ALBANY, NEW YORK

January 26, 1998

3:04 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

(The public address system was completely inoperative.)

THE PRESIDENT: The Senate will come to order. Would you please rise and join me in the Pledge of Allegiance.

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

The invocation today will be given by Reverend David Selzer, from the Episcopal Church of the Good Shepherd in Buffalo.

Reverend Seltzer.

REVEREND DAVID SELZER: Let us pray.

Bless to You, O Holy One, Creator and Sustainer of the universe.

Bless to You, O God, for creating us women and men in your holy image and for giving us the gifts of memory, wisdom, skill and compassion.

Bless to You for this day and for the Senate of this great state of New York with its gifts of being able to respond to its citizens in need and its concern for all the

people of New York.

Bless to You, Allah, for the work You have given us to do, to govern Your people with justice and equality under the law and to discern the needs of our citizens, women and men, old and young, people of color and white, native and immigrant, gay, lesbian and straight, for the health and well-being of all.

Bless to You for the heritage of the women and men of New York who helped our society become more just for all, for Elizabeth Cady Stanton and Amelia Jakes Plummer, for Margaret Sanger and the founders of Planned Parenthood, for those who continue the struggle for equality and equal rights for women, especially giving thanks to the gifts of family planning and reproductive choice. Help us to learn from their experience and continue their heritage.

Be present with the Senate as it meets today, guide and secure the concerns of all its citizens and to preserve their liberties and the dignity of all, helping to move beyond legislation for pure political

gain only, to legislation that seeks to do justice for all.

Bless to you forever and ever. Amen.

THE PRESIDENT: Amen.

Reading of the Journal.

THE SECRETARY: In Senate, Saturday, January 24th. The Senate met pursuant to adjournment. The Journal of Friday, January 23rd, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Secretary will read.

THE SECRETARY: Senator Rath, from the Committee on Local Government, reports the following bills:

Senate Print 527, by Senator Present, an act to amend the General Municipal

Law;

532, by Senator Present, an act to amend the General Municipal Law;

1182, by Senator Seward, an act to amend the County Law;

1419, by Senator Cook, an act to amend the Real Property Tax Law;

2305, by Senator Larkin, an act to amend the Real Property Tax Law;

5960, by Senator Present, an act to amend the Real Property Tax Law, and

6025, by Senator Stafford, an act to amend the Real Property Tax Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 70, by Senator Levy, an act to amend the Penal Law;

244, by Senator Johnson, an act to amend the Penal Law;

251, by Senator Rath, an act to repeal section 241;

253, by Senator Skelos, an act to amend the Penal Law;

337, by Senator Skelos, an act to amend the Penal Law;

539, by Senator Present, an act to amend the Criminal Procedure Law;

816-A, by Senator Saland, an act to amend the Penal Law;

882, by Senator Spano, an act to amend the Penal Law;

948-A, by Senator Alesi, an act to amend the Penal Law;

1292, by Senator Saland, an act to amend the Criminal Procedure Law;

1467-A, by Senator Volker, an act to amend the Criminal Procedure Law;

1914-A, by Senator Libous, an act to amend the Penal Law;

1918, by Senator Libous, an act to amend the Penal Law;

3532, by Senator Volker, an act to amend the Penal Law;

4347, by Senator Maltese, an act to amend the Penal Law;

4644-A, by Senator Cook, an act to amend the Criminal Procedure Law;

5421, by Senator Velella, an act to amend the Criminal Procedure Law;

5691, by Senator Volker, an act

to amend the Penal Law and others.

All bills reported direct for third reading.

THE PRESIDENT: Without objection, all bills direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, take up the non-controversial calendar.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 9, by Senator Rath, Senate Print 3636, an act to amend the General Municipal Law, in relation to alternative methods.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the 160th day.

THE PRESIDENT: Call the roll.

(The Secretary called the

roll. )

THE SECRETARY: Ayes 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 13, by Senator Leibell, Senate Print 3626, an act to amend the Executive Law, in relation to allowing designees of certain members.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 18, by Senator Saland, Senate Print 1143, an act to amend the Penal Law, in relation to including the intentional preventing of hospital emergency department personnel.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 20, by Senator Volker, Senate Print 1717, an act to amend the Penal Law, in relation to aggravated harassment of an employee by an inmate.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 22, by Senator Wright, Senate Print 3814, an act to amend the Penal Law, in relation to assault with a noxious material.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll. )

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 23, by Senator Larkin, Senate Print 3869, an act to amend the Civil Practice Law and Rules, in relation to authorizing.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 24, by Senator Nozzolio, Senate Print 3924, an act to amend the Penal Law, in relation to allowing an 11-year-old person to take a hunting safety course.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 25, by Senator Padavan, Senate Print 4589, an act to amend the Penal Law, in relation to including police officers.

