

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA
COOPERSTOWN, NEW YORK
JUNE 28-29, 1996

PRESENT: Members: Abrams; Adelman; Agress; Alderman; Asarch; Baldwin; Bashian; Bass; Baum; Birmingham; Besunder; Bohner; Bracken; Branca; Burgman; Chakansky; Cioffi; Coffey; Colavito; Cometa; Cooke; Cunha; D'Angelo; DaSilva; Denton; DiNardo; Dollard; Doran; Dwyer; Effman; Eppler; Epstein; Felder; Field; R.L. Fink; Robert S. Fink; Fisher; Fishberg; M. Freedman; R. Freedman; Friedman; Gacioch; Gardella; Gauthier; Geltzer; Gerstman; Getnick; Gingold; M. Goldstein; Golinski; Gorgos; Gross; Gutleber; Haig; Hall; Harris; E. Hart; Hartman; Hassett; Hayes; Heming; Herold; Hesterberg; Hodges; Horan; Horowitz; Jacobowitz; Jones; Juliano; Kamins; Kelly; T. Kennedy; Kilsch; Krane; Landy; Lascuertes; Lashley; Lawrence; Lazar; Lefkowitz; Levin; C. Levy; J. Levy; P. Levy; Lieberman; M. Longo; Lucchesi; Madigan; Maldonado; Malito; Maney; Manley; Markuson; Marten; Martusewicz; McClusky; McDonough; McGlinn; Mellon; Meng; Midonick; Millon; Moore; Murray; Naviasky; Netter; Nortz; Nussbaum; O'Leary; Oliver; Omansky; Ostertag; Palmer; Paul; Pearl; Peckham; Penzel; Peradotto; Periconi; Pfeifer; Porter; Pruzansky; Raylesberg; Reede; Reich; Reizes; Remo; Rice; Richardson; Rider; Roper; Rosenbloom; Rosenfeld; Ross; Rothstein; Santemma; Schraver; Sharkey; Sienko; Souther; Spellman; Standard; Taylor; Terranova; Tharp; Thompson; Tishler; Tomaselli; Tsimbinos; D. Tyler; J. Tyler; Weaver; Whalen; Witmer; Yanas.

1. Approval of minutes of April 13, 1996 meeting. The minutes were deemed accepted as distributed previously.
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. Pruzansky.
3. Designation of Parliamentarian. Mr. Pruzansky announced that he had appointed Robert J. Pearl to serve as Parliamentarian at House of Delegates meetings for the 1996-1997 Association year.
4. Report and recommendations of Special Committee to Review the Code of Professional Responsibility. Steven C. Krane, Chair of the Special Committee to Review the Code of Professional Responsibility, provided an overview of the committee's study and proposed amendments to the Code of Professional Responsibility. He also summarized the process utilized by the committee in considering comments submitted by interested parties and in preparing the revised draft of proposed Code amendments presently before the House, particularly the resolution of differences with the Special Committee on Lawyer Advertising and Referral Services and the Committee on Professional Ethics regarding the

amendments proposed to Canon 2. Sharon Stern Gerstman, Chair of the Special Committee on Lawyer Advertising and Referral Services, then summarized that committee's proposed Code amendments dealing with the subjects of lawyer advertising and solicitation to be addressed in the context of Canon 2.

Pursuant to the scheduling resolution adopted at the April 13, 1996 meeting of the House of Delegates, and after discussion, proposed amendments were adopted* to the following provisions of the Code of Professional Responsibility: DR 2-101, EC 2-10, EC 2-14, DR 2-102, EC 2-11, Definition 2, DR 2-103, DR 2-104, DR 2-105, Definition 7, DR 1-102 [with the exception of subdivision A(7) which was deferred until the November 1996 meeting], Definition 6, DR 1-103, DR 1-104, DR 1-105, DR 2-106, Definition 10, EC 2-20, DR 2-107 and DR 2-109. Mr. Krane noted that the proposed amendment to DR 2-110 had been withdrawn.

During the foregoing discussion, Mr. Denton noted his objection to the inclusion of the modified subdivision A(5) to DR 2-103 as being contrary to the procedure set forth in the scheduling resolution adopted by the House of Delegates on April 13, 1996. Also during the discussion, a motion was made and defeated by vote of the House to amend the scheduling resolution to permit the offering of Code amendments from the floor in addition to those submitted according to the prescribed procedure. A further motion was defeated by the House to amend the scheduling resolution to permit the consideration of procedural motions prior to the conclusion of debate on all substantive amendments.

