NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

October 7, 1999

5:06 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G

THE PRESIDENT: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

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

THE PRESIDENT: The invocation today will be given by the Reverend Peter Young from the Church of the Blessed Sacrament in Bolton Landing, New York.

REVEREND YOUNG: Let us pray.

Dear God, on this beautiful fall October day, we gather to use our talents with Your blessings. For the citizens of our great state, we pray that You will grant us wisdom and help to carry on the duties of leadership.

We ask You this in Your name, O God, and pray that You will guide us, and our Senators, for the benefit of all of the people of State of New York.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, October 6th, the Senate met pursuant to adjournment. The Journal of Monday, October 4th, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Volker.

SENATOR VOLKER: Madam President, I wish to call up my bill, Senate Print Number 4719B, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: By Senator Volker, Senate Print 4719A, an act to amend

the General Business Law.

ACTING PRESIDENT KUHL: Senator Volker.

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

ACTING PRESIDENT KUHL: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Mr. President, I now move to recommit the bill to the Committee on Rules, as amended.

ACTING PRESIDENT KUHL: The bill will be recommitted.

Senator Bruno.

SENATOR BRUNO: Mr. President, we're at ease for a few moments, waiting for the Minority to finish their conference. And I am informed that they are finishing and are a few minutes away from the chamber.

And when we have Minority

representation, we're going to ask for an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT KUHL: Do you want to set a time on that, Senator Bruno? 5:15 or -

SENATOR BRUNO: In five minutes.

ACTING PRESIDENT KUHL: The Senate will stand at ease.

There will be a Senate Rules Committee meeting in the Majority Conference Room. Senate Rules Committee meeting in the Majority Conference Room, Room 332, at 5:15.

(Whereupon, the Senate stood at ease at 5:10 p.m.)

(Whereupon, the Senate reconvened at 5:26 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

I ask the members to find their places, staff to find their places.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time go back to the motions and resolutions calendar and ask that the

Resolution Calendar be presented and passed.

ACTING PRESIDENT KUHL: We will return to the regular order of motions and resolutions.

The Resolution Calendar is before you. All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, there is a resolution that we just passed that I have sponsored, 2333, asking the Governor to proclaim the year 2003 the Year of the Korean War Veterans. Anyone that would like to be on that resolution, please acknowledge at the desk.

Thank you.

ACTING PRESIDENT KUHL: Are there members who would like to be on the resolution?

SENATOR BRUNO: Anyone that wouldn't like to?

ACTING PRESIDENT KUHL: Maybe it's easier, Senator Bruno, Senator Connor, if we put all the members on the resolution with the exception of those members who don't wish to be the resolution.

If you don't wish to be on Resolution 2333, please indicate to the desk, and they will remove your name.

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President, can we at this time return to reports of standing committees. I believe there's a report from the Rules Committee that I would ask be accepted at this time.

ACTING PRESIDENT KUHL: There is.

The Secretary will read the report of the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, offers up the following bills directly for third reading:

Senate Bill 6143, by Senator Wright and others, an act to amend the Public Service

Law and the Environmental Conservation Law;

6144, by Senator Nozzolio and others, an act to amend the Penal Law and the Vehicle and Traffic Law;

6145, by Senator Volker and others, an act to amend the Executive Law and the Criminal Procedure Law;

And 6146, by Senator Rath and others, an act to enact the Clinic Access and Anti-Stalking Act of 1999.

All bills directly for third reading.

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Rules report is accepted. The bills are ordered directly to third reading.

Senator Bruno.

SENATOR BRUNO: Mr. President,

can we at this time take up the noncontroversial reading of the Rules report.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1682, Senator Wright moves to discharge, from the Committee on Rules, Assembly Bill 9039 and substitute it for the identical Senate bill, 6143.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1682, by the Assembly Committee on Rules, Assembly Print 9039, an act to amend the Public Service Law and the Environmental Conservation Law.

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

THE SECRETARY: Section 18. This act shall take effect December 1, 1999.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record

the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1682 are Senators Duane, Hevesi, LaValle, Onorato, Padavan, Schneiderman, Seabrook, and Senator Leibell. Also Senator Saland.

