NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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February 7, 2011

3:07 p.m.

REGULAR SESSION

SENATOR JOHN J. FLANAGAN, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FLANAGAN: The Senate will come to order.

I ask everyone to please rise and repeat the Pledge of Allegiance.

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

ACTING PRESIDENT FLANAGAN: In the absence of clergy, I would respectfully ask that everyone observe a moment of silence.

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

ACTING PRESIDENT FLANAGAN: The reading of the Journal.

THE SECRETARY: In Senate, Sunday, February 6, the Senate met pursuant to adjournment. The Journal of Saturday, February 5, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Secretary will read the

substitution.

THE SECRETARY: On page 9, Senator Maziarz moves to discharge, from the Committee on Energy and Telecommunications, Assembly Bill Number 261 and substitute it for the identical Senate Bill Number 215, Third Reading Calendar 35.

ACTING PRESIDENT FLANAGAN: Substitution so ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, on behalf of Senator Maziarz, on page 10 I offer up the following amendments to Calendar Number 36, and it is Senate Print 607A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FLANAGAN:

Senator Libous, the amendments are received and the bill will retain its place on the Third Reading Calendar.

SENATOR LIBOUS: And I would ask you to please call on Senator Breslin.

ACTING PRESIDENT FLANAGAN: Senator Breslin.

SENATOR BRESLIN: Thank you, Senator Libous. Thank you, Mr. President.

On behalf of myself, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Bill Number 1187.

ACTING PRESIDENT FLANAGAN: So ordered.

Senator Breslin.

SENATOR BRESLIN: Further, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Bill 2739, by Senator Stavisky.

ACTING PRESIDENT FLANAGAN: So ordered.

SENATOR BRESLIN: Thank you,

Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, I believe there are three privileged resolutions at the desk by Senator Nozzolio. I'd like to ask that you have them read in their entirety and move for their immediate adoption.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, legislative resolution congratulating the Victor High School Marching Blue Devils Band and Director Eric Everhart upon the occasion of winning the New York State Championship and placing 4th in the United States Scholastic Band Association Championships.

"WHEREAS, It is the sense of this Legislative Body to recognize the dedication and commitment of our young people who distinguish themselves through excellence in musical competition; and

"WHEREAS, Music competition provides an opportunity for students to exhibit their practical skills to an audience, thereby giving them a sense of pride in their hard work and efforts; and

"WHEREAS, Attendant to such concern, and fully in accord with its long-standing traditions, it is the intent of this Legislative Body to congratulate the Victor High School Marching Blue Devils Band upon the occasion of winning the New York State Championship and placing 4th in the United States Scholastic Band Association Championships; and

"WHEREAS, The Victor Marching Blue Devils ended a successful 2010 season with a New York State Championship and a fourth-place finish at the United States Scholastic Band Association Championships (USSBA) held in Annapolis, Maryland, on November 6, 2010. The Marching Blue Devils, in their third year in the National Class, placed fourth out of 16 bands in their division. At the USSBA Championships, a total of 100 bands competed in all divisions from 12 states; and

"WHEREAS, The Marching Blue Devils is comprised of over 100 students in Grades 7 through 12, and performed their program, Axiomata Motus: The Principles of Motion; and

"WHEREAS, On October 31, 2010, the Victor Marching Blue Devils were named National Class Champions with a score of 97.05 at the New York State Field Band Conference Championships at the Syracuse Carrier Dome; and

"WHEREAS, The members of the 2010 Marching Blue Devils Band have proven themselves to be an unbeatable combination of talents, reflecting favorably on Victor High School; and

"WHEREAS, The band's outstanding performance has clearly made a contribution to the spirit of excellence which is a tradition of Victor High School; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the members: Nicole Barry, Kristin Barry, Kaitlyn Benwitz, Sam Benwitz, Joseph Bills, Whitney Bishop, Morgan Bishop, Lindsey Bradley, Emily Brown, Kristian Brown,

