

JANUARY 13, 2006

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January 13, 2006 LB 57, 1080

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain today is acting chaplain Senator Kruse. Senator.

SENATOR KRUSE: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Kruse, for doing that for us. Senator Kruse represents the 13th District. I call the eighth day of the Ninety-Ninth Legislature, Second Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

ASSISTANT CLERK: There's a quorum present this morning, Mr. President.

SENATOR CUDABACK: Are there any corrections for the Journal?

ASSISTANT CLERK: I have no corrections.

SENATOR CUDABACK: Messages, reports, or announcements?

ASSISTANT CLERK: Mr. President, I do. Committee on Transportation offers notice of committee hearing; Government, and Business and Labor, all notice of hearing. I have a report of registered lobbyists for the current week; a listing of reports that are on file in our office from various state agencies. (Legislative Journal pages 327-330.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Next agenda item, introduction of new bills.

ASSISTANT CLERK: Mr. President. (Read LB 1080 by title for the first time, Legislative Journal page 330.)

SENATOR CUDABACK: We now go to the next agenda item, General File, special order, LB 57. Mr. Clerk, where were we when we left off?

ASSISTANT CLERK: Mr. President, LB 57 was introduced by Senator

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Foley and others. (Read title.) The bill was under consideration by the body yesterday. There were no committee amendments offered to the bill. We were considering a motion from Senator Chambers to reconsider the adoption of FA198.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Foley, just a minute or so on the contents of the bill.

SENATOR FOLEY: Thank you, Mr. President. Members, good morning. This will just be a quick update on where we are on the bill. As you recall, four years ago we adopted the fetal homicide statute which says that if a person commits an act of violence against a pregnant woman, the results of that violence, her unborn child dies, he can be prosecuted not only for what he did to the woman but also for what happened to the child. This is just the next logical step and recognizes that there will be cases and have been cases where the child survives the attack, but has serious bodily injury. Under the bill, the assailant could be prosecuted for an assault against the unborn child, in addition to criminal charges for whatever he did to the mother of the child. That's the gist of the bill. Came out of committee on a 7 to 1 vote, no committee amendment, and we put in a couple of hours of debate yesterday and here we are today. Thank you.

SENATOR CUDABACK: Thank you, Senator Foley. We're now on the reconsider motion offered by Senator Chambers. Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Had I been asked to bring us up-to-date from where we were yesterday, I would say we were in the midst of a scintillating discussion of the bill, and I intend to resume that discussion today. Everything I can do to stop this from becoming law I intend to do. I notice on the agenda that even if Senator Foley manages to get a cloture vote, we have other matters coming up in which senators and, I know, some lobbyists have an interest. I promised that I was going to deal with every matter that comes before us, and I have to deliver on that promise. Will I take everything to cloture? Maybe so; maybe not. That's what you do when you're in control. But I'll tell you one thing, and I'm starting on it today. When

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we see on the agenda a list of resolutions that are to be adopted pursuant to a certain rule, what that rule says is that once that thing appears on the agenda, if five days elapse without any member requesting that that particular resolution be placed on the daily agenda for debate, then it will be deemed passed. Well, we're going to debate now every resolution that appears on the agenda. So as soon as resolutions appear, I will not let five days elapse without a request being made to put them on the agenda for debate, and I have prepared a request so that the five resolutions that appear today will come before us for debate. So those whose resolutions they are may want to help themselves to what it is they want to talk about to persuade the Legislature to adopt their resolution.

SENATOR CUDABACK: We now start your first 5 minutes, Senator Chambers.

SENATOR CHAMBERS: Thank you. What my amendment does, I have to get on the gadget, this is a motion to reconsider an amendment that failed yesterday. Twenty-two people voted against it. My amendment says, "Add a new section: 'The provisions of this act shall not apply until the individual member of Homo sapiens in utero has reached a stage of development where arms, legs, hands, feet and a head are present.'" I can't tell you how many people came up to me laughing about, even some lobbyists, the fact that the Legislature says that there should be bodily injury where there is no body. I'm going to see if a lawyer, other than Senator Landis, who's on the floor, who understands what a body is. It does not simply mean an object. We're talking about a human being which, according to Senator Foley, and I'm putting it on his terms, exists at the time of conception. He admitted there is no body at that time. He admitted there are no arms, legs, head, no organs. But according to the language of his bill, when you want to impose a criminal sanction, there has to be serious bodily. I'd like to ask Senator Foley a question.

SENATOR CUDABACK: Senator Foley, would you yield to a question, please?

SENATOR FOLEY: Yes, I would.

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SENATOR CHAMBERS: Senator Foley, what is your understanding of serious bodily injury in the context of a criminal statute?

SENATOR FOLEY: Actually, Senator Chambers, it makes no difference whatsoever what my understanding is, because the term is already defined in statute.

SENATOR CHAMBERS: So tell me then, if you've looked at it, what it means, according to the statute. Because I gave the cite (inaudible) yesterday.

SENATOR FOLEY: Let me read from the bill. Senator, let me read from the bill where we pick up some language out of the DUI statutes. I'm reading from line 18: "For purposes of this section,"...line 18 of page 3: "For purposes of this section, serious bodily injury shall mean bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body."

SENATOR CHAMBERS: At the time of conception, is it your understanding, because that's what we're dealing with now, that these provisions can be met when you have a zygote? Can these conditions be met?

SENATOR FOLEY: I'm going to...I'm going to answer your question this way, Senator. Yes, it is possible to inflict serious bodily injury at the very earliest stages of pregnancy.

SENATOR CHAMBERS: Which...

SENATOR FOLEY: Now...

SENATOR CHAMBERS: ...which means...

SENATOR FOLEY: ...now...let me...

SENATOR CHAMBERS: ...from your position, so I understand, because it's my time and I want to get as clear as I can, from the point of conception, you feel that serious bodily injury can

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be inflicted.

SENATOR FOLEY: Yes.

SENATOR CHAMBERS: Okay. That's all I have for you. Thank you. And if you want to elaborate, you can on your own time. Religion does make fools of all of you. You all are dealing with a religious dogma and not reality. You are not dealing with the criminal law. You are not dealing with case law. You are dealing with a dogmatic position that comes from a church which has been demonstrated to be often wrong. And when I mentioned the other day, yesterday, that the church had held that a male fetus is infused with a soul...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...earlier than a female fetus, it established that at the point of conception neither had been infused with a soul. A lot of this stuff that they teach now and that people like Senator Foley, who won't read the history of the church and these dogmas, don't realize had not always been the position of the church itself. So what happened to all those fetuses who did not have souls prior to the church saying they had souls? That shows the mistake of inculcating in the law or into the law religious dogmatic positions. Now, if that's what the Legislature wants to do, I cannot stop them unless I stop the whole bill, but I want it clear on the record and for the public how idiotic and moronic this Legislature is. There are people on this floor who know better. Senator Beutler is a lawyer. He knows better. Senator Don Pederson knows better.

SENATOR CUDABACK: Time, Senator. Thank you, Senator Chambers. (Doctor of the day introduced.) On with discussion. Senator Foley, followed by Senator Chambers.

SENATOR FOLEY: Thank you again, Mr. President. I want to pick up on some of the points that were made yesterday because it's...I think it's very important that we have a very clear record here. Senator Chambers would argue that what I'm offering is Catholic dogma, and to that I would say, Senator,

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pick up the standard embryology textbook used at the University of Nebraska Medical School and medical schools throughout the country. It's a book called Introduction to the Developing Human. It has no Catholic imprimatur on it. It's not produced by the Catholic Church. It's a medical textbook used by students in med schools. I'm going to read a few passages from this textbook, because I think it directly bears on some of the points that Senator Chambers is struggling to make. Quoting now: The intricate processes by which a baby develops from a single cell are miraculous, and few events are more exciting than a mother's viewing of her embryo during an ultrasound examination. Human development is a continuous process that begins when an oocyte, or ovum, from a female is fertilized by a sperm from a male. Although most development...developmental changes occur during the embryonic and fetal periods, some important changes occur during later periods of development, infancy, childhood, adolescence, and adulthood. Although it is customary to divide human development into prenatal, or before birth, and postnatal, after birth, periods, birth is merely a dramatic event during development resulting in a change in environment. Development does not stop at birth. Important changes, in addition to growth, occur after birth--example, development of teeth and female breasts. The brain triples in weight between birth and 16 years. Most developmental changes are completed by the age of 25. Then it goes into a definition of "zygote." This is the single cell that results from the union of the oocyte and the sperm. A zygote is the beginning of a new human being. That's not Catholic dogma. That's science. That's the science that's taught in our Med School and med schools throughout the United States, not just this textbook, but any decent embryology textbook is going to have that information in it. That's basic science. Senator Chambers might not know when human life begins; most of us do. The book goes on: Human development begins at fertilization, the process during which the male gamete, or sperm, unites with the female gamete, or oocyte or ovum, to form a single cell called a zygote. This highly specialized, totipotent cell mark the beginning of each of us as a unique individual. That's not Catholic dogma. That's science. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. On with

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discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, if people who are not trying to twist and distort science would read and allow what they read to speak for itself that would be fine. But when they cunningly, disingenuinely...disingenuously attempt to put a Catholic twist on it, they run into trouble. Senator Foley didn't pay attention to what he read. If I had the passage, I could be more specific in all of them, but he talks about the fertilized egg being the beginning of the development. Nowhere did he read that a fertilized egg is a human being. Senator Foley, cunningly, like a card shark or somebody using the shell game, did not say human being exists at that time; it's the beginning of human life. I have always said that at any stage of development there's a potential human being, but it is not a human being. That which is developing and that zygote is not a human being any more than an acorn is an oak tree. An acorn is as much the beginning of an oak tree as a zygote is the beginning of a human being. But an acorn is not an oak tree, a zygote is not a human being, a chicken's egg is not a chicken. When you go into the restaurant, you don't...they don't ask you, you want bacon and scrambled chicken? You want bacon and scrambled eggs. Aristotle knew that a developing embryo was not a human being, and he never called it that. Aristotle did the first systematic study of the development of creatures from the time of conception to the time of birth. Now, Senator Foley talked about the development process by which a baby develops from whatever term he was using from his textbook at that time. That's not denied. I tried to get something through his skull yesterday about the difference between the fertilized egg and what preceded that fertilized egg. Since he maintained that the fertilized egg is the full human being, then there is no developmental process after that. The job has been completed. Now he reads from a textbook, which would correct his ignorance if he would allow it to. We are talking about a process of development, but being a fuzzy thinker he brings that same fuzziness to precise language. This is the same process by which religious zealots attempt to say that so-called intelligent design is science. Call it what it is, teach it for what it is, but don't corrupt and taint science with this nonsense. So Senator Foley cannot show you a