THE PRESIDENT: Read the last

section, please.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 26, by Senator Volker, Senate Print 5280, an act to amend the Penal Law, in relation to causing the death of a peace officer.

THE PRESIDENT: Read the last section, please.

Oh, Senator Holland.

SENATOR HOLLAND: To explain my vote.

SENATOR HOLLAND: When New York City Police Officer Vinnie Guidice died in the line of duty in May of 1996, it was a loss that hit home for me.

Though he worked in New York, Officer Vincent Guidice lived in Stony Point

in Rockland County and was a vibrant member of our community, having served as a volunteer fireman and had a variety of other community involvement.

As we all know by now, the circumstances of Officer Guidice's death were unusual. There was no gun, no knife; yet the consequences of Anthony Rivers' actions were just as deadly and the results just as tragic, the loss of one of New York's finest.

Officer Guidice died on May 22nd, 1996 from injuries he sustained while responding to the second domestic violence request of the day involving Anthony Rivers. Rivers resisted arrest, resulting in a struggle during which Officer Guidice fell on a broken mirror and bled to death from the resulting injuries.

When a jury failed to find Anthony Rivers criminally responsible for Vincent Guidice's death, it was clear that this Legislature should be responsible for addressing shortcomings in the law.

Officer Guidice was not the only victim of this crime.

His family, our community and every law-abiding New Yorker was victimized when Anthony Rivers who, in trying to prevent Officer Guidice from upholding the law, was not held responsible for his death.

Rivers has a very, very bad record.

Passage of this legislation would provide greater protections for our public servants who put their lives on the line every day.

Vinnie Guidice made the ultimate sacrifice in the performance of his job.

It is only proper that we honor his memory with legislation that will, in the future, hold criminals more accountable for their actions.

I hope our colleagues in the Assembly will see fit to join the Senate in passing the Police Officer Vincent Guidice Memorial Act.

We must end parole for violent felons!

I vote yes.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 4. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 36, by Senator Farley, Senate Print 3803-A, an act to amend the Banking Law, in relation to the voluntary and involuntary liquidation of investment companies.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 50, by Senator Spano, Senate Print 4143, an act to amend the Workers' Compensation Law, in relation to exemption from coverage for executive officers of certain entities.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 80, by Senator DeFrancisco, Senate Print 480, an act to amend the Social Services Law, in relation to transportation.

SENATOR STACHOWSKI: Lay aside.

THE PRESIDENT: Laid aside, please.

THE SECRETARY: Calendar Number 87, by Senator Present, Senate Print 538, an

act to amend the Penal Law, in relation to lawful possession.

SENATOR STACHOWSKI: Lay aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 96, by Senator Maziarz, Senate Print 2525, an act to amend the Criminal Procedure Law, in relation to period of limitation.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

SENATOR SKELOS: Madam President, could you take up the controversial calendar.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 80, by Senator DeFrancisco, Senate Print 480, an act to amend the Social Services Law, in relation to the transportation of certain persons in need of medical assistance.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator DeFrancisco, an explanation has been requested.

SENATOR DeFRANCISCO: Yes, this bill basically -- well, not basically, is identical to the bill that passed last year which would require all individuals on Medicaid who are physically able and emotionally able to take public transportation to non-emergency appointments.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

If the sponsor would yield for a question.

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Senator

DeFrancisco? Senator Paterson.

SENATOR PATERSON: Senator DeFrancisco, this measure designed for cost saving, I wonder if you have any data as to how much it would save the state and how one would consider maybe how this wonderful term "physically able" is defined and so, therefore, I ask you (inaudible).

SENATOR DeFRANCISCO: We say it would be a justified benefit not only to save the costs, but it drives more dollars to public transportation each year. I was approached by CENTRO, our local transportation agency, who we have provided emergency funding for the last three years, and they told me not only the saving but that transportation dollars would be driven to those public transportation systems that we had to use other tax dollars for to provide emergency grants since their ridership wasn't as high as it would have to be to be financially stable. So I don't know the exact dollars, but to tell you there's a double benefit saving the transportation costs and driving dollars to public transportation.

THE PRESIDENT: Excuse me, Senator Paterson. There is no microphone today, so if everybody would refrain from talking too much and ask the speakers who are debating to magnify their voices.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

Could Senator DeFrancisco yield for another question?

THE PRESIDENT: Senator?

SENATOR DeFRANCISCO: Yes.

SENATOR PATERSON: Senator, do you happen to have the -- how many individuals would actually be affected and would, in fact, this whole scenario played out for some amount of savings, involve a lot of burden on senior citizens whose ability to travel any distance from the public transportation center to where they may live would probably vary almost on a monthly basis with the elderly. How many people, in other words, would this actually really assist?

