NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 4, 2010

11:23 a.m.

REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

I ask everyone present to please rise and recite with me the Pledge of Allegiance.

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

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

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

ACTING PRESIDENT VALESKY: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Wednesday, March 3, the Senate met pursuant to adjournment. The Journal of Tuesday, March 2, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator Squadron, on page 16 I offer the following amendments to Calendar Number 174, Senate Print Number 5577, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT VALESKY: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, can you please recognize Senator Libous.

ACTING PRESIDENT VALESKY: Certainly.

Senator Libous.

SENATOR LIBOUS: Mr. President, do you recognize me?

ACTING PRESIDENT VALESKY: I

certainly do.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Volker, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. And that would be Senate Print 6142, Mr. President.

ACTING PRESIDENT VALESKY: So ordered.

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT VALESKY: Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's some substitutions at the desk.

ACTING PRESIDENT VALESKY: There are.

The Secretary will read.

THE SECRETARY: On page 13, Senator L. Krueger moves to discharge, from the Committee on Judiciary, Assembly Bill Number 5985A and substitute it for the identical Senate Bill Number 3070A, Third

Reading Calendar 124.

ACTING PRESIDENT VALESKY: Substitution ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe Senator Smith has a resolution at the desk. I ask that the title of the resolution be read and move for its immediate adoption and allow Senator Smith to speak on his said resolution.

ACTING PRESIDENT VALESKY: Senator Klein, has this resolution been deemed privileged and submitted by the office of the Temporary President?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT VALESKY: I assumed it was.

The Secretary will read.

THE SECRETARY: By Senator Smith, legislative resolution commemorating the 35th annual Queens County St. Patrick's Day Parade, to be held on Saturday, March 6, 2010.

ACTING PRESIDENT VALESKY: Senator Smith, on the resolution.

SENATOR SMITH: Thank you very much, Mr. President.

My colleagues, I rise today -- as you know, in the last couple of weeks we've been honoring different groups throughout our state. We did the Dominican group, we've done Koreans. And today, Mr. President, I rise to talk about a proud group of immigrants that have come to this country who have done this country proud, and that is the Irish community.

They have crossed the shores with hope, like so many other different ethnic groups in our state. The Irish community, Irish-Americans are one of the oldest, accomplished groups in the State of New York. And as many other people know, that they have done tremendous to advance the cause of the State of New York.

On March 6th, this Saturday, there will be the 35th anniversary of the Queens St. Patrick's Day Parade. It kicks off the Irish season in the State of New York. We'll be honoring Patrick McGowan, who is the grand marshal of the parade, along with Aine

Sheridan, another grand marshal.

And I'm also very proud that one of our esteemed colleagues is one of the grand marshals who will in be that parade, and I look forward to sharing time with him, and that is Senator Marty Golden. Senator Marty Golden will be a grand marshal in that parade, and I will make sure that he gets the hospitality that Queens is known for.

There are others who are honored: Deputy Grand Marshals Judge Ingram, Martin Dunne, William Glynn, Joe Lynch, Ed Valentine, Patrick Sullivan, Maureen O'Malley, and Kathy Clarke.

We know throughout our history that the Irish-Americans have done quite a bit in the arts and sciences, major roles in our police department as well as our fire department. We know that there have been difficult times faced by many. St. Patrick faced many of those tough challenges, as we do today, but because of his unrelenting faith and commitment he was able to achieve quite a bit.

Mr. President, I am proud today to

stand up here to honor the Irish-Americans of the State of New York, their contribution to the state, and again proud to be in the borough that will kick off the Irish-American community celebration of St. Patrick's Day on this Saturday in Queens County.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Smith.

Are there any other Senators who wish to be heard?

Seeing none, the question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

Senator Smith has asked that the resolution be open for cosponsorship. Any Senator wishing not to cosponsor the resolution please notify the desk.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe Senator DeFrancisco has four resolutions at the desk. I ask that the titles of the resolutions be read and move for their immediate adoption.

ACTING PRESIDENT VALESKY: Senator Klein, have these resolutions been deemed privileged and submitted by the office of the Temporary President?

SENATOR KLEIN: Yes, they have, Mr. President.

ACTING PRESIDENT VALESKY: The Secretary will read the titles of the four resolutions.

THE SECRETARY: By Senator DeFrancisco, legislative resolution congratulating the Baldwinsville Football Team and Coach Carl Sanfilippo upon the occasion of capturing the 2009 Section III Class AA Championship.

By Senator DeFrancisco, legislative resolution congratulating the Baldwinsville Girls Volleyball Team and Coach Mary Jo Cerqua upon the occasion of capturing the 2009 Section III Class AA Championship and the 2009

Class AA Regional Title.

By Senator DeFrancisco, legislative resolution congratulating the Baldwinsville Boys Volleyball Team and Coach Dan Hyland upon the occasion of capturing the 2009 Section III Class AA Title.

