ALBANY, NEW YORK

April 4, 1993

3:05 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: The Senate will come to order. Senators will find their seats.

If you will please rise with me for the Pledge of Allegiance to the Flag.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT FARLEY: Today in the absence of clergy, we'll bow our heads for a moment of silent prayer.

(A moment of silence was observed.)

Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Saturday, April 3rd. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Friday, April 2nd, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as

read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Do we have a report?

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR VELELLA: Mr. President.

ACTING PRESIDENT FARLEY: Yes, we do. Senator Velella.

SENATOR VELELLA: On behalf of Senator Padavan, on page 9, I offer the following amendments to Calendar 106, Senate Print 1208, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments are received. The bill will retain its place on Third Reading Calendar.

SENATOR VELELLA: And on behalf

of Senator Johnson, on page 16, I offer the following amendments to Calendar Number 336, Senate Print Number 2762, and ask that it retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments are received; the bill will retain its place.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Marino, I move to recommit Senate Print 1892-A, Calendar Number 184, of the committee -- back to the Committee on Cities.

ACTING PRESIDENT FARLEY: The bill is recommitted.

Senator Present.

SENATOR PRESENT: Mr. President, I'd like to call an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT FARLEY: There will be an immediate meeting of the Rules Committee in Room 332.

SENATOR PRESENT: Mr. President, the chamber will stand at ease until a report

from that Committee returns.

ACTING PRESIDENT FARLEY: The Senate will stand at ease until the Rules Committee report.

(The Senate stood at ease from 3:08 p.m. to 3:19 p.m.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: On behalf of Senator Stafford, I'd like to call an immediate meeting of the Finance Committee in Room 332.

ACTING PRESIDENT FARLEY: There will be an immediate meeting of the Finance Committee in 332.

Senator Present.

SENATOR PRESENT: Senate will stand at ease.

ACTING PRESIDENT FARLEY: The Senate will stand at ease.

(The Senate stood at ease from 3:21 p.m. to 3:36 p.m.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, could we return to reports of standing committees.

ACTING PRESIDENT FARLEY: The Senate -- the Secretary will read a report of a standing committee.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following bill directly for third reading: Senate Bill Number 4038, by Senator Maltese, an act to amend the Social Services Law, in relation to medical assistance exclusion.

ACTING PRESIDENT FARLEY: Without objection, that bill is reported directly to third reading.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY: You want to do the resolution report -- take your time.

Senator Present.

SENATOR PRESENT: Mr. President, I move that we adopt the Resolution Calendar with the exception of Number 944.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes. With regard to 957, which is my resolution on Dennis Byrd, anyone who wants to be on that is certainly welcome.

ACTING PRESIDENT FARLEY: I think we've got to call -- did you get all those names?

We have not adopted it as yet, and one of the reso's is held out or held aside for a moment. All in favor of adopting the Resolution Calendar with exceptions, say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Present.

SENATOR PRESENT: Mr. President, can we return to reports of standing committees.

ACTING PRESIDENT FARLEY: We have

a report of a standing committee. The Secretary will read it.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills directly for third reading:

Senate Bill Number 4009, an act to amend Chapter 303 of the Laws of 1988, relating to the extension of the State Commission on the Restoration of the Capitol.

Senate Bill Number 4228, an act to amend a Chapter of the Laws of 1993, enacting the Legislature and Judiciary budget, in relation to appropriations made for the Judiciary.

Also Senate Bill 4358, by the Committee on Rules, proposing amendments to the Constitution, in relation to the manner of contracting, paying and refunding state debts.

Also Senate Bill Number 4359, proposing an amendment to the Constitution, by the Committee on Rules, in relation to the submission of a capital program and financing plan.

All bills directly for third reading.

ACTING PRESIDENT FARLEY: All bills reported directly to third reading.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up Senate Bill 4038, previously reported by the Rules Committee.

ACTING PRESIDENT FARLEY: Secretary will read the bill.

THE SECRETARY: Calendar Number 399, by Senator Maltese, Senate Bill Number 4038, an act to amend the Social Services Law, in relation to medical assistance exclusion.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Maltese.

SENATOR MALTESE: Mr. President, this bill would amend Section 365-A of the Social Services Law, by adding a new subdivision 8 regarding the exclusion of medical assistance for abortion under certain circumstances.

Each year, approximately from 18.8 million to $21 million of Medicaid funds are spent for the purpose of providing abortions for Medicaid-eligible individuals. Taxpayers should not be required to pay for medically unnecessary abortions and, as such, this bill would prohibit the expenditure of funds for abortions or related care, supplies and services except where determined to be medically necessary to preserve the life of the mother or where the pregnancy is the result of rape or incest.

The latest data that we have, Mr. President, indicates that in 1991, there were 158,762 abortions performed in New York State alone and, of that number, 49,500 were Medicaid-funded. That would amount to $20.3 million. In 1992, the total Medicaid-funded abortions were 48,500, and that would amount to $21 million. It is estimated that approximately two-thirds of them would come under the terminology in this bill and thus would be covered by this bill and the money that would be

saved would be quite substantial.

Mr. President, as to the guts of this emotional issue, this has been debated in prior years, but I would like to read from a portion of the legislative memo in support of this legislation from the New York State Nurses for Life.

"New York State Nurses for Life insists that abortion is a civil rights issue. An innocent victim is deprived of life. Medical science has monitored the heartbeat of the unborn 25 days after conception and brain waves 45 days after conception. These, we stress, are scientific facts, not religious beliefs."

New York State Nurses for Life have stated that they -- that *** "we regard abortion as a civil rights issue. When it comes to civil rights, it is generally accepted that for each of us, our personal civil rights ends when the rights of our neighbor begin."

SENATOR PADAVAN: Mr. President. Mr. President, could we have some order? I believe there's an awful lot of conversation.

ACTING PRESIDENT FARLEY: Your point is well taken. Please, let's take these conversations outside the chamber.

Senator Maltese.

SENATOR MALTESE: Continuing the statement in support by the New York State Nurses for Life: "The law does not allow us to destroy or occupy our neighbor's house. The law does not allow us to take our neighbor's life. And this is the most compelling portion: "As nurses, we have been taught that the care of a pregnant woman involves the care of not one, but two individuals, mother and child. We can not sanction the killing of the unborn baby who is the most defenseless segment of our society."

Mr. President, I would like to show for our colleagues a recent headline from the Daily Gazette of Schenectady, of February 5th, 1993, and that headline reads: ABORTION IN STATE AT HIGHEST LEVEL SINCE 1982.

Mr. President, we are advised that in all of New York State, there were 298,702 live births. Therefore, if we take the

figure of abortions in that same year, 1990, which are completed data, that is 159,978. Thus we have an abortion rate, a shameful abortion rate, in this state of 53 per one hundred live births.

Mr. President, this is an issue that has come up in the past and we who espouse the "life" issue have taken the argument that those that have opposed the death penalty for convicted criminals, those that have supported -- that have opposed the death penalty for persons who are convicted after the most time consuming and involved legal system in the world, those are the same people who would condemn to death the unborn who are guilty of no crime except of being conceived.

Mr. President, this is an emotional issue for all of us, but it is a far more critical issue for the unborn. For them, it is the question of life and death.

Mr. President, I urge the adoption of this legislation.

SENATOR OPPENHEIMER: Mr.

President.

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

SENATOR OPPENHEIMER: In no way do I doubt the sincerity and the honesty with which Senator Maltese prepared his -- his words, and I don't want to get into a discussion of when does life begin, or religious values. At this point I would just like to mention, speak of two -- two things that have very much changed in the past year and that will make my speech a little bit different from what we have discussed in prior years.

Now, I have talked of what I felt was a humane and an enlightened and a sound policy that we have in our state and most - most New Yorkers recognize abortion as a fundamental right of women, a personal liberty of women, and this is the 22nd anniversary of our legislation which decriminalized abortion which we did in 1970 and, at that same time, in 1970, this Legislature and the Governor recognized that Medicaid was essential for

reproductive choice for the poor because, if there is no Medicaid, there is no choice for the poor and, therefore, the law does not apply to the poor.

Well, something very new has happened, and this is really very, very new, because on March 23rd of this year -- and that's like ten days ago, the court spoke in a decision called Hope vs. Perales. The Appellate Division said at that time that our state Constitution, New York State's Constitution, prohibits a state policy that burdens the fundamental right to choice, that the state cannot exclude abortion funding from all other pregnancy services that are offered by New York State, that they can't -- the state may not selectively fund child birth but not fund abortion, since abortion is one of the medically acceptable options.

The opinion explicitly says the due process clause of the New York State Constitution encompasses the right to reproductive choice, which is an integral part of the right to privacy and the case -- the

agency and the program under discussion in the court case is PCAP, which is our prenatal care assistance program, and it said that this service must be provided to poor women and have all choices included in the discussion offering the full range of medical services to pregnant women.

Let me just read in conclusion - where is it? In conclusion, this is what the appellate court noted, that once the state assumed the responsibility of helping needy pregnant women, it was required to do so in a neutral -- in a neutral, non-discriminatory manner that does not coerce poor women into choosing child birth even at the expense of their health and well-being.

We expect that this will be appealed to the Court of Appeals but, as we all know, the Court of Appeals has been expansively interpreting our state Constitution and in their belief saying that our state Constitution offers greater privacy rights and constitutional protections than does the federal Constitution,

and this is -- has been borne out in other states.

In -- just in January, in February of '91, the Court of Appeals in Michigan ruled that their Medicaid program violated the Michigan state Constitution because the court found that the law restricting payment for abortion -- abortions created a direct barrier to a woman's fundamental right to abortion, and that there is no compelling state interest that would justify this infringement.

Likewise, in interpreting the application of the Massachusetts due process clause to Medicaid funding for abortion, the Massachusetts Supreme Judicial Court ruled that "once the state chooses to enter the constitutionally protected area of choice, it must do so with genuine indifference. It may not weigh options open to the pregnant woman by its allocation of public funds. In this area, government is not free to achieve with carrots what it is forbidden to achieve with sticks."

And, similarly, the California

Supreme Court concluded that once the state furnishes medical care to the poor woman in general, it cannot withdraw part of that care solely because the woman exercises her constitutional right to choose to have an abortion.

So these are quite different parameters than we saw last year and, as I said, we do expect that this will be appealed up to the Court of Appeals, but we do know that that court and Judith Kaye have a very expansive view of our state Constitution.

Now, let me for a moment just look at the justification that is in the memorandum in support that Senator Maltese and Padavan have put out, and I must say this justification is a bit appalling to me as I'm - I know it has been in past times, past years to Senator Mendez, because it seems to equate cost savings as the reason to go ahead and ban Medicaid funding for abortion, and we feel that saving money is not the issue here, and actually I -- I must correct the thinking on this because

it is factually wrong.

The -- the fact is that child birth is much more expensive than abortion. A pregnant woman on Medicaid -- and we're talking about Medicaid women -- if forced to carry to term, would be eligible for, one, fully funded prenatal care; two, labor and delivery services, and three, medical care for the infant. We are talking many thousands of dollars and, on Medicaid, the average cost of a Medicaid abortion is like $315.

So we certainly shouldn't look at this any way as a cost saver. It is perhaps saving the health and well-being of the mother, but cost should not be a factor here and indeed the -- the figures that are available would show that it is much more costly for a Medicaid woman to carry to full term.

There is another new factor here and this we have not discussed before because it was not the case in prior years and, of course, I believe you know what I'm talking about and I'm talking about a new president. President

Clinton is committed to a woman's constitutional right to choice and to support for poor women to have this same right to choice, and we expect that he will ask Congress to drop the 16-year-old Hyde amendment which bans, as you know, federal financing for abortions under Medicaid.

When this was passed in 1976, many states said that, if the fed's -- if the federal government won't offer payment for funding for abortion, then we're not going to, and today only 12 states do fund Medicaid abortions, but if the Hyde amendment was repealed, then we would see funding by the federal government again and that is what we expect to see.

THE PRESIDENT: Senator Oppenheimer, I understand that Senator Mendez wanted to ask a question. Would you yield to her to ask a question?

SENATOR OPPENHEIMER: Yes, sure, Senator Mendez.

SENATOR MENDEZ: Yes, excuse me,

Senator Oppenheimer. You just mentioned my name in one of your statements, and I want some clarification on it. It's done for the record so I need some clarification on it. I missed what you said, but I'm most interested in knowing.

SENATOR OPPENHEIMER: I'm happy to join with a statement that you made two -- a couple of times in past years, that we shouldn't equate the taking -- or abortion for Medicaid women with the cost because -

SENATOR MENDEZ: We should not.

SENATOR OPPENHEIMER: Because money savings is not the issue here.

SENATOR MENDEZ: That we should not.

SENATOR OPPENHEIMER: Yes, that money savings -- I'm concurring with what you were saying.

SENATOR MENDEZ: I wanted some clarification. I've always said, as you know, that the true choice for a woman who is poor must be medical funds for abortion and prenatal

care.

SENATOR OPPENHEIMER: Exactly.

SENATOR MENDEZ: Thank you.

SENATOR OPPENHEIMER: I concur with you completely.

Now, the $64 question, I guess, the $64,000 question concerns health care reform, and it is conceivable, no pun intended, that we may see reproductive health and abortion services included in the basic benefit package that is being talked about in health care reform and also in the Medicaid programs which would make the Hyde amendment moot. But that is the $64,000 question, where health care will be going for our nation.

Let me conclude by saying that, for 22 years now, New York has respected -- New York State has respected the civil rights of our poorest women, permitting equal choice to those who can pay for medical services and those who cannot, and it has dramatically improved women's health in our state and their welfare.

Now, we are not discussing here

the pros and the cons of abortion. Legal abortion is the law in our nation, and it is deemed a constitutionally protected matter of privacy, and women must have the opportunity to exercise their -- their legal right, and I believe that's -- well, I believe that it's their basic right to -- to health care. But women must not go back to seeking unsafe abortions and risking their lives and their health, and women should not be discriminated against because of their economic status in life.

New York never has discriminated and New York, I hope, never will, and I would urge all my colleagues to support the continuation of this Medicaid funding for poor women in New York State.

Thank you, Mr. President.

SENATOR MARCHI: Mr. President.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: I kind of anticipated that the Hope case would -- would come into the dialogue that is being conducted

today.

Senator Maltese, I believe, made a strong and persuasive argument on a question that is very difficult to debate because it all depends on your starting point and where your position originates and -- and whether there will ever be a reconciliation, I really don't know.

But we do have a very serious problem on the question of constitutional revision which seeks to intrude and subvert the claimed intent of the New York State Legislature, and I cite this not only to illustrate what's going on in the instant issue, but in its broad application in so many other fields, it does raise very serious problems.

Who is enacting legislation here? Is it the state? Is it the executive and the legis... and the Governor that enact legislation, or are we getting now a massive presence by the allegation that there's been under-inclusion and, very thoughtfully, the under-inclusion is supplanted by language.

The Hope case is a very relevant case, and it should be -- it should be looked at because the federal government had put -- had initiated a program to -- under their federal Medicaid program, to extend funding to pregnant women and their children if they were within the 100th to 180th percentile above the poverty line and this was to take care of mothers and their children, and also all women who were in the process, so that there was even a flow of -- of assistance provided by the state to those mothers, to the exclusion of the abortional aspects itself.

Now, that -- the question has come up that somehow the court could supply the intent which we failed to supply. Failed to supply because we didn't know what we were doing? I don't know.

Senator Oppenheimer, you -- you are one of 20 members in the Legislature - there were two Republican members and you were very forthright about this because you are quoted and your position is right out there, and

you have quoted exactly how you felt, so that I would characterize your statement as being coherent and logical in terms of their articulation. You did it very thoughtfully.

But there is an amicus brief, advanced as representative of the Legislature. Now, I just wonder if it is representative of the Legislature. I would wonder. I don't -- I don't like to ask each member, but I can ask you, Senator, and I don't want to ask others perhaps, were you specifically requested or did you specifically request the Whiteman firm to represent you personally as an amicus, or was it collectively in the name of legislators in the collegial sense, or just what was the nature of that -- of that representation by the Whiteman firm in this case?

