NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 1, 2002

11:03 a.m.

REGULAR SESSION

SENATOR MICHAEL A.L. BALBONI, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BALBONI: The Senate will please come to order.

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

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

ACTING PRESIDENT BALBONI: In the absence of clergy, let us bow our heads in a moment of silence.

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

ACTING PRESIDENT BALBONI: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 30, the Senate met pursuant to adjournment. The Journal of Monday, April 29, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President. Amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Velella, page number 29, Calendar Number 597, Senate Print Number 5706;

Senator Maziarz, page number 48, Calendar Number 829, Senate Print Number 6721;

Senator LaValle, page number 48, Calendar Number 830, Senate Print Number 6733;

Senator Nozzolio, page number 50, Calendar Number 852, Senate Print Number 7195;

Senator Volker, page number 51, Calendar Number 869, Senate Print Number 4048;

Senator Spano, page number 52, Calendar Number 870, Senate Print Number 6105A;

Senator Meier, page number 55, Calendar Number 899, Senate Print Number 7137.

I now move that these bills retain their place on the order of Third Reading Calendar.

ACTING PRESIDENT BALBONI: Senator Fuschillo, the amendments are received and adopted, and all the bills will retain their place on the Third Reading Calendar.

Substitutions.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Are there any substitutions at the desk?

ACTING PRESIDENT BALBONI: In fact there are, Senator.

SENATOR SKELOS: I ask that they be made at this time.

ACTING PRESIDENT BALBONI: The Secretary will read.

SENATOR SKELOS: Thank you.

THE SECRETARY: On page 46, Senator Hannon moves to discharge, from the Committee on Local Government, Assembly Bill Number 3538B and substitute it for the identical Senate Bill Number 4510A, Third

Reading Calendar 816.

On page 49, Senator LaValle moves to discharge, from the Committee on Transportation, Assembly Bill Number 2786B and substitute it for the identical Senate Bill Number 1766B, Third Reading Calendar 835.

On page 49, Senator Trunzo moves to discharge, from the Committee on Transportation, Assembly Bill Number 8853A and substitute it for the identical Senate Bill Number 5644, Third Reading Calendar 838.

On page 52, Senator Padavan moves to discharge, from the Committee on Education, Assembly Bill Number 7580C and substitute it for the identical Senate Bill Number 5318A, Third Reading Calendar 875.

And on page 54, Senator Maziarz moves to discharge, from the Committee on Social Services, Assembly Bill Number 10017 and substitute it for the identical Senate Bill Number 6875, Third Reading Calendar 897.

ACTING PRESIDENT BALBONI: The substitutions are so ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President,

there's a privileged resolution at the desk by Senator Espada. May we have the title read and move for its immediate adoption.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: By Senator Espada, Legislative Resolution Number 5267, commemorating the celebration of Cinco de Mayo, May 5, 2002.

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

(Response of "Aye.")

ACTING PRESIDENT BALBONI: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT BALBONI: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Higher Education Committee in the Majority Conference Room.

ACTING PRESIDENT BALBONI: There will be an immediate meeting of the Higher Education Committee in the Majority Conference

Room.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: If we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Calendar Number 167, by Senator Hoffmann, Senate Print 4885, an act to amend the Vehicle and Traffic Law, in relation to leaving the scene of injury.

ACTING PRESIDENT BALBONI: Last section.

THE SECRETARY: Section 2. This act shall take effect 120 days.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 176, by Senator McGee, Senate Print 4881, an act to amend the County Law, in relation to

investigation.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 275, by Senator Libous, Senate Print 5094B, an act to amend Chapter 912 of the Laws of 1920.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 27. This act shall take effect on the 30th day.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number

360, by the Assembly Committee on Rules, Assembly Print Number 11114, an act to amend the Public Health Law, in relation to designating.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 408, by Senator Alesi, Senate Print 4657, an act to repeal certain provisions of the General Business Law.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 430, by Senator Balboni, Senate Print 5388, an act to amend the Penal Law, in relation to the crime of stalking.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 521, by Senator Rath, Senate Print 2392, an act to amend the Executive Law, in relation to the statewide computerized registry.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the 30th day.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 603, by Senator DeFrancisco, Senate Print 436, an act to amend the Criminal Procedure Law, in relation to the collection.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 715, by Senator Skelos, Senate Print 6387, an act authorizing the assessor of the County of Nassau.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 725, by Senator Maziarz, Senate Print 7101, an act to amend the Executive Law, in relation to increasing.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT BALBONI: The

bill is passed.