Randy Bush, Jay Butcher, Ashleigh Carey, Emily Carrozzi, Alyssa Catholdi, Nick Centonze, Mitchell Chan, Brittany Clark, Lindsay Clark, Justin Dake, Ashton Davenport, Olivia DeCarlo, Jenna DeFranco, Austin Drabek, Christian Drew, Jake Drew, Katherine Eames, Michelle Eames, Christina Eames, Lindsay Ernst, Aleta Everhart, Logan Everhart, Mason Everhart, Brianna Farrell, Julianna Fisher, Marissa Gallo, Edward Gharzouzi, Deanna Giardino, Candace Gonnella, Cameron Goodman, Melanie Gydesen, Alan Harding, Danny Hawk, Emily Hawk, Jennifer Heltz, Shealynn Hilliard, Lesley Hogan, Taylor Holmes, JoAnna Holroyd, Victoria Lanzillo, Kevin Lavery, Geena Lawatsch, Laurel Lehman, Maggie Limbeck, Brent Lindsay, Emily Mansfield, Luke Martin, Emily McIntyre, Luke McIntyer, Brianna Merlo, Ryan Merlo, David Montmarquet, Paige Morrell, Zach Mosher, Alayna Murphy, Aaron Natarelli, Declan O'Brien, Cody O'Connor, Ellen Patridge, Cody Paul, Anthony Perdigao, Beverly Petilli, Connor Petilli, Michelle Petilli, Anita Polvinen, Kailyn Ricigliano, Alex Robinson, Julia Rodriguez, Lindy Rohr, Jenny Rowan,

Madison Royal, Nate Samoriski, Alysia Schantz, Kristen Schantz, Dan Shawe, Hali Shepard, Megan Shepard, Chris Snyder, Carolyn Spitzer, Kathryn Sprague, Laura Sprague, Nathan Sprague, Sean Steele, Kristen Stewart, Hannah Thumm, Taylor Triou, Amanda Wagner, Katie Williams, Gregory Williamson, Erin Whipple, Melissa Whipple, Emma Wisotzke, Chelsie Yourch, and Ryan Yourch; the staff: Mike Heaney, Ted Mascari, Mary Burke, Kelly Moser-Vogler, Lesley Rider, Shane Startzel, Joe Taylor, Patsy Van Kirk, Jonathan Ytreberg, Sara Zuhlsdorf, and Kiah Everhart; Assistant Director Mark Rider, and Director Eric Everhart of the Victor High School Marching Blue Devils Band upon the occasion of winning the New York State Championship and placing 4th in the United States Scholastic Band Association Championships; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the members of the 2010 Victor High School Marching Blue Devils Band, the staff, and to the aforementioned directors."

By Senator Nozzolio, legislative

resolution congratulating the Victor Blue Devils Boys Volleyball Team and Head Coach Dave Wisniewski upon the occasion of capturing the Class B State Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, The Victor Blue Devils Boys Volleyball Team are the Class B Champions; and

"WHEREAS, The Victor Blue Devils defeated Section 11's Eastport South Manor High School 3-1 to gain the first ever New York State Division II Championship; and

"WHEREAS, The athletic talent

displayed by this team is due in great part to the efforts of Coach Dave Wisniewski and Assistant Coaches Kathryn Fenton and Jake Martin, skilled and inspirational tutors respected for their ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the Victor Blue Devils Boys Volleyball Team, from the opening game of the season to participation in the championship, were a brotherhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school; and

"WHEREAS, Coach Dave Wisniewski has

done a superb job in guiding, molding and inspiring the team members towards their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Dave Wisniewski and his outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Victor Blue Devils Boys Volleyball Team, its members -- Nicholas Bills, Morgan Bolger, McKay Clawson, James Cooper, Erik Dechow, Matthew DeLong, Michael Ellison, Nick Glamack, Erik Griffin, Nicholas Hodownes, Blair Hutto, Christopher Mahan, Brandon McAlees, Jeffrey McGuinness, Matthew McGuinness, Christopher Mydosh, Brannon Perdicho, Cory Phillips, Mitchel Segbers, and Philipp Wacker -- and Coaches Dave Wisniewski, Kathryn Fenton and Jake Martin, on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Victor Blue Devils Boys Volleyball Team and to the aforementioned coaches."`

And by Senator Nozzolio, legislative resolution commending Ashley Broderick upon the occasion of capturing the 2010 New York State Federation Girls' Diving Championship.

