NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 2, 1999

11:07 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate is called to order.

I ask everyone present to please rise and join with me in reciting the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

THE PRESIDENT: In the absence of clergy, may we bow our heads in a moment of silence, please.

(Whereupon, the assemblage respected a moment of silence.)

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 1st, the Senate met pursuant to adjournment. The Journal of Friday, January 29th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Marchi, from the Committee on Corporations, Authorities and Commissions, reports:

Senate Prints 774, by Senator Stafford, an act to amend the Public Authorities Law;

1081, by Senator Holland, an act to amend the Not-For-Profit Corporation Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Prints 89, by Senator Alesi, an act to amend the Highway Law;

558, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

975, by Senator Skelos, an act to amend the Vehicle and Traffic Law;

1060, by Senator Padavan, an act to amend the Vehicle and Traffic Law;

1083, by Senator Holland, an act to amend the Vehicle and Traffic Law;

1102, by Senator Goodman, an act to amend the Transportation Law.

Senator Spano, from the Committee on Labor, reports:

Senate Prints 830, by Senator Marcellino, an act to amend the Labor Law;

1370, with amendments, by Senator Spano, an act to amend the Labor Law;

1372, by Senator Spano, an act to amend the Labor Law.

All bills directly for third reading.

THE PRESIDENT: Without objection, all bills ordered direct to third reading.

Reports of select committees.

Communications and reports from State officers.

Motions and resolutions.

SENATOR SKELOS: Madam President, I don't believe there are any motions, so at this time may we please adopt the Resolution Calendar in its entirety?

THE PRESIDENT: All in favor of adopting the Resolution Calendar, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Recognize Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the non-controversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 14, by Senator DeFrancisco, Senate Print 539, an act to amend the Criminal Procedure Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 17, by Senator Maziarz, Senate Print 652, an act to amend the Criminal Procedure Law.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 23, by Senator DeFrancisco, Senate Print 538, an act to amend the Penal Law in relation to the payment.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 54, by Senator Seward, Senate Print 1365, an act to amend the Insurance Law and the Banking Law.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: Is that temporarily or for the day, Senator?

SENATOR DOLLINGER: Temporarily.

THE PRESIDENT: Senator Seward.

The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 74, by Senator Hannon, Senate Print 813, an act to amend the Criminal Procedure Law in relation to imposing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6, this act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38. Nays 1.

Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 78, by Senator Skelos, Senate Print 1017, an act to amend the Criminal Procedure Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38. Nays 1.

Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 79, by Senator Goodman, Senate Print 1122, an act to amend the Penal Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 80 -

SENATOR WALDON: Lay it aside.

THE SECRETARY: -- by Senator Balboni, Senate Print 1241, an act to amend the Criminal Procedure Law.

SENATOR WALDON: Lay it aside.

THE PRESIDENT: Is that

temporarily or just for the day?

SENATOR WALDON: Temporarily.

THE PRESIDENT: Temporarily. The bill is laid aside temporarily.

That completes the reading of the non-controversial calendar.

SENATOR SKELOS: Madam President, if we could take up the controversial calendar at this time?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 17, by Senator Maziarz, Senate Print 652, an act to amend the Criminal Procedure Law.

THE PRESIDENT: Senator Maziarz, an explanation has been requested.

SENATOR MAZIARZ: Lay it aside temporarily.

THE PRESIDENT: The bill will be laid aside temporarily, Senator.

THE SECRETARY: Calendar Number 54, by Senator Seward, Senate Print 1365, an act to amend the Insurance Law and the Banking Law.

SENATOR DOLLINGER: Explanation,

Madam President.

THE PRESIDENT: Senator Seward, an explanation has been requested.

SENATOR SEWARD: Certainly, Madam President.

This legislation before us would amend Article 16 of the Insurance Law to delete the State law prohibition on property and casualty insurers from owning bank securities and banking-related entities and to provide the explicit permission for the banks and trust companies to, on the flip side, invest in subsidiary corporations whose activities do include acting as underwriter, agent or broker with respect to any kind of insurance.

Now, the reason for this legislation, Madam President, is, that just in December of last year, this House joined with the Assembly in passing legislation which removed the restrictions on the ownership of domestic life insurers of banks and banking-related institutions. And so in the interest of parody and fairness, this bill would remove the similar restrictions with

respect to the property and casualty insurance companies.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Senator Dollinger. Why do you rise, Senator?

SENATOR DOLLINGER: Will the sponsor yield just to a question?

THE PRESIDENT: Senator Seward, will you yield?

SENATOR SEWARD: Yes, certainly.

THE PRESIDENT: On the bill, Senator Dollinger.

SENATOR DOLLINGER: Senator, the -- this will allow the banks to be engaged as underwriters, agents or brokers with respect to any kind of insurance?

SENATOR SEWARD: With respect to that piece, Senator, this bill, standing alone, will not do that. It -- that piece of the legislation merely gets New York State ready for and in a position to respond to pending federal legislation, so-called HR10. So this bill alone will not allow them to do that, but it gets the State poised and ready

for the federal legislation, should it pass.

SENATOR DOLLINGER: Again, through you, Madam President. So do I understand correctly then that this is really a piece of legislation that is a preface to changes at the federal level, when those changes occur, that they will be able to do - we will, in essence, have cleared the way for those changes, those federal changes to occur at the state level as well. Is that correct?

SENATOR SEWARD: Well phrased, Senator Dollinger.

SENATOR DOLLINGER: Again, through you, Madam President, one final question. Wouldn't it be more prudent to wait until we see whether the or what the exact context of the federal legislation is before we sort of, so to speak, clear the decks here in New York to allow this to happen?

Why wouldn't we wait until the federal legislation comes down and then take our law and modify it to meet the exact wording of the federal statute?

SENATOR SEWARD: Well, Madam President, my view here is that we're talking

about a matter of parody that, with the legislation that was enacted in December, and I believe it passed unanimously in this House, allowing the life insurers to purchase bank securities, that the flip side should be to prepare New York State Law for the banks to also purchase entities that are involved in the insurance business and so -- also, of course, looking at, along the lines of parody, of course, the property and casualty companies being involved as well.

This -- what I see this legislation doing in respect to the banks is just preparing New York State. Why delay this matter of parody that I've talked about, should the federal legislation move forward? This doesn't get involved with the details of exactly how that will work. That's obviously something that will be dictated by the federal legislation and, of course, other New York State statutes and regulations.

THE PRESIDENT: Thank you, Senator.

SENATOR SKELOS: Madam President, if I could interrupt for a moment.

There will be an immediate meeting of the Children and Families Committee in Room 123 of the Capitol.

THE PRESIDENT: All right. There will be an immediate meeting of the Children and Families Committee in Room 123 of the Capital.

Senator Dollinger.

SENATOR DOLLINGER: One final question for the sponsor, Madam President, through you.

THE PRESIDENT: Thank you.

SENATOR DOLLINGER: Does this bill in any way affect the merger of Travelers Insurance Company and City Bank Corporation.