Ayes, 48. Nays, 9.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: In relation to Calendar Number 1682, also Senator Oppenheimer.

Ayes, 47. Nays, 10.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: In relation to Calendar Number 1715, Senator Nozzolio moves to discharge, from the Committee on Rules, Assembly Print 9038A and substitute it for the identical Senate Print, 6144.

ACTING PRESIDENT KUHL: The

substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1715, by the Assembly Committee on Rules, Assembly Print 9038A, an act to amend the Penal Law and the Vehicle and Traffic Law, in relation to falsely reporting an incident.

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

THE SECRETARY: Section 10. This act shall take effect on December 1, 1999.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: In relation to Calendar Number 1716, Senator Volker moves to discharge, from the Committee on Rules, Assembly Print 9037A and substitute it for the identical Senate Print, 6145.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1716, by the Assembly Committee on Rules, Assembly Print 9037A, an act to amend the Executive Law and the Criminal Procedure Law, in relation to the DNA Identification Index.

SENATOR DUANE: Lay it aside.

ACTING PRESIDENT KUHL: The bill will be laid aside.

The Secretary will continue to read the noncontroversial reading of the Rules report.

THE SECRETARY: In relation to Calendar Number 1717, Senator Rath moves to discharge, from the Committee on Rules, Assembly Print 9036A and substitute it for the identical Senate Print, 6146.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1717, by the Assembly Committee on Rules, Assembly Print 9036A, an act to enact the

Clinic Access and Anti-Stalking Act of 1999.

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

SENATOR GOODMAN: Is this bill being called, sir? I just arrived in the chamber.

ACTING PRESIDENT KUHL: The bill is being called on the noncontroversial calendar.

SENATOR GOODMAN: I beg your pardon. Thank you very much.

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

THE SECRETARY: Section 19. This act shall take effect on December 1, 1999.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Goodman, to explain his vote.

SENATOR GOODMAN: Mr. President, I would like to explain my vote briefly and say that I believe that this bill -

ACTING PRESIDENT KUHL: Senator

Goodman, excuse me just a minute.

There's a lot of noise in the chamber. If we could have the members please take their conversations, if they find that they're necessary, out of the room, and the staff take their places. Give me just a minute to get to quiet.

Senator Farley, do you wish to take your chair or the conversation out of the room?

Thank you.

Senator Goodman.

SENATOR GOODMAN: Mr. President, it's my belief that this Clinic Access Bill constitutes perhaps the most important women's rights measure that has passed in this house in the last 30 years.

Some 30-some-odd years ago, you may recall we did pass a bill which permitted women the right to exercise their choice in matters relating to abortion. And since that time, unfortunately, despite the fact that this even preceded the Roe versus Wade federal decision, we found ourselves in a situation in which, unfortunately, women were blocked at

clinic entrances, were harassed and, in many instances, injured and in some cases even killed in an effort to proceed to try to obtain the services to which they were legally entitled.

Mr. President, this matter came to a boil very recently when a Dr. Slepian, in the city of Albany [sic], was in his own kitchen and was shot in the back by an individual who resented the fact that he was providing women's sanitary services, including abortion. And that I think indicated the severe problem which the society faced at a point where the law was being flouted and totally disregarded.

Why was this disregard so permitted under these circumstances? The answer is plain. That although a federal law was passed making this type of activity illegal, there was simply insufficient availability of enforcement to make sure that the federal law had teeth.

The action which we're taking today, which carries with it as well a provision which prevents stalking -- that is

to say, the following of individuals with an intent to do them harm or to harass them - for the first time in these many years will provide the very teeth necessary to assure that the protections guaranteed by the law can be carried out.

A law which passed is one thing, but a law which can create a definite limit to impermissible conduct is quite another. And under the circumstances, I cannot emphasize strongly enough the significance of this major piece of legislation.

