

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
HILTON NEW YORK, NEW YORK CITY
JANUARY 25, 2013**

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PRESENT: Abella; Abernethy; Ajaiyeoba; Alcott; Ayers; Barnes; Baum; Behrins; Berman; Brown, E.; Brown, T. Andrew; Brown, Terry; Buholtz; Buzard; Cahill; Castellano; Cecero; Chambers; Chase; Clark; Coffey; Cohen, D.; Cohen, O.; Cohn; Crummey; Curley; Davis, T.; DeHaven; Di Pietro; DiLorenzo; Doyaga; Doyle; Dunne; Edmunds; Effman; Ellerin; Enea; Eng; Eppler; Epps; Fahey; Fallek; Feinberg; Feinman; Fernandez; Ferris; Finerty; Fishberg; Fisher; Fontaine; Fox; Franchina; Freedman, H.; Friedman; Gaffney; Gall; Galligan; Genoa; Gerace; Gerstman; Gold; Gorgos; Green; Gross; Gutekunst; Gutenberg; Gutheil; Gutierrez; Haig; Hall; Hanna; Harper; Hayes; Hetherington; Hillman; Hoag; Honig; Hoskins; Hurteau; Jackson; Jaglom; James; John; Kahn; Kamins; Karabatos; Karson; Kelly, M.; Kenney; King; Klein; Kobak; Kornfeld; Kurs; Lanouette; Lau-Kee; Lawrence; Lawton-Thames; Lee; Lessard; Lapp; Leventhal; Levin; Levy; Ling-Cohan; Lugo; Lupkin; Madigan; Makofsky; Maltz; Marinaccio; Marino; Martin, D.; Martin, E.; Marwell; Mayer; McAuliffe; McCafferty; McEntee; McKay; McNamara; Meacham; Meislahn; Millon; Minkoff; Minkowitz; Miranda; Moore; Morales; Moy; Mulhall; Murray; Myers; Napoletano; Nelson; Onderdonk; Ostertag; Parker; Perlman; Pogson; Prager; Rauer; Reed; Richman; Richter; Riley; Rivera; Robertson; Rodriguez; Romero; Rosiny; Rothstein; Ruderman; Russ; Russell; Ryan; Sachs; Safer; Salkin; Scanlon; Schoenfeld; Schofield; Schraver; Serbaroli; Shamoon; Shulman; Siegel; Sigmond; Singer; Slavin; Slezak; Smith, A.; Sonberg; Standard; Stanislaus; Starkman; Stenson Desamours; Sunshine; Swanson; Sweet; Syracuse; Taylor; Terranova; Tesser; Tilton; Tollin; Torrey; Tsan; Ugurlayan; Valet; Wallach; Watkins; Weis; Wiig; Wilkey; Wimpfheimer; Woronov; Yeung-Ha; Young; Younger; and Zuchlewski.

Mr. Schraver presided over the meeting as Chair of the House.

1. Approval of minutes of November 16, 2012 meeting. A motion was adopted accepting the minutes as previously distributed.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Claire P. Gutekunst to members of the Association 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. Stephen P. Younger, a member of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2013-2014 Association year: President-Elect: Glenn Lau-Kee, New York City; Secretary: David P. Miranda, Albany; Treasurer: Sharon Stern Gerstman, Buffalo; and Vice Presidents: First District – Catherine A. Christian and Jay G. Safer, New York City; Second – Manuel A. Romero, Brooklyn; Third – Lillian M. Moy, Albany; Fourth – Rebecca A. Slezak, Amsterdam; Fifth – Thomas E. Myers, Syracuse; Sixth – Mark S. Gorgos, Binghamton; Seventh – June M. Castellano, Rochester; Eighth – Cheryl Smith Fisher, Buffalo; Ninth – Arlene Antoinette Gordon-Oliver, Mount Kisco; Tenth – Scott M. Karson, Melville; Eleventh – Richard M.

