NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 9, 1999

3:03 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask that everyone present please rise and repeat with me the Pledge of Allegiance.

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

THE PRESIDENT: The invocation today will be given by Bishop Matthew Clark, Roman Catholic Diocese of Rochester.

Welcome Bishop.

BISHOP CLARK: Thank you very much.

I'm honored to be with you and to offer a prayer for the people of our State and for yourselves in their service.

All that God has created and sustains, all the events God guides and all human works that are good and have good purpose prompt those who believe to praise and bless the Lord with hearts and voices.

God is the source and origin of every blessing. In prayer we proclaim our belief that all things work together for the

good of those who fear and love the Lord. We are sure that in all things we must seek the help of God, so that in complete reliance in God's will we may do everything in God's glory.

And so we pray. Eternal God, from the abundance of your mercy, enrich these, your servants, and safeguard them, give them new life and strength of spirit so that the power of Your love will enable them to accomplish what is right and good. Strengthened by Your blessing, that they always be thankful to you and bless You with unending joy.

Hear us, answer us with Your blessing. We praise You and thank You forever, for You are God in all times and ages, Amen.

My best wishes to you all. And my thanks to you for your hospitality. Nice to be with you.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday March 8th. The Senate met pursuant to

adjournment. The Journal of Friday, March 5th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

SENATOR SKELOS: Madam President, if you could just recognize Senator Lack.

THE PRESIDENT: Senator Lack is so recognized.

SENATOR LACK: Thank you, Madam President. There will be an immediate meeting of the Judiciary Committee for purposes of a confirmation and one Bill in Room 332, the Senate Majority Conference Room, immediately, please.

THE PRESIDENT: There will be an immediate meeting of the Senate Judiciary Committee in Room 332 immediately.

The Secretary will read.

THE SECRETARY: Senator Spano, from the Committee on Labor, reports the following Bills:

Senate Print 1453, by Senator Spano, an act to amend the Labor Law and the Public Health Law;

3314, by Senator Spano, an act to amend the Workers' Compensation Law; and

3315, by Senator Spano, an act to amend the Workers' Compensation law.

Senator Rath, from the Committee on Local Government, reports:

Senate Print 734, by Senator Stafford, an act to authorize the Village of Saranac Lake;

1027, by Senator Meier, an act in relation to the creation of fire protection district;

1195, by Senator Lack, an act in relation to certain assessment decisions;

1856, by Senator LaValle, an act to amend the Town Law;

1965, by Senator LaValle, an act to amend the General Municipal Law;

1966, by Senator LaValle, an act to

amend the General Municipal Law;

1968, by Senator LaValle, an act to amend the Town Law;

2459, by Senator LaValle, an act to amend the General Municipal Law;

2534, by Senator Larkin, an act to amend the General Municipal Law; and

2680, by Senator LaValle, an act to amend the General Municipal Law;

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 1103, by Senator Goodman, an act to amend the Transportation Law;

2289, by Senator Farley, an act to amend the Vehicle and Traffic Law;

2324, by Senator Bonacic, an act to amend the Public Authorities Law and the Highway Law;

2765, by Senator Kuhl, an act to amend the Highway Law;

2788, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

2873, by Senator McGee, an act to amend the Highway Law;

2948, by Senator Rath, an act to amend the Vehicle and Traffic Law;

3192, by Senator Trunzo, an act to amend the Vehicle and Traffic Law; and

3278, by Senator Trunzo, an act in relation to requiring.

Senator Alesi, from the Committee on Commerce, Economic Development and Small Business, reports:

Senate Print 550, by Senator DeFrancisco, an act to amend the Economic Development Law and the New York State Urban Development Corporation Act; and

2063, by Senator LaValle, an act to amend the Public Authorities Law.

Senator Meier, from the Committee on Veterans and Military Affairs, reports:

Senate Print 2838, by Senator LaValle, an act in relation to employees;

3044, by Senator Kuhl, an act to amend the Military Law; and

3162, by Senator Meier, an act to amend Chapter 271 of the Laws of 1994.

Senator Saland, from the Committee on Children and Families, reports:

Senate Print 15A, by Senator Holland, an act to amend the Domestic Relations Law;

253, by Senator Holland, an act to amend the Family Court Act;

1828, by Senator Saland, an act to amend the Social Services Law;

1829, by Senator Saland, an act to amend the Social Services Law;

2028, by Senator Goodman, an act to amend the Social Services Law; and

2721, by Senator Saland, an act to amend the Family Court Act.

Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, reports:

Senate Print 1780, by Senator Farley, an act to amend the Public Officers Law;

1849, by Senator Stafford, an act to amend the Executive Law;

2886, by Senator Bonacic, an act to amend the Tax Law;

2899, by Seward, an act to amend the Tax Law; and

3152, by Senator Kuhl, an act to amend the Tax Law.

All bills ordered direct for third reading.

THE PRESIDENT: Without objection, all bills ordered direct to third reading.

Reports of select committees.

Communications and reports from State officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, I move that we adopt the Resolution Calendar in its entirety.

THE PRESIDENT: All those in favor of adopting the Resolution Calendar, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President,

if we could take up the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 107, by Senator Nozzolio, Senate Print 637 an act to amend the Correction Law and the Public Health Law in relation to testing inmates.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 148, by Senator Lack, Senate Print 1143, an act to amend the Labor Law in relation to direct sellers.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: It's laid aside.

THE SECRETARY: Calendar Number 158, by Senator LaValle, Senate Print 2521, an act to amend the Education Law in relation to the functions of the chief fiscal officer.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 175, by Senator Wright, Senate Print 1232, an act to amend the Penal Law in relation to including possession of an automated teller machine card.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3, this act shall take effect to the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 178, by Senator Padavan, Senate Print 1397, an act to amend the Penal Law in relation to making citizenship documentation fraud in of the first degree.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46. Nays 1.

Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 179, by Senator Padavan, Senate Print 1398 -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 217, by Senator Trunzo, Senate Print 1666, an act to amend the Eminent Domain Procedure Law in relation to acquisition of land by the State.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this

act shall take effect in 30 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 225, by Senator Rath, Senate Print 124, an act to amend the General Municipal Law in relation to alternative methods.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3, this act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 229, by Senator Padavan, Senate Print 1388, an act to amend the General Municipal Law in relation to reporting information to the United States Immigration and Naturalization Service.

THE PRESIDENT: Read -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 230, by Senator Leibell, Senate Print 1980, an act to amend the Real Property Tax Law in relation to allowing municipalities.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes the non-controversial reading of the calendar.

SENATOR SKELOS: Madam President, if we could go to the controversial calendar, starting with Senator Lack's bill, Calendar Number 148.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 148, by Senator Lack, Senate Print 1143, an act to amend the Labor Law in relation to direct sellers.

THE PRESIDENT: Senator Libous, did you want to be recognized, sir?

SENATOR LIBOUS: Madam President, could I have unanimous consent to be recorded in the negative on Calendar Number 158, please?

THE PRESIDENT: Senator is so recorded in the negative.

SENATOR LIBOUS: Thank you.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: On the bill in front of us, the Lack bill.

I'd like to point out that the AFL-CIO has a Memo of Opposition, and in their memo they cite that the Governor has a task force right now in looking at all of the issues that have to do with independent contractor status. And they suggest that, because of that task force currently doing that work, that they would prefer that if this

bill was held until after the task force rendered its report.

I'm just pointing that out for everybody before they vote so they understand that the AFL has an objection and that they would prefer if the bill was held.

Thank you.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 148 are Senators Duane, Onorato and Satvisky.

Ayes 50. Nays 3.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 107, by Senator Nozzolio, Senate Print 637, an act to amend the Correction Law and the Public Health Law.

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 179, by Senator Padavan, Senate Print 1398, an act to amend the Penal Law in relation to making unlawful immigration a Class C Felony.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Padavan, an explanation has been requested.

SENATOR PADAVAN: What this proposed law seeks to do is expand our current forfeiture law to allow the seizure of instrumentalities that are used when individuals or organizations or groups smuggle illegal aliens into this country for financial gain.

SENATOR PATERSON: Would Senator Padavan yield for a question?

THE PRESIDENT: Senator Paterson, do you wish to be recognized?

SENATOR PATERSON: Yes. Would Senator Padavan yield for a question?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Senator, do you yield?

All right -

SENATOR PADAVAN: Yes, I do, Madam President.

THE PRESIDENT: You may proceed with a question, Senator Paterson.

SENATOR PATERSON: Senator, being that this legislation that you're proposing has already been established as federal law, what do you see as the need to adopt it on the State level?

