ALBANY, NEW YORK

February 8, 1994

3:15 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: Senate will come to order. Senators will please find their seats.

If you will rise with me for the Pledge of Allegiance to the flag.

(Whereupon, the Senate joined in the Pledge of Allegiance to the Flag.)

We are pleased to have with us today the Reverend Michael Bacchus of Full Gospel Assembly of Brooklyn, New York.

Reverend Bacchus.

REVEREND MICHAEL BACCHUS: Let us pray.

Eternal God, we ask this afternoon that You will come and You will give to our state leaders the wisdom, understanding for the difficult tasks that they have before them today as it pertains to our state and to our people. We ask that You will guide them in their deliberations.

We ask that Your spirit will overshadow each one, and we pray that they will

be able to make those difficult decisions that will affect the destiny of our state.

We thank You today for Your blessings, and we ask these things in His name with Thanksgiving.

Amen.

ACTING PRESIDENT FARLEY: Thank you, Reverend.

The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, February 7, the Senate met pursuant to adjournment. Senator Spano in the chair upon designation of the Temporary President. Prayer by Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing. The Journal of Friday, February 4, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as read.

The order of business.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Present.

SENATOR PRESENT: Will you recognize Senator Larkin, please.

ACTING PRESIDENT FARLEY: Senator Larkin.

SENATOR LARKIN: There will be an immediate meeting of the Local Government Committee in Room 332. We have one bill to consider.

ACTING PRESIDENT FARLEY: The Local Government Committee will meet in Room 332 immediately.

We also have a report from a standing committee. Senator Present, shall we proceed with it?

SENATOR PRESENT: Proceed with it.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: Senator Sears

from the Committee on Consumers Protection reports the following bills directly for third reading:

Senate Bill Number 3619, by Senator Maltese and others, an act to amend the General Business Law.

4046, by Senators Sears and Lack, an act to amend the General Besiness Law.

6544, by Senator Sears, an act to amend the General Business Law.

Senator LaValle from the Committee on Higher Education reports the following bills directly for third reading:

Senate Bill Number 939, by Senator LaValle, an act to amend the Education Law.

1506, by Senators Volker and others, an act to amend the Education Law.

2583, by Senators Saland and Larkin, an act to amend the Education Law.

3970A, by Senators LaValle and Tully, an act to amend the Education Law.

Senator Cook from the Committee

on Education reports the following bills directly for third reading:

Senate Bill Number 47, by Senator Holland, authorize the Salvation Army Eastern Territory School for Officers Training.

2744A, by Senator Larkin and others, an act to amend the Education Law.

3248, by Senator Padavan, an act to amend the Education Law.

3304, by Senator Maltese and others, an act to amend the Education Law.

4341A, by Senator Cook, an act to amend the Education Law.

6566, by Senator Hannon, authorize payments in lieu of taxes by the County of Nassau.

6583, by Senator Cook, authorize payment of transportation aid to the Roscoe Central School.

Senator Padavan from the Committee on Cities reports the following bill directly for third reading:

Senate Bill Number 6411, by

Senator Maltese and others, Administrative Code of the City of New York.

Senator Levy from the Committee on Transportation reports the following bills:

Senate Bill 433, by Senator Stafford, an act to amend the Highway Law, in relation to abandonment of certain town highways.

1942, by Senator Larkin and others, an act to amend the Vehicle and Traffic Law.

2706, by Senator Goodman, an act to amend the Vehicle and Traffic Law.

4801, by Senator Levy, an act to amend the Vehicle and Traffic Law.

5343A, by Senator Maltese, an act to amend the Vehicle and Traffic Law.

5435B, by Senator Levy, New York State Thruway Authority.

6312, by Senator Holland, an act to amend the Public Authorities Law.

6335, by Senator Holland, an act to amend to amend the Public Authorities Law.

6562, by Senator Johnson and others, study by the New York State Thruway Authority examining parking facilities.

Senator Skelos from the Committee on Aging reports the following bills:

Senate Bill Number 631, by Senator Skelos and others, an act to amend the Executive Law.

2191, by Senator Farley and others, an act to amend the Education Law.

3310, by Senator Skelos, an act to amend the Real Property Tax Law.

Senator Wright from the Committee on Alcoholism and Drug Abuse reports the following bills:

Senate Bill 471, by Senator Levy, an act to amend the Railroad Law and the Public Authorities Law.