Gutierrez, Forest Hills; Twelfth – Steven E. Millon, the Bronx; Thirteenth – Michael J. Gaffney, Staten Island. Nominated as members-at-large of the Executive Committee were T. Andrew Brown, Rochester; David Louis Cohen, Kew Gardens; Evan M. Goldberg, New York City; Oliver C. Young, Buffalo; James B. Ayers, Albany; Ira S. Goldenberg, White Plains; and James R. Barnes, Albany.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

4. Memorial to Hon. Theodore T. Jones, Jr. Hon. Jonathan Lippman, Chief Judge of the Court of Appeals, presented a memorial to Hon. Theodore T. Jones, Jr., Associate Judge of the Court of Appeals, who passed away in November 2012. A moment of silence was observed out of respect for Judge Jones' memory and his contributions to the Judiciary and the legal profession.
5. Report and recommendations of Committee to Ensure Quality of Mandated Representation. Norman P. Effman, chair of the committee, reviewed the adoption by the House in 2005 of the Standards for Providing Mandated Representation and the subsequent amendment of the Standards in 2010. He reported that in 2012, the Office of Indigent Legal Services approved conflict defender standards, which are based on the NYSBA Standards, and that the committee recommends that they be incorporated into the NYSBA Standards. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, in 2005 the New York State Bar Association endorsed Standards for Providing Mandated Representation (NYSBA Standards), revised in 2010, to assure high quality legal representation for every individual under a mandated representation plan; and

WHEREAS, in 2012 the Indigent Legal Services Board approved *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest* (Conflict Defender Standards), as mandated by statute, that are based on the NYSBA Standards and are consistent with the NYSBA Standards;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the incorporation of the Conflict Defender Standards into the NYSBA Standards; and it is further

RESOLVED, that the Committee to Ensure Quality of Mandated Representation is hereby authorized to prepare a post-incorporation document for presentation to the House of Delegates.

6. Address by Hon. Jonathan Lippman, Chief Judge of the State of New York. Chief Judge Lippman addressed the House of Delegates with respect to the status of Unified Court System initiatives. He provided an update on the Judiciary budget; funding for civil legal

services; juvenile justice; the Commercial Division of Supreme Court; and wrongful convictions. The report was received with the thanks of the House.

7. Presentation of the Ruth G. Schapiro Memorial Award. Mr. James presented the annual Ruth G. Schapiro Award to Kathryn Grant Madigan, past president of the Association.
8. Report and recommendations of Special Committee on Voter Participation. John R. Dunne and Daniel F. Kolb, co-chairs of the special committee, outlined the committee's recommendations with respect to increasing voter registration and improving the voting process. A motion was made to approve the resolution offered by the committee, after which a motion to amend to provide for an adequate and mandated state funding scheme failed on a standing vote of 59-116 and a motion to amend to include a mandate for civic education failed. After discussion a motion was adopted to approve the following resolution:

WHEREAS, the right to vote is a fundamental right of citizens of the United States, but the rate of voter participation in New York State is among the lowest in the country; and

WHEREAS, the New York State Bar Association's Special Committee on Voter Participation was appointed to recommend ways to remove barriers to registration and voting while maintaining the integrity of the process; and

WHEREAS, the Special Committee has completed a report containing a number of recommendations with respect to the registration process and the voting process, as well as increased penalties for deliberate and misleading conduct;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Special Committee on Voter Participation; and it is further

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

9. Report and recommendations of Task Force on Family Court. Task Force co-chairs Hon. Mary Rita Connerton and Susan B. Lindenauer reported on the committee's work to date in examining the challenges faced by Family Courts and developing recommendations that would better enable the courts to meet the demands placed upon them. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, Family Court plays a vital and unique role in addressing the personal and serious issues faced by New York's children and families; and

WHEREAS, Family Court judges and their staff work hard under demanding conditions to have a positive impact on families, children and their communities; and

WHEREAS, the Task Force on Family Court was appointed to examine the challenges faced by Family Court and recommend measures that would better enable Family Court to meet the demands placed on it; and

