

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ABLANY, NEW YORK  
APRIL 4, 1992

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PRESENT: Adler; Ange; Baker; Baldwin; Banner; Barnett; Birmingham; Besunder; Bracken; Brand; Brevorka; Cedarbaum; Ciulla; Clarke; Clements; Cometa; Connolly; Cooke; Cooper; Daly; D'Angelo; Darche; DelleCese; Doyle; Dwyer; Egelfeld; Eppler; Feigenbaum; Field; Fink; Friedman; Galloway; Geltzer; Gershon; Goldblum; Goldstein; Goodstein; M. Gross; Grossman; Haig; Halpern; Hart; Haskel; Hassett; Headley; Heming; Hesterberg; Horan; Jacoby; Jaffe; Jones; Karan; Kellar; Kennedy; J. Kenney; Kessler; King; Klein; Lee; Leinhardt; Levin; Lindenauer; Long; Longo; MacCrate; Madigan; Maher; Markuson; Marrero; McGlenn; Meng; Mercorella; Meyer; Millon; Minardo; P. Mitchell; J.C. Moore; Morris; Netter; Nobile; O'Brien; O'Keefe; Opatowsky; Ostertag; Palermo; Patrick; Pearl; Peckham; Pelky; Pfeifer; Pisani; Pruzansky; Radding; Radigan; Raysman; Reich; Reiniger; Reizes; Rice; Richardson; Rifkin; Riley; Roper; Rosiny; Rothstein; Ruffer; Sachs; Santemma; Schumacher; Seward; Sienko; Simberkoff; Small; Spellman; Stave; Sussman; Triebwasser; Troeger; Vigdor; Walker; J. Walsh; Weiner; R. White; Williams; Witmer; Wolf; Yanas; Zalayet.

1. Approval of minutes of January 31, 1992 meeting. The minutes were approved as distributed.
2. Report of Treasurer. Mr. Gershon summarized the Treasurer's report covering the period January 1 - February 29, 1992. He reviewed the major income and expense segments of the budget and advised that these were within the Finance Committee's estimates for the first two months of the fiscal year. He noted changes made in the investment allocations in the Association's reserve funds to provide added growth and an increased return for these accounts. Mr. Gershon indicated the Finance Committee was also considering the appropriate timing for making supplemental payments, as provided in the 1992 budget, in cooperation with The New York Bar Foundation, to reduce the outstanding principal remaining on the Bar Center expansion loan to minimize long-term interest expenses. He stated that the Association remained in sound financial condition and that in accordance with the Bylaws, the audited financial report for the 1991 fiscal year would be presented at the June meeting of the House. The report was received with thanks.
3. Election of Nominating Committee and NYSBA Delegates to ABA House of Delegates. Henry L. King, Chair of the Nominating Committee, reported that the committee had nominated John J. Yanas, Angelo T. Cometa and John A.R. Walsh as members-at-large of the Nominating Committee and Mr. Yanas as its Chair for the 1992-93 Association year. A motion was adopted electing said Chair and members. Mr. King then reported that the Nominating Committee had selected Robert J. Bohner to serve as an alternate at-large member. A motion was adopted electing Mr. Bohner to that position.

Mr. King next reported that the vice-president and elected delegates from each district had nominated the following individuals to serve as members and alternates of the Nominating Committee from their respective districts for the 1992 -93 Association year:

<u>DISTRICT</u>	<u>MEMBERS</u>	<u>ALTERNATES</u>
FIRST:	Cora T. Walker John J. Kenney	Nicole A. Gordon
SECOND:	Roger B. Adler Gregory X. Hesterberg	Philip G. Minardo
THIRD:	Miriam M. Netter David S. Williams	Dale M. Thuillez
FOURTH:	Dudley M. Ferguson Thomas J. McDonough	Paul F. Brown
FIFTH:	James E. Reid Charlene V. McGraw	James F. Dwyer
SIXTH:	Albert C. Neimeth Leslie N. Reizes	Peter W. Mitchell
SEVENTH:	Justin L. Vigdor S. Gerald Davidson	Merle M. Troeger
EIGHTH:	Carl L. Bucki Maryann Saccomando Freedman	Daniel A. Rybak
NINTH:	Joseph F. Longo Arthur L. Pulley	John K. McGuirk
TENTH:	Robert W. Corcoran Thomas J. Spellman	A. Craig Purcell
ELEVENTH:	Robert L. Klein Bernard M. Eiber	Gary M. Darche
TWELFTH:	Mark B. Rubin Hon. Alexander A. DelleCese	Richard Weinberger

A motion was adopted electing the foregoing district representatives and alternates.

