

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
APRIL 3, 2004**

PRESENT: Alcott; Alessio; Amoroso; Asarch; Aversa; Ayers; Bailey; R. Bartlett; Benedict; Berman; Bracken; Brady; Butler; Buzard; Campos-Galvan; Cioffi; Coffey; Cyrulnik; Darche; Denton; Dixon; Doerr; Dorsey; Doyle; Dwyer; Edmunds; Eisman; Evans; Fedrizzi; Fennell; Ferrara; Filberto; Fink; Flaherty; Flink; Flood; Geoghegan; Gerstman; Getnick; Goldenberg; Golinski; Green; Gross; Grossman; Haig; Hassett; Hayes; Herold; Hession; Hoffman; Hollyer; Horan; James; Kamins; Kiernan; B. King; Kinum; Klein; Kossove; Kougasian; Kretser; Lagonia; Lawrence; Lerose; Lesk; Levin; P. Levy; Lewis; Lynch; Madigan; Mandell; Marwell, Matalon; Mayer; Meislahn; Michaels; Millman; Milonas; Miranda; Mitzner; Monahan; Moore; Myers; Nathanson; Netter; Nizin; O'Leary; O'Mara; Ostertag; Peradotto; Perlman; Pfalzgraf; Plumley; Price; Purcell; Quinlan; Reed; Reimer; Robert; Rosner; Rothstein; Safer; Schraver; Schultz; Seiden; Shaw; Sherwin; Shive; Shulman; Silkenat; Sperendi; Standard; J. Sunshine; N. Sunshine; Tell; Terranova; Tharp; Tishler; Treece; Tyler; Walker; S. Walsh; Weisman; Wimpfheimer; Zeltner.

The meeting commenced with the presentation of the Association's latest public information radio announcements, prepared by the Committee on Public Relations, to increase awareness of how lawyers positively impact people's lives every day. The four-week statewide campaign, featuring four 30-second messages, is being conducted in cooperation with the New York State Broadcasters Association.

1. Approval of minutes of the January 30, 2004 meeting: The minutes, as previously distributed, were approved unanimously by voice vote.
2. Report of the Treasurer. James B. Ayers began the Treasurer's report with an update on the financial statements through December 31, 2003, advising that the auditors expected to issue a draft statement in the next week with a surplus of \$1.1 million. Adjustments included \$573,000 for the defined benefit pension plan and \$363,000 for the post retirement medical plan. Noting that the operating budget does not include investment gains and losses, he said that the operating loss for 2003 is \$423,000, a decrease of \$788,600 from 2002. Continuing Legal Education declined approximately \$1 million from 2002 to 2003, and membership and section dues increased by \$317,000.

Reviewing financials for 2004 through February 29, Mr. Ayers reported that total revenue through the first two months of 2004 was \$10,620,000, an increase of 2% from last year. Membership and section dues decreased a total of about \$237,000 from February 2003 to February 2004. With regard to areas of growth in

revenue, he advised that net realized and unrealized gains were \$245,000 as compared to a net loss of \$152,000 for 2003, a change of approximately \$400,000. CLE income increased by about \$85,000 over last year. As discussed at previous meetings, Mr. Ayers noted the alternate year volatility of CLE revenue with higher income seen in even years, which have a higher number of bar registrants. Total expenses for this same period were \$3,652,000. Expenses were down approximately \$300,000 or about 7% from 2003, including decreases in Annual Meeting costs. The Association's overall net surplus was up by approximately \$536,000 as of the end of February, with 75% of this increase attributable to investment performance.

Mr. Ayers further reported that on March 9, 2004, the Executive Committee approved recommendations by the Finance Committee to freeze employee benefit accruals under the defined benefit plan and to amend the staff 401(K) plan to provide an employer contribution in addition to elective employee contributions. The Finance Committee took this action based on concern with regard to projected future contingent benefit costs and liabilities of the defined benefit plan. The Committee conducted an extensive evaluation of various options with the objective of providing meaningful retirement benefits to employees while enabling the Association to control future costs in a fiscally prudent manner.

The Treasurer's report was accepted with appreciation.

3. Report of the Nominating Committee. Paul Michael Hassett, Chair of the Nominating Committee, reported on the Committee's nominations for members of the Nominating Committee and Delegates to the American Bar Association House of Delegates for 2004-2005.

a. Election of members of the Nominating Committee. Nominated for service on the 2004-2005 Nominating Committee were the following individuals:

- Members-At-Large: Steven C. Krane as Chair and Paul Michael Hassett and Lorraine Power Tharp as Members;
- Alternate Member-At-Large: Thomas O. Rice.

