NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 24, 2004

12:21 p.m.

REGULAR SESSION

SENATOR PATRICIA MCGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: 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 McGEE: The invocation today will be given by Reverend Jacques Michel, who is minister of the Overseer Holiness Church of God of the United States, in Spring Valley, New York.

REVEREND MICHEL: Let us pray.

Dear Lord, we are very grateful for the renewed energy and enthusiasm You have brought at the beginning of this new day.

May You guide this New York State Senate in every problem that they shall face, every decision they shall make from this day on. Quicken their mind, alert their perception, and deepen their understanding.

Our heavenly Father, this New York State Senate humbly bow to Thy will, and we thank You for helping them think positively

and sensitively over this long overdue recognition conducive to the passing of this resolution honoring our forefathers of Haitian descent who fought alongside American troops at the Battle of Savannah, Georgia, on October 9, 1779, for America's freedom.

Yesterday You brought these two nations together as blood brothers, and today, as their great-grandchildren, we are here celebrating our independence and our freedom and the fruits of our socio-political-economic growth.

For this we give Thee thanks, O Lord, as we are ever grateful for Your continued blessing extended upon our families, the great State of New York, and these United States of America.

Let us all say amen.

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 23, the Senate met pursuant to adjournment. The Journal of Sunday, February 22, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT McGEE: 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 Larkin, from the Committee on Racing, Gaming and Wagering, reports:

Senate Print 1129, by Senator Wright, an act to amend the Tax Law;

2128, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

3872, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

4167, by Senator Larkin, an act to amend the General Municipal Law;

And Senate Print 4443, by Senator Bonacic, an act to amend the Tax Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions at the desk?

ACTING PRESIDENT McGEE: Yes.

SENATOR SKELOS: If we could make them at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 4, Senator Golden moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 6896A and substitute it for the identical Senate Bill Number 2668A, Third Reading Calendar 2.

On page 19, Senator Fuschillo moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 9616 and substitute it for the identical Senate Bill Number 6069, Third Reading Calendar 262.

And on page 21, Senator Spano moves to discharge, from the Committee on Labor, Assembly Bill Number 5827 and substitute it for the identical Senate Bill Number 2730A, Third Reading Calendar 274.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time I'd like to adopt the Resolution Calendar, with the exception of Resolutions 3353, 3578, 3579, and 3612.

ACTING PRESIDENT McGEE: All in favor of adopting the Resolution Calendar, with the exceptions of Resolutions 3353, 3578, and 3579, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Also the exception of Resolution 3612.

The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President,

if we could recommit Resolution 3612 to the Committee on Finance.

ACTING PRESIDENT McGEE: So ordered.

SENATOR SKELOS: And at this time, if we could take up Resolution 3353, by Senator Morahan, have it read in its entirety, and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Morahan, Legislative Resolution Number 3353, commemorating the 200th Anniversary of the Independence of Haiti from France.

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to the cultural heritage of the ethnic groups which comprise and contribute to the richness and diversity of the community of the State of New York; and

"WHEREAS, Attendant to such concern, and in keeping with its time-honored traditions, it is the intent of this Legislative Body to commemorate the 200th Anniversary of the Independence of Haiti from

France; and

"WHEREAS, On January 1, 1804, after a prolonged struggle, Haiti proclaimed its independence from France, becoming the second independent state in the Western Hemisphere and the first free black republic in the world; and

"WHEREAS, The celebration of Haitian independence affirms the culture, identity, and self-esteem of a people. It honors a rich heritage and illuminates Haitian history and tradition, as well as the spirit of an indomitable people; and

"WHEREAS, The people of this great state and nation and Haiti enjoy a deep and abiding relationship rooted in kinship and culture, and many New Yorkers proudly trace their own roots to Haiti; and

"WHEREAS, The Anniversary of the Independence of Haiti from France is a time to celebrate the aspirations and values that have been shared with Haitians for generations, and to recognize the countless contributions of Americans and New Yorkers of Haitian descent to every aspect of society; and

"WHEREAS, The State of New York is greatly enriched by its large population of citizens of Haitian ancestry. In New York City alone, the population of New Yorkers of Haitian descent is at least 118,000, according to the 2000 census report, but it is believed to be even higher; and

"WHEREAS, The 200th Anniversary of Haiti's Independence provides an opportunity to recognize the significance of their contributions to the quality and character of life, and, through events and activities, for all people to gain a greater appreciation of Haitian history and traditions, and of the role Haitian-Americans have played and will continue to play in our society; and

"WHEREAS, This Legislative Body is pleased to have this opportunity to recognize such events of significance which foster ethnic pride and exemplify the cultural diversity that represents and strengthens the fabric of the people and of the State of New York; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commemorate

the 200th Anniversary of the Independence of Haiti from France, and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Reverend Dr. Jacques O. D'i Michel, Founder and National Chairman of H.A.V.E.N., Spring Valley, New York; Mr. Harry J. Fouche, Haitian Consul General in New York; and to Haitian/American Voters and Entrepreneurs National (H.A.V.E.N.)."

