NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 8, 2009

3:15 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BRESLIN: The Senate will please come to order.

I ask all to rise and recite with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

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

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

ACTING PRESIDENT BRESLIN: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Sunday, June 7, the Senate met pursuant to adjournment. The Journal of Saturday, June 6, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BRESLIN: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's a report of the Finance Committee at the desk.

ACTING PRESIDENT BRESLIN: Senator Klein, there is a report of the Finance Committee here at the desk.

The Secretary will read.

THE SECRETARY: Senator Kruger, from the Committee on Finance, reports the following nominations.

As chair and member of the State Board of Parole, Andrea Evans, of Jamaica.

ACTING PRESIDENT BRESLIN: Senator Kruger.

SENATOR CARL KRUGER: Please move the nomination.

ACTING PRESIDENT BRESLIN: Are there any other Senators wishing to be heard?

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank

you, Mr. President.

I rise to congratulate the Governor on this choice of the chair of the Board of Parole.

We had the opportunity in our committee today to talk with and to share concerns that those of us have who are a part of the Crime Victims, Crime and Corrections Committee. And I think to the satisfaction of all, Ms. Evans was more than able to answer our concerns.

Her lifelong support of a safe community as well as a just one is commendable, and I'm very pleased to place her name in nomination and support the Governor in his choice for someone that I think will bring a breath of fresh air to a system that needs to be really looked at seriously and carefully.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Hassell-Thompson.

Are there any other Senators wishing to be heard?

The question, then, is on the motion to confirm the nomination of Andrea Evans. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The motion carries.

The nomination is hereby confirmed.

Andrea Evans is in the gallery. Congratulations.

(Applause.)

ACTING PRESIDENT BRESLIN: The Secretary will continue to read.

THE SECRETARY: As members of the Mental Health Services Council, Mantosh J. Dewan, M.D., of Syracuse; Mark H. Fuller, of LeRoy; Diane Lang, of Massapequa; Steven J. Miccio, of Fishkill; Grant Mitchell, M.D., of Goldens Bridge, and Stephanie Orlando, of Albany.

As a member of the Board of

Visitors of the Bernard M. Fineson Developmental Disabilities Services Office, Marla L. Litvin, of Douglaston.

As a member of the Board of Visitors of the Metro New York Developmental Disabilities Services Office, Willie Mae Goodman, of New York City.

And as a member of the Board of Visitors of the St. Lawrence Psychiatric Center, Edward J. Knight, of Colton.

ACTING PRESIDENT BRESLIN: Senator Kruger.

SENATOR CARL KRUGER: Please move these nominations.

ACTING PRESIDENT BRESLIN: Are there any other Senators wishing to be heard on the nominations?

The question is on the motion to confirm the nomination of Mantosh J. Dewan, M.D., Mark H. Fuller, Diane Lang, Steven J. Miccio, Grant Mitchell, M.D., Stephanie Orlando, Marla L. Litvin, Willie Mae Goodman, and Edward J. Knight.

All those in favor please signify

by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The motion carries. The nominations are hereby confirmed.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT BRESLIN: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, I've just handed up a privileged resolution at the desk, and I ask that it be read in its entirety and this body move to adopt it.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: By Senators

Libous, Monserrate and Maziarz, providing for the election of Pedro Espada, Jr., as Temporary President of the Senate and Dean G. Skelos as Vice President Pro Tem and Majority Leader.

SENATOR KLEIN: Mr. President --

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: -- I move that we stand at ease.

SENATOR LIBOUS: Excuse me, Mr. President. I believe I have the floor, and the Senate cannot stand at ease at this point in time.

ACTING PRESIDENT BRESLIN: The Senate will stand at ease.

SENATOR LIBOUS: Immediate vote on the motion to stand at ease, Mr. President. By a show of hands, an immediate vote.

I have the floor, and you cannot stand at ease. I ask for an immediate vote, Mr. President, by a show of hands, on those people who wish to stand at ease.

ACTING PRESIDENT BRESLIN: --

Senator Libous.

Senator Klein.

SENATOR KLEIN: Mr. President, I move that we stand at ease.

SENATOR LIBOUS: By a show of hands, I would like to move for a vote on that motion.

SENATOR KLEIN: Let's ring the bell and get everybody in here.