SENATOR OPPENHEIMER: I don't believe, Senator Marchi, that the intent is to represent the Legislature. The intent was to get Senators and Assembly people who concurred in my contention.

SENATOR MARCHI: But you all had

to sign on.

SENATOR OPPENHEIMER: Yes.

SENATOR MARCHI: You all had to verify signatures.

SENATOR OPPENHEIMER: Yes. While I was talking to organizers for the Senate putting out a notice of what the case would be about, it was being appealed, and we ended up with, I'm not sure how many signatures. There were many more Assembly people that were concerned with this matter too and chose to sign on to the amicus brief.

SENATOR MARCHI: Well, you were -- I mean, well, you were very forthright about it because your testimony appears in the brief that they follow -- filed.

SENATOR OPPENHEIMER: We were approached by -- to organize in the Legislature those legislators who were of a like mind by the New York Civil Liberties Union who was then trying to organize other groups in support of their case.

SENATOR MARCHI: New York Civil

Liberties Union. Well, were the services provided by the Whiteman firm on a pro bono basis?

SENATOR OPPENHEIMER: I believe that was -

SENATOR CONNOR: Privilege.

SENATOR MARCHI: Well, if you don't know.

SENATOR OPPENHEIMER: I'm going to defer to my colleague. At the present time, I am not certain of the arrangement, and I can let you know at some time.

SENATOR MARCHI: Well, you don't know personally whether that -- whether their services were provided pro bono.

SENATOR OPPENHEIMER: I'm not sure.

SENATOR MARCHI: Whether they were provided to the New York Civil Liberties Union.

SENATOR OPPENHEIMER: I'm not sure what the arrangement was.

SENATOR MARCHI: Well, thank

you. Well, yeah. On the cover sheet, this is the court, of course, James Lytle of counsel, Carl F. Patka and Beth A. Bourassa, on the brief, Whiteman, Osterman & Hanna, on behalf of the New York State Legislature as amici curiae.

Well, I'm not going to go after you over what the court said, but this is what they -- this is what they represented, so I assume that at some point Lytle thought he was representing the New York State Legislature.

I don't think Senator Stafford would -- would challenge my statement that the funds certainly did not come from the Senate or from any public funds. So I -- I don't know where the funds came from if -- if, indeed, they were provided or whether the Whiteman firm performed this as -- on a pro bono basis.

SENATOR LEICHTER: Mr. President.

SENATOR MARCHI: Yes, Senator.

SENATOR LEICHTER: Will Senator Marchi yield?

SENATOR MARCHI: Yes, I will.

SENATOR LEICHTER: Senator, have you seen the caption of the action and have you seen the amicus briefs?

SENATOR MARCHI: Oh, yes, I have.

SENATOR LEICHTER: Right. And was there anything in any amicus brief, Senator, where representation was made by the Whiteman firm or anybody else that they were representing, quote, "the Legislature"?

SENATOR MARCHI: Well, I -- I will say that I did speak to one Senator who said he wasn't -- he knew about it, but knew little else, and I was just wondering how these names came. There were 60 in the Assembly and then we had 20 over here.

SENATOR LEICHTER: Right.

SENATOR MARCHI: This was the sentiment of the Legislature. Now, we have the vote today, will indicate whether there is a -

SENATOR LEICHTER: Mr. President.

SENATOR MARCHI: -- this kind of

sentiment here today on the -

SENATOR LEICHTER: Mr. President, would Senator Marchi yield to another question?

SENATOR MARCHI: Yes.

SENATOR LEICHTER: Senator, is it not fairly clear if you look at all the papers that were submitted to the court that a number of legislators, and I was one, in their individual capacity -

SENATOR MARCHI: You weren't quoted up front.

SENATOR LEICHTER: May I just finish my question? -- in their individual capacity submitted their amicus brief which we're entitled to do as you would have been entitled to submit an amicus brief on the other side, and isn't it clear that the court mistakenly wrote about the Legislature when there was no representation on the part of any of the litigants.

SENATOR MARCHI: Well -

SENATOR LEICHTER: Or by any of the amicus that they were representing the

Legislature because indeed the Legislature was not a party and under these circumstances could not be to this lawsuit.

SENATOR MARCHI: Well, that -- I accept that totally, Senator, as a forthright and honest statement and descriptive of what happened, but the court certainly assumed - engaged in certain assumptions in making that statement.

What's more importantly, when, in the formulation of the decision, we find out the role that under-inclusion is going to be playing in the future, and I'm not -- I'm not limiting myself to this. There are a number of issues that are involved that -- that come across our halls, and -- and if we are going to be supplanted by -- by being charged with under inclusion and they will conveniently provide and fill in that gap, well, then we've introduced a new element in lawmaking in the state of New York and one which we all should individually and collectively be very sensitized to.

This does not mean that you have

to change any opinion because you're -- you have the courage of your convictions on an issue, on this issue or another issue, and you're entitled to have them and vote the way -- I mean that's the way -- that's the way legislation and that's the way bills are enacted and programs put into place.

Now, this -- in the Whiteman brief, as legislative history of Chapter 584 demonstrates, the exclusion of medically neces sary abortions from PCAP Medicaid for women above the poverty line was highly controversial. And he goes on to say, in quoting from another case as descriptive of this one, this -- "The court's task is to discern what course the Legislature would have chosen if it had foreseen our conclusion as to under-inclusiveness."

And I quote from the decision itself: A trial court also properly determined that the constitutional defect in PCAP would best be remedied by expanding the ambit of the program to include funding for medically indicated abortion rather than voiding the law

in its entirety, and it appears that this alternative is consistent with the predominant sentiment of the Legislature.

Now, how can they make an assumption like that? How can the court do this? To assume that we wanted to -- had we known, had we known that these sentiments had been articulated and had we had the benefit of the Appellate Division's thinking and reasoning that we would have changed our minds and provided and filled in that gap.

I know what I was voting on. You knew what you were voting on, and I quarrel with no one if our votes contrasted. They didn't contrast on this case, on this instant case of Hope-Perales, but where they do, by God, you - we all have to voice our conscience and our judgment on these bills.

But can a court come along and say after that, after the fact, had you known what we know now and what we're thinking now as to constitutionality, you would have voted differently.

Well, this -- this is the height of nonsense and, if we accept this and we accept it and there have been other instances, this body will have to take and assume its responsibility very seriously as to where we're headed.

Judge Stanley Fuld, in the Delmar Box case, 320 NY -- 309 NY 60, stated, Memoranda on a bill written after its passage is not indicative of its legislative intent by a legislator, even though a legislator authored it. This is Judge Fuld just a few years ago.

What are we going to do? Are we going to be second-guessed on everything we pass now and, if they don't like it, they'll under include and put in everything they want? This is not judicial temperament exerted and exemplified in its pronunciation. This is a raw invasion of our legislative prerogatives, and it goes beyond this case. It goes beyond the arguments that we are waging here today because, if we allow this to take place, we will have retreated and abandoned and, by our silence, consented to an

arrogation to themselves of valuable legislative powers, and I don't think there's any legislator here who ascribes to that motive. All I see are legislators who have had the courage to vote their conviction regardless of how it -- how popular or unpopular it may be with any single member in this house; and that's the way it should be.

I -- yes, the statement that it appears with the alternative is consistent with the predominant sentiment of the Legislature was pure, pure guesswork on their part, not even guesswork; it was just any decision at all.

I will say that Judge Ciparick did recognize that the power of funding still lies within the -- within the Legislature, and Judge Ciparick was not attempting to preempt that, because as was stated, it may ultimately be their determination whether it will be funded in accordance with this decision.

But where are we? We had other examples of this, and at -- well, I won't go into them now at this point. There are other

cases that are directly relevant to an issue, but I would rather see this bill be taken care of, but I think -- I believe that we should be examining the -- these cases very carefully as they come up, and there will be people advanced for our consideration for confirmation and that the same careful scrutiny that they are pleading for in Washington should be exercised in this house if we are to retain control over our own responsibilities, if we are going to be able to discharge our responsibilities in a -- any kind of competent manner, but if we're going to be - if we're -- if we are going to have partners in lawmaking and not settling constitutional issues, then it's about time that we gave the entire reviewing process a very serious look.

Senator, I will yield if you -

SENATOR OPPENHEIMER: Thank you. I have a question for Senator Marchi.

I wonder if you have seen that, on the first page of the amicus brief, it says that a -- the amicus curia brief was submitted in behalf of the parties and they mention the

parties and they say at that point right on page 1, that it is members of the New York State Legislature, it is not -- we are not speaking for the Legislature. We are merely members of a like mind who came together to submit the brief, and so I was just wondering if you had seen that on page 1. That just -- that doesn't suggest -

SENATOR MARCHI: Well, maybe it's a product produced by -- just like a camel they say was produced by a committee, and probably a committee wrote on this and one side didn't know what the other side was doing, but certainly in the decision itself, they say this, what we're doing -- we're sure that the Legislature would have wanted us to do this had they known, had they known what the -- what the constitutional issues were involved; they would have preferred to do it this way.

How do they know? Ask me at least! My God!

SENATOR OPPENHEIMER: O.K. The other question I would like to ask you, Senator Marchi -

SENATOR MARCHI: Yes.

SENATOR OPPENHEIMER: -- is, if you recall at the time that you passed PCAP, at that time, do you recall that abortion never came into the discussion, that -

SENATOR MARCHI: That the -- that we -

SENATOR OPPENHEIMER: That abortion did not come into the discussion.

SENATOR MARCHI: Oh, yes.

SENATOR OPPENHEIMER: Because myself and all the strong supporters of choice felt that there was no way to move early prenatal and early childhood health care if we continued to push for the full panoply of choices, so we decided to surrender the issue of choice in order to get health care for the pregnant mother -- woman, and for the early - earliest years of childhood.

SENATOR MARCHI: Well, I mean you're -- you were candid, you were honest and forthright and aboveboard, and I would say that there was not -- there wasn't any member of this

body that was anything less than that, but to have the court come in later and say there are some who may have felt this way or that way and then also say that had they known, they would have -- the predominant sentiment was to do it this way, then all our decisions become very tentative. They rest on very insecure bases. There is no foundation that it can rest comfortably, when -- when they come in and say, Oh, but for the circumstances, you would have decided differently.

We decided on the basis of what we knew and what we had and people may have had various motives one way or the other in casting the vote they did. You went on to explain it, but -- but to say that -- well, the vote today is going to tell you right away how we would have voted so -- on the assumptions that they're making here. I believe it will.

ACTING PRESIDENT FARLEY: Senator Espada.

SENATOR ESPADA: Thank you, Mr. President. I rise because we continue here in

these chambers to define ourselves in ways that I believe most legislators, most people of conscience find reprehensible.

Senator Oppenheimer eloquently went through the implications of selective denial of funding. She went through how this would create an impediment to the free exercise of a woman's fundamental right to choose.

This also puts a penalty, though, on poor pregnant women and it is a bit surprising to have that happen, to have that emanate from the voices that cry out against tax increases, surcharges, fees of all types, because this is the net result or one of the net results is to create a financial hardship on people that this Legislature has deemed to be needy.

But we'll put moralizing aside for a second, because I'd like to go through this cycle. I'd like to go through what would actually happen if this bill became law and if indeed withdrawal of funding, Medicaid funding, for these women.

This bill is fraught with hypocrisy and contradictions. You take a child born in my district in the South Bronx. This bill -- this body would push to give it birth, push to bring it into life. Do you recognize, I ask, do you recognize that it has no housing? Do you recognize that it would have to wait three or four years to get into public housing? Do you recognize that, with regards to the education of this child, Jonathan Kozel has called it "savage inequality", that's what this child would have to deal with, "savage inequality" in trying to obtain a quality education.

Do you recognize for a moment that it can't have a work ethic if it doesn't have a job? This Legislature doesn't do enough, in my view, to promote quality housing. In fact, since I've been here what it has done, what some of the supporters of this bill have actually passed by this house is that this child that we push to give life to, and its mother, would wait outside a homeless shelter to get in until -- and couldn't get in until such time as

search warrants took place, until fingerprinting took place.

Now, not only are they savage inequalities, but there's a contradiction that no one could uphold, that no court, any court, would see through these -- this public mugging, this legislative mugging, of constitutionality rights.

Here today, we -- we look back at Martin Luther King, Jr. Today, as always, I look back at JFK, and each of these giants, public servants, taught us that the manner in which we treat those that are not as fortunate, that are vulnerable, that are needy, define our character, define what we're about, and I think this bill does do that, and I ask all of you to put the -- this game of what is popular politically at any given time and look to have deliberations that are based on an understanding of equal access, that are based on the understanding of equal protection regardless of economic status.

I ask as you vote, to remember

this day, to remember your own humanity, to be fair. I ask that you vote against this bill.

Thank you, Mr. President.

THE PRESIDENT: Senator Spano.

SENATOR SPANO: Mr. President, Senator Oppenheimer spoke earlier. She said that we don't want to get involved in religious battles today, and I have to admit to you that I feel a little uncomfortable getting up here on Palm Sunday discussing this issue, and it's one that is -- is an emotional issue, one that people on both sides of the aisle continue to have some very strong opinions on and I, of course, have the greatest amount of respect for Senator Maltese and our colleagues who have presented this to us today. We know that it's an issue that is very, very important to them.

But there are other issues that we are in the process of negotiating right now to try to get included into this budget that may give us the ammunition that we need to prevent unwanted pregnancies in this state, and the initiatives that have been presented to us by

the Family Planning Advocates are excellent ones and are positions that I hope ultimately will be included as a part of the budget that will be passed at some point over these next few hours.

But the important issue, and notwithstanding the issues that were raised by -- by Senator Oppenheimer about the constitu tionality, the constitutionality, but the important issue that New York State should continue to stand as a beacon for reproductive freedom for all women who live here.

It's one that we -- it's an issue that all of us take very, very seriously. It's one that I believe that on the issue of choice that a woman -- that all women in this state should be given the ability to make that decision, and it's a decision that should rest with her, with her family, with her spouse, with her doctor, and with her own conscience, and it's not a decision that we, and certainly I as a person who will never have to make that choice, should be standing here imposing our beliefs on them.

So I stand here today to -- to hope that the issues that have been raised by the Family Planning Advocates are included in this budget, that we continue to do everything that we can to prevent unwanted pregnancies in this state, that we continue to fight against adolescent pregnancies in this state and to stand -- at the same time allow us to stand as that beacon for reproductive freedom.

Thank you.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Now, this is an issue which certainly everyone takes quite seriously. It's not an issue that's a partisan one. It's a matter of conscience and, over the years, I've had a consistent position, but it is certainly one that I review intellectually from time to time.

To me, this bill, first of all, has a lot more to do with economic discrimina tion than it does with abortion. We put out a

bill here that says the state of New York won't put any money into reimbursement for abortional services to poor women. The rationale is, "I don't want my taxpayers' money, my money as a taxpayer, used for something with which I vehemently disagree, and which I feel is morally wrong."

Yet, every two weeks the state of New York pays the employer's share of the medical insurance for its employees, for our staffs, for our families, and those benefits do include abortional services, so that for the middle class who are our workers, our staffs, the moral absolute seems to vanish, and we want to exact our conscientious beliefs about abortion on only the poor women in New York.

I think that's wrong. I think it makes it an issue of economic discrimination, not an issue about abortion.

Secondly, I think that, while - and I certainly appreciate and share the concerns of moral theology about abortion, that's not a consensus position in New York

State. It's not a position shared by other very conscientious, very religious, very moral thinkers in this state, leaders in this state, religious leaders, ethical leaders, who don't share that position, and that's their right in this democracy.

We have a right to disagree over this. We certainly have a right to disagree over this, and we have a right to attempt to persuade in an appropriate way each other about the views, but that's a moral debate, that's a theological debate; it's an ethical debate. We are here to make, by law, the public policy of the state of New York and that public policy is supposed to enshrine the shared consensus value of all of our citizens, and that's my competence as an elected official.

