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ALBANY, NEW YORK

April 4, 1993

3:05 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

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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

1 read.

2 The order of business:

3 Presentation of petitions.

4 Messages from the Assembly.

5 Messages from the Governor.

6 Reports of standing committees.

7 Do we have a report?

8 Reports of select committees.

9 Communications and reports from
10 state officers.

11 Motions and resolutions.

12 SENATOR VELELLA: Mr. President.

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

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

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

23 SENATOR VELELLA: And on behalf

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

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

8 Senator Present.

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

13 ACTING PRESIDENT FARLEY: The
14 bill is recommitted.

15 Senator Present.

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

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

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

1 from that Committee returns.

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

5 (The Senate stood at ease from
6 3:08 p.m. to 3:19 p.m.)

7 ACTING PRESIDENT FARLEY: Senator
8 Present.

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

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

15 Senator Present.

16 SENATOR PRESENT: Senate will
17 stand at ease.

18 ACTING PRESIDENT FARLEY: The
19 Senate will stand at ease.

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

22 ACTING PRESIDENT FARLEY: Senator
23 Present.

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

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

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

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

16 SENATOR LEICHTER: Explanation.

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

20 Senator Present.

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

1 SENATOR GOLD: Mr. President.

2 ACTING PRESIDENT FARLEY: Senator
3 Gold.

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

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

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

15 (Response of "Aye.")

16 Those opposed nay.

17 (There was no response.)

18 The Resolution Calendar is
19 adopted.

20 Senator Present.

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

23 ACTING PRESIDENT FARLEY: We have

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

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

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

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

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

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

1 All bills directly for third
2 reading.

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

5 Senator Present.

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

9 ACTING PRESIDENT FARLEY:
10 Secretary will read the bill.

11 THE SECRETARY: Calendar Number
12 399, by Senator Maltese, Senate Bill Number
13 4038, an act to amend the Social Services Law,
14 in relation to medical assistance exclusion.

15 SENATOR GOLD: Explanation.

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

19 SENATOR MALTESE: Mr. President,
20 this bill would amend Section 365-A of the
21 Social Services Law, by adding a new subdivision
22 8 regarding the exclusion of medical assistance
23 for abortion under certain circumstances.

1 Each year, approximately from
2 18.8 million to \$21 million of Medicaid funds
3 are spent for the purpose of providing abortions
4 for Medicaid-eligible individuals. Taxpayers
5 should not be required to pay for medically
6 unnecessary abortions and, as such, this bill
7 would prohibit the expenditure of funds for
8 abortions or related care, supplies and services
9 except where determined to be medically
10 necessary to preserve the life of the mother or
11 where the pregnancy is the result of rape or
12 incest.

13 The latest data that we have, Mr.
14 President, indicates that in 1991, there were
15 158,762 abortions performed in New York State
16 alone and, of that number, 49,500 were
17 Medicaid-funded. That would amount to \$20.3
18 million. In 1992, the total Medicaid-funded
19 abortions were 48,500, and that would amount to
20 \$21 million. It is estimated that approximately
21 two-thirds of them would come under the
22 terminology in this bill and thus would be
23 covered by this bill and the money that would be

1 saved would be quite substantial.

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

8 "New York State Nurses for Life
9 insists that abortion is a civil rights issue.
10 An innocent victim is deprived of life. Medical
11 science has monitored the heartbeat of the
12 unborn 25 days after conception and brain waves
13 45 days after conception. These, we stress, are
14 scientific facts, not religious beliefs."

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

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

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

4 Senator Maltese.

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

16 Mr. President, I would like to
17 show for our colleagues a recent headline from
18 the Daily Gazette of Schenectady, of February
19 5th, 1993, and that headline reads: ABORTION IN
20 STATE AT HIGHEST LEVEL SINCE 1982.

21 Mr. President, we are advised
22 that in all of New York State, there were
23 298,702 live births. Therefore, if we take the

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

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

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

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

23 SENATOR OPPENHEIMER: Mr.

1 President.

2 ACTING PRESIDENT FARLEY: Senator
3 Oppenheimer.

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

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

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

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

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

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

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

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

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

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

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

23 And, similarly, the California

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

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

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

1 it is factually wrong.

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

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

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

1 Clinton is committed to a woman's constitutional
2 right to choice and to support for poor women to
3 have this same right to choice, and we expect
4 that he will ask Congress to drop the
5 16-year-old Hyde amendment which bans, as you
6 know, federal financing for abortions under
7 Medicaid.

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

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

21 SENATOR OPPENHEIMER: Yes, sure,
22 Senator Mendez.

23 SENATOR MENDEZ: Yes, excuse me,

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

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

12 SENATOR MENDEZ: We should not.

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

15 SENATOR MENDEZ: That we should
16 not.

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

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

1 care.

