ALBANY, NEW YORK

March 10, 1997

3:02 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

THE PRESIDENT: The invocation today will be given by Reverend Dr. Paul Smith who is the Pastor of the First Presbyterian Church in Brooklyn. Reverend Smith.

REVEREND DR. PAUL SMITH: Let us pray.

Sanctity asks the question, "Is it fair?" Expedience asks the question, "Is it politick?" Courtesy asks the question,"Is it safe?" But conscience always asks the question, "Is it right?"

In this moment of reflection and prayer, we ask for guidance, wisdom and strength for these legislators, that they may always ask the question, is it right?

We pray for the power of Your spirit to rain down upon them and us so they may be persuaded to follow their conscience as they act on behalf of those who have elected them to

office.

As the session begins, keep their minds and hearts focused on the needs of our state and the needs of our constituents, that we may all be drawn closer together. Amen.

THE PRESIDENT: The reading of the Journal, please.

THE SECRETARY: In Senate, Friday, March 7th. The Senate met pursuant to adjournment. The Journal of Thursday, March 6th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Hannon, from the Committee on Health, reports the following bills:

Senate Print 1188, by Senator Velella, an act establishing the Chronic Care Management Demonstration Program; and

Senate Print 1913, by Senator Libous, an act to amend the Public Health Law and the Insurance Law.

Both bills ordered direct to third reading.

THE PRESIDENT: All bills direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

I wish to call up, on behalf of Senator DeFrancisco, Senate Print 477 that was recalled from the Assembly, which is now at the desk.

Secretary will read the title.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 61, by Senator DeFrancisco, Senate Print 477, an act to amend the Real Property Tax Law.

SENATOR FARLEY: Madam President,

I now move to reconsider the vote by which this bill was passed.

THE PRESIDENT: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 31.

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

THE PRESIDENT: Amendments received.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe I have a resolution at the desk number 637. I would ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution 637, commemorating the 20th Anniversary of the Organization of New York State Management and Confidential Employees.

THE PRESIDENT: The question is on the resolution.

All in favor, signify by saying

aye.

(Response of aye.)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe there is another privileged resolution by Senator LaValle at the desk. I would ask the title be read and move for its immediate adoption.

THE PRESIDENT: Resolution 636, the Secretary will read.

THE SECRETARY: By Senator LaValle, Legislative Resolution 636, paying tribute to Dr. Irwin Polishook, in recognition of his many accomplishments and his distinguished service as President of the Professional Staff Congress.

Senator LaValle.

SENATOR LAVALLE: Thank you, Madam President.

Madam President, the resolution before us today recognizes Dr. Irwin Polishook for the 20 years that he has been in the

presidency of the Professional Staff Congress. He has not only been president, but he was one of the founding members and officers of the Professional Staff Congress. He was elected treasurer, co-treasurer, 1972.

He has been a very, very distinguished member of the CUNY faculty at Lehman College, at Hunter, and at the Graduate Center.

Many of you know Irwin Polishook who has walked the halls of this Capital for those 20 years asking for what is right so that the students who attend City University -- who attend not only City University but all of the institutions of higher education would have access and the ability to move forward and seek and be all that they could be, and certainly in that regard he has represented the faculty and on the various issues that concern them, but their issues are our issues, and that is the students of this state.

What is important for me is that Irwin Polishook has distinguished himself in the manner that he has lobbied for the faculty, for the students, for higher education because it

has been in the most professional way. I don't believe -- while there are people who lobby and there are histrionics, Irwin Polishook I think uses his great intelligence, his wit, to win over a person who has a disparate view but always does so in a very gentlemanly, sincere and straightforward way.

So I think any of us who serve 20 years in a position, whether it's here in the Senate, in the Legislature, but certainly as President of the Professional Staff Congress, I think should be both congratulated and recognized, and that's why I rise and move the resolution, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: These are difficult times for education, higher education, as well as elementary and secondary education, and there are few people in the state of New York who command the respect and the appreci ation and the admiration of the citizenry that Irwin Polishook presents. He is an outstanding, an outstanding labor leader. He is a gifted educator. He is someone whom we should all recognize and appreciate for his skill and his

ability to discuss these issues.

Were it not for Irwin Polishook's leadership, some of the funding for higher education, especially in the City University of New York, would not have been restored after there were reductions in the budget.

Were it not for Irwin Polishook's leadership, some of the programs that benefit the students and faculty and some of the tuition increases that have been proposed would not have been reversed. He is an outstanding, fair-minded gentleman whom I have known for more than 20 years, and he is very much appreciated by those of us who have had contact with him and those of us who have had the chance to appreciate his talent.

Irwin Polishook, you have friends here and I think that almost every member of the Legislature should join us in this tribute to you.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Yes, thank you, Madam President.

I also rise to support this resolution by Senator LaValle and others and to

say as a colleague, as a professor for most of my adult life, of Irwin, to say how successful he has been in enhancing higher education in this state. He speaks for one of the great public institutions in the world and with the city of New York. And let me just say that we're grateful for all that you've done for not only the students, but for New York State and for higher education. I'm pleased to consider you a colleague and a friend and somebody that has really been of great service, not only to higher education, but to New York State.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, it should fill Irwin Polishook's heart with satisfaction to hear these genuine expressions from members of the Legislature. His service is rendered in impeccably gentle fashion but the gentle fashion that only strong people can exercise because he carries with it credibility.

I remember very well when I worked with Dr. Lester Granger and we were not happy with the rather restrictive access that minorities had to higher education, and as we moved, it wasn't an easy task, but we had

friends along the way and it came to pass that important programs such as SEEK took place, and wider admissions and wider access. When we started at that time, we had one percent of the City University or those facilities that made it up, had one percent minority, and Lester Granger himself was a professor, had been leader of the Urban League before Whitney Young, was a professor in Louisiana, and with a -- just a small part of that population, there were that many in institutions of higher learning, segregated, true, but they were doing something we were failing to do.

And well I remember the energetic response we had and that includes you, Senator Stavisky, because I remember very well your voice was loud and clear in the Assembly at that time, I believe -

SENATOR STAVISKY: That's right.

SENATOR MARCHI: -- and things happen; and more importantly, when the stresses and strains set in, which was further down the road a few years later, it was this very gentle presence who had an iron fist and a velvet glove arguing, persuading about our human resources

being the decisive and most important asset that any city can boast of, did it with sensitivity and such clarity and the fairness that the public should display when funding efforts of this kind, to emancipate and to give voice to an enriching factor that was in our society and we were failing to take full advantage of it by doing the necessary implementation in our allocation of resources.

Now the sides are drawn even more sharply and the pressures are very heavy, but it's a very distinct pleasure and honor to have you and your colleagues here exhorting us, as you always have, to what I believe to be a most effective appeal and one which will be fine resonance in the decisions that are taken in Albany.

I wish you well, Irwin, and all of you who are with you engaged in this fashion.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator Marchi. Does anyone else wish to speak on the resolution?

(There was no response.)

The question -

SENATOR STAFFORD: Madam President.

THE PRESIDENT: Oh, Senator Stafford, excuse me.

SENATOR STAFFORD: The number of years that Irwin and I have worked together I won't mention because neither of us can count that far, but it goes back a good number of years. Everything that's been said has been said so well, I can add really nothing.

I would point this out, that in this business you get to know people who you look forward to coming in your office. That is not universally the case -- and somebody's mad that I said it wasn't the case universally, but it is with Irwin. And I can only say he always had the facts, as has been pointed out, he always knew exactly what he was talking about, he always made sense and is and was and always will be a most effective protagonist.

He won't -- he'll be changing gears a bit, but I'm sure he'll be very busy and I'm sure we will be hearing from him, and we wish him the best.

THE PRESIDENT: Thank you,

Senator Stafford.

Does anyone else wish to speak on the resolution?

(There was no response.)

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

(Response of aye.)

Opposed, nay.

(There was no response.)

The resolution is adopted. Congratulations, Mr. Polishook.

(Applause)

We have a substitution at the desk. The Secretary will read.

THE SECRETARY: On page 10, Senator Cook moves to discharge from the Committee on Corporations, Authorities and Commissions, Assembly Bill Number 1476 and substitute it for the identical Third Reading Calendar 224.

THE PRESIDENT: Substitution ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up the non

controversial calendar?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 3, by Senator Cook, Senate Print 367, an act to amend the Public Officers Law, in relation to the defense and indemnification of members.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 194, by Senator Spano, Senate Print 1793, an act to amend the Labor Law, in relation to permitting voluntary withholding of federal income taxes.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 204, by Senator Rath, Senate Print 2015, an act to amend the General Municipal Law, in relation to allowing for the use of fire training centers.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 205, by Senator Skelos, Senate Print 334 -

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 216, Senate Print 1314, by Senator Velella, an

act to amend the Penal Law and the Criminal Procedure Law, in relation to forgery.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 241, by Senator Levy, Senate Print 37, an act in relation to requiring the Department of Motor Vehicles to compile information.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 249, by Senator Farley, Senate Print 1684, an act to amend the Executive Law, in relation to designation of August 7th as Family Day, a day of commemoration.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 251, by Senator Maltese, Senate Print 1800, an act to amend the Penal Law, in relation to the crime of partial birth abortion.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside.

Senator Bruno, that completes the noncontroversial reading of the calendar.

Senator Bruno.

SENATOR BRUNO: Madam President, can we now go to the controversial calendar, and

I recommend that we lay aside bill number - Calendar Number 205, at the request of the sponsor, for the day.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 251, by Senator Maltese, Senate Print 1800, an act to amend the Penal Law, in relation to the crime of partial birth abortion.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President -- Madam President, I yield to the Senate Majority Leader, Senator Joseph Bruno.

THE PRESIDENT: Thank you.

Senator Bruno.

SENATOR BRUNO: Thank you, Senator Maltese.

Madam President, we have debated this issue before in this chamber and we debated it at a time when those of us that supported the elimination of this procedure known as partial birth abortion was before the public. Since that time, much more information has been made public about this procedure, and I am not going to go

on at great length because much has been said and will be said; much has been written about this procedure called partial birth abortion.

The Reverend Paul Smith delivered the opening prayer for this session today and he said a number of times do what's right. Do what's right.

We are elected, all of us, to do what's right. I commend Senator Maltese for bringing this issue before us; I will support this bill, not because it's pro-life, not because it would be not pro-choice, but because it's right. It is the right thing to do.

President Clinton has indicated that he would sign a bill, under the right circumstances, to eliminate this procedure, but the greatest pro-choice, pro-abortion advocate representing a coalition of over 200 organiza tions has admitted that he lied through his teeth, quote, end quote, about the numbers of babies that are aborted in this way.

None of us like to talk about the procedure, but all we have to do is pick up any newspaper, any article, and we can read about it, can see it on TV, we can hear about it on

the radio. When he confessed that he lied through his teeth that there are thousands and thousands and thousands of babies that are aborted in this way, causes us all to pause and think: When we vote, are we doing what is right?

One of the authorities said he had moral compunctions about the operation and considered the fetus to be a child at 20 weeks -- 20 weeks. This procedure is done at 20 weeks, 24 weeks, 25 weeks. There's no prohibition at all. It's been done to terminate pregnancies during all 40 weeks of pregnancy for a long litany of reasons, he goes on to say, including cleft lip, maternal depression, pediatric indications, which, on explanation, was that the mother was too young, the mother-to-be, and they acknowledged that most of the partial birth abortions were elective, not necessary to save the life of the mother, not even for good health reasons, to protect the woman. Elective.

The procedure, we all know, that is used mostly is that this fetus, this baby, by definition, is allowed to be partially born, and

seconds before this fetus would become a baby, the brain is vacuumed out of the skull and the body is then crushed and extracted; that is the most common procedure. It's been described as barbaric and that is, in my mind, being kind.

By definition, a fetus is a baby. Now, anyone can object, anyone can debate, anyone can reason, but anyone that makes this a pro-choice issue is wrong and they're not doing what is right. They're wrong. For anyone that condones their wrong choice, they're not serving the best interests of the public.

All of the polls, all of the surveys cut across the lines, talk about three out of four people think this procedure is barbaric and wrong and should be stopped.

So we're appealing here on the floor that we support Senator Maltese, stop this procedure which, in any civilized society, should never have been allowed to exist in the first place, so let's stop it now. Let's send the right message that life is sacred and let's deliver this to the Assembly, not in any partisan way, but with bipartisan support so that we, here in this chamber, can all be proud

of the part that we played in stopping this procedure.

Thank you, Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Madam President, I have an amendment at the desk and I ask that it be called up, waive its reading and I will explain.

THE PRESIDENT: Secretary will read -- oh, you waive the reading?

SENATOR CONNOR: Waive the reading, and I'll explain.

This amendment would add an exception to this bill when, 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.

I offered this amendment last year, and I know some would critique it because they would say that "serious adverse health consequences" isn't a medical term of art, but I would point out that the language in the main bill doesn't employ anything that any physician

has been able to tell me is a medical term of art.

To the larger issue, Madam President, I sent Senator Bruno a letter this morning asking that he put off this vote for a month so that we can have the appropriate committee hold hearings. This bill arrived on this floor due to a Codes Committee meeting called off the floor last Wednesday, despite requirements in Senate rules about 24-hour notice, and so on, but I'm not complaining about procedure.

Last year I said on this floor, after an intense several days of lobbying and discussions with proponents and opponents, that I learned one truth and that is that I was not comfortable believing advocates -- believing 100 percent what advocates on either side of the issue had to say about it and that I would like more information.

Now, I know somebody undoubtedly would say, "Well, you've had a year now to get more information," but I, too, have been disturbed about press accounts that people lied, people admitted they lied, and so on; and I've

read the same newspaper stories and columns, I'm sure, as Senator Bruno has. I simply have a difference, Madam President. To me, newspaper stories, memoranda from so-called pro-choice or pro-life people, columnists' opinions are not evidence, they are not evidence.