My competence isn't to attempt to tell someone what I think about abortion, I agree or disagree with what someone else thinks. We leave that to those leaders who lead that debate on all sides of it. My competence as a legislator is to make public policy and, in

doing that, of course, I don't leave my conscience at home. None of us leave our conscience at home. But we do have to use our judgment about what the best way to bring about public policy is, and if my conscience says, "Gee, I wish people didn't get abortions, because that's very troubling," I have to recognize that.

But then the next question is, as a public official, what's the best way, what's the best way to do that? And I submit to you the best way to do that is not to deny poor women the same choice which the courts have guaranteed that other women have. The best way to do that is not to make abortion illegal.

I don't believe that would work, and I don't believe that this bill, even if you cut off reimbursement to poor women, I don't think women who -- who are faced with that difficult choice and make that choice to end the pregnancy, and that's a choice made -- I have to believe that's a choice made in desperation. That's not a choice someone takes lightly. I

can't speak to that, I'm not a woman, but I certainly don't believe anyone makes that choice lightly. I don't think people make it frivolously. I think people make it in desperation, out of a need, a desperate need, not to bear a child that they can't provide for, for a variety of reasons.

And, in that desperation, I submit to you that those poor women will get an abortion. Desperate women before Roe v. Wade, desperate women got abortions. They weren't necessarily safe; in fact in many, many cases they were not safe, but they, faced with that choice, carried it out.

So I don't believe this bill -- I believe it's designed to make a political statement. I don't believe it's -- will accomplish any purpose of ending abortion. It will merely tell the poor women in New York State, We don't think you ought to have the same right as our staff members, as our family members, as our employees, in the state of New York; and I think that's poor public policy, and

I'm opposed to it. I think it's wrong. It's wrong for the variety of reasons that I've outlined.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I was going to ask Senator Spano a question about what he meant by "a few hours." We were going to pass a budget in a few hours, but he was one of those who laughed most heartily when I asked Senator Present what the outside time limit was last week; so I decided not to ask the question.

I apologize for the frivolity to open this debate, Mr. President, but I want to address first and foremost the points raised by my colleague, Senator Marchi, with respect to the judicial power in this state and the exercise of that power.

It seems to me that the railing against the judicial power in this case is misplaced, Senator Marchi, because the court, in

this instance, is recognizing a constitutional principle, a principle that goes beyond the power that's present in this chamber, not the legislative power, the power instead that derives from the people, "we the people" who formed the union, "we the people" who formed the state.

It was the people who exercised the constitutional power and, in fact, in the Hope case, the Appellate Division recognized that the people of this state, through their due process clause, had wanted to ensure that the issue of access to a fundamental right would be preserved for everyone.

The whole point of the Constitution is, it's designed to protect the people of this state from us, from acting in a way that interferes with their constitutional rights.

How do we handle the problem of under-inclusion that you so properly point out? It seems to me, and I would again defer to your expertise in the area of law, but look at the

Carolean Products case in the United States Supreme Court, 1934, when the issue of the judicial power was being developed in the wake of the New Deal. Remember the little footnote in Carolean Products from Justice Harlan in which he said, There has to be a balance, a constitutional power on the part of the court because the one principle that the Constitution stands for is that it's designed to protect those who will never have access to a political majority. They will never be in a position where they will be able to pass legislation. They will always be in the minority. But we, as a constitutional people, recognize that we would protect that minority from the power of the majority.

In this case, what did the court do? It determined that there was under-inclusion and it said, How are we going to solve the problem of under-inclusion? How are we going to rectify it? They used the judicial power, that coordinated power of government, with the same power that exists in this body but on another

parallel track, and they simply said, we're going to exercise that judicial power to achieve the goal of the Constitution, to make sure that the rights of the minority that we, the judicial branch of government, are the sole protector of, the minority cannot go to the Legislature and ask for that protection. They don't have the political power to do it. Instead, the Constitution protects them and it has to be vindicated by a common law court. That's the power of the judiciary to protect those who are defenseless from the power of the majority.

So it was done in this case. This is a case about a fundamental right that is protected from intrusion by any legislative power or legislative majority. It seems to me that that's the critical issue that we stand here to debate today. I join with my colleagues, Senator Connor, Senator Oppenheimer, Senator Espada and, yes, Senator Spano, in the right - in articulating the right that is at issue in this case.

I'd simply point out that we can

not leave the constitutional rights of the people of this state to a means test, to simply a test of their wealth before they have the right to exercise a fundamentally constitution ally protected right given to them by the people, not given to them by the Legislature.

If we enact a means test, what other rights will we create a means test for? We'll simply restrict everyone's access to fundamental rights on the basis of their pocket book. It seems to me that that flies in the face of our constitutional principles.

I'd close with just one comment on substance. This is a simple issue for me. It's purely and simply one of fairness and access to health care. The message that we would send by enacting this is that we don't believe in fairness, that we believe we ought to have a two-tiered system of access to health care.

Nothing, in my judgment, strikes more fundamentally at the principle of fairness and, frankly, at the principle of constitutional

fairness that we should all recognize, not just through the due process clause, but that we ought to recognize in the pronouncements of this Legislature as well.

Mr. President, I'm opposed.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes. Mr. President, what strikes me about this bill, and it's a matter that Senator Espada referred to, is the solicitude and even humanity that the sponsor of this measure and the supporters of this measure show for the fetus or, as they refer to it, the unborn baby, and I know it's genuine. It's real humanity, real concern, but somehow when that fetus is carried to term, we don't find that solicitude any more. That humanity that was expressed by Senator Maltese when he talks about the fetus doesn't seem to carry over after what many of us consider to be life, which is after birth, occurs.

So we find that Senator Larkin doesn't want to provide housing to the mother

and the baby until there's a warrant check. We find Senator Holland doesn't want to provide benefits until the mother is fingerprinted, and I assume under his bill the baby would have to be fingerprinted too.

We find that Senator Marino doesn't want to provide medical care or at least a sufficient level of Medicare that most of us think is necessary for that baby that's now born, and for the mother. Senator Kuhl wants to reduce the housing allowance. The Majority here wants to reduce the social service benefits, the welfare benefit.

I just say to you, where is your concern for all of those poor infants that are born? I don't see it. I see the measures that I referred to, and Senator Espada made that point too, particularly in the district that he represents.

I think, as Senator Dollinger rightly said -- yeah, I'll yield.

SENATOR MARCHI: Mr. President, would the Senator yield for a question?

SENATOR LEICHTER: Yes.

SENATOR MARCHI: I -- on the question of the -- you seem to throw a shadow or a cloud over the efforts that were made to provide as much medical care to face that problem, and I was just curious whether you had read the dissenting opinion that the presiding justice of the First Department, Francis Murphy, made where in many ways he did not -- it was not a strong dissent; it was not a strong dissent but he did advance the fact that, under the provisions that existed in that act, it did provide substantial services even to women who, short of the abortional procedure itself, in other words, all of the medical services were available to that person, and I was just wondering whether you had read the minority opinion of Judge Murphy.

SENATOR LEICHTER: Senator, I - I -- I did. I don't know what relevance it really has to the point that I was trying to make, nor am I that certain that it does us any -- it benefits us at all to revisit the bill

providing prenatal care that we passed here, and we -- we all know that some of us who felt very strongly that that bill was flawed because it didn't allow counseling on abortion, neverthe less voted for it because we thought it was so important to provide that prenatal care.

And, Senator Marchi, as you remember, the Majority in this house, maybe not every member but the Majority held that bill up. I think it took -- was two years or maybe even longer until the state of New York availed itself for women who needed these services because, once again, people wanted to make a statement on abortion.

And let me say, Senator, I have the greatest respect for the position, for you. I -- and I understand your position, and I respect it as I do Senator Maltese. I know it flows from a deep felt moral conviction, but I think the point that we're making here is that we don't feel that it is fair to debate the issue of abortion in terms of taking away from poor women services that are available to other

women and services that flow as a constitutional right.

Now, we can debate the issue of abortion. We can respect your position, as I do, knowing where it comes from, but I don't think that we ought to find these sort of bills, a measure such as this one, trying to take away Medicaid funding, holding up a bill on prenatal services because you wish to reaffirm your position on abortion.

SENATOR MARCHI: Well, I -- Mr. President, I -- in response, I have introduced in the past bills that just limit it to people who are employed by the Legislature, so that this is -- this is a -- as Senator Connor pointed out, a position. I think it articulates a position. It doesn't go very far beyond that for reasons that he mentioned, and I think they were perfectly valid reasons.

But this is -- this is not the forum to -- to inject a fill-in, to fill in what they feel is a void, and the Legislature addressed it and it just puts into perspective

how this whole issue along with a lot of other social issues that are unrelated to this procedure, are impacted by -- by events and by what the fed's are doing, and I know Senator Dollinger made the argument that this is sort of a common law right, common law interpretation of constitutional rights.

But we are still -- there are still seven persons looking at this and there is -- there is a -- there is an arena for constitutional issues, and there are -- there is an arena for programmatic issues, and you're addressing it now; so I can't argue with you on this. I mean that's your position; I respect it. I feel otherwise, but we -- we have to be very, very solicitous about deeding over that power that we have here or in any legislative body when we do it via the route of under-inclusion, by judges, some years later.

SENATOR LEICHTER: Senator, I - I understand your point and, in that sense, there's some agreement between you and me, because I don't want to debate it in terms of

whether the -- the recent decision by the Appellate Division in the Perales case or other decisions require that we provide that medical service. Maybe it does, and it's a belief that is consistent or would be a decision would be consistent with my belief.

But I agree, I don't think that's the issue here today. The issue, as I see it, was really stated in terms of whether we wish to make or those people who support this bill and who are against abortion wish to deny poor women a service and a right that is available to all other women, and I think that's the point; and the other argument that I wish to make is that I think it's unfortunate at every opportunity that the anti-choice people that you raise these sort of -- that you express your opinion in these sort of bills because it inevitably results in either creating a two-tiered system of health care, discriminates against poor women, and so on, and it's in that sense that I wish to consider your bill and, as I said earlier, it seems to me, frankly, there's an inconsistency

among the supporters for this measure when you take a look at all the measures they put forward which seek to deny services and benefits to poor people, to infants that are born after expressing this great solicitude for the, quote, "unborn baby," unquote.

Thank you.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Thank you, Mr. President.

I just want to speak very briefly. Many of the comments that have been made have expressed my sentiment already, but I'd just like to speak specifically to Senator Maltese who quotes as one of his key support groups the Nurses for Life and, Senator Maltese, I have also spoken with the Nurses for Life. They've spoken to me, and it's very interesting that, while they support legislation such as this, they are moot on issues of health education for young people, school-based health programs and services, condom availability for

minors, and the availability of reproductive counseling.

So I find it quite a contradiction that this group supports this legislation which would essentially restrict the availability of reproductive services, full re productive services to certain women, poor women in particular, while at the same time they don't want or they at least are not advocating for or supporting or talking about the availability for education services, health education, sex education and other related services that would help particularly young women avoid this problem of having an unwanted pregnancy, and I'm not assuming that all of the kind of pregnancies that you are trying to address are necessarily unwanted for those reasons, but certainly it seems to me that, in the least, we ought to be looking for preventive services.

I have lobbied, and I know that Senator Tully had a bill last session that was killed in the middle of the night and it's my understanding that it was killed by groups like

Nurses for Life and others who opposed that legislation, because it would provide re productive health counseling and services to young women, and I think that is a particular insult to this body that seeks to provide health services to young people that we can not get legislation passed because those groups like Nurses for Life and others oppose that legislation.

I just want to speak to Senator Marchi. I'm very surprised and shocked that the Senator takes this position regarding the court's decision. I certainly was also part of that brief and make no apology for it, because we do have a three-branch government political process, and the judiciary often deliberates and takes positions opposite to the legislative branch and/or even the executive branch; so I don't believe that is an unusual occurrence, and we also sometimes take positions that opposes the other branches, and it was my understanding that we have that right and they have that right. That is the -

SENATOR MARCHI: Point of order, Mr. President.

SENATOR MONTGOMERY: -- balance of power.

SENATOR MARCHI: Point of order.

SENATOR MONTGOMERY: Am I not to be continued?

ACTING PRESIDENT FARLEY: Senator Marchi, what is your point of order?

SENATOR MARCHI: My point of order is only to say that I have the greatest respect for her, and I do not begrudge you any statement that you wish to make. I know it's with sincerity.

SENATOR MONTGOMERY: Thank you. I would just -- my point was, Mr. President, that it is in many instances where the court has revisited itself as in the Plessy vs. Ferguson case, where eventually the court revisited and changed -- reversed its own decision.

The Congress has very often been the last point, particularly in the area of civil rights, when the court has not acted. The

court has acted in many instances when Congress has not, so that this is, it seems to me, a very normal process in the course of reaching decisions, and I am not surprised, and I certainly welcome the fact that the -- the judiciary decision was different from ours because I believe that it is right to protect the constitutional right of every woman or every individual to have equal access to public services.

My last comment is regarding the money. I think that Senator Oppenheimer was absolutely correct in that the cost of -- cost to society of maintaining children whose parents are unable or unwilling or incapable of caring for them is astronomical, and until we are able to make sure that the services that are necessary to make -- make it possible for young people to realize a full and complete life, we should not be encouraging, in fact mandating, that unwanted children or children who should otherwise not have to suffer such consequences, we should not be mandating that they be forced

to.

So for those and the many reasons discussed here today, I wish that the Legislature would see in its wisdom and vision to reject this legislation, which as far as I can determine, based on recent court decisions, might even be unconstitutional on its face.

Thank you, Mr. President.

THE PRESIDENT: Senator Nolan, did you wish to be heard? Senator Nolan.

SENATOR NOLAN: Yes, Mr. Chairman.

Interestingly enough, some people talk about poor people, and I understand there's no question that the issue in this bill is even more difficult than the issue of abortion itself, because the fact of the matter is that, unfortunately, Roe v. Wade is the law of the land and, in fact, that's what makes this issue itself more difficult because obviously people are affected adversely by this, but that on the other hand, if you come to the conclusion that abortion is wrong, then there certainly is no

way under any circumstances that you can support this bill, even though it is a more difficult overall issue than the subject of abortion itself.

It's interesting, and I've said this on the floor of the Senate, on many other occasions, my term in the Senate, I think I represent a district that ranges from poor areas in the southern end of Albany and the northern end of Albany to wealthy people who live in Loudonville, and other areas of Albany County, and it's interesting, more people vote in my district than any other Senate District in this state.

So obviously the people are very interested in their government, and the fact of the matter is I've never had either a person or a group of people who represent themselves as poor people coming to lobby me on the subject of abortion. Now, some people will say, Well, that's because poor people don't have time to come and talk about the subject. Well, that's baloney, because I've had lots and lots and lots

of poor people come into my office and talk to me about welfare, talk to me about civil rights, talk to me about a lot of issues that affect the poor, and I've been to many, many meetings in communities, out in the community where people talk about a lot of issues, and I'm particularly talking about poor areas. The people that tend to come and talk to me about abortion in the ten years -- ten terms that I've been in the Senate tend to be wealthy people, upper middle class people, claiming that they represent the poor and yet those same people are not the people that are concerned about the issues that really affect the poor so much -- food, clothing, welfare, and all of the other issues that we know are so important to poor people.

Education, the most -- single most important issue in terms of poor people, if poor people are going to come out of the ghetto, so to speak, education certainly is the number one priority in the sense of making sure that our poor people are educated so that they understand and are able to move forward in

society, that they're able to rear their children for a better life, and so on.

And, you know, we talk about poor people. I mean Senator Montgomery certainly is a good friend of mine, and I respect her a lot and so on, but you know, throughout the history of this country, the country is replete with people who have come out of poor areas and who are very poor and raised in poverty themselves and have gone on to the highest levels of -- of fame, and et cetera, in this country.

I remember reading back in the 1960s an article by Dan Walker, a columnist in the DAILY NEWS, who wrote a column about poor people and how they -- certain particular poor people, how they came out of abject poverty and rose to great heights, and he pointed out that within one five-year period, I believe, in the Lower East Side of New York, which was then the ghetto area of New York City in the early 1900s, came Alfred E. Smith, who became a great Governor of this state, came Jimmy Walker, who became mayor of New York, came Cardinal

Mundelein and Cardinal Hayes, who were princes of the Catholic Church, came Irving Berlin and Eddie Cantor, who certainly went on and became legends in their own lifetime. And so it goes.

