

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 24, 2000

PRESENT: Adler; Agress; Alcott; Amoroso; Anglehart; Asarch; Attea; Auspitz; Aydelott; Ayers; Bailey; Baldwin; Barasch; Batra; Bleakley; Bracken; Brett; Buckley; Buzard; Capell; Cashman; Castellano; Chambers; Christian; Church; Cometa; Connolly; Copps; Corcoran; Cristo; Dale; Davis; Denton; Dietz; DiGirolomo; DiLorenzo; Dollard; Doyaga; Drinkwater; J. Dwyer; M. Dwyer; Eisman; Eppers; Fennell; Field; Filiberto; Finerty; Fishberg; FitzGerald; Flood; M. Freedman; Futter; Galloway; Gardella; Gerstman; Getnick; Gingold; Giordano; Goldstein; Graber; Gross; Hartman; Hassett; Heller; Helmer; Herold; Hirsch; S. Hoffman; Hoye; Jacobs; Jacoby; James; Karson; Kelly; Kennedy; Kenny; Kilsch; D. Klein; M. Klein; Kougasian; Krane; Kretser; Krooks; Lagarenne; Landy; Lashley; Lawrence; Leber; Levin; Lieberman; Lindenauer; MacCrate; Mandell; Maney; Manley; Martindale; Mawhinney; Mayer; McGlinn; Mihalick; Miklitsch; Millon; Minkowitz; Moore; Morse; Murray; Nashak; Naviasky; Netter; O'Brien; O'Donnell; Omara; Opotowsky; Ostertag; Palmer; Paul; Peckham; Periconi; Perticone; Priore; Pruzansky; Rahn; Reich; Reizes; J. Reynolds; Rice; Richardson; Rifkin; Robinson; Rubin; Rybak; Samel; Shapiro; Silkenat; Sloan; Souther; Spellman; Standard; Stewart; N. Sunshine; Tharp; Tishler; Trevett; Tully; Uebelhoer; Walker; Wimpfheimer; Witmer; Wolf; Zube.

In advance of the commencement of the regular business meeting of the House of Delegates, Mr. Krane announced that copies of the Association's 1999-2000 annual report had been distributed at each place. He commended the report to the members as a comprehensive summary of significant NYSBA activities during the past year.

1. Approval of minutes of April 8, 2000 meeting. The minutes of the April 8, 2000 meeting were amended to reflect the Bar Center in Albany as the location of the meeting. As amended, the minutes were deemed accepted.
2. Introduction of new members. The new members of the House of Delegates who had assumed office on June 1 were introduced and welcomed by Mr. Krane.
3. Report of Treasurer. On behalf of Mr. Headley, G. Robert Witmer, Jr., current member and immediate past Chair of the Finance Committee, summarized the audited financial report for the year ending December 31, 1999. He noted that the Association had completed the previous year with operating net income of \$687,800. He indicated that total net income, inclusive of gains and losses on investments, which are not budgeted, was slightly in excess of \$2.5 million.

Mr. Witmer then reviewed the major income and expense items contained in the 2000 Association budget. He noted that total revenue had increased by \$778,613, with

membership and section dues rising by \$363,500 and \$14,700, respectively. He indicated that mandatory continuing legal education had a positive impact on income, with receipts of \$2.4 million through the end of May, or some \$927,000 higher than for the comparable period in 1999. Mr. Witmer advised that with increased activity, CLE expenses were also some \$390,000 higher than the previous year. He also reviewed the unrealized and realized gains and losses on investments, stating that market fluctuations had generated unrealized losses of \$488,000 and realized gains of \$318,000. Mr. Witmer also indicated that expenses were approximately \$1 million above 1999 levels, reflecting CLE and section activity, as well as added staff to support the expanded CLE activity. He stated that these expenses had been planned for and budgeted by the Finance Committee. Mr. Witmer reported that the Association remained in sound financial condition as it neared the midpoint of the fiscal year. The report was received with thanks.

4. Installation of Paul Michael Hassett. Mr. Krane explained that in 1993 an installation ceremony for the President was inaugurated at the June meeting of the House of Delegates in keeping with the responsibilities of the position and the close proximity of that meeting to the commencement of the President's term on June 1. The oath of office was then administered to Mr. Hassett by Hon. Eugene F. Pigott, Jr. Presiding Justice of the Appellate Division, Fourth Department, who delivered brief remarks. Mr. Hassett then discussed the service rendered to the public and the profession by the organized bar, the level of activity by the Association's sections and committees, and his commitment to leading the Association in addressing key issues during his term.

