ALBANY, NEW YORK

April 30, 1996

2:00 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to find their chairs, the staff to find their places. I'd ask everybody in the chamber, including those visitors in the gallery, to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

We're very pleased to have the Reverend Peter G. Young of the Blessed Sacrament -- Sacrament Church of Bolton Landing with us to deliver the prayer.

Peter Young.

FATHER PETER YOUNG: Thank you, Senator.

Let us pray. Dear God, scarcely knowing what and how to ask Your guidance on in regard to our efforts, we ask You to bring our New York industries and labors to a fresh touch of life-giving spirit. We pray for those whose skill and training talents are unused, that they

may obtain the dignity of work. Grant us what is required for all in the life that You have given us to and not because we ask wisely or well but because of the boundless compassion that You have made known to us, O God.

Thank you, Senator.

ACTING PRESIDENT KUHL: Thank you, Reverend Young.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 29th. The Senate met pursuant to adjournment. The Journal of Sunday, April 28th, was read and approved. On motion, the Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford,

from the Committee on Finance, offers up the following nominations: Member of the state Council on the Arts: John L. Loeb of Purchase.

SENATOR STAFFORD: Thank you, Mr. President.

I'm sorry. We'd respectfully move the confirmation of these nominations, please.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Goodman.

SENATOR GOODMAN: Mr. President, with respect to the nomination of John L. Loeb, Jr., I would like to say a brief word on his behalf.

ACTING PRESIDENT KUHL: Senator Goodman on the nomination.

SENATOR GOODMAN: Mr. President, this distinguished New Yorker who is noted for his own contributions to our society as well as his distinguished familial lineage is being presented to us as a candidate for nomination to the New York State Council on the Arts.

John Loeb, Jr. served as

ambassador to Denmark and is a noted art collector in his own right. He is the grand nephew of former Governor Herbert Lehman. He comes from a family whose art collection is legend and who have presented their entire arts collection from the late Robert Lehman to New York's Metropolitan Museum of Art, where it forms its own discrete wing.

John L. Loeb, Jr. will be an individual who can contribute enormously to the work of this important council, and I very much hope that this chamber will give his nomination its enthusiastic support and a unanimous vote.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

(There was no response.)

Hearing none, the question is on the nomination of John L. Loeb of Purchase, New York to be a member of The state Council on the Arts. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

THE SECRETARY: Members of the Empire State Plaza Art Commission: Arline Peartree of Averill Park; J. Stanley Yake of Rexford.

ACTING PRESIDENT KUHL: The question is on the nomination of the nominees to become members of the Empire State Plaza Art Commission. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominees are confirmed.

The Secretary will continue to read.

THE SECRETARY: Member of the Advisory Council on Agriculture: Charles E. Wille of Montgomery.

ACTING PRESIDENT KUHL: The question is on the nomination of Charles E. Wille to become a member of the Advisory Council on Agriculture. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will read.

THE SECRETARY: Member of the Niagara Frontier Transportation Authority: Luiz F. Kahl of Williamsville.

ACTING PRESIDENT KUHL: The question is on the nomination of Luiz Kahl to become a member of the Niagara Frontier Transportation Authority. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will read.

THE SECRETARY: Members of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Batavia: D. James Mastelenis of Batavia, Julia A. Ryan of Medina, Roy J. Wullich of Batavia.

ACTING PRESIDENT KUHL: The question is on the nomination of the nominees to become members of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Batavia. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominees are confirmed.

The Secretary will continue to read.

THE SECRETARY: Member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Oxford: Alex Park of Trumansburg.

ACTING PRESIDENT KUHL: The question is on the nomination of Alex Park to

become a member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Oxford. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will read.

THE SECRETARY: Members of the Board of Visitors of the New York State Home for Veterans and Their Dependents at St. Albans: Elizabeth A. Carr of Kew Gardens, Harvie Moder of Queens Village, Alvin R. Rosado of College Point, Marjorie Smith of South Ozone Park.

ACTING PRESIDENT KUHL: The question is on the nomination of the nominees to become members of the Board of Visitors of the New York State Home for Veterans and Their Dependents at St. Albans. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominees are confirmed.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Libous, on page 49, I offer the following amendments to calendar 757, Senate Print 6945, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we now move the Resolution Calendar with the exception of Resolution 3161.

ACTING PRESIDENT KUHL: The motion is to accept the Resolution Calendar with

the exception of Resolution 3161. All those in -

SENATOR GOLD: Hold on one second, please.

Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: Yeah. I'd like to have the Resolution Calendar in its entirety laid aside temporarily while I find out exactly how this got to the floor and perhaps discuss it with Senator Stafford and some others. I was at a committee meeting this morning in Finance, and I asked specifically about a Resolution Calendar, and I was told there was none. I was at the meeting, I think from beginning to end, and I'm not saying I have any problem with any particular resolution on here, but I certainly would like to know how it got here and what the processes were.

We have on the Finance Minority side an individual who goes through these and checks them out for members of the Minority just

to make sure there's no particular problems and there probably are no problems with this calendar, but I would like to put it aside until we have a chance to look at it, and I would like to know how it got to the floor and what committee supposedly reported it out.

ACTING PRESIDENT KUHL: Senator Bruno, Senator Gold has asked that the Resolution Calendar be temporarily laid aside until some procedural questions can be answered for him. What's your desire on that, sir?

SENATOR BRUNO: Mr. President and Senator Gold, can't we discuss this as we are progressing forward with the calendar rather than lay it aside?

SENATOR GOLD: Well, Mr. President -

SENATOR BRUNO: You mean you have comments and questions on -- that you'd like to direct to myself or to a member in the house?

SENATOR GOLD: Yeah. Well, Senator -

SENATOR BRUNO: And can we do

that appropriately now, Senator?

SENATOR GOLD: I would be glad to. Mr. President -

ACTING PRESIDENT KUHL: Senator Bruno, I thought -- if the Chair might just intercede here. I thought Senator Gold's request was to set this aside temporarily, take up the non-controversial calendar, and he can arrange to have a discussion with you and Senator Stafford and then come back to it.

SENATOR BRUNO: That's fine, Mr. President.

ACTING PRESIDENT KUHL: All right. Then, Senator Bruno -- Senator Goodman, would you like to offer up a privileged resolution which is at the desk at this time.

SENATOR GOODMAN: Yes, Mr. President, if I may.

ACTING PRESIDENT KUHL: I'll ask the Secretary to read the title.

SENATOR GOODMAN: Thank you, Mr. President.

THE SECRETARY: By Senator

Goodman, Legislative Resolution honoring the memory of Robert Russell.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Goodman.

Excuse me just a minute, Senator Goodman. It's awful noisy in here. Ladies and gentlemen, we have a lot of work to do today, a lot of work to do today.

Senator Dollinger, would you take your seat, please. May we have quiet in the chamber so we can hear the members.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: I appreciate the opportunity to speak on a resolution honoring the memory of Mr. Robert Russell who, as many of you will recall, was an intimate member of the Senate family.

Bob Russell was a long-time staff member of this body, and in -- his most recent work was heavily involved in the Committee on Arts and Cultural Affairs and in that capacity

made a legion of friends who have been in touch with our office since the day of his untimely death from cancer.

Bob Russell's quality and his experience have been amply set forth in the resolution which will be fully adopted by this body, but I would like to say that obviously the Senate can never reach its full capacity to function effectively on behalf of the people without the dedicated work of its senior staff members, and in Bob Russell, we had a member who did his work with loving diligence and with great attention to all of those with whom he came in contact.

It was Bob Russell who made it a point to be in touch with virtually every major cultural institution in the state, and it was Bob Russell who put their minds at ease during the attenuated process of grant certification and processing, which as we all know at times can be a very lengthy one indeed.

Bob Russell won us many friends. Bob Russell advanced the cause of culture in the

state of New York and is known by all as a friend of the arts.

I've just had the privilege of attending a ceremony in which the Egg has now been named after our beloved chairman of the state Council on the Arts, Kitty Carlyle Hart, who has just retired, and it's of interest to note that during that process, the name of Bob Russell came up more than once among many of the people who were there to honor Kitty Hart and also derivatively Bob Russell.

Mr. President, we're fortunate to have had him in our midst. We have reason to share great pride in his accomplishments on our behalf and on that of the people, and I believe this resolution will be one that will be long remembered by all of us who knew and loved him.

Thank you very much indeed.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the resolution?

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. I

would be remiss if I didn't rise to speak on behalf of this resolution and to provide the body with my remembrances of Bob Russell. Our offices -- my office and Senator Goodman's office are on the same floor, and a day did not go by when Bob Russell didn't come in to give me and the staff a greeting, a warm smile, an offer of assistance in any area that we might be interested in receiving his help from, and this was even during the time when he was extremely ill, and despite that illness which led to his untimely death, he never, ever complained. He continued to come to the office, smile and try to make everyone feel good about what they were doing for this Senate family.

Bob was a special person. I'll always remember him, and I know that our prayers -- his family are in our prayers and will continue to be.

ACTING PRESIDENT KUHL: Senator Larkin on the resolution.

SENATOR LARKIN: Mr. President, I had the privilege of knowing Bob Russell and his

family for over 20 years.

Bob Russell was the type of an individual that looked to see what he could do to help somebody else before he ever cared about himself. When you start to look at what he did in his local community, his benefits to community service, he was always there, whether it was a Monday or a Sunday. Bob Russell carried on a tradition of his own family and his children with him.

Bob Russell came back and forth here to Albany on many days when any other person here would have stayed home and said "It's over." He carried on because he cared.

Bob Russell was an individual, if you met him just once, you'd never forget him because you'd come away with the feeling of there's an individual that cares about every human being.

Bob Russell, may his soul rest in peace.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the

resolution?

(There was no response.)

Hearing none, the question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

Senator Goodman, why do you rise?

SENATOR GOODMAN: It should be opened up for co-sponsorship from any member of the house.

ACTING PRESIDENT KUHL: Are there other members that would like to be on the resolution for co-sponsorship?

(There was a show of hands.)

Seeing everybody raise their hands, Senator Bruno, would it be permissible to put everybody on the resolution except those people who do not wish to be on the resolution?

SENATOR BRUNO: No objection.

ACTING PRESIDENT KUHL: If there is anybody, indicate to the desk. That would be the procedure.

Senator Bruno, that brings us to the calendar, unless you have the issue resolved relative to the Resolution Calendar.

SENATOR BRUNO: Mr. President - Mr. President, can we at this time call for an immediate meeting of the Crime and Corrections Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Crime and Corrections Committee in the Majority Conference Room, Room 332. Immediate meeting of the Crime and Corrections Committee, Majority Conference Room, Room 332.

Senator Gold, why do you rise?

SENATOR GOLD: Yeah, Mr. President. I've had an opportunity to talk to Senator Stafford and to examine the Resolution Calendar, and I understand there was a technical glitch. No harm done. I'm assured by Senator Stafford we can try to avoid this in the future,

and there certainly is no objection to the items on the calendar. So we could take those up if you so please.

ACTING PRESIDENT KUHL: Senator Bruno, is it your motion to move the Resolution Calendar at this time?

SENATOR BRUNO: Yes, Mr. President, with the exception of Resolution 3161 and 3210.

ACTING PRESIDENT KUHL: The motion is to adopt the Resolution -- Resolution Calendar with the exception of Resolutions Number 3161 and 3210. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President, can we at this time take up Resolution Number

3161 by Senator Owen Johnson.

ACTING PRESIDENT KUHL: I'll ask the Secretary to read the title to calendar - to Resolution Number 3161.

THE SECRETARY: By Senator Johnson, Legislative Resolution commemorating May 2nd, 1996 as a "Day of Prayer" in New York State.

ACTING PRESIDENT KUHL: Senator Johnson, on the resolution.

SENATOR JOHNSON: Mr. President, as you heard, it's the "Day of Prayer" in New York State. It's a national event in many states. Even the President has presided, as the Governor did, at a National Day of Prayer meeting today.

I'd like to open this up -- we've done it many years. I'd like to open this up to all the members of the Senate for co sponsorship.

ACTING PRESIDENT KUHL: Senator Johnson is opening up the resolution on the floor to the members. Are there members who

would like to be on the resolution?

(There was a show of hands.)

Seeing a lot of hands, Senator Johnson, do you have any objection to putting all the members on with the exception of those who do not wish to be on, if they would so indicate to the desk?

(Senator Johnson nods head.)

All the members will be included. The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Resolution Number 31 -- 3210 by Senator Stachowski.

ACTING PRESIDENT KUHL: I'll ask the Secretary to read the title to Resolution Number 3210.

THE SECRETARY: By Senator

Stachowski, Legislative Resolution commemorating April 29th, 1996 as "Workers Memorial Day" in the state of New York in remembrance of those who have imperiled their health and safety or sacrificed their lives in the performance of their work.

SENATOR STACHOWSKI: Mr. President, this resolution -

ACTING PRESIDENT KUHL: Senator Stachowski.

SENATOR STACHOWSKI: -- is to show that not only do we honor but we remember all those working men and women that do their dedication or their hard work. They have given their lives for the cause of working men and women, and that we want to make sure that this state is always remembered as "Workers Memorial Day", and that I think it's a resolution that we should adopt, and it's very important to the working men and women as a sign that we recognize this contribution to society, and I would like to open this resolution up to all the members in the body.

ACTING PRESIDENT KUHL: Senator Stachowski has opened up the sponsorship of the resolution. Are there members who would like to be on the resolution with Senator Stachowski?

(There was a show of hands.)

Seeing most of the members, if they would -- we'll put all the members on the resolution, Senator Stachowski, except for those who wish not to be.

The question is on the adoption of Resolution 3210. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the non controversial calendar.

ACTING PRESIDENT KUHL: The Secretary will read the non-controversial calendar.

THE SECRETARY: On page 14, Calendar Number 386, by Senator Lack -

SENATOR BRUNO: Lay it aside at the request of the sponsor for the day.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of the sponsor for the day.

THE SECRETARY: Calendar Number 603, by Member of the Assembly Greene, Assembly 8466, an act to amend the Banking Law, in relation to eliminating certain restrictions upon junior mortgage loans.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

604, by Senator Farley, Senate Print 6220, an act to amend the Banking Law, in relation to the liquidation of investment companies.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 619, by Senator Marcellino, Senate Print 4425, an act to amend the Penal Law, in relation to criminally negligent homicide.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 622, by Senator Saland, Senate Print 6023, an act to amend the Civil Practice Law and Rules, in relation to orders of protection and temporary orders of protection.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 630, by Senator Skelos, Senate Print 6539, an act to amend the Vehicle and Traffic Law, in

relation to the sale of vehicles by the United States government at auction.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 632, by Senator Levy, Senate Print 6593, an act to amend the Railroad Law, in relation to sanitary conditions.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 634, by Senator Rath, Senate Print 6622-A -

SENATOR WALDON: Lay it aside.

THE SECRETARY: -- an act to amend the Vehicle and Traffic Law, in relation to mandatory -

SENATOR GOLD: Lay it aside at the request of Senator Waldon.

THE SECRETARY: -- of licenses.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 635, by Senator DiCarlo, Senate Print 6643-A, an act to amend the Vehicle and Traffic Law -

SENATOR WALDON: Lay it aside.

THE SECRETARY: -- and the Penal Law, in relation to the sentence for leaving the scene of an incident.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 693, by Senator Volker -

SENATOR GOLD: Lay it aside.

THE SECRETARY: -- Senate Print 4799-A, an act to amend the Penal Law, in relation to including certain obscenity crimes in definition of criminal act.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 695, by Senator Leibell, Senate Print 5910, an act to amend the Civil Practice Law and Rules, in relation to registrations to do business with the county of Putnam.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 788, by Senator Maltese, Senate Bill 6901-B, an act to amend the Penal Law, in relation to the crime of partial birth abortions.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Bruno, that completes the non-controversial calendar.

SENATOR BRUNO: Mr. President, can we at this time take up the controversial calendar.

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar beginning with Calendar Number 634.

THE SECRETARY: On page 26, Calendar Number 634, by Senator Rath.

SENATOR BRUNO: Lay it aside at the request of the sponsor.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

635, by Senator DiCarlo, Senate Print 6643-A, an act to amend the Vehicle and Traffic Law and the Penal Law, in relation to the sentence for leaving the scene of an incident.

SENATOR WALDON: Explanation, please.

ACTING PRESIDENT KUHL: Senator DiCarlo, an explanation of Calendar Number 635 has been asked for by Senator Waldon.

SENATOR DiCARLO: Yes, Mr. President. The purpose of my legislation is to require a mandatory minimum period of imprisonment of two years for a motorist who, having been involved in an accident resulting in death or serious injury, leaves the scene without stopping or reporting the accident, although he or she had cause to know that a serious injury or death was likely.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Would the gentleman yield to a question or two?

ACTING PRESIDENT KUHL: Senator

DiCarlo, do you yield to a question from Senator Waldon?

SENATOR DiCARLO: Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: Senator DiCarlo, in putting together this proposal, did you take into consideration that for the few moments post-accident, many people who have been involved in an accident are so traumatized by what happened that they are in a dysfunctional state?

SENATOR DiCARLO: Well, I'm not going to say what's on somebody's mind, but the purpose clearly is if the person should have known -- should have known that serious injury or death had occurred, they should report it. So I don't know if that answers your question about the state of mind.

SENATOR WALDON: May I continue, Mr. President?

ACTING PRESIDENT KUHL: Senator DiCarlo, you're through with your answer?

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: Senator Waldon, the floor is yours.

SENATOR WALDON: Senator, I'm not being frivolous in the questions. I'm just concerned about a real situation I know of that happened which almost parallels what you're proposing, where a young school teacher, a high school teacher, mother of two children, a pillar of our society who was involved in a very serious accident, and for the few moments post the accident in a complete state of panic, if you will, ran away from the scene of the accident. Later on she gained control, meaning she regained her self-composure and then took all of the necessary steps. My concern is, is there a cutoff point where someone who may, from the impact and the trauma of the accident, panic and run, do they have a chance to cure that panic and that immediate trauma?

SENATOR DiCARLO: Is that a question?

Senator, if that's another

question, I'll try and answer it. There are provisions within my legislation where it would not be a mandatory two years imprisonment if found guilty. If a person had no record - prior record in this area, then the judge could take into consideration somebody with a clean record in this area and not impose the mandatory two.

SENATOR WALDON: Okay.

Thank you very much, Mr. President. Thank you very much, Senator DiCarlo.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill?

Senator Lachman.

SENATOR LACHMAN: I have a question for Senator DiCarlo.

ACTING PRESIDENT KUHL: Senator DiCarlo, do you yield to Senator Lachman? The Senator yields.

SENATOR LACHMAN: Senator DiCarlo, what if there were three or four vehicles involved in the accident, and the

driver and occupants of the third and fourth vehicle weren't directly involved in this accident except as innocent bystanders?

SENATOR DiCARLO: To answer your question, in the bill, the person who left would have had to have cause to know that death or serious injury had occurred. So the person who was just caught up in a five-, ten- or fifteen car accident who then left, I don't believe they would have known or would have had cause to know that a serious accident, injury or death had occurred. So I think in your case, I don't think there would be a prosecution under the statute.

SENATOR LACHMAN: There would not be a prosecution?

SENATOR DiCARLO: I don't believe there would because there had to have been the knowledge of it.

SENATOR LACHMAN: Thank you.

SENATOR DiCARLO: You're welcome.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

(There was no response.)

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 693, by Senator Volker, Senate Print 4799-A, an act to amend the Penal Law, in relation to including certain obscenity crimes in definition of criminal act.

SENATOR WALDON: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of the bill has been asked for by Senator Waldon.

SENATOR VOLKER: Mr. President, this is a bill that has passed this house on several occasions before that would include pornography or certain obscenity crimes in the definition of the Organized Crime Control Act.

Some of us believe that during the passing of the Organized Crime Control Act that one of the areas that should have been included is the area of pornography or obscenity, and what this bill simply does is to add the obscenity area into the Organized Crime Control Act.

ACTING PRESIDENT KUHL: Senator Waldon.

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

Senator Volker -

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Thank you very

much, Mr. President. Senator Volker, I thank you.

Senator, I'm concerned. Why are we putting this under the penumbral zone of OCCA? I mean, we have lots of obscenity statutes, and we deal with this so carefully and so clearly in other ways. Why are we laying this, if you will, at the doorstep of organized crime?

SENATOR VOLKER: Senator, the reason for it is that it is pretty obvious -- it became very obvious to us in this when we first introduced this statute, the bill certain years ago. There were a number of instances where prosecutors had determined that organized crime was involved in the pornography area, and it seems -- you asked the question of, there are a lot of other crimes and why should we add this one? I think the answer is why shouldn't it be there? If organized crime is participating in the spreading of pornography, then I think that this crime ought to be included because, as you know, it provides certain additional crimes and

flexibilities, and I think it's something that should be done.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: One last question, if I may, Mr. President.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator, this - in your opinion, does this in any way mitigate the applicability of our statutes on the books now in regard to obscenity and, if no, then is there no duplication involved here in regard to OCCA matters?

SENATOR VOLKER: I don't think there's any duplication as such. I just think that it gives the -- the ability when dealing with organized crime to deal with another piece of what organized crime has been involved with.

I know, Senator Waldon, you're

well aware as I am that there is a -- a major organized crime problem in this state. I think you could argue in some ways it's not as great as it was some years ago, but it's still a major problem, and it just seems as if that -- as we are dealing with the issue of organized crime, that we should deal with it in the most unified matter possible, and adding obscenity to the list of those crimes as part of that effort just seems logical to me.

SENATOR WALDON: Last question, if I may, Mr. President.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield? The Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President.

Senator Volker, last question. I apologize. I thought the last one was the last one. Is there a companion bill in the Assembly and, if not, have you worked on conforming what the Assembly is doing so that it will parallel what you're proposing to us for consideration -

to us for consideration?

SENATOR VOLKER: Senator, there is a companion bill in the Assembly, and it's a Rules bill, I believe by Assemblyman Robach, and I think he sponsored this bill for several years, and we are trying to deal with the Assembly on this issue, and this and a number of issues, we would hope that this year will be resolved before the end of this year.

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

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 788, by Senator Maltese -

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: I'm voting no on that bill, 693.

ACTING PRESIDENT KUHL: You wish to be recorded in the negative on Calendar Number 695 -- excuse me -- 693?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT KUHL: Okay. Without objection.

(There was no response.)

Hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 693.

Senator Smith, you wish to be recorded in the negative on Calendar Number 693 also?

(Senator Smith nods head.)

Senator Waldon?

(Senator Waldon nods head.)

Without objection.

(There was no response.)

Hearing no objection, Senator Smith and Senator Waldon will be recorded in the negative and Senator Gold in the negative on Calendar Number 693.

Is there any other Senator wishing to be recorded in the negative on Calendar Number 693?

(There was no response.)

Announce the results.

THE SECRETARY: Ayes 54, nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 788, by Senator Maltese, Senate Print 6901-B, an act to amend the Penal Law, in relation to the crime of partial birth abortion.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of Calendar Number 788 has been asked for by the Minority Leader, Senator Connor.

SENATOR MALTESE: Mr. President, we have before us a bill that is somewhat unique in that it establishes the crime of partial birth abortion, and it is a bill that has been termed by people on opposite sides of the issue as either pro-life or anti-choice or anti-abortion.