Separate motions were adopted by unanimous voice vote electing: (1) the nominated chair and the members-at-large, and (2) the nominee for alternate member-at-large.

Mr. Hassett then presented the Committee's nominations for district members and alternates of the Nominating Committee, as follows, who were then elected by unanimous voice vote motion: First – Rosalind S. Fink, Sue C. Jacobs, Peter M. Kougasian, Michael Miller, Hon. E. Leo Milonas, Norman L. Reimer, Edwin D. Robertson, James R. Silkenat and

Lisa M. Stenson, with Alan Rothstein, First Alternate, Catherine A. Christian, Second Alternate, and Ann B. Lesk, Third Alternate; Second – Gregory T. Cerchione and Manuel A. Romero, with Lawrence F. DiGiovanna as Alternate; Third – Hon. Gerard E. Maney and Hon. Randolph F. Treece, with Marilyn T. Carreras as Alternate; Fourth – to be submitted; Fifth – James F. Dwyer and Nicholas S. Priore, with Timothy J. Fennell as Alternate; Sixth – Leslie N. Reizes and David A. Tyler, with Clover M. Drinkwater as Alternate; Seventh – June M. Castellano and James C. Moore, with G. Robert Witmer Jr. as Alternate; Eighth – David L. Edmunds Jr. and Joseph McCarthy, with Hon. Erin M. Peradotto as Alternate; Ninth – Frank M. Headley Jr., Robert L. Ostertag, and Hon. Sam D. Walker, with Catherine M. Miklitsch as Alternate; Tenth – John P. Bracken, Emily F. Franchina, Joshua M. Pruzansky, and Jon N. Santemma, with Scott M. Karson as First Alternate and Owen B. Walsh as Second Alternate; Eleventh – Catherine R. Glover and George J. Nashak Jr., with Steven Wimpfheimer as Alternate; Twelfth – Steven E. Millon and Maxwell S. Pfeifer, with Robert S. Summer as Alternate.

b. Election of Delegates to the ABA House. The report of the Nominating Committee for Delegates to the American Bar Association House of Delegates was given by Mr. Hassett for the six positions up for election. He advised that the Delegates would serve two-year terms, commencing at the close of the ABA's Annual Meeting in August 2004. The NYSBA's 11 Delegates serve staggered terms. A motion was adopted unanimously in a voice vote electing the nominated delegates: A. Vincent Buzard of Rochester, Steven C. Krane of New York City, A. Thomas Levin of Mineola, Robert L. Ostertag of Poughkeepsie, and Maxwell S. Pfeifer of the Bronx. Elected by motion in a separate unanimous voice vote was the nominee for Young Lawyers delegate, Manuel Campos-Galvan of New York City.

3. Report and recommendations of the Committee on the Jury System. Peter D. FitzGerald, Chair of the Committee on the Jury System, reviewed the Committee report concerning various issues in jury selection and juror involvement under study by Court System entities and others. The Chief Judge's Commission on the Jury System is expected to issue a report later in the spring and the Court System's Jury Trial Project is conducting various pilot projects.

Mr. FitzGerald reported that Committee recommended continuing the Association opposition to reductions in peremptory challenges in civil or criminal matters. Among other measures, the Committee opposed making provision for jurors to ask oral questions directly to witnesses and, pending further study and review, did not favor permitting submission of written questions by jurors to the judge who would determine whether they are permissible. The Committee favored allowing challenges by consent, while making it clear that this is not a means for improper and unlawful discrimination against potential jurors. The report supported continuation of the court rule requiring a judge to open the voir dire but then have

discretion to determine the extent of his/her further level of supervision of the process. The Committee also favored continuation of opportunity to use Judicial Hearing Officers to monitor jury selection where warranted by the high volume of cases. In addition, the Committee recommended that the judge have discretion to provide a written copy of the charge to the jury after the parties have opportunity to examine a copy and be heard. Use of interim summations, either required or by judicial discretion, was opposed by the Committee. Noting the diverse conditions across the state, the Committee recommended continuation of efforts of the bench and bar to promote communication, promptness and fairness in the jury process, rather than implementation of uniform statewide rules.