2 SENATOR OPPENHEIMER: Exactly.

3 SENATOR MENDEZ: Thank you.

4 SENATOR OPPENHEIMER: I concur
5 with you completely.

6 Now, the \$64 question, I guess,
7 the \$64,000 question concerns health care
8 reform, and it is conceivable, no pun intended,
9 that we may see reproductive health and abortion
10 services included in the basic benefit package
11 that is being talked about in health care reform
12 and also in the Medicaid programs which would
13 make the Hyde amendment moot. But that is the
14 \$64,000 question, where health care will be
15 going for our nation.

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

23 Now, we are not discussing here

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

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

18 Thank you, Mr. President.

19 SENATOR MARCHI: Mr. President.

20 THE PRESIDENT: Senator Marchi.

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

1 today.

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

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

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

1 The Hope case is a very relevant
2 case, and it should be -- it should be looked at
3 because the federal government had put -- had
4 initiated a program to -- under their federal
5 Medicaid program, to extend funding to pregnant
6 women and their children if they were within the
7 100th to 180th percentile above the poverty line
8 and this was to take care of mothers and their
9 children, and also all women who were in the
10 process, so that there was even a flow of -- of
11 assistance provided by the state to those
12 mothers, to the exclusion of the abortional
13 aspects itself.

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

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

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

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

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

23 SENATOR MARCHI: But you all had

1 to sign on.

2 SENATOR OPPENHEIMER: Yes.

3 SENATOR MARCHI: You all had to
4 verify signatures.

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

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

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

23 SENATOR MARCHI: New York Civil

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

4 SENATOR OPPENHEIMER: I believe
5 that was -

6 SENATOR CONNOR: Privilege.

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

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

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

16 SENATOR OPPENHEIMER: I'm not
17 sure.

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

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

23 SENATOR MARCHI: Well, thank

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

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

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

18 SENATOR LEICHTER: Mr.
19 President.

20 SENATOR MARCHI: Yes, Senator.

21 SENATOR LEICHTER: Will Senator
22 Marchi yield?

23 SENATOR MARCHI: Yes, I will.

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

4 SENATOR MARCHI: Oh, yes, I
5 have.

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

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

17 SENATOR LEICHTER: Right.

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

21 SENATOR LEICHTER: Mr.
22 President.

23 SENATOR MARCHI: -- this kind of

1 sentiment here today on the -

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

4 SENATOR MARCHI: Yes.

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

10 SENATOR MARCHI: You weren't
11 quoted up front.

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

21 SENATOR MARCHI: Well -

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

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

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

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

23 This does not mean that you have

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Senator, I will yield if you -

18 SENATOR OPPENHEIMER: Thank you.

19 I have a question for Senator Marchi.

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

1 parties and they say at that point right on page
2 1, that it is members of the New York State
3 Legislature, it is not -- we are not speaking
4 for the Legislature. We are merely members of a
5 like mind who came together to submit the brief,
6 and so I was just wondering if you had seen that
7 on page 1. That just -- that doesn't suggest -

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

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

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

1 SENATOR MARCHI: Yes.

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

6 SENATOR MARCHI: That the -- that
7 we -

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

10 SENATOR MARCHI: Oh, yes.

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

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

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

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

20 ACTING PRESIDENT FARLEY: Senator
21 Espada.

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

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

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

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

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

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

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

1 search warrants took place, until fingerprinting
2 took place.

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

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

23 I ask as you vote, to remember

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

3 Thank you, Mr. President.

4 THE PRESIDENT: Senator Spano.

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

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

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

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

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

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

10 Thank you.

11 THE PRESIDENT: Senator Connor.

12 SENATOR CONNOR: Thank you, Mr.
13 President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 THE PRESIDENT: Senator
5 Dollinger.

6 SENATOR DOLLINGER: Thank you,
7 Mr. President.

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

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

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

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

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

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

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

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

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

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

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

23 I'd simply point out that we can

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

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

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

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

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

5 Mr. President, I'm opposed.

6 ACTING PRESIDENT FARLEY: Senator
7 Leichter.

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

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

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

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

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

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

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

1 SENATOR LEICHTER: Yes.

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

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

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

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

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

1 women and services that flow as a constitutional
2 right.

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

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

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

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

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

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

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

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

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

7 Thank you.

8 THE PRESIDENT: Senator
9 Montgomery.

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

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

1 minors, and the availability of reproductive
2 counseling.

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

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

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

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

1 SENATOR MARCHI: Point of order,
2 Mr. President.

3 SENATOR MONTGOMERY: -- balance of
4 power.

5 SENATOR MARCHI: Point of order.

6 SENATOR MONTGOMERY: Am I not to
7 be continued?

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

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

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

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

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

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

1 to.