5. Presentation of Root/Stimson Award. Philip Furgang, Chair of the Committee on Public Relations, presented the Root/Stimson award to past Association President Archibald R. Murray of New York City for exemplary community service. In presenting the award, Mr. Furgang outlined Mr. Murray's extensive service in leading The Legal Aid Society, as well as his involvement in numerous church and community activities. Mr. Murray and his wife, Kay Murray, acknowledged the award and the recognition given Mr. Murray for his many decades of outstanding public and professional service.

6. Report of President. Mr. Hassett reported the following matters:

a) On June 5, 2000, he had met with Chief Administrative Judge Lippman to discuss a number of topics of mutual interest, including the status of OCA's legislative program, trial court restructuring, 18-B panel fees, audio-visual coverage of trial court proceedings, multidisciplinary practice, mandatory continuing legal education, the Commission on Fiduciary Appointments, private lawyer referral services, and the report of the Ad Hoc Committee on the Jury System. With respect to court reorganization, Mr. Hassett noted that OCA would continue to press for trial court merger on the best terms possible, but it was unlikely the Legislature would take action in the immediate future. He also indicated that Judge Lippman had expressed a definite interest in the report of the Special Committee on the Law Governing Firm Structure and Operation and the

outcome of the House debate on the topic. Mr. Hassett reported, with respect to MCLE, that Judge Lippman had advised him OCA is in the process of developing regulations to implement the decision to award CLE credit for performing pro bono service and for judging high school mock trial tournaments.

b) Chief Judge Kaye, Judge Lippman and the four Presiding Justices of the Appellate Division had been provided copies of the report of the Ad Hoc Committee on the Jury System, as approved at the April 8, 2000 House meeting. He indicated that, in turn, these judges were providing copies of the report to the administrative judges for the various courts, and had acknowledged the need for a flexible approach in addressing the concerns raised by the NYSBA. Mr. Hassett also noted that in the fall, New York would be hosting a summit on the jury system. This program is intended to draw participants from other states to share their experiences and to exchange ideas for improving the jury system. He also stated that Charles F. Crimi, Jr., Chair of the Ad Hoc Committee, was a member of the planning group for the summit.

c) On May 16 and 17, in conjunction with the American Bar Association, he had joined with over 150 bar leaders nationally to meet with members of Congress in Washington, D.C. regarding issues of importance to the organized bar. He indicated that the program had included interactive lobbying workshops, briefings, and plenary sessions on justice issues, such as Legal Services Corporation funding.

d) While Chief Judge Kaye remains committed to raising 18-B panel fees from their current inadequate levels, there was little likelihood of action by the Legislature in the near future. He indicated the Association, through its retained lobbyist, would continue to press the issue in the Legislature. Mr. Hassett also reported on the status of litigation at the state and federal levels to increase 18-B fees.

e) Mr. Hassett outlined his plans to meet with county and local leaders across the state during the coming months. He noted that the meetings, which will be organized on a district basis, would enable him to learn about concerns and problems firsthand so that the NYSBA can respond to these issues effectively.

f) On June 6, 2000 he had met in New York City with representatives of nearly all the Association's twenty-three sections. He stated that the session was productive, and that the topics addressed had included strategies for gaining, retaining and serving section members; using technology to enhance section services; planning for programs and publications; and procedures for developing substantive reports and legislative proposals.

g) In keeping with the Association's willingness to respond to issues involving defense of the rule of law and the protection of human rights on a global basis, the International Law and Practice Section had released a statement with respect to the legal rights of thirteen Iranian Jews accused by Iran of spying for Israel. The statement had challenged the closed hearing process employed by Iran and the absence of

counsel, and had called on Iranian court officials to guarantee at least basic fair trial rights to the accused.

h) On May 9, 2000, the Committee on Children and the Law had hosted a reception at the Bar Center at which the Howard A. Levine Award for excellence in the field of juvenile justice and child welfare had been presented to Hon. Nicolette M. Pach, Suffolk County Family Court Judge; Hon. Gloria Sosa Lintner, New York City Family Court Judge; and Prof. Merrill R. Sobie of Pace University School of Law.

