

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 31, 1992

PRESENT: Members Adler; Agress; Ange; Aronson; Baker; Baldwin; Banner; Barnett; Barnosky; Beckerman; Berman; Birmingham; Besunder; Brachtli; Bracken; Brand; Brevorka; Brinton; Cedarbaum; Clements; Coffey; Cohn; Connolly; Connors; Cooke; Cooper; Daly; Darche; Davidson; DelleCese; DeLuca; Dowling; Doyle; Dwyer; Egelfeld; Eiber; Elmer; Eppler; Fales; Feigenbaum; Field; Fink; Fitzgerald; Forger; Fox; Friedman; Frye; Galloway; Gershon; Goldblum; M.J. Goodstein; N. Gordon; Greisler; J. Gross; M. Gross; Grossman; Haig; Hall; Halpern; Harper; Hart; Haskel; Headley; Heming; Hesterberg; Hoffmann; Horan; Jacoby; Jaffe; Jones; Kahn; Kamins; Karan; Kennedy; J. Kenney; T. Kenney; Kessler; King; Lashley; Lee; Leinhardt; Levin; Lindenauer; Long; Madigan; Maney; Markuson; Marrero; McDonough; McDowell; McGlenn; McGuirk; Meng; Meyer; E. Miller; Millon; Minardo; P. Mitchell; J.C. Moore; Morris; Murray; Neimeth; Netter; Nobile; O'Keefe; Okin; Opotowsky; Ostertag; Patrick; Pearl; Peckham; Perrin; Pfeifer; Pisani; Pruzansky; Purcell; Rachlin; Radigan; Raysman; K. Reilly; Reiniger; Reizes; Rice; Richardson; Rifkin; Riley; Robfogel; Robinson; Roper; Rossettie; Rothstein; Russell; Rybak; Sampson; Santemma; Schell; Schumacher; Seward; Seymour; Simberkoff; Small; Souther; Spellman; Stave; Strauss; Triebwasser; Troeger; Vigdor; Weiner; D. White; R. White; Witmer; Wolf; Wright-Sirmans; Yanas; Zalayet.

1. Approval of minutes of November 2, 1991 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. Henry L. King, Chair of the Nominating Committee, reported that the committee had nominated the following individuals for election to the respective offices as indicated:

President-Elect: Archibald R. Murray, New York City
Secretary: Lawrence E. Lagarenne, Monticello
Treasurer: Richard M. Gershon, Albany

District Vice-Presidents:

First: Arthur N. Field, New York City
Second: Joseph H. Farrell, New York City
Third: Thomas P. Connolly, Albany
Fourth: David R. Seward, Gloversville

Fifth: M. Catherine Richardson, Syracuse
Sixth: Kathryn Grant Madigan, Binghamton
Seventh: Robert J. Pearl, Rochester
Eighth: Joseph D. Bermingham, Buffalo
Ninth: William J. Daly, Ossining
Tenth: Edward T. Robinson, III, Oyster Bay
Eleventh: A. Paul Goldblum, Brooklyn
Twelfth: Maxwell S. Pfeifer, Bronx

At-Large Members of the Executive Committee:

Grace Marie Ange, Buffalo
Robert L. Geltzer, New York City
Robert L. Haig, New York City
James C. Moore, Rochester
Joshua M. Pruzansky, Smithtown
G. Robert Witmer, Jr., Rochester

There being no further nominations, a motion was made and carried that the nominations be closed. The Secretary then cast a single ballot to elect the officers and member-at-large of the Executive Committee for the 1992-93 Association year.