THE SECRETARY: Calendar Number 732, by Senator Spano, Senate Print 6068, an act to amend the Vehicle and Traffic Law, in relation to exempting.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BALBONI: Lay that bill aside.

THE SECRETARY: Calendar Number 749, by Senator Kuhl, Senate Print 6716, an act to amend the Education Law, in relation to notifying school districts.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 755, by Senator Skelos, Senate Print 421, an act to amend the Domestic Relations Law, in

relation to parents or other persons.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 756, by Senator LaValle, Senate Print 1368, an act to amend the Domestic Relations Law and the Family Court Act, in relation to the visitation rights of great-grandparents.

ACTING PRESIDENT BALBONI: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BALBONI: Lay that bill aside.

THE SECRETARY: Calendar Number 761, by Senator Balboni, Senate Print 7203, an act to amend the Domestic Relations Law and

others, in relation to altering the phrase "natural parent."

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 770, by Senator Kuhl, Senate Print 2121, an act to amend the Education Law, in relation to optional retirement programs.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT BALBONI: The

bill is passed.

THE SECRETARY: Calendar Number 854, by Senator Trunzo, Senate Print 7312, an act to amend the Vehicle and Traffic Law, in relation to World Trade Center distinctive plates.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT BALBONI: The bill is passed.

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

SENATOR SKELOS: If we could go to the controversial calendar.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Calendar Number 732, by Senator Spano, Senate Print 6068, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Explanation, Mr. President.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT BALBONI: Lay that bill aside for the day.

THE SECRETARY: Calendar Number 756, by Senator LaValle, Senate Print 1368, an act to amend the Domestic Relations Law and the Family Court Act, in relation to the visitation rights of great-grandparents.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Mr. President, we'll lay that aside temporarily. I believe Senator LaValle is conducting a Higher Education Committee meeting.

ACTING PRESIDENT BALBONI: The bill will be laid aside temporarily.

SENATOR SKELOS: Mr. President, if we could stand at ease pending the report of the Higher Education Committee.

ACTING PRESIDENT BALBONI: The house will stand at ease pending the report of the Higher Education Committee.

(Whereupon, the Senate stood at

ease at 11:15 a.m.)

(Whereupon, the Senate reconvened at 11:17 a.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: If we could return to reports of standing committees, I believe there's a report of the Higher Education Committee at the desk. I ask that it be read.

ACTING PRESIDENT BALBONI: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator LaValle, from the Committee on Higher Education, reports:

Senate Print 1042, by Senator LaValle, an act to amend the Education Law;

1210A -

ACTING PRESIDENT BALBONI: May I interrupt for a second.

Can we please have some order in the chamber. This is an important report.

Thank you very much.

THE SECRETARY: Senate Print 1210A, by Senator LaValle, an act to amend the Education Law;

1373, by Senator LaValle, an act to amend the Education Law;

1778, by Senator Libous, an act to amend the Education Law;

2352, by Senator LaValle, an act to amend the Education Law;

2353, by Senator LaValle, an act to amend the Education Law;

And Senate Print 7310, by Senator LaValle, an act to amend the Education Law.

All bills ordered direct to third reading.

SENATOR SKELOS: Move to accept the report of the Higher Education Committee.

ACTING PRESIDENT BALBONI: Without objection, the report is accepted.

SENATOR SKELOS: I take that back. You don't have to accept the report.

If we could take up Calendar Number 756, by Senator LaValle, at this time.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Calendar Number 756, by Senator LaValle, Senate Print 1368, an act to amend the Domestic Relations Law and the Family Court Act.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT BALBONI: Senator LaValle, an explanation has been requested.

SENATOR LAVALLE: Thank you, Mr. President.

Senator Paterson, last year we debated this bill. The bill is very, very straightforward. It adds to grandparents the great-grandparents having visitation rights, and it would allow them to bring a proceeding -- that is, great-grandparents - in order to secure visitation rights to their great-grandchildren.