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

SENATOR MORAHAN: Madam President.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: I'd like to speak on the resolution.

ACTING PRESIDENT McGEE: Senator Morahan, on the resolution.

SENATOR MORAHAN: Twenty-five years before the independence of Haiti, 800 young Haitian descents -- patriots, if you will, landed on the shores with French troops

in Savannah, Georgia, and participated with 4,000 American troops, under the leadership of General Benjamin Lincoln, in the Battle of Savannah, in the freedom fight, the Revolution of this country.

There was one little boy there, a drummer boy, age 12. His name was Henry Christopher. He was a drummer. There's a portrait done by the Reverend Michel that depicts him tending to a mortally wounded American major who was shot and killed in that battle.

That young drummer boy went on to fight again against the British in Pensacola, Florida. And he survived both battles and was destined to become one of the most famous and legendary Haitian leaders in its history. He was, in fact, the George Washington of Haiti.

The Haitian community in America and in New York has long and deep roots with this country and our fight for freedom. And their independence was shown in their desire to free themselves of the French control. And they had that spirit of independence very early on.

So I'm delighted to sponsor this resolution and open it up for the sponsorship of all Senators who wish to be on the resolution. Those who do not want to be the resolution can notify the desk.

But I'm delighted to have the national president of H.A.V.E.N., the Haitian-American voters on a national basis, Jacques Michel, Reverend Jacques Michel, who said our invocation today here with us.

We had some other guests who were expected. The consul general of Haiti was here today, was supposed to be here, but unfortunately, through traffic, through whatever, could not arrive on time. And therefore other things that may be happening back home in Haiti could be a distraction.

So we wish all of our Haitian-Americans well on this very specific and very important date of their independence from France, and to thank them from early on being involved in bringing freedom to our country as well, 25 years before they had their own.

So thank you, Madam President. And

I ask my Senate colleagues to vote unanimously for this resolution.

ACTING PRESIDENT McGEE: Thank you, Senator Morahan.

The resolution is open for cosponsorship. Everyone will be put on as a cosponsor. If you do not wish to be a cosponsor, you should be notify the desk.

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 Kuhl.

SENATOR KUHL: Yes, Madam President. We'd like to announce an immediate meeting of the Labor Committee in the Majority Conference Room, Room 332. So if you could direct the members there, it would be much appreciated.

ACTING PRESIDENT McGEE: Immediate meeting of the Labor Committee in

Room 332.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Could we now take up Resolution 3578, by Senator Hassell-Thompson, ask that the title be read, and move for its adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Hassell-Thompson, Legislative Resolution Number 3578, mourning the death of Tina Sattin, distinguished citizen and devoted member of her community.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Now, in successive order, may we

take up Resolution Number 3579, by Senator Breslin, ask that the title be read, and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Breslin, Legislative Resolution Number 3579, honoring the life of Albany Police Lieutenant John F. Finn.

ACTING PRESIDENT McGEE: Senator Breslin.

SENATOR BRESLIN: Yes. For members of the Senate who do not know, Lieutenant John Finn was wounded on December 23rd and passed away some ten days ago.

Lieutenant Finn, among other things, had set up a child agency within the police department, been voted Policeman of the Year, was a native of Smithtown, Long Island, and left a wife and two young children.

We held a memorial service last Saturday in Albany where thousands and thousands of people came to the Pepsi Arena, joined by over a thousand policemen from all

over the Northeast.

And this resolution is one small part of recognizing Lieutenant Finn and recognizing his surviving family. And I would ask that all others join with me in being placed on the resolution. And those not wishing, of course, can say so at the desk.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Breslin.

The resolution is open for cosponsorship. Everyone will be put on as a cosponsor. If you do not wish to be a cosponsor, you should notify the desk.

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 Kuhl.

SENATOR KUHL: Yes, Madam President. Can we now have the

noncontroversial reading of the calendar, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 71, by Senator Farley, Senate Print 4575, an act to amend the Banking Law, in relation to the powers of banks.

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, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 82, by Senator Maziarz, Senate Print 4987B, an act to amend the Vehicle and Traffic Law, in relation to repeat convictions of alcohol and drug-related offenses.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 109, by Senator Volker, Senate Print 426, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 112, by Senator Marcellino, Senate Print 785,

an act to amend the Vehicle and Traffic Law, in relation to increasing penalties.

