

1 NEW YORK STATE SENATE

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4 THE STENOGRAPHIC RECORD

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9 ALBANY, NEW YORK

10 March 18, 2013

11 3:23 p.m.

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13
14 REGULAR SESSION

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18 SENATOR DAVID CARLUCCI, Acting President

19 FRANCIS W. PATIENCE, Secretary

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

2 ACTING PRESIDENT CARLUCCI: The
3 Senate will come to order.

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

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

9 ACTING PRESIDENT CARLUCCI: In the
10 absence of clergy, may we please bow our heads
11 in a moment of silence.

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

14 ACTING PRESIDENT CARLUCCI: The
15 reading of the Journal.

16 THE SECRETARY: In Senate, Sunday,
17 March 17th, the Senate met pursuant to
18 adjournment. The Journal of Saturday,
19 March 16th, was read and approved. On motion,
20 Senate adjourned.

21 ACTING PRESIDENT CARLUCCI:
22 Without objection, the Journal stands approved
23 as read.

24 Presentation of petitions.

25 Messages from the Assembly.

1 The Secretary will read.

2 THE SECRETARY: On page 11,
3 Senator Seward moves to discharge, from the
4 Committee on Insurance, Assembly Bill Number
5 5694 and substitute it for the identical Senate
6 Bill Number 3857, Third Reading Calendar 147.

7 ACTING PRESIDENT CARLUCCI: The
8 substitution is ordered.

9 Messages from the Governor.

10 Reports of standing committees.

11 Reports of select committees.

12 Communications and reports from
13 state officers.

14 Motions and resolutions.

15 Senator Libous.

16 SENATOR LIBOUS: Thank you,
17 Mr. President.

18 On behalf of Senator Gallivan, on
19 page 8 I offer the following amendments to
20 Calendar Number 74, Senate Print 583, and ask
21 that said bill retain its place on the
22 Third Reading Calendar.

23 ACTING PRESIDENT CARLUCCI: The
24 amendments are received, and the bill will
25 retain its place on the Third Reading Calendar.

1 Senator Libous.

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

4 At this time, Mr. President, with
5 unanimous consent, I'd like to recognize my
6 friend and colleague Senator LaValle to address
7 the body.

8 ACTING PRESIDENT CARLUCCI:
9 Senator LaValle.

10 SENATOR LaVALLE: Thank you,
11 Senator Libous.

12 We have some very special guests
13 today that I would like to introduce to this
14 body: A very prominent Italian who is the
15 rettore of the University of Palermo, the
16 president of the University of Palermo,
17 Rettore Roberto Lagalla, and his wife, Maria
18 Paola Ferro.

19 Also we have Pasquale Assennato,
20 who is a professor at the university. And we
21 have a dear friend that's with them who is also
22 a professor at the University of Palermo,
23 Professor Marcello Saija.

24 And also, from Stony Brook, the
25 director of the Center for Italian Studies --

1 and he has been here -- a very dear friend,
2 Professor Mario Mignone.

3 Rettore, your work in Sicily, in
4 Italy, the number of journals that you have
5 written in, the speeches on healthcare are well
6 known. And this body recognizes you for your
7 work in healthcare and certainly being the
8 president of a very important university in
9 Italy, the University of Palermo.

10 Congratulations on your good work,
11 and I hope you have a good stay here in the
12 United States.

13 (Applause.)

14 ACTING PRESIDENT CARLUCCI: Thank
15 you, Rettore. Thank you, Senator LaValle.

16 Senator Libous.

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

19 I believe there is a previously
20 adopted resolution by Senator Hassell-Thompson at
21 the desk; I believe it is Number 836. I ask that
22 its title be read and call on the good Senator.

23 ACTING PRESIDENT CARLUCCI: The
24 Secretary will read.

25 THE SECRETARY: Legislative

1 Resolution Number 836, by Senator
2 Hassell-Thompson, commemorating the 50th
3 Anniversary of the United States Supreme Court's
4 decision Gideon v. Wainwright holding the
5 14th Amendment to the Constitution requires
6 states to provide counsel to indigent criminal
7 defendants.

