ALBANY, NEW YORK

February 22, 1993

3:01 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: The Senate will come to order. Senators will find their seats.

If you will please rise with me for the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

Today we're pleased to have the Reverend Robert Bey, Pastor of the New Hope A.M.E. Church of Brooklyn, New York, Senator Markowitz'.

Reverend Bey.

REVEREND ROBERT BEY: Gracious Master and my God, assist me to proclaim, to cover throughout this universe which is of Thy keeping. Master, we ask that You will come into this Senate today. Speak to the hearts and the minds that the wisdom and knowledge that be portrayed here in this session will be as a light to the lamp to the pathway of many. Let them do not in muttering and mumbling but speak out in the great devoutness of a surety and

solidarity to the purpose of which they have taken their oath.

Lord, be with them, guide them, keep them under Your protection. Then Lord, remember as they sit in judgment today of many bills that need to be passed, many bills that need overhauling, many bills that need up lifting, build a light in them that it will spread throughout the universe casting no dispersion upon none. Help them to remember that when and why they're working to remember the health care workers of this state of New York, for Lord, I am one of those persons who stands on the threshold of many. Remember, O Lord, their families as they go forth. Unite them in the spirit and truth and in grace. Let their endowment be empowered from on high, not from within themselves, but, O Lord, let them lift up the countenance from which Thy light shall shine; and then give them peace in this, our prayer. Amen.

ACTING PRESIDENT FARLEY: Thank you, Reverend Bey.

The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Friday, February 19th. The Senate met pursuant to adjournment, Senator Bruno in the Chair upon designation of the Temporary President. The Journal of Thursday, February 18th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Secretary will read a report of a standing committee.

THE SECRETARY: Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, reports the following bill directly for third reading: Senate Bill Number 2185, by Senator Volker, an act to amend

Chapter 3 of the Laws of 1993, amending the Tax Law, relating to the imposition of sales and use taxes by the county of Erie; reported directly for third reading.

ACTING PRESIDENT FARLEY: Without objection, it's reported directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Mega.

SENATOR MEGA: Senator, Mr. President, on page 5, I offer the following amendments to Calendar Number 6, Senate Print Number 177, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments received; the bill will retain its place.

SENATOR MEGA: Senator Holland, on page 5, I offer the following amendments to Calendar Number 37, Senate Print 463, and ask

that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR MEGA: Behalf of Senator Tully, page 5, I offer the following amendments to Calendar Number 30, Senate Print Number 232, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection, bill will retain its place.

SENATOR MEGA: On behalf of Senator Saland, I move the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print Number 1409.

ACTING PRESIDENT FARLEY: Without objection.

Do we have any other motions on the floor?

Senator Present, we have a quorum. We're ready to go. What's your pleasure.

SENATOR PRESENT: Let us take up the non-controversial calendar.

ACTING PRESIDENT FARLEY: Non-controversial, Secretary will read.

THE SECRETARY: On page 5, Calendar Number 36, by Senator Cook, Senate Bill Number 573, an act to amend the Lien Law, in relation to fees for filing a building loan contract.

ACTING PRESIDENT FARLEY: There's a local fiscal impact note here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 43, by Senator Stafford.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 58, by Senator LaValle, Senate Bill Number 241, authorizing the approval of certain building aid for the William Floyd Union Free School District.

ACTING PRESIDENT FARLEY: There's a local fiscal impact note here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 59, by Senator Hannon, Senate Bill Number 279, authorize payments in lieu of taxes by the county of Nassau.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 60, by Senator Saland, Senate Bill Number 943, an act to amend the Education Law, in relation to requiring boards of education to provide transportation for all children.

ACTING PRESIDENT FARLEY: There's a local fiscal impact note here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT FARLEY: Lay that bill aside temporarily. Lay that aside temporarily.

THE SECRETARY: Calendar Number 61, by Senator Hannon, Senate Bill Number 280, an act to amend the Real Property Tax Law.

SENATOR PRESENT: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 62, by Senator Levy, Senate Bill Number 80, an act in relation to requiring the Commissioner of Transportation to conduct a review.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 63, by Senator Levy, Senate Bill Number 191, Vehicle and Traffic Law, in relation to criminal history checks on school bus attendance.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Lay

that bill aside.

