NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 10, 2000

3:03 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

THE PRESIDENT: In the absence of clergy, would we please bow our heads in a minute of silence.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, January 9th, the Senate met pursuant to adjournment. The Journal of Saturday, January 8th, 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.

Reports of select committees.

Communications and reports from state officers.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Majority in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Majority in the Majority Conference Room.

SENATOR SKELOS: Stand at ease.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 3:05 p.m.)

(Whereupon, the Senate reconvened at 3:39 p.m.)

ACTING PRESIDENT NOZZOLIO: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the

Judiciary Committee in the Majority Conference Room.

ACTING PRESIDENT NOZZOLIO: An immediate meeting of the Senate Judiciary Committee in Room 332.

SENATOR SKELOS: The Senate will stand at ease.

ACTING PRESIDENT NOZZOLIO: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:40 p.m.)

(Whereupon, the Senate reconvened at 4:16 p.m.)

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT NOZZOLIO: Immediate meeting of the Senate Finance Committee in the Senate Majority Conference Room.

SENATOR SKELOS: Stand at ease.

ACTING PRESIDENT NOZZOLIO: Also,

stand at ease.

(Whereupon, the Senate stood at ease at 4:17 p.m.)

(Whereupon, the Senate reconvened at 4:25 p.m.)

SENATOR SKELOS: Madam President.

THE PRESIDENT: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report at the desk by the Judiciary Committee and the Finance Committee.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following bill direct to third reading:

Senate Bill Number 6, by Senator Bruno, concurrent resolution of the Senate and Assembly proposing amendments to Article 7 of the Constitution.

And Senator Stafford, from the Committee on Finance, reports the following

bills:

Senate Print Number 7, by Senator Bruno, an act to amend the State Finance Law;

762, by Senator Johnson, an act to amend the State Finance Law;

1197, by Senator LaValle, an act to amend the Executive Law;

1745, by Senator LaValle, an act to amend Chapter 554 of the Laws of 1996;

And Senate Print 4433, by Senator Fuschillo, an act to amend the State Finance Law and the General Municipal Law.

All bills ordered direct to third reading.

SENATOR SKELOS: Move to accept the report.

THE PRESIDENT: Without objection, the bills are ordered directly to third reading.

Senator Bruno.

SENATOR BRUNO: Madam President, I would hand up a privileged resolution, ask that it be read, and move for its immediate adoption.

THE PRESIDENT: Motions and

resolutions. The Secretary will read.

THE SECRETARY: By Senator Bruno, legislative resolution urging the Temporary President of the Senate and the Speaker of the Assembly to engage in discussions regarding standards of conduct for all members and employees of the Legislature with respect to gifts from registered lobbyists and their clients.

THE PRESIDENT: The motion is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Senator Bruno.

SENATOR BRUNO: Thank you, Madam President. You're very fast and quick and efficient up there, Madam President.

THE PRESIDENT: Of course.

SENATOR BRUNO: By way of explanation, we have adopted in the Senate a ban on all gifts, all meals, voluntarily.

And I know that there are some that feel that we should enter this into the formal rules of the Senate. And we have been looking at this for a couple of weeks. And we've had

some discussions with the counsel of the Minority Leader. And we realize that it's very, very difficult to put into language wording that implements very specifically the intent.

There is honor in this chamber, I believe that. And I believe there is honor in the other chamber.

The purpose of this resolution is to really document our intent to put before the Assembly as well as the Senate a rules change that would become effective upon joint adoption.

And if the Assembly joins with us, as the Assembly joins with us in enforcement in the Ethics Committee presently -- the Senate, with its own rules with infractions, would not normally go to the Ethics Committee. So how do you enforce a ban that I know that some of you have in mind that singles out the Assembly? How do you enforce it? And if there is no enforcement, well, then, we already voluntarily have said we're going to live by it. Then where are we? We are back to politics.