It is unique in that it is an abortion bill that is not in reality an abortion bill but a bill that seeks to prevent something very akin to homicide. The bill itself is a - is substantially similar or almost identical to the Congressional bill that -- H. R. 1833 which was passed overwhelmingly by both the Congress and the United States Senate with both Democrat and Republican support.

The bill would ban abortions that are performed by a physician who delivers a

living fetus into the vagina and then and only then kills the fetus.

The bill specifically defines a partial birth abortion as an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery. Physicians who violate this law would be subject to criminal penalties, but no penalty could be applied to the woman who obtained such an abortion.

This specific procedure, partial birth abortion, is often used for second trimester abortions from 20 to 24 weeks, four and a half to five and a half months. It is - it can be used in the third trimester, and in some cases is performed up until the ninth month.

The procedure itself, I'll get to in a moment, but what I'd like to mention is that this procedure has been considered by physicians across the state but also across the country, and by and large, very few physicians

have supported the procedure or performed the procedure.

The American Medical Association -- the National Council on Legislation of the American Medical Association, consisting of 12 members specifically chosen for this reason, voted unanimously to recommend the AMA endorsement of the original Congressional bill.

The council is made up of 12 physicians of different specialties who are charged with studying proposed federal legislation with respect to its impact on the practice of medicine.

A member of the council has publicly stated that this was not a recognized medical technique and that the procedure is basically repulsive. However, meeting in October, the AMA Board of Trustees divided on their recommendation -- and that's the board of trustees which is composed of approximately 25 -- and they voted to take no position. So we had a situation where their council was unanimously for the legislation and the parent

executive body voted to take no position.

Now, as far as its similarities or why we have before us a "B" print, the bill was originally modeled after the Congressional version of the partial birth abortion bill sponsored by Bob Canaday of Florida, and that bill contained two sections, one section of which related to imposing civil liability on the physician. Our version did not have that civil liability on the physician. The second portion required that the physician come forward and use as an affirmative defense that he had performed the procedure in order to protect -- in order to save the life of the mother.

We, on the "B" version -- and that was the reason for this delay 'til today - we did what I, as a former prosecutor and deputy chief of the homicide bureau, consider an improvement on the bill, we did here in New York in the state Senate, what was done to the Congressional bill by the Senate under the sponsorship of Senator Brown and Senator Dole, and they removed that requirement for the doctor

to come forward with the -- with the affirmative defense.

Thus, the bill is very simple, very spartan in its terms. It simply indicates "the provisions of this section shall not apply to a partial birth abortion performed by a duly licensed physician that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness or injury where no other medical procedure would suffice for that purpose."

I'd like to now read -- we had a press advisory yesterday, Mr. President, where we had with us -- and I believe she may be in the balcony at this time -- a nurse, Brenda Pratt Shafer, and Nurse Shafer speaks from a unique perspective. She had the occasion to be present during the performance of a partial birth abortion by a physician -- or an alleged physician who has made it his specialty to perform these -- this particular procedure, and I'll let Brenda Shafer's words speak for herself as to this procedure.

"In September '93, Brenda Pratt Shafer, a registered nurse with 13 years of experience was assigned by her nursing agency to an abortion clinic. Since Nurse Shafer considered herself very pro-choice, she didn't think the assignment would be a problem. She was wrong." This is what Nurse Shafer saw and said. "I stood at the doctor's side and watched him perform a partial birth abortion on a woman who was six months pregnant. The baby's heart beat was clearly visible on the ultrasound screen. The doctor delivered the baby's body and arms, everything but his little head. The baby's body was moving. His little fingers were clasping together. He was kicking his feet. The doctor took a pair of scissors and inserted them into the back of the baby's head, and the baby's arms jerked out in a flinch, a startled reaction like a baby does when he thinks that he might fall. Then the doctor opened the scissors up. Then he stuck the high-powered suction tube into the hole and sucked the baby's brains out. Now the baby was completely limp. I never went

back to the clinic, but I am still haunted by the face of that little boy. It was the most perfect, angelic face I have ever seen."

Now, opponents of my legislation may say, well -- make all types of allusions to Nurse Shafer, who I want to say right here and now is a very brave, courageous woman to come forward and testify as she did before Congress and to come here to New York too, so that we could have the benefit of her thoughts, but the opponents of the bill might very well say, Well, that was Brenda Shafer. She's changed her mind. Who knows what pressures she was under and what have you.

Well, that infamous physician, Dr. Martin Haskell, who pioneered this system, had occasion to present a paper to a fall risk management seminar in September of 1992 in Dallas, Texas and the topic of the seminar sponsored by the National Abortion Federation was Second Trimester Abortion from Every Angle, and we have in the table of contents second trimester D & X, 20 weeks and beyond.

I do want to indicate that at this point, the -- what we are now going to label in the Penal Law as partial birth abortion is termed by most physicians D & X. There are two procedures which D & E, which is the most commonly used, dilation and evacuation, and this D & X procedure which is dilation and extraction -- extraction, if you will, of the -- the still -- the fetus, and this is Dr. Haskell's paper presented at the National Abortion Federation. It's not a very lengthy paper, but I'll leave out portions which are very medical about the specific medicinal treatments and what have you.

The surgical method in this paper differs from classic D & E in that it does not rely upon dismemberment to remove the fetus nor are inductions or infusions used to expel the intact fetus. Rather, the surgeon grasps and removes a nearly intact fetus through an adequately dilated cervix. The author has coined the term "dilation and extraction", so he lays claim to the terminology, or "D & X" to

distinguish it from dismemberment type D & Es.

This procedure can be performed in a properly equipped physician's office under local anesthesia. It can be used successfully in patients 20 to 26 weeks in pregnancy. The - he refers at this point to a doctor who has - or a physician who has gone to meet his maker in October, Dr. James T. McMahon, who wrote a letter to Dr. Haskell, and in his letter he states, "Coupled with other refinements and a slower operating time, I performed these procedures up to 32 weeks or more." The author in his paper, Dr. Haskell now, states, "The author has performed over 700 of these procedures with a low rate of complications. The author -- patient selection. The author routinely performs this procedure on all patients" -- that's elective, as well as emergency of any type -- "20 to 24 weeks LMP, last menstrual period, with certain exceptions. The author performs the procedure on selected patients 25 through 26 weeks LMP. Dilation and extraction takes place over three days. In a

nutshell, D & X can be described as follows:" and then he lists "Day 1, dilation." The procedure -- and if we put it in context with those who would say that the procedure can be engaged in to save the life of the mother in an emergency situation, we have to put in context the fact that in every single description of this procedure, including this one where Dr. Haskell is spelling it out for the edification of fellow physicians, requires three days. "Day 1, dilation. Day 2, more dilation and after day 2" -- now, this is an out-patient procedure - "the patient returns home or to a motel overnight. Day 3, the operation."

Now, lest you think that Nurse Shafer exaggerated, this is the doctor describing the procedure for his fellow surgeons in this recommendation. "The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus locating the lower extremities. This scan provides the surgeon information about the orientation of the fetus and approximate location of the lower

extremities. The transducer is then held in position over the lower extremities.

"The surgeon introduces a large grasping forcep, such as a Bierer or Hern, through the vaginal and cervical canals into the corpus of the uterus. Based upon his knowledge of fetal orientation, he moves the tip of the instrument carefully towards the fetal lower extremities. When the instrument appears on the sonogram screen, the surgeon is able to open and close to firmly and reliably grasp a lower extremity." Lower extremity, of course in medical terms, one of the baby's legs. "When the instrument appears on the sonogram screen, the surgeon is able to open and close the jaws. The surgeon then applies firm traction to the instrument, causing a version of the fetus (if necessary) and pulls the extremity into the vagina.

"By observing through the sonogram the movement of the lower extremity" - so the legs are moving at the time -- "and version on the fetus on the ultrasound screen,

the surgeon is assured that his instrument has not inappropriately grasped a maternal structure.

"With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities. The skull lodges at the internal cervical os. Usually there is not enough dilation for it to pass through" -- usually, he says. I'll refer to that later. "The fetus is oriented dorsum or spine up", so with legs down.

"At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and 'hooks' the shoulders of the fetus with his index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. The middle finger lifts and pushes the anterior cervical lip out of the way.

"While maintaining this tension,

lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip curved down along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

"Reassessing proper placement of the closed scissor tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissor to enlarge the opening.

"The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With this catheter still in place, he applies traction to the fetus, removing it completely from the patient." That's in Dr. Haskell's own terminology, his own description.

Now, in the course -

ACTING PRESIDENT KUHL: Senator

Maltese, excuse the interruption.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Will Senator Maltese yield to a question?

SENATOR MALTESE: No. I'll yield at the proper time, and I'll give Senator Dollinger all the time he will -

SENATOR DOLLINGER: Mr. President, even if it deals with the supposed testimony of Nurse Shafer?

ACTING PRESIDENT KUHL: Senator Dollinger, Senator Maltese has the floor and he has refused to yield at this time.

Senator Maltese, the floor is yours.

SENATOR MALTESE: Mr. President, as in any emotional issue, there have been figures tossed around by people on both sides. I have here a statement from the state of New York Department of Health, dated April 22nd, 1996, and the table refers to abortions in New York State alone for 1993, the last year that

figures were available, and the tables from the New York State Department of Health indicate that in New York State, there were 157,891 abortions performed. Out of that 157,000, approximately -- well, approximately - according to this exactly, 3,217 were post-20 weeks.

The report further goes on to indicate -- by the way, out of that 157,000 in New York State, lamentably 110,000 were from New York City.

The report then goes on to describe the amounts for the individual -- the four procedures, dilitation and curettage, they have 8,915; suction curettage, 139,438; dilation an evacuation, 21,358 and of that figure - saline injection was somewhat less, but of that figure, 20-plus, they have the figure at 2,398 20 weeks or more.

Now, one of the problems is that there is no reliable number available for the amount of abortions that this bill would seek to prevent. The numbers that have been, in some

cases, tossed around, are somewhere from 400 to 800.

I simply wish to point out that with that amount of abortions and the amount of abortions performed in New York City and New York State -- that figure, by the way, to New York State is approximately ten percent of the entire million and a half abortions that are performed nationwide on an annual basis. The fact that Dr. Haskell proudly boasts that he has used a partial birth abortion procedure over 700 times and -- I have a letter here from a Dr. William K. Rashbaum who was -- who has offices at 208 East 72nd Street in Manhattan. It is a letter that was directed to the honorable Charles Kennedy, the sponsor of this legislation, opposing the legislation, and he speaks of -- that he wishes them to reconsider the bill, but then he states, "My colleagues and I have completed over 19,000 abortions - procedures -- I'm sorry -- since we began." I have to go back and read the prior sentence. "I started performing and teaching dilation and

evacuation techniques in 1978. My colleagues and I have completed over 19,000 procedures since we began. We have done the D & X." - that's the dilation and extraction method - "that is under consideration in the bill routinely since 1979."

So, again, I submit that with that amount of abortions, the amount that Dr. Haskell had indicated he has performed -- and this is strictly with reference to the D & X, the dilation and extraction -- that the number would have to be in excess of the 400 per year figure performed nationwide, and we still had no indication of an exact number. I submit, of course, as the sponsor of this procedure that one in New York State is too much.

The -- there have been statements made, I know, and as in every issue, whether you find doctors on either side of an issue, physicians take positions that are for or against or what have you. The -- as I mentioned earlier, the council that had been empowered by the medical association found the procedure,

while they didn't use that terminology, repulsive or repugnant, but I'd like to -- and just recently, the Pope, Pope John Paul II, and cardinals and bishops took a position on this issue that is both a medical, legal and certainly a moral issue. They don't need my approval one way or another or my approbation, but I certainly feel that if there's any issue that the clergy is entitled -- in fact, obligated to speak out on, it is the issue of abortion per se and certainly this specific procedure.

Now, with reference to this specific procedure, Pope John Paul II, when he referred to President Clinton's veto of substantially the same bill, simply -- and I'll read only one line, "called the veto a shameful veto that in practice is equivalent to an incredibly brutal act of aggression against inhuman --" I'm sorry -- "against innocent human life and against the inalienable human rights of the unborn. The veto legalizing the inhuman procedure endangers morally and ethically the

future of the society that allows it."

Now, some may say that, Well, the Pope is in the Vatican, and so on, somewhat removed, although apparently he seems closer to the issue than many of our legislators, whether they be in Washington or in New York. I have a letter April 16th which was written to President Clinton by eight cardinals from the United States of America, including our own Cardinal John O'Connor. I won't read it. It echoes the Pope's -- although three pages long, it has many, many valid arguments.

I would like to read, since I am from Queens County and represent the people in Queens, the brief statement by Bishop Daly, the bishop of the Diocese of Brooklyn and Queens.

"The President's lamentable decision to veto legislation that would have terminated partial birth abortions goes contrary to sentiments of a vast majority of Americans. It calls for a response that will radically diminish its effect. At issue is an act performed by a physician that is inhumane and unsupportable for

any reason. 'Barbaric' is a strong word, but how else does one characterize a surgical procedure so gruesome that one winces on hearing it described? This explains why a recent poll identified 71 percent of Americans as opposed to it. 70 percent of the House -- of the members of the House and 54 percent of the Senate voted to ban the procedure. A measure introduced in the state Legislature would ban the procedure in New York. We urge the faithful to contact their respective legislators among the 15 Senators and 36 Assemblypersons representing constituents in Brooklyn and Queens and urge them to support the legislation. The attacks on the sanctity of life, a gift given to us by Almighty God, have become unrelenting. We must continue to be persistent in supporting life and returning to a culture of life. Let us invoke God's help as we work to preserve life from conception to natural death.".

Now -- and, by the way, this is not a Catholic issue. We have had statements made by many prominent Protestant and Jewish -

THE PRESIDENT: Senator Mendez, why do you rise?

SENATOR MENDEZ: I was wondering if Senator Maltese would yield for a question, a short one.

THE PRESIDENT: Senator Maltese, do you yield for a question?

SENATOR MALTESE: I have great respect for Senator Mendez, but I would prefer to make my statement and then yield.

SENATOR MENDEZ: Okay. Thank you.

SENATOR MALTESE: Thank you.

THE PRESIDENT: Senator Maltese, you have the floor.

SENATOR MALTESE: There have been many points made on this legislation, and one of the arguments made in opposing the legislation is that speaking on behalf of the mother and speaking -- presuming to speak on behalf of the fetus or the unborn child, and the arguments have been made that the fetus, during this procedure, does not feel pain, and the -- the

Planned Parenthood Association has circulated a so-called FAX sheet "When Does the Fetus Die", and that FAX sheet indicated that the fetus dies of an overdose of anesthesia given to the mother. These claims were contradicted, not by some pro-lifer, but by Dr. Haskell himself in July 1993. When asked by the American Medical Association's newsletter whether or not the fetus is dead before it enters his patient's birth canal, the doctor responded without hesitation, "No, it's not. No, it's really not", he said. "A percentage are. Probably about one-third of those are definitely dead before I actually start to remove the fetus and probably the other two-thirds are not.".

A clinical paper Haskell submitted in 1992 exactly tracks Nurse Shafer's account of his methods, and it goes on and speaks of -- speaks of the methods.

In addition, the -- Dr. James McMahon who I referred to earlier and who passed away in October of this past year, the other foremost practitioner of this art, indicated in

a defense of his procedure, "The fetus feels no pain", he wrote in a letter to the House Judiciary Committee. "This is because the mother is given narcotic analgesia that passes directly into the fetal blood stream. The result, a medical coma is induced in the fetus. This is neurological fetal demise. There is never a live birth."

Plainly, in addition to a lot of other things, the doctor is a liar. "Against this suggestion" -- or was -- "against this suggestion and with great heat, though little press coverage, the nation's anesthesiologists have rebelled. Dr. Norig Ellison, president of the American Society of Anesthesiologists, called the McMahon letter entirely inaccurate in House testimony last month. 'In my medical judgment, it would be necessary in order to achieve neurological demise of the fetus in a partial birth abortion to anesthetize the mother to such a degree as to place her own health in serious jeopardy.'

Dr. David Birnbach,

president-elect of the Society of Obstetrics, Anesthesia and Perinatology concurred. "If Dr. McMahon was using massive lethal doses of anesthesia during partial birth abortions, he was also definitely placing the mother's life at great risk, and this is absolutely not an acceptable medical practice ", in quotes. "Dr. Ellison said it was a gross misconception that a human fetus feels no pain during partial birth abortions."

The last statement that I think is relevant is that "another witness at last month's hearing, the director of pediatric care at Atlanta's Emery University put it, "this procedure, if it was done on an animal in my institution, would not make it through the institutional review process."

By the way, both the prior physicians -- anesthesiologists were both labeled as pro-choice. In addition, we hear that, Oh, this is to protect the life of the mother. Despite the statement -- the bare-faced statement by Dr. Haskell that 80 percent are

elective, in addition to that, we have -- Dr. Haskell has written that, as I mentioned before, he routinely performs such abortions with limited exceptions and then stated in July of '93, "Most of my abortions are in the 20- to 24-week range. In my particular case, probably 20 percent are for genetic reasons and the other 80 percent are purely elective." Before he died, Dr. McMahon reported that a plurality of what he called non-elective partial birth abortions for reasons of maternal health involved a mother's depression. His most common non-elective fetal indication was Down's syndrome. He sometimes performed the operation because the baby had a cleft palate, and by the way, earlier today at a press conference, Assemblyman Tedisco spoke about his own personal family experience where, in his family, a brother was a victim of Down's syndrome and that he -- he was a valuable addition to the family and performed according to God's expectation of what a life should be.

So then we have safety. "Is

partial birth abortion ever the safest, necessary procedure in a late-term abortion?" Dr. Warren Hearn, author of Abortion Practice, the Standard American Abortion Textbook and a specialist in abortion -- in late abortions says, "No. I have very serious reservations about this procedure." He told the American Medical News in November. "You really can't defend it. I'm not going to do it and I wouldn't -- I would dispute any statement that this is the safest procedure to use." Quite the contrary. Dr. Hearn, believes it to be potentially dangerous.

Now -- and then we have an additional statement by a Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, saying, "Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure."

While I speak about Down's syndrome and we hear what are admittedly very

pitiful, painful stories of women who come forward and testify to some of the abortions that they have undergone, I believe in many of those cases, if the abortionists were not so eager to perform the abortion, there would perhaps be a different result.

This morning, members of my staff spoke to Dr. Stephanie Rifkinson, a pediatric neurosurgeon at St. Agnes Hospital in White Plains, and she spoke of hydrocephalus, and that is the abnormal accumulation of water in the brain that we heard -- or some of us heard or read during the Congressional testimony was one of the rationales put forth to undergo this procedure. She made this statement: "Hydrocephalus is curable in a majority of cases. They end up living normal lives with a 95 percent or better IQ." As far as an encephalitic baby, that's where -- one where the brain protrudes. There -- if the baby lives through the initial procedure, there is a good prognosis and it can survive. In her opinion, there is no risk to the mother to carry the

fetus. Risk is in the delivery because the mother would have to deliver cesarean.

She also indicates that in her experience, personal experience, hydrocephalus is curable by inserting a shunt to bypass the blockage, and again, in her opinion, many abortion decisions made are made without consulting a neurosurgeon to determine if her abnormality is curable and the fetus or baby can lead a normal life.

And just on the medical testimony with reference to the feeling of the fetus. There's no question. It's not even, I think, controverted in any way. At 14 weeks, the heart pumps several quarts of blood through the body of the fetus every day. A 12-week, unborn baby in the opinion -- and I have a list of physicians, Landrum B. Schettles, M.D., Ph.D., Daniel N. Robinson, Ph.D., Hearing on Fetal Pain, Arthur C. Guiden, M.D., Textbook on Medical Physiology, and they say a 12-week-old, unborn baby, not 20 weeks, 12 weeks, 8 weeks before has developed the body parts required to

experience pain, including all the nerves, spinal cord and thalamus.

Now, what do we have before us today? We have a very critical decision. This is not just an ordinary bill. It simply is not. I realize and many of us here realize that there are arguments on both sides of the issue. The House of Representatives and the Senate who were confronted with the very same question, and the House of Representatives by more than a two to one margin passed the bill. The bill won support from more than a few lawmakers who generally favor abortion. It won support from 73 Democrats and 215 Republicans, 37 percent of voting Democrats, 93 percent of Republicans. Nearly one-third of the women in the House, 15 of 47, including Representative Susan Molinari of Staten Island who has labeled herself pro-choice, Democratic Leader Richard Gephardt, Democratic Whip David Bonier, Representative John Dingell, Ranking Democrat -- who is Ranking Democrat on the Commerce Committee - Representative Lee Hamilton, Democrat,

Representative Dave Obey and Congressman Patrick Kennedy, the son of Edward Kennedy.

Now, this came up in the Rules Committee, and we had an opportunity to speak about it and, quite honestly, we did not have the opportunity to go through the absolute masses of material that we had at that time and that was submitted to us subsequently. Material has come, not only from New York, but other states in the Union, probably -- or primarily because of the bill being before the Washington, D.C. Congress. The fact that President Clinton vetoed the bill means that the Senate which passed the bill only by 54 to 44 will not be able to override, although the House could probably do so.

The issue is before us now. There may be arguments made, Well, one of the prime sponsors in the lower house, the Assembly is -- is Assemblyman Manning and he's a Republican and politics dictates that it's going nowhere. At the same time, another prime co-sponsor is Joe Robach, and he is a Democrat.

There are -- I have been advised that other Democrats are getting on the bill, despite considerable pressure not to do so.

This is, and absolutely as described by Bishop Daly and others, a gruesome procedure. It is an abhorrent procedure, a barbaric procedure as described by our Majority Leader. It's not something that should be permitted in civilized society. Make no mistake about it. When you sift through Nurse Shafer's testimony and sift through Dr. Haskell's clinical descriptions, what you come up with is a baby that is, in some cases viable, and viable now has gone down to about 22 weeks, so there's no question that in many cases it's viable, that -- and viable is capable of sustaining life outside the womb at the time of birth -- that this is brought down through the birth canal, totally extruded from the vaginal canal, except for the head, and I was assured yesterday by - by, I think it was Dr. San Filippo, various doctors have spoken to us about this, and they are to be commended for coming forward, that in

some cases, the pressure of the abortionist is the only thing that keeps the head in the birth canal so that the scissors can be stuck right through into the back of the head.

So we have a situation that I, quite frankly, think is akin or very close to a homicide, not something that should be -- at any event should be practiced in civilized society, not something that we here in New York should permit or condone by your vote today, perhaps because of politics or what have you -- and hopefully the Assembly would see it differently -- perhaps it may not become law, but we can take a stand right here and now to do something that condemns this barbaric procedure so that no reputable physician will ever perform it in the future.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR DOLLINGER: Point of order.

SENATOR CONNOR: I believe I have the floor, and I asked Senator Maltese -

THE PRESIDENT: I have a list.

SENATOR CONNOR: Excuse me, Madam President. I asked Senator Maltese for an explanation. That means I have the floor and he yielded -- yielded for his explanation. He yielded to give an explanation as the sponsor. I believe that's the parliamentary procedure.

THE PRESIDENT: Senator, I have the list of speakers, and Senator Bruno is next on the list.

SENATOR CONNOR: Madam President. Lists? I already have the floor is my point, Madam President. I suggest you consult the parliamentarian.

I am perfectly happy to yield to Senator Bruno, but I had the floor and asked Senator Maltese for an explanation.