WHEREAS, the Task Force examined resources for litigants; resources for the courts; court operations, case management, and staffing; and technology; held hearings in each of the state's four judicial departments and consulted experts in New York and other states to obtain a full picture of the problems that Family Court faces as well as solutions to these problems; and

WHEREAS, the Task Force has completed a comprehensive report containing major recommendations to significantly strengthen Family Court by establishing as its highest priority the addition of more judges, as well as recommendations to improve court operations, increase resources for individual litigants, increase the use of technology, and improve the overall capacity of the court;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Task Force on Family Court; and it is further

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

10. Report of President. Mr. James highlighted items contained in his written report, a copy of which is appended to these minutes.
11. Report and recommendations of Committee on Civil Rights. Diana Sagorika Sen, chair of the committee, together with committee member Karen L. Murtagh, outlined the Committee's recommendations to limit the use of solitary confinement in New York correctional facilities. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, on October 18, 2011, the United Nations Special Rapporteur on torture, Juan E. Méndez, called on all countries to ban the use of solitary confinement of prisoners except in very exceptional circumstances and for as short a time as possible. Noting that such confinement can amount to torture when used as punishment or for an indefinite or prolonged period of time because of the severe mental pain or suffering it may cause, the Special Rapporteur recommended that solitary confinement in excess of 15 days should be completely prohibited.

WHEREAS, on October 2, 2012, the New York Civil Liberties Union issued a 64-page report titled, "*Boxed In: The True Cost of Extreme Isolation in New York's Prisons*" on the use of solitary confinement in New York State's prisons. The report, based on a year of study and analysis, explored the history that led to the use of solitary confinement in New York State and compared New York's use of solitary confinement with that of other states. It analyzed both whether the use of solitary confinement violates current legal standards, and whether reforming solitary

confinement in New York State would adversely impact prison or public safety. The report concluded that New York's use of solitary confinement is arbitrary and unjustified, harms prisons and corrections staff and negatively impacts prison and community safety.

WHEREAS, according to the report, last year alone, New York issued more than 13,500 extreme isolation sentences; about one for every four people incarcerated. Just over eight percent of New York's prison population is in isolation at any given time - the vast majority for non-violent offenses. Only 16 percent of isolation sentences from 2007 to 2011 were for assault or weapons. About half of the 4,500 prisoners in solitary confinement spend 23 hours a day in an isolation cell completely alone. The other half are confined in an isolation cell the size of a parking spot with another prisoner, a practice that forces two strangers into intimate, constant proximity for weeks, months and even years on end. A 2003 report by the Correctional Association of New York found that the average sentence in disciplinary segregation was 5.3 months but hundreds of inmates spent an average of three years in isolation and several prisoners in administrative segregation have been isolated for more than 20 years.

WHEREAS, extreme isolation is different than prisoner separation, which has long been an accepted corrections practice. Corrections officials can separate and remove violent or vulnerable prisoners from the general prison population without subjecting them to the punishing physical and psychological deprivation of extreme isolation - a point of consensus among corrections officials in other states, legal scholars and international human rights bodies.

WHEREAS, based upon the recommendations of the United Nations Special Rapporteur, the comprehensive report of the New York Civil Liberties Union and the plethora of historic and scientific evidence set forth in this report, all of which demonstrate the damage caused by prolonged solitary confinement and the ability to ensure prison and public safety without resorting to its use.

WHEREAS, the Committee on Civil Rights has prepared a report analyzing the use of solitary confinement and recommending that the use of solitary confinement be profoundly restricted; it is therefore

RESOLVED, that the New York State Bar Association hereby approves the report and recommendations of the Committee on Civil Rights.

FURTHER RESOLVED, that the New York State Bar Association calls upon all governmental officials charged with the operation of prisons and jails throughout New York State to profoundly restrict the use of long-term solitary confinement, by adopting clear and objective standards to ensure that prisoners are separated from the general prison population only in very limited and very legitimate circumstances and only for the briefest period and under the least restrictive conditions practicable.