SENATOR SEWARD: No, it does not. That's not the intent of the legislation.

SENATOR DOLLINGER: Okay. Thank you, Madam President.

THE PRESIDENT: Thank you, Senator.

Read the last section.

THE SECRETARY: Section 5, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47. Nays 1.

Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 79, by Senator Goodman, Senate Print 1122, an act to amend the Penal Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

Senator Duane, why do you rise?

SENATOR DUANE: Madam President, I rise to explain my vote. I'm voting no because I believe that this would be better undertaken as part of an ominous bill dealing with issues of sexual assault.

THE PRESIDENT: The bill is

passed.

Thank.

THE SECRETARY: Calendar Number 80, by Senator Balboni, Senate Print 1241, an act to amend the Criminal Procedure Law in relation to authorizing.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, on Calendar Number 79 -

THE PRESIDENT: Why do you rise, Senator?

SENATOR PATERSON: I'm just trying to make sure that on Calendar Number 79 that the vote is now 47 to 1, with Senator Duane recording in the negative.

THE PRESIDENT: It does, Senator.

SENATOR PATERSON: Thank you.

SENATOR CONNOR: Explanation.

THE PRESIDENT: Senator Balboni, an explanation has been requested, sir.

SENATOR BALBONI: Yes, Madam President.

Thank you.

THE PRESIDENT: You're welcome.

SENATOR BALBONI: The bill before

us would create the crime of stalking. It would create three different degrees and it would amend the Penal Law. The initial degree would be stalking in the third degree and would set up the acts rule -- acts which would be prohibited under the law. And those acts are divided up into two parts.

The first is the unwanted and with intent to cause harassment or alarm or annoyance, the following of an individual repeatedly, meaning more than once. That is the first element of stalking. Or the individual commits a series of acts, which, by themselves, are intended to provide a reasonable person with fear for either their safety or their life. And those are simplistic discussions of the two actus rates, as it were, for the crime of stalking.

In addition, which then we set up enhancers. And they then raise -- and the stalking in the third degree is an A misdemeanor. Stalking in the second degree, specifically, now uses enhancers of -- let me get to the specifics -- if the person's -- if they have been convicted of a prior offense of

stalking or against another family member and the preceding 10 years, then it goes to a class E felony, or if they violate a duly ordered order of protection or if in the course of committing the stalking they display a firearm or a weapon or if they commit the crime of stalking against an individual who is under 17 years of age. Stalking in the first degree is a class D felony, and this would also be a previous conviction, but of a felony stalking offense, in the preceding 10 years and if in the course of committing a stalking offense the individual recklessly and intentionally causes physical injury or serious physical injury or death to the individual.

In addition to which the bill allows for eavesdropping and video surveillance techniques by law enforcement under the Criminal Procedure Law in an effort to assist the criminal justice agencies to prosecute stalking.

Why this bill? Why now? Last June, the Center for Disease Control and the Center for Victims Rights came out with a

traumatic study, indicated that over a million people have been stalked in the United States.

Stalking is not a crime you talk about. I am sure that any of my colleagues in this chamber, if you were to talk to members of your staff, members of your family, you would be astounded, as I have been, with the number of people in our own circles who have been stalked but who never talk about it. Stalking is terrorism on a personal basis. It is the invasion of every aspect of your life. And what makes it so difficult is you don't know -- there's no bright line as to what constitutes stalking under our current law, so you don't know if it really constitutes menacing or harassment. And that's why this law is so overdue and so needed in the State of New York.

California introduced their first statute in 1990 and we have taken certain steps with the creation of our harassment and menacing statutes, but it has been a gap. We need to fill that gap. That's what this bill does.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator.

SENATOR WALDON: Madam President.

THE PRESIDENT: Senator Waldon.

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

THE PRESIDENT: Senator Balboni, will you yield, please?

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: All right. Go ahead, Senator Waldon.

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

Let me preface my question with some remarks. Recently, in the press and elsewhere in the media, we've heard of some controversy, at least I have, in regard to the clinic access bill proposal and your proposal for stalking. I personally do not believe that they are contraindicated. I believe that both will do the job that's necessary for the particular class of people affected.

I would like to ask you, do you see a contraindication between your proposal and

the proposed clinic access bill, if you've had the liberty of reviewing that?

SENATOR BALBONI: Senator, if you are saying that the two are mutually exclusive, I do not believe they are mutually exclusive.

SENATOR WALDON: Thank you very much.

Madam President, would the gentleman yield again?

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yep. Yes, Madam President.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you, Madam President.

Senator, do you see that this expands the menacing statutes which we have now and the harassment statutes we have now to specifically cover them under the penumbras zone -- under the heading of stalking, so we no longer need, necessarily, for someone who is stalked or the stalker, menacing and harassment, we can deal with them only under

the stalking statute as you propose it to be?

SENATOR BALBONI: Actually, Senator Waldon, the proposal before us now makes amendments to the existing harassment and menacing statutes, so as to coordinate the ability of law enforcement to prosecute under any one of those.

SENATOR WALDON: Would the gentleman yield to perhaps just one or two more questions, Madam President?

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: I continue to yield.

THE PRESIDENT: Go ahead -

SENATOR WALDON: Thank you, Madam President.

THE PRESIDENT: -- Senator Waldon.

SENATOR WALDON: Thank you, Senator.

Senator, most recently a heinous crime was committed in Upstate New York, the taking of a life, someone who worked on behalf of those people who had clinics or who

attended clinics in order to access those clinics for abortions and other kinds of medical therapies.

Do you think, had we had this proposal that you're giving us today on the books of the State of New York, that that could have prevented the murder of Dr. Slepian?

SENATOR BALBONI: Senator, I apologize. I'm at a loss, because I don't know -- you're giving me a broad set of circumstances. I'm not sure of the specifics.

SENATOR WALDON: Let me rephrase it.

SENATOR BALBONI: As you know, criminal justice is always applied on a case-by-case scenario and that is the nature of our justice system. So without further information, I would not be able to answer that question.

SENATOR WALDON: Madam President, would the gentleman permit to clean up my act and rephrase the question?

THE PRESIDENT: Senator Balboni, is that permitted?

SENATOR BALBONI: I always permit that.

SENATOR WALDON: Thank you, Madam President.

THE PRESIDENT: You may, Senator.

SENATOR WALDON: Thank you, Senator.

Senator, if this proposal you're submitting for our consideration today had been law prior to the day that Dr. Slepian was killed, do you think it would have had any salutary effect, it could have prevented the killing of Dr. Slepian?

SENATOR BALBONI: I, unfortunately, do not know the specifics as to the current situation in the Dr. Slepian case. I know of the tragedy. I know of the loss of life. I realize that the acts of violence took place at his home and not at a healthcare facility. However, I do not know what the criminal justice agency has in the way of evidence. I understand, only through rumor and speculation that, in fact, the doctor was stalked. Given that set of circumstances and this is a stalking bill, I believe that this

bill would, in fact, have provided a better mechanism by which that situation could have been addressed.

