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# Evening The Tribune

Wednesday, November 30, 2016

www.eveningtribune.com

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HORNELL CASE

## Miller trial moved to February

BATH — The trial of Dakota M. Miller, a 23-year-old Hornell man accused in the alleged beating death of 17-month-old Ian Manishe-Huff last November, has been delayed until February. Jury selection is now set to begin on Feb.



Miller

28. The trial was originally scheduled to begin Dec. 10.

"The defense asked for more time to pursue other issues in the case," Steuben County District Attorney Brooks Baker told The Evening Tribune on Tuesday.

Also pushing the case to a later date is the timeline of another case. The trial of Thomas Clayton, a Catonman accused of conspiring to kill his wife on Sept. 29, 2015, will be heard by Judge Peter Bradstreet in Steuben County Court first.

Earlier this year, a county jury found Michael Beard guilty of killing Kelley Clayton.

"The other half of the Corning homicide trial will be in January, so we had to schedule it for either now or February," Baker confirmed.

When the Miller trial convenes in February, he will face charges of first-degree murder, aggravated murder, second-degree murder and first-degree manslaughter.

Miller will remain remanded to the Steuben County Jail until the trial.

— The Evening Tribune

## Christmas Cantata presented Dec. 4

HORNELL — The Hornell Community Choir Christmas Cantata will be Sunday, Dec. 4 at 7 p.m. at Our Lady of the Valley church (formerly St. Ann's Church). Admission is free with a donation benefiting The Vincent House.

## Peace advocates schedule holiday meeting

BATH — The Bath Peace and Justice Group will present its annual holiday Words and Songs for Peace on Wednesday, Dec. 7, from 7-8:30 p.m., at the PeaceWeavers' Thunder Mountain Peace Sanctuary, 8125 Crouse Road, Bath.

Storytellers, singers and poets will share stories, songs and poems focused on peace and the holiday season.

There will also be a sing-along of holiday songs. Refreshments will be served. This event is free and open to the public.

Donations welcome. Call 607-569-3564 for more information.



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CUOMO IN MAPLE CITY

# Governor due in Hornell today

Cuomo expected to visit Alstom plant

By John Anderson  
Regional Editor



Cuomo

HORNELL — New York State Gov. Andrew Cuomo was expected to be at the Alstom facility in Hornell this morning.

Local leaders said they did not know what the visit is about, but elected officials from Hornell were invited to an 11 a.m. event

and Hornell City Police have met with the New York State Police concerning the safety detail, the Evening Tribune has learned.

Cuomo has not made a public announcement concerning the \$2.45 billion Amtrak contract landed by Alstom which is expected to create 750 jobs in the region, including 400 in

Hornell to produce the new Amtrak high-speed line, the Acela Express.

The state had offered \$30 million to help land the contract, however, that was over time and contingent on money invested in Hornell.

During the announcement of landing the \$2.45 billion contract, those figures were not discussed by the state.

It could be addressed by Cuomo today.

There is another

long-shot Cuomo could be addressing: the Metropolitan Transportation Authority (MTA) R211 bid award.

That \$3 billion contract is expected to be awarded early in 2017, but proposals were due on July 22 and an exact date to award the bid has not been announced.

According to MTA, the R211 contract is for 1,025 cars on the New York City subway line and they will feature Wifi, USB chargers and opening to move

freely between cars while the subway moving.

The new subway cars will also have digital displays (there are new digital touch-screen displays at some stations on the platform), digital advertising and announcements and lights for door open and closing alerts.

Alstom in Hornell has a 700,000-square-foot facility and is the largest passenger rail manufacturing facility in North America.

CHARITABLE CAUSES



Hornell City employees, including Firefighter Chris Cartella and his sons Kelan (left) and Kian (right) signed up to ring bells for The Salvation Army at Walmart on Tuesday, to help celebrate Giving Tuesday, an annual day of philanthropy devised to offset consumer focused Black Friday and Cyber Monday. JASON JORDAN PHOTO

# Giving Tuesday counters the consumer craze

Day of giving embraces technological turn

By Jason Jordan  
The Evening Tribune

A weekend of crazed consumerism driven by Pre-black Friday, Black Friday, Small Business Saturday, and Cyber Monday sales, is always followed up by a conscience clearing dose of giving to push

aside the memories of trampled shoppers and being trapped in long lines.

Giving Tuesday is quickly becoming an annual tradition, prompting the world to be a little more kind during the holiday season and support worthy causes.

The initiative was first launched by the 92nd Street Young Men's and Young Women's Hebrew Association in New York City in 2012, and has since become a

global philanthropic phenomena.

