ALBANY, NEW YORK

April 23, 1996

3:00 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join with me in the Pledge of Allegiance.

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

The invocation today will be given by Reverend Father Khatchig Megerdichian, pastor of the Holy Cross Armenian Apostolic Church.

Reverend Khatchig Megerdichian.

REVEREND KHATCHIG MEGERDICHIAN: Dear God, we thank You for the gift of life and for granting us the honor and the privilege of living in this great land of freedom and opportunity, where each and every one of us has the freedom to worship in the faith of their ancestors.

We thankfully dedicate our lives to Your glory, to the service of our fellow man, to freedom, justice, righteousness and the democratic way of life. We humbly pray that You preserve and protect this great nation, the

United States of America and all of its federal, state and municipal agencies. We humbly pray that Your divine wisdom illuminate the hearts and souls and minds of our President and cabinet and Congress and especially our Governor, state Senate and Assembly.

As we gather here today, we remember and honor and pay tribute to the blessed memory of over one and a half million innocent Armenian men, women and children who became victims of the first genocide of the 20th Century at the hands of the Ottoman Turks between 1915 and 1923. We pray that the grievous wrongs of brutal massacre, mass deportation and starvation committed against the Armenian people be known to the world and set right so that the sacred blood of our martyrs will not have been shed in vain.

Dear God, may the trials and tribulations which the Armenian people experience throughout their long illustrious history not be experienced by any nation of the world again.

And now dear God we pray, grant us faith, hope and love. Make us instruments of Your peace. Teach us to glorify Thy all holy name, humbly serve our fellow man and unceasingly strive for freedom and justice all the days of our lives. Amen.

THE PRESIDENT: Amen. Thank you, Father.

The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, April 22nd. The Senate met pursuant to adjournment. The prayer by the Reverend Wayne Jagow, Concordia Lutheran Church, Lockport. The Journal of Sunday, April 21, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, I believe there are some motions at the desk. May we have them now, please.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: Thank you, Madam President.

I wish to call up my bill, Print Number 4578, recalled from the Assembly which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 306, by Senator Tully, Senate Print 4578, an act to amend the Vehicle and Traffic Law, in relation to prohibiting the issuance of a driver's license.

SENATOR TULLY: Yes, Madam President. I now move to reconsider the vote by which this bill was passed.

THE PRESIDENT: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 31.

SENATOR TULLY: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments are received.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: 2912-A, 6384 and 6666.

THE PRESIDENT: The enacting clauses will be struck.

SENATOR MAZIARZ: Also, Madam President, on page number 36, I offer the following amendments to Calendar Number 685, S.6876, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received.

SENATOR MAZIARZ: Thank you, Madam President.

ACTING PRESIDENT RATH: Senator Marcellino.

SENATOR MARCELLINO: Madam President, are there any substitutions to be made?

ACTING PRESIDENT RATH: Senator Maltese.

SENATOR MALTESE: Madam President, with reference to Calendar Number 694, I would like to place a sponsor's star.

ACTING PRESIDENT RATH: The bill is starred at the sponsor's request.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, at this time may we please adopt the Resolution Calendar with the exception of Resolutions 3066, 3013 and 3056.

ACTING PRESIDENT RATH: All those in favor of adopting the Resolution Calendar

signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is approved.

SENATOR MARCELLINO: Madam President.

ACTING PRESIDENT RATH: Senator Marcellino.

SENATOR MARCELLINO: May we please have Resolution 3066, which is mine, read in its entirety and move for its immediate adoption.

ACTING PRESIDENT RATH: The Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution 3066, expressing sincerest sorrow upon the occasion of the death of Robert M. Banister, first vice-president of the New York State Conservation Council and former chairman of the Conservation Fund Advisory Council.

WHEREAS, it is the sense of this legislative body that those who give positive definition to the profile and disposition of the ecology of the state of New York profoundly strengthen our shared commitment to the exercise of freedom; and

WHEREAS, attendant to such concern and fully in accord with its long standing traditions, it is the intent of this legislative body to express sincerest sorrow upon the occasion of the death of Robert M. Banister, first vice-president of the New York State Conservation Council and former chairman of the Conservation Fund Advisory Council.

Robert M. Banister is survived by his wife of 46 years, Betty Banister, and their four children.

Robert M. Banister was born in 1930. He was a life-long sportsman and conservationist, being a strong advocate of sportmen's interests throughout New York State. He represented sportsmen on a number of boards and commissions, and he was the first vice

president of the New York State Conservation Council and served as chairman of the Conservation Fund Advisory Council for five years.

Dedicating his life to the issues in which he so strongly believed, he worked closely with the New York State Legislature on various legislative incentives that have resulted in better hunting and fishing in New York State. Most recently, he has been working closely with the representatives from the 5th Senatorial District in coming up with legisla tion authorizing the hunting of game on Sundays during each such season in the Southern Tier, central and western regions of New York State; and

WHEREAS, in 1974, Robert M. Banister was elected as director of the Genesee Conservation League and served as conservation vice-president for 14 years. In 1976, he was elected as Monroe County Councilman to the New York State Conservation Council, a position he held for ten years; and

WHEREAS, in 1979, Robert M. Banister was elected to the Genesee Conservation Foundation. In 1980, he was appointed by the New York State Conservation Council as advisor to the New York State Fish and Wildlife Management Act Board and served for six years.

In early 1980, Robert M. Banister was elected Monroe County Sportsman of the Year by the Monroe County Conservation Council. In 1983, he was elected director-at-large to the New York State Conservation Council and in 1986, he was elected vice-president to the Council. The next year he was appointed to the Conserva tion Fund Advisory Council as a representative for Region 8. Upon appointment by the Governor, he served on the Great Lakes Basin Advisory Council for five years. In 1991, he was elected chairman of the Conservation Fund Advisory Council.

Robert M. Banister was one of the co-originators of the Sportsmen's March on Albany.

Robert M. Banister did so

magnanimously labor for the positive and salutary definition of the ecology of the state of New York; and

WHEREAS, Robert M. Banister often told an anecdote illustrating the difference between environmentalists and conservationists, for whom he so strongly advocated. The story goes that an environmentalist and a conserva tionist were in a room with an apple sitting on the mantel of the fireplace. The environ mentalist picked up the apple, polished it to a high luster and placed it on the mantel for everyone to admire. The conservationist picked up the apple, ate it and then planted the seeds; and

WHEREAS, through his long and sustained commitment to the positive and salutary definition of the natural heritage of this Empire State, Robert M. Banister did so unselfishly advance that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations and express sincerest sorrow upon the occasion of the death of Robert M. Banister, first vice-president of the New York State Conservation Council and former chairman of the Conservation Fund Advisory Council, fully confident that such procedure mirrors our shared commitment to preserve, to enhance and to yet effect that patrimony of freedom which is our American heritage; and be it further

RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to Mrs. Robert M. Banister and family and to John Long, chairman of the New York State Conservation Fund Advisory Council.

ACTING PRESIDENT RATH: Senators wishing to speak on the resolution?

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

Madam President, I rise to speak on this particular resolution, and I would like

to offer it in a traditional way to every member -- to open it up for co-sponsorship to every member in the chamber who, unless they tell the desk otherwise, will be left out.

ACTING PRESIDENT RATH: The members will co-sponsor unless the desk is notified.

SENATOR MARCELLINO: I'd like to say a few words today about Mr. Robert Banister who, until just two weeks ago, was the chairman of the New York State Conservation Advisory Board and who passed away prematurely on Sunday, April 14th, 1996.

Bob was one of those people who was larger than life, literally larger than life. He was a big man, and he had a heart as big as the outdoors he loved so much. Now, unfortunately, Bob and I only met recently because of my assuming the chair of the Environmental Conservation Committee, but Bob made his presence felt immediately upon my being named the new chair contact. He made an offer to sit down and give me the benefit of his

advice and counsel, and I welcomed that. It was a tremendous asset.

He worked well with my staff and he worked constructively. He was a true environmentalist because as a conservationist, no one enjoys the environment more; no one respects it more and no one wants to see it preserved more and, when Bob fought for an issue, he fought for an issue. You never found Bob sitting on a fence. That was not his style. He was clear. He was concise. Whether you agreed with him or not, it was always done in a professional and friendly way, and he always had the time for a good joke and a good laugh.

So my relationship with Bob was a good one and a positive one, as many others in this chamber will tell you as well. He was a fine man. He was one of those people that the expression he will never be -- he will not easily be replaced -- well, Bob is one of those individuals who frankly will never be replaced.

Thank you.

ACTING PRESIDENT RATH: Are there any other Senators wishing to speak?

(There was no response.)

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, may we have Resolution 3056 by Senator Maltese read in its entirety and adopted, please.

ACTING PRESIDENT RATH: The Secretary will read.

THE SECRETARY: By Senator Maltese, Legislative Resolution 3056, memorializing Governor George E. Pataki to proclaim April 24th, 1996 as "Armenian Martyrs' Day" in New York State;

WHEREAS, it is the sense of this assembled body to emphatically urge Governor

George E. Pataki to proclaim April 24, 1996 "Armenian Martyrs' Day" in New York State; and

WHEREAS, this proclamation arises from a sense of human decency and respect for the Armenian people and their history.

Towards the end of the 19th Century, the Turkish Government began to systematically persecute their citizens of Armenian heritage.

From 1894 to 1896, Sultan Abdu-Hamid II ordered the massacre of 300,000 Armenians living within the boundaries of the Turkish Empire; and

WHEREAS, in 1909, 30,000 more Armenian men, women and children were senselessly slaughtered by Turkish armies in the mountain village of Cilicia.

Nonetheless, by the onset of World War I, there still remained 2,500,000 Armenians who made their homes within the Ottoman Empire. Of those, over 250,000 were faithful soldiers who loyally fought within the ranks of its armies in an effort to defend their

homeland.

On April 24, 1915, hundreds of Armenian religious, political and intellectual leaders were rounded up, exiled and eventually murdered in secret death camps hidden in the depths of the mountainsides.

Over the course of the next six months, the Armenian soldiers on active duty in the Army were disarmed and placed in forced labor battalions, whereupon many either starved or were summarily executed behind the fences of these camps.

Deprived of their leaders and the young men who could defend these helpless communities, the remaining Armenians became the easy target for the governmental raids and found themselves at the mercy of cruel and often barbaric persecutors; and

WHEREAS, a total of 1,500,000 Armenian men, women and children were massacred; 500,000 more were exiled and about 500,000 were able to escape the reign of terror and establish themselves in new and wholly foreign lands. As

a result, today there are only 100,000 people of Armenian heritage left residing within the boundaries of modern Turkey.

The devastation which resulted from this "ethnic cleansing" practiced by the rulers of the Ottoman Empire occurred in a similar ratio to that caused by the Jewish Holocaust in Germany and Eastern Europe, yet most of the world's peoples do not realize the gravity of the genocide perpetrated during this period.

The Armenian people have been denied the right of self-determination of ancestral lands. They have received no form of reparations for their tragic losses; and

WHEREAS, on April 24, 1996, a memorial ceremony will be held in New York City Hall, City Council Chamber to commemorate the 81st Anniversary of the Armenian Genocide; and

WHEREAS, members of the Armenian community will gather to honor the memory of the victims of this genocide and to emphasize that crimes against humanity must be condemned and

never be allowed; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to urge Governor George E. Pataki to proclaim April 24, 1996 "Armenian Martyrs' Day" in New York State; and be it further

RESOLVED, that this resolution is intended to counter the tide of revisionist history that purports that Armenian genocide never took place; and be it further

RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to the Armenian National Committee, to Rouben Shugarian, Armenian Ambassador to the United States and to Alexander Arzoumanian, United Nations representative and to the President of the United States.

ACTING PRESIDENT RATH: Senator Maltese.

SENATOR MALTESE: Madam President, first of all, this resolution would be open to anyone who wishes to join in sponsoring it, and while I'm saying that about

opening resolutions, I'd refer to Resolution 300... 300... it looks like ...5 which is commemorating the 100th Anniversary of the Appellate Division, Second Department, which is also open to all members.

Madam President, this important resolution seeks to retain in our thoughts and in our minds and in our prayers a very, very terrible genocide that took place many years ago.

As the resolution spoke for itself as to revisionists who seek to hide this terrible atrocity from the minds and hearts of so many Americans, we must remember that in many ways, the past is -- foretells what comes in the future, and if more people had spoken out and fought against this terrible atrocity, then perhaps the Holocaust of the second -- during the second World War and prior to it would not have taken place.

We have the responsibility in the Legislature of bringing resolutions and cataclysmic events like this to the floor, and I

join with the Armenian community of New York State and the nation and Reverend Father Khatchig Megerdichian from the church in Troy, a church that is within Senator Bruno's Senatorial District, and mention the fact that despite this atrocity and despite this holocaust, the Armenians who disseminated throughout Europe and came to the New World and the United States had made a place for themselves as American citizens of the first order and are in every line of endeavor with -- with special emphasis in business and in medicine, and we in America are very happy that we share the pride in America with our Armenian-Americans.

So, again, Madam President, I urge the adoption of this resolution commemorating American Martyrs' Day on April 24th, 1996.

ACTING PRESIDENT RATH: Thank you, Senator Maltese.

The question is on the resolution -- pardon me. Another Senator wanted to speak.

Yes, I'm sorry.

SENATOR LACHMAN: Madam President, my distinguished colleague who is sponsoring this resolution, I would be honored if he would allow me to co-sponsor it because I believe, as he believes and I know all of us believe, that genocide should be condemned regardless of who perpetrates it and who suffers.

Unfortunately, this was the first major genocide in the 20th Century and many historians hushed up the fact that it was, and tragically it might have led others to believe that they could get away with genocide against other peoples, and I would be honored to co-sponsor this resolution and to state that categorically, the belief of this chamber that genocide against any group regardless of race, religion, ethnic and nat... or national origin should be condemned and deplored any place in the world.

Thank you.

ACTING PRESIDENT RATH: Thank

you, Senator Lachman.

Senator Marcellino, would you like to have us put all members on this bill unless notified by -- to the desk.

SENATOR MARCELLINO: I believe that was Senator Maltese's wish at the beginning so, yes, by all means.

ACTING PRESIDENT RATH: Thank you. That will be so ordered.

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, may we have a reading of the non- -

ACTING PRESIDENT RATH: We have substitutions.

SENATOR MARCELLINO: Make the substitutions, if you have it.

ACTING PRESIDENT RATH: Thank you, Senator Marcellino.

The Secretary will read.

THE SECRETARY: On page 7, Senator Kuhl moves to discharge from the Committee on Agriculture, Assembly Bill Number 1221-A and substitute it for the identical Second Report Calendar Number 720.

ACTING PRESIDENT RATH: So ordered.

SENATOR MARCELLINO: Madam President, at this time may we have a reading of the non-controversial calendar.

ACTING PRESIDENT RATH: The Secretary will read.

THE SECRETARY: On page 12, Calendar Number 296, by Senator Skelos -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 393, by Senator Skelos, Senate Print 3612, an act to amend the Domestic Relations Law, the

Criminal Procedure Law and the Family Court Act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 394, by Senator Skelos, Senate Print 4840, an act to amend the Criminal Procedure Law, in relation to expanding the circumstances under which orders of protection may be continued.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 450, by Senator Marcellino, Senate Print 6316-A, an act to amend the Environmental Conservation

Law, in relation to permitting the hunting of game on Sunday.

SENATOR PATERSON: Lay that aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 578, by Senator Kuhl, Senate Print 4117, an act to amend the General Business Law and the Executive Law, in relation to exemptions from the Security Guard Act.

SENATOR PATERSON: Lay it aside, please.

SENATOR KUHL: Madam President.

ACTING PRESIDENT RATH: Why do you rise, Senator Kuhl?

SENATOR KUHL: Would you place a sponsor's star on that bill, please.

ACTING PRESIDENT RATH: At the request by the sponsor, put a star on the bill. So ordered.

SENATOR KUHL: Thank you.

THE SECRETARY: Calendar Number

582, by member of the Assembly Nolan, Assembly Print 6741-B, an act to amend the Labor Law, in relation to requiring growers and processors to provide safe drinking water.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Senator Mendez.

SENATOR MENDEZ: Yes, Madam President, to explain my vote.

ACTING PRESIDENT RATH: We'll call the roll then, Senator Mendez, if you would.

Thank you. Please call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT RATH: Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President.

About 15 years ago, I introduced

two bills that at the time the only thing that they did was, number one, provide -- provide toilet facilities on the fields where the migrant workers do, in fact, work and the other one was for the establishment of a -- public telephones so they could call their families if they wanted to. At the time it seems -- at the time it seems that nothing could be done about that.

About two years ago, Madam President, the Minority Leader, Senator Connor, appointed a joint legislative task force on farm issues, and we conducted public hearings and as a result of those public -- of that public hearing, we were able to come up with a report concerning the plight of farm workers in the great state of New York, and a couple of them have been passed in the Assembly.

Today, we just finished passing a bill that I think is the first bill in many, many years that has been passed and that, in fact, helps the plight of the farm workers. I couldn't possibly let go of the fact that

without the cooperation and understanding of Senator Bruno, without the understanding and cooperation of Senator Spano, who understood the need for this bill and reported the bill out to the Committee on Water Resources and there, a very good friend also, Senator Tully, expressed concern and was able to report it out to the floor.

Yesterday, I received the cooperation of Senator Dean Skelos, of course, Senator Bruno, and I want to acknowledge the work done on this issue and -- on behalf of farm workers by Reverend Witt, and Miss -- and other coalitions that are fighting to remove inequities from the labor laws as it pertains to the farm workers. I feel there are still some things to be -- I can appreciate there's a long way to go. However, the important thing is - in terms of my own experience is that rational minds can get together, discuss issues and agree to solutions that, in fact, remedy a need of a group, of a people or what have you.

So I want to thank these

wonderful gentlemen for the help that they have given us, for the great hope that they have given the farm workers of New York State.

Thank you, Madam President.

ACTING PRESIDENT RATH: Thank you, Senator Mendez.

Announce the vote.

THE SECRETARY: Ayes 49.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 614, by Senator Hoblock, Senate Print 2612-A, an act to amend the Penal Law, in relation to increasing the penalties for the sale of controlled substances.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 617, by Senator Volker, Senate Print 3803, an act to amend the Criminal Procedure Law, in relation to the period of time which must be excluded.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 621, by Senator Volker, Senate Print 5793, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 623, by Senator Saland, Senate Print 6028, an act to amend the Criminal Procedure Law, in relation to mandatory arrests and orders of protection in family offense cases.

ACTING PRESIDENT RATH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 90 days.

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 688, by Senator Saland, Senate Print 2596, an act to amend the Civil Practice Law and Rules, in relation to the statute of limitations for enforcement of support orders.

ACTING PRESIDENT RATH: Read the

last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 705, by Senator Saland, Senate Print 2120, an act to amend the Family Court Act, in relation to the fair treatment of child witnesses in child protective proceedings.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 708, by Senator Nozzolio, Senate Print 6227, an act to amend the Executive Law, in relation to payments received as profit for a crime.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 709, by Senator Marcellino, Senate Print 6230-A, an act to amend the Executive Law, in relation to victim notification and verification procedures for police.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT RATH: The bill

is passed.

THE SECRETARY: Calendar Number 712, by Senator Nozzolio, Senate Print 6924, an act to amend the Executive Law, in relation to making available to their victims the proceeds of civil recoveries.

ACTING PRESIDENT RATH: Read the last section.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

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

SENATOR MARCELLINO: Madam President, may we now take up the fearfully, awesome controversial calendar.

ACTING PRESIDENT RATH: The Secretary will read.

THE SECRETARY: Calendar Number 296, Senator Skelos, Senate Print 6072-A, an act to amend the County Law and the General Municipal Law, in relation to authorizing

counties.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT RATH: An explanation has been requested.

Senator Skelos.

SENATOR SKELOS: Thank you, Madam President.

This legislation will authorize counties by local law, at the option of the county, to establish a crime case status hot line providing for an automated toll-free victim notification system and/or a pay per call jail information line.