THE PRESIDENT: I believe Senator Bruno has the floor.

SENATOR CONNOR: Point of order, Madam President. I have the floor. I'm happy to yield to Senator Bruno, but I suggest we follow parliamentary procedure, not lists.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President. Senator Connor. Thank you very much.

Thank you for the courtesy, Madam President. And I believe, Senator Connor, procedurally, you are correct, and we want to follow the correct procedures in this chamber, certainly.

I ask your indulgence here because I have to leave not because I'm not interested in what is here but we have a meeting with the Governor and some others that was supposed to be at 3:00, and it was delayed, and we're going to leave here and do some of the other things that we have to get done today.

But I wanted to speak to this issue, Madam President, and Senator Maltese said all of the things that should be said and could be said on this issue. I want to make a point, in that, while I am pro life and have been in my career in public office, this issue is on the floor of the Senate not as a pro life issue, not as an anti-choice issue, but as an issue of what

is right and what is wrong. What is right and what is wrong? And I respect people who advocate the pro choice position. I respect what they have to say. I don't agree with what their thoughts are on the issue, but I respect their right of choice.

But this is an issue that goes beyond the question of pro choice or pro life. This is an issue of decency, of humanity, and Senator Maltese said it right. One death in a partial birth is one too many -- one death; and when you hear the procedure of a partial birth abortion, there is no justification -- no justification that can be accepted by people who would recognize what is right and what is wrong.

We learn, as young people, as children, right from wrong. It is wrong to have a baby delivered -- and being delivered and being removed from the birth canal, it is wrong to then kill that baby. That is not pro choice. That is wrong. That is taking a human life, and we can say what we want to say on the

issue. We can make it pro choice, but I would ask you -- while I respect the judgments that each person in this chamber will make individually as they vote, I will respect that, but I will ask you to just examine your thoughts as you review the procedure that takes place.

When in this state it's legal to have an abortion -- it's legal, and within the first five, six months, people have abortions, by the thousands, and that's legal, and any excuse that leads a person in the seventh month, eighth month to have a partial birth abortion is wrong, and we can't in this chamber by any vote make it right. It's wrong. It's taking a human life.

That baby -- and I was listening to a pro choice proponent describe the procedure of a partial birth abortion, and the person said, "when the baby was being delivered" - "when the baby was being delivered," "when the child was being delivered." You will read that on partial birth abortion, "when the child," "when the baby" is being delivered.

What happens as the baby is being delivered. If the baby's head were to exit the passage, in this state and in this country to then kill that baby would be murder, plain, simple murder. The fact that the baby's head remains in the channel allows that baby to be killed in the name of an abortion? That's wrong. It's wrong. That child is living. That child is moving.

All of the tests that are given, fetal blood tests, ultrasound -- all of the tests that are given in the second month of pregnancy, third month, fifth month, can help women make judgments on what is happening within their bodies. They can make those judgments in the third month, in the fourth month. There is no excuse that anyone can make for allowing a baby to be killed in this state or in this country. None, and it's not pro choice. It's not pro choice. It is considered murder.

You think about several inches of that baby's head and the placement of it, and that's the judgment we will make in this

chamber. If that baby is in the channel with its head -- or out of the channel, and if the baby's head is out of the channel, that baby is born. That baby is born, and then it would be a crime in this state to kill that baby.

So we're talking about a procedure that is considered barbaric, inhumane. That's what we're talking about in this chamber. Again, I respect the attitude that's reflected by people who are pro choice. That's a choice that we make, each of us, as we vote, but I'm asking my colleagues to make a judgment on this issue.

In Washington, this was bipartisan when it was voted on. Some of the most liberal people in the Washington, Democrats as well as Republicans, voted to make this partial birth abortion illegal in the United States, and it should be illegal in the United States.

It's not a partisan issue. It's not pro choice. It's not pro life. It's what is wrong; and when we in our society question

young people who get in trouble at early ages, we talk about a permissive society. We talk about people not being able to make judgments, young people. You wonder why? You wonder why when we can deliver a baby and based on where its head is placed at the time commit an act that takes the life of that child, and wonder why when young people read about it, hear about it, see it, debate it, you wonder why they get a sense of injustice, of confusion in their lives.

We have to start somewhere and this is a good place to start for all of us here. Just take a look at an issue that is as plain as making the choice on what's right and what is wrong.

Thank you, colleagues, and thank you, Madam President, and thank you, Senator Connor.

THE PRESIDENT: Senator Connor.

Senator Goodman, I had you next on my list.

SENATOR CONNOR: Madam

President. I'm happy to, by arrangement, yield to Senator Goodman.

SENATOR GOODMAN: Madam President. My colleagues. I would like to start my remarks with a fervent prayer which is that there is never, ever again going to be on the planet the necessity for performing the procedure which we are debating today.

I pray that because that procedure is obviously one which causes us all the deepest concern and consternation.

If we were fortunate enough to know and had prescience that the good Lord would permit all future pregnancies to proceed normally, there would never be the need for this procedure again.

But I ask you to join with me in a slightly unconventional analysis of what's going on in this debate, reaching back into my own book of memories to the time when I was a father, three young children, and during the period when my wife was pregnant. What greater blessing could there be in the world than to

discover that a wanted baby is on the way, that trip home from the doctor when your wife tells you we're expecting a child, and those weeks and months of anticipation as the development of the child occurs in the womb of the woman and you await with both trepidation and immense anticipation the arrival of the youngster.

But now, my friends, journey with me down a fork in the road which, unfortunately, is one which occurs in a number of instances. I will just mention that in the case of my third born, there was a complication at the very end of his birth. His cord was wrapped around his neck, and it was going to be a breech birth; that is to say, he would be born feet first rather than head first; and for a brief, stunning moment, the happiness and the exalted joy of the anticipation of the arrival of that child turned into a moment of fear and a question mark as to what could possibly happen next. I get down on my knees and thank God that the child was born normal and, today, an adult of whom I'm deeply proud as are my other

children.

But, my friends, I ask you to share with me for just a moment the experiences which occur to people who are not that fortunate. First of all, it is a scientific fact that we do not have the ability to predict precisely the course of a pregnancy. Physicians tell us that even chromosomal evaluations and even the use of sonogram, which, fortunately, at times, can give us the prediction of the sex of the child which sometimes is something we want to know, has shown the advances of medical science. But with all those advances, there is still the possibility that at the last moment something can go awry. By the last moment, I mean in the final trimester of the pregnancy and even beyond the final trimester, in the final days.

Now, sit for a moment and suspend your analysis of this just to make a deeply subjective judgment, and, say, suppose you were at home one evening after coming home from work, if you were the male, and your wife said, "I was

at the doctor this afternoon, dear. I'm sorry to tell you that something has gone awry. Our child is not going to be a normal child. There is a possibility that this child may perish in my womb from a vital defect which could kill the child before birth, and the doctor has told me that if that child is to die in my womb, the degrading of the fetus and the tissue abnormalities and the toxic substances which unfortunately relate to such an incident could kill me and we could lose me and the child." What shall we do? What are our alternatives under the circumstances wholly unanticipated in which there's dire jeopardy visited upon an innocent and unsuspecting couple who up to this moment have had nothing but a sense of exaltation?

My friends, this is very complicated medical material, and I don't begin to have the medical expertise to tell you what is done in all cases, but I will tell you this, that we have examined the testimony of innumerable women, one of whom was here in the

capital giving us -- sharing her experience with us, and a number of others who have been quoted either in writing or on videotape which I have observed with great concern over recent days, and in each instance, they have said, "We wanted this child more than anything in the world, but we were to be denied it because..." and now we get into a tragic litany of possibilities.

Many defects are so severe that they are incompatible with life: A child born with no kidney, a heart with one chamber instead of four, large amounts of brain tissue missing or positioned in places, God help us, outside the skull -- the brain is situated outside the child's skull, and, indeed, there may not be a skull at all. When such abnormalities occur, a couple faces terrible choices, and the procedure which we're debating here today is not one that constitutes murder or promiscuous use of the medical procedure for sex selection or to cure a cleft palate or any one of a wide variety of other abnormalities.

In fact, there are techniques

which medical science can now use to correct abnormalities during the process of gestation and during the birth period itself. We've been blessed with new tools, but there are innumerable instances, fortunately, quite rare, in which we do not have those available to us.

Now, I ask each and every individual one of you to examine your own analytical sense and your conscience to say, when your wife comes home to you or you are the wife, indeed, and you discover this tragic turn of the wheel of fate, what should be done.

Well, there are some options, and let's discuss them quite candidly. First of all, why not let nature take its course and let the woman go to term and deliver the baby and pray for a miracle, even though we know that miracle is obviated by the circumstances. Fetuses with severe abnormalities have a high chance of dying in utero even before labor begins, and as I've said to you, when the fetus dies in the mother's womb, the tissues break down, and that could kill the mother. Make no

mistake about it. That is a demonstrable medical fact. The dead fetus within the mother is a toxic experience of grave jeopardy.

It can -- I don't really think there is a need to elaborate what can happen to the mother. There is a list of horrors which are tragic beyond belief.

Now, the question is, why not induce labor with drugs? The cervix which holds the uterus closed during pregnancy is very resistant to dilation until about 36 weeks. For those of you who sat with your wife while awaiting the arrival of the child you remember there's a familiar medical expression, "How many fingers dilated is she?" There is a measurement approximating the width of a human finger which tells you when the mouth of the cervix is open, and that permits circumstances which permit the baby to be born. Prior to that, it is not possible without the intervention of medicines to have the child born. Now, inductions can be done by -- at various points along the way. But because of the danger of uterine rupture,

inductions require constant nursing supervision and are, therefore, done in the labor and delivery room. The physical pain is greatly intensified by the emotional pain of losing the wanted pregnancy, and there are immense problems with this type of approach.

Why not just do a Caesarean? Perfectly logical question. A Caesarean delivery generally involves twice as much blood loss as a vaginal delivery; and before 36 weeks gestation, the lower segment of the uterus is usually too thick to use a standard horizontal incision, so a vertical incision is necessary. So what? Any uterine incision complicates a future pregnancy, but a vertical incision is more dangerous and jeopardizes both the mother's health and any future pregnancy. When the uterus has a vertical scar future pregnancies require a Caesarean always and are more apt to be complicated by uterine rupture.

Therefore, a new issue presents itself. What about the future fertility of the mother and the future capacity of the mother to

give birth? If there are procedures in the birth that jeopardize that, that's a matter of vital concern, a matter relating not only to the impending possible death of the mother but depriving her of the opportunity to have more wanted children.

Is there a safer and better option? Medical science says yes. The safe and better option is the tragic one which I pray we will never have to use. But if we should, do we not wish to have it in our armamentarium of solutions to this type of problem that I have described. This is the moral and ethical dilemma which this house is asked to evaluate today, and I say it is not an easy corn. I'm not going to say to you this is simple, you brush this decision off your lapel like a speck of dust.

This requires, my colleagues, the most profound introspection, and we must try to ask ourselves, are the issues on the scales of life so significant that we would dare countenance what is obviously a repugnant

procedure? The procedure itself has been amply described. Senator Maltese in his great sincerity has given us various documented indications of how horrible this is.

I don't like to think about this. This is uncomfortable. I never thought I'd have to talk about it on the floor of this house. But, my friends, if our objective is, indeed, to guard the health of the mother, if it is to guard the capacity for her to have future children, this is something we can't escape.

Now, there has been discussion about the President's veto message. I'm not a great fan of the incumbent President, but this is quite a veto message, and I'm going to share parts of it with you. I think it's highly important.

The President has said this bill does not allow women to protect themselves from serious threats to their health. The decision to have an abortion generally should be between a woman, her doctor, her conscience and her God. "I've long opposed late term abortions,"

says the President, "except where necessary to protect the life or health of the mother. I can not support use of a procedure on an elective basis where the abortion is being performed for nonhealth-related reasons and there are equally safe medical procedures available. Rare and tragic situations can occur in a woman's pregnancy in which a doctor's medical judgment for use of this procedure may be necessary to save a woman's life or protect her against serious injury or her health. In these situations in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected."

Just a few more excerpts. "Babies have fatal conditions and would not live...who wanted anything" -- these are for people who wanted anything other than an abortion, but were advised by their doctors that this procedure was their best chance to avert the risk of death and grave harm, which in some cases would have included an inability to ever

bear children again. These babies were certain to perish before, during, or shortly after birth, and the only question was how much grave damage was going to be done to the woman. "I can not sign this house bill, H.R. 1833, because by treating doctors who perform the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. That is why I implore Congress to add an exception for the small number of compelling cases where selection of the procedure in the medical judgment of the attending physician was necessary to preserve the life of the woman or avert serious adverse consequences to her health. The life exception in the current bill only covers cases where the doctor believes that the woman will die. It fails to cover cases where absent the procedure serious physical harm, often including losing the ability to have more children, is very likely to occur. I told Congress that I would sign the bill if it were amended to add an exception for serious health consequences. I understand the desire to eliminate the use of a

procedure that appears inhumane, but to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

"The Congress chose not to adopt the sensible and constitutionally appropriate proposal I made, instead leaving women unprotected against serious health risks."

The President is right, I believe. You may not agree. The President vetoed the bill, and it's very unlikely that the bill will be overridden. We will pass the bill today because I have no doubt that a majority of my colleagues will vote for it. But it will not become law because, as we know, it is a one house bill.

So you ask, why do this? Why do it at all. Perhaps there's an answer; and that is, that it gives us an opportunity to ventilate some of the logic or illogic that lies in these very sensitive questions; and if that be the case, sobeit.

Madam President. Let me sum up with this simple thought. So often, in a case where an elected official who represents approximately 300,000 people must try to make agonizing decisions, it boils down essentially to an elemental matter of gut reaction or common sense, and that can best be achieved when one tries to empathize with the problems that one's constituents suffer from.

The superficial indictment of this procedure is almost ineluctable. It's almost incontrovertible when you hear all the horrors that seem to be associated with it. But the fact is that if we take just a few moments to think what it means, those of you who've had children -- I suspect maybe a majority in this house have had the privilege and the pleasure and the exalted experience of parenthood -- we know how wonderful that is, but we rarely have occasion to stop and think what happens when God's blessings go awry, and it can happen and it does happen, and it is in those instances where our humane instincts must serve us, and

that is why I implore you, my colleagues, to rethink this matter and to defeat this bill in the interest of our constituents' concerns.

THE PRESIDENT: Thank you, Senator Goodman.

SENATOR PADAVAN: Madam President. Will Senator Goodman yield to a question?

SENATOR GOODMAN: Yes, I will, Senator Padavan.

THE PRESIDENT: Senator Goodman yields.

SENATOR PADAVAN: Senator, listening very carefully to everything you had to say, I get the impression, correct me if I'm wrong, that in your view and based on the information you have at hand that all of the partial birth abortions that have been done in this state and elsewhere were done for medical reasons relevant to the health or well-being of the life of the mother or because the fetus was in such terrible condition that it was necessary.

THE PRESIDENT: Senator Goodman.

SENATOR PADAVAN: And my question to you, Senator, is are any of the abortions, partial birth abortions that were performed, in your view, elective, meaning none of the circumstances you described were present?

SENATOR GOODMAN: Senator, New York already bans abortions after 24 weeks except to save a mother's life; and after 20 weeks gestation, the state requires a second doctor to be present to provide medical attention to the fetus, even though fetuses aren't capable of survival at that point.

So my answer to you is that if there is any other reason for which these abortions have been performed, it would have been illegal and there is no necessity for us further to regulate it.

SENATOR PADAVAN: Senator, that doesn't answer the question. I know what's legal and illegal. That's what I'm leading up to. The fact remains, are you representing to this body that none of these abortions

performed, partial birth abortions well described here by Senator Maltese, were done for elective purposes?

SENATOR GOODMAN: I'm saying to you, Senator, that none have been done illegally and that in the context of this debate the significant and paramount question is whether we require an overarching law to press down upon this further regulation and to impose a penalty of felony.

I have no way of knowing the answer to your question nor -

SENATOR PADAVAN: All right. That's a fair answer.

SENATOR GOODMAN: Excuse me. I'm not quite finished.

I have no way of knowing the answer nor, I suspect, do you, but I do know with certainty that the law would preclude it and, therefore, the need for yet another law which is based, in my judgment, on incomplete evidence is clearly superfluous.

SENATOR PADAVAN: Would you yield

to a follow-up question, Senator?

THE PRESIDENT: Senator Goodman, do you yield?

SENATOR GOODMAN: I yield, Madam President.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Your suggestion is -- again, if I heard you correctly, was that we should include or as the President seemed to imply in the message you read, the issue of the health of the mother, serious consequences to the health of the mother -- not the life but the health of the mother. Would that include mental health; and how does that relate to your former answer, your first answer or your answer to my first question?

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Senator, I believe that the answer to that lies in a basic conviction of mine, which is that those judgments can best be made by the physician, by his patient, by the patient's spiritual guide and by the patient's family, and that for a

legislature from the remote point that we stand in Albany to reach its hand into the delivery room of a hospital, conceivably hundreds and hundreds of miles from the point at which we speak, for us to presume that our wisdom can be so great that it can permit the decisions to be revoked by a physician in whose judgment something needs to be done, provided it's legal, would be highly inappropriate.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Madam President, if the Senator would yield further.

Senator, what I asked, and perhaps I didn't make myself clear, your suggestion and that of the President, I gather, that the bill be amended to include adverse health consequences, would that include mental health, depression, or any other related area?

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: My answer is it is none of our damn business, in the sense that it should be a decision between the individual physician, the attending physician who has all

of the facts relating to the pregnancy, the mother herself, her spiritual advisor and her family advisor. So the answer is I don't know.

SENATOR PADAVAN: It is our damn business, but we can talk about that later.

Thank you.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President. I would call up my amendment at the desk and waive its reading and offer an explanation.

THE PRESIDENT: Senator Connor on the amendment.

SENATOR CONNOR: Thank you, Madam President. This is, indeed, an issue that, and I've talked to many members on both sides of the aisle -- that obviously people of conscience differ upon, and I think many people have evaluated this with a fresh look and haven't just reacted from their prior positions on abortion-related legislation, and I think what that reflects is everyone, first of all, has a line in their mind.

And the present state of the law as I have often said, in my view on it, is we are a diverse state. We have many different philosophical, moral, religious traditions and, within those traditions or among those traditions, I should say, there are differing views about fundamental issues of when life begins, when personality adheres to either a fetus or a born child and, therefore, we would perhaps want to attach legal rights at that point.

But I think within all those traditions, there's a line. If it differ from one to the other, there is some line; and I have listened. I listened to Senator Maltese, and I have read some of the literature if it can be called that and heard popular accounts of different procedures. I have talked to people on both sides, and, indeed, if you listen to one description of this procedure, it sounds like it's either right on the line or over the line for most traditions.

And in terms of talking to people

on both sides of this issue, I have come to learn one thing with a certainty -- one thing with a certainty. Don't rely on what you hear from the most committed people on either side and their witnesses because they are advocates and people do shade the cause one way or the other, and in the course of doing -- evaluating this bill, a lot of questions have arisen.

Number 1 question is: What does partial birth abortion mean? Now, Senator "doctor" Maltese offered one description, but it's not a medical description, and he admitted that. And, clearly, this is a term that's chosen -- not here but has been chosen because it works in the media. It conveys a certain graphic message, and it, in some respects, begs the question, by using the term "birth," obviously, but I have talked to many physicians and none of them know this term. None of them use this term except some who seem to be advocating one position particularly, sometimes the other.

I have talked to a couple of

obstetricians or had a couple of obstetricians contacted who are not involved in this debate, who you won't find testifying formally or informally by the pro choice people or the pro life people or whatever. The reaction I got is, "We don't know what this means. I've never heard of it being done certainly not in New York," and that cuts one way.

But, Senator Maltese, I'll tell you. I also asked some of them under what circumstances would some fetal abnormality jeopardize, for example, the future fertility or health of a woman were it to be delivered, and I get the answer, "Well, I don't know." These are from obstetricians, "I don't know." So what's clear to me is nothing is very clear about this.

The only thing that is very clear about this is some people on the national scene particularly -- now it seems to have seeped its way to the State of New York -- see this as some sort of campaign issue, a good issue with which to paint people as either extremist or

insensitive or whatever.

The fact is -- the fact is for many traditions, moral traditions that view abortion as wrong, the method doesn't really matter, and this bill is about a method, about a particularly graphically disturbing method. But you know what? Many, many medical procedures are quite disturbing, I'm sure even to the medical people. You know an operating room isn't pretty no matter what the procedure is.

But the one thing that kind of disturbs me, frankly, is an attempt to make this a partisan nature, and I know Senator Bruno said it is not a partisan issue, and it is not. The citing of prominent Democrats in Washington who voted for a comparable bill. I don't know what point that drives to unless it is to try and depict some underlying partisan consideration.

I would remind this house that New York's present portion law on the books, on the statute books passed in 1970 by a Republican controlled Senate under Earl Brydges, passed in 1970 by a Republican controlled Assembly under

Perry Duryea, and signed by Nelson Rockefeller, a Republican Governor, remains on the books although some aspects of it, perhaps -- and it predates Rowe v. Wade. Some aspects of it may in fact be interpreted by courts in light of the subsequent decision in Rowe v. Wade and other cases.

That law does, as Senator Goodman pointed out -- that law does forbid third trimester abortions except to save the life of the mother; and because Rowe v. Wade also addressed the health concerns of the woman, it has been interpreted to further be modified by that decision to apply in certain circumstances when the health of the woman is in serious jeopardy. But that law remains on the books.

So when I hear evidence from advocates for this bill that cite a doctor who says, "Oh, I perform lots of these in New York and in 80 percent of the cases they were merely elective," I say why are we listening to testimony from such an admitted outlaw? Those operations were illegal if, indeed, they were

performed for those reasons by that doctor who now comes and said to us, "I did it." To me, not a credible witness. To me, not a credible witness for obvious reasons.

Now, while Senator Bruno talked very much about the third trimester, his concern with the stage of fetal development during that time and the status in the law as it is and as he would have it be with respect to that third trimester, Senator Maltese hasn't limited his bill, and he was quite candid about it. His bill deals with a method. His bill deals with a method regardless of the stage of gestation involved.

And, rightly or wrongly, you can agree or disagree, but the Supreme Court has told us in Rowe v. Wade it is the law of the land that the legislature of a state can only outlaw abortion in the third trimester except when a mother's life is in danger or her health is in danger. So Senator Maltese has been quite candid. He has confirmed for us what many of the pro choice people have been saying. This

bill isn't limited to a procedure that occurs very late in a pregnancy, in the third trimester.

The interesting thing about this approach of attacking a method is, if you believe that third trimester abortion is wrong, ought to remain wrong, you ought not care about the method, distasteful, I mean, or whether it's a cleaned-up method that seems somehow more palatable and remote. Indeed, I'm sure many, many advocates of great conscience who feel that public policy, the public policy of the State of New York ought to reflect their particular religious, moral, ethical tradition that might view, for example, life as beginning at conception, would in all honesty have to say the method doesn't matter. The method doesn't matter; abortion is wrong. So why this attack on a method other than, frankly the shock value involved?