At the conclusion of the discussion of the amendments proposed to the Definitions and Canons 1 and 2, Mr. Pruzansky advised the members that, pursuant to the scheduling resolution, consideration of proposed amendments to Canons 3, 4 and 5 would be taken up at the November 2, 1996 meeting of the House, with comments to be submitted no later than October 11, 1996.

5. Report and recommendations of Special Committee on Lawyer Advertising and Referral Services. Sharon Stern Gerstman, Chair of the Special Committee on Lawyer Advertising and Referral Services, summarized the committee's report as it relates to the establishment of a proposed Commission on Advertising. She indicated it was contemplated that the Commission would conduct educational programs for attorneys, the public and the media; cooperate with the Committee on Professional Ethics in rendering advice to potential advertisers prior to dissemination; review advertising after dissemination and, where problems may be apparent, to consult with the advertising attorney to rectify matters. She emphasized that the proposed Commission was an advisory body and would not exercise any disciplinary authority or serve any disciplinary function. After discussion, the following resolution was approved on motion of the House:

RESOLVED, that the Association approves in principle the report of the Special Committee on Lawyer Advertising and

* Such adoption to be contingent on their approval by the Appellate Division of State Supreme Court in the four judicial departments.

Referral Services* subject to the separate consideration by the House of Delegates of the Special Committee's proposed amendments to the Code of Professional Responsibility; and it is further

RESOLVED, that the Association endorses the recommendation of the Special Committee concerning a Commission on Advertising, and refers to the Association Executive Committee the issues of creation of the Commission and development of an appropriate charge; and it is further

RESOLVED, that the House of Delegates requests the Executive Committee to provide for the preparation and submission of a recommendation and, if appropriate, a proposal to conduct a study similar to the study conducted by the Florida Bar with respect to adverse effects which may result from advertising of legal services.

6. Report of Treasurer. Mr. Rice summarized the audited financial statement for the year ending December 31, 1995 and indicated that the Association had completed the previous year with a surplus of approximately \$410,000 before recognition of SFAS No. 106, "Employers' Accounting for Post-Retirement Benefits Other Than Pensions." He stated that to save the added costs entailed in amortizing this expense over twenty years, the Finance Committee had elected to recognize the full impact of SFAS No. 106 in 1995. He stated that the addition of this cumulative expense of \$993,000, when netted against the surplus, had resulted in a loss of \$583,000 for the year. Mr. Rice emphasized that this had no effect on the Association's cash flow, which was substantially higher than for 1994. He then summarized the Treasurer's report covering the period January 1 to May 31, 1996. He reviewed the major income and expense items for the initial five months of 1996, and noted that the statements of financial position were approximately \$930,000 more than for the comparable period in 1995. Mr. Rice stated that the Association remained in sound financial condition as it neared the mid-point of the current fiscal year. The report was received with thanks.

7. Memorial to W. Haywood Burns. Former Association President Archibald R. Murray, together with House of Delegates members John R. Horan and Marttie L. Thompson, presented a memorial to W. Haywood Burns, a member of the House and former Dean of City University of New York's School of Law, who had perished in an automobile accident in South Africa earlier in the year. They outlined the significant elements of his career, and his accomplishments in furtherance of the pursuit of justice and equality. A moment of silence was observed out of respect for Mr. Burns' memory and his contributions to the Association and the legal profession. A copy of the memorial is attached to these minutes.

* This clause was moved and adopted by the House with the understanding that it did not include the proposed Commission on Advertising, which is addressed in the immediately following clause.

8. Inauguration of M. Catherine Richardson. Mr. Pruzansky announced that in keeping with the duties and responsibilities of the office of President, the Association in 1993 had instituted a formal swearing-in of the President to be performed each year at the June meeting of the House of Delegates, given the close proximity of the Cooperstown meeting to the commencement of the President's term of office on June 1. The oath of office was then administered to M. Catherine Richardson by Hon. Richard D. Simons, Associate Judge of the New York State Court of Appeals.

9. Presentation of Root/Stimson Award, Public Service Award and Award of Merit. Peter H. Levy, Co-Chair of the Committee on Lawyers and the Community, presented the Public Service Award to Buffalo Mayor Anthony M. Masiello and to Henry G. Pirowski, Coordinator for that city's C.O.U.R.T.S. Program, for their significant contribution to enhancing the administration of justice.

Mr. Levy next presented the Root/Stimson Award to Michael J. Siris of Manhasset for outstanding service to the community.