8 ACTING PRESIDENT CARLUCCI: Senator
9 Hassell-Thompson.

10 SENATOR HASSELL-THOMPSON: Thank
11 you, Mr. President.

12 Fifty years ago on March 18, 1963,
13 the Supreme Court unanimously ruled in Gideon v.
14 Wainwright that criminal defendants have a
15 constitutional right to a lawyer whether or not
16 they can afford one.

17 Following this historic decision, a
18 new trial was ordered. And with a new lawyer
19 appointed, Gideon was acquitted.

20 Clarence Earl Gideon is an unlikely
21 protagonist. He was a poor white male from
22 Missouri with a track record for petty thievery.
23 He was first convicted of larceny at the age of
24 18 and over the course of his life served prison
25 sentences in four different states. He's

1 commonly referred to as a drifter because of his
2 tendency to jump from home to home and wife to
3 wife.

4 Say what you might about him as a
5 man, but it is undeniable that Gideon had
6 gumption. After being convicted in 1961 of
7 felony theft, he stood in front of the Florida
8 State Court and, representing himself, refused to
9 plead guilty until the court appointed him a
10 counsel. Knowing nothing about the law, he
11 nevertheless had an unwavering belief that the
12 United States Constitution entitled him to a
13 lawyer and to have representation before the
14 court could throw him into jail.

15 Technically, Gideon was wrong.
16 Under the U.S. Supreme Court's case in Betts v.
17 Brady, decided 20 years earlier, the court had
18 ruled that no one has a universal right to
19 counsel in a criminal state trial unless that
20 denial could constitute a denial of fundamental
21 fairness.

22 But as Anthony Lewis wrote in his
23 famous book, Gideon's Trumpet, Gideon's argument
24 wasn't necessarily futile on the basis that it
25 was wrong.

1 As we have seen over the years under
2 different, more progressive leadership, the
3 United States Supreme Court would occasionally
4 change its mind. And 50 years ago, that's
5 exactly what it did, by overturning Gideon's
6 conviction and unanimously holding that the
7 14th Amendment requires states to provide counsel
8 to defendants in criminal cases whether or not
9 they're able to afford an attorney.

10 The point of this case is simple.
11 Everyone in our country deserves a fair trial
12 before going to jail, no matter who they are or
13 what they have done. Our justice system needs to
14 support the plight of poor people, not to
15 contribute to it.

16 It is a matter of common sense that
17 the administration of law must be unbiased. And
18 in order to administer equal and nonprejudicial
19 representation, every state needs to not only
20 develop a public defender system but it needs to
21 ensure that it creates laws and contributes
22 financially to ensure that that system truly
23 works.

24 This commemoration is bittersweet.
25 While the right to counsel in criminal cases has

1 been determined, the legal needs of many
2 defendants are still going unmet -- and therefore
3 the right often amounts to an empty one.

4 New York has no statewide system for
5 the provision of indigent defense but instead
6 relies on our counties to administer this kind of
7 indigent defense services. As long as counties
8 have to bear the public defense mandate, they
9 must be economically funded to provide quality
10 representation.

11 In 2009 I was proud to lead the
12 Senate Democratic majority in the creation of our
13 Indigent Legal Services Board, which oversees the
14 Office of Indigent Legal Services, the first of
15 its kind to manage public defenders in the
16 history of the State of New York. However, we
17 must ensure that these organizations are
18 adequately funded, or I fear that our incremental
19 advances in the area of public defense will be
20 continuously thwarted.

21 In 2009 historic legislation was
22 passed by our joint legislative houses and signed
23 under Governor Paterson to establish new caseload
24 standards in the City of New York for public
25 defenders. However, to truly stabilize our

1 justice system, we must expand the law
2 statewide. Having the right to counsel means
3 absolutely nothing if the lawyer is unable to
4 give adequate representation because he or she is
5 ill-prepared due to an insufferably burdensome
6 caseload.