In last year's debate, one of the questions over the special proceeding, it simply allows them to bring a proceeding but obviously does not guarantee a result. That is for the court to determine whether that particular great-grandparent should have visitation rights.

As we all know, today great-grandparents are younger than they were in preceding generations, as are grandparents younger and more active in their grandchildren's or great-grandchildren's upbringing.

It can simply be a good bonding relationship. But in some cases it goes beyond that. Where the children have had some sort of marital discord, grandparents and great-grandparents are being called into duty to provide support. And, in some cases, the grandchildren or great-grandchildren actually live with the grandparents or the great-grandparents.

So this bill simply -- and it comes out of situations where great-grandparents were left on the side without any ability, any ability to plead a case on visitation. This bill gives them that ability to go to court, plead a case as to whether they will have the opportunity to be able to have visitation with their great-grandchildren.

ACTING PRESIDENT BALBONI:

Senator Paterson, I assume that explanation is

satisfactory.

SENATOR PATERSON: It was very satisfactory.

ACTING PRESIDENT BALBONI: Terrific. Thank you.

SENATOR PATERSON: But it just leads to a question, if Senator LaValle will yield.

ACTING PRESIDENT BALBONI: Senator LaValle, will you yield to a question?

SENATOR LAVALLE: Yes, I would be honored to answer your question.

ACTING PRESIDENT BALBONI: Please proceed.

SENATOR PATERSON: Mr. President, I don't know if you're aware that this is a confrontation between two former high school classmates. So let's begin.

Senator LaValle, is there any conflict, in your opinion, with Supreme Court rulings that have kind of suggested - although the state seems split on their interpretation of the ruling -- that seem split on to what extent you would want to contravene the power of the parent that is

raising the child to grant visitation?

SENATOR LAVALLE: Senator, first of all, I thank you for acknowledging that you and I attended a great high school in Hempstead, Hempstead High School. You had erred at one prior time and omitted that in some discussion here, and I brought that to your attention.

However, the most important thing, as you know, when it comes to the courts and children, whether it is between parents or a grandparent, is that the best interests of the child is the paramount consideration that the court considers. We do not disturb that in any way, Senator.

SENATOR PATERSON: Mr. President, if Senator LaValle would continue to yield.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT BALBONI: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT BALBONI: Please proceed.

SENATOR PATERSON: So because of the fact that you mentioned, that grandparents

are younger these days, and also the fact that people are older these days -- for instance, there were 20,000 people in this country in the year 1990 who were 100 years of age, and that number has now doubled. There are now over 40,000 people in this country over 100 years of age. So there would be a lot more great-grandparents.

So you're just extending the same opportunity that the grandparents have to the great-grandparents.

SENATOR LAVALLE: That is absolutely correct, Senator.

SENATOR PATERSON: Mr. President, if Senator LaValle would continue to yield.

ACTING PRESIDENT BALBONI: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT BALBONI: Please proceed, Senator Paterson.

SENATOR PATERSON: You see, based on that, I think I can vote for the bill, Senator.

But my problem relates to adding on to a situation that perhaps is already out of

hand. Because I think if there is an equitable interest, if there was some relationship between the child and the grandparents or the great-grandparents at the time, maybe that the child lost one of their parents or there was a divorce or something like that, I think that would be somewhat compelling.

But now, with great-grandparents involved, you have perhaps eight, and if you throw in any of the grandparents, you have over ten people that have an action in court, which I think could be distressing to the parent that's trying to raise the child.

And so since all Family Court issues' credo is that we act on the best interests of the child, I'm just asking you if we aren't muddying the waters and we don't even know whether or not our higher courts have -- their dicta approves of this type of situation where we're granting almost a requirement, we are giving action to a large group of people now that there may not be any real evidence that there needs to be a relationship if there hasn't been one before.

SENATOR LAVALLE: Senator, first, I just want to repeat that we are giving to the great-grandparent an opportunity, because the language here says "may," the grandparent may bring a proceeding.

In most cases I would think that the situation that the great-grandparent is stepping forward is because there is some discord and the child is left out of a relationship with a great-grandparent that they had.