It was announced that the Executive Committee had endorsed the report and recommendations for positive House action. Following discussion, the House voted unanimously by voice vote to adopt a motion approving the report and recommendations.

5. Report of the Elder Law Section. The Chair of the Elder Law Section, Joan L. Robert, made an informational presentation on the Section's report and recommendations that expressed concerns about the effect on the elderly of the Governor's budget proposals that would reduce New York's share of the cost for the federal Medicaid program. The House was advised that given the occurrence of budget negotiations and the possibility of action on the budget prior to the House meeting, the Executive Committee had endorsed the report in a March 11 special meeting.

The report concluded that the following budget proposals would have devastating effects on financially and medically needy seniors: Increasing from 36 to 60 months the period of time during which financial transactions of a Medicaid recipient would be subject to review and imposing this look-back period on non-institutionalized as well as institutionalized individuals; eliminating spousal refusal in home care and limiting its use for spouses of institutionalized individuals; shifting the penalty period for asset transfers from the date of the gift to the date of the application for Medicaid; and imposing ineligibility periods for home care caused by transfers of assets.

While recognizing the tight fiscal times for the state, the Section cautioned that such actions would punish unwitting seniors who have helped their families with tuition or home purchases and now experience medical problems; would have the unintended effect of encouraging use of institutional, rather than community, services; and would require recordkeeping far beyond normal practice for the elderly. The report observed that, excepting the penalty period for home care, these measures are inconsistent with federal law and therefore would require a waiver from the federal government. The Section urged that the eligibility provisions not be changed until the state develops a comprehensive long-term care program for the elderly.

6. Presentation of the Trial Lawyers Section National Trial Advocacy Awards. President Levin and Professor Travis H.D. Lewin, Trial Lawyers Section competition director, presented awards to the co-champion law school teams, from St. John's and Syracuse, for the Region II National Trial Advocacy Competition. Ryan K. Kerwin of Syracuse was named the overall best advocate in the regionals, with Kareem R. Vessup of St. John's as runner-up and recipient of the Anthony J. DeMarco Jr. trophy as best advocate through the first three rounds. The two teams advanced to the National Finals. St. John's received the Tiffany Cup for 2004 for having the best record at the Nationals. The regional competition, held in Albany in February with nine schools participating, was sponsored by the Section and Albany Law School.

7. Report of the President. President Levin reported on the following matters:
 - a. Judicial selection. It is anticipated that the Chief Judge's Commission to Promote Public Confidence in Judicial Elections will release a report in June. The Association provided input to the Commission on its interim report, per House direction in January. In other developments concerning judicial selection procedures, suit has been filed in federal District Court for the Eastern District of New York challenging the state's system of nominating Supreme Court candidates at political conventions as depriving citizens of the right to vote. The Association's newly established Special Committee on Court Structure and Judicial Selection, chaired by the Hon. Richard D. Simons, is examining the areas under study by the Commission and other issues of structure and selection and is monitoring the District Court suit.
 - b. Family Court compensation. The Assembly Judiciary Committee is advancing a bill that would raise the salaries of Family Court judges to the level of other county court judges in each county. The Association will monitor this and related developments.
 - c. Bylaw amendments. The Committee on Bylaws is drafting amendments to pursue the House's direction in January to add 12 seats to the House and add 2 members-at-large to the Executive Committee to advance racial and ethnic diversity, modify the formula for section representation on the House, and revise some terms of office on the Executive Committee. The proposed amendments are expected to be presented for subscription at the June House meeting.
 - d. Diversity initiatives. He and President-Elect Standard and other representatives met with minority bar leaders at a breakfast following up the diversity reception at the Association Annual Meeting. The meeting focused on means of enhancing communication and coordination on mutual concerns among the associations, and increasing member involvement. In addition, the Environmental Law Section has awarded

three fellowships to minority law students to work this summer in positions in government or public interest. This joint program with the Environmental Law Committee of The Association of the Bar of the City of New York provides the students with the opportunity to gain practical knowledge of the environmental law field and make contacts.

