ALBANY, NEW YORK

April 7, 1994

12:20 p.m.

REGULAR SESSION

LIEUTENANT-GOVERNOR STAN LUNDINE, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: Senate will come to order. The Senators will please find their places.

I would like to ask everyone present to rise and repeat the Pledge of Allegiance with me.

(Whereupon, the Senate joined in the Pledge of Allegiance to the Flag.)

Please be seated.

In the absence of visiting clergy, may we now bow our heads in a moment of silence.

(Whereupon, there was a moment of silence.)

Secretary will read the Journal.

THE SECRETARY: In Senate Wednesday, April 6, the Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Tuesday, April 5, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Hearing no

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 Present.

SENATOR PRESENT: Mr. President. Will you recognize Senator Tully, please.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: Thank you, Mr. President. There will be an immediate meeting of the Senate Health Committee in Room 332.

THE PRESIDENT: So noted.

Senator Trunzo.

SENATOR TRUNZO: Mr. President. On behalf of Senator Lack, will you please star Calendar Numbers 492 and 494.

THE PRESIDENT: The bills are starred.

Secretary will read.

THE SECRETARY: On page 4 of today's calendar, Senator Nozzolio moves to discharge the Committee on Elections from Assembly Bill Number 5131B and substitute it for the identical Calendar Number 540.

On page 4, Senator Nozzolio moves to discharge the Committee on Elections from Assembly Bill Number 5224 and substitute it for the identical Calendar Number 541.

On page 5, Senator Nozzolio moves to discharge the Committee on Elections from Assembly Bill Number 5401B and substitute it for the identical Calendar Number 542.

THE PRESIDENT: Substitutions are ordered.

Senator Present.

SENATOR PRESENT: Mr. President. I would like the Senate to stand at ease for a few moments.

THE PRESIDENT: Senate will stand at ease.

(Whereupon, at 12:24 p.m., Senate

was at ease.)

(Whereupon, at 12:50 p.m., Senate reconvened with Senator Spano in the chair.)

ACTING PRESIDENT SPANO: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President. Is there a report from a standing committee at the desk.

ACTING PRESIDENT SPANO: Yes, there is.

SENATOR PRESENT: May we have it read.

ACTING PRESIDENT SPANO: Secretary will read it.

THE SECRETARY: Senator Tully from the Committee on Health reports the following bill directly for Third Reading:

Senate Bill Number 7459A, by Senator Tully, an act to amend the Public Health Law, the General Municipal Law, and the Insurance Law.

ACTING PRESIDENT SPANO: Without

objection, third reading.

SENATOR PRESENT: May I yield to Senator Stafford?

SENATOR STAFFORD: There will be an immediate meeting of the Committee on Finance in Room 332. Finance, 332.

ACTING PRESIDENT SPANO: Finance meeting in Room 332.

Senator Present.

SENATOR PRESENT: Senator Kruger has a privileged resolution. Would you recognize him.

ACTING PRESIDENT SPANO: Senator Kruger.

SENATOR KRUGER: Yes, Mr. President. I would appreciate this resolution being offered with unanimous consent. It is a resolution supporting the first anniversary of Rabbi Burg's Holocaust Memorial.

ACTING PRESIDENT SPANO: Secretary will read the title of the resolution.

THE SECRETARY: By Senator Kruger Legislative Resolution, honoring Rabbi Melvin

Burg of Ocean Avenue Jewish Center upon the occasion of his designation as recipient of the First Annual Holocaust Awareness Award of the Council of Jewish Organizations of Bay Park, New York.

ACTING PRESIDENT SPANO: The question is on the resolution. All those in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Can we take up the noncontroversial calendar, please.

ACTING PRESIDENT SPANO: Secretary will read the noncontroversial calendar.