And this has come to attention - you know, happens all the time, particularly with grandparents, where the couple break - one of the couples may die, and the couple was separated or divorced. All of a sudden, one of the spouses that had never truly been involved in the relationship with the child comes forward and exercises their parental rights and says, "I am going to take this child." The child now is taken away from any relationship with the grandparent, or it can be a great-grandparent.

So I don't think that we're talking about situations that involve a cavalier

relationship between parties. I think usually this happens when there is some act in the family -- a death, usually. And that has been -- and I think every member here has had that, where people have come to our offices and asked for some sort of guidance or help.

Unless we change the law, and we usually tell people this, there is no language in the law that allows you to go into court to plead your case. Grandparents currently have this right; great-grandparents do not.

So I don't know if that allays some of your concerns. Obviously, we can only go by some of the experiences that we have, and those experiences show us that something severe happened within the family structure to trigger a grandparent or a great-grandparent moving forward for visitation rights. That's all we're talking about.

ACTING PRESIDENT BALBONI: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT BALBONI: On the bill.

SENATOR PATERSON: When this bill first came into this chamber, which I believe was actually -- the first time was two years ago, I was a little surprised that it would be as much of an issue.

And then Senator Ada Smith introduced me to these little girls, during the Black and Puerto Rican Legislative Caucus weekend. They were three years old, they were lovely, they were twins. And they were with what I thought were their grandparents. I later found out that those were actually their great-grandparents and that they were actually, in this particular case, the custodians of these children.

So Senator LaValle's point is very well taken. This is something that is more frequent than you would think in this day and age.

And I'll vote for the bill on the basis of whatever we're doing now regarding the grandparents should be extended to the great-grandparents.

But I would just like to leave this admonition, that courts are starting to take

judicial notice of situations involving a parent who is having difficulty not only obfuscating the barriers of raising a child as sometimes a single parent or a parent that's remarried, where the biological parent of the child is deceased, or after a divorce, and the other family members have at times, even unwittingly, just been -- created a difficulty for that parent.

I guess whatever that final resolution is to a Supreme Court case that seemed to overturn the law in the state of Washington, and whether or not our legislation right now is unconstitutional, is something to be resolved at a different time and on a different issue. So perhaps I'm putting the cart before the horse. But if it's ever resolved, I would think that the great-grandparents should also be included.

But I just want to make it clear that there is a concern that is being litigated all around this country right now about how far the surviving parent is raising the child has to go to accommodate the wishes of the relatives.

ACTING PRESIDENT BALBONI: Thank you, Senator Paterson.

Senator Duane, do you wish to be heard on this bill?

SENATOR DUANE: Perhaps, but what I first -

ACTING PRESIDENT BALBONI: Will you get back to us later?

SENATOR DUANE: No, I would like to ask the sponsor if he would yield.

ACTING PRESIDENT BALBONI: Senator LaValle, will you please yield?

SENATOR LAVALLE: Yes.

SENATOR PATERSON: The Senator yields.

SENATOR DUANE: Thank you.

I'm sort of coming at this from a different angle than my colleague Senator Paterson and, previously, Senator Montgomery. I'm just going to preface my question with what my overriding concern is so that the sponsor might be able to address it.

I'm concerned that a great-grandparent being able to start a proceeding could be used as a harassment tool

against -- could be used as a harassment tool against the parents. And I'm wondering if there's a limitation on the number of proceedings that could be brought.

In other words, if a Family Court says no the first time, can the great-grandparents go back for more?

SENATOR LAVALLE: My belief would be, Senator, that the great-grandparent, in order to come before the court again, would have to have some new evidence, some new material that they did not have in their first petition.

So that if we limited it, there could be a situation where the first petition did not include certain information, because the test here is the best interest of the child.

An attorney would look at, for the petitioner in that particular court, some of the decisions that the judge made and the standards that they used in determining what the best interest of the child is. That attorney may have unwittingly left out, in that petition, some key pieces and realized

that, when they got a negative decision from the court for their petitioner, that they probably needed to go back and put in those key things.

But unless you had something like that, it's unlikely that you would move forward again to the court without -- because once the court makes the decision, it's really not going to change it unless you bring new information to their attention.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT BALBONI: Excuse me, Senator Duane, if you would just suffer an interruption for a moment, please.