The automated crime victim notification system will enable victims to gain information about the pending criminal proceedings in which he or she may have been involved, the custody status of the alleged perpetrator and any other details, including court dates. The system can also automatically call the victim, informing him or her of the release date of the alleged offender.

You know, statistics are very

clear that 280,000 women are battered every year in New York State. There is a report of domestic violence to law enforcement agencies every 15 seconds, and according to the FBI, four women a week are killed and an untold number of others are injured as a result of domestic abuse. In these cases, the first few hours of release of the offender are critical in protecting the women.

We believe this type of program which has been successful -- successfully used in New Jersey, in Kentucky will go a long way in protecting those who are victims of domestic violence and, in fact, others who have been victimized by those about to be released from jail.

ACTING PRESIDENT RATH: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

We'd like to congratulate Senator Skelos for his work. The establishment of a crime case status hot line would certainly be in

order. The statistics that Senator Skelos just made available to us are staggering and that, as well as the other victims of crimes who would be gained very favorably by knowing this information is certainly laudable.

If Senator Skelos would yield for a few questions.

ACTING PRESIDENT RATH: Senator, will you yield?

SENATOR SKELOS: Yes, Madam President.

ACTING PRESIDENT RATH: The Senator yields.

SENATOR PATERSON: Senator, the issue of counties perhaps would have the option to pay for this type of service, but isn't it also true that in the bill that a one percent premium of bail would go toward paying for the crime case status hot line?

SENATOR SKELOS: Presently, three percent is retained. We would allow for one year that there could be an additional one percent retained by the counties and, of course,

you know if a person is found innocent or if a case is dismissed and not pursued, that percentage goes back to whoever posted the bail. Only if there is a conviction or a plea, which is a conviction, would that be retained, or a county could opt to have a pay per call charge not to be paid by the victim or the victim's attorney but others who may seek the information, or a county could choose not to charge anything at all. It would be at the option of the county.

SENATOR PATERSON: Just to clarify, Senator, I just want to make sure that if an individual who is arrested is found to be not guilty or if the charges are dismissed, the one percent, therefore, would be returned. In other words, 100 percent of -

SENATOR SKELOS: Senator DeFrancisco informs me that it's not returned. So I would stand corrected then on that.

SENATOR PATERSON: Okay. That's what I thought, Senator, and since that is the case, I guess my question is, do we not set up a

situation where we have a hot line that we sorely need; and this is not a discussion of your intent to establish the hot line because we wholeheartedly agree with it. We hope we can work this out so that we can have a crime case status hot line. All the victim services organizations have been asking for it and you've responded to them, but the question is don't we set up a situation where, in a sense, innocent people, because of the fact that they were charged, are now being put in the position of paying for this hot line that all citizens of the state can benefit?

SENATOR SKELOS: Again, that's at the option of the county. The county does not have to implement the additional surcharge. The county could do it by a charge per call similar to what we're doing under the "Megan's Law" with the 900 number where you pay a fee and that will help pay for the cost of the -- of the 900 number. It's at the option of the county.

SENATOR PATERSON: Thank you, Senator Skelos.

ACTING PRESIDENT RATH: Senator Paterson, does that complete -

SENATOR PATERSON: Madam President -

ACTING PRESIDENT RATH: You said you had several questions. Does that complete your several questions? Senator Waldon has requested the floor.

SENATOR PATERSON: No, it didn't.

ACTING PRESIDENT RATH: It did not complete your several questions. Did you want Senator Skelos to proceed, or did you have another question?

SENATOR PATERSON: Maybe I should think of a word that means more than "several". I have an infinite number of questions.

ACTING PRESIDENT RATH: Senator Skelos.

SENATOR SKELOS: I certainly would be happy to answer -

ACTING PRESIDENT RATH: Senator Paterson, yes, go ahead.

SENATOR SKELOS: -- a few more

questions.

ACTING PRESIDENT RATH: An infinite number of questions, I don't know whether there's a ruling on that in the handbook. I'll check that out.

Go ahead, Senator Paterson. I think you've got at least a few more.

SENATOR PATERSON: We have just a few more questions and, really, I'll defer to Senator Waldon. I would just like to get this issue cleared up.

First of all, Senator, I'm concerned that we have a situation where certain counties would be bearing a greater encumbrance than other counties for establishing this entire service, and the fact that individuals -- let's say if someone pays $100,000 in bail, that $1,000 might go to set up this hot line and the person may be found to be not guilty or the charges may be dismissed, and my concern in this situation is that I think that is a tremendous burden to ask of an individual who has simply been arrested, not convicted of a crime, but a

bail has been set and a bail in this state means to assure the presence and the cooperation of the defendant, that -

SENATOR SKELOS: Senator Paterson, maybe I can correct myself again. I'm informed by learned counsel that actually if you are found not guilty or the case is not continued, that the three percent is returned to the individual. So that renders moot your concern.

SENATOR PATERSON: Senator -

ACTING PRESIDENT RATH: Senator Paterson, another question?

SENATOR PATERSON: Well, this is the last question.

ACTING PRESIDENT RATH: The last of the infinite.

Senator Skelos, do you yield?

(Senator Skelos nods head.)

ACTING PRESIDENT RATH: Proceed.

SENATOR PATERSON: You have now answered to my satisfaction about the three percent that you cover in the bill, but what

about the one percent that's still there, the one percent that may be dedicated to establishing the case status hot line?

SENATOR SKELOS: That would be returned also? It wouldn't be charged. It would be returned also if you're found not guilty.

SENATOR PATERSON: Thank you very much, Senator Skelos.

You have helped to clear up the issue of who will pay for the criminal case status hot line and also have helped me for the first time in history to define the term "infinite".

ACTING PRESIDENT RATH: That was wonderful, Senator.

Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

Would Senator Skelos yield to a question or two?

SENATOR SKELOS: Yes, Madam President.

SENATOR WALDON: Thank you, Madam President.

Senator, I'm trying to get a sense of the real information that will be given to the caller. John Doe is arrested. A woman is the alleged victim. She calls the hot line. It says here that certain information will be given. It's only the information that you have in this bill, this proposal where he's located, the charge, what really will be disseminated?

SENATOR SKELOS: The information that we're trying to give to the victim is information, for example, when a woman's batterer is going to be released from jail so that she will know that there may be a potential problem for her with this release, and the way it would work is the victim could call the hot line. A person would have a PIN number and a case number so that the 800 number that's called would know the case that's involved, the fact that this person is a victim. They could then find out the information that they want, such as the release date, or you can even set up a

system where, by computer, there is a call made to the victim's home when a person is going to be released and it will continue to call that home until there is contact made with the victim so that the person knows that somebody is about to be released from jail or there's a trial date established, that type of thing. So it's really information that will be made available to the victim to be able to better protect themselves.

SENATOR WALDON: Madam President.

ACTING PRESIDENT RATH: Senator Waldon. Senator Skelos, will you yield to another question?

SENATOR WALDON: So from what you're saying -- and I'm really trying to get a sense from what I'm reading -- victimless crimes will not be part and parcel of this. For example, someone commits a burglary. There's no one home. No one is injured and they exit the burglary. Someone requesting information anonymously about that person would not be given the information, is that correct?

SENATOR SKELOS: You still get

the information. I believe if my house is burglarized, I'm a victim, whether I'm in that house or not.

SENATOR WALDON: Madam President.

ACTING PRESIDENT RATH: Senator Waldon. Senator Skelos, do you yield?

(Senator Skelos nods head.)

ACTING PRESIDENT RATH: Yes, he yields.

SENATOR WALDON: If what you've said in terms, Senator, just then, stretching what I normally characterize as "victims" -- for example, the Crime Victims Compensation Board might compensate someone for burglary, but I think normally an injury of sorts is involved. Can we say then that all crimes -- information regarding all crimes by a person involved as the victim in the crime or someone anonymously can call and get the information on the person who's alleged to have committed this act?

SENATOR SKELOS: And this would be at the option of the county. The county could set up the system any way they wish. They

could narrow it to domestic violence. They could make it expanded to any type of a crime. Your definition of a "victim" may be one thing. I look at it from the point of view if somebody has burglarized my house, I have been victimized. If somebody steals my car, whether I'm in it or not, I have been victimized. If the county opts to include that type of information in the crime victim hot line, then that would be accessible by me as a victim.

SENATOR WALDON: Madam President, may I continue, please?

ACTING PRESIDENT RATH: Senator Skelos, do you continue to yield?

SENATOR SKELOS: And just to follow up, Senator Waldon, most of this information is public information anyway when an individual has been arrested. What we're doing is we're making -- we're coming into the computer world, the computer age, and just making the information a little bit more available.

SENATOR WALDON: Madam President,

if I may continue.

ACTING PRESIDENT RATH: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

SENATOR WALDON: Are you implying by your response, Senator Skelos, that someone arrested and an entry is made in the police blotter that somehow that goes out in the Internet or the Web saying, John Doe just robbed six people on the corner of 156th Street and Amsterdam Avenue or Broadway in New York City; is that what you're saying?

SENATOR SKELOS: You have to have a PIN number. If you paid attention to what I said to Senator Paterson, that you have to have a PIN number to access that information.

SENATOR WALDON: Then as a follow-up to that, the only person who has a PIN number -- or only those persons who have PIN numbers will be those who have been identified by the county as victims; is that what you're saying?

SENATOR SKELOS: That's right.

Or their attorney, bail bondsman, that type of person.

SENATOR WALDON: Last question.

ACTING PRESIDENT RATH: Senator Waldon. Last question, Senator Skelos.

Go ahead, Senator.

SENATOR WALDON: Under the Freedom of Information Law, as I understand it, there are certain investigations conducted by a district attorney or the New York State Commission of Investigation or other lawful body in the state, whereby even I as a legislator cannot call and ask for information because it might compromise the investigation, the ongoing investigation. Would this in any way interfere with ongoing investigations by district attorneys, Commission of Investigation or other investigative bodies in the state?

SENATOR SKELOS: I would assume that the counties have to abide by what the law is and whatever the freedom of information laws are.

SENATOR WALDON: Thank you.

ACTING PRESIDENT RATH: Senator Waldon.

SENATOR WALDON: Madam President, on the bill.

ACTING PRESIDENT RATH: On the bill.

SENATOR WALDON: I'm a little bit frightened by this. I think that "1984" -- was that the title of the book? It was "1984"?

SENATOR LACHMAN: Yes. Published in '48 and it was called "1984".

SENATOR WALDON: Thank you.

Our learned educator just advised me that they flipped the numbers. I think that "1984" may be visiting us in 1996, and I'm worried by that. I'm worried because anyone who has a lawyer, who is a victim can get the information anyway. So why do we need to put it on the phone and why do we need to have PIN numbers to access it?

I think that when you get into the business of putting people's business in the street, there are too many negatives, too many

down sides to that, and I think this rush to share information about someone who may have committed a crime and who may have caused someone to be a victim and who may owe a debt to society is a dangerous, dangerous ground to walk upon, because my fear is that those who will be most maligned by this process are the ones who are always most maligned by this process, those characterized -- and the director of Criminal Justice in our fair state, Mr. Schechtman, his report shows that blacks in this state, Latinos in this state, if committing the same act or alleged to have committed the same act will, one, not be treated fairly or equally, if you can characterize "equal" as fair, as a white counterpart with the precisely same profile. Someone the same age, the same area, the same allegation, the same financial and social background, the black or Latino will almost 30 percent of the time do time or receive punishment even when it comes to, if arrested or you're released on your own recognizance, or do you spend the night or some days in jail? I

think this compounds that.

I think this compounds that the report shows that racism is alive and well in New York State. I think it's unnecessary. I think it's overbroad. I think it does a disservice to us because all of us who practice or are part and parcel of the criminal justice system know that your lawyer can get all of this information. So why do you want to put it on the Net or on the Web or whatever? Who are you looking to punish and who are you looking to damage with this information?

I would encourage my colleagues to look at that and to think about it and see if that is something that the people of the state of New York should be about, and I would encourage all of us to recognize that it's too much too soon, and we should vote no on this issue.

ACTING PRESIDENT RATH: Senator Dollinger.

SENATOR DOLLINGER: Would the sponsor yield to just a couple of questions?

ACTING PRESIDENT RATH: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Madam President.

ACTING PRESIDENT RATH: The Senator yields.

SENATOR DOLLINGER: Senator, I'm interested in page 2 of the bill, lines 21 and 22 which talk about the provision that "In no case shall the county be held liable for damages for any failure to provide notice pursuant to this section."

My question is what happens if the information provided by the county is inaccurate; is the county still liable for the inaccurate information on this data?

SENATOR SKELOS: No. They would not be. They're held immune.

SENATOR DOLLINGER: Okay. I understand that's what you're trying to do.

SENATOR SKELOS: It's very similar to, I believe the Correction Law where it involves state notification.

SENATOR DOLLINGER: Right. I - if that's what you want to do is create that blanket immunity, I don't think this line does it because I can foresee that what this in essence says, or what I think its most literal reading is, that if a county elected not to have the system, it couldn't be held liable for the failure to implement the system, which I think you and I both agree. There shouldn't be any liability on the part of the county for the failure to follow through on this optional system, but as it's drafted, what I see this doing is opening the door that if the information provided by the county to the victim is inaccurate and the victim relies on that inaccurate information, the county will be sued. This language doesn't create immunity. It doesn't even mention the word "immunity", and I would suggest that you strengthen it by adding "immunity", if that's what you want to do.

The other question I have, and it deals with immunity, is what happens if the information provided to the county is not

accurate? If the incarceration institution says -- doesn't update the information or it's not accurately provided, the assumption is that the person is still in the -- in incarceration and yet has not been released. It seems to me you have the same problem. The victim relies on the data from the hot line. The victim doesn't change their conduct and the whole point of this is to, as I understand it, I think rightfully so, is to allow victims, to know, to understand and to alter their conduct, either contact the Parole Board or to take personal actions or obtain protective orders, whatever. It seems to me that if what you have done here is said that the county can't -

SENATOR SKELOS: Senator Dollinger, you know the system is not perfect. I don't think we can devise a system that's perfect. We allow for the system to contact the victim. We allow the victim to contact the system, and I think it affords just an additional protection, perhaps not perfect. It's like orders of protection. They're not

perfect, but it's a little additional "oomph" to try and protect somebody, and this is what this system is doing.

It's just trying to give that little additional protection so that a person who has, for example, suffered from domestic violence will know that a spouse or significant other is coming out of jail and can better protect themselves from a violent situation. That's all it's doing. We don't pretend for it to be perfect, that it's going to stop all domestic violence; that it's going to stop all violence by those when they're released from jail or incarceration. It's just a little bit more.

SENATOR DOLLINGER: On the bill, Madam President.

ACTING PRESIDENT RATH: On the bill, Senator Dollinger.

SENATOR DOLLINGER: I agree with Senator Skelos. I don't think that we have to be perfect in achieving our balance here, but what I'm afraid of is that this language doesn't

create enough of an immunity so the counties will actually do it, because what I think will happen is that county attorneys will read this provision and realize that if they set up this system, the cost to maintain it with a level of accuracy so that they can be assured that they've got something that victims can rely on, I think they're going to look at it and say that the risk of this kind of system is very, very expensive.

I know there have been lawsuits brought against the 911 system in other counties, a very significant one brought against Erie County a couple of years ago which resulted in a multi-million dollar damage award because the person relied on the system and the system didn't work.

So I would suggest that perhaps if we reach a point where the Assembly is going to sit down and go over this bill, that you strengthen the immunity provisions. If what you really want to do is make them create it more as a service rather than something they can

absolutely depend on, then you ought to say that and you ought to make the county immune from any lawsuit, because it'll be a spur to get counties to actually do it.

ACTING PRESIDENT RATH: Thank you, Senator Dollinger.

Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT RATH: Senator Paterson, why do you rise?

SENATOR PATERSON: Madam President, to explain my vote.

ACTING PRESIDENT RATH: To explain your vote.

SENATOR PATERSON: I cannot vote for this bill at this time only because in spite of, I think, the sincere assurance of the sponsor and his counsel, that the money would be refunded to the defendant after there is a

dismissal of the charges or a finding of not guilty by the court, though I believe that, I don't find it anywhere in this bill, and I suggest that counties, as strapped as they are financially, may not return that money, and I do not want to see innocent people paying large sums of money merely by the fact that they were arrested to sustain the criminal case hot line when it is a great idea, and I think it's something that we as a government should sponsor ourselves and those who post bail and then are found to be guilty should certainly be financing their part of it. However, I just don't think it would be fair at all to individuals who have been charged and not found to be guilty of any crime to have to pay for that hot line.

I vote no.

ACTING PRESIDENT RATH: Thank you, Senator.

Announce the vote.

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

ACTING PRESIDENT RATH: The bill

is passed.

THE SECRETARY: Calendar Number 393, by Senator Skelos, Senate Print 3612, an act to amend the Domestic Relations Law, the Criminal Procedure Law and the Family Court Act, in relation to imposing a mandatory surcharge.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT RATH: An explanation has been requested.

Senator Skelos.

SENATOR SKELOS: Madam President, this bill establishes the Domestic Violence Legal Service Account. The account will be funded by a surcharge imposed by parties against whom an order of protection has been issued. The surcharge will be $25 per order of protection. The funds generated from this surcharge will be appropriated to the Office of Prevention of Domestic Violence to be used for legal services for the victims of domestic violence.

ACTING PRESIDENT RATH: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Skelos would yield for three questions.

ACTING PRESIDENT RATH: Senator Skelos -

SENATOR SKELOS: I'm counting.

ACTING PRESIDENT RATH: -- three questions.

SENATOR SKELOS: I'm counting. Number one.

ACTING PRESIDENT RATH: Proceed.

SENATOR PATERSON: Number one, Senator, in spite of the fact that, again you have picked a very important area and one that has not been addressed enough with the tremendous number of stalkings and the issues related to domestic violence and other forms of harassment and threat and coercion but, again, I want to talk to you about the manner in which this is funded.

Do you not think that it may exacerbate a situation for the surcharge to be placed on an individual who is being identified

by the court as a risk but has not actually been in any way necessarily charged, and so this action by the court is not one that's final or renders a judgment; it is one that just creates what would, in a sense, be a protection for the victim, to then levy a charge against the individual that the order of protection is taken seems to indicate an opinion that the court has rather than the fact that the court is protecting the defendant against a risk.

SENATOR SKELOS: The best way I can answer that, in my opinion, is that the surcharge is appropriate for the purposes for which it's going to be used, and that's to provide -- help provide legal services to those who are victims of domestic violence and who need the assistance.

Certainly as we -- the bill is discussed with the Assembly, there could be discussions concerning indigency and other issues involved.

ACTING PRESIDENT RATH: Question number two, Senator.

SENATOR SKELOS: Question number two.

SENATOR PATERSON: This is a short question. What is the manner of collection that we will use for the surcharge since the individual -- would we do that during the process of service of the order of protection?

SENATOR SKELOS: Yes.

Number three.

ACTING PRESIDENT RATH: Number three.

SENATOR PATERSON: Number three, Senator, just simply, in your answer to question number one, you gave -

SENATOR SKELOS: This is number three.

SENATOR PATERSON: Right. No. I'm saying in your answer to question number one as a preamble to question number three, you indicated that there is a need for this kind of service and that the money will go to a very good cause, but just to, in a sense, follow up

on question number one as number three, I would again like you to answer what it is about taking the money from the -- from the individual who was identified as the object of the order of protection when the court has not made any determination as to whether or not there's a need for the order but what the court is doing is taking a preventive meas... a preventive measure. So my question is, why should an individual pay for a preventive measure? Would the court not be -- the court is, in a sense, erring on the side of caution if we issue an order of protection and there is no need for it, but we should still issue it.

The question is, why is the object being charged for what would be a very needed service? Why don't we just establish it as a government because people need to have additional services? That's something that is, in a sense, called for by the staggering statistics that you related to us earlier. So rather than put it on the object, why would we not just provide this in the law and provide

this in our budget?

SENATOR SKELOS: Senator Paterson.

ACTING PRESIDENT RATH: Senator Skelos.

SENATOR SKELOS: This legislation that we're passing today is part of an ongoing discussion with the Assembly where many of the issues that you've raised will perhaps be discussed with them if the final bill can be - agreement can be reached on this type of legislation. We are moving the process forward.

