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ALBANY, NEW YORK

February 22, 1993

3:01 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

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

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

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

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

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

13 Reverend Bey.

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

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

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

22 ACTING PRESIDENT FARLEY: Thank
23 you, Reverend Bey.

1 The Secretary will begin by
2 reading the Journal.

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

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

12 The order of business:
13 Presentation of petitions.

14 Messages from the Assembly.

15 Messages from the Governor.

16 Reports of standing committees.

17 Secretary will read a report of a
18 standing committee.

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

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

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

8 Reports of select committees.

9 Communications and reports from
10 state officers.

11 Motions and resolutions.

12 Senator Mega.

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

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

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

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

3 ACTING PRESIDENT FARLEY: Without
4 objection.

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

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

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

17 ACTING PRESIDENT FARLEY: Without
18 objection.

19 Do we have any other motions on
20 the floor?

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

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

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

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

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

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

15 ACTING PRESIDENT FARLEY: Call
16 the roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 35.

19 ACTING PRESIDENT FARLEY: That
20 bill is passed.

21 THE SECRETARY: Calendar Number
22 43, by Senator Stafford.

23 SENATOR GOLD: Lay aside, please.

1 ACTING PRESIDENT FARLEY: Lay
2 that bill aside.

3 THE SECRETARY: Calendar Number
4 58, by Senator LaValle, Senate Bill Number 241,
5 authorizing the approval of certain building aid
6 for the William Floyd Union Free School
7 District.

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

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

13 ACTING PRESIDENT FARLEY: Call
14 the roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 35.

17 ACTING PRESIDENT FARLEY: That
18 bill is passed.

19 THE SECRETARY: Calendar Number
20 59, by Senator Hannon, Senate Bill Number 279,
21 authorize payments in lieu of taxes by the
22 county of Nassau.

23 ACTING PRESIDENT FARLEY: Read

1 the last section.

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

4 ACTING PRESIDENT FARLEY: Call
5 the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 35.

8 ACTING PRESIDENT FARLEY: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 60, by Senator Saland, Senate Bill Number 943,
12 an act to amend the Education Law, in relation
13 to requiring boards of education to provide
14 transportation for all children.

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

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

20 ACTING PRESIDENT FARLEY: Call
21 the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes -

1 ACTING PRESIDENT FARLEY: Lay
2 that bill aside temporarily. Lay that aside
3 temporarily.

4 THE SECRETARY: Calendar Number
5 61, by Senator Hannon, Senate Bill Number 280,
6 an act to amend the Real Property Tax Law.

7 SENATOR PRESENT: Lay aside.

8 ACTING PRESIDENT FARLEY: Lay
9 that bill aside.

10 THE SECRETARY: Calendar Number
11 62, by Senator Levy, Senate Bill Number 80, an
12 act in relation to requiring the Commissioner of
13 Transportation to conduct a review.

14 SENATOR GOLD: Lay aside.

15 ACTING PRESIDENT FARLEY: Lay
16 that bill aside.

17 THE SECRETARY: Calendar Number
18 63, by Senator Levy, Senate Bill Number 191,
19 Vehicle and Traffic Law, in relation to criminal
20 history checks on school bus attendance.

21 SENATOR GOLD: Lay it aside,
22 please.

23 ACTING PRESIDENT FARLEY: Lay

1 that bill aside.

2 THE SECRETARY: Calendar Number
3 65, by Senator Padavan, Senate Bill Number 546,
4 Criminal Procedure Law, in relation to
5 permitting the people to appeal an unduly
6 lenient sentence.

7 SENATOR GOLD: Lay aside, please.

8 ACTING PRESIDENT FARLEY: Lay
9 that bill aside also.

10 THE SECRETARY: Calendar Number
11 66, by Senator Skelos, Senate Bill Number 564,
12 an act to amend the Penal Law.

13 ACTING PRESIDENT FARLEY: Read
14 the last section.

15 SENATOR GOLD: Lay aside.

16 ACTING PRESIDENT FARLEY: Lay
17 that one aside.

18 THE SECRETARY: Calendar Number
19 67, by Senator Volker, Senate Bill Number 583,
20 Criminal Procedure Law, in relation to the
21 period of time which must be excluded.

22 SENATOR GOLD: Last section.

23 ACTING PRESIDENT FARLEY: Read

1 the last section.

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

4 ACTING PRESIDENT FARLEY: Call
5 the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 39.

8 ACTING PRESIDENT FARLEY: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 68, by Senator Levy, Senate Bill Number 648, an
12 act to amend the Penal Law, in relation to the
13 offense of assault in the second degree.

14 ACTING PRESIDENT FARLEY: Read
15 the last section.

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

18 ACTING PRESIDENT FARLEY: Call
19 the roll.

20 (The Secretary called the roll.)

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

23 ACTING PRESIDENT FARLEY: The

1 bill is passed.