I wish to thank my colleagues at this point for giving it final passage, and to say that I think the Governor's very progressive stand on this matter has also been a significant contributory to the success of the measure. I most affirmatively wish to support him and obviously explain my affirmative vote, with a -- double underlining the fact that it's one of the great votes that we've been able to cast since I've arrived in this Legislature some 32 years ago.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Goodman, you will be -

SENATOR GOODMAN: May I ask for a very brief opportunity to state that -- I don't know this if this is the right moment, but I wish to record my opposition to a bill that -

ACTING PRESIDENT KUHL: Senator Goodman, we'll do that in just a moment.

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

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

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I join Senator Goodman in -- and I share in his pride in our passing this bill. I am rising now, and I don't want to delay things, particularly to thank and commend those who remained behind when we adjourned in August. And -- because when we adjourned without doing this bill, I was quite concerned. And I know that Senator Bruno and staff stayed on, got this done.

It is a tremendous step forward. It is a very important bill. It's a very important bill to many people who I know personally and have worked with. And protecting the doctors and the patients and the clinic workers of our state is just a very important measure that we have finally been able to act on.

And it makes -- you know, this is the kind of work that we need to do, we need to do more of. And I was very, very proud when I heard at the end of the day after we had adjourned that in fact people had gotten the job done and we've done this. This is a tremendous step forward.

I hope that we'll be able to move forward next year further in the area of human rights, reproductive rights. There are a lot of things still on the agenda. But this is a tremendous step, and I'm very -- it's the kind of bill that makes me proud to be in the Senate.

And again, high praise to those, having been up all night the night before we adjourned, who stayed on and got the job done

and negotiated it out with the Assembly and the Governor.

I vote in the affirmative.

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

Senator Hoffmann, to explain her vote.

SENATOR HOFFMANN: Thank you, Mr. President.

I want to thank my colleagues for their support for this important measure. We passed it earlier this session in a somewhat different form, and now that it has come back, paired with the anti-stalking bill for a second time, and we know that the Governor is prepared to sign this matter into law almost immediately, we are really at an historic moment.

But it's a bittersweet moment, because it underscores how very fragile our democracy is. We shouldn't have to pass a law to guarantee access to a health service that is already fully legal in this state. But because of the threats on people's lives and

because of the taking of a life and because of the constant intimidation that women have felt, it has become necessary for us to take this measure seriously and to put something into law that will be unchallengeable, and that every woman, for whatever reason, who seeks access to such a health care facility can be guaranteed that access without any form of discrimination or intimidation.

And there are people who are on another side of the choice issue who have to have some pause right now too. And I share their concern. Because the fact that we still have abortion services in a civilized society is another reason for us to continue redoubling our efforts to help educate young women, to help educate young men about the dangers of unwanted pregnancy, to help people of all ages understand their need to be responsible to each other when they engage in sexual activity. We have far too many unwanted pregnancies in this state, and we sometimes forget that that's an issue that requires our attention as well.

So while we address the issue of

clinic access, while we address the issue of safety, primarily for women, from the fear of stalking, I hope that we can redouble our efforts to address the need for a freer and a fairer society for all women -- particularly for young girls, who are so often victimized by people who prey upon their naivete in the areas of reproductive activity.

And I want to compliment and thank Senator Bruno for his steadfast support of this measure, and make sure that everybody realizes that we will be vigilant in the State of New York in seeing that it is fairly and justly enforced.

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

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I would like to make one point, if I may. And that is that the approach in the last couple of years, certainly -- maybe even longer than that -- of the prochoice community has been to focus on education and prevention. Because I think there is nobody probably in this state who is

proabortion; what we are is prochoice.

And we would like young people to understand that there are any number of means of preventing pregnancy. And that is what we seek, prevention of the pregnancy. Nobody really likes the idea of an abortion. It's just there should be a choice if an accident has occurred and this is not a child that is wanted -- a fetus that is wanted.

What I want to say is it's sort of funny, this is so anticlimactic, after all the years that we have been working for this, to sort of have it just slip in on this quiet night. But I am, of course, very thrilled.

And what I want to say is my appreciation to the people who have made this happen -- in particular, Senator Bruno.