7 Therefore, it is absolutely
8 substantive interactive that we pass legislation
9 this week that restores funding to the Indigent
10 Legal Services Office, and we must oppose the
11 Executive's proposal to eliminate the \$4 million
12 appropriated for upstate case caps.

13 Just two months ago the United
14 States Supreme Court considered a case involving
15 indigent defense. The issue of Boyer v.
16 Louisiana was whether a state's failure to fund
17 counsel for an indigent defendant for five years
18 should be weighed against the state for speedy
19 trial purposes. Louisiana disagreed and argued
20 even if the majority of the delay in bringing the
21 defendant to trial was caused by a funding
22 crisis, that it should not count against the
23 state.

24 We do not need to wait for the
25 Supreme Court's answer. As a legislature, we can

1 decide that New York State will accept
2 responsibility for its indigent defense
3 problems. Today we must honor the dedication of
4 those legal aid societies, public defenders, 18B
5 lawyers and pro bono defense counsels who
6 zealously represent the poor. At the same time,
7 we want to use this anniversary as an opportunity
8 for reflection and inspiration.

9 We have a responsibility as
10 lawmakers to exercise our power for the
11 betterment of our citizens in all aspects of
12 their lives. Having adequate representation at a
13 criminal trial demonstrates a person's true
14 freedom.

15 I urge my colleagues to join me in
16 supporting an aggressive campaign of indigent
17 defense reform to ensure that we protect all
18 citizens and their freedoms with the kind of
19 unbridled gumption that drove Gideon's passion
20 one half a century ago.

21 Thank you, Mr. President.

22 ACTING PRESIDENT CARLUCCI: Thank
23 you, Senator Hassell-Thompson.

24 Are there any other Senators wishing
25 to be heard on the resolution?

1 This resolution was previously
2 adopted on March 14th.

3 Senator Libous.

4 SENATOR LIBOUS: Yes,
5 Mr. President. I believe at this time we're
6 going to take up the reading of the
7 noncontroversial calendar.

8 ACTING PRESIDENT CARLUCCI: The
9 Secretary will read.

10 THE SECRETARY: Calendar Number 55,
11 by Senator Seward, Senate Print 3066, an act to
12 amend the Insurance Law.

13 ACTING PRESIDENT CARLUCCI: Read
14 the last section.

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

17 ACTING PRESIDENT CARLUCCI: Call
18 the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes, 61.

21 ACTING PRESIDENT CARLUCCI: This
22 bill is passed.

23 THE SECRETARY: Calendar Number 56,
24 by Senator Seward, Senate Print 3539, an act to
25 amend the Insurance Law.

1 ACTING PRESIDENT CARLUCCI: Read
2 the last section.

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

5 ACTING PRESIDENT CARLUCCI: Call
6 the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes, 61.

9 ACTING PRESIDENT CARLUCCI: The
10 bill is passed.

11 THE SECRETARY: Calendar Number
12 147, substituted earlier by Member of the
13 Assembly Skoufis, Assembly Print Number 5694, an
14 act to amend Chapter 630 of the Laws of 1988.

15 ACTING PRESIDENT CARLUCCI: Read
16 the last section.

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

19 ACTING PRESIDENT CARLUCCI: Call
20 the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes, 61.

23 ACTING PRESIDENT CARLUCCI: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 175, by Senator Golden, Senate Print 3754, an act
2 to amend the Public Housing Law.

3 ACTING PRESIDENT CARLUCCI: Read
4 the last section.

5 SENATOR MONTGOMERY: Lay it aside.

6 ACTING PRESIDENT CARLUCCI: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 176, by Senator Young, Senate Print 3843, an act
10 to amend the Private Housing Finance Law.