Remember, when an order of protection is issued, the judge has made a determination that something serious has happened here. So I don't personally have a problem with a $25 surcharge at that point. As our discussions continue with the Assembly, this is one of the issues that will be raised and it could/could not be part of the final bill that's agreed upon by both houses, your concerns, I'm talking about.

ACTING PRESIDENT RATH: Senator Paterson, on the bill.

SENATOR PATERSON: Thank you, Madam President.

I somewhat differ in my interpretation of what the order of protection is with Senator Skelos. Many times, there is not the requisite evidence or the proof at that particular time to establish what an individual may have done to another individual. What the order of protection does is, in a sense, serve as a warning that the criminal justice system has taken notice of this situation and that it will, in a sense, serve as a deeper understanding if there's any further action after the order of protection is issued of what may have already been going on.

So I don't see it as something serious has been observed by the court. It's that the court has a notion that something serious may have occurred and would like to protect the victim from any further violence or any further harassment.

Because of that, because it is not punitive but it is preventive, I don't think that -- the individual who may become so antagonized by the levy of this fee so that the individual causes more harm, I don't think it's wise to place the money in that fashion. However, again, in two bills today, Senator Skelos has developed a concept on some issues that we as a body have for a long time needed to address.

ACTING PRESIDENT RATH: Thank you, Senator Paterson.

Senator Gold.

SENATOR GOLD: Yeah. Would the Senator yield to a question?

ACTING PRESIDENT RATH: Senator Skelos, will you yield?

SENATOR SKELOS: Yes, Madam President.

ACTING PRESIDENT RATH: Senator yields.

SENATOR GOLD: Senator, does this only apply to Family Court or any court issuing

an order of protection?

SENATOR SKELOS: Any court.

SENATOR GOLD: Well, Senator, if the Senator will yield, let me just throw something out, and I'll tell you a concern. It's not a heavy concern, but it is a concern.

I know as a practicing lawyer, from time to time the Attorney General or others in a business setting will sue for something against somebody doing a certain kind of an illegal activity and what always happens -- not always, but a lot of times happens, is the defendant will say, "We don't do that; we don't do that," and so a judge will say, "If you're not doing it, there's no harm to the injunction" and you say, "You don't understand, your Honor. Why should I have it on my record that I needed somebody to enjoin me from doing an illegal act or something I shouldn't be doing, when the fact is I never violated anything?"

Senator, in 90 percent of those cases, the injunction gets ordered. The judge has forced the defendant in a situation where

they say there's been nothing raised, say no.

Now, we take the orders of protection. Senator, I don't want to do the kind of outrageous judge bashing that's easy for newspaper reporters to do, or others to do, but the fact is that we are in an environment now where there are judges who don't want to be criticized by this newspaper or that newspaper, and so I'm telling you, take this -- and you can take this to the bank, orders of protection, if asked for now, are being given and the excuse is, "Well, in the discretion of the court I'm going to issue it." Why? Because God forbid anything happens that judge's name isn't going to be in the paper that he refused an order for protection.

As if that wasn't bad enough, now the suggestion is that somebody is going to have to pay for it. Now, I certainly believe that orders of protection, while they can not stop massive assaults on people by people who are going to do it, I think it's an important tool, and I do support orders of protection, and I do

believe that, if you have a situation where you have a hearing or you have a process and a court determines, based upon facts in a record, that an order of protection should be issued, I don't have a problem.

I do have a problem if it's mandated, and that's my question. Is there any leeway here for a judge to not charge the money, because it seems to me that if a judge in today's atmosphere is going to issue orders of protection just to protect the judge from criticism more than anything else, that to throw a fine on top of it or a court charge is really adding insult to people who aren't being injured.

SENATOR SKELOS: Senator Gold, just to respond. Under this legislation, no, there's no discretion but, as I mentioned to Senator Paterson, this bill -- and I know what we're voting on today is this bill. These types of concerns are being discussed with the Assembly, whether the money should be held in abeyance, whether there should be an indigency

provision. Other discussions are ongoing with the Assembly. I know we're voting on the bill as it is today, but I'm looking to move the process forward. Hopefully the Assembly will come to the table and negotiate, but in the end, I can very comfortably live with this bill the way it is.

SENATOR GOLD: Well, Senator, on the bill, Madam President.

SENATOR RATH: On the bill.

SENATOR GOLD: And I don't want to make it bigger than it is, but when we say we're discussing and, therefore, it's important to pass it because it may be amended, I don't know where that logic comes from because the only thing I see from this bill we're talking about is it sets up a mandatory surcharge and, if the Assembly does away with the mandatory surcharge, I don't know what the bill was about to begin with. But I'm telling you it's a terrible thing, and we're not talking, just so my colleagues understand this -- I'm not talking about some minority guy on welfare. You know,

that's an easy target for every piece of legislation we ever discuss in this house. I'm talking about people who are being brought into the courts, an action is started, a husband and wife. He works, she works, they got money. Money is not the issue, Senator, but the charge is made by a wife or even by a husband that an order of protection is necessary and, before the case even gets started, before there's a hearing, a judge decides an omnibus motion and along with the omnibus motion, the judge says, "And in my discretion I'll issue the order of protection."

Well, first of all, it's outrageous that judges are doing that, but I understand it. The press to some extent has poisoned the court system, poisoned an atmosphere. They won't admit it because there's no guts there, but they've done that. But now to add a fee on top of it, I mean it just seems to me to be creating a situation which makes no sense to me.

If some -- if an order of

protection is needed, issue it by all means. The policemen in our cities should take them seriously, and I know there have been problems over the years where they haven't. They should be taken seriously, but, Senator, I think we have an obligation in this chamber to have our eyes open to what is actually happening in the courtroom and, you know, years ago they used to criticize the Legislature that there were too many lawyers. Well, maybe today we don't have enough, and I mean lawyers who practice and are in the courts.

If you're in the courts, you see the enormous pressure judges are put under. You'll understand that today -- I'm not talking about three weeks ago, and I'm not talking about two years ago -- today there are orders of protection being issued which I believe are not valid, not justified, but where judges are protecting themselves, and to add this kind of a burden on it -- and it's not a financial burden; the 25 bucks is not the financial burden, but now people walk around, Gee, that guy had to get

an order of protection out against him, and he had to pay 25 bucks for it also. That's what's going to happen to that man, that woman, in their real life, Senator, and it's putting somebody under a black cloud before the case even begins, and I don't think it's fair.

ACTING PRESIDENT RATH: Senator Leichter.

SENATOR LEICHTER: Yeah, Madam President. Would Senator Skelos yield, please.

ACTING PRESIDENT RATH: Senator Skelos, would you yield?

SENATOR SKELOS: Yes.

SENATOR LEICHTER: Senator Skelos, I'm not that familiar with orders of protection, but it's my belief that you can get an order of protection without the person against whom the order is directed ever appearing in court. In other words, a woman would go to court, and she'll submit an affidavit. She may have a bruise. Judge will look. Under the circumstances -- I think Senator Gold explained it very well -- it's

reasonable for a judge to say, "O.K., I'm going to issue this order. You say you were punched by your boy friend Harry; I'm going to issue an order, and I want the court to serve it on Harry," whatever his last name is.

Harry has never been in court, but the order issues. Am I correct in the procedure?

SENATOR SKELOS: $25 surcharge.

SENATOR LEICHTER: O.K. Now, it turns out, Senator, that this was totally made up. She was mad at Harry for something else, and she made it up and while I don't mean to say that most of the time when women go and try to get orders of protection, probably in 95 percent or 98 percent of the cases it's appropriate, but here you've got a case, the order issued. Then Harry shows up in court and the order is vacated and so on.

But am I not correct under this bill, and I think you just blurted it out -

SENATOR SKELOS: Yes, the answer is $25 surcharge.

SENATOR LEICHTER: Well, yes, I mean I don't think anything more ought to be said. I think you ought to just withdraw the bill. I mean it makes no sense whatsoever. I mean with all due respect.

SENATOR SKELOS: Senator Leichter, last year the bill passed 57 to 1.

SENATOR LEICHTER: Same bill?

SENATOR SKELOS: Same bill, passed 57 to 1. I think you may have voted against it.

SENATOR LEICHTER: I'm not going to say -

SENATOR SKELOS: But the bill did pass. I think it's a good bill standing up by itself, but I think through discussions with the Assembly there may be some changes, but I can support the bill, as 57 other Senators did last year, once again this year.

SENATOR LEICHTER: Senator, if you would continue once again to continue to yield.

ACTING PRESIDENT RATH: Senator

Skelos.

SENATOR LEICHTER: Do you think it is fair that somebody who is found not to have been properly the object or the subject of an order of protection, that that person should be forced to pay $25 even though the order is found to have been given on totally false testimony or affidavits?

SENATOR SKELOS: I think in the end, the fact that the legal services that will be provided to indigent women outweighs perhaps that person having to pay $25.

SENATOR LEICHTER: Madam President, if Senator Skelos will be good enough to yield.

ACTING PRESIDENT RATH: Senator Skelos, would you yield for another question?

SENATOR SKELOS: Yes, Madam President.

SENATOR LEICHTER: Senator, what sort of collection system have you set up to - to collect this $25? Where is the judgment provided?

SENATOR SKELOS: I suppose the court collects the money.

SENATOR LEICHTER: Well, Senator, with all due respect, if you will continue to yield, how does the court collect money? You don't wave a magic wand. Suppose Harry says, "What are you talking about? I wasn't even in the country at that time. I'm not going to pay $25." How do you collect? Who goes out and collects the $25?

SENATOR SKELOS: The judge would issue an order. You pay -- you pay the $25 surcharge. If not, you would be held in contempt.

ACTING PRESIDENT RATH: Senator Leichter.

SENATOR LEICHTER: Well, I think Senator Skelos will continue to yield.

ACTING PRESIDENT RATH: Senator Skelos, will you continue to yield?

SENATOR LEICHTER: Do you know the costs that are involved in this sort of a procedure? Do you know the burden that you're

placing on the court to collect the $25 fee which you admit shouldn't -- the person who's being asked to pay the fee, in justice, should not have to pay?

SENATOR SKELOS: I think in most instances as you indicated that in your opinion 98 percent of the orders of protection that are issued are valid, I think in most instances the person would pay the $25 surcharge.

SENATOR LEICHTER: Madam President, if Senator Skelos will yield.

ACTING PRESIDENT RATH: Senator Skelos yields.

SENATOR LEICHTER: Probably to the last question.

SENATOR SKELOS: Thank you very much.

SENATOR LEICHTER: Senator, doesn't it bother you that you have not taken the time to write protections for that two percent -- maybe you and I agree that two -- two percent of the orders or five percent of the orders are invalid -- wouldn't it be fairer to

provide a way that, if it is found that the order of protection was issued on false testimony or false affidavits, that the money should not be collected, it should be refunded; is that so difficult?

SENATOR SKELOS: I feel very comfortable in voting yes on this bill.

ACTING PRESIDENT RATH: Senator Leichter, on the bill.

SENATOR LEICHTER: Well, you know, Madam President, you know, I think we have a certain obligation to put forward bills that not only make good press releases or may make sense conceptually, and conceptually I can see a way to work out your bill that I would support. I like the idea, but the -- and I'm sorry to say this to you, Senator, sorry to say this to you, but there's almost an arrogance, "Listen, I can pass anything. I can write nonsense and I'll get 31 votes," and, Senator, that's what it is.

I want to tell you, the previous bill we passed that I voted for because I don't want to make any big fuss, I think that is so

inartfully drafted that I think it's embarrassing. I'll just go over it, and the reason I will, Senator, is because I think it has bearing on this bill and the question of what we're about and whether we're going to pass serious legislation, whether we -- whether we consider what we pass as having to -- to meet certain standards of clarity.

A previous bill makes it perfectly unclear whether, in order for somebody to avail themselves of the hot line, they have to be a victim who was -- who was involved in a pending criminal proceeding, so you don't cover an instance where a person may have been a victim, may not be involved in a criminal proceeding, may not have even been a criminal proceeding. I don't know what that means.

I think it's things like that that, before the bill is put on the floor, we ought to try to -- we ought to see that they're written in a sensible way, and I don't mean to be critical of staffs, Senator, because I think they do the best job, but I think before we put

the bill out, I think we have the responsibility to do more than say, Well, I'm comfortable with it; let the Assembly make the necessary corrections to it, and I think in this particular instance, Senator, I think there's glaring draft -- draftsman errors in this bill, and I think not to cover when you easily could, the case of an order of protection issued against somebody who is found not to have done anything wrong, and why make that person pay? You say, Well, it's for a good cause. Then maybe you ought to provide that everybody in the state ought to pay $25 into a sort of a victims' fund. That may be fine, because that's really what you're doing, but if it is based that somebody has done something wrong, then indeed it ought to require a finding that that person has done something wrong, and even then you - you don't provide any means for collection to make the collection proceed on the basis of an order of contempt, which are very difficult to enforce and expensive, rather than providing at least for judgment so a judgment could be

entered and then the marshal could very easily enforce it.

I think these are errors that can be corrected, but I think we so often find here once you people put a bill on the floor, that is sacred, it cannot be improved by anyone. All the years I've been here, I doubt if ten times somebody has withdrawn a bill when objections were made on the basis of a technical error and said, "O.K., you're right, I'll correct it."

So, Senator, we're not against the concepts of the previous bill or this bill, but I would be embarrassed -- I would be embarrassed voting for a bill like that because I think it is so inartfully and so unfairly drawn.

ACTING PRESIDENT RATH: Senator Montgomery, did you wish to speak on the bill?

SENATOR MONTGOMERY: Yes, Madam President.

I wonder if the sponsor would yield for a question.

ACTING PRESIDENT RATH: Senator

Skelos, will you yield? Senator yields.

SENATOR MONTGOMERY: Yes, thank you, Senator Skelos.

Senator, I note that in 1995 your bill passed 56 to 1, and I was the only one to vote against it, and I just want to ask you I guess a similar question to what I did before. This bill only relates to domestic violence, or does it relate to anybody against whom an order of protection is issued?

SENATOR SKELOS: Domestic violence.

SENATOR MONTGOMERY: Only to domestic violence. Is there any reason that you only for that -- that you only wanted to deal with those kinds of -- those issues?

SENATOR SKELOS: The surcharge applies to any order of protection. The money goes into the Office of Prevention of Domestic Violence to be used for legal services concerning domestic violence charges.

SENATOR MONTGOMERY: All right, Senator. That means then in an instance such as

I've experienced recently where one of my constituents, I had to get an order of protection against that person -

SENATOR SKELOS: Madam President, I can't hear Senator Montgomery.

ACTING PRESIDENT RATH: We need a little quiet in the chamber, please.

SENATOR MONTGOMERY: I have, up until now, an order of protection because someone was targeting me for an attack, and it means then that that person has to pay the $25 surcharge and, if that is the case, that person becomes even more aggravated and stands a chance to wait for me outside my office when I'm leaving late at night.

Is that -- is it fair to say that that's a possibility since, you know, my office is public, so I can't really keep people from coming near there? The order of protection may or may not be effective, but the person is further aggravated based on this surcharge.

SENATOR SKELOS: If there's an order of protection, you should pay a $25

surcharge.

SENATOR MONTGOMERY: So that would be the case. Thank you, Senator Skelos.

SENATOR SKELOS: Madam President, it's correct, you voted against the bill last year, not Senator Leichter. I believe Senator Leichter supported it last year.

ACTING PRESIDENT RATH: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Thank you. Madam President, just briefly on the bill.

As I had indicated when I voted against the bill last year, to Senator Skelos and I believe in committee as well, my concern is that in domestic violence cases specifically, and I believe in general, when one has to get an order of protection, there is a serious conflict that has existed and that is oftentimes accompanied by a level of violence from one person to another, and if now the individual has to pay a surcharge, it seems to me it would further aggravate the situation, and the -- the person for whom the order is to protect then, it

seems to me, becomes vulnerable to -- to the attack and especially in light of the fact that orders of protection generally are not really and truly efficient in keeping another person who really wants to harm someone from doing so.

So I'm just going to vote against this, not because I am opposed to punishment for people who engage in any form of domestic violence as well as any other violence toward another person, but I certainly would not want to support legislation that I feel would really aggravate a situation where this is the case, so I'm going to vote no again this year.

Thank you, Madam President.

ACTING PRESIDENT RATH: Senator? Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 1st day of November.

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 393 are Senators Gold, Leichter, Montgomery, Seabrook and Waldon. Ayes 54, nays 5.

ACTING PRESIDENT RATH: The bill is passed.

Senator Waldon, why do you rise?

SENATOR WALDON: Madam President, I was called out of the chamber on business in regard to my Senatorial District and failed to be present when 296 was voted upon. I ask unanimous consent to be recorded in the negative.

ACTING PRESIDENT RATH: Unanimous consent to be recorded in the negative.

THE SECRETARY: Calendar Number 450, by Senator Marcellino, Senate Print Number 6316-A, an act to amend the Environmental Conservation Law, in relation to permitting the hunting of game on Sunday.

SENATOR GOLD: Explanation.

ACTING PRESIDENT RATH: Explanation has been requested, Senator Marcellino.

SENATOR MARCELLINO: Yes, Madam President. This bill amends the Environmental Conservation Law authorizing the hunting of game on Sunday during the hunting season in the Southern Tier, central and western regions of the state of New York for three years from the effective date of this chapter.

In other words, this is the last bill that Bob Banister worked on and negotiated the settlement and negotiated the agreement between those who had some problems with it earlier.

ACTING PRESIDENT RATH: Are there any further questions?

Senator Gold, why do you rise?

SENATOR GOLD: Yes. Senator, would you yield to a question, please?

ACTING PRESIDENT RATH: Senator Marcellino, would you yield?

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT RATH: Senator will yield.

SENATOR GOLD: Senator, just so I

understand this. Right now we ban this activity on Sunday, is that correct?

SENATOR MARCELLINO: Yes, in those regions.

SENATOR GOLD: Do you know - pardon me?

SENATOR MARCELLINO: Those regions cited in the bill only.

SENATOR GOLD: I see. So are there any other regions that would be left out now?

SENATOR MARCELLINO: No.

SENATOR GOLD: This would not be statewide.

SENATOR MARCELLINO: This would be uniformly -

SENATOR GOLD: Do you know why - the legislative history why hunting was not allowed on Sunday?

SENATOR MARCELLINO: It's my understanding that this bill, the concept went back to the "blue laws" and there was concern for activities such as hunting and others, other

things that were done on what would be considered a Christian sabbath of Sunday.

However, as in the case of many of the other issues under the "blue laws" we've reconsidered them over time, and this particular bill would only apply for a three-year period of time and then at the end of which we can go back to the old system, make it permanent or amend it as necessary.

SENATOR GOLD: Madam President.

ACTING PRESIDENT RATH: Senator Gold.

SENATOR GOLD: Yeah, Madam President, on the bill.

I don't see any reason why, if somebody wants to, they can't take a shot on Sunday, and there also happen to be laws which say you can't sell liquor on Sunday and somebody may want to take a different kind of shot on a Sunday, and I don't know why we can't get rid of that law also.

There's a bill I have in, and I've had it in for a couple years, which would

allow Orthodox Jewish store owners who close on Saturday and who service communities who do all kinds of other business on Sunday to be permitted to sell liquor on Sundays in those communities, and I think that it's about time we stop the discrimination that we have as regards certain industries and certain groups in our society.

You can go out throughout this state. There isn't a mall that closes on Sunday. There isn't a restaurant usually that closes in most places. You can go to a movie, do a million things, and I support your bill, Senator, and I'd be very grateful if you would tell Senator Bruno about your bill so he could focus on it.

I know that Senator Skelos has had many, many letters, I'm told, and petitions in his district, and I've had them in mine, where people just want to be treated the same as anybody else. We respect Christianity; we respect everybody, but we want the same respect and, while I did not make my motion to discharge

last week -- it wouldn't have made any difference anyway the way your party votes -- I do urge that Senator Goodman, who I'm also told supports my bill and has it in his committee, be allowed to let my bill out of committee.