And we feel that this issue is more important than to just politicize it for whatever purposes some people might have in mind. We're very cognizant of the fact that this is an election year, and we're also cognizant of the fact that some of you are very enthusiastic in trying to increase your numbers. And I appreciate that, believe me. And we'll do everything that we can to keep you where you are, because you do such a good job there. And that is the explanation.

Thank you, Senator Rath, for appreciating the humor in that.

Lighten up. It's not that serious. Okay? We can smile and we can laugh.

This is a serious subject before us, and we want to deal with it in a serious way. But we can also recognize that merits and politics sometimes serve different purposes.

We've got plenty of time for the political season as we leave this session. Right now we are doing the work of the people on behalf of the entire constituency. We believe that that constituency is well served

with a ban that we will continue to honor here in the Senate, voluntarily. No one has to force us. No one has to hold our feet to the fire.

We passed a bill, we passed an all-inclusive bill having to do with lobbying, and the Assembly didn't pass it. And we joined and signed in the bill that we did pass because it was the only way we could extend the Lobby Commission that the Governor signed.

So I like to deal in reality. And we also understand in the political climate that you deal politically. But I am suggesting to you that we're here legislating.

We're dealing in reality. We're not in the political end of the year. And I would urge you to join with us in this resolution so that we engage in serious discussions with the Assembly and we are able to jointly implement something that will be very, very meaningful, enter it into the rules, where we have enforcement.

Thank you, Madam President.

THE PRESIDENT: On the resolution. All those in favor signify by

saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Connor.

SENATOR CONNOR: Yes, Madam President.

I call up my resolution amending the Senate rules to which I gave notice last week.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Connor, Senate resolution amending the Senate rules, in relation to ethical standards for members, officers, and employees.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Last week I stood on the floor and I pointed out how credit is due to this side of the aisle for a number of ideas that were out there, like repeal of the gross receipts

tax and some of the other things the Governor and the Majority were proposing.

And turnabout is fair play, so I want to say this rule wasn't my idea, or the provisions of this rule really wasn't my idea. It was Senator Bruno's, who announced it in December in the form of a bill. This rule tracks really what was in his bill that this house adopted.

And as I said at the time, once this house adopted Senator Bruno's bill, it was a collective statement by all of us -- and we should all be proud of that -- that we thought, given today where public perception was and so on, that it was wrong for members and staff of the Legislature, of this house, the Senate, to continue to accept gifts of meals and so forth from lobbyists.

Once we made that statement, then of course it begged the question, if you think it's wrong, don't do it.

Something doesn't have to be illegal for you not to do it. If you think it's wrong, you don't do it, whether it's legal or illegal.

The language in this rule -- and why a rule? Well -- and I applaud Senator Bruno's efforts in the resolution he just passed to engage the Speaker and the Assembly. I know he tried to do that in December, and we ended up with a bill that we had to pass about lobbying that didn't deal with the gift ban at all.

But I say, why wait? Why wait for the Speaker? Regrettably, the Assembly, both leaders over there, have been pretty straightforward about saying they're not interested in entertaining a gift ban.

And I accept that Senator Bruno has announced on behalf of the Majority that the Majority members were voluntarily observing the provisions that will be embodied in this rule. I might note that the Minority members have individually, as well as collectively, pledged to observe the ban. And I know Senator Bruno almost invariably, when he speaks for the Majority, speaks for each and every member. But I speak for each and every member on this, because I've got their names on a piece of paper that says they agree to

it. I haven't seen that forthcoming anywhere else.

What would this do? This wouldn't do anything that Congress hasn't done, that the U.S. Senate hasn't done. To much fanfare, when the so-called Congressional revolution of -- we don't mention Newt anymore, do we? We just call it the revolution of 1994, 1995. I know once it was Newt's revolution, but Newt seems to have been nuked. But -- or nuked himself, politically.

They did their great reforms by rule. They govern themselves by rule. The rules aren't the same in each house. They stand or fall on what each house adopts.