And all you folks who in the past have had trouble with this issue, it is such an important thing to us in the prochoice community. I know in my -- in my county, we have to put up bulletproof doors and windows in our reproductive health centers, at enormous cost. I mean, isn't that appalling, that in this country we have to put up

bulletproof doors and windows?

So this goes really a long way to correcting that injustice, overcoming the intimidation that so many people have felt, and permitting them to seek their reproductive health in a free and a caring atmosphere and not a violent one.

So my thanks to all you folks.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Mr. President, we have here an anti-stalking bill and a clinic access bill. I support the stalking bill. I'm opposed to that component dealing with clinic access. And I vote no on this legislation. I just want to explain briefly why.

Senator Hoffmann indicated we shouldn't have to pass a law that allows clinic access. Well, not only shouldn't we have to, but we don't have to. If someone is harassing somebody, they could be charged with

harassment. If someone is assaulting someone, they could be charged with assault. If someone is killing someone, they could be charged with murder.

I think basically what this bill really does is there's a certain division among people on a certain issue, and this is to make one side of that issue feel good.

But there's already bills that deal with every act of violence that this bill is allegedly for. And it seems to me that there's a real fine line between harassment and free speech. And I think most of the people voting for the bill would have been appalled if during the Vietnam War we had passed a special bill protecting people -- or against people who were protesting a specific issue against the war.

And the most amazing thing about the bill is not only do we not need it -- we shouldn't have to pass it, we don't need it - but when Roy Goodman eloquently steps up and talks about that atrocious act where a doctor was killed in his own home, it points up the very fact that that has nothing to do with

clinic access. He was home, he got shot, somebody murdered him. He should be charged and convicted of murder and punished accordingly.

So no matter how you slice it, the bill is not needed. And it's really a political statement that I think is very dangerous in defining certain favored groups in the Legislature to have special protection, when it's really a free speech bill and it's a decision that the legislator's taking on, whether you're for or against an abortion or for -- or prochoice or antichoice, depending on how you frame the issue.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1717 are Senators DeFrancisco, Farley, Maltese, and Padavan. Also Senator Meier.

Ayes, 53. Nays, 5.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the

noncontroversial reading of the Rules report.

SENATOR BRUNO: Mr. President, can we at this time go to the controversial calendar.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1716, by the Assembly Committee on Rules, Assembly Print 9037A, an act to amend the Executive Law and the Criminal Procedure Law, in relation to the DNA Identification Index.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of Calendar Number - actually, it's Senate Print 6145.

SENATOR VOLKER: Mr. President, this is, in my humble opinion, one of the most important criminal justice bills that we will pass and now will go on to the Governor in this decade, in the 1990s.

And the reason is, very quickly, I was the sponsor of the original bill that set up DNA -- the DNA data bank, back I think somewhere in the late '80s or early '90s. In

'94, we passed legislation that essentially set up the DNA data bank for most of the violent felonies.

Now, this bill, which was passed by the Assembly after this house left -- and frankly, thanks to Senator Bruno -- and I don't want to cast any aspersions, but the way this system works, unfortunately now, if we hadn't left the scene, I don't believe the Assembly would have done the bill at that time. I think it would have been later on in the year before this ever would have happened. But unfortunately, the Assembly waited until we left.

And by the way, Senator Schneiderman said he was still here. I was still here too. I was here in the middle of the night when all the ruckus was going on, and of course Senator Bruno and -- I'm looking at the staff people who were here deep into the night. And this is the result of it.

These are important bills. This bill would expand rather dramatically the availability of DNA. Particularly, it would expand it to drug offenders, both past and

present -- in other words, people that are on probation and parole -- and to burglars. Because this especially includes burglary third, which is very important, because many of those people have been found in other states, with the DNA testing, to be involved in other crimes, including a significant number of sex crimes.

Now, I've talked to the Governor personally about this bill, by the way. I just met last night with the DCGS to discuss the cost. It is going to be a considerable cost over the next few years. But I think the result of this bill will be that a lot of criminals, some of whom may be out on the streets today, you know, for sex crimes and many other crimes, when the -- when this is fully implemented, they're going to end up in jail. They're going to get caught, and they're going to go to jail.