Mr. Levy then presented the Award of Merit for small bar associations to the Orange County Bar Association and the Award of Merit for large bar associations to the Association of the Bar of the City of New York in recognition of their outstanding service to the public and the profession through programs administered at the local level.

10. Report of President. Ms. Richardson reported the following matters:

a) On June 17, together with Mr. Pruzansky, she had met with the section leaders to discuss a variety of issues of mutual interest. She advised that these matters had included the development of coordination among sections and with the Association to achieve common objectives, increasing membership, providing services and opportunities for section members, and working toward securing improvements in the legal system.

b) Since she and Mr. Pruzansky were the Association's voice with the Courts and the Legislature, she would welcome communication from the members of the House regarding issues or concerns they would like to have raised. She noted that they met quarterly with the Chief Judge and senior OCA officials, most recently on May 7, and were in a position to raise subjects of importance to the organized bar.

c) The Office of Court Administration had released the report of the Professional Education Project, chaired by Hon. Joseph P. Sullivan. She noted that the report evaluated the state's current continuum of legal education and presented recommendations pertaining to skills and values instruction prior to admission to the Bar, procedures for admission to practice, and post-admission education and professional development, including the adoption of mandatory continuing legal education. She indicated that the report was being reviewed by interested Association committees.

d) After reviewing comments from interested bar groups, including the NYSBA, the Office of Court Administration had presented the report of the Committee

on the Profession and the Courts to the Administrative Board. She indicated she would confer with Judge Lippman regarding how the Association might best remain involved in the process, and would keep the House apprised concerning future developments.

e) With minor modification, the four departments had approved the NYSBA's proposal, adopted at the January 1996 House meeting, to amend the Code of Professional Responsibility to allow the sale of a law practice. She offered congratulations to Mr. Pfeifer for his role in securing the approval of this amendment.

f) In May, the Chief Judge had spoken at a conference held at the Bar Center to mark the tenth anniversary of the report of the Task Force on Women in the Courts. She noted that while considerable progress had been made over the past decade, many barriers still remained to the advancement of women and underrepresented minorities in the legal profession. She encouraged the members of the House to reach out to women and other underrepresented groups to have them join and become actively involved in the work of the Association.

g) As adopted in late April, the fiscal 1996 federal budget had reduced funding for the Legal Services Corporation to \$278 million and imposed restrictions that will prohibit legal services programs from bringing class actions or challenging government welfare regulations. She indicated that in view of the federal budget reductions, the Governor and the Legislature had been asked to form a task force to study sources of future public funding for civil legal services. She indicated that relevant Association committee would continue their efforts to secure reasonable funding levels for legal services programs.

h) The Association's legislative program was doing well during the current session of the Legislature. She indicated it was likely that two measures submitted at the request of the Trusts and Estates Law Section involving adoption of the Uniform Transfers to Minors Act and corrections to the statutory short form general power of attorney would be enacted. She also noted that with Association support, legislation had been passed to extend the statutory authorization for group and prepaid legal services plans.

i) Since many new members have joined the House of Delegates since the rededication of the expanded Bar Center in 1990 and had not had an opportunity to see the facilities in Albany, tours would be conducted in conjunction with the November 2, 1996 meeting of the House.

j) Ms. Richardson expressed appreciation to Mr. Pfeifer for his energetic and dedicated leadership as President during the past year, and presented him with a plaque inscribed as follows:

The New York State Bar Association presents this testimonial to Maxwell S. Pfeifer 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 1995-96.

11. Report and recommendations of Commission on Providing Access to Legal Services for Middle Income Consumers. Paul Michael Hassett, Chair of the Commission on Providing Access to Legal Services for Middle Income Consumers, summarized the report and recommendations of the commission. He explained the methodology employed by the commission in conducting its study, including a survey of middle income consumers. He then outlined recommendations formulated based on that study, including the survey results, to improve access to legal services by those in the middle income category. Mr. Hassett indicated these initiatives fell into two major categories: those that would improve access to the legal system (lawyer referral services, group and prepaid legal services, and public awareness initiatives); and those that would improve the civil legal process (expanding access to Small Claims Court, development of procedures for the simplified resolution of cases under \$75,000, pro se assistance, alternative dispute resolution, and the utilization of a Multi-Door Courthouse). After explaining these recommendations, he advised the House that based on comments received from interested groups subsequent to the April meeting of the House, modifications had been made to the commission's report. After discussion and the failure of a motion to table the matter by a vote of 36-94, the following amended resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association approves, in principle, the report of the Commission on Providing Access to Legal Services for Middle Income Consumers and authorizes the officers to take such actions as may be necessary to further explore and where appropriate, implement the recommendations contained in the report, including referral to appropriate sections and committees for consideration.