What's missing here or what - the real victim here seems to be the truth and we do have a vehicle at getting at the truth and I would urge Senator Bruno to recommit this bill with instructions to the Codes Committee to conduct hearings within the next month because I want to know what the truth is. I want to hear from expert medical testimony, I want to hear from advocates on both sides of the issue and I want to make a judgment about who's telling whom, and the reason I want to do this is because what's proposed here is apparently a change in the law. I assume it's a change in the law or we wouldn't have a bill.

My understanding of the law in the state of New York is that third trimester abortions are illegal. Last year, it was presented as a third trimester issue; we now see newspaper reports saying perhaps it's not. It's

very disturbing to me.

Madam President, on a philosophical level, on a philosophical level, Senator Bruno said, Gee, last year we were told there were hundreds, now apparently there are thousands. That really doesn't matter to me on a philosophical level because if you believe that a human life is involved, it really doesn't -- ought not matter whether it's three or three times a thousand, but as a legal principle, if you're going to change the law, we ought to ascertain once and for all who is affected by the law, how many people are involved and what exactly is the effect, and I think we can only get this from a hearing. We can't get it out of the newspapers; we can't get it out of the memoranda that are circulated, and we ought to do that and let the chips fall where they may. That's the way we ought to legislate, and unfortunately we're not doing it now because we are rushing this through. And I'm as disturbed about some accounts of this procedure, albeit, again, if one certainly believes that life is at stake, the method of ending that life ought not really matter as a moral or philosophical

viewpoint, but perhaps as a public policy or a legal statement, it does matter and we ought to know the facts.

Now, it seems to me in order to be consistent with legal principles that have been set down by the courts that we ought to adopt this amendment and have an exception where it's necessary to avert serious adverse health consequences. If someone has a better word of art for that or better description of that - perhaps hearings could generate a better description of what serious adverse health consequences, or any way you want to describe it, would be. I welcome that. And perhaps maybe it shouldn't just be attending physician, there are some areas where two physicians are involved or a second opinion. I'm open to discussions on that, but I do think we do have to have some acknowledgment that there are circumstances where the serious adverse health consequences to a woman might justify some procedure, and that's why I offer this amendment.

Again, this is a very complicated area. Obviously many, many people will vote on

both sides of this because they hold very, very -- positions that are really inflexible, somewhat absolutist based on their moral or philosophical views; I certainly appreciate that, but there are others of us who approach these issues, not from our own personal viewpoint of philosophy or moral theology or whatever, but rather as a public policy issue that has to reflect the kind of consensus the citizens of the state of New York wish to have in law, and for those who think that way, whether to vote yes or no on this could very, very much hinge on what kind of evidence is adduced at a hearing, an orderly hearing, and, frankly, you know, I'd love to see people who say they lied come and testify and, if they don't, I know -- I'm a lawyer -- I know what kind of inferences to derive from their failure to do that. But we haven't gone through that process.

Be that as it may, Madam President, I would urge we adopt this amendment before proceeding to the main bill because I think this is what really the court decisions require that we do, give due consideration to

serious adverse health consequences for women.

THE PRESIDENT: Senator Dollinger, do you wish to speak on the amendment?

SENATOR DOLLINGER: On the amendment, very briefly, Madam President.

Our Majority Leader, our President, has told us to do what is right and I think that in taking an oath in this office, when I was sworn to support and defend the Constitution of the United States, I think to do what you suggest, Mr. President, would be wrong, and I'll tell you why: Because the amendment that's before us contains the language, the operative language in Roe vs. Wade that protects the right of a woman, in consultation with her physician, to terminate a pregnancy in any manner they deem appropriate, not only for the life of the mother, but for her health as well.

It seems to me that we can talk about moral absolutism, and we can talk about it in a debate about the ethics of this issue, but I stand here today and I can read you the passage right out of Roe against Wade, it's as clear as you could want it to be, and it says

that before we can do this, under the Constitution of the United States which we are sworn to uphold, regardless of our morality, because that's the law that binds us together as a nation, we cannot interfere with the choice of a woman and her physician if -- if, as a consequence, we would interfere with her life or cause her serious adverse health consequences. It's that simple.

Senator Bruno and all of those who would vote on this issue, whatever you think about right and wrong in your own mind, whatever you want to debate about the morality of this issue, there's only one vote that's right under the Constitution that you're sworn to uphold and that's a vote in favor of this amendment so that what we do comports with the Constitution of the United States, the supreme law in our land.

THE PRESIDENT: Senator Bruno, do you wish to speak on the amendment?

SENATOR BRUNO: Madam President, Senator Maltese, the sponsor of this legislation, was considerate enough to defer to me as I opened with my remarks. I would like now to recognize in my place, Senator Maltese so

that he might continue his explanation of this legislation that pertains to this amendment that is on the floor now.

Thank you, Madam President.

THE PRESIDENT: Senator Maltese, do you wish to speak on the amendment?

SENATOR MALTESE: I would like to speak on the amendment as it pertains to the original bill, Madam President.

THE PRESIDENT: Go ahead.

SENATOR MALTESE: Thank you, Senator Bruno.

It's really surprising to sit in this chamber and hear my distinguished colleague, Senator Connor, speak about the need for any further investigations or further hearings. I have here, Madam President, a file folder that is about one half of the file folders that we have which contain, in the main, Congressional and United States Senate testimony, extensive hearings that were held on a national level when the bill was considered before the United States Congress and the United States Senate.

Offhand, I can't think of a

single piece of legislation, since Roe vs. Wade, in the last decade that has received this amount of exhaustive research and publicity. That isn't to say that partisans on either side were always truthful or perhaps swayed by emotion, but this is not a debate about abortion, it is not a debate about right to life, it is a debate about a particularly loathsome procedure that should not be part of civilized society.

Madam President, I'd like to read the terminology of the main -- the bill here, and this is very simple, very spartan, very straightforward. No ambiguity: "The Penal law is hereby amended by adding a new section, partial birth abortion. A person is guilty of partial birth abortion when he or she knowingly performs a partial birth abortion and thereby kills a human fetus. As used in this section, the term 'partial birth abortion' means partially vaginally delivering a living fetus before killing the fetus and completing the delivery. A female, upon whom a partial birth abortion is performed, may not be prosecuted under this section for a conspiracy to violate this section or for an offense under this

section. 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."

It is simple and straight forward and certainly the subject of much controversy. Democrats and Republicans of the United States Congress, the United States Senate and this Legislature, have taken positions, despite being Pro-Choice, and have taken positions in favor of this legislation. Senator Moynihan, Daniel Patrick Moynihan, who has always been, as far as I know, Pro-Choice and labeled himself Pro-Choice, in announcing when he would vote to override President Clinton's veto said, "It's as close to infanticide as anything I have come upon."

Now, I think that despite the amount of debate that we have had on this bill, despite the lengthy prior debate last year, I am told one of the longest in Senate history, I'd like to refer to a nurse who was present during

the actual procedure performed by the apostle, if I may use that term in this context, Dr. Martin Haskell, who has been labeled the fore most -- and self-termed, too -- the foremost practitioner of this terrible practice, and Nurse Shaeffer participated with Dr. Haskell at this procedure and this was her testimony; and she was here with us, those of you that remember last year, she was present and appeared with us.

"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 heartbeat 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 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." And that was a nurse that had been, until that operation, for all I know still is, Pro-Choice.

Now, lest anyone here or any listener think -

SENATOR DOLLINGER: Senator Oppenheimer.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I wanted to ask a question, if the good Senator would yield.

SENATOR MALTESE: I prefer not to yield until I complete my statement, Madam President.

THE PRESIDENT: Fine, but we'll have a chance for everyone to speak on the amendment.

SENATOR OPPENHEIMER: This was a question on something that was said a couple minutes ago that I wanted to question.

THE PRESIDENT: You will be recognized next.

Go ahead, Senator.

SENATOR MALTESE: Lest anyone think the nurse's statement, Nurse Shaeffer's statement, is an exaggeration or colored by her own very considerable emotion, I have before me a paper which recites the testimony of Dr. Martin Haskell, together with Dr. James T. McMahon, who has gone to his eternal reward, or lack thereof, which was delivered at the National Abortion Federation seminar in September, the 13th and 14th, 1992 where Dr. Haskell goes into considerable detail about this procedure, taking great pride in his authorship and recitation, and he first says in a brief introduction: "The surgical method described in this paper differs from classic D&E in that it does not rely upon dismemberment to remove the 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 and D&X to distinguish it from dismemberment type D&Es. This procedure can be performed in a properly equipped physician's office -- physician's office -

under local anesthesia. It can be used successfully in patients 20 to 26 weeks in pregnancy. The author has performed over 700 of these procedures with a low rate of complications.

Patient selection -- I'll skip only to the portions that are pertinent at this point: The author routinely performs this procedure on all patients 20 through 24 weeks LMP, last menstrual period, with certain exceptions: The author performs the procedure on selected patients 25 through 26 weeks LMP.

He also recites, for those that say that this procedure is -- has to be somewhat precipitous to save the life of the mother, dilation and extraction takes place over three days. Now we're to procedure.

The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus locating the lower extremities -- I'll skip over some. When the instrument appears on the sonogram screen, the surgeon is able to open its claws to firmly and reliably grasp a lower extremity, the leg of the baby. The surgeon then applies firm traction to the

instrument causing aversion of the fetus, if necessary, and pulls the extremity into the vagina. By observing the movement of the lower extremity 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 extremity. The skull lodges at the internal cervical os; usually there is not enough dilation for it to pass through.

The fetus is oriented dorsum, or spine up. At this point, the right-handed surgeon slides the finger of the left hand along the back of the fetus and hooks the shoulders of the fetus with the index and ring finger, palm down.

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, curve 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 scissors 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 -- I don't know where the term "safely" would be -- he spreads the scissors to enlarge the opening. The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents.

With the catheter still in place, he applies traction to the fetus, removing it completely from the patient. The surgeon finally removes the placenta with forceps, scrapes the uterine walls with a large Evans forceps and 14 millimeter suction curette. The procedure ends, and so does the life of the fetus.

Now, the prior votes on the bill in the Senate and the House indicate that this had wide Democratic and bipartisan support. But

I'd like to direct myself for a moment to the material that Senator Bruno alluded to.

Make no mistake about it, these figures, these statements that are so blithely alluded to by many proponents of this procedure were taken of great moment during the debate in the Congress, in the state, and in this house and in the Assembly, and I want to quote, as Senator Bruno has indicated, this is not some mere self-anointed leader of the pro-abortion forces, this is Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers. They represent approximately 220 independently owned abortion clinics. And his statements were: The Pro-Choice movement has lost a lot of credibility during this debate, not just with the general public, but with other Pro-Choice friends in Congress. Even the White House --" even the White House -- "is now questioning the accuracy of some of the information given to it on this issue. I think we should tell them the truth, let them vote and move on."

Now, again, I'd like to read this paragraph: Again Fitzsimmons, "When you're a

doctor who does these abortions and the leaders of your movement appear before Congress and go on network news and say these procedures are done in only the most tragic of circumstances, how do you think it makes you feel? You know they are primarily done on healthy women and healthy fetuses and it makes you feel like a dirty little abortionist with a dirty little secret," Fitzsimmons said. "I think we should tell them the truth."

So he lied about the frequency, he lied about the medical necessity, they lied about the number. Originally we were quoted figures of approximately 500 a year; now they're talking some 10,000 a year. Quite, quite a big difference.

I know that we have many, many supporters of this legislation and certainly more eloquent; and in the case of the Cardinals and Bishops are more saintly than perhaps any of us in this chamber, public figures, normally Pro-Choice like Mayor -- former Mayor Ed Koch, who have all asked the legislators in this house and the legislators on the national level to reconsider, despite whatever position they may

hold on abortion or right to life, and stop this procedure.

I'd like to, for a moment, speak about another misstatement that was made frequently during the debates and that misstatement was -- and it was precipitated, I believe, by Dr. McNally who claimed that he would give massive doses of anesthesia which would not affect the mother but which would deaden whatever pain the fetus would feel, and I'd like to just skip and say: The babies are alive and experience great pain when they are subject to a partial birth abortion.

In Congressional testimony on March 21st, 1996, the heads of the American Society of Anesthesiologists and of the Society for Obstetric Anesthesia and other top experts testified that even that anesthesia -- even general anesthesia given to the mother has little effect on the baby. Jean A. Wright, associate professor of pediatrics and anesthesia at Emory University, testified that recent research shows that by the time a baby is developed enough to be a candidate for a partial birth abortion, the fetus is sensitive to pain,

perhaps even more sensitive than a full-term infant. She added,"This procedure, if it was done on an animal, in my institution would not make it through the constitutional review process. The animal would be more protected than this child is."

Now, during the last debate, we had opportunities to speak to pediatric surgeons, surgeons that perform operations on children in uterus, in utero, and in many cases, they spoke of performing operations on poor, unfortunate children who were born without full brains and with brains outside the skull, and they indicated-- she indicated the specific physician, that they had a fair amount of success, although in most of these extreme cases, there was no question that the child was born with some brain damage.

I'd like to -- in skipping over a lot of the other material, I'd like to perhaps just read a brief portion of an article by a Dominick Lawson that appeared in the National Right to Life News on April 12th, 1996, and Dominick Lawson is the editor of the London Daily Telegraph, and he was commenting on the

fact that an amniocentesis test had determined that two infants who were tested, they made a mistake at the hospital and determined that one had Down's syndrome and it was the wrong child, so that child was then aborted and then they followed through and aborted the other child of the other parents, and he speaks of the apology that was directed to both parents by the hospital and then refers to the fact that he and his wife, his wife gave birth to a little baby girl, six pounds, five ounces, and that that baby girl suffers from Down's syndrome and he writes, "Modern medicine, however, regards these babies as necessary, if unfortunate casualties in the war against abnormality. And Down's syndrome is far and away the most common form of genetic abnormality. But, a Down's child is not an unhealthy child. Down's is not a disease. Such a child is not infectious, or no more than any other child. Such a child suffers no pain or distress, or no more than any other child."