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

8 Thank you, Mr. President.

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

11 SENATOR NOLAN: Yes, Mr.
12 Chairman.

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

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

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

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

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

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

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

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

12 I remember reading back in the
13 1960s an article by Dan Walker, a columnist in
14 the DAILY NEWS, who wrote a column about poor
15 people and how they -- certain particular poor
16 people, how they came out of abject poverty and
17 rose to great heights, and he pointed out that
18 within one five-year period, I believe, in the
19 Lower East Side of New York, which was then the
20 ghetto area of New York City in the early 1900s,
21 came Alfred E. Smith, who became a great
22 Governor of this state, came Jimmy Walker, who
23 became mayor of New York, came Cardinal

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ACTING PRESIDENT FARLEY: Senator

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

3 SENATOR TULLY: Thank you, Mr.
4 President.

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

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

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

1 ACTING PRESIDENT FARLEY: Senator
2 Smith.

3 SENATOR SMITH: Thank you, Mr.
4 President.

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

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

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

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

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

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

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

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

8 ACTING PRESIDENT FARLEY: Senator
9 Padavan.

10 SENATOR PADAVAN: Thank you, Mr.
11 President.

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

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

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

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

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

23 One or more of our colleagues

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

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

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

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

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

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

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

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

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

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

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

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

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

1 time.

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

8 Thank you, Mr. President.

9 ACTING PRESIDENT FARLEY: Senator
10 Goodman.

11 Oh, Senator Espada, why do you
12 rise?

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

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

17 (Senator Padavan nods head.)

18 SENATOR ESPADA: Yes. Thank you
19 very much.

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

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

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

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

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

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

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

14 ACTING PRESIDENT FARLEY: Senator
15 Espada.

16 SENATOR ESPADA: You did, and I
17 thank you.

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

23 SENATOR PADAVAN: Senator, again

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

10 ACTING PRESIDENT FARLEY: Senator
11 Goodman.

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

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

7 SENATOR HALPERIN: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 SENATOR GOLD: Mr. President.

22 ACTING PRESIDENT FARLEY: Senator
23 Gold.

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

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

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

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

3 SENATOR GOODMAN: Mr. President.

4 SENATOR GOLD: I certainly would
5 yield.

6 ACTING PRESIDENT FARLEY: Senator
7 Goodman.

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

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

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

1 and that was the entire emphasis.

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

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

15 SENATOR GOLD: Well, Mr.
16 President.

17 ACTING PRESIDENT FARLEY: Senator
18 Gold.

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

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

7 You referred back to 22 years
8 ago, and interestingly enough, I ran for the
9 Assembly in a very hotly contested race, almost
10 lost, and that might have had an effect on the
11 law because my vote was the 75th vote which
12 required Perry Duryea to cast the 76th vote to
13 make that the law, and had I lost the election,
14 there wouldn't have been a 75th and assuredly no
15 76th.

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

23 What are we talking about? At

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

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

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

23 This is not obviously -- oh, one

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

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

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

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

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

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

13 ACTING PRESIDENT FARLEY: Senator
14 Waldon.

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

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

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

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

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

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

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

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

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

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

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

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

10 ACTING PRESIDENT FARLEY: Senator
11 Galiber.

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

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

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

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

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

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

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

1 get on issues.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Senator Oppenheimer.

21 SENATOR OPPENHEIMER: Did we make
22 it under two hours?

23 ACTING PRESIDENT FARLEY: We're

1 not keeping track.

2 SENATOR OPPENHEIMER: We tend to
3 be -

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

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

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

14 SENATOR MONTGOMERY: Oh, thank
15 you, Senator Oppenheimer.

16 Senator Marchi.

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

20 SENATOR MARCHI: Yes.

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

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

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

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

23 I don't see that. It's not

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

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

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

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

4 SENATOR MONTGOMERY: Thank you.
5 Thank you.

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

9 SENATOR MONTGOMERY: Yes, thank
10 you, Senator.

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

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

1 Thank you, Senator Oppenheimer.

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

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

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

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

1 middle class woman really rightfully ought to be
2 available to a poor woman, and I respect all of
3 the statements and the philosophies that were
4 enunciated today, and I think that this debate
5 -- this debate is never going to go away, and
6 it's never going to get resolved, and I really
7 hate this discussion, and I really think
8 government has no place in this discussion.

9 It's such a personal and such a private matter
10 and a woman is going to handle it as best as she
11 can handle it, and that's why I really hate this
12 discussion in this chamber, because I don't
13 think government has a role to play here.