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scientific textbook which says a fertilized egg constitutes a human being. I went through all this with his former colleague, Chip Maxwell, who thought he was so smart. But he handed out the passage and as we were able to analyze it on the floor, it was clear that it was not saying what he was trying to get it to say. But regardless of all of that, a zygote does not have a body. A zygote does not have organs. If he wants to go--when I say "he,"...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...Senator Foley--if Senator Foley wants to go by what the common understanding of a human body is, anybody can tell him it's not a single cell. If he needs to understand the popular concept and the scientific description or definition of an organ, none of those would say that an organ is found in a zygote. And Senator Foley knows that. But when a person is locked up in a religious straitjacket, the attempt is made to get the Legislature to go along with it. And I'm glad he did read into the record what he read, because anybody can get the transcript now and see that nowhere did he read from his textbook that a zygote is a human being. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the motion to reconsider. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. Every one of us human beings had a beginning. We weren't created from air. We have a beginning, a physical beginning to our existence. Science tells us when that beginning is, and most of us understand it, with the exception of Senator Chambers. The embryology textbook, University of Nebraska, says the zygote cell results from the union of the oocyte and a sperm; a zygote is the beginning of a new human being. That's what science is telling us. I wouldn't think I'd need to tell anyone that, but Senator Chambers would like us to. Genetically speaking, when the oocyte and sperm unite, we're all there. It's all there. The genetic blueprint is complete. All that's added from that point forward is nutrition. Senator Chambers earlier was trying to make the point that in the earliest stages of pregnancy you couldn't

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inflict serious bodily injury. That's wrong. Of course you can. You can do it chemically. In fact, last year in floor debate on that meth bill, LB 117, Senator Chambers himself acknowledged this. Let me read from the transcript of last year's floor debate. Crack is dangerous, says Senator Chambers. Pregnant women who have used crack have given birth to children who have crack in their system. They're called crack babies. Other drugs can be transmitted from the mother to the child. He's absolutely correct. He's absolutely correct. You could cause serious bodily injury to an unborn child chemically in the very earliest stages of pregnancy. In my handouts that you...that you've got before you, I gave you yesterday, I've got a list of quite a number of drugs that are very, very dangerous for pregnant women to take. Remember the thalidomide problem back in the 1950s, all those babies that were born with serious defects and so forth because the mother was told by her doctor take thalidomide? I think it was...I think it was prescribed as a sleeping aid. I'm not sure why it was prescribed. But anyway, they took it on doctors' advice until we learned what thalidomide can do. Thalidomide is still on the market. It's still being prescribed today. It's available, and there are many other drugs available as well that can be extremely damaging to the unborn child and could, indeed, cause serious bodily injury. If a person of ill intent spiked a pregnant woman's food or her drink with one of these drugs, he could indeed inflict serious bodily injury on the unborn child, absolutely. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Chambers, and this...and this will be your third time, Senator, as you know.

SENATOR CHAMBERS: I understand. Thank you, Mr. President. When Senator Foley has to reach as far as he's trying to reach to make his point, he has no point. We are talking about a criminal statute. In order to prove a crime, every essential element of the crime must be proved. If you are going to allege that serious bodily injury occurred at any stage of development, and the zygote is a stage of development, you cannot prove that there is a body. You cannot prove there are organs. You cannot prove any disfigurement. You should not, as a Legislature,

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enact language that is totally and absolutely unenforceable, and a prosecutor would laugh Senator Foley out of his office if he said, I want you to prosecute because somebody injured a zygote. He'd say, take that stuff back to your church and argue it as much as you want to there. But I'm going to keep us on what Senator Foley read again. Whatever the term he used as the start of the process, he said, from his textbook, it is the beginning of. It is not the thing itself; it is the beginning of the development. And as quiet as it's kept, I was trying to show him that it could be argued that the egg is a part of the stage of development of a human being. That's what I said yesterday, because without the egg you have nothing. So anything that plays a part in the production ultimately of a human being obviously is a part of that process. When Senator Foley and his ilk want to try to blend the concept of human life and a human being, he knows what he's doing. He didn't find, still, in anything he read that the beginning of this development constitutes a human being. He did not read you anything that said an embryo, which is a further development from a zygote, is a human being. He did not read where it says a fetus is a human being. All of those do constitute stages, phases, or steps in the development from that which is not a human being into that which becomes a human being. We're talking here...and if he'd taken his Catholic philosophy he would know the meaning of the beginning of a process. He would know the philosophical meaning of becoming. In philosophy, they have what they call act and potency. Potency they define as the act of a being insofar as it is in potency. That doesn't seem to make sense. What potency means is that a thing possesses what is necessary to become something else. When it becomes that completed thing, it is an act. God has no potency. God is act. When he gets into this realm, he ought to know what he's talking about, even from the standpoint of what Catholic doctrine teaches, which I'm very familiar with. I studied it at a Jesuit university. I don't know where Senator Foley took his studies. But regardless of what he says here, he knows and everybody knows that a zygote, that single cell, is not a human being.

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: Everybody knows it. Let's adopt what he says, though, for the sake of argument on this bill. That zygote does not have a body. It cannot suffer serious bodily injury. It has no organs which can be affected in their functioning. So I'm offering my amendment again. I want the public to know that there were two opportunities for the Legislature to correct the erroneous notion that the legislators think there can be bodily injury where there is no body. There is no body. There is no body. Where there is no body...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...there cannot be serious bodily injury. Thank you, Mr. President. I will ask for a call of the house.

SENATOR CUDABACK: Senator Chambers, I'm not telling you what to do, but we are not through yet. That was not your closing and there's another speaker.

SENATOR CHAMBERS: Oh, I see. Okay.

SENATOR CUDABACK: So you can call the house if you wish, but...

SENATOR CHAMBERS: No, no.

SENATOR CUDABACK: Okay. Thanks. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. Again, there's no confusion, with the exception of Senator Chambers, of anybody in this room about when human life begins. We know when human life begins because we learned it in 10th grade biology, or probably learned it a lot sooner than that. That's not the issue before us. The issue is, are we going to place any value on a human life prior to birth? Senator Chambers says, no, it has no value; trash it, cut it up, burn it; it has no value; you're nothing until you're born. That's what he said. That's his position, and he's wrong. Any pregnant woman will tell you he's wrong. They attach enormous value to the life of their unborn children. They'll show you pictures of them. They'll name them, and they'll mourn their loss if they have a miscarriage. They'll mourn that loss for a long time. And if some drunk

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driver crashes into them and kills their child or inflicts permanent brain damage on that child, you bet they'll regard that as a loss, and so should our laws. Senator Chambers says, show me the prosecutor who will take these cases. That's true of any criminal matter. There are cases which a prosecutor won't touch because the difficulty of proof is so difficult, is so enormous, and he won't touch certain cases. That's true of all areas of criminal law. But there are other cases where you can prove it, where all the elements of the crime can be shown, and you can prove it beyond a reasonable doubt. And I want to empower those prosecutors to go after those drunk drivers and those rapists and those assailants and prosecute them when they cause injury to someone else's child. That's common sense. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Further discussion on the motion to reconsider? Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. I'm going to oppose a couple of questions or interpretation. You'll probably have a chance to listen to them. My guess is your light will be on, Michael. I don't want to...this isn't one of those cross-examination things, but there are a couple of questions I want to ask about. One of my concerns is about, in fact, that area that Senator Foley was just talking about. I, too, agree that in fact the woman's grief, of a mother who has lost a wanted child in a pregnancy that she intended to take to term, has suffered a huge, huge loss, and the person who takes that from her, against her will, has committed a reprehensible and heinous act for which significant criminal penalty, I think, is entirely justified. Now, I'm concerned about the way this is written in a couple of ways, and also I'm concerned about the language of the bill in that I think it focuses on, in fact, this use over and over again of the "unborn child" language, as opposed to what I think the...something that does not seem to be acknowledged here, and that is that the great source of loss is the robbery from a pregnant woman of...and a family of a wanted pregnancy. To me, that's the huge overwhelming social cost here that needs to be recognized and punished. But there is a phrase here that says, look, the assault of an unborn child does not apply to any act

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or conduct that is committed or engaged in by the mother of the unborn child. I get "committed," okay, I get "engaged in," but I'm not...but it does not say "consented to," and the reason is I asked that is because, while there might be an act that the woman does herself, and I think for example that might well mean smoking or doing something that would create a risk of birth defects that she volunteered...did voluntarily. Drinking alcohol in the middle of a pregnancy, for example, could cause bodily injury, could cause exactly the kinds of things that are otherwise prescribed in the bill but the, in this case, is excepted out because she committed it. "Engaged in" means that she's also an actor, but short of that is something in which she might consent to an act, and I wanted to know why that word wasn't there. Secondly, there's another one. Says any medical procedure performed with the consent of the mother. I understand completely that there is an area in medicine where you presume consent, although consent is not given, and that's because somebody is essentially passed out or they're in a coma or whatever, but the law reasons that if they were awake they would want this to be done. It is not the same thing as consent, however. It's presumed consent and it's a different...and it is a narrowing of what we might think would be appropriate here. The third thing is this medical exception, which is the deliberate use of a device. Let me see if I can get my gadget, as Senator Chambers calls it, to recite it. "Dispensing a drug or device in accordance with law or administering a drug or device prescribed in accordance with law." Out of all the range of medical treatment, only the dispensing of a drug or device seems to be allowed here. What I don't understand is why there is not an exception for all legitimate medical procedures,...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...which I don't think seems to be here yet. And, by the way, legitimate means not just the ones that are consented to but the ones that are presumed consent to; why acts that the woman consents to are not part of this. And again the dispensing of a drug or device, if in fact that's the case, I want to know why (3) is different than (2). I would rather say that medical procedures are exempt if, you know, they're done

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either with the presumed or actual consent of the woman. Those sections and that language disturbs me. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. Further discussion on the motion to reconsider? Senator Friend.