THE SECRETARY: On page 7, Calendar Number 282, by Senator Stafford, Senate Bill Number 437A, an act to amend the Environmental Conservation Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 396, by Senator Cook -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 401, by Senator Skelos.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 491, by Senator Libous, Senate Bill Number 6914, Uniform City Court Act.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 495, by Senator Lack, Senate Bill Number 7148A, Estates, Powers and Trusts Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46. Nays 1. Senator Saland recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 510, by Senator Stafford, Senate Bill Number 6845, amends Chapter 266 of the Laws of 1981, amending the Civil Practice Law and Rules.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 511, by Senator Wright, Senate Bill Number 6958, an act to amend the Penal Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 513, by Senator Padavan, Senate Bill Number 128A, an act to amend the Executive Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 522, by Senator Levy, Senate Bill Number 469A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 549, by Senator Padavan, Senate Bill Number 7293, Education Law, in relation to the number of community school districts.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present, that completes the noncontroversial calendar.

SENATOR PRESENT: Mr. President may I ask that we stand at ease.

ACTING PRESIDENT SPANO: Senate will stand at ease.

(Whereupon, at 1:00 p.m., Senate was at ease.)

(Whereupon, at 1:26 p.m., Senate reconvened with Lt. Governor Lundine in the chair.)

THE PRESIDENT: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President. Can we return to report of standing committees.

ACTING PRESIDENT FARLEY: Secretary will read.

THE SECRETARY: Senator Stafford from the Committee on Finance reports the nomination of James W. McMahon, of Ballston Lake, as Superintendent of State Police.

SENATOR STAFFORD: Mr. President.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: It certainly is a pleasure to forward from Finance, where there was a unanimous vote, as expected, the nomination of James W. McMahon.

Now, I could go on and on and on, and it's all positive. He has come up through the ranks. He has served in almost every capacity as a trooper and as a member of the Division of State Police.

I remember the tremendous job he did during the Olympics. We think that was yesterday but, believe it or not, it was about 15 years ago. It's hard to believe that it was 15 years ago.

He is dedicated. He is extremely

well qualified. He is well educated. And I would suggest from talking to members of the Division, in other words, troopers and all who are in the Division -- they are all troopers but officers also -- they are very anxious that Jim McMahon be made Superintendent, be appointed Superintendent. They respect him. They like him. He gets the job done. Treats people fairly. If there has to be a correction, he makes it; and he allows people to do their job.

So I compliment the Governor and all who have been involved in the appointment of James W. McMahon, and I move the confirmation.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I'm also pleased to rise to support the nomination of Superintendent of James McMahon. Let me just say something that Tom Constantine, who was my constituent from Schenectady, who was one of the finest Superintendents we've ever had, has moved on to even bigger and greater things as our drug czar,

but Jim McMahon is a person who has come up through the ranks, as Senator Stafford said; a person who started out as a trooper at the very beginning, went on to become a sergeant, zone sergeant, lieutenant, captain, major, staff inspector, lt. colonel and colonel and deputy superintendent; a person that has come up through the ranks.

I think that one of the major reasons that Superintendent Constantine was so respected and did such an outstanding job was because he was a trooper's trooper. Well, this young fellow is also a trooper's trooper. He is a credit to the finest police force in the United States and one that has a reputation for excellence.

And Jim McMahon, living in Saratoga County, is within a baseball throw of being in my district. He is actually in Senator Bruno's district. I have the town of Ballston, even though he lives in Ballston Lake which is part of the Town of Clifton Park.

I know that my daughter spoke to

me the other night. She said, Daddy, you want to really support him. Because she met one of his children and -- I guess who got the word a little bit early, and I said I think I'll be happy to do it.

Basically, because Jim McMahon is a person who has come up through the ranks, and we have learned that those kind of people make excellent leaders, excellent superintendents. I think it was mentioned that there was nobody that came to work earlier or stayed longer than this fellow, and I think he is going to be one of the great superintendents of this state, and I'm pleased to second his nomination.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Mr. President. I wish to add my words to those of Senator Stafford and Senator Farley and add a commendation to the Governor for making a nomination within the boundaries of our state and, as Senator Farley has said, someone within the ranks. What an inspiration to the other troopers who are working at the different levels

to know that one of their own can rise and aspire to the highest position as Superintendent of the State Police.

This can serve us in many, many ways. His knowledge and depth of experience over almost 30 years of service, his prior service as a veteran of the United States Army, his being a family man, somebody devoted to his family and at the same time devoted to the service and the state and the law enforcement field.

