NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 28, 2003

11:06 a.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 please 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, may we all bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, January 27, the Senate met pursuant to adjournment. The Journal of Friday, January 24, 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.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, may we adopt the Resolution Calendar, with the exception of Resolution 169.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution 169, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

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

THE PRESIDENT: There will be an

immediate meeting of the Finance Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time could we please have the title read on Resolution 169 and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Connor, Legislative Resolution Number 169, commemorating the Asian-American community's celebration of the Lunar New Year, 4701, the Year of the Ram, on February 1, 2003.

THE PRESIDENT: The question is on the resolution. All in favor --

Senator Connor, excuse me.

SENATOR CONNOR: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR CONNOR: Madam President, I'm delighted to bring this resolution before the Senate. It's something we've done annually now for many, many years, and that is to congratulate our state's Asian-American

community, which is throughout the state and concentrated in various places in the state.

I am privileged to represent the traditional Chinatown in Manhattan, but there are many, many more communities around New York City and New York State that have benefited by the industriousness, good citizenship, hard work, and family values of our Asian-American citizens.

So I think it's fitting and appropriate that we pause at this time to congratulate and wish well the Asian-American community as they approach their celebration of their New Year's.

This year, starting on February 1st, is by the Asian calendar, the lunar calendar that they observe, the year 4701. If anybody wants to think about a Pick 4, 4701. And it's bound to be lucky.

And this year, Madam President, is the Year of the Ram. For those who want to know the significance of the Year of the Ram or are planning a family, since there's still time in the Year of the Ram, those who are born in the Year of the Ram are elegant,

artistic, and creative. They are intelligent, good-natured, and generous.

Furthermore, those born under the sign of the ram are also sincere, noble, and independent. They appreciate peace and tranquility and are well known, Madam President, for their gentleness, understanding, and compassion.

So as I say, from a family-planning perspective, this would be a good year, the Year of the Ram. With qualities like that, one couldn't go wrong in one's children.

But I do urge all of my colleagues to support this, Madam President. I would certainly like to open this to sponsorship by the entire Senate. And that said, I move its adoption.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, with Senator Connor's consent, if we could open up the resolution to sponsorship, we'll put all the members on the resolution. If they do not wish to cosponsor the resolution, they should notify the desk.

THE PRESIDENT: Thank you, Senator Skelos.

Any Senator who does not wish to be a cosponsor of the resolution that was just passed, please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 11, by Senator Volker, Senate Print 236, an act to amend the Criminal Procedure Law, in relation to sealing.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 38, by Senator Maziarz, Senate Print 508, an act to amend the Penal Law, in relation to creating definitions.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 41, by Senator Balboni, Senate Print 519, an act to amend the Penal Law, in relation to the crime of stalking.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 49, by Senator Skelos, Senate Print 493, an

act to amend the Real Property Tax Law, in relation to including certain vacant real property.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 50, by Senator Little, Senate Print 741, an act making certain findings and determinations.

THE PRESIDENT: There's a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Senator Skelos, that completes the reading of the noncontroversial calendar.

THE PRESIDENT: Madam President, I think we should just notice that it's Senator Little's first bill passed in the Senate. So congratulations.

(Applause.)

THE PRESIDENT: Congratulations and continued success, Senator Little.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the controversial calendar, I believe Senator Volker is at the Finance Committee meeting. I believe there will be an explanation requested of Senator Balboni, so if we could go to Senator Balboni's bill next.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 41, by Senator Balboni, Senate Print 519, an act to amend the Penal Law, in relation to the crime of stalking.

SENATOR PATERSON: Explanation,

please.

THE PRESIDENT: An explanation has been requested, Senator Balboni.

SENATOR BALBONI: Thank you, Madam President. Thank you to the distinguished Minority Leader.

I would like to just bring us back to the bill that we passed in 1999 that created the crime of stalking in this state. At the time, we attempted to fix some of the aberrations of the law that included that there was a cap, a misdemeanor cap on the number of crimes that could be committed, and the aggregate sentence that would then be imposed. We removed that.

But we forgot to include a piece which has been illustrated by several very disturbing news accounts. As recently as the spring of 2001, a man in Nassau County made 72 phone calls to women telling them that he held captive members of their family. The law itself was not able to address this particular campaign of terror, personal terror on these women.

This law would now make it an

increased penalty for anyone who engages in that type of stalking conduct against any individual or individuals over the number of ten. And the bill specifically amends Section 120.55 of the Penal Law and essentially says that if there are ten or more persons, then there is an increased penalty.

