

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 20, 1989

PRESENT: Agress, Albert, Amrod, Ange, Ball, Barbash, Barnett, Barthold, Bergen, Birmingham, Besso, Biblowit, Birnbaum, Blossom, Bohner, Brachtl, Bracken, Brenner, Brevorka, Brinton, Buckley, Cannon, Canoni, Cavanaugh, Clarke, Colish, Cometa, Connolly, Cooke, Cregg, Daly, Davidson, DeMaio, Deptula, DiLorenzo, Dollard, Dwyer, Eiber, Elmer, Emerson, Esteve, Evans, Faga, Fales, Farrell, Ferguson, Field, Fisher, Fitzgerald, Forger, Frank, Freedman, Gaal, Garamella, Geltzer, Gershon, Gertz, Ginsberg, Glasheen, Goldblum, Gordon, Grobosky, Grogan, Haig, Hall, Halpern, Hart, Haskel, Hawkins, Headley, Heming, Horan, Hyman, Ippolito, Jones, Kaplan, Kaufman, King, F. Klein, R. Klein, Lamb, Lowe, MacCrate, Mahony, McDonald, McGinnis, McGlinn, McGoldrick, McGraw, McGuirk, McMahon, Meng, Mercorella, Miller, Mitchell, Morris, Murphy, A. Murray, C. Murray, K. Murray, Neimeth, Netter, Obold, O'Brien, Offermann, Palermo, Pearl, Penzel, Perles, Perrin, Pfeifer, Pulley, Reiter, Rice, Richardson, Ritholz, Robinson, Rosiny, Rothstein, Rubin, Santagata, Santemma, Schell, Schiller, Schnier, Seward, Sherwood, Shlufman, Siegel, Silverstein, Simberkoff, Souther, Stave, Stiles, Thompson, Tondel, Torres, Van Strydonck, Vigdor, Vitacco, Wagner, Walker, C. Walsh, Wanderman, Warren, Weaver, Whalen, Wilkens, Williams, Witmer, Wolf, Woodman, Woronov, Yanas, Zimmermann.

1. Approval of minutes of October 29, 1988 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Gershon's report, which previously had been presented to the members of the House at the Annual Meeting of the Association, was received with thanks.

3. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. Justin L. Vigdor, Chair of the Nominating Committee, reported that the committee had nominated the following persons for election to the respective offices as indicated:

President-Elect

Secretary

Treasurer

Vice-President, First District

Vice-President, Second District

Vice-President, Third District

Vice-President, Fourth District

Vice-President, Fifth District

Vice-President, Sixth District

Vice-President, Seventh District

Vice-President, Eighth District

Vice-President, Ninth District

Vice-President, Tenth District

Vice President, Eleventh District

Vice-President, Twelfth District

Angelo T. Cometa, New York City

G. Robert Witmer, Jr., Rochester

Richard M. Gershon, Schenectady

John R. Horan, New York City

Thomas O. Rice, Brooklyn

Thomas P. Connolly, Albany

Dudley M. Ferguson, Gloversville

M. Catherine Richardson, Syracuse

John J. Fitzgerald, Cortland

Robert J. Pearl, Rochester

Francis J. Offermann, Jr., Buffalo

Robert L. Ostertag, Poughkeepsie

John P. Bracken, Mineola

A. Paul Goldblum, Brooklyn

Maxwell S. Pfeifer, Bronx

Executive Committee member-at-large	Nicole A. Gordon, New York City
Executive Committee member-at-large	Frank M. Headley, Bronxville
Executive Committee member-at-large	Archibald R. Murray, New York City
Executive Committee member-at-large	Frank R. Rosiny, New York City
Executive Committee member-at-large	Jon N. Santemma, East Norwich
Executive Committee member-at-large	Howard D. Stave, Forest Hills

There being no further nominations, a motion was made and carried that the nominations be closed. The Secretary then cast a single ballot for the officers and members-at-large of the Executive Committee.