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

23 So, one, I hope that the Hope vs.

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

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

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

1 Republican Family Committee.

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

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

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

7 Thank you, Mr. President.

8 ACTING PRESIDENT FARLEY: Senator
9 Maltese to close debate.

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

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

1 decisions that Senator Brydges most regretted
2 during his legislative career.

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

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

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

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

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

13 But it is -- it is, in fact, just
14 that for a great many of the people who choose
15 abortion. I referred earlier to the figures,
16 the abysmal figures, the horrifying and shocking
17 figures for a so-called civilized society, that
18 we had only 298,702 live births statewide in
19 1990 and 159,000 abortions, which gives us a
20 rate of 53 per hundred live births.

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

1 teenagers. There are 113 for every 100 live
2 births.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 lation before the house.

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

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

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

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

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

13 I urge the house to vote for this
14 legislation.

15 ACTING PRESIDENT FARLEY: Senator
16 Present.

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

21 ACTING PRESIDENT FARLEY: The
22 bill is laid aside.

23 SENATOR PRESENT: Mr. President,

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

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

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

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

16 (Response of "Aye.")

17 SENATOR GOODMAN: Mr. President.

18 ACTING PRESIDENT FARLEY: Senator
19 Goodman.

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

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

1 call on that.

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

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

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

6 Mr. President.

7 SENATOR GALIBER: Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ACTING PRESIDENT FARLEY: Thank
11 you, Senator Goodman.

12 Senator Leichter.

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

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

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

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

1 SENATOR GOODMAN: Senator
2 Leichter yield to a question?

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

5 SENATOR LEICHTER: Yes.

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

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

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

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

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

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

23 But I -- my only problem is, when

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

6 ACTING PRESIDENT FARLEY: Senator
7 Markowitz.

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

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

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

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

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

1 ACTING PRESIDENT FARLEY: Senator
2 Gold.

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

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

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

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

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

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

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

22 ACTING PRESIDENT FARLEY: Senator
23 Montgomery.

1 SENATOR MONTGOMERY: Thank you,
2 Mr. President.

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

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

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

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

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

18 Thank you.

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

21 (Response of "Aye.").

22 Those opposed nay.

23 (There was no response.)

1 The resolution is adopted.

2 Senator Hoffmann.

3 SENATOR HOFFMANN: Yes, Mr.

4 President.

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

8 I would like the record to
9 reflect that, had I been in the chamber at that
10 time, I would have been voting in the negative
11 on Assembly 1351-A, which was substituted for
12 651 in this house, and Assembly 1350-A, which
13 was substituted for 650-B in this house.

14 ACTING PRESIDENT FARLEY: The
15 record will reflect.

16 SENATOR HOFFMANN: Thank you.

17 ACTING PRESIDENT FARLEY: Senator
18 Present.

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

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

1 SENATOR LIBOUS: Thank you, Mr.
2 President.

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

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

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

13 ACTING PRESIDENT FARLEY: Senator
14 Libous.

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

18 ACTING PRESIDENT FARLEY: Call
19 the roll on reconsideration.

20 (The Secretary called the roll on
21 reconsideration.)

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

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

3 ACTING PRESIDENT FARLEY: The
4 bill is committed to Finance.

5 SENATOR LIBOUS: Thank you.

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

8 THE SECRETARY: Calendar Number
9 400, Senator Stafford moves to discharge the
10 Committee on Finance from Assembly Bill Number
11 6118-A, and substitute it for the identical
12 Senate Bill Number 4009.

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

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

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

23 ACTING PRESIDENT FARLEY: Read

1 the last section.

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

4 ACTING PRESIDENT FARLEY: Call
5 the roll.

6 (The Secretary called the roll.)

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

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

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

13 ACTING PRESIDENT FARLEY: 400.

14 SENATOR HOFFMANN: There is no
15 400.

16 ACTING PRESIDENT FARLEY: 4009,
17 I'm sorry.

18 SENATOR HOFFMANN: Close, sorry.
19 Thank you.

20 ACTING PRESIDENT FARLEY: We're
21 calling the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 58.

1 ACTING PRESIDENT FARLEY: The
2 bill is passed.

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

7 Senator Present.

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

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

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

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

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

1 appropriations made to the Judiciary.

2 SENATOR DOLLINGER: Explanation,
3 Mr. President.

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

6 SENATOR STAFFORD: Thank you.
7 Mr. President, this does not change the numbers
8 in the budget at all. It has been traditional
9 that we really have cut the actual Court of
10 Appeals budget, so this puts \$137,000 back into
11 the Court of Appeals and, in effect, takes the
12 137,000 out of the lower courts.

