

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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