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I'm going to deviate a little bit from the...from the current dissecting, I guess, of this bill, and I wanted to raise a couple points. I was thinking about this last night and looking...doing a little research, very little research, cursory I would call it, and in regard to some of the things that occurred to me last night before I undertook the effort. One of the things that I...that I've always found fascinating, since the George Bush/John Kerrey election, was that there's a division. There's a division in this country. There's a blue and there's a red division. And what I found intriguing when I started looking at this last night, and how...I don't know how the whole thing got tied together in my mind but it did, because I thought, you know what, there's probably a division in regard to a situation like this, or in an area like this. And what I found was that the hayseeds and the hicks and the, oh, the backwoods states, you know, name them, the ones you think that are the backwoods states, the ones that...the ones that we really have problems with bringing them into the twentieth century, the dichotomy is not there in regard to this issue. Let me quickly explain. Twenty-seven states treat the killing of an unborn child as a form of homicide, twenty-seven states. Now the thing is I don't always buy...and there are folks that have talked out here about the...just because these other states are doing it doesn't mean we have to. Absolutely not! Of course, I agree with that. But for the sake of this discussion, in my cursory investigation last night, I found this very intriguing. Twenty-seven states treat the killing of an unborn child as a form of homicide. Interesting, 12 states define by statute the killing of an unborn child as a form of homicide regardless of the stage of pregnancy. And Arizona, I think, that some during the election and the campaign craziness that was occurring a couple years back, was Arizona treats it as a manslaughter. Two thousand and one there was a bill signed into law. Illinois, a flaming blue state, to the best of my

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recollection, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, they deal with the stuff ad nauseam. One state actually defines, by statute, the killing of an unborn child after the embryonic stage is a form of homicide. Guess what state that is, folks. Mississippi maybe? Shall we just say it? Shall we name the backwoods states or the ones that we think are backwoods states? Mississippi, Alabama, Nebraska, Iowa, you name it. No, no, no, this one was California. California penal code 187, 2001, murder, postembryonic stage, seven to eight weeks gestation. Oh, we'd except that from Arkansas, but please, folks, California? Are we out of our minds? Where is the red and the blue division? I don't see it. Now I'm not saying that anybody out here brought that up in regard to this particular argument, but I've heard it. We've all heard it. Anybody standing out here, sitting out here, roaming through NBC, ABC and CBS has heard it. I'm not hearing it in regard to this issue. I'm not seeing it now in regard to this issue, I should say.

SENATOR CUDABACK: One minute.

SENATOR FRIEND: Ten states define by statutes nonfatal attacks on an unborn child as a criminal...as criminal offenses, ten states. Hmm, Illinois, there they are again. That's that flaming blue state I talked about. Louisiana, of course they're in there. Michigan, hmm, I don't remember what color they were. No, I do remember. They were blue. Minnesota, I lived there. I know how blue they are. I loved it. I love Minnesota, by the way. Well, Mississippi, of course they're in, or North Dakota, Ohio, Pennsylvania. I think you get the gist. Am I adding anything to this argument? I don't really know, but the point is please, in regard to this discussion, please let's take the idea of reasonableness, legitimacy, whether this is good public policy in my view,...

SENATOR CUDABACK: Time. Time, Senator.

SENATOR FRIEND: ...let's kind of take that off the table. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Friend. On with

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discussion. Senator Foley, you have talked three times. Sorry. Senator Redfield.

SENATOR REDFIELD: Thank you, Senator Cudaback. Members of the body, I haven't spoken on this issue this year, but I certainly have spoken out before when we debated the bill on fetal homicide. And I would suggest to you that if it was wrong to kill a fetus, it is certainly wrong to assault a fetus. That's just a logical conclusion. We strive for consistency within our law structure. We try to align our definitions so that we don't have conflicts within the law. I think it's important that we use the same definitions in this bill that were used in the fetal homicide bill. I think it's important that we recognize the worth, not only to the woman but to society, of children. Clearly Nebraska has struggled with a demographic problem. We need more citizens. We clearly don't have enough people coming into the borders of this state, or being born into this state, to provide all the services that will be demanded by the baby boomers as they leave the work force. So we can talk about it emotionally, or we can talk about it very factually, and I think by and large most people are approaching this from a very factual, unemotional standpoint. I think it's important that government protect all of those who cannot defend themselves. Clearly, an unborn embryo is not capable of defending itself, and I don't think that we can say it's wrong to kill it but it's okay to hurt it, it's okay to damage it. I think it's just being consistent within our law structure. I would hope that all of you think about this from the standpoint of policy and what the obligation of government is to its citizenry, especially those that are weak, rather than looking at this as it may be a dogma or a position of one church. I can assure you that I talk to citizens across the state, across the country, and I don't find this to be a universally accepted dogma only of a Catholic Church. I find it to be accepted everywhere. I think it's interesting that Senator Friend was just talking about some of the states that might be considered less sophisticated and they don't struggle understanding this. And it's interesting to have him bring before us the fact that California, which is considered a very liberal state and very sophisticated, does not have a problem understanding this. So perhaps we're making it too complicated. Perhaps we're trying

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to make more of it than there really is there. Senator Landis brings up questions about why one medical intervention or timing is named in the bill. He knows why. It's because it allows for what our country has clearly stated in the Supreme Court decision is allowable, and that's why you find the language in the bill that is there. Again, I will say to you that this is an issue of simple assault, simple assault on a person. And there are those who have talked about, well, perhaps there would be more strenuous penalties if you assault a pregnant woman, and I would say to you that another woman who is not pregnant might wonder why the attacker of the pregnant woman is being punished to a greater degree than the attack on her person, because the pain to the woman herself...

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: ...may actually be the same. One is of no more value than the other. They are both valued. The difference is that there is a second injury here to an entity that is separate and independent of that woman that brings a second penalty. That's the gist of bill and I do support it. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Wehrbein. Is Senator Wehrbein on the floor? I'm sorry, but I cannot let you speak, Senator, unless he gives me the permission. You may read something, Senator...or, Senator, I'm sorry, Clark.

CLERK: Mr. President, new bills. (Read LB 1081-1090 by title for the first time.) I also have, Mr. President, hearing notices from the Banking, Commerce and Insurance Committee, General Affairs Committee, and Retirement Systems Committee, signed by their respective Chairs. That's all I have, Mr. President. Thank you. (Legislative Journal pages 331-333.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Wehrbein. He is not on the floor, so we will pass over Senator Wehrbein. Senator Baker.

SENATOR BAKER: Mr. Speaker, I would yield my time to Senator

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Foley, please.

SENATOR CUDABACK: Senator Foley, you have almost 5 minutes.

SENATOR FOLEY: Thank you, Mr. President. I notice that Senator Landis was called off the floor, and that's unfortunate because I wanted to thank him personally, and I will when he comes back, but I wanted to thank him for his honesty and for joining in the discussion, both yesterday and today. I think...I find Senator Landis' comments to be thoughtful and honest and very helpful. And I see he's back. So, Senator Landis, just know of my appreciation for joining the discussion, and you've raised some points that do merit some discussion. Having now complimented you, I've got to quibble a little bit with the semantics. I blanch a little bit when we refer to the loss of an unborn child as simply the loss of a wanted pregnancy. From the mother's perspective, I don't think that's how she views the loss. I think she views it as the loss of a child. And it's, you know, it's a difference in choice of words, but I think it's an important distinction. It wasn't a pregnancy that was lost; it was a child that was lost. You raise some interesting questions about the language on the top of page 3 of the bill. Top of page 3 is that section which essentially exempts the mother herself from any potential of criminal prosecution. Any act conducted by the mother or engaged in by the mother is off-limits, so to speak, in prosecuted...from prosecutorial action. And I've talked to prosecutors about this language and how they view the fetal homicide statute. Of course, this is modeled after that. And they're telling me the language is good. They're telling me the language works and they're telling me of their successes in going after the kinds of criminals that you and I, I think, would agree he should or she should be going after--the drunk driver, the murderer, the rapist. You and I both want these people prosecuted. So I'm a little reluctant to say I want to change what works. I'm not telling you, Senator Landis, I won't accept any amendments in that area, but I'm going to tell you up front I'm going to be reluctant to change what works, and the prosecutors are telling me you've got good solid language, we're using it in court successfully, don't fix what ain't broken. Questions have come up from time to time. We heard this question four years ago on the fetal homicide

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statute and we're hearing it a little bit again this year, about why not just establish some point in the pregnancy--10 weeks, 20 weeks, 30 weeks, pick your number--why not just establish some point in the pregnancy when the provisions of this law might kick in? Why are you, Senator Foley, trying to cover all nine months of pregnancy? Well, there's a number of reasons for that, but one of the reasons is I don't want to put another burden on the prosecutor. I don't want them to have to prove...if we had a 20-week threshold, for example, I don't want to put him in the place of having to prove that the pregnancy really was 20 weeks when the injury was incurred. Prosecutors have a tough enough time as it is. I think that the...we just recognize that prosecutors have discretion. There's some cases they won't take because they like to win too. And if the facts and circumstances of a given case are weaker than what they'd like to see, they simply won't take the case to court. But the kinds of cases that we've seen since passage of the fetal homicide case...fetal homicide law four years ago are precisely the kind of cases that we said would go to court and would succeed.

SENATOR CUDABACK: One minute.

SENATOR FOLEY: And we heard a lot of horror stories and inflammatory rhetoric four years ago about how it was excessive language and would never work, wouldn't stand up in court, all that kind of thing, and that's just been proven wrong. Fetal homicide statute works. This is modeled after that statute. You also raise questions about the actions of the mother herself, and that is a fascinating question. Senator Beutler actually offered an amendment. I don't know if we're going to get to it or when we'll get to it, but at some point before we take some votes on this bill I hope the body will have a really good discussion about what about the actions of the mother herself, because that is a very, very difficult public policy question. I'm hearing from doctors, I'm hearing from prosecutors, I hear from a lot of people about cases that you and I all know about, of cases of women who are abusing alcohol, abusing drugs and so...

SENATOR CUDABACK: Time, Senator.

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SENATOR FOLEY: Thank you.

SENATOR CUDABACK: Thank you, Senator Foley, Senator Baker. Senator Redfield, followed by Senator Landis.