SENATOR WALDON: Madam President, thank you very much. Thank you, Senator.

THE PRESIDENT: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield to a couple questions?

And I guess I'll preface my comments by saying -

THE PRESIDENT: All right. First of all, Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: I'll preface my comments by saying, Madam President, that I think this is a bill that has, we recognize, a tremendous problem in this state. Senator Balboni's absolutely correct. The Board for the Center for Disease Control showed that there were more a million people that were being stalked in this country. You can't open

a magazine now and read about a sports hero or a movie entertainer that hasn't been stalked, that hasn't been a victim of this kind of behavior. So I think that we, on this side of the aisle, recognize that Senator Balboni's legislation is attacking a part of a problem, a very serious problem.

And I would just add that, Senator Balboni, one thing I think you might have left out, is I think that same report shows that about 80 percent of the people who are actually stalked are females, they're women. This is a problem that most often confronts women. And I think it's something that we need, as Senator Balboni says, to take very seriously, but I also think we have to make sure that, when we pass this bill, we're attacking the exact nature of the problem and we're using our Penal Law to properly define the conduct that we're seeking to prohibit and seeking to punish.

With that in mind, Senator Balboni, let me just ask you a couple questions about the section that deals with stalking in the third degree.

As I understand it, the statute says, and I call your attention, it's on page 3, line 13 through 15. It says, "With intent to harass, annoy or alarm." The intent that you're referring to there is on the part of the person who is, who is engaging in that conduct. Is that correct?

SENATOR BALBONI: That's correct.

SENATOR DOLLINGER: So we're using, in this statute, we're using the subjective intent of the perpetrator as an ingredient of the crime. Is that correct?

SENATOR BALBONI: That is correct.

SENATOR DOLLINGER: And again through you, Madam President, if Senator Balboni will continue to yield.

SENATOR BALBONI: I continue to yield.

THE PRESIDENT: Senator continues to yield.

SENATOR DOLLINGER: So what we've established is that there is some conduct with intention on the part of the perpetrator is an ingredient in the conduct.

Senator Balboni, will you acknowledge that the proof beyond a reasonable doubt of that intention may be very difficult to achieve?

SENATOR BALBONI: Senator, I hope that we can characterize our discussion in something other than what is currently existing law. As you know, the mens rea requirement by criminal justice statutes is a necessary requirement under the Constitution, and this is nothing or no more difficult than the prosecution of any case in which intent is a required element of the conduct.

SENATOR DOLLINGER: Again through you, Madam President, if Senator Balboni will continue to yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: Senator Balboni, do you continue to yield?

SENATOR DOLLINGER: Suppose the following facts occur, that someone is attempting to enter a healthcare facility and someone doesn't bar their way but simply shouts over their shoulder in epithets, comments, encourages them to exercise their

civil rights in a particular fashion and they testify at trial, when they're brought to trial on the stalking issue, they say, "I wasn't intending to annoy, harass or alarm them. I simply was intending to tell them what their Constitutional rights were or what my opinion was of their exercise of their Constitutional rights." My question is, if that case is brought, does that violate this stalking statute?

SENATOR BALBONI: No, it doesn't. And since this is not cross-examination, I'll be free to explain my answer.

SENATOR DOLLINGER: I do appreciate it.

SENATOR BALBONI: Though it is taking on that tone; isn't it, Richard?

The discussion would have to relate to all the elements of the bill. And in the scenario that you just laid out, there was a couple of missing elements under the statute. The first is repeatedly.

Remember what the nature of stalking is.

SENATOR DOLLINGER: We'll get to

repeatedly in a second.

SENATOR BALBONI: But you were not clear. You did not include that this was repeatedly done over time. And, in addition, to which this is the type of issue, situation that is more clearly defined. I mean, instead of taking somebody that's standing outside of a healthcare facility, how about a woman who's at work and then is followed repeatedly at home, or someone who is sent dead roses over a period of time, or perhaps what's happening in Cattaraugus County right now. That's not, that's not a hypothetical. How about we take a real life case and why don't we talk about what's happening in Cattaraugus right now, where there is a man on trial who has been alleged to have read through the papers for a series of years and has taken clips -- how terrifying is this for all us public officials? -- taking clips of individuals, all women, cut them out of the newspapers, found out where they lived and he had 45 on his hit list, contacted 28 of them and he would have three conversations with them. The first conversation was, "I'm going to stick

you with a knife in your stomach." Click. Hang up. Day later, "Do you know that can killed by a knife is the worst and most painful way to die?" Click. Third, "You have 48 hours before I do this to you." This is not a hypothetical. This is not something that we've dreamed up. This is real life and it's happening right now in Cattaraugus County.

Richard, I think that that is the kind of situation that more clearly defines not only the example of stalking, but it's need right now in this state.

SENATOR DOLLINGER: Again through you, Madam President, if Senator Balboni will yield to a couple -- to a question?

THE PRESIDENT: Senator, do you continue to yield?

SENATOR BALBONI: Yes, Madam President.

SENATOR DOLLINGER: I couldn't agree with you more, Senator Balboni, that that example that you made is not only real and is not only a violation of law. My question is: Why do you use a subjective

standard on the part of the perpetrator to define an element of this crime, when what we should do is use an objective test of the conduct that it annoys, harasses or alarms as the standard, so the jury would never be faced with the question of you must resolve beyond a reasonable doubt that the subjective intention on the part of the perpetrator, and instead use an objective standard that would say if the effect of this conduct is to create in the mind of the victim that they were annoyed, harassed or alarmed, then it could be proved by the testimony of the victim and the subjective viewpoint of the perpetrator would not be pertinent to the case?

Wouldn't it be more effective to say to the women of this nation, of this state or the victims that you make reference to in Cattaraugus County, wouldn't it be better to say to them, "Wait a second, we don't have to prove the intention on the part of the perpetrator who may walk in and say, 'Well I thought I was doing something I was constitutionally permitted to do. I thought I was doing something that was expressing my

political opinion'?

Why don't we set up an objective test in the statute that says, if the effect of the conduct is to create in the mind of the victim the notion that they are being annoyed, harassed or alarmed, then they are guilty of stalking regardless of what their subjective opinion or viewpoint may be?

SENATOR BALBONI: To respond to the gentleman's question, Madam President, I would have three points. The first is, we do include that type of test, and that is in paragraph number 2 of Section 120.45. That is the element of the other, the alternative portion of the initial stalking definition, which specifically says, "Intentionally stalking. The crime of stalking is intentionally or repeatedly committing acts over a period of time which are likely to place such person in reasonable fear of physical injury, serious physical injury, sexual assault or death." So the prosecutor would be able to choose which section they could pursue and prosecute under. That's my first comment.

The second comment is, this intent inquiry is no more difficult than the jury's analysis of whether or not somebody intended to kill another individual as opposed to merely cause their death recklessly. And, as you know, that is the difference between murder in the first degree and manslaughter.