4. Report and recommendation of Commercial and Federal Litigation Section concerning reforms in civil pre-trial proceedings. Mark C. Zauderer, Chair of the Committee on Complex Civil Litigation of the Commercial and Federal Litigation Section, summarized the section's report and proposals to improve pre-trial proceedings in civil practice in state court. He outlined the section's specific recommendations with respect to pre-trial conferences; objection to notices of discovery and inspection and interrogatories; specificity requirements in connection with discovery; sua sponte pre-trial consolidation of cases; incorporation of self-executing orders in court decisions; elimination of the present priority rule for discovery; attorney certification of discovery responses; and streamlining of the process for conducting out-of-state depositions. Mr. Zauderer indicated that the suggested improvements would achieve cost and time savings, and enhance the efficient use of judicial resources, without any significant increase in expense to the state. Following preliminary discussion, a motion was adopted to table final consideration of the matter until the April 1992 meeting of the House and to refer the report to interested sections and committees for their review and comment in advance of that meeting

5. Report of President's Committee on Access to Justice. John P. Bracken, Co-Chair of the President's Committee on Access to Justice, summarized the committee's activities, in cooperation with the county and local bar associations, in furtherance of the resolution adopted in 1989 by the House of Delegates to enhance the delivery of voluntary *pro bono* legal services to the indigent. He described related efforts at the national level to maintain adequate funding for the Legal Services Corporation, as well as steps taken at the state level to protect the Interest on Lawyer Account Fund from being diverted from legal services-related purposes to fund the state's general revenues. Mr. Bracken also noted the committee's efforts to facilitate attorney involvement in *pro bono* activities, including the streamlining of in forma pauperis

procedures, exempting retired attorneys engaged in *pro bono* services from payment of the biennial registration fee, and encouraging the Attorney General to ease the restrictions on outside practice by his assistants to allow them to provide *pro bono* representation to the indigent. He noted the Association's creation of a staffed Department of Pro Bono Affairs to assist county and local bar groups in the development of *pro bono* activities, and the encouragement given Association sections and committees to engage in *pro bono* activities. Mr. Bracken also cited the public relations activities undertaken to heighten awareness of the need for *pro bono* service among the members of the legal profession. He reviewed statistics compiled regarding the current level of *pro bono* activity and indicated that the committee would continue its efforts in this area to avoid the need for the imposition of a mandatory plan by the court system. The report was received with the thanks of the House.

6. Report and recommendation of Committee on Legal Aid. Stephen G. Brooks, Chair of the Committee on Legal Aid, summarized the report submitted by that committee in cooperation with the President's Committee on Access to Justice recommending the formation of a New York Legal Assistance Partnership. He explained the purpose of the partnership as seeking to bring together the members of the legal community in New York who are active in providing civil legal assistance to the indigent. He noted that such an organization did not presently exist, and that the establishment of the proposed group would enhance the ability of civil legal services providers and individual attorneys to share innovations in management and legal practice, thereby promoting improved advocacy and greater efficiency. Following discussion, a motion was adopted authorizing the formation of the New York Legal Assistance Partnership as proposed.

Mr. Brooks then reviewed the report of the Committee on Legal Aid supporting the enactment of federal legislation to reauthorize the Legal Services Corporation, as opposed to the procedure of year-to-year extensions employed in the recent past. He also summarized the committee's position in support of adequate funding for the legal Services Corporation. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, the New York State Bar Association has a long tradition of commitment to and support for legal services to the poor; and

WHEREAS, the over 2 million poor people in New York State need free legal representation to ensure and secure the basic necessities of food, shelter, and health care; and

WHEREAS, the authorization for the Legal Services Corporation has expired, and reauthorizing legislation should be adopted in 1992; and

WHEREAS, the New York State Bar Association has previously resolved to oppose actively "each and every part" of the H.R. 1345, the McCollum-Stenholm "Legal Services Reform Act of 1991" because the provisions of that legislation would impose "unnecessary and highly detrimental restrictions on the civil legal services delivery system which

has served the legal needs of the country's poorest citizens for the past 25 years;" and

WHEREAS, the House Judiciary Committee subsequently approved a compromise reauthorization bill, H.R. 2039, by a bipartisan 25-7 vote; and

WHEREAS, H.R. 2039 would preserve a strong legal services program while addressing concerns that have been expressed about legal services programs; and

WHEREAS, amendments to H.R. 2039 may be proposed on the House floor which would even further limit contacts with legislators or agency officials by legal services programs on behalf of clients or at the request of those officials; would even further restrict the uses of private and public funds, including IOLA funds, by legal services programs; would require destructive competitive bidding procedures for program funding; would permit even more intrusive and inappropriate monitoring and sanctioning of programs; and would require disclosure of privileged information; and would otherwise improperly restrict the delivery of civil legal services; and