Two -- just two things. The bill also increases the penalties for any kind of illegal use of DNA testing to a felony, for any kind of improper use makes it a felony. You go to jail for, what is it, 2½ to 7½, if

I'm not mistaken. And I think it's a very important bill.

And one final thing. It changes the fact that you can only use blood to extract DNA, which is the present statute. So you can use other areas -- for instance, hair and things of that nature -- for DNA testing.

ACTING PRESIDENT KUHL: Senator Duane.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DUANE: Am I correct to note that this bill would set up a statewide DNA reporting system?

SENATOR VOLKER: Well, it's actually already set up, Senator. It was set up, as I say, years ago, in -- oh, I don't know, '88, '90, somewhere in there. And then it was expanded in '94.

What this is is an expansion of that system that was already set up some years ago.

SENATOR DUANE: And one additional question.

ACTING PRESIDENT KUHL: Are you asking the Senator to yield again, Senator Duane?

SENATOR VOLKER: I will yield.

ACTING PRESIDENT KUHL: Senator Volker, do you yield again?

SENATOR DUANE: And just to clarify -

ACTING PRESIDENT KUHL: Senator Duane -- Senator, excuse me just for a minute.

There are a lot of conversations in the chamber going on. It's very difficult to hear the questioning. If you need to have a conversation, members, please take them out.

If the sergeant-at-arms can just kind of curtail the movement through the chamber, that would be appreciated.

Thank you for the interruption, Senator Duane.

SENATOR DUANE: Thank you.

If the sponsor would please reclarify the enhanced penalties for tampering with DNA.

SENATOR VOLKER: Yeah, it would make it a Class E felony. Which, as I said, would move that from a -- I believe a misdemeanor now, a Class A misdemeanor, to an E felony. Which I believe is what, 2½ to 7½, I believe, or something of that nature.

Four. I'm sorry, 4 years. Maximum of 4 years.

SENATOR DUANE: Thank you, Mr. President.

Thank you.

SENATOR VOLKER: You're welcome.

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

Excuse me. Senator Duane.

SENATOR DUANE: I believe that there's an amendment at the desk.

ACTING PRESIDENT KUHL: There is an amendment at the desk, Senator Duane.

SENATOR DUANE: I would ask that the reading be waived and I be given an opportunity to explain the amendment.

ACTING PRESIDENT KUHL: Your request is granted. The reading will be waived, and you're now afforded an opportunity

to explain the amendment.

SENATOR DUANE: Thank you very much.

The amendment that's at the desk is the exact same legislation which passed the Assembly this session, which is known as either the bias bill or the hate crimes bill. And because the amendment that is before us is exactly the same as what the Assembly has passed, we have a real opportunity now to pass the bias bill.

As many of you know, in the last session we increased penalties for crimes committed against the elderly. This chamber has a long history of passing legislation which enhances penalties for crimes committed against law enforcement officers. Recently, in committee in the Senate, legislation was passed which enhanced penalties for sports authorities -- referees, umpires and coaches.

And what this legislation before us would do, contained in this amendment, would be to enhance penalties for bias-related crimes.

It seems that the argument, which

had been used time and time again, that there shouldn't be special categories set up, is not really the case, because we've been willing to consider doing that for referees and umpires and coaches, and we've in fact done it for older people and for police.

Since we last met, probably the most well-known case of terrible bias and hate occurred in California, where in Los Angeles a gunman, a white supremacist, went out to a daycare center that was run by a synagogue and committed just the most heinous hate crimes against Jewish children.

Are we waiting for that to happen in New York State? Do we need to have this kind of terrible, terrible tragedy happen in New York State for us to pass bias-related legislation?

You know, in New York State -- many of you saw the photos of the police officers escorting the children from the daycare center. But in New York State, state troopers don't even report bias incidents. There is no reporting, no statewide reporting system for bias-related incidents. Why? Are we afraid

to know the extent of bias in New York State? Why don't we want to know cases of anti-Semitism and racism, antigay attacks in our state? Why don't we want to have that information so that we can deal with the issue of hate crimes and hate in our state?