i) Earlier in the month, the Committee on Legal Aid and the Department of Pro Bono Affairs had conducted their fifth Legal Assistance Partnership Conference in Albany. Mr. Hassett explained that the conference had drawn representatives from legal aid and legal services offices from across the state, and had blended the discussion of issues of importance to the delivery of legal services with substantive law topics, skill-based workshops and technology training.

j) Over 500 schools had participated in this spring's high school mock trial tournament, sponsored jointly by the Association and The New York Bar Foundation. Mr. Hassett advised that the tournament had been won by St. Francis High School from Hamburg, New York, and that St. Francis had gone on the following week to win an interstate competition held in Annapolis against the Maryland state champion. Mr. Hassett acknowledged the role of the Committee on Citizenship Education in organizing and administering the competition.

k) The Unified Court system had fared well in the budget process for the 2000-2001 fiscal year. He indicated that the judiciary's operating budget had risen by six percent from the previous year to a level of \$1.46 billion. Mr. Hassett pointed out that the budget includes funds for 182 new court system positions, money to implement "Kendra's Law," funds to expand the drug treatment courts and domestic violence programs, as well as money to cover the initial phase of a major renovation of Court of Appeals Hall in Albany.

l) On May 1, as part of Law Day, the Association had presented Pro Bono Service Awards to individual attorneys from the state's twelve judicial districts, and had recognized large and small firm efforts as well as law school programs. Mr. Hassett acknowledged the cooperative efforts of the President's Committee on Access to Justice, the Committee on Legal Aid, and the Committee on Legal Education and Admission to the Bar in administering the award program.

m) Hon. Joseph Bellacosa was resigning as an Associate Judge of the Court of Appeals to become Dean of St. John's University School of Law. Mr. Hassett noted that the State Commission on Judicial Nomination had set June 27, 2000 as the filing deadline for applicants interested in filling the Court of Appeals vacancy.

On behalf of the Association, Mr. Hassett then expressed gratitude to Mr. Rice for his insight and dedicated leadership during the past year and presented him with a plaque inscribed as follows:

The New York State Bar Association presents this testimonial to Thomas O. Rice in recognition of his devoted service to the Association in the successful furtherance of its ideals and in the promotion of the best interest of the profession through his service as President of the Association 1999-2000.

7. Report and recommendations of the Special Committee on the Law Governing Firm Structure and Operation. Robert MacCrate, Chair of the Special Committee on the Law Governing Firm Structure and Operation, outlined the background and methodology of the Special Committee's study. He pointed out that the appointment of the Special Committee had stemmed from the resolution adopted at the June 1999 House of Delegates meeting to the effect that further study be made of the issues connected with multidisciplinary practice. He indicated that in its initial phase, the Special Committee had conducted extensive studies to appraise the current status of the legal profession in all its major aspects. Mr. MacCrate stated that the results of those studies were set forth in Part One of the Special Committee's report, comprising its first six chapters. He noted that these chapters dealt with the salient changes in the demography of the profession; the effects of specialization, information technology, advertising and law practice management; the differentiation in practice settings; cooperative arrangements with other professionals; the organization, education and maintenance of a single American legal profession; and the articulation and enforcement of professional values.

Mr. MacCrate then explained that in Part Two of its report, the Special Committee addressed the challenges to maintaining a single public profession of law. He noted that the chapters contained in this segment of the report addressed the issues of marketing legal services as part of a multidisciplinary practice; described the globalization of American law practice; surveyed multidisciplinary practice in selected foreign jurisdictions; and identified and appraised the factors looking toward change in the profession.

He next summarized Part Three of the report, indicating that Chapter 11 set forth the Special Committee's analysis of the principal issues, while Chapter 12, consistent with that analysis, contained recommendations concerning changes that should be made in the law governing lawyers and law firms. Mr. MacCrate indicated that the recommendations for changes in the Code of Professional Responsibility were drafted in a manner that would preserve the core values of the legal profession. He noted that for the benefit of those jurisdictions governed by the Model Rules of Professional Conduct, the proposed changes had also been set forth in a Model Rules format.

Mr. MacCrate then reviewed the procedural posture of multidisciplinary practice in the American Bar Association's House of Delegates. He noted that the ABA Commission on Multidisciplinary Practice had urged postponement of final action at the upcoming meeting of the ABA House of Delegates in July. He indicated that the ABA Commission continued to advocate multidisciplinary arrangements that would permit lawyers to share fees and join with nonlawyer professionals in a practice that delivers both legal and nonlegal professional services, with lawyers having control over the rendition of legal services.