I'm really tired of having bills come through which allow things to happen on Sunday because it's inconvenient for one person or another and then we are told that this group of Orthodox Jews cannot be granted relief by this Legislature. I think the time has come to stop that particular kind of discrimination.

Senator Marcellino, I respect your bill, and I respect the people you're trying to help. I'm not a hunter, but I respect people who hunt and, if they want to hunt on a Sunday, that's their business. I think your party and for those in the Assembly who haven't let out the bill, it applies to them also, it's about time that the particular discrimination that Senator Solomon, when he was here, fought for, that Senator Kruger has been fighting for, I've gotten support from Senator Lachman and

others, Senator Stavisky, I can name a lot of people. There's a discrimination here and it ought to stop. My bill does that pure and simple, and I would urge that the same fairness that was given to your bill, the consideration of your bill is given to my bill and, while it doesn't affect a lot of people, the Orthodox Jews who are affected by my bill are entitled to relief.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT RATH: The bill is passed.

Senator Skelos, why do you rise?

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT RATH: Immediate meeting of the Rules Committee in the Majority Conference Room.

THE SECRETARY: Calendar Number 614, by Senator Hoblock, Senate Print Number 2612-A, an act to amend the Penal Law, in relation to increasing the penalties for sale of controlled substances.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT RATH: Explanation has been requested. Senator Hoblock.

SENATOR HOBLOCK: Madam President, this bill amends the section 220 of the Penal Law increasing the penalty for the sale of a controlled substance within an area defined as public housing or public housing project.

What this legislation does, it pretty much tracks the increase in the legislation we passed for the sale of controlled substances in and around schools and play grounds.

SENATOR PATERSON: Madam President, if Senator Hoblock would yield for a question?

ACTING PRESIDENT RATH: Yes, Senator Hoblock.

SENATOR HOBLOCK: Sure.

SENATOR PATERSON: Senator Hoblock, we've had a number of pieces of legislation that definitely offer a higher penalty for certain types of crimes committed against perhaps protected classes of people or protected areas such as a playground, as you pointed out, or a church or a synagogue, that kind of thing. We've also had some pieces of legislation which I thought just protected geographic locations such as crimes on the subway and, in this case, the sale of controlled substances in public housing.

My initial question is, what makes public housing so special as opposed to any other area that the penalty should be higher for the sale?

SENATOR HOBLOCK: Well, Senator

Paterson, as we discussed last year, this legislation came to me at the specific request of public housing officials in this area who were very concerned about what was happening, and some of these drug dealers and others that are in this illicit business taking advantage on those folks that are living in these housing projects, and felt that one effort to make it more palatable and more enticing for those folks that live there, that we try to rid that particular community of these drug dealers.

SENATOR PATERSON: Thank you, Madam President.

Senator Hoblock, I respect the point of view of public housing officials in this particular area. But before I even ask you, how much of this area, what percentage of the population, lives in public housing?

ACTING PRESIDENT RATH: A question, Senator Paterson?

SENATOR PATERSON: That's a question.

ACTING PRESIDENT RATH: A

question, Senator Hoblock.

SENATOR HOBLOCK: I'm not sure; I'm not sure of that statistic.

SENATOR PATERSON: Madam President, if Senator Hoblock will yield to another question.

ACTING PRESIDENT RATH: Senator Hoblock, will you yield to another question?

SENATOR PATERSON: Madam President, isn't it possible that this is an institutional response? There aren't any private housing officials. Yes, there is a tremendous drug problem that may exist all over. So what I'm saying, this may exist in public housing, but I don't see why the penalty should be any higher.

I think what the public officials are saying to you, Senator, is we have a problem with drugs, but I think if you talk to anybody lives anywhere else, they're going to tell you we have a problem with drugs; and so what I'm saying is, I don't see the need to protect one particular area geographically of a community,

because a community is more than just a geographic location. It's a relationship between all of the different neighborhoods and all of the different people that live within the community.

What I'm suggesting is that this bill is somewhat -- that this bill, in a sense, favors a certain area over another simply because there's an institution that manifests the complaint, but that a perusal of the whole neighborhood would demonstrate that there's no need for the penalties to be any higher in a specific area.

What there's a need for is greater law enforcement with respect to controlling drug trafficking and substance abuse.

So my question is, why is public housing more important than the other areas other than the fact that the officials or the agency complained?

ACTING PRESIDENT RATH: Senator Hoblock.

SENATOR HOBLOCK: Well, I think, Senator Paterson, as I said before in relation to -- this creates the identical provision that we have for schools, playgrounds, and I think that we should be extremely sensitive, not overly protective of certain areas, particularly where people live and people are together with their families, that obviously we can't control every inch of every territory, but I think that when people go home and spend time with their families they should have this added and extra protection, and perhaps you might want to join with us in sponsoring some legislation that would increase the penalties for this particular offense for everyone, and then we wouldn't have this problem if, in fact, we can agree that we should increase these offenses and make it a much stronger message to anyone that deals in this particular trade.

ACTING PRESIDENT RATH: Senator Paterson, Senator Lachman has asked if you would yield the floor for a question from your colleague?

SENATOR LACHMAN: Senator Paterson, can you yield so I can extend your line of reasoning and ask Senator Hoblock a question in this area?

SENATOR PATERSON: Certainly, Senator.

SENATOR LACHMAN: I'm aware of the fact that schools have drug-free zones and crime-free zones, but there is a distinction between schools and housing, whether they're public housing or private housing. The reason, the rationale for the drug-free and crime-free zones around the schools is that we as adults are in loco parenti to children.

You don't have a similar situation in terms of housing. Will the Senator consider amending the Penal Law to extend the - the penalty for the sale of controlled substances not only in public housing but also extend it to private housing? As Senator Paterson has been saying, what is the distinction between public housing and private housing?

The distinction between housing of any sort and schools is a very wide distinction. We are not in loco parenti to residents of public housing or private housing, and what is good for public housing should be good for private housing.

SENATOR HOBLOCK: When you refer to private housing, do you refer to apartment houses?

SENATOR LACHMAN: Sure.

SENATOR HOBLOCK: Well, I think maybe that's the next piece of legislation we can entertain. We'll get that one done first, and then we can bring that one. I agree.

ACTING PRESIDENT RATH: Senator Waldon, did you wish to comment on the bill?

SENATOR WALDON: Yes, I had hoped for an opportunity to ask the learned Senator from Albany a question or two.

ACTING PRESIDENT RATH: Senator Hoblock, do your yield?

SENATOR HOBLOCK: Sure.

ACTING PRESIDENT RATH: The

Senator yields.

SENATOR WALDON: Thank you, Madam President. Thank you, Senator.

Last year we discussed and debated this bill and, at that time, excuse me, I tried to raise to you my concerns in regard to the composition, meaning the make-up of the people who live in the projects. To cut to the chase, I shared with you the information that there are over 660,000 people in the project in the city of New York, that they're overwhelm ingly black and Latino, and that this bill, if it were to become law in the state of New York, would disparately impact those people?

I'm not condoning the sale of drugs. My concern was and is now that, if we're going to have such a bill, it should be applied equally to everyone, the buyer and the seller, the people who come to the projects, and I cited at that time South Jamaica houses have license plates from Connecticut, New Jersey, some of them drive Mercedes-Benzes, "beamers" as my son says, BMWs, Jaguars. People who live in South

Jamaica houses cannot afford those cars, except the "pusher man", and my concern was that if this were to become law then people who may be on the fringe of whatever this is would be overwhelmingly disparately impacted. I want to take this to another level at this time and I'll get to the question if you will just bear with me.

When you look at this along with the Police and Public Protection Act, and when you look at this proposal of yours along with what I discussed some moments ago, Mr. Schectman's report, and when you look at the 8,800 prison cells proposed by the Governor to be built at a cost of $486 million, do we see the "field of dreams" of Governor Pataki as the prisons?

If you remember, in the film, there was a poignant moment in the film "Field of Dreams", when it was said, If you build it, they will come. Do you see this as a possibility that this Governor wants to build prisons and that this bill you're proposing will

compound the direction, the flow of people of flesh towards the prisons?

I know that's a convoluted question, but I beg you to try to answer it.

SENATOR HOBLOCK: Well, I'll try the best way I can, Senator Waldon.

First of all, I don't remember the conversation -- I do remember the conversation we had last year along these same lines. We're not dealing -- this legislation is not dealing with -- I'm not dealing with the residents of these projects, because you have statistics on those that reside in New York City. I'm not sure of the statistics up here in this area, but I could tell you that one of the -- one of the cities that asked for this legislation here locally would have a population totally different than you've described that's in New York City, and as far as, you know, the field -- your analysis of the "Field of Dreams" and building it and they will come, I have to tell you that I don't think we ought to be driving our criminal laws and the sanctions that

we provide based on whether or not we think there ought to be prisons.

Certainly, as we strengthen these laws, we're going to have to provide. We're going to have to provide for that, but I guess what you're asking me is to go to the other side as the alternative and because we don't want to have prisons, we don't want to build prisons, therefore, we shouldn't have any strong laws. I don't agree with that.

SENATOR WALDON: Madam President, on the bill.

ACTING PRESIDENT RATH: On the bill, Senator Waldon.

SENATOR WALDON: I want to thank Senator Hoblock for his answer. I know that it was candid and forthright.

I was not suggesting, Madam President and my colleagues, that for those who are violators of the law and especially in this insidious activity of drug sales, that they should not go to prison. What I am trying to make as a point last year and this year and many

times when I stand and beg your indulgence on this floor, is that of how racism does have an effect on the composition of the prisons in the state of New York, and if we're going to have law let's create laws which will ensure equity in the prison population, meaning that those who commit the crimes, let's make sure that all who commit the crimes go to jail, and I was suggest ing that the experience that we have seen in South Jamaica and in areas like South Jamaica is that the people who have the money to buy the drugs aren't black, aren't from South Jamaica, aren't from Far Rockaway, aren't from Bayview Park, and they drive up in their sleek automobiles, buy their what they call leisure activity drugs and go away somewhere, but the kids who are in that neighborhood when the crime combat teams come through whether they're the seller or not, often -- all too often are arrested, and I'm suggesting that this bill if it were to become law in this state would compound that, and I was further suggesting that we ought to be mindful of the direction that

we're heading as a state and as a people in regard to ensuring that these cells proposed by Governor Pataki will be filled.

Unfortunately, if the way that they're being filled now continues, most of the people will continue to look just like me, will come from areas where I grew up and sometimes go now to represent my constituents and our constituents, and I just think that we ought to be better than that, and I guess what I'm really hoping is that one of these days on this floor I'm going to say something that will excite intellectually everyone around here, and we'll begin to focus on putting the money on the front end where it's better spent, it's less costly, it saves human lives, it saves pain and suffering. We'll all be more secure in our homes and in our persons, but this madness about building of prison cells in such a proliferating manner is not the way that I think we ought to go.

I hope that one day we won't go in that direction, and one day even the little

children in South Jamaica, South Bronx, Bed-Stuy will know that they're judged by the content of their character because the school system has made it possible for them to have character and to be productive human beings and not that some cop unfortunately will judge them only on the basis of the color of their skin, and they will become just another criminal justice statistic.

Thank you, Madam President.

ACTING PRESIDENT RATH: Thank you, Senator Waldon.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Would the sponsor answer a question?

SENATOR HOBLOCK: Sure.

ACTING PRESIDENT RATH: Senator Hoblock yields for a question.

SENATOR MONTGOMERY: Yes, thank you.

Senator Hoblock, could you explain to me what is the difference in a person who would be arrested under this law and a

person who would be arrested under the law as it currently exists outside of housing or in housing?

SENATOR HOBLOCK: Sure. Let me try to find it for you.

Right now, under Section 220 of the Penal Law, various degrees of sale, criminal sale of a controlled substance, they go from the fourth degree right -- right on, and what this legislation does, it amends Section 220 by adding a subdivision 16 that defines "public housing project" and creates a felony, I believe it's a "C" felony, for sale of a controlled substance.

SENATOR MONTGOMERY: So it raises it from a -- it raises an identical charge from -- from say an "E" felony to a "C" or a "D" to an "E" or -

SENATOR HOBLOCK: That's what I'm tryin' to find for you, and I apologize, I don't have that at the tip of my fingers. Well, Section 22 has various degrees.

SENATOR MONTGOMERY: O.K.

SENATOR HOBLOCK: Raises each one. For instance 220.34 has sale of a controlled substance in the fourth agree which is a Class C felony; 224.39 is a Class B felony and so on, so there's four different degrees, and what this does is it puts into the definition of "controlled substance" when we're talkin' about the sale of controlled substance, public housing projects, so it increases the various levels from, if it's a "C" now, it will be a "B", and so on.

SENATOR MONTGOMERY: All right. Thank you. Now, Senator, if you would continue to yield.

SENATOR HOBLOCK: Sure.

SENATOR MONTGOMERY: For my clarification. It's my understanding that under current law you can get up to seven years in prison for the possession of a vial of "crack", is that -- is that correct? Is that your understanding or -

SENATOR HOBLOCK: Possession?

SENATOR MONTGOMERY: Possession,

yes, or with the assumption to sell, whatever it is.

SENATOR HOBLOCK: I don't know that.

SENATOR MONTGOMERY: All right. Senator, if you would continue to yield.

SENATOR HOBLOCK: Sure.

SENATOR MONTGOMERY: The federal Housing and Urban Development agency has begun to enforce -- it's my understanding they intend to enforce their own very strict law regarding any activity, any criminal activity within federal housing projects, that upon one conviction or if there is evidence of a person's being involved in criminal activity, they can be evicted from a single incident or single charge.

SENATOR HOBLOCK: This is federal housing?

SENATOR MONTGOMERY: This is the federal housing law which is now being enforced. Apparently it's been on the books for some time, but it's never been enforced. It's

my understanding that that is going to be very vigorously enforced now.

Will -- do you still see the need for your legislation despite the fact that the -- there is a new enforcement of this -- this criminal code in housing?

SENATOR HOBLOCK: Yeah, I think there's a -- there's a definite distinction between the federal and the state laws as far as the jurisdiction of the law enforcement communities and the federal staffing, because it's going to take federal people to incorporate that into the federal system so, yeah, I do think there should be a need for state law.

SENATOR MONTGOMERY: All right. If you -- just one final question, Senator. Madam President, if the Senator would continue to yield. You have indicated that a group in your own district came to you requesting that such legislation be introduced. Is it not the case that what those residents, as the residents in my own district, complain and request the ability to do is have a speedy eviction of

people who are engaged in criminal activity so that they are not -- they do not have to suffer the consequences of this kind of activity in a given building, that it's really the eviction, that they want to get rid of the people who are engaged in such activities?

SENATOR HOBLOCK: Well, it may not necessarily be the people that are living there, people that come on the premises as well. They use that, such as one would try to use a school ground because that's an enticing audience in some cases.

As far as the -- the group of individuals that initially requested this, it came from -- from and through the people that lived there because the request came to me in the form of a resolution from the City Council after a situation and set of circumstances had been presented to this Council, and there was an open forum in which this was discussed, and as a result, City Council drafted a resolution requesting that this be done. They felt it was in their best interests and the proper way to

handle this particular problem, not necessarily because there were problems with the residents in dealing with this issue but rather those that were coming onto the property, because as the legislation indicates, it's within a thousand feet as well, so it's those that are coming onto the premises, not even going into the building perhaps, but coming onto the playgrounds, perhaps the entranceways, parking lots and whatever, and trying to entice those people that live there.

SENATOR MONTGOMERY: O.K. Thank you, Senator Hoblock.

Madam President, briefly on the bill.

ACTING PRESIDENT RATH: On the bill, Senator Montgomery.

SENATOR MONTGOMERY: Yes. There -- the problem that Senator Hoblock is trying to address is one that is not unique to his district certainly, and not unique to mine, but it is for certain a major problem as it relates to public housing since there are such very

large concentrations of people living together. But I think, if I understand the problem from the perspective of the residents who live in public housing, they need to be able to, one, control the kinds of people who are accepted into housing, that there should be a higher standard of behavior so that people having to live so close together respect more definitively each others' rights as neighbors and, two, that we should not allow people who are engaged in criminal activity to be able to continue to live in a building or in a development without any consequences for that activity, especially in light of the fact that it attracts other criminal elements, as well as it destroys the quality of life of an entire development.

So I understand what people in public housing want, and I think that I also understand what Senator Hoblock is trying to address, but this legislation simply adds a new level of, or a -- it's -- it expands the net for arresting people and charging them at a higher level and, in fact, we know that a very large

percentage of the people who are now overcrowding the prisons and jails are in there because of the Rockefeller drug laws and the second felony laws that have been passed subsequently.

So this will crowd the prisons, crowd the jails for extended periods of time without necessarily addressing the real problem that the housing -- the residents of housing authority developments throughout the state are asking for.

I, too, support Senator Hoblock's wish to give some relief to those residents, but I certainly don't think that it's a wise idea for us in the Legislature to -- to put forth legislation which will ultimately cost the state an enormous amount of money by increasing the cost to us of longer prison sentences for these individuals when there is obviously another more efficient and more cost-effective measure to take that would protect people in public housing.

So I'm going to vote against

this, not because I don't want to protect the interests of people in public housing in Albany as well as in Brooklyn, but because I think that this is just not the way to go because it doesn't really solve the problem.

Thank you.

ACTING PRESIDENT RATH: Thank you, Senator.

Senator Abate, did you wish to speak?

SENATOR ABATE: Yes, on the bill.

I understand the sponsor's intention and his -- or seemingly his concern about the quality of life in public housing. Why I oppose the bill is because I don't understand the rationale for the bill. No one is saying, either side of the aisle, that punishment is not appropriate, sometimes treatment and punishment. Treatment is a form of punishment, but if you look at what's on the books today, if someone is charged with a "D" felony, the judge has seven years scope of

punishment.

This bill is saying that if someone is arrested for sale in a public housing area that seven years is not enough. The judge needs 15 years scope, and my understanding is that someone now currently can be charged with a "C" felony which the scope of punishment is 15 years, but that's not enough, and that person should be charged with a "B" felony which means it would raise the scope of punishment up to 25 years.

We do know that, whether it's 7 years, 15, 25 or under the Rockefeller drug laws where offenders could be sentenced up to life, we are not as a state soft on people who possess or sell drugs. The proof of the pudding is for the past, I guess 15 years at least, the majority of people in prison are there for drug-related crimes, either possessing or selling drugs.

So I can't understand the rationale or purpose. We're already punishing severely people who possess and sell drugs.

There is scope of punishment within the 7, 15, or 25 to life sentence, for people to say, "I don't like you selling near a home or a public housing area. I'm not going to give you one and a half to three, I'm going to give you two to four or two and a half to five or three and a half to seven." There's a huge range of punishment that could take into consideration some of the unique circumstances of the case.

There are many vulnerable people in our society. There are many vulnerable and poor people in our society. Where do you draw the line? Should we now be extending sales of drugs outside of senior citizen centers? They are very vulnerable. They can be easily victim ized.

So I don't understand the rationale. I don't understand how this would make that community safer, extending the punishment from 15 to 25 years as a range of sentence. I believe the sentences as they apply now are sufficient on the books. Someone who's a heavy trafficker can get life in prison, could

get up to 25 years.

So I think we as a Legislature have to be very careful when we pick apart vulnerable communities, vulnerable segments of our society, different kinds of constituency and say, We're going to give more time to that offender in that community as opposed to another.

If we are -- if we were soft on crime, if we weren't already punishing people who sell drugs, I would say, Senator Hoblock, it's needed. But this is not needed in terms of deterrence. It's not needed in terms of retribution or just desserts. These individuals are going to jail and prison because we have a second felony offender law. They can't walk away from being punished or sentenced to prison, so I don't think for all the public safety, I don't see the effectiveness of this approach in terms of deterrence or promoting public safety in our housing projects and, for that reason, until I can see a rationale to supporting this legislation, I have to oppose it today.

Thank you very much.

ACTING PRESIDENT RATH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of November.

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT RATH: Senator Leichter.

SENATOR LEICHTER: Madam President, to explain my vote.

I think our criminal system and our criminal laws are based on the nature of the acts and very rarely upon where the act is committed. I have difficulty understanding that, well, you sell drugs across the street from a housing project that will get a lesser sentence than if you sell it on the same street as the housing project. It just doesn't make sense.