I would not have believed that such obvious points needed to be made until he read the newspapers reports, and he speaks of his daughter as the picture of health, strong

and robust and he says, "It is true that Dominica will have some degree of mental retardation. It could be severe, it could be slight, they will not know for years. But mental handicap is not the same as mental illness. A slow child is not a lunatic. Above all, a child suffering from Down's syndrome will not necessarily be unhappier than any other child. Indeed, children with this condition very often seem capable of greater love and happiness than those with a normal chromosomal makeup."

And he says, "Again, I would not have thought that this point regarded -- would necessitate repeating," but then he says,"Many of the reporters and commenters say that the child would be so unhappy that they would be better off dead and, therefore, they may, on occasion, be killed. This is not an exaggeration. According to the bill in England, the Human Fertilization Act, it became legal to terminate a pregnancy up to the very end, up to the moment that the umbilical cord is cut, if there is a substantial risk that the child would be seriously handicapped. There is a mighty

paradox in all of this," and he speaks of England but it applies to America. "As a country and as a people, we have become increasingly kind and understanding towards those with physical and mental handicaps. They are no longer automatically institutionalized. We have granted them equal rights to education, we have granted them equal rights to economic security, all we deny them is the equal right to life."

Now, Senator Bruno alluded to Reverend Paul Smith's statement earlier that conscience always asks the question, "Is it right?" Here is a procedure that flies in the face of thousands of years of history, flies in the face of all humanity, would lower us lower than perhaps animals, in many cases, speaking of parental love, mother love.

This is a loathsome, abhorrent procedure. This is a procedure that has been described as medical men who are Pro-Choice as something they would never dirty their hands with. This is a procedure that has been described as akin to murder and homicide and infanticide. This is a procedure that

physicians, physicians describing it have indicated that the only pressure stopping that child from being fully born is the pressure of two fingers on the shoulders of that child keeping the head in the vagina.

Madam President, colleagues, I ask you, reexamine the arguments on this issue, reexamine your own thoughts and your own conscience. I presume to put myself in no one else's shoes. I say to you that this is not a procedure that we in this chamber, in this house, in this Capitol, in this state or in this country, should sanction or permit.

THE PRESIDENT: Senator Oppenheimer, on the amendment.

SENATOR OPPENHEIMER: Actually, I had risen not on the amendment, but to question something that was being said by Senator Maltese -

THE PRESIDENT: Would you like Senator Maltese to yield?

SENATOR OPPENHEIMER: -- So I would like Senator Maltese to yield.

THE PRESIDENT: Senator Maltese.

SENATOR OPPENHEIMER: In this

bill, Senator Maltese, you make no differential in what you term partial birth abortion. This doesn't limit it to the third trimester or - because in fact, there are more of this procedure done in the second trimester; so, without that limitation, obviously, this is contrary to our law, our national law.

SENATOR MALTESE: Madam President, as my colleague is aware, the present state of the law limits abortions to the first 24 weeks, six months. This specific bill does not allude to any time period because, as Dr. Haskell and Dr. McNally have indicated, the fetus must be fully formed prior to this procedure being undertaken, and they do not ever apparently say much about this procedure being performed before the 18th or 20th week, which would be approximately five months.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: The fact is, Senator Maltese, that the majority of these procedures are done in the second trimester, and, therefore, your bill, this proposed bill, is simply in contravention to the law of our

country.

SENATOR MALTESE: Madam President, the majority of abortions -- there are, I believe, 149,000 that are performed on New York residents, of them 97,871 performed in New York City. The indication is that 20 or more weeks -- and these are figures from the Health Department -- the only 2,534 are performed within 20 or more weeks. So, the amount of abortions that would be available for this type of procedure, at least in New York, would not be over that amount.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If I might, the statistics we have are that only 140 of these procedures are done in the third trimester; therefore, the large number are done prior.

THE PRESIDENT: On Senator Connor's amendment, does anyone else wish to be heard?

Senator Abate, on the amendment?

SENATOR ABATE: Yes.

Would Senator Maltese yield to a

question?

THE PRESIDENT: Senator Maltese.

SENATOR ABATE: I am troubled by what is the definition of what is partial birth abortion. Does that include D and E procedures?

SENATOR MALTESE: No, it does not. The D and E, as these doctors have indicated, is dilation and extraction, and the- well, the D&E is what the doctor, good doctor alludes to as dismemberment within the womb, so this would be taking the fetus out in total, the whole fetus out, which is a different procedure. This is the D&X, as Dr. Haskell has referred to it, which differentiates it from the D&E.

SENATOR ABATE: Would you be surprised, Senator Maltese, to learn that some doctors -- and I've asked doctors if D&E could come under this procedure, could come under a partial birth abortion because it does not, in my understanding -- D&E does not talk about dismemberment, it's suction. It also can involve the same procedure as a D&X.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Yes, Madam President, I have here a definition of dilation

and extraction, and the whole -- the key term is intact. The terminology, partial birth, means just that, the baby is partially born. This baby would not be partially born if the physician would be reaching his tools within the woman's body and taking, as they do in the D&E, portions of the baby's body out one at a time. This would necessitate the baby being dead and not -- and not being born.

The whole term -- the term and debates in the Congress and on the federal level, there was a great deal made of the fact that partial birth abortion is not a phrase easily found or found at all in any dictionary; and yet, many physicians were perfectly content with the term because it describes exactly the procedure. A partial birth, the baby -- the fetus is partially born and, with the exception of a portion of the skull, is completely extruded from the vagina.

THE PRESIDENT: Senator Abate.

SENATOR ABATE: Yes. Senator Maltese, does this procedure apply to second trimester, as well as third trimester.

SENATOR MALTESE: Yes. In

response to Senator Oppenheimer, it does, it does, but that those type of abortions probably would not lend themselves very easily to this procedure because the -- it is probably -- Dr. Haskell described the reason for the partial birth abortion. He indicated that when the baby gets beyond a certain age, beyond the 20 weeks, the fibers of the baby's flesh become so hard that it is more difficult to take them out a piece at a time and he, therefore, indicated that this was a preferable procedure because you were able to have the mother over three days dilation, give birth to the baby, all but the skull and the head.

SENATOR ABATE: Senator Maltese, are you saying that this procedure applies whether the fetus is viable or not viable outside the womb?

SENATOR MALTESE: Yes, that's part of the problem, sure. It's -

SENATOR ABATE: And you're suggesting that this procedure is more gruesome than dismembering a fetus, more gruesome than a C-section -

SENATOR MALTESE: Yes.

SENATOR ABATE: -- that tears the fetus out of the mother's womb?

SENATOR MALTESE: Madam President -

SENATOR ABATE: More gruesome than suctioning the fetus out, is that your contention?

SENATOR MALTESE: Madam President, I'm sure this discussion is as disagreeable to my colleague, Senator Abate, as it is to me; and yet, at the same time, we are legislators, we legislate on medical practices or pseudo medical practices, and we have to acquaint ourselves with as much as possible. I don't pretend to be expert on obstetrics or birth or any of these procedures.

Like the good Senator and others, I have attempted to, over the course of the last two years, acquaint myself with many of these procedures by speaking to many doctors and physicians and people who are experts as to which is more gruesome. I don't want to make a value judgment. What could be gruesome to Senator Abate who I know has worked in law enforcement, it might not be to me. I worked in

homicide for three and a half years. What could be gruesome to another Senator here might not be to me.

The point of this is that this is a birth, this is all but for a few seconds or for a few centimeters of living, breathing tissue is a birth and that birth is cut short, that life is cut short by a scissors put in the back of the skull and the brains are then sucked out of that living, breathing baby. And that is a procedure that we in this state should not condone.

THE PRESIDENT: Senator Abate.

SENATOR ABATE: Yes, I would like to speak on the amendment and why I support the amendment.

I stand before this chamber as a mother and I can sincerely say the best thing I have ever done in my life, the best thing I ever accomplished is having a child, and there's been no greater joy than has been in my life than being a mother.

And I wish I could submit to what Senator Bruno said, that this is a matter of right and wrong and it's a simple issue. It is,

I believe, not so simple. And I'd like to talk why this amendment is so important. We need to clarify what this bill does and does not do.

Last year, I focused wrongly on the bill. I thought the bill was about late term abortion. It is not just about late-term abortions, it's about a vaguely-described procedure, and I have spoken to doctors. What is this partial birth abortion? There's no medical term, there's nothing that I could find in any medical dictionary. Does it apply to D&Es, to D&Xs? We know that it doesn't apply to procedures called dismembering a fetus, it doesn't apply to a hysterotomy, but I'm not sure what this vague terminology means and, if we don't know what it means in terms of not our lay terms but in terms of medical terms, we don't know how far-reaching this bill is.

What we do know, and I did not understand last year but I understand this year and I'm more adamantly opposed this year than last year, that this would cover all -- poten tially could cover all abortions after the first trimester. And I submit that all abortions are gruesome, and now we're singling out one

procedure because we think it's more gruesome than another. Why not next week attach another procedure.

It is a slippery slope. What we're now saying -- not talking about late-term abortions, we're talking about abortions after the fourth week of pregnancy; and the impact, as everyone has said the greatest impact this ban will be on abortions that occur before 24 weeks when a woman has a constitutional right to an abortion, and that it will also apply to third trimester -- and this bill is more restrictive than the laws on the books of 40 other states. Those other states are consistent with Roe v. Wade. They say that in a third trimester there should be two exceptions, to preserve the life of the mother, or to preserve the health of the mother.

This bill carves out one exception. Why is it in the wisdom of 40 other states who are consistent with Roe v. Wade that recognize and understand the exception? This amendment would be consistent with Roe v. Wade as applies to third trimester abortion and would not carve out the exception to preserve the

health of the mother.

Now last year we focused on numbers, and wrongfully so, because we talked about numbers as it applies to late-term abortions. The facts are the same last year and they are the same this year, and the facts are 99 percent of all abortions occur before 20 weeks; 6/100th of one percent occur after 24 weeks.

I have a report from the Department of Health. Let's not believe me, I'm not a doctor. Let's not believe Mr. Fitzsimmons. Vital Statistics of New York State, 1994 says that after 25 weeks, there are 140 abortions that occurred, 140 and, if you look at Fitzsimmons' statement, that statement isn't contrary to the facts we knew last year as compared to this year. Yes, there are, in the second trimester, potentially 3- to 4,000 of these kinds of abortions. There are only hundreds in the third trimester. It's what we stated last year, it is the truth. But what we fail to remember -- and I have the testimony and the transcript of "Nightline", when he was asked about this procedure, this is left out. We're

telling half the story. When he's asked about the procedure, he says, "I have no reservations, zero reservations, about this procedure, and when it's done we have no apologies and no reservations." And he goes on to say that,"This is a procedure that is a good procedure that should be kept away out of the Congressional rubric. I'm not backing away from everything."

What we are -- if we talk about the numbers today, we're missing the point because that is obscuring the overriding principle that such a ban as is suggested in this bill intrudes unacceptably into a women's private medical decision. So when we say it's not the business of Congress, I also suggest it's not the business of this Legislature, that the woman should make this decision, with the advice of her spiritual advisors, with her family and her doctor; and in fact what we're doing, if we pass this law, we will be limiting her access to abortions that are now legal in this country and in this state.

If the passage of this bill occurs, it will mark the first time since 1970 that abortions performed before 24 weeks of

pregnancy will be declared illegal.

This bill has far-reaching outcomes. It's not about a procedure, it's not about late-term abortions, it's about the woman's right to choose.

This bill is unconstitutional. Should we say we don't care? I think we should care about how we use taxpayer dollars, knowing that this bill will be declared unconstitutional. And why is it unconstitutional? It's impermissibly vague. It fails to define adequately the boundaries of conduct for which a physician may be held accountable.

If it's not defined appropriately, a physician can be imprisoned or fined but, moreover, can be imprisoned for up to four years. Don't we want a law that's not vague so that persons of common intelligence don't have to guess at its meaning and its application? It does not provide adequate notice of what is prohibited behavior and it, moreover, will invite arbitrary and discriminatory enforcement.

The bill is unconstitutional also because it endangers a woman's health and life. It imposes an unnecessary burden on a woman to

decide between her health, her ability to have children in the future and risky -- more risky procedures.

The Supreme Court has emphasized that physicians must have discretion to determine the best course of conduct. What are we saying today, that we know better than doctors? We have to be mindful of our role. We are lawmakers and not doctors. And we should not impose or restrict the discretion of a doctor in the middle of an abortion procedure when it could mean that that woman will fail to have another child, that could risk her health. We are saying to that doctor, "You have limited choices. You can't look at your patient, protect her, because the lawmakers have said you do not have discretion, even if it means you have to do a D&E or you have to do a C-section which could mean uterine or cervical lacerations, injecting a sharp instrument."

Even if it means more harm to the woman and her future ability for fertility, we're saying to the doctors, "Ignore your best medical advice and follow what we think is best for the woman."

The bill unconstitutionally restricts when a woman may obtain an abortion. The court has been very clear. Again, it's unconstitutional. So long as a fetus is not viable, a woman has a right to end her pregnancy in accordance with her own conception of spiritual imperatives and her place in society.

We all know it's a difficult decision; it's an agonizing decision for a woman, but in the case where a fetus is not viable, that decision is hers and hers alone. If a fetus is viable, the government has said and the Supreme Court has said you can ban abortions, you can restrict it, but only with two exceptions: This bill ignores Roe v. Wade, eliminates the exception of protecting the health of the mother.

What are we saying to women? Undergo more dangerous procedures or wait until you're dying and then maybe you could have the procedure of choice, the choice of your doctor; otherwise, you have to follow the choice mandated by the Legislature.