THE SECRETARY: Calendar Number 65, by Senator Padavan, Senate Bill Number 546, Criminal Procedure Law, in relation to permitting the people to appeal an unduly lenient sentence.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT FARLEY: Lay that bill aside also.

THE SECRETARY: Calendar Number 66, by Senator Skelos, Senate Bill Number 564, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT FARLEY: Lay that one aside.

THE SECRETARY: Calendar Number 67, by Senator Volker, Senate Bill Number 583, Criminal Procedure Law, in relation to the period of time which must be excluded.

SENATOR GOLD: Last section.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 68, by Senator Levy, Senate Bill Number 648, an act to amend the Penal Law, in relation to the offense of assault in the second degree.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40, nays 1; Senator DeFrancisco in the negative.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 69, by Senator Tully, Senate Bill Number 776, an act to amend the Penal Law.

SENATOR GOLD: Lay aside for Senator Halperin.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 70, by Senator Tully, Senate Bill Number 779, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40, nays one; Senator Wright recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

71, by Senator Volker, Senate Bill Number 931, an act to amend the Penal Law, in relation to increasing penalties for crimes.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 72, by Senator Skelos, Senate Bill Number 949, Civil Practice Law and Rules and the Public Health Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 73, by Senator Volker, Senate Bill Number 919-A, an act to amend the Penal Law, in relation to resisting arrest.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 74, by Senator Spano, Senate Bill Number 1006, Mental Hygiene Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT FARLEY: That

bill is passed.

THE SECRETARY: Calendar Number 75, by Senator Spano, Senate Bill Number 1009, an act to amend the Mental Hygiene Law, in relation to identity disclosure of individuals.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT FARLEY: The bill is passed. The bill is passed.

Senator Present, that concludes the non-controversial.

SENATOR PRESENT: Mr. President, we call up Calendar 62.

ACTING PRESIDENT FARLEY: Secretary will read Calendar Number 62.

SENATOR GOLD: Explanation.

THE SECRETARY: Calendar Number

62, by Senator Levy, Senate Bill Number 80, an act in relation to requiring the Commissioner of Transportation to conduct a review of transpor tation of disabled children.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: I asked an explanation.

ACTING PRESIDENT FARLEY: I didn't hear you.

SENATOR GOLD: I apologize.

SENATOR PRESENT: Lay it aside, please.

ACTING PRESIDENT FARLEY: Lay that bill aside.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Would you like to call up Number 60, Senator Present.

SENATOR PRESENT: Please call up Calendar Number 60.

ACTING PRESIDENT FARLEY: Secretary will please read Calendar 60.

THE SECRETARY: Calendar Number

60, by Senator Saland, an act to amend the Education Law, in relation to requiring boards of education to provide transportation for all children.

ACTING PRESIDENT FARLEY: There's a local fiscal impact note here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 60 are Senators Daly, Holland, Jones and Kuhl. Ayes 40, nays 4.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Can you call up Calendar 65, please.

ACTING PRESIDENT FARLEY: Secretary will read Calendar Number 65, Senator Padavan's bill.

THE SECRETARY: Calendar Number 65, by Senator Padavan, Senate Bill Number 546, an act to amend the Criminal Procedure Law, in relation to permitting the people to appeal an unduly lenient sentence.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Padavan.

SENATOR PADAVAN: Mr. President, currently the law allows that a defendant have the right to appeal a sentence which he or she feels is unduly harsh and that right, of course, is important and it's an appellate court right and we have no quarrel with that at all.

However, currently the prosecut or, the people's attorney, has only the right to appeal a sentence on a matter of technical violation of law or misapplication of law, and what this bill simply does is provides an

opportunity for the prosecutor to also be able to challenge or question the sentencing judge's decision based on whether or not the penalty was harsh enough.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 65 are Senators DeFrancisco, Dollinger, Espada, Galiber, Gold, Marchi, Montgomery, Ohrenstein and Smith. Ayes 35, nays 9.

ACTING PRESIDENT FARLEY: That bill is passed.

SENATOR PRESENT: Mr. President, Calendar 69, please.