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Once again, I don't have any numbers but it's just the basis of the bill is common sense. If the person is physically capable of public transportation, then an individual should be required to take public transportation just like any individual on a fixed income that may not be able to purchase a vehicle would need public transportation to go to work and pay their own money for that public transportation. We should use the same theory if they're physically capable, to use our taxpayer money more efficiently, but I can't give you numbers. It just makes to me common sense to provide the same standard for those using public money as they would have to use with their own money.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Senator DeFrancisco.

Madam President, on the bill.

I think that what Senator DeFrancisco is suggesting makes sense to me as well. If we had a group of people who are

physically able to travel at a cost savings to the state, we certainly would want to encourage that travel. However, lacking sufficient evidence and documentation as I tried to elicit from Senator DeFrancisco, we have to arrive at the conclusion that conditions are not always as they seem.

In the sense of trying to come to a determination as to what actually is "physically able" under what we would consider to be the standard that would make someone eligible to engage in this kind of transportation, it's our opinion that it would possibly hurt far more individuals than would actually help us in terms of the cost savings.

The desire to direct more people to public transportation is good; the desire to have those who are physically capable not take too much advantage of social services by taking taxis to services is also good, but in the absence of (inaudible) that the evidence would bear out, we are making individuals travel great distances from the center at which the public transportation

begins, and there is also concern for the public safety of those individuals, often elderly, who are placed in the position of having to travel like that and lacking the physical capability to do it a few times over a period of time, their overall physical condition and out of concern for their physical condition and their overall health and safety, I think it would make better sense not to pass this legislation and would probably bear on the factors of public safety and also of difficulty to the individuals who are not trying to really in many ways take advantage of the system but are probably having trouble living under the conditions as they are now.

I would suggest that we not go this route and pass this legislation.

THE PRESIDENT: Thank you, Senator Paterson.

Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the

roll. )

THE SECRETARY: Those recorded in the negative on Calendar Number 80 are Senators Abate, Connor, Gentile, Gold, Kruger, Lachman, Markowitz, Montgomery, Paterson and Santiago. Ayes 45, nays 10.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 87, by Senator Present, Senate Print 538, an act to amend the Penal Law, in relation to lawful possession of weapons.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Present, an explanation has been requested.

SENATOR PRESENT: Mr. President, it's been many years since we passed (inaudible) Boy Scout summer camp program, where they teach the boys how to ensure the safety, and to allow 11-year-olds to obtain (inaudible). It's a very popular program among the scout campers and it's limited to taking place under the control and

supervision of a certified Boy Scout instructor on a range that's certified. That's all it does.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Just a point on the bill itself. I'd just like to comment that sometimes I think we bring a terrible confusion by these programs particularly for the younger people such as this permitting possession of a rifle. In other words, we're advocating against the overuse of tobacco, but at the same time we're publicizing the use of tobacco. We might have sexual problems and we suggest abstinence from sex, but again we publicize the process. Here again, we have the problem with the discussion of safety of firearms at the same time we're bringing up the discussion of the use of firearms themselves and, at this point, particularly at age 11, I don't know that it's the greatest idea to actually be publicizing what would be the use of firearms which has contributed to

so much violence in our society today.

Other than that, I'm not going to say anything about the fact that my brother shot me with his B-B gun many years ago (inaudible) and I think he was somewhere around age 11, and that is only a minor consideration in casting my vote against this particular piece of legislation.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Those recorded in the negative on Calendar Number 87 are Senators Kruger, Montgomery and Paterson. Ayes 53, nays 3.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I would like unanimous consent, please, to be recorded in the negative on Calendar Number 8.

ACTING PRESIDENT MEIER: Without objection, Senator Oppenheimer will be recorded in the negative on Calendar Number 8.

Senator Skelos, that concludes the reading of the controversial calendar.

SENATOR SKELOS: Mr. President, if we could return to motions and resolutions, I believe there is a privileged resolution at the desk by Senator Markowitz. I would ask that the title be read and move its adoption.

ACTING PRESIDENT MEIER: We will return to the order of motions and resolutions. Secretary will read the title.

THE SECRETARY: By Senator Markowitz, Legislative Resolution recognizing the week of January 25 through January 31, 1998 as Catholic Schools Week.

ACTING PRESIDENT MEIER: Question is on the resolution. All in favor

signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Would you recognize Senator Montgomery, please.

ACTING PRESIDENT MEIER: Sorry. Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar Number 96.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar Number 96.

Senator Rath.

SENATOR RATH: Yes, Mr. President. I move the following bill be discharged from its respective committee with instructions to strike the enacting clause: Senate Bill Number 1744 and 2120.

ACTING PRESIDENT MEIER: So

ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any other housekeeping at the desk?

ACTING PRESIDENT MEIER: No, Senator Skelos, there is none.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, January 27th at 12:00 noon.

ACTING PRESIDENT MEIER: There being no further business, the Senate will adjourn until January 27th, Tuesday, at 12:00 noon.

(Whereupon at 3:30 p.m., the Senate adjourned.)