And in the third aspect of it is, you're saying in the one hand, trying to prove in the intent of the perpetrator is subjective, but yet, and yet you're saying that the reasonableness of the victim is also not subjective. I submit to you they're both subjective. And that is the nature of this crime.

See, this is what's been so daunting over the years. And I would refer to you two articles that have specifically criticized not putting in the intent language. The first is a St. John's Law Review, Volume 67, begins on page 347, it's entitled "Stopping Stalkers. A Critical Examination of Anti-Stalking Statutes." And in addition to which I would refer you to a Northwestern University Law Review that is entitled, "Are

Stalking Laws Unconstitutionally Vague or Over Broad?" And that's 88 Northwestern Law Review 769.

Both articles specifically refer to the need to include an intent element on behalf of not only the perpetrator but also the victim so that you can give law enforcement an ability to point to not only the objective facts but also the subjective. And, as you know, these things can be manifested very clearly. In other words, a letter that's being sent to somebody, "I want to kill you." You know, under law right now, one letter such as that, it's not clear. Suppose they didn't use the word kill. Suppose they -- "I want to love you to death"? Or, in this case, there's been a case in the City of New York where nurses were followed and they were said, "I want to perform surgery on you." You know, these types of actions, that can be gleaned and be given to a jury as evidence of intent to stalk. And I think that that's -- this statute has been very carefully crafted. And at this point, it's not just me, it's Dale Volker. Dale Volker has been doing

a tremendous amount of work on this for years. And I don't think there's anybody else in the state who's got a better reputation in criminal justice law than Dale Volker. So this has been something that he and his staff have taken an enormous amount of time and energy. And, frankly, we have looked at all of the case law from across the nation, and this is the best crafted statute we could bring up.

SENATOR DOLLINGER: Mr. President -

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: -- Senator Balboni any I may not agree about parts of the statute. We do agree about the comments with respect to Senator Volker.

I have one other question, Mr. President.

ACTING PRESIDENT KUHL: Senator Balboni, do you yield to a question from Senator Balboni?

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR DOLLINGER: Stalking is an enormous problem. We agree on that. We disagree about whether the, at least, in the third degree this statute attends to it, and I'll address that in my remarks on the bill.

If you wanted to solve the problem of stalking and if you wanted to empower people who feel they are victims of the stalking, why not give them access to the civil justice system and allow the to bring a civil action on their own against their stalker to obtain not only a order of protection but a preliminary injunction, a temporary restraining order, damages for contempt of court? If we want to solve the problem, wouldn't it be even easier to use the civil justice system with its reduced burden of proof, simply beyond a reasonable doubt to empower women across this state to go to the civil court system and get the relief that they seek?

SENATOR BALBONI: Senator Dollinger, that request for civil relief has not been asked for by the D.A.'s Association,

by the victims groups, by law enforcement groups.

It seems that a lot of stalkers are judgment proof, a lot of stalkers don't have money. And what the system is relying on, as it does with most criminal justice statutes, is a victim's compensation statute.

And let me point out an irony. Do you know last year this body passed and the Governor signed a law which provides for victims compensation based upon victims of stalking?

We have it in place. We don't have the law. It's high time we do it.

SENATOR DOLLINGER: Thank you, Mr. President. Before I yield the floor to other of my colleagues, I would just point out to Senator Balboni that the suggestion that we use the civil tort system as a way to provide remedies against stalkers is something that we've already marched partly down the road to do. I point out to Senator Balboni today, today we passed a bill that expanded the scope of those who could bring a civil action to recover a civil enforcement of judgements.

We've expanded the group of people to include district attorneys and others. I would suggest that, if we're seriously interested in resolving the problem of stalking, we should not only look at criminal remedies, but we ought to look at civil remedies as well. They hold the potential to give women or classes of women, whether they're seeking access to whatever they choose, whether it be healthcare or any other exercise of their rights, if those rights are interfered with by people who repeatedly follow them, by people who annoy and harass them or alarm them. If they perceive that that's the goal of the conduct directed against them, they ought to have access to civil remedies.

And I would suggest, Senator Balboni, that if what you're really trying to do is completely attack the problem of stalking, empower the women of this state, 80 percent of the people who are stalked are women, give them a chance to go to a lawyer and say, "You're right." We may not get a civil judgment for damages against our stalker, but we may get a civil remedy, a

temporary restraining order, a preliminary injunction that says if it ever happens again they will be arrested and held in contempt of court. The fact that there's a lower burden of proof gives more women access to the defense against stalkers.

I would just strongly suggest that this bill, which contains some, in my judgment, some loosely worded provisions that ought to be better defined; nonetheless, does not do the complete job for the women of this state, for the people who are stalked. Let's create a civil remedy. Let's do the whole job. That would be the way to give a clear direction to stalkers, that not only are you going to be put in jail, potentially, but you could also be held in contempt of court and be put in jail through the civil justice system.

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

SENATOR CONNOR: Mr. President, if he could keep Senator Balboni and Senator Dollinger going for another 20 minutes, I think I could get a hour's worth of continuing legal education credit for all the lawyers in

the room. As you know, we have to do that. That's, you know -

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

SENATOR GOODMAN: I'd like to speak on the bill, please.

ACTING PRESIDENT KUHL: Senator Onorato had indicated that he wished to speak before you, sir. So -

SENATOR GOODMAN: Is there a list?

ACTING PRESIDENT KUHL: -- you will be second on the list, Senator.

SENATOR GOODMAN: Second. Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Onorato.

SENATOR ONORATO: Mr. President, would the sponsor yield to a question, please?

SENATOR BALBONI: Yes, Mr. President.

SENATOR ONORATO: Senator Balboni, how will this effect the paparazzi who are continually harassing celebrities and everybody else with their invasion of property

and private lives?

SENATOR BALBONI: This would, in fact, cover them. And oftentimes there has been an irony in some of the national publications that state that, you know, California was the first state to come out with such a law. New York has just as many, arguably, just as many famous people in our state, yet we don't have -- the George Onoratos of the world and we don't have a law to protect them.

But what is important to recognize, that this is not a narrowly drawn bill in terms of the class of people it protects. It protects not only the women of the state, it protects the famous and the rich and the people who are our constituents and the people who don't have a nickle. And that's the benefit of this law. It protects everybody.

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: Mr. President, this matter is one which has come up in various forms in this Legislature for several decades. And let me say that today really is

the opening shot in what I think will be a continuing debate during 1999 with respect to the whole question of what can be done to protect the rights of women who seek abortion services.

I think there's been ample coverage up to this moment of the question of whether the stalking bill provides adequate clinic access protection, and I will touch upon that in just a moment. But before doing so, I'd like to take just a few seconds to discuss a visit that we had in this chamber last week which is one of the most memorable and poignant in my recollection.