It's not going to reduce the sale

of drugs. There's no studies that have shown that these higher sentences applied in these circumstances will actually work as an effective deterrent. I think we're just making such a mish-mash of the criminal law. We've had bills here that, if you commit a crime, if you bop somebody on the head in the subway it's more serious than if you bop them on a bus or that, if you hit somebody who's 65, it's more serious than if you hit a child who's two years old.

I think Senator Abate said it very well. Where's the rationale? Where's the sense?

Madam President, I vote in the negative.

ACTING PRESIDENT RATH: Senator Leichter in the negative.

Announce the vote.

THE SECRETARY: Those recorded in the negative on Calendar Number 614 are Senators Abate, Leichter, Montgomery, Paterson, Santiago, Seabrook and Waldon. Ayes 54, nays 7.

ACTING PRESIDENT RATH: The bill

is passed.

Next item.

Senator Santiago, why do you rise?

SENATOR SANTIAGO: Madam President, I wish to state for the record that legislative business kept me out of the chamber yesterday when Senate Bill 474 and Senate Bill 668 were considered. I would -- and had I been present, I would have voted in the negative on both of these bills.

ACTING PRESIDENT RATH: The record will so reflect, Senator Santiago.

Clerk shall read.

THE SECRETARY: Calendar Number 708, by Senator Nozzolio, Senate Print Number 6227, an act to amend the Executive Law, in relation to payments received as profit for a crime.

SENATOR LEICHTER: Madam President.

ACTING PRESIDENT RATH: Senator Leichter.

SENATOR LEICHTER: Yes. Will Senator Nozzolio yield to some questions?

ACTING PRESIDENT RATH: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Yes, Madam President.

ACTING PRESIDENT RATH: Senator will yield.

SENATOR LEICHTER: Senator, as I understand this bill, it seems to make two changes in the "Son of Sam" Law. It provides that where a contractor fails to notify the crime victim board that a contract has been entered into for consideration with someone who committed a crime and the contract deals with the substance of that crime or relates to that crime, that a fine of $25,000 or 25 percent of the proceeds, whichever is greater, can be levied, is that correct?

SENATOR NOZZOLIO: Madam President, that is correct.

SENATOR LEICHTER: And then you also provide that the notice that has to be

given the crime victim board has to be immediate, is that correct?

SENATOR NOZZOLIO: Yes, Madam President. The response must be upon receipt entering -- immediate notification to the crime victims board upon entering into that contract, so upon execution, Senator, that notice must be given.

SENATOR LEICHTER: Senator, I have problems with what it means to give "immediate" notice but maybe you can satisfy my uncertainties about that. What is "immediate", Senator? A contract is entered into at 3:00 o'clock in the afternoon. Can you tell me by when the notice has to be furnished to the crime victims board?

SENATOR NOZZOLIO: It has to be sent -- I would define "immediate", Senator, as upon execution, so simultaneously upon executing this contract -

SENATOR LEICHTER: All right.

SENATOR NOZZOLIO: -- notice should be sent to the crime victims board that

this business arrangement is established where the perpetrator of the crime who is now behind bars and that that criminal has just entered into a financial arrangement with -

SENATOR LEICHTER: Senator Nozzolio continue to yield?

SENATOR NOZZOLIO: Senator, I'll continue to yield.

ACTING PRESIDENT RATH: Yes, he will yield.

SENATOR LEICHTER: Senator, a contract is entered into at 3:00 o'clock but notice is given the next morning at 10:00 o'clock. You would say the person or the company that entered into that contract should be subject to a 20 -- at least a $25,000 fine.

SENATOR NOZZOLIO: Are you asking me, Senator, what are the parameters for notification?

SENATOR LEICHTER: Senator, I asked you what "immediate" is, and you said immediate in the terms of the example that I gave is immediately upon execution of the

contract. I gave you an example. You execute the contract at 3:00 o'clock in the afternoon. If you have send the notice the following morning, you're telling me that you are subject to a $25,000 fine and possibly more.

SENATOR NOZZOLIO: I'll let the courts interpret the scope of immediacy, Senator, but frankly, "immediate" was an entry into this statute because right now, to put your question into context, Senator, there is no time frame established for notification. There is no sanction when an individual enters into such agreement and does not notify.

So, Senator, I think that the tightened language of "immediate", it means now. You can take Webster and define "immediate" as well as I can, Senator. I suggest you go ahead and do so.

SENATOR LEICHTER: Madam President, first of all, Senator Nozzolio, let me correct you.

ACTING PRESIDENT RATH: Senator, do you wish Senator to yield, Senator Nozzolio?

SENATOR LEICHTER: If he will yield for a series of questions.

ACTING PRESIDENT RATH: A series of questions?

SENATOR LEICHTER: Yes. Senator, first of all, you're correct right now the statute does not have a parameter, maybe not a suitable parameter. It provides for as soon as a payment or intended payment is a profit from a crime, and you're correct there are no sanctions.

I have no problem establishing sanctions. I think maybe $25,000 is too high, but my real problem is with the word "immediate". Now, your initial reaction was, Senator, "immediate" means you sign that contract, you have the very next thing you do, you have to give that notice and, if you give it the following morning, that's not immediate.

Then I think you realize that's a little harsh, if not outright absurd, to impose this $25,000 fine. So you said, Well, let the courts define it; but, Senator, isn't it our job

in the first instance to write legislation that says clearly what we want, and does it in a reasonable manner?

ACTING PRESIDENT RATH: Senator Nozzolio.

SENATOR NOZZOLIO: I'll try to respond to Senator Leichter's speech. It - Senator, the definition, "immediate", I did not define it as you characterize my definition. You put forth a scenario, a hypothetical that said, Is the next morning immediate? I didn't answer that question.

I believe, in my opinion, my intention in putting this statute before us, this change before us, is to tell those who are engaged in business enterprise with convicted criminals that they have a responsibility. That responsibility should be, in my opinion, upon execution of that contractual arrangement. Execution means, I believe "immediate" is appropriate in this case because it's telling those who are engaging in conduct with criminals that they have a responsibility to the victims

of those crimes, that they have to notify the crime victims board when they're engaging in conduct with criminals.

I believe "immediate" is appropriate. It's an appropriate statement. It says that this Legislature doesn't want those who are engaging with -- in money raising, money-engaging activities with convicted criminals that they should keep in mind that there is a victim to this crime regardless of how sensational and attractive the story may be on the marketplace.

That word, Senator, is put there for a reason. It sends, I believe, a really clear signal. I'm not going to get mired in your hypotheticals. Your hypotheticals, frankly, are only used to obfuscate the intention of this legislation which says "upon immediate entry". "Immediate" means, as Webster would define it, "right away", and "right away" is what we think is the right way to engage in this type of sanction.

SENATOR LEICHTER: Senator

Nozzolio, if you continue to yield.

ACTING PRESIDENT RATH: Senator Nozzolio, will you continue to yield?

SENATOR LEICHTER: I think the example I gave you, Senator, and your response, I thought, was very clear. You said that's right, "immediate" means immediate. You got to send it on the execution, which means if you send it the following morning, you're subject to a $25,000 fine.

Senator, may I make a suggestion that's hard, I'm sure, to improve upon something as much thought has been given to as you gave to this bill and the care in drafting, and so on, but may I suggest language, Senator, that would guide the court that I think would accomplish your purpose and wouldn't make us subject to probably a lot of litigation as to what is "immediate"?

Why not say it has to be sent within five days, has to be sent if you want to, within three days, has to be sent within seven days. Certainly that's sufficient time to

achieve the purpose. The purpose is very simple. The purpose is that you don't want the money to be paid out that would go to the person who perpetrated the crime, and he would spend the money before the crime victims board would ever know. Clearly, three, five, seven days provide that.

To put in the word "immediate", Senator, frankly, if the contract was signed at 10:00 in the morning and you did it at 5:00 o'clock at night, under your definition that's not immediate. So would you see anything wrong with the language that I propose to you of stating a specific time period?

SENATOR NOZZOLIO: Senator, that doesn't seem to be unreasonable to me. Your comments do not appear blatantly unreasonable, but in the world of legislation in trying to fashion a bill that will become law, we have to have an identical measure passed in this house that is passed in the other house, in the Assembly, passed last month is a measure which is sponsored by a number of Assemblymen, that

uses the word "immediate". This measure has already passed the Assembly, that I believe certainly your comments are not out of line but I am also concerned with getting this sanction available to ensure the protection of our crime victims and that as such, use the identical language that was used in the measure that was passed in the state Assembly.

SENATOR LEICHTER: Madam President.

ACTING PRESIDENT RATH: Senator Leichter.

SENATOR LEICHTER: If Senator Nozzolio will continue to yield.

ACTING PRESIDENT RATH: Senator Nozzolio, you continue -

SENATOR LEICHTER: If I understood, as I understand the exact measure has passed in the Assembly, how come there's no substitution of the Assembly bill?

SENATOR NOZZOLIO: I'm informed that the measure relative to this language which you question, Senator, the word "immediate" was

used in the Assembly definition. That's why it was transferred here. There are some minor variations, some different language in other aspects of the Assembly bill but those are - the definition of "immediate" was to mirror that substance -- substantive portion of the Assembly measure.

SENATOR LEICHTER: Madam President.

ACTING PRESIDENT RATH: Senator Nozzolio continue to yield?

SENATOR LEICHTER: If you will continue to yield.

So, in other words, you're telling us that it isn't as if we pass this bill then we are ready to send a bill to the Governor. We're going to have to revisit this anyhow because there's differences between the Assembly bill and the Senate bill and, while I'm sure the Assembly was as careful as you were in drafting your bill, I think the word "immediate", I think creates a real problem and I have difficulty with it particularly when the

fine is so substantial.

Maybe $25,000 is -- is an appropriate minimum fine, but then to leave any uncertainty as to by what period of time that notice is to be given seems to me unwise and since you're going to have to write -- write a new bill or write a bill that works out the problems with the Assembly -

SENATOR NOZZOLIO: Senator, we'll take certainly your constructive criticism under consideration. It's taken in good spirit, that in further refining this measure that I certainly will engage in conversation with the Assembly to see if, as we clear up the differences between these measures, if this remains an issue, certainly your comments will be duly noted.

SENATOR LEICHTER: Madam President.

ACTING PRESIDENT RATH: Senator Leichter.

SENATOR LEICHTER: On the bill.

Thank -

ACTING PRESIDENT RATH: Senator Leichter, on the bill.

SENATOR LEICHTER: Thank you very much, Senator Nozzolio. I mean I don't think this is a big deal except in this Legislature, same problem in the Assembly and the Senate that once a bill is put on the floor nobody ever wants to change it even if the -- you know, as Senator Nozzolio kindly said, the suggestion I made is constructive.

The fact is that it is -- it is blatantly unreasonable to say that somebody has got to do something immediate without defining it, but particularly if it carries with it as heavy a penalty as $25,000. So I'm not going to vote for this. I happen again to agree with the concept. I think the statute as presently worded could result and may have already resulted in monies being paid to a perpetrator of a crime who then decimates the funds and the crime victim is denied the compensation which the crime victim ought to get.

That makes good sense, and there

ought to be some sort of sanction if you fail to give notice. I absolutely agree with you. I think 25,000 may seem to my mind really quite severe, but then I think we have an obligation to define clearly a reasonable period of time so I'm going to vote against this until that reasonable period is in a bill before us. I hope we'll see it. I hope we will then be dealing effectively with the problem and Senator Gold, to whom we are grateful because he was, of course, the author of the "Son of Sam" Law, I don't know how he feels about it, but I consider that a very significant statute, very important, and I don't want to tinker and meddle with it in a way that, frankly, is very inartful, so I'm going to vote in the negative.

ACTING PRESIDENT RATH: Senator Abate.

SENATOR ABATE: Yes. I'm firmly in support of this bill. I think Senator Leichter raises some issues about construction and whether case law, in fact, defines the "immediate", but the general spirit and intent

of this legislation is so critical.

When I chaired the crime victims board and we were dealing with "Son of Sam" cases, time and time again the victim would come and say, We now know of a contract and it was not a contract that the crime victims board was aware of because there was no teeth, there was no penalty imposed upon a publisher or someone else to notify the crime victims board of a contract.

Finally, after ten years, and I do compliment the leadership of Senator Nozzolio on this bill, finally, there will be enough remedy and teeth given to the crime victims board so it gives some meaning to the law and so that, in fact, restitution can be made to crime victims.

Without the teeth, the law, the modified "Son of Sam" Law is really meaning less. So this is long overdue. It's an important piece of legislation for crime victims, and it deserves bipartisan support.

ACTING PRESIDENT RATH: Thank

you, Senator.

Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT RATH: The bill is passed.

Senator Marcellino, that completes the reading of the controversial - one more bill, I'm sorry.

SENATOR MARCELLINO: No, Madam President. At this time, would you please recognize Senator Larkin.

ACTING PRESIDENT RATH: I'm sorry, one more page.

SENATOR MARCELLINO: Please recognize Senator Larkin.

ACTING PRESIDENT RATH: Senator Larkin.

SENATOR LARKIN: Madam President, yes. I was out of the chamber on Bill Number 688. Had I been in the chamber, I would have voted yes.

ACTING PRESIDENT RATH: The record will so reflect.

Secretary will read the last bill.

THE SECRETARY: Senate Bill Number 712, by Senator Nozzolio, Senate Bill 6924, an act to amend the Penal Law to make available to victims the proceeds of their recoveries.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT RATH: Explanation has been requested.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President, my colleagues.

This afternoon this Legislature has passed or will pass no less than a dozen measures dealing with the rights of crime victims. In this Crime Victims Week we have

engaged in great debate, discussion, about important measures dealing with ensuring the rights of victims and making each further insurance that their victimization is not continued by the system.

The Justice Department reports that Americans have incurred over $450 billion worth of costs related to crime each year. This is an unconscionable statistic, and I believe that in New York we are taking -- have taken great strides in doing much for the victims of crime.

Under the leadership of the Governor and the Attorney General, further with the actions of this house, we have taken enormous steps to advocate on behalf of those citizens unfortunate enough to be victimized by criminals.

This measure before us extends that effort in trying to ensure that when an inmate receives a financial award while incarcerated, that that award becomes available to those who have been victimized by the

criminal in the first place.

When an inmate successfully sues the state or a particular locality, the victim of the crime will be compensated out of the cash award of the inmate. Now, that's what the bill before us does, and I urge its passage.

SENATOR DOLLINGER: Madam President, will the sponsor yield to a couple quick questions?

ACTING PRESIDENT RATH: Senator Nozzolio, would you yield to Senator Dollinger?

SENATOR NOZZOLIO: Certainly, Madam President.

SENATOR DOLLINGER: First let me say to my colleague from Monroe County, I think its a great idea. It finally establishes a tie between an inmate who nets a recovery from a third-party claim into a benefit for victims. I think it's good, I think I favor it, says that if someone obtains proceeds afterward, that they should disgorge those proceeds to the victim.

Let me ask you this question. Why did you limit the bill solely to actions

brought against government?

SENATOR NOZZOLIO: In most cases, Senator, an inmate will sue the state of New York, those who are incarcerated in the state system. Often a local inmate will sue the county, as you're familiar with, I'm sure, but we wanted to limit it to those items because that's, frankly, where most of the inmate litigation is directed to.

SENATOR DOLLINGER: O.K. Again through you, Madam President, did you consider the possibility that you would make it apply to third-party claims, claims brought by an inmate, for example, as I once brought one against a manufacturer of a saw in an incarceration facility, because they didn't provide a proper guard?

SENATOR NOZZOLIO: Well, Senator, that type of third-party litigation would be appropriate.

SENATOR DOLLINGER: O.K.

SENATOR NOZZOLIO: But I think it certainly makes sense to me and that the only

reason why it was not imported in this bill was because we wanted to put this in law because that's where the bulk of the litigation occurred.

SENATOR DOLLINGER: O.K. Through, Madam President, one final question: If a bill were proposed that said a third-party action brought by an inmate shall be subject to approval by a court, much like infant settle ments are approved and that the victims would have a lien against the proceeds of that claim brought by the inmate and that the court would have to notify the victims of the lien and the opportunity to foreclose the lien or to file a claim against that liened amount of the proceeds, and if the court had to approve the final settlement package, is that a bill you could support, because I think it's an idea that should be put before the Senate?

I think this bill goes part of the way. I'd be prepared to draft the bill, give it to you, you and I co-sponsor it, it could come to this floor and we'd really do the

job of tying inmate's claims proceeds, net proceeds to inmates, to having an available fund. Would you support that kind of a bill if you and I worked together on it?

SENATOR NOZZOLIO: Senator, I cannot tell you certainly whether I could support it or not support it at this point until I saw the measure but I think the concept is certainly one that we're trying to achieve here and is consistent with what our objectives are and I would be glad to work with you constructively on this measure as well as advise as to the type of language that I believe would be appropriate.

SENATOR DOLLINGER: I appreciate the chairman of the Crime and Corrections Commission's candor. I agree that going that next step and locking in third-party complaints may only affect a handful of cases, but it would give the perception that I think this bill embodies, and I think is a good one that, if you are incarcerated and if, for some reason, you're injured and you suddenly have funds available a

victim would be able to file a lien, have the court approval, give notice, all of the provisions are in here.

I think it's a good bill. I think it ought to go a step further. I'm going to draft a bill; I'll send to to you, Senator Nozzolio, and hope it would have your support so we could do that bill.

Thank you.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 61.

ACTING PRESIDENT RATH: The bill is passed.

Senator Marcellino, that concludes the calendar.

SENATOR MARCELLINO: Madam

President, may we return to reports of standing committees for a Rules Committee report.

ACTING PRESIDENT RATH: The Secretary shall read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill directly to third reading:

Senate Print 6901-A, by Senator Maltese, an act to amend the Penal Law, in relation to the crime of partial birth abortions.

SENATOR MARCELLINO: Move to accept the report of the Rules Committee.

ACTING PRESIDENT RATH: All those in favor of accepting -

Senator Paterson.

SENATOR PATERSON: We oppose the acceptance of that report, Madam President.

ACTING PRESIDENT RATH: Well, if we need to debate, we'll debate and take a vote.

SENATOR PATERSON: Thank you, Madam President.

It's very clear that Senator Maltese has brought forth a piece of legislation that is on the minds of all New Yorkers.

ACTING PRESIDENT RATH: Senator Marcellino.

SENATOR MARCELLINO: Yes, just a point of order. Just remind everybody that a debate on a committee report is a half hour debate, each side.

ACTING PRESIDENT RATH: We'll proceed, Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

The point is that this piece of legislation that comes before the house is one that has been addressed by the Cardinal; it has been addressed in federal legislation vetoed by the President, and it is certainly a very hotly debated issue in this country.

For this piece of legislation to come before the house as early as tomorrow morning, in my opinion, would be all the more reason not to bring it directly to Rules and

bring it -- bring it to the active list today. This is an issue for which I would be very clear personally, I don't know how I'm going to vote on it.

I'd like to learn more about it and, therefore, that being the case, I don't understand how we can do it at this particular time. I'm not saying that it's out of order. I'm just saying that it's imprudent and it really is something that I thought we had started to change right here in the Legislature which is the procedure for which we address issues of the day, issues that are of extreme importance, issues that are of the highest value to individuals.

The information that this piece of legislation may come to the floor tomorrow became available perhaps earlier this afternoon. It doesn't do either the issue justice. I don't think it gives the legislation or the work of the sponsor any justice, and it is the reason why we have the strong feeling that we have on this -- in this particular

situation.

All the time we report bills to third reading on unanimous consent. We try to cooperate, but this is a piece of legislation that certainly will be the epicenter of the eyes of all New York State residents as to how this body dispenses with this prospective law, and for us to just simply bring it to Rules this afternoon in the middle of the session and then bring it onto the floor tomorrow, in my opinion, is actually anathema to what the credo of this chamber should be, which is that we only would divorce ourselves from the regular course of business and conduct due to an emergency situation, and I don't know what the emergency is.