People -- I noticed there was an article in the DAILY NEWS today about General Powell, who the Republicans are talking about the possibility of running for Governor in 1994, and if you look at his background, he came from Jamaica, I believe, and came to this country and certainly didn't have the benefit that a lot of us in this chamber have, but yet was able to become a very famous and powerful person in this country.

So I don't think we should deprive anybody of -- of the right to live, and we talk about the right of women to choose, but how about the right of the unborn to choose their life?

Now, Senator Oppenheimer, I'd like to ask you a question if you would yield, and this is something that really bothers me deeply. I've done a lot of reading on this

subject, and the fact of the matter is every statistic that I've been able to read shows that the United States of America has by far the highest abortion rate of any country in the western world, five and six times as great as many of the countries in Europe, in South America, and so on, and can you explain to me, please, why this country is -- that we have become so morally decadent in this country?

SENATOR OPPENHEIMER: No. Sadly, your facts are correct, Senator Nolan, and I think we would have to look at what was said by Senator Montgomery earlier. This nation has a peculiar bent. Maybe it's because of our Puritan beginnings, and it has a Puritanical philosophy which is not broadly accepted in the rest of the world.

The rest of the world, as I would say almost every citizen and certainly woman in this country, would far prefer for this abortion issue to go away. But what do you have to do to make it go away? You have to offer education to youngsters, family planning education, and it

should preferably start in elementary school with what is responsibility. These issues that are brought up in the broad context don't deal with just what contraception should you use. It deals with a whole concept of what is a family and what is responsibility, and what do you do when you're a father? Does that mean that you just bear a child and walk away?

These are the major issues that are not tackled in our society, and we have the most ridiculous array of programs on -- on public television which seem to laud sexuality and sensuality, and you see Calvin Klein jeans with some young babe, you know, rear end in, you know, the posterior of the person is smack up against the screen. I mean it's ridiculous.

What are we telling them? We are telling our youngsters that sexuality is good. Sensuality, it doesn't matter if you have relationships that are serious just for its own end, this is the way you should dress and this is what our advertising says is cool, and then on the other hand, we're not offering in our

schools the responsible choice that should be made when you decide to have intimate relationships.

Indeed, when we talk about facing society as it is today and we know that our youngsters, 75 percent of our youngsters coming out of high school have had intercourse, well, if you're not offering -- if the family planning and the kind of general responsible behavior we would like to see from our youngsters, then for pity sake, offer them the alternative which is how do you prevent pregnancy?

You do it with Norplant in your arm or you do it with taking -- what's the pill? "the pill". So you have do it through other methods of contraception. We just simply don't offer the choices, the responsible choices or the logical medical choices that are out there, and it is not that youngsters around the world are being celibate. We know that isn't true, but they just have a much more responsible education and health system than we have here.

ACTING PRESIDENT FARLEY: Senator

Nolan, are you finished? O.K. Senator Tully, you're next on the list.

SENATOR TULLY: Thank you, Mr. President.

In connection with the bill before us, Senator Marchi correctly raised the Court of Appeals decision in the Hope case and the question of legislative intent as it relates to PCAP legislation as we know it today.

As the sponsor of this legisla tion and involved in three-way negotiations, I want to make it clear that the legislative in tent at that time had absolutely nothing to do with the question of abortion, that we were dealing with prenatal care, which clearly implies the birth of a child, and abortion was never discussed.

We were trying to provide services to those most in need in the prenatal area, something that had been attempted to be negotiated for years and years and was not concluded until last year, and that issue was never discussed.

ACTING PRESIDENT FARLEY: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

I'm very pleased this year that we are joined by so many new voices but I'm greatly saddened by some of the remarks that my colleague, Senator Nolan, made.

Let me explain to you something about poor women. Having come from a poor community and having seen poverty first hand, poor women, and especially minority women, do not talk openly about sex or about abortions and you will not find them going out to advocate.

The Puerto Rican/Latino woman is usually a home body. The African-American female is involved in the home, and these are things that they don't even talk to their husbands about, more or less some strange male.

And I'm saddened to hear that you discuss all of these great men who rose up out of poverty, but this issue is about women, and I didn't hear you mention one woman.

There's seven women on this side of the aisle, and I'm pleased that we are in accord on this issue, and I dare say that all of these males in this room have ever experienced in any way what a woman has to go through in this country and especially in this state, and I was very pleased to hear my colleague, Senator Espada, espouse some of the things that we sit here and vote for, that deprive women of their rights in this state; and once again, as I've said for the five years that I've been here, this bill is discriminatory. It discriminates against the rights of women.

And I know that my colleague, Senator Maltese, is as impassioned about this as I am, and we have the privilege of sharing - our districts abut, and I know many of the women in his district, and I've had the opportunity to speak with many of them, and I'm a member of Catholics for Free Choice, and through that organization we've contacted many women in his district, and I'm proud to stand here and say that most of them agree with my position, and I

think that there's something else that maybe many of you males should do.

Go back and talk with those women in your district because we're sent here to represent those constituents, not to represent our own views. Therefore, I vote in the negative.

ACTING PRESIDENT FARLEY: Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

Senator Montgomery was a little bit exercised about Senator Marchi's comments and that probably is because you hadn't done what I hadn't done at that moment in time and that is read the actual statement in this decision which I think was the primary thrust of Senator Marchi's comments.

If you read the covering page transmitted to us by the Appellate Division, they make reference directly to a brief, and I'm quoting, On behalf of the New York State Legislature -- that's you, me and everybody in

both houses, and then if you read the decision itself, one sentence I will repeat, not that whole paragraph -- And it appears that this alternative is consistent with the sentiment of the Legislature.

Now, I think what Senator Marchi was saying quite clearly, irrespective of the underlying basis for the decision, the interpretation of the state Constitution, the efficacy of their conclusion, the fact remains that in two instances in this decision, they make reference to a simple fact of the state Legislature being in concurrence. Well, I'm not in concurrence; you are. So there we go and I think that's important for us to take note of.

However, let me address the basic issue. I've listened very carefully to all of you this year, as I have in others, and obviously, I respect each and every point of view that has been expressed and the right to express it. But I think there are some things that have been said that require a response.

One or more of our colleagues

gave a lengthy dissertation on the economic issues related to a child that was born in less privileged environment, poor, as opposed to an abortion that may or may not take place. I think if you draw a conclusion in our society or to equate a child's life or anyone's life for that matter to an economic cost on its face, is an argument that I don't think any of us really want to subscribe to, and if we have used it, I think we should reconsider the context in which we presented it.

I think it's important for us to realize that the Congress of the United States very specifically and very clearly said that it would not fund Medicaid abortions. As a result of that pronouncement which they have reaffirmed on more than one occasion, we are one of only six states that continue to do so. National policy at our federal level by our Congressmen and women, stated clearly time and time again, that we should not, but we have decided, as did five others, to go in a different direction and I think it's important to recognize that fact.

That's what -- that is what is being said today on this floor by a number of us. It's not a unique minority view if you look at the country as a whole, but a majority view and, when you consider the Congress is dominated by your party, it just sort of strikes me as rather odd that we should be cast in the light of being totally unenlightened and unique in our position.

Now, the issue of Roe vs. Wade has been brought up here in the context of several comments, and I assume it was brought up appropriately, some might say inappropriately, but if you want to bring up Roe vs. Wade, I think you also should bring up Deal vs. Bell, which is another case in 1977, where the Supreme Court said the state has a valid and important interest in encouraging child birth and states are not required to use Medicaid funds to pay for non-therapeutic abortions of those who can not afford them. And so the Supreme Court spoke to that issue quite clearly, and it doesn't require any interpretation at all.

Later on, in 1989, in Webster vs. Reproductive Health Services, another decision that is relevant, it was established by the Supreme Court reaffirming the right of government not to become involved in the abortion business, and here the court said in a sentence that I think is worthy of repetition, quote: "Nothing in the Constitution requires states to enter or remain in the business of performing abortions." End of quote. And I think that, my colleagues, is the issue. Are we in the business of abortion?

Now, some of you mentioned, Senator Montgomery, Senator Smith, a number of others, that we should be doing things to facilitate child bearing, birth women who are poor who wish to bring their baby into this life, and the bill that Senator Tully talks about a moment ago that was the basis of the court's decision that's been referred to, does just that.

But we go way beyond that in this budget and, hopefully, we'll get to it at some

point in time. You will see an item referring to the Maternity and Early Childhood Foundation, an organization that was funded a number of years ago by initiatives in both houses, both sides of the aisle, providing millions of dollars to help women who are poor, with all of the maternity costs during child birth, prenatal and after child birth. So we have not been callous to that issue. We've done what we could do to provide money for these particular pregnant women.

I know of no issue in the discussions that take place and have taken place in regard to Medicaid funding that reduces the amount of money that will be available in aid to dependent children. I know of no initiative in this house and certainly not in the Majority that would diminish the funding for children in any of the categories that historically have been in place and, moreover, I will remind you that, in this state, we expend a larger share of our overall budget for social services than any state in the nation, in aggregate and on a per

capita basis, and Medicaid is the fastest growing part of that component.

So when we vote on this budget once again, there will be hundreds of millions of dollars in new money provided for health care to the poor. Those who get up, as did Senator Leichter earlier, and cite our deficiencies in this regard I think, frankly, are being specious.

I've been in this place, this is my 21st year, and every year I've been here I have voted for budgets that included more and more money for social services. Is it enough? Will it ever be totally enough? I don't know the answer to that question. The fact remains that we have done what we could and then some.

Well, I said earlier I respect your views; I hope that you respect ours. We feel very strongly on this issue both in terms of the constitutional decisions that have been made and the underlying one that indicates quite clearly that we need not and should not be in the abortion business as a state even at this

time.

And so I think we should join all of the other states other than the six of us, the great majority of them and their legislatures and Congress, the Supreme Court of the United States, who said quite clearly we should get out of the abortion business.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Goodman.

Oh, Senator Espada, why do you rise?

SENATOR ESPADA: The Senator, a question of the Senator.

ACTING PRESIDENT FARLEY: Senator Padavan, will you yield to Senator Espada?

(Senator Padavan nods head.)

SENATOR ESPADA: Yes. Thank you very much.

No quarrel either with your right to say what you said, personally, but you said something, you said that you have a representa tive view that perhaps may be in the majority

here today, and I just wonder how you settle this whole question of, on this side of the aisle, seven women ranging in political philosophy from conservative to liberal, how could you consider your position representative and, if you still do, then is it -- is this issue of a woman's point of view on this matter important to you at all?

SENATOR PADAVAN: Senator, the views of all of my constituents and all members of this house are important to me, and I make no distinction between their gender. A Senator stands up and speaks, I really don't care what their particular gender is; I'm listening to what they have to say, and I respect what they have to say.

I do that, I think, with my own constituency and obviously in my constituency, there are people that would agree with me and those that would disagree with me and again they are obviously from both sexes. I have members of my own family that don't agree with me. I'm not going to tell you who they are because

you'll throw this back in my face at some point. But the fact remains they don't and some -- and some who do, so I don't think that's really the issue here.

I've been here a sufficient amount of time to have learned that, if we don't respect each others' views, and the things we have to say to each other, we're going to get into a lot of trouble in the way we conduct ourselves. I think I've answered your question.

SENATOR ESPADA: Mr. President, if I could just follow up.

ACTING PRESIDENT FARLEY: Senator Espada.

SENATOR ESPADA: You did, and I thank you.

The question is how much weight as we deliberate these incredibly fundamental issues in public policy, how much weight, or is it important to value the weight that opinions held by a woman would have in this body?

SENATOR PADAVAN: Senator, again

I'll try my best to respond. I place the same amount of weight on the view expressed by any female member of this house as I do by any female member of my constituency. I would also assume that female membership in this house would place an equal amount of weight on an opinion expressed by a male constituent on any given issue. I don't think that there should be a lack of balance in that perspective.

ACTING PRESIDENT FARLEY: Senator Goodman.

SENATOR GOODMAN: Mr. President, I was in this chamber 22 years ago when, after an extraordinarily moving debate, this house made a decision which became the law of the land permitting freedom of choice with respect to abortion in the first trimester of pregnancy and I shall never forget Earl Brydges seated in the chair now occupied by Senator Present, who was passionately pro life, and he came into this chamber and he made a policy decision and that decision was that, even though he felt that abortion was morally wrong, that this house

should be given the opportunity to debate the question and to have a free vote of conscience upon it. Those now seated in this chamber who will remember this are Senator Present, Senator Galiber, Senator Marchi, and, Senator Halperin, were you here in your knee pants at that time?

SENATOR HALPERIN: Yes.

SENATOR GOODMAN: Apparently you were, and that perhaps was the point of greatest dignity and greatest sensitivity of the house and the point at which the saying that we are the greatest of all of the state legislative bodies had its truest underpinning.

In the 22 years since that action was taken and just to conclude the Earl Brydges recollection, at the conclusion of the debate which he closed for his point of view, he slumped into his chair literally in tears because he knew that, by virtue of his decision to allow the democratic process to take its full result, that he might very well have something occur with which he disagreed. And so for him it was an extraordinarily moving moment and one

which we all shared and had a lump in our throats at the time.

In every year since that action was taken in this house, at budget time and at various other times, an attempt has been made to chip away at the decision which we reached at that moment and, unfortunately, this house did not uphold that decision but, fortunately, the other house did and, as a result, the sanctity of that decision has never been impinged upon.

Mr. President, in reflecting upon some of the issues that are at stake in this, I'd like to share with you another reminiscence. One night long ago I was serving as commissioner of finance in the New York City administration, and the mayor of New York decided that it would be a good idea for each of his commissioners to take a turn in what he called the "night mayor" program, night mayor, m-a-y-o-r.

For me, my first night as night mayor became a nightmare, m-a-r-e because I took a tour of the city. We were allowed not just to stay in City Hall but to go out and tour around

and see what was going on in the City, and I went to the Children's Shelter at 110th Street and Fifth Avenue, and it was an unannounced inspection tour, and I saw row upon row of cribs of sleeping children, some not sleeping, some bellowing, but there is something quite significant about this, because there were two children in every crib, one at the head of the bed and one at the foot of the bed, two little heads, one popping out of each end. These were the poor children who had no parents. These were the children who were in an orphanage which was so overcrowded that there was no way to care for them other than in conditions which I can only describe as inhuman and insufferable. If it had been possible for many of their mothers to have exercised their right of free choice, I would not have seen two children in each crib that night and so many of those little cribs.

Mr. President, if we can just take a moment to try to empathize with the impoverished mother-to-be who suddenly makes the totally unexpected discovery that she is

expecting a child and she is bewildered and she doesn't know what to do and she does not know where to turn. She may be given the choice that, if it is her judgment and that of her spiritual counselor or that of herself and her doctor that an abortion is appropriate, that she should then go and try to get an abortion.

But where does she get the wherewithal to do this? Who provides the money for this procedure to be undertaken? The answer is, if the will of this house which is exercised at budget time were to apply, that no one would provide it, that government which theoretically grants the right of freedom of choice would actually be denying it on the basis of an economic form of blockade. No money available and, therefore, no exercise of free choice.

Mr. President, it has often been asserted with deep sincerity by those who support the pro life position that to permit an abortion to occur is to permit the taking of a human life, and I'd just like to remind us all of some of the elements of that debate 22 years

ago when we propounded the proposition that in the first trimester of pregnancy before the quickening of the fetus there is not, in the view of many of us, the existence of a human life as such. A potential life, yes, from the moment of conception, but not a human life in any normally construable sense of that word.

What has been the acid test of this? It has been whether the fetus could survive outside the woman, and there has been no place on this planet, of which I or any medicine -- medical man that I have spoken to that I am aware, that a fetus has been able to survive outside of the woman in any period of less than a trimester, and so there is substantial medical evidence for the fact that this is not in any normal sense of the word a human life and that the taking of this is not the taking of a human life and is certainly not murder.