There came to our visitors waiting room a lady in a wheelchair and she was in a condition which is indescribable, really, and I won't attempt to spell it out in detail to you. But let me just say in advance she was a bombing victim, a bombing victim in a clinic in Alabama where she was the chief nurse and where a policeman was killed standing next to her. To look at this woman was an almost unbelievable agony just in the beholding of her condition because there she stood with a

one eye having been blinded, one ear having been rendered unusable, her legs were heavily scarred to a degree that is almost indescribable, they were both broken in the blast. In every way she had been maimed and virtually slaughtered while still managing to live and survive the experience. This is a gentle soul, a mother of two kids whose only crime had been to administer services, not just for abortion, but to a women's health clinic for all sorts of gynecological services. Her life had been utterly ripped apart by the explosion of this bomb and she felt strongly enough about the need to protect people against similar fate so that she was taking the personal and painful experience of flying around the country to appear before various legislative bodies to illustrate the extraordinary inhumanity which can be perpetrated one individual to another in this very agonizing battle which seemed never to end.

Mr. President, left me say that there is a misconception which is around in this land at the moment which is that a

stalking bill will protect against clinic access problems. It's been amply spelled out, I think, that the federal law exists. It's not a question whether we need a new law, we have a law that provides comprehensive clinic access. But as the situation, unfortunately, unfolds we find that that law is unenforceable, not because there's any defect in the way it's drafted or any defect in its language, but simply because we do not have the manpower at the state leave to see that the law is enforced.

Now, this is a cruel irony, if you stop to think about it. A law passed at federal level which protects people for specific rights of access to clinics but insufficient numbers of federal marshals and insufficient capacity on the part of local district attorneys to step in and fight the good fight to enforce this law. This is something which, in my mind, is absolutely intolerable because what it does is to make a mockery of the legal system in this country. We pass a law to protect people. It's on the books. It's clear and explicit. And what

happens? The law continues to be broken with impunity and the slaughter of the type that I've just described which is visited upon this tragic figure is something which we are forced to tolerate because the law does not have any teeth in it.

What I think we are seeking today is a law that does have teeth, and I'd like first to complement Senator Balboni, the stalking law, in its own specialized way, accomplishes very good aims and it's a good law and there's no debate about its merits. What there is a debate about, however, is the assertion of certain opponents of clinic access law that stalking puts the whole thing to rest. It does nothing of the kind because the stalking law will not provide the federal marshals we need to protect us, it will not provide the district attorneys, it will not provide the local assistance which is imperative if the lawful is to be observed.

So what alternative does this leave us? Let me share with you a little inside baseball and a little internal strategy in what I envisage is the way in which to solve

this problem. I've been given assurances by the Majority Leader that this matter will come before a conference of the Majority for a full and adequate discussion in the very near future.

The bill that we have before us goes far beyond the federal law. And, in that respect, unfortunately, will not be palatable to this legislative process, even though I would personally vastly prefer it.

What I'm proposing, therefore, is to have a bill, and indeed, my office has drafted a bill identical in every respect to the federal law. It goes no further. It stops at the precise boundaries set by the federal law.

And why does it do that? Because I want to go to the most conservative elements of our process here and say to them, "Look, there's nothing new about this state bill except the capacity to enforce an existing law. We are, in effect, taking the federal law. We're stamping it upon the local situation and we're saying let us use this law as the means to come up with what amounts to a

compromise." We don't seek impair free speech. If someone wants to stand at the entrance to a clinic and urge people not to have abortions, this law will not prevent that. The Supreme Court has made it clear in its recent decision that the free speech elements in this situation can continue and, therefore, we're not going to change that terrain. But what this does do is to assure that we can enforce the existing law and we can actually provide physical protection to those women and those workers who desperately need it.

I'm suggesting, therefore, that we not support this bill at the moment. Even though I vastly prefer to see it enacted, I will not vote for it. I will go with my party in a party vote against it. But I want to let you know that it's my intention to go into the Republican conference to discuss the preparation of a bill absolutely identical to the federal bill and to see if we can't pass it.

But I'll do something more than that. I think it's imperative that we realize

that the blockage to this bill comes from certain forces outside the Senate chamber. It's no secret that the Conservative Party, for example, have serious free speech objections to the Assembly bill. Therefore, I think it's important that we go to the head of that party and that we reason with them and say, "The bill we're seeking to pass does not impair the free speech aspects that concern you." It's important that we go to other people who may have objections to this bill institutionally and point out to them that all we're doing is passing a law that already exists at the federal level.

That's the strategic plan. It's my fond hope that it will work. I share is that with you so that you will understand that that seems to me to be the practical, pragmatic approach to getting a bill passed which will truly protect women like this noble nurse, Mrs. Lyons, who came here to convey the message, she will realize that her effort was not in vein and we will realize that the protection which we so urgently require is something that we can actually provide.

That's what I hope we can do and I urge your support for that element solution.

ACTING PRESIDENT KUHL: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I believe there's an amendment at the desk.

ACTING PRESIDENT KUHL: Senator Schneiderman, if you just give me one moment, please.

Senator Schneiderman, there is an amendment at the desk.

SENATOR SCHNEIDERMAN: I ask that it be read and I would like to offer an explanation of the amendment.

ACTING PRESIDENT KUHL: We'll waive the reading of the amendment, Senator Schneiderman, and afford you an opportunity to explain your amendment at this point.

SENATOR SCHNEIDERMAN: Thank you very much.

This amendment amend Senator Balboni's stalking law by adding the provisions of what is commonly referred to as the Clinic Access Bill, which I believe

Senator Goodman has just averted to in his earlier comments.

While my colleagues and I are very supportive of Senator Balboni's efforts and Senator Volker's efforts, as he properly credited the Chair of the Codes Committee, we believe that their legislation can be improved with the addition of some language what will protect women, doctors and clinic workers from violence, threats of violence and intimidation and harassment at family planning clinics.

I have not spoken before on the floor of this distinguished chamber, and it's appropriate that I do so now and it's very appropriate that I follow the Dean of my delegation, Senator Goodman. But this particular bill is very important to me. My first job out of high school was as a worker in a family planning clinic. I think I'm the only former clinic worker ever elected to the New York State Senate. More recently I represented for a number of years clinic defenders in New York City and I have been dozens of times in front of clinics as a witness to the harassment, intimidation and

abuse that we seek to address with the clinic access bill.

I believe that the stalking bill in no way covers the types of problems we face every week around New York State and that have resulted in a reduction of family planning services to the point that the law of the land is no longer available to thousands and thousands of women in our state. I think that the acts that we're seeking to remedy here are things that, if you would join me in front of a clinic on a Saturday morning, I think pretty much all of my colleagues would agree cannot be tolerated by the Criminal Law of New York State. But, unfortunately, the Criminal Law of New York State does not clearly define the crimes that we seek to define in the clinic access bill and does not empower state and local authorities to weigh in on the side of patients and doctors in this struggle.

I have seen appalling acts of intimidation and violence. I have been a witness to the most offensive racist and anti-Semitic diatribes I've ever heard in my life directed at women seeking to secure

constitutionally protected medical services. I've personally spoken to doctors who have to hire security guards to protect their families to ensure that their children are not harassed in their schools. It is time for the State of New York to send a clear message to local authorities and to terrorists and harassers alike that we will not stand for this.