2 THE SECRETARY: Calendar Number
3 69, by Senator Tully, Senate Bill Number 776, an
4 act to amend the Penal Law.

5 SENATOR GOLD: Lay aside for
6 Senator Halperin.

7 ACTING PRESIDENT FARLEY: Lay it
8 aside.

9 THE SECRETARY: Calendar Number
10 70, by Senator Tully, Senate Bill Number 779, an
11 act to amend the Civil Practice Law and Rules.

12 ACTING PRESIDENT FARLEY: Read
13 the last section.

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

16 ACTING PRESIDENT FARLEY: Call
17 the roll.

18 (The Secretary called the roll.)

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

21 ACTING PRESIDENT FARLEY: The
22 bill is passed.

23 THE SECRETARY: Calendar Number

1 71, by Senator Volker, Senate Bill Number 931,
2 an act to amend the Penal Law, in relation to
3 increasing penalties for crimes.

4 ACTING PRESIDENT FARLEY: Read
5 the last section.

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

8 ACTING PRESIDENT FARLEY: Call
9 the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 41.

12 ACTING PRESIDENT FARLEY: The
13 bill is passed.

14 THE SECRETARY: Calendar Number
15 72, by Senator Skelos, Senate Bill Number 949,
16 Civil Practice Law and Rules and the Public
17 Health Law.

18 ACTING PRESIDENT FARLEY: Read
19 the last section.

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

22 ACTING PRESIDENT FARLEY: Call
23 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 41.

3 ACTING PRESIDENT FARLEY: That
4 bill is passed.

5 THE SECRETARY: Calendar Number
6 73, by Senator Volker, Senate Bill Number 919-A,
7 an act to amend the Penal Law, in relation to
8 resisting arrest.

9 SENATOR GOLD: Lay it aside.

10 ACTING PRESIDENT FARLEY: Lay
11 that bill aside.

12 THE SECRETARY: Calendar Number
13 74, by Senator Spano, Senate Bill Number 1006,
14 Mental Hygiene Law.

15 ACTING PRESIDENT FARLEY: Read
16 the last section.

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

19 ACTING PRESIDENT FARLEY: Call
20 the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 41.

23 ACTING PRESIDENT FARLEY: That

1 bill is passed.

2 THE SECRETARY: Calendar Number
3 75, by Senator Spano, Senate Bill Number 1009,
4 an act to amend the Mental Hygiene Law, in
5 relation to identity disclosure of individuals.

6 ACTING PRESIDENT FARLEY: Read
7 the last section.

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

10 ACTING PRESIDENT FARLEY: Call
11 the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 41.

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

16 Senator Present, that concludes
17 the non-controversial.

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

20 ACTING PRESIDENT FARLEY:
21 Secretary will read Calendar Number 62.

22 SENATOR GOLD: Explanation.

23 THE SECRETARY: Calendar Number

1 62, by Senator Levy, Senate Bill Number 80, an
2 act in relation to requiring the Commissioner of
3 Transportation to conduct a review of transpor
4 tation of disabled children.

5 ACTING PRESIDENT FARLEY: Read
6 the last section.

7 SENATOR GOLD: I asked an
8 explanation.

9 ACTING PRESIDENT FARLEY: I
10 didn't hear you.

11 SENATOR GOLD: I apologize.

12 SENATOR PRESENT: Lay it aside,
13 please.

14 ACTING PRESIDENT FARLEY: Lay
15 that bill aside.

16 SENATOR PRESENT: Mr. President.

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

19 SENATOR PRESENT: Please call up
20 Calendar Number 60.

21 ACTING PRESIDENT FARLEY:
22 Secretary will please read Calendar 60.

23 THE SECRETARY: Calendar Number

1 60, by Senator Saland, an act to amend the
2 Education Law, in relation to requiring boards
3 of education to provide transportation for all
4 children.

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

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

10 ACTING PRESIDENT FARLEY: Call
11 the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Those recorded in
14 the negative on Calendar Number 60 are Senators
15 Daly, Holland, Jones and Kuhl. Ayes 40, nays
16 4.

17 ACTING PRESIDENT FARLEY: The
18 bill is passed.

19 SENATOR PRESENT: Mr. President.

20 ACTING PRESIDENT FARLEY: Senator
21 Present.

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

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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 prosecutor, 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

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

5 ACTING PRESIDENT FARLEY: Read
6 the last section.

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

9 ACTING PRESIDENT FARLEY: Call
10 the roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Those recorded in
13 the negative on Calendar Number 65 are Senators
14 DeFrancisco, Dollinger, Espada, Galiber, Gold,
15 Marchi, Montgomery, Ohrenstein and Smith. Ayes
16 35, nays 9.

17 ACTING PRESIDENT FARLEY: That
18 bill is passed.

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

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

1 THE SECRETARY: Calendar Number
2 69, by Senator Tully, Senate Bill Number 776, an
3 act to amend the Penal Law.

4 SENATOR GOLD: Explanation.

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

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

12 ACTING PRESIDENT FARLEY: Read
13 the last section.

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

16 ACTING PRESIDENT FARLEY: Senator
17 Galiber.

18 SENATOR GALIBER: If you will
19 yield for a question.

20 SENATOR TULLY: Yes, Senator.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 SENATOR GALIBER: Yield for one
5 other question.