SENATOR REDFIELD: Senator Cudaback, I would like to yield my time to Senator Foley and Senator Landis to continue the discussion.

SENATOR CUDABACK: Senator Foley, about 2.5 minutes.

SENATOR FOLEY: I'm sorry, you...that time was yielded to me? Thank you. Let me pick up where I was. I had indicated that Senator Beutler has offered us an amendment that we probably won't get to for awhile, but at some point in this debate on the bill, before we get to some serious votes, I really hope we can get into a good discussion of the issue that Senator Beutler has tossed into the mix, and that is what about the actions of the mother herself. And as I was saying a moment ago, that is a very difficult public policy question. I've struggled with it, others have as well, and I hear from doctors who tell me, look, I've got patients coming in my office, pregnant women; they're acknowledging to me, and I know, that they're using alcohol improperly, they're using drugs improperly, and I counsel them and I plead with them and I instruct them, please, don't you realize what this is doing to your child, and yet there's no change in habit or change in practice. And, sure enough, the child is born; it's got drug problems, it's got fetal alcohol syndrome, and what a tragedy those cases are, and I don't know what to do about that, I really don't know what to do about that. But that question is a question that is deliberately outside of the four corners of this bill. This bill is intended to address only third party aggressions, third party acts against the pregnant woman and her child. It deliberately and clearly excludes the mother herself, because I don't know what to do in those situations. I don't know what the correct public policy answer is. I think we need to have a really good discussion about that, and I don't think we're going to solve it today or on this bill, because that's not the intent of the bill. But it's a question that this Legislature would do well

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to address. And you've raised it a bit, Senator Landis, and I thank you, and Senator Beutler has raised it, too, and I thank him, because it is an area we need to get into. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Landis, 2.5 minutes of Senator Redfield's time.

SENATOR LANDIS: Thank you. I got the admonition for how I had misstated the social values here, but I didn't get, I think, an answer to the question that I was asking. I did get the sense really that says, gosh, prosecutors say this language works and I'm reluctant to make a change. What I didn't get was, I think, an answer to the question, does subsection (2) of Section 8 include presumed consent or not, and does subsection (1) require the activity of the woman rather than simply her consent. If I have to, I guess I can get...strain to find a hypothetical. They're relatively difficult to imagine, but they certainly could cover it. If a woman said, yeah, you could punch me in the stomach, but didn't do the punching, she didn't commit the act and she didn't engage in the act, but she consented to it. There's a difference between committing, engaging, and consenting. And subsection (1) does not accept the notion of consent, which means that the woman doesn't do anything on that score but, in fact, consents to something happening. I'm trying to stay away from sexual hypotheticals, which I think are a possibility, and I (laugh) for that reason, I want to stay...the hypotheticals are a little harder to come by. In subsection (2), any medical procedure performed with the consent of the mother, the consent there, it's not uncommon for somebody to say presumed consent because you could have a...what subsections (2) and (3) mean is this. If you've got a comatose woman, not capable of giving consent, the only thing that gets excused in this bill is the dispensing of a drug or device, because she can't give her consent and "any other medical procedure" is not named and excepted, other than the ones in subsection (3), which I think means you've got somebody in an ambulance, on the way to the hospital, and under this situation if you don't have a device or drug in accordance with law or administering a drug (inaudible), then subsection (3) doesn't apply and you don't have consent for subsection (2). There is a

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concern.

SENATOR CUDABACK: Excuse me, Senator Landis, but we're now on your time, Senator Landis.

SENATOR LANDIS: Thank you. There is an inadequate concern of, it seems to me, where the mother's or the woman's interests, concerns, and her actions relate. I want to, last...and I want to yield the rest of my time because this is not meant to be one of those cross-examinations but a chance for reflection. Can you think of a hypothetical in which there could be an assault on a fetus, unborn child, take your pick for the language, and we all have our favorites, that does not constitute an assault on the woman herself? Because this bill describes only the assault on the fetus and it implies, I think, that there is no assault...or that it's two completely different things, which means that you could have an assault on a fetus without an assault on the woman, and if that's the case, I want to know what those circumstances are. And if it isn't that there's any distinction, I want to know why the fact that the assault on the woman isn't in this. So if they're separate, tell me the situation in which a fetus could be assaulted without the woman being assaulted, and if you can't think of that situation then tell me why an assault on the woman isn't part of this social wrong. I'll yield the rest of my time to Senator Foley.

SENATOR CUDABACK: Senator Foley, about a minute has been used.

SENATOR FOLEY: Thank you. Thank you, Mr. President. Thank you, Senator Landis, for the time and the discussion. I want to...and I'm sure this is going to sound like I'm ducking your question, so hammer away at me. (Laugh) But I want to...I do want to mull it over a bit and I want to think through it. I don't want to just answer on the spur of the moment, put something on the record that I'm going to have to clarify further. I'd rather just mull it over, think about it, and give you a thoughtful response, because your question deserves a thoughtful response. And you've been...you've been good in this debate and fair in this debate, so please allow me that courtesy. Also, your question about implied consent, I think that's a good question. You know, I read the language and it

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seems pretty straightforward to me as covering, and the words say it, any medical procedure, any medical procedure performed with the consent of the mother, and perhaps that means implied consent as well. I don't see a difficulty, and I think that the hypothetical that Senator Landis offered of the woman who says, go ahead, punch me in the stomach and let's see what it does, I've given you my permission, I think that's a stretch. I think that's a bit of a stretch and I'm not sure we need to craft language that takes into that kind of a stretched hypothetical. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley and Senator Landis. Senator Price, you're recognized.

SENATOR PRICE: Mr. Speaker and members of the body, I'm listening with interest to this bill, good questions, good debate, and I'm going to continue to listen. And I will yield the remainder of my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, 4.5.

SENATOR CHAMBERS: Thank you, Senator Price. Thank you, Mr. President. Members of the Legislature, I understand that Senator Foley gets highly emotional on these matters, because he doesn't bring many bills. He hasn't had a lot of success. He's running for the Auditor so he's got a lot on whatever mind he has. But he outright lied when he said that I have no concern for a fetus or any stage of development that I say kill it, tear it up, burn it, it means nothing; the concern that a woman has means nothing. I've never said that. In fact, I've taken a stronger position in favor of prenatal care being provided by the state for poor women, which is not something he has done, so he was an outright liar. It's one thing for us to have a difference of opinion. We're going to have those and I will accept it. But as much time as I've spent in this Legislature, compiling a record of helping children when they are in this world, helping poor women who are pregnant get state assistance, medical care to help them carry that pregnancy to term, to provide postnatal care for poor women, he talks about fetuses, then he lies on me because he projects onto me what is really in his wicked mind. That's what happens when you get these

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"one-ideaed" people who get carried away. What he is trying to do is separate the woman from the fetus, in line with what his church believes. The fetus takes priority; let the woman go, let the woman die. That's why those people on Capitol Hill who are of his ilk and those on this legislative floor don't want to put a provision in these antiabortion bills to take an exception for the health of the pregnant woman, and that's why their bills get struck down. I care about that woman. I don't see the fetus as having an independent existence from the woman. The fetus is not a person; the woman is the person. What I have always advocated is that the attacks which occur against pregnant women are against the woman, so let the charge be brought based on the assault against the woman, and if she's pregnant, that is an aggravating factor and it can raise the assault to a step higher, or wherever people think it should be. But the woman, for me, is the focal point. He trashes women. I don't say, throw women away. I don't say women are breeders. I don't say they're to be kept pregnant, barefoot and in somebody's kitchen. Then, when the man gets tired of using her for a fire extinguisher, he dumps her and those children and goes find him some young chick somewhere. And if Senator Foley thinks this doesn't happen, I don't know when he...I don't know where he has been. I have to deal with reality. I am often appealed to by pregnant women who are poor and cannot get assistance anywhere, and they don't go to Senator Foley because they know he is a misogynist. When has he ever said anything in favor of women? This state had nothing but white women employees but I, a black man, was the one who brought a law...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...to make clear that when time comes for a female employee to collect her pension she'd get the same amount as white men. White men let that go. Not one of them saw the need to correct that inequity because they didn't think it was unequal because women are a step lower, but the women paid the same amount into the program, and not all women lived longer than all men. And when they spent their pension, they weren't sold products at a lesser amount because they got a lesser amount. So I changed that. These are the issues I constantly deal with, and on this one the woman should be the focal point.

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And he can say whatever he wants to say in his inflamed, disordered mind, but for him to suggest that I don't care about fetuses or any other stage of development when a woman is pregnant is crazy, insane,...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...and an outright lie. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Wehrbein, on the motion to reconsider.

SENATOR WEHRBEIN: Give my time to Senator Foley.

SENATOR CUDABACK: Senator Foley, you have almost 5 minutes.

SENATOR FOLEY: Thank you for the time, Senator Wehrbein. Senator Chambers has a short memory. He doesn't remember the budget debate last year. Appropriations Committee reported out their bill. I filed the first amendment to last year's state budget bill and I immediately went to Senator Chambers. He was the first senator I went to after I filed that amendment. I said, Senator Chambers, I'd like to show you the amendment I just filed; maybe now, finally, here's something we can work together on. The amendment called for a half million dollars in pregnancy assistance aid to young, poor women who are in a crisis situation. Because we know that many women who turn to abortion, they're young, they're unmarried, and they're poor, and they think abortion is their only option. It's not their only option. There are people who want to help. And I fought for a half million dollars appropriations to set up a new initiative on that effort and it's succeeded. The amendment succeeded. But it didn't succeed with Senator Chambers' help. He fought against it. He spoke against it. He voted against it. Senator Chambers has a short memory. My second year here my priority bill--you only get one of those, right?--my priority bill was a bill to assist women who are fighting with BlueCross Insurance Company and Mutual of Omaha and the others, because the insurance companies were discriminating against them in certain very serious diseases, like endometriosis and polycystic