And, Mr. President, that is the logical premise from which we assert the right of privacy of a woman to make a choice with her best available advice on her own, without the

intrusion of government. What right does government have to intrude itself into the bedroom or intrude itself into the most private of awful decisions?

We spoke of the "hanger syndrome" in that debate 22 years ago, of the fact that there literally was case after case in which poor women administered abortions to themselves with twisted wire coat hangers, and we documented repeatedly the extent to which women in that situation often administered to themselves a death sentence from which there was no return to life. Hemorrhaging ensued and death followed shortly thereafter.

How many back alley abortions are we willing to see contemporary society permit?

Mr. President, it might be useful to take a moment to say what pro choice is not. Pro choice is not pro abortion. It is not pro abortion for contraceptive purposes. It is not pro abortion for convenience. It is not pro abortion on a basis that is thoughtless and unmotivated by valid factors.

To say that one is pro choice is in no way to suggest that it is not imperative that society provide sex education, that society do everything in its power to try to advise that abstemious behavior is appropriate, especially among our teenagers and especially among those in a premarital situation. But don't we know enough to learn that in the best of all worlds that is not the way the world really works. The world works that, for whatever impulse and reason, young mores involve premarital sex; they involve promiscuous sex; they involve a lot of things which we hope we can try to prevent from recurring over and over. But despite our best efforts and anything we might say in this chamber, these things are a fact of life.

No, pro choice is not pro irresponsible behavior, and it is not pro promiscuity. If we could spend more of our time educating our kids into what constitutes appropriate behavior in their own long-range interest, we'd have less necessity for abortion, but in a practical, cruel, real world where im

pregnation occurs when it is not intended and indeed at times when it's not even understood that it will occur, we owe it to the people who are involved in this human calamity to give them every possible assistance, to throw them, if you will, a life preserver, to enable them to bear future babies healthily and not to bungle abortions so that either they kill themselves or they prevent the normal conception of future progeny.

Mr. President, there's been ample coverage today, I suspect, of the economic folly of those who suggest that we can save $12 million on abortion. Have we read the memoran dum in support of this measure? It's absolutely astonishing. "Fiscal implications," it says. "A conservative estimate of two-thirds of the abortions being medically unnecessary would produce savings of $12 million annually."

This is a Senate memorandum relating to a bill in this chamber? $12 million. You've already heard the costs of the children in the little cribs, and you've already

heard the costs of situations involving youngsters who are born and have never had a break, never had any opportunity to be given any of the gifts of the Jeffersonian dream of the society in which all men can be pulled up and women can be pulled up by their own boot straps. It's a wasteland in many cases and it becomes more and more of a wasteland the more and more we hew to the narrow type of approach which says we'll save 12 million bucks if we prevent Medicaid abortion.

I respectfully submit to you, Mr. President, that that's folly and the most self defeating sentence I've ever seen in any bill memorandum in this house.

Let me conclude by suggesting that those of us who care very deeply and both pro life and pro choice people do, about the future outcome of our civilization, will recognize that this type of a debate in this house today has far-reaching implications, not only are we discussing a question of an appropriation for Medicaid abortion, we're

providing a lens through which the public will look at a legislative process in a free land and we're giving the public the opportunity to gauge the degree of judgment and common sense and true morality which this house can or cannot practice depending upon the vote of its members.

Now, I'm not here to say that any action, that any outcome here is inherently immoral by intention, but I am here to tell you that, in terms of the common sense and the judgment of what it is that is ethical behavior in a society as many of us construe it, the opportunity which we must try to provide to all citizens irrespective of economic condition to be given adequate attention under the over arching principle that every individual has a right to privacy and a right to choice in an abortion, for a consistent application of that principle there must always be funding for the abortion and to the extent to which we deprive people of that, we're indulging in what I can only call the crudest of self-administered folly.

So, my friends, once again the issue is before us. I wish I could predict that this house would defeat this measure. I know that it will never become law, and I know that probably the mind set of most of my colleagues is such that this debate will not affect its outcome, but it's my fondest wish that somehow, some day, in some way in this house that these measures will no longer be presented.

And I would remind us, in conclusion, that the latest public opinion poll taken by people in my party has shown that, and within the last several weeks has shown that better than two-thirds of all New Yorkers believe in the principle of pro choice. If we purport to mirror the underlying feelings of those we're here to represent en masse, that statistic alone should be sufficient to impel us to a conclusion that this bill is not an appropriate bill for passage in this house.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: In answer to those people who think that sometimes it is unnecessary for people to speak because other people have spoken, this is a perfect example of why that argument doesn't always hold true because you may vote the same as another person but maybe for completely different reasons and, Senator Goodman, while I understand your sincerity, I want to completely disassociate myself with one of the examples you used which I thought was a horrible example.

When you referred to those children in the orphanage, I said, God bless them that they were born, and thankful that their mothers had had them as children and our responsibility is to see to it that those children get care, that perhaps that the mothers would not abandon them, but that they have life.

My position as pro choice has never been that abortion should be an off-handed birth control method that we do just as we yawn in the morning or in the evening we go get an

abortion. I am thrilled that those children were alive. I thrill for every woman -

SENATOR GOODMAN: Mr. President.

SENATOR GOLD: I certainly would yield.

ACTING PRESIDENT FARLEY: Senator Goodman.

SENATOR GOODMAN: Mr. President, Senator Gold, I appreciate your yielding, and I appreciate the opportunity of setting the record straight if my words were not clearly enough set forth to be generally understood.

SENATOR GOLD: I'm sure they weren't, and I'll be glad to yield.

SENATOR GOODMAN: Senator Gold, I specifically said that I did not feel at any time that abortion should be construed as contraception, and I most assuredly at no moment intended to imply that my seeing two children in a crib was an indication that they were not children to be appreciated. It was rather focused upon the tragedy that society is not able, in many instances, to care for children,

and that was the entire emphasis.

Obviously, I think you and I know one another well enough so that you should never confuse any such statement with a statement to suggest that those children were not welcome when born and that those children were not entitled, as every other free citizen is of this society, to optimum care. But my reflection was to see a City facility in which there were two kids in a crib, to convey to you the notion that that was a ghastly inadequate way for human beings to be treated.

I hope that I've dispelled any misunderstanding on the quote.

SENATOR GOLD: Well, Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: I don't misunderstand Senator Goodman, because I know that, in his heart, he has compassion and good ness. Your words, Senator, I don't think came out the way you wanted them because you

suggested that had the law been different in those days, those children may not have been there, and I know you didn't mean that, because you have now explained your position which I knew to be your position; but it was not a great example.

You referred back to 22 years ago, and interestingly enough, I ran for the Assembly in a very hotly contested race, almost lost, and that might have had an effect on the law because my vote was the 75th vote which required Perry Duryea to cast the 76th vote to make that the law, and had I lost the election, there wouldn't have been a 75th and assuredly no 76th.

Just wanted to make a couple of points. In terms -- there's some major inconsistencies here. We complain about the cost and, on the other hand, I hear that there aren't any poor people asking for this, and then I hear people say we spend the most amount of money.

What are we talking about? At

least in the privacy of this chamber, let's understand some things. A vote for this bill is not a vote for the majority of people in this state. It may be a vote for the way individuals here feel and their consciences feel, and I respect that and I'm never going to argue with anybody on that, never, all right?

In the privacy of this room, if this state spends a lot of money for social services and for health care, it isn't because of a lot of you here who fight with us every year to take away that money. Sure, when the budget process is finished, the Majority in this house takes great pride in coming up with 31 votes, and then you'll write letters home that say, because of you, you cut this and you cut that and you cut this and that; and so don't come in now today and brag that New York State spends all its money in helping people.

Certainly wouldn't be spending what we were spending if it was up to a lot of the people here.

This is not obviously -- oh, one

other point, on this "poor people". Senator Nolan, whose sincerity on this issue is extraordinary and I would never question, but he makes an argument which, with all due respect to him, and he's a bright lawyer, is totally flawed. He says that poor women and poor people don't -- he never heard anybody ask for it.

On the other hand, my distinguished colleague from the county of Queens, Senator Maltese, says that we are having more abortions than any year since 1982. Well, since this bill only covers abortions for poor people, didn't the 45,000 or so people who took advantage of the program speak? Wasn't that them speaking saying they needed the program and they were able to get it? Is there any doubt in anybody's mind that if the program wasn't available, these thousands of poor women would be subject to butchery? We know that's the fact.

And lastly, I'd like to say that I recognize that this is not a partisan issue. One of my closest friends in the world, no

secret, Senator Onorato, who can't be here right now and who is on his way here, may not make this vote but has always supported this bill in the past and I'm sure will indicate on the record his support for it today, Senator Stachowski, Senator Nolan, we have people on this side of the aisle who will support that; you may have some on your side who will oppose it, but there's one interesting factor. When someone made a reference earlier to seven women on this side of the aisle from different political points of view, Senator Pataki has a lot to offer this chamber and my remarks certainly are not meant in any way against him, but when you did have a woman on your side, she happened to agree with the women on this side. So the women who are here today are not speaking as Democratic women, and they're not speaking as liberal women or conservative women, they're speaking as women, and you have Republican women outside of this chamber who speak as women.

I don't speak as a woman, but I can speak as a human being in this society, who

recognizes that you can not, in good conscience, make the kind of distinctions among women that this bill would make. It is terrible politics for this state. I appreciate the fact that the sponsors of this bill are unquestionably as sincere or more sincere than I am -- can't be more sincere, as sincere as I am, and as Senator Goodman and Senator Oppenheimer and others, but with that degree of sincerity that I feel, I'm telling you this is bad, bad public policy for this state, and I applaud the fact that it will not become law even if it passes here.

ACTING PRESIDENT FARLEY: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President, my colleagues.

I rise because of some things which were said on the floor earlier and to share with you a personal experience I had at the Foundling Home in Manhattan some many years ago.

Many of you do not know this, but for a period of nine or ten years I played Santa

Claus every year for the Knights of Columbus, and one of the places that I was required to go was the New York City Foundling Home, and after a period of time I couldn't do it any more, not because I didn't enjoy bringing joy to the children or sharing the presents, but it was because at the end of the day playing Santa Claus, the children who were, some in the cribs, most out of the cribs, would grab the red suit that I had on and begin to call me "Daddy" as I tried to leave the Foundling Home, and the overwhelming emotion that I experienced in the last couple of years that I played that role made it impossible for me to continue.

When Senator Goodman spoke of the two children in the crib, I wondered what we're thinking about, how sacrosanct are we to believe that the policy of the Congress of the United States, a male-dominated bastion, is the right thing to do? Since when does New York State have to copycat what someone else is doing? Does it make the Congress right that they are insensitive to the women of this nation? Will

it make us right to again repeat our insensitivity to the women of this nation? Does it make the Republicans in this chamber right to disregard their poll which tells them that the women in their party and the people in their party want to change and want to support pro choice?

But the graphic description of the two children in the crib reminded me that, in a conversation week before last that I had with Tom Coughlin, that the Department of Correctional Services is driven by the fact that we have two inmates in a cell, and what happens when these women, many of them children themselves, have these babies and are unable to take care of them and, because of the policies that we establish here when we fight over the educational budget, those children are not allowed, some of them, in the inner cities to have a decent education, and that also happens in the rural areas of our state when we fight over the penny, and they have inadequate clothing, inadequate housing, inadequate medical

attention, and sometimes not necessarily by choice, but by being the victims of this society they end up as one of the two persons in the prison cell.

Although there is no direct connection, no absolute nexus between our vote on this bill and the monies that we spend for prisons, which, by the way, dwarfs the $12 million we're talking about here, we spend billions on prisons, $150,000 to maintain the prison cell with this mortgage component, $50,000 a year for a maxi' maxi' just to keep the prisoner in the cell.

Are we also sacrosanct in our approach to life or our approach to death? I think this is a mistake. I think for us to feel good about duplicating what the Congress has done is a huge error. We're better than that. I think it is a mistake for us not to be sensitive to the will and the needs and the desires and expressions of the women of this state and of this country and, in fact, I would encourage the women of this country to vote out

all of those who don't see it their way. They have 51 or better percent of the voting block. Vote everyone who does not agree with their position out of office, and then this will become a moot issue.

I must encourage all of my colleagues, Mr. President, to please, please listen to the drum beat of the women and vote no on this issue.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: Mr. President, I wasn't going to speak on this until, Senator Goodman, I only hope that they clear the record up because I know that you said it and I don't -- I'm glad to hear that you did not mean it.

You and I some 22 years ago were a bit at odds on this very same issue because I had objected to you bringing the balloon and the hanger and stuff like that. Good memories, O.K.?

But on this particular issue, it's all been said. I think -- I don't want to

beat a dead horse. My name was called, and I want to make it crystal clear that what Senator Gold has said was what I was going to say also.

Those of us who come from the city of New York, and this issue always troubles me because we lose sight of what it's really all about. It's an attitude and it's a pitying and it's a judgment, and it's a decision that people have come to, same as the death penalty.

Every now and then, you might sway someone over to agree with the death penalty. Not on this issue though. But the tragedy of what happens, Senator Maltese, when we start talking about this issue, is that we bring in things that have nothing whatsoever to do with your right of choice in terms of your opinion on this particular issue.

We start picking on the poor again. We start dealing with the Constitution, whether or not it was the intent of the Legislature. We just went through a situation, we talked about the intent of the legislation, the three branches of government. You want to

get on issues.

Reapportionment bill, we had someone who suggested that we pass this. The Legislature passed it, the governor signed it so, therefore, it is a presumption, a presumption of constitutionality. That's what the Court of Appeals said. Some of it disagreed, not those who were shifted out into the woods.

Burden of proof, those who felt that they had gone through branches of government was essential and that in this instance somehow they'd gone a bit too far.

Senator Nolan talks about why is it, we know that there's a number of questions, a number of issues. We don't know why drugs are used at the rate it's used in the United States, but it is, this great country of ours.

So, Mr. President, most of what has been -- I wanted to say has been said, and I would not have mentioned it but for that one point and I think it's extremely important, Senator, because I know you didn't mean it

because somewhere along the line they may pick that record up because there are those in my family where my mother had nine -- my grandmother had nine children, and that's the only way they slept, Senator, only way you get a good night's sleep. One slept this way, one went the other way, one went down, and that's the way people could sleep nights, and for you to suggest, and you didn't mean it, I'm glad to hear it, didn't mean that that person who was sleeping the opposite way, maybe that person wouldn't have been sleeping that way but for the fact that we're taking a position as far as abortion is concerned.

You mentioned something about lifting up the bootstraps theory somewhere along. Try it, today, Senator, just lift your self up by your own bootstraps. You're going to fall on your gluteus maximus, believe me. Try it! You're going to find out. I have.

So, Mr. President, we're trying to get at the time point where we'll re-shuffle and re-deal the cards, if you will, every 50

years 'til we come to those who have too much and those who have not enough, until we come to that philosophy that every individual has a right and an opinion and a choice.

I've taken a position as far as this issue is concerned. Senator, you and I were on the right side of the argument in the debate 22 years ago, and I suffered along with you to see the agony on Senator Brydges' face because he had the nerve and the temerity and the fairness to have this issue debated, and Senator Waldon, you probably are getting close to being right. We've got something like 1500 women in the Legislature, quite an increase from just a few years ago, and they have a powerful presence in the legislative branch throughout this nation, and they bring a kind of sensitivity and concern on issues that are important to all of us as human beings.

So, Mr. President, I'm going to vote as usual on this piece of legislation, I'm going to vote against the amendment because the amendment is really just a way of keeping the

ultimate issue alive; that is whether you're for or against abortion, almost got sucked in, and I'll end on this note because of my sensitivity one year, there was a bill which said would you have any objection to having another attendant in the room when the person was having the abortion.

Now, that's the approach used, and I voted, I said yes, if you're going to go for the abortion let's have somebody else in the room, but it's just a means through which you keep the issue alive, just like this issue of whether or not we should pay for the abortion or no, but the underlying -- the basic issue is whether or not you believe or not, and that's where the issue should stay.

ACTING PRESIDENT FARLEY: Senator Oppenheimer to close debate for this side and then Senator Maltese to close debate.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Did we make it under two hours?

