NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 21, 2004

11:05 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 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, Tuesday, January 20, the Senate met pursuant to adjournment. The Journal of Monday, January 19, 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.

The Secretary will read.

THE SECRETARY: Senator McGee, from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 45, by Senator Alesi, an act to amend the Vehicle and Traffic Law;

495, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

2859, by Senator McGee, an act to amend the Vehicle and Traffic Law;

3518, by Senator McGee, an act to amend the Vehicle and Traffic Law;

4420, by Senator Alesi, an act to amend the Vehicle and Traffic Law;

And Senate Print 4987, by Senator Maziarz, an act to amend the Vehicle and Traffic Law.

Senator Rath, from the Committee on Children and Families, reports:

Senate Print 517, by Senator Balboni, an act to amend the Family Court Act;

556, by Senator Skelos, an act to amend the Family Court Act;

1825, by Senator Meier, an act to amend the Domestic Relations Law;

3127, by Senator Volker, an act to amend the Criminal Procedure Law;

And Senate Print 5711A, by Senator DeFrancisco, an act to amend the Social Services Law.

Senator Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 551, by Senator Skelos, an act to amend the General Business Law;

3939A, by Senator Balboni, an act to amend the General Business Law;

5443, by Senator Nozzolio, an act to amend the General Business Law;

And Senate Print 5860, by Senator Fuschillo, an act to amend the General Business Law.

Senator Saland, from the Committee on Education, reports:

Senate Print 216, by Senator Saland, an act to authorize the City School District of the City of Poughkeepsie;

988, by Senator Leibell, an act to

authorizing the Pawling Central School District;

1487, by Senator Kuhl, an act to amend the Education Law;

1591A, by Senator Seward, an act in relation to creating;

2611, by Senator LaValle, an act to authorize payment;

5715, by Senator Farley, an act to amend Chapter 305 of the Laws of 2003;

And Senate Print 5756, by the Senate Committee on Rules, an act to amend Chapter 695 of the Laws of 2003.

All bills ordered direct to third reading.

THE PRESIDENT: All bills reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Maziarz, on page number 5, I offer the following

amendments to Calendar Number 13 and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendments are received, and the bill will retain its place on Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time adopt the Resolution Calendar, with the exception of Resolution 3117.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution 3117, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time have the title read on Resolution 3117.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: By Senator Connor, Legislative Resolution Number 3117, commemorating the Asian-American community's celebration of the Lunar New Year 4702, the Year of the Monkey, on January 22, 2004.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Tomorrow is the lunar new year, in which those who follow it, principally Asian-Americans in New York and elsewhere, will celebrate the new year, the Year of the Monkey.

According to the legend, or tradition, Buddha invited the animals of the world to visit him, rewarding those who came by naming a year in their honor. Each animal, in turn, gave its characteristics to the people born in the year.

This resolution, of course, has been an annual event in the Senate as well as in the Assembly, and the Speaker is the sponsor in the Assembly of this resolution.

The way it works is every 12 years, the animal sign is repeated. So that people born in the sign of the monkey, for example, would be -- I'll pick some sample years -- would be 1944, 1956, 1932. Those years may resonate with some of my colleagues. If you were born in those years, you were born in the sign of the monkey.

People born in the Year of the Monkey are very intelligent, well-liked by everyone, and will have success in every field they choose. Those born under the sign of the monkey are very energetic people and like lots of activity. Being loyal, upbeat and good listeners are traits of those born in the sign of the monkey, and they can be with several types of people and fit in easily.

There are some other traits that other sources denote that are human traits and not quite as flattering; nothing really bad. Those born in the Year of the Monkey certainly are fine people to have among us.

I would invite all of my colleagues who wish to join in cosponsoring this resolution. Unlike some past years, it

doesn't relate to a particular event, so it's appropriate for presentation at the many, many different Asian-American lunar new year celebrations that I know will be going on throughout the state.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I think I join Senator Connor in urging everyone to celebrate this great holiday.

And I just wanted to add a few words for our Chinese friends, constituents, and brothers and sisters. And although Senator Connor and Senator Stavisky and some others have large constituencies, all of us have some people who are celebrating this holiday. So [continuing in Chinese].

Thank you.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, given the circumstance of what we have before the house, I would recommend that we open this

resolution to anyone that would care to be on it, and any exceptions please notify the desk.

And thank you.

THE PRESIDENT: If any member does not wish their name on this resolution, please notify the desk.

All in favor of adopting Resolution 3117, by Senator Connor, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, can I ask for an immediate meeting of the Transportation Committee in the Majority Conference Room.

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

Senator Bruno.

SENATOR BRUNO: Can we at this time have the noncontroversial reading of the

calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 36, by Senator Balboni, Senate Print 512A, an act to amend the Penal Law, in relation to increasing the criminal penalties.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 37, by Senator Skelos, Senate Print 550, an act to amend the Penal Law, in relation to sexual assault against a child.

THE PRESIDENT: Read the last section.

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

November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 40, by Senator Velella, Senate Print 3183, an act to amend the Criminal Procedure Law, in relation to the commission of crimes against children.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 44, by Senator Spano, Senate Print 5278A, an act to amend the Penal Law, in relation to the commission of aggravated sexual abuse.

SENATOR SCHNEIDERMAN: Lay it

aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 45, by Senator Golden, Senate Print 5279A, an act to amend the Penal Law, in relation to promoting prostitution.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 46, by Senator Balboni, Senate Print 5280A, an act to amend the Penal Law, in relation to disseminating indecent material.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 14. This

act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 62, by Senator Farley, Senate Print 2059, an act to amend the Environmental Conservation Law, in relation to making technical corrections thereto.