11 ACTING PRESIDENT CARLUCCI: Read
12 the last section.

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

15 ACTING PRESIDENT CARLUCCI: Call
16 the roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes, 61.

19 ACTING PRESIDENT CARLUCCI: The
20 bill is passed.

21 Senator Libous, that completes the
22 noncontroversial reading of the calendar.

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

25 At this time could you ring the bell

1 and bring the members to the chamber, and we'll
2 very shortly get into the controversial reading
3 of the calendar.

4 ACTING PRESIDENT CARLUCCI: The
5 Secretary will ring the bell.

6 SENATOR LIBOUS: Mr. President.

7 ACTING PRESIDENT CARLUCCI: Senator
8 Libous.

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

11 Could we now have the reading of the
12 controversial calendar, please.

13 ACTING PRESIDENT CARLUCCI: The
14 Secretary will read.

15 THE SECRETARY: Calendar Number
16 175, by Senator Golden, Senate Print 3754, an act
17 to amend the Public Housing Law.

18 ACTING PRESIDENT CARLUCCI: Senator
19 Montgomery.

20 SENATOR MONTGOMERY: Thank you,
21 Mr. President. I would like to speak on this
22 legislation.

23 ACTING PRESIDENT CARLUCCI: Senator
24 Montgomery on the bill.

25 SENATOR MONTGOMERY: Yes. This is

1 a bill that Senator Golden is introducing, and it
2 would change the governing structure of the
3 New York City Housing Authority.

4 And I am opposed to this particular
5 version of the change in the structure of the
6 governing body for the following reasons. This
7 bill creates a new governing board that would now
8 serve entirely at the mayor's pleasure. This
9 indicates that Senator Golden would like to see
10 the New York City Housing Authority become a
11 mayoral agency. However, it would not have the
12 same accountability, as every other city agency
13 does, to the scrutiny of the City Council and the
14 public.

15 This bill also would allow the mayor
16 to eliminate any and all of the members of the
17 board without cause. So he we could wake up one
18 day and have a NYCHA board in place and the next
19 day, based on the mayor's political or otherwise
20 decisions or needs or pleasure, we would have a
21 different board.

22 And so the whole idea of continuity
23 and stability of this important agency, this
24 important authority, which is depended on by
25 hundreds of thousands of residents in the City of

1 New York, it would totally be destabilized based
2 on one person's desire, decision, politically or
3 otherwise.

4 The mayor, although, adds one
5 additional -- this bill would add one additional
6 resident to the NYCHA board. That resident is
7 selected by the mayor. In addition, the bill is
8 blind to any standard of competence for any of
9 the board members. So we would not have the
10 benefit of people who have expertise in different
11 areas, i.e., finance, administration and
12 management, housing policy, workforce
13 development, and others.

14 So there is really no benefit that
15 is added to the New York City Housing Authority
16 by virtue of this legislation. And so it is a
17 very, very questionable way to be proposing to
18 change such an important city authority without
19 having a lot of public discussion, without having
20 been engaged in some dialogue with people who
21 depend on the housing authority, who work with
22 the housing authority, and for whom the housing
23 authority exists. So I am certainly opposing
24 this legislation.

25 And I want to say that we do have a

1 bill that was introduced by Senator Bill Perkins
2 and myself which would in fact not only add one
3 additional tenant representative to the board,
4 but we would add five tenant representatives.
5 And we would also increase the board, the voting
6 board, to six members who would represent areas
7 of expertise; i.e., housing, finance, workforce
8 development, management, administration, housing
9 policy, health and human services and community
10 development.

11 We think that it is time that we
12 need to revisit the New York City Housing
13 Authority board, but we do not believe that this
14 bill that Senator Golden has introduced does that
15 at all. The only thing that it actually does is
16 creates a housing authority that is entirely
17 controlled by the mayor of the City of New York
18 and without any accountability to any other city
19 agency or the public or taxpayers.