And by Senator DeFrancisco, legislative resolution congratulating the Baldwinsville Boys Soccer Team and Coach Tim Scheemaker upon the occasion of capturing the 2009 Section III Class AA Championship.

ACTING PRESIDENT VALESKY: Senator DeFrancisco, on the resolutions.

SENATOR DeFRANCISCO: Thank you very much.

Before we came out on the floor today, I had a conversation with Senator Maziarz from Niagara Falls, who's to my immediate left, and I apologized to him because he has one championship team come every 15 years and we keep coming back from Central New York with championship teams after championship teams.

But this is a first, even for the great people and athletes of Central

New York -- namely, having four championship teams out of one school, out of one Senate district. And they're all here in the gallery.

And let me just start very briefly saying a few brief words on each one.

The football team had an 11 and 1 record in their championship season as Section III champions, and an 11 and 1 record in an extremely competitive, the most competitive league of all leagues, the toughest league. And they did an incredible job, an 11 and 1 record.

Coach Carl Sanfilippo I know is quite a taskmaster. His reputation precedes him. But in order to follow the directions of a good coach, you need good solid kids, good people that know the importance of working together.

And working together is something that you will find will help you all during life. If we could only work together in this chamber as well as you work together on the football field, we'd have a much better legislative body.

That team also had seven All-League First Team players, which is truly, truly remarkable. And we congratulate you.

In addition to the football team, we have a resolution for the boys volleyball team -- a 19 and 1 record, five All-League First Team members, a team that obviously ran over its opposition to its title.

Same thing -- all of you, in each of the teams, so I don't repeat myself, I played baseball in high school -- oh, by the way, they beat my team, my CBA team, twice this year. Despite that, we're honoring them today.

But while I played baseball at CBA and then in college at Syracuse University, I'll tell you one thing. Look to your left and your right. You will be friends with these people your entire life. You'll think back about these championship days and how great it was to be part of what you've been a part of.

So you're extremely fortunate. Me, at my age, a very old age -- but still very much in shape --

(Laughter.)

SENATOR DeFRANCISCO: -- I still am best friends with every single person that we played ball with over the many years. And here this team had five All-League players.

Now, I hope I don't get out of order here, but we also have the championship from the girls volleyball team. They had five All-League players. That was the 19 and 1 team -- I may have misspoke before -- the girl's volleyball team.

The boys volleyball team, also they had an 18 and 1 record, three All-League players. Same things goes to them, how wonderful they've done.

And then the soccer team, what was your record? Pardon me?

GALLERY MEMBER: Fourteen, five, and zero.

SENATOR DeFRANCISCO: Okay, you didn't remember? But you won the sectional title. You might want to study a little more so you do a little bit better in quizzes in open public.

(Laughter.)

SENATOR DeFRANCISCO: But the message is very clear. We have a special school with special coaches and special young people that are going to be the leaders of tomorrow.

We congratulate you. We wish you the best of luck in all your future endeavors. And we hope you enjoy your day here in Albany being honored by the New York State Senate.

Thank you very much.

ACTING PRESIDENT VALESKY: Thank you, Senator DeFrancisco.

Senator Maziarz, on the resolutions.

SENATOR MAZIARZ: Thank you very much. Thank you very much, Mr. President.

I am the aforementioned Senator Maziarz, and I represent the City of North Tonawanda, the North Tonawanda Lumberjacks that were the Class A State Champion this year.

And Senator DeFrancisco is absolutely right. It only happens in North Tonawanda about once every 15 years. But in North Tonawanda, it is 85 degrees 365 days a

year, and you can't say that about Baldwinsville, can you?

(Laughter.)

SENATOR MAZIARZ: Thank you very much, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Maziarz.

Are there any other Senators who wish to be heard?

Seeing none, the question is on the resolutions. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolutions are adopted.

Senator DeFrancisco has indicated he'd like to open up all four resolutions to cosponsorship. Any Senator wishing not to cosponsor should notify the desk.

Congratulations to the Boys and Girls Volleyball Teams, the Boys Soccer Team, and the Football Team from Baldwinsville.

(Applause.)

ACTING PRESIDENT VALESKY: Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we please move to a reading of the calendar.

ACTING PRESIDENT VALESKY: The Secretary will proceed with the reading of the active bills on Senate Calendar Number 16.

THE SECRETARY: Calendar Number 33, by Senator L. Krueger, Senate Print --

SENATOR KLEIN: Lay the bill aside for the day.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 43, by Senator Stachowski, Senate Print 1716A --

SENATOR KLEIN: Lay the bill aside for the day, please.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 107, by Member of the Assembly Weinstein, Assembly Print Number 2575, an act to amend

the General Municipal Law, in relation to establishing criteria.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 108, by Senator Maziarz, Senate Print 1055B, an act to amend the Banking Law, in relation to preauthorized electronic --

SENATOR LIBOUS: Lay it aside for the day, please.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 118, by Senator Bonacic, Senate Print 6276, an act to amend Section 3 of Part NN of Chapter 57 of the Laws of 2008.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 121, by Senator LaValle, Senate Print 1075A, an act to amend the Real Property Law, in relation to including.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number

124 --

SENATOR KLEIN: Lay the bill aside for the day, please.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 131, by Senator Schneiderman, Senate Print 4256, an act to amend the Civil Practice Law and Rules, in relation to disclosure.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of January next succeeding.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 131: Ayes, 55. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 134, by Senator Fuschillo, Senate Print 46A, an act to amend the Vehicle and Traffic Law, in relation to persons authorized.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Little, to explain her vote.