And, as I say, this is not a partisan issue. There is no Democratic or Republican position on this. Indeed, we have in

this very house people from both parties on both sides of this issue. The amendment that I have offered -

And let me tell you my conclusions, therefore, about the main bill. I really regret that we haven't had the opportunity to have serious hearings on this from serious medical people who are not enlisted in any cause. They are not enlisted in a pro choice cause; they are not enlisted in a pro life cause, or let's hear medical opinion from those sides, but let's also hear some middle ground medical opinion, because I have heard quite contrary opinions on what this procedure is, when it is necessary, when it is appropriately used, when it is presently legally used, to the extent that if I admit to some confusion, I share it.

And Senator Maltese says, you know, we're really here to vote on an issue, and he acknowledged that it's going nowhere as a matter of law or as a statute, but he felt we ought to make a statement; and, indeed, I sat

here wondering, then, "Why not pass a sense of a Senate resolution instead of a one-house criminalizing bill?" if what we're really about is expressing some sense of revulsion at a particular medical method and then, having done that, let the medical profession come back and say that we don't know anything about practicing medicine because most of us, probably none of us, know that much about it, to tell you the truth.

And my conclusion, therefore, is that it's very difficult for me to accept this bill particularly as is because it is just a statement. It deals with a procedure. It leaves gaps. It's own proponents differ as to whether it's a third trimester or a 20-week bill if you talk about periods of gestation.

The one thing it's missing -- and if you want to talk about absolutes, and you know this is a big -- gets framed in absolutes all the time. People use words like "murderer" and so on and so forth, absolute terms whereby one judges another, and I don't presume to judge

anyone nor do I think we can fairly judge nor do I think any respected religious leader pretends to judge the individual conscience of anyone, of any woman, certainly, who finds the necessity or undergoes an abortion at any stage, because it is a difficult personal choice and, ultimately, we are all accountable to our own consciences.

But we frame it in absolutes, but Senator Maltese's bill isn't absolute. It has an exception. It has an exception written into it in those cases where it's necessary to preserve and save the life of the woman and I think we probably all think that's a reasonable exception. Is it an exception to the absolute moral law as some people see it? Yes, it is. But it's a public policy exception that I believe we all agree it is wise as a matter of public policy to make. Indeed, even as we for give those who in self-defense take action, we must recognize the right of every person in this state including, certainly, the women in this state to preserve their rights, to take action to do that.

And I think we must go further. I think the law of the land compels it and good public policy -- if not theology, good public policy, which is our business, because I doubt any in this body pretend to be theologians. I certainly am not, and I don't have any theological quarrels with anyone.

But as a matter of public policy, we ought to protect the health of the women in this state, and we ought to recognize that a woman has a right under these circumstances to take action consulting with her physician and those with whom else she chooses to consult. I doubt many women in this state would choose to consult with the Legislature in this state over such an important personal decision. But if they chose to, we all have phone numbers -- but whoever they chose to consult with, and their physician and make that choice to preserve their health from serious adverse consequences.

Now, we know people will quarrel and say, does that include psychological? Does that include this and that? What do I mean by

this amendment? Therefore, what this amendment does is add a further exception to Senator Maltese's bill to provide that the provisions shall not apply to an abortion performed where in the medical judgment of the attending physician the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

Now, serious adverse health consequences, what does that mean? Well, I suppose as proposed by me or written by me or proposed by the President, it's as accurate a description of a common sense thing as the term partial birth abortion is. I don't know that it's out of the medical textbooks, but I know in common sense what we mean. It doesn't mean an ingrown toe nail. It doesn't mean a slight headache that goes away in ten minutes. It doesn't mean inconvenience. Serious adverse health consequences I think we all understand mean serious physical damage, having the element of perhaps permanent damage, or having serious other consequences like infertility or some

other physical function that would be impaired in the future in a serious way. That's what it means. That's what it means.

And if anybody wants to get up and say, "I'm not sure it might not include something too wide," well, show me. Prove it to me. Just as Senator Maltese wants to make a statement about something his bill calls partial birth abortion, I want to make a statement about the value of the serious health concerns of the women of the State of New York and accept this amendment -- accept this amendment that allows an exception to protect a woman in the case of serious adverse health consequences. You know, and, by the way, some may get up and say there aren't that many serious adverse health consequences. So, there aren't. Whatever there are, there are, and there ought to be an exception.

Add this amendment to the bill. Add this amendment to the bill, and I would have no problem with the bill as a statement, as a statement addressed at the procedure that

Senator Maltese described which I don't really have the competence. I have public policy competence. I certainly don't have medical competence to decide whether it happens quite that way or not. But, you know what, in the late term, I don't really care how it happens. I don't really care how they do a third trimester abortion. I'm not for it. I'm not for it unless it's absolutely medically necessary to save a woman's life or preserve her from adverse serious health consequences.

So, Madam President, I would urge the adoption of this amendment. It is similar to that which the President held out. It is made in all seriousness, because I think it is necessary. It is the right of a woman. Whether one disagree with that right as a moral or theological principle, I think it is a matter of the public policy in our diverse and free society that a woman together with her physician has a right to take action to preserve her life and her serious health concerns.

And, again, in my mind, this

method, any other method, unless done for these reasons ought to remain, as it is, illegal.

THE PRESIDENT: Does anyone desire to speak on the amendment?

On the amendment, Senator Gold.

SENATOR GOLD: Thank you, Madam President.

SENATOR LEICHTER: Excuse me, Madam President. With all due respect to Senator Gold, I think that we have a list.

THE PRESIDENT: That's right. We do. I'm going to call for a question on the amendment.

SENATOR GOLD: I think I'm on the list next, anyway.

SENATOR LEICHTER: Okay.

SENATOR GOLD: I'm next on the list.

THE PRESIDENT: Senator Gold is next on the list.

SENATOR LEICHTER: May I just continue my point of order because as you called it, Madam President, it seemed as if you were

going to set up a new list on the amendment.

THE PRESIDENT: No.

SENATOR LEICHTER: All right. You will continue on the list. Thank you.

SENATOR GOLD: Thank you, Madam President, and my fellow "doctors."

I guess, at times, I'm as good at pointing at the other side of the aisle and claiming politics is being done as anybody else, and I think certainly, Senator Maltese, this is one day when that is inappropriate because there certainly will be people on both sides who do various things; and if nothing else, we can all agree that this certainly ought to be a vote of conscience and not one of politics.

But it's interesting. My dear friend and colleague Senator Farley and I were exchanging some words about this a couple of days ago, and Senator Farley said, "Well, this is an issue that really should be on the floor," and I said to Senator Farley, "Well, that may be so but we don't vote on issues; we vote on specific pieces of legislation to become law,"

and Senator Farley said, "Manny, you're wrong; we vote on issues."

Senator Farley, unfortunately, you're right and I am wrong, although I wish I were right. Because when we finish talking about issues, a law sometimes comes out of it, and then in the courtroom a judge and a jury does not want to know about an issue. They are bound by a piece of paper.

Having said that and recognizing that Senator Farley is probably right and today we're discussing issues, unfortunately, I am disturbed as a law maker that there are words used in this bill that really are not defined in law. I'm disturbed that there are memos that question whether doctors or people in the medical professions can really deal with this law as it's written.

I am also interested in the observation that we have had legislation on this floor -- I think it was offered by Senator Levy but I may be wrong -- which discusses noise in our community; and when it comes to discussing

noise, we can put into law decibel levels and all kinds of technical things to tell people how bad their boom boxes are or their car radios are, but when it comes to an issue of this particular magnitude and medical significance, we can't seem to get definitions or anything more exacting than this bill. I think that's extraordinarily curious.

I was very much taken by and want to compliment my colleague Senator Goodman, particularly the touch of starting with a prayer. I think that that was very, very taste ful and, Senator, I would concur in that remark. Interestingly enough, Senator, we don't know so much about each other until we get into certain debates, and I think an awful lot of personal things are kept that are personal, but having also had a daughter born with an umbilical cord around her neck and gone through that, I can sympathize to what you were saying. This debate also happens on the eve of the yahrzeit of a son of mine who passed away as a result of SIDS.

So, Senator, I and others know what it is to have children and to kvell with them and to love them, and I know what it is to have the losses, and we all know that. We all know that and appreciate that.

But I think that the most telling conversations that I have had in this area were with my own leader and also with some people on your side of the aisle who I won't name, because what Senator Connor has said in private is pretty much what he said in public, and what some of the Republican colleagues of mine have said in private will probably stay there. But what it is is, why can't we sit down and get a bill and have everybody participate? Because if there is a terrible thing going on out there and it is not a pro choice issue, it's not an abortion issue, it's a more humane kind of thing, why not just let's really get a bill that the liberals, the conservatives, the pro's, the con's, can agree that something is wrong? We can take away the label and maybe all of us get together on that issue.

And to tell you the truth, I don't know why. I don't know why. I feel very much similar to Senator Connor that I kind of wish that there was a bill of this nature in this area dealing with this issue that I could support, and I'll tell you why, Senator Maltese.

Back in the days when abortion become legal, there was a vote in the Assembly and Perry Duryea said, if there were 75 votes, he as the Speaker would cast the 76th vote, and there was a special election in February of that year, and it was very hotly contested and although the district was overwhelmingly Democratic, thanks to Senator Maltese and some of his colleagues, I almost lost that special election. But having won it, I was the 75th vote which forced Perry Duryea to cast the 76th vote, so that election was very important in terms of the history of abortion in New York State.

Having said that I personally, Senator, don't believe in abortion. So you say,

well, how did you cast your vote? My vote was not whether I personally wanted to be involved. It was on the overall issue of women's right and a particular woman's right to make a choice.

So, Senator, it's not that I and others along the line may have said that you wake up each morning praying that abortions take place, that we are for abortion. It's such a terrible way to phrase it. The only thing I think we have ever said is that we are not doctors, that this is an issue between a woman and her doctor, and maybe we're not as smart as we would like to think we are. We ought to keep our nose out of it; and from that point of view, it made some sense.

Having said that, Senator, I do believe as a human being I'm allowed to have a mind, and if I think something is really wrong and goes past a certain line, I'm not afraid to say that.

Senator Maltese, you are in an area where many of us who were responsible for changes in New York State law in the area of

abortion would like to work with you to draw a line where everyone can agree we have gone perhaps too far, and where doctors and women can agree, and I'm sorry that unfortunately we have not worked towards that.

I think that, as a minimum, Senator Connor is right. If the Connor amendment were accepted, Senator, we get a lot out of the way. We don't have to use expressions like Rowe v. Wade. We don't have to worry whether we are at that point. We don't have to worry about whether the Maltese bill is an attempt to go behind Rowe v. Wade. We don't have to worry about where the trimesters are coming in. If the Connor bill were to pass, Senator, it might alleviate an awful lot concern of a lot of people in this chamber.

There are certain people in this chamber, I'm sure, who might feel that if that amendment passed, there are still other things they are looking for; and I shrug my shoulders and, Senator, I tell you that could be the case with many, many things in many situations.

But your proposal, Senator Maltese, if it passes today will not become the law of the land today or tomorrow or next week, so we are not rushing to save some situation that you may have in mind. On the other hand, if the Connor amendment were to pass, it might change dramatically the whole negotiation in this area.

I have heard people say they're very worried about this bill because New York State is a leader; and while the federal government is dealing with this issue, if New York State were to do something, that might have some effect.

And things are happening nationally, Senator. I think it's fascinating that the presidential choice-of-your-party-to-be is now faced with problems within the party itself. We have our Governor, we have Christie Whitman, and I heard today that Governor Pete Wilson of California is now getting on that bandwagon which says that let's get the abortion issue out of your party's platform. I know

Senator Dole is not happy with that.

But we in this state might be able to do something in this area which is very helpful, but I think, Senator, if that's going to happen then the dialogue has to be between people of good will who, perhaps, have been on opposite sides, very extreme opposite sides of this debate in years gone by, coming in and saying we might have trouble in the middle, but we can cut the extremes and show people this is an area where it's possible to work.

So I am going to basically rest on what I have said. I think Senator Connor said it extraordinarily well. I'm very proud of the remarks of Senator Goodman, and, Senator Maltese, I'm proud of you, too, because I know you fight for what you believe in, and this is an area where you are totally sincere. But, Senator, I think you are missing an opportunity if you out of hand vote for Senator Connor's amendment. It is well thought out. It is not a crazy. It is not an amendment that takes you away from any place that you could not be

comfortable; and for that reason, I will support the amendment and sincerely hope that it passes.

THE PRESIDENT: Has everyone who wishes to speak on the amendment been heard?

(There was no response.)

The question is on the amendment. All those in favor.

(Response of "Slow roll call.")

Are there five members requesting a slow roll call?

(Whereupon, members requesting a slow roll call were standing.)

The Secretary will call the roll. All those in favor of the amendment signify by saying aye.

THE SECRETARY: Senator Abate.

SENATOR ABATE: Aye.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: No.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

SENATOR BRUNO: (Indicating no.)

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Madam President. In explaining my vote, I want to address something that I think is an under current here, and that is somehow or other that serious -- the term serious adverse health consequences can somehow be lightly invoked, somehow be deemed to be abortion on demand. That is not the intent of this sponsorship. I think I made that clear. We are talking about serious adverse physical health consequences to the woman; and if someone has a better word of art for this, I welcome that addition, but I think it's our obligation in making public policy to preserve this right for women to take an action to preserve themselves from serious consequences.

I vote aye.

THE PRESIDENT: Thank you.

Senator Abate is going to explain her vote.

SENATOR ABATE: Yes. I support this amendment, and I think we can gain courage

and guidance from a number of other states throughout the country that do not allow abortions after viability unless in fact they are necessary to preserve the women's life or physical health, but both exceptions are included in the law, and let me just put on the record how many states allow these abortions, again, to preserve the life or the health of the mother -- Alabama, Arizona, Arkansas, California, Connecticut, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, Wyoming. Over 30 some states in their wisdom -- and let us take guidance from their action -- have said that no one likes late term abortions, but when it's necessary under the medical guidance of -- sound medical guidance, when it's necessary to preserve the life of the mother or preserve the woman against unnecessary health consequences, the law of the

land and this law is enacted in many states throughout this country.

Again, this is not a courageous step in this state. We should follow the wisdom and guidance of so many other states in this country.

THE PRESIDENT: Thank you, Senator Abate.

Continue to call the roll, please.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: No.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: No.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President. I have a lot to say about this bill, and I'll wait until we consider the bill on the merits, but it seems to me that if we want to follow the guidance of our leader, Senator Bruno, about what the right thing to do is, this is it. The Constitution of the United States, the document that governs all of our conduct, the one that we're sworn to uphold when we took an oath of office, says that a late term abortion cannot be performed unless the life or the health of the mother is at stake. That's what it says according to the United States Supreme Court.

I know there are a lot of people in this room -- in fact, there are a lot of people who will vote on this measure who disagree profoundly with the Supreme Court's articulation; but, nonetheless, that's what our Constitution tells us. What this bill will do is -- in my judgment, this bill will take us exactly as far as the United States Constitution allows an elected majority to go. United States

Supreme Court has said we can not force a woman to choose between her life and her health in making this decision.

If this amendment passes, as I believe it should, because I believe we've got the power to move that far and that we should move that far, but if this amendment passes and this bill is changed, I will vote for this bill as an exercise of the power given to this Legislature representing a majority of people in this state to do the right thing. Without it, under the Constitution that we all revere, we will do the wrong thing.

I vote aye, Madam President.

THE PRESIDENT: Thank you, Senator Dollinger.

Continue the roll call, please.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: No.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Yes on the

amendment.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Yes.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: No.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: No.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Yes.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: No.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: No.

THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: No.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Aye on the

amendment.

THE PRESIDENT: Senator Lack.

SENATOR LACK: No.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: No.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: No.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: No.

THE SECRETARY: Senator Leichter.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: To briefly explain my vote.

I think it's regrettable that we would turn down an amendment that would recognize the importance of the health of the woman; and as Senator Connor has raised it, he has really made it extremely narrow. In fact, I must say so narrow that it causes me some question as to whether it would cure what I consider a major constitutional and other deficiencies in the bill before us. But there is no question that this amendment at least in

recognizing the importance of the health of the mother makes a great improvement.

I vote yes.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Levy.

SENATOR LEVY: No.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: No.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: No.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: No.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Madam President.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: I think it's a bit disingenuous to urge this amendment when the measure that was described by Senator Maltese as being a one-houser. Does that mean that the Assembly will not take notice of what has been offered by my distinguished colleague and pass

it? In that event, you would have a conference. In that event, the fact that there is this emotion and this feeling would have an auspices under which it would be discussed. I have an idea, and I hope I'm wrong, Madam President, there is no expectation in this house that this bill will be taken up at all in the House, and that's why it's being termed a one houser. I hope I'm wrong.

I vote no.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Yes.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: No.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: I will be voting yes.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Madam President. If we are to be concerned about the constitutionality of the laws that we pass in this chamber and in New York State, I think we have to consider this amendment and vote positively on it, because, otherwise, we are voting on something that is unconstitutional. It is very clear that we by law -- Rowe versus Wade says we can not impose restrictions on a woman's health when the question is the woman's health versus the

survival of the fetus; and in this instance by not looking at the woman's health, be it emotional or be it physical or be it reproductive health, we are simply not looking at the health.

And that health question -- it was raised before. Do we mean emotional health? I think we mean what the medical profession deems to be of important consideration to that pregnant woman. We are not doctors. We should not be trying to make those decisions. We should be looking at government and dealing with governmental issues.

I vote yes.

THE PRESIDENT: Thank you.

Continue the roll call vote, please.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President. To explain my vote. I think that Senator Maltese has identified a problem and Senator Connor has refined it. The issue of a woman's health and the serious ramifications are extremely serious and are well identified in this amendment and I think must be adopted.

Unfortunately, I think that we have all collectively, maybe not individually, done a disservice to the public regardless of how we stand on this particular issue by rushing this bill, by bringing it before the house as we did last week; and, interestingly enough, the effective date of this bill wouldn't have been immediately -- as you think it would be if this was such a serious emergency -- but the effective date of this bill is in November, and I think that this is really indicative of the politics of confusion, which we have even heard in this particular debate. What we have allowed is for those who have the strongest voices and the greatest resources to impress their views on us rather than doing as Senator Connor suggested, holding hearings and really

approaching some of the medical personnel and some of the organizations that don't have a vital interest in advocacy and bringing them before us to get, perhaps, a more prescribed and, certainly, more scrupulous look at this particular bill.

This is not to, in any way, diminish the efforts of people who feel very strongly about this issue who have come here to lobby and come here to watch this debate today. We certainly respect them and we certainly feel that there is sincerity in their point of view, but the fact remains that this is a deliberative body that is supposed to examine the information in a very cautious fashion, which we have not done in this particular issue. What we have done, rather, is to antagonize the constituency regardless of how people feel on such a sensitive issue and an issue that is so close to people's hearts and touches their moral character.

I don't know how any of us as part of this chamber can leave here today with

any kind of dignity, knowing that we have allowed this to happen, other than those of us who tried to challenge the process that has produced this kind of situation.

I think the amendment is a fine amendment and addresses the constitutional guarantees that already exist as a result of the Rowe v. Wade Supreme Court decision of 1972, and I think that it should be adopted and this discussion will go on, but we should remember that the focus of this discussion is today, and so to put my vote on the record I'm in favor.

THE PRESIDENT: Thank you.

Continue the roll call, please.

THE SECRETARY: Senator Present.

SENATOR PRESENT: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: No.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Yes.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: Yes.

THE SECRETARY: Senator Sears.

SENATOR SEARS: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: No.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: No.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: No.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: No.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Aye.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: No.

THE SECRETARY: Senator Tully.

SENATOR TULLY: No.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: No.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: No.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: To explain my vote.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

What we have seen here today is great theater. We have a proposal which obviously is admittedly a one-house bill. We have a proposal which flies in the face of the Constitution not of New York State but of the United States. It flies in the face of court precedent; and when someone in the guise of Senator Connor, the Minority Leader, makes an amendment proposal which will cure the defects of the one-house bill which flies in the face of the Constitution, we're going to defeat that amendment. I believe that we should be ashamed

of ourselves as an institution. We should be ashamed of the disrespect shown by this proposal and our action regarding the bedrock of our nation, the Constitution of the United States. We should be ashamed of playing to the gallery on an issue that is a one-house issue because we know in its present state, unless this amendment is accepted, is incorporated into the bill and through consultation with the Assembly is made a bill of both houses that our Governor can act upon, we know that all we're doing is spinning our wheels in the muck and mire of political rhetoric.

For all of those reasons, I must vote with Senator Connor because I believe his wisdom is the wisdom that is shown in this body today.

THE PRESIDENT: Thank you, Senator Waldon.

Continuing the roll call, please.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: No.

THE PRESIDENT: Absentees,

please.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: It's very rare that I get up. I have to tell you I support my leader, Marty Connor, on this issue completely. I am voting yes on the amendment, and let me tell you. This bill should not even be here because, if you want to talk about abortion, and all respect to Senator Maltese, this bill is an abortion.

Thank you.

THE SECRETARY: Senator Kruger.

(There was no response.)

THE PRESIDENT: Results, please.

THE SECRETARY: Ayes 25. Nays 35.

THE PRESIDENT: The amendment is defeated.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

Let me first say, Senator Maltese, I applaud you for bringing this bill

before us dealing with this partial birth procedure. This is a procedure that shocks humanity. 85 percent of our state is appalled by this barbaric procedure.

Senator Bruno said it very clearly. This is not a pro-choice, pro-life issue. It's an issue of common decency. You know, in the Conference the other day, a doctor was asked, Is there another procedure that can be opted for, another procedure than where you suck the brain out of the babies, out of their skull? He said, yes, there are a couple other procedures: A saline solution procedure where they inject a saline solution into the umbilical cord and a chemical is inserted in the uterus, and so forth, but both of these endanger the mother, and they didn't necessarily abort the child. The procedure that is used in almost all cases is this partial birth procedure where you jam an instrument into their skull and suck the brains out of a child that could live on its own supposedly.

Incidentally, with all -- with

all of these -- this discussion, and I think there's a point that they're trying to make, Senator Maltese's bill does protect the life of a mother.

It's kind of shocking, the other day in the New York Post that a woman testifying before the United States Congress who's a subject of a seven and a half-month abortion, doctor was out of the room, she happened to live, and she says, "I'm happy to be alive and I thank God every day for life."

It's pretty horrible when you think that these late-term abortions even exist. But let me say this: We're talking about one-house bills, and Senator Waldon who I respect and I know that abhors this procedure, Senator Connor, I know has influence and I'm confident that he could get a Majority member of the other house to introduce a bill and it would pass with overwhelming support with his amendment over there, and we could have a conference committee, as Senator Marchi has spoken about, and we could have something that

the Governor has said that he would be pleased to sign.

This is a procedure that should not be allowed in this state. It's a procedure that shouldn't be allowed in the United States. When you're talking about the health of the mother, now I realize -- and I applaud Senator Connor on his amendment that he just didn't say health of the mother, because Senator Padavan was on a hot issue. The health of a mother is such a loophole that you could drive a truck through it. There's no question about that. What kind of health are you talking about? Mental health? Physical health? Everybody's got some health problems.

This is a piece of legislation that will pass this house. This is not neces sarily a one-house bill. The people of this state, and your constituents, are going to demand that we do something about this barbaric procedure. As I said earlier, it is a matter - an issue of common decency.

How anyone -- anyone in this

chamber can justify this procedure, it leaves me cold. As this Nurse Shafer said at the Conference -- this was a young woman who was very pro-choice, working in an abortion clinic, observed and I guess participated in this procedure. She left the room and has devoted, I would say, a significant amount of energy in her life to seeing that this partial birth abortion procedure is outlawed, and I applaud her for it.