Mr. King then reported that the Nominating Committee had selected the following individuals to serve a two-year term as delegates to the House of Delegates of the American Bar Association commencing in August 1992:

John P. Bracken  
T. Richard Kennedy  
Archibald R. Murray

Robert L. Ostertag  
Anne B. Ruffer (young lawyer delegate)  
Justin L. Vigdor

A motion was adopted electing the foregoing individuals.

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 civil pre-trial proceedings in state court. He outlined the section's recommendations regarding: (a) objections to notices of discovery and inspection and interrogatories; (b) specificity requirements in connection with discovery; (c) incorporation of self-executing orders in court decisions; (d) streamlining of the process for conducting out-of-state depositions; (e) pre-trial conferences; (f) sua sponte pre-trial consolidation of cases; (g) elimination of the present priority rule discovery; and (h) attorney certification of discovery responses. He indicated that the first four proposals were being presented for consideration by the House while the latter four were being withdrawn to allow for further discussion with other interested sections and committees of the Association. Following discussion, separate motions were adopted approving the recommendations presented in connection with items (a) through (d).

5. Proposed resolution by Commercial and Federal Litigation Section endorsing salary increases for the judges of the New York State Courts. Prof. Vincent C. Alexander, Chair of the Committee on State Judiciary of the Commercial and Federal Litigation Section, summarized the section's proposed resolution urging that the compensation of judges of the state court system be increased. He noted that the judges had not received an increase since 1987 and that this had an adverse economic impact on the members of the judiciary. He cited relevant data regarding salary levels in other jurisdictions, and noted the support of other bar groups in New York for the proposition of a judicial salary increase. After discussion, the following resolution was adopted on motion of the House:

TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF NEW YORK

RESOLVED, that the New York State Bar Association strongly urges that the compensation of the judges of the State of New York be increased. At the very least, this increase should be commensurate with the ratio of inflation measured prospectively from October 1987.

In so doing, the Association takes cognizance of the following facts, which it deems significant to this cause:

1. The last salary increase for New York State judges occurred over four years ago, in October of 1987. Failure to correct this state of affairs during the next fiscal year would result in a five-and-one-half year freeze on judicial salaries. In light of the increased filings and burgeoning court calendars documented in the Chief Judge's 1991 State of the Judiciary report, such a freeze is inequitable and unjust. Moreover, according to

the National Center for State Courts, judges in no other state have gone without a pay raise longer than the judges of New York and one other state, Pennsylvania.

2. Due to the escalating cost of living, judges receive substantially less in disposable income today than they received four years ago. Using the consumer price index as the measure of the rate of inflation, the cost of living increased 21.6% between January 1988 and December 1991.

3. Ethical constraints imposed by the Code of Judicial Conduct severely limit the ability of judges to earn income from other sources. Indeed, the commentary to Canon 5 of the Code expressly provides that the appropriate remedy for the financial hardships caused by the canons of ethics is the securing of "adequate judicial salaries." The 1988 Report of the New York Temporary Commission on Executive, Legislative, and Judicial Compensation concluded that judges, among other public officials, "are now required to accept a standard of living far below the less-than-munificent compensation of twenty years ago. It is unconscionable to demand such sacrifice of our public servants and their families."