Some of the programs that he has indicated that he will continue as Superintendent Constantine and some of the other ones that he will energize and innovate bode well for law enforcement in New York State.

I rise to also commend and second the nomination.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I also rise to second the nomination of James McMahon as the Superintendent of the

State Police, and I also join the voices that have talked about how this nominee came up through the ranks.

I would simply also like to put in a pitch for where he came from, the 54th Senate District. It's such a nice thing to hear when we hear about the neighborhoods in the City of New York, many of whom I've heard but I'm not familiar with, to suddenly hear the name of a neighborhood like Bulls Head in the west side of the City of Rochester, that one of our residents has come to the top of the State Police ranks. And I think that west side community in the city of Rochester that the new Superintendent grew up with -- I know many of the people from that community. It's a wonderful community, a strong, vibrant community that has produced many of the leaders in the City of Rochester and the County of Monroe.

It's with great pleasure that I welcome a son of the 54th district to the State Police superintendency, and I am pleased and privileged to be seconding your nomination.

Welcome, and let's go Bulls Head.

THE PRESIDENT: Senator Larkin.

SENATOR LARKIN: Mr. President. I rise also to second the nomination of Colonel McMahon for Superintendent of the State Police.

Those of us who had an occasion to work with him when he was down in the Hudson Valley always heard words like: "He's a trooper's trooper. He's a leader. He leads. He gives directions. He participates."

Local law enforcement officers always told me and local elected officials said that if you had a problem you could go to Colonel McMahon and you could get an answer. He was always willing to cooperate and participate.

He participated, he and his men, on school events, traffic, crime, drug-related incidents. He was always there for us. You know, when he left to go to T troop and then to the big high command in Albany, he was sadly missed. We are confident that his presence will reemerge throughout this whole State of New

York.

When talk about role models today in our country, mostly they talk about a jock, but here's a role model in law enforcement that's a true role model for every individual seeking entry into law enforcement.

I think we have just selected the outstanding law enforcement officer of America to be the next Superintendent of State Police.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Mr. President. Let me just say that I agree 100 percent with what my colleague, Senator Larkin, just said and I guess having been a close personal friend of the former Superintendent, Tom Constantine, I want to say what I said in the Finance meeting; and, that is, that I don't think people quite realize the honor that was bestowed on New York when Tom Constantine was named to head the DEA in Washington, a job of somewhat epic proportions.

In fact, I will tell you this, that for various reasons, I got involved in that

just a little bit because there was some inter-politics going on in Washington at the time relating to the DEA itself, and because one of the deputy -- I don't know, deputy superintendents or whatever the deputy is in DEA happened to be married to a family that I know real well did talk to us about some risks that were involved, some shall we say police political risks. But Tom Constantine didn't falter, and he was more than willing to take any of those kinds of things. And I think the President -- to his credit, by the way - President Clinton has decided against one plan that would have somewhat dramatically cut the DEA and merged it with another agency, which is one of the plans that supposedly would have saved a lot of money. I often said I can show you some plans that will save tons of money, but, unfortunately, they'll also have some very dramatically bad aspects as far as law enforcement.

As far as I know, the only agency of the State of New York that did not take any

cuts during the fiscal crisis was the New York State Police, even though they suffered some attrition losses, obviously, and we had a couple of schools that had to be cancelled during the fiscal crisis, but the thing I think about the gentlemen we're about to make the head of the state police today is he comes from a long line in that agency, came up through the ranks, knows the agency from one end to another; and as Bill said, a number of people have said, if you talk to the Troopers in the street, they all say this is one fine Trooper and a fine gentleman. And they also -- as my colleague Senator Stachowski said, the scary thing is they also say they like him. And the reason I say that is because if you know command people sometimes, sometimes that can be a little tenuous for various reasons. When you command, sometimes you have to make enemies.

But the new Superintendent McMahon is the kind of guy who I think you just have to -- you have to like him and respect him, so I think it was a great choice. I wish him

the best of luck. And I can only say from my perspective and I know from the perspective of the people of this chamber, we will cooperate in every way possible and the best of luck.