Today President Clinton signed an executive order which makes hate crimes a crime in the United States military. And yet our state troopers here in New York State don't even consider hate crimes to be a terrible crime. Why not? The U.S. military, with its hideous don't-ask-don't-tell policy, now has hate crimes as one of the classes of crime which is covered within the military, and yet our law enforcement here in New York State does not do that. That is wrong. It's wrong that we don't have a hate crimes bill.

Now, you know, I know that people are annoyed that I'm standing up and bringing this up again. But you know what? I'm going to do it time after time after time again. You know what you can consider it? Consider it your sacrifice to the time I had to spend in an emergency room because I got beaten up

and I needed hospital attention. I don't think that's too much to ask for.

And if you had a few more minutes, you could go out at 8 o'clock and see the vigil in honor of Matthew Shepard, who was murdered a year ago today. And you can hear the testimonials from people here in Albany who were victimized by hate crimes.

I spoke at the Gay Pride rally on Saturday, and I asked the question which I always ask: "How many of you have been verbally or physically assaulted for being gay or being perceived to be gay?" And once again, the vast majority of people raised their hands. Because every day in New York State, people are vilified and beaten up because they are gay or they are perceived to be gay.

And New Yorkers will not be safe from anti-Semitic or racist or homophobic attacks until we pass a bias bill. I urge you to vote for the amendment today. It's the way to protect all New Yorkers from hate crimes.

Thank you.

ACTING PRESIDENT KUHL: Senator

Hevesi, on the amendment.

SENATOR HEVESI: Thank you, Mr. President.

And I, for one, am not upset that Senator Duane has chosen to reiterate time and time and time again our collective failure here to address a most important and pressing public policy issue.

And let me state from the outset that I support Senator Volker's bill on the DNA index, which I think is going to save lives. And a few moments ago I supported the clinic access legislation, which I think will save lives, in conjunction with the stalking component of that legislation, which will save lives. And in both of those cases, in addition to saving lives, we may prevent serious injury from being inflicted upon the residents of this state.

I would like to note, though, that there was a memo in opposition filed to the clinic access legislation by the New York State Conservative Party. Yet somehow that bill, that legislation, came before us, overcame that opposition, and we just passed

it. And for some reason we're not able to pass hate crimes legislation.

Now, let me digress for a second. I, as many of my colleagues here, give many speeches in my district, usually one a day, if not more than that. And for those of you who are not familiar with my district, it's a very conservative district. Very conservative. So I go out and I speak in my district, and they're very supportive of the legislation we passed today -- DNA index, stalking. And they're also supportive of hate crimes legislation.

And they're sophisticated. And they don't understand -- well, let me do it this way. They do understand that the reason that hate crimes legislation doesn't pass is because there's a provision there that provides a protection on the basis of sexual orientation, in addition to all the other protections that are provided on the basis of race and ethnicity and gender and age and disability.

They don't understand why it is that that protection should preclude passage

of this legislation. Because they have not made the logical leap -- because you can't make the logical leap, and I've spoken about this a number of times on this floor -- that to provide this protection in some way endorses a lifestyle, as if that was a problem in and of itself. There's no logical connection there. Just can't understand it.

But I will tell you, Mr. President, that my constituents are very angry. My black constituents are very angry that they're not afforded protections if they're attacked because they're black, because somebody thinks that providing some protection to a homosexual is going to encourage homosexuality -- as if that was possible.

And my Jewish constituents are very upset that we don't have hate crimes, because now they can be attacked because they're Jewish and not have additional protections and not have additional penalties for individuals who would commit so stupid an act, and not have the deterrent factor that I believe hate crimes legislation would send to all the ignorant bigots out there who are losers in

their own life and need to point the finger of blame at somebody else to reflect on their shortcomings, to explain their shortcomings.

And the women in the audience that I speak to, they're upset too because they don't get the protection. And those with disabilities don't get the protection. And Catholics don't get the protection. And Indians don't get the protection. And no one else gets the protection. Puerto Ricans, Latinos, they don't get the protections either.