SENATOR LIBOUS: Mr. President, the bell does not need to be rung. I have the floor. I have the floor. You cannot move to adjourn. You cannot move to be at ease. Let's take the motion to an immediate vote.

ACTING PRESIDENT BRESLIN: A moment, please, Senator.

SENATOR LIBOUS: Mr. President, are we going to vote on the motion on the floor?

ACTING PRESIDENT BRESLIN: Again, one moment, Senator Libous.

SENATOR LIBOUS: Mr. President, the house is not at ease. The house is not in recess. There's a motion by Senator Libous on

the floor, and I would like to take that motion to a vote.

ACTING PRESIDENT BRESLIN: We will address the motion in due course, Senator Libous.

SENATOR LIBOUS: It's very simple, Mr. President. We just need to take it to the vote.

ACTING PRESIDENT BRESLIN: Senator Libous, we are discussing what the motion was, whether it was privileged or not.

SENATOR LIBOUS: Mr. President, I just want to remind you, sir, as I'm sure you're aware, that the motion is before the body at this time.

ACTING PRESIDENT BRESLIN: Senator Libous --

SENATOR LIBOUS: Mr. President --

ACTING PRESIDENT BRESLIN: -- the privileged motion is out of order.

SENATOR LIBOUS: No, Mr. President --

ACTING PRESIDENT BRESLIN: Senator Libous.

SENATOR LIBOUS: I appeal the ruling of the chair, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Appeal the ruling of the chair, Mr. President.

ACTING PRESIDENT BRESLIN: The question before the house is whether the decision of the chair shall stand as the judgment of the Senate.

SENATOR LIBOUS: I want an immediate vote on the appeal of the ruling of the chair by a show of hands.

ACTING PRESIDENT BRESLIN: All those in favor of overruling the decision of the chair please signify by raising your hands.

(Pause.)

SENATOR LIBOUS: Results?

Mr. President, may we have the results?

ACTING PRESIDENT BRESLIN: One minute, Senator Libous.

SENATOR LIBOUS: Clerk, announce

the results.

Mr. President, there are a majority of votes, 32, on the floor, to be exact. May we please have a ruling, an announcement on the vote. The requested one minute has been beyond one minute.

(Pause.)

SENATOR LIBOUS: Mr. President. Mr. President, there are 32 votes before the house.

(Pause.)

SENATOR LIBOUS: Mr. President, we are not at ease, and there are 32 votes. And I would ask you to read the results, please, or step away from the chair.

ACTING PRESIDENT BRESLIN: One moment, Senator Libous. Another moment.

(Pause.)

SENATOR LIBOUS: Mr. President, I've waited patiently for several minutes. It's only a matter of counting, sir. The votes are on the floor to override the ruling of the chair. We need to go to the motion.

(Pause.)

SENATOR LIBOUS: Mr. President, are you going to read the results?

Mr. President, if you do not read the results, we may choose to remove you from the chair. According to Mason's, when the presiding officer refuses to put a motion which is properly before the body -- are you going to give us the results, Mr. President?

The proper procedure is to select at once a temporary presiding officer to put the motion to a vote.

(Pause.)

SENATOR LIBOUS: Mr. President, you have had ample time to make a decision. According to Mason's, I am asking that you are removed from the chair.

And at this point in time, I would appoint Senator George Winner to go to the chair.

All in favor of Senator Winner going to the chair, stand and raise your hands. As the Temporary President.

SENATOR PARKER: I don't recognize --

SENATOR LIBOUS: Mr. President -- Mr. President, I have the -- Mr. President, I have the floor. You have been removed from the chair.

As a vote of 32, Senator George Winner will now take the chair.

SENATOR PARKER: May I ask a question?

ACTING PRESIDENT BRESLIN: Senator Libous, the Secretary will read the results.

SENATOR LIBOUS: Thank you, Mr. President.

THE SECRETARY: Ayes, 32. Nays, 30.

SENATOR LIBOUS: Mr. President, I ask --

(Uproar.)

ACTING PRESIDENT BRESLIN: Wait a minute. Wait a minute. Be quiet.

SENATOR LIBOUS: I have the floor, Mr. President.

SENATOR KLEIN: Mr. President, I move we adjourn. The resolution is not

germane --

SENATOR LIBOUS: Immediate vote on adjournment. The resolution is pending.