I urge the passage of this bill and I applaud the sponsor, and I'm confident and hopeful that working together that we can make sure that this procedure never takes place in New York State.

THE PRESIDENT: Senator Cook.

SENATOR COOK: Thank you, Madam President.

Senator Maltese, would you be willing to yield to some questions, please?

THE PRESIDENT: Senator Maltese.

SENATOR COOK: Senator, I don't have the benefit of a legal education, so I'm going to ask you questions that really relate to

the legal aspects of this bill because I know you've been a prosecutor and you would understand these things better than I do.

The first question I have is that, as has been indicated, the words "partial birth abortion" is not a word of art in the field of medicine. You defined it in the law then as "partially vaginally delivering a living fetus" and you've indicated that the preponderance, at least of the testimony that you have, is that indeed the fetus is living at the point -- at the point when, as you said, it is then killed by the doctor.

There are at least some physicians, however, who dispute that, as you've also cited, even though you disagree with them. You've cited that there are physicians who state that. My question is, leaving this definition in the law as it is without it being a word of art in medicine, isn't that going to bog down any kind of legal proceeding in a question of fact as to at what point the death actually took place? That is, since your definition says it

has to be delivered before killing, isn't that going to be a question of fact that people are going to have to testify to before you can even get to the point of deciding whether you've had a partial birth abortion under this bill?

SENATOR MALTESE: Mr. President, and my esteemed colleague, there's been a reference made a number of times to our inability in large -- to a large extent to cope with the medical terminology and medical terms and, like my colleagues who previously addressed themselves to this issue, I don't pretend to have any special medical knowledge.

I did, in the course of drafting this legislation and in making it virtually identical to the federal legislation, speak to a number of physicians and obstetricians and people in the medical field.

The terminology, "partial birth abortion," was one that was copied exactly from the federal legislation, but, quite frankly, the same physicians, Dr. Haskell and others who indicated that they had initiated and coined the

first expression, the "D & E", the dilation and evacuation, we now know, based on their representations and their statements, that prior to 1978, there was no such procedure, no such procedure or medical procedure termed as such.

In 1979, apparently as an out growth of the dilation and evacuation which was to leave the fetus within the woman and pull it out piece by piece, the doctor -- apparently Dr. Haskell and Dr. McMahon came up with this procedure which they named dilation and extraction, "D & Ex".

So my view not as an attorney, and I find many times that legislators or others who are not attorneys indicate that they lack the legal knowledge and acumen of lawyers, but I've always found that the -- to the so-called common man, the average attorney lacks a certain amount of common sense.

In this case, I would hope that we've used it. A partial birth abortion has been very clearly defined within the four corners of this legislation, in that it is

termed, and it says, "As used in this section, the term," quote, "'partial birth abortion'," unquote, "means partially vaginally delivering ***" so that would mean, that would preclude a C-section, a living fetus, so that would have to be a fetus that was extracted and living at the time before killing the fetus, terminating its life and stopping -- and this I discussed with physicians and -

SENATOR COOK: Mr. President, will the Senator yield?

SENATOR MALTESE: Yes.

SENATOR COOK: That's precisely the point. Don't you have a question of fact there then as to whether, in fact, if you're in the middle of a prosecution, that that fetus was delivered -- was living at the time of delivery? I mean, haven't you created a question of fact there that becomes the focal point of the whole -- the whole trial because you haven't even determined -- you have to determine whether a crime has been committed, and you basically have to find out whether the requirements of that

definition have been met?

SENATOR MALTESE: Well, Mr. President, that's true. At the same time as we heard the procedure described both by Nurse Shafer and by Dr. Haskell's description of the procedure, and earlier today and yesterday by other physicians, they apparently locate the fetus by sonogram, and during the course of the operation actually watch the fetus so that they can get the, as they call them, "lower extremities" and pull the baby out.

In the course of these sonograms, I am told -- and I have only seen pictures and not the sonogram itself -- I am told that you can very vividly see the heart beating, so I - and these are a permanent record that can be - that can be available to anybody with dates and times on the sonogram -- so presumably right up to the moment of extraction, you can watch the fetus travel the vaginal canal right to extrus ion and see that it is in fact living, at least in the case of a fetus that is in fact living and, as Dr. Haskell indicated, is in fact in

some two-thirds of the partial birth abortions that he performs.

SENATOR COOK: O.K. The bill, Senator -- if you will continue to yield.

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator Maltese, do you continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR COOK: -- creates the title of the crime of "partial birth abortion." Senator, I assume that, since it's a crime, the district attorney basically has the responsibility to prosecute the criminal?

SENATOR MALTESE: Yes, Mr. President, he does.

SENATOR COOK: How does a district attorney find out this crime has been committed?

SENATOR MALTESE: Well, Mr. President, it would be as in any other, a question of fact. I assume someone either

present in the operating room or someone aware of it would bring it to the attention of a district attorney and that there had been a violation of law, in this case or in any others.

SENATOR COOK: O.K. Senator, you've been a former district attorney. Maybe you can help me with this. We now have, say, the nurse who has been present in the operating room is a witness to this crime. The -- as I understand it, the nurse would then call the district attorney and say, "I was a witness when a crime was committed, and an abortion was performed on Mrs. X."

What does the district attorney do then? He goes to the judge and he says: I have reason to believe that a crime was committed. I need to have access to Mrs. X' hospital records so that, in fact, I have information to present to the grand jury to show that this abortion -- this crime was committed, because I've got to present a bill, a part of the cause here if the jury -- if the grand jury

is going to indict someone I'm going to have to present a medical record, presumably at least, to show that this crime was committed so that they can make a -- hand up an indictment.

Wouldn't that be the case?

SENATOR MALTESE: Mr. President, you know, a district attorney has it within his power to decide which cases to prosecute and which cases not to prosecute, so I -- I assume that, since this is a felony, he would make a determination based on available facts and decide what the evidence to present to a grand jury and then he would at that point in time depending on the grand jury's action -

SENATOR COOK: But wouldn't you -- wouldn't you agree, Senator, that if you were prosecuting -

ACTING PRESIDENT KUHL: Senator Cook, are you asking Senator Maltese to answer some more questions?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR COOK: Senator Maltese, if you were the district attorney and you were going to appear before the grand jury to ask for an indictment, then at the very least you would have to bring in a medical record to show that the crime had been committed, which means that you're going to, in some manner, have to get access to the woman's medical record and you're going to have to present that medical record to the district attorney because you're going to have to show in some manner that this crime happened.

SENATOR MALTESE: Mr. President, I -- with all due respect, Charlie -- Senator Cook, I don't follow your conclusion. All these questions are questions of fact that would be determined by the district attorney and how he assembles his proof is a matter of discretion to the district attorney, so I -- I assume he would use whatever sources at his disposal as to the

people that were presented, the person who had brought the matter to his attention, the hospital records and whatever other information, probably subpoena or request the appearance of the physician, attending physicians, nurses and the person -- the person herself who brought the -- the person herself who underwent the procedure.

SENATOR COOK: So that either you're going to have to bring this woman who's had the abortion in to appear before the grand jury or else you're going to have to bring her medical records in to show that the abortion - I -- I guess, Senator, what I'm trying to get at is, through some credible evidence, as I understand it, a grand jury is going to have to have some indication that this crime took place, and what I'm trying to get at is, wouldn't it be at the minimum a necessity to provide the grand jury with the medical record of the woman to show that the crime happened?

SENATOR MALTESE: Mr. President, yes, but you know, one of the questions that

came up with reference to our speaking to physicians and obstetricians in connection with this statute, was what -- at what stage do - does a physician perform a partial birth abortion, and what was indicated to us is that in all the early stages where the other procedures that we've described took place, the fetus was undeveloped, relatively undeveloped - a mass of protoplasm, a mush as one doctor described it -- and unable to reach this point of gestation, but that somewhere around 17 or 18 weeks and then going toward 20 weeks, the skull -- the calcification of the body and the skull was such that the prior procedure which was so ostensibly followed, the dilation and evacuation, became much more difficult because the instruments that were inserted did not have the ease of being able to -- to break off portions of the fetus' body and bring -- and bring them out. So in this case, they had a relatively solid head which would proceed only with great difficulty after three days of dilation through the birth canal, and there have

been -- they felt that this procedure would only be even possible after 20 weeks, so I think it would be, as always, a question of fact and a question of proof as to what the district attorney would put into -- to evidence.

I can say after being there three and a half years and in homicide that questions of abortion or questions of birth or questions relating to abortions and termination of life in either infants or newborns, or miscarriages, were areas that were tread into with great reluctance. The average district attorney, like most of us, was very reluctant to go into the area because of the difficulty of securing proof, the difficulty of securing medical evidence and medical testimony and the difficulty of ascertaining with specificity exactly what had transpired.

SENATOR COOK: So that it's a very difficult thing to establish as proof. Now, Senator, let me, if I may, ask -

ACTING PRESIDENT KUHL: Senator Maltese, you continue to yield? Senator

continues to yield.

SENATOR COOK: Senator, I assume if you were a district attorney, you wouldn't want to go into a trial with a single count indictment if you could avoid it. You probably would want to, in effect, establish that there had been a -- a pattern on the part of this doctor to -- to perform these illegal abortions.

How would you do that? Would you then search his medical records to find out all the women who had abortions and then go and check their medical records to find out, in fact, that they had abortions and then you would present their medical records to the grand jury so that they were able to hand up a multi-point, several-count injunction -- or, I'm sorry, indictment as opposed to a single count? Would that be a reasonable way that you would proceed?

SENATOR MALTESE: Mr. President, I think in -- with reference to this specific proposed legislation, we have a situation as we had in so many of the bills relating to abortion

and right to life of any type, we, I believe, would have almost immediately a test case. We would have almost immediately doctors who would come forward as doctors have in the past, or abortion doctors, and confess or admit to performing something totally within the - within the statute that was not done to -- to save the life of the mother, that was -- you know, that was done purely electively and would be within the four corners of the proposed legislation.

So I don't know that you would have any great difficulty at least in the first few cases were you to decide to prosecute.

SENATOR COOK: So, in other words -- Mr. President, if I may. So, in other words, Senator, you're basically concluding a doctor is going to confess that he committed the act, but he's going to challenge it on constitutional grounds; is that what you base it on?

SENATOR MALTESE: That's what I believe would happen. It's a matter of

conjecture.

SENATOR COOK: Well, let's assume -- Senator, let's assume that some doctor had done this and it was determined to be constitutional, and I just want to -- I want to figure out how you go -- how you proceed in prosecuting someone who has committed this crime because it seems to me that you then have to proceed from the point where you have gotten the indictment.

You have a trial. Now, at that point I would assume you have to call the witnesses and that the most important witness would be the woman who would have the abortion because she is -- certainly has the most first hand information, so probably when you get ready to try this doctor for this crime, you're going to have to put the woman who had the abortion on the witness stand and establish the fact that, in fact, she had the abortion. Would that be a reasonable case?

SENATOR MALTESE: It would seem to be a logical -- a logical situation that she

would, in fact, having been present and having the abortion performed, yes.

SENATOR COOK: So that -- Mr. President, if the Senator continues to yield.

ACTING PRESIDENT KUHL: Senator Maltese, you continue to yield?

SENATOR COOK: So that basically, a woman goes to her doctor and she asks the doctor to -- or she has a problem because we're talking about a problem of abortion. She has an abortion. She then is going to find herself on a witness stand sharing with the whole world the most intimate secrets about her health, about what were the circumstances surrounding this abortion because then, as I understand it, the defense that the doctor would then make was that it was a case of the imminent death of the woman if the abortion weren't performed or, if Senator Connor's amendment had been adopted, it would be the question of the health, whatever that may be, that all of these issues then become a matter of conjecture in open court and the point being, Senator, that you very thoughtfully said

that the female on whom the partial birth abortion has been performed may not be prosecuted, so you very carefully now have given the woman every -- taken away every excuse that she would have for not testifying because she now, since she can't self-incriminate, she now has to go in and basically answer all sorts of questions about her health, her life, her abortion, in a public court in order to gain the information that would be necessary to -- to successfully prosecute the doctor for the crime that he was -- that he's committed.

Would that be -- would that be logical?

SENATOR MALTESE: Mr. President, I don't know that anything that's done either by judges or DAs or courts or members of this Legislature are logical. At the same time, I think we have an obligation to try to craft legislation as best as we can to make certain acts a crime and, as far as the district attorneys, they have the sworn duty to try to uphold the law and to prosecute miscreants and

persons who violate the law.

I think that the difficulty of prosecuting a case, one of the things that in - in referring to juries on homicides, especially homicides where you had no one else present but the perpetrator and the victim, is you would say sometimes to the jury that a homicide, in many cases, is the toughest crime to prove because the only person that -- if you kill the victim and there's no one else present, the only person that is present is the alleged perpetrator, and his point of view is the only one that comes across to a jury.

So I think here you have at least additional witnesses. It's done usually quite openly and notoriously, and I think that it's just a matter of difficulty of proof. I don't know that that should be the defining factor in our adopting legislation of any kind, especially legislation like this.

SENATOR COOK: Mr. President. Thank you. Thank you, Senator Maltese. I want to thank you for your courtesy as always.

You've always been a gentleman, and I know that you're very sincere in this -- in this bill.

The bill creates the crime of illegally performing an abortion, and in name at least the doctor is the one who is charged with the crime and who will sit there as the defendant in the trial; but the person who is really on trial is the woman because she is first going to have people rummaging around in her private medical records in order to establish that the crime occurred. She is going to be on the witness stand where she is going to have to testify that, in fact, she had the abortion. She is going to be cross-examined to determine that, in fact, there was a reason, supposedly a justification, for having the abortion. Her most private -- the most private information about her life is going to be put on trial in front of the whole world to see and, Senator, if this were a measure which in some manner would possibly make the abortion more more humane or more desirable, perhaps that would be one point; but the real point is that

this does not do that.

This is a bill which victimizes the woman by putting her on trial and, frankly, by making her an object of public ridicule because she had an abortion and, Senator, that is not justifiable in my mind of anything that we do.

I really think that abortions are not pretty. I never liked the practice of abortion and, frankly, I don't know in my own family whether I would suggest that an abortion take place or not. It would depend on the circumstances; but, Senator, it is something that, in very narrow circumstances, certain people are confronted with and they really don't have an awful lot of choice because of the health issues involved, and they should not be subjected to the possibility of having to answer to that in a court of law.

And the second point that I would say, Senator, is that if you have a situation in which doctors know that they may be subject to a criminal investigation if they perform the

abortion in this particular manner, then they're going to be -- then they're going to find other means to do it, and which in some cases -- and I would say it's probably a narrow bunch of cases -- they're going to use some procedure which in some cases may not be the safest procedure but they're going to do it for their own self protection because they don't want to be involved in a criminal investigation.

And finally, Senator, I would have to put this on the table and make it a point of reality, and that is the fetus never survives an abortion. There has been discussion about at what point the life of the fetus is terminated, be it in the womb, be it at delivery, be it at what point, the fetus does not survive the abortion.

The point, therefore, Senator, has to be, what is going to be the policy of the state of New York relative to the health of the woman; and I think that anything that we do in this house which takes away the option which the woman and which her doctor and which her

spiritual advisers, under the best consideration that they can give, if they fail to have that option available to them, I think we've done them a grave disservice.

Thank you.

ACTING PRESIDENT KUHL: The Chair would just like to remind the membership that there are ten other members who have indicated to us that they would like to speak on this issue. In order, they are Senator Espada, Senator Leichter, Senator Mendez, Senator Abate, Senator Oppenheimer, Senator Dollinger, Senator Marchi, Senator Lachman, Senator Waldon and Senator Hoffmann. Also this debate started at 2:37. The rules allow for two-hour debate, as you're all aware. The leadership, Senator Bruno, Senator Connor, have allowed us to go a little bit farther than that, but I would just remind you that there are other people, colleagues, who are waiting to speak when you take your turn.

Thank you.

Senator Espada.

SENATOR ESPADA: Thank you, Mr.

President.

Actually it can be abridged because I didn't think it possible somehow, and apologies to the sponsor, that they would -- the sponsor would be so thorough and really compassionate and thoughtful in his presentation so that part of my rebuttal is out the window, thank God.

But this bill, with all due respect to the sponsor, is medical malpractice in the making. I mean we here in this chamber as Senators are going to make medical decisions without a license? There's something in the codes of this state about that. Isn't that a felony? Isn't that inappropriate?

And I share Senator Paterson's views on the unseemly process that was used to get the bill on the floor. The justification for that seems to be that we have to rush to do the right thing. To do the right thing coming into May is to pass a budget. Where is the priority and emphasis to that?

To do the right thing if you're

interested infanticide, if you're interested in the infant mortality and morbidity rates in my district and in districts like mine throughout this state, is to give a fair share allocation to education, is to give a fair share allocation to the health care resources that would indeed prevent premature infant death and morbidity.

And so let's just cut to the chase here. Doing the right thing in this context is code language. It's code language for putting a doctor in jail. It's code language for splitting the trauma of a family that has to undergo this kind of an experience, and I think Senator Goodman put it in its proper perspective. You have a couple here, a mom and a dad, with six, seven, eight, sometimes nine months waiting for a child, for a baby, for an addition to their family, that might have purchased a crib, that might have named that baby, and now instead of aiding and assisting in whatever way, through compassionate legislation resources or just human empathy, we want to do something, we would deal with that realities;

but instead we reach down to a baser instinct and we exploit the trauma and the tragedy.

And, you know, it's been rather slick. This is a slick public relations maneuver. Unlike the past where we carry the fetus in the jar or we gag physicians and prevent them from providing counseling on a woman's reproductive rights or when we pick up poor women and deny them the Medicaid-funded abortion, this one focused in on a procedure, a graphic and horrifying procedure, and so that procedure has been the focal point. That procedure has been the emphasis; but, you know, you took greater license than that. You became medical linguists and you introduced some new words, "partial birth abortion," and you take some poll results and you ask pro-choice or pro life citizens in this state, How do you feel about this procedure, and you get 71 percent. You should have gotten a hundred percent, because it is gruesome. So is a triple bypass surgical procedure gruesome. It's not a matter of electing to get one. It's a matter of medical

necessity.

And so we are dealing with a specific procedure, a specific procedure that would be outlawed and, as Senator Cook outlined, would criminalize the doctor, would expose the woman, would take her right of privacy totally -- totally away from her.

Now, how would you like it if your daughter or your mother or your wife had to make that critical decision at whatever point, and the point is not clear, first trimester, second trimester, violation of Constitution or not, whatever span of time in that pregnancy you visit the doctor, after the ultrasound, after whatever diagnostic procedure, and they tell you that the baby is without a spine, that the brain is growing outside of the head, that the toxicity in the mother, there's fluid building up in the mother, her life is in danger.

I mean let's get real about this. In that context, on whatever side you come on here, consider the consequences because this is real. This is real to Vicki Wilson.

This is real to Miss Corinne Costello. This is real to whatever the numbers are, 600 in the nation, 3,000. Let's see, I don't know what the real number is. I'd venture to guess that you don't either, but the bottom line is there's a reality out there that women and fathers and families are put in, in rare circumstances where they have to choose. They have to choose between the mother and the child. They have to choose between a safe procedure and a risky procedure. You remove the safe procedure, the D & E or the D & X, you remove that procedure, you ban that procedure, and you force the woman to choose a riskier option, one that would compromise her health.

Well, why not do a C-section? Why not talk about a less gruesome procedure? Well, the law says that you don't have to deal with that section. The law of the land says it is illegal to deal in trade-offs. You can't do it, and so, Mr. President, in the interests of time, this is not an elective procedure. This is a medical necessity.

This is about family trauma. This bill, although spartan in its writing, is explosive in that it is intrusive. It is potentially deadly. It is, without this particular amendment that was offered, unconstitutional and exploitative, no question.

Let me just end by reading from Corinne Costello's testimony to the Judiciary Committee of the United States Congress when she says, "We are the families who wait to hold our babies, to raise them, to love them, to nurture them. We are the families who will forever have a hole in our hearts. We are the families who have to choose how our babies would die. Each one of you should be grateful that you and your families have not had to face such a choice. I pray that no one you love ever does. Please put a stop to this terrible bill," she asks them.

I ask you to do the same thing.

Thank you so much, Madam President.

THE PRESIDENT: Thank you, Senator Espada.

Senator Leichter.

SENATOR LEICHTER: Madam President, I think it's very clear when you look at this bill and you listen to the debate, that this bill is nothing else but an assault on Roe vs. Wade and an assault on a woman's right to have an abortion.

Now, let me say I have the greatest respect for Senator Maltese, and I know that he has very deeply felt religious morality beliefs on this issue. Nobody questions your sincerity or the sincerity of anybody else, and Senator Bruno certainly has made his opposition to abortion well known.

But this bill is a political statement, sheer and simple, a political statement. Why is it that, after all the years that this procedure existed, in a presidential year, a year of a presidential election, suddenly we have a bill that, as Senator Bruno says, No, this bill doesn't deal with abortion. This bill deals with a procedure. Why is it before us in the year 1996? And why, if the

issue is a procedure and understanding it, why don't we have hearings on it? Why not give the medical communities an opportunity to be heard?

I have statements here from the most respected and the most admired medical associations and doctors explaining the statement and saying that this is an intrusion upon the practice of medicine. At the very least, we should have had hearings. I think this bill was important enough, if you think that it is such an important policy statement, that it should have gone through the regular procedures of the Senate.

It should have been taken up by the Codes Committee; we should have had hearings. With all due respect to the work that you've done, Senator Maltese, I just don't think it is sufficient, and certainly doesn't satisfy me, for you to read excerpts that you find in doctors' statements that support your position.

I'd like to hear Dr. Haskell testify, and you're a good enough lawyer to know that that is the best evidence, not your reading

excerpts and picking and choosing here and there what you're going to read.

I think the Senate is stumbling into an area where it is totally incompetent, where it's totally uninformed. I don't see a single doctor here. If we're dealing with a medical procedure, I'd like to hear from the doctors. I'd like to hear from the medical profession, but I don't think that was the aim. I think the aim is that you wanted to make this end run around Roe vs. Wade. You are against abortion, and you'll choose any opportunity that you can to challenge it, even if it is blatantly unconstitutional, as this bill is.

Senator Maltese, you made that clear. You said that you're dealing with a procedure which, as you stated, is used mainly in the second trimester. What happened to the statement of Roe vs. Wade that we are precluded from interfering with a woman's right to choose for herself in the first and second trimester?

And then the amendment of Senator Connor which, frankly, I think was so narrowly

drawn that I have some question whether it actually satisfies the Supreme Court's opinion and the Supreme Court's grant to a woman of the right to make decisions in privacy; but the Supreme Court certainly said that, in the third trimester, states can act except where abortion is necessary for the life or the health of the mother, and you voted down an amendment which conceivably -- I think conceivably -- frankly I doubt it, but conceivably would have made this bill constitutional.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Excuse me, Madam President. Senator Leichter, excuse the interruption, but we have a procedure here that I'd like to accommodate Senator Paterson, Senator Stavisky. They have some travel due to a death in the family, and I'd like to ask that we open the roll so that we could have two of our members that have personal problems vote.

THE PRESIDENT: The Secretary will read the last section.