And I appreciate Senator Goodman's efforts in this area and I commend him, but I believe the law that has overwhelmingly passed the Assembly and it has more than enough votes to pass in this chamber if we allow it to the floor, goes further in one very critical way than the federal law, and that's why I would seek for us to consider this particular bill and this amendment.

The bill that we are seeking to pass this year will protect doctors and patients in their homes and their schools, away from clinics. That is something the federal law does not do. And if the despicable murder of Dr. Slepian at his home after months and years of harassment, intimidations, demonstrations abuse does not

send home the message that we have to extend this protection to people's homes, outside of clinics, I don't know what will.

I think the clinic access bill, which we have introduced is a narrowly drawn statute that defines specific criminal conduct and provides specific authorization for prosecutors and courts alike. It also provides a critical civil remedy so that people being abused and harassed will have a remedy, can seek something from their harassers. And I do also urge Senator Balboni that the use of the civil remedies can also be a useful addition to the stalking law.

The anti-choice agitators in New York are seeking to end by violence what they have been unable to accomplish in the courts. Their goal is clear and clearly articulated. Their intention is to end all freedom of choice in the State of New York. We cannot, as a state government, allow that to go forward. The fact that the Governor supports such a bill, the Assembly has overwhelmingly supported such a bill and that we have the votes in this chamber to pass such a bill is

consistent with the fact that 82 percent of the people in our state want better protection for clinics, for doctors and for women who seek to obtain legal constitutionally protected reproductive health serves he.

I strongly urge that we send that signal, that we do not delay, 14 weeks since Dr. Slepian was murdered, let's not wait another week and let's add this bill today and let's pass it.

ACTING PRESIDENT KUHL: Any other Senator wish to speak on the amendment?

Senator Oppenheimer.

SENATOR OPPENHEIMER: I'd like to speak on it.

Well, I appreciate what Senator Goodman is doing, but I must say I don't agree with his conclusion. I think that this stalking bill is certainly one that's a very significant and an important bill. I think it's time has come. We're one of the few states, if maybe the only state in our union that doesn't have some kind of a stalking bill.

And most stalking victims are,

after all, domestic violence victims. And I've been very involved in promoting legislation concerning domestic violence victims and, certainly, these, the batterers in almost all these cases harass and terrorize the women. And as has been stated, 79 or 80 percent are, are females who are subjected to this. And I think this bill is essential.

And I also have been put up to say not only is it a superb bill, but the Senator that's sponsoring it is a superb Senator and a fine tennis player.

But I really want to address the amendment because this bill, though it is a fine bill, as I said, it does not deal with the problems of clinic access. The obstructors are sitting there, they are not following you around, they're not stalking you, they are sitting there or standing there and they are simply not permitting you, through harassment or verbal abuse, to enter the clinic. This bill would not prevent the, the harassment we have seen in Westchester County, where people are obstructing the clinic in Dobbs Ferry one day and then one or

two days later they moved to our White Plains clinic, this would not begin to touch that problem. And you think of the woman who is going. She's seeking healthcare and it doesn't even have to relate to, to abortion or any pro-choice issue. This might be a woman seeking prenatal care, which is taken care of in our reproductive healthcare clinics. It might be a woman seeking a mammogram to detect breast cancer or someone seeking the test for cervical cancer. I mean, to think that the only thing that provided in a reproductive healthcare is abortion is simply not to understand what family and reproductive health clinics do. And you think of this woman trying to reach her provider and being assaulted with the terrible names that you have heard, you know, that you have mentioned, Eric. And what is her fault, her guilt? She's trying to reach her doctor and she's being prevented from doing so. And these are rights that are constitutionally protected for her to reach her healthcare provider and to receive healthcare.

And to think that the providers of

reproductive healthcare live and work in constant fear of intimidation and that they have to go to their offices, the clinics, their homes wearing bulletproof vests or having security systems installed in their homes and in the clinics at enormous cost. It's senseless. And the fact is, our existing law is inadequate to protect the civil rights of these women and of the healthcare providers.

And this threatening atmosphere and the violence has really provoked, at this point, a genuine public outrage. And I think the people of this state are telling us that we have to move. And the amendment we're offering will prohibit harassment at clinics, offices, homes. It'll increase the criminal penalties, it will establish civil remedies. And, Lord knows, civil remedies do a lot of good because nobody wants to get hit in the pocketbook or in the wallet. And it also, of course, provides for injunctive relief.

So I think that we really have to, have to follow the lead of the Assembly and also, mind you, that the amendment we're

putting forth clearly and distinctly protection First Amendment rights. But First Amendment rights to speech and to assembly and all do not require that people walk around wearing bulletproof vests and have security systems in their homes and offices. So I would urge you to take a serious look at this amendment, and if it does not pass today to look to bring it up in the form of a new bill shortly in the future.

Thank you.

ACTING PRESIDENT KUHL: Senator Paterson, on the amendment.

SENATOR PATERSON: Thank you, Mr. President. I think in the chamber today we have witnessed some excellent work by some very diligent legislators.

Senator Balboni, after examining the existing laws in our country and the tendency toward the laws related to stalking being over broad and perhaps not comprehensive enough and after consulting with the St. John's Law Review and the Northwestern University Law Review brings us a bill that is far more comprehensive on the subject.

Senator Schneiderman adds to that a firm piece of legislation that would really establish protection and clinic access for those who seek reproductive services.

The Assembly has already passed effective clinic access legislation. So, therefore, what we might accomplish by passing this amendment would be, actually, as an addendum to Senator Schneiderman's amendment, we're passing a stalking bill that the Assembly has not passed. So what we would then do, as a body, is combine these two very effective pieces of legislation that address the general issue of personal safety and personal freedom and send this bill to the Assembly, which would, I believe, overwhelmingly ratify it, and then we would send this right to the Governor. We could do it right now. The Governor has voiced great concern for clinic access. Eleven Republican Senators that have gone on record on this issue feel exactly the same way. And so, in that respect, I think we would not only serve the political interests of the chamber on all sides, but we would do something that would

endear so much to the benefit of so many civilians around this state who have been victimized by the types of threats, the types of violence, the types of degradation that Senator Schneiderman and Senator Balboni referred to in their remarks.

So I couldn't be more pleased to support both Senator Balboni's bill and the amendment offered by Senator Schneiderman at this particular time.

There are those who have differing points of view on the issue of choice, and we respect those differing individual and sometimes religious points of view. But while we cannot legislate morality, we can legislate to protect those from the immortality of others. And there is no doubt that we have a law in this country right now that allows people certain rights and they should not be interfered with.