4. According to the Office of Court Administration, a significant number of executive branch employees have received salary increases since 1987 and many earn more than members of the state judiciary. As of November 1990, over 3400 executive branch employees (nearly all of whom received increases after October 1987) were earning salaries higher than the minimum salaries of Surrogates, Family Court judges and County Court judges. (Salaries among some judges of co-equal jurisdiction differ depending on location in the state). As of March 1990, over 5600 executive branch employees (nearly all of whom received increases after October 1987) were earning salaries exceeding the minimum salary of full-time City Court judges. Furthermore, District Attorneys within the five counties of New York City now earn \$20,000 per year more than the Supreme Court Justices before whom they appear. (Ironically, § 928 of the County Law provides that District Attorneys in the five counties comprising New York City shall receive salaries that are no less than those of Supreme Court Justices.) As urged by the Chief Judge, a comparison between judicial salaries and those of legislative and executive branch personnel would prove useful in assuring fairness in the treatment of judges.

5. The salaries of the lowest paid federal judges are greater than those of the highest paid New York State trial judges: Justices of the New York State Supreme Court currently earn \$95,000 while U.S. Bankruptcy judges and full-time Magistrate Judges earn \$119,140.

6. Now is an appropriate time for the Governor and the Legislature to take cognizance of the need for judicial salary increases and to generate appropriate legislation to meet the need. The absence of an explicit

request for judicial salary increases in the 1992-93 judiciary budget proposed by the Chief Judge and Office of Court Administration is understandable in light of the contentious litigation over the 1991-92 budget that was only recently resolved. Judicial salary increases, nevertheless, should be a part of the 1992-93 budget. The gap between current salaries and the cost of living will only widen if action is not taken now.

7. Despite the hardships of the current economic climate and the difficult financial circumstances of the State, basic fairness dictates that judges receive a salary increase. Judges should not be singled out to make financial sacrifices greater than those borne by other public servants with equal responsibilities in fundamental operations of state government. It is important to the citizens of the state that the most qualified candidates pursue and remain in judicial service. This goal cannot be achieved without an assurance that judicial salaries will increase at reasonable time intervals. As noted at the outset, the failure to act now will result in a five-and-one-half year interval. This is simply too long.

The New York State Bar Association believes that it is important that each member lend his or her voice to the call to solve this important problem, and therefore it is further:

RESOLVED, that the New York State Bar Association strongly urges its members to contact the members of the Legislature of the State of New York and the Governor to express their support for an increase in compensation for the state judiciary.

6. Presentation of Trial Lawyers Section National Trial Advocacy Competition Awards. In cooperation with Anthony J. DeMarco, Jr., Chair of the Trial Lawyers Section Trial Advocacy and Scholarship Competition Committee, Messrs. Ostertag and Bracken presented the Trial Lawyers Cup and Scholarship to Hofstra University School of Law as the law school from New York State placing highest in the National Trial Advocacy Competition. Benjamin Cardozo School of Law of Yeshiva University was recognized for its second place finish among New York law schools in the competition.

7. Report and recommendation of Task Force on Solo and Small Firm Practitioners. Robert L. Geltzer, Chair of the Task Force on Solo and Small Firm Practitioners, summarized that group's study and report to assist the Association in addressing the unique needs and concerns of attorneys who practice in a solo or small firm environment. He detailed the recommendations which had been developed by the task force to assist solo and small firm practitioners in the areas of: (a) law practice management, economics and technology; (b) enhanced continuing legal education and mentoring/networking opportunities; (c) court improvements; (d) maintaining professionalism; and (e) better public perception and external/internal communications. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, a majority of the attorneys in private practice in New York State are either members of small firms of between two to five lawyers or are in solo practice; and

WHEREAS, a significant proportion of the members of the New York State Bar Association ("Association") are in such practice settings; and

WHEREAS, the Association recognizes the valuable contribution made by solo and small firm practitioners to the public, the practice of law, and the legal profession, and desires to give these lawyers a greater voice within the Association; and

WHEREAS, as disclosed by the extensive study conducted by the Task Force on Solo and Small Firm Practitioners ("Task Force"), such practitioners require enhanced support from the Association to help them continue to: serve their clients competently, improve their practices, serve the public, and address their unique needs and concerns; and

WHEREAS, to serve as a blueprint for the Association to provide assistance to solo and small firm practitioners, the Task Force has formulated numerous recommendations in various categories, including law practice management, economics and technology; enhanced continuing legal education and mentoring/networking opportunities; court improvement; maintaining professionalism; and better public perception and external/internal communications; and