THE PRESIDENT: The question occurs on the confirmation of the nominee. All those in favor, say aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The ayes have it. The nominee is confirmed. James W. McMahon of Ballston Lake to serve as Superintendent of the State Police.

(Applause.)

Senator Present.

SENATOR PRESENT: Mr. President. Can we call up Senate Bill 7459A. I understand that there is a message at the desk.

THE SECRETARY: Calendar Number 550, by Senator Tully, Senate Bill Number 7459A, an act to amend the Public Health Law, the General Municipal Law, and the Insurance Law.

SENATOR PRESENT: Mr. President.

I move that we accept the message.

THE PRESIDENT: On the motion, all those in favor, say aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The ayes have it. The motion is adopted. The message is agreed to.

Read the last section.

THE SECRETARY: Section 15. This act shall take effect immediately.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: Yes, Mr. President, to explain my vote.

THE PRESIDENT: Senator Tully is recognized.

SENATOR TULLY: Two minutes, I'll take it. We did pass a version of this bill back in January of '94, Mr. President. This is an amended version. It was worked on a tripartite basis with the Assembly and the Governor. And, certainly, I'd like at this time to congratulate John Bacheller from Senator

Marino's staff, Dan Degnan from Senator Larkin's staff, Dick Jacques and Karen Chamberlain from my staff, and thank the Governor for his cooperation as well as the members of the Assembly.

This is a great benefit to our senior citizens and certainly to those who wish to visit their seniors in life care communities. It will be an economic boon to the state in the amount of about $2 billion. It will provide a lot of jobs.

It's a bill whose time has come, and I urge all my colleagues to vote in favor of it.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Yes, I want to congratulate my colleague and seatmate here on this life care community. This is something that New York State has needed for a long time. I think we're the only state in the nation that really does not have it functioning, and we've got several online that are ready to move.

Because, quite frankly, we're

losing some of our brightest and best and most affluent, so forth, citizens to other states that want to enter these life communities, and I think this is an outstanding agreement. I understand it's agreed to by all three parties. And as he said, it's a bill whose time has come. And I congratulate you, Senator Tully, on a good move.

SENATOR GOLD: Results.

THE PRESIDENT: Secretary will report.

(Secretary called the roll.)

THE SECRETARY: Ayes 51.

THE PRESIDENT: The bill is passed.

THE PRESIDENT: Senator Present.

SENATOR PRESENT: Mr. President. Can we return to the controversial calendar?

THE PRESIDENT: Secretary will read.

THE SECRETARY: On page 7, Calendar Number 282, by Senator Stafford, Senate Bill Number 437A, Environmental Conservation

Law.

SENATOR PRESENT: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 396, by Senator Cook, Senate Bill Number 2287, Environmental Conservation Law, in relation to permitting certain directional signs in the Catskill Park.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 401, by Senator Skelos -

SENATOR GOLD: Can we lay this aside for amendment?

THE SECRETARY: -- Senate Bill Number 6793A, and act to amend the Vehicle and Traffic Law.

SENATOR PRESENT: Lay that aside temporarily.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 513, by Senator Padavan, Senate Bill Number 128A, Executive Law, in recommendation to the authority of the State Board of Parole to release certain inmates.

SENATOR GOLD: Senator yield to a question?

SENATOR PADAVAN: Yes.

SENATOR GOLD: Senator, is this the same bill we had last year?

SENATOR PADAVAN: No.

SENATOR GOLD: Can you tell us the differences?

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: One of the issues raised last year in the course of discussing this bill related to if the judge either failed to respond to the board in a timely fashion or if the judge was no longer sitting. We have addressed that issue by simply providing that in such eventualities, the parole board's actions would take effect. That is the major change in the bill from last year.

SENATOR GOLD: (To the Chair) I'm sorry.

Senator yield to a question? Senator, as I understand the amendment, the judge does not respond within 25 days.

SENATOR PADAVAN: Yes.

SENATOR GOLD: Is that right?

SENATOR PADAVAN: Yes, let me read it to you.

SENATOR GOLD: How does that differ from last year?

SENATOR PADAVAN: Because that was not in last year's bill.

SENATOR GOLD: All right. So -

SENATOR PADAVAN: The 25 days was in.