And I think we ought to do a rule because it will put in writing, in a formal way -- and I don't mean this to become a mechanism for harassing members, for attacking members. Someone said to me, "Oh, well, what if some cuckoo in your district writes a letter to the Ethics Committee saying, you know, 'I saw Marty Connor out to dinner with so-and-so'?"

My view of that would be the Ethics

Committee ought to dismiss it. We're not passing a rule saying you can't keep company. We're passing a rule saying they can't pay for it. And unless somebody could file the kind of complaint that says, Here's my evidence that the lobbyists paid for it, I don't think members ought to be harassed and asked to bring in credit card receipts, you know, on every Monday morning for what they did the week before.

I note the Lobbying Commission has sent out an advisory to lobbyists asking them to keep a record of each and every instance where they provide a gift, even under $75. While they don't have to disclose, on an itemized basis, gifts unless they exceed $75, the lobbyists are now being told by the Lobbying Commission that they're to keep a record of each and every instance, whether it's $20 or $30.

And the lobbyists are also being told, by the way, that no matter the amount of the gift, they are to notify the member as to what they received.

So, I mean, there will be

documentation to support our rule and that the Ethics Committee could rely on in dismissing frivolous complaints. Because I would say, you know, if you don't have evidence that, like, the lobbyist gave the member a notice saying "I spent money on you," just the fact that you were seen having a drink with someone doesn't even rise to the level of an investigation. You'd need something more solid, certainly, to proceed.

The rule -- and I two or three weeks ago noticed a rule, certain language. Upon reflection, after hearing Senator Bruno on the floor back in December, I revised the whole rule, and it has all the exceptions that Senator Bruno had in his law. I think it's a good-faith effort to copy exactly what our Majority Leader proposed and put it into rule form and give the Ethics Committee the power to adopt some guidelines to advise members.

I don't think any members in any gray area ought to be criticized if the Senate itself doesn't provide appropriate guidelines to the member. Again, the committee can spell out all those exceptions, when you can go to

meetings, receptions, and so on -- the kind of things we all agree are not a gift, in fact, but are part and parcel of our official business as Senators.

Also a provision that the Ethics Committee can give a written waiver upon application, and an admonition that -- the most important -- the most important sentence, in my mind, in this rule is the one that says "Members, officers, and employees shall adhere to the spirit as well as the letter of this rule and refrain from all attempts to circumvent or otherwise evade the application of the rule." And I didn't get that from Senator Bruno's bill, but I lifted it from the Congressional rule, to tell you the truth. That was in Newt's rule.

So I think what we have before us is a rule that will arm the Majority Leader in his negotiations with the Assembly. Because we have just all joined in passing a resolution urging both the Majority Leader and the Speaker to work together to come up with something of application to both houses, and that's fine.

But we don't have to wait for them, and we don't have to judge the ethical standards -- or set the ethical standards of this house, of the Senate, based on waiting for the Assembly to come along. I think if we strike out with this kind of rule, the time will not be too long in the future before the Assembly has a similar rule. I think that's a political reality.

And, my colleagues, this is not about winning a seat or not winning a seat, or politics. If there's any damage to be done in the past perception, it's all been out there. It's all been out there. Not for nothing that some people called the lobbying law we passed Sharon's Law. Whatever's out there is out there. Whatever political hay is to be made is going to be made or not made.

This is about how we're going to conduct ourselves in the future. And I daresay -- why a rule? Senator Bruno is correct, this is an election year. There will be new faces here. There will be two new faces probably in a couple of months in this chamber. And they didn't sign a pledge, and

they weren't part of Senator Bruno's conference that took a voluntary pledge. But I would expect them to adhere to the ethical standards that we set for the entire body. And people this year may retire, may lose seats, who knows. Back here next January, a new Legislature with some new faces not bound by a voluntary rule announced by the Majority Leader in 1999.

In fact, I harbor a little secret -- a little secret hope that Senator Bruno isn't the Majority Leader in 2001. That's my job. He's probably my second or third choice. Well, no, he's my -- whatever, 27th choice or something.