WHEREAS, it would be beneficial for the Association to explore those recommendations in depth and to implement those deemed feasible and appropriate; it is hereby

RESOLVED, that the House of Delegates recognizes the significant role of solo and small firm practitioners in meeting the day-to-day legal needs of individual citizens, and expresses its commitment to undertake initiatives and programs to address their unique concerns and often difficult practice circumstances; and it is further

RESOLVED, that the House of Delegates receives and accepts the Report of the Task Force; and it is further

RESOLVED, that the various recommendations contained in said Report be commended to the relevant sections and committees of the Association for study and comment; and it is further

RESOLVED, that after such study and comment, the Executive Committee implement those recommendations that it deems feasible and appropriate within fiscal or other policy determinations of the House of Delegates, and refer to the House of Delegates those matters which present policy issues which should be decided by the House; and it is further

RESOLVED, that the work of the Task Force be continued for at least one year in order to monitor the results of any implemented recommendations, and to refine them as they progress, including reporting back to the House of Delegates after that time as to the status and results of any implemented recommendations and any need for further appropriate action.

8. Report and recommendation 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 report and proposed amendments to DR 1-103(A) of the Code of Professional Responsibility and Section 499 of the Judiciary Law to ensure the confidentiality of communications to and among members of lawyer assistance committees administered by the state and local bar associations. He noted the need for such amendments to facilitate the efforts of such committees in assisting attorneys afflicted by alcohol or drug abuse. Mr. Pfalzgraf explained the manner in which the proposed provisions would function and indicated they were consistent with the position taken by the American Bar Association, as well as similar measures enacted in a number of other states. Following discussion, a motion was adopted approving the proposed amendment to DR 1-103(A) of the Code of Professional Responsibility for submission to the four Appellate Divisions and the filing of the proposed addition of Section 499 of the Judiciary Law.

9. Report and recommendation of Commercial and Federal Litigation Section concerning federal judicial vacancies. Mark H. Alcott, a member of the Executive Committee of the Commercial and Federal Litigation Section, summarized the report of the section with respect to judicial vacancies in the federal courts contained in the Second Circuit and the need to fill those vacancies to facilitate the effective functioning of those courts. He also noted the need for governmental authorities to develop more efficient processes for the nomination and confirmation of federal judges in order to reduce the time during which judicial positions are vacant. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, there are currently eleven judicial vacancies in the Second Circuit; and

WHEREAS, there is currently one vacancy on the Second Circuit Court of Appeals; and

WHEREAS, the United States District Court for the Southern District of New York currently has seven judicial vacancies, one fourth of all authorized positions, one of which has existed since 1988 and two of which have existed since 1989; and

WHEREAS, the Judicial Conference of the United States has declared that a judicial emergency exists with respect to three judicial vacancies in the Southern District; and

WHEREAS, the United States District Court for the Eastern District of New York currently has two judicial vacancies one of which has existed since December, 1990; and

WHEREAS, the United States District Court for the Northern District of New York currently has one judicial vacancy which has existed since December, 1990; and

WHEREAS, the aforesaid vacancies have slowed the disposition of cases, especially civil cases in the Southern District, and have contributed to an alarming increase in the backlog of cases in the United States District Courts for the Southern, Eastern and Northern Districts of New York; and

WHEREAS, the vacant judgeships have caused delays in the administration of justice, made it more difficult for the judges in the United States District Courts for the Southern, Eastern and Northern Districts of New York, and have also raised concerns that the administration of justice has been adversely affected; and

WHEREAS, the Commercial and Federal Litigation Section of the New York State Bar Association believes that continuing judicial vacancies deprive the public of expeditious civil and criminal justice;

NOW, THEREFORE, BE IT RESOLVED THAT the New York State Bar Association urges all parties involved in the judicial selection, nomination and confirmation process to take immediate bipartisan action to fill these vacancies and help alleviate what has become a severe problem affecting the administration of justice in the federal courts in the State of New York; and it is further

RESOLVED, that in light of the fact that judicial vacancies have been a continuing problem in the Second Circuit, all parties involved in the process of selection, nomination and confirmation of federal judges undertake to develop methods to improve the efficiency of the processes by which federal judges are nominated and confirmed in order to reduce the time during which judicial positions are vacant.