13 SENATOR GOLD: What is that?

14 SENATOR STAFFORD: Court of
15 Appeals has to make the decisions on the
16 137,000.

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

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

1 at, well, about -

2 SENATOR STAFFORD: Where is the
3 bill?

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

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

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

14 SENATOR STAFFORD: I didn't hear
15 you.

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

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

23 SENATOR DOLLINGER: O.K. But it

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

4 SENATOR STAFFORD: No, it does
5 not -

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

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

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

21 SENATOR STAFFORD: Yes.

22 SENATOR DOLLINGER: Thank you.

23 ACTING PRESIDENT FARLEY: You can

1 read the last section.

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

4 ACTING PRESIDENT FARLEY: Call
5 the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 58.

8 ACTING PRESIDENT FARLEY: The
9 bill is passed.

10 Senator Present.

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

13 ACTING PRESIDENT FARLEY: Senator
14 Mendez.

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

19 ACTING PRESIDENT FARLEY:
20 Recess.

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

1 Conference.

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

5 Senator Present.

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

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

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

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

3 ACTING PRESIDENT FARLEY: Senate
4 will come to order.

5 Senator Present.

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

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

11 4358. The Secretary will read
12 the title.

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

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

22 All in favor, say aye.

23 (Response of "Aye.")

1 Those opposed, nay.

2 (There was no response.)

3 It is accepted. The resolution
4 is adopted.

5 Senator Present.

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

9 ACTING PRESIDENT FARLEY: 4359.

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

16 ACTING PRESIDENT FARLEY: All in
17 favor, say aye.

18 (Response of "Aye.")

19 Those opposed, nay.

20 (There was no response.)

21 It is accepted.

22 Senator Jones is in the negative.

23 SENATOR JONES: I would like to

1 explain my vote. I'm in the negative.

2 ACTING PRESIDENT FARLEY: Okay.

3 You want to explain your vote, also.

4 SENATOR JONES: Yes.

5 ACTING PRESIDENT FARLEY: Senator
6 Jones to explain her vote.

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

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

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

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

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

6 ACTING PRESIDENT FARLEY:
7 Results.

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

10 ACTING PRESIDENT FARLEY:
11 Accepted.

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

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

18 ACTING PRESIDENT FARLEY: Senator
19 Mega.

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

1 ACTING PRESIDENT FARLEY: It is
2 my understanding there is.

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

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

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

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

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

14 Read the title.

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

20 ACTING PRESIDENT FARLEY: Senator
21 Mega, on the resolution.

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

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

3 (Response of "Aye.")

4 Those opposed, nay.

5 (There was no response.)

6 The resolution is adopted.

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

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

14 (Whereupon, hands were raised.)

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

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

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

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

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

9 SENATOR HOFFMANN: The
10 Constitutional Amendment, Mr. President.

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

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

17 SENATOR PRESENT: Without
18 objection.

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

21 SENATOR PRESENT: Mr. President.

22 ACTING PRESIDENT FARLEY: Senator
23 Present.

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

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

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

11 ACTING PRESIDENT FARLEY: That's
12 10:00 p.m.?

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

15 ACTING PRESIDENT FARLEY: That's
16 10:00 o'clock tonight, right?

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

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

22 SENATOR PRESENT: Yes.

23 SENATOR OHRENSTEIN: Mr.

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

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

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

7 SENATOR PRESENT: Mr. President.

8 ACTING PRESIDENT FARLEY: Senator
9 Present.

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

14 (An announcement relating to
15 restaurants was made.)

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

18 ACTING PRESIDENT FARLEY: Senate
19 will come to order.

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

23 ACTING PRESIDENT FARLEY: Yes,

1 there is.

2 SENATOR PRESENT: May we have it
3 read, please.

4 ACTING PRESIDENT FARLEY: Clerk
5 will read.

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

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

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

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

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

1 bonding authority of the Environmental
2 Facilities Corporation.

3 All four bills reported directly
4 for third reading.

5 ACTING PRESIDENT FARLEY: Without
6 objection, third reading.

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

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

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

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

15 ACTING PRESIDENT FARLEY: Senator
16 Present.

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

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

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

3 ACTING PRESIDENT FARLEY: The
4 Senate will continue to stand at ease. But all
5 Senators within the sound of my voice, there is
6 an immediate conference of the Majority in Room
7 332.

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

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

12 THE PRESIDENT: Senate will come
13 to order.

14 Senator Present.

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

17 THE PRESIDENT: Secretary will
18 read.

19 THE SECRETARY: Calendar Number
20 399, by Senator Maltese, Senate Bill Number
21 4038, an act to amend the Social Services Law,
22 in relation to medical assistant exclusion.