Thank you, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Balboni would yield for a question.

THE PRESIDENT: Senator, will you yield?

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I was proud to support your bill in 1999.

And I remember we pointed out, when I was working in the DA's office, there was nothing more frustrating for prosecutors than the fact that we were not really equipped to stop a lot of the conduct that the bill that

we passed in 1999 addresses. It was very difficult to talk to victims and not really know what to do with these ways that they were encumbered by outsiders either standing in front of their homes, calling them on the phone, maybe going right up to the line of what would constitute an assault but knowing how to avoid that, and continued to terrorize the individuals. And it really is a form of terrorism.

I was just wondering if Senator Balboni would enlighten the body as to how this new bill distinguishes itself a little more specifically from the bill we passed in 1999.

SENATOR BALBONI: Madam President, through you, the bill that we passed in 1999 removed the -- what was known as the misdemeanor cap from successive misdemeanors that were committed. And in the crime of stalking in the first degree, that is currently a misdemeanor.

What this bill would do, it would take a crime of stalking in the second degree and, if it is perpetrated against ten or more

individuals, then it would go from a misdemeanor to a Class E felony.

SENATOR PATERSON: Thank you.

SENATOR BALBONI: Thank you, Madam President.

THE PRESIDENT: Does any other Senator wish to be heard on this bill?

Then the debate is closed.

Read the last section.

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, 48.

THE PRESIDENT: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Madam President, I was perfectly within the rules when I was questioning Senator Balboni, wouldn't you agree?

THE PRESIDENT: Senator, I'd like to proceed with the Senate business.

SENATOR PATERSON: Oh, good.

Well, then, I would never break the rules. Like if I were to recognize that the New York State Schools Program is here and they provide social services to children around the state, that would be breaking the rules.

But I don't break the rules, as you would affirm, so I'm going to sit down now.

THE PRESIDENT: Then we'll proceed with the Senate business.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could just stand at ease until Senator Volker returns from the Finance Committee meeting.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 11:19 a.m.)

(Whereupon, the Senate reconvened at 11:22 a.m.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Environmental Conservation Committee in the

Majority Conference Room.

And now if we could go to Senator Volker's bill.

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

The Secretary will read Calendar Number 11, Bill Number S236.

THE SECRETARY: Calendar Number 11, by Senator Volker, Senate Print 236, an act to amend the Criminal Procedure Law, in relation to sealing and other dispositions.

SENATOR VOLKER: Madam President, this is a bill that has passed this house for the last several years. It passed last year by a vote of 56 to 4. It has been requested by the City of New York and the City of New York Police Department.

The general rule is that when something is dismissed -- that is, a criminal action is dismissed, in particular a noncriminal offense, convictions for a noncriminal offense -- the records can be sealed and you can apply for a sealing of the

records.

What the New York City Police Department is requesting here is that where a person has previously been convicted of a violent felony offense, a serious offense, actually been convicted of it, that the records not be sealed unless there is some other -- something other than is the normal situation, because it -- they believe it has had an impact on investigations in some cases.

This doesn't mean that somebody is going to trumpet this additional offense. And it's only in the case of someone who has been previously convicted of a violent felony offense. They ask that the normal rule be suspended in those cases.

I was looking at -- a couple of years ago, I guess there was a comparatively small number that actually were asked to be sealed, and -- comparatively small. And I think the feeling is that only in those cases where there was a violent felony offense do they ask that they not be sealed.

THE PRESIDENT: Does any other Senator wish to be heard on this bill?

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

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

Senator Stachowski.

SENATOR STACHOWSKI: Madam President, could I have unanimous consent to be recorded in the negative on Calendar 38, S508.

THE PRESIDENT: Hearing no objection, you will be so recorded as voting in the negative, Senator.

SENATOR STACHOWSKI: Thank you.

THE PRESIDENT: You're welcome.

Senator Skelos.

SENATOR SKELOS: If we could return to reports of standing committees, I

believe there's a report of the Finance Committee at the desk. I ask that it be read at this time.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following nominations.

As chairwoman of the Consumer Protection Board, Teresa A. Santiago, of Hartsdale.

THE PRESIDENT: Senator Spano.

SENATOR SPANO: Madam President, it is my pleasure to speak in favor and urge the nomination of Teresa Santiago to serve as the chair of the Consumer Protection Board in the state.