In fact, right now, I thought if there was an emergency, it would be the fact that we're about to approach a deadline in which we haven't passed the budget of the state of New York. That would be next Tuesday. This is something that certainly may require public scrutiny and on which the people may feel very

strongly about, and I respect that feeling.

I especially respect it because I'm not totally sure how I would vote on the issue, and yet we are going to be here in this chamber and cavalierly just take action on this bill for whatever reason I don't know, and that is the reason, Madam President, that I would oppose the acceptance of the Rules report and taking this piece of legislation up so immediately and, in my opinion, so irresponsibly.

ACTING PRESIDENT RATH: Senator Gold.

SENATOR GOLD: Thank you, Madam president.

Madam President, I'm sorry that Senator Skelos and Senator Velella and Senator Maltese are not here. Perhaps they are in the other room and will hear me and will come in because -- I see Senator Skelos -- I certainly don't like to talk about people or with people when they're not here. It's a shame Senator Velella isn't here. Maybe he'll come in.

Senator Paterson, I don't know how you can say you don't know why the bill is here, and et cetera. It's obvious why it's here. There has been no leadership from the Governor on the budget, and there's got to be press activity some place. Reporters need something. They must be spoon-fed. So every time the Governor gets in trouble with the budget, he picks on judges or he'll put out a crime bill which is probably extremist of some of nature and, of course, this bill has the magic of all the words in it, abortion. It's a magic word for the press. That's why it's here today.

I was talking to some people a couple days ago. Say what you want to about late budget, say what you want to about Mario Cuomo. He called people to meetings; he tried. Whether he was successful or not, he tried. There were meetings. This Governor holds a meeting every once in a while; he figures it's too embarrassing now that he hasn't had a meeting or his staff.

Well, staff is meeting. That's something people ought to think about when they talk about term limits. There ought to be term limits for staff. They're the ones that have the power around here. Apparently it's not the members, according to the Governor.

This bill got to Rules through an act of the leader of the Codes Committee. It was not voted by the committee. Is that technically permitted under our rules? I think it is. I thought, based upon conversations with Senator Maltese at the meeting and, as I say, a bill is so important to Senator Maltese -- he was here a minute ago; I don't know why he walked out. Senator Maltese was asked questions, couldn't give answers that were satisfactory to a lot of us and -- there he is now; Senator Maltese is in the room.

The response to the questions that were asked on the bill by Senator Velella, who gets very offended when anybody asks a question about anything is, This is technicalities; it's a technicality. Well,

that's what laws are for, technicalities. One law reads one way, and one law reads another way. That's a technicality. That's what we discuss here.

I'm very, very sorry that the Majority in this house feels that it is above being questioned on anything because when you do that, certainly my colleague from the Bronx gets nasty about it and everything becomes obstreperous and irresponsible because you have questions.

Well, irresponsible is putting forth a piece of legislation when your sponsor can't even define it, and it's a criminal statute.

I thought it was fascinating in discussing this bill at the Rules Committee that Senator Maltese's first position was that he really didn't need a lot of reformations even though it's a criminal statute because some of the words are just so obvious that everybody knows what they mean.

I pointed out that there was a

letter from a Dr. Hale to Senator Dole in Washington on a similar piece of legislation where the letter, which I don't have right now, indicated that the Congressional definitions had no relationship to medical definitions.

Well, at that point, Senator Maltese said, well, he was satisfied with the definitions. Well, how are you satisfied with non-existent definitions? And the answer is he's satisfied to get the bill out here because it's important to have the bill out here because talking about the bill, maybe the press won't talk about the lack of leadership of the Governor in the budget process.

This bill is a very serious piece of legislation which could do good or do harm, and we ought to know what we're talking about. Senator Maltese described the procedure which he said he would like to stop in the state of New York. Very gruesome procedure, and I said to Senator Maltese, Senator, maybe that should be stopped and what you're describing, if it's happening to eight-month-old fetuses or seven

month-old fetuses, maybe these things should be stopped but, Senator, does your bill affect Roe versus Wade? Does it mean any abortion?

Well, he said he didn't think so, but there's nothing in the bill that says that. As a matter of fact, while there is language in the section of law which allows abortions in certain situations, the language of this bill says partial birth abortions shall not constitute a justifiable abortional act.

Now, what is a partial birth abortion, which this bill would bar? According to the bill, it is defined and it's the only definition, an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

Now, the procedure that Senator Maltese described, and these were his words, was that somebody inserts something into a woman, hooks the head, suctions the head and kills this fetus to make it easier to deliver. Well, if that's the fact, it's not barred by this piece

of legislation, so I said to Senator Maltese, At least let's deal with it to get it right. Suggestion couldn't be accepted.

I asked Senator Maltese what is, in fact, a partially vaginally delivered living fetus? I said, Well, is it a toe? I mean do you have to get up to the ankle? What is it? That really wasn't defined either, so I guess it would be anything.

So I said to Senator Maltese, I know of people who, in the abortion debate have shown photographs, and I didn't say it with Senator Maltese, but it happens all the time and they will show you a fetus and they'll say, Lookit, you want to kill this? This is a human. This is only three weeks but, again, already you can see this and you can see that.

So I said, Well, if you can see this and you can see that, supposing after three weeks, a fetus was taken out and somebody said, Oh, my gosh, there's a beat there, and it dies, is that covered by this bill? If it is, it certainly interferes with Roe v. Wade. It

certainly interferes with a woman and her doctor; but none of this is answered.

Now, the memo that goes with the bill says that partial birth abortions are often used in the second trimester, abortions from 20 to 24 weeks, et cetera, et cetera, but there's nothing in the bill that talks about 20, 24 weeks. There's nothing in the bill that talks about an abortion in the second week, third week. It just is left open, and what I said to Senator Maltese is, Senator, for the sake of argument, if you had a prosecution, if this was the law and you had a prosecution under this bill, would you want it to be a defense where somebody did this to a seven and a half-month old fetus, did exactly what you said? Would you want it to be a defense that the -- that the killing, as you describe it, took place before the foot came out and not after the foot came out? Would you want it to be the defense that it wasn't defined properly? Would you want the person that did this to get away with it? I wouldn't, and the answer is the bill's going to

come out. The definitions are fine. I'm satisfied with the definitions.

I said in committee, and I'll repeat it on the floor because now we have a record, there was a very beloved colleague of ours named James Donovan, whom I didn't agree with on the overall issue of abortion at that time, but I don't think there was a member of this chamber that didn't love that man and respect him for his dedication to an issue, and there were times when he voted differently than a party line because he would see it as a back doorway to perhaps convince people how deeply this issue was important, so, for example, he was terrific when it came to providing money for welfare parents to support their children because I once said, Yes, it's all right to have them born and then you want to kill them, and he said, No, Senator, let the children be born and we'll support them. I think he was a great man.

I have always believed that Senator Serphin Maltese, who I am happy being on

different political ends of the spectrum with, is as sincere on this issue as anybody, and I have never questioned his sincerity on the issue. As a matter of fact, during the Rules Committee debate, I didn't even say he was wrong on the issue. It never came up, so in terms of the rather glib comments of my colleague from the Bronx about politicizing the issue, we weren't even getting into the issue. We were pointing out that the bill is no good the way it's written.

There are people in this chamber on both sides of this aisle that do not like the procedure that is trying to be barred. It's not a Democratic/Republican issue, certainly is not. As a matter of fact, I even wonder whether it's a Conservative/Liberal issue. It's an issue of human beings and the way they see a particular situation, how they see relationships between women and their doctors. So it shouldn't be politicized.

But one thing is very, very clear. My distinguished colleague, Senator

Dollinger, I think was too generous last week. I do believe that there are times in committees when some of the Republican chairs do allow par ticipation but, Senator Dollinger, you were too generous. You were, and I say it again, you were too generous.

When it comes to the politics of this place, there is no yielding to intellect on the part of the other side. This bill had to come out because the Governor needs cover. It's easy, he needs cover, and this makes better press than some other things as far as the Governor is concerned.

So assuming that the Republicans vote to sustain the Rules report, we will have a debate tomorrow and Senator Maltese, unable to control the fact that he's honest, will give honest answers and he will tell you that there are no legal definitions for some of the phrases in this bill and you will hear in the course of that debate that this is a flawed bill. And will we vote on it? You can take that to the bank, we'll vote on it.

Why? Well, look, we're getting the process started. We can always talk to the Assembly. We can always amend, we can do this, we can do that, we should have, we could have, we could have, we would have, but there will be a vote because that will be a story. A bill is passed in the New York State Senate similar to the Congressional bill but with a little bit of language that the President said he would sign it for, and the next thing we know that's the story and the Governor gets to breathe a little easier for a few more days on the budget.

I just think it's unfortunate. Senator Maltese, in discussing that huge word "abortion" like everything else, you have your extremes and there were extremes which I could never bring you to, and there are extremes you could never bring me to, and then as you pass along from those extremes you get into situations where people of good will can perhaps agree that this may or may not be going too far and that may or may not be going too far.

This may be one of those areas,

Senator, where everybody or people from different parts of the spectrum could draw a bill that perhaps stops a practice that we think goes too far and yet leaves women their dignity, the right to their bodies and does not affect socially the effects of Roe v. Wade.

I would have hoped, Senator, that we would have done that in this case. The bill was in the Codes Committee. In the hierarchy of the Senate, the Codes Committee is considered pretty significant in terms of what we, over a drink, talk about, our best committees, our biggest committees, and everybody agrees -- not to quote me on this -- the chairman of Codes is one of our best chairmen, certainly one of the fairest. There is no better place for this bill than to be in the Codes Committee, discussed as other bills are discussed in the Codes Committee and perhaps put into shape so that whether we agree with it or don't agree with it, we can be proud that that's at least the work product of the New York State Senate.

SENATOR HOFFMANN: Mr.

President.

SENATOR GOLD: No, I won't yield right now.

ACTING PRESIDENT WRIGHT: Senator Hoffmann, why do you rise?

SENATOR HOFFMANN: Wondered if Senator Gold would yield to a brief question.

ACTING PRESIDENT WRIGHT: Senator Gold, would you yield to Senator Hoffmann.

SENATOR GOLD: In a moment.

ACTING PRESIDENT WRIGHT: Senator Gold has declined to yield.

SENATOR GOLD: The last point I made is the language, and I made this point in Rules. At appropriate times in New York State we have been a leader and at appropriate times we have been a follower. We have been a leader in the crime victims field. I believe we were one of the first, if not the first state, to have a crime victims compensation law. I had the honor of drafting that law.

We also were a follower when two years ago we passed a bill that we were asked

about by people in the state of California where we mandated the teaching of a Holocaust in our schools. But whether we are leaders -- whether we are leaders or followers, the fact is that we in New York draw our laws differently than other places.

Congress, to its lack of credit as far as I'm concerned, draws laws which you need 50 lawyers to interpret each paragraph. I don't know how they ever do that stuff. In California, they use different kinds of language and put it together in different kinds of ways.

I don't care whether this bill was taken word for word from Congress or not. In my opinion, the way we draw laws in New York we define terms particularly in criminal statutes and we like to be in a situation where our laws are a little tighter, a little more explicit, specifically in the area of criminal law.

That is what the debate in Rules was all about. Nobody was questioning the motives, certainly not of Senator Maltese or

Senator Farley or some of the other sponsors of the bill. The motivation of the individuals who want to see this as a law was not questioned nor did we get into the merits.

We did get into the issue as to whether or not this work product should be rushed by the aborting of our normal committee system to be brought to the floor.

I think it's a mistake. I think we do not do the issue justice, and I think that the issue deserves a just and fair hearing and, in my opinion, the way you get a fair hearing is to revoke or not revoke but to reject this committee report and urge the Rules Committee to send it back to Codes where it can be properly worked on.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Connor, on the motion to accept the Rules Committee report.

SENATOR CONNOR: Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Excuse

me, Senator Hoffmann. Why do you rise?

SENATOR HOFFMANN: I had requested Senator Gold to yield for a question. I was under the impression that he would yield for a question in a moment and I had a brief question for clarification.

ACTING PRESIDENT WRIGHT: Senator Gold, ready to yield at this time?

SENATOR GOLD: Yeah, I would.

SENATOR HOFFMANN: Senator Gold, I wanted to make sure I understood you correctly since I have not seen this measure, since I did not sit on the committee which has apparently just attempted to report it to the floor.

Did I understand you to say correctly -- did I understand you correctly to say that this bill as reported by someone and perhaps you can clarify that for me as well, is purported to express specific differences between the President of the United States and the Congress of the United States?

SENATOR GOLD: What I said, Senator -- I'm glad you asked -- I am told it

was stated at the committee meeting that the bill that the Congress sent to the President was vetoed by the President because it didn't take into consideration the health of the mother and it was stated at the committee meeting that starting with line 20, that there is language in here which they believe would satisfy the President if it was submitted to him. That's what my reference meant.

SENATOR HOFFMANN: And if Senator Gold would continue to yield for a further point of clarification, Mr. President. I assume Senator Gold will continue to yield.

ACTING PRESIDENT WRIGHT: Senator Gold, will you yield?

SENATOR GOLD: Yes.

ACTING PRESIDENT WRIGHT: Senator Gold yields to Senator Hoffmann.

SENATOR HOFFMANN: Thank you. Could you tell me who it was that stated to whatever members of this committee that they believe they understand the President of the United State's objections and have addressed

them in this bill before the New York State Senate?

SENATOR GOLD: I really don't remember who made the comment.

SENATOR HOFFMANN: Thank you, Mr. President. Thank you, Senator Gold.

ACTING PRESIDENT WRIGHT: Senator Connor, on the motion to accept the Rules Committee report.

Senator Connor.

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

Once again we stand here and it seems we hear an echo and the echo transcends this bill. It's about process and it's about process as it upholds the integrity of this institution. No matter what you feel about this bill or this issue or related issues, it's certainly been an area of contention, an area that concerns the public, and an area where there are many people who would like to be heard and an area where much information will be helpful.

Senator Maltese, I spoke to Senator Bruno 45 minutes ago. I asked him why this was being done in such a hurry. His reaction was we have the votes, we're just going to do it tomorrow before all these pro-choice people come around.

That's a wonderful way to run the Senate. The fact of the matter is, Senator Maltese, I don't think you really have an accurate idea of what members, particularly on this side of the aisle, think about this bill and think about the situation it purports to address.

I've read the same popular accounts, non-medical, non-scientific, press accounts, about the so-called "partial birth abortion". My initial reaction to that is I'd vote for a bill to ban that procedure that was consistent with Roe v. Wade. When I first read this bill this afternoon, when I heard and was shocked some three hours ago that there might be an attempt to move it in less than 12 or 14 hours, I read the bill. I had different staff

talking at me. I said, Whoa! I don't know that this is a pro-choice or pro-life issue, and I walked out on the floor. Session was just beginning and I cadged a number of members, some you know, naturally some members weren't here - I didn't see everybody -- to get a feel.

I found at least a half a dozen other so-called pro-choice members and, as I say, I didn't talk to more than six or seven people who had questions about this, who were inclined to support a ban on what has been presented in the popular medium as a so-called "partial birth abortion"; and, as you understand and I hope it's clear, the issue of choice, abortion, so on, has never been a partisan issue.

There are people on your side of the aisle who disagree with you, Senator Maltese. There are people on this side of the aisle who disagree with each other and with you and it really saddens me to see this partisan rush as if somehow or other, points will be scored, headlines will be made. It will somehow

have some play on the presidential election because I tell you, and I quote to you what Senator Bruno told me an hour ago: Well, gee, in Congress some of the most liberal Democrats like Kennedy and Gephardt voted for this.

This is not a partisan issue, and the questions that were being asked in committee were not necessarily from the standpoint of we're against this bill or we're for this bill. There are questions, and I left this floor and almost had my mind made up about this bill and then I talked to some people who brought out some other facts. I said, Gee, I didn't know that, I didn't know that.

We say, Well, how can we talk to members? How can we get these facts out? And I said, you know, I wish Senator Maltese really cared about this because I, you know, if I had to lean, Senator, I'm still leaning toward a bill like this, like this that addresses other concerns. You know, why don't you have a hearing Friday? Why don't we hear from everybody on this? I'd like to hear some medical testimony

because of what I talked to a couple people with better medical knowledge than me and they say they can't find these terms. These aren't terms of medical usage.

Now, Senator Maltese, you can say Aah, we all know what it means. I mean does it mean what I read in some newspaper account a few weeks ago when I decided, Gee, that shouldn't be done, or does it mean other things? I'd like to hear them, but I can't, I'm not going to have any expert medical advice conveyed to me in the next -- Senator Bruno, I think, said he wants to start at ten tomorrow. Let's hurry up -- in the next so many hours, and I think, frankly, Senator Maltese and the only thing Senator Bruno said, Oh, this is the bill, Senator Maltese changed it. This is the bill that would meet the President's definition, protect the mother's health.

So I read through it and I see it protects the mother's life but it doesn't mention health, and I have said and I wrote, you know, it doesn't mention "health", so yeah,

yeah, there's been some changes. It meets the President. The President would have signed this bill. Well, I don't see the word "health".

So what's the rush? If you're serious about addressing that real situation we read about, if it be real, if it really happens and you know what, if it doesn't happen, it shouldn't happen, and I'll support you in making sure it doesn't happen, but as long as you meet the requirements of Roe v. Wade about the first 24 weeks of pregnancy. You know, let's pass a constitutional law that bans the problem you address. Let's not ban problems that don't exist or things we can't do.

Roe v. Wade ties our hands in those first 24 weeks. It's not clear that your bill, you say it in your bill, this bans a certain procedure in the last trimester. I'll support that. In fact, under existing New York law, I believe abortion is not legal except under severe limitations in that last trimester. I support that present law. Don't see me filing any bills saying, let's make it

legal up until the eighth or ninth month. You don't see any members over here doing that.

If this is other than a political campaign slogan for the Dole campaign, let's have the Rules Committee consider it tomorrow morning. Let's discuss the kind of amendments I'm talking about, put it out and debate it next Monday or Tuesday in the ordinary course. Let's solicit some opinion. Senator Maltese, you address for me that Roe v. Wade problem. You limit this bill to the last trimester. You protect the mother's physical health as well as her life. You conform this to what the experts say is the real situation, and you got me. You got a lot of other people, I think. But we want time to hear all the facts. We want to know this is a legitimate legislative effort to address either a real or a perceived problem that meets constitutional requirements, that protects the relationship between a woman and her physician in those first six months of preg nancy, that protects a woman's health and life in the third trimester, and then I think people

could perhaps agree on this.

I don't think, incidentally, and I haven't had time to explore it but from what I've heard in the last hour that there really are such situations as have been described in the popular literature if you give us some time to think about it.

Senator, this is the Senate of the state of New York. This once -- once sincere people on both sides of the aisle have, all of us, stood and talked about this as they used to use the phrase and I heard Jerry Bloom use it and I heard John Caemmerer use it and they would talk about this and Bill Conklin, and talk about this as the greatest deliberative body in the world.

What a joke that's become when we don't deliberate. What a joke that is when we don't reason together. What a joke that is when we don't have time to think or get information or to let the public have any input on a very important issue. What a joke it is when we cut each other off for partisan reasons from

reasoning together and perhaps producing a bill, if there be a problem because I don't think people -- I've talked to some of whom are pro choice have any different visceral reaction than some of the members over there who described themselves as otherwise.

But let's have a bill, let's have a real bill. This rush for a headline so people don't focus on the budget that the Governor ought to be leading us into. This rush, gee, anything for a headline, a couple days ago the Governor was on the front page going to lead the pro-choice charge, whatever that means, your Governor, Senator Maltese, your Governor was going to do that.

I wish he were leading the "get a budget" charge this week, but that's partisan bickering. This is if you put out a political campaign slogan as a bill on 14 or 15, 16 hours notice, then you're going to get a political campaign slogan response. You're going to get a vote that way. If you want real legislation, Senator Maltese, sit down and talk to people.

Slow up, not for a month, slow up for a few days. Let this once again be, if not the greatest deliberative body in the country, at least let it be a fairly moderate deliberative body, and I would urge, and without getting into this bill, I would ask every member certainly on this side but every member respect the institution and on the procedural vote, please vote not to accept this report.

Let the Codes Committee hold hearings, let the people be heard. Let members have time to reason together.