1002, by Senator Levy and others, an act to amend the Vehicle and Traffic Law.

1579, by Senator Velella, an act to amend the Vehicle and Traffic Law.

2076, by Senator Levy, an act to

amend the Vehicle and Traffic Law.

Senator Tully -- excuse me.

Senator Volker from the Committee on Codes reports the following bills directly for third reading:

Senate Bill Number 779, by Senator Tully, Civil Practice Law and Rules.

919A, by Senator Volker and others, an act to amend the Penal Law, in relation to resisting arrest.

1424, by Senator Volker and others, an act to amend the Penal Law.

2421, by Senator Volker, an act to amend the Penal Law.

2459, by Senator Sears, an act to amend the Penal Law.

2630, by Senator Volker, an act to amend the Criminal Procedure Law.

2732A, by Senator Volker, Civil Practice Law and Rules.

2990, by Senator Cook and others, an act to amend the Criminal Procedure Law.

3498, by Senator Lack, an act to

amend the Penal Law.

3566, by Senator Pataki, an act to amend the Penal Law.

3612, by Senators Skelos and Tully, Criminal Procedure Law.

4520, by Senator Volker, Civil Rights Law.

6350, by Senator Volker and others, an act to amend the Penal Law and the Criminal Procedure Law.

Senator Johnson from the Committee on Environmental Conservation reports the following bills:

Senate Bill Number 783A, by Senator Johnson and others, Environmental Conservation Law.

1098, by Senator Daly and others, Environmental Conservation Law.

1795, by Senator Johnson and others, Environmental Conservation Law.

3367A, by Senator Johnson, Environmental Conservation Law.

4317, by Senator Nozzolio,

Subdivision 2 of Section 110511 on the Environmental Conservation Law.

Senator Maltese from the Committee on Crime Victims, Crime and Correction reports the following bills:

Senate Bill Number 577, by Senator LaValle, an act to amend the Correction Law.

4508, by Senator Maltese, an act to amend the Correction Law.

6552, by Senator Skelos and others, Correction Law.

And 6569, by Senator Skelos, an act to amend the Executive Law.

All bills reported directly for third reading.

ACTING PRESIDENT FARLEY: All bills are reported directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Present.

SENATOR PRESENT: Mr. President. I move that we adopt the Resolution Calendar with the exception of Resolutions 2551, 2579 and 2590.

ACTING PRESIDENT FARLEY: All in favor of adopting the Resolution Calendar with exceptions say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The Resolution Calendar is adopted with exceptions.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I was away from the chambers yesterday, when the vote on Calendar Number 119 was taken. I would like the record to reflect that had I been in the chamber at the time the vote was taken that I would have voted in the affirmative on that bill.

ACTING PRESIDENT FARLEY: Senator Kuhl, the record will so state.

SENATOR KUHL: Thank you.

ACTING PRESIDENT FARLEY: Senator Sears.

SENATOR SEARS: Mr. President. I was away from the chamber on Senate business when the vote on Calendar 119, Senate Print 2754, was taken yesterday. I would like the record to reflect that had I been here, I would have voted in the affirmative on that bill.

ACTING PRESIDENT FARLEY: The record will so state.

Senator Wright.

SENATOR WRIGHT: Mr. President. I was away from the chamber on Senate business when the vote on Calendar 119, Senate Print 2754, was taken yesterday. I would like the record to reflect that had I been here, I would have voted in the affirmative on that bill.

ACTING PRESIDENT FARLEY: The record will so state.

Are there any other motions?

Senator Present.

SENATOR PRESENT: Mr. President. I would like to call up Resolution 2579, ask

that it be read and offered up to the sponsorship of the entire chamber.

ACTING PRESIDENT FARLEY: The Secretary will read.

THE SECRETARY: Legislative Resolution 2579, by Senators Marino, Skelos and others, expressing sincerest sorrow upon the occasion of the death of the former Secretary of the Senate of the State of New York Albert J. Abrams.

Whereas, the membership of the Senate of the State of New York is moved this day to recognize and pay tribute to an individual of distinguished purpose and true commitment who dedicated his life and career to public service and to the pursuit of excellence in the conduct of this legislative process.

Attendant to such concern and fully in accord with it's longstanding traditions, it is the intent of this legislative body to express sincerest sorrow upon the occasion of the death of the former Secretary of the Senate of the State of New York Albert J.

Abrams.

