NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 3, 2003

3:13 p.m.

REGULAR SESSION

SENATOR JOHN J. FLANAGAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FLANAGAN: 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.)

ACTING PRESIDENT FLANAGAN: In the absence of clergy, may we bow our heads in a moment of silence.

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

ACTING PRESIDENT FLANAGAN: Reading of the Journal.

THE SECRETARY: In Senate, Saturday, February 1, the Senate met pursuant to adjournment. The Journal of Friday, January 31, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FLANAGAN: 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 Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Maziarz, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print Number 728.

ACTING PRESIDENT FLANAGAN: So ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, I have a privileged resolution at the desk, Number 299. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: By Senator Bruno,

Legislative Resolution Number 299, paying tribute to the heroic lives of the seven astronauts who made the ultimate sacrifice aboard the space shuttle Columbia on February 1, 2003.

"WHEREAS, Throughout the history of our world, brave men and women who have the innate curiosity to gain knowledge about our planet and its surroundings have entered the unknown as pioneers for the benefit of all humankind; and

"WHEREAS, The United States of America grieves the loss of our seven astronauts who gave the ultimate sacrifice when the space shuttle Columbia was destroyed on Saturday, February 1, 2003; and

"WHEREAS, This Legislative Body is moved, with reverent esteem, to mourn the loss of Rick Husband, 45; Michael P. Anderson, 43; Ilan Ramon, 48; David Brown, 46; Laurel Clark, 41; Kalpana Chawla, 41; and William McCool, 41; and

"WHEREAS, Shuttle Commander Rick Husband, who also served as a crew member aboard space shuttle Discovery in 1999, was

married and the father of two beautiful children, and resided in Amarillo, Texas; and

"WHEREAS, Payload Commander Michael P. Anderson, who also served as a crew member flying aboard space shuttle Endeavor, was married and resided in Plattsburgh, New York; and

"WHEREAS, Payload Specialist from Tel Aviv, Israel, Ilan Ramon, was married and the father of four beautiful children; he was Israel's first astronaut; and

"WHEREAS, Mission Specialist David Brown, from Arlington, Virginia, achieved his dream of space exploration and was on his first space flight; and

"WHEREAS, Mission Specialist Laurel Clark, from Racine, Wisconsin, was married, the proud mother of one child, and was also on her first space flight; and

"WHEREAS, Mission Specialist Kalpana Chawla, from Karnal, India, was married and was on her second shuttle mission; and

"WHEREAS, Shuttle Pilot William McCool, from San Diego, California, was

married with three loving sons, and was on his first space voyage; and

"WHEREAS, The frontiers of science have been expanded exponentially by each of these astronauts, whose dedication and devotion to explore outer space led them to the challenge of exploration with the highest courage and determination; and

"WHEREAS, The inspiration of outer space exploration remains in the dreams of everyone who gazes at the stars with the wonderment of the earth and beyond, and the beauty and mystery of the cosmos endures in the minds of all; and

"WHEREAS, The memory of each of these seven astronauts who were lost will forever remain with their families, and their bravery will live on in the heart of every New Yorker and every American citizen; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to pay tribute to the heroic lives of the seven astronauts who made the ultimate sacrifice aboard the space shuttle Columbia on February 1, 2003,

and be it further

"RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to the families of Rick Husband, Michael P. Anderson, Ilan Ramon, David Brown, Laurel Clark, Kalpana Chawla, and William McCool."

ACTING PRESIDENT FLANAGAN: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President, and colleagues.

We've heard a resolution today honoring the crew of the Columbia space shuttle. And we do that really with heavy hearts, as we in this state, in the country, people throughout the world really mourn the loss of these seven very, very brave achievers doing things that are beyond most people's power to comprehend.

When you listen to their lives, their backgrounds, they had dreams, they had aspirations -- and all of them had dreams that someday they'd be an astronaut. And they elected to do just that; one of probably the most dangerous, difficult, and challenging things that anyone could do.

And they died. They died Saturday morning, almost instantly, orbiting the earth, an hour from their families, to be reunited with their loved ones, with their children, to be acclaimed as heroes. And they died.

But their memory, through this resolution, through things like this, through their families, through the ongoing research, development that will take place, their memory will live for all of us. Because every time you look up, you will think about that space shuttle, that crew, all those that will follow, those that are up there now, doing things that, again, are beyond our powers to comprehend. And they've done it bravely, willingly, wanting to.