MULTIPLE REPUBLICAN SENATORS: Roll call. Roll call.

SENATOR LIBOUS: Roll call on the vote.

(Uproar.)

(The Majority Democrats left the chamber and the public address system was disconnected at 3:38.)

SENATOR LIBOUS: I now make the motion that Senator George Winner serve as the president of this body. All in favor of the motion. Second the motion?

MULTIPLE REPUBLICAN SENATORS: Second.

SENATOR LIBOUS: All in favor of the motion indicate by raising their hands.

(Hands raised.)

SENATOR LIBOUS: Thirty-two votes; the motion is passed. Senator Winner will take the chair.

Mr. President, is there a quorum in

the house? Can I ask for a quorum call?

ACTING PRESIDENT WINNER: The Secretary will read the quorum call. The Secretary will read for the quorum call.

THE SECRETARY: Senator Adams.

(No response.)

THE SECRETARY: Senator Addabbo.

(No response.)

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Here.

THE SECRETARY: Senator Aubertine.

(No response.)

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Here.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Here.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Here.

THE SECRETARY: Senator Flanagan.

SENATOR FLANAGAN: Here.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Here.
THE SECRETARY: Senator Foley.
(No response.)
THE SECRETARY: Senator Espada.
SENATOR ESPADA: Here.
THE SECRETARY: Senator Duane.
(No response.)
THE SECRETARY: Senator Dilan.
(No response.)
THE SECRETARY: Senator Diaz.
(No response.)
THE SECRETARY: Senator Golden.
SENATOR GOLDEN: Here.
THE SECRETARY: Senator Griffo.
SENATOR GRIFFO: Here.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Here.
THE SECRETARY: Senator Hassell-Thompson.
(No response.)
THE SECRETARY: Senator Huntley.
(No response.)
THE SECRETARY: Senator C. Johnson.

(No response.)

THE SECRETARY: Senator O. Johnson.

SENATOR OWEN JOHNSON: Here.

THE SECRETARY: Senator Klein.

(No response.)

THE SECRETARY: Senator L. Krueger.

(No response.)

THE SECRETARY: Senator C. Kruger.

(No response.)

THE SECRETARY: Senator Lanza.

SENATOR LANZA: Right here.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Here.

THE SECRETARY: Senator LaValle.

SENATOR LaVALLE: Here.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Here.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Here.

THE SECRETARY: Senator Little.

SENATOR LITTLE: Here.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Here.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Here.

THE SECRETARY: Senator McDonald.

SENATOR McDONALD: Here.

THE SECRETARY: Senator Monserrate.

SENATOR MONSERRATE: Here.

THE SECRETARY: Senator Montgomery.

(No response.)

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Here.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Here.

THE SECRETARY: Senator Onorato.

(No response.)

THE SECRETARY: Senator Oppenheimer.

(No response.)

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Here.

THE SECRETARY: Senator Parker.
(No response.)
THE SECRETARY: Senator Perkins.
(No response.)
THE SECRETARY: Senator Ranzenhofer.
SENATOR RANZENHOFER: Here.
THE SECRETARY: Senator Robach.
SENATOR ROBACH: Here.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Here.
THE SECRETARY: Senator Sampson.
(No response.)
THE SECRETARY: Senator Savino.
(No response.)
THE SECRETARY: Senator Schneiderman.
(No response.)
THE SECRETARY: Senator Serrano.
(No response.)
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Here.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Here.

THE SECRETARY: Senator Smith.
(No response.)
THE SECRETARY: Senator Squadron.
(No response.)
THE SECRETARY: Senator Stachowski.
(No response.)
THE SECRETARY: Senator Stavisky.
(No response.)
THE SECRETARY: Senator Stewart-Cousins.
(No response.)
THE SECRETARY: Senator Thompson.
(No response.)
THE SECRETARY: Senator Valesky.
(No response.)
THE SECRETARY: Senator Volker.
SENATOR VOLKER: Here.
THE SECRETARY: Senator Winner.
SENATOR WINNER: Here.
THE SECRETARY: Senator Young.
SENATOR YOUNG: Here.
ACTING PRESIDENT WINNER: The Secretary will announce the results of the

quorum call.

SENATOR CARL KRUGER: Present.