10. Report and recommendation 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, and 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. After discussion, the following resolution was adopted on motion of the



House, with the understanding that the proposed structure and rules of the court would include a habeas corpus-type concept:

WHEREAS, the New York State Bar Association believes it is desirable to create an International Criminal Court, for the reasons set forth in the attached report of the Commercial and Federal Litigation Section;

Now, THEREFORE, BE IT RESOLVED THAT the New York State Bar Association approves the attached report of the Commercial and Federal Litigation Section; and it is further

RESOLVED, that the New York State Bar Association urges all appropriate officials in the Department of State, Department of Justice, Congress and elsewhere to work for the establishment of an International Criminal Court, as described in the report; and it is further

RESOLVED, that the New York State Bar Association commends this report to the attention of the American Bar Association, for consideration and adoption at its Annual Meeting to be held in August, 1992.

11. Resolution endorsing candidacy of Anthony R. Palermo for the office of President-Elect of the American Bar Association. Mr. Ostertag advised that former Association President Anthony R. Palermo was a candidate for the office of President-Elect of the American Bar Association in 1993. After discussion, the following resolution was adopted on motion of the House endorsing Mr. Palermo's candidacy:

Recognizing that Anthony R. Palermo possesses personal qualities of integrity, wisdom, judgment and leadership, combined with outstanding legal skills and a sound understanding of the needs of the legal profession and the public; and

Recognizing that Anthony R. Palermo has held numerous offices in the New York State Bar Association (NYSBA), including President from 1979-80, President-Elect and Chair of the NYSBA House of Delegates from 1978-79, and has served as a member of the NYSBA House of Delegates and several active committees and sections of the NYSBA; and has held other responsible positions within the organized Bar and elsewhere, including as a Director of the American Judicature Society from 1974-78, as a member of the National Conference of Bar Presidents and the Executive Council thereof from 1978 - 1982, as a Fellow of the American College of Trial Lawyers, as a Fellow of the American Bar Foundation and New York State Chairman thereof from 1980-85, as a member of the Monroe County (Rochester, New York) Bar Association and as President, Secretary and Trustee thereof; and

Recognizing that Anthony R. Palermo has demonstrated commitment to the profession and the public for adherence to the highest standards of ethical conduct, including his service as Trustee of the New York State Lawyer's Fund for Client Protection from 1981 to 1990, by appointment of

the New York State Court of Appeals, and as Charter Chair from 1981 to 1985, and as a member of the Character and Fitness Committee of the Appellate Division, Supreme Court, Fourth Judicial Department from 1972 to 1976; and

Recognizing that Anthony R. Palermo has demonstrated commitment to improved access to the delivery of legal services, including his services as Chair of the NYSBA's Action Unit No. 3 on Legal Services from 1976 to 1978, and as Chair of the Public Defender Merit Selection Commission of the Monroe County Bar Association from 1973 to 1974, and service as President of the Foundation of the Monroe County Bar from 1974 to 1977, and as a Fellow of The New York Bar Foundation, and as a director thereof from 1978 to 1991; and

Recognizing that Anthony R. Palermo has demonstrated commitment to improved quality of the judiciary, including service as Chair of Governor Mario M. Cuomo's Judicial Screening Committee, Fourth Judicial Department, and as a member of Governor Cuomo's Statewide Judicial Screening Committee from 1987 to 1989, and service as a member of the New York State Temporary Legislative Commission on Judicial Compensation 1981-82; and