So you have to respect and admire what they've done with their lives, how they gave their lives for all of us, so that our lives get better and better.

So we'll remember them, their families, in our prayers, in our thoughts, and every time we look to the heavens. And they were up above, just looking down on Earth as they were approaching it. And we all know, I

think, in our hearts, in our minds, that they're up above now, still looking down and doing with their lives in the hereafter what they always dreamed they would do. They gave their lives living their dream and improving the quality of life for all of us.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I want to join Senator Bruno and I'm sure everyone in this room. This is a resolution that is unfortunate, it's sad, it is timely. But I also think it's important that those of us who participate in the collective endeavor that is the government here in the United States recognize that there are a lot of other people making greater sacrifices, taking greater risks as a part of this great collective enterprise of being the United States.

And when many of us were growing up, the top of the list for kids of what you wanted to grow up to be was an astronaut. I

think that's probably faded somewhat. But this is a reminder of decades of heroism, decades of foresight, and really of something that we should all be proud of as Americans, we should be proud of as New Yorkers, and we certainly should be proud of as people who participate in the government.

A lot of these people who participate in the space program could make a lot more money doing something else. But they're among the thousands and thousands of people in our government, working in government programs, working to make America live up to its legacy of greatness. And it is certainly worthwhile to pause in reflection of that.

The sacrifices that we make to participate in the State Legislature, which sometimes we grouse about a little too much, are nothing compared to the sacrifices that are made by others in their efforts to support our collective dream.

So I join with Senator Bruno in this resolution. I thank you for bringing it to us today.

ACTING PRESIDENT FLANAGAN: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can I ask that we put all of our colleagues in the Senate on that resolution. Unless anyone here would prefer not to be on it, and then you could let the president know.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: The resolution is open for cosponsorship. If you do not wish to be a cosponsor, please notify the desk.

Senator Bruno.

SENATOR BRUNO: Mr. President, I have another privileged resolution, numbered 270, at the desk. I would ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: By Senator Bruno, Concurrent Resolution Number 270 of the Senate and Assembly, authorizing the Senate and Assembly of New York State to purchase copies of the New York Red Book for 2003-2004.

ACTING PRESIDENT FLANAGAN: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the noncontroversial reading of the calendar.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 14, by Senator Volker, Senate Print 241 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The

bill is laid aside.

THE SECRETARY: Calendar Number 35, by Senator DeFrancisco, Senate Print 323, an act to amend the Criminal Procedure Law, in relation to applications for recognizance or bail.

ACTING PRESIDENT FLANAGAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Breslin, to explain his vote.

SENATOR BRESLIN: Thank you, Mr. President.

Briefly, this is a vote that directionally I totally agree with and agree with the sponsor. It was brought up last year, and I voted for it.

However, in this time of financial difficulties, to set an example, this bill has no provisions that the state pay for it. It's being passed down as an unfunded mandate to

the localities.

And for that reason and that reason alone, I will vote in the negative.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Skelos.

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

ACTING PRESIDENT FLANAGAN: Immediate meeting of the Insurance Committee in the Majority Conference Room.

The Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 35, ayes, 59; nays, 1. Senator Breslin recorded in the negative.

ACTING PRESIDENT FLANAGAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 42, by Senator Marcellino, Senate Print 526, an act to amend the Penal Law, in relation to surreptitious video surveillance without

consent.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 43, by Senator Skelos, Senate Print 550, an act to amend the Penal Law, in relation to sexual assault against a child.

ACTING PRESIDENT FLANAGAN: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 46, by Senator Maziarz, Senate Print 561, an act to amend the Penal Law, in relation to killing or injuring a police animal.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT FLANAGAN: The bill is passed.

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

SENATOR SKELOS: Mr. President, if we could go to the controversial reading of the calendar.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number

14, by Senator Volker, Senate Print 241, an act to amend the Penal Law and the Criminal Procedure Law, in relation to term of imprisonment.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR VOLKER: Mr. President, this is a bill that's passed this -- I believe it passed this house last year by something like 53 to 6.

It is -- this bill was developed when there was so much attention being given to two times and you're out. Basically, this is a "three times and you're out" bill.

A person in the future -- and by the way, I think everybody should understand, of course, that this is only for future crimes. If this bill should become law after November 1st of this year, this bill would allow the persistent violent felony offenders -- that is, felons who have been arrested and convicted twice of violent felony offenses -- upon the third conviction, the sentence would be increased from what is now a minimum of 10 to 25 years and a maximum period

of life to a minimum sentence of 25 years and the maximum of life.