ACTING PRESIDENT FARLEY: Secretary will read Calendar 69, by Senator Tully.

THE SECRETARY: Calendar Number 69, by Senator Tully, Senate Bill Number 776, an act to amend the Penal Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked, for Senator Tully.

SENATOR TULLY: Yes, Mr. President. This bill deals with individual defendants who are convicted of multiple unrelated felonies and it removes the current cap on sentencing in regard to them.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GALIBER: No, no, hold on, Senator.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: If you will yield for a question.

SENATOR TULLY: Yes, Senator.

SENATOR GALIBER: And I don't usually do this. Why do we need this bill? Do we recognize that on consecutive sentences we

can run these things -- I voted against it in committee -- we can run these things so far, a hundred to a hundred a hundred. I don't think -- no one's complaining about the amount of time people get.

Some of us are concerned that they have so much time that they're -- some of them 60, 70, 80 years old in jail, no risk to anybody. We're paying 24-, $30,000 a year, some so old they don't even want to appear before a parole board, because even if they were to let them out there's no family out there. They don't want to be in the streets.

And then we come with a piece of legislation saying that's not far enough. We want to go a little further. And nobody except how it sounds, you know, every now and then we have one of these heinous crimes which you and I have no problem with sending he or she away who commits this crime for the rest of their lives, hopefully never, never to return to society.

But you have a situation here where you're putting -- taking off a cap on the

consecutive. I don't know why do we really need it, and I ask that question from you because we talk about things from time to time. Why do we need the thing?

SENATOR TULLY: That's a good question, Senator Galiber. I'm pleased to explain it.

I'm sure you recall back in 1983 in my community in the village of Westbury, there was that famous Westbury diner incident where a gang of bad guys, if you will, went into the diner, and they committed every type of crime from rape to robbery to assault on a number of people, and there were frequently situations where individual defendants were guilty of several very, very serious felonies.

The law as it presently stands in a situation like that would allow that individual to be sentenced to a maximum if he had an underlying "A" felony to a maximum of 35 years. The law as it currently stands is at 20, but if there was an underlying Class A, it could be 35 years.

In that particular type of situation, there's no question in my mind or the mind of any right-thinking individual that that type of person should not be allowed on the streets and if they are found guilty, there should be an opportunity to keep them incarcerated for as long as possible.

This statute allows that to take effect, and it's not something that's inconsequential in today's day and age when you see people who are minding their own business, if you will, sleeping on a subway and having groups come upon them and assault them, rob them, set them on fire and perhaps even kill them.

If they don't kill them but if they do all the other things, then they're subject to the current cap. I don't think that should be the case. This bill provides an opportunity for full maximum sentencing for the rest of their viable lives to take place, but leaves an opening, an opening, for the sentencing judge, if he determines based on the

material that's before him, that this should not take place, then he has the ability to bring it back to what it is today.

SENATOR GALIBER: Yield for one other question.

SENATOR TULLY: Yes, Senator.

SENATOR GALIBER: At the present time, you know, does that judge, the sentencing judge, have the opportunity to decide whether the sentence runs concurrent or whether it runs consecutive?

SENATOR TULLY: He does.

SENATOR GALIBER: He does. He does have that discretion?

SENATOR TULLY: Yes.

SENATOR GALIBER: In the real world, there is something you have let us know about, and we all know about it. It has that sense of notoriety. There are some things that have happened in our community, which is part of your total neighborhood but our community, and I feel the same way about it but it's a knee-jerk reaction to really say we're going to give them

life in prison without parole.

You know, we have can't even get that off in terms of how we deal with capital punishment, but yet because we have a few isolated situations -- horrible isolated situations -- we are now taking away from the judge even more discretion.

Voted no against Senator Padavan's bill just before because what we're doing is at the present time what we've historically done here in the last 10 to 12 years that we've taken every discretion almost away from sitting judges in terms of sentenc ing. They become automatons up there. They stand there or sit there and they are there at the will of the prosecutor. If the prosecutor doesn't go along with so and so based on what we've passed, the judge can't do anything about it.