12. Report of Committee on Civil Rights. Mr. Pruzansky advised that the report of the Committee on Civil Rights was deemed accepted and that formal consideration of this matter had been deferred until the November 2, 1996 meeting of the House to allow further time for comment by interested sections and committees.

13. Report of Chair. Mr. Pruzansky noted that to allow as much time as possible at meetings for the discussion of substantive items, he had circulated his report as Chair in a written format in advance of the meeting. A copy of the report is attached to these minutes. Consistent with the items set forth in the report, the following actions were taken by the House:

a) A motion was adopted extending the terms of the following special committees for an additional year:

- 1) AIDS and the Law
- 2) Alternative Dispute Resolution
- 3) Election Law
- 4) Group and Prepaid Legal Services Plans
- 5) Improve Courthouse Facilities

- 6) Improve the Civil Justice System (formerly Action Unit No. 6)
- 7) Steering Committee on Commerce and Industry
- 8) Lawyer Advertising and Referral Services
- 9) Procedures for Judicial Discipline
- 10) Review the Code of Professional Responsibility
- 11) Solo and Small Firm Practitioners
- 12) Volunteer Lawyers

b) A motion was adopted discharging the Committee on Media Awards.

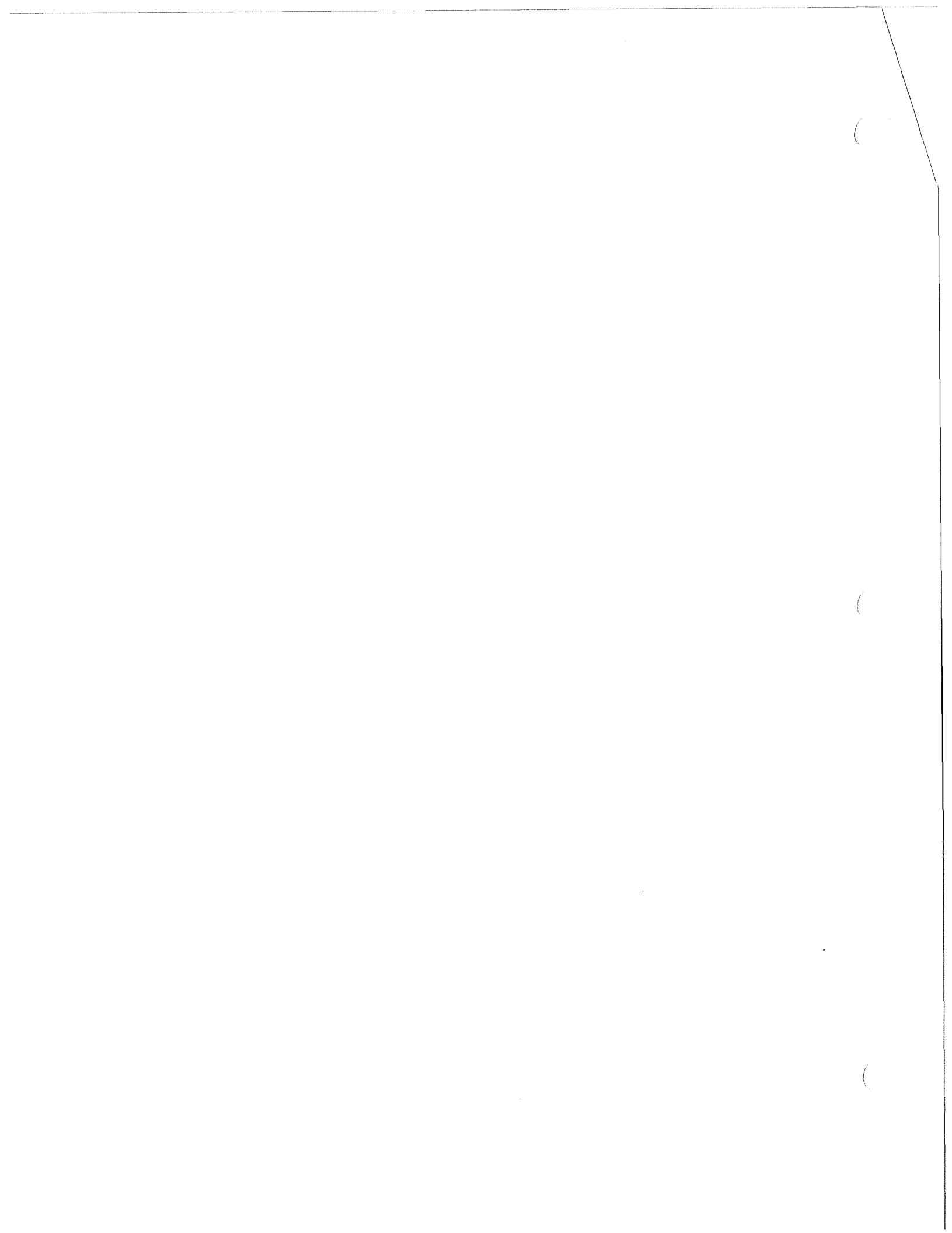
Mr. Pruzansky also reminded the members to complete and return the survey forms which had been distributed to assist in enhancing communication between the members of the House and the bar leadership.