ACTING PRESIDENT FARLEY: We're

not keeping track.

SENATOR OPPENHEIMER: We tend to be -

ACTING PRESIDENT FARLEY: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I just wanted to, before the close of debate, I would like to ask if Senator Marchi would yield to a question, in fact. Can I do that?

ACTING PRESIDENT FARLEY: Senator Oppenheimer has the floor. She will yield to you, I'm sure.

SENATOR MONTGOMERY: Oh, thank you, Senator Oppenheimer.

Senator Marchi.

ACTING PRESIDENT FARLEY: Senator Marchi, would you yield to Senator Montgomery for a question?

SENATOR MARCHI: Yes.

SENATOR MONTGOMERY: Yes. In light of your comments, when you spoke, when I was speaking and Senator Padavan's comments, I

just wanted to ask if you were in your -- in your debate, were you responding solely to the fact that the wording in the -- in the decision stated that on behalf of the -- that the law firm was representing the New York State Legislature?

SENATOR MARCHI: Well, it was a -- this is a representation made for the purposes of justifying under-inclusions. Had it been -- had it not been that way, it certainly undermined, I think to some extent, the regularity and the professionalism of the judicial temperament that should have been exhibited by the court treating this in not being so frivolous with -- with some of the supportive data.

But my -- essentially, my argument was with the under-inclusion to supply that which was not intended to be supplied and then in the court's decision itself, well, we're doing what you would have done had you realized our constitutional concerns about it.

I don't see that. It's not

justified, I don't think, in terms of experience. You're speaking about public policy generally and that leads you in another direction; that's something else, but I think in terms of -- in terms of supplying by under-inclusion, it's something that I don't want to see, at least in future cases where it's so blatantly in contrast with realistic statements by us.

It's wrong. Well, then, call it unconstitutional and let the process proceed, but I don't see -- I don't see the avenue that was selected as -- as really, I thought it was very cavalier treatment of the Legislature and much more importantly, it -- and certainly they became legislators as well as -- and that happens inevitably when you make a decision affecting even constitutional rights. But it's to be exercised with the greatest care with respect to the Constitution.

But here we're saying what categories we're going to add, and we're going to put in this rather than declare the whole

thing unconstitutional, and that's what they want. Well, it wasn't what we wanted because we would have said so, if we wanted it.

SENATOR MONTGOMERY: Thank you. Thank you.

SENATOR MARCHI: I'm sure I didn't answer your question, but it's part of it, but certainly not all of it.

SENATOR MONTGOMERY: Yes, thank you, Senator.

I thought that I understood you to say that, and I also confirm my original comment, and that is I certainly do believe that the court has a right to reverse a decision of ours but, moreover, I do want to make sure that Senator Marchi understands I certainly absolutely respect your right to your opinion. I just happen to disagree with that.

I certainly do agree with the court and, as I said before, I also respect that they will override us and, hopefully, they will continue to in the spirit of our Constitution and our government as it is established.

Thank you, Senator Oppenheimer.

ACTING PRESIDENT FARLEY: Senator Oppenheimer, you have the floor.

SENATOR OPPENHEIMER: I appreciate what several of my colleagues specifically have said.

Senator Goodman mentioned that, irrespective of what we do here, that abortion will not go away and indeed that poor women will do what they have to do as they have been doing for thousands of years, and we can legislate all we want, but the fact is that a woman is going to do what she has to do and it really doesn't matter what we do here and that's sort of the bottom line; and poor women, if they don't have access to the Medicaid funding, are going to do what they had done prior to Roe vs. Wade which is they died in inordinate numbers in horrible ways in back alleys.

I appreciated Senator Nolan's thoughtful discussion where, although he is strongly opposed to abortion, he recognizes that what is available to a -- a well-to-do or a

middle class woman really rightfully ought to be available to a poor woman, and I respect all of the statements and the philosophies that were enunciated today, and I think that this debate -- this debate is never going to go away, and it's never going to get resolved, and I really hate this discussion, and I really think government has no place in this discussion. It's such a personal and such a private matter and a woman is going to handle it as best as she can handle it, and that's why I really hate this discussion in this chamber, because I don't think government has a role to play here.

But I hope that we will not have this discussion next year, and the Hope vs. Perales decision if it goes to this Court of Appeals, I believe, will be upheld and I will mention now before all of this body that I will again be organizing friend of the court concurrence with members of this legislative body who feel as -- as I do that this is appropriate for us to file an amicus brief.

So, one, I hope that the Hope vs.

Perales decision will be upheld by our Court of Appeals if it goes there, and I, secondly, hope the other big change this year is that I hope our President will ask Congress to drop the Hyde amendment and ask Congress to move ahead on health care reform and included as part of that health care and basic benefits package, that choice will be available to all women.

It's certain to me that we shouldn't discriminate against poor women for those privacy rights and health rights which were available to women that are more affluent.

In closing, I'd just like to mention those groups that are in support of Medicaid funding for abortion, and they number about 25. Amongst them are the American Association of University Women, Catholics for Free Choice, the Protestant Episcopal Church Diocese of New York, International Association of Women Ministers, League of Women Voters, Association of Social Workers, the New York State Nurses Association, the New York State Council of churches, the New York State

Republican Family Committee.

Actually I did want to mention a few lines from this very fine legislative memo. The New York State Republican Family Committee states that they believe that "***government must play a constructive role in ensuring that people of differing views are allowed to follow their consciences. It is government's responsi bility to foster a climate of tolerance. It is not the government's -- the business of govern ment to advocate one religious view over another. The inclusion of abortion within New York State's Medicaid system is positive proof that New Yorkers recognize the importance tolerance plays in building a civilized society and the Republican Family Committee urges Medicaid funding for abortion because it safeguards a woman's health. It is fair and just, and it saves the taxpayers' money."

This is the women of the Republican Party of New York State speaking. Well, there are several -- many other groups. There are only two groups who are in opposition

to Medicaid funding, and that is the New York State Right to Life Committee and the New York State Nurses for Life, which was mentioned by Senator Maltese. There are about 25 or 30 groups that support -- that are supportive of more Medicaid funding.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Maltese to close debate.

SENATOR MALTESE: Mr. President, since Senator Goodman engaged in a bout of nostalgia in connection with the general subject, perhaps to some extent I can do the same.

While I was not up here as a member of this body, I was, in fact, up here and had discussed the matter with Senator Brydges and his aides, and I was not present in the chamber that day, but had occasion to speak to him subsequent to the fact, as some of my colleagues did, some of my present colleagues, and I don't think anybody would disagree with me that that decision was probably one of the

decisions that Senator Brydges most regretted during his legislative career.

Just now, I added up the amount of abortions that have taken place in 19... in New York State since that ill-fated decision and they total over three and a half million abortions since 1971, and with reference to those figures, I think it's interesting to note that in the first year 1971, there was more than a quarter of a million abortions, whereas in the prior year there had been only 62,000.

It's also interesting to note that in those years, those first years, New York State became an abortion mecca, and that some 60 percent of the abortions performed in the first two years -- first three years were from - performed on out-of-state residents who traveled here to secure those abortions.

The analogy that Senator Goodman made about the two children in the crib, I believe, has been to some degree covered by Senator Gold. But I would like to comment on them to the effect that those mothers, the

mothers, no matter how poor or deprived, I wonder if those same mothers had to choose between the children, sort of a choice between living or dying, I am a hundred percent positive the choice would not be for death.

Senator Goodman also made the decision, and I'm sorry he's not here in the chamber now, made the allusion to what choice is, that it is not a choice for -- for - necessarily for pro abortion, that it is - being pro choice is not pro choosing abortion for birth control methods.

But it is -- it is, in fact, just that for a great many of the people who choose abortion. I referred earlier to the figures, the abysmal figures, the horrifying and shocking figures for a so-called civilized society, that we had only 298,702 live births statewide in 1990 and 159,000 abortions, which gives us a rate of 53 per hundred live births.

But when we look at the figures for teenagers, we find them even more shocking and a commentary on our society today for

teenagers. There are 113 for every 100 live births.

Senator Goodman, and I don't question his sincerity, but he also made an allusion in saying that he did not believe this legislation, like some of our other right to life legislation, he said, he is not saying that it is inherently immoral by intention. Well, by saying that, I think I can safely say that the result would be inherently immoral. The implication certainly is there.

I submit, Mr. President, that I stand on much firmer ground; I and those advocates of life stand on much firmer ground when we say that certainly the alternative to life, the abortion of these three and a half million babies since 1971, may not be immoral by intention, but certainly is immoral in results.

Mr. President, I would like to refer now to the -- the decision, the court decision referred to by Senator Oppenheimer and others, and that court held that the right to abortion is protected under the United States

Constitution and that a Medicaid program could not discriminate in funding between child birth and abortion.

I believe this court, the appellate court, is certainly out of step with reason and other court decisions. Indeed, the -- the proponents of this decision, lawyers for the New York Civil Liberties Union, took pains to say that it was the first time that an appeals court in New York -- New York had taken a -- had made such a decision.

In addition, Mr. President, I think the loose terminology referred to by my good colleagues, Senator Marchi and Senator Padavan, with reference to the intent of the Legislature and the will of the Legislature, leaves us no doubt that this court was certainly guilty of sloppy draftsmanship.

I refer now to that specific decision with reference to the New York State Prenatal Care Assistance Program, PCAP, and as Senator Tully referred to as the sponsor of the bill -- and I would like to read specifically in

the decision with reference to PCAP, that -- and this is the majority decision -- "was enacted to take advantage of specifically designated federal funding and was aimed at decreasing infant mortality and promoting the health of infants and mothers."

And I want to repeat that, Mr. President: "Was aimed at decreasing infant mortality and promoting the health of infants and mothers."

To think that an appellate court of this great state can take such a clear and precise message and turn it into the exact opposite, turn a program that was supposed to protect and preserve the life of infants into a pogrom that destroys and slaughters those very same innocents, Mr. President, that court had to be in error.

I refer again to the majority decision. "In the opinion of the court, the right of a pregnant woman to choose an abortion in circumstances where it is medically indicated, is one component of the right of

privacy," and this is the part that bears our attention, "and by excluding any abortion fund ing, PCAP is deficient as it cannot fulfill its stated objective to combat infant mortality and promote healthier babies."

So we have this decision of this learned justice indicating that, by excluding abortion funding, they can not fulfill their stated objectives to combat infant mortality.

If that -- that doesn't make any sense, Mr. President; it doesn't take a Phila delphia lawyer to tell us that.

And again, in the majority decision referring to PCAP, "The disagreement arises over the right of needy pregnant women to choose an abortion when one is medically indicated or life saving."

I believe, Mr. President, with reference to the specific decision and this legislation before this house, this legislation specifically excludes abortion to protect the life of the mother in addition to rape and incest. So it is not analogous to the legis

lation before the house.

I'd like to, before I close, Mr. President, refer to Justice Murphy's dissent.

"The situation at bar is materially different in its enactment of PCAP. The Legislature neither recognized nor purported to address a wider need for comprehensive Medicaid coverage. What the Legislature did do was to extend certain Medicaid benefits selectively in order to assist women with incomes just in excess of the maximum allowable for Medicaid eligibility to afford the often extraordinarily expensive medical care necessary to maintain a healthy pregnancy, the Legislature's express objective being that of reducing to the extent possible, what were widely regarded at the time of PCAP's enactment, to be unacceptably high levels of infant mortality and morbidity attributable to inadequate prenatal care."

I don't think, Mr. President, relying on either the majority or the minority opinion in the case, that we can extend their reasoning to this legislation.

In addition, Mr. President, this legislation stands on its own two feet. What we are attempting to do here is deny the money to perform abortion, state taxpayers' money, Medicaid abortion, to deny the expenditure of these funds to terminate pregnancies and kill unborn children.

Mr. President, I submit that it is unfair and intolerable to utilize money that was intended to assist in the health of adults and children, to utilize that very same money to terminate life.

I urge the house to vote for this legislation.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, I would ask that the vote on this bill be laid aside. We've had a good debate, and we'll vote on it later.

ACTING PRESIDENT FARLEY: The bill is laid aside.

SENATOR PRESENT: Mr. President,

I -- in behalf of Senator Marino, I'd offer up the privileged resolution that's at the desk, ask that its title be read and that it be acted upon.

ACTING PRESIDENT FARLEY: The Secretary will read Senator Marino's privileged resolution.

THE SECRETARY: Legislative Resolution, by Senators Marino, Marchi, Goodman, Padavan, Velella, Maltese and Hannon, memor ializing the Federal Communications Commission to waive the cross-ownership rule in the case of the New York Post.

ACTING PRESIDENT FARLEY: All in favor of adopting the resolution say aye.

(Response of "Aye.")

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT FARLEY: Senator Goodman.

SENATOR GOODMAN: May I be heard on the resolution, please?

ACTING PRESIDENT FARLEY: Certainly, you may be. We'll withdraw the roll

call on that.

SENATOR GOODMAN: Mr. President, this resolution, of course, relates to the fact that Rupert Murdoch seeks once again to become the publisher of the Post, a position from which he was barred by virtue of an action taken some years ago in the United States Senate by a Senator from Massachusetts, who, because he objected to certain of the contents of the Post, felt that an opportunity presented itself when Mr. Murdoch acquired a television station in New York, to seek to have a ruling that one could not own both a television station and a newspaper in the same market.

That action in the United States Senate threw the New York Post into what can only be described as a toboggan ride of in stability over the ensuing year. For some period of time, it was in the hands of its publisher, Mr. Peter Kalikow, who came upon difficult times after a while, indeed came into a condition of bankruptcy, and was forced to sell the Post, and then there was a series of

events that can only be described as a madcap roller coaster ride with the New York Post being taken over by first one individual who himself then went into bankruptcy, so that was two bankruptcies involved, and then -

Mr. President.

SENATOR GALIBER: Mr. President.

SENATOR GOODMAN: May I ask for some order, please.

ACTING PRESIDENT FARLEY: Yes, let's hold down the conversations. I'm sorry. There's some conversations going on. I'd ask your courtesy to the speaker, please.

SENATOR GOODMAN: So after a second bankruptcy, still another individual became involved and, upon the arrival of that individual in the publishership, there was published for all to see an absolutely unique historical document, a picture on the front cover of the New York Post of Alexander Hamilton, the founder of that paper, shedding a tear and, indeed, he might have shed a tear either of laughter or of sadness or both because

what ensued was a comic opera of such peculiarity and uniqueness that all of New York stopped its normal workaday business to focus on an absolutely astounding situation.

That was that a group of very talented writers and reporters and columnists continued, despite the fact that they'd been ejected from the Post, to publish the paper and in publishing it to exercise their freedom of speech and expression to attack the ir responsibility of the then so-called publisher of the paper. I say "so-called" because the status of publisher was never firmly established during that period.

I think the most noteworthy thing about this entire episode was the unique courage shown by this team of reporters who would not let the Post die and who would not let it fall into the hands of irresponsible people who sought to publish it.

Now, we have in Albany one member of that unique team, and although it's rarely the habit on this floor to single out a member

of the fourth estate for special praise, I do think that this situation does require us to take note of the role of Fred Dicker, who makes his office not far from here and who, from time to time, has lobbed hand grenades on the heads of many of us in this chamber exercising his right of free reportorial expression, but who nonetheless is one of the keenest investigative reporters presently working in the business.

As we all know, Fred Dicker received an award for his reportorial excellence and was singled out for his journalistic skill, but I think the brightest page probably in his and the whole paper's history, was this period in which an attempt was made to fire all these people, to still their voices, and what resulted was that they moved out of the headquarters of the New York Post into a local cafeteria, several of them into City Hall, several of them working up here out of their residences, I'm told, and in short doing something which is absolutely unparalleled in the history of United States journalism.

The resolution which Senator Marino sponsors and which a number of us co-sponsor, simply to reflect our appreciation of the uniqueness of this situation and the courage demonstrated by a group of people who, economically, were in great, great danger and notwithstanding that, they stuck their head above the trenches and they did battle for what they happened to believe in.

Now, no one is under any illusion that this statement or any other that may be made on the floor today will exempt us from future criticism by the Post. Candor compels me also to mention that the governor himself, although he, too, was often the target of Post darts, put himself out in many different ways to try to bring about the continued existence of the paper.