SENATOR HOFFMANN: Mr. President.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT WRIGHT: It's the ruling of the Chair that, pursuant to Rule Number VII, Section 2, the time on the motion to debate has elapsed. We will take up the vote on the motion to accept the Rules report.

SENATOR GOLD: Excuse me.

SENATOR DOLLINGER: I'd like to

be -

(Senator Hoffmann, Senator Leichter, Senator Skelos talking over; unintelligible.)

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Hoffmann, why do you rise?

SENATOR HOFFMANN: I'd like to appeal the ruling of the Chair. I'd like to have the clock checked. I'd like to have the sorcerer impeached. I don't know, I think there are a whole lot of things we should do in this medieval institution. I think there are a number of appropriate steps to bringing democracy back. I'll think of a few more if you give me a couple of minutes.

ACTING PRESIDENT WRIGHT: Thank you, Senator Hoffmann.

SENATOR HOFFMANN: You're most welcome, Mr. President.

ACTING PRESIDENT WRIGHT: The ruling of the Chair is that the debate pursuant

to the ruling at that time has elapsed; therefore, we will take a vote on the motion. All those in favor of accepting the Rules Committee report?

SENATOR LEICHTER: Appeal on the ruling of the Chair. I heard Senator Hoffmann say that she was appealing your ruling, Mr. President.

SENATOR HOFFMANN: I'm appealing the ruling of the Chair, Mr. President, to close debate on this issue.

ACTING PRESIDENT WRIGHT: The question is on the -

SENATOR HOFFMANN: There is more debate by members of the house. I respectfully request the appeal overruling the Chair relative to the time constraints.

ACTING PRESIDENT WRIGHT: The question is on the appeal of the ruling of the Chair. All those in favor -

SENATOR LEICHTER: Slow roll call.

SENATOR ESPADA: Slow roll call.

ACTING PRESIDENT WRIGHT: There's been a request for a slow roll. Do I see five members standing?

SENATOR HOFFMANN: I believe we will have a slow roll call. Then perhaps the Majority would like to reconsider and -

ACTING PRESIDENT WRIGHT: Are there five members standing?

SENATOR SMITH: Oh!

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: Slow roll was requested. There are five members standing. Secretary will call the roll.

SENATOR HOFFMANN: Mr. President.

ACTING PRESIDENT WRIGHT: The Secretary will call the slow roll call. A vote of "Aye" is to sustain the ruling of the Chair.

SENATOR VELELLA: Mr. President, just so I understand what the issue is that we're voting on. Is it the Minority's

contention that 29 minutes have passed in debate or that it was less than 30 minutes that passed in debate?

SENATOR DOLLINGER: Point of order, Mr. President.

SENATOR VELELLA: I don't know what we're voting on.

SENATOR DOLLINGER: I'm not sure I do either but -

SENATOR HOFFMANN: I would -

ACTING PRESIDENT WRIGHT: Senator Hoffmann, you're not recognized.

SENATOR HOFFMANN: Am I recognized, Mr. President?

ACTING PRESIDENT WRIGHT: You are not, Senator Hoffmann.

SENATOR HOFFMANN: Since I was asking a question.

ACTING PRESIDENT WRIGHT: And you were not recognized, Senator. Thank you.

SENATOR VELELLA: Address the chair.

ACTING PRESIDENT WRIGHT:

Senator, if we may, we are calling a slow roll on the motion to appeal the decision of the Chair, made by Senator Hoffmann. A vote "Aye" is in sustaining the Chair. A "Nay" vote rejects the Chair.

SENATOR DOLLINGER: Point of order, Mr. Chairman.

ACTING PRESIDENT WRIGHT: Let's try it again.

O.K. We're going to call the roll on a motion to appeal the ruling of the Chair which is to close debate, correct.

SENATOR HOFFMANN: Thank you, Mr. President, for recognizing my motion.

ACTING PRESIDENT WRIGHT: All right. Call the roll.

Senator Alesi.

SENATOR ALESI: Point of in formation. Would you please reiterate your position on the voting procedure, please?

ACTING PRESIDENT WRIGHT: Yes. This is on a motion to appeal. A "Yes" vote sustains the appeal and overrules the Chair.

(Pause) A "Yes" vote sustains the ruling of the Chair. A "No" vote overrules the Chair. Call the roll.

THE SECRETARY: Senator Abate.

(There was no response.)

Senator Alesi.

SENATOR ALESI: Yes.

ACTING PRESIDENT WRIGHT: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

THE SECRETARY: Aye.

Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Explain my vote, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Mr. President, it seems to me that when several members of this house have not had an opportunity to be heard within the time limit every other time that I think we've had this debate, there's been an agreement by the Majority members, on Senator Padavan's immigration bills, certainly on the death penalty bills, when there has been heated debate about an issue that members have strong opinions on. We have relented and allowed additional time for debate.

Today, at least Senator Hoffmann, and I don't know her opinion on this bill but it's certainly one that should be heard, and the opinion on the issue of accepting the Rules

Committee report; Senator Leichter stood and asked to be heard on whether or not we should accept the Rules Committee report. I would like to be heard on the issue of whether we accept the Rules Committee report, and I think it's unconscionable that this house won't allow that time to debate. You're putting a muzzle on the debate.

It's not fair. It's not right and, frankly, with all due respect to my leader, Senator Connor, he is one of those who has preached at me as, frankly, has Senator Marino, Senator Bruno, Senator Skelos -- in fact, I think every member of this house who sits in the Republican house, has preached to me on the importance of respecting the rules of this house.

Well, we all know what this is. This isn't a cheap publicity stunt to get this bill before us. It's just a very expensive publicity stunt. We're not doing it right. We're not even listening to the debate about accepting the Rules Committee report and it

seems to me it's a travesty.

I tell everyone in this chamber don't lecture me about putting politics over rules next time.

Vote no.

ACTING PRESIDENT WRIGHT: Senator Dollinger, how do you vote? No? Continue the roll.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold.

SENATOR GOLD: No.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Explain my vote.

ACTING PRESIDENT WRIGHT: Senator Hoffmann, to explain her vote.

SENATOR HOFFMANN: Yes, Mr. President.

It was one week ago today that I stood on this floor and asked my colleagues to release from committee a number of bills that I felt were urgent to reform our legislative process, and I listened while a number of my colleagues across the aisle stated that they would vote no on a procedural matter. They were voting against allowing bills to come to the floor for a vote.

I find myself in a somewhat ironic situation today casting a similar vote on a procedural matter. I do not want to allow a measure to come to the floor of this august chamber in such a reprehensible way. Of course, I will vote no against allowing a bill as significant as one which deals theoretically

with the health of every young woman of child bearing age of this state to be rushed to this floor, to be rushed to this chamber with a threat that we'll be forced to vote on it in less than 24 hours time without even the courtesy of an advance notice, much less a public hearing and outside opinions.

The outrage -- the outrage in this chamber today that women's health and reproductive activities would be trivialized as some kind of a subterfuge, some kind of a royal display of fantasy to prevent people of this state from realizing that we can't get our heads together to come up with a budget, that we would present ourselves to the public or the crafters of this bill and the people who have sent it through the Codes Committee claiming that they have a greater body of knowledge than the United States Congress and the President of the United States who have not yet been able to come to terms with this issue despite the fact that they have debated it openly and publicly and held hearings on it.

This is a subject of enormous and intense discussion in Washington. It has not been the subject of any open meetings or public hearings, committee meetings in this chamber to my knowledge. We're supposed to be working on the New York State budget in this chamber, not bringing issues before this body based on headline journalism, not based upon newspaper stories.

I listened to my colleagues across the aisle saying that they didn't want to pander to newspapers last week. That's what you accused me of. I'm so sorry that you didn't take your own words to heart. What could be more base than throwing out a bill of this magnitude without at least giving us the courtesy of knowing in advance that the health and safety and reproductive activities of every woman in this state can be played second fiddle to virtually anything and thrown up as some kind of a camouflage when we can't put a budget together?

This is a disgrace. Of course, I

will vote no in closing debate.

ACTING PRESIDENT WRIGHT: Continue the roll.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

(There was no response.)

Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Mr. President, to explain my vote.

I'm sorry we're shutting off debate in this fashion. Part of the steam roller tactics of the Majority. I wanted to ask Senator Maltese why a bill that was introduced April 9th was amended, I assume a week ago or a few days ago, and whose effective date is the - in November, has to be rushed to the floor and I can only surmise what his answer would be and I know you, Senator Maltese, to be a very honest person is, Well, it's politics time. This is a good time for us to move this sort of a bill; and I would have wanted to ask Senator Volker, chairman of the Codes Committee that I've served on for many years and for whom I have great fondness, great admiration. "Dale," I would say, "how come this bill wasn't considered by the Codes Committee? You considered death penalty, you've considered every bill. We've discussed it, all of these bills, in very fair fashion," and I guess his answer would be, "Franz, it was out of my hands, this bill was

pulled out of the committee," and it's clear that's what has happened, and to politicize this issue in such a fashion, I think does a disgrace to the position that you hold, Senator Maltese, that I disagree with strongly, but I have the greatest respect because I know it comes from a very firm and strong moral grounds of beliefs.

But not to -- and we've had debates before and we've had some wonderful members that are no longer with us, Senator Donovan and Senator Caemmerer, and we've had heated debates on this but we debated. We deliberated. This is so momentous; this is so important, and to rush it out to the floor in this fashion when the bill doesn't become effective until next November. Why? Why? There is only one reason. Politics.

I vote no.

ACTING PRESIDENT WRIGHT: Continue the roll.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Aye.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
(There was no response.)
Senator Nanula.
(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.
THE SECRETARY: Senator Oppenheimer.
(There was no response.)
Senator Padavan.
SENATOR PADAVAN: Yes.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: No.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
SENATOR SANTIAGO: No.
THE SECRETARY: Senator Seabrook.
SENATOR SEABROOK: No.
THE SECRETARY: Senator Sears.
SENATOR SEARS: Yes.

THE SECRETARY: Senator Seward.

(There was no response.)

Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

ACTING PRESIDENT WRIGHT: Senator Smith to explain her vote.

SENATOR SMITH: Mr. President, I'm just amazed that my colleagues across the aisle who profess to have family values would hold the women of the state of New York in such contempt that they would rush to bring a bill to the floor which affects the lives of each and every woman of child-bearing age.

I just can't imagine that they would care so little about the majority of the people of the state of New York. Therefore, Mr. President, I definitely vote in the negative because I hold the women of the state of New York in high esteem, and I feel that we have to take the time to be able to study this bill and to have some hearings before each of us are required to make a vote of this importance.

THE SECRETARY: Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Yes.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: Explain my vote, Mr. President.
ACTING PRESIDENT WRIGHT: Senator Stavisky, to explain his vote.
SENATOR STAVISKY: The desire to be fair and open with the public is evidenced by the fact that even the press which ordinarily covers proceedings of the Legislature and the executive branches of government is not in this chamber because of the awareness that this is an unfair closed shop where there is no opportunity for rational discussion among people who may disagree but who have an obligation to listen to

each other.

See the consequences of what we're doing today. Look at the gallery. You'll see the public, notified of what we're about to do here in this chamber. There is not a single person in the gallery on that side of the aisle. Is that an accident, or is it a deliberate desire to obfuscate the tragedy that is occurring here in this chamber? And it is a tragedy that transcends the issue. It is a tragedy that reflects discredit on this house. Not a single person is in the gallery above that side of the aisle, and I guess I would need a periscope to be able to see whether there's anyone sitting in the gallery on this side.

But that's an indication of how anxious the sponsors of this flawed proposal were to have the public informed and involved. What will you say to the people throughout the state of New York when they ask, Well, why didn't you tell us? Why didn't you give us a chance to be heard? Why didn't you give us a chance to talk to you before you made this

decision?

Again, look to the gallery. Look to the empty benches and reflect as to why you should be voting no on this motion regarding the ruling of the Chair and why you should reflect more carefully on what is being done in a manner that is the antithesis of democracy.

I vote no.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(Negative indication.)

THE SECRETARY: No.

Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT WRIGHT: Call the absentees.

THE SECRETARY: Senator Abate.
SENATOR ABATE: No.
THE SECRETARY: Senator Babbush.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Kuhl.
(There was no response.)
Senator Montgomery.
(There was no response.)
Senator Nanula.
(There was no response.)
Senator Oppenheimer.
SENATOR OPPENHEIMER: Mr. President.
ACTING PRESIDENT WRIGHT: Senator Oppenheimer, to explain her vote.
SENATOR OPPENHEIMER: This is really very sad and tragic for the women of New York State that we are held in such low esteem that the time for input cannot be found. It's

also, I think, tragic for New York State Senate. I think there is a process which we all wish we could have followed here, a time for serious debate, a time for thoughtful discussion.

I think it discredits us, and I think it says very little to the women of this state, and I really don't know why we can't have that thoughtful debate. It's a very complex issue, and it's trying to be handled in a knee jerk reaction manner, and it just does a great deal of disservice to women, to doctors in this state, to nurses. There's a lot of opinion on this, important opinion, and I think we should be hearing it.

I vote no.

THE SECRETARY: Senator Seward.

(There was no response.)

ACTING PRESIDENT WRIGHT: Results.

THE SECRETARY: Ayes 34, nays 20.

ACTING PRESIDENT WRIGHT: The

ruling of the Chair is sustained.

On the motion to accept the Rules Committee report.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, a point of order, 34 ayes and 20 nays?

ACTING PRESIDENT WRIGHT: That's correct.

SENATOR PATERSON: Mr. President, if I remember correctly Senator Hoffmann's motion was not to review the ruling of the Chair. Senator Hoffmann's motion was to appeal the ruling of the Chair. In other words, her motion was to change the ruling of the Chair and so regardless of anyone's intent in here, just so that we do preserve some kind of sanity, we had 17 motions to discharge here last week, the motion in favor was recorded by a vote of yes.

I'm just contending that just for the record, that this vote is wrong, that in

advertently the appeal of the Chair -- of the Chair won because those were the yes votes, 34 in favor of the motion.

ACTING PRESIDENT WRIGHT: Senator Paterson, I declared that a vote of "Yes" was to sustain the decision of the Chair. There were 34 affirmative votes to sustain the decision of the Chair. Therefore, I have ruled that the decision is sustained and we are now on the motion.

SENATOR PATERSON: Point of order, Mr. President. I understand what your direction was to the body, and I am certainly not trying to change the intention of any member here, but just so that we have clarity in this chamber since we don't seem to have clarity on very much right now, I'm just informing you that this -- that you ruled on a motion, in my opinion, incorrectly because the motion was made and the affirmative vote for the motion would have been recorded as "yes" and if someone can explain to me how that's otherwise, how it could have been otherwise, I certainly would

appreciate knowing that because we're going to have other motions in this chamber.

ACTING PRESIDENT WRIGHT: The motion before the house is to accept the Rules Committee report. All those in favor of accepting the Rules Committee report.

SENATOR SMITH: Slow roll call.

ACTING PRESIDENT WRIGHT: Call the roll. There's a request for a slow roll. There are five members standing. On the motion to accept the Rules Committee report, there will be a slow roll; clerk will call the roll.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

SENATOR OPPENHEIMER: Wait a minute!

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Connor.

(Negative indication.)

THE SECRETARY: Senator Cook.

SENATOR COOK: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Cook, to explain your vote.

SENATOR COOK: Had I been a member of the Rules Committee, I might have made a decision based on the merits of this bill because that's the appropriate function of the Rules Committee or of any other committee considering the bill. However, the question before us is whether the Rules Committee has the power to report a bill to the floor, and if we deny that precedent then we deny -- then we set a precedent for all kinds of other issues that may come before the Legislature over a period of the rest of the year and into the future.

So I think it ought to be clear that this is a procedural motion once again on the question of whether the bill ought to be referred to the floor, and I think that clearly the rules of the house say that the Rules

Committee had that power. They've acted within their powers and, therefore, I'm voting yes.

ACTING PRESIDENT WRIGHT: Senator Cook in the affirmative.

Continue the roll.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President.

ACTING PRESIDENT WRIGHT: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: We've heard a lot of dialogue today, some of it louder than I've heard in the four years that I've been here, but the fact of the matter is I'd just like to state a couple of facts that I think are relevant in this vote.

Number one, the vote has nothing to do with disrespect for women and, if the decision is political, as some on the other side of the aisle have suggested, I would suggest that maybe some of their comments might have been political as well.

But most importantly, this bill has been in print in the "A" version since April 9, 1996, presumably it's been in print before the "A" version came out. So if anyone wanted to determine what bill may come forward in the future, they certainly had ample opportunity to do this.

In addition, this is not a bill or an idea that is a new idea. There's been debate in Congress. The issue is not a new issue, so to suggest that someone could not possibly determine their decision by tomorrow after full debate, especially when the bill is a matter of 29 lines, I think is a little bit overstating the case. So I vote yes.

ACTING PRESIDENT WRIGHT: Senator DeFrancisco in the affirmative.

Continue the roll call.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Explain my

vote.

ACTING PRESIDENT WRIGHT: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Mr. President, I just disagree slightly with Senator Cook. Senator Cook said that the only issue that was present here was whether the Rules Committee has the power to report to the floor. Well, it's obvious that they don't have the power because this body has the ability to accept it or reject it. That's what this vote is all about. They may have the power to recommend to this body that it accept it, but this body has the power to decide under the circumstances of any particular issue, any Rules Committee report, to decide whether it's in the best exercise of discretion of this body to accept that report.

I argued before that it wasn't in the best interests of this body or in the best interests of the legislation that we do this. This is an issue that needs hearings. This is an issue that needs time and, frankly, with all

due respect to Senator DeFrancisco, you talk about the politics of this.

I'll tell you what the politics of this is. Several of my colleagues suggested it's designed to protect George Pataki. I'm not going to comment on that. I know why it's being done. Where's the urgency of it being done? None of the people who support this bill have to put up with the telephone calls. None of the people who support this bill want to put up with the FAX machines. None of the people who support this want people to come in and explain why they chose to have this enormously - enormously difficult, painful, anguishing procedure. That's why you don't want to do it. You don't want to listen to the people you represent and the people of this state tell you why it's a good idea. It's just like it's 4:00 o'clock in the morning on the 15th of June or the 4th of July. You're doing it under the cover of night. You're doing it under the pressure of some unknown time pressure simply to avoid something you find distasteful, people

calling you on the phone and telling you you're wrong.

No!

ACTING PRESIDENT WRIGHT: Senator Dollinger in the negative.

Continue the roll.

SENATOR MARCELLINO: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Marcellino, why do you rise?

SENATOR MARCELLINO: May I have unanimous consent to call Senator Spano out of order?

ACTING PRESIDENT WRIGHT: Without objection, Senator Spano should be called.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

ACTING PRESIDENT WRIGHT: Senator Spano is recorded in the affirmative.

Continue the roll.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Mr. President, to explain my vote.

ACTING PRESIDENT WRIGHT: Senator Gold to explain his vote.

SENATOR GOLD: Senator DeFrancisco, as you know, in front of your desk and behind your desk are these lovely red books and I heard your comments about the bill being introduced on the 9th.

First of all, I may be mistaken but I believe that that date never changes even when you amend bills, so I think it was first introduced on the 9th, but having said what you said, I'm sure you're familiar with Senate Bill 6953 that was authored by Senator Espada on the Vehicle and Traffic Law because, after all, that was on the 11th, and I'm sure you've read that bill.

Also Senator Velella had a bill 6954 introduced on that same day dealing with prohibition of discrimination against foreign

travel, I'm sure you read that and, of course, you didn't and I didn't either, Senator, because we don't read bills just because they're introduced. That's why we have a committee system, and that's why we have a First Report and a Second Report and a Third Report, so it's noted only to us Senator but also to the world, there are lobbying organizations that want to be heard and would never file memos on every single bill, but they find out what is being considered.

Our rules provide for extraordinary circumstances and we can, in fact, have the Rules Committee offer a report. Nobody is saying that that's out of order. We're saying that in our collective judgment we should not accept the report.

Senator Cook, that doesn't destroy the system. It only says that in this particular one instance there is a better alternative.