Organizations like the Salvation Army use the new pseudo-holiday to mark the beginning of their holiday drives.

"Giving Tuesday really ushers in the 'Giving Season' for The Salvation Army. Following Black Friday and Cyber Monday where everyone is focused on the people on their Christmas list, Giving Tuesday

SEE GIVING, A6

ANALYSIS

# No, you can't strip flag-burners of citizenship

By Eugene Volokh  
The Washington Post

Donald Trump tweeted Tuesday:

"Nobody should be allowed to burn the American flag — if they do, there must be consequences — perhaps loss

of citizenship or year in jail!"

Contrary to President-elect Donald Trump's tweet, even if flag-burning weren't protected by the First Amendment (and it is), you couldn't strip people of their citizenship for it.

Let's begin with the constitutional text, here from section 1 of the 14th Amendment:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside."

Once you have American citizenship, you have a constitutional entitlement to it. If you like your American citizenship, you can keep your American citizenship

SEE FLAG, A6

STATE LEGISLATION

# Cuomo vetoes 'farm to food bank' credit

Legislators call for off-session override

By Jason Jordan  
The Evening Tribune

ALBANY — Gov. Andrew Cuomo's veto of a bill to supplement Food Bank donations with farm products that would otherwise be thrown away is causing



Palmesano



O'Mara

an uproar among local state lawmakers.

The bill commonly known as the "Farm to Food Bank" legislation, would have allowed farmers across the state to write off 25 percent of their donations to emergency food systems, not to exceed \$5,000 annually.

The measure was unanimously approved by the Senate and Assembly in June, and its veto flies in the face of common sense, legislators said upon hearing the news on Tuesday.

"It's extremely disappointing and frustrating that the governor would use his veto power to block this bill, which would have been helpful to our state's family farmers, but also would have been helpful to low income families that need to access our food banks and our food pantries. The Farm to Food Bank bill in my opinion would have been a win-win for everyone," said Assemblyman Phil Palmesano (R-Corning).

Palmesano went on to say that farmers are facing more challenges than ever, and the tax break would have gone a long way in mitigating them.

"They're being crippled by labor costs and mandates, especially now with

SEE CREDIT, A6

## CHARTERED FLIGHT

# Soccer team's plane crashes; 71 dead

By Fernando Vergara and Joshua Goodman  
The Associated Press

LA UNION, Colombia — Colombian authorities searched for answers Tuesday into the crash of a chartered airliner that slammed into the Andes mountains while transporting a Brazilian soccer team whose Cinderella story had won it a spot in the finals of one of South America's most prestigious regional tournaments. All but six of the 77 people on board were killed.

The British Aerospace 146 short-haul plane declared an emergency and lost radar contact just before 10 p.m. Monday (0300 GMT Tuesday), according to Colombia's aviation agency. It said the plane's black boxes had been recovered and were being analyzed.

The aircraft, which departed from Santa Cruz, Bolivia, was carrying the Chapecoense soccer team from southern Brazil for Wednesday's first leg of the two-game Copa Sudamericana final against Atletico Nacional of Medellin. Twenty-one Brazilian journalists were also on



Relatives and friends mourn during a ceremony in memory of the late journalist Guilherme Marques, who died in a plane crash on Tuesday. A chartered plane that was carrying the Brazilian soccer team Chapecoense to the biggest match of its history, as well as members of the press, crashed into a Colombian hillside and broke into pieces, killing most passengers, Colombian officials said Tuesday. LEO CORREA/THE ASSOCIATED PRESS

board the flight.

Colombian officials initially said the plane suffered an electrical failure but there was also heavy rain-fall at the time of the crash. Authorities also said they were not ruling out the possibility, relayed to rescuers by a surviving flight attendant, that the plane ran out of fuel minutes before its scheduled landing at Jose Maria Cordova airport outside Medellin.

Whatever the cause, the emotional pain of Colombia's deadliest air tragedy in

two decades was felt across the soccer world.

Expressions of grief poured in as South America's federation canceled all scheduled matches in a show of solidarity, Real Madrid's squad interrupted its training for a minute of silence and Argentine legend Diego Maradona sent his condolences to the victims' families over Facebook.

Brazil's top teams offered to loan the small club players next season so they can rebuild

following the sudden end to a fairy tale season that saw Chapecoense reach the tournament final just two years after making it into the first division for the first time since the 1970s. "It is the minimum gesture of solidarity that is within our reach," the teams said in a statement.

Sportsmanship also prevailed, with Atletico Nacional asking that the championship title be given to its rival, whose upstart run had electrified soccer-crazed Brazil.