20 So I am opposing this, and I invite
21 my colleagues to also join me in voting no on
22 this legislation.

23 Thank you, Mr. President.

24 ACTING PRESIDENT CARLUCCI: Thank
25 you, Senator Montgomery.

1 Are there other Senators wishing to
2 be heard on the bill?

3 Senator Krueger.

4 SENATOR KRUEGER: Thank you. On
5 the bill.

6 I stand to share my colleague's
7 concerns with this bill and to express my reasons
8 for why I'll be voting no.

9 As my colleague already so
10 articulately explained, we need to do something
11 about the governance in NYCHA. I think any of us
12 who are from New York City can tell our own
13 stories about frustrations we have had, and lack
14 of response.

15 But if you're going to change the
16 governance of a public authority, you need to
17 think through what's broken and what needs to be
18 fixed. For me, one of the huge issues is that
19 there is no transparency in their budget. They
20 don't report to anyone on their revenues, on
21 their expenditures, on their capital reserves, as
22 we've learned recently on where they are in their
23 capital plans because they received quite a bit
24 of federal money to do preservation, expansion.
25 There are concerns about their leasing off

1 properties they own for private development.
2 There's endless questions, but no information
3 coming.

4 So it seems obvious to me that at
5 this point in history, governance improvements
6 for the New York City Housing Authority would
7 require full disclosure, as this Legislature has
8 done with its public authority reform bills for
9 state public authorities.

10 Now, granted, NYCHA is a city
11 authority, but apparently they need to come to us
12 for a change in governance. So it seems obvious
13 to me this house wants to make sure that that
14 governance change includes real reforms in the
15 information flow in authorities.

16 Second, as my colleague pointed out,
17 while I can accept a change in how board members
18 are picked and how many they are and whether
19 they're paid or on a per diem, I don't accept the
20 concept that we would have no standards for the
21 qualifications of who they are or need to be.
22 And I'm very concerned about a model where simply
23 at the decision of the mayor they could be
24 removed without cause at any moment in time.

25 Unfortunately, we in the City of

1 New York have seen a pattern where a -- I'm
2 sorry, Mr. President I'm having a little trouble
3 hearing myself.

4 ACTING PRESIDENT CARLUCCI: Please
5 keep conversations to a minimum while Senator
6 Krueger has the floor.

7 Continue, Senator Krueger.

8 SENATOR KRUEGER: Thank you. I
9 don't know if anyone else wanted to hear me, but
10 I wanted to hear myself. Thank you. Don't
11 answer.

12 (Laughter.)

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

15 The concern that if you remove a
16 board member or members without cause at any
17 moment, that you actually can simply, as whoever
18 the mayor is in New York City, be saying "I know
19 these board members don't agree with me on this,
20 I'm going to fire them all and replace them on a
21 minute's notice." That's bad governance. It's a
22 bad model of governance. And so I don't accept
23 that it's a reform to move forward by
24 establishing that model.

25 I also, frankly, have spoken to

1 people who are involved in a coalition trying to
2 make improvements in the New York City Housing
3 Authority, and they support having tenant members
4 of the board, as I support having tenant
5 members. But they also say they have an entire
6 leadership model throughout the different
7 authority projects and that they would like to
8 recommend their tenant leaders for the board, not
9 being exclusively who the mayor decides ought to
10 believe the tenant members of the board. And I
11 think that they need to play a role.

12 I have also been discussing the fact
13 that the City Council of the City of New York,
14 who have a very personal relationship with NYCHA
15 because it is a city housing authority and they
16 are the city legislature, that the New York City
17 Council should at least have some role in advice
18 and consent to who board members are, and that
19 critically they need that same information about
20 revenue, expenditures, capital plans as we in the
21 State Legislature do.

22 So I strongly believe we need a
23 governance bill for NYCHA. And I think we could
24 get one this year, but I don't believe this
25 should be the governance bill we pass. And I'll

1 be voting no, Mr. President.