So basically, what this does is -- and remember, these people are pretty professional people, as the saying goes. Because violent felony offenses, to go through two and then have a subsequent violent felony offense, these are pretty tough people.

And what it would do is say that it would be -- 25 years would be the minimum, and then the maximum would be life. That's really the only change, because you're just moving up the minimum sentence.

And we're talking, by the way, about a very small number of people, because very few people get to three violent felony offenses. They usually end up with two at the most, because they spend a lot of time in jail in any case.

ACTING PRESIDENT FLANAGAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill.

I know Senator Volker is a very thoughtful student of the criminal justice

system. I do think, though, that we've reached a point where this ritual of us passing a series of sentencing bills here that we know aren't going to pass the Assembly and the Assembly passing sentencing reform bills that aren't going to pass here is getting a little bit tedious.

This bill has been around an awfully long time. In fact, I note that the bill memo still says "unmistakably, crimes of violence in the state are on the rise," which I guess hasn't been true for a few years since the bill memo was drafted.

I think that it is time, this year, to deal comprehensively with the questions of disparate sentencing in New York State, the need for sentencing reform. We failed to address the issue of the Rockefeller Drug Laws last year.

I would look forward to putting the issues addressed by this legislation together with some of the other one-house bills that go through this house and go through the Assembly, and I would actually urge that we try to convene some sort of a task force or

conference committee to deal with the issues of sentencing comprehensively.

It is appropriate for us to have sentencing reform. This year is a good time to do it. I don't think this particular piece of legislation is up-to-date anymore, but I think that the issues that it seeks to address are still with us.

I will be voting no, but I do think that the issue of sentencing is something that we really have to get to sooner or later. And as I suspect we're going to be here for a while this year, why not spend some time working on this while we're here.

Thank you, Mr. President.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Volker.

SENATOR VOLKER: I agree with you, Senator. In fact -- of course, the issue of the Rockefeller Drug Laws, in fact, we may be dealing with that much sooner than you think. That is, this house. Because we are moving fairly quickly to do something here before this month is out.

The Assembly, as you well know, is not in a position to do much of anything right now. Since we don't know for sure who is the chairman and all the rest of the stuff, it's a little difficult to do any negotiating. I mean, I'm being very -- but I agree with you, I think this is the year, with all the fiscal problems and so forth, that we deal with issues of sentencing -- and you can call it reform in certain cases -- and to deal with drug laws.

I think the Assembly needs something this year, I really do. I believe that this -- the situation is different now. And with the City of New York in such a plight that it's in, I think that the people in the Assembly will need some sort of legislation dealing with some of the major issues of sentencing.

And I think what will happen is you're going to see some drug legislation -- the Rockefeller Drug Laws is easy. There's only a handful of people in jail under the Rockefeller Drug Laws really. But I think that you're going to see some sort of

sentencing reform this year that's going to show some sentences go up and some, in effect, at least be reviewed and come down.

ACTING PRESIDENT FLANAGAN: Any other Senator wishing to be heard on the bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 14 are Senators Connor, Diaz, Duane, Hassell-Thompson, Montgomery, Parker, Paterson, and Schneiderman.

Ayes, 52. Nays, 8.

ACTING PRESIDENT FLANAGAN: The bill is passed.

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

SENATOR SKELOS: Mr. President, if we could stand at ease. We're waiting for the Insurance Committee to issue its report,

and then we'll adjourn.

ACTING PRESIDENT FLANAGAN: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:34 p.m.)

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

ACTING PRESIDENT FLANAGAN: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Insurance Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT FLANAGAN: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Seward, from the Committee on Insurance, reports the following bills:

Senate Print 574, by Senator Seward, an act to amend the Insurance Law;

And Senate Print 912, by Senator Seward, an act to amend the Insurance Law.

Both bills ordered direct to third

reading.

ACTING PRESIDENT FLANAGAN: All bills reported direct to third reading.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT FLANAGAN: No.

SENATOR SKELOS: There being no further business to come before the Senate, I move we adjourn until Tuesday, February 4th, at 11:00 a.m.

ACTING PRESIDENT FLANAGAN: On motion, the Senate stands adjourned until Tuesday, February 4th, at 11:00 a.m.

(Whereupon, at 3:41 p.m., the Senate adjourned.)