But so let's not delude ourselves into saying a voluntary ban is enough, a voluntary ban is enough. You might not be here. Your successor may not adhere to it.

We may end up with two standards in this house, those who were here in December in 1999 who took the pledge and those who walked in thereafter who decide, no, they like the Assembly rule better, they want to be wined and dined. Hey, it's understandable that new

members would want to be wined and dined. They've never had the experience that some of the people who took the pledge in 1999 have had.

Once you have two standards, once you have two standards in the Senate, you have no standard.

So, my colleagues, all politics aside, I urge we adopt this rule. I don't think the rule as a practical matter imposes any more or less of a burden or a standard on the members of this house than we all in this room now -- than we all in this room now have bound ourselves to. What it does do is it binds our successors, it binds the people who come in next year to these ethical standards, whether we're here or not.

Oh, yes, if they want to ignore them, then they'd have to stand up on this floor and publicly repeal the rule. But to leave it voluntary, they just merely have to show up here next January, remain silent, and let the good times roll.

Madam President, I urge we adopt this rule.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I just rise to really commend Senator Connor in that he has now adopted the policies in the party of Newt Gingrich. And I quickly remind him, look what happened to Newt Gingrich.

(Laughter.)

THE PRESIDENT: Senator Duane, do you wish to be heard at this time?

SENATOR DUANE: Thank you, Madam President.

Oftentimes in this body we hear members, and particularly on the other side, claiming that votes on motions to discharge or amendments to legislation are just procedural and not really votes. But in fact, every vote that we take here is a real vote with real consequences, both good and bad.

I think that we need to take very seriously our role as legislators, and I think we really need to put our money and our rules where our mouths are and to pass these rules so that we make them part of this institution for real.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I rise in support of Senator Connor's proposed rule, which I'm going to dub the "Senate Public Credibility Act of 2000" - our first action in the new millennium to do the one thing that I think is most critically important for this body, to preserve and defend its credibility in the eyes of the people.

What this rule does is it takes the one power that we have exclusively in this chamber, the one legislative power that we hold that no one can take away from us. We don't need the accord of our colleagues in the Assembly, and we certainly don't need the accord of the second floor. We can do this one all by ourselves. The power rests right here.

And I've watched this body in the course of the last seven years use that power with invincibility, wielding it as it deems fit, spending billions of dollars, ruling

motions out of order, cutting off debate on amendments. That power rests right here in this chamber. It is omnipotent within the context of this chamber. And in fact, it exists to create the "Senate Public Credibility Act."

I would suggest that what this bill does is this gives us a standard that we can all abide by, and it eliminates the public perception that this body would be unduly influenced by the extending of gratuities of any sort to any one of its members.

I would strongly suggest what we ought to do is adopt this amendment, set a standard for ourselves just like we set standards for everybody else in this state, set a reasonable standard and agree to abide by it. Let's vote for the "Senate Public Credibility Act of 2000" now.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I think that this is an extremely important moment for this house, and I think

it's an important moment to follow up on Senator Bruno's words, which are that we deal in reality here.

The question is, are we going to deal with reality? Because I was very -- you know, admittedly, I'm not in the Majority, but I was proud of the fact that our house took the lead on the lobbying reform bill with the law we passed in December. And I am saddened by the fact that our colleagues in the Assembly are not following suit.

But what we have now is an opportunity to show the public -- that is incredibly cynical about what's going on in this building -- that we do deal in reality, that we are not just about passing one-house bills that cross each other in the night and we can say, "Oh, I voted for it" and they say, "We voted for it," and nothing happens and the public gets more and more disaffected. We have the opportunity now to do what both houses of Congress have done. We can set the rule.

And I will say that, you know, frankly, the rule that Senator Connor has

proposed, I was among those who have advocated for a stronger rule, for something that's a broader ban. And Senator Connor said, "No, we're going to do what's in Senator Bruno's bill that we passed last month."

This is what we have already voted on. It doesn't go any further, although it could have. This is what our house has already said we believe in.