23 SENATOR GOLD: Slow roll call.

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

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

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

9 THE PRESIDENT: Slow roll call.

10 THE SECRETARY: Senator Babbush,
11 excused. Senator Bruno.

12 SENATOR BRUNO: Yes.

13 THE SECRETARY: Senator Connor.

14 SENATOR CONNOR: No.

15 THE SECRETARY: Senator Cook.

16 Senator Cook.

17 SENATOR COOK: No.

18 THE SECRETARY: Senator Daly.

19 SENATOR DALY: Yes.

20 THE SECRETARY: Senator

21 DeFrancisco.

22 SENATOR DeFRANCISCO: Yes.

23 THE SECRETARY: Senator

1 Dollinger.

2 (There was no response.)

3 Senator Espada.

4 SENATOR ESPADA: No (indicating).

5 THE SECRETARY: Senator Farley.

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

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

1 supported by this house.
2 I vote aye.
3 THE PRESIDENT: Senator Farley
4 votes aye.
5 THE SECRETARY: Senator Galiber.
6 (There was no response.)
7 Senator Gold.
8 SENATOR GOLD: Negative.
9 THE SECRETARY: Senator
10 Gonzalez.
11 SENATOR GONZALEZ: No.
12 THE SECRETARY: Senator Goodman.
13 SENATOR GOODMAN: No.
14 THE SECRETARY: Senator
15 Halperin.
16 SENATOR HALPERIN: Here. Oh!
17 No.
18 THE SECRETARY: Senator Hannon.
19 SENATOR HANNON: Yes.
20 THE SECRETARY: Senator Hoffmann.
21 SENATOR HOFFMANN: No.
22 THE SECRETARY: Senator Holland.
23 SENATOR HOLLAND: Yes.

1 THE SECRETARY: Senator Johnson.
2 SENATOR JOHNSON: Aye.
3 THE SECRETARY: Senator Jones.
4 SENATOR JONES: No.
5 THE SECRETARY: Senator Kuhl.
6 SENATOR KUHL: Yes.
7 THE SECRETARY: Senator lack.
8 SENATOR LACK: Yes.
9 THE SECRETARY: Senator Larkin.
10 SENATOR LARKIN: Yes.
11 THE SECRETARY: Senator LaValle.
12 SENATOR LAVALLE: Aye.
13 THE SECRETARY: Senator Leichter.
14 SENATOR LEICHTER: No.
15 THE SECRETARY: Senator Levy.
16 SENATOR LEVY: Aye.
17 THE SECRETARY: Senator Libous.
18 SENATOR LIBOUS: Aye.
19 THE SECRETARY: Senator Maltese.
20 SENATOR MALTESE: Aye.
21 THE SECRETARY: Senator Marchi.
22 SENATOR MARCHI: Aye.
23 THE SECRETARY: Senator Marino.

1 (Indicating "Aye.")

2 THE SECRETARY: Aye. Senator
3 Markowitz.

4 THE PRESIDENT: Senator Markowitz
5 is recognized.

6 SENATOR MARKOWITZ: To explain my
7 vote for a moment.

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

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

20 I vote no.

21 THE SECRETARY: Senator
22 Masiello.

23 SENATOR MASIELLO: No.

1 THE SECRETARY: Senator Mega.
2 SENATOR MEGA: Yes.
3 THE SECRETARY: Senator Mendez.
4 SENATOR MENDEZ: No.
5 THE SECRETARY: Senator
6 Montgomery.
7 SENATOR MONTGOMERY: No.
8 THE SECRETARY: Senator Nolan.
9 (There was no response.)
10 Senator Nozzolio.
11 SENATOR NOZZOLIO: Yes.
12 THE SECRETARY: Senator
13 Ohrenstein.
14 (Indicating "No.")
15 THE SECRETARY: No. Senator
16 Onorato.
17 SENATOR ONORATO: Aye.
18 THE SECRETARY: Senator
19 Oppenheimer.
20 (There was no response.)
21 Senator Padavan.
22 SENATOR PADAVAN: Yes.
23 THE SECRETARY: Senator Pataki.

1 SENATOR PATAKI: Yes.
2 THE SECRETARY: Senator
3 Paterson.
4 SENATOR PATERSON: No.
5 THE SECRETARY: Senator Present.
6 SENATOR PRESENT: No.
7 THE SECRETARY: Senator Saland.
8 SENATOR SALAND: Aye.
9 THE SECRETARY: Senator
10 Santiago.
11 SENATOR SANTIAGO: No.
12 THE SECRETARY: Senator Sears.
13 SENATOR SEARS: Aye.
14 THE SECRETARY: Senator Seward.
15 SENATOR SEWARD: No.
16 THE SECRETARY: Senator Sheffer.
17 SENATOR SHEFFER: Yes.
18 THE SECRETARY: Senator Skelos.
19 SENATOR SKELOS: Yes.
20 THE SECRETARY: Senator Smith.
21 SENATOR SMITH: No.
22 THE SECRETARY: Senator Solomon.
23 (There was no response.)