6 SENATOR TULLY: Yes, Senator.

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

12 SENATOR TULLY: He does.

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

15 SENATOR TULLY: Yes.

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

1 life in prison without parole.

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

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

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

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

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

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

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

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

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

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

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

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

10 ACTING PRESIDENT SPANO: Read the
11 last section.

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

14 ACTING PRESIDENT SPANO: Call the
15 roll.

16 (The Secretary called the roll.)

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

21 ACTING PRESIDENT SPANO: The bill
22 is passed.

23 SENATOR PRESENT: Mr. President,

1 could we call up Calendar 66, please.

2 ACTING PRESIDENT SPANO: Calendar
3 66, Secretary will read.

4 THE SECRETARY: Calendar Number
5 66, by Senator Skelos, Senate Bill Number 564,
6 an act to amend the Penal Law, in relation to
7 restructuring computer crimes.

8 SENATOR GOLD: Explanation.

9 SENATOR SKELOS: Yes, Senator
10 Gold.

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

20 Presently, the maximum sentence
21 is a Class E felony.

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

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

4 ACTING PRESIDENT SPANO: Read the
5 last section.

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

8 ACTING PRESIDENT SPANO: Call the
9 roll.

10 (The Secretary called the roll.)

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

16 ACTING PRESIDENT SPANO: The bill
17 is passed.

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

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

22 THE SECRETARY: Calendar Number
23 73, by Senator Volker, Calendar Number 919-A, an

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

3 SENATOR GOLD: Explanation.

4 ACTING PRESIDENT SPANO: Senator
5 Volker.

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

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

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

10 ACTING PRESIDENT SPANO: Read the
11 last section.

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

14 ACTING PRESIDENT SPANO: Call the
15 roll.

16 (The Secretary called the roll.)

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

21 ACTING PRESIDENT SPANO: The bill
22 is passed.

23 SENATOR PRESENT: Can we stand at

1 ease for a few minutes.

2 ACTING PRESIDENT SPANO: Senate
3 will stand at ease.

4 SENATOR GOLD: Mr. President.

5 ACTING PRESIDENT SPANO: Senator
6 Gold.

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

10 ACTING PRESIDENT SPANO: Senator
11 Connor.

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

14 Could I have unanimous consent to
15 be recorded in the negative on Calendars Number
16 65, 66 and 73.

17 ACTING PRESIDENT SPANO: Without
18 objection.

19 Senator Mendez.

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

23 ACTING PRESIDENT SPANO: Senator,

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

3 SENATOR MENDEZ: Incredible!

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

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

9 ACTING PRESIDENT SPANO: Without
10 objection.

11 SENATOR MENDEZ: Thank you, Mr.
12 President.

13 ACTING PRESIDENT SPANO: Senator
14 Mendez.

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

19 ACTING PRESIDENT SPANO: Minority
20 Conference after session.

21 SENATOR MENDEZ: Thank you.

22 SENATOR PRESENT: Mr. President.

23 ACTING PRESIDENT SPANO: Senator

1 Present.

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

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

9 SENATOR GOLD: Mr. President.

10 ACTING PRESIDENT SPANO: Senator
11 Gold.

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

19 ACTING PRESIDENT SPANO: Senate
20 will stand in recess.

21 (The Senate stood in recess from
22 3:45 p.m., until 5:57 p.m.)

23 ACTING PRESIDENT FARLEY: The

1 Senate will come to order.

2 Senator Present.

3 SENATOR PRESENT: Now that we've
4 called the chamber to order, would you call up
5 76, please.

6 ACTING PRESIDENT FARLEY: The
7 Secretary will read Number 76.

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

13 ACTING PRESIDENT FARLEY:
14 Substitution is ordered.

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

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

19 SENATOR PRESENT: I move we
20 accept the message.

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

23 (Response of "Aye.")

1 Those opposed, nay.
2 (There was no response.)
3 The message is accepted.
4 Read the last section.
5 THE SECRETARY: Section 2. This
6 act shall take effect immediately.
7 ACTING PRESIDENT FARLEY: Call
8 the roll.
9 (The Secretary called the roll.)
10 THE SECRETARY: Ayes 58.
11 ACTING PRESIDENT FARLEY: The
12 bill is passed.
13 Senator Leichter.
14 SENATOR LEICHTER: Yes, Mr.
15 President. Could I have unanimous consent to be
16 recorded in the negative on Calendar 66 and 73,
17 please.
18 ACTING PRESIDENT FARLEY: Senator
19 Leichter will be in the negative on Calendar 66
20 and 73.
21 Senator Present.
22 SENATOR PRESENT: Mr. President,
23 there being no further business, I move we

1 adjourn until tomorrow at 3:00 p.m.

2 ACTING PRESIDENT FARLEY: The
3 Senate will stand adjourned until tomorrow at
4 3:00 p.m.

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

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