Now the question is, do we really believe in it or is it just more rhetoric? By voting for this rule, we are sending a message to the public that we deal in reality. We have the power and we have, I believe, the obligation to pass this to impose a gift ban on ourselves. And I assure you that the colleagues of mine in the Assembly who are already twisting in the wind on this issue will twist that much faster and harder if we take this voluntary step. There's no question in my mind that we should take Senator Bruno's provisions and enact them as a rule today.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes. On the rule, I strongly endorse my leader's

recommendation for this. And I want to bring to everyone's attention that some time ago a very well known chancellor -- and I don't mean Rudy Crew or Howard Levy, but I mean Otto von Bismarck -- once said that there are two things one should never see being made, sausages and laws. But the penalty we pay for such squeamishness is bad food and bad government.

On the federal level, we have the Food and Drug Administration to protect us, as well as rules and regulations of the United States Congress. The State of California has adopted similar laws and rules and regulations.

We are the great state of New York. We are the Empire State. Just last month we witnessed a nonpartisan or bipartisan coalition in this chamber coming together in the first step to bring about change.

I predict whatever the vote is on this amendment, it will eventually become a reality. So let's make it a reality now, today, rather than at the end of the session or next year. Thank you.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

Just briefly, I'm very confused now. I really don't understand what's going on here. You know, we voted last month on a gift ban, I believe it was unanimous. Everybody voted for it. But we all knew at the time there's a chance the Assembly doesn't pass it, it doesn't become a law. Okay? That's number one.

Now we have a resolution today saying that we should have discussions with the Assembly Speaker to try and facilitate enactment of something that would increase and enhance the credibility here. That's all well and good also, but there's a chance that that might not happen.

Then we have a voluntary ban on both sides of the aisle, which is all well and good -- except for Senator Connor points out that some of us may not be here and there may be new members -- and we have an opportunity here today to pass a Senate rule that would do what we have all said we want to do.

And I have a sense that -- and I don't know, maybe we're counting our chickens, maybe this is going to pass here -- that it's not going to pass and there are going to be members who for some reason won't vote for it, and I'm not sure of the rationale. I truly don't understand. It was intimated that this is political posturing on our part so that some people may not vote the way they believe and proved that they believe by voting for the ban last month.

So if you believe it, vote for it. I mean, everything we do here has some kind of political context. But that kind of logic just doesn't fly. It doesn't sit with me. I'm voting for this rule. And I don't think it will sit with the constituents of anybody who votes no on this. I urge all of my colleagues to adopt this rule.

THE PRESIDENT: On the resolution, all those in favor signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

SENATOR BRUNO: Party vote in the

negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 23. Nays, 36. Party vote.

THE PRESIDENT: The resolution is defeated.

Senator Bruno.

SENATOR BRUNO: Is there any housekeeping at the desk, Madam President?

THE PRESIDENT: Yes, there is, Senator.

SENATOR BRUNO: Thank you. Can we take that up now?

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause:

Senate Number 820, Senate Number 5308D.

THE PRESIDENT: So ordered.

Senator Maltese.

SENATOR MALTESE: Madam President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause:

Senate 2177, Senate 3701.

THE PRESIDENT: So ordered, Senator.

Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

On behalf of Senator Breslin, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause:

Senate Print 2154, Senate Print 2366, and Senate Print 3871.

THE PRESIDENT: So ordered.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

On behalf of Senator Connor, I move

that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause:

Senate 6069.

THE PRESIDENT: So ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, on behalf of Senator Bruno, I offer up the following committee assignment changes and ask that they be filed in the Journal.

And then also, in consultation with the Minority Leader, on behalf of Senator Bruno I hand up the following Minority committee assignments and leadership changes and ask that they be filed in the Journal.

THE PRESIDENT: Notices will be filed in the Journal.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Tuesday, January 11th, at 1:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, January 11th, at 1:00 p.m.

(Whereupon, at 4:55 p.m., the Senate adjourned.)