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, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 135, 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, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 141, by Senator Padavan, Senate Print 624, an act to amend the Penal Law, in relation to the disposal of allegedly stolen motor vehicles.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 142, by Senator Skelos --

SENATOR SAMPSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 228, by Senator Golden, Senate Print 5872, an act to amend the Penal Law, in relation to

eliminating reference to "deviate sexual intercourse."

SENATOR DIAZ: Explanation.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 242, by Senator Bonacic, Senate Print 5938, an act to authorize the Town Board of the Town of Mamakating, Sullivan County, to dissolve and discontinue.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 262, substituted earlier today by Member of the Assembly Pheffer, Assembly Print Number 9616, an act to amend the General Business Law, in relation to ephedra.

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, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 321, by Senator Seward, Senate Print 5957, an act to amend the Tax Law, in relation to authorizing the County of Schoharie.

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

Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR KUHL: Madam President, would you recognize Senator Duane. I believe he wants to change a vote.

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Thank you, Madam President. May I have unanimous consent to be recorded in the negative on Calendars 71 and 135.

SENATOR KUHL: No objection.

ACTING PRESIDENT McGEE: Without objection.

SENATOR KUHL: Would you recognize Senator Hassell-Thompson, please.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Senator Kuhl.

Madam President, earlier in the session today a resolution, a privileged resolution was read. I apologize for not having been in the chambers. But I do wish to just very quickly thank this body for this

resolution for a woman who gave her life to the theater and to arts, but used that life to educate and to teach reading, self-confidence, and who gave a lot of herself to make the community of Mt. Vernon a better place.

So for that I thank you for accepting this resolution, and would hope that all of you would honor her family by signing onto that resolution. It will mean a great deal to them and to our community as well.

Thank you.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson would like to open this resolution up for cosponsorship. May we please put everyone on as a cosponsor. If someone does not wish to be a cosponsor, they should notify the desk.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. We'd ask the Journal Clerk to put everybody's name on Resolution Number 3578. Except those members who don't wish to be on that resolution, if they would notify the clerk accordingly. Thank you for your direction.

Now, Madam President, may we have the controversial reading of the calendar, please.

ACTING PRESIDENT McGEE: Thank you, Senator Kuhl.

The Secretary will read.

THE SECRETARY: Calendar Number 142, by Senator Skelos, Senate Print 1021A, an act to amend the Criminal Procedure Law, in relation to the period of limitation for the prosecution of sex offenses.

SENATOR LIZ KRUEGER: Madam President, if I could speak briefly on the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I will be supporting this bill, as I supported it last year. But I also felt that we could not let this occasion go by without stating yet again for the record what a shame that we have still not come to an agreement between the two houses on a clergy reporting bill that would ensure that children are protected under all circumstances where

they might be the victims of abuse.

This bill will extend the statute of limitations on sex abuse, which is something that I know we support. But until we follow through and come to an agreement between the two houses on the differences we have on the clergy reporting bill -- three years, now, after we started to deal with this issue -- we will still have failed to do our job in addressing the concerns of large numbers of victims of sexual abuse in the state of New York.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Krueger.

Is there any other Senator who wishes to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 228, by Senator Golden, Senate Print 5872, an act to amend the Penal Law, in relation to eliminating reference to "deviate sexual intercourse."

SENATOR SAMPSON: Explanation.

ACTING PRESIDENT McGEE: Senator Golden will be right with us. Hold on just one moment.

SENATOR KUHL: Madam President, I understand the explanation is satisfactory.

Could we read the last section, please.

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, 56.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl, that completes the

controversial reading of the calendar.

SENATOR KUHL: Yes, Madam President. Sorry for the delay. We're just trying to keep things moving here.

Could we return to the order of reports of standing committees. It's my understanding that the report of the Labor Committee, which just concluded its session in the Majority Conference Room, is at the desk. And I ask the Secretary to read.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Velella, from the Committee on Labor, reports the following bills:

Senate Print 108, by Senator Velella, an act to amend the Labor Law;

2683A, by Senator Mendez, an act to amend the Workers' Compensation Law;

3444, by Senator Velella, an act to amend the Labor Law;

3607, by Senator Spano, an act to amend the Labor Law;

And Senate Print 4828, by Senator

Velella, an act to amend the Labor Law.

All bills ordered direct to third reading.

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

Senator Kuhl.

SENATOR KUHL: Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: There is no housekeeping at the desk, Senator Kuhl.

SENATOR KUHL: That being the situation, Madam President, I believe that business is concluded for the day.

I move that we adjourn until Monday, March 1st, at 3:00 p.m., with intervening days to be legislative days.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Monday, March 1st, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:45 p.m., the Senate adjourned.)