Mr. MacCrate described the resolution offered by the Special Committee as an affirmative response to the situation, providing a principled approach to the issues while preserving the core values of the legal profession.

Discussion then ensued, during which most speakers were supportive of the report and position proposed by the Special Committee. Some members did express concern that the proposed position might place New York attorneys at a competitive disadvantage in comparison to those states embracing multidisciplinary structures. Other members expressed concerns about giving formal approval to contractual arrangements between attorneys and nonlawyers.

An amendment was offered to the proposed resolution to expand the second "Resolved" clause to the effect that in urging the ABA to adopt the principles advocated by the NYSBA, support could be given to "any resolution consistent therewith". It was explained that this would provide greater flexibility to the NYSBA's delegates to the ABA House of Delegates. The proposed amendment was accepted by Mr. MacCrate on behalf of the Special Committee. After further discussion, and with the amendment just described, the following resolution was adopted by vote of the House:

WHEREAS, in furtherance of a June 1999 resolution of the House of Delegates, the Special Committee on the Law Governing Firm Structure and Operation was created to review the present law prohibiting attorneys from practicing in partnerships with nonlawyers and to consider whether there is a need for any changes in the law, taking into account the evidence in support of such changes and whether potential advantages from such changes outweigh potential detrimental effects, and

WHEREAS, the Special Committee has completed its work and submitted its report under date of April 2000; it is hereby

RESOLVED, that the New York State Bar Association hereby approves the report of the Special Committee, and consistent with the recommendations contained in the report, New York State is urged to revise its law governing lawyers to implement the following principles and preserve the core values of the legal profession:

1. Lawyers and law firms should be permitted to provide nonlegal services to clients or other persons, directly or through affiliated entities, provided that no nonlawyer or nonlegal entity involved in the provision of such services owns or controls the practice of law by a lawyer or law firm or otherwise is permitted to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person.

2. Lawyers and law firms should be permitted to enter into interprofessional contractual arrangements with nonlegal professionals and nonlegal professional service firms for the purpose of offering legal and other professional services to the public, on a systematic and continuing basis, provided no nonlawyer or nonlegal entity has any ownership or investment interest in, or managerial or supervisory right, power or position in connection with, the practice of law by any lawyer or law firm.

3. New York State should retain and enforce laws that generally bar the practice of law by corporations and voluntary associations.

4. To facilitate enforcement of statutes prohibiting the unauthorized practice of law, New York State should reevaluate and refine to the extent necessary its definition of the "practice of law."

5. Nonlawyer investment in entities practicing law should continue to be prohibited.

6. No change should be made to the law that now prohibits lawyers and law firms directly or indirectly from transferring ownership or control to nonlawyers over entities practicing law, since any demand that exists for greater integration of legal services with those of other professions may be satisfied by permitting lawyers to enter into strategic alliances and other contractual relationships with nonlegal professional service providers, as well as by permitting lawyers to own and operate nonlegal businesses.

7. All lawyers are members of one profession subject to the rules of law governing lawyers.

and it is further

RESOLVED, that the American Bar Association be urged to adopt the foregoing principles or any resolution consistent therewith as a position to be commended for implementation in all jurisdictions of the United States; and it is further

RESOLVED, that to the extent that the Special Committee believes that amendments to the New York Lawyers' Code of Professional Responsibility are necessary to implement these principles, such amendments shall be presented to the House of Delegates for consideration at a subsequent meeting; and it is further

RESOLVED, that in furtherance of the aforesaid principles, an appropriate committee within the Association shall be designated to evaluate and draft appropriate statutory amendments refining the definition of the practice of law in New York; and it is further

RESOLVED, that the officers are empowered to take such other and further steps as they may deem warranted to implement this resolution.

8. Report of The New York Bar Foundation. Hon. Richard J. Bartlett, who had assumed office as President of The New York Bar Foundation on June 1, 2000, expressed appreciation to Maryann Saccomando Freedman for her outstanding leadership of The Foundation during her three-year tenure as President. He noted that during that period, The Foundation had initiated a practice of making regular reports to the House of Delegates, had revitalized the Fellows program at the district level, and had expanded its grant program which assists worthy organizations in furthering the objectives of facilitating the delivery of legal services, improving the justice system and the law, enhancing professional competence and ethics, and increasing public understanding of the law. Judge Bartlett noted the increase in annual contributions to The Foundation and expressed appreciation to the members of the House for their ongoing support of The Foundation. The report was received with thanks.