"WHEREAS, This Legislative Body takes pleasure in honoring talented high school athletes who distinguish themselves and their community through outstanding athletic performance; and

"WHEREAS, Attendant to such concern, and in full accord with its long standing-traditions, it is the intent of this Legislative Body to commend Ashley Broderick upon the occasion of capturing the 2010 New York State Federation Girls' Diving Championship; and

"WHEREAS, In winning her second consecutive New York State diving title, Victor High School, New York, Senior Ashley Broderick did it on her final jump of her high

school career. Needing a score of 58, she held out her arms and launched backwards into a flipping 1 1/2 inward pike, scoring a 60; and

"WHEREAS, Ashley Broderick finished with a 504.80, edging out Herricks senior Nicole Honey, in order to win the New York State Swimming and Diving Championships at Erie Community College. She accepted a scholarship to attend the University of Pittsburgh in the fall of 2011; and

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice. Ashley Broderick's dedication to diving is a year-round, everyday commitment. She is highly focused and has developed a matchless work ethic; and

"WHEREAS, Ashley Broderick's exemplary performance is reflective of her dedication, determination, and personal commitment. Her achievements stand as a hallmark of what is best in the families, schools, and communities across New York Stating; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commend Ashley Broderick upon the composition occasion of capturing the 2010 New York State Federation Girls' Diving Championship, and to congratulate her for the enduring honor that she has brought to her family, her school and her community; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Ashley Broderick."

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, on the resolutions.

SENATOR NOZZOLIO: Thank you, Mr. President.

And thank you, Clerk Testo, for your reading of those resolutions.

Ladies and gentlemen, my colleagues, this is indeed a great day for our state because here in this chamber we are honoring excellence. We are honoring the excellence, the hard work, the ingenuity, the can-do spirit that makes champions.

And I'm so pleased that the three state championship units and individuals that

we're honoring today are all from the Victor School District. Now, there must be something in the water. Maybe it's the blue and gold colors of the Victor Blue Devils that have just inspired a sense of excellence throughout this school district.

Today is a day for honoring those champions. And they're here today in Albany for that recognition. That the Victor Marching Band, the Victor Boys Volleyball Team, and the Victor diver Ashley Broderick bring together with them all the hard work and dedication that championships mean.

That by capturing the state championship title for marching band, the state championship title for boys volleyball, and the state championship diver, these outstanding achievements were the result of tremendous hard work, teamwork, great coaching, wonderful parenting, and a tremendous amount of inspiration.

The Victor Blue Devils Marching Band was the 2010 New York State champion. The near-perfect score that they engaged in in their efforts recognize them as the leader of

our state. But also, in so doing, in a competition from a national standpoint, that was held in Annapolis, Maryland, the Victor Blue Devils placed fourth nationally.

That score, that great teamwork was an inspiration and a result of hard work of all the band members, members of the color guard, especially their coach, Eric Everhart, and the real coach of the marching band, his wife, Rhonda Everhart. Together they presented such a team -- they're two tremendous role models -- and utilized for the band great teamwork, great esprit de corps, and one that the entire Victor community is very, very proud of.

The Victor Boys Volleyball Team, their first ever championship in boys volleyball, defeated Eastport South Manor. And the team, led by Coach Dave Wisniewski, who could not be here today, and assistant coach Jake Martin, who is here today, we thank them and congratulate them.

In the growing popularity of volleyball -- it's an Olympic sport, one that we're seeing many, many more schools develop

now to great sport. It's one that takes a tremendous amount of athletic ability. And to have a state championship team is a wonderful tribute to the coaches as well as to the athletic director from Victor, Ron Whitcomb.

Ron is here today, and we're very, very pleased that the entire athletic program of Victor produces great athletes, in some cases wonderful championships, but in all cases great citizens. Great members of the community, people who understand the value of hard work, teamwork, and community spirit. And that's what the Victor athletic program is all about. And we're so pleased to see the Victor volleyball team recognized appropriately.

Last but certainly not least, now for the second year in a row Ashley Broderick is state champion, as the 2010 New York State Federation Girls' Diving Champion, winning, as was indicated in the resolution, on her last dive of her high school career.

She certainly, Ashley deserves a tremendous amount of credit. Here is a sport which takes such individual dedication, such

attention to detail. She is an outstanding young woman, not just a tremendous athlete but a wonderful person.

She is with her dedicated coach, Christine Thompson, who is here today to serve in this recognition.

I'd also like to give special thanks to those who run the school district. And taking time out of her busy schedule is Superintendent Dawn Santiago-Marullo, who's here with her children, her students, her champions. And the spirit that she exhibits is manifest in running the programs at Victor. And Victor is an outstanding school system. She deserves great credit.