15. Date and place of next meeting. Mr. Pruzansky announced that the next meeting of the House of Delegates would be held on Saturday, November 2, 1996 at the Bar Center in Albany.

Respectfully submitted,



Kathryn Grant Madigan
Secretary



NYSBA House of Delegates
June 28-29, 1996

ARM: Today we take a brief recess in the work of the House to say farewell to one who has been a shining star. When our president asked me to arrange a memorial to Haywood Burns, I began to think of the many connections Haywood has had to the law and to social justice, and I realized that we could exhaust any reasonable allocation of time that might be given to us. I have, therefore, asked two friends and admirers, Marttie Thompson and John Horan, to say a few words. Not every person who has known and admired Haywood could be accommodated today, and the two who have been designated will speak briefly.

Seeking to organize this effort, I turned to a college classmate of mine who has known Haywood since Haywood's school days in Peekskill. He describes Haywood as the most precocious youngster ever born in Peekskill. Everyone in Peekskill who knew Haywood stood in awe of him, in awe of his intellect and his energy.

His academic life and his commitment to social justice were truly impressive. With your permission I will read into the record a few lines from the citation that was

presented not long ago when the CUNY Law School conferred an honorary doctor of laws upon Haywood posthumously. It is as follows:

“Raised in Peekskill, New York, the grandson of a Georgia sharecropper, Professor Burns’ courage, values, and talents found their first expression when, at age 15, he helped integrate that town’s public swimming pool. The zeal and dedication Professor Burns brought to his struggle against racism made him a formidable foe, but when combined with his intellectual acumen and scholarly bent, the success of his endeavors was assured.”

Haywood’s thirst for justice inevitably led to a crossing of paths with Marttie Thompson, a member of this House and a long time legal services lawyer. Marttie, please step to the microphone.

MLT:

I REMEMBER W. HAYWOOD BURNS

When I met Haywood he was Executive Director of the National Conference of Black Lawyers. I remember him as a tireless worker. He

was a bundle of energy moving about the room talking and discussing a multitude of issues which affected the poor and needed support.

The Committee on Minorities and the Law - New York County Lawyers' Association sponsored Evening Forums on issues which related to the minority community.

One such forum was THE MINORITY LAWYER'S ROLE IN EDUCATING MINORITY YOUTH. The Committee asked Haywood to be the Moderator. He was very excited about the program because he enjoyed challenging young people, and as Moderator he could also challenge minority lawyers to assume a leadership role.

The forum was also memorable because Julius Chambers, then Director/Counsel of the NAACP Legal Defense Fund, was the Keynote Speaker. Haywood and Julius were dear friends and had worked together on many difficult legal issues over the years.

It was the custom at that time that County Lawyers' once a year would honor high school students for their achievements in academics, leadership and community involvement. Following a stirring keynote address, Haywood presented an award to each student encouraging them to pursue their dreams.

The energy, insight, resourcefulness and intellect which Haywood brought to so many difficult issues that impact the poor and disadvantaged are now gone. All of us will miss him.

ARM: I have asked John Horan to say a few words on behalf of all of us.

John, please step to the microphone.