But here we have a situation, we're taking a little bit away again where if the judge wants to run the sentences concurrent ly, he can do it. That's the other branch of

government that we talk about, the three branches. And why do we have to have and that's a rhetorical because you've explained, why would we want to add a cap on to take someone out of society because forever and ever and ever and not leave it up to the judge to make that discretion or decision as to whether or not a person -- and I think judges are as sensitized to things that are happening in our community, perhaps more so than we are or equally as we are and in the course of their sentence, they certainly can do just that.

So it's difficult to talk to you about it because it won't change anything, but we keep doing this, Senator. We do a little bit with Senator Padavan's bill and a little bit with your bill and a little bit of mandate over here, a little bit of shovin' over here some place, and we're really not solving anything. All we're really doing is packing and packing and packing our penal institutions to the point where we're going to have to, some day in the very near future, Senator, decide whether or not

we want to educate our youngsters or keep people in prison, and we're getting pretty close to that.

So I don't see that this kind of legislation, certainly isn't progressive. It's regressive; it's not needed, but it's interesting that this is your view and if, in fact, we ever get to the point where we have a bill on this floor in lieu of the death penalty saying that we want to have a life imprisonment with no parole, at least this piece of legislation and for those who voted for it, we can assume that they would vote for a life in prison without any parole also.

SENATOR TULLY: Yes, Mr. President. If I gather from that last statement that there was a question in there somewhere that says something to the effect of why do we wish to take this discretion away from the judge, Senator, I wish you would carefully read the bill, because we don't take the discretion away from the judge. In fact, we give him more discretion than he now has.

And you did mention life without parole. There you're dealing with homicides. You're not dealing with things that some people think today should be the subject of life without parole or should be the subject of a death penalty, for instance, the crime of rape a la the one that I described in Westbury.

So there are many, many instances where there are many, many violent crimes committed by the same individual at the same time on a number of different victims, and I think this type of sentencing provision will definitely work as a deterrent and, as a former prosecutor, as you know that I have been, and also have been on the other side as a criminal defense attorney, I know both sides of the issue, Senator, and I fully understand where you're coming from, but I believe that this type of legislation, if enacted, would be a benefit to the citizens of this state.

SENATOR GALIBER: Oh, just let me clear up something. If I did talk in terms of judges, it was an emotional portion of my -

just getting tied up into it. I -- what my original point was, very frankly, and I think you grabbed it early on and that's where I -- my position, the springboard came up -- the judges have the discretion to do it now. They have it to do it and in the course of just being frustrated about not having enough votes to defeat your bill, I might have said that they did not have the discretion. O.K.?

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 69 are Senators Espada, Galiber, Gold, Montgomery, Ohrenstein and Smith. Ayes 44, nays 6.

ACTING PRESIDENT SPANO: The bill is passed.

SENATOR PRESENT: Mr. President,

could we call up Calendar 66, please.

ACTING PRESIDENT SPANO: Calendar 66, Secretary will read.

THE SECRETARY: Calendar Number 66, by Senator Skelos, Senate Bill Number 564, an act to amend the Penal Law, in relation to restructuring computer crimes.

SENATOR GOLD: Explanation.

SENATOR SKELOS: Yes, Senator Gold.

This bill upgrades our current computer tampering statutes in the state of New York by increasing the penalties where an individual alters or destroys computer programs and causes monetary damage. If an individual causes more than $3,000 in damages, he or she could be charged with a Class D felony. If an individual causes more than $50,000 in damages could be a Class C felony.

Presently, the maximum sentence is a Class E felony.

SENATOR GOLD: Senator Skelos yield? Yes, is this the same bill we had last

year when Senator Connor and Leichter and Markowitz, Ohrenstein and Smith and Waldon voted in the negative?

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 66 are Senators Espada, Galiber, Markowitz, Montgomery and Ohrenstein. Also Senator Smith, Senator Santiago. Ayes 43, nays 7.

ACTING PRESIDENT SPANO: The bill is passed.

SENATOR PRESENT: Mr. President, could we now call Calendar 73.

ACTING PRESIDENT SPANO: Calendar Number 73, Senator Volker's bill.

THE SECRETARY: Calendar Number 73, by Senator Volker, Calendar Number 919-A, an

act to amend the Penal Law, in relation to resisting arrest.