This bill is unconstitutional for another reason: Even the life exception is too

narrow. It talks about physical disorder, illness or injury. It is so vague as to be meaningless. It can exclude other life threatening situations; and even with this life exception, it won't apply if another procedure, even one more risky, could have been used.

So let's not confuse ourselves today. The outcome of this bill will clearly limit access to abortion services. By its very intent, doctors will not want to be second guessed. They won't understand the nature of this bill, they won't understand the language, they won't want to take risks and they don't want to risk being in prison for four years. Even if they have no criminal intent, they will say to women, "Leave this state, get an abortion, go underground," because doctors will not perform abortions not only in the third trimester, but now in the second trimester.

We argue over and over in this chamber that government should not intrude in the lives of individual citizens and we argue over and over that we need less government and not more government. Why are we so anxious today to substitute our untutored, raw opinions

for sound medical decisions? Why are we willing to ignore sound public health policy and ignore the tragedies of so many women who want to have their children but are forced with a decision to bring birth to a deformed fetus or never have another child in the future? Why are we, as a Legislature, compounding this pain and suffering?

If we think by passing this legislation women will walk away, we're wrong. They will not walk away, they will find a way to have an abortion, they will go out of town, go out of state; and we're jeopardizing their health even further. We're saying to women we know better than their doctors. We're saying to women that they don't need to consult with their families and their priests and their rabbis to make this very personal and important decision.

I know that this is an emotional issue, I look around, that there are people here who feel very strongly about this issue. This is clearly an issue of conscience but this is an issue that we need to understand the facts and the facts in this bill go much further than I believe even Senator Maltese would like. This

is a bill that doesn't just ban the procedure that's crafted narrowly so we understand it, it potentially is a ban on all second and third trimester abortions.

I believe by voting against this ban we are saying that we have respect for a pluralistic society. We're saying that I have respect for that woman who is Catholic. I have respect for that woman who is Jewish, I have respect for that woman that's Protestant and Muslim because she should have a right to exercise in this free society what her religion and what her conscience mandates.

If you vote against this bill, you're saying that you have respect for the constitution of the United States and you do not want to waste taxpayer dollars on a bill that is clearly unconstitutional. And if you vote against that ban today, I believe you're showing respect for women, you're showing respect for their lives, their health and their right to choose.

Let me just end. Frank Rich of the New York Times summed it up, I believe, quite eloquently. He said, "In the decade since

Roe v. Wade, American women have never been more in danger of losing their constitutional right to abortion than they are this week. Pro-Life advocates are right to so strenuously champion the ban because it again begins the end run process of gutting Roe v. Wade a few procedures at a time."

And I submit, this bill is not about a procedure, because most abortions could be defined as partial birth abortions. And he goes on to say, "This ban does not stamp out infanticide, which is already illegal." Again, we already have on the books third trimesters are illegal except for very defined excess, but what it does is cripples a woman's right to choose and a doctor's duty to recommend the safest of the uniformally awful options for carrying out their anguished choice.

I'm not prepared today to water down a woman's right to choose, particularly on a bill that does not define in real terms or give guidance to doctors what they can and cannot do. All it will do is set a chilling effect on any woman exercising her legal right to have an abortion.

I am voting my conscience today. I am showing respect to this pluralistic society, people who are Catholics and Jews and Protestants and Muslims or whatever religion they have so they can lead their lives and exercise their religions and pursue their lives and conscience. I support the Constitution, I support women, and for these reasons I support the amendment and I must oppose the bill.

THE PRESIDENT: Thank you, Senator Abate.

Senator Leichter, do you wish to speak on the amendment?

SENATOR LEICHTER: I'll speak on the bill, Madam President.

THE PRESIDENT: Thank you. The question -

SENATOR DOLLINGER: May I be heard on the amendment, please?

THE PRESIDENT: Yes, Senator Dollinger.

SENATOR DOLLINGER: Would the sponsor yield to a couple questions, please?

THE PRESIDENT: Senator Maltese, on the amendment.

SENATOR MALTESE: Madam President, if it's on the amendment -- I'll yield to a question, at any rate.

THE PRESIDENT: Yes, you spoke on the amendment, Senator Maltese.

Senator Dollinger.

SENATOR DOLLINGER: I just have -- Senator you pointed to the file you had with all that material in it. Isn't it a fact, Senator, that you were a prosecutor in your life prior to coming to this chamber?

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Time before, yes.

SENATOR DOLLINGER: And isn't it a fact in normal trial procedure, an advocate, in putting evidence before a jury, would put together live testimony from witnesses with firsthand information about a fact in order to prove it to that jury?

SENATOR MALTESE: In most procedures, yes, Madam President.

SENATOR DOLLINGER: And isn't it also true, Senator, that you wouldn't use hearsay to try to convince a jury of a series of

facts if it meant convicting someone of a crime, isn't that correct? You would want to use live testimony so the jury could draw conclusions from live testimony, isn't that -

SENATOR MALTESE: Madam President, of course as has been repeatedly stated, this is a legislative body and not a jury but, in addition, there were many cases, as a matter of fact, exhaustive testimony under oath before the Congressional hearings.

SENATOR DOLLINGER: Again, through you, Madam President, you wouldn't read somebody else's testimony to a jury, you would have the witness testify themselves live for the jury, wouldn't you?

SENATOR MALTESE: Madam President.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Previously - previously sworn to testimony would be certainly advantageous toward forming a point of view and certainly helpful to us as legislators. We cannot bring witnesses here into the chamber, prohibited by Senate rules; therefore, we have to settle for the next best thing, which is our

reading and analyzing previous testimony. Certainly -- my good colleague, Senator Abate, quotes columnists in the New York Times. Certainly I don't know their degree of prevarication or truthfulness, but I don't know that that's equivalent to testimony given under oath before a Congressional committee.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Again, through you, Madam President, wouldn't you acknowledge, Senator, it would be better to bring in the witnesses that know firsthand about this issue -- obstetric and gynecological experts, women who've undergone the procedure, so that we could wipe out all the rhetoric and just deal with the facts? Wouldn't that be a better way to do this?

SENATOR MALTESE: Madam President -

SENATOR DOLLINGER: We can do that through our hearing process.

SENATOR MALTESE: Madam President, I wish to point out to my colleague, Senator Dollinger, that during the last time

this bill was debated and prior thereto, we were deluged with experts and physicians and surgeons, and experts of one kind or another, depending on their point of view, were brought forth at press conferences and meetings so we had many of that firsthand testimony. Much of that -- Nurse Brenda Shaeffer was in the audience, previously testified or stated during various conferences and meetings her point of view. There were pediatricians, surgeons that testified that made statements as to the best way to treat unborn fetuses. We had -- we had an untold amount of testimony that we could rely on and allude to in this much debated, much discussed piece of legislation.

SENATOR DOLLINGER: Again, through you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Just two other questions: Don't you think, Senator, it would be better that no one would be convicted of a crime based upon hearsay? Why should we make something a crime based on hearsay?

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President, Senator Dollinger, who is an attorney and a trial attorney, is obviously engaging in rhetorical questions. I think that we in this legislative body must use our best judgment. As Reverend Smith had indicated, we have to do what's right and do what's right on as much available testimony and information as we could possibly obtain.

Senator Dollinger had the same opportunities that I and all the members of this house had to secure voluminous information in connection with this piece of legislation. Those envelopes that I pointed to were just a mere fraction of the information available.

Certainly he could have had information that would have been sworn to information that he could have by virtue of a subcommittee or certainly an investigative body of the minority, called witnesses and have had experts testify giving their point of view. So he had the same opportunity that we had. This is a year later and Senator Dollinger and his colleagues have not availed themselves of that opportunity.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: And again, through you, Madam President. Could you tell me, Senator, how we would have done that since last Tuesday, the day this matter was put, at the request of the President, on the Codes Committee agenda?

SENATOR MALTESE: As the Senator well knows, this is not since last Tuesday, this is since approximately a year ago when this bill, this identical bill was debated before this house and Senator Dollinger spoke at some length on the bill and he had that extensive opportunity and did not avail himself of it.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I have one other question, and I'll sit down.

Senator, could you explain to me why women's health should not be included in this bill? What do you have against women's health being a factor in a decision involving this procedure? What is it about women's health

that you don't like that prevents you from supporting this amendment?

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President, as the Senator well knows, women's health is indeed very important to me. I have a wife, I have two daughters, I have three granddaughters, just recently born. Women's health is very important to me. At the same time, this is again engaging in semantics and rhetoric.

Certainly there is -- when we talk about the specifics of the bill, the bill is very specific. As the Senator well knows, expressio unius est exclusio alterius. The expression of one is the exclusion of all others.

This bill clearly lays out what is forbidden, again what is a crime for any physician worth his salt, and this bill is very expressive, tells what it is.

When you speak of women's health, the President and some others have taken women's health to mean some discomfort, to mean some depression. This bill is plain. It is to save

a woman's life, and that's the exception that we give. Women's health, on the other hand, can mean anything to anybody and would not clearly define what is a crime and what is criminal activity.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I just can't understand why Senator Maltese won't let women's health be defined by women and their physicians.

THE PRESIDENT: Senator Oppenheimer, on the amendment.

SENATOR OPPENHEIMER: Yes, just one more question, Senator Maltese, if you would yield.

SENATOR MALTESE: Yes.

SENATOR OPPENHEIMER: This is sort of a philosophic question, I guess: You are a person who believes in pro-life and, therefore, would you not, since you believe that conception begins at the very beginning, that life begins at conception, would you not then term any abortion as being a partial birth

abortion?

SENATOR MALTESE: I'm sorry, I didn't hear the -

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If you believe that life begins at conception, would you not then believe that all abortions are partial birth abortions?

SENATOR MALTESE: No. Madam President, what I believe or don't believe does not have relevance in this particular case. This is clearly defined, clearly delineated. It's very specific, and it tells what -- it explains and states what a partial birth abortion is. It's amazing that there could be this many interpretations on something that is a partial birth, that is clearly spelled out.

And just to allude to Senator Dollinger's last statement that we should leave women's health to women, I assume that from hereafter, he will exclude himself from debate on any issue that affects women or their health.

THE PRESIDENT: Does anyone else wish to speak on Senator Connor's amendment?

SENATOR OPPENHEIMER: On the bill later.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Madam President, I wonder if Senator Dillinger -

THE PRESIDENT: Senator Dollinger?

SENATOR MENDEZ: -- Would answer a question, and it's on the amendment.

Senator, the amendment states that when we change the main bill and add to it adverse effects on the health of a woman -- is that correct?

SENATOR DOLLINGER: That's my understanding of the amendment.

SENATOR MENDEZ: Now, tell me something: How do you define adverse effects on a woman's health? Would it be a headache?

SENATOR DOLLINGER: Through you, Madam President, I define that by asking the woman and her physician, in consultation, to determine what the health consequences are.

SENATOR MENDEZ: Senator, you're a very bright man. Adverse effect, could it be a headache?

SENATOR DOLLINGER: I leave that to their physician. It's an adverse health consequence.

SENATOR MENDEZ: But you have no idea what an adverse effect on a woman's health is?

SENATOR DOLLINGER: I could think -

SENATOR MENDEZ: You're going to vote yes on the amendment and you have no idea whatsoever?

SENATOR DOLLINGER: I leave that judgment, as we do oftentimes, to a decision by a physician in consultation with his or her patient. If that decision is some day called into question, as everyday decisions in this world are in every single context, those terms need to be defined by courts and judges and juries.

SENATOR MENDEZ: Senator, in the final answer, you don't know the definition of adverse effects on a woman's health, and yet you're going to vote for this amendment.

SENATOR DOLLINGER: I'm going to vote for this amendment because I believe that

the adverse health consequences -- what I disagree with Senator Maltese on, fundamentally, is that the decision about adverse health consequences ought to be made by a woman who's fully informed by her physician about what the consequences of a procedure are on her health and her life. It's her call, it's her decision, and I'm willing to let her make it. If that - if it doesn't meet the test of adverse health consequences and it's someday ruled by a judge to have been adverse -

SENATOR MENDEZ: It has not been -

SENATOR DOLLINGER: Then they take the consequences before the law.

THE PRESIDENT: Senator Mendez, just let him finish answering, please.

Senator Dollinger.

SENATOR DOLLINGER: I'm finished, Madam President.

SENATOR LEICHTER: Madam President.

THE PRESIDENT: Senator Leichter, do you wish to speak on the amendment?

SENATOR LEICHTER: Just with the

indulgence of both Senator Mendez and Senator Dollinger, I just want to read the amendment, since they're discussing it.

It says "avert serious" - "serious adverse health consequences". I think that answers your question about the headache.

SENATOR MENDEZ: Serious? Serious? What would you consider a serious health effect?

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Well, one that comes to mind is the inability of the woman to have children in the future.

SENATOR MENDEZ: That's a serious one. Is there any proof that that's the case?

THE PRESIDENT: Senator Oppenheimer, do you wish to speak on the amendment?

SENATOR OPPENHEIMER: I was going to respond to my colleague.

THE PRESIDENT: Yes.

SENATOR OPPENHEIMER: There is a definite reason for why this horrible procedure is used; and, yes, it does have direct bearing on future propagation. You would say that why

couldn't a C-section be done, right? You would say why not do a C-section to take out the baby instead of doing it in this alternative way. As it is described to me, a C-section is done across the uterus, obviously this way, and at that stage, before the very final days, the uterus is not wide enough to do the normal C-section; therefore, what has to be done is a vertical line. The vertical line is what the problem is. The incision done in that fashion can impact a woman in the future from having the musculature that can move sufficiently to accommodate a growing fetus, so that's the problem.

SENATOR MENDEZ: Madam President.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Yes, on the amendment and on the bill -

THE PRESIDENT: No, just on the amendment. Please, keep it germane to the amendment, please.