WHEREAS, the New York State Study on the Legal Needs of the Poor, and the legal needs studies in other states, have documented that providers of civil legal services can meet only a small percentage of the civil legal needs of the poor; and

WHEREAS, the providers of civil legal services to the poor have had a 37% decrease in real dollars in their federal funding since 1981 while the number of poor people in the United States has increased by approximately 15%; and

WHEREAS, the Board of Directors of the Legal Services Corporation voted on January 13, 1992 to adopt a budget request for FY 1993 in the amount of \$525,000,000, a 50% increase over the FY 1992 budget.

NOW, THEREFORE BE IT RESOLVED that the New York State Bar Association urges the New York congressional delegation to support H.R. 2039 as reported by the House Judiciary Committee; and

BE IT FURTHER RESOLVED that the New York State Bar Association urges the New York congressional delegation to reject the McCollum-Stenholm "Legal Services Reform Act of 1991" provisions as unnecessary and highly detrimental restrictions on the civil legal services delivery system which has served the legal needs of the country's poorest citizens for the past 25 years; and

BE IT FURTHER RESOLVED that the New York State Bar Association urges the New York Congressional Delegation to approve the full

\$525,000,000 budget request for FY 1993 of the board of Directors of the Legal Services Corporation.

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

a) The Chief Judge and the Governor had settled the litigation instituted by the former in connection with the 1991-92 judiciary budget. He stated that the settlement covered both the current and the 1992-93 fiscal years, and would enable the court system to restore personnel lost through layoffs during the past year, as well as reopen the court parts which had been forced to close in recent months. Mr. Ostertag also outlined the efforts by the Association in support of the Judiciary budget, including the approval given by the Executive Committee, pursuant to the authorization granted by the House at the last meeting, to file an amicus curiae brief in opposition to the Governor's motion to dismiss the lawsuit. Mr. Ostertag acknowledged the effort by the Commercial and Federal Litigation Section in preparing the brief, the filing of which was obviated by the settlement of the lawsuit. He also advised that in conjunction with the settlement of the suit, the Governor and Chief Judge had agreed to have an independent audit conducted of the court system, and that Mayor Dinkins was contemplating a similar evaluation of the New York City courts. Mr. Ostertag reported that he had appointed a Special Planning Committee chaired by Whitney North Seymour, Jr. to evaluate the feasibility of forming a Citizens Commission to conduct an independent evaluation of the courts on behalf of the Association, including the scope, cost and staffing of such a study. He indicated the committee contemplated having a report prepared by May 1, 1992.

b) Based on a request by the Committee on Women in the Law, the Executive Committee had authorized it to release its Model Policy for Childbirth and Parenting Leave to corporate law departments and public sector agencies as a non-binding informational guide, similar to the distribution to law firms which had been authorized in 1990.

c) He had written to the Governor and the legislative leaders expressing the Association's opposition to any increase in court fees to help balance the state's 1992-93 budget. He indicated that the Executive Committee would continue to monitor developments in this area, so that prompt action could be taken to reinforce the Association's position on this issue should the need arise.

d) In response to a request initiated last year by local bar leaders attending the General Meeting that an identification card be issued to attorneys to facilitate admission to courthouses and detention facilities, the Office of Court Administration had begun issuing such cards on January 2, 1992.

e) On December 3, 1991, he and Mr. Bracken had met with representatives of the Office of Court Administration to discuss matters of mutual interest. He stated that the topics addressed, in addition to the judiciary budget, had included the following:

i) Representation in matrimonial actions. Concerns which had been raised at the November 1991 conference of solo and small firm practitioners regarding the mandatory nature of assignments of counsel in matrimonial cases in the Third and

Ninth Districts had been relayed to the Chief Judge. Judge Wachtler had indicated he would discuss the concept of a more flexible, voluntary approach with the administrative judges for those two districts. Mr. Ostertag stated that the Association would be kept apprised of developments in this area.