SENATOR GOLD: Explanation.

ACTING PRESIDENT SPANO: Senator Volker.

SENATOR VOLKER: Mr. President, this is a bill that would differentiate between the varying methods of resisting arrest and would attempt to -- these are resisting arrests, by the way, obviously against a police officer, would attempt to differentiate between what is called the passive form of resisting arrest and the use of physical force, and with the use of physical force would mean that there would be a higher offense.

One of the problems has been that in the resisting arrest area, that as a result of the way in which various statutes have fallen, that there has been assaults on police officers which is short of assault second which is a felony, and when the resisting arrest charge is brought, the maximum charge that you can bring is a misdemeanor.

What this attempts to do is to differentiate between those cases where someone just says no, and sits down or whatever, refuses to -- refuses to react to a command or whatever, and in those cases where that person uses physical force to avoid the arrest. If that person does, then it is assault, it is a resisting arrest second, which is a class E felony instead of a Class A misdemeanor.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 73 are Senators Espada, Galiber, Markowitz, Montgomery and Smith. Ayes 47, nays 5.

ACTING PRESIDENT SPANO: The bill is passed.

SENATOR PRESENT: Can we stand at

ease for a few minutes.

ACTING PRESIDENT SPANO: Senate will stand at ease.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yes, while we have a moment, could I ask you to recognize Senator Connor.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Could I have unanimous consent to be recorded in the negative on Calendars Number 65, 66 and 73.

ACTING PRESIDENT SPANO: Without objection.

Senator Mendez.

SENATOR MENDEZ: May I have unanimous consent to be recorded in the negative on Calendar Number -

ACTING PRESIDENT SPANO: Senator,

we can't hear you. You have to remove your pocketbook from the microphone.

SENATOR MENDEZ: Incredible!

ACTING PRESIDENT SPANO: I know you got all the cash in there.

SENATOR MENDEZ: I do request unanimous consent to be recorded in the negative on Calendar Number 73, seventy-three, a big no.

ACTING PRESIDENT SPANO: Without objection.

SENATOR MENDEZ: Thank you, Mr. President.

ACTING PRESIDENT SPANO: Senator Mendez.

SENATOR MENDEZ: Mr. President, I would like to advise the members of the Minority that we are going to have a conference right after session.

ACTING PRESIDENT SPANO: Minority Conference after session.

SENATOR MENDEZ: Thank you.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT SPANO: Senator

Present.

SENATOR PRESENT: There will be an immediate Conference of the Majority in Room 332. The Senate will stand in recess until we complete that conference.

ACTING PRESIDENT SPANO: Senate will stand in recess. Immediate Majority Conference, Room 332.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: I just think it's -- it's there and I think Senator Present would agree that, when we come back, I believe there was an intention to do the Erie County bill, so people should just know that. Now, they know that. Now they can leave or whatever you want. Whatever the members would say.

ACTING PRESIDENT SPANO: Senate will stand in recess.

(The Senate stood in recess from 3:45 p.m., until 5:57 p.m.)

ACTING PRESIDENT FARLEY: The

Senate will come to order.

Senator Present.

SENATOR PRESENT: Now that we've called the chamber to order, would you call up 76, please.

ACTING PRESIDENT FARLEY: The Secretary will read Number 76.

THE SECRETARY: Senator Volker moves to discharge the Committee on investiga tions, Taxation and Government Operations from Assembly Bill 3835 and substitute it for the identical Third Reading 76.

ACTING PRESIDENT FARLEY: Substitution is ordered.

SENATOR PRESENT: Mr. President, is there a message from the Governor?

ACTING PRESIDENT FARLEY: Yes, there is a message from the Governor.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT FARLEY: All in favor of accepting the message, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. Could I have unanimous consent to be recorded in the negative on Calendar 66 and 73, please.

ACTING PRESIDENT FARLEY: Senator Leichter will be in the negative on Calendar 66 and 73.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move we

adjourn until tomorrow at 3:00 p.m.

ACTING PRESIDENT FARLEY: The Senate will stand adjourned until tomorrow at 3:00 p.m.

(Whereupon at 5: 59 p.m., the Senate adjourned.)