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ovarian disease. And they were telling those women, yeah, our policy covers those diseases, but not you; we're not going to cover you because we think you just want to get that fixed so you can get pregnant. I fought hard for that bill. I got that bill through the Banking, Commerce and Insurance Committee, and I brought it to the floor as my priority bill. Who do you think voted no? Senator Chambers did; helped defeat the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. (Visitors introduced.) Further discussion, the motion to reconsider? Senator Chambers, there are no further lights on. The Chair recognizes you to close on your motion to reconsider the vote on FA198.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Foley brought bills to try to favor pro-life organizations and that's what he wanted that initiative for, an organization of his that followed his church's doctrine. And, once again, he is being grossly dishonest. The only time he brings something is when it accords with his church's dogma. I'm talking about healthcare, where women have children and they need food, they need medicine, not money to be sent someplace where a group is going to tell them don't get an abortion. That's not helping women, but that's his concept of it. And it confirms what I've said about his approach. He thinks, and he's certain, that this bill will be enacted into law, and I'm going to stop it. Some people have talked about Senator Foley and me being an irresistible force and an immovable object, but once again, showing how people cannot think, those terms are mutually exclusive. If a force is irresistible, nothing can stand against it so there cannot be an immovable object. If an object is immovable, that means nothing can disturb it so there can be no irresistible force. There can only be one or the other. But some people who don't think very far, of Senator Foley's ilk, would say, well, if an irresistible force met an immovable object, there would be an explosion. You'd probably say they're two things equally resistant or strong, so neither can do anything to the other. But there is not an irresistible force, not an immovable object. But in this case, I'm going to be the immovable object. You saw what happened when you let the NRA

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sucker all you dummies who voted for that bill, into moving a bill which now they say was inappropriately drafted, it's got to be changed because you dumbbells didn't have sense enough to draft it right and then you dumbbells voted for it. And now the public sees what dumbbells you are, and you're the ones who want to be letting people carry guns hidden and they're, I hope, not as dumb as you all are. And I tried to point out how bad it was. Well, now you've got a bill being brought to you by outsiders, who are telling you, accept a definition which makes no sense, accept the creation of a crime which cannot be prosecuted. He didn't name a single prosecutor of all these so-called prosecutors that are talking to him. Let him give their names. I give names. When I was up here the other day, I talked about the U.S. Attorney by name, Mike Heavican; mentioned the head of the FBI. I couldn't think of his name right off, but I gave you his position, and there's only one of them in the state. His name is LaCotti. The Chief of Police in Omaha is Warren. I give names. I'm not going to stand up here and say a whole lot of doctors are talking to me, and can't give you a name; a whole lot of prosecutors, and can't give you a name. Frankly, I don't believe prosecutors have told him this is a good bill. Maybe they did, but I don't believe him. If he will lie on me while I'm on the floor, then I know he's willing to lie about what some purported people said. But check those things he was talking about taking the state's budget money for and setting it aside for certain organizations who spoke against abortion. He wasn't talking about setting up medical programs to provide medical care for those women who don't have insurance, who can't get a doctor, and after the child is born cannot get postnatal care. I'm interested in people who are walking, talking, breathing, or infants who are crying. An amazing thing happens down here.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: When people bring their babies into the Capitol Building, my office is where they come. I'm the one they want to take pictures with. Maybe that happens with Senator Foley, but I can prove what I say because a picture of mine with these little white babies, even, was in the legislative...whatever that book is that they put out each week.

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I love children. I love women and, unlike Senator Foley, I'm not going to throw women away because of something, some doctrine written by men, who know nothing, will say. When it comes to pregnancy, the only one who should make the decision as to whether to be carried to full term is the woman, in consultation with her doctor; not a bunch of stodgy old men, running around in red hats and pointed-toed shoes called cardinals, or somebody sitting on a throne in the Vatican called the Pope. Women are the ones who should have the final say, and I'll fight for that as long as I'm in the Legislature. People can say that abortion is a sin.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: They'll never get me to vote that it's a crime. Now, Mr. President, I will ask for a call of the house.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on the motion to reconsider. Been a request for a call of the house. All in favor of the house going under call vote aye; those opposed vote nay. Voting on the call of the house. Record please, Mr. Clerk.

CLERK: 15 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: Motion was successful. The house is under call. All unauthorized personnel please leave the floor. Unexcused senators please report to the Chamber. The house is under call. House is under call. All unexcused senators please report to the Chamber. The house is under call. Senator Janssen. Senator Schrock. Senator Raikes. Senator Synowiecki. Senator Preister. Senator Bourne. Senator Aguilar. Senator Janssen. Senator Preister, Senator Synowiecki. I'm sorry, Senator Synowiecki; you are here. Would you please check in? Senator Synowiecki, would you please check in? Thank you. Senator Preister, Senator Schrock. Senator Schrock, would you check in, please? Thank you. Senator Janssen, the house is under call. All members are present or accounted for. There's been a request for a roll call vote on the question to reconsider. Mr. Clerk, when you get time, please call the roll.

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CLERK: (Roll call vote taken, Legislative Journal pages 333-334.) 1 aye, 16 nays, Mr. President, on the motion to reconsider.

SENATOR CUDABACK: The motion was not successful, and I do raise the call. Mr. Clerk, do you have items for the record, or new bills?

CLERK: I do, Mr. President. Thank you. New bills, Mr. President. (Read LB 1091-1096 by title for the first time.) And I have a hearing notice, Mr. President, from the Education Committee. That's all that I have at this time, Mr. President. (Legislative Journal pages 334-335.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Continuing on with amendments to the LB 57. Mr. Clerk, please.

CLERK: Mr. President, the next amendment, Senator Chambers, FA199. (Legislative Journal page 1312, First Session, 2005.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA199 to LB 57.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the first thing I want to do is acknowledge that Senator Friend spoke truth on this bill this morning. He said, there may be a division on this bill, and I think he's right. There is a division on this bill. I'm on the correct side; the others are on the incorrect side. And for those who are so angry back there and giving Senator Foley time in anger, the "Bible" says anger resteth in the bosom of a fool. So if you get mad at that, get mad at your Jesus that you pray to every morning. Some people wonder why I call the Catholic Church a criminal operation, and I always point to the widespread sexual abuse of children, and how it's covered over by bishops, archbishops, priests, even the Vatican, and Joseph Ratzinger, who became the Pope. They have an operation in Rome where they teach young men for the specific purpose of becoming priests in America. A couple of years ago, some of the middle-aged men who had attended told how they were sexually abused during that

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treatment, and they said this on national television. And the Pope didn't want to do anything about it, Ratzinger wanted to keep it quiet, and that's how they gave the appearance that everything is all right. They knew the sexual abuse was widespread. They would have been better to admit it and say, it is a cancer, but we're going to root it out. It may be widespread, wider spread than what has appeared in the media, but we're going to track it down wherever it is and protect these children. But the children didn't count. If they were fetuses, they would have. I had mentioned a bishop who said he had been abused. There's a very brief article about it in the Omaha World-Herald, dated January 12. But there are quite a few articles that you can get off the Internet. And so you know who this person is, this quote would come from the Detroit Free Press, dated January 12. It says: Detroit Catholic Auxiliary Bishop Thomas Gumbleton rocked his church Wednesday, first by admitting that he, too, was a child victim of sexual abuse years ago, then by calling on lawmakers to change laws that bar victims from suing the church in older cases. He knows how rotten the church has shown itself to be in this area. Quote: I speak out of my own experience of being exploited as a teenager through inappropriate touching by a priest, the 75-year-old bishop said in a statement he passed out at a news conference on behalf of abused victims in Ohio. That made Gumbleton the first U.S. Catholic bishop to acknowledge having experienced such abuse. Quote from Gumbleton: I understand why victims of sexual abuse need this new window of opportunity to bring legal actions, he said at the demonstration. I know how difficult it is for me to speak about what happened. This man is 75 years old, an auxiliary bishop, and it was difficult for him. So some of these rotten priests, and the bishops who cover for them, say, why didn't these people come forth immediately? They knew why, and that's why they felt comfortable abusing these boys. And in many cases, when a parent went to a bishop, the bishop and others would come to the family and say, don't say anything; you don't want to hurt the church. And those who did speak were shunned and mistreated and considered as criminals. I told you about a priest suing. There was a small article about it in the December 16 edition of the World-Herald, but the original article appeared in Newsday, and I'll read the brief part that is in this article, so you can check it out and

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see if I was lying. A New Jersey priest has sued New York Cardinal Edward Egan, the cardinal, and several other top church officials, for \$5 million, contending that he was terminated as a school director in 2003 for speaking out against bishops', plural, bishops', b-i-s-h-o-p-s-' cover-ups of clergy sex abuse. The lawsuit, filed Wednesday by Reverend Robert Hoatson, H-o-a-t-s-o-n, in the U.S. District Court in Manhattan, also alleges that Egan, along with Newark Archbishop John Myers and Albany Bishop Howard Hubbard, are, quote, active homosexuals, unquote, who protected predatory priests out of fear that those men might reveal their own secrets. This is what the Catholic Church has done. That makes it a criminal organization. Whenever the leaders of an organization aid and abet the commission of crimes, the organization is criminal, and it is worse than La Cosa Nostra and the Mafia. Yeah, they don't want to hear it here, but I'm going to say it here, because people out there do hear it. And that's why I say this nonsense of putting into the law what the Catholic Church wants puts the Mafia in a position to say, well, pass some things we want, because we don't believe in abusing little children, and if we caught one of ours doing that, we would "de-nut" him, we would "de-penis" him, and he'd wind up in a lot of pieces floating in the river someplace. Then they're going to bring this stuff here, and I'm supposed to go along and be afraid to talk about the wrong that they commit. I'm not the one who did these deeds. I'm not the one who exposed them. I'm not the one who wrote the articles and published them. But there are people who don't want anything said about it. And yet, there are people who will say if a 20-year-old man has sex with a 15-year-old girl and marries her, he ought to go to prison, because that's terrible. But when it comes to this, where people who call themselves the Vicar of Christ, who forgive people of their sins, who have others come to me and say, forgive me for I have sinned, and talking to somebody who did things they wouldn't dream of doing, something needs to be said about it, and something needs to be done about it. And I'm going to continue talking on this bill. And I know people have bills that they want, but when they aid and abet this kind of trash legislation, theirs has to take the consequences. There's a cost for what they do, and I'm going to exact that cost. One way or the other, they're going to pay the "Ernie" tax. And the difference

