

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN
JUNE 25, 1988

PRESENT: Members Agress, Amrod, Ange, Ball, Barbash, Barnett, Barthold, Bergan, Birmingham, Blossom, Bohner, Bowers, Bracken, Brenner, Brevorka, Brinton, Buckley, Buzard, Canoni, Clarke, Cometa, Connolly, Cooke, Corcoran, Cox, Cregg, Daly, Davidson, DeMaio, DiLorenzo, Dollard, Dwyer, Emerson, Evans, Faga, Farrell, Ferguson, Field, Fisher, Fitzgerald, Floyd, Forger, Frank, Freedman, Gaal, Geltzer, Gershon, Ginsberg, Goldblum, Gordon, Grobosky, Grogan, Haig, Hawkins, Heming, Horan, Hurd, Hyman, Ippolito, Jones, Kaplan, Kaufman, King, F. Klein, Lamb, Lowe, Mahony, McDonald, McGinnis, McGlinn, McGraw, McGuirk, McKay, Meng, Mitchell, Morris, Murpny, A. Murray, C. Murray, K. Murray, Neimeth, Obold, O'Brien, Offermann, Oliensis, Ostertag, Palermo, Pearce, Pearl, Penzel, Perrin, Pfeifer, Pugh, Pulley, Reiter, Rice, Richardson, Rider, Ritholz, Robinson, Rosiny, Rosner, Rothstein, Schell, Schnier, Seward, Silverstein, Simberkoff, Stave, Stiles, Thompson, Tobin, Van Strydonck, Vigdor, Vitacco, J. Walsh, Wanderman, Weaver, Whalen, Williams, Wolf, Woronov, Yanas, Zimmerman.

1. Introduction of new members. The new members of the House who had assumed office on June 1 were introduced and welcomed by Mr. Yanas. The following is a list of the new members of the House: Vivian H. Agress, Grace Marie Ange, Joseph Barbash, Helaine M. Barnett, Thomas H. Benton, G.S. Peter Bergen, David R. Blossom, Peter J. Brevorka, Bradford H. Brinton, Peter C. Buckley, John M. Clarke, Edward M. Cooke, S. Gerald Davidson, Nicholas A. DiCerbo, Louis P. DiLorenzo, Bernard M. Eiber, Martin Evans, Andrew S. Fisher, Marquette L. Floyd, Beatrice S. Frank, Robert L. Geltzer, Anthony J. Geraci, Nicole A. Gordon, M. Mark Grobosky, Edward J. Grogan, III, Robert L. Haig, Dennis Hawkins, David N. Hurd, George H. Lowe, Gerald T. McDonald, John K. McGuirk, M. Kathryn Meng, Anthony J. Mercorella, Peter W. Mitchell, Lawrence M. Mooney, Neil W. Moynihan, Brian F. Mumford, Albert C. Neimeth, Miriam M. Netter, Ralph R. Nobile, Sheldon Oliensis, Braddock S. Pearce, Gregory J. Perrin, Charles J. Raubichuck, James K. Riley, Donald Schapiro, Michael W. Schell, Andrew M. Schnier, Arthur M. Sherwood, Carl J. Silverstein, Eugene P. Souther, Howard D. Stave, Robert H. Wagner, Robert E. White, John A. Wolf, Richard S. Woodman.

2. Approval of minutes of April 23, 1988 meeting. The minutes were approved as distributed.

3. Report of Treasurer. Mr. Gershon reviewed the audited balance sheet and statement of revenues for the year ending December 31, 1987 and indicated that the Association had completed the year with a surplus of approximately \$400,000. He then summarized the Treasurer's report for the period January 1 to May 31, 1988, and indicated that the Association remained in sound financial condition at the midpoint of the fiscal year. The report was received with thanks.

4. Status report concerning Bar Center expansion. Henry L. King, Co-Chair of the Ad Hoc Committee on Bar Center Facilities and Space Requirements, summarized the status of the Bar Center expansion and fund-raising campaign. He reported that thus far the campaign had generated approximately \$3 million in pledges,

and that planning was in progress for a renewed effort in the fall for purposes of increasing that figure. Mr. King noted that the Ad Hoc Committee, after reviewing cost estimates, fund-raising projections, and the impact of long-term debt financing, had determined it would be imprudent to undertake the project as approved by the House of Delegates in 1986, as cost figures would have approached \$9 million. He advised that with the concurrence of the Executive Committee, Finance Committee, and the Board of Directors of The New York Bar Foundation, the Ad Hoc Committee had reduced the scope of the project to a renovation of Nos. 5 and 6 Elk Street, the construction of a twelve foot wide addition to their rear, and modification of the existing Bar Center. Mr. King noted that while this redesign eliminated the previously planned meeting hall and supporting facilities, it would still provide office spaces essential for the growth of the Association's programming and membership services at an affordable cost of approximately \$6.8 million. Following discussion of the revised expansion plan, the following resolution was adopted unanimously on motion of the House:

RESOLVED, that in connection with the expansion of the Bar Center located at One Elk Street in Albany, New York, the House of Delegates hereby reaffirms and restates its general approval of said expansion as embodied in the resolution adopted June 28, 1986 and ratifies and confirms the actions taken to effectuate that resolution by the Ad Hoc Committee on Bar Center Facilities and Space Requirements ("Ad Hoc Committee"); and

RESOLVED, that the officers of the Association, working in conjunction with the officers of The New York Bar Foundation and through the Ad Hoc Committee or its authorized designees are hereby authorized to proceed with the implementation of the revised plan for the expansion of the Bar Center, including the renovation of the adjacent buildings located at Nos. 5 and 6 Elk Street, in accordance with the general proposal presented at this meeting, the total cost of which shall not exceed \$6,800,000, provided that the Ad Hoc Committee shall be empowered to increase this figure by up to \$100,000 to accommodate cost increases occasioned solely by construction during winter conditions; and

RESOLVED, that such implementation of the general plan shall include the commissioning of detailed building designs and construction documents to be prepared by The Saratoga Associates, the letting of project bids through L.A. Swyer Company, Inc., and execution of all necessary contracts and agreements and all steps necessary to effectuate the general plan; and

RESOLVED, that the officers of the Association are hereby authorized to convey the properties known as Nos. 5 and 6 Elk Street to The New York Bar Foundation on such terms and conditions as the Executive Committee of the Association may approve with attention to the respective status of each organization and the statutes and regulations applicable thereto; and

RESOLVED, that the officers of the Association in cooperation with The New York Bar Foundation are hereby authorized to continue a statewide program to raise the monies necessary to finance the

general plan for the expansion of the Bar Center and the charitable and educational programs of The Foundation, subject to the approval of the Executive Committee of the Association as to specific actions to be taken by the Association; and

RESOLVED, that the officers of the Association in cooperation with The New York Bar Foundation and through the Ad Hoc Committee or its authorized designees are hereby authorized to undertake such interim and long-term financing including the execution of all loan agreements and such other documents as may be necessary to complete the general plan for the expansion of the Bar Center.

5. Report and proposed Bylaws amendment by Committee on Bylaws. On behalf of G. Robert Witmer, Jr., Chair of the Committee on Bylaws, Mr. King summarized a proposed Bylaws amendment which would permit the House of Delegates to consider a special assessment of the members under appropriate circumstances. He noted that the amendment was in compliance with applicable provisions of the Not-for-Profit Corporation Law, which require that authorization for member assessments must be contained in either the organization's certificate of incorporation or bylaws. Mr. King advised that adoption of the amendment would permit the House to utilize a special assessment in connection with the Bar Center expansion in the event that sufficient funds were not realized from the campaign.

A majority of the members of the House subscribed to the proposed amendment as presented for filing with the Secretary for consideration at the January 1989 Annual Meeting of the Association.

6. Proposal by the Special Committee on Entertainment Law to form a Section on Entertainment, Arts and Sports Law. Marc Jacobson, Chair of the Special Committee on Entertainment Law, summarized the committee's proposal to form a Section on Entertainment, Arts and Sports Law. He reviewed survey results demonstrating member interest in the formation of such a section, and outlined proposed programs and activities to be undertaken by the section. After discussion, the following resolution was adopted unanimously on motion of the House:

RESOLVED, that there is hereby established a Section on Entertainment, Arts and Sports Law within the New York State Bar Association; and it is further

RESOLVED, that the chair of the Special Committee on Entertainment Law shall serve as chair of a Steering Committee to take all steps necessary to implement the establishment of the Section on Entertainment, Arts and Sports Law; and it is further

RESOLVED, that an appropriate budget be approved by the Finance Committee and that the necessary funds be allocated from the general funds of this Association to carry out the foregoing, and it is further

RESOLVED, that the proposed bylaws of the Section on Entertainment, Arts and Sports Law are hereby approved.

7. Presentation of Root/Stimson Award, Public Service Awards and Award of Merit. Edward J. Moses, Chair of the Committee on Lawyers and the Community, presented the Root/Stimson Award to attorney Mary M. Coffin of Schenectady for outstanding service to the community.

Mr. Moses presented the Award of Merit for larger associations to the Monroe County Bar Association in recognition of distinguished professional and public service accomplished through programs administered at the local level.

Thomas M. Whalen, III, Executive Committee liaison to the Committee on Lawyers and the Community, presented the Public Service Award to Sergeant James Waters of the Onondaga County Sheriff's Department, for his outstanding contribution to the betterment of the administration of justice. The Public Service Medal was presented by Mr. Whalen to Special Agent Kevin R. Lewis of the Organized Crime Drug Enforcement Task Force of the Federal Bureau of Investigation for demonstrating exemplary courage in protecting the integrity of governmental operations and systems of justice.