Recognizing that Anthony R. Palermo has been active in the work of the American Bar Association (ABA), and currently serves as the Secretary of that organization and as a member of its Board of Governors and its Executive Committee, and in the past has served as State Delegate from New York in the ABA House of Delegates from 1982-85 and previously served in the ABA House of Delegates as a Delegate of the NYSBA, and has also served on the Board of Governors as a representative of the State of New York, and as Chairman of the ABA Board Program Committee and as a member of the Executive Committee and Long Range Planning and Management Committee of the ABA Board, and as Board of Governors Liaison to several significant committees of the ABA, and has also served as a member of the Scope and Correlation Committee of the House of Delegates, and as a member of the ABA Standing Committee on Bar Services and Activities and as a member of the Membership Committee of the House of Delegates, and has demonstrated the capability for dedicated and responsible leadership within the ABA, and thus merits full consideration for the office of President-Elect of the ABA; now, therefore, be it

RESOLVED, the House of Delegates of the NYSBA enthusiastically endorses the candidacy of Anthony R. Palermo for nomination to the office of President-Elect of the ABA in 1993 and respectfully urges the Delegates of the ABA House of Delegates to support his nomination for, and election to, that office; and it is further

RESOLVED, that the officers of the NYSBA are authorized to distribute this Resolution to each member of the ABA House of Delegates and to such other individuals as may be deemed appropriate.

12. Resolution endorsing candidacy of Bernard F. Ashe for the office of Chair of the House of Delegates of the American Bar Association. Mr. Ostertag announced that Bernard F. Ashe was a candidate for the office of Chair of the House of Delegates of the American Bar Association in 1994. After discussion, the following resolution was adopted on motion of the House endorsing Mr. Ashe's candidacy:

Recognizing that Bernard F. Ashe possesses personal qualities of integrity, wisdom, judgement and leadership, combined with outstanding legal skills and a sound understanding of the needs of the legal profession and the public; and

Recognizing that Bernard F. Ashe has been active as a member of the New York State Bar Association (NYSBA) Labor and Employment Law Section, having served on its Executive Committee from 1982 to 1987 and from 1988 to 1991; and has held other responsible positions within the organized Bar and elsewhere, including as a member of the Association of the Bar of the City of New York's Committee on Labor and Social Security from 1974 to 1977 and its Committee on Labor and Employment Law from 1984 to 1987, as a member of the Board of Directors of the American Arbitration Association and its Labor Section Law Committee, as a member of the National Commercial and Labor Panel of Arbitrators and the New York Lemon Law Panel, as a member of the Board of Directors of the American Prepaid Legal Services Institute from 1985 to 1989, as a member of the National Bar Association, the Federal Bar Association and the Albany County Bar Association, as a member of the Executive Committee and Board of Directors of the National Resource Center for Consumers of Legal Services, as a member of the National Organization on Legal Problems and the Society of Professionals in Dispute Resolution, and as First Vice President from 1981 to 1985 and member of the Board of Directors from 1979 to 1985 of the Urban League of Albany, Inc.; and has served as a member of the Board of Trustees of the Lawyers' Fund for Client Protection of the State of New York since 1981; and

Recognizing that Bernard F. Ashe has been active in the work of the American Bar Association (ABA), presently serving on the Board of Governors and having previously served in the House of Delegates as a Section Delegate, on the Nominating Committee and its Steering Committee, as Chairman of the Section of Labor and Employment Law and Cochairman of its Committee on State Labor Law and Public Employee Bargaining, as a member of the Consortium on Legal Services and the Public and the Commission on Public Understanding About the Law, and is a Life Fellow of the American Bar Foundation, and has demonstrated the capability for dedicated and responsible leadership

within the ABA, and thus merits full consideration for the office of Chair of the House of Delegates of the ABA; now, therefore, be it

RESOLVED, that the House of Delegates of the NYSBA endorses the candidacy of Bernard F. Ashe for nomination to the office of Chair of the House of Delegates of the ABA in 1994 and respectfully urges the Delegates of the ABA House of Delegates to support his nomination for, and election to, that office.