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between me and them, I don't skulk around here when they get angry or get off in their little knots and talk about how upset they are with me. I've dealt with far worse than anything any of them can bring to me. And that, that's brought to me, is brought to me to my face, where people talk about what they're going to do to me. And you see I don't have any lumps on my head. You see I don't have any bruises around my eyes, I don't have any scars and scrapes. I'm not coming in here limping because somebody kicked my rear end. But maybe other people can't say the same thing when they make the mistake of confusing trying to be courteous for being weak, for trying to avoid physical confrontations with being afraid. I'm like the old gunfighter who doesn't want to shoot anybody, who doesn't want to have a standoff to see who draws a gun the fastest. But just like that old man who's not going to let anybody shoot him, I'm not going to let anybody hurt me without me getting in my licks, too. And as for those who are getting so upset they might be suggesting that they want to handle this someplace else in a different way, I welcome it. I'm inviting that. I'm not running anywhere. I'm not hiding. I'm here, and I don't hide. Now, what this amendment would do, for the record, on page 2, in lines 7, 8, 12, 13, 14, 17, 18, 20, 23, 24, 25, and on page 3, in line 11, strike the words "an unborn child" and insert the two words "a fetus." Whenever this bill is described in the newspaper, they call it the fetal assault bill, calling it what it is. When Senator Foley was reading to you all from his textbook, he did not read anyplace where they called a fetus an unborn child. In fact, he may have read someplace in his presentation the word "fetus." Why is it so difficult to apply the scientific term to a stage of development in the process of moving from a fertilized egg to a full-fledged human being? Because they want to create personhood for a fetus...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...separate from the woman, so that the woman can be discarded and the fetus can be rescued and brainwashed. We ought to put in this bill what it is we're talking about. We're not talking about a child; we're talking about a fetus. That's what the scientists call it in their writings. When people become emotional, when they become religious in the

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discussion, they'll say "unborn child." There are a lot of things people say in religious discussion. That's why churches are free to teach whatever they want to, and that's why a wall should be erected between church and government, so that the government does not tell the churches what to teach and what not to teach. But by the same token, churches should not be allowed to say what the government is...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...going to put into the statute books. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA199 to LB 57. Open for discussion on that motion. Senator Foley, followed by Senator Chambers.

SENATOR FOLEY: Thank you, Mr. President. I want to follow up on a point I was making earlier about the efforts that I've made on behalf of pregnant women and their unborn children. Senator Chambers says I only care about the child, not the mother. Again, his memory runs short, because last year, when the budget finally reached the Governor's desk, he used his line-item authority, and he took \$1 million out of a program that funds healthcare for low-income and indigent persons. There's a group here in Lincoln called the People's Health Center. It's not in my district, but it's...I'm aware of them. They do good work, and they would have benefited from that \$1 million appropriation. The Governor's staff was working hard to protect that veto. I voted to override the Governor's veto. The effort failed, unfortunately, but I voted yes to override the Governor's veto on that matter, because I feel so strongly about that. Senator Landis, you raised an interesting hypothetical earlier, and I kind of dismissed it as a stretch. You talked about a case of...or a hypothetical, what about the mother who says, go ahead, punch me; I don't want this child; go ahead and punch me. And I thought, oh come on, that's not going to happen. Well, someone handed me a news article from the Detroit News. Let's see, well, I'll have to get the date. It's not clear. This is an Internet copy, so it's not clear what the date is, but I think it's very recent, in the last couple of

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years. This is the case of a couple of young kids, a boyfriend-girlfriend situation. Girl gets pregnant, she doesn't want to be pregnant, she hands a baseball bat to her boyfriend and says, go ahead, hit me. It happened. It happened. Your case, your hypothetical, Senator Landis, happened. What about the prosecutor? What did he do? He prosecuted the young man for the death of the child, but not the mother. And I haven't looked at the language of Michigan's statute to see if it mirrors ours, or just how that all works. But I was dismissive when you raised that hypothetical, and there we go; it happened in Michigan. Thank you.

SENATOR CUDABACK: Thank you, Senator Foley. On with discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to give Senator Foley a pass. He has worked hard. He is getting tired. See, he's a young blood. I'm old. I'm almost 70 years old. I shouldn't be taking advantage of these young people and expecting them to have the stamina, the endurance, the mental tenacity that I have. And older people are supposed to give consideration to the infirmities of the young. So I probably have been overbearing, unfair, and pushing them beyond their limits of endurance. So he gets a pass this time that I speak. But if he provokes me, all bets are off. He thinks this bill is going to become law, he's sure it's going to become law, just as the NRA is sure that its bill is going to become law. Somebody wrote, I think it was in the Lincoln Journal, that that movement assures passage of the law...of the bill into law. If that's what I read correctly, that's not true. I didn't even read where any of them picked up the fact that the A bill did not advance. That's why the public is often misled about what happens in the Legislature, because they get it from reporters who don't follow, who don't report significant activities, and give assurances that they can't. Somebody told me that a headline said, Senate votes to advance a bill, or something like that, and they got the impression it was the U.S. Senate. Now, reporters don't write the headlines, but people at the paper write headlines, and there are supposed to be editors there. And then I have reporters who don't want to pick up what is said on the floor, then they ask me for an

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interview. What kind of nonsense is that? They don't like what they hear on the floor either, so they're going to go hide, then they're going to say, can I get an interview with you? Well, they should do their job and pick up whatever they want to get an interview about on the floor. Do you all know that they get free space in this building and don't pay rent? Would anybody dream of letting a homeless person curl up in a little cubbyhole in this building to be warm, protected from the inclement weather? No. They should say there should be a line of...a wall of separation between the government and the media. That's what they need to say. But that is not the case. In the First Amendment, they do protect freedom of the press. But in America, that's not needed. You know why that was put in the Constitution? Because at one time there were what you could call crusading press organs, investigative reporters, who wrote things that displeased the government. In order to assure that they could do that without being punished for the government, a protection was put in. But they're the handmaidens of the government. They're the spokespersons for the government. When they're writing about something the government does, they say "we," like in Baghdad, "we" suffered these casualties; "our" strategy. No, they're supposed to be the objective, dispassionate reporters, transmitters of what is going on. But when they put themselves in it...they were even wearing flags after the time that those airplanes crashed into the buildings. They ought to keep their flags at home, and be the objective persons they're supposed to be. So there are many people who fly false flags in this society, and they're given free rides. Well, let everybody carry...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...a false label. But what the Legislature puts into the statute, I should...I believe should be accurately and correctly labeled. We're talking here about a fetus, an embryo, and Senator Foley wants to push it all the way back to the stage of the zygote. But it is clear that we're not talking about a child, and this statute ought to properly and correctly identify or name what it is we're talking about. So my amendment would strike "unborn child," or any combination of words with that in it, and substitute "fetus." Thank you,

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Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Foley, on FA199.

SENATOR FOLEY: Thank you, Mr. President. Senator Chambers doesn't like the use of the term "unborn child." Well, Justice Blackmun didn't have any difficulty with it when he wrote Roe v. Wade. Supreme Court has used that term dozens and dozens and dozens of times. That's the correct legal term, Senator Chambers. That's why we use it. That's the term used in federal legislation. Congress is using the correct legal term, and Nebraska is using the correct legal term when it writes its statutes, as well. If the United States Supreme Court can use the term "unborn children" to include pregnancy at every stage, then it's good enough for me. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Chambers, on FA199.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Foley a question...

SENATOR CUDABACK: Senator Foley, would you...

SENATOR CHAMBERS: ...or two.

SENATOR CUDABACK: ...respond?

SENATOR CHAMBERS: Senator Foley, the fact that Senator Blackmun used that word makes it good enough for you.

SENATOR FOLEY: Justice Blackmun.

SENATOR CHAMBERS: Justice...what did I say?

SENATOR FOLEY: Senator Blackmun.

SENATOR CHAMBERS: Oh, okay. I'm sorry, Justice Blackmun, wherever you are. (Laugh) Well, Senator Foley, Justice Blackmun said other things during that opinion. Do you agree

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with everything he wrote in his opinion?

SENATOR FOLEY: I don't agree with his reasoning in that case.

SENATOR CHAMBERS: And you don't agree with his...

SENATOR FOLEY: But he used the correct legal term.

SENATOR CHAMBERS: And you don't agree with his conclusion either, do you?

SENATOR FOLEY: I sure don't.

SENATOR CHAMBERS: Thank you, Senator Foley. He has the supermarket approach. He picks and chooses what he wants, and rejects the rest. And I'm sure Senator Foley will acknowledge that those two words, "unborn child," are the least consequential items in Senator (sic) Blackmun's opinion. Let me ask Senator Foley another question, so I won't misstate anything. Senator Foley, who is the justice under whose name Roe v. Wade was written?

SENATOR FOLEY: Justice Blackmun authored the decision.

SENATOR CHAMBERS: Right. I just wanted Senator Foley to confirm that, because this Roe v. Wade decision which everybody discusses, the opinion supporting it was written by Justice Blackmun. He had a tremendous amount of difficulty formulating an opinion, and other justices participated. They consulted experts, staff members, and others. Justice Blackmun was not like Justice William O. Douglas, who could dash off an opinion which was well written, cogently stated, well reasoned, between the time he cast his--he fished--the time he cast his line, a fish bit, and was hauled into the boat. Justice Blackmun, however, in his slow, deliberate way, did write an opinion which supported a decision with which I agree. A woman should have the right...not "should," a woman, in my opinion, does have the right to determine whether or not she will carry a pregnancy to full term. When men contrive to control the sexual activities, the sexual organs, the reproductive system of a woman, it is designed to control the woman. That is the most intimate,

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personal area of a woman's life. And when men who have exploited, mistreated, suppressed, and repressed women throughout history want to take control of that intimate part of their life, and women, because of conditioning, some of them, not all by a long shot, will allow it to happen, reaffirms for these men their control over women. If they really cared about these fetuses, there wouldn't be the amount of hunger and homelessness among children that you find. There are homeless women who have children in Lincoln, in Omaha, I know, and I don't know from experience, but I presume from other cities throughout this state. But you don't find the outcries to provide something for these hungry, homeless children. You don't see people with these professionally produced signs that you'll see supporting Alito, who is...they're trying to make a Supreme Court judge, saying, overturn Roe v. Wade. Those same people will not have those same types of signs...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...saying, eradicate hunger in my city, give housing to the homeless. That is a part of Catholic theology that I like. It's called...not that stuff with those signs, but the concept of social justice, the notion...and I might give...be giving them more credit than they're due, but it fits in the same church, if not the same pew. There should be a line drawn, a level set below which no member of a civilized society would be allowed to fall. And as rich as this country is, and as many organizations and churches as there are accepting public money, there should not be the hunger and homelessness unaddressed that exists in this country.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. And that was your third time, Senator. Senator Foley, you're recognized, and this will be your third time as well.