Albert J. Abrams, a resident of Slingerlands, New York, is survived by his wife, Lorena Friedman Abrams; by four children, David Abrams of Miami, Eugenie Abrams of Ravena, Valerie Sideman of Hopedale, Massachusetts, and Marc Kessler of Cambridge, Massachusetts; by one sister, Shirley Miller of Baltimore, Maryland; and by eight grandchildren.

Albert J. Abrams dedicated 58 years of service to the New York State Senate spanning over 75 legislative sessions including special sessions, impeachment sessions and constitutional conventions.

Albert J. Abrams was elected Secretary of the Senate on January 6, 1963, appointed Deputy Secretary in 1965, and reelected as Secretary in January 1966, and served in this capacity until 1976.

As chief administrative officer of the New York State Senate, Albert J. Abrams effectuated the smooth and efficient transition of the legislative body into the electronic and

computer age.

Albert J. Abrams served as senior advisor to four successive majority leaders, Walter J. Mahoney, Joseph Zaretzki, Earl Brydges and Warren Anderson, over nearly 30 years.

A graduate of New York University, Albert Abrams majored in government; Albert J. Abrams was sent to Albany in 1936 to work for a three-month period as a legislative assistant for State Senator Thomas C. Desmond; the job lasted 20 years until he became city manager of Newburgh, a position he held for several years.

Albert Abrams served as executive director of the Senate Committee on Cities, the State Joint Legislative Committee on Nutrition and the Joint Legislative Committee on Aging.

Albert J. Abrams also founded the National Society of Legislative Clerks and Secretaries which celebrated its 25th year at its annual meeting in Albany, New York, in 1992.

More recently, Albert Abrams

served as senior policy analyst in the New York State Senate for the past several years.

Albert J. Abrams was awarded the American Society of Public Administration Alfred E. Smith Award for outstanding administration and was also awarded the Arthur Levitt Award by the Alliance of Public Employees Association.

Albert Abrams organized the National Association of Jewish Legislators, which he served as Volunteer Executive Director; he was the Research Director of the National Association of Legislative Leaders; and also served as a Management Consultant to the United States Senate.

Albert Abrams also served as an adjunct professor at State University of New York at Albany's graduate school in public administration and at Siena College; his proposal for the establishment of the Albert Einstein Distinguished Chair in Science and the Albert Schweitzer Distinguished Chairs in the Humanities, under the jurisdiction of the New York State Board of Regents, was enacted into

law in 1964.

Albert J. Abrams was instrumental in developing the field of gerontology, having served as director of the first legislative committee in the country dealing with problems of the aging; he was the founder of the National Council on the Aging and served as its President; his extensive writings on aging have been widely published.

Albert Abrams served as President of the Albany Senior Services Center, Inc., and was responsible for the establishment of its foundation.

Albert J. Abrams was chairman of the Committee on Aging for the United Jewish Appeal and served on the Board of Daughters of Sarah Nursing Home and B'Nai Brith Parkview Apartments.

Albert Abrams received the Ollie A. Randall Award and the Henrietta Rabe Award for service to the aged and to senior centers.

Albert J. Abrams served on the Board of the Albany Symphony Orchestra and on

the Board of Directors of the Visiting Nurses Association.

Albert J. Abrams was a person of great warmth and compassion with a fertile and innovative mind, constantly searching out ways for improving the lives of others; he was articulate and persuasive in advancing the principles for which he stood; his keen wit and sense of humor were an integral part of his personality and provided a firm foundation for his optimistic attitude toward life and his confidence that solutions to the problems of society could always be found.

The legacy of Albert J. Abrams will long serve as a model of integrity and devotion to public service, and it is now the intent of this legislative body to inscribe upon its records this somber and grateful tribute to his memory, hopeful that future generations may understand and appreciate the benevolence of the man, the merit of his causes, and the caliber of his services to the citizens of New York; now, therefore, be it

Resolved, That this Legislative Body pause in its deliberations to pay tribute to the life and accomplishments of the late Albert J. Abrams, former Secretary of the New York State Senate, recognizing the significance of his exemplary record of public service and selfless dedication to representing the people of New York State with integrity and dedication; and be it further

Resolved, That a copy of this resolution, suitably engrossed, be transmited to Mrs. Albert J. Abrams and family, Slingerlands, New York.

ACTING PRESIDENT FARLEY: On the resolution. All those in favor, aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

Senator Present.

Senator Velella.