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

a) The Chief Judge had formed a special committee to assess the statewide operation of the Individual Assignment System in civil terms of Supreme Court and to recommend any changes deemed necessary to ensure that the IAS is geared to meet the court system's present and future civil justice needs. Mr. Ostertag advised that interested groups within the Association will monitor the progress and results of the study, as well as submit comments to OCA during the course of the evaluation.

b) Consistent with positions adopted previously by the Executive Committee and the House of Delegates, the Legislature had restored funding for the Law Revision Commission and New York's Uniform Laws Commission.

c) In keeping with the resolution adopted at the House meeting in January, he had written to Congress urging the passage of reauthorization legislation for the Legal Services Corporation and expressing the Association's opposition to the "Legal Services Reform Act of 1991." Mr. Ostertag requested that the members of the House contact the members of Congress from their region to support the Association position.

d) In keeping with the previously stated views of the Association, he had contacted Congress to request that Section 120 of the Internal Revenue Code be made permanent. He noted that the tax exclusion for qualified legal services plans under Section 120 is critical to employers, as it furnishes the incentive necessary for them to provide prepaid legal services plans to employees.

e) The Governor's Medicaid Reform Proposal had been reviewed by several Association sections and committees, including the General Practice, Elder Law, and Trusts & Estates Law Sections, as well as the Committees on Legal Aid and Public Interest Law. Their views, which were uniformly consistent in their opposition to the proposal, were communicated to the Legislature to urge a reshaping of the measure consistent with the comments submitted by the NYSBA groups.

f) At the February 1992 Midyear Meeting of the American Bar Association's House of Delegates, the report of the ABA's Commission on Evaluation of Disciplinary Enforcement was adopted, but in an amended form. He noted that a major amendment had dealt with the stage at which the filing of a grievance against an attorney becomes public, with the ABA's formal position now stipulating that public access to disciplinary proceedings not occur until after a determination is made that there is probable cause to believe misconduct has occurred. Mr. Ostertag advised that this issue was under study

by the Association's Committee on Professional Discipline, with a report anticipated for presentation at the June meeting of the House.

g) Legislation had been enacted to allow the granting of parole to terminally ill inmates in appropriate cases where warranted by the inmates' medical condition and where they would not be a danger to others. Mr. Ostertag noted that this measure had been supported by the Criminal Justice Section, the Committee on Women in the Law, and the Special Committee on AIDS and the Law.

h) On February 7, 1992, 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 had included the following:

i) Judiciary budget. The Chief Judge had reported that the settlement of the litigation with the Governor and the Legislature had in essence restored the situation to its status as of April 1, 1991, which would allow the rehiring of laid-off employees, the filling of vacancies created by the job freeze, and the reopening of closed court parts. Mr. Ostertag advised that the Chief Judge was also conferring with the administrative judges at the local levels to deal with case backlogs which had developed during the period of diminished services. Mr. Ostertag noted that the Governor and the Chief Judge were discussing the details of an audit of the court system, as agreed to in connection with the settlement of the judiciary budget litigation. He also reported that he had appointed a Special Planning Committee, chaired by former Association President Whitney North Seymour, Jr., to consider the feasibility of the Association forming a Citizens Commission to study needed improvements in the court system.

ii) Courthouse facilities. The Chief Judge and the Chief Administrator advised that the State Court Facilities Capital Review Board has under consideration a request by New York City to defer major elements of its courthouse facilities construction and renovation plan due to budgetary problems. They noted that while the New York City authorities were preparing a response to concerns raised by the State Court Facilities Capital Review Board concerning the adverse effects of prolonged delay in plan implementation, they were considering the allocation of some \$6 million for the repair and maintenance of existing facilities. It was also reported that there were approximately 65 projects in other regions of the state which were progressing satisfactorily. Mr. Ostertag indicated that the Association's Special Committee to Improve Courthouse Facilities was continuing to monitor this area and the House would be kept apprised regarding future developments.

iii) Lawyer referral services regulation. The Chief Judge advised that the Court of Appeals and the Appellate Divisions were appointing a joint committee to review the report of the Special Committee on Lawyer Referral Services Regulation, as approved by the House of Delegates. He indicated that the Association would be kept informed as to future developments.

i) He and Mr. Bracken had met recently with the leaders of the Young Lawyers Section, which was in the process of enhancing the programs and services offered to its members. Mr. Ostertag noted that the Young Lawyers Section was seeking to foster closer liaison with the other sections of the Association and he encouraged the

members of the House who were in leadership positions in the other sections to cooperate in this effort.