- e. Student loan assistance. Pursuing the request of the Young Lawyers Section, he is establishing a special committee to explore whether deductibility for student loans would be feasible for those entering public service. The committee will include representatives of the Young Lawyers Section, the Tax Section, and others.
- f. FTC litigation. As to the Association's litigation against the Federal Trade Commission concerning the Gramm-Leach-Bliley Act, both sides have cross motions pending for summary judgment, with a decision expected in late April or early May. The Association position is that the Act's requirement to send privacy notices to clients is not applicable to the legal profession, which is already bound by stricter standards of professional responsibility. Earlier in the year, the Association received a favorable ruling from the District Court.
- g. Electronic access to court records. The report of the Commercial and Federal Litigation Section, approved by the House in January, on electronic access to court records, was submitted to the Court System. The report recommended implementation of electronic access and filing, with certain safeguards, using procedures similar to the federal PACER system. Since then, the Chief Judge's Commission on Public Access to Court Records issued a report calling for files to be available electronically to the same extent as accessible by paper and following, in major respects, the PACER system. The Commission recommended a new rule, applicable to electronic and paper filings, in areas where there needs to be protection from public disclosure, such as Social Security numbers. The Court System plans to initiate a series of pilot projects in various areas of the state.
- h. Fiduciary rules. The Special Committee on Fiduciary Appointments is studying the functioning of the new rules concerning the appointment process and responsibilities of appointees under Article 81 of the Mental Hygiene Law and cases involving Guardians ad Litem. The report is expected to be presented at the June 2004 meeting.
- i. Annual Meeting. The Special Committee to Review the Annual Meeting, chaired by President-Elect Standard, is working on its examination of all aspects of the Annual Meeting to ensure that the Association is continuing to be responsive to the needs and interests of its members and presenting programs and other activities that encourage participation. As part of this

study, a survey was distributed to Delegates inquiring whether they would prefer to retain the present Friday meeting schedule for the Annual Meeting or consider a move to Saturday, as is scheduled for the other House meetings during the year. A substantial majority favored the current meeting time on Friday. Delegates also were asked by a show of hands to indicate their preference for a dinner or reception format for the event held on Thursday evening of the Annual Meeting honoring Section and Committee Chairs. Attendance has decreased in recent years and this year a change was made to a reception held at the Marriott Marquis. A substantial majority responded with a preference for a dinner, such as that held at the Tavern on the Green in past years. The Committee will be preparing recommendations on these and other Annual Meeting activities.

- j. Appreciation for service. President Levin expressed appreciation to the Executive Committee and House and recognized outgoing members for their service.

- 8. Report and recommendations of the Special Committee to Ensure the Quality of Mandated Representation. Vincent E. Doyle III, Chair of the Special Committee to Ensure Quality of Mandated Representation, summarized the Committee's report and recommendations concerning the Governor's proposals to modify requirements for localities in providing for the defense of the indigent. The Committee supported the Governor's call to accelerate distribution of monies from the Indigent Legal Services Fund to localities. However, the Committee opposed measures that would shift oversight from the Comptroller to the Division for Criminal Justice Services, as creating the potential for conflict of interest, and also opposed proposals that would change the formula for distributions from the Fund and that would eliminate maintenance of effort and reporting requirements for localities.

In discussion, the Committee accepted a proposed amendment by the Criminal Justice Section to add the following:

Because of the importance of maintaining a stable stream of funding for the purposes for which the ILS Fund was created, the Special Committee urges that the legislation explicitly provide that the ILS Fund monies be dedicated to assist counties in providing legal representation for persons who are financially unable to afford counsel pursuant to Article 18-B of the County Law and to assist the state in funding representation provided by assigned counsel paid in accordance with § 35 of the Judiciary Law, and for no other purposes.

It was announced that the Executive Committee had unanimously endorsed the report for positive House action. The House adopted a motion unanimously by voice vote approving the report and recommendation, as modified to include the

Criminal Justice Section amendment, accepted as a friendly amendment by the Committee.

9. Reports and recommendations concerning the Unified Court System's report on pro bono. C. Bruce Lawrence, Co-Chair of the President's Committee on Access to Justice, presented the Committee's report reviewing the proposals of the Court System's Office of Justice Initiatives on "The Future of Pro Bono in New York." The Justice Initiatives report included the results of a survey on pro bono activity in 2002 and proposals to enhance service. In an analysis of these proposals, the President's Committee on Access to Justice cited the societal obligation of addressing the unmet legal needs of the poor and the need for adequate funding for civil legal services as critical to facilitating access to justice, supplemented by pro bono service. The Committee observed that existing statewide and local networks to coordinate pro bono activity should be supported, rather than new structures created.