Now, if you yell fire in a movie theater, you may not actually be directly affecting in a physical way another person's life, but when you start in many ways degrading or engaging in deprecating or

horrible remarks toward people who are trying to exercise their rights when they go to healthcare facilities to seek reproductive services, where a decision on their own part has not even been made, in my opinion, you're violating the law. You are really going against the spirit of what we are allowing for in this country. If there are those who don't agree with it, they have a right to put legislation in to change the law. But, at the same time, when the law actually exists, we are compelled as a body, we are compelled as human beings to stand for the rights of our fellow citizens.

ACTING PRESIDENT KUHL: Senator Duane on the amendment.

SENATOR DUANE: Thank you very much, Mr. President. I do want to, at the outset, say that I support Senator Balboni's stalking legislation and I also want to speak in favor of Senator Schneiderman's amendment. And I speak as someone who has served as a clinic defender and, in fact, as an escort of women going in for reproductive services. I've also provided trainings to people who are

interested in learning how to defend clinics and, in fact, to defend clinics.

I believe very strongly that our Constitution has guaranteed protection for access to family planning services, including reproductive service. And, in fact, when we do that, we are protecting access to healthcare.

In New York State, we're losing reproductive services by attrition. In many cases, it's too dangerous for providers, it's too dangerous for property owners to make space available for providers.

In New York City, we have clinic access laws which have worked well, not perfectly, but very well. And I think that we need to institute that kind of protection on a statewide basis. I do think today is the day, now is the time. I don't think we should hesitate any longer. Clearly, our state cries out for this kind of protection for people seeking healthcare services, including reproductive services. And I would urge my colleagues to vote yes on the amendment.

Thank you.

ACTING PRESIDENT KUHL: Senator Markowitz on the amendment.

SENATOR MARKOWITZ: Thank you very much, Mr. President. This is one of those rare issues that I wish we didn't have to be here discussing it today in the chamber, but this is one of those issues that reach importance among Democrats and Republicans, Long Island, Downstate and Upstate, it impacts families and especially women all over the state.

Today we have some providers that shield and protect battered women. In my district alone the Park Slope Safe Homes Project each year holds a vigil in Prospect Park for women who have been stalked and murdered either by their husbands or boyfriends. And it's pathetic and pitiful that we have to be there each and every year for these women whose lives perhaps could have been protected. And that's why, Senator Balboni, your bill is a positive step forward, because we have to indicate in every way this legislature to those that are out there with the intent to harm women that they may have

been married to or living with or going with that this kind of deplorable behavior will never be accepted by a civil society. And this legislature must rise to that occasion.

Senator Schneiderman, your bill is an excellent step forward. There is no doubt, there is no doubt that myself twice have been in front of these clinics, once right here in Albany, right here, right on Lark Street, where I saw myself people that use religion in the most despicable manner, because people that are truly religious would never speak the way they speak and threaten the way they threaten. They use religion and they become immoral terrorists by their behavior.

And so this legislature should approve this amendment on the floor today. This amendment would allow this legislature to notify these people that use their religion in a phony way, in a phony way, to use their religion to prevent the rights of those who may differ with them on issues who have a right constitutionally, who are in the most vulnerable time of their lives, many of them, that going to these clinics, never with a

smile on their face. This is a challenging personal issue to women and families in our society, and so that bill, this amendment, Senator Balboni, and I know how you feel about this and many of your colleagues, this should never be politics, this issue. This is one of those issues we have a chance to make a statement this afternoon, and let's move this forward and pass both of these proposed legislation and then put this society and these people on notice in New York State that their behavior will never be tolerated.

ACTING PRESIDENT KUHL: Senator Hevesi, on the amendment.

SENATOR HEVESI: Mr. President, I believe to some extent we may be even underestimating the extent to which this stalking legislation is necessary. And I commend Senator Balboni and Senator Volker on this legislation. I know personally at lease five women who have related to me tales of how they have been stalked and the lack of adequate resources that were available in order to address their situation. So I strongly commend them. I would also suggest

that providing civil remedy would be a step in the right direction.

Having said that, it is important to recognize, and I think that most of my colleagues in this legislative body would recognize that this legislation does not address the problem of clinic access. And as a result of that, I strongly support the amendment, offered up by Senator Schneiderman. And would suggest to my colleagues on the other side of the aisle that there truly is nothing in that legislation and this amendment that is fundamentally inconsistent with maintaining a pro-life position. This is not political. This is not partisan. This is protecting the rights of individuals who have a Constitutional right to seek reproductive health services. And as importantly, as importantly this sends an absolutely, unequivocal message that we will not tolerate, as a governmental entity, individuals who have come to believe that it is acceptable to practice intimidation and violence in order to effectuate goals that they have been -- that they have failed to achieve in the courts.

This amendment is absolutely essential as is the stalking legislation. I would urge my colleagues both on the Democratic and Republican side to support both the stalking bill and the amendment.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, for a second time on the amendment.

SENATOR DOLLINGER: Actually, for the first time, Mr. President, on the amendment. I believe I spoke on the bill the first time.

Just briefly on the amendment, Mr. President. To some extent, this amendment, in my judgment, is not all that big a deal. And I'll tell you why. We have a century long practice in this nation and in this state in saying that, if you had a constitutional right, no one should interfere with your exercise of that right. Whether it was a poll tax in the south or whether it was interruptions with people's rights to vote, the people of this state have been foremost in this country in standing up and saying, "We will not let anyone interfere with the

exercise of your constitutional rights." We abolished all those taxes on voting. We're one of the first states to warmly welcome women as full participants in the political process. And yet, here we are, debating a bill that simply says there's a constitutional right to seek healthcare on behalf of woman. And all those women want is the government to stand up and say, "We support that right given to you by the Constitution. We will criminalize anyone who interferes with it," and, as Senator Schneiderman's amendment says, "we will empower you and give you a civil remedy if for some reason government doesn't come to your aid, you can take the power of government in your own hands and seek a civil injunction that will prevent people from interfering with your exercise of your constitutional right." Simple. Simple.

In my judgment, it has almost nothing to do with abortion. And those are my colleagues who are pro-life should understand that is protecting the constitutional right. The issue and the debate of whether that constitutional right should occur or not has

already been resolved. And all that this bill seeks to do is bring the power of government to side with the individual to protect their constitutional right.

To all my Republican colleagues, I'll close with one thought. I come from a community that gave birth to two great civil rights leaders, Susan B. Anthony and Frederick Douglas. They were both Republicans. And I dare say that, if they were both sitting in this chamber as members of this house, they would never turn down an opportunity to say to the people of this state, when you exercise your constitutional rights, you are entitled to the protection of government in doing so. They, I believe, would sit here and tell you this is the fundamental purpose for which government was created; that is, to respect the individual in their election of their civil rights and to protect that individual from interference by another party.

I would submit that the Grand Old Party, as Frederick Douglas and Susan B. Anthony knew it, would be standing with members of this side of the chamber and

welcome the opportunity to provide civil and criminal protection to those of our citizens who exercise their individual rights granted to them by the Constitution of this State and of this nation. There is no more important thing that we could do than to preserve the exercise of those rights.

ACTING PRESIDENT KUHL: The question is on the amendment.