ACTING PRESIDENT WINNER: Senator Diaz, are you present?

SENATOR DIAZ: I'm here but not voting.

ACTING PRESIDENT WINNER: Let the record reflect that Senator Diaz is present.

SENATOR LIBOUS: Is there a quorum, Mr. President?

ACTING PRESIDENT WINNER: A quorum is present, Senator Skelos.

Senator Libous.

SENATOR LIBOUS: Mr. President, the motion to adjourn was never properly voted on. We need now to take up that motion whether or not this body should adjourn or not.

So if you could take that up. And I would like it to show by a show of hands whether or not this body should adjourn.

ACTING PRESIDENT WINNER: There is a motion pending on the floor to adjourn. All those in favor of adjourning signify by

raising your hand.

(No hands raised.)

ACTING PRESIDENT WINNER: The motion fails.

The Senate is not adjourned. The Senate is in session.

SENATOR LIBOUS: Mr. President, I have a resolution before the desk. I ask that it be read in its entirety and that this body take it up for an immediate vote.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: By Senators Libous, Monserrate and Maziarz, providing for the election of Pedro Espada, Jr., as Temporary President of the Senate and Dean G. Skelos as Vice President Pro Tem and Majority Leader for the years 2009-2010.

"RESOLVED, That Senator Pedro Espada, Jr., be, and he hereby is elected Temporary President of the Senate for the remainder of the years 2009-2010 and will designate the authority to appoint members of the Rules Committee to the Vice President; and

"RESOLVED, That Senator Dean G. Skelos be, and he hereby is elected the Vice President Pro Tempore for the remainder of the years 2009-2010; and who shall also assume the duties of the Majority Leader for the remainder of the years 2009-2010 upon the passage of a resolution approving new rules of the Senate."

ACTING PRESIDENT WINNER: The question is on the resolution.

SENATOR LIBOUS: I ask that there be a vote by a show of hands on the resolution, Mr. President.

ACTING PRESIDENT WINNER: All those in favor of the resolution please signify by raising your hand.

In relation to the resolution before the house, the clerk will announce the results.

THE SECRETARY: Ayes, 32.

ACTING PRESIDENT WINNER: The resolution is adopted.

SENATOR LIBOUS: Mr. President, I now ask that Senator DeFrancisco swear in the

new Temporary President, Pedro Espada, and the new Vice President, Majority Leader Dean Skelos.

SENATOR DeFRANCISCO: First, Senator: I, Pedro Espada, Jr. --

SENATOR ESPADA: I, Pedro Espada, Jr. --

SENATOR DeFRANCISCO: -- do solemnly swear --

SENATOR ESPADA: -- do solemnly swear --

SENATOR DeFRANCISCO: -- that I will support the Constitution of the United States --

SENATOR ESPADA: -- that I will support the Constitution of the United States --

SENATOR DeFRANCISCO: -- and the Constitution of the State of New York --

SENATOR ESPADA: -- and the Constitution of the State of New York --

SENATOR DeFRANCISCO: -- and that I will faithfully discharge the duties of the office of the Temporary President --

SENATOR ESPADA: -- and that I will faithfully discharge the office of the duties of the Temporary President --

SENATOR DeFRANCISCO: -- of the Senate, according to the best of my abilities --

SENATOR ESPADA: -- of the Senate, according to the best of my abilities --

SENATOR DeFRANCISCO: -- so help me God.

SENATOR ESPADA: -- so help me God.

ACTING PRESIDENT WINNER: Congratulations.

(Applause.)

SENATOR DeFRANCISCO: Senator Skelos.

I, Dean Skelos --

SENATOR SKELOS: I, Dean G. Skelos --

SENATOR DeFRANCISCO: -- do solemnly swear --

SENATOR SKELOS: -- do solemnly

swear --

SENATOR DeFRANCISCO: -- that I will support the Constitution of the United States --

SENATOR SKELOS: -- that I will support the Constitution of the United States --

SENATOR DeFRANCISCO: -- and the Constitution of the State of New York --

SENATOR SKELOS: -- and the Constitution of the State of New York --

SENATOR DeFRANCISCO: -- and that I will faithfully discharge the duties --

SENATOR SKELOS: -- and that I will faithfully discharge the duties --

SENATOR DeFRANCISCO: -- of the offices of Vice President Pro Tem and Majority Leader --

SENATOR SKELOS: -- of the offices of Vice President Pro Tem and Majority Leader --

SENATOR DeFRANCISCO: -- of the Senate --

SENATOR SKELOS: -- of the

Senate --

SENATOR DeFRANCISCO: --

according to the best of my abilities --

SENATOR SKELOS: -- according to the best of my abilities --

SENATOR DeFRANCISCO: -- so help me God.