Rescuers working through the night were initially heartened after pulling three people alive from the wreckage. But as the hours passed, heavy fog and stormy weather grounded helicopters and slowed efforts to reach the crash site.

At daybreak, dozens of bodies scattered across a muddy mountainside were collected into white bags. They were then loaded onto several Black Hawk helicopters that had to perform a tricky maneuver to land on the crest of the Andes mountains. The plane's fuselage appeared to have broken into two, with the nose facing downward

into a steep valley.

Officials initially reported 81 people were on board the flight, but later revised that to 77, saying four people on the flight manifest did not get on the plane.

Images broadcast on local television showed three of the six survivors on stretchers and connected to IVs arriving at a hospital in ambulances. Chapecoense defender Alan Ruschel was in the most serious condition, and was later transported to another facility to undergo surgery for a spinal fracture. Teammates Helio Zampier and Jakson Follmann also suffered multiple trauma injuries, with doctors having to amputate the goalkeeper Follmann's right leg.

A journalist traveling with the team was recovering from surgery and two Bolivian crew members were in stable condition, hospital officials said.

The aircraft is owned by LaMia, a charter company that started off in Venezuela but later relocated to Bolivia, where it was certified to operate last January. Despite such apparently limited experience the airline has a close relationship

with several premier South American squads.

Earlier this month, the plane involved in Monday's crash transported Barcelona forward Lionel Messi and the Argentina national team from Brazil following a World Cup qualifier match.

The airliner also appears to have transported the national squads of Brazil, Bolivia and Venezuela over the last three months, according to a log of recent activity provided by Flight-radar24.com.

Before being taken offline, LaMia's website said it operated three 146 Avro short-haul jets made by British Aerospace, with a maximum range of around 1,600 nautical miles — about the same as the distance between Santa Cruz and Medellin.

Hans Weber, a long-time adviser to U.S. aviation authorities, said the aircraft's range deserves careful investigation. He noted that the air distance between cities is usually measured by the shortest route but planes rarely fly in a straight line — pilots may steer around turbulence or change course for other reasons.

## CREDIT

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increases to the minimum wage and paid family leave and the impact that will have on our family farms," he said.

Cuomo said tax credits already exist for charitable food donations.

"It is well-established that farmers can already deduct the fair market value of charitable food donations on their tax returns," Cuomo said.

Supporters in the

Legislature, including Palmesano, are calling for a special session to override the veto.

"I'm urging Speaker (Carl E.) Hestie and Majority Leader (John J.) Flanagan to reconvene session and override the governor's veto of this common sense legislation. It passed unanimously in both houses — There were no 'No' votes, and I think this would be an opportunity for legislative leaders to speak back to the governor and say that we agree with you and this needs to be a priority for our

state," he said.

Senator Tom O'Mara (R-Big Flats), a member of the Senate Agriculture Committee, and co-sponsor of the bill agreed.

"It's hard to understand the governor's continued rejection of this action in the face of unanimous, bipartisan legislative support," O'Mara said. "New York state provides tax credits to encourage a lot of worthwhile initiatives, and this one would rank among the very best of them. he said. "Equally important, it would help provide this

healthy food for more and more children and families in need ... This veto is incredibly disappointing and frustrating."

New York State Farm Bureau took major issue with the governor's veto decision on Tuesday.

"During this season of giving, New York Farm Bureau is profoundly disappointed in Governor Cuomo's veto of a bill that would encourage greater farmer food donations to people in need across the state," said a statement issued by the organization on Tuesday.

## FLAG

From Page A1

— and that's with the Supreme Court's guarantee, see *Afroyim v. Rusk* (1967):

"There is no indication in these words of a fleeting citizenship, good at the moment it is acquired but subject to destruction by the Government at any time.

Rather the Amendment can most reasonably be read as defining a citizenship which a citizen keeps unless he voluntarily relinquishes it.

Once acquired, this Fourteenth Amendment citizenship was not to be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other



An American flag flies in front of the New York Stock Exchange on Oct. 8, 2014, in New York. ASSOCIATED PRESS FILE PHOTO

governmental unit."

(Special bonus in Afroyim: a cameo appearance by a Representative Van Trump in 1868, who said, among other things, "To enforce expatriation or exile against a citizen without his consent is not

a power anywhere belonging to this Government. No conservative-minded statesman, no intelligent legislator, no sound lawyer has ever maintained any such power in any branch of the Government.") In *Vance v. Terrazas* (1980), all the justices agreed with this principle.

Now, as with almost all things in law — and in life — there are some twists. Naturalized citizens can lose their citizenship if they procured their citizenship by lying on their citizenship applications; the premise there is that legal rights have traditionally been voided by fraud in procuring those rights.