1 Senator Spano.
2 SENATOR SPANO: No.
3 THE SECRETARY: Senator
4 Stachowski.
5 SENATOR STACHOWSKI: Yes.
6 THE SECRETARY: Senator
7 Stafford.
8 SENATOR STAFFORD: Aye.
9 THE SECRETARY: Senator
10 Stavisky.
11 (There was no response.)
12 Senator Trunzo.
13 SENATOR TRUNZO: Yes.
14 THE SECRETARY: Senator Tully.
15 SENATOR TULLY: Aye.
16 THE SECRETARY: Senator Velella.
17 SENATOR VELELLA: Yes.
18 THE SECRETARY: Senator Volker.
19 SENATOR VOLKER: Yes.
20 THE SECRETARY: Senator Waldon.
21 SENATOR WALDON: No (indicating).
22 THE SECRETARY: Senator Wright.
23 SENATOR WRIGHT: No.

1 THE PRESIDENT: Secretary will
2 call the absentees.

3 THE SECRETARY: Senator
4 Dollinger.

5 SENATOR DOLLINGER: No.

6 THE SECRETARY: Senator Galiber.

7 (There was no response.)

8 Senator Nolan.

9 (There was no response.)

10 Senator Oppenheimer.

11 SENATOR OPPENHEIMER: No.

12 THE SECRETARY: Senator Solomon.

13 SENATOR SOLOMON: No.

14 THE SECRETARY: Senator
15 Stavisky.

16 THE PRESIDENT: Secretary will
17 call the results.

18 THE SECRETARY: Ayes 31, nays
19 26.

20 THE PRESIDENT: Senator Galiber,
21 you are not recorded.

22 SENATOR GALIBER: No.

23 THE PRESIDENT: Senator Galiber

1 votes no.

2 THE SECRETARY: Ayes 31, nays

3 27.

4 THE PRESIDENT: The bill is

5 passed.

6 Senator Present.

7 SENATOR PRESENT: Mr. President.

8 Would you call up -

9 SENATOR GOLD: Hold up. Mr.

10 President.

11 THE PRESIDENT: Senator Gold.

12 SENATOR GOLD: Can I get a

13 detailed statement, please, of that vote?

14 THE SECRETARY: In relation to

15 Calendar Number 399, those who voted in the

16 affirmative: Senators Bruno, Daly, DeFrancisco,

17 Farley, Hannon, Holland, Johnson, Kuhl, lack,

18 Larkin, LaValle, Levy, Libous, Maltese, Marchi,

19 Marino, Mega, Nozzolio, Onorato -

20 SENATOR GOLD: Excuse me. How

21 was Senator Nolan voted?

22 SENATOR NOLAN: Yes.

23 THE PRESIDENT: Senator Nolan was

1 not recorded.

2 SENATOR GOLD: Oh, I'm sorry.

3 That's what I was concerned about. And Senator
4 Stavisky -- how was he recorded?

5 SENATOR STAVISKY: No.

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

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

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

14 THE PRESIDENT: Secretary will
15 again report the results.

16 THE SECRETARY: Ayes 32, nays
17 28.

18 THE PRESIDENT: The bill is
19 passed.

20 Senator Present.

21 SENATOR PRESENT: Mr. President.
22 Let's take up Calendar 404, which is Senate Bill
23 652B.

1 THE PRESIDENT: Secretary will
2 read.

3 THE SECRETARY: Calendar Number
4 404. Senator Stafford moves to discharge the
5 Committee on Finance from Assembly Bill Number
6 1352A and substitute it for the identical Senate
7 Bill 652B.

8 THE PRESIDENT: Substitution
9 ordered.

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

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

14 SENATOR PRESENT: I move that we
15 accept the message.

16 THE PRESIDENT: On the motion.
17 All those in favor, say aye.

18 (Response of "Aye.").

19 Opposed, nay.

20 (Response of "Nay.")

21 The motion is agreed to.

22 Third reading.

23 THE SECRETARY: Calendar Number

1 404, substituted earlier, Assembly Budget Bill,
2 Assembly Bill Number 1352A, an act making
3 appropriations for the legal requirements of the
4 state debt service.

5 THE PRESIDENT: Read the last
6 section.

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

9 THE PRESIDENT: Call the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 56, nays 4.

12 Senators Dollinger, Hoffmann, Jones and
13 Stachowski recorded in the negative.

14 THE PRESIDENT: The bill is
15 passed.

16 Senator Hannon.

17 SENATOR HANNON: Mr. President.

18 I wish to call up my bill, Print Number 3420,
19 recalled from the Assembly which is now at the
20 desk.

21 THE PRESIDENT: Secretary will
22 read.

23 THE SECRETARY: Senate Bill

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

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

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

9 (The Secretary called the roll on
10 reconsideration.)