Why? Why? Because we can't make that leap.

And I'll tell you something. Senator Goodman got me excited earlier this year as he rose to speak -- and I applaud his advocacy on hate crimes legislation. He rose to speak indicating that there were ongoing negotiations with the Cardinal and that there may be a ray of hope here that there will be some type of special dispensation on this issue which would release certain individuals who have a philosophical or ideological propensity to oppose hate crimes legislation

if sexual orientation is included in there.

And I don't know what has happened to those negotiations, but I would encourage anybody who has participated in those negotiations to bring them forward, advance them in any way possible, if that's what it will take.

But I would like to point out one thing. All those people who I speak to in my district -- the blacks, the Jews, the Latinos, the Puerto Ricans, the women, those with disabilities, the homosexuals -- none of those individuals have said to me, despite their anger in not having a hate crimes bill passed in the State of New York, despite the fact that they now don't have those protections because somebody doesn't want to include homosexuals, none of them -- none of them - have said to me, "Senator Hevesi, why don't you go up there and negotiate with the sponsor and pull sexual orientation out and pass the bill tomorrow?" None of them have asked for that.

And I applaud them, and I commend them. And I commend Senator Duane and all of

those individuals who are members of this body who will not stop until we have this protection.

No, this is not a panacea. If we pass hate crimes tomorrow or tonight, we're not going to end the idiocy that some people have. We're not going to end this type of psychological problem that leads people to commit crimes to victimize people. There are other things we can do.

But it sends a strong message to those who would commit violence upon people based on some characteristic that they by definition have no control over. And it would, without a shadow of a doubt, provide an additional penalty for the ugliest crimes that are committed in our society. Those are hate crimes.

So I support Senator Duane in his advocacy. I support everyone who supports the hate crimes legislation. I support this amendment.

And I support Senator Volker's bill, because I believe that that also will prevent victimization. That's our purpose in

this legislative body.

I support the amendment, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I also rise in support of the amendment. And listening to Senator Hevesi, who really, I think, spoke with extraordinary eloquence on this, it reminds us that while we're doing some work today and we're getting some good things done -- and I also support Senator Volker's bill, and I think that the DNA data bank will enable us to do justice - there's a lot of other kinds of injustice we have to address. And we have a lot of unfinished business.

I think that it's no secret now, as Senator Hevesi pointed out, why this bill isn't passing. It's not something that people are unaware of. It's been going on for a long time. And we know one thing. We know this bill is not passing because we won't take out a provision regarding sexual orientation.

And therefore, I submit to you that the message we send every year when the Senate doesn't pass this bill is that the position of our house is that some types of discrimination are okay.

Because we understand, and I don't think there's -- you know, there's some arguments about this, but I've never heard a compelling counterargument -- that a bias-related crime is different than a regular assault. There is no question that when, you know, someone sprays on my house "Charlie Loves Suzy," it has a different effect on me -- it's just graffiti, but it has a different effect than if someone says "Kill the Jews."

We know there's a difference. And it's different because it chills everyone in the category, it hurts everyone in the category of people who is harmed.

So I suggest that it's our obligation to face up to the fact that the people of the State of New York are catching on to our failing in the Senate on this issue. It is not okay for us to say we're willing to

pass a bill that says bias attacks against black people and Jews and Asians should be punished with more severity by the law because they are different types of crimes, but we're not going to do it for bias-related attacks against gay people.

That is something that is fundamentally offensive. And as we're finishing the session today -- maybe we are, maybe we're not -- but we're certainly starting a campaign that will go forward into next year. This is something that is important unfinished business in this house.

I support the amendment. I urge that we take the same steps that we took with the clinic bill and get this done.

Thank you.

ACTING PRESIDENT KUHL: The question is on the amendment. All those in favor signify by saying -

Senator Goodman.

SENATOR GOODMAN: Mr. President, a brief additional comment, if I may, please.

ACTING PRESIDENT KUHL: You wish to speak on the amendment, Senator?

