

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 24, 2003**

PRESENT: Alcott; Amoroso; Asarch; Ayers; Barasch; M. Bartlett; R. Bartlett; Bauman; Beehm; Bracken; Butler; Buzard; Capell; Carreras; Castellano; Chambers; Christian; Clifford; Coffey; Cometa; Corcoran; Crane; Cristo; Cuyler; Darche; Dietz; Doerr; Dollard; Doyle; J. Dwyer; Eisman; Eppler; Evans; Farrell; Fedrizzi; Fennell; Filiberto; Finerty; Fink; Fishberg; Fisher; FitzGerald; Flaherty; Flink; Franchina; Frank; Fredrich; H. Freedman; Friedman; Futter; Gacioch; Geoghegan; Gerrard; Gerstman; Getnick; Goldenberg; Goldstein; Graber; J. Gross; M. Gross; Gutekunst; Haig; Handlin; Harren; J. Harris; M. Harris; Hartman; Hassett; Hayes; Heggen; Heming; Herold; Hoffman; Horowitz; Hoye; Ingrassia; R. Jacobs; S. Jacobs; Jacoby; Jaffe; James; Kamins; Karson; Kelly; Kilsch; B. King; Kirkwood; Klein; Kogut; Kougasian; Krane; Landy; Lawrence; Lee; Leistensnider; Lerose; Levin; C. Levy; M. Levy; P. Levy; Lewis; Lieberman; Lindenauer; Longo; Madigan; Mandell; Maney; Manley; Mayer McAuliffe; McCarthy; Meng; Michaels; M. Miller; S. Miller; Milonas; Minkowitz; Miranda; Mitzner; Monahan; Moore; Morse; Myers; Nashak; Nizin; O'Connor; O'Leary; O'Mara; Opatowsky; Ostertag; Palermo; Palmer; Perlman; Peterson; Pfalzgraf; Price; Priore; Pruzansky; Purcell; Quattlebaum; Rayhill; Reich; Reimer; Reitzfeld; Renzi; Reynolds; Rice; M. Richardson; T. Richardson; Richman; Rifkin; Rizzo; Robertson; Rodriguez; Romero; Rosner; Rubenstein; Russo; Safer; Schraver; Schumacher; Sconiers; Seiter; Seymour; Sherwin; Silkenat; Sloan; Standard; J. Sunshine; N. Sunshine; Sweeny; Terranova; Tharp; Treece; Tully; Tyler; Uebelhoer; Vigdor; Wales; Walker; O. Walsh; Weinberger; Wimpfheimer; Witmer; and Zeltner.

1. Approval of minutes of November 2, 2002 meeting. In a unanimous voice vote, a motion was adopted approving the minutes as distributed previously.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Kenneth G. Standard to members of the House at the Annual Meeting, was received with thanks.
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. Thomas O. Rice, Chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2003-2004 Association year:

PRESIDENT-ELECT

Kenneth G. Standard, New York City

TREASURER

James B. Ayers, Albany

SECRETARY

A. Vincent Buzard, Rochester

DISTRICT VICE-PRESIDENTS

FIRST

Mark H. Alcott, New York City
Stephen D. Hoffman, New York City

SEVENTH

C. Bruce Lawrence, Rochester

SECOND

Edward S. Reich, Brooklyn

EIGHTH

Sharon Stern Gerstman, Buffalo

THIRD

Rachel Kretser, Albany

NINTH

Joseph F. Longo, White Plains

FOURTH

Cristine Cioffi, Niskayuna

TENTH

A. Craig Purcell, Hauppauge

FIFTH

James F. Dwyer, Syracuse

ELEVENTH

Gary M. Darche, Flushing

SIXTH

Kathryn Grant Madigan,
Binghamton

TWELFTH

Lawrence R. Bailey Jr.,
New York City

MEMBERS-AT-LARGE OF THE EXECUTIVE COMMITTEE

Donald C. Doerr, Syracuse
John H. Gross, Northport
Claire P. Gutekunst, New York City
Gunther H. Kilsch, New York City
David R. Pfalzgraf, Buffalo
Jay G. Safer, New York City

There being no further nominations, a motion was made and carried that the nominations be closed. The Secretary then cast a single ballot for the above-named individuals as officers and members-at-large of the Executive Committee.