SENATOR VELELLA: My bill on page

4, Calendar Number 59, Senate 2599B, would you put a star on that bill, please?

ACTING PRESIDENT FARLEY: Bill is starred at the request of the responsor.

Senator Present.

SENATOR PRESENT: Mr. President. Could we take up Resolution 2590?

ACTING PRESIDENT FARLEY: 2590, the Secretary will read the title.

THE SECRETARY: Legislative Resolution 2590, by Senator Maltese and others, urging the New York State congressional delegation to propose a Constitutional Amendment for ratification by the states which would specify that the Congress and the states shall have the power to prohibit the physical desecration of the American Flag.

Whereas, it is the sense of this Legislative Body that the flag of the United States is more than an arbitrary symbol, it is more than an appendage of circumstance; on the contrary, the flag of the United States is the living embodiment of those sacred ideals and

principles upon which this beloved nation was first founded and for which countless thousands have given their lives in the cause of America's freedom.

The flag of the United States, since its very inception, has served as a most paradigmatic attribute of this nation's sovereignty; the exhilarative expression of a united people, the flag of the United States is a consciously designed pattern whose history is anchored in the unswerving conviction that this beloved nation evolve in a manner consistent with the dreams and aspirations of our forefathers, of those who, at the price of great suffering, first enunciated the ultimate end and purpose of our American experience.

Consistent with that shared determination, the Supreme Court of the United States has labored to assure the pervasive and equitable extension of civil liberties.

Nevertheless, in the case of Texas vs. Johnson, No. 88-155, the Supreme Court has ruled that a statute may not be enacted to

prohibit the desecration of the American flag.

It has become increasingly apparent that such a ruling presses against the will of the American people, for whom, in the first instance, the flag of the United States personifies freedom.

The Congress of the United States has repeatedly supported legislation protecting the flag from acts of desecration; on March 6 of 1989, legislation was passed in the Senate by the overwhelming vote of 97 to 0 prohibiting this display of the flag on the floor or ground.

It is the sense of this Legislative Body to join with the Congress of the United States in disavowing the inadequacies of the Supreme Court ruling and to urge the people of the State of New York to continue to proudly display the American Flag as a sacred expression of this nation's freedom and for those values for which it stands.

This Legislative Body specifically memorializes the New York State

Congressional Delegation to address the errancy inherent in the Texas vs. Johnson ruling and to immediately secure passage of a Constitutional Amendment proscribing the desecration of the flag of the United States; now, therefore, be it

Resolved, That this Legislative Body pause in its deliberations in memorializing the Congress of the United States to assert its legitimacy and, in doing, initiate legislation culminating in an Amendment to the Constitution of the United States specifically prohibiting the desecration of the American Flag, fully confident that such procedure is in accord with our shared commitment to the preservation of that patrimony of freedom which is our American Heritage; and be it further

Resolved, That copies of this Resolution, suitably engrossed, be transmitted to the Congress of the United States.

ACTING PRESIDENT FARLEY: Senator Maltese, on the resolution.

SENATOR MALTESE: Mr. President. I wish to advise the body that the resolution is

open to all members of the house.

ACTING PRESIDENT FARLEY: On the resolution. All in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(Response of "Nay.")

The resolution is adopted.

Anybody that wishes to be on the resolution, please let the desk know.

Senator Present.

SENATOR PRESENT: May we return to reports of standing committees, please?

ACTING PRESIDENT FARLEY: Yes, we may.

We have a substitution, I believe.

THE SECRETARY: Senator Larkin, from the Committee on Local Government, reports the following bill directly for third reading:

Senate Bill Number 6640, by Senator Holland, an act authorizing the extension of time for collection of taxes without interest or penalties for the year 1994

as a result of the severe and unprecedented weather conditions existing.

Reported to third reading.

ACTING PRESIDENT FARLEY: Without objection, third reading.

We have a substitution of that bill, if we may do that, Senator Present.

Secretary will read the substitution.

THE SECRETARY: Senator Holland moves to discharge the Committee on Local Government from Assembly Bill Number 9370 and substitute it for his identical Senate Bill 6640.

ACTING PRESIDENT FARLEY: Senator Present, we have no message on that as yet so we can't pass it. Substitution is ordered on the bill, though.

Senator Present.

SENATOR PRESENT: Mr. President. Call up Resolution 2551, and recognize Senator Larkin, please.

ACTING PRESIDENT FARLEY: The

Resolution is called up.

Senator Larkin.

