NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:11 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 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: With us this afternoon to give the invocation is Rabbi Nachman Simon, from Chabad-Lubavitch of the Capital District in Delmar.

RABBI SIMON: Last week we celebrated Tu B'Shevat, the New Year for Trees. This is the season in which the earliest blooming trees in the land of Israel emerge from their winter sleep and begin a new fruit-bearing cycle.

It says in the Bible that man is a tree of the field, and we can reflect on the lessons we can derive from this analogy. The tree's primary components are the roots, which anchor it to the ground and supply it with water and other nutrients; the trunk, branches, and leaves, which comprise its body;

and the fruit, which contains the seeds by which the tree reproduces itself.

The spiritual life of man also includes roots, a body, and fruit. The roots represent faith, our source of nurture and perseverance. The trunk, branches, and leaves are the body of our spiritual lives, our intellectual, emotional, and practical achievements.

The fruit is our power of spiritual procreation, the power to influence others, to plant a seed in a fellow human being, see it sprout, grow, and bear fruit.

Buried underground, virtually invisible, are the roots. They possess neither the majesty of the tree's body, the colorfulness of its leaves, nor the tastiness of its fruit -- but without roots, a tree cannot survive.

This is our faith and commitment to our Creator. May it be the Almighty's will that He give us the strength to guide us, the people of New York, so that we can be a full-sprouted tree bearing much fruit, founded on the principles of faith in our Creator,

helping us in all our endeavors.

And let us all say amen.

ALL: Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, January 24, the Senate met pursuant to adjournment. The Journal of Thursday, January 23, 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 Volker, from the Committee on Codes, reports the following bills:

Senate Print 323, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

327, by Senator DeFrancisco, an act

to amend the Criminal Procedure Law;

422, by Senator Bonacic, an act to amend the Penal Law;

508, by Senator Maziarz, an act to amend the Penal Law;

512, by Senator Balboni, an act to amend the Penal Law;

518, by Senator Balboni, an act to amend the Civil Rights Law;

519, by Senator Balboni, an act to amend the Penal Law;

526, by Senator Marcellino, an act to amend the Penal Law;

550, by Senator Skelos, an act to amend the Penal Law.

554, by Senator Skelos, an act to amend the Penal Law;

555, by Senator Skelos, an act to amend the Penal Law;

561, by Senator Maziarz, an act to amend the Penal Law;

621, by Senator Padavan, an act to amend the Penal Law;

And Senate Print 624, by Senator Padavan, an act to amend the Penal Law.

All bills ordered direct to third reading.

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

Senator Skelos.

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

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senator Paterson. I ask that it be read in its entirety.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator

Paterson, Legislative Resolution 194, memorializing Governor George E. Pataki to proclaim February 2003 as Black History Month in the State of New York.

"WHEREAS, It is the duty of a community to recognize those within its midst who have contributed greatly to the quality of life therein; and

"WHEREAS, Black History Month, which was founded in 1926 by Dr. Carter G. Woodson, is celebrated nationally each year during the month of February; and

"WHEREAS, In recognition of the rich and diverse contributions of African-Americans, a joyful month-long celebration is held across New York State and across America to pay tribute to our African-American brothers and sisters; and

"WHEREAS, Many commemorative events, plays, lectures, parties, and museum tours are held to honor and display the cultural heritage of African-Americans; and

"WHEREAS, Black History Month is the time to reflect on the struggles and victories of African-Americans throughout our

country's history, and to recognize their numerous valuable contributions to the protection of our democratic society in war and in peace; and

"WHEREAS, We commend the African-American community for preserving for future generations its centuries-old traditions that benefit us all and add to the color and beauty of the tapestry which is our American society; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim February 2003 as Black History Month in the State of New York; and be it further

"RESOLVED, That this Legislative Body pause further to applaud each of the individuals who have furthered the cause of African-American heritage and freedom, which contributes greatly to the quality of life in New York State; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted at events commemorating Black History Month."

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I guess all of us, in whatever groups that we're in, have this distinct sense of paranoia that we're all being discriminated against, or perhaps we're not all being recognized for our service. And so it was important for me to put in the resolution that Black History Month was founded in 1926 by the Honorable Carter G. Woodson.

And the reason that he chose the month of February was not because it was the shortest month and African-Americans were being cheated out of three extra days. That's not the reason. The reason was that Frederick Douglass, probably the foremost and most famous and original black leader in this country, was born on February 13, 1818, and died on February 18, 1895. So it was originally entitled "Negro History Week," and that was to commemorate the birth and the death of Frederick Douglass.

The first African known to have come to this country was an individual known as Estevan or Estevanico. He came in the

15th century with Spanish explorers.

The first African known to have come to New York was an individual known as Jan Rodriguez. He came here in 1607. He was actually dropped off as a disciplinary action by the British West Indian Company, from one of their ships that was passing through the New York area and landed on what is now the island of Manhattan. He himself hailed from the island of Hispaniola.

And therefore, with the great Dominican population that has emigrated to Manhattan in years since, he not only was the first Dominican to come to Manhattan, he was the first settler to come to that area.

By the time the British West Indian Company came back to look for him, five years later, he had aligned himself with a Native American tribe and with muskets drove his adversaries away.

All through history, African-Americans have had a unique contribution to this country as the first group brought here not through exploration, or escaping tyranny, but brought here as chattel

slaves.