So here we have a bipartisan effort with a group of beleaguered journalists, and the happy result apparently, if the resolution we present is activated, that the United States Senate problem which originally

resulted in Mr. Murdoch's withdrawal will be withdrawn, and Murdoch can once again come into the ownership and publishership of the Post.

As to Mr. Murdoch himself, he comes from a background of very unique report orial involvement. The famous story about him was that his father, who had run a chain of papers, died and Mr. Murdoch one day was brought into the publisher's office by someone considerably older than himself, who said, "Now, young man, you're going to sit there and you will do exactly as you are told," to which Mr. Murdoch replied, "Quite the contrary, my dear sir, I am going to sit where you are now sitting and I will be the publisher of this chain of newspapers."

So young Rupert Murdoch just out of knee pants, as the story goes, was in no way unable to express his strength of purpose, and what transpired from that point on is well known. He is today a media baron, highly controversial, drawing an editorial from the New York Times which could only be described as a

preachment of editorial ethics, to which the Post promptly responded with a very vigorous rebuttal of the Times' points, and we have the continuation of high drama.

That's just what's supposed to happen in a place like New York, and thank God, if this resolution is followed, it will continue to happen for many, many controversial, productive and interesting years to come.

ACTING PRESIDENT FARLEY: Thank you, Senator Goodman.

Senator Leichter.

SENATOR LEICHTER: Mr. President, I thought it was well stated earlier today by Senator Gold that we might come to the same conclusion for different reasons and, while Senator Goodman seems to be in particularly good dramatic voice today, I did want to disassociate myself on a number of things that he said and from many of the statements here, starting, Senator Goodman, with what I thought was a somewhat unfair attack on the Senator from Massachusetts.

There happened to be some very solid and good reasons for not allowing the operator of a television station also to own a newspaper, and that is because you don't want anybody to monopolize the news and the public access to information.

However, I think the Governor rightly pointed out that, considering the New York market, that risk does not occur, but I think that people of good faith and public concern can express some hesitancy about relaxing the waiver requirement or at least appreciate the reason that this rule exists.

As far as your description, you know, of the Post, and so on, it certainly is an amusing paper at times. It's a little shocking at other times. There's a lot of good fiction in it at other times. I certainly want to see the paper survive, and there's some wonderful people who work for it, and I'm going to -- I'm voting for the resolution not for the language in it, but I would like the waiver to be granted.

SENATOR GOODMAN: Senator Leichter yield to a question?

ACTING PRESIDENT FARLEY: Senator Leichter, would you yield to a question?

SENATOR LEICHTER: Yes.

SENATOR GOODMAN: We seem to be in a mode at the moment that permits us to express ourselves more expansively than if the budget bills were ready to go, which permits us to address this question you raise.

Are you aware that, at the time of this resolution, there was a Boston newspaper under the rule of Rupert Murdoch which was very severely taken to task by the Senator from Massachusetts, and would you think it was a total coincidence that, because that Senator was being criticized repeatedly in the columns, the editorial columns of that Boston newspaper, that it was just happenstance that he decided to take the lead in banning both the ownership of the boston paper and the New York paper?

My own judgment is that I think it was not a coincidence. I think he had a

specific purpose, and one which perhaps was understandable in this chamber even though we might deplore it and not agree with it.

SENATOR LEICHTER: Well, Senator, let me just point out to you that the rule again of permitting somebody to own both a television station and also a newspaper applies. Whether Senator Kennedy had some other considerations in mind, I don't know. I was just saying that there is ample public justification for the rule, and I'm not going to attribute some ulterior, some evil motive to Senator Kennedy or anybody else.

Let me say that I don't think anybody has ever described Rupert Murdoch as having enriched or embellished -- "embellished" isn't the right word -- enriched or added to the credibility of the newspaper profession. I think he's, you know, tried to create a lively paper, and he models it somewhat after some of the British dailies which you've seen, and they can be pretty shocking.

But I -- my only problem is, when

you start waxing so eloquently and so praise worthily about Mr. Murdoch and the Post and some other things that you've said, that just -- I just felt it necessary to disassociate myself from this comment.

ACTING PRESIDENT FARLEY: Senator Markowitz.

SENATOR MARKOWITZ: I just wanted to add to the comments by adding that I'd like to see the paper, the Post, returned to its working class beginnings, its humble approach to trying to speak for the working person in our city of New York, and I would hope that Mr. Murdoch two or three or whatever this is, that somehow the paper refocuses on that need in New York City.

Secondly, the sleaze that that paper represented the first time around, I would hope could be modified. I would like to see nothing more than a stronger New York Post, one that joined with the superb reporting of the Times and Newsday and the Daily News to a large degree. I certainly would like to see the Post

also, even if it is a more conservative viewpoint, that's fine, New York City needs all the viewpoints. We don't have to agree with the paper to want to see its success. And that viewpoint, if effectively and properly presented to New York, can add greatly to the vitality of the newspaper industry in New York City.

Lastly, I know that those of us that are concerned with the advancement of African-American and Latino viewpoints, it's important that the Post be sensitive to and make sure that their journalistic staff reflects the mosaic of New York City so that, when reporting on stories, they touch and reach out to all the dynamic ethnic and racial groups that make New York City what it is.

I hope that -- that Mr. Murdoch and his colleagues will at least attempt to make that happen, and I know all of us feel very strongly that the Post will be once again welcome in New York, and I certainly agree with Senator Goodman that -- that the waiver be granted.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Mr. President, we're doing terrific today in terms of whether we agree or disagree with everybody's logic and maybe from one side of the coin that we all stand up and explain our logic, maybe if we all were quiet, nobody would have to disassociate with anything else.

I understand where Senator Mark owitz is coming from, but I want to explain that in my vote, I'm -- I'm going to vote for this because I believe in freedom of speech, not freedom of acceptable speech, and I don't care what the Post prints. If I don't like it, I don't have to buy it; the next guy doesn't have to buy it.

And I'm not voting for this bill in the hopes that they change their policies. It's none of my business. They ought to have their own policies and, you know, we go through legislation here where people say, We're going to ban stores from carrying certain books and,

of course, I vote against those. I say, you know, don't buy the books. If you don't like what a book store sells, don't buy in that book store.

But I think there has to be a very fine line here. I'm glad that when the Post reads Senator Goodman's remarks, they will all feel very, very good and throw out their chests. I understand, if they read somebody else's remarks, they may not feel so good.

I think our job is a simple, straight, easy, uncomplicated job, and that's to make sure that there's a free press in America that we can either like or dislike, and that's where we'll spend our money, but I don't think on resolutions like this, it should depend upon any editorial policy or anything of a paper.

So I'm voting for it. My views of this paper, I'm sure, are known. They don't have to be put on the record, but the issue here is the supporting of free speech, as I see it.

ACTING PRESIDENT FARLEY: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

This is a wonderful opportunity of mine at this time in my life to be in the chamber and to hear the deliberations that I hear of mental giants on both sides of every issue imaginable. I learn so much, and I also love the fact that we can have an opinion of our own, and I'm going to go today on the fence, I suppose.

I'm really supporting Senator Markowitz in what he said. I think he's absolutely correct that the Post, hopefully, will -- will reflect -- will represent fairly the -- all groups in the city of New York, their views as reflected in our lives and our neighborhoods and, even though the New York Post, about two years ago, one particular writer for the Post tried to destroy my political career, told lies on me in the paper, I still - I remain as a -- as an elected official. I am going to rise above that, and I have overcome my feelings of anger and frustration at the way

that that paper portrays not only me but a number of elected officials and a number of other people in a way that I think is totally unfair and uncalled for and unbecoming of a newspaper in such a city as New York.

But nonetheless, I want to see the paper survive. I don't buy the paper, and I don't know many of my constituents who do, but those people in the city of New York who want to buy the Post ought to be able to buy it. It ought to be one of the papers that is available to people, and so I am supporting this resolution.

But I, like Senator Markowitz, hope that that paper rises to the standard of journalism of some of the other great papers in our City.

Thank you.

ACTING PRESIDENT FARLEY: On the resolution, all in favor say aye.

(Response of "Aye.").

Those opposed nay.

(There was no response.)

The resolution is adopted.

Senator Hoffmann.

SENATOR HOFFMANN: Yes, Mr. President.

I was out of the chamber the other evening, April 1st, at 12:35 a.m., session of March 31st.

I would like the record to reflect that, had I been in the chamber at that time, I would have been voting in the negative on Assembly 1351-A, which was substituted for 651 in this house, and Assembly 1350-A, which was substituted for 650-B in this house.

ACTING PRESIDENT FARLEY: The record will reflect.

SENATOR HOFFMANN: Thank you.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, could we take up Calendar Number 400, please, and before you do -

ACTING PRESIDENT FARLEY: Before we do, Senator Libous, prior to Calendar 400.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator LaValle, I wish to call up his bill, Print Number 1398, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read Senator LaValle's bill.

THE SECRETARY: By Senator LaValle, Senate Bill 1398, providing for extended school days for a district facing unusual circumstances.

ACTING PRESIDENT FARLEY: Senator Libous.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

ACTING PRESIDENT FARLEY: The bill is before the house. Senator Libous.

SENATOR LIBOUS: Mr. President, please commit the bill to Finance.

ACTING PRESIDENT FARLEY: The bill is committed to Finance.

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT FARLEY: Calendar Number 400. There's a substitution.

THE SECRETARY: Calendar Number 400, Senator Stafford moves to discharge the Committee on Finance from Assembly Bill Number 6118-A, and substitute it for the identical Senate Bill Number 4009.

ACTING PRESIDENT FARLEY: Substitution is ordered. You can read the last section.

Read the title, and then read the last section, I think.

THE SECRETARY: Assembly Bill Number 6118-A, an act to amend Chapter 303 of the Laws of 1988, relating to the extension of the state Commission on the Restoration of the Capitol.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR HOFFMANN: Mr. President. Where in the calendar is the -

ACTING PRESIDENT FARLEY: The bill is on your desk right in front of you.

SENATOR HOFFMANN: What is the number again, Mr. President?

ACTING PRESIDENT FARLEY: 400.

SENATOR HOFFMANN: There is no 400.

ACTING PRESIDENT FARLEY: 4009, I'm sorry.

SENATOR HOFFMANN: Close, sorry. Thank you.

ACTING PRESIDENT FARLEY: We're calling the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: I'm sorry, that was Calendar 400, it was Bill Number 4009. You don't have any calendar number. I'm just going by what they tell me.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up Calendar Number 401, which I believe is Senate 4228?

ACTING PRESIDENT FARLEY: O.K. We do not have calendars, but there is a bill on your desk, and the number is 4228.

THE SECRETARY: Senator Stafford moves to discharge the Committee on Finance from Assembly Bill Number 6490 and substitute it for the identical Senate Bill 4228.

ACTING PRESIDENT FARLEY: Substitution is ordered. You can read the title.

THE SECRETARY: An act to amend a Chapter of the Laws of 1993, enacting the Legislature and Judiciary Budget, in relation to

appropriations made to the Judiciary.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT FARLEY: Senator Stafford, an explanation has been asked for.

SENATOR STAFFORD: Thank you. Mr. President, this does not change the numbers in the budget at all. It has been traditional that we really have cut the actual Court of Appeals budget, so this puts $137,000 back into the Court of Appeals and, in effect, takes the 137,000 out of the lower courts.

SENATOR GOLD: What is that?

SENATOR STAFFORD: Court of Appeals has to make the decisions on the 137,000.

ACTING PRESIDENT FARLEY: Does that answer your question, Senator Dollinger? Senator Dollinger has the floor.

SENATOR DOLLINGER: If the chairman of Finance would yield to a question. Just, again, since this came up late, is there a change intended on the back page of this bill

at, well, about -

SENATOR STAFFORD: Where is the bill?

SENATOR DOLLINGER: -- transfers and restriction on transfers, that will also change that.

SENATOR STAFFORD: That's a technical correction from the original budget. I'll be glad to explain that to you in case you want me to.

SENATOR DOLLINGER: Yeah. I'm just not sure I heard you. Could you repeat that?

SENATOR STAFFORD: I didn't hear you.

SENATOR DOLLINGER: No, I didn't hear your response to my question. I just asked you to repeat it so I could -

SENATOR STAFFORD: Oh. A technical correction to the original budget action, again makes no changes as far as the amounts.

SENATOR DOLLINGER: O.K. But it

-- but it eliminates a restriction on transfer, as I understand it, that was contained in the original budget; is that correct?

SENATOR STAFFORD: No, it does not -

SENATOR DOLLINGER: Well, then, maybe you can just identify it. As I understand it, is the bracketed portion deleted that was in the original budget, and now it's deleted? Original provision said that the transfer could not happen until there had been a certificate of approval filed with various offices. That restriction is now deleted; is that correct?

SENATOR STAFFORD: Well, I was a speck involved in this, and this was language from the Division of the Budget that they wanted to change, and we agreed to it.

SENATOR DOLLINGER: O.K. So that the bracketed section is deleted; is that correct?

SENATOR STAFFORD: Yes.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT FARLEY: You can

read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, I yield to Senator Mendez.

ACTING PRESIDENT FARLEY: Senator Mendez.

SENATOR MENDEZ: Mr. President, there will be a meeting of the Democratic Conference, the Democratic Conference right after we adjourn.

ACTING PRESIDENT FARLEY: Recess.

SENATOR MENDEZ: No, after we adjourn. So, all right. All right. There will be an immediate meeting of the Democratic

Conference.

ACTING PRESIDENT FARLEY: There will be an immediate meeting of the Democratic Conference in their conference room, I presume.

Senator Present.

SENATOR PRESENT: Mr. President, Mr. President, the Senate will stand at ease awaiting the return of the Minority from their conference.

ACTING PRESIDENT FARLEY: The Senate will stand at ease waiting the return of the Democratic Conference.

(Whereupon at 6:50 p.m., the Senate stood at ease.)

(Whereupon, at 8: 15 p.m., the Senate reconvened.)

ACTING PRESIDENT FARLEY: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President, will you call up Calendar 402.

ACTING PRESIDENT FARLEY: Do we have a Bill Number on that? "4358", I don't think they have that on the calendar.

4358. The Secretary will read the title.

THE SECRETARY: Senate Bill Number 4358, by the Senate Committee on Rules, proposing amendment to the Constitution sections 11, 12, 13 and 16 of Article VII of the Constitution, in relation to the manner of contracting, paying, and refunding state debt.

ACTING PRESIDENT FARLEY: Read the last section. This is a constitutional - Okay. Just call the roll on that.

All in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

It is accepted. The resolution is adopted.

Senator Present.

SENATOR PRESENT: Mr. President, will you take up Calendar 403 which is 4359, Senate.

ACTING PRESIDENT FARLEY: 4359.

THE SECRETARY: Senate Bill Number 4359, by the Senate Committee on Rules, proposing amendment to the Constitution, sections 2, 10, 11 and 16 of Article VII of the Constitution, in relation to the submission of the capital program and financing plan.

ACTING PRESIDENT FARLEY: All in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

It is accepted.

Senator Jones is in the negative.

SENATOR JONES: I would like to

explain my vote. I'm in the negative.

ACTING PRESIDENT FARLEY: Okay. You want to explain your vote, also.

SENATOR JONES: Yes.

ACTING PRESIDENT FARLEY: Senator Jones to explain her vote.

SENATOR JONES: Yes. Mr. President, I would like to explain my vote on this issue.

I was very happy to hear the words "debt reform", and certainly that's something the public wants, and it's been a long time coming. So I applaud the efforts in trying to start down the road toward that.

However, I'm a little concerned that I see nothing that tells me there is debt reduction. I see in here there is still possibility of incurring more debt, and I don't think that's what the public is looking for. I would hope that -- while I realize this is a year to go, I'm hoping during that year that we will be getting input from our constituents and business and labor leaders and perhaps make some

changes so we can also be addressing reduction as well as reform in the way we do our borrowing in this state.

So I'm going to have to vote no at this time.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Ayes 58, nays 1, Senator Jones recorded in the negative.