2 Thank you.

3 ACTING PRESIDENT CARLUCCI: Thank
4 you, Senator Krueger.

5 Are there other Senators wishing to
6 be heard on the bill?

7 The Secretary will ring the bell.

8 Read the last section.

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

11 ACTING PRESIDENT CARLUCCI: Call
12 the roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT CARLUCCI: Senator
15 Squadron.

16 SENATOR SQUADRON: Thank you,
17 Mr. President. To explain my vote.

18 Look, there's no question that NYCHA
19 needs to be reformed, goodness knows. The
20 problem is this isn't the way to do it, it's not
21 the process by which we should be doing it. We
22 need to have an extensive conversation on this.
23 And also, I got to tell you, to change the
24 structure without increasing the transparency,
25 without knowing more about what's happening,

1 without giving the City Council better oversight,
2 seems to be a solution that gets nowhere near
3 solving the problem.

4 So I thank Senator Golden for his
5 commitment to NYCHA and to reforming it; it's
6 very important. Unfortunately, I wish we were
7 doing it in the right way. I vote no,
8 Mr. President.

9 ACTING PRESIDENT CARLUCCI: Thank
10 you, Senator Squadron.

11 Are there other Senators wishing to
12 explain their vote?

13 Senator Golden.

14 SENATOR GOLDEN: Thank you,
15 Mr. President.

16 I can understand my colleagues on
17 the other side of the aisle looking for a better
18 bill. This is a good bill, and especially when
19 you take a look at what's been going on over the
20 last many years.

21 When you take a look at the number
22 of building complaints, building repairs as of
23 August were 338,000. There is currently, since
24 August, an increase of 84,000. There were
25 422,000 repair complaints at NYCHA. Think about

1 that.

2 Think about the pay that the members
3 that were there before were getting. The
4 chairman gets \$212,000 and the members get
5 \$186,000 each, for incompetence and for failure.

6 This new bill will allow it to go to
7 five members and to increase the ability for the
8 tenants to have a voice on that board, and will
9 also give the ability to get the commitment of
10 the mayor and the chairman and that board to get
11 those 400,000-plus units repaired in a timely
12 fashion over the course of this year.

13 So although I know my colleagues are
14 looking for a better bill, this is a bill that
15 will work. It is a bill that I believe is
16 something that is long due, and I believe it's a
17 bill that will get those repairs done by the end
18 of this year, and that's very, very important.

19 So I vote aye. Thank you.

20 ACTING PRESIDENT CARLUCCI: Thank
21 you, Senator Golden.

22 The Secretary will announce the
23 results.

24 THE SECRETARY: In relation to
25 Calendar Number 175, those recorded in the

1 negative are Senators Adams, Addabbo, Avella,
2 Ball, Breslin, Diaz, Dilan, Gianaris, Gipson,
3 Hassell-Thompson, Hoylman, Kennedy, Krueger,
4 Latimer, Montgomery, O'Brien, Peralta, Perkins,
5 Rivera, Sampson, Sanders, Serrano, Squadron,
6 Stavisky, Stewart-Cousins and Tkaczyk.

7 Ayes, 36. Nays, 26.

8 ACTING PRESIDENT CARLUCCI: The
9 bill is passed.

10 Senator Libous, this completes the
11 controversial reading of the calendar.

12 SENATOR LIBOUS: Thank you,
13 Mr. President.

14 Is there any further business at the
15 desk?

16 ACTING PRESIDENT CARLUCCI: There
17 is no further business at the desk.

18 SENATOR LIBOUS: There being no
19 further business, Mr. President, I move that we
20 adjourn until Tuesday, March 19th, at 3:00 p.m.

21 ACTING PRESIDENT CARLUCCI: On
22 motion, the Senate stands adjourned until
23 Tuesday, March 19th, at 3:00 p.m.

24 (Whereupon, at 3:53 p.m., the Senate
25 adjourned.)