SENATOR FOLEY: Thank you, Mr. President. Senator Chambers says that he agrees with the fundamental reasoning of Roe v. Wade,

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and he's entitled to that opinion. You know I don't agree with that, but he's entitled to it. That's fine. But there are many legal scholars who support abortion who will concede Roe v. Wade is not good reasoning. It's sloppy thinking. The whole trimester approach to regulating abortion is unworkable. Sandra Day O'Connor wrote, I think it was Planned Parenthood v. Casey, Roe v. Wade is on a collision course with itself, because of the whole trimester approach to regulating abortion. But if Senator Chambers cherishes this right to choose so much, why doesn't he want to protect the woman's right in the cases, majority of cases, where the woman wants to protect her child? Why can't we have stronger laws that enhance protections for the woman and her child? This bill isn't at odds with Roe v. Wade. Senator Chambers knows that. This bill is consistent with the thinking etched out in Roe. There's no conflict at all. It simply says, in the context outside of abortion, that the third party cannot attack that child. He has no right to attack the child, and if he does, he ought to be prosecuted, just like Kevin Mattini was prosecuted when, two summers ago, he was drunk as a skunk, blood alcohol content was three time the legal limit, methamphetamine in his system, he's driving the wrong way down a street in Omaha, crashes into Linda (sic) Turco. She was eight months pregnant. He killed that baby, and Kevin Mattini is in prison today. That's where he belongs. He belongs in prison for killing that child. The fetal homicide statute put Kevin Mattini in prison, and people who commit those kind of crimes belong there. But what if Linda (sic) Turco's baby had lived but had permanent brain damage? What then? That's what this bill is about. It deals with the "what then?" It deals with that gap in our laws. It's fully consistent with the work that this Legislature has done in recent years on this question. This bill merits your support. Thank you, Mr. President.

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Foley. Senator Beutler.

SENATOR BEUTLER: Members of the Legislature. Senator Foley, let me ask you a couple questions if I can. And forgive me if this discussion has already taken place. And I'm really struggling, in terms of legal concepts, to envision how all of

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this works. And let me call your attention, first of all, to section (1) of Section 4, which is the intentional or knowing causing. In subsequent sections, the two subsequent sections talk about recklessly causing; this section talks about intentionally causing. With respect to the intentionality here, is it the intent to commit an act upon the mother, or the intent to commit an act upon the unborn child?

SENATOR FOLEY: Senator, you're schooled in the law, and you're familiar with the concept of transferred intent. And let me give you a layman's understanding of what transferred intent is. If I point a loaded gun at someone and pull the trigger, and intend to kill or harm someone, but my target ducks and the bullet sails off and hits someone who I didn't even know was there, behind the bush, I can be prosecuted for what I did to the man behind the bush, even though I never intended to harm him--transferred intent.

SENATOR BEUTLER: But that is an act of recklessness towards that third person, isn't it, not an attack...not really an act of intentionality?

SENATOR FOLEY: No, because I had intent, I had intent to do damage or kill a particular person, and the intent is transferred to the ultimate victim.

SENATOR BEUTLER: If you do not know of the pregnancy and there's no way of your knowing, how do you know that your intentional act may cause harm to another?

SENATOR FOLEY: If I understand your question, Senator, I think you're raising the hypothetical of the man who intends to harm a woman, but does not know that she's pregnant, and he commits an act against the woman, she sustains an injury, presumably, and an unborn child that he is not aware of also sustains an injury. He didn't have knowledge of the pregnancy, but he could still be prosecuted if he inflicts serious bodily injury against the child.

SENATOR BEUTLER: So even though he doesn't know of the pregnancy, and therefore cannot have that intent, you're going

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to prosecute him as if he had the same degree of...

SENATOR FOLEY: Under the doctrine of transferred intent, I think a prosecution could be successful in that case.

SENATOR BEUTLER: I guess I'm questioning in what situations you want to use a doctrine of transferred intent, because it's a difficult thing to say that a person who had absolutely no knowledge of something has a transferred intent, and that transferred intent is punished to the same degree as something that is in fact intentional.

PRESIDENT SHEEHY: One minute.

SENATOR BEUTLER: Do you understand where I'm coming from?

SENATOR FOLEY: I think so. (Laugh)

SENATOR BEUTLER: Okay. Well, let me think about that a little bit, too.

SENATOR FOLEY: Sure.

SENATOR BEUTLER: Thank you.

PRESIDENT SHEEHY: Thank you, Senator Beutler. Senator Johnson.

SENATOR JOHNSON: Mr. President, didn't expect to speak so soon. Senator Foley and I have had a pleasant conversation about this the other day, and so on, and I really just kind of wanted to expand on a few of the concerns that we talked about, and maybe a few new ones that I thought up this morning. One of the things, of course, is this; is that when we see the term "unborn child," particularly we grandpas are flush with emotion to protect that unborn child. But as you get away from the time of delivery and retreat back towards conception, to me, it becomes more and more difficult to determine a cause and effect of the actions. And to me, I think that's the thing that bothers me the most. Let me give you a few examples. If you have a 20-year-old female who becomes pregnant, or, let's put it this way, she passes an egg and it becomes fertilized, there's

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something in the neighborhood of a 98 percent chance that she will develop a pregnancy, and from that point on, a high likelihood of having a normal child. On the other hand, if you take a 45-year-old, perhaps the chances of that egg implanting in the uterus goes down to 45 percent. It's in the neighborhood of only half of them will even implant in the uterus and start the pregnancy. So there's those kind of things that are problematic in themselves, but here's a couple of them beyond that. Let's just say that you had a couple where it was an abusive group, and there were beatings that occurred on a regular basis, and you end up with a normal child...or with an abnormal child. Which beating was it that counted for the abnormality that the child developed? And did she get beaten by more than one person? Often, women that are in an abusive relationship will...it will be a multiple relationship where they are beaten by several people. So that's one of the things that bothers me, just like that, is how do you identify the incident that caused the problem? Now, here's another one that I thought of this morning. If you, again, have these beatings that are occurring over months, and the pregnant mother delivers a child that is abnormal, your first thought, again, is, was one of these beatings responsible for that? But during that course, the patient developed measles. Measles are known to cause birth defects. Now, she didn't have her vaccination against measles because she belonged to a religious faith that said that you shouldn't have them.

PRESIDENT SHEEHY: One minute.

SENATOR JOHNSON: So in this case, would the pastor of the church that she went to be the causative action of her not having the shot, getting measles, and developing the abnormality? We then can get into all kinds of other things, when you...and what some people would call abnormal asexual relationships. You have the problem of bondage, sadomasochism, and all of those things. And again, whereas these acts are consensual, certainly incidents could occur where, again, you could have some of these problems evolve. But when, where, how about if it's with multiple partners, and so on? So those are some of the kind of questions that come to me, that bother me from a cause and effect standpoint. Thank you.

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PRESIDENT SHEEHY: Thank you, Senator Johnson. Senator Baker.

SENATOR BAKER: Thank you, Mr. Lieutenant Governor. I would yield my time to Senator Foley.

PRESIDENT SHEEHY: Senator Foley.

SENATOR FOLEY: Thank you, Senator Baker, for the time. Senator Johnson, when you were speaking I was interrupted in conferring with someone, so I didn't hear every word of what you said. I tried to. But let me just answer you in this way. You talked about the hypothetical, the woman who may have undergone multiple beatings, and now you've got a child who's injured and, okay, who's the bad guy? That may very well be a case where a prosecutor says, you know, I don't know who did it. I don't know which one of the bad guys, potential bad guys, did it, so I'm not going to take that case to trial. There's prosecutorial discretion in every criminal matter. And as I said earlier, prosecutors like to win, and they like to take their best cases to trial. Senator Beutler raised this question earlier that we talked about on the transferred intent. We've had that case already in Nebraska. That was the case of Destiny Davis. The...I'm looking...oh, Floyd, I guess, this gentleman, Floyd, was shooting at his girl...yeah, William Floyd. Here it is. William Floyd is guilty of first-degree murder and manslaughter of an unborn child and possession of a firearm. What did he do? Well, William Floyd Jr. was shooting a gun at his girlfriend. He missed and he hit Destiny Davis, killed her, and killed the unborn child. William Floyd didn't know that Destiny Davis there, and he didn't know she was pregnant. He killed both of them, and we have a successful prosecution in Nebraska. This state was also...this question you're raising was also addressed in a court decision out of Minnesota, 1990, State v. Merrill, where the court held that the possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude. And I think that also speaks to the issue that you're raising, Senator Beutler. And it's a good question, it's a fair question, but I think it's adequately addressed in the way the criminal law is applied today. Thank you.

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PRESIDENT SHEEHY: Thank you, Senator Foley. Further discussion on FA199? Seeing none, Senator Chambers, you're recognized to close.