ACTING PRESIDENT FARLEY: Accepted.

SENATOR STAFFORD: Mr. President. Can I please announce an immediate meeting of the Committee on Finance.

ACTING PRESIDENT FARLEY: The Committee on Finance will meet immediately in Room 332.

ACTING PRESIDENT FARLEY: Senator Mega.

SENATOR MEGA: Mr. President. Would IT BE appropriate to return to the resolution calendar? I understand there is one item that has been laid aside.

ACTING PRESIDENT FARLEY: It is my understanding there is.

SENATOR MEGA: I believe it is 944. Could that be -

ACTING PRESIDENT FARLEY: 944. The Secretary will read the title.

THE SECRETARY: Legislative Resolution Number 944, by SenatorS Mega, Maltese, Marino, Volker -

SENATOR MEGA: Mr. President. Could we have a little order?

ACTING PRESIDENT FARLEY: Yes, let's have a little order here, please.

Read the title.

THE SECRETARY: Legislative Resolution memorializing Governor Mario M. Cuomo to proclaim May 11th, 1993, as Police Memorial Day and May 9 through 15, 1993, as Police Week in the state of New York.

ACTING PRESIDENT FARLEY: Senator Mega, on the resolution.

SENATOR MEGA: Yes. Would you take a vote on that resolution, please.

ACTING PRESIDENT FARLEY: All in favor of the resolution, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

SENATOR MEGA: Mr. President. I would like to advise the members that any member who would like to go on that resolution is more than welcome to be a co-sponsor.

ACTING PRESIDENT FARLEY: The resolution is open to members. Please approach the desk or raise your hand.

(Whereupon, hands were raised.)

ACTING PRESIDENT FARLEY: Senator Present, do you want all the Republicans - Senator Hoffmann.

SENATOR HOFFMANN: Yes, and I am down on the previous bill, please, with unanimous consent, Mr. President.

ACTING PRESIDENT FARLEY: The Constitutional Amendment with Senator Jones. She's also down.

ACTING PRESIDENT FARLEY: Just a moment. We are accepting people that want to be on Senator Mega's resolution and then we will go -

That resolution has been passed. Now, there was a motion by Senator Hoffmann, a request to be down on that second amendment to the Constitution?

SENATOR HOFFMANN: The Constitutional Amendment, Mr. President.

ACTING PRESIDENT FARLEY: 4359. Is that it? Is that the one Senator Jones was down on.

One at a time. Senator Hoffmann is down on that. Senator Oppenheimer is down on that.

SENATOR PRESENT: Without objection.

ACTING PRESIDENT FARLEY: Anybody else? That's it.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: We will stand in recess pending the return of a report from the Finance Committee.

ACTING PRESIDENT FARLEY: The Senate will stand easy, in recess, pending the report of the Finance Committee.

SENATOR PRESENT: No vote will be taken. Then we will recess until 10:00 o'clock so somebody can go out and get something to eat, then we will take up bills after 10:00.

ACTING PRESIDENT FARLEY: That's 10:00 p.m.?

SENATOR PRESENT: Try and get back promptly at 10:00.

ACTING PRESIDENT FARLEY: That's 10:00 o'clock tonight, right?

All right. The Senate will stand in recess until 10:00 p.m.

Senator Present. Senator Present. Senator present. Should we stay here to accept that Finance Committee report?

SENATOR PRESENT: Yes.

SENATOR OHRENSTEIN: Mr.

President. I'm going to announce a Democratic Conference for 10:00 p.m.

ACTING PRESIDENT FARLEY: Okay. There is a Democratic Conference at 10:00 p.m.

ACTING PRESIDENT FARLEY: Senator Present. I can't hear the Majority Leader here.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: I have been asked if I would announce the following for general information. The following restaurants are open.

(An announcement relating to restaurants was made.)

(Whereupon, at 8:30 p.m., the Senate reconvened.)

ACTING PRESIDENT FARLEY: Senate will come to order.

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

ACTING PRESIDENT FARLEY: Yes,

there is.

SENATOR PRESENT: May we have it read, please.

ACTING PRESIDENT FARLEY: Clerk will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills directly for third reading:

Senate Bill Number 652B, a Budget Bill, making appropriations for legal requirements of the state debt service.

Senate Bill Number 4360, by the Committee on Rules, an act to amend the Family Court Act, the Social Services Law, the Civil Practice Law and Rules.

Also, Senate Bill Number 4361, by Senator Marino and others, amends Chapter 796 of the Laws of 1992, relating to the establishment of the Higher Education Applied Technology Program.

Also, Senate Bill Number 4362, by the Committee on Rules, an act to amend the Public Authorities Law, in relation to the

bonding authority of the Environmental Facilities Corporation.

All four bills reported directly for third reading.

ACTING PRESIDENT FARLEY: Without objection, third reading.

SENATOR PRESENT: Mr. President. Senate shall stand in recess until 10:00 p.m.

ACTING PRESIDENT FARLEY: Senate shall stand in recess until 10:00 p.m.

(Whereupon, at 8: 35 p.m., the Senate recessed.)

(Whereupon, at 11: 46 p.m., Senate reconvened.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: On behalf of Senator Levy, I would like to call an immediate conference of the Majority in Room 332. Immediate conference of the Majority.

ACTING PRESIDENT FARLEY: There will be an immediate conference of the Majority in Room 332.

SENATOR PRESENT: The Senate will continue to stand at ease.

ACTING PRESIDENT FARLEY: The Senate will continue to stand at ease. But all Senators within the sound of my voice, there is an immediate conference of the Majority in Room 332.

(Whereupon, at 11: 46 p.m., Senate continued in recess.)

(Whereupon, at 12: 44 a.m., Senate reconvened.)

THE PRESIDENT: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up Calendar 399.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 399, by Senator Maltese, Senate Bill Number 4038, an act to amend the Social Services Law, in relation to medical assistant exclusion.

SENATOR GOLD: Slow roll call.

THE PRESIDENT: Slow roll call is requested. All those Senators who wish to take a slow roll call, please rise.

THE PRESIDENT: The chair will advise the Acting Majority Leader that five Senators have not risen.

SENATOR GOLD: ... four, five, six, seven... forty... forty-two -- come on.

THE PRESIDENT: Slow roll call.

THE SECRETARY: Senator Babbush, excused. Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Cook. Senator Cook.

SENATOR COOK: No.

THE SECRETARY: Senator Daly.

SENATOR DALY: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator

Dollinger.

(There was no response.)

Senator Espada.

SENATOR ESPADA: No (indicating).

THE SECRETARY: Senator Farley.

THE PRESIDENT: Senator Farley is recognized to explain his vote.

SENATOR FARLEY: I just want to be heard on this bill to explain my vote. Every year, we seem to do this for the past seventeen years that I have been here. Generally speaking, we've had to vote on an amendment. This is a live bill. This is one that is reasonable. This is one that puts us in conformity with about 43 other states. It's a bill that speaks of rape, incest, and the life or health of the mother. It's a reasonable piece of legislation. It represents the will of this house. It is something that has always been mentioned that Senator Donovan who was the champion in this area always wanted to do, and I think its time has come. I think it's a reasonable bill, and one that I hope will be

supported by this house.

I vote aye.

THE PRESIDENT: Senator Farley votes aye.

THE SECRETARY: Senator Galiber.

(There was no response.)

Senator Gold.

SENATOR GOLD: Negative.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Halperin.

SENATOR HALPERIN: Here. Oh! No.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: No.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Jones.
SENATOR JONES: No.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Yes.
THE SECRETARY: Senator lack.
SENATOR LACK: Yes.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Yes.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Marino.

(Indicating "Aye.")

THE SECRETARY: Aye. Senator Markowitz.

THE PRESIDENT: Senator Markowitz is recognized.

SENATOR MARKOWITZ: To explain my vote for a moment.

Senator Farley called Senator Donovan a blessed memory, and he was a blessed memory, and there was no member of this Senate that was more passionate about this issue and many other issues, most of which I agreed with.

But as if he was sitting right next to you, Senator Farley, he would expect me to get up at this moment with a smile on his face as you're smiling and say that on this issue he was wrong and you are wrong, and that poor women deserve what other women enjoy and have a right to expect, the right of choice.

I vote no.

THE SECRETARY: Senator Masiello.

SENATOR MASIELLO: No.

THE SECRETARY: Senator Mega.
SENATOR MEGA: Yes.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nolan.
(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Yes.
THE SECRETARY: Senator Ohrenstein.
(Indicating "No.")
THE SECRETARY: No. Senator Onorato.
SENATOR ONORATO: Aye.
THE SECRETARY: Senator Oppenheimer.
(There was no response.)
Senator Padavan.
SENATOR PADAVAN: Yes.
THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Yes.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: No.
THE SECRETARY: Senator Present.
SENATOR PRESENT: No.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
SENATOR SANTIAGO: No.
THE SECRETARY: Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: No.
THE SECRETARY: Senator Sheffer.
SENATOR SHEFFER: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Solomon.
(There was no response.)

Senator Spano.

SENATOR SPANO: No.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

(There was no response.)

Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: No (indicating).

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: No.

THE PRESIDENT: Secretary will call the absentees.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Galiber.

(There was no response.)

Senator Nolan.

(There was no response.)

Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Solomon.

SENATOR SOLOMON: No.

THE SECRETARY: Senator Stavisky.

THE PRESIDENT: Secretary will call the results.

THE SECRETARY: Ayes 31, nays 26.

THE PRESIDENT: Senator Galiber, you are not recorded.

SENATOR GALIBER: No.

THE PRESIDENT: Senator Galiber

votes no.

THE SECRETARY: Ayes 31, nays 27.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. Would you call up -

SENATOR GOLD: Hold up. Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Can I get a detailed statement, please, of that vote?

THE SECRETARY: In relation to Calendar Number 399, those who voted in the affirmative: Senators Bruno, Daly, DeFrancisco, Farley, Hannon, Holland, Johnson, Kuhl, lack, Larkin, LaValle, Levy, Libous, Maltese, Marchi, Marino, Mega, Nozzolio, Onorato -

SENATOR GOLD: Excuse me. How was Senator Nolan voted?

SENATOR NOLAN: Yes.

THE PRESIDENT: Senator Nolan was

not recorded.

SENATOR GOLD: Oh, I'm sorry. That's what I was concerned about. And Senator Stavisky -- how was he recorded?

SENATOR STAVISKY: No.

SENATOR GOLD: Yes, that's him. That's him.

THE PRESIDENT: There will be order in the chamber. Senator Nolan voted yes, and Senator Stavisky voted no.

SENATOR GOLD: I think it's right now. I withdraw the request and ask the vote be called.

THE PRESIDENT: Secretary will again report the results.

THE SECRETARY: Ayes 32, nays 28.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. Let's take up Calendar 404, which is Senate Bill 652B.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 404. Senator Stafford moves to discharge the Committee on Finance from Assembly Bill Number 1352A and substitute it for the identical Senate Bill 652B.

THE PRESIDENT: Substitution ordered.

SENATOR PRESENT: Mr. President, is there a message at the desk?

THE PRESIDENT: There is a message of necessity at the desk.

SENATOR PRESENT: I move that we accept the message.

THE PRESIDENT: On the motion.

All those in favor, say aye.

(Response of "Aye.").

Opposed, nay.

(Response of "Nay.")

The motion is agreed to.

Third reading.

THE SECRETARY: Calendar Number

404, substituted earlier, Assembly Budget Bill, Assembly Bill Number 1352A, an act making appropriations for the legal requirements of the state debt service.

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 56, nays 4. Senators Dollinger, Hoffmann, Jones and Stachowski recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Hannon.

SENATOR HANNON: Mr. President. I wish to call up my bill, Print Number 3420, recalled from the Assembly which is now at the desk.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Senate Bill

Number 3420, by Senator Hannon, an act to amend Chapter 915 of the Laws of 1992, amending the Public Authorities Law.

SENATOR HANNON: Mr. President. I now move to reconsider the vote by which this bill passed this house.

THE PRESIDENT: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is before the house.

SENATOR HANNON: Mr. President, I now offer the following amendments and move to discharge the Committee on Corporations, Authorities and Commissions from Assembly Print Number 6996 and substitute it for my identical bill 3420A.

THE PRESIDENT: Substitution ordered.

SENATOR HANNON: I now move that the substituted Assembly bill have its third

reading at this time.

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: Unanimous.

THE PRESIDENT: The bill is passed.

SENATOR LEICHTER: Mr. President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Is that the same vote as there was last time?

THE PRESIDENT: Senator Leichter, the chair will advise that the bill was originally passed unanimously.

SENATOR LEICHTER: May I have the same vote?

THE PRESIDENT: It does have the same vote. Thank you.

Senator Present.

SENATOR PRESENT: Mr. President.

Let's take up Calendar 405, which is Senate 4360.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 405. Senator Stafford moves to discharge the Committee on Finance from Assembly Bill Number 7588, and substitute it for the identical Senate Bill 4360.

THE PRESIDENT: Substitution ordered.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk?

THE PRESIDENT: There is a message at the desk.

SENATOR PRESENT: I move 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.

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 57. Those recorded in the negative on -- those recorded in the negative on Calendar Number 405 are Senators Espada, Galiber, Hoffmann, Leichter, Mendez, Montgomery, Nolan, Santiago, Smith, Stavisky and Waldon. Ayes 49, nays 11.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, let's take up Calendar 406, which is Senate 4361.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 406. Senator Marino moves to discharge the Committee on Finance from Assembly Bill Number

7587 and substitute it for the identical Senate Bill 4361.

THE PRESIDENT: Substitution ordered.

SENATOR PRESENT: Mr. President. Is there a message of necessity at the desk?

THE PRESIDENT: There is a message of necessity at the desk.

SENATOR PRESENT: I move 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 agreed to.

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 59, nays 1.

Senator Hoffmann recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR MARKOWITZ: Mr. President.

THE PRESIDENT: Senator Markowitz.

SENATOR MARKOWITZ: Please record me in the negative on S. 4360.

THE PRESIDENT: Without objection, so ordered.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I would like to be recorded in the negative on S. 4360.

THE PRESIDENT: Without objection, so ordered.

SENATOR CONNOR: Thank you, Mr. President.

THE PRESIDENT: Senator Present.

SENATOR PRESENT: Mr. President. Let's take up Calendar 407, which is Senate

4362.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 407. Senator Stafford moves to discharge the Committee on Finance from Assembly Bill Number 7589 and substitute it for the identical Senate Bill 4362.

THE PRESIDENT: Substitution ordered.

SENATOR PRESENT: Mr. President. Is there a message at the desk?

THE PRESIDENT: There is a message at the desk.

SENATOR PRESENT: I move 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 agreed to.

SENATOR LEICHTER: Mr. President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Mr. President. I have an amendment at the desk.

THE PRESIDENT: Senator Leichter's amendment.

SENATOR LEICHTER: Mr. President. I waive the reading, ask an opportunity to give a most brief explanation.

Mr. President, my colleagues, among other provisions in this omnibus bill is one which again defers the EPIC program and also an increase in the bonding capacity of the Urban Development Corporation. I think it's about time that we implemented EPIC. I think UDC has borrowed enough money. I question many of their projects. And for that reason, I offer you this amendment to delete those two provisions from the bill.

THE PRESIDENT: On the amendment.

All those in favor, say aye.

(Response of "Aye.")

Opposed, nay.

(Response of "Nay.")

In the opinion of the chair, the nays have it. The amendment is not agreed to. I have this instinctive ability to tell.

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 PRESIDENT: Senator Mega.

SENATOR MEGA: Mr. President. May I have unanimous consent to be excused from voting?

THE PRESIDENT: Without objection, so ordered.

THE SECRETARY: Those recorded in the negative on Calendar Number 407 are Senators Daly, DeFrancisco, Dollinger, Hoffmann, Jones, Libous, Masiello, Padavan, Pataki, Seward, Stachowski and Wright. Ayes -- also Senator Saland in the negative. Ayes 46, nays 13.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move we adjourn until Monday, April 5, at 1:07.

THE PRESIDENT: Senate stands adjourned.

(Whereupon, at 1:07 a.m., the Senate adjourned.)