p.m., the  
13    Senate adjourned.)

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