



Testimony for New York State Senate Democratic Task Force on Legislative and Budgetary Reform- Public Forum to be held on December 8, 2004

Madam Chairman, Members of the Task Force, Ladies and Gentlemen:

Thank you for the opportunity to speak to you this afternoon. My name is Harry D. Lewis. I am an attorney and parliamentarian in private practice in Manhattan. Today, I appear on behalf of the State Affairs Committee of the Association of the Bar of the City of New York, of which I am a member.

I'm here to tell you that the State Affairs Committee unequivocally supports the reforms proposed for the rules governing the New York State legislative process. We issued a report advocating for legislative rules changes in 2000 and issued a statement, which I have attached, again just recently.

With the U.S. working to establish democracy overseas, we in New York have become careless about defending our own parliamentary democracy. Majority incumbents in both political parties have slipped into pernicious practices. The New York Legislature denies fundamental rights to its own members, thereby disenfranchising members of the public. The most famous American parliamentarian of the twentieth century, Alice Sturgis, described the most important of those rights in her classic treatise, *The Standard Code of Parliamentary Procedure* (at 1) thus: "Here [in the legislature] is the right of free and fair debate, the right of the majority to decide, and the right of the minority to protest and be protected."

But, as you are all very much aware, in Legislature, rank and file members of both parties have had their voices silenced. The leaders and their central staff govern New York, not the elected representatives of the people. The minorities in both houses are denied their fundamental right to protest against the whims of the majority, and to be protected from unfair retaliation for letting their voices be heard. In addition, most legislators of both parties are excluded from basic decisions on the formation of legislation, deferring to the "three men in a room" to make the decisions. It is essential that these voices return to the committees and the floor of the Assembly and Senate. Without dissenting voices, there is no public debate. And without vigorous public debate in all parts of the legislative process, covered by the media to inform the citizens, there is no parliamentary democracy. That is why we are advocating for rules changes that make it easier for rank and file members of both parties to use the committee process effectively, to hold public hearings at which their constituents and experts in

public policy can debate issues of public importance, and to get important bills debated, and amended, on the floor.

Too often, neither the Assembly nor Senate convene for free and fair public debate of important issues. Or if they convene, it is in a room filled with empty chairs, not with members. It is too time-consuming, and too much trouble, we are told, to have our legislators show up to debate important issues in public, and to cast their votes, recorded in the journal, when they could be engaged in constituent service and dispensing member benefits in their districts. It is more efficient and pragmatic, we are told, to conduct public business behind closed doors, to keep almost all of our legislators ignorant and powerless by bringing up massive bills in the last moments of the session on abusive “messages of necessity”.

The dysfunction in our legislature means that the public business is not being done in the interests of the people, but only in the interests of those with the ear of the leadership. The failure of the legislative process is a loss for the public. First, legislators cannot effectively represent their constituents when their decision-making role is so subjugated to not only the legislative leaders but their staffs. Many legislators – often but hardly exclusively those of the minority parties – are so effectively marginalized that their constituents are barely represented in the governing process. Second, the result of an ineffective legislature is that the people’s business does not get done. We tend to picture that concept in the abstract. But when all agree that the Rockefeller drug laws should be reformed, or that persons with mental health problems should be treated equitably with regard to health insurance, the extended failure to reach a legislative solution has serious, sometimes tragic, impacts on individuals – many of them. To the extent these rules changes can remove these people as pawns in the political gamesmanship, your efforts will be well spent.

The legislative dysfunction also means that courts have been forced to adjudicate issues which properly should have been determined by the legislature in the first instance. The financing of our public schools has fallen into the hands of jurists, who, their good intentions notwithstanding ought to lack the moral and legal authority of the elected representatives of the people. When the lobbyists start lining up outside the courthouse, instead of the state house, as has happened with the recent public education financing controversy, the alarm bells should start ringing.

Further, the strangulation of democratic processes destroys any opportunity to hold incumbents accountable for their public pronouncements in public debate, for their public conduct of governmental affairs, whether wise or

foolish, and ultimately, for their votes on important issues. It shuts off important opportunities for the minority party to publicly protest foolish or corrupt proposals that favor special interests or waste the taxpayers' money. It promotes secret government. It robs the general public of the opportunity to observe all of our legislators in action in a public forum, and to draw their own conclusions. In short, the "three men in a room" are convenient scapegoats for legislators unwilling to accept responsibility for legislative excesses, or for their failure to protest those excesses, in a public forum.

In the words of the Open Meetings Law, "It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."

It's time for serious reform of this broken legislative process, restoration of legitimacy to the legislature as an institution, and restoration of true parliamentary democracy in New York.