THE SECRETARY: Section 3. This

act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I vote -- I vote no, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: May I be recorded in the negative on the bill. Thank you.

THE PRESIDENT: Withdraw the roll call, please.

Senator Leichter, do you care to continue?

SENATOR LEICHTER: Yes, Madam President. Thank you. I've been asked to move over to Senator Paterson's seat, and I will try to finish very quickly, because I realize there are others.

I'm really concerned also that that failure to hold a hearing and the way we're proceeding and the disregard that we show for constitutional mandates or for that matter for our own laws of the state of New York that once again we're belittling women; we're martyrizing women.

I think Senator Cook made an excellent point that you're really putting the woman on trial here. I think again we see an effort to undermine a woman's right to an abortion, to scare doctors away from performing abortions because they may face criminal action.

I really don't think, Senator Maltese, with all due respect, that you understand the procedure. Senator Farley got up and I couldn't believe what he said. Senator Farley said, how can you justify, and then he goes ahead and justifies it. He said, Well, there's two other procedures, the saline procedure and the other procedure but, well, those are harmful to the health of the woman. Then he goes on blithely proposing that we ban

the very procedure which might be necessary to save the life of the mother or to -- or to preserve her health.

I think that we're in an area where we should not act. We're in an area where we're precluded from acting, and we've acted in total disregard of our rules and of our procedures.

I will yield to Senator Farley.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Senator Leichter.

Just on a point of personal privilege. I truly believe that you kind of misunderstood what I said. I said that one of the doctors, at a press conference yesterday, and I'd stand corrected that I was saying how barbaric and gross this partial birth procedure is that they use almost all the time when they do it, because there were two other procedures that could be used. He says, but it is not an accepted procedure because it endangers the mother and it doesn't always kill the baby, but

they always use, theoretically, if I got that correctly, Senator Maltese, this third barbaric gross procedure. That's the one that they use and I'm saying that, when we're talking about that, that's what we should outlaw and that's what this bill does, that says that this in humane procedure would be outlawed. I certainly wasn't blithely offering an alternative.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Well, Madam President, Senator Farley, we'll get the transcript tomorrow. We'll take a look at what you said, and I think what you said happens to be the case that there are instances where this procedure may be decided on by medically trained persons as a procedure which is necessary.

I just finally want to say that I think once again here we find that certain religious beliefs are sought to be imposed upon all of society as public policy. I think you can certainly be against abortion, you can rail against it, you can criticize it, and so on, but

I don't think you have the right to impose your religious beliefs in this fashion, and you certainly don't have a right to step between the woman and her doctor and deny her the medical procedure which might be necessary for her health and for her life.

I regret very much that we're taking up this bill in this fashion and in such disregard of a woman's right and the constitutional protection that a woman has.

THE PRESIDENT: Thank you, Senator Leichter.

Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President.

I wonder if Senator Maltese would yield for a question.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Pleased to.

SENATOR MENDEZ: Senator Maltese, does your bill in any way -- in any way -- ban abortions to the second trimester?

SENATOR MALTESE: Madam

President, Senator Mendez, no.

SENATOR MENDEZ: Thank you.

Thank you.

I really, Madam President, have to establish that because this issue is so emotional that, when you see return from both sides of the aisle and people then end up saying things that are not factual and that will complicate matters in terms of making a logical decision about a problem that all of us are very much concerned with.

So as the first thing that I want to establish is, number one, I, Olga Mendez, the State Senator from the 28th Senatorial District, I am pro-choice. However, this kind of procedure -- this kind of procedure -- there is no -- no possibility that it should be allowed to stay. It's been said that this denies a woman her reproductive freedom.

Well, this is why I did ask Senator Maltese if, in fact, banning -- if, in fact, his bill passes this chamber, if in fact it is going to intrude in what already the law

of the land is, and that is that a woman has a perfect right to have an abortion, to choose, free choice to choose to have an abortion, but the Supreme Court clearly stated 24 weeks -- 24 weeks, as long as the fetus or the baby -- and I use both words because people are even so finicky even about what you want to call that entity that resides in a woman's uterus, so as long as the fetus is viable.

Now, the Supreme Court also stated that a human being becomes a legal person once that human being is out of the birth canal. It is fascinating to me that this horrendous process, the entire baby or fetus is pulled out alive but in the procedure they make certain that the head of the baby stays in the birth canal so that -- so that that person, that fetus or baby, is just four-fifths away from being a legal person.

So I don't think that there is - I don't think that there is any justification at all for maintaining this process. As I said, this procedure, as I said before, it does not

take one inch away from the gains made by women in terms of free choice, doesn't take anything away from women. Anybody who says so is just residing in fantasy land.

Secondly, there are other methods that are available, and this bill, Madam President, this bill will not ban -- will not ban the -- this procedure in cases whereby the life of the mother is at stake, one. So -- so I think that this horrible procedure is being defended in many -- is being defended in many rhetorical fashions because it is being related to the presidential election, O.K. Because our president, our wonderful president, vetoed that bill, I think all the rest of the Democrats in New York State feel that we must -- that we must obliterate from our minds the -- the horrendous part of this procedure, so that in that fashion we are the best Democrats in the whole world and, at the same time, my dear fellow Republicans might feel, well, we're doing this, maybe we can really give a one-two punch to President Clinton.

Those two political positions if, in fact, they do explain the tremendous rhetoric that's being used in this instance, in my mind they are not worth it. What counts in my mind is that we are a nation of civilized people. We, the American people, are the most generous, the most kind people in the whole planet earth, and this procedure is so repulsive, so utterly savage, that I lack -- Madam President, I lack adjectives to describe this, and since in the final analysis, as I said before, a woman's right to choose is not being obliterated, you know, if we keep it up -- and I was mentioning this to some wonderful people -- maybe the day will come when baby -- babies' tissues or crippled tissues, baby's brain cells or fetal cells could be a commodity on the street so that they could be used to make beautiful cream to keep us young and to put them to some other supposedly good use.

Madam President -- Madam President, this bill will not see the light of day in the Assembly. I am sorry for that. I

think the amendment -- yes, I voted for the first amendment. On the other hand, we also know that, because federal legislation and federal policy takes over -- takes precedence over state policies, this bill as is, it will be women who need this horrendous process to stay alive. They will have an opportunity to have it and that's the way things are.

So I am supporting this bill, Madam President, and I will vote yes.

THE PRESIDENT: Thank you, Senator Mendez.

Senator Abate.

SENATOR ABATE: On the bill.

It was said by a number of my colleagues that this issue is a simple issue, that it's an issue of the difference between right and wrong, and it's an issue of common decency and humanity.

I wish it were so simple. I don't believe this is an issue that's simple for either side. If you look in the rafters, there are people that are advocates from different

religious organizations, from family planning, women's organizations, where this issue is a matter of conscience, where this issue is a very emotional issue and on both sides, the advocates strongly hold their positions. So no matter what our individual opinions are in this issue, we need to put those opinions aside and look at what is the role of government and what is our role as a lawmaker.

I hear over and over again here in this chamber that the role of government has become too intrusive, that we need less government and more individual responsibility and accountability and that government should not intrude in the lives of people.

So the question is, and I believe the fundamental question, who should be making these medical decisions? Should they be law makers? I, for one, don't really understand even the medical terms being addressed today. I, for one, am not equipped to say to a woman that you should take one procedure and not another and maybe as a consequence risk her

health or her life or her ability to have another child.

I believe the decisions should remain in the medical profession, and we should look at our history in the decisions we make. We live in our diverse society. We live in a society where there are many religions and there's clearly no monolithic consensus around when birth begins and when life begins, and out of respect for the diversity in our society, out of respect for people who are Roman Catholic, for people who are Jewish or people who are Protestants or Muslims or whatever one's religious beliefs, out of respect, we in this state and in this nation have said because we respect everyone's opinions, we believe that a woman should have the right to choose.

So if you are Roman Catholic and you feel firmly that life begins upon conception, no one will say to you that you should have an abortion. On the other hand, if you consult with your religious advisers and people in your family and you feel that you -

it's appropriate for you to have an abortion, the law says that you can have one.

We're now talking about late term abortions, and I think we would be doing a disservice to women if we didn't interject in this debate, and I'm glad Senator Cook began that discussion, what does this impact and what will it be on women because we can not talk about this legislation until we really understand who the women are that choose to have these late-term abortions and what will the impact on them be.

So we know from -- from experience, the women who have undergone this very rare and safe procedure have done it in a very catastrophic health situation. They wanted the pregnancy. They wanted to bring their pregnancy to term. There are many cases where the women even named their children. Their nurseries were prepared. This was a human tragedy for them when they learned from their doctors that their health was in jeopardy, that their life would be risked, they could no longer

have children if they brought the pregnancy to full term.

I'd like to read the words of Corinne Costello because I do not believe this is based -- complete. I believe the debate is hollow if we do not have a woman's voice in this chamber who can say, this is wrong, that you are irreversibly affecting the life and the decisions of me and my family.

So let me just read, and I probably will go on longer than I should today, but I feel very strongly about this issue as a mother and also as a lawmaker.

Corinne Costello says: "But disaster struck me in my seventh month. Ultrasound testing showed that something was terribly wrong with my baby. Because of a lethal neurological and muscular disease, her body had stiffened up inside my uterus. She hadn't moved for several months and she was unable -- her lungs had been unable to stretch to prepare them for life. Our doctors told us that Catherine Grace could not survive and that

her condition made giving birth dangerous for me, possibly even life-threatening.

"Because she could not absorb amniotic fluid, it had gathered in my uterus to such a dangerous level that I weighed as much as if I were at full term. I carried my daughter for two more agonizing weeks. I couldn't save her life. How could I spare her pain? How could I make her passing peaceful and dignified?

"At first, I wanted the doctors to induce labor, but they told me that Catherine was wedged so tightly in my pelvis there was a good chance my uterus would rupture and my life would be put in danger and if not my life, my health."

So she goes on and on and talks about the procedure, and then she ends and says, "I still have mixed feelings about abortion, but I have no mixed feelings about legislation that would altogether ban late-term abortions. Senator after Senator --" this is her exact words -- "talked about the procedure I under went as if they had seen one, and Senator after

Senator got it wrong. Catherine was not cavalierly pulled halfway out and stabbed with scissors, as some Senators described, in the process," and before that she described a needle that was used to remove fluid from the baby's head so that the fetus could be pulled through the cervix. "I had one of the safest, gentlest, compassionate ways of ending a pregnancy that had no hope. I will probably never have to go through such an ordeal again, but other women, other families who receive devastating news and have to make decisions like mine," and she says lawmakers have no place in our tragedies.

I give the voice of Corinne Costello because there are other Corinne Costellos that have had this procedure and others will be similarly faced with these tragedies and, as someone said, I don't know whether Senator Espada, whether it's our mothers or our daughters or our cousins or our loved ones, let's treat them with respect and dignity, let's ensure that their health is not jeopardized, and make sure that we act as law

makers, not as physicians.

I go back to the fundamental issue: Why are we discussing this bill? Are there numerous abortions, late-term abortions occurring in New York State as described by Senator Maltese? By all accounts, and I made a number of phone calls, talked to a number of physicians, there are estimates of a handful of abortions such as these which I'm describing as late-term abortions in New York State.

And why is that? It's because we already have a law that clearly defines when third trimester abortions are appropriate. It's one of the most restrictive laws in the country, and I would dare say that it's probably unconstitutional. It was passed before Roe v. Wade. It just carves out a -- an exception for preserving the life of the mother, and there's a reason why there are very few late-term abortions, because it's already illegal except for this carved-out exception in New York State.

The abortions are not occurring

in New York State. Women who want these abortions and are pregnant don't have them in New York State. They leave the state. So I have to say, why are we doing this? And I suspect we're doing this because there are many people who do not like the fundamental right of women to choose, and this is an opportunity because the way the proposed legislation is drafted, it's very broad and and it's very vague, that it will in fact erode the woman's right to choose.

And why I say it's vague because it talks about partial birth abortions and yet there's no medical terminology that defines it. Are we talking about D & Es or D & Xs? It also does not determine, as Senator Maltese sincerely stated -- it does not restrict abortions to the third trimester. We're talking about first and second trimester cases.

So this bill, as has been stated by my colleagues, raises serious legal and constitutional issues. It is also saying to a doctor that we of the Legislature know better than he or she and that we will determine what

procedures are safe and what procedures are available to women, and we will be saying to a woman, you must of a hysterotomy and not have maybe a D & E because we in the Legislature have decided that hysterotomies are safer, and hysterotomies are the abortion procedure where there is a cut, a caesarean cut, that is longi tudinal, and studies have shown and medical testimony supports that this presents an enormous risk to the health of a mother, jeopardizes the woman's ability to have children in the future because there is a greater likelihood of perforating the uterus. But do we have the knowledge and expertise in this chamber to say which procedure under what situations should be available to women? I think not.

And we've heard over and over again that this proposed legislation is unconstitutional because under Roe v. Wade and Planned Parenthood v. Casey, the courts were very clear that there was not sufficient to create an exception of just preserving a life of a mother, that constitutionally any law that

sought to ban abortions in the third trimester must include the exception of preserving the health and avoiding severe health consequences for the mother.

So the Supreme Court has said, a state may not ban an abortion necessary to preserve a woman's life or health and the Supreme Court said that the woman cannot be put in a trade-off, that an undue burden would be placed on her if she had to choose between her life and health and that of a potential fetus life.

So what are we doing here? If we know it's unconstitutional and we know that, if we were to pass this bill, because I don't believe in the semantics that it's a one-house bill. This is a bill that may not pass this year, but we may hear about this bill again, and clearly if this ever passed it would be enjoined in the court, and right now under the law of the land it would be held unconstitutional.

So maybe what are we doing? Are we sending a chilling effect on doctors that,

whether the late-term abortion or a first or second trimester abortion, are we saying to doctors in this state, without a fair under standing what procedures are available, without giving doctors a fair warning, we're saying, You better stay away from abortions, because even if you don't have criminal intent, even though you're not sure what a partial birth abortion means, and even though you believe you're doing it to preserve a woman's life, you may be indicted and may be prosecuted and put in prison.

So what we are doing is eroding a woman's fundamental right to choose and what this bill does not do because in our naivete, the women who are going to consult with their priests and their ministers and their rabbis, they will consult with their families, and they will decide that they want to seek these abortions.

Do you think by passing this legislation that women will say they won't get an abortion? They will get an abortion. What

we are forcing women to do is to go underground to seek unsafe abortions, to risk their lives or to go out of state to get their abortions.

This bill will not discourage. Unfortunately, what the bill does, it will discourage qualified doctors from performing abortions or force women to jeopardize their health or force women to face riskier late step, less safe procedures in order to satisfy our misguided intentions.

I believe this is going to present an unprecedented intrusion into medical decision making. We're furthering the pain and tragedy that so many women may have to face in the future. This is a rare procedure. We're talking about maybe 400 cases in the country, maybe a handful of cases in New York State.

I agree with my colleagues that the legislation is more about effective public relations. None of this public relations will make this bill constitutional. Nothing addresses sound public health policy, and I would just like to end -- in conclusion, to end

in taking a look at a Long Island newspaper which had an editorial. I think it really sums up the debate today, and the title of that editorial is, "There's No Good Reason for the Maltese Abortion Bill," and let me just read a few of the lines:

"To compound the insult, the state lawmakers seek to address a problem that doesn't exist in New York State. New York already bans abortions after 24 weeks except to save a mother's life, and after 20 weeks gestation, the state requires a second doctor to be present to provide medical attention to the fetus even though fetuses are incapable of survival at that point. These two restrictions, both of them still on the books although they are unconstitutional under Supreme Court rulings, nonetheless make New York doctors reluctant to perform any late-term abortions.

"Most New York women who find themselves in the traumatic circumstances of needing a late-term abortion because of fetal abnormality or other health risks, travel out of

state.

"In conclusion, these circumstances make it patently clear that any new state restriction would be hollow. Injecting the idea in Albany's election year debate is just another bit of political games manship that will cause public and private anguish."

ACTING PRESIDENT KUHL: The Chair recognizes Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, thank you, Senator Abate, for making every point I was about to make.

Let's see. I do want to speak to something that was brought up by the Senator prior to you, and I think we're going to really have to focus in on this.

First of all, the numbers of this procedure, 4/100ths of one percent. As we are probably aware in this chamber, maybe not, I'll tell you that 99 percent of all abortions take place in the first six months of a woman's pregnancy, and so in the last three months

there's only one percent taking place and of that one percent only 4/100ths are this procedure.

There are, needless to say, other procedures in the third trimester which are principally used. This procedure is seldomly used. And so why is this tragic procedure used? And it's a very, very tragic and a horrible procedure. So let's examine why this procedure is used in 4/100ths of one percent of those abortions done in the last trimester.

Basically it would -- it's because either the woman's health is very, very severely impacted or the fetus is simply not viable. Usually the skull is, in one instance and this is a prime instance, usual reason, the -- the fetus or the baby would be hydrocephalic and that means that the skull is very swollen and there is no way to get this fetus out of the -- the normal canal.

The -- also another common instance is when the organs of the baby are outside of the baby and this term that's been

chosen, what do you call it? You call it a partial birth abortion, that would seem to suggest that there is a living baby that has been partially delivered and then it's being killed.

The fact of the matter is that it is extremely unlikely, almost impossible, for these babies to sustain life, so I think the choice of language is, you know, certainly not medical and certainly questionable.

The procedure and why it is chosen is probably due to the fact that women want to very much have this baby. If they can not have this baby, then they want to be reassured that they will be able to have other babies, and I don't know how many of you were here last week when this lovely young woman came here from Georgia, and she was the perfect instance. As soon as she had to have this baby taken from her by this procedure, she immediately went back to business of creating another baby and she had that youngster with her last week and the baby was perhaps a year old,

and she says she's a strong -- this was -- this couldn't have been staged. She said, "I'm a strong Newtie supporter, but on this issue, I can't agree with," and obviously she came from Georgia.

But the -- the purpose is to maintain the woman's reproductive health which is as important as her general health, which is as important as her mental health, but principally this comes about because the baby cannot be delivered without doing serious damage to her and to the possible future children that I'm sure she wants to have because she desperately wanted to have this child; but we must have the fetus come out of the woman because if the fetus dies in the woman, there are some very, very serious toxidity problems that could indeed cause not only serious damage but indeed death to the woman.

So that's the procedure, and why the procedure is chosen in this infinitesimally small percentage of trimester abortions which in and of itself is a very tiny one percent of all

the abortions that are done in our nation.

I'm trying to avoid reiterating what Senator Abate has said. However, I must reiterate that it is constitutionally protected that the woman's health not be subjugated, superseded by fetal survival. We must be very concerned about the woman's health. Much of this debate has only been about surviving of the fetus which, in most people's opinions, would not survive anyway, certainly would never need -- leave the needle -- the neo-natal unit at the hospital.

At any rate, I'll sum up by saying that this really is an unprecedented intrusion by government into medical decisions that rightly belong with a family and the medical provider to the family, the doctor. The doctor under this bill would be barred from a technique he thinks is safest for the woman and for her future health and reproductive health, and, you know, doctors should be doing the medicine and then we should be doing -- doing the government and budgets and as has already

been suggested.

This woman that I talked with last week and many other women that I have spoken with about this procedure after they have learned that their babies were severely deformed, presented a very, very sad picture. I've also met, as I said, with their children, the babies of these mothers who were able, because of this procedure, to have subsequent children. These mothers wanted their children very badly and they were advised by their doctors that this procedure was the best method of preserving their ability to try and have future children.

I was very lucky, and I'll be personal for a moment. I had four very healthy babies, and I was not faced with a catastrophic pregnancy. I don't know what I would have done under these circumstances, but I do know that my husband and I would have made our decision based on the advice of our family doctor.

This bill takes that decision about what to do in the face of these tragedies

out of the hands of women and their families. I don't believe I can or I should make this decision for any woman. So I'm going to oppose this bill so that I never have a woman come up to me and tell me she can never have children because I took that choice away from her.

I'll be voting no.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I have lots of questions about this bill. Will Senator Maltese just yield to one?

ACTING PRESIDENT KUHL: Senator Maltese, will you yield to a question from Senator Dollinger?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator, what would happen if a woman was carrying twins and her doctor said the only way that one of those twins will survive is to partial birth abortion the other twin? Under those circumstances,

should the doctor who performs that procedure go to jail?

SENATOR MALTESE: Mr. President, despite the fact that over the last few weeks, two weeks or so, I've been delving into all this medical terminology and documents and speaking to doctors, I don't know that I'm qualified to answer that but in discussing some aspects of the legislation and medical procedure with Dr. SanFilippo yesterday, he seemed to indicate that his procedure as such would not be used in a case as described by Senator Dollinger.

He described a D & C -- not a D & C, a C-section, indicating that in the course of the C-section, the -- all the mother's organs, and I assume that in addition to the mother's organs, the other twin's could be easily, whatever the medical purpose was, could be easily accommodated, thus then closing up a woman and letting the other child live to being born.

SENATOR DOLLINGER: But again, Mr. President, I -- if Senator Maltese will just

continue to yield for a clarifying question.

ACTING PRESIDENT KUHL: Just one more question, Senator Dollinger?

SENATOR DOLLINGER: Well, because like a good prosecutor and a good lawyer, Senator Maltese just gave me the toreador's robe as I was approaching and, frankly, changed my hypothetical and said, "I'm not going to answer the question, Senator Dollinger. I don't feel qualified and I don't want to yield."

ACTING PRESIDENT KUHL: Senator Maltese, you want to yield to another question?

SENATOR MALTESE: I suppose.

ACTING PRESIDENT KUHL: Senator Maltese yields.

SENATOR DOLLINGER: Suppose a late-term abortion is the only way, and I said let us assume a qualified person, an ob-gyn said the only way to preserve the life of one of the two children is to partially -- through partial birth abortion remove one of the children.

Does that doctor -- is that doctor guilty of a Class E felony?

SENATOR MALTESE: Mr. President, in seeking guidance on this, I asked my counsel if she had an answer, and she said, Suppose my grandmother's tires were yellow; would she be a school bus?

I think -

SENATOR DOLLINGER: Well, Senator, I think that's your whole problem with regard to this. You said you weren't qualified to deal with my hypothetical. I say this, and I say it with all due respect, you deserve the Butterfly McQueen award for proposing this bill because, as we all know Butterfly McQueen is a great star in the pop culture, an icon in enter tainment, and we remember in "Gone with the Wind" when she said, "Miss Scarlet, I don't know nothin' about birthin' babies."

And I would suggest, Senator, and unfortunately, those who are behind it "don't know nothin' about birthin' babies." Why don't you know nothing about birthing babies? Because you haven't dealt with the question of multiple births. You know, multiple births that rare

occasion that happens, I don't know, once in a thousand where there are twins or triplets and yet there's no exception in this bill for multiple births, and if, in fact, a mother goes through the terribly difficult position of saying, "O.K., I will decide to preserve the life of one of my children by allowing the other to be taken by partial birth abortion," for fear that both of them will die, that doctor, following the advice of the mother, following the consent of the mother, is guilty of a Class E felony to try to preserve one of those lives that I've heard so many people say today is so important.

I agree they're that important, but in a multiple birth situation where one has to be sacrificed to help the other, do you take that choice away from the mother of the one who's going to live?