SENATOR GOODMAN: Yes, I do.

ACTING PRESIDENT KUHL: The floor is yours.

SENATOR GOODMAN: Gentlemen, I think you're entitled to have a brief report on what is occurring with respect to this bill, and I will render it herewith.

I think you should know that shortly after the Cardinal underwent his surgery for his brain tumor, that I received a personal telephone call from him. In that telephone call, which I must say filled me with the deepest admiration -- even deeper than that I already felt for the Cardinal - he most graciously stated that this matter was still very much alive, that there had been a conference of the bishops, to which he had referred earlier in the year, and that with respect to that conference, a study is being made by a subcommittee of the bishops. And it was his expectation that sometime in the very near future, possibly as early as the end of October, that that conference would deliver their report to the plenary bishops' deliberations.

May I say to you from the bottom of my heart I believe very deeply in the -- not only the integrity, but in the desire of the Cardinal to do everything within his power to foster goodwill. I need only point out to you, for example, the letter that he wrote on Yom Kippur to the Jews of New York in which he took the extraordinary step, for the first time in history, of issuing a personal apology for the history of anti-Semitism -- which is an astonishing and saintly act on his part which has been deeply appreciated and understood throughout the state of New York.

And I ask you please once again to exert a little patience on this. I did not intend to speak about it on the floor tonight, but since you are, I think, entitled to be aware of the fact this is not a quiescent matter, it is being considered very carefully.

As recently as this afternoon, I received a call from John Kerry, the legislative representative to the Catholic Church, to reiterate the information which the Cardinal did convey. This is under active deliberation by them. And it's my profound

hope, although I cannot predict the precise outcome, obviously, that the goodwill evinced by the Cardinal will manifest itself in something which will bring some sort of resolution to this very, very serious problem.

ACTING PRESIDENT KUHL: The question is on the amendment. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT KUHL: The amendment is lost.

The Secretary will read the last section.

THE SECRETARY: Section 9. This act shall take effect December 1, 1999.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Excuse me, Senator Goodman.

Senator Duane, why did you rise?

SENATOR DUANE: To speak as I

cast my vote.

ACTING PRESIDENT KUHL: Senator Duane, to explain his vote.

SENATOR DUANE: First, I do also want to add that I'll bet that there were people on the bus with Rosa Parks that said, "Why don't you just shut up, Rosa, and sit down where you're supposed to." But she wouldn't do it, and I'm not going to either.

On the DNA database bill, the reason I'm going to cast my vote in the negative -- there are two reasons. One is I'm very concerned that nothing in the bill speaks to what's going to happen to the samples after the DNA has been taken. My understanding is that the blood samples can be kept in perpetuity, and I don't see why it is that they can't be destroyed after the DNA has been extracted.

And the other issue is I've heard the argument said time and time again that a lot of people who have been falsely incarcerated will now be freed because of this bill. This from a body which has approved of eliminating money for prisoners' legal

services.

If incarcerated people in the State of New York had access to legal protection or lawyers who could go to the database and thereby prove whether or not they were innocent, I would be more inclined to vote for this. But this legislation neither provides the funding nor the mechanism to really make that happen, and that's why I'm voting in the negative on this.

Thank you, Mr. President.

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

Senator Goodman, to explain his vote. Senator Goodman passes.

Announce the results.

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Goodman.

SENATOR GOODMAN: Some housekeeping, if I may.

Would you be good enough to record me in the negative on Calendar Number 1682. I

was out of the chamber on Senate business when this was called. Senate Bill Number 6143.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Goodman will be recorded in the negative on Calendar Number 1682.

Senator Bruno.

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

ACTING PRESIDENT KUHL: No. The desk is clean.

SENATOR BRUNO: Then, Mr. President, there being no further business to come before the Senate, I move that we adjourn, subject to the call of the Majority Leader, intervening days to be legislative days.

Happy Thanksgiving.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned, subject to the call of the Majority Leader, and intervening days are to be legislative days.

(Whereupon, at 6:11 p.m., the Senate adjourned.)