SENATOR LITTLE: Thank you, Mr. President.

I would really like to thank Senator Fuschillo for putting forth this bill. This has been passed in the Senate before, and I am pleased that it's reached the floor and will be passed today.

The genesis of this bill came from an incident that happened in Lake Placid, New York, in 2002. Jack Shea, who was commonly referred to as "Mr. Lake Placid," was an Olympic Gold Medalist winner in the 1932 Olympics. Born and raised in Lake Placid, the '32 Olympics took place in Lake Placid, and Jack Shea won the first Gold Medal for speed

skating in that event.

In January of 2002, Jack Shea, at the age of 91, at 4 o'clock in the afternoon was driving his car just through the village and was anticipating his grandson competing in the 2002 Winter Olympics in the skeleton. Jack Shea's life was cut short. He was hit when a driver came across, hit him head-on.

The driver was intoxicated or believed to be intoxicated. The police ordered blood work. The blood work showed above a .08 content. But because there was no physician supervising at that clinic -- which is the Adirondack Medical Center -- in their clinic at that particular time, the results of that test were thrown out and there was never any prosecution in the case.

Jack Shea's grandson went on and won the Gold Medal and had a card, his grandfather's Olympic card, attached inside his helmet. It was a very emotional time. It was a very sad time to think that Jack Shea didn't -- needlessly, didn't live through this exciting time in the life of the Shea family.

So thank you for passing this bill.

I look forward to seeing it passed in the Assembly and being signed into law.

Thank you.

ACTING PRESIDENT VALESKY: Senator Little to be recorded in the affirmative.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, quickly, I just want to thank my colleagues for their support and Senator Little for her comments.

What this bill does is it removes an unnecessary restriction that is allowing drunk drivers, even those that kill innocent victims, to escape prosecution. We've heard the case here, and it's happening throughout the state.

We have to continue our fight to rid our streets of drunk drivers. This is just another step in the battle.

Thank you very much, Mr. President.

ACTING PRESIDENT VALESKY: Senator Fuschillo to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 55. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 144, by Senator Young, Senate Print 2434, an act to amend the Agriculture and Markets Law, in relation to game bird breeding.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 149, by Senator Klein --

SENATOR KLEIN: Lay the bill aside for the day.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number

151, by Senator Breslin, Senate Print 2088A, an act to amend the Insurance Law and the Civil Practice Law and Rules, in relation to standard fire insurance policies.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 156, by Member of the Assembly Cahill, Assembly Print Number 602, an act to amend the Criminal Procedure Law, in relation to execution of bench warrants.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 161, by Senator Stewart-Cousins, Senate Print 5600B, an act to amend the General Municipal Law and the Education Law, in relation to information technology.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 165, by Senator Hannon, Senate Print 1990, an act to amend the Public Health Law, in relation to witnesses to a health care proxy.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: This bill would reduce the number of witnesses to a healthcare proxy from one two to one.

I just think the importance of a healthcare proxy, especially to people who may become later incapacitated and not make the decision -- that's the purpose for the proxy -- that we've got to be very careful that that's the person's signature and that's the person's desire.

I'm hesitant to reduce the number of witnesses from two to one; that's why I'm voting no.

ACTING PRESIDENT VALESKY: Senator DeFrancisco to be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 165 are Senators Adams, DeFrancisco and Hassell-Thompson.

Ayes, 52. Nays, 3.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 168, by Senator Klein, Senate Print 4903, an act to amend the Vehicle and Traffic Law, in relation to non-divisible load permits.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 171, by Senator Savino, Senate Print 3511A, an act to amend the Retirement and Social Security Law, in relation to increasing.

ACTING PRESIDENT VALESKY: Read

the last section.

THE SECRETARY: Section 3. This act shall take effect June 30, 2010.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 179, by Senator Leibell, Senate Print 6108B, an act in relation to the alienation of certain parklands.

ACTING PRESIDENT VALESKY: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is passed.

Senator Klein, that completes the

reading of the active bills on Senate Calendar Number 16.

SENATOR KLEIN: Mr. President, is there any further business at the desk?

ACTING PRESIDENT VALESKY: The desk is clear.

SENATOR KLEIN: There being none, Mr. President, I move that we adjourn until Monday, March 8th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT VALESKY: On motion, the Senate stands adjourned until Monday, March 8th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:46 a.m., the Senate adjourned.)