9. Reports and recommendations re audio visual coverage of trial court proceedings. Mr. Krane reported that the Legislature, during the current session, had not acted on any of the pending measures to reinstate audio-visual coverage of trial court proceedings. He noted that this situation provided an opportunity for the House of Delegates to revisit the position adopted on this issue in 1994 for purposes of providing guidance to the Legislature in its future consideration of legislation to permit cameras in the trial courts. Mr. Krane then stated that the Executive Committee had discussed the matter at its June 23, 2000 meeting and was offering a resolution recommending that the Association re-examine the issue. To accomplish this study, the Executive Committee recommended that a special committee be appointed to evaluate all relevant data and developments and report its findings and recommendations to the House of Delegates no later than January 2001 to permit timely comment to be made to the Legislature during the next legislative session.

Roger B. Adler, delegate from the Criminal Justice Section, offered an amendment to the proposed resolution to add the federal courts to the recommended study and to emphasize that the 1994 House position remains unaltered during that study. Following discussion, the amendment was defeated by vote of the House.

Mr. Adler then reviewed salient elements of the proposed legislation and outlined the Criminal Justice Section's position, as adopted by the House in 1994, that favors camera coverage of trials, but with the consent of counsel for all parties. He also noted the section's concern about the rights of witnesses who may not wish to appear on camera while testifying.

He stated that counsel was in the best position to analyze the impact of audio-visual coverage in particular cases and to make appropriate determinations to achieve fairness while protecting the rights of their clients and witnesses.

Kevin W. Goering, Chair of the Committee on Media Law, summarized that committee's position in favor of allowing camera coverage on a permanent basis, but without the caveat requiring consent of counsel. He reviewed the positive experience under the prior audio-visual experiment and noted that New York was one of only three states not permitting cameras in the trial courts.

On behalf of the Criminal Justice Section, Martin B. Adelman noted the impact on the resources of counsel and the trial courts of permitting camera coverage, as well as the effect on witnesses. He stated that the 1994 position of the House offered a balanced perspective on the issues.

Gunther H. Kilsch, delegate from the Trial Lawyers Section, reported that section's support for media coverage so long as counsel consents.

Hon. James Buckley, delegate from the Judicial Section, stated that section would support the study as proposed by the Executive Committee.

After further discussion, the following resolution was adopted by vote of the House:

RESOLVED, that the New York State Bar Association should re-examine the issue of audio-visual coverage of civil and criminal proceedings; and it is further

RESOLVED, that a special committee be appointed to evaluate all relevant data and developments and report its findings and recommendations to the House of Delegates no later than the January 2001 meeting.

10. Report of Chair. Mr. Krane reported the following matters:

a) To avoid any conflict with the celebration of Passover, the date of the April House meeting had been shifted to March 31, 2001.

b) Pursuant to the Bylaws, the terms of several special committees were due to expire. On motion of the House, the terms of the following special committees were extended for an additional year:

Ad Hoc Committee on the Jury System
AIDS and the Law
Commission on Providing Access to Legal Services for the Middle Income Consumers Group and Prepaid Legal Services Plans
Judicial Independence
Pension Simplification
Procedures for Judicial Discipline
Steering Committee on Commerce and Industry
Unlawful Practice of the Law
Volunteer Lawyers

c) There were five special committees as follows that had completed their assigned tasks and were being allowed to lapse with the consent of their respective chairs:


Administrative Adjudication
Future of the Profession
Review the Court System's Civil Justice Program
Solo and Small Firm Practitioners
Task Force to Study "Pay to Play" Concerns

With respect to the Special Committee on Solo and Small Firm practitioners, Mr. Krane noted that its function would now be incorporated in the General Practice Section.

d) The role of the Committee on Public Interest Law was being assumed by other groups, including the Committee on Attorneys in Public Service. Mr. Krane noted that under the Bylaws, House approval was required to discharge a standing committee. A motion was adopted discharging the Committee on Public Interest Law.

11. Date and place of next meeting. Mr. Krane announced that the next meeting of the House would be held on Saturday, November 4, 2000 at the Bar Center in Albany, New York.

Respectfully submitted,



Lorraine Power Tharp
Secretary