ii) Courthouse facilities. The Chief Administrator had reported that despite the recession, some 40 courthouse improvement projects had been completed outside of New York City, with an additional 35 progressing satisfactorily. He noted that New York City remained a major problem, as city officials, for budgetary reasons, wanted to defer at least half the court renovation program until 2004. He indicated that the Association had testified in opposition to any further delay at public hearings held by the State Court Facilities Capital Review Board. Mr. Ostertag stated that the latter body had this matter under advisement, and that he would report future developments to the Association.

iii) Lawyer referral services regulation. The Chief Judge indicated that the report and recommendations of the Association's Special Committee on lawyer Referral Services Regulation had been reviewed by the Administrative Board and, at that body's suggestion, the Appellate Divisions were in the process of appointing a joint committee to review the NYSBA report. Mr. Ostertag stated that the Association would be kept advised regarding any future actions taken by the courts.

iv) Prompt hearing of custody matters in Family Court. Concerns raised by the Executive Committee regarding the need for more expeditious handling of custody matters in Family Court were under discussion between the Chief Administrator and the Association's Family Law Section, and that OCA's Family Court Rules Advisory Committee would be reviewing the matter to determine if improvements were feasible.

v) Pro bono. The Chief Judge had noted that the bar's response in the area of *pro bono* had been positive and encouraging based on the survey data compiled by the Pro Bono Review Committee. The Chief Judge was pleased with the level of attorney participation disclosed by the survey, and stated that the court system would continue to cooperate with the organized bar to enhance the delivery of voluntary *pro bono* civil legal services to the indigent.

f) The Task Force on Solo and Small Firm Practitioners would be presenting a detailed report at the next meeting outlining ways in which the Association could address the needs of this segment of the legal profession. Mr. Ostertag noted that the task force had engaged in an extensive study, including the holding last November of a two-day conference for solo and small firm practitioners from all areas of the state, as a basis for formulating its recommendations. He indicated that the report and proposals would be widely distributed among sections, committees and other interested groups to encourage an informed discussion at the next meeting.

8. Report and recommendations of Commercial and Federal Litigation Section regarding creation of an International Criminal Court. Mark H. Alcott, Chair of the Committee on International Litigation of the Commercial and Federal Litigation Section, summarized the section's report recommending the establishment of an international criminal court. He outlined the history of past efforts to create such a

tribunal. He further described the inadequacies of the current framework, including extradition treaties, for dealing effectively with various international offenses. Mr. Alcott explained the manner in which the jurisdiction of the proposed international criminal court would be structured on a limited basis to deal with offenses as defined in existing international conventions to avoid the definitional and political problems which defeated earlier efforts to establish such a tribunal. Following preliminary discussion, a motion was adopted to table final consideration of the matter until the April 1992 meeting of the House and to refer the report to interested sections and committees for their review and comment in advance of that meeting.

9. Report of Committee on Lawyer Alcoholism and Drug Abuse. David R. Pfalzgraf,, Chair of the Committee on Lawyer Alcoholism and Drug Abuse, summarized the committee's work in recent months to assist attorneys afflicted with alcohol or drug problems, and to provide educational information to and to coordinate its efforts with county and local bar organizations, judges' groups, and law schools. He also reviewed the need for amendments to the Code of Professional Responsibility and the Judiciary Law to insure the confidentiality of communications imparted to attorneys serving on lawyer rehabilitation committees. He advised that the proposals were under review with other interested committees and that he anticipated the submission of a final recommendation for consideration at the April meeting.

Ray M. Lopez, Director of the Lawyer Assistance Program, the Association-staffed entity connected with the Committee on Lawyer Alcoholism and Drug Abuse, outlined the efforts undertaken in coordination with the local bar associations to provide direct assistance to attorneys suffering from drug abuse or alcoholism, and to provide information to interested groups as well as individual attorneys. The two reports were received with the thanks of the House.