SENATOR GOLD: Was in?

SENATOR PADAVAN: Was in. But the issue relevant to a judge no longer sitting was not.

I'll read it to you. It says, "If the judge fails to mail a response to the board within 25 days after the board mails a

notification, the sentencing judge shall be deemed to have approved of any release. If the sentencing judge is no longer sitting, then the notification provided for herein shall be dispensed with."

So that even eliminates the 25 days if the judge is not sitting.

SENATOR GOLD: All right. Will Senator yield to one more question.

SENATOR PADAVAN: Yes.

SENATOR GOLD: Senator, when does the notification go out, at what stage of the proceedings in terms of the time frame involved? In other words, does the notice to the judge go out after the parole board has already made its determination?

SENATOR PADAVAN: Yes. Obviously, the Parole Board would have to make some kind of determination for the judge to evaluate.

SENATOR GOLD: All right. So if the Senator will yield to a question. If the parole board makes a determination and let's say

the determination is to parole, they then must send a notice to the judge. That takes a few days.

SENATOR PADAVAN: No, it says after they mail it. So it would be the date of mailing.

SENATOR GOLD: All right. The judge has 25 days to send in a response.

SENATOR PADAVAN: A response, m-m h-m-m.

SENATOR GOLD: Now, if the judge sends in a response that is negative, for example, what happens under your bill? The judge says I don't think you should do this.

SENATOR PADAVAN: Well, if the judge indicates that he is in opposition, the bill does not, in effect, mandate that that decision controls the actions of the board entirely. But, on the other hand, if we are to accept the fact that the judge is in the process with regard to that specific parole request, then I think it's clear in terms of how we have written this bill that the parole would not take

place.

SENATOR GOLD: In other words, if the judge does not approve, there is no parole?

SENATOR PADAVAN: That's correct. However, they could recommend it subsequently. It doesn't preclude any subsequent recommendation.

SENATOR GOLD: Mr. President. On the bill.

(Whereupon, Senator Farley was in the chair.)

ACTING PRESIDENT FARLEY: Senator Gold, on the bill.

SENATOR GOLD: I think that's really the point here, the point is that the system that we have set up of indeterminate sentences provides for a process whereby we have a Parole Board. These people come before us. We know who they are. They make a determination, and that determination is now absolutely voidable by a judge who sentenced the individual.

Now, that is just, as long as you

understand it, a huge, huge change in the philosophies of our law.

We could change the law -- and by the way, we debated the issue of 3 strikes you're in, you're out, whatever it is, and I told you we're going to hold hearings next week. We are going to hold hearings to see what prosecutors and others have to say.

But understand it. If you want a sentencing system where the sentencing judge gives a specific sentence, we can do that. But the problem with Senator Padavan's law, as I see it, is that a sentencing judge, three, four, five years later, thousands of cases later, is being asked now on a letter, notice, to comment on the determination of the Parole Board. The judge is not hearing the parole information. The judge isn't up-to-date on what may or may not have transpired within the prison system during that period of time, and the judge is given that kind of a veto power. And it is, as I said, a huge difference in the philosophy of the laws as we have as a legislature

structured.

Last year, Senator DeFrancisco, and Waldon, Smith, Paterson, Ohrenstein, Markowitz, Leichter, Gonzalez, myself, Senator Galiber, Espada, and Connor voted in the negative.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar 513 are Senators DeFrancisco, Gold, Kruger, Markowitz, Mendez, Nanula, Ohrenstein and Smith. Ayes 43. Nays 8.

THE PRESIDENT: The bill is passed.

Senator Present, that -- do you want to hold it up?

Senator Gold.

SENATOR GOLD: Can I yield to Senator Present for the purpose of a motion?

SENATOR PRESENT: Any house keeping?

THE PRESIDENT: We have none, Senator Present.

Unless -- any motions? Anything on the floor?

Seeing none.

SENATOR PRESENT: Mr. President. There being no further business, I move that we adjourn until tomorrow at 11:00 a.m.

THE PRESIDENT: The Senate will stand adjourned until tomorrow at 11:00 a.m.

(Whereupon, at 1:50 p.m., Senate adjourned.)