SENATOR MENDEZ: I will be voting against this amendment, the reason being that it voids, practically voids the main intention of the main bill. I don't think that the issue of

adverse serious effects on a woman -- to me, that's a lot of rhetoric. There's nothing specific on it. It could be interpreted in any way by anybody. It could be that a doctor one day could say, "Okay, it's serious effect on you to have a continuous headache." And that could be a serious effect. Serious effect, that it will be defined differently by many different people. So I think it voids the intention of the main bill and therefore I'll be voting in the negative.

THE PRESIDENT: The question is on Senator Connor's amendment. A yes vote will be in favor of the amendment; a no vote will be a vote in opposition to the amendment.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: We would like a slow roll call on the amendment.

THE PRESIDENT: Are there five members wishing a slow roll call? Okay. The question is on the amendment. Will you call the roll, please?

THE SECRETARY: Senator Abate.

SENATOR ABATE: Yes.
THE SECRETARY: Senator Alesi.
SENATOR ALESI: No.
THE SECRETARY: Senator Breslin.
SENATOR BRESLIN: Yes.
THE SECRETARY: Senator Bruno.
SENATOR BRUNO: No.
THE SECRETARY: Senator Connor.
(Affirmative indication.)
THE SECRETARY: Senator Cook.
SENATOR COOK: Yes.
Senator DeFrancisco.
(There was no response.)
Senator Dollinger.
SENATOR DOLLINGER: Yes.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: No.
THE SECRETARY: Senator Gentile.
SENATOR GENTILE: Yes.
THE SECRETARY: Senator Gold, excused.
Senator Gonzalez.
(There was no response.)
Senator Goodman.
SENATOR GOODMAN: No.

THE SECRETARY: Senator Hannon.
SENATOR HANNON: No.
THE SECRETARY: Senator Hoffmann, excused.
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: Yes.
THE SECRETARY: Senator Lack.
(There was no response.)
Senator Larkin.
SENATOR LARKIN: No.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: No.
THE SECRETARY: Senator Leibell.
(There was no response.)
Senator Leichter.
SENATOR LEICHTER: Madam President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: To explain my vote.

The Majority Leader challenged us to do what's right on this bill and I intend to do right, I'm going to vote against it and I'll explain why I'm against it. I don't like the bill and, frankly, this amendment, in my mind would not cure the basic defect in the bill. It may make the bill somewhat less objectionable and, for that reason, I'm going to vote for it, but I wouldn't want anybody to think that my vote for this amendment in any way means that I think that it makes this a bill that ought to be passed into law.

Having said that, Madam President, I'll vote yes.

THE PRESIDENT: Thank you.

Continue to call the roll.

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: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator Meier.

SENATOR MEIER: No.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Yes.

THE SECRETARY: Senator Nanula.

(There was no response.)

Senator Nozzolio.

(There was no response.)

Senator Onorato.

SENATOR ONORATO: Yes.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: To explain my vote.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I would have to concur with Senator Leichter that this is an amendment that improves a terrible bill and I will be supporting it, but it's a terrible bill, which I'll talk on when we get to the bill.

I'm voting yes on the amendment.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Yes.

THE SECRETARY: Senator Present.

SENATOR PRESENT: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: No.

THE SECRETARY: Senator Rosado.

SENATOR ROSADO: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: No.
THE SECRETARY: Senator Sampson.
SENATOR SAMPSON: Yes.
THE SECRETARY: Senator Sanitago.
SENATOR SANTIAGO: Yes.
THE SECRETARY: Senator Seabrook.
SENATOR SEABROOK: Yes.
THE SECRETARY: Senator Seward.
(There was no response.)
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: No.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: No.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: Yes.
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.
(There was no response.)
THE SECRETARY: Senator Waldon.
SENATOR WALDON: Yes.
THE SECRETARY: Senator Wright.
SENATOR WRIGHT: No.
THE PRESIDENT: Yes, call the absentees, please.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: No.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Kruger.
SENATOR KRUGER: Yes.
THE SECRETARY: Senator Lack.
SENATOR LACK: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: No.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: Yes.
THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: No.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: No.
THE SECRETARY: Senator Volker.
(There was no response.)
THE PRESIDENT: The results.
THE SECRETARY: Ayes 22, nays 35.
THE PRESIDENT: The amendment is defeated.
On the bill. Senator Meier.
SENATOR MEIER: Madam President, my colleagues.
SENATOR SKELOS: Senator Meier, if I could interrupt for a moment.
THE PRESIDENT: Senator Skelos.
SENATOR SKELOS: Madam President, at this time could we have the last section read for the purposes of three members voting.
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. )

SENATOR SKELOS: Please recognize Senator Holland.

SENATOR HOLLAND: I vote yes.

SENATOR SKELOS: Senator Tully.

SENATOR TULLY: Yes.

SENATOR SKELOS: And Senator Nanula.

SENATOR NANULA: No.

SENATOR SKELOS: Withdraw the roll call.

THE PRESIDENT: Thank you. Senator Meier.

SENATOR MEIER: Thank you, Madam President.

The first time I entered this chamber was some 20 years ago as counsel then to the late Senator James Donovan and, as those of you who had the privilege of knowing him and serving with him in this chamber will recall, he was for 25 years the leading advocate for life in this chamber and even more consistently for children, and when he spoke about life, he spoke with a special credibility because he did it with a consistent ethic of supporting children,

in advocating for the unborn and for decent pre-and post-natal care for mothers and infants, for the rights of the handicapped and for adequate education for all children.

I mention Senator Donovan, whose seat I now proudly hold, because the fact that we are even having this debate today stands as evidence that his greatest fear has been realized. He warned this body and he warned this state that a society which too freely draws lines about which life we will protect and which life we will respect would soon be a society which would draw no lines at all.

My colleagues, was he wrong, when we can now seriously discuss whether a matter of seconds and centimeters can make a real moral difference in terminating a life? And no matter how anyone may vote today, nearly every member will acknowledge that the issue before the Senate is profoundly troubling, troubling because one of the leading defenders of this procedure, Ronald Fitzsimmons, whose name has been used before here today, has not only acknowledged that the defense has been built upon a series of lies about frequency and

circumstances, but also because of his stunningly frank admission that any abortion culminates in the death of a living being and, in the case before us, the life which is ended is not easily deprived of humanity by using words or by definition as a zygote, a mass of tissue, or a fetus. The life which is ended in partial birth abortion plainly, by visual observation, looks to be and is, in fact, a child.

Today many of us in this chamber may have different views on the overall issue of abortion, and I do not mean to argue, indeed it is dangerous to argue, that we should make legal and moral judgments on life itself, only at the point where what we can see makes us squeamish, but still, my colleagues, I suggest to you that it is even more dangerous to stand before this body of evidence which invites revulsion and do nothing.

Let us draw a line today, my colleagues, and let us draw that line in favor of life.

ACTING PRESIDENT MARCELLINO: Senator Farley.

SENATOR FARLEY: Senator Meier, I've been moved by what you've had to say. Jim Donovan was a very dear friend of mine, and you did him proud.

Let me just say a few things on this bill. You know, we're here to represent society. You know, if society has spoken clearly on anything, they have on late term abortions. The vast majority, the overwhelming majority, has said that this crosses the line. It's not an issue of pro-life or pro-choice. It's an issue of human decency, and this truly crosses the line of human decency.

Senator Daniel Patrick Moynihan has called it infanticide. Allen Dershowitz, not one of my favorite Conservatives, has said that this crosses the line. You know, editorial after editorial in this state, by papers that supposedly think of themselves as pro-choice, has urged this Legislature to do something about banning these late term abortions. They're absolutely disgusting.

I respect the opinions of many, and it's interesting, on the vote on this legislation which would pass easily in the

Assembly if it was let come to the floor and Governor Pataki who claims that he's pro-choice has said he will sign it. This should be banned and I'm telling you, I think it will be banned. Whether New York State steps up and does it, I think that the federal government is going to do it. If there's a veto, it will be overridden.

This is a procedure that is unspeakable. I'm ashamed even to discuss it with people because it is so disgusting that people would do this to a child that could live on its own. There was a woman that testified before Congress who was going to be a late term abortion and yet the doctor happened to be out of the room and the nurses let the child live and she thanks -- thanks God every day for her life.

We must act on this legislation and I applaud Senator Bruno for bringing it to the floor and Senator Maltese for the excellent description that you've given and the reason for this. I happen to be a lawyer and a law professor. I see no constitutional problem at all. I think it's very clear that this bill says exactly what is laid out and what should be

done.

I urge its passage.

ACTING PRESIDENT MARCELLINO: Senator Goodman.

SENATOR GOODMAN: Mr. President, this bill has been extensively debated and explored again today and many of you will recall that I spoke at some length in opposition to it when it was first presented to the house earlier this year. I change not one jot or tittle of what I had said then and I reaffirm precisely that aspect of the debate, but I would like to say one or two additional things as we're confronted with this very vexatious problem today.

Those who put forth this bill would have us believe that we're thinking in terms of a perfect Gerber baby emerging from a woman being slaughtered by being stabbed in the head and in the neck with a vicious weapon that puts an end to the life of this exquisite child.

This is a public relations nightmare which is dreamed up by I know not whom, but I can only say to you it is an utter

distortion of what is really at stake in this matter, because what is happening here is something very different. What is happening here is that in point of fact practically nobody has these abortions at the point where that baby looks like a Gerber baby. Practically nobody has the abortion at a time when there's a fully developed fetus viable outside the womb. The fact of the matter is that there's a cruel numbers game which was kicked off by Mr. Fitzsimmons, whom I do not know and whom I deplore unreservedly, by the dissemination of his numbers, but at least if he was going to correct the record which he sought to do, he might have made it clear what he was talking about, which he most assuredly did not. He left us with the impression that there are thousands and thousands of these babies which are being slaughtered in the manner which I just described, and that is a bald-faced lie.

The fact of the matter is that only some 600 abortions, no matter what the procedure, occur either after the sixth month of pregnancy in the United States each year. I repeat only 600, no matter what the procedure,

occur after the sixth month of pregnancy in the entire United States each year, tragically deformed fetus or a mother in peril.

What's a tragically deformed fetus? It's not the Gerber baby. It's a child who, by the grace of God and some unbelieveable distortion of the normal reproductive process, has a brain growing outside its head. It's a child those liver is outside of its body. It's a child born with no genitalia. It is a child who is incapable of surviving once it is removed from the womb by any method.

Mr. President, it's tragic and unbelieveable that we've distorted this to the point that we have, but I'd like to raise the question very briefly as to who are the people who go through this procedure and why? Why the delay? Why do they wait until the very last moment?

Opponents of partial birth abortion say these women in the final weeks or days of pregnancy, even as Jack Kemp said during the convention, just seconds away from delivery, whimsically opt for infanticide. Some would accuse them of doing this because their prom

dresses no longer fit as they become larger in the stomach, and have this procedure. This is outrageous. This is not what this is about in any manner, shape or form.

Several thousand other cases of people who have these abortions occur earlier when the fetus -- before a fetus is viable. We're talking about abortions that are legally provided for, not only federally under Roe v. Wade but by the state of New York which in 1970, before Roe vs. Wade said that you could perform these abortions.

Now candor compels us to say that an abortion at any time and at any point in the development of the fetus is a cruel and horrendous thing to contemplate. Are we aware what a dilitation and curettage is? You take something shaped like a hoe, a garden hoe, and you scrape the uterus, and if there's an embryo attached to the uterus, you scrape it, you pull off its legs, you dismember it, you remove it from the human female, and that's an abortion. That's not just the procedure of this terrible misnomer that we've been discussing. That's a normal abortion, but I would remind you that

those of us who are supporters of the abortion process and believe in a woman's choice, we have supported not the process but the woman's right to choose it if she and her doctor and her clergyman and her husband conclude she needs it, that we sanction this for the reason that we believe that the fetus is not a human being, that it is not yet viable, that it is incapable of sensate feeling, that it is in such a primitive state of development that it is primal fibrillae. That's a vital distinction that we must always keep in mind in this matter.

Now I'd like to return to the question of what it is that prompts women to have these late procedures. Some who delay abortions to the second trimester are poor or rural women who have to save up for an abortion or a trip to a provider, and let me remind you that 84 percent of American counties don't have a provider. There's no way to get an abortion in these counties. Scared women delay because of the harassment at their local clinics.

Now the Supreme Court says you can yell and scream your head off as a woman approaches a clinic as long as it's within 15

feet of the front door so she can get in this. How would you like to go to any medical clinic for any medical procedure and have people waving and shouting at you that you are committing murder. I don't care whether it's 15 feet or 15 yards or 15 miles; that is a daunting procedure and no wonder people are so reluctant to place themselves in this position.

Teen-age girls who are in denial or traumatized by parental notification laws and, incidentally, on parental notification laws maybe the father of the child is the father of the individual having the abortion in cases of incest which tragically occur.

I say to you that we have a situation where a woman can learn from an amniocentesis which can only occur -- which can only be used late in pregnancy to reveal a gross abnormality of the fetus, that that's another reason for the delay. These are not capricious ly done and I beg you not to conclude that this is because a prom dress does not fit. That would be an entirely cruel and inappropriate observation, and I beg those who said that to recant it.

Now, what this seems to me to boil down to is this: We're dealing with something so sensitive and so sacred and delicate in the matter of child birth, that the fear of having to take the life of an embryo, of a fetus, of a human child is at any point in its development something we vastly prefer not to see happen.

So let us think as we have this debate how important it is to provide family planning and clinic information to prevent the creation of an infant in the first place, and let us think how important sex education is and let us think how important proper contraception is to prevent these tragedies from ever occurring. We don't speak much about these matters, my friends, but these are things which any responsible legislator must have in the foreground of consciousness.

Now, I'd like to conclude this by simply saying to you that what's at stake here is very much more than just the debate about this type of abortion. This is nothing more nor less than a thinly veiled attack on the whole concept of legal abortion as defined by Roe vs.