And, Superintendent Marullo, it's wonderful to see you. And thank you for your leadership in running an outstanding school system.

I'd also like to give a special thanks to Yvonne O'Shea, who's the Victor senior high school principal. Principal O'Shea, thank you for your great leadership.

And last but not least, I want to thank Aaron Isaacs, the audiovisual

coordinator for the Victor School District.

Mr. President, thank you for allowing me to present to you and to this body genuine champions, genuine leaders of the future of this state and nation, people who are dedicated to hard work and excellence. And that is a spirit that we are rightly to congratulate here in this wonderful Senate chamber.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Nozzolio.

Are there any other Senators wishing to be heard on the resolutions? Hearing none, the question is before the house. All those in favor of the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, congratulations to the Victor community, the band, the Blue Devils, the volleyball team, and Ms. Ashley Broderick.

(Applause.)

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I believe that there is a privileged resolution at the desk by Senator Martins. Would you please have the title read and move for its immediate adoption and.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: By Senator Martins, legislative resolution celebrating the opening of an exhibit at The Holocaust Memorial and Tolerance Center of Nassau County recognizing the life and heroic actions of Aristides de Sousa Mendes.

ACTING PRESIDENT FLANAGAN: Senator Martins on the resolution.

SENATOR MARTINS: Thank you, Mr. President.

I rise and ask my colleagues to join me in recognizing not only The Holocaust Memorial and Tolerance Center of Nassau County, which is the preeminent center in

Nassau County for teachings on the Holocaust and on tolerance, but also the life of a very special individual, Aristides de Sousa Mendes, who was a consul general for Portugal in Bordeaux, France, during World War II.

During six days in June of 1940, against the orders of his government, Aristides de Sousa Mendes issued over 30,000 visas to individuals fleeing the Nazi regime. As they tried to leave France, he gave them safe passage. Included among those 30,000 are 12,000 Jews who were saved during World War II, the consequences of which are readily apparent. There are hundreds of thousands of people alive today in the world as a result of this one individual's actions.

And there are times like these that we have an opportunity as a body to recognize those people who have made a difference in this world against the interests of their own self-interest, against the orders of their own government, taking a stand for that which is right. And Aristides de Sousa Mendes was just such a person.

Unfortunately, he died in 1954,

stripped of all diplomatic credentials, stripped of his right to practice in his country, but was recognized in 1966 by Israel at Yad Vashem as one of the Righteous Among the Nations.

The Holocaust and Tolerance Center in Nassau County opened an exhibit yesterday recognizing the life of Aristides de Sousa Mendes, a person of singular integrity and courage who unquestionably altered world history and certainly altered the lives of so many hundreds of thousands of individuals.

I think it is incumbent upon us, when we do have an example of extraordinary courage and character, that we recognize such an individual. And I would ask my colleagues to join with me in recognizing Aristides de Sousa Mendes for his great contribution to society as well as his great example to today's generation and future generations of courage and character under extraordinary circumstances.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Martins.

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

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe that Senator Martins would like to open the resolution up for cosponsorship. So as our usual practice, if there is anyone in the chamber who wishes not to be on the resolution, please let the desk know.

ACTING PRESIDENT FLANAGAN: Senator Libous, the resolution is open for cosponsorship. If you do not wish to be mentioned as a cosponsor, please notify the desk.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Can we now take up the noncontroversial calendar, please.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 5, by Senator Young, Senate Print 764, an act to amend the Highway Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 17, by Senator Fuschillo, Senate Print 598, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 18, by Senator Young, Senate Print 800, an act to amend the Municipal Home Rule Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 23, by Senator L. Krueger, Senate Print 885, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 28, by Senator Saland, Senate Print 1411, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT FLANAGAN: The bill is passed.

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

SENATOR LIBOUS: Thank you, Mr. President.

Is there any other business at the desk at this time?

ACTING PRESIDENT FLANAGAN: Senator Libous, there is none.

SENATOR LIBOUS: Thank you, Mr. President.

There being no further business, I move that the Senate adjourn until Tuesday, February 8th, at 2:00 p.m.

ACTING PRESIDENT FLANAGAN: On motion, the Senate stands adjourned until Tuesday, February 8th, at 2:00 p.m.

(Whereupon, at 3:31 p.m., the Senate adjourned.)