Senator Skelos, why do you rise?

SENATOR SKELOS: There will be an immediate meeting of the Banks Committee in the Majority Conference Room.

ACTING PRESIDENT BALBONI: Thank you very much, Senator Skelos. There will be an immediate meeting of the Banks Committee in the Majority Conference Room.

Thank you very much, Senator Duane.

SENATOR DUANE: Thank you.

I understand and appreciate that response. However, I just also want to clarify, does the sponsor have faith that the Family Court would -- what I'm concerned about in that case is that the great-grandparents might intentionally leave something out so that they could go back.

SENATOR LAVALLE: No, I - Senator, it is an attorney's obligation to zealously represent their client. They are bound, and they're not going to do it intentionally.

Family Courts are jammed. Their dockets are very, very crowded. It's a very busy court. An attorney representing the petitioner is not going to chance having a judge kind of dress them down by saying "Why are you wasting my time?" So that they would present, on that first petition, their best case.

I gave you something that would happen in a rare instance, in a rare instance, that upon reflection the attorney says: You

know, I should have put those two things in my petition in meeting that best interest standard.

It probably -- it's a rare instance that that would happen. The court is too jammed up to just go back and do things in repetition. You get it right the first time or, you know, you're left out.

SENATOR DUANE: Thank you.

And through you, Mr. President, if the sponsor would yield for another question.

ACTING PRESIDENT BALBONI: You had me in suspense there. I didn't know what you were going to ask. Thank you.

Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Sure.

ACTING PRESIDENT BALBONI: Thank you.

SENATOR DUANE: And because I'm not familiar with this specific part of family law, in a case where there has been some kind of event which would lead the great-grandparents -- or the grandparents, for that matter -- to want to bring a proceeding,

would not knowledge of that, whatever event that is, on the part of the grandparents or great-grandparents immediately trigger child welfare authorities to also look into what's happening?

SENATOR LAVALLE: I don't know the answer to your question. I don't know the answer.

SENATOR DUANE: Okay. And if the sponsor would continue to yield.

SENATOR LAVALLE: Yes, Mr. President, I'll yield.

SENATOR DUANE: And the reason I asked my previous question was that would then -- and the sponsor may know the answer to this question -- if ACS does have to go in, then does it not become their job to investigate whether or not the grandparents or the great-grandparents would be appropriate to have visitation and therefore decide in the best interests of the child to have them visit would be a good thing?

In other words, by bringing in - how is ACS brought in and would they not involve the great-grandparents and the

grandparents?

SENATOR LAVALLE: Well, as you could imagine, the person who is petitioning is going to the court and asking the court in the best interests of the child, we believe we should have visitation rights.

If one or both parents, because there has been some sort of discord, they will challenge that petition. They will say: We believe that the great-grandparent is too old, not capable of even in a short visitation dealing with this.

There could be, maybe, abuse. Just taking this to an extreme, there could be maybe abuse issues. There could be lots of things that the parents who want to challenge the petition would bring forward. Go to county agencies, wherever they could, whatever leverage they have to block that petition.

So there are a variety of things that could be called into play. But the petitioner is not going to do it, because they're trying to put forth their best case.

SENATOR DUANE: And if the sponsor would yield for one final question.

ACTING PRESIDENT BALBONI:

Senator LaValle, do you yield to one final question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT BALBONI: Please proceed, Senator Duane.

SENATOR DUANE: If grandparents brought forward -- tried to start a proceeding and they were rebuffed, could they then set up or could then -- could they, you know, set up or independently the great-grandparents come forward and bring a proceeding?

And the reason I ask that, then, is then could there not be, you know, a sort of an unspoken conspiracy to harass the parents when one method fails, then to go on? Because there would be potentially two sets of great-grandparents, two sets of grandparents, and they could each -- you could potentially have four unsuccessful proceedings against a family.

SENATOR LAVALLE: Senator, the answer really goes back to the best interest of the child. Regardless of what we talk about, whether it's a custody issue between

two parents, visitation rights, visitation rights for grandparents, the paramount test is what's best for this child.