4. Report and recommendations of Action Unit No. 7. Hon. Leonard D. Wexler, Co-Chair of Action Unit No. 7, and action unit reporter Burton C. Agata summarized the report and recommendations developed by the action unit to improve the functioning of the criminal justice system. They outlined the methodology employed by the action unit in conducting its study and the reasons underlying the conclusions and changes proposed to remedy problems perceived in the areas of the jury, discovery, probation, alternatives to incarceration, sentencing and appeals. Following discussion, separate motions were adopted approving the following recommendations as proposed by the action unit: (1) Mandatory jury sequestration in cases involving felonies, other than Class A and B felonies should be eliminated; (2) Article 240 of the Criminal Procedure Law should be amended so that the discovery of pretrial hearing and trial witnesses' statements is advanced to an earlier stage and the need for formal written demands and motions for discovery is eliminated in some instances; (3) There should be realistic and enforced workload standards and limits for probation officers, and salaries of county probation officers should be equal or comparable to the salaries of state parole officers; (4) There should be a full fifty percent reimbursement by the state to counties for the maintenance and improvement of probation services; (5) The state should expand the development of program alternatives to incarceration; (6) That portion of Penal Law Sec. 70.06 which mandates the imposition of a term of imprisonment on a predicate nonviolent felony offender should be repealed. Action with respect to two separate recommendations to create four appellate defender officers to handle indigent appeals in all counties except those with an existing legal and or defender office, and to seek the adoption of legislation or regulations to require each Judicial Department to designate a supervising clerk to oversee the production and filing of transcripts for indigent appeals was deferred to permit further study by the action unit.

5. Report and resolution by American Bar Association Section of Individual Rights and Responsibilities concerning discrimination based on sexual orientation. Past Association President Alexander D. Forger summarized a report and resolution scheduled for presentation to the American Bar Association's House of Delegates at the February 1989 meeting by that organization's Section of Individual Rights and Responsibilities. He noted that the section had requested the support of the New York State Bar Association for the proposal which would urge federal, state and local governments to enact legislation prohibiting discrimination on the basis of sexual orientation in employment, housing and public accommodations. After discussion, a motion was passed endorsing adoption of the following resolution by the American Bar Association's House of Delegates:

BE IT RESOLVED, that the American Bar Association urges the Federal government, the states and local governments to enact legislation prohibiting discrimination on the basis of sexual orientation in employment, housing and public accommodations.

6. Proposed resolution in support of federal judicial salary increases. Mr. King advised that he had been contacted by the Federal Judges Association with a request that the NYSBA support the recommendation by the United States Commission on Executive, Legislative and Judicial Salaries that federal judges' salaries be increased. He summarized the elements of a proposed resolution to accomplish this purpose, and noted the unanimous endorsement it received from the Executive Committee. After discussion, the following resolution was adopted unanimously on motion of the House:

TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES AND
THE COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL
SALARIES:

RESOLVED, that the New York State Bar Association hereby adopts this resolution in strong support of pay levels as proposed by the 1989 Quadrennial Commission for justices and judges of the courts of the United States. In so doing, the Association takes cognizance of the following facts, which it deems significant to this cause.

1. The Federal Salary Act of 1967, as amended, provided for the impaneling of a Commission on Executive, Legislative and Judicial Salaries on October 1, 1988, with a mandate to report to the President of the United States by December 15, 1988, its recommendations of the appropriate pay levels and relationships between and among the offices of the United States Government under its purview.

2. The offices and positions considered by the Commission included the Chief Justice and Associate Justices of the Supreme Court of the United States, and United States Circuit and District Judges.

3. As a result of economic developments over the past 20 years Federal judges are substantially worse off today in purchasing power terms than at their 1969 salary levels.

4. The salaries of the Supreme Court justices have actually declined in real terms by approximately 43 percent between 1969 and 1988, while the salaries of both circuit and district judges lost about 30 percent of their value over this period.

5. Aside from sporadic and inadequate adjustments for the announced purpose of reacting to increases in the cost of living, justices and judges have received only one major increase in pay since 1977, namely an increase of approximately 10 percent in March, 1987.

6. At the time he recommended the foregoing 1987 pay adjustment to Congress under the Federal Salary Act, President Reagan conceded its utter inadequacy and agreed to implement shortly a second adjustment to compensate more fully for past failure to keep judicial salaries current with the cost of living:

"This increase is but the first step in addressing the loss of real income documented by the Quad Commission. In addition to this pay raise, I anticipate submitting another salary recommendation prior to leaving office -- in

response to the recommendations of the next Quad Commission, which will be appointed and will make its recommendations in 1988. While I cannot pre-judge those recommendations, assuming continued progress toward eliminating the deficit and favorable economic conditions, I would expect to recommend at that time another step toward overcoming that erosion of real income." 52 Fed. Reg. 4126 (1987).