Why do I raise that hypothetical? Because this bill is absolutely, as Senator Cook said, filled, replete with poor thinking. Senator Cook's correct, women will be called to

testify because they will be the only witness to this crime. They will be subpoenaed in front of grand juries, and I am telling you if this bill some day becomes law, women will go to jail because they will be subpoenaed to testify, they will refuse to testify in front of grand juries investigating Class E felonies, and a judge, in response to a district attorney's motion, will say, "I find you in contempt because you have refused to testify against your physician," and that judge will do what every good judge in the state will do, he will say, "It's time to put you in jail until you comply with the subpoena," and there will be a woman sitting behind bars because she refuses to testify against her physician.

Even worse -- even worse, this bill will force women to relive this tragedy innumerable times. They will have to testify in front of grand juries. They'll have to testify at trials or, worse, Senator Maltese, they will suffer what I believe is the greatest indignity of all, a tragedy that no one should have to

bear, because what happens in these partial birth abortions? The woman who came to me said she held the baby in her arms, she had a funeral service, she celebrates its birthday, but under your bill the question is whether the fetus was alive at the time of delivery.

I suggest there's only one good way, Mr. Prosecutor, for you to find that out before the baby's been buried and that's to exhume the baby's remains, to bring it up out of the grave, and to do an autopsy. So this mother who has buried her child after this anguishing decision will now be forced to have the child brought out of the tomb so your prosecutors can find out whether or not it was alive and a crime was committed.

I suggest to you, you are going to force women to replay this travesty again and again and again and again and again, and the public ridicule that Senator Cook talked about will be visited on them again and again and again and again.

This is all about war on women.

This is all about embarrassing women into not exercising their constitutional choices. What else happens under this bill? You know who else is going to be involved here, and, Senator, to show you how badly drafted your bill is, I find it fascinating that your bill says that a female cannot be charged with a crime under this section. She can't be charged with a partial birth abortion.

But what about the scheming prosecutor who says, "I'm going to charge her with assault. I'm going to charge her with battery since she consented to the battery of this child/fetus." What about child abuse or neglect? "I'm going to charge her with neglecting her child or abusing her child." That's not protected by this bill. Some prosecutor who wants to score points will charge the woman with child abuse.

They may not be charged with partial birth abortion, but they'll be charged with something else, because they'll be a criminal too. You'll make women who exercise

these choices into criminals and will start putting them in jail for exercising their constitutional rights.

But more importantly, what is this all about? Why does this bill come up at this time of the year? Why do you quote Barbara Shafer, who is now, of course, the poster child for the partial birth abortion rules? She's spoken gospel about what happens.

Paul Simon, United States Senator from Illinois, after hearing her testimony, wrote a letter to the Women's Medical Center in Cincinnati, Ohio and said, Who is this woman? Is she correct? You know what letter he got back? He got a letter from the woman who runs the ob-gyn service who is a registered nurse, who said, We couldn't even find Barbara Shafer at first. We had to look in our records. It turns out she worked under another name. She worked in our facility for three days, of course, making her an expert at least in your point of view, an expert on partial birth abortions. For three days she worked there. The nurse who

described Barbara Shafer's testimony said it's largely inaccurate. First, she described Dr. Haskell performing four 25-week and one 26-week abortion procedures. Quote: "Dr. Haskell does not perform abortions past 24 weeks of pregnancy. This is a self-imposed limit to which he has scrupulously adhered throughout the time that I've worked for him." She worked for him for three years.

"Secondly, Dr. Haskell," and this is critical because Senator Maltese, as you remember, made a big thing about the fact that this nurse had observed the ultrasound and movement and all these other things, this was her description of this partial birth abortion, hinging on her testimony about the ultrasound, so you can perhaps appreciate this, Senator Maltese, because I guarantee you, as a good prosecutor, have gone through this a number of times where you analyze someone's testimony and then look at the facts and realize that there was a huge variance in the two and that probably made you as a good prosecutor enormously

skeptical about the accuracy of their observation or their rendition of the facts. Nurse Shafer says, "I watched it on ultrasound." Nurse in charge of the ob-gyn service says, "Dr. Haskell does not use ultrasound in the performance of second trimester abortions. We use only -- only use ultrasound to determine the pregnancy's gestation."

Therefore, Nurse Shafer's entire description of her experience when viewing a second trimester abortion, which includes Dr. Haskell's using the ultrasound while doing the procedure, is clearly questionable. This gospel that comes on high from those who favor banning partial birth abortion, the source is questionable. It isn't even accurate. You're counting on a witness who has been there three days.

I ask you, Mr. Prosecutor, go in to your courtroom. The real trial that we ought to have is to put Nurse Shafer on trial, to put the ob-gyns in this state on trial, to bring them in here to testify so that we can find out

what the truth is, so that when we enact these bills we enact it on the basis of trust and not on the basis of fiction, not on the basis of television commercials, not on the basis of inflammatory descriptions that are, by the person who is in charge, declared to be clearly questionable.

We're arguing about clearly questionable things. Be glad to make the letter available. Be glad to make Senator Simon's letter available to the rest of his colleagues.

Mr. President, I'll conclude.

SENATOR VELELLA: Mr. President, will Senator Dollinger suffer a brief interruption?

SENATOR MALTESE: Senator Dollinger yield for a question?

SENATOR VELELLA: One moment.

ACTING PRESIDENT KUHL: Senator Velella, why do you rise?

SENATOR VELELLA: We have two other Senators who, because of personal matters, have to leave the chamber. I would ask that we

briefly interrupt the proceedings and read the last section so that Senator Stafford and Senator Gold can cast their votes.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This acted shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: In the negative.

ACTING PRESIDENT KUHL: Senator Gold will be recorded in the negative.

SENATOR STAFFORD: Thank you, Mr. President. Aye.

ACTING PRESIDENT KUHL: Senator Stafford will be recorded in the affirmative. The roll call is withdrawn.

Senator Dollinger to conclude.

SENATOR DOLLINGER: Thank you, Mr. President.

I will yield to Senator Maltese when I'm finished.

ACTING PRESIDENT KUHL: He will yield when he's finished.

On the bill.

SENATOR DOLLINGER: I have one perhaps little technical point, and I would ask Senator Maltese to address it when he sums up.

What happens to fathers in this bill? This bill clearly says the woman can't be prosecuted. What if a father like myself consents to this procedure and observes this procedure? I've consented to the destruction of this life as you describe it.

Am I guilty as an accomplice because I and my wife consented to this? Can a father be charged with a partial birth abortion or much worse, can a father be charged with child abuse or child neglect because, as you say, this fetus is alive and is entitled to protections?

What happens to fathers, that other indispensable element in the decisions

about child creation and child rearing?

I'll close, Mr. President, with a comment that I wish Senator Bruno were here for. Senator Bruno talked about respecting other people's choices, but I think we would be remiss if we don't recognize that this issue isn't about respect. This issue is about television commercials. This issue is not about respecting our choice. This issue is about revving up the politics of this state so that those of us who vote against this measure will be accused of killing babies, we'll be accused of killing infants. We'll be accused of destroying life as we know it.

I know those commercials are going to run, and I know that all those people over on the other side of the aisle who say they respect my choice, they won't lecture me on respect in November. They're going to run against Senator Oppenheimer; they're going to run against me; they're going to run against Senator Hoffmann, and they're going to run against anyone else who votes and that they

think they can beat, and I guarantee the one word you won't hear in the television commercials, We respect Senator Dollinger's choice, but you know it kills babies. You know it kills children. He respects all those other things.

That's what this issue is really all about. It's not about respect for other people's choices. It's about the politics of this state and how those who favor this bill think they can whip up the politics of this state for political gain. I've said it before; I'll say it again, the one thing this chamber is not good at is real political science. What we are very good at is politicizing science and that's what we do again here today. We take science. We imbue it with politics and we end up with really a bastardization and that's what this bill is.

As Butterfly McQueen said, we don't know nothin' about birthin' babies. You know who does? Ob-gyns and the women they serve. This choice is theirs and theirs alone.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Thank you, Madam President.

This issue, the issue of abortion generally, was first posited by Hippocrates. Hippocrates, 2400 years ago, Madam President, formulated an oath that has been taken by every physician virtually on the planet earth. He was not Jewish; he was not Christian; he was not Islamic. He swore by Apollo, but it was a noble statement in the defense of life, and he spoke very eloquently in that oath about defending life at every stage -- man and woman, bonded and slave. He said he knew no distinction, but the doctor, in taking an oath of office as a physician, was taking an oath to preserve life -- the culture of life -- and that is plain and simple and clear.

2400 years that principle stood, and almost everybody in this chamber was delivered by a physician who had taken that oath. I don't know what they're doing now, but they did take the oath at that time. Did they

have their fingers crossed? "I didn't mean it."

You younger people -- and I guess the women here are younger people -- they were delivered by doctors who came after the redefinition, which was not constitutional because it's noted in the Constitution of the United States. It's a traditional opinion. We know that the Supreme Court does not have stare decisis. Otherwise Brown vs. The Board of Education would not have overruled prior holdings of the Supreme Court. The one man/one vote, or the one person, if you will, one vote would not have stood if stare decisis governed the actions of the Supreme Court of the United States, and indeed the Supreme Court of the United States when they spoke on this subject did have some reservations, Madam President, and I quote from Roe v. Wade:

"With respect to the state's important and legitimate interests in potential life, the compelling point is viability." This is because the fetus presumably has the

capability of meaningful life outside the mother's womb. "State regulation protective of fetal life" -- I'm not quoting any ob-gyn expert; I'm quoting Roe v. Wade -- "State regulation protective of fetal life after viability thus has both logical and biological justification. If the state is interested in protecting fetal life after viability, it may go so far as to prescribe abortion." They go on to say during that period "except when it is necessary to preserve the life or health of the mother."

What does this act say? When we go to the present law, the submission of a female to an abortional acted is justifiable when she is under a reasonable belief that such act is necessary to preserve her life or within 24 weeks from commencement of her pregnancy. "To preserve her life," but that's not the wording of the bill that was sponsored and authored by Senator Maltese and backed by so many of us.

It says here, "The provisions of

this section shall not apply to a partial birth abortion performed by a duly licensed physician that is necessary to save the life of the mother***". It doesn't stop there with a period. It goes on to say, "*** whose life is endangered by a physical disorder, illness or injury where no other medical procedure would suffice for that purpose."

That's not the whole statement. The statement that Senator Maltese put in his bill defines it all the way through. It is solicitous about that, the potential threat to that mother, not to say it doesn't stop when it says the life of the mother. It goes on. And don't we take notice of that?

We're at a perilous moment in history. We see life taken so cavalierly around the world. Really, I -- you know, I -- I've also been on the other -- on the side of life on the question of capital punishment. I am still unalterably opposed to capital punishment, and I will not condemn that district attorney up in the Bronx because he was still wrestling with

that problem.

But it doesn't change, the culture of death is slowly making its way. We had almost a half a million abortions last year in the United States of America. In this state, and in the city of New York, every other conception ended up in abortion. Does that mean that the -- the doctors were out there struggling valiantly to preserve life?

Now, I will say this, that Roe v. Wade, when it was passed, Senator Brydges was seated right there where Senator Skelos is now. He wept. He brought the bill out because he felt that in the fullness of time it deserved the full consideration of this chamber, something which I don't feel that the Assembly is going to do. But he was so troubled by it that I actually saw him weep. It's the only time in 40 years that I have seen a Senator weep over the outcome of a bill that had been brought out for general discussion. He was sorely troubled.

I said, Well, we can't suffuse

the process of democracy. It has to have an audience, and that has been said. But this is the -- this is the problem. The only thing the Constitution -- we say about the Constitution.

You know, the only thing I can find in the Constitution on persons is Article I, Section 2 of the Constitution, Abolition: Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers, which shall be determined by adding the whole number of free persons including those who serve us for a term of years and excluding Indians not taxed, three-fifths of all other persons.

Slaves were considered three fifths of a person. Now, some prelate, commenting on what happened in -- with this veto, said that this is a four-fifths, one-fifth abortion and 80 percent infanticide. This is what happens when you start playing the numbers game. It's all right until you reach the eyebrow or the nape of the neck.

What kind of law is that? When we have a half a million of them here in New York. Is this another avenue now we're not defining, a limitation which is implicit in Roe v. Wade? Roe v. Wade wasn't that promiscuous. They did establish some -- some guidelines from which this dialogue could go on, but they defined a terminus.

Where is the terminus now? This is a starting point, throw away. Is life sacred? Is the culture of death to triumph?

Madam President, it's -- you know, I was watching a debate between Mr. Novak and Bill Press, I believe, on Crossfire, and Novak said it was a very deplorable, horrible description of the process that had taken place. Press said, Horrible and disgusting? He said, If I had a hemorrhoid operation, a hemorrhoid operation is horrible and disgust ing. If I need it, I'll have it.

Now, this is not the attitude that characterizes anybody in this chamber because you did support a bill at least defining

-- defining at least, hopefully, some kind of circumscription of the practice.

But this is the response that he had on a prominent station, and he's -- Bill Press the left and Mr. Novak from the right denouncing something that the general American public is disgusted with, and it was shown and supported so eloquently by the vote of the House of Representatives who know their people. They're closer to their people. They're not in the ivory tower as the figures from the Senate might have indicated.

So we've had -- we've had expert opinion. The medical society who, their presence has been invoked so frequently and with such force and to some effect I assume, but they did constitute a body to study this and to come out with a recommendation and their recommendation was unanimous. Not one, not one dissented.

So what did they do? They washed their hands. I don't know what happened to it. I believe somebody said they thought it was too hot to handle. But unless we start talking

about the culture of life, and the culture of life goes further, you know, we can't wash our hands, you know, even after they're born. We have an obligation to these children, their health, their education. These are the purposes that we are here for. We haven't solved it by giving them life unless we give meaning and significance to that life and mustering our substance to support them in fulfilling their place on this planet.

This all goes to the respect that we have for each other. When we see each other, what do we see? When I look you in the eye, what do I see? I see a person created in a divine image, a valuable person, and they do not cease being important even if they're mongoloid or they have physical defects, or they have -- what they have. They have life. They have life. They commend our compassion. They commend our help, and far be it from us to deny it.

This is a bill that -- that really signifies -- gives us a starting point from which we can -- we can at least look

affirmatively at the question of life and we have -- we have a lot of work for us, ahead of us to the best of our ability to give it sense and meaning, and every single member of this house can do that, and you have done it in the past and you give every evidence that you continue to give it that emphasis.

But let us not encourage the circumspection of even what Roe v. Wade says. They would be insulted if they -- if they knew what was going on now. I don't know how many of them survive, but those that do survive at least would understand that we at least understood what they were defining and were trying to implement it by a passage of this bill.

THE PRESIDENT: Thank you, Senator Marchi.

Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

Would the learned gentleman from Maspeth out in Queens County yield to a question or two?

THE PRESIDENT: Senator Waldon.

SENATOR MALTESE: Yes, I will.

SENATOR WALDON: Senator Maltese, I was wondering whether in your deliberations regarding this proposal, if you considered who will pay for the doctor's defense, but even more importantly than his or her defense, if they're found guilty, not found guilty but if they are in fact arrested and indicted as a result of making a medical decision contraindicated by this proposal, who will repair their reputation after the arrest, after the indictment, after the trial?

SENATOR MALTESE: Madam President.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: This is a - this is a question that really is very difficult to resolve or to answer. When we enter public life, to a certain extent we expose ourselves to a certain amount of criticism, some of it perhaps not justified.

When a physician makes a decision

that is truly a medical decision, appreciated and endorsed by a majority of his profession, I do not feel that he would ever be either prosecuted, indicted or convicted for anything certainly under this section. What we're seeking to do is narrowly -- as narrowly as possible, in a criminal statute, define the four corners of this -- this crime if it is to be committed.

What -- what the doctor -- what a doctor who would perform this procedure which has been criticized by a committee of the American Medical Association unanimously which, despite the fact that we must understand human frailty and human nature, the American Medical Association, when 25 of their leaders considered this unanimous question, this unanimous decision brought to them, they turned chicken. They turned tail and decided to avoid the question and say, We will take no position, despite the fact that many of them, as Senator Marchi has indicated, had taken the Hippocratic oath, so when I answer your question, I say to you, if

one result of our deliberations today, if one result of bringing this law to the floor and bringing this reprehensible procedure to the public eye is that some physician or alleged physician hesitates on performing this loathe some procedure, then so be it, and I will - will be most appreciative that that was perhaps not the only desired effect of this legislation but that it was a result of our proposed legislation.

SENATOR WALDON: Madam President, would the learned gentleman consider another question?

SENATOR MALTESE: Yes, Madam President.

SENATOR WALDON: Senator, as you may know, I worked in the Office of Mental Retardation and Developmental Disabilities as a counsel to the New York City services group for about 18 months, and during that time Judge Barthell was conducting a federal trial in Brooklyn, and we dealt with the Willowbrook issue.

As part of my responsibility in that issue, I had to go to places like Flower Fifth Avenue and to Willowbrook itself, and I had occasion, unfortunately, in terms of my psyche and my emotional state on certain days, to all too often see the most severely retarded and abnormal children existent and extant at that moment in the state of New York.

Let's create a hypothetical. As a result of that information, let me share this hypothetical with you. If the child -- if the decision in regard to the fetus is to go to full term and these severely abnormal children, some as characterized in statements made here, with their brains outside of the body, with their organs outside of the body, so severely retarded for various and sundry reasons that they will never ever have or there will never ever be any expectation of anything resembling even severely retarded state of life, who will pay for them and under what circumstances will they be maintained?

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President, to have a direct reply to the question, I assume the state will fulfill -- if the parents or the responsible parties are not able to, do not have the resources, the state will pay for it, will pay for their upkeep and perhaps the rest of their lives.

But, Madam President, earlier today I spoke of Dr. Stephanie Rifkinson, the pediatric neurosurgeon. In her description, she referred to hydrocephalus, and which was the abnormal accumulation of water in the brain. She indicated that many physicians and many people in the medical field, instead of sitting down with their patients and explaining to them the possibility and in some cases the proba bility of that fetus attaining the expectation of a normal life, they took kind of the easy way out and indicated that an abortion was the procedure.

Now, this -- and the specific medical condition referred to by my learned colleague, and this is phonetic, encephalocele

of the brain, one where the brain protrudes through, in that case she indicated that it can have a good prognosis and can survive.

Now, we're dependent to a large degree on medical, not in this case, testimony although we do have available much of the testimony that was given at the Senate and the Congressional hearings. But we have to rely on what physicians tell us. I realize that like differences among lawyers, there are differences among physicians and differences among doctors.

At the same time, I don't condemn the women who in these cases are driven to such dire lengths. We do not -- that's evident in the law. What we have are very, very pitiful situations. There's no doubt they are very difficult decisions of conscience. I -- we haven't taken a position on the women. What we are trying to do is ban a reprehensible procedure, ban a procedure and stop a procedure that takes away from our humanity. This is what we're attempting to do.

The -- the situation as described

by Senator Waldon, obviously a society has to be responsible for those who are in circumstances that they have to be assisted. I don't put only the people that are in the institutions that Senator Waldon observed. I put the -- this unborn fetus in the same situation, the baby who is nine-tenths or seven-eighths extruded from the mother's vaginal canal, I put that baby, who is more helpless than that baby who is totally dependent on the outside world for existence where heretofore it was dependent on the mother's sustenance and in a protected environment.

What a terrible, terrible thing that we should spend so long now, so many hours discussing what is or should be apparent I think to -- with common sense, to any individual, whether he has a law degree, a doctor's degree or anything else. Obviously the majority of the populace or the majority of the people as evidenced by the fact we're in this situation as described to them indicated that they were opposed not to abortion which divides pretty

much 50/50, I believe, but there were over 70 percent, I believe, that said that this situation, this procedure, was repugnant, repulsive and should not be condoned.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you, Senator Maltese. I appreciate your patience in response to my questions.

Madam President, on the bill. First, let me apologize to the people in the gallery because you came here today under false pretenses, not your false pretenses, but I think you were told and the information was assimilated to you, if you came here, you would see a real debate on real issues with the real possibility of change in terms of your apprehension regarding the abortion issue. Obviously, that did not happen. It could not happen. It was not in the cards.

Secondly, let me apologize to you because what we really should have been about during these long hours today is dealing with the more important -- let me retract that -

with the issue which is driving why we're here all together as legislators, and that is the budget of the state of New York. This obfuscated -- obfuscated our real mandate, which is to put the government of New York State in order. We cloud it with this issue.

What we should have been doing today, yesterday and tomorrow -- we bought time as a legislative body, so you are not happy because the result that you had hoped for could not possibly happen today.

I am not happy because the business of the state of New York, though this is in part the business, has been dealt a slowing hand. We were now -- let me apologize. We now have taken another day not to do what we should have been mandated to do.

This is a very difficult issue. The decisions about life and death are always difficult. When I look at my upbringing in the church of God in Christ -- cogent -- it is very difficult to deal with these issues, but I'm not God. I'm not even a demigod and -- nor do I

pretend to be such. So I find myself inadequate to truly deal with this issue in terms of some heavenly persuasion, and so I rely on the persuasion that 40 years of public life, which include the time that I was in the U.S. Army, has given me to that date, and all that I've learned in government tells me that if I recognize the issue and deal with the issue as best as -- as best as I can, I've done my job.

This issue is one that is extremely complex and requires two people to be involved, in my opinion, besides God -- you want to call him Yahweh; you want to call him Christ, whatever you wish to call your God -- and that's the mother of your child and her doctor.

I'm not adequate to make decisions that doctors make. I don't have the training. I do not have the training, so I defer to the doctors. Our Constitution says that in regards to these issues, we should defer to the doctors. The laws on the books of the state of New York as we speak say that we should defer to the doctors, and yet with this bill,

we're trying to amend the Constitution, if you will, of the United States and the state inappropriately.

Lastly, women, in my opinion, are God's greatest gift to this world. Women are the greatest gift that the Almighty has given us. Look in the chamber. Not only do we have lovely ladies serving in the chamber, they are bright; many of them are keeping many situations going at the same time. They are mothers. They are professional women. They are wives. They are professional lawyers. They are legislators. They are caring, sharing, loving human beings, and why would I presuppose or suppose that, as a male, I can make a decision that is, in my opinion, in the world and in the realm of women, that only a woman should be able to decide what is right and what is wrong in regard to the life that she creates within her body.

So for three reasons, I have to oppose my learned colleague. One, I am not God and can't make heavenly decisions. Two, I am

not a doctor and not adequately prepared to deal with the problems, complex as they are, regarding abortion and other medical issues, and three, perhaps the most important of all, I do not have the genius, the inclination, the caring, the sharing, the loving capacity that a mother has in regard to the fetus that she's carrying.

Only a mother can determine what she will do with this fetus, and I don't think it's an easy decision. The women are not happy to abort these children. This is not a happy experience, but it is their decision. We are in violation of their area. We, as men, most of us older men, older men beyond the time when we should be making babies are making decisions for these women about their babies. I think it is an abomination. I encourage you to recognize the righteousness and right of the women and say no to this legislative proposal.

I thank you, Madam President.

THE PRESIDENT: Thank you, Senator Waldon.

Senator Hoffmann.

SENATOR HOFFMANN: Madam President, I believe I'm the last speaker.

THE PRESIDENT: Yes, you are.

SENATOR HOFFMANN: Thank you, Madam President.

I think that's kind of fitting because I think I was the first speaker last week when this issue appeared before us, and what a short and action-packed time we have had.