I have known Teresa for a long time. I know of her history as a native of the South Bronx, but now as a resident of Westchester County. She has been long active in Puerto Rican and Latino issues, has been a solid leader in our community, in Westchester, in the metropolitan area, and across the state

of New York. And being an outstanding advocate on feeling very strongly about the issues that she's concerned about.

She has got excellent credentials to chair the Consumer Protection Board, will bring with her the wealth of knowledge and personal experience that is necessary to protect the consumers all across the state of New York.

So it is my pleasure today to urge the nomination of Teresa Santiago to chair the Consumer Protection Board and to congratulate the Governor on nominating someone with such impeccable credentials and sending her to us for our confirmation.

Thank you, Madam President.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

The Committee on Consumer Protection met with and interviewed the nominee, and I must say that she certainly brings a wealth of both community and professional experience to the position.

I want to commend Governor Pataki for his nomination. And I as well as the members of the committee look forward to working with the nominee in the upcoming year. I wish her the best and offer my office as a resource and look forward to working together with her.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: Thank you.

I would like to speak on behalf of the appointment of Teresa Santiago. I know Teresa Santiago for a long time. I know her commitment to the community, I know her dedication, I know her involvement in the community, and I know that she will be a great asset to the administration.

Therefore, I commend Governor Pataki for choosing such a distinguished Hispanic woman, and I encourage him to continue looking for more Hispanics to fit positions in his administration.

Thank you very much.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Madam President, it is with great joy that I rise to support

the nomination of Teresa Santiago. She happens to be a friend of mine.

I have to tell you myself that as a Puerto Rican woman, I am so proud of Teresa Santiago, who also is a Puerto Rican woman, a very highly qualified person for the job that she has been holding for the last three weeks.

I want to congratulate the Governor. A person more qualified for the position of chair of the Consumer Protection Board I don't think is available. Her experience as an administrator, as a marketing specialist, will come in very handy to the functions of the new job.

So again, my very best to Teresa Santiago, and my thanks to the Governor for recognizing this young lady's talents and abilities.

Thank you, Madam President.

THE PRESIDENT: Senator González.

SENATOR GONZALEZ: Thank you, Madam President.

I too rise to commend the Governor on Teresa Santiago. I know her for many years, and she will bring to this particular

position someone that knows in terms of the consumers and the people that she will be dealing with on behalf of the State of New York.

So I congratulate her and wish her well, and may God bless her and give her speed.

Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

I too rise to -- very rarely do I commend the Governor, but on this occasion he and I see eye to eye.

The young woman happens to be from my district. She was born in my district and now has moved to the other part of my district, in Westchester. So therefore, I already know she's going to do a wonderful job.

And we have had an opportunity to talk, and certainly she brings tremendous credentials. But more than that, she brings a passion to the work that she is setting out to

do.

So therefore I think that the people of our communities at large will be well served in this appointment.

Thank you.

THE PRESIDENT: The question is on the confirmation of Teresa A. Santiago as Consumer Protection Board director. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Teresa A. Santiago is hereby confirmed.

Congratulations and best wishes.

(Extended applause.)

THE PRESIDENT: Director Santiago is present today with her mother, Julia Camacho; her father, Desiderio Camacho; and her aunt, Carmen Fernandez.

Have a great celebration, to the entire family.

The Secretary will read.

THE SECRETARY: As a member of the Small Business Advisory Board, John C.

Mitchell, of Norwich.

As a member of the State Park, Recreation and Historic Preservation Commission for the City of New York, Jeffrey E. Livingston, of New York City.

And as a member of the Saratoga-Capital District State Park, Recreation and Historic Preservation Commission, Katharine Tomasi, of Salem.

THE PRESIDENT: The question is on the confirmation of the members of the Small Business Advisory Board, of the State Park, Recreation and Historic Preservation Commission for the City of New York, and of the Saratoga-Capital District State Park, Recreation and Historic Preservation Commission.

All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The appointments are hereby confirmed.

The Secretary will read.

THE SECRETARY: Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 879, by Senator Marcellino, an act to amend the Environmental Conservation Law;

885, by Senator Marcellino, an act to repeal Title 17 of Article 23;

And Senate Print 900, by Senator Marcellino, an act to amend the Environmental Conservation Law.

All bills ordered direct to third reading.

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

Senator Rath.

SENATOR RATH: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: No, there isn't, Senator Rath.

SENATOR RATH: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Monday, February 3rd, at 3:00 p.m.,

intervening days to be legislative days.

THE PRESIDENT: On motion, the Senate now stands adjourned until Monday, February 3rd, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:35 a.m., the Senate adjourned.)