4. Report of the President. Ms. Tharp reported on the following matters:
- a. Court of Appeals. On January 6, the Governor announced his selection of Court of Claims Presiding Judge Susan Phillips Read to fill the vacancy on the Court of Appeals created by the retirement of the Hon. Howard A. Levine. The Association's Committee on Judicial Selection, chaired by Past President Maxwell S. Pfeifer of the Bronx, had reviewed the qualifications of all the nominees for this position and found them well qualified. The Committee's findings were transmitted to the Governor.
 - b. State of the State address. She and Executive Director Patricia K. Bucklin attended the Governor's State of the State address on January 8. The Governor described the state's economic problems and called for a budget with spending below that of the current fiscal year. Among initiatives related to the justice system, he urged elimination of parole for felons similar to the federal approach; elimination of the statute of limitations on terrorist offenses; and mandated life without parole for possession of chemical or biological weaponry. With regard to domestic violence cases, he sought a requirement that judges review the accused's history in considering bail, lengthening of orders of protection, and extension of protections for unmarried couples in the same household. He also discussed consolidation of several courts, elimination of certain jurisdictional restrictions, and steps for reform of mandatory drug sentences.
 - c. Judiciary budget. In view of the state deficit, the judiciary budget request includes no new programs and plans to leave 700 positions vacant. The proposal seeks a 1.9 percent increase in spending, including funding for contractual personnel costs and continuation of problem-solving court programs for domestic violence, family, drug, mental health and other cases. President Tharp plans to testify on behalf of the Association at the February legislative hearings on the budget.
 - d. IOLTA case. On December 9, the United States Supreme Court heard oral arguments in the Washington Legal Foundation's challenge to the constitutionality of the Interest on Lawyer Trust Account (IOLTA) program in the State of Washington as an impermissible taking of property. The IOLTA program contends that there is no identifiable value lost to individual clients since the amounts are so small. The NYSBA, as authorized by the Executive Committee, joined with other bar associations in filing *amicus curiae* briefs supporting the Washington IOLTA program's position.

- e. State of the Judiciary address. She and Executive Director Bucklin attended Chief Judge Judith S. Kaye's State of the Judiciary address on January 13. The Chief Judge announced the commissioning of the Rockefeller Institute of Government to perform an analysis to determine economies to be achieved by streamlining of the courts; continued her call for legislation to raise the assigned counsel rates and support of reform of the mandatory drug sentencing laws; her plans for a comprehensive review of the matrimonial rules; creation of a commission, to be chaired by the past Chair of the Commercial and Federal Litigation Section, Mark C. Zauderer of New York City, to determine why more than 80 percent of those called for jury duty are not named to serve on a jury; and statewide expansion of the Integrated Domestic Violence Courts and the addition of Family Court judgeships in New York City in an agreement with Mayor Michael R. Bloomberg. The Chief Judge also announced the establishment of a commission, chaired by former Fordham Law School Dean John D. Feerick, to examine ways to make judicial elections less partisan. Chief Judge Kaye cited the Association's Committee on Judicial Campaign Conduct for providing guidance and procedures for appropriate campaign conduct, working with committees of local bar associations.

- f. Meeting with Court System officials. She and President-Elect Levin and Executive Director Bucklin would be meeting on January 31 with Chief Administrative Judge Jonathan Lippman to discuss issues of mutual concern. Among topics would be the judiciary budget request; continued efforts to seek court restructuring, reform of the mandatory drug sentencing laws, and increased assigned counsel rates; procedures for on-line publication of court decisions; proposals expected to be pursued by business, insurance and other entities for changes in the tort system; and implementation of the new rules on fiduciary appointments and the recommendations that had been made on the proposed provisions by the Association's Special Committee.

- g. Meeting with Deans. She and President-Elect Levin held a meeting on December 3 with law school deans on issues of concern in legal education and the profession. Subjects included the Board of Law Examiners' proposal to raise the passing score on the bar examination; preparation of law students for contemporary issues in practice; fostering professional values; addressing quality of life concerns; and assisting students with their education debt, including pursuit of recommendations in the report of the Special Committee on Student Loan Assistance for the Public Interest.

Also discussed were ways to promote interaction among members of the profession, law school faculty, and the Association. President Tharp advised that the meeting is one step in Association efforts to develop closer relationships with the law schools.

- h. Corporate governance. Issues concerning corporate responsibility and governance were the focus of many of the educational programs during the Annual Meeting, including the first-ever Presidential Summit that she convened. The summit examined the roles of inside and outside counsel, corporate officers and directors, accountants and the federal and state government. The panel discussed legal and ethical concerns in considering what had occurred and current conditions in the wake of corporate scandals and investigations, and what actions should be taken. President Tharp thanked the Commercial and Federal Litigation, Corporate Counsel and Business Law Sections for their co-sponsorship and assistance in planning the program and Robert L. Haig for his work in planning and serving as moderator of the proceedings.

Appreciation also was expressed for the Business Law Section's development of commentary on the proposed Securities and Exchange Commission provisions resulting from enactment of the Sarbanes-Oxley Act. President Tharp advised that the Association would continue to provide input in regard to the responsibilities of counsel and proposals for new legislation and regulations on these issues.

- i. On-line postings. As an additional communications tool and to facilitate earlier access, plans are being undertaken to post Executive Committee and House agendas and related materials on the Association's website, beginning with the reports for the April 2003 meeting, and with access limited to the particular group. Hard copies will be circulated, as in the past.
- j. Strategic plan. The Executive Committee's strategic planning objectives are being circulated to Sections and Committees for coordination in the development of action plans. The strategic plan focuses on means of enhancing legislative advocacy, communications with the profession and public, membership development reflective of the diversity of the profession, and membership services, including practice management resources.