11 THE SECRETARY: Ayes 60.

12 THE PRESIDENT: The bill is
13 before the house.

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

20 THE PRESIDENT: Substitution
21 ordered.

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

1 reading at this time.

2 THE PRESIDENT: Read the last
3 section.

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

6 THE PRESIDENT: Call the roll.
7 (The Secretary called the roll.)

8 THE SECRETARY: Unanimous.

9 THE PRESIDENT: The bill is
10 passed.

11 SENATOR LEICHTER: Mr. President.

12 THE PRESIDENT: Senator Leichter.

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

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

18 SENATOR LEICHTER: May I have the
19 same vote?

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

22 Senator Present.

23 SENATOR PRESENT: Mr. President.

1 Let's take up Calendar 405, which is Senate
2 4360.

3 THE PRESIDENT: Secretary will
4 read.

5 THE SECRETARY: Calendar Number
6 405. Senator Stafford moves to discharge the
7 Committee on Finance from Assembly Bill Number
8 7588, and substitute it for the identical Senate
9 Bill 4360.

10 THE PRESIDENT: Substitution
11 ordered.

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

14 THE PRESIDENT: There is a
15 message at the desk.

16 SENATOR PRESENT: I move we
17 accept the message.

18 THE PRESIDENT: On the motion.

19 All those in favor, say aye.

20 (Response of "Aye.")

21 Opposed, nay.

22 (There was no response.)

23 The ayes have it. The motion is

1 adopted.

2 Read the last section.

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

5 THE PRESIDENT: Call the roll.

6 (The Secretary called the roll.)

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

13 THE PRESIDENT: The bill is
14 passed.

15 Senator Present.

16 SENATOR PRESENT: Mr. President,
17 let's take up Calendar 406, which is Senate
18 4361.

19 THE PRESIDENT: Secretary will
20 read.

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

1 7587 and substitute it for the identical Senate
2 Bill 4361.

3 THE PRESIDENT: Substitution
4 ordered.

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

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

9 SENATOR PRESENT: I move we
10 accept the message.

11 THE PRESIDENT: On the motion.

12 All those in favor, say aye.

13 (Response of "Aye.")

14 Opposed, nay.

15 (There was no response.)

16 The ayes have it. The motion is
17 agreed to.

18 Read the last section.

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

21 THE PRESIDENT: Call the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 59, nays 1.

1 Senator Hoffmann recorded in the negative.

2 THE PRESIDENT: The bill is
3 passed.

4 Senator Present.

5 SENATOR MARKOWITZ: Mr.
6 President.

7 THE PRESIDENT: Senator
8 Markowitz.

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

11 THE PRESIDENT: Without
12 objection, so ordered.

13 Senator Connor.

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

17 THE PRESIDENT: Without
18 objection, so ordered.

19 SENATOR CONNOR: Thank you, Mr.
20 President.

21 THE PRESIDENT: Senator Present.

22 SENATOR PRESENT: Mr. President.

23 Let's take up Calendar 407, which is Senate

1 4362.

2 THE PRESIDENT: Secretary will
3 read.

4 THE SECRETARY: Calendar Number
5 407. Senator Stafford moves to discharge the
6 Committee on Finance from Assembly Bill Number
7 7589 and substitute it for the identical Senate
8 Bill 4362.

9 THE PRESIDENT: Substitution
10 ordered.

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

13 THE PRESIDENT: There is a
14 message at the desk.

15 SENATOR PRESENT: I move we
16 accept the message.

17 THE PRESIDENT: On the motion.
18 All those in favor, say aye.

19 (Response of "Aye.")

20 Opposed, nay.

21 (There was no response.)

22 The ayes have it. The motion is
23 agreed to.

1 SENATOR LEICHTER: Mr. President.

2 THE PRESIDENT: Senator Leichter.

3 SENATOR LEICHTER: Mr.

4 President. I have an amendment at the desk.

5 THE PRESIDENT: Senator

6 Leichter's amendment.

7 SENATOR LEICHTER: Mr.

8 President. I waive the reading, ask an

9 opportunity to give a most brief explanation.

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

20 THE PRESIDENT: On the amendment.

21 All those in favor, say aye.

22 (Response of "Aye.")

23 Opposed, nay.

1 (Response of "Nay.")

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

5 Read the last section.

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

8 THE PRESIDENT: Call the roll.

9 (The Secretary called the roll.)

10 THE PRESIDENT: Senator Mega.

11 SENATOR MEGA: Mr. President.

12 May I have unanimous consent to be excused from
13 voting?

14 THE PRESIDENT: Without
15 objection, so ordered.

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

22 THE PRESIDENT: The bill is
23 passed.

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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.)