SENATOR PADAVAN: Well, first, Senator, we should be aware of the fact that this is not an academic issue. You may have recalled reading in The New York Times in December, December past, of a huge smuggling operation that had been uncovered between Canada and the northern part of our state where in one year alone 12,000 people have been smuggled across the border, into New York State, were using various means, boats, trucks, cars and the like. The same operation, according to the Justice Department, had been responsible over a three-year period of smuggling over 24,000 individuals.

So I think New York State, because most of these people were headed directly to our urban centers, including New York City, I think it serves the best interest of this state in two ways:

First, it allows us to seize those assets and they become part of those funds which, as you know, are used 50 percent for local programs, including school, training and education, prevention, drug and alcohol prevention and education, and local law enforcement. So we gain the asset.

But, also, I think it's a deterrent in some measure to the activity at hand as it relates specifically to New York State.

Obviously, the federal government has not done the job that we would like it to do; otherwise, this operation would not have been going on for three years before it was finally discovered. So in any way, shape or form we can add to the level of illegality, in this case by seizure of assets, I believe that's a positive move.

SENATOR PATERSON: Thank you, Senator Padavan.

Madam President, on the bill.

THE PRESIDENT: Go ahead, Senator.

SENATOR PATERSON: I would have felt certainly more assured that this legislation, which, as I said before, already has been passed and adopted on the federal level, would be applied to the State if the same Justice Department from which Senator Padavan derived his statistics had advised that it would be a good idea for there to be concurrent prosecutions of this offense on the federal and state level. Otherwise, without the appropriate United States attorneys, whether it be in the Northern District or other parts of this state, not giving any guidance or alerting us to the need for us to have our own state prosecutors in our 62 counties involved, I don't see the need to pass this law on two levels of government.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Madam President, I'd like just to advise Senator Paterson, my dear colleague, that in 1984, this Legislature, and I was proud to have been

the prime sponsor of the mover of that legislation, adopted a very broad civil and criminal forfeiture law which was already in place, to a degree, at the federal level. And it gave this State and our local prosecutors the opportunity to seize assets, which last year alone put $14 million into a fund administered by the Comptroller, which is used to enhance local law enforcement and also became a prime source of funding for drug treatment, education and prevention.

So the fact that the federal government has a statute, does not preclude us from accumulating whatever benefit we can accumulate, both in terms of deterrence and assets.

Frankly, I think, since those people who were coming into New York State by the thousands, becoming a burden at all levels of our government, whatever assets we could seize in the process, we well deserved.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3, this act shall take effect on the 1st day of

November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 179 are Senators Duane, Gonzalez, Markowitz, Meier, Nanula, Paterson, Rosado, Sampson, Santiago, Seabrook, Smith and Satvisky.

Ayes 43. Nays 12.

THE PRESIDENT: The bill is passed.

The Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 179, in the negative also Senators Montgomery and Waldon.

Ayes 41. Nays 13.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 229, by Senator Padavan, Senate Print 1388 -

SENATOR PADAVAN: Madam President, at the request of Senator Paterson, I'm going to star, I'm going to star this bill.

SENATOR PATERSON: Thank you.

THE PRESIDENT: The bill is starred.

SENATOR PADAVAN: At the request of the sponsor and Senator Paterson.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I know that Senator Lack is on his way in and there's a report of the Judiciary Committee.

THE PRESIDENT: All right.

SENATOR SKELOS: I ask that it be read.

THE PRESIDENT: Thank you, Senator. In the interim we will have the reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following bill direct to third reading:

Senate Print 114, by Senator Skelos, an act to amend the Domestic Relations Law and the Penal Law.

THE PRESIDENT: Without

objection, the bill is directed to third reading.

Senator Lack.

SENATOR LACK: Thank you, Madam Chairman. I rise to move the -

Are we on?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports - offers up the following nomination:

As a judge of the Montgomery County Court, Felix J. Catena, of Amsterdam.

THE PRESIDENT: Senator Lack do you wish to be recognized at this time?

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Felix J. Catena as a judge of the Montgomery County Court.

He has been nominated by the Governor as an excellent nomination. He appeared before the Committee today. His credentials have been examined by the staff of the Committee and have been found to be in

excellent working order. He was unanimously approved by the Committee and moved to the floor for consideration at this time.