It was announced that the Executive Committee had endorsed the report for positive action as modified to incorporate several points raised by the New York County Lawyers' Association, voting with one negative vote to add, from the NYCLA report, that the most significant way of providing legal services to the indigent is through a well-funded system of legal service providers; that pro bono service should remain voluntary and any suggested numbers of hours should be aspirational; and that reporting should be voluntary for attorneys and for sponsors of pro bono programs such as bar associations. Further, by a vote of 13 to 6, the Executive Committee also called for the addition of the NYCLA point urging the Court System to broaden the definition of pro bono to capture the substantial services attorneys and bar associations provide for the public, and made plans to prepare such a definition.

Extensive discussion ensued concerning the questions of whether reporting should be required or voluntary, and whether the definition of pro bono should focus on the provision of legal assistance to low-income persons or be expanded to include volunteer service to others. It was noted that much of the volunteer service following the World Trade Center attacks, for example, involved assisting survivors or families who are not low income.

A motion was made to incorporate the points raised by NYCLA as described above. Accepted as friendly amendments were proposals to make certain modifications in the report of the Access Committee for consistency and to state that statewide coordination can help expand pro bono but unnecessary bureaucracy and governmental intervention should be avoided. By voice vote, the House adopted this motion to amend. Also adopted by voice vote was a motion that the judiciary has a proper role to help facilitate and support pro bono but the organized bar should play the primary role. The main motion was then adopted, as modified, in a voice vote.

10. Report of the Special Committee to Review Attorney Fee Regulation. A. Vincent Buzard, as Co-Chair of the Special Committee to Review Attorney Fee Regulation, reported that the Committee has begun its study of statutes and court rules relating to attorney fees and that Association members are being asked to provide suggestions on areas of examination and additional issues that should be studied. The Committee has studied the proposal of Common Good on limiting contingent fees and opposes the proposal. A report in opposition is being prepared. Co-chairing the Committee is Steven C. Krane.
11. Report of The New York Bar Foundation. Robert L. Haig, President of The New York Bar Foundation, updated the House on The Foundation's strategic planning initiatives in regard to grantmaking, The Fellows program, visibility and development and encouraged members' involvement and support.
12. Report of the New York County Lawyers' Association on electronic recording of police interrogations. An informational report of the New York County Lawyers' Association calling for taping of police interrogations was given by NYCLA President-Elect Norman L. Reimer. The proposed resolution urged all law enforcement agencies to videotape custodial interrogations of crime suspects and, where impractical, to audiotape the interrogations in their entirety, and calling on the Legislature and/or courts to enact laws or rules requiring such taping, with the necessary funding and remedies for noncompliance. The report discussed situations of false confessions and described studies and experience in other jurisdictions, concluding that taping interrogations would help deter police coercion and frivolous defense claims of coercion and also aid the jury in assessing the veracity of taped confessions. It was announced that the report was adopted by the American Bar Association House of Delegates in February, and that the report would be presented for formal action at the June House meeting to allow for review and comment by interested NYSBA Committees and Sections.
13. Report of the Electronic Communication Task Force. The Chair of the Electronic Communications Task Force, David P. Miranda, gave a status report to the House on the Association's increased use of technology to provide information to members more quickly and accessibly and additional opportunities for members to interact with the Association and each other. These initiatives, he said, include the expansion of content and navigation of the Association website, the implementation of e-forums for member communication, and the new "nysbar" pass-through e-mail address for members. Appreciation was expressed to the Task Force for its work on these projects.
14. Chair's report. President-Elect Standard presented the following matters:
 - a. Designation of Delegates to the House. A motion was adopted unanimously by voice vote approving the designation of Delegates filed by local bar associations to serve for the 2004-2005 Association year beginning June 1, 2004.

- b. Filing of the roster of the House. A motion was adopted unanimously by voice vote filing the roster of the House for 2004-2005.
 - c. Appreciation for service. Appreciation was expressed to President Levin for his leadership and advocacy on behalf of the Association. In completing his last meeting as Chair of the House Mr. Standard thanked Delegates for their service and collegial participation in addressing and resolving issues discussed and debated in the past year.
15. Date and place of the next meeting. President-Elect Standard announced that the next meeting of the House of Delegates was scheduled for Saturday, June 19, 2004 at The Otesaga Hotel in Cooperstown, New York.

Respectfully, submitted,



A. Vincent Buzard