SENATOR CHAMBERS: Thank you, Mr. President. As with NRA, this train is grinding its way. We're spinning our wheels, we have to run out the clock, and Senator Foley is not going to prevail. Even if he, as was the case with Senator...I don't know whether to call her "Annie Oakley," "Belle Starr," "Calamity Jane," or Jeanne. But that's the...if I say "ABC" when I speak to her, that's what they're referring to--Annie, Belle, or Calamity. And she'll know, because we have our own communication system. If he would happen to get a cloture vote, his bill is not going anywhere. And there are lobbyists who are starting to get a little concerned now about the path the Legislature is going, and some senators are getting a little concerned, too, because they fell into that situation that they tell young people don't do. Don't do something tonight in a flood of emotion, then regret in the morning what you did last night. These grown people around here don't have that excuse. That's why they're not entitled to mercy; they're entitled to Atropos, "Atroposology." But when Senator Foley mentioned that his bill does not conflict with Roe v. Wade, he brought Roe v. Wade into the discussion, and then I asked some questions so people would know what that case dealt with and who the drafter of the opinion was. I haven't said this bill contradicts Roe v. Wade. I have said that it's a part of a Catholic scheme to separate the woman from the fetus, give the fetus separate, independent personhood, and elevate that above the woman when it comes to value. You don't see him talking about, make sure these pregnant women have enough clothes to wear, enough food to eat. But that fetus, that's what they talk about. He said something that was very peculiar. He correctly stated, I'm paraphrasing what he said, that I, meaning Chambers, very strongly favor a woman's right to choose. And that's true, I do. I do. He said there should be as much protection of a woman's right to have a child if she wants to carry the pregnancy to term. There is nothing in the law that compels a woman to have an abortion. I would oppose any attempt by the state to compel a woman to have an abortion, so that is a red herring. If she wants to carry a

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pregnancy to term, she can do so. The state does not compel anybody to have an abortion. There was something else that...oh, Senator Foley mentioned that there might be a situation arising under the circumstances laid out in the hypothetical of Senator Johnson where a prosecutor would simply refuse to prosecute because a determination could not be made which of several malefactors may have produced the injury that would be the cause of a criminal charge, if one was to be lodged. And then he talked about prosecutorial discretion. Up to that point, he is correct. But a prosecutor should not be in a position of saying, I cannot and will not prosecute because the law, as written, makes it impossible; I can't prosecute somebody for damaging something that is not even visible to the naked eye; I will not prosecute somebody for causing bodily harm...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...where there is no body; I will not do that. And that is not prosecutorial discretion in the ordinary sense of the term. That's talking about prosecutorial impossibility. But because they think in fuzzy terms and are willing to accept anything that they see written in some other state, their analytical faculties, which they do have, are not called into play. They do not examine the impact in the real world of the words they want to put into the statute books and create a criminal offense. The criminal law should be drafted with more care than any other law, because it invokes the coercive, and in some cases the violent, power of the state against an individual for engaging in conduct which the Legislature said shall not be engaged in without consequence.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: You've heard the closing on FA199 to LB 57 by Senator Chambers. The question before the body is, shall that amendment be adopted? All in favor vote aye; all those opposed

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vote nay. The question before the body is the Chambers amendment, FA199. Been a request for a call of the house. All in favor of the house going under call vote aye; all those opposed vote nay. Record please, Mr. Clerk.

CLERK: 12 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. The house is under call. All unexcused senators please report to the Chamber and record your presence. Senator Cunningham, Senator Pahls, Senator Hudkins. Senators Heidemann, Stuhr, Landis, Burling. Senators Kruse, Thompson, and Bourne. The house is under call. Senator Heidemann, Senator Stuhr, and Senator Bourne. Senator Stuhr. All members are present or accounted for. Mr. Clerk. Mr. Clerk, please call the roll on the question.

CLERK: (Roll call vote taken, Legislative Journal pages 335-336.) 1 aye, 14 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The amendment was not adopted, and I do raise the call. Mr. Clerk, please.

CLERK: Mr. President, Senator Chambers would move to reconsider the vote just taken.

SENATOR CUDABACK: Senator Chambers, you're recognized to open on your motion to reconsider.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm drawing great encouragement from these votes. Yesterday, when the body erroneously voted against my amendment that said the bill would not come into effect unless the fetus had developed to the point of having arms, legs, and so forth, there were 22 no votes. When we brought it up for reconsideration today, there were 16 no votes. This last vote tallied 14 no votes. I'm making inroads. But I think not only are my colleagues growing physically weary, some are growing

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weary of this kind of legislation. What will the next one be? The anti-choice people are running out of options. They need something somehow related to abortion so that they can keep their organizations intact, continue to raise funds, continue to raise the specter of division. There are some people who call themselves pro-life who have been picketing funerals, and saying that some of these servicemen were killed because abortion is allowed in this country. Pat Robertson, that theological giant, said that when those airplanes flew into the Twin Towers, one of the reasons was because there's abortion. That's the kind of people that Senator Foley is in league with. They do have indeed a wide tent, not a circus tent, a carnival tent, and inside is a freak show, every variety is there, nut cakes. But they're all in it together and they love each other, because they have in common this: That fetus is more important than the woman; and women, in general, in this society, are hated and are invisible. The term "glass ceiling" has application to white women. Why should there be such shock and amazement for a woman to get any position in this country, when women comprise a majority of the population? Why should it be a surprise that a member of the majority heads a company? Why should it be a surprise that a member of the majority would be President? They've got a program on television, which I have not seen, which portrays a woman as the President of the United States. That should not be remarkable, even if it happened in real life. But people know it is well-nigh impossible. When you see men pushing legislation related to women, it is always of a restrictive variety. Even when it has the appearance of being for the benefit of women, it's for the purpose of putting her in a position to service men even more by producing babies, being baby machines. But to talk about a type of education, counseling is what I think women in this country need, not only counseling, but therapy, to break out of that mental prison, to break those emotional shackles which make them indeed feel inferior to men, and they do. The louder they declaim against it, the more they establish it, because you can look at the manner in which they express it. You can look at the way they dress. They're going to dress the way a man tells them they must dress. Some of the top designers of women's clothing are men. And when you look at what women wear, these men hate women. They wear things that hurt. They might take off all

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those stays and straps, and uplift this, and pooch in that, and punch out the other. They look like they were in a fight where the other person had a bullwhip and all they had to offer was their body--welts, scars everywhere. Why do you think men build those shoes with those high heels? They have a bet going on how foolish women will be in terms of wearing a shoe with the heel so high they can scarcely balance on it, and even if they do, that weight pushes forward on their toes, squelches them up, shortens the muscles in their calves, puts improper curvature in their spine, and they do this to impress those who hate them, and feel like they are triumphing every time a woman walks down the street looking like a misfit of nature, thinking she's looking good, when men are dominating them again. Look how nature creates the human form, and practically every article of clothing that men design for women, and that female designers design for women who are under the control of men, will put out there. They don't enhance a woman's health. Women consent to allowing their bodies to be parsed. "Boobs" they call them. I didn't even know what those were; show how naive I am. They put silicone implants in so they have big breasts, apparently big breasts. They go to Victoria's Secret, which is not a secret to anybody anymore. Not only do some of them have operations to put more fat in their rump to make it stick out, but they can buy garments that will artificially create that impression. They will build trousers with seams so that when a woman puts them on and pulls the britches up to her waist, well, it will uplift and pooch out their gluteus muscles. Why? For men. And look at me. I can wear a sweatshirt. I can wear jeans. I wear walking boots all the time. You all can't do that. Even the men are trapped, to some extent, when it comes to that. Have you ever seen anything more useless or funny looking than a necktie? Looks preposterous, but they all wear them. And somebody who's going to wear a necktie is going to dictate your life to you? That should be enough for you to turn against everything they bring to you. Wearing a necktie, pshaw. That's spelled p-s-h-a-w, for the sake of the transcribers. All we're doing, remember, is burning the clock, and I will burn it in the way that I choose. But the reason I'm using this approach is to show how this kind of legislation has not any focus on the woman, no focus on the woman. Senator Foley's fetal homicide bill had no focus on the woman. If you had a bill like that,

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the argument that I gave last year, and I believe it to this day, any crime committed against a woman, and the perpetrator knows that she is pregnant, the harm to the fetus should be an aggravation of the crime committed against the woman, not a separate crime committed against a fetus, which is not a person, which is not a human being, which is a potential human being. The reason some abortion bills will say "viable fetus" is because they're pointing to a time in the development where the fetus can exist independently of the woman, outside of the woman's body. So even they recognize different stages of development.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: These types of bills are designed to give the fetus an independent, separate existence. Senator Foley mentions that certain types of criminals should be locked up, and we agree with that, and there are laws that will do that. But that doesn't have anything to do with this kind of language and the kind of standards, if you want to call them that, which this bill attempts to put into the law. My motion up there is to reconsider that last...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you. You've heard the opening on the motion to reconsider. Open for discussion of that motion. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. Senator Chambers gets very queasy, very uncomfortable when I write legislation or I speak of the unborn child as a person separate and distinct from the mother of that child. Tosses all that aside and says, well, that's your Catholic background, that's all you've got. He shakes his head yes. (Laugh) No, Senator Chambers, that's where medical science is taking us. That's what the best and the brightest medical scientists are doing today. Here's the cover story of Newsweek magazine. I don't think this is a Catholic document, Newsweek magazine, June 9, 2003. Fascinating

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story, and I may share this with you, Senator Johnson. As a retired surgeon, I think you'd be fascinated by this. If you'd care to, I'll be delighted to get you a copy of this article, and the incredible photography. And the title of the article, page 48 of that issue: Treating the tiniest patients. Dramatic advances in fetal medicine, especially in utero surgery, have changed what we know and how we think about the unborn. And the article goes on at some considerable length, citing particular examples of how this...an area of specialization at Vanderbilt University is now developed where they're treating the unborn child in very complex surgeries in utero. And I'm sure...Senator Johnson, I'm sure you're aware that this is happening, because I'm sure you keep up with the field. Very complex surgeries, where anesthesia is applied both to the mother and separately to the unborn child, and surgical procedures are performed on the child, the child is sewn back up, if I can use that term, and later born healthy. That's tremendous. We all should rejoice in that kind of advance in medical science. Texas Children's Hospital, they have something called the Texas Center for Fetal Surgery, and they have a long list of some of the medical difficulties that they can now deal with in utero on unborn children. It's incredible. Here's an article from the...from Brown University, one of the Ivy League schools, and it's called the George Street Journal, all about how medical teams are now performing in utero surgeries. That's where medical science is taking us. We're thinking of and we're treating the unborn child separate and distinct from the mother. We're recognizing that there's two lives at stake, not just one. That's modern medicine, Senator Chambers, not Catholic dogma. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Mr. Clerk, items for the record, or messages, or announcements?

CLERK: Mr. President, new bills. (Read LB 1097-1106 by title for the first time.) New resolutions, Mr. President: LR 270 by Senator Price, and LR 271 by Senator Price; both those will be laid over. Senator Thompson would like to add her name to LB 915 as a cointroducer. (Legislative Journal pages 336-339.)

And I have a priority motion, Mr. President. Senator Don

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Pederson would move to adjourn until Tuesday, January 17, at 10:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn until Tuesday, January 17, 10:00 a.m. All in favor say aye. Opposed, nay. We are adjourned. Members, have a nice weekend. (Gavel)

Proofed by: JAH