8. Preliminary report of Task Force on Administrative Adjudication. Hon. Matthew J. Jasen, Chair of the Task Force on Administrative Adjudication, outlined the task force's examination of the operation of five representative state agencies (the Departments of Environmental Conservation, Health, Motor Vehicles, and Social Services, and the Workers' Compensation Board) to determine if their hearing procedures were operating fairly and accorded due process to the parties appearing before them. He indicated that the task force had also considered whether the hearing process would benefit from the consolidation of the hearing function into a central agency. Judge Jasen described the methodology employed by the task force in conducting its study, including the on-site observance of agency activities and the holding of public hearings in Albany, Buffalo and New York City. He indicated that the task force was in the process of formulating its final recommendations and that release of its written report was anticipated in the near future.

9. Report of Special Committee on Lawyer Competency. Francis H. Musselman, Chair of the Special Committee on Lawyer Competency, summarized the report and recommendations developed by the committee to improve competency at all levels of the legal profession in New York State. He outlined the review which had been conducted of pre-law education, the role of law schools, post-law school continuing education, and activities within law offices. Mr. Musselman described the specific recommendations, such as enhanced practical skills training in law school and improved voluntary continuing legal education, intended to reduce problems which generate malpractice claims and client grievances. He indicated that in endorsing enhanced voluntary continuing education programs, the committee had rejected mandatory continuing legal education as a means for improving competency. Mr. Musselman invited comment from the members of the House and local bar associations regarding these recommendations, as their views would assist the committee in addressing these concerns when it reports further at the next meeting of the House.

10. Report of Special Committee on Biotechnology and the Law. Grace Marie Ange, Chair of the Special Committee on Biotechnology and the Law, summarized the committee's preliminary report with respect to the law-related issues concerning surrogate parenting, gamete donation and embryo experimentation. She also reviewed the nature of the committee's analysis of relevant issues, the conclusions reached thus

far, and future items for consideration. She also noted that at its April meeting the Executive Committee had authorized dissemination of the report as a preliminary document for informational purposes and had encouraged the committee to conduct a seminar on the subject involving representatives from other interested disciplines. Ms. Ange advised that the committee would continue its study of this developing area of the law and would keep the Association apprised of its activities.

11. Report of President. Mr. King reported the following matters:

a) Hon. Lewis F. Powell had been selected to receive the Annual Award which would be presented at the January 1989 Annual Dinner.

b) He and Mr. Yanas had met on June 17 with Chief Judge Wachtler and other officials of the Office of Court Administration. He indicated that the topics discussed had included the condition of courthouse facilities, the need to alleviate delays in the selection of civil trial juries, the status of the special masters program, court merger and merit selection, the establishment of additional judgeships to relieve civil case congestion in the metropolitan New York area, and the study of mandatory pro bono being made by the Chief Judge's Committee to Improve Availability of Legal Services.

c) The film "An Empire of Reason," which had been produced by The New York Bar Foundation to commemorate the two hundredth anniversary of New York's ratification of the United States Constitution, had premiered in New York City on May 4 and would be broadcast nationally by PBS in July.

d) In its recent ruling in Friedman v. Supreme Court of Virginia, the U.S. Supreme Court had declared unconstitutional a Virginia requirement that out-of-state attorneys had to take a bar examination to be admitted to practice in that state. Mr. King noted that the decision was consistent with the position presented in an amicus curiae brief filed by the Association. He indicated that the Committee on Legal Education and Admission to the Bar would be studying the impact of the Friedman case on the New York-New Jersey reciprocity situation.

e) The four Appellate Divisions had appointed a joint committee to review the Code of Professional Responsibility amendments proposed by the Association, and that he anticipated their deliberations would be concluded and an amended Code would be in place by the end of the current Association year.

f) The International Law and Practice Section, which had been formed in 1987, had completed a successful initial year, with a membership exceeding 1,000 and that as part of the section's programming, section members had recently concluded a trip to China which had also involved meetings with representatives of several other Far Eastern bar associations.

g) He would be appointing a special committee to study the legal ramifications of the AIDS situation and to formulate appropriate recommendations for consideration by the Association.

h) During his term, he would encourage Association sections and committees to address issues in the areas of professional competence and ethics to improve this aspect of the legal profession.

Mr. King expressed appreciation to Mrs. Freedman for her energetic and dedicated leadership as President during the past year, and presented her with a plaque inscribed as follows:

The New York State Bar Association presents this testimonial to Maryann Saccomando Freedman in recognition of her devoted service to the Association in the successful furtherance of its ideals and in the promotion of the best interest of the profession through her service as President of the Association 1987-88.

12. Report of Chair. Mr. Yanas reported that in cooperation with the Onondaga County Bar Association and other bar groups in the central New York region, planning was well under way for the Fall General Meeting to be held October 27-29, 1988 in Syracuse. He advised that in addition to a Town Hall Meeting and a meeting of the Conference of Bar Leaders, sections and committees were preparing a variety of programs, including sessions dealing with real estate titles, sanctions, problems of the elderly, the law guardian system, and hiring associates for the small law firm. Mr. Yanas indicated that more detailed registration information would be distributed later in the summer, and he encouraged participation by the members to ensure the success of the meeting.

13. Date and place of next meeting. Mr. Yanas announced that the next meeting of the House of Delegates will be held in Syracuse on Saturday, October 29, 1988.