7. The opportunity to fulfill the above promise is now at hand, and the facts in justification thereof are as compelling or more so than in 1987.

8. While the salaries of Federal judges have been declining in real income terms, the compensation of other components of the legal profession, from which judges are necessarily drawn, have matched or exceeded increases in the consumer price index -- this applies to the salaries of law firm partners and associates, corporate general counsel and their staffs, law school deans and faculties, and the state judiciaries of many states.

9. The foregoing developments have led to inexorable pressure upon Federal judges to forsake the Judiciary or other callings in order to provide for their families and educate their children. The rate of resignation for the Federal Judiciary, once a rare and singular event, has increased sharply in the last two decades and continues to grow.

10. If adjustments sufficient to redress the loss of economic power of Federal judicial salaries are not made now, the pressure for further resignations will increase, damaging judicial independence and frustrating the conception of the Founders that Federal judges should have and fulfill life tenure in office during their good behavior.

11. The failure to adjust judicial salaries may also narrow the ranks of lawyers from which federal judicial appointments can be made.

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

a) He and Mr. Yanas had met on December 6 with Chief Judge Wachtler and other officials of the Office of Court Administration. He indicated that the topics discussed had included the 1989 Judiciary budget, preliminary data concerning the operation of the special masters program in Westchester County, the use of facsimile transmission to facilitate the service of documents in connection with court proceedings, OCA's legislative plans to eliminate medical malpractice panels as a source of unnecessary delay in civil cases, and the Association study of mandatory continuing legal education authorized by the House at the October 1988 meeting.

b) Consistent with the action taken by the House at its last meeting, he had appointed a Special Committee to Consider Mandatory Continuing Legal Education, with Robert B. McKay serving as Chair, and that a preliminary report was anticipated for presentation later in the year.

c) He had appointed a Task Force on the Law Guardian System, chaired by John R. Horan, to cooperate with the four Appellate Divisions in improving the quality of representation afforded to children.

d) As suggested at the October 1988 House meeting, the Finance Committee was studying the feasibility of establishing an affordable dues program to assist those members who were suffering from financial hardship. He indicated a report would be made to the House as soon as the Finance Committee had completed its study.

e) Administration of the sponsored insurance program was scheduled to transfer from the Bertholon-Rowland Corp. to Marsh and McLennan, Inc. on March 6, 1989, and that this step was the culmination of an extensive evaluation of the program conducted by the Committee on Association Insurance Programs in consultation with the Executive Committee.

f) On November 22, 1988 a wall-breaking ceremony had been held in No. 6 Elk Street to mark the formal commencement of construction for the Bar Center expansion. He noted that the project was proceeding on schedule, and that completion of the work was anticipated for the spring of 1990. Mr. King reported that the fund-raising effort was also progressing, and that approximately \$500,000 in pledges had been obtained during the past five weeks, raising the campaign total to approximately \$3.5 million. He advised that contact with law firms, foundations and corporations was continuing throughout the state, and he encouraged participation by the members of the House to complete these contacts.

g) The experimental program permitting television coverage of trial court proceedings was scheduled to conclude in 1989, and that interested Association committees and sections were studying this matter as a basis for providing comment to the Office of Court Administration regarding continuation of the program.

h) Former Association President Bernard J. Reilly had successfully undergone heart surgery and was recuperating satisfactorily.

8. Report of Chair. Mr. Yanas reported the following matters:

a) To facilitate communication between the Association leadership and the sections, he had attended meetings of a number of section executive committees during recent months, and had also participated in programs with other organized bar groups regarding matters of mutual interest.

b) The Nominating Committee had nominated the following individuals as delegates to the American Bar Association House of Delegates for election to a two-year term at the April 1989 meeting: Maryann Saccomando Freedman, Ralph L. Halpern, Charles E. Heming, Henry L. King, and Beth Ela Wilkens.

9. Date and place of next meeting. Mr. King announced that the next meeting of the House of Delegates will be held in Albany on Saturday, April 15, 1989.