5. Presentation of the Ruth G. Schapiro Memorial Award. President Tharp presented the eleventh annual Ruth G. Schapiro Memorial Award to Past President M. Catherine Richardson for her exemplary contributions in advancing opportunity for women in the profession and helping young people pursue their dreams. She was cited for her consistent efforts to foster equality of opportunity for women, inclusiveness and full participation in the profession, and for her ongoing support of best practices to promote the long-term health of the profession, as well as her community service for young people. Ms. Richardson thanked the House for the honor, citing advances made and the need for continued efforts in pursuing Ms. Schapiro's vision.

6. Report and recommendations of the Committee on Legal Education and Admission to the Bar on the proposed increase in the bar examination passing standard. Representing the New York State Board of Law Examiners, Bryan R. Williams described the research and proposal of the Board to change the passing level of the state bar examination from the present 660 to 675 on a 1000-point scale. Dr. Stephen P. Klein summarized the study that he conducted at the Board's request. The Board also had reviewed passing standards in other states, observing that neighboring states and those with similar commercial and industrial elements have higher levels. New York candidates' performance on the MBE is below average. The Board has proposed delaying implementation of the recommended increase for one year to allow current students to prepare to meet this standard and to enable the Board to compile baseline data to evaluate the impact of the proposed standard before and after the standards would go into effect.

Dean Richard Matasar spoke on behalf of the Committee on Legal Education and Admission to the Bar, reviewing the Committee's report which called for further studies, before action is taken on the proposal, to determine what relationship, if any, might exist between competency as a lawyer and bar examination scores falling below the proposed new passing level and the effect that the increased passing score would have on the diversity of the New York bar. It was announced that the Executive Committee had endorsed this position for positive House action by a vote of 14 to 7.

The House adopted a motion, by a standing vote of 108 to 59, endorsing the position of the Committee on Legal Education and Admission to the Bar.

7. Report and recommendations of the Special Committee on Association Governance. Dennis R. Baldwin, Chair of the Special Committee on Association Governance, updated the House of Delegates on the work of the Special Committee in developing recommendations to enhance procedures to promote openness, diversity, and fairness with opportunity to actively participate and seek leadership positions. The report is being finalized with comments to be sought from Sections, Committees, local bars and others and consideration by the House.

While the overall governance structure was found to be sound, the Committee identified areas in which procedures could be improved to further the above-referenced objectives. Among recommendations, the Committee is proposing adoption of a diversity policy by the Association; creation of a leadership development committee; service of the Association Secretary as the Diversity Chair; establishment of a Committee on Diversity to monitor and report on progress; designation of 12 positions on the House for traditionally underrepresented racial and ethnic groups; revision of the formula to increase Section delegates while balancing geographic representation in the House; and some modification to the composition of the Executive and Nominating Committees. The Committee also is proposing measures to facilitate communication between the Association and Sections and Committees, among those groups, between the Association and members, and between the Association and other bar groups.

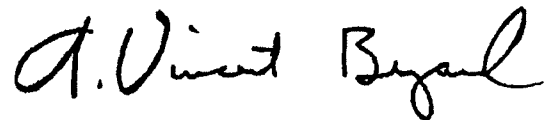
8. Report and recommendations of The Association of the Bar of the City of New York concerning equity of marriage. A report of The Association of the Bar of the City of New York calling for provisions for equity in marriage for same-sex couples was presented by Leslie Rubin of The Association of the Bar's Sex and Law Committee and Jay Weiser of its Lesbian and Gay Rights Committee. While concluding that same-sex marriage is not precluded under state law, the report seeks adoption of legislation to provide full marriage rights or, at least, civil unions.

Delegates expressed views on the specific recommendations of the report, other approaches, and whether the issue is within the purview of the Association or primarily a question of policy for consideration by the Legislature. The House was informed that the Executive Committee recommended, by a vote of 11 to 9, a resolution stating that it would not be consistent with the Association's fundamental purposes to take a position for or against the legislation and urging domestic partners to seek legal counsel to pursue lifetime and estate planning to ensure that their wishes are legally enforceable.

In a standing vote of 74 to 66, the House adopted a motion that consideration of the question be postponed and that a Special Committee on Legal Issues Affecting Same Sex Couples be formed to explore legislative or private legal solutions to the problems raised in The Association of the Bar of the City of New York report, and report back to the House of Delegates with concrete recommendations no later than November 2003, and that the New York State Legislature thereafter enact legislation that clearly defines the legal rights and responsibilities of same-sex couples.

9. Report of the Chair. President-Elect Levin announced that the House, at the April 5, 2003 meeting, would be asked to elect five of the NYSBA's 11 delegates to the American Bar Association House of Delegates. He reported that the Nominating Committee had nominated the following individuals for those positions: Robert L. Haig of New York City, Paul Michael Hassett of Buffalo, James C. Moore of Rochester, Kenneth G. Standard of New York City, and Lorraine Power Tharp of Albany.
10. Date and place of the next meeting. President-Elect Levin announced that the next meeting of the House of Delegates was scheduled for Saturday, April 5, 2003 at the Bar Center in Albany, New York.

Respectfully submitted,



A. Vincent Buzard
Secretary