Wade and by the 1970 law which I voted for when I was in this chamber in that year.

This is an attempt to make every possible effort to create such a psychology of fear in a physician that he wouldn't touch this type of thing with a 20-foot pole. No physician wants to go to jail. No physician wants to perform an E felony procedure and, if there's even the slightest doubt that that could be at stake, what physician would dare to assist a woman in need of an abortion for the most legal and compelling reason.

This is going to throw a chill throughout this whole process. This is going to prevent the thing for which some of us fought so hard, which is not for abortion which many of us oppose but for the right of a woman to make the choice whether to have an abortion. That's what's integrally involved in this, and that's what we must never forget.

I beg you, my friends, not to be taken in by the image of the Gerber babies sliding into oblivion at the end of a scissors and being slaughtered. This is not what this is about. It is about a human attempt to try to

save women, to try to save their lives, to try to save them from infertility and to try to prevent the birth of children who are hideously deformed and can never live outside the womb.

If we keep that in mind, I think the conclusion is clear that we must vote in opposition to this dreadful piece of legislation.

ACTING PRESIDENT MARCELLINO: Senator Cook.

SENATOR COOK: Mr. President, thank you.

Mr. President, people see this bill in a variety of different ways. People see it as a moral issue. Thankfully, we can't amend the moral law. The moral law is what the moral law is. God said to Moses, "I am who I am" and there isn't any way we can change it.

Neither is it amending the Health Law which a lot of people seem to be talking about, because it is an amendment to the Penal Law. It starts out: "Section 1. The Penal Law is hereby amended," and then it defines how that person -- how that law is amended, by saying, a person is guilty of a partial birth abortion

when he or she knowingly, et cetera, et cetera, and then in Section 3, a female upon whom a partial birth abortion is performed may not be prosecuted.

Now, I think there lies the crux of what we're talking about. It is not a moral issue. It is not, because we can't -- we can not legislate morality. It is not a health issue. It is a legal issue, and it is a civil rights issue, and it is a question of who is going to be impacted by prosecuting the person who's named in paragraph one, that is the - presumably the doctor, and who is going to really suffer.

What does this do in practical terms? It means that a district attorney now can go into a hospital, can invade the private health records of women upon what -- who knows what, whatever information may reach him, that phone call that somebody calls up and says, I understand that Mrs. Jones had an abortion. You better go down there to the hospital and dig through her records and make sure she didn't break the law, or that her doctor didn't break the law.

Then what supposedly the district attorney finds this to be the case, now how does he create a prima facie case for an indictment? Certainly the only way he can do it is to go before the grand jury, present Mrs. Jones' health records and prove that she had an abortion, or show that she had an abortion whereby presumably the grand jury issues an indictment.

Now, the district attorney has the third step of the process, and that is how am I going to prove this? Well, there's one primary witness. That primary witness is the woman who had the abortion.

Now, remember, most people in those circumstances would be able to get on the witness stand and say, I decline to answer the question on the grounds of self-incrimination, but we've said in the bill, you can't incrimin ate yourself. You can't be prosecuted. There fore, you've got to sit there and answer every question.

O.K., Mrs. Jones, when did you have this abortion? Why did you have this abortion? What led up to it? How many people

did you see? Who's the father? What circum stances?

All those personal questions that the woman who has had the abortion is the indi vidual who's put on trial, not the individual who is named in the first paragraph, the first sentence of this bill, and that's why it is a travesty upon the civil rights of every woman in this state to say that we are now going to place them in the very possibility if they choose to have an abortion of having to answer in an open court for whether or not they had this particular type of abortion and, if so, why they had it and when they had it, and what are the circumstances.

This is not an appropriate piece of legislation for us to do, whatever may be the medical situation. I think that's for people who deal with medical ethics to solve that problem, but we should not put people -- we should not endanger people's civil rights by forcing them to sit before the entire public and explain to the whole world all the most private secrets that they have held.

ACTING PRESIDENT MARCELLINO:

Senator Leichter.

SENATOR LEICHTER: Mr. President, I'm going to ask Senator Maltese to yield, but I first just want to say, Senator, I appreciate that -- your very deep morally held views on this subject, and I respect that, and also Senator Farley and other people who support this bill and who really are against any abortion.

I strongly disagree with you, but I understand where this bill comes from. But yet this bill is presented to us in such emotional terms and such misconceptions, and I think is so far off the mark and I really want to commend Senator Goodman because I think that he really dealt with the fact, with issues and reality that have to be dealt with, and I think Senator Cook's comments were very well taken too, because I must say that the support for this bill is founded on misconceptions, argued in sort of a fog of unreality which denies what really happens. It denies the role of the doctor. It belittles the woman and, insofar as you argue that Mr. Fitzsimmons lied and apparently he lied, but that was never the issue.

The issue wasn't whether it was 5,000 or 100 of these procedures that were being done because if it was wrong, if one were done it shouldn't be allowed, and if it was right and needed to be done and was medically correct, then it doesn't matter whether it's 100 or whether it's 5,000. So I think that really has no bearing on what the issue is.

Senator Maltese, if you would yield, please.

ACTING PRESIDENT MARCELLINO: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

SENATOR LEICHTER: I listened to some of the answers you made to Senator Oppenheimer and Senator Abate and, as I understood your definition of the bill as you yourself said, nowhere in the -- nowhere in any medical book, nowhere in any law can you find the expression "partial birth abortion" and we're dependent upon the legislation and you as the sponsor to tell us what it is you're talking about.

Now, I thought I understood you to say that dilation and extraction is not

covered by your particular bill. Did I understand that -

SENATOR MALTESE: Dilation and extraction is. It's dilation and evacuation that's not.

SENATOR LEICHTER: Well -

SENATOR MALTESE: The way they recite it is the dilation and evacuation, which is the tag out piecemeal. The dilation and extraction, the D&X as termed by Dr. Haskell is the dilation and extraction of the living fetus.

SENATOR LEICHTER: O.K. And the evacuation -

SENATOR MALTESE: Is not covered.

SENATOR LEICHTER: -- you say is not covered.

SENATOR MALTESE: Is not covered.

SENATOR LEICHTER: The partial dismembering of the fetus.

SENATOR MALTESE: Is not covered.

SENATOR LEICHTER: Well, you've

answered that. I wanted to ask you whether I understood you correctly to say that what you're talking about is when a fetus as delivered is partially viable; is that correct? Did I understand you to say that?

SENATOR MALTESE: Well, the phraseology of the bill -- Mr. President, the phraseology of the bill is "a living fetus", so whether or not it is viable, capable of life outside the womb is the question here, and it is a living fetus, so it would have to be viable outside the womb to be a living fetus.

SENATOR LEICHTER: Again if you will continue to yield. Through the Chair, Senator Maltese, again, I don't believe there's any clear definition of what is meant by "living fetus". I mean I think a fetus, in a sense, is living -- a living cell is living. To be viable is something else.

Now, you have stated that your bill, and you used the expression "a living fetus", you're saying that the fetus is viable. In other words, outside of the womb it can exist on his or her own.

SENATOR MALTESE: I'm sorry,

Senator. I'm sorry, I didn't hear the question. I was trying to get -

SENATOR LEICHTER: In other words, living, you're telling us that a living fetus is viable, what the law presently terms as being "viable" meaning that the fetus can live outside of the womb on his or her own.

SENATOR MALTESE: Mr. President, as I understand the term "viable" it's capable of life outside the womb. I think that is different than a living fetus. The fetus has, as I understand, these doctors in their terminology extracting it from the vagina and they -- at that point, it is a living fetus, but I believe incapable in some cases of surviving outside the womb.

So we're talking about a living fetus which then is killed. I think there's no question that, if the fetus drew its first breath and the doctor then plunged the scissors into the back of the neck, that would be a murder in anybody's definition, so I think there is some difference between a living fetus and a living human being or a living person.

SENATOR LEICHTER: Well, Senator,

the -

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR LEICHTER: If you continue to yield.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR MALTESE: Excuse me. I continue, yes.

ACTING PRESIDENT MARCELLINO: He continues.

SENATOR LEICHTER: And with all respect, the reason for the difficulty is because you're giving us language which just is not understood in either medical terms or in scientific terms or legal terms, but I think I understand now.

You're saying that, in your definition, a living fetus is something else than viability outside of the womb; is that correct?

SENATOR MALTESE: Yes, that's correct, Senator.

SENATOR LEICHTER: O.K.

SENATOR MALTESE: I was trying to

get ahold of the definitions for the D&E and D&X, and so on, but they deal with the procedures and not the fetus itself.

SENATOR LEICHTER: Right. So, therefore, if the doctor did not plunge the knife, the scissors or whatever it is, I started to describe it in the very graphic terms that you used, but did not take the medical procedure, I think it's a common scissors, not a knife, it's a -

SENATOR MALTESE: Metzenbaum, Mr. President, a Metzenbaum scissor as described by Dr. Haskell.

SENATOR LEICHTER: O.K. It's a surgical tool that, if he didn't do that, that so-called living fetus would expire because it's not viable.

SENATOR MALTESE: Mr. President, no, that isn't my -- that isn't my interpreta tion or my understanding.

SENATOR LEICHTER: My understanding -

ACTING PRESIDENT MARCELLINO: Excuse me. The Chair, in the interest of the debate and time, has not been pushing the fact

that the question should be referred through the Chair to the individual Senators-at-large, but if we could do that, we might get some more clarity in the debate.

Senator, do you continue to yield?

SENATOR LEICHTER: Thank you, Mr. President.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: He continues to yield, sir.

SENATOR SKELOS: What time did the debate begin?

ACTING PRESIDENT MARCELLINO: 3:24, sir. The official two hours will be up at 5:24.

Senator?

SENATOR LEICHTER: Well, Senator, I asked you before, is that living fetus viable as it's now understood in the law? It's referred to, in fact, in the Penal Law which you're amending, Section 4-164 talks about viable births, and my question to you is that fetus which has been extracted from the womb in this particular procedure, if it were without

anything further being done -- I'm sorry, let me rephrase it. That living fetus once extracted from the womb is not viable and, therefore, could not survive outside the womb, isn't that correct?

SENATOR MALTESE: Mr. President, I've been handed the definition of viability: Ability to live outside the womb, and according to Dr. SanFilippo, one of the physicians we had here during the last debate, a fetus has virtually no chance of viability, ability to live outside the womb, before 22 weeks and a ten percent chance of viability at 22 weeks. At 24 weeks, the subject of many of these partial birth abortions, a fetus has a 50 percent chance of viability, ability to live outside the womb.

So I don't know, Mr. President, and my colleague, the terms "viability" and "living", I don't think are necessarily consistent. I don't think they're both synonymous.

SENATOR LEICHTER: Again, Senator, if -

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR LEICHTER: Would you agree with me that, under the statute -- let me, just so I have to repeat the question, that under the statute, under the law of the state of New York, that if there's a fetus that is viable that there are protections provided in the law to see that that fetus is now a child, is born alive, is taken care of, and the statute makes it clear, in fact, that there has to be a second doctor has to be in attendance if it's a trimester abortion, and if it turns out that the fetus is viable, then it's to be accorded all the protections in law that goes to human beings, so if that's what you're dealing with, Senator, we wouldn't need -- we wouldn't need your bill because that's already the law of the state of New York.

Clearly, you're dealing with something else, and if it's not viable, that living fetus, when it's extracted from the womb, then it clearly would expire because it's no longer cap... doesn't have any longer the

support system of the mother in the womb, isn't that correct?

SENATOR MALTESE: I followed the somewhat circuitous reasoning, but I believe what your conclusion is, is correct.

SENATOR LEICHTER: O.K. Thank you and isn't it -- isn't it a fact -

ACTING PRESIDENT MARCELLINO: Does the Senator continue to yield?

SENATOR LEICHTER: Yes. Does he continue to yield?

And isn't it a fact that any fetus in the womb is living in the sense that it's an organism, it's cells, they're alive to my mind. It's not a live person. It's not a living person. It's not a person at all, but under some religious views and under your views it is, but what is the difference between a so-called livable fetus that during abortion in the third or fourth weeks is extinguished through the process as Senator Goodman described graphically as scraping the womb, or a livable fetus, again not viable, not able to live outside the womb, which when as part of the procedure is being pulled out of the womb

instead of just leaving that livable fetus, that fetus, to expire, a medical procedure is taken so as to extinguish the livable organism?

SENATOR MALTESE: Well, Mr. President, I believe the Senator lost me somewhere along the line, but I think that, you know, the bill again, I have to go back to the definition. It's partially vaginally delivering a living fetus before killing the fetus after and completing the delivery, so he has partially delivered a living fetus, so he's delivered it. It has nothing to do with an embryo or cells or anything else. This is a -- would be perceived because of the -- the age, the 24 weeks or the 20 weeks, as a viable fetus in most cases, depending on the age of the fetus.

ACTING PRESIDENT MARCELLINO: Senator Maltese, will you continue to yield? I presume the Senator has some more questions.

SENATOR LEICHTER: Yes. I don't mean to drag this on, and I understand members are getting a little restless, but I think it's terribly important because you keep on shifting your definitions.

Now, again, you're talking about

viability. Viability is covered under the law. That's covered right now. We don't need your bill. Your bill is talking about viability and that's already the law, so you're talking about the fetus that cannot survive outside the womb and what I'm trying to answer -

SENATOR MALTESE: Mr. President, if I may, you said -- you're talking about a fetus that cannot survive outside of the womb, and I'm not talking about a fetus that cannot survive outside the womb. I'm talking about a fetus that may or may not survive outside the womb.

SENATOR LEICHTER: But excuse me, Senator, you're -- Senator Maltese -

ACTING PRESIDENT MARCELLINO: Do you continue to yield?

SENATOR MALTESE: Yes.