THE PRESIDENT: 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, 54.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Thank you, Madam President. Can we at this time take up the

controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 44, by Senator Spano, Senate Print 5278A, an act to amend the Penal Law, in relation to the commission of aggravated sexual abuse in the third degree.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, briefly on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: I've supported Senator Spano's bill in the past, and I will do so again today.

In recent sessions we've done a good job of enhancing penalties, closing loopholes, and otherwise modernizing the state's sexual assault laws. But although great strides have been made, we really have not done nearly as good a job in providing emergency care to sexual assault survivors.

I want to note that a 2003 survey

by the New York State Coalition Against Sexual Assault found that New York hospitals need to be -- are not consistent in their delivery of emergency services for rape survivors. 63 percent of hospitals do not have a sexual assault examiner, sexual assault nurse, or sexual assault forensic examiner program at their facilities.

We passed legislation last year requiring that emergency contraception be made available to rape survivors. But we really do need to move forward to ensure that we're not just toughening penalties but we are also providing for the victims. And that is something that the state has lagged on much more seriously than we have in our efforts to tighten up the criminal code.

So I support this legislation, but I hope that we will be able to move forward in a balanced way as the session continues and do something to ensure that rape survivors do get the care that they're entitled to under the law, which now, unfortunately, they're not receiving.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 33. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Madam President, for the information of the members, following the report of the committee that's out, we're going to ask for a meeting of the Veterans and Homeland Security Committee, and then, following that, a meeting of the Corporations Committee.

And we'll await their reports and until that time, if necessary, stand at ease.

THE PRESIDENT: The Senate stands

at ease.

(Whereupon, the Senate stood at ease at 11:20 a.m.)

(Whereupon, the Senate reconvened at 11:38 a.m.)

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Balboni, there will be an immediate meeting of the Veterans, Homeland Security and Military Affairs Committee.

ACTING PRESIDENT MAZIARZ: There will be an immediate meeting of the Veterans and Homeland Security Committee in Room --

SENATOR SKELOS: In the Majority Conference Room.

ACTING PRESIDENT MAZIARZ: In the Majority Conference Room.

SENATOR SKELOS: And we'll stand at ease.

ACTING PRESIDENT MAZIARZ: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 11:39 a.m.)

(Whereupon, the Senate reconvened

at 11:45 a.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Would you please recognize Senator Montgomery.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I would like unanimous consent to be recorded in the negative on Calendar Numbers 44 and 45.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar Numbers 44 and 45.

Senator Skelos.

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

ACTING PRESIDENT MEIER: Immediate meeting of the Corporations Committee in the Majority Conference Room.

SENATOR SKELOS: And I believe there's some housekeeping at this time, if you

would recognize Senator Fuschillo.

ACTING PRESIDENT MEIER: Yes.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

I offer the following amendments to Calendar Number 82, Senate Print Number 4987, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on page number 4 I offer the following amendments to Calendar Number 9, Senate Print Number 2066, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

Senator Skelos.

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

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Kuhl, from the Committee on Transportation, reports the following bills:

Senate Print 397A, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

417, by Senator Bonacic, an act to amend the Vehicle and Traffic Law;

426, by Senator Volker, an act to amend the Vehicle and Traffic Law;

764, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

776, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

785, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

788, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

907, by Senator McGee, an act to amend Vehicle and Traffic Law;

1735A, by Senator Skelos, an act to amend the Highway Law;

2754A, by Senator McGee, an act to amend the Highway Law;

2974A, by Senator Kuhl, an act to amend the Vehicle and Traffic Law;

3033, with amendments, by Senator Kuhl, an act in relation to requiring;

3438, by Senator Kuhl, an act to amend the Vehicle and Traffic Law;

4230, by Senator Kuhl, an act to amend the Vehicle and Traffic Law;

4468, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

And Senate Print 5236, by Senator Spano, an act to amend the Vehicle and Traffic Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could just stand at ease, there will be two more committee reports and then we'll adjourn.

So, members, either keep your seats or, if you want to move on, this is the time to do it.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 11:50 a.m.)

(Whereupon, the Senate reconvened at 11:55 a.m.)

ACTING PRESIDENT MEIER: Senator Velella.

SENATOR VELELLA: Would you recognize Senator Parker, please.

ACTING PRESIDENT MEIER: Yes. Senator Parker.

SENATOR PARKER: Yes, Mr. President. I'd like to request unanimous consent to be recorded in the negative on Senate Bill 5278A.

ACTING PRESIDENT MEIER: Without objection, Senator Parker will be recorded in

the negative on Calendar Number 44.

(Whereupon, the Senate stood at ease at 11:56 a.m.)

(Whereupon, the Senate reconvened at 11:59 p.m.)

ACTING PRESIDENT MEIER: Senator Velella.

SENATOR VELELLA: Mr. President, I understand there's a report from the Veterans and Homeland Security Committee at the desk.

Can we go to reports of committees.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Balboni, from the Committee on Veterans, Homeland Security and Military Affairs, reports:

Senate Print 87, by Senator Maltese, an act to amend the Real Property Tax Law;

783A, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

1766, by Senator Morahan, an act to amend the Military Law;

3046, by Senator Morahan, an act to amend the Executive Law;

And Senate Print 4022, by Senator Balboni, an act to amend the Education Law.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Senator Leibell, from the Committee on Corporations, Authorities and Commissions, reports:

Senate Print 1970, by Senator Marchi, an act to amend Chapter 631 of the Laws of 1947;

2989A, by Senator Spano, an act to amend the Public Authorities Law;

And Senate Print 4327, by Senator Bonacic, an act to amend the Public Authorities Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: All bills directly to third reading.

Senator Velella.

SENATOR VELELLA: Mr. President, there being no further business, I move that we adjourn until Monday, January 26th, at

3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, January 26th at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 12:01 p.m., the Senate adjourned.)