The court does not want to put the child in an environment that is going to be aberrant from the one that they live in, not going to put them in harm's way. Regardless of what the adults want, the court's there to protect the child. That's why this best-interest test is a sacrosanct test in the court, because that's their job. And the petitioner and other people have to show the court why they are right in trying to support that child in some sort of way.

That's the court's duty, responsibility. That's why this test is there. And it's in every bill that we deal with children.

So I think it's -- you know, both in Family Court and in Supreme, when we're dealing with these matters, it's a very, very difficult, it's an emotional -- if it's in Supreme, it's in a section of Supreme that is a very emotional one, very tense. In Family Court, a lot of emotion.

And people -- you know, if you haven't been in a Family Court, you should just go there and just sit in and see the emotion. See the emotion.

And the court, just to go back, is not going to do anything regardless of the flailing around of the adults. They are only interested in one thing, what is in the best interests of that child.

SENATOR DUANE: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT BALBONI: Senator Duane, on the bill.

SENATOR DUANE: Both with the legislation dealing with grandparent visitation, as well as this legislation with great-grandparent visitation and their ability to start a proceeding, it's an issue which I have given a lot of thought to.

And I agree with and support the notion that extended family is very good and, in most cases, the presence of extended family is in the best interests of the child.

And I understand my Minority colleagues' concern that this bill continues

to not make it easy enough for them to get visitation. And while I agree with that, I also have concerns that these kinds of proceedings could be used as a harassment tool towards parents.

And the sponsor, you know, very carefully and appropriately and eloquently, really, has explained why it is that the court would be very careful about that.

However, the more I -- as I thought about it, there could be two sets of grandparents and then I think eight sets of great-grandparents, because each grandparent would then have two parents. Anyway, however, it is. It might be four. But that could be a lot of proceedings.

Even if the court decided in each case that there wasn't merit, the family of origin, the biological or adoptive parents of the child, would most likely still have to hire an attorney to protect themselves against the grandparents and great-grandparents who might also have attorneys.

So -- and interestingly, I find myself questioning this in the same way -- the

lesbian and gay civil rights group are very concerned about this kind of legislation because they are concerned that it could be used as harassment against grandparents who don't approve of the life that their children are living and the environment in which their grandchildren are being raised.

And also, some of the fundamentalist religious groups also are concerned about this kind of legislation because, again, it could be used as a tool to harass parents of children whose grandparents don't approve of the religious atmosphere in which they're being raised.

I'm going to vote for this legislation. But I'm going to remain concerned about what happens with the outcome of these kinds of proceedings. But I do have -- I actually have more faith, by and large, in the Family Courts than in the Supreme Courts in these cases.

But anyway, I'm going to vote for it with the hope that the intention of the bill is what will happen in reality.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Thank you, Senator Duane.

Does any other Senator wish to be heard on this particular bill?

If not, please read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT BALBONI: The bill is passed.

SENATOR FUSCHILLO: Madam President.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we please call up Calendar Number 926, Senate Print Number 7310.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 926, by Senator LaValle, Senate Print 7310, an

act to amend the Education Law, in relation to establishing a World Trade Center memorial scholarship program.

SENATOR LAVALLE: Madam President.

ACTING PRESIDENT McGEE: Senator LaValle.

SENATOR LAVALLE: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator LaValle, on the bill.

SENATOR LAVALLE: Madam President, this is a Governor's program bill sponsored by myself and most every member of the Senate. It is a bill that has been put together very, very carefully, with a lot of input -- and this is very, very important -- a lot of input from members of this body who were dealing with the families of those who had loved ones perish on 9/11.

And we have gone through very, very carefully, looking at many of the possible scenarios that families gave to us that were put into this bill.

There is probably no greater legacy

that a person who lost their life could leave than in assuring that their families -- their spouses, their children, and those who are financially dependent upon them -- will be able to fulfill their dreams and their hopes in getting a higher education.

We've talked about it, each one of us on this floor, the importance of a higher education in making sure that those dreams are fulfilled. It's really a ladder, in most every case, to one's personal success.

And so we ensure that the children, the spouses, and the financial dependents, whether they receive an education at a state university, city university, or private school within the state, will receive what is currently the SUNY tuition and room and board of $12,000 a year.