And citizens can voluntarily surrender their citizenship, just as people can generally waive many of their legal rights; this surrender can sometimes be inferred from conduct (such as voluntary service in an enemy nation's army), if the government can show that the conduct was engaged in with the intent to surrender citizenship.

But flag-burning, whether or not it is intended to express contempt for the United States (and burning an

**"Nobody should be allowed to burn the American flag — if they do, there must be consequences — perhaps loss of citizenship or year in jail!"**

— Donald Trump, via Twitter

American flag, like flying the Confederate flag, can have many possible intentions), is generally not accompanied by an intent to renounce U.S. citizenship, nor is it generally evidence of any such intent. A college student's expression of contempt for the college's administration, or the college as a whole, doesn't mean an intent to drop out of the college — it's entirely consistent with an intent to make the best of a bad situation, or even to take advantage of the benefits provided by an institution that one despises. One might consider such an attitude dishonorable, depending on the circumstances, but it's very plausible that the contemptuous student would have that attitude.

That is even more clearly so as to a citizen's expression of contempt for the current American administration, or even America as a whole (if that's the flag-burner's attitude), given how costly surrender of citizenship would be, especially when one lacks another country that will take one in.

So even if flag-burning could be made criminal (and, I note again, it can't be), the 14th Amendment protects the flag-burner's citizenship, just as it protects other criminals' citizenship.

## GIVING

From Page A1

reminds us that there are some who may not be on anyone's Christmas list or mom and dad just can't afford to purchase even the smallest of gifts. We all have an opportunity to make Christmas possible for them," said Kathleen Burke, spokesperson for the Empire State Division of the Salvation Army.

Giving Tuesday has a tangible effect on the coffers of non-profit organizations.

"At The Salvation Army we see the uptick in giving and families grabbing an angel tree tag at the mall to buy a simple gift for a child in need or simply volunteer to ring a bell for a couple hours — just to give back. We encourage people to give what they can, whether it's time or talent or a financial donation that can help ease the burden we carry to meet needs all year long," Burke said.

To make a donation to the Salvation Army, visit [redkettle.org](http://redkettle.org).

While well established organizations use traditional methods of fundraising, others are taking to the web to capitalize on the "crowd sourcing" craze, especially those efforts spearheaded by younger people.

"The idea was brilliant, and it does a good job of keeping it cool," said CEO and co-founder of CrowdRise Robert Wolfe.

"We can't say enough good things about giving Tuesday. As its grown its stayed true to the mission."

Web-based giving platforms like CrowdRise have contributed to the exponential growth of Giving Tuesday online.

"We had lots of causes come to us and say we don't want to do another gala dinner on Giving Tuesday, so we started to challenge ourselves," Wolfe said.

This year, the company established the giving tower, equating donations to bricks in a building.

"Every charity has their own page under the umbrella of the giving tower. It sends auto-invites to their donor list, building a giant tower of donations,"

he described, creating a visual manifestation of giving for participating organizations.

The key to attracting new donors is simple, according to Wolfe.

"The more tangible the message, the more likely people are to give and share," he said.

"No one is being super psyched to say 'I just gave \$100 for operational funds,' people want to say 'I gave \$100 to build a hospital in Kenya — that's cool.'"

Linking causes with donors by way of social media has also been a key factor in the popularization of Giving Tuesday.

"General sharing is so important, if you building they won't necessarily come, With social media targeting you are more likely to get more funders and supporters. Organizations are doing better at that," Wolfe said.

Crowd sourcing sites like CrowdRise are able to showcase 501(c)3 causes in the thousands, and are introducing philanthropy to a younger, more tech savvy generation.

"We skew very young at crowd rise, I don't have a checkbook, and most kids in college don't have a checkbook, any way to make it easier for young people to give is better," Wolfe said.

According to the CEO, a change in culture has made people more giving not just on Giving Tuesday, but year round.

"Older generations might have found it tactless to share how much you give to a cause, but now it's a part of your life," he said.

"Causes are engrained in people's lives. Giving Tuesday is a real rallying point."

The ways to give, and the reasons people decide to part with their money are equally diverse, but most are personally motivated.

Reader Bonnie DuBois of Hornell says the day has inspired her to give to cancer charities each of the last eight years.

To learn more about Giving Tuesday, visit [www.givingtuesday.org](http://www.givingtuesday.org). To find publicly vetted organizations to donate to, visit [www.charitynavigator.org](http://www.charitynavigator.org) or call your regional Better Business Bureau Office.

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