10. Report and recommendation of Commercial and Federal Litigation Section regarding teaching of pre-trial litigation skills in law schools. Shira A. Scheindlin, Chair of the Commercial and Federal Litigation Section, summarized the section's report and recommendations for law schools to provide students with pre-trial litigation training courses as part of their curricula. She explained that given the nature of modern litigation practice and the manner in which law firms function, it would be beneficial to expand beyond the intellectual pursuit of legal subjects to provide students with training in relevant pre-trial skills. She outlined the manner in which such instruction could be provided and the areas, such as pleadings, discovery, motion practice, settlement, negotiation, and appeals, which such training should encompass. After discussion, the following resolution was endorsed for adoption by the House of Delegates at the January 31, 1992 meeting:

RESOLVED, that the House of Delegates hereby endorses in principle the report of the Commercial and Federal Litigation Section with respect to the teaching of pre-trial litigation skills in law schools and commends the recommendations contained therein for consideration by the law schools in New York State.

11. Proposed resolution recognizing centennial of the National Conference of Commissioners on Uniform State Laws. Mr. Bracken advised that the National Conference of Commissioners on Uniform State Laws was celebrating its one hundredth anniversary in 1992. To commemorate this centennial and to recognize the contributions of the conference in developing valuable uniform statutes on a national scale, the following resolution was adopted on motion of the House:

WHEREAS, the National Conference on Uniform State Laws was organized in 1892 "to promote uniformity of state law on all subjects where uniformity is desirable and practicable"; and

WHEREAS, the Conference has drafted uniform acts addressing a wide range of subject areas, including the Uniform Commercial Code, the release of health care information, transfers to minors, fraudulent transfers, trade secrets, unclaimed property, federal liens, powers of attorney, rights of the terminally ill, controlled substances, probate, partnerships, child support enforcement, pretrial detention and determination of death; and

WHEREAS, the Conference has produced more than 150 uniform and model acts for consideration by the states, many of which have been adopted by the New York State Legislature and are now the law of this state; it is hereby

RESOLVED, that the House of Delegates of the New York State Bar Association adopts this resolution commemorating the centennial of the National Conference on Uniform State Laws in appreciation for the valuable contributions made by the National Conference to the advancement of jurisprudence and the development of uniform national standards in numerous fields of law.

Mr. Bracken also reported that the Governor's 1992-93 budget proposal had eliminated funding for New York's Uniform Law Commission. In support of the significant work performed by this body in conjunction with the National Conference on Uniform State Laws, the following resolution was adopted on motion of the House:

WHEREAS, the State of New York was one of the seven state founders of the Conference on Uniform State Laws (the "Conference") and New York's Uniform Law Commission (the "Commission") is now in its 100th year; and

WHEREAS, the Conference in which Uniform Law Commissions of all 50 states have participated has produced over 150 uniform laws and model acts for consideration by the states, many of which have been adopted in New York; and

WHEREAS, the beneficial impact of those acts on the people of New York and the status of New York as a legal, banking and commercial center has been invaluable; and

WHEREAS, the Commission's total annual funding for the current fiscal year was \$55,320, of which \$50,000 represents New York's dues to the Conference and the balance is for the Commission's operating expenses; and

WHEREAS, the Governor's proposed budget eliminates all funding for the Commission and the Governor is proposing that the Legislature repeal Section 165 of the New York Executive Law which is the Commission's charter,

NOW, THEREFORE, BE IT RESOLVED, that the New York State Bar Association urges the Governor and the Legislature of the State of New York to preserve the existence of the Commission and to continue its funding so that New York will not be the only state in the nation to withdraw from the Conference's work of advancing jurisprudence and developing uniform national legal standards.

12. Report of Chair. Mr. Bracken reported the following matters:

a) The Nominating Committee had nominated the following individuals for election at the April 1992 meeting of the House to a two-year term as delegates to the American Bar Association House of Delegates: John P. Bracken, T. Richard Kennedy, Archibald R. Murray, Robert L. Ostertag, Anne B. Ruffer (young lawyer delegate), and Justin L. Vigdor.

b) Former Association President John J. Yanas had testified on behalf of the Association at a joint hearing of the Senate and Assembly Judiciary Committees with respect to the 1992-93 judiciary budget. Mr. Bracken indicated that the NYSBA would be continuing its legislative efforts in the future in support of adequate funding for the court system as well as other measures of significance to the Association.

12. Date and place of next meeting. Mr. Bracken announced that the next meeting of the House of Delegates will be held on Saturday, April 4, 1992 at the Bar Center in Albany, New York.