And I would most respectfully yield to Senator Farley for purposes of a second.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR FARLEY: It's a distinct pleasure and an honor for me to nominate a young man that I've known for quite a few years and his family, Felix Catena, who is a city court judge in the City of Amsterdam, an assistant -- former corporation counsel, former assistant district attorney, been involved in the private practice of law, he was a prosecuting attorney with the United States Department of Labor, and has been an associate in law firms.

And let me just say that he comes from one of the most remarkable families, not only in Montgomery County, but in New York State. His father, Gene Catena, who is with us, and -- Judge Gene Catena, who is in the

gallery was a distinguished judge for many, many years in Montgomery County. His paternal grandfather and namesake, Felix Aulisi, who was his mother's dad, was not only an outstanding Supreme Court justice but a member of the Appellate Division. And his great uncle, Arthur Aulisi, also a renowned Supreme Court justice.

I'll tell you, this guy, truly, like in the horse racing business, comes from great breeding.

Judge Catena is one of seven children. And I just want to tick off Judge Gene Catena's family and children. And let me just -- Cornelio Catena, he's president and a chief executive officer of the Amsterdam Memorial Hospital. His brother, Gene Catena, is a Major in the United States Army. John Catena is a marine biologist on the National Oceanic Atmospheric Administration. Thomas Catena is a physician in family practice residency. And Paul Catena, who is up there, wave, Paul, is a member of the Senate family, Director of the Social Services Committee, with Senator Joseph Holland. And, of course,

it looks like the baby of the family, Ann Catena, is Director of Corporate Development for Operations Smile.

What a remarkable young man this is. He was educated at the American University, is an undergraduate where I went to law school, and was a graduate of University -- of a law school in California, is a member of the District of Columbia Bar, the California Bar and the New York Bar.

But let me just say this, how pleased and honored I am that the Governor has selected this remarkable young man to be the county court judge for Montgomery County.

There is no family that I know of that has a greater influence or respect within this, within this county than the Catena family and the Aulisi family, of which he is part of both.

It is with a great deal of pleasure and honor that I nominate and urge the selection of Felix J. Catena as judge of the Montgomery County Court.

And I would ask you, Madam President, to acknowledge his family, which

practically fills up the center part of the gallery up there, with his wife and his two children. And I think you've got another one at home; do you?

JUDGE CATENA: Yes.

SENATOR FARLEY: Yeah. Is it Gene?

JUDGE CATENA: Yes.

SENATOR FARLEY: Age four?

JUDGE CATENA: Yes.

SENATOR FARLEY: He, apparently, is busy with his paper route or something. I don't know where -- he's not here with us.

But even more important, his 90 - he has longevity in his family. His 95-year-old grandmother, the wife of the late Felix, Judge Felix Aulisi, could not be with us today, but I'm sure that she's with us in spirit and this is being taped and so forth, and we'll make sure that she knows about it.

Madam President, I would ask you to acknowledge the family and Judge Catena.

THE PRESIDENT: Thank you, Senator.

First of all, the question is on

the nomination of Felix J. Catena as judge of the Montgomery County Court.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Felix J. Catena is hereby confirmed as judge of the Montgomery County Court.

(Applause.)

THE PRESIDENT: At this time, in my capacity as President of the Senate, as well as the former D.A. and judge in this region, well aware of the excellence of both you, Judge Catena, and your family, I'd like to recognize you, as the judge of the Montgomery County Court; your wife, Barbara; your children, who are also here, Michela and Alexandra; your father, Retired Judge Gene Catena; brothers, Cornelio, John and Paul; Grandmother Rose Aulisi; and other family members are hereby recognized. Welcome to the Senate. May you have a wonderful celebration this special day.

MR. CATALFAMO: Thank you very much.

THE PRESIDENT: Congratulations.

(Applause.)

THE PRESIDENT: The Secretary will read.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could return to the controversial calendar and call up Calendar Number 107.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 107, by Senator Nozzolio, Senate Print 637 an act to amend the correction Law and the Public Health Law in relation to testing inmates for transmissible diseases.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Explanation.

SENATOR SKELOS: Lay it aside for the day.

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

SENATOR SKELOS: Is there any housekeeping at the desk, Madam President?

THE PRESIDENT: No, Senator, there is no housekeeping at the desk.

SENATOR SKELOS: There being no further business, I move we adjourn until Wednesday, March 20th, at 11 a.m.

THE PRESIDENT: On motion, the Senate now stands adjourned until Wednesday, March 10th 11 a.m.

(Whereupon, at 3:33 p.m., Senate adjourned.)