JRH: I first became aware of Haywood Burns in 1970. He was a young lawyer then who had already served two years with the NAACP Legal Defense Fund, and as a private practitioner he had taken on Angela Davis who was a fugitive charged with murder and kidnapping in connection with an aborted raid to free black prisoners at a California

courthouse. These were days in this country when the word "radical" had meaning and there was racial tension in the air. Many were fearful of the consequences. Angela Davis was for a while an inflammatory celebrity, whatever side you were on; Haywood Burns was in those days to the establishment a "radical" lawyer. His originality and disciplined approach to race relations had not yet been felt widely and he was looked on with some apprehension because his courage and intelligence were obvious and he was clearly formidable. He had also started the National Conference of Black Lawyers, and was among the first to challenge the established bar with its deficiencies. Soon thereafter he became active in the defense of black men charged in the Attica uprising. He was fearless, passionate in his beliefs, tireless, visible, and outspoken. He went on into distinguished academic settings in New York City and a critical tour as Dean of the Law School at Queens College CUNY where he presided over its accreditation and pioneered

clinical courses. He was in every sense exemplary. At his death there were realizations of greatness lost.

ARM: I know there are many of you present who would like to express your deep regard for Haywood and his efforts. But Haywood would understand the need to press on with the business of the House. On behalf of all of you, I say now, farewell dear brother till we meet again.

Archibald R. Murray

New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200



June 20, 1996

To: Members of the House of Delegates

Re: Report of the Chair

Traditionally, the Chair of the House presents an oral report at each meeting concerning ministerial items to be addressed by this body. The nature of the Chair's report is dictated by the fact that in his or her separate report, the President will address the more critical substantive or policy matters with which the Association is involved, so there is no need for the Chair to raise those issues.

In an effort to preserve time at our meetings for the discussion of substantive agenda topics, I herewith furnish an advance written report covering certain "housekeeping" items which need our attention at the next House meeting.

a) Reappointment of special committees. Special committees are appointed for a fixed period of time (not to exceed three years), and when that time has elapsed, approval by the House of Delegates is required to extend the term of such committees. The following special committees are due to lapse this year, and I will ask for your approval to extend their terms for an additional full year:

- 1) AIDS and the Law
- 2) Alternative Dispute Resolution
- 3) Election Law
- 4) Group and Prepaid Legal Services Plans
- 5) Improve Courthouse Facilities
- 6) Improve the Civil Justice System (formerly Action Unit No. 6
- see below)
- 7) Steering Committee on Commerce and Industry
- 8) Lawyer Advertising and Referral Services
- 9) Procedures for Judicial Discipline
- 10) Review the Code of Professional Responsibility
- 11) Solo and Small Firm Practitioners
- 12) Volunteer Lawyers

b) Lapsed committees (for your information - no House action necessary). The following special committees have been allowed to lapse as they have either completed their assigned tasks, or are being combined with other committees:

- 1) Ad Hoc Committee on Fiduciary Compensation (task completed with the adoption of legislation)
- 2) Ad Hoc Committee on Non-Lawyer Practice (task completed with approval of report)
- 3) Monitor Commencement of Civil Actions By Filing (combined with Committee on Civil Practice Law and Rules)

4) Task Force on the Profession (task completed following House action last year on its report)

c) Change in committee name (for your information - no House action necessary). "Action Unit No. 6" has been redesignated as the "Special Committee to Improve the Civil Justice System" to reflect the deletion of the term "Action Unit" from the Association Bylaws. The new name is also consistent with the group's current function.

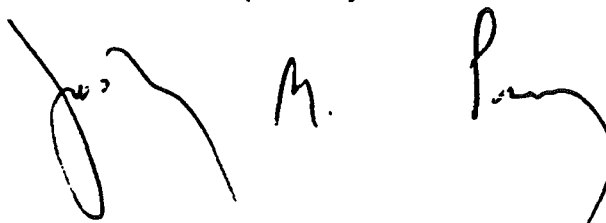
d) Discharge of standing committee. Based on our ongoing review of the continued need for committees, and in the interest of containing expenses, we have determined that the Committee on Media Awards, a standing committee under the Bylaws, is no longer necessary as its function is not directly related to the central purposes of the Association. Since it is a standing committee, the authorization of the House is required to discharge the group, and you will be asked at the meeting to approve this action.

e) Survey form. At the Saturday, June 29, 1996 session of the House, you will find a brief survey form intended to enhance communication between the members of the House and the bar leadership regarding the meeting, agenda topics and other related matters. Please take a few moments to complete the form and return it to a member of our staff on the 29th. We intend to provide similar survey forms at each of the meetings during the Association year.

f) Association President M. Catherine Richardson and I will be attending meetings of various of our sections and local bar associations. I hope your groups will use those opportunities to raise any issues or questions they may have, so that the Association may remain responsive to these concerns consistent with its leadership role in the profession.

The foregoing items constitute my report as Chair.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joshua M. Pruzansky', written in a cursive style.

Joshua M. Pruzansky
Chair of the House