SENATOR LEICHTER: You're an excellent lawyer. You're a prosecutor. You've taken criminal statutes, you've applied them, and you construe them strictly as you have to do. If you're talking about viability, that's already covered in the law. You don't have to do anything because the law makes it very clear

that as to a fetus that's taken out of the womb, if that fetus had viability it's accorded the protection it -- it's a human being and the state of New York provides the additional protection of saying that, in the trimester, a second doctor has to be there to be sure that that viable fetus, now a child, is given all the chance and opportunity to live.

That's not your bill. You're talking about what you define and what I don't see defined anywhere else as a living fetus. My question to you -- I'll just ask it one more time -- living fetus outside of the womb that cannot survive or a living fetus in the womb that also cannot survive outside of the womb in one instance through the usual procedure of scraping the womb, that living organism, that fetus is extinguished.

Now, you have that fetus outside the womb that's extinguished. What is the moral difference? What is -- I understand you don't like the procedure at all, but can you forget the moral distinction? Can you give me any rational distinction?

SENATOR MALTESE: Mr. President,

I certainly think there's a rational as well as a moral distinction here. When the good Senator, my good colleague, talks about scraping he's obviously talking about cells or an embryo or a partially formed human being or a partially formed fetus.

There's quite a bit of difference between a delivery of a living fetus and then killing the fetus. I think what the good Senator is choosing to forget is Dr. Haskell's very elaborate description of what is involved here. This doctor did not put his hand into the woman's body and extract a protoplasm or tissues of some type. He took first one extremity, a leg, then he took another extremity, another leg, then he reached behind and below the spinal column and carefully moved the shoulders.

This is a living fetus, this is a, but for a few minutes and a few centimeters, a living breathing human being, but for a few minutes and that is what, if we're trying to engage in semantics or terminology in trying to distinguish between a fetus and cells, there's quite a hell of a lot of difference here, Mr. President.

We're talking about the type of delivery, the type of -- and we're talking about using a term that's very simple -- killing the fetus and completing the delivery.

The description that's been made here is very clear. The doctor holds his hands here, none of the evidence before the Congress, before the United States Senate and before this house and the Assembly had this difficulty ascertaining exactly what this distinction is. I think, on its face, it's clear on its face and I think it's understandable to most of us.

SENATOR LEICHTER: One final question.

ACTING PRESIDENT MARCELLINO: Will you yield to one final question?

SENATOR MALTESE: Yes.

SENATOR LEICHTER: I think. Irrespective of the answer, it will be the final question.

Is the fetus at conception - conception occurs and the egg and the sperm as we learned, and let's say after two or three weeks, there's a fetus. Do you -- do you define that as a living fetus?

SENATOR MALTESE: Do I -

SENATOR LEICHTER: Fetus in the womb. That's defined as -- under your definition of "livable fetus" and you've got to help us because we can't go anywhere and you made up these terms.

SENATOR MALTESE: Well, I didn't make them up, Mr. President.

SENATOR LEICHTER: Well, they're certainly not in any medical book. They're certainly not in any statute. They're not in any scientific treatise or work, so I'm relying on you. My question is that embryo, that fetus in the womb, in the first trimester, is that a livable fetus?

SENATOR MALTESE: No, no, Mr. President. My good colleague talks about a livable fetus. He just changed the terminology.

SENATOR LEICHTER: Living fetus.

SENATOR MALTESE: The question is, is it a living fetus? In my mind, it is a living fetus at that point in -- in conception, but it would not be the same as covered by this law because this law speaks of delivery, a

living fetus before killing the fetus and completing the delivery, so this is not the same thing as embryos or a partial or a partially developed fetus in the body.

This is a fetus that would be completed through the vagina and would be delivered if not for the actions of the abortionist.

SENATOR LEICHTER: Thank you very much. I'm going to stay to my promise, Senator Maltese, although I think it might be useful to explore more of these definitions because I think there's an awful lot of misconception and I think that your bill and this drive against what is called partial birth abortion is fueled by misunderstanding and a great deal of emotionalism and comes from people who are generally opposed to abortion and would like to get rid of abortion in any way and every way that they can. But at least you conceded that it -- the fetus' viability is now protected by law, so that's not what you're talking about because that's already in the statute.

You're talking about something else, and what you're talking about, as you

said, is a living fetus that is outside the womb though it can't live outside the womb, but if it's -- if you extinguish that organism outside the womb, then under your bill, even though that organism, that fetus, cannot survive outside the womb, you want to make this a crime.

Senator, what we're talking about here are medical procedures. These are not decisions that women make. These are decisions that doctors make in very hard and very difficult cases, and for you as a legislator and the Legislature to say that this particular procedure is one that we will talk -- that we will say, if you do it it's a crime, I find absolutely no basis for, and again, let's be very clear. We're not talking about a viable child. We're not talking about a fetus that can live outside of the womb. You're talking about a procedure that's taken almost inevitably in order to save the life of the mother or for the health of the mother or because of terrible complications, and this is the only way that the doctor can determine that he can proceed.

As I understood you to say, you or your bill does not seek to bar the use of the

dilation and evacuation which, as I understand it, is every bit as gruesome, and it's clear what we're talking about is gruesome -- most medical procedures are gruesome.

I went to the doctor today; he took some blood from me. I thought that was gruesome, but they are gruesome, and we talk about them and -- but they are medical procedures and dealing with the human body we find that the nature of medical care is such that it may -- it may be bothersome, but the point is, why is it being done and who is doing it? Are you saying these doctors are butchers? These doctors are killers? That's absurd.

Senator Meier, you talked about somebody that all of us really revered, Senator Donovan. We knew his passionate views on this issue, and much as we disagreed we honored his view as I honor your view, but you talk about preserving life. We are preserving life when we oppose this bill, when we support abortion.

Let's talk about the life of the mother. Let's talk about that woman who has that agonizing decision late in an abortion, I'm sorry, late in the pregnancy when abortion is

medically required or she's advised to have it. She doesn't say, Well, fine, I want to have a dilation and extraction or I want to have a dilation and evacuation. She goes to the doctor and they make that most difficult, painful decision, a decision that you and I as men will and obviously are incapable of ever having to make, and then the doctor says, It's late in your pregnancy. This is the way that I have to proceed medically, but next year if Senator Maltese's bill should become law, the doctor would have to say, I can't do what is medically correct and what is medically necessary.

Now, as a practical matter, if this bill ever became law, I think it would be declared unconstitutional for points that were made by Senator Oppenheimer and Senator Abate. So I'm not going to repeat those there. I think it's also going to be thrown out because it is so vague, it is so unclear what Senator Maltese is talking about, and he himself, sometimes he's talking about viability, then he's talking about a living fetus that's never been defined and try to distinguish a living fetus from an embryo, and so on.

It's so vague you'd never have any prosecution, and Senator Cook rightly pointed out the social harm that would come if this was -- should be law and prosecutors went and looked into -- into records and I think what it ends up and it may be your purpose, Senator Maltese, and I understand that because I know how deeply you are against abortion, and that is really to in any way that you possibly can to limit a woman's right to have an abortion because you feel it is wrong.

I think, Senator, that issue has been determined. It was determined in this state in 1970. It was determined by Roe vs. Wade. Fight the moral issues where moral issues ought to be fought, in churches, in synagogues, in mosques, in meetings and on our streets, but leave the law -- leave the law so that a woman can make this decision for herself. We should not make it for her.

This is a wrong approach. It's a flawed bill and it really is based on false premises.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer.

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

I don't want to cover a lot of what has already been said, and I think I'm at the tail end of this.

ACTING PRESIDENT MARCELLINO: You wish to speak on the bill, Senator?

SENATOR OPPENHEIMER: Yes.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Let me start by saying, I think most operations, if you were to discuss them, are pretty disgusting. I mean if I were to tell you about my open heart surgery where they stopped my heart and they stopped my lungs and cut my chest open, I mean that's pretty disgusting; so I don't think we should be talking about the blood and gore issue, because I can't think of any operation that's just a tidy, fun thing to discuss.

Also I want to dispose of the numbers as quickly as possible in the law because that has been covered. Mind you, we are talking about four-tenths of one hundred percent, so we are talking about not even one

half of one percent of all abortions and, as was mentioned, we are only talking about 140 in our state and even then that's still a portion, so we don't even know what portion of them is this particular procedure. But actually, I don't want to focus in on that nor do I want to focus at the moment on the law, because the law is pretty clear. Roe vs. Wade restricts abortions after 24 weeks of pregnancy. New York State, same thing, illegal, same thing in 41 other states in our nation; so unless, of course, the woman's health and life is at risk, so it is the law. So it seems to me that this bill simply says the law is the law and here's the law.

Now, what I'd like to look at is the person who has to have this procedure done and try and find out why this person is looking at this procedure, why would any woman choose to have the fetus pulled out of her in this grotesque manner that does require its skull to be crushed, and why in a country where 99 percent of our abortions do occur in the first 20 weeks, why would anyone want to wait to do it at this juncture?

One of the main reasons we know

for the crushing of the skull is that the skull has been very enlarged by the water in it and, therefore, it can't pass through the vaginal canal. So the question is, why would they choose this procedure and, of course, the answer is they don't choose the procedure. The doctor chooses the procedure, and the doctor chooses this procedure over another third trimester procedure because he thinks this is going to be best for the health of the mother.

We already know infanticide is banned, and it's illegal, and so what I'm saying is the law is pretty clear on this issue, and it is the doctor who is saying to the patient, This is the best thing for your health and this is why I am telling you I want to perform this particular type of abortion in your third trimester.

I think that doctors are responsible parties here, not elected officials. They have the Hippocratic oath. They try and take the best care they can of their patient. They could prescribe another type of procedure, but the doctor thinks this is the best procedure at this juncture. It's very,

very private and a very painful decision and it's only done when something really has gone horribly wrong.

The fact is, and to say that whimsy is simply not to understand what pregnancy means to most women and to understand that you would never carry a child, a fetus, for six or seven months in order to get rid of that fetus. I mean you've already come through a pretty difficult time. There would be no -- and you're very attached to that fetus which is growing in your body, so I can assure you this would only be utilized and really, trust me, this would only be utilized under the most extreme circumstances, and normally it's because the woman really wants to have more children. We had someone up here last year who really very graphically -- and she came with her little one year-old child because she had to have a child taken -- a fetus taken from her and she desperately wanted more children and that was why the doctor said, This is the procedure you have to do if you want to continue to reproduce.

So I feel that it would be very

foolish and definitely illegal for us to try to censor the kind of options that a doctor has available to him if he wants the most medically sound procedure. This, what you are presenting to us, doesn't ban third term abortions. That already is banned in the law. It just bans this one procedure, and this procedure is only utilized when the doctor feels it is necessary for the health and well-being of the mother.

So I'm going to be voting against this bill.

ACTING PRESIDENT MARCELLINO: Senator Mendez.

SENATOR MENDEZ: Mr. President, I believe that this issue brings the most incredible, incredible rhetoric here. There is so much rhetoric, so much exaggeration, that it really insults the intelligence. This bill will not interfere actually -- will not interfere with an abortion for a woman within the time that Roe vs. Wade stated.

In fact, a little while ago I called a friend of mine who is a physician. She's always been -- a young physician, a practicing Catholic, but she's always been for

the choice of a woman to decide what to do in cases where she's pregnant and to have the child or the baby or the fetus.

She mentioned that, as a physician, one of the things that disturbed her is that we are -- we know that a pregnancy is full term at 40 weeks. However, after 37 weeks then the child is born and is full term as opposed to the full term, and so when we are talking about 24 weeks, it is unfortunate, the problem is that most of the women do not have exact the date and it could go two weeks more or two weeks less, so in instances like this, at 24 -- 24 weeks of pregnancy could, in fact, be six and a half months of pregnancy.

The rhetoric again. So in terms of viability, I think that that situation clarifies the issue. I am appalled by all the fuss that has been made about partial -- about definition of partial abortion. I just don't see it. Why? What is birth? The whole baby goes through the birth canal, out and everybody is happy. Pass the -- pass the tobacco, the cigar, if it's a boy and I don't know what they give if it's a girl. Probably nothing.

So it's partial birth because, for instance, we know that the Supreme Court defined a fetus becomes a person once it goes through the birth canal. In the case of a partial birth, what's abhorrent about it is that the child is delivered, four-fifths of that child is delivered, and that one-fifth that remains is the head where the skull is crushed, as we all know, and the brains are sucked out.

There was a big lie that was passed around some time ago that when people raised the question of whether or not the fetus would feel pain, they said that -- they said that we have no evidence to tell us the fetus would feel pain, whereas the anesthesiologists came out and said clearly the fetus will feel pain, because it is not anesthetized.

So I think that, Mr. President, it's late in the day. I think that all this rhetoric about thinking, being paranoid and thinking that the right of a woman to be free to have her choice is being -- is being completely diluted, that's bunk. To think that -- there are many, many women and men that are pro-choice in the state of New York and they abhor this

procedure. This is not is a perfect bill, we know that. I don't know that we could make this decision. I don't like that, but for perfection I do think it makes an amendment.

I think that's bunk, the rhetoric. The bill, that's why it is debunked, to think that it is against Roe vs. Wade, anybody who supports this bill, my God that's the most blatant rhetoric that I have heard in a long, long time.

So, Mr. President at six months -- 24 weeks of pregnancy -- I checked today. I went out and called, it's a determination that could be made, in fact, most certainly the issue, and probably the doctors choose this procedure because -- because there is this very -- there is less healing for the woman to go through in terms of what -- excuse me, in terms of -- in terms of the need for this procedure, because the -- the child that might be malformed or whatever, I was told by this physician, a couple of them today that I called, that with today's technology, they know earlier than 24 weeks.

So I don't think that -- I think

that this bill will, in fact, not limit in any sense the right of a woman for -- the right to choose, and if it was to do to a cat or a dog what we'll do to that fetus, we'll all be sent to prison.