New York had a very large free population because the first church built on Manhattan Island was the old St. Nicholas Church, which succumbed to a fire in 1847 and, but for the efforts of the people who lived in that community, who were all African, the church would have totally perished. As a reward for that, they were freed by King Charles I of England and thereafter were thought to have been major players in the development of the early New York culture.

Through our Constitution, which started out with Article 1, Section 2, Clause 3, which provided for the existence, for population purposes, of slaves and counted them as three-fifths of the population, or Article 4, Section 2, Clause 3 of the Constitution, an article which provided for the recovery of runaway slaves, which sadly has never been removed from the Constitution, what to do about African natives who lived in this country was the most significant point that we addressed in our country from its inception.

In the original Declaration of Independence, which described slavery as the greatest woe to mankind, it did not make the final cut because of a coalition of New England slave traders and southern planters.

It led, in 1820, for Thomas Jefferson, one of our country's founders and probably its most literary character, to write: "Never did I ever believe that our country would have so much trouble from this source."

The great British wit Sydney Smith, writing in the Edinburgh Review at the same year, wrote: "Which one of the European tyrannies that the Americans so abhor systematically tortures and divides one-sixth of its population?"

So between 1820 and all through those decades, again, what to do about the Africans that lived in this country was a major, major problem for anyone who sought leadership.

Finally, in the compromise of 1850, California was elected to -- was brought into

statehood as a free state, Texas as a slave state, Utah and New Mexico as neutral territories, and the District of Columbia had slavery abolished.

Finally, in 1857, it all led to a Supreme Court case, the Dred Scott decision, which didn't just hold that we could have slavery north of the 36th parallel, as had been arrived at in 1820 through the Missouri Compromise, but actually held that Frederick Douglass, as three-fifths of a person, didn't have the right to sue in a federal court. That was a constitutional decision. That's what the Constitution held at that particular time.

It took a civil war and years of struggle to abolish not only slavery but segregation and also a separatist point of view, to the point now that fortunately we have nine African-Americans that serve as Senators in this particular body.

This may not, as a national sense, be representative of all the contributions that this community has made to American society, but it certainly represents a great

stride that this country has made, not only because of African-Americans, but because of all Americans. So when we talk about African history, we're really talking about American history.

And there are those, as Dr. Martin Luther King pointed out in his famous speech in the March on Washington, who are not African-American but believe in the American dream and believe in freedom and justice for equality. So we're not just celebrating great African-Americans who held this truth to be self-evident, we're talking about all Americans who believed in equality and that people be judged not by the color of their skin but by the content of their character.

It's in this vein, Madam President, that we present this resolution in memorial to all of those -- black and white, Asian, Hispanic, both the living and the dead -- who struggled over the past few centuries, unremittingly and courageously, to live to bring America into context with its Constitution and its Declaration of Independence, so that when we say the Pledge

of Allegiance we mean "for all."

Thank you.

ACTING PRESIDENT McGEE: Thank you, Senator Paterson.

The question is on the resolution. All in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Senator Paterson, would you care to open up that resolution to the sponsorship of the entire Senate?

SENATOR PATERSON: After what I said, that would be about the most hypocritical thing I could ever do.

Yes, Madam President.

SENATOR SKELOS: Madam President, all members will be put on the resolution. If somebody wishes not to be on the resolution, they should notify the desk.

ACTING PRESIDENT McGEE: Thank you, Senator Skelos.

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

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator Little, from the Committee on Local Government, reports the following bills:

Senate Print 493, by Senator Skelos, an act to amend the Real Property Tax Law;

And Senate Print 741, by Senator Little, an act making certain findings and determinations.

Both bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Without

objection, the bills are reported to Third Reading Calendar.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 6, by Senator Maltese, Senate Print 89, an act to amend the Penal Law, in relation to clarifying the definition.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 13, by Senator Volker, Senate Print 240, an

act to amend the Penal Law, in relation to loitering for the purpose of engaging in prostitution.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 24, by Senator Skelos, Senate Print 261, an act to authorize the assessor of the County of Nassau to accept and consider.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 25, by Senator DeFrancisco, Senate Print 328, an act to amend the Town Law, in relation to including.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 32, by Senator Saland, Senate Print 396, an act to amend the Tax Law, in relation to authorizing the County of Dutchess.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

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

SENATOR SKELOS: If we could take up the controversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 32, by Senator Saland, Senate Print 396, an act to amend the Tax Law, in relation to authorizing.

ACTING PRESIDENT McGEE: Senator Breslin.

SENATOR BRESLIN: Madam President, through you, if the sponsor would yield to one brief question.

ACTING PRESIDENT McGEE: Senator Saland, Senator Breslin would like you to yield for a question.

SENATOR SALAND: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BRESLIN: Through you, Madam President, I just wanted to know if there was a message of necessity from the

local entity.

SENATOR SALAND: I'm sorry, I couldn't -- with the door open, I couldn't hear you, Senator.

SENATOR BRESLIN: A message of necessity from -- or, excuse me, a fiscal note from the local entity.

SENATOR SALAND: I have a home rule request that was passed by the Dutchess County Legislature on January 9th of this month.

SENATOR BRESLIN: Thank you very much, Madam President.

ACTING PRESIDENT McGEE: Does any other Senator wish to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos, that completes the

controversial reading of the calendar.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Tuesday, January 28th, at 11:00 a.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Tuesday, January 28th, at 11:00 a.m.

(Whereupon, at 3:30 p.m., the Senate adjourned.)