Isn't it rather incredible that an issue this momentous only emerged one short week ago and now we are in the process of voting on it? Something as momentous as the reproductive health of every woman in the state of New York has come up, and it was just a week ago -- it was Tuesday of last week that we heard some time -- well, a little less than -- it was before 7:00 o'clock. It was around 6:00 o'clock -- between 4:30 and 6:00 o'clock, we found out that a report was coming from the Rules Committee and it would be reported to the

calendar for a vote the following day -- the following day, ladies and gentlemen. I just want to remind everybody that that was the process that we had.

How unlike this chamber when studying a serious issue to rush something to the floor in that manner, and why would any matter as significant as reproductive health, called sometimes "late-term abortion", called by those who would sensationalize and distort it, "partial birth abortion", how is it that that could come up for our vote in 24 hours or even one week?

I am reminded that in this same chamber we have colleagues who have chaired committees and held numerous hearings on important issues. I would like to compliment Senator Tully during the years that he chaired the Health Committee and how I wished that the Health Committee had heard this issue.

This issue did not come before the Health Committee, which presumably would have some jurisdiction, some interest, maybe

some expertise. No, it didn't go before the Health Committee. It didn't go before the Codes Committee, which routinely analyzes this type of legislation. It came through the Rules Committee. That is the shortcut to get something to the floor as quickly as possible.

The quick and dirty route to passing laws in New York State, ladies and gentlemen, is to rush it through the Rules Committee, and that's how this measure came to our attention.

Senator Tully, when he chaired the Health Committee, held a series of hearings or symposiums, I believe they were called, on breast cancer. This Senate and the Assembly held hearings all over the state of New York about the urgent concerns dealing with the tremendous proliferation of breast cancer in women in this state.

We're willing as a body, as a legislative body, to give thorough and careful study and hold public hearings and allow medical testimony about women's breasts but not their

uteruses. What a disgrace. How can we explain that we have a bill before us that does not even have sound, medical terminology in it?

I have correspondence from a number of physicians, most of whom we only contacted recently because it's only been one week since this occurred.

From a physician in Oneida, in my district, Dr. Cooley writes: "Almost always, the fetus will have a zero-zero Apgar score at one and five minutes, respectively." That means no life. No life. I remember what an Apgar test was. I remember the whole Apgar rating when I had my children and how important that was. A zero Apgar means no life. These are not viable lives, and this is not a personal option out of some convenience. This becomes a medical necessity.

As Senator Abate read a little while ago, an eloquent, a passionate and a heartbreaking letter, and I heard her voice crack. She was tough, but my eyes welled up when I read it. This letter which was reprinted

in the New York Times back in November described in the first person a young woman who had gone through this horrible procedure. She didn't want to go through this procedure. She wanted to have a baby, and when she was told that the baby she was carrying had died within her, had no viable life, could not be delivered normally and her own life was at risk, she had no alternative. It was the medical judgment of her doctor and this woman that this was the only way it could work. In fact, she postponed for two weeks the inevitability of this process, but she had the courage to write and tell how it happened and then to admonish lawmakers to please not interfere with other women who might find themselves in the same position that she was in.

The physician in Oneida who writes to me says that the article by Susan Fields, a columnist who wrote an article last week on this issue characterizing it as the partial birth abortion and describing in the same gory details we heard from Senator Maltese

earlier, the scissors maneuver, says that the article by Susan Fields is absolutely ludicrous and the terminology used does not explain the procedure at all.

I would take the word of the obstetrician/gynecologist group in Oneida, New York with -- for whom I have great respect, over some nameless and difficult-to-quantify individual who is on a crusade to ban all abortions and has targeted this as one place to start and cleverly utilized the most sensationalistic language to try to detract people from the real purpose, which is to eliminate freedom of choice for women in this state.

The American Nurses Association has something to say about this. I found it interesting that we have a nurse quoted in Senator Maltese's information, who we now know was not, in fact, in the capacity she claimed to be, did not function in the procedures that she said she was at because others who worked in that same clinic have refuted her.

Senator Dollinger did an excellent job of explaining that Nurse Shafer was incorrect, and there are any number of people familiar with the situation in that clinic who say that is not the way things happened, but I would take, over Nurse Shafer any day of the week, the American Nurses Association, an organization that represents 2.2 million registered nurses in 53 associations across the United States. They say, "Very few of those late-term abortions are performed every year and they are usually necessary either to protect the life of the mother or because of severe fetal abnormalities." It is inappropriate for lawmakers to mandate a course of action for a woman who is already faced with an intensely personal and difficult decision. This procedure could mean the difference between life and death for a woman.

The American College of Obstetricians and Gynecologists has issued their statement -- again in the brief time that we have had it before us for any kind of review -

and they made it abundantly clear that they are disappointed that the New York State Legislature would attempt to regulate medical decision making by considering legislation on so-called partial birth abortions. The College finds it very disturbing, any action by the New York State Legislature that would supersede the medical judgment of trained physicians and that would criminalize medical procedures which may be necessary to save the life of a woman.

Moreover, in defining what medical procedures doctors may or may not perform, the bill employs terminology that is not even recognized in the medical community, demonstrating why legislative opinion should never be substituted for professional medical judgment.

Alan Rosenthal, a doctor and Dean of Columbia School of Public Health states, "I am concerned that the medical community is being used and abused to further the political agenda of individuals who do not support access to safe, legal abortion. To many, this legislation

appears to be simply the first step in a procedure-by-procedure attempt to make the constitutional right to choose meaningless."

I think it's pretty obvious that we really have no business getting into this medical quagmire. We don't know the language. We take verbatim the opinions of people who are not experts. We take out of context individuals who may or who may not have been involved in a process as bystanders or minor players and elevate them to some kind of expert status, but we have not studied this.

We have a responsibility, ladies and gentlemen, before we deal with people's lives to do it in a thoughtful, reasonable way. If we can hold hearings on breast cancer and give women's breasts the attention they deserve in medical circumstances, why can't we do the same for the uteruses of the women of this state? Why are we rushing this bill out of this house today? Why aren't we operating in concert with the other legislative chamber here and why, in God's name, are we doing it now?

This is April 30th. We are 30 days late with a budget in New York State. I have had not one single constituent come rushing up to me in the grocery store when I was home in my district and said, "Gosh, I hope you really do something real fast about that late-term abortion bill," not one, but I've had a whole lot of people tell me, "What is wrong with you people and why can't you get a budget done?" That's what we elect you to do. They have made it abundantly clear that they hold us in contempt for the 12th year in a row for our inability to put a budget together.

What is this diversionary tactic all about? Is it because of this? Is it because there are polls that show this is a popular issue that will help Candidate Dole with his campaign? Front page sories, "Bruno Pushes for Ban on Late Abortions." Wonderful! The polls show nationally the people thought that President Clinton was wrong for his ban and that perhaps this is something that the Republicans can capitalize.

I hope that's not the case. Even I don't want to be so cynical as to believe that this is motivated as a political maneuver. I don't want to see the story that says, Anti abortion leader Maltese and Bruno, or whoever, embrace Dole in campaign walk, and they all pat each other on the back for having pushed this one-house bill through.

Is that what we are doing here? Is that really what we're doing here? If it is, we should all be ashamed of taking any part of it, but if it isn't, then let's go back to the drawing board on this. Let's hold those hearings. Let's give every doctor -- let's give Nurse Shafer a chance to come to New York State so she can tell us what she saw. Let us have an opportunity to ask her some of those questions. Let me bring some of these nice doctors that took the time to write letters, even a handwritten letter and, by golly, you can tell it's a doctor's letter because I have a real hard time reading his handwriting. It looks like most of the prescriptions that they write.

These people deserve an opportunity to be heard on this. Not one of us is a physician. Not one of the 61 members of us is a physician. How dare we pass a law that defines medical terminology and tells physicians what to do?

We have trivialized women's reproductive health for the crassest political purpose, or else we have done it because we have bungled and didn't have something better to do because we're rudderless without any kind of substantive budget negotiations. Are we just marking time here because we don't have a clue what we're elected to do?

I really want some answers to these questions because the people who have sent me here from the 48th Senate District would like to know why we are spending our time today on April 30th on this measure.

Many of them don't like the idea of abortion under any circumstances. They would probably deluge me with letters if there was a sound bill that outlawed this procedure.

Probably many of them would have said that the amendment that Senator Connor proposed was a good idea, and I'm still incredulous why it was that it was voted down.

Let me read it again in case somebody missed it and you want to change your mind before we leave today. It says, "The provisions in this section shall not apply to any abortion performed where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or overt serious adverse health consequences to the woman."

And people voted against that, "the life of the woman or serious adverse health of the woman"? What is the priority here, or is this another one of those procedural things because it was introduced by a Minority member, it has no meaning? I don't think so, because I did hear two Republicans vote for it, but why wasn't this taken into consideration?

The life, the adverse health of women in this state deserves more consideration

than we've given it this last week, more consideration than we've given it today. I believe we should at the very least allow Senator Tully or some other Republican member who has demonstrated some compassion for women's health in the past to hold some hearings on it. If Senator Maltese doesn't, I'm sure Senator Bruno can find a member on the other side of the aisle who will.

Clearly, it wouldn't be a valid public hearing because we know there are no Democrats who are allowed to chair a committee. We could have some kind of a rump hearing, I suppose, or a task force. It will have to be called a Minority task force, but it would be a task force, but why don't we do it so that it's real? Why don't we do it so we can engender some respect from people out there for a change, and why don't we do it at a time when we have put our budget together and we can give it the attention it deserves?

I'm trying to find out what it was the Governor said today about the school aid

that has eliminated the city of Syracuse from some windfall that's just been discovered, or some change in the calendar on school aid. I would like to find out because the people in Syracuse need that information right now. They don't need to be subjected to this kind of grandstanding, these kinds of headlines, and more waste of their tax dollars.

THE PRESIDENT: The debate on the bill is concluded. Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the first day of November.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President.

THE PRESIDENT: Senator Maltese.

SENATOR SKELOS: Madam President, would you kindly recognize Senator Maltese to close.

THE PRESIDENT: Yes. Senator Maltese.

SENATOR MALTESE: Yes, Madam President. I will be comparatively brief.

First of all, in the desire, my good colleague Senator Dollinger, to be absol utely accurate, he kept referring, of course, to Barbara Shafer when, in fact, Nurse Shafer's first name is Brenda but, more importantly, he referred to letters and correspondence, as my colleague -- as Senator Hoffmann did, referring to the truthfulness of this abortion bill and employees of this abortion clinic where the good doctor worked.

I have before me again, which I read earlier, the seminar -- management seminar paper that was written by the doctor in question where, if you recall, Senator Dollinger's letters indicated that the doctor did not use the ultrasound, and I'll just skip.

"The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus." Further down, "The transducer is then held in position over the lower extremities."

Further down, "When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity."

Further down, "By observing the movement of the lower extremity and version on ultrasound screen, the surgeon is assured that his instrument has not inappropriately grasped a maternal structure."

The sonogram in the procedure as described by the doctor itself is absolutely essential to the procedure, or else, as he indicates very clearly, he could possibly inappropriately grasp some portion of the mother's internal organs.

It's difficult to tell where to start, but -- oh, I would, in reference to my good colleague, Senator Cook, about these aborted babies don't live -- I just have the article from the New York Post. Admittedly, it was -- she was the subject of a saline procedure, but her name was Jeanna Jessin. There's a beautiful picture of her. She's 19

years old, and I give it to my colleague. I'm sorry, John. I didn't mean to throw it.

Madam President, just the last - forgetting all this testimony, doctors' testimony, what have you, they were probably some of the most extensive Congressional hearings ever held. All those papers are available. They were referred to by Senator Dollinger and others, obviously available to both the Minority and Majority.

This is a procedure that is reprehensible. This is a procedure that's practiced by physicians where they describe holding the head into the mother so that the back of the head may be pierced by a pair of surgical shears. Other doctors have told us and testified in Washington that that is, in many cases, the only thing that stops the baby from being born.

This procedure is tantamount to homicide. It should not be permitted. It should not be condoned. It certainly should not be the law of New York State that it is

permitted.

THE PRESIDENT: Read the last section, please.

SENATOR LEICHTER: Slow roll call.

THE SECRETARY: Section 3. This act shall take effect on the first day of November.

THE PRESIDENT: Slow roll call, please.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

(Negative indication.)

Senator Cook.

SENATOR COOK: No.

THE SECRETARY: Senator

DeFrancisco.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I vote aye, and I just want to state very briefly the reasons why.

There were several comments made about we should have more hearings; we should be discussing it more, debating it more. There's not one hearing that we could have that could possibly change anybody's mind in these chambers, and to suggest we need more procedure is just to delay an inevitable vote because you all know where you're going to stand on this particular issue.

Secondly, the reason I'm voting against it is because this procedure is abhorrent when a child is half in existence, to end that child's life, and it's just surprising to me that all of the debate that we've heard about how we don't care about women, how we don't care about women's issues, how we don't care about the health and safety of the women,

that half of those half-born children are potential women, potential women who have no voice at hearings, who have no voice before these chambers, and who are half born but are not given the right to be fully born and enjoy the life that we all have.

For those reasons and because the procedure is abhorrent, I will vote aye.

THE PRESIDENT: Continue the slow roll call, please.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Madam President, to explain my vote.

THE PRESIDENT: Senator DiCarlo.

SENATOR DiCARLO: I wasn't going to stand up and speak on this issue, but I think I have to, just to get a point across that I think hasn't been spoken about here today.

I'm saddened by the tone of this debate, and I'm saddened because I was here when my father was an Assemblyman back in the late '60s and early '70s when the abortion debate first came up, and I remember sitting on the

floor of the Assembly when my father debated against legalizing abortion, and I remember how emotional it was when they were talking about aborting two-inch big fetuses and how that was murdering children and how intense that debate was over two-inch long fetuses, and now I join my colleagues in the Senate some 20-some-odd years later as a member of the Senate, and we're debating whether it should be legal to kill half-born babies, and that's the normal debate we are now involved with.

What's happened in the last 20 to 25 years when an issue that should be so easy is made so difficult by what I would label as extremists, when extremists can make this a debate that is so difficult when it should be such an easy debate?

I'm saddened by this debate, and I'm saddened that we in this state have come to this position. I'm saddened for the future because if we continue down this road, then life is not precious and nothing is important.

I vote yes.

THE PRESIDENT: Continue the slow roll call.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Madam President. My colleagues heard me talk about the politics of this and the difficulty that I believe attends this bill.

I wrote a letter to the dioceses yesterday. I'll quote just a part of it. "In considering this issue, I asked myself a very simple question. What would I do if the doctor attending my wife during her pregnancy said that the birth of our unborn child might take my wife's life or cause serious adverse consequences to her?

"I love my wife. We have been married for 21 years this Friday. I would never want to choose between the life of my wife and the life of my child. I believe that if I were faced with this choice, I would pray for guidance, discuss it with my family, my wife and my children, and then make a terrible choice.

"I do not know what that choice would be even now as I consider that frightful possibility. However, the last thing I would want is anyone, including my doctor, my cardinal, my priest, my church, my parents and, most especially, my government, to tell me that I had no choice and that the birth of my child, even lived horribly disfigured and incapable for living even a reasonable time, was more important than the life and health of my wife.

"I know these are close calls. How much of an impairment of my wife's health is reasonable for her to endure in order that my child be born? In searching my conscience today, I do not know the answer. I am not sure there is a single answer that would apply in every case, but I do know, consistent with my church's concept of enlightened free will, that the choice is mine and my wife's to make and not for anyone else.

"I have never had to make this choice. God blessed us with three wonderful and healthy children, but because I know how

difficult and complicated and conscience wrenching that choice would be, how could I ever justify this government taking it away?"

I vote no.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold recorded in the negative earlier today.

Senator Gonzalez.

SENATOR GONZALEZ: Aye.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Madam President.

THE PRESIDENT: Senator Hoblock.

SENATOR HOBLOCK: Madam

President, to explain my vote.

Madam President, I've listened to the debate very carefully, as I'm sure just about everyone else has. A lot has been said today on a very important issue, one that is very emotional. I've heard whether we're voting on a bill, debating a bill, or whether we're voting on an issue and debating an issue. I think we are debating and voting on an issue.

I listened to my good friends, Charlie Cook and Roy Goodman, debate and talk about this bill, and I think what Roy Goodman said -- a lot of what he said is absolutely true in that I kind of hope, I guess many of us would, that we wouldn't even have to talk about this issue or it would not occur -- the procedure would not occur but, unfortunately, it does.

I've stood on this floor and I've stood on the floor of the Assembly and talked about my stand on exercise of a woman's right, particularly supporting the law as it exists in New York State and as set down by the Supreme

Court in Roe versus Wade, and talked and debated about the Medicaid funding issue, talked and debated the parental notification issue, and lots of other issues, and I think in each and every one of those, I've tried to look at the issue and the bill to try to make an intelligent decision.

On this particular bill, I'm letting my conscience rule, because I think even the way I do believe in the basic right to choose, I've got to draw the line. My conscience tells me that that's what I have to do and, as I know this procedure, what I've listened to today and what I've heard about the last few days, it's horrific. It's a procedure that not too many people want to speak about, and I would hope we didn't have to but we do.

So my conscience is ruling and I'm drawing the line, and I vote in the affirmative.

THE PRESIDENT: Continue the roll call.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: No.
THE SECRETARY: Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.
(There was no response.)
Senator Kuhl.
SENATOR KUHL: Aye.
THE SECRETARY: Senator Lachman.
SENATOR LACHMAN: Aye.
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: No.
THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator 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.
(Affirmative indication.)
THE SECRETARY: Senator Montgomery.
(Negative indication.)
THE SECRETARY: Senator Nanula.
(Negative indication.)
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.
SENATOR ONORATO: Aye.
THE SECRETARY: Senator Oppenheimer.
THE PRESIDENT: Senator Oppenheimer.
SENATOR OPPENHEIMER: Because some people have questioned whether this procedure would be something that you would opt for were you a woman who wanted to have an abortion or simply didn't want to have the child, I can assure you that a woman that has made up her mind not to have the child is going to have an abortion certainly in the first trimester. If perhaps it slips by, maybe the second, but this could never, never occur in the third trimester when you are seven or eight or nine months -- well, nine -- seven or eight, six months pregnant. You feel the baby. You become very attached to what's inside of you. It's like a piece of you. It's inseparable from what you are, and so no woman would ever permit herself to get to that point if she did not want

to have the baby. So you must understand that these are women who desperately want this child, only this child is so impaired that there's no way that this child would be able to sustain life.

Therefore, this procedure -- we have to now look at this procedure. This procedure is a horrible procedure and, believe me, no woman in the world is going to want this procedure, but it is forced on the family, and why is it forced -- and also, before I get to that, I want to mention that this is just an infinitesimally small piece of the abortions that are done in the third trimester. You do understand that. Of that one percent that has -- women that have abortions in the third trimester, 90.96 of that -- almost the entire one percent -- is done by other methods. We're talking about 4/100ths of one percent that does it by this method.

Well, why would you do it by this method? There is a reason, and that's why the doctors choose this method in the instance where

the head of the child is either very swelled or the brain is actually outside. The head is simply too big to get through the birthing canal. So that's why they choose this, because these women desperately wanted these children - this child, and they want to continue to have more children, and this is the only method that we can be certain that the uterus will not be damaged and that the woman can then go on to have other children.

I've spoken now with three women who have had this process -- that procedure. All three have small babies now. They want to have their kids. So, yes, the procedure is God awful, but it's the only way that we can be sure that these women that want to have more children will be able to do so. Otherwise, there are other procedures for trimester abortions. In fact, 96 out of every 100 are done in the other procedure. So you must understand how small, how minuscule these procedures are, and you really have to understand why it's being done.

I vote no.

THE PRESIDENT: Continue the slow roll call, please.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson recorded in the negative earlier today.

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.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Aye.

THE SECRETARY: Senator Smith.

THE PRESIDENT: Senator Smith.

SENATOR SMITH: Thank you, Madam President.

Eliminating or limiting the availability of this procedure could force a woman to carry a severely deformed fetus and risk her own health while possibly risking her future ability to have a child.

In the case of severe abnormalities or threats to the life and health of the mother, doctors must be permitted to practice medicine based upon their professional knowledge and their skilled performance of the procedure which will most effectively protect the life and health of their patient. When a family is faced with this tragic decision, it is because a woman's life is in danger. I will not and I cannot participate in this death sentence upon women.

Therefore, I vote no.

THE PRESIDENT: Continue the slow roll call.

THE SECRETARY: Senator Spano.

SENATOR SPANO: No.

THE SECRETARY: Senator Stachowski.

(There was no response.)

Senator Stafford voting in the affirmative earlier today.

Senator Stavisky voting in the negative earlier today.

Senator Trunzo.

SENATOR TRUNZO: Aye.

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.)

Senator Wright.

SENATOR WRIGHT: Aye.

THE PRESIDENT: Absentees, please.

THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE PRESIDENT: The results, please.

THE SECRETARY: Ayes 39, nays 21.

THE PRESIDENT: The bill is passed.

We have housekeeping at the desk.

SENATOR BRUNO: Is there, Madam President?

THE PRESIDENT: Yes.

SENATOR BRUNO: Can we take care of those items presently?

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Yes, Madam President. On page 15, I offer the following amendments to Calendar Number 425, Senate Print Number 5729-A, and ask that the bill retain its place on the third reading.

THE PRESIDENT: The amendments are received.

SENATOR SEWARD: I have three other items of housekeeping as well.

THE PRESIDENT: Go ahead, Senator.

SENATOR SEWARD: On behalf of Senator Johnson, please remove the sponsor's star from Calendar Number 411.

THE PRESIDENT: The star is removed.

SENATOR SEWARD: On page 22, I offer the following amendments to Calendar Number 572, Senate Print Number 6052, by Senator DeFrancisco and ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received.

SENATOR SEWARD: And on behalf on Senator Alesi, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause. That's Senate Bill Number 7410.

THE PRESIDENT: The enacting

clause is struck.

Senator Montgomery -- I can't hear Senator Montgomery.

SENATOR MONTGOMERY: Madam President, I move that the following bill be discharged from its committee and be recommitted with instructions to strike the enacting clause: Senate Bill 4311.

THE PRESIDENT: The enacting clause is struck.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Madam President, there will be a Minority Conference tomorrow at 10:30 a.m. at Room 314.

THE PRESIDENT: There will be a Minority Conference tomorrow at 10:30 in Room 314.

Senator Bruno.

SENATOR BRUNO: Madam President -

THE PRESIDENT: There's no further business.

SENATOR BRUNO: Would you recognize Senator Volker, Madam President.

THE PRESIDENT: I'm sorry.

Senator Volker.

SENATOR VOLKER: Madam President, I just want to remind the members that tomorrow morning at 8:00 o'clock is the annual memorial service, interfaith service for deceased legislators, 8:00 o'clock at St. Mary's Church down at the bottom of the hill. I would appreciate anybody who could get there. It's the annual service at 8:00 o'clock tomorrow morning.

Thank you.

THE PRESIDENT: Thank you, Senator Volker.

Senator Bruno, there is no further business.

SENATOR BRUNO: Madam President, there being no further business to come before the Senate, I move we stand adjourned until tomorrow at 11:00 a.m.

THE PRESIDENT: The Senate stands

adjourned until Wednesday, May 1st, at 11:00 a.m. sharp.

(Whereupon, at 7:27 p.m., the Senate adjourned.)