That grant will go to students attending New York State colleges regardless of whether the person was killed or disabled, or disabled at the World Trade Center, the Pentagon, or those on the hijacked United Flight 93 and Flight 175 and American Airlines Flight 11 and 77. There is no residency

requirement for those that were victims of that attack.

It also includes members of the fire, ambulance, and emergency medical personnel involved in the response effort.

The grants are good for four undergraduate years, or there are some programs that are five years if the eligible student is enrolled in a five-year program.

The grants -- that's the $12,000 - are considered last dollars. That's after Pell and TAP is taken out. And by the way, every bill that we deal with, and you can look at law in terms of scholarship, includes that language that we go to TAP and Pell grants first and then the scholarship kicks in.

One of the inputs that was given, very, very critical, was that there were students who were attending out-of-state colleges prior to September 11th. We want to make sure that they continue in those programs. It's the only exception for paying for an out-of-state tuition. All other tuitions are and grants are in New York State schools. The exception is a student who was

in a program prior to 9/11, they will be eligible.

The legislation will be deemed to have been in effect on April 1, 2001, and is applicable for awards made for the 2001-2002 academic year.

I am -- my name appears first on this legislation, but this legislation, when we pass it, is something that this body, with your input, with your input will, I think, give to the survivors, children, and spouses and those who are financially dependent, will allow them to complete that dream that in many cases was started at a dinner table or someplace with a person about the importance of that higher education.

I can think of no more important piece of legislation that this body will be passing than this. And I thank my colleagues for your attention to detail and for the way that you have dealt with the families to ensure that the State of New York will be doing this. And certainly to our Governor for making this a priority and making it a program bill.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam President, this bill represents three things. Promises made, promises kept.

The Governor announced this initiative, this idea, shortly after September 11th. Senator Bruno, Senator LaValle, working very, very hard, have made this a reality. And against the backdrop of terrible economic news, we go forward.

The bill also shows that we will not forget the victims or their families. The bill also demonstrates that we believe in the future. On September 11th, thousands of people lost their futures. But with this act today, we continue to believe in the future of the children of the victims.

You are to be congratulated, my colleagues. We worked together on this. We all kept pushing. And we do this together. Assembly Speaker Silver should also be congratulated.

And this is what the people want to

see from us. They want to see us getting together, building a consensus, moving forward and protecting and benefiting the people of this state.

And lastly, the Governor. During all the times that Governor visited my district right after 9/11, with all the families that he met with, the only thing that I ever saw the Governor hold were the hands of the victims and their families, the hands of the people that he represented and cared for. This is leadership. Innovation, ideas and action: that's George Pataki.

Thank you, Madam President.

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

Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we return to motions and resolutions. I believe there is a privileged resolution by Senator Bruno at the desk. May we have the title read.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 5282, commemorating the 51st consecutive observance of the National Day of Prayer in the State of New York, Thursday, May 2, 2002.

ACTING PRESIDENT McGEE: All in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is carried.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we return to the reports of standing committees. I believe there's a report of the Banking Committee at the desk.

ACTING PRESIDENT McGEE: Yes, there is.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Farley, from the Committee on Banks, reports the following bills:

Senate Print 2840, by Senator Farley, an act to amend the Banking Law;

4634A, by Senator Farley, an act to amend the Banking Law;

6515, by Senator Farley, an act to amend the Banking Law;

7175, by Senator Farley, an act to amend the Banking Law;

And Senate Print 7179, by Senator Farley, an act to amend the Banking Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Without objection, all bills are reported to Third

Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: There is none.

SENATOR FUSCHILLO: Madam President, there will be an immediate meeting of the Majority Conference in the Majority Conference Room following the adjournment of the session.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Majority in the Majority Conference Room following adjournment of the session.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there being no further business, I move we adjourn until Monday, May 1st, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Monday, May 6th, at -

SENATOR FUSCHILLO: Madam President.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Before we adjourn, let's adjourn till Monday, May 6th.

ACTING PRESIDENT McGEE: We'll do that.

SENATOR FUSCHILLO: Will you recognize Senator Brown.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you, Madam President. I request unanimous consent to be recorded in the negative on Calendar 755.

ACTING PRESIDENT McGEE: Without objection.

On motion, the Senate stands adjourned Monday, May 6th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:00 p.m., the Senate adjourned.)