FURTHER RESOLVED, that the New York State Bar Association calls upon such officials to adopt stringent criteria, protocols and safeguards for separating violent or

vulnerable prisoners, including clear and objective standards to ensure that prisoners are placed in solitary confinement only in limited and legitimate circumstances for the briefest period and under the least restrictive conditions practicable; and auditing the current population in extreme isolation to identify people who should not be in the Special Housing Unit, transitioning them back to the general prison population, and reducing the number of Special Housing Unit beds accordingly.

FURTHER RESOLVED, that the New York State Bar Association urges that the imposition of long-term solitary confinement on persons in custody beyond 15 days be proscribed.

FURTHER RESOLVED, that the New York State Bar Association calls upon the State Legislature to hold public hearings to inquire into the harmful effects of long-term solitary confinement and to solicit both professional and academic commentary on the matter and comments from persons who have been placed in long-term solitary confinement, and to otherwise conduct these hearings in a manner that will best inform lawmakers and the public at large regarding the effects of long-term isolation and to adopt appropriate legislation to address the use of solitary confinement in New York facilities.

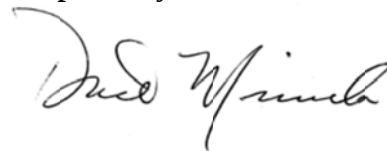
FURTHER RESOLVED, that the officers of the Association are hereby empowered to take such other and further action as may be required to implement this resolution.

12. Report and recommendations of Committee on Lawyer Referral Service. Anna K. Christian, chair of the Committee, outlined proposed amendments to the plan that governs the operation of the Association's Lawyer Referral and Information Service to provide for a more formalized process to address the reinstatement or continued suspension of a panel member. After discussion, a motion was adopted to approve the amendments.
13. Report of ABA State Delegate. Mark H. Alcott, ABA State Delegate, updated the House on ABA activity and reviewed the agenda for the upcoming February 2013 House of Delegates meeting. In addition, he reviewed ABA activity with Congress, the upcoming presentation of the ABA Spirit of Excellence Award to Prof. Jenny Rivera from CUNY School of Law, and the activities of ABA President-elect James R. Silkenat. The report was received with thanks.
14. Report and recommendations of Working Group on Guidelines of Committee to Review Judicial Nominations. Vincent E. Doyle III, chair of the Working Group, outlined proposed amendments to the Guidelines of the Committee to Review Judicial Nominations with respect to the process by which a candidate may appeal a rating to an Appellate Panel of the Executive Committee. After discussion, a motion was adopted to approve the amendments. Messrs. Coffey and Younger abstained from participating in the discussion and vote.
15. Report of Secretary. David P. Miranda, Secretary, reported on the implementation of the reports and recommendations of the Task Force on the Future of the Legal Profession, the Task Force on New York Law in International Matters, the Special Committee on

Veterans, the Special Committee on Immigration Representation, and the Task Force on Nonlawyer Ownership. The report was received with thanks.

16. Report of Executive Director. Patricia K. Bucklin, Executive Director, updated the House with respect to staff and internal operations, including the implementation of a content management system for the Website, the implementation of the Strategic Plan approved by the Executive Committee, physical staff relocations, and the Annual Meeting. The report was received with thanks.
17. Administrative items. Mr. Schraver reported on the following:
 - a. NYSBA delegates to ABA House of Delegates. At the April 6, 2013 meeting, the House would be requested to elect five of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: Seymour W. James, Jr. of New York City, Glenn Lau-Kee of New York City, Bernice K. Leber of New York City, A. Thomas Levin of Garden City, and Stephen P. Younger of New York City.
 - b. Standing Committees. Mr. Schraver reported that the Executive Committee had approved the recommendation of the Committee on Committees that the Special Committee on Immigration Representation, the Special Committee on Veterans, and the Special Committee on Youth Courts be constituted as standing committees of the Association. A motion offered by Mr. Doyle was adopted to approve the designation of these committees as standing committees.
18. Date and place of next meeting. Mr. Schraver announced that the next meeting of the House of Delegates would take place on Saturday, April 6, 2013 at the Bar Center in Albany.
19. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



David P. Miranda
Secretary