You got to read the title, I believe.

THE SECRETARY: Legislative Resolution 2551, by Senator Larkin. Legislative Resolution memorializing the life and accomplishments of Joel Cook, founder of the National Human Rights Committee for POW/MIAs.

ACTING PRESIDENT FARLEY: Senator Larkin.

SENATOR LARKIN: Mr. President. My colleagues.

Joel Cook was one individual who was totally dedicated to the accountability for MIAs and POWs. Joel Cook served in Vietnam 1971-72. Was a member of the First Cav'. He was an Infantry Sergeant, was wounded, Silver Star, Bronze Star with "V" for "Valor".

Upon returning home, he found the American people were lackadaisical, had no care for those who had served their country and were wounded, killed or missing.

In 1977, in conjunction with the families of missing servicemen, he founded the National Human Rights Commission which later became a part of the MIA/POW movement.

He went around this country at his own expense, promoting the awareness and the fact that there were at that time over 3,000 Americans missing and unaccounted for in Southeast Asia.

In 1992, it was found that he had Agent Orange. I remind you he left Vietnam in 1972. Twenty years later at a veterans hospital, Castle Point, they found that this young man of 45 years old, father of two children, had terminal cancer from Agent Orange.

Joel Cook never gave up. He continually pressed. He made a trip to Nam, a part of President Reagan's task force, to go in, and President Bush's, to see what we could do about accounting for those that are missing.

You know, today as we pass this resolution, we find that we are recognizing

Vietnam. We are lifting the embargo. I find it a helluva action when I find that over 2,000 Americans are still missing.

Joel Cook went to his grave fighting to make the American people and the Congress of the United States aware that we can not call upon our young people and ask them to give their blood and their life and then turn their back on them, and that's what this nation has done.

Mr. President. My colleagues. Joel Cook was an individual, came up from meager means, rose to be a very prominent member in an organization that cared about human life and human dignity.

I would offer this resolution and open it for sponsors.

Thank you very much.

ACTING PRESIDENT FARLEY: On the resolution. All in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

The resolution is open for members that wish to join in on it. Please notify the desk.

Senator Present.

SENATOR PRESENT: Mr. President. Let's take up the noncontroversial calendar.

ACTING PRESIDENT FARLEY: Noncontroversial calendar. The Secretary will read from page 5.

THE SECRETARY: On page 5, Calendar Number 88, by Senator Levy.

SENATOR CONNOR: Lay it aside.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 103, by Senator Stafford.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 113, by Senator Stafford, Senate Bill Number

4237A, relating to state aid to the North Warren Center School District.

ACTING PRESIDENT FARLEY: There is a local fiscal impact note here at the desk.

Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 130, by Senator Stafford, Senate Bill Number 438, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside. Withdraw the roll call.

Senator Present, that's noncontroversial.

We have some amendments on the floor.

Senator Lack.

SENATOR LACK: Mr. President. On page 4, I offer the following amendments to Calendar Number 27, Senate 4106, on behalf of Senator Wright and ask that the bill retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments received. The bill will retain its place.

SENATOR LACK: Also on behalf of Senator Wright, on page 4, I offer the following amendments to Calendar Number 28, Senate 4107, and ask that the bill retain its place on the calendar.

ACTING PRESIDENT FARLEY: Amendments received. The bill will retain its place.

Any other motions on the floor?

Senator Present, what's your

pleasure?

SENATOR PRESENT: Mr. President. Can we stand at ease maybe awaiting a message?

ACTING PRESIDENT FARLEY: The Senate will stand at ease.

(Whereupon, at 3:45 p.m., the Senate was at ease.)

(Whereupon, at 3:59 p.m., Senate reconvened.)

ACTING PRESIDENT FARLEY: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President. Can we call up Assembly Bill 9370?

ACTING PRESIDENT FARLEY: Secretary will read Assembly Bill 9370.

THE SECRETARY: Calendar 201, Assembly Bill 9370, by Member of the Assembly Nicoletti, substituted earlier today, an act authorizing the extension of time for collection of taxes.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is passed.

What is your pleasure?

SENATOR PRESENT: Mr. President. There being no further business, I move we adjourn until Monday, February 14, intervening days being legislative days.

ACTING PRESIDENT FARLEY: The Senate will stand adjourned until Monday at the regular hour, intervening legislative days, 3:00 p.m.

(Whereupon, at 4:01 p.m., Senate adjourned.)