SENATOR SKELOS: -- so help me God.

(Applause.)

SENATOR LIBOUS: Mr. President, would you please call on Senator Espada, please.

ACTING PRESIDENT WINNER: Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

Mr. President, I hereby appoint Senator Winner as the presiding officer and designate that the Vice President appoint the members of the Rules Committee. I believe that he has new assignments that he will now hand up, sir.

ACTING PRESIDENT WINNER: Thank

you, Senator Espada.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could have the immediate meeting of the Rules Committee in the well of the Senate chamber right here.

ACTING PRESIDENT WINNER: The list of the members of the Rules Committee has been handed up.

SENATOR LIBOUS: Mr. President, could you please read the members of the Rules Committee.

ACTING PRESIDENT WINNER: Thank you, Senator Libous.

A list of the members of the Rules Committee has been handed up to the Secretary for filing with the Journal clerk.

The Secretary will read the names of the members of the Rules Committee.

THE SECRETARY: Appointments to the Rules Committee.

Chairperson: Skelos.

Members: Espada, Stachowski, Montgomery, Duane, Hassell-Thompson,

L. Krueger, Parker, Dilan, Klein, Valesky, Monserrate, DeFrancisco, O. Johnson, Padavan, Volker, Farley, LaValle, Seward, Hannon, Larkin, Saland, Flanagan and Bonacic.

ACTING PRESIDENT WINNER: Senator Libous.

SENATOR LIBOUS: There will be an immediate meeting of the Rules Committee in the front of the chamber, the well of the Senate chamber.

ACTING PRESIDENT WINNER: The Rules Committee will meet immediately in the well in the front of the chamber.

(Pause.)

SENATOR LIBOUS: Mr. President, I believe there's a report of the Rules Committee at the desk. I ask that it be read and adopted.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: By Senator Skelos, resolution to adopt the rules of the Senate for the remainder of the 2009-2010 session.

SENATOR LIBOUS: Mr. President, can we have some order so that we can hear the Secretary.

ACTING PRESIDENT WINNER: The Senate will come to order.

Senator Libous, is there a motion to accept the Rules report?

SENATOR LIBOUS: I move for the acceptance of the Rules report.

ACTING PRESIDENT WINNER: All those in favor of accepting the Rules report signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT WINNER: Opposed, nay.

(No response.)

ACTING PRESIDENT WINNER: The Rules report is adopted.

SENATOR LIBOUS: There's a resolution at the desk. I ask that you read its title and move for immediate adoption, please.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: By Senator Skelos, legislative resolution to adopt the rules of the Senate for the remainder of the years 2009-2010 session.

ACTING PRESIDENT WINNER: Senator Libous.

SENATOR LIBOUS: Let's vote on the motion, Mr. President.

ACTING PRESIDENT WINNER: There's a resolution before the house. All those in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT WINNER: Opposed, nay.

(No response.)

ACTING PRESIDENT WINNER: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Was it adopted?

ACTING PRESIDENT WINNER: Yes, the resolution has been adopted.

SENATOR LIBOUS: Mr. President, I now ask that we lay aside the entire active

list for the day.

ACTING PRESIDENT WINNER: So ordered.

SENATOR LIBOUS: Mr. President, I'm handing up a statement that all committee appointments are hereby revoked and that all new assignments will be made on Wednesday.

ACTING PRESIDENT WINNER: So ordered.

SENATOR LIBOUS: Mr. President, I move for adjournment.

Oh, and also committee assignments and leadership assignments be revoked.

ACTING PRESIDENT WINNER: So ordered and entered into the Journal.

SENATOR LIBOUS: I move that we adjourn until Wednesday, June 10th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT WINNER: The Senate stands adjourned till Wednesday at 3:00 p.m., intervening days being legislative days.

Thank you, Senator Libous.

(Whereupon, at 3:55 p.m., the Senate adjourned.)