So it's an abhorrent procedure, Mr. President. It's very uncivilized. As Senator Moynihan says, Senator Moynihan sees it as infanticide. There is a better way. Why not use the better way than go through this kind of very distasteful procedure.

I will be voting yes for this bill, Mr. President. I keep believing in free choice, and I am just appalled, still very much appalled at the kind of horrible rhetoric and lies in terms of statistics from one interview and the other.

I'm not compromising at all, but one thing that must always stay in place is the right of a woman to choose, but this procedure has to be abolished because it's barbaric and it dehumanizes all of us.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Marchi.

SENATOR MARCHI: Mr. President, Senator Mendez is distressed about the intensity of the feelings that have prevailed over much of the discussion. Well, I think it's inevitable on a subject like this. There are -- there are strong feelings, honestly advanced, because of the trouble that they produce and in considering their impact on public mores, and if that is done and we all understand it, and we all respect each other, then we also have a responsibility.

The statement was made earlier, I believe by Senator Cook, that you don't legislate morals. We do legislate morals, absolutely. If you've heard the expression, mala in se, and mala prohibita, mala in se is - mala prohibita is something that's prohibited, so if I go 29 miles an hour in a 28-mile-per hour zone, I'm violating the law even though I may not have a malicious or bad intent.

On the other hand, if I kill, if I steal, if I assault, if I commit any of these crimes that are mala in se, evil of itself, then you have to prove scienter, that you know what you're doing. There is knowledge and intent

that is required to be observed.

Now, constitutionally, we know of the experience we've had over the decades. We had Chief Justice Taney proclaiming a slave a chattel. That was reversed with experience and time. We've had separate but equal was constitutional, but it was modified in time. I think on this issue, there is a deep seated policy or mores on the subject itself that has gone over many decades, so it is a much stronger conviction that is brought to this, but we have to rivet our attention on the purpose of this bill, and this is to delineate -- to delineate and draw a line across that bar of sand that is distinguishable and tells us when life begins or when it hasn't begun yet so that the normal protections are extended.

It's very interesting and George Will picked it out, out of the debates that took place on September 26th when the debate was in progress on the override of President Clinton's veto, although the bill that was -- at least the amendment that was advanced here was a little stricter than the one that Clinton vetoed, and this occurred following the exchange between

Senator Rick Santorum who favored override and Senator Ross Feingold of Wisconsin who opposed it, and Santorum -- the Senator from Wisconsin said that this decision should be left up to the mother and the doctor as if there was absolutely no limit that should be placed on the decision that they may make. "My question is this," he said to Feingold. "My question is this: If that baby were delivered breach style and everything was delivered except for the head and, for some reason, that baby's head would slip out, that the baby was completely delivered, would it then still be upon the doctor and the mother to decide whether -- whether to kill that baby?"

Feingold -- this is a U.S. Senator in the course of debate: The standard of saying it has to be a determination by a doctor, and I can sympathize with Senator Cook when he described the trauma that that poor mother is going through because the decision basically it was the decision of the doctor, not herself. She carried the baby as someone pointed out for all of those months.

"Feingold: The standard is to be the determination by the doctor of health of

the mother is sufficiently standard that would apply to that situation, and that would be an adequate standard.

"Santorum: That doesn't answer the question. Let us assume the head is accidentally delivered. Would you allow the doctor to kill the baby?

"Feingold: That is a question that should be answered by the doctor and the woman who receives the advice from the doctor."

I don't know whether she's still with it at that point. Then there was the exchange with Senator Frank Lautenberg, very same question: If the baby was delivered accidentally and the head slipped out, would you allow the doctor -- well, you know, he could have said, well, maybe the head can't slip out and given the physical circumstances of that point of delivery, but Lautenberg said, "Oh, you're making decisions that say a doctor doesn't have to."

"So two inches make a difference as to whether you answer that question?" "No," said Lautenberg, "what makes the difference is someone who has the knowledge and intelligence

and experience making the decision."

So that means if the baby is out completely, Mr. President, out completely, we're not talking about a border line, we're not talking about two inches of the head, we're talking about the completeness of it.

During the course of debate, two knowledgeable Senators -- I've met Mr. Lautenberg; he's a distinguished member from New Jersey -- say yes, it's the decision of the doctor to make up his mind after they're born. So when -- when Senator Meier brought up the question of, well, wait a minute, when does life begin? When does it have all the protections? Well, the protection is go with the doctor. At some point I think it has to be defined and if it is defined that woman would not be put in that anguished -- anguishing situation so accurately described by Senator Cook, and the purpose of the legislation introduced by Senator Maltese with exquisite precision would apply.

My feeling is that that situation would probably not apply -- would not develop if we had concrete policy which we didn't have today. We don't have it, because there are

important members of the United States Senate who are already saying that decision rests with the doctor even if the baby is born and delivered.

So it's -- it does require some response, not on the basic question that we're talking about, but when does life begin? And the directions that are suggested and plainly in view is the reason why we are -- we have this bill before us this afternoon.

ACTING PRESIDENT MARCELLINO: Is there any other Senator wishing to be heard on this issue?

Read the last section, please.

SENATOR PATERSON: Slow roll call, please.

ACTING PRESIDENT MARCELLINO: Slow roll call is requested. Do we see five Senators standing? I don't see them. See two, three, four and a half. Slow roll call is requested. Call the roll slowly. Can we ring the bells outside so everyone outside can hear the bell. Read the last section first before we call the roll.

THE SECRETARY: Section 3. This

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

Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Just to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Breslin, to explain his vote.

SENATOR BRESLIN: Robert Drinan from Georgetown so aptly explained that this procedure does not eliminate any abortions and as much as I find this procedure abhorrent -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Can we have some silence and quiet in the room, please? It's difficult enough to hear. Senator, I apologize.

SENATOR BRESLIN: -- find the process abhorrent, I'm not a medical doctor and I'm not a spiritual leader. That spiritual leader, with the doctor and the woman, should make that decision and this bill, if it was successful, should include the serious health of

the mother and, therefore, I vote against this bill.

ACTING PRESIDENT MARCELLINO: Continue the roll call.

THE SECRETARY: Senator Bruno.

(Negative indication. )

THE SECRETARY: Senator Connor.

(Negative indication. )

Senator Cook.

SENATOR COOK: No.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Explain my vote.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I'm going to vote in the affirmative and I just want to explain a couple of things. We've heard a lot of statistics on the floor today and from the individual who all of a sudden changed his mind as to what the true facts were that generated debate several months ago, indicated that his statistics were wrong and he lied through his teeth.

Where anybody in this chamber were to get a reliable set of statistics is beyond me. How you can say there are only 800 of these are performed or that they're only performed -- only performed when we don't have Gerber babies is beyond imagination and anybody that would possibly believe those statistics I think are not being true to themselves. You can get statistics that could say anything.

The issue in this bill is the procedure is abhorrent at this stage of pregnancy in any civilized society, number one, and number two, whether what is being aborted is the Gerber baby or the most deformed child, we don't have the right to make a decision that only the fair survive, only the fair survive and it is appalling to me to hear that argument on this floor.

We have a day that Senator Libous puts on for people with disabilities, legislation to help people with disabilities. To come to this floor and suggest that this is O.K. because it is only people that are not going to be individuals who are in full capacity when they're born, then that's O.K. is totally

appalling.

The procedure is wrong. It's morally wrong. We should make it legally wrong.

ACTING PRESIDENT MARCELLINO: Continue the roll call, please.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

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

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

SENATOR DOLLINGER: I've listened to a lot of this debate, tried to syphon it through my mind as a parent and as a grandparent. I have a 15-year-old daughter, I have a 17-year-old son and a 12-year-old son and I make this decision today for them and I make it for my grandchildren that I hope some day to have, and it seems to me that this is a very personal choice, a terrible, horrible choice, a horrible, grotesque procedure that nobody likes. Nobody on this floor has said they like it. But it seems to me that what we have to

look at is who gets to make that choice.

We have the 61 people in this room, will we use our moral judgment to impose it on my grandchildren and my children? I don't think that's the right thing to do. I go back to what I said about Senator Bruno. I hope that some day, if they face that difficult choice, they will make the right moral judgment and more importantly we will respect that difficult, difficult choice.

I don't want my children to have to choose between their lives and the life of their child or in serious adverse health consequences to them and the life of their child. That's what this is all about. I stand here today as a father, and I hope some day a grandfather, and I leave that choice to them, to their husbands and wives and to their own conscience.

I vote no.

ACTING PRESIDENT MARCELLINO: Continue the roll call, please.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: I vote aye.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.
THE SECRETARY: Senator Gold excused.
Senator Gonzalez.
SENATOR GONZALEZ: Yes.
THE SECRETARY: Senator Goodman.
SENATOR GOODMAN: No.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann excused.
Senator Holland voting in the affirmative earlier.
Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Aye.
THE SECRETARY: Senator Lachman.
SENATOR LACHMAN: Yes.
THE SECRETARY: Senator Lack.
SENATOR LACK: Yes.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
(There was no response. )
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: Mr. President, please, to explain my vote.
ACTING PRESIDENT MARCELLINO: Senator Maltese, to explain his vote.
SENATOR MALTESE: Mr. President, I realize that even though many of the feelings expressed today are very heartfelt and a question of conscience, at the same time some of the misstatements not only of the gentleman, Ron Fitzsimmons, but of so many people can't simply be explained away.
The statements that partial birth abortions are procedures that are only used in life endangerment or grave fetal disorder cases

cannot be reconciled with the facts. In 1992, Dr. Haskell's instructional paper, he himself, this architect, this person who created this gruesome procedure, wrote that he routinely performs this procedure on all patients, 20 through 24 weeks, four and a half to five and a half months, and after the controversy arose in the American Medical News, the official newspaper of the AMA, they conducted a tape recorded interview where he -- concerning this specific abortion method -- indicated, and I'll be quite frank and exactly quote: "Most of my abortions are elective in that 20- to 24-week range. In my particular case, probably 20 percent of these procedures are for genetic reasons, and the other 80 percent are purely elective."

And we can't equate, as some of my good colleagues have indicated, a gruesome procedure, a bloody procedure with this that is so closely akin to murder, and it does no good and serves no useful purpose to question the motives of some of our people who have either had a long-standing reverence for life and are pro-life or for those many, many Democrats,

scores and scores of them elected officials who, despite being pro-choice are repelled by only this specific procedure.

Mr. President, this is as close to murder as you can get. Mr. President, the fact that two distinguished United States Senators in the heat of debate could not differentiate between taking a life of a living human being and an abortion procedure should give us great pause as to the slippery road that we now traverse.

Mr. President, I vote 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 Meier.

SENATOR MEIER: Aye.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula voting in the negative earlier today.
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: Aye.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: Nay.
THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: Yes.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: No.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Rosado.
SENATOR ROSADO: Aye.
THE SECRETARY: Senator Saland

voting in the affirmative earlier today.

Senator Sampson.

SENATOR SAMPSON: No.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: No.

THE SECRETARY: Senator Seward.

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

ACTING PRESIDENT MARCELLINO: Senator Seward, to explain his vote.

SENATOR SEWARD: Mr. President, my colleagues, I have generally viewed abortion-related issues as ones that most appropriately should be decided between a woman, her physician, or anyone else whom she would choose to consult, and I have a record in this house of voting according to those long held views.

But I do not consider that support of this bill that's with us today could be in conflict with my stated views. The issue

addressed in the bill that's before us today is one that deals with a procedure performed late in a pregnancy, a partial birth abortion, on an elective basis, and I struggle to accept the almost complete delivery of a live fetus and the subsequent termination of that life when there is no direct threat to the mother's life.

Therefore, Mr. President, I vote aye.

ACTING PRESIDENT MARCELLINO: Continue the roll call.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

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

ACTING PRESIDENT MARCELLINO: Senator Smith, to explain her vote.

SENATOR SMITH: Thank you, Mr. President.

After careful consultation with the one person that I feel should be able to make a decision on this issue, my gynecologist, I vote no.

THE SECRETARY: Senator Spano.

(Negative indication.)

THE SECRETARY: No.

Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Aye.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully voting in the affirmative earlier today.

Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(Negative indication. )

THE SECRETARY: No.

Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT MARCELLINO: Call the absentees, please.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Ayes 40, nays 19.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos. Senator Skelos.

SENATOR SKELOS: Will you recognize Senator Paterson, please.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, does the Secretary have record of getting a message from the Assembly about a joint session of the Legislature tomorrow in the Assembly Chamber?

ACTING PRESIDENT MARCELLINO: We are told that -- Senator Paterson, Senator Paterson. The Chair is told that there is an Assembly resolution advising us and inviting us to attend.

SENATOR PATERSON: This is regarding the confirmation of the Regents, Mr. President, and I just wanted to make sure that everybody got an invitation.

SENATOR SKELOS: Thank you very much.

Is there any housekeeping at the desk?

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Mr. President, is the communication that Senator Paterson was referring to, is this regarding a constitutional duty that's recognized in the New York State Constitution?

SENATOR SKELOS: The answer is, there is a message at the desk.

Senator Velella, please.

SENATOR VELELLA: Mr. President, on behalf of Senator Mendez, I move that the following bill be discharged from its respective committee and the enacting clause be stricken: Senate Bill 2142.

ACTING PRESIDENT MARCELLINO: Shall be done.

Senator Volker.

SENATOR VOLKER: Mr. President, I

wish to call up my bill, Senate Print Number 270, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 12, by Senator Volker, Senate Print 270, an act to amend the Penal Law.

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

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration. )

SENATOR VOLKER: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: Amendments are received and adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Tuesday, March 11th at 3:00 p.m. sharp.

ACTING PRESIDENT MARCELLINO:

There being no housekeeping before the Senate, no further business, we move to adjourn until Tuesday, March 11th, at 3:00 p.m. sharp.

(Whereupon at 6:20 p.m., the Senate adjourned.)