All those in favor signify by saying aye.

(Response of "Aye.")

SENATOR PATERSON: Party vote to accept.

ACTING PRESIDENT KUHL: Secretary call the roll on the amendment.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT KUHL: Record the party line vote with exceptions.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the party line vote with exceptions. Announce the results.

THE SECRETARY: Ayes 21. Nays

37.

Party vote with an exception.

ACTING PRESIDENT KUHL: The amendment fails. We're on the bill.

Senator Balboni, to close.

SENATOR BALBONI: Thank you, Mr. President.

The discussion we've had today is unique in that it's happened here but it hasn't happened there. We have passed this bill on successive occasions. The Assembly has not. We need to act today to try to get them to act tomorrow.

I'd like to thank all of the members on the Democratic side who have risen in support of the bill. But I'd also like to point something out. Recently we have taken to naming the measures that we have considered in this body as they relate to victims. It is a powerful message that resonates not only with us but with our constituencies. This measure has no name. Let's try to keep it that way.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Chair recognizes Senator Waldon to explain his vote.

SENATOR WALDON: Thank you, very much, Mr. President, my colleagues. No one in this nation should be denied his or her constitutional rights. Therefore, I'm hoping that at some later date the wisdom of this body will be to pass a clinic access bill to ensure that our women and others who work in the area of reproductive services are not intimidated nor made fearful in terms of what is their right to work, what is their right to receive services and what is their right, their God given right to make decisions about their bodies.

However, I would encourage my colleagues to vote for this particular proposal that we have before us at the moment.

And my reasons are very real and simple. When I was a police officer, I went to many family dispute situations, some which resulted in the spouse being killed and some where she was just beaten beyond recognition, or perhaps not quite as violently attacked. But in many of those instances, the woman had in her hand an Order of Protection. And in recent times, as a legislator, I have received many calls from constituents who asked me to help them to do something because they had an Order of Protection and they were still being hassled, harassed and oftentimes beaten.

So we have a moral obligation, in my opinion, to vote up on this proposal, because if we can save between today and tomorrow just one woman, one child, one person from being beaten, maimed, harassed or psychologically intimidated by putting this on the books of the State of New York, we have done our duty as legislators.

Thank you, my colleagues. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon, how are you voting?

SENATOR WALDON: (Affirmative indication.)

ACTING PRESIDENT KUHL: Senator Waldon will be recorded in the affirmative.

Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, to explain my vote.

I am -- I want to, first of all, thank the sponsor of this legislation, Senator Balboni, because it is, it is a measure that is intended to protect what I believe to be women in this state. I'm happy that it doesn't have a name because it's for all of us, it's for both women and men, but especially women. And I, certainly, have been stalked myself, and it's a very fearful experience, frightening experience to have. And I believe this speaks to me personally as well as all of the other people in -- who find themselves with that problem.

I am very pleased also that Senator Schneiderman has brought or attempted to bring legislation that would protect women who use clinics in this state. I personally use a

women's clinic. I prefer that because it's more comfortable for me in terms of my healthcare and I would be horrified if I walked out of the clinic to find people standing around. I think it is a matter of my civil rights, my right to access to healthcare and my right to privacy. So we need that legislation. It is -- and, again, I say I'm happy that we have no name on either of these bills because it's not in the name of someone. It is to protect all of us, who I believe have every right to seek out the services.

So, Mr. President, I'm voting in the affirmative.

ACTING PRESIDENT KUHL: Senator Montgomery will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time, would you please call up Calendar Number 17, by Senator Maziarz.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 17, by Senator Maziarz, Senate Print 652, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

Is it to explain your vote?

SENATOR DUANE: I rise to explain my vote, Mr. President.

ACTING PRESIDENT KUHL: All right. Senator Duane will explain his vote.

SENATOR DUANE: I'm voting no on item Number 17 for two reasons, in particular. One is I am very concerned about capturing 16 to 18 year olds within the provisions of this legislation and that they are then forever

within the confines of some of the provisions of Meagan's Law. I don't think that 16 to 18 year olds, specifically, should be captured in that way by this legislation. And also, generally, I'm concerned about weakening the discretion of D.A.s and judges in this matter.

And, finally, there were two other items of legislation which I voted nay on previously for which I voted for the same reasons as I stated for 17.

Thank you, Mr. President.

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

Announce the results.

THE SECRETARY: Ayes 57. Nays 1.

Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: Bill is passed.

THE SECRETARY: Excuse me, also Senator -

ACTING PRESIDENT KUHL: Montgomery in the negative.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT KUHL: Okay.

THE SECRETARY: Ayes 56. Nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

Mr. Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Children and Families Committee at the desk. I ask that it be read.

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

THE SECRETARY: Senator Saland, from the Committee on Children and Families, reports:

Senate Bills 587, by Senator Skelos, an act to amend the Domestic Relations Law;

980, by Senator Skelos, an act to amend the Domestic Relations Law;

1013, by Senator Saland, an act to amend the Family Court Act;

1018, by Senator Skelos, an act to amend the Family Court Act and the Criminal Procedure Law;

1404, by Senator Saland, an act to

enact the Juvenile Justice Reform Act.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Without objection, the bills are ordered directly to third reading.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There is one motion, I believe, that's on the floor, Senator Skelos.

Chair recognizes Senator Fuschillo for the purpose of the -

SENATOR FUSCHILLO: Mr. President, on page number 6 -

ACTING PRESIDENT KUHL: -- for motions and resolutions.

SENATOR FUSCHILLO: Thank you, Mr. President. On page number 6, I offer the following amendments to Calendar Number 39, Senate Print Number 562 and ask that said bill be retained on the third reading.

ACTING PRESIDENT KUHL: Motion is received and adopted. Bill retain its place

on Third Reading Calendar.

Senator Skelos, it's also noted at the desk that Senator DeFrancisco, on Resolution 245, which was adopted earlier today, which recognizes February as Black History Month, would like to open that resolution to the other members.

SENATOR SKELOS: I have no objection to that.

Senator Paterson?

Senator DeFrancisco would like to open up the resolution on Black History Month to the entire Senate for sponsorship.

SENATOR PATERSON: Let me think. Yes, I think that would be fine.

ACTING PRESIDENT KUHL: Should we place all the members on the resolution, Senator Skelos, and those that do not wish to be on it indicate to the desk?

Direct the Secretary to do such.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno in consultation with Senate Minority Leader, hands up the following Commission appointment by Senator

Connor and ask that it be filed in the Journal.

ACTING PRESIDENT KUHL: Chair will direct the Commission appointment be filed with the Journal Clerk.

SENATOR SKELOS: No other housekeeping, Mr. President?

ACTING PRESIDENT KUHL: That competes it Senator Skelos.

SENATOR SKELOS: There being no further business, I move we adjourn until Monday, February 8th, at 3 p.m., intervening days being legislative days.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until Monday, February 8th, at 3 p.m., intervening days to be legislative days.

(Whereupon, at 12:28, the Senate adjourned.)