Lastly, I would like to say to Senator DeFrancisco that I recognize this as a,

quote, legitimate issue. The problem is that we do not vote on issues. We never did. You can not stand up and say vote me "yes" or vote me "no" on the issue. We vote on a specific piece of paper and that's where the problem lies.

Senator Connor, when he was talking earlier, could only speak for himself, and I can only speak for myself. But I agree with him. If there was a bill that stopped a procedure that is unconscionable, I would vote for it and I want to tell you something, you're going to have a chance tomorrow to make that decision because if Senator Maltese doesn't want to improve his bill, maybe we'll have to do that and now we'll have some interesting votes tomorrow. You can see whether or not you want to support this bill if it, in fact, bans the Roe v. Wade situation and takes it out of this bill.

Let's see tomorrow whether or not you would vote for this bill if it makes it clear that it's supposed to do what it says it does. That's the issue and we believe in voting

no for accepting this report, that Senator Volker's leadership on the Codes Committee could lead us to a better bill that I would be delighted to vote for, and others would be delighted to vote for because this, I believe, is one of those issues which does not polarize people on the issue of abortion or no, but can bring people together to say that something is wrong.

I don't know why Senator Maltese doesn't accept that opportunity, because it will be very interesting. Senator Maltese could run for reelection and say, "I was able in the issue of abortion to do a bill which brought everybody together." I think that's pretty strong stuff.

I vote no.

ACTING PRESIDENT WRIGHT: Senator Gold is recorded in the negative.

Continue the roll call.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Explain my vote.

ACTING PRESIDENT WRIGHT: Senator Hoffmann, to explain her vote.

SENATOR HOFFMANN: Thank you, Mr. President.

I, too, find it a little startling to here it suggested that simply because a bill has appeared in print dealing with a unique health matter that we should all be so thoroughly versed and ready to vote on it that we can do so on literally momentary knowledge. It insults our intelligence and it makes a mockery of the already difficult to comprehend procedures of this chamber.

Once again, I'm going to vote no

on what has become a travesty in this chamber, a procedure it's clear that, for whatever reason, the Majority in this house has chosen to manipulate this process for some purpose that makes light of the fact that we are late for the budget, that we are not, in fact, deliberating on the budget as we should be, but that we are bringing up a health matter of most urgent, urgent consequences and not bringing it through the Health Committee, not allowing it to be heard in public hearings and not even allowing the members of this house to debate on whether it is germane to our activities and whether we should, in fact, include it on our calendar for a vote as early as tomorrow morning.

Of course, I will vote no on this procedural matter but I will continue to implore upon the Majority Leader of this house to exercise sounder judgment, to be the leader that he was last year when he held the first Finance Committee meeting ever in which we sat and discussed the differences between the budget proposal from this chamber and the budget

proposal from the Assembly. It was a start. It may have been a modest start, but it actually showed the beginnings of some discussion, some negotiation.

This is the same chamber that sent several members to a conference committee just a few days ago and again yesterday or this morning, excuse me, to discuss the differences between two -- the two houses' bills on small city school budgets.

We have on occasion demonstrated that we are willing to work like adults, that we are willing to put aside partisan differences and differences between the chambers to deal with the issues of this state. That's what we should be doing with our budget.

What we should not be doing is injecting critical health issues, ones that they cannot resolve in Washington and then purport to send them to the floor having second-guessed the President of the United States himself and saying that everyone in this chamber will be suddenly forced to vote on it tomorrow morning.

An absolute travesty of our responsibilities as legislators.

I vote no against any measure coming to this chamber for a vote under these matters tomorrow.

ACTING PRESIDENT WRIGHT: Senator Hoffmann is recorded in the negative.

Continue the roll call.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

(There was no response.)

Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Mr. President, to explain my vote.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Leichter to explain his vote.

SENATOR LEICHTER: What we're seeing here are bully-boy tactics that defame this house, make a mockery of the committee system, that, frankly, defile a very important issue, the issue of health, an issue that affects women in this state, an issue that people have great moral differences of opinion on, but not to allow this to come after going through the regular process and permitting the people of this state to be heard, allowing doctors to testify, allowing religious leaders to testify, allowing women to testify on it, that's what we should be doing.

Why are we rushing this in a fashion that will deny the people of this state an opportunity on really one of the most important issues, to have proper deliberative considerate judgment? This is a bill that goes into effect in November. Why bring it out without committee hearing on a Tuesday and push it to a vote on Wednesday?

I think it's disgraceful, and I think you show that this house has no regard for process. The only thing that counts with you is politics and sheer raw power.

Mr. President, I vote no.

ACTING PRESIDENT WRIGHT: Senator Leichter is recorded in the negative.

Continue the roll.

THE SECRETARY: Senator Levy.

(There was no response.)

Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator

Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

ACTING PRESIDENT WRIGHT: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I'm voting no on this procedural matter and had I been in the chamber on the last vote, I would have voted no because I think we should have had more debate, more time to debate, and so I'm voting no on this one, and I would have voted no on the last one.

ACTING PRESIDENT WRIGHT: Senator

Montgomery is recorded in the negative.

Continue the roll call.

THE SECRETARY: Senator Nanula.

(There was no response.)

Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson to explain his vote.

SENATOR PATERSON: Thank you, Mr. President.

I'm happy that not too many members of the Majority got up to support the actions that occurred today because I think any

further explanation that would try to justify this would be sort of like having fruit of the poisonous tree.

I think it's very clear to every one that this action showed absolutely no fairness and a complete disregard for the process. I was happy that Senator Hoffmann pointed out that anybody could come to a view about an issue within 12 hours but that, as legislators, 12 hours is not enough time to be making a decision even if a bill leads 29 lives.

We would like the opportunity to hear other people's points of view, read mail on the subject, make phone calls, get back FAXes of positions that different groups have taken about this situation. Also just sitting here in the chamber, I've heard a great deal of discussion about this bill and a great deal of disagreement not based on how it should be voted, but just basically on what the bill says.

And so, finally, Mr. President, I think that the report of the Rules Committee

which is what we're voting on is not something that is precedental. It is something in which we would be instructing the Rules Committee as to whether this is a seasonable period to discuss this bill. Without the requisite time to prepare and without the requisite time to allow the public, particularly the people who are supporting this bill, to come forward and justify, I think disgraces them maybe even more than those who are opposed to it, because I would think that they would want their consciences clear should this bill pass or ever become law, that there was a reasonable time given to those who had a differing point of view and, for those reasons, I vote not to accept the Rules Committee report.

ACTING PRESIDENT WRIGHT: Senator Paterson is recorded in the negative.

Continue the roll call.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
SENATOR SANTIAGO: No.
THE SECRETARY: Senator Seabrook.
SENATOR SEABROOK: No.
THE SECRETARY: Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
(There was no response.)
Senator Skelos.
SENATOR SKELOS: Aye.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Mr. President, explain my vote.
ACTING PRESIDENT WRIGHT: Senator Stachowski to explain his vote.
SENATOR STACHOWSKI: Earlier

Senator Cook referred as a member of Rules that the Rules Committee has the right to refer any bill out directly to third reading and Senator Dollinger said that they have the ability to do that, but the body has to agree to it, and I might point out that on numerous occasions we not only have referred them but agreed to them without any debate at all -- bills much more complicated than this one, much longer than this one, maybe many that took a lot longer in Rules to get out than this one, but at least when questions were asked in Rules on all those previous bills, whoever was answering, whether it was the sponsor, whether it was the counsel, no matter who it was, had the ability to answer the questions and had the information readily available during the committee meeting, and so there was no opposition from this side unless it was a no vote in principle on the bill coming out.

In this bill and in this particular instance, this was not the case. This is not the case and wasn't in committee.

Somebody earlier pointed out that the bill has been available since April 9th. We should all have been able to read it and be familiar with it. That may be true but -- and maybe we wouldn't have read it, but at least the sponsor who was fielding the questions would have been able to give the definitions that were asked for and explain the procedure precisely that was asked for and answer a couple of other questions that were asked.

That was not the case, so that that example, if anybody should be upset about that, should have been whoever was fielding the questions in committee and if those questions were answered, there wouldn't have been this long debate about this bill coming here and it would probably be taken up tomorrow.

The fact is that this bill makes it a criminal offense and those definitions are necessary and so that it's really incumbent on us to have those answers so that if we put a bill out that's going to be a law that the courts can uphold and if those definitions

aren't answered, aren't available, then how do we even do these things? How do people uphold the offense if it is an offense?

My problem is that all those things were missing, and so that in this particular instance, I too have a problem with the bill coming from Rules directly to the floor and it's only in this particular instance.

I vote no.

ACTING PRESIDENT WRIGHT: Senator Stachowski is recorded in the negative.

Continue the roll.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Aye.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Aye.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Explain my vote.

ACTING PRESIDENT WRIGHT: Senator Waldon to explain his vote.

SENATOR WALDON: Mr. President, my colleagues, no one called me a history buff but on occasion I do watch the channel on TV that is the History Channel, and this past week while I was home with the flu, I had occasion to watch the channel, and it was dealing with a particular period during the second World War where -- excuse me -- the German army employed lightning tactics -

ACTING PRESIDENT WRIGHT: Excuse me, Senator Walton. Excuse me. If I could have order in the chambers, please. If we could extend the courtesy to our colleague, it would be appreciated.

Senator Waldon.

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

The German army employed lightning tactics in order to accomplish its mission. They went through the Ardennes, which was thought not to be penetrable. They went over the Maginot Line which was built in order to keep all enemies out. But this is not the Maginot Line, and this is not the Ardennes. This is the chamber of the Senate of the state of New York, and people come here to deliberate and to profoundly deal with the problems facing the people of the state of New York.

This time it was not done in terms of deliberation in a very meaningful way. This time it was not done in terms of meaning the process was carried out in terms of thinking soundly about what we were going to do. There was no real opportunity for the Committee on Codes to deal with this problem. There was no opportunity for doctors who really understand the gravity of the situation that we're dealing with to come and testify and let us know the

nuances of what we're doing. There was no opportunity for women, who are the most impacted by what we're doing here today, to come and let us know how they feel, how the love and caring that they have for their children will be affected by what we're doing here.

This was a blitzkrieg, and the beauty of the show that I saw on television was that, though the blitzkrieg early on was successful, eventually it didn't work. It did not work, and we all know the history of what happened in regard to the blitzkrieg.

This is a mistake, this blitz krieg. I believe it is not foolproof. I believe eventually it will fail and we will go back to the process that reflects the important decisions that must be made in this chamber. We are better than the blitzkrieg.

Mr. President, my colleagues, I vote in the no.

ACTING PRESIDENT WRIGHT: Senator Waldon is recorded in the negative.

Continue the roll.

THE SECRETARY: Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT WRIGHT: Absentees.
THE SECRETARY: Senator Babbush.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Kuhl.
(There was no response.)
Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Nanula.
(There was no response.)
Senator Seward.
(There was no response.)
ACTING PRESIDENT WRIGHT: Read the results.
THE SECRETARY: Ayes 34, nays 21.
ACTING PRESIDENT WRIGHT: The

Rules report is accepted.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT WRIGHT: There is one motion.

Senator Holland.

SENATOR HOLLAND: Mr. President, on page 26, I offer the following amendments to Calendar Number 597, for Senator Sears, Senate Print Number 5917-A, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT WRIGHT: Amendments are received.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there being no further business -

ACTING PRESIDENT WRIGHT: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I'd like to announce that there will be a conference of the Minority tomorrow morning at

10:00 a.m.

ACTING PRESIDENT WRIGHT: Be a conference of the Senate Minority tomorrow morning at 10:00 a.m.

Senator Marcellino.

SENATOR MARCELLINO: There being no further business, I move we adjourn until tomorrow, April 24th, at 10:00 a.m. sharp.

SENATOR CONNOR: Mr. President, I oppose the motion, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Connor, why do you rise?

SENATOR CONNOR: To oppose the motion. The Senate has a schedule on session times. The Senate session on Wednesday calls for a session at 11:00 a.m. To change it at 7:00 p.m. to 10:00 a.m. tomorrow morning, when the Majority knows they just placed on the floor a major bill, has not been conferenced by this side as we maintained in the procedural motion or -

ACTING PRESIDENT WRIGHT: Senator Skelos, why do you rise?

SENATOR CONNOR: I object to the motion to adjourn until 10:00 a.m.

SENATOR SKELOS: Mr. President, I believe a motion to adjourn is not debatable.

SENATOR CONNOR: Slow roll call, Mr. President.

ACTING PRESIDENT WRIGHT: Call the roll. Five are standing. Slow roll call. We have a motion to adjourn. Call the roll. The Secretary will read.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Connor to explain his vote.

SENATOR CONNOR: Thank you.

You know, I really -- I really hate to take up the time of this chamber and have a slow roll call on a motion to adjourn, but in the whole context of what's transpired here today, the total disregard for the deliberative process and for letting members have an opportunity to consider very, very important legislation, changing, deviating from the schedule of an 11:00 a.m. session to 10:00 a.m. has the effect of denying this conference the elementary courtesy that, in past regimes, has always been extended in this house, and that is when major legislation is brought forth, the Minority is given an opportunity to conference it because we all know of that unwritten rule, that never published rule, that secret rule, that says no legislation makes it to this floor unless it's first conferenced and approved by a majority of the Majority party, and in view of that, it's our intention tomorrow to have a conference at 10:00 a.m.

We can either -

SENATOR DOLLINGER: Can I hear -

SENATOR CONNOR: We can either do -

ACTING PRESIDENT WRIGHT: Senator Connor. Can we have order in the chamber, please, so we can proceed.

The Chair recognizes Senator Connor to continue.

SENATOR CONNOR: Thank you, Mr. President.

It seems to me our choices here are simple. We can reject this motion to adjourn until 10:00 a.m., do another one saying that we'll start at 11:00 a.m. and we can start promptly, or the Majority can insist on adjourning until 10:00 a.m., and probably my guess is it will probably be around noon when we really get down to the business of this house.

I vote no on the motion to adjourn.

ACTING PRESIDENT WRIGHT: Senator Connor is reported in the negative. Continue the roll.

THE SECRETARY: Senator Cook.

(There was no response.)

Senator DeFrancisco.

ACTING PRESIDENT WRIGHT: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I want to follow through with the spirit of Senator Bruno's reforms in this house and not have an all-night session. Because of that, I vote yes.

ACTING PRESIDENT WRIGHT: Senator DeFrancisco is recorded in the affirmative.

Continue the roll.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Explain my vote, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, when I spoke on the issue of

accepting the Rules Committee report, I made what even I thought was perhaps an outlandish suggestion, that the reason why the Majority was rushing this thing through was because they were afraid that their constituents would call them and say they were wrong.

Senator Connor, I'm now totally convinced that I was absolutely right. The reason why they're going to cut off this debate, the reason why they want to get it done quickly is so the people who would call them and tell them they're wrong won't even know tomorrow morning we're doing it.

I don't understand why we're changing the calendar. I don't understand why we're doing it. My respect for the order of this house, which perhaps was growing in the last year, seems to once again to have been diminished back to its minimum status, because this isn't about rules. This is all about politics, and anybody that tells me otherwise will have a very difficult task explaining what happened tonight.

No!

ACTING PRESIDENT WRIGHT: Senator Dollinger is recorded in the negative.

I would remind the members of the Senate if we could keep the noise down, we can proceed quicker.

Proceed with the roll.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Gold to explain his vote.

SENATOR GOLD: Mr. President, I'm very nervous about what Senator Connor said about starting work at noon tomorrow. I want to start at 11:00. I'm going to vote no.

ACTING PRESIDENT WRIGHT: Senator Gold in the negative.

Continue the roll.

THE SECRETARY: Senator

Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

(There was no response.)

Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Explain my vote.

ACTING PRESIDENT WRIGHT: Senator Hoffmann to explain her vote.

SENATOR HOFFMANN: Well, I feel compelled, since I haven't taken too much opportunity to speak on the floor of this session, to explain once again on a procedural motion where I find most of my colleagues on the other side of the aisle really inconsistent with the spirit of democracy as we know it.

We are expected to follow certain rules of procedures. We're expected to

deliberate in an open and forthright manner those issues important to this state, and I continue to believe that one of those most important issues is resolving a state budget. I have heard only recently from reporters that the Governor is preoccupied with resolving a state budget. In fact, he has threatened once again to try to find a way to withhold the salaries of lawmakers even if the rest of the state gets paid, so he at least is thinking about this.

I'm not so sure that this is a purely partisan issue. I think it may not be something that is the major preoccupation of the second floor of this Capitol right now but, for some reason which is totally mystifying to me, it appears to be a preoccupation of the leadership or a large number of the members, all of them willing to support it on the other side of the aisle, and I represent so many people of that political party who I know do not feel the same way they do, I feel compelled to say no, we should not change our procedures and suddenly meet at 10:00 o'clock instead of at 11:00

o'clock, not giving members an opportunity to study a piece of legislation as meaningful as this for an adequate amount of time, and having it rushed to the floor.

No, of course, I'm not going to support any of that. This is not a partisan issue. For some reason, some people are misinformed about the mood of the public out there, and I hope they're going to get a quick wake-up call because the voters and the taxpayers of this state want us to work on the budget, ladies and gentlemen. My colleagues, they do not want us to be debating a measure that apparently is not resolvable by the President of the United States and the United States Congress. They want us to put a budget together tomorrow.

I'll vote no.

ACTING PRESIDENT WRIGHT: Senator Hoffmann is recorded in the negative.

Proceed with the roll.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

SENATOR DOLLINGER: Could we have a little order in the chamber.

ACTING PRESIDENT WRIGHT: Proceed with the roll.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

(There was no response.)

Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Nay.

THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Yes.
THE SECRETARY: Senator Marchi.
(There was no response.)
Senator Markowitz.
SENATOR MARKOWITZ: Briefly to explain.
ACTING PRESIDENT WRIGHT: Senator Markowitz to explain his vote.
SENATOR MARKOWITZ: My first few months in the Senate back in 1979, a wonderful colleague of mine by the name of Caesar Trunzo said to me, "Markowitz, it's not for real." Caesar, you are really right.
No!
ACTING PRESIDENT WRIGHT: Senator

Markowitz reported in the negative.

Continue.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Mendez.

(There was no response.)

Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

(There was no response.)

Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Aye.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
(There was no response.)
Senator Seabrook.
SENATOR SEABROOK: No.
THE SECRETARY: Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
(There was no response.)
Senator Skelos.
SENATOR SKELOS: Aye.
THE SECRETARY: Senator Smith.
SENATOR SMITH: Mr. President.
ACTING PRESIDENT WRIGHT: Senator Smith to explain her vote.
SENATOR SMITH: I won't have many words to say this evening so that I'm sure that I have time tomorrow to have a lot to say so

that I can help assure that we don't start before noon.

ACTING PRESIDENT WRIGHT: How do you vote, Senator Smith?

SENATOR SMITH: No.

ACTING PRESIDENT WRIGHT: Senator Smith recorded in the negative.

Continue with the roll.

THE SECRETARY: Senator Spano.

(There was no response.)

Senator Stachowski.

SENATOR STACHOWSKI: To explain my vote.

ACTING PRESIDENT WRIGHT: Senator Stachowski to explain his vote.

SENATOR STACHOWSKI: I would hope that somebody had heard Senator Connor, because I would hate to think while the West Point people are waiting around to do their resolu tion, that we're arguing over procedural matters and we don't even get to the West Point resolution until around 12:00 o'clock or 2:00 o'clock in the afternoon.

I vote no.

ACTING PRESIDENT WRIGHT: Senator Stachowski is recorded in the negative.

Continue the roll.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(There was no response.)

Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT WRIGHT:

Absentees.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Cook.

(There was no response.)

Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Kuhl.

(There was no response.)

Senator Marchi.

(There was no response.)

Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Nanula.

(There was no response.)

Senator Santiago.

(There was no response.)

Senator Seward.

(There was no response.)

Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Waldon.

(There was no response.)

ACTING PRESIDENT WRIGHT: Results.

THE SECRETARY: Ayes 34, nays 19.

ACTING PRESIDENT WRIGHT: The motion is approved. The Senate stands adjourned until tomorrow at 10:00 a.m.

(Whereupon at 7:23 p.m., the Senate adjourned.)