j) In March he and Mr. Bracken had met with Association section leaders to discuss matters of policy and procedure, including improved coordination and communication among sections studying similar issues.

k) At its meeting on April 3, the Association's Executive Committee had, at the request of the Committee on Women in the Law, and consistent with positions adopted previously by the Association, endorsed legislation which would limit discrimination by private clubs by expanding the definition of public accommodation in the Executive Law to include private clubs with over 100 members which regularly receive payments from nonmembers for the furtherance of business.

l) This would be the last meeting for a number of members who were completing their term of service in the House. Mr. Ostertag expressed appreciation to the retiring members of the House for their attendance, participation and support during their tenure.

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

a) Bar associations entitled to delegates had filed their designations of delegates for the 1992-1993 Association year. On motion said designations were approved as filed, and a further motion was adopted approving the filed roster of members of the House as the official list for 1992-1993.

b) Pursuant to the Bylaws, the terms of several special committees were due to expire. On motion adopted by the House, the terms of the following special committees were extended for an additional year:

AIDS and the Law  
Alternative Dispute Resolution  
Association Task Force on Simplification  
Biotechnology and the Law  
Computer Access and Retrieval of Government Records  
Consider Mandatory Continuing Legal Education in New York State  
Election Law  
Group and Prepaid Legal Services Plans  
Improve Courthouse Facilities  
Interest on Lawyer Account (IOLA) Advisory Committee  
Medical Malpractice  
Military and Veterans Affairs  
Pension Simplification  
Procedures for Judicial Discipline  
Volunteer Lawyers

c) The Executive committee had recommended that the Committee on Unlawful Practice of the Law be discharged, as changes and developments in this area of the law

had eliminated the need for the committee with its limited function. A motion was adopted discharging the committee with the thanks of the House.

d) He added his appreciation to that expressed earlier by Mr. Ostertag to the departing members of the House for their encouragement and involvement with the Association during the past year.

16. New business:

a) Bernard Cedarbaum, a member of the Executive Committee of the Business Law Section, summarized that section's report with respect to the impact of the action taken by the Office of Thrift Supervision in issuing a temporary order to cease and desist freezing the assets of the law firm of Kaye, Scholer, Fierman, Hays & Handler in connection with an investigation of that firm's representation of a savings and loan institution. He described the adverse impact that such orders can have on the effective representation of a client and the need for Congress to restrict the use of freeze orders against law firms by federal agencies. Mr. Ostertag summarized the discussion of this issue by the Executive Committee on April 3, 1992 and the resolution proposed to urge the regulation of freeze orders by governmental bodies. He noted that the proposed resolution was not specific to the situation of Kaye, Scholer, Fierman, Hays and Handler, as the issues involved were broader and of more general application than the facts of this particular case. Following discussion, the following resolution, as proposed by the Executive Committee, was adopted on motion of the House:

RESOLVED, that Congress should amend the provisions of 12 U.S.C. §1818(c)(1) to allow freeze orders to be imposed only upon application to the U.S. District Court where the principal office of the person or entity whose assets are to be frozen is located, after notice to such person or entity unless the agency establishes to the court's satisfaction that the order should be effective without prior notice, and upon a showing that the agency is likely to succeed on the merits and that the order is reasonable in its terms and necessary under the circumstances to enable the agency to collect any judgment that may ultimately be rendered against such person or entity.

b) Richard Long, a member of the Commercial and Federal Litigation Section's Committee on Civil Practice Law and Rules, outlined concerns raised by interested Association sections and committees regarding the operation and impact of Section 306-a of the Civil Practice Law and Rules. He reviewed the history of this measure, and the need for corrective amendments to resolve ambiguities and functional difficulties created by the current statutory language. He described the remedial changes proposed by the Association's Committee on Civil Practice Law and Rules, and the recommendation by the Commercial and Federal Litigation Section that New York shift from a service of process system to a filing system for the commencement of civil actions. After discussion, the following resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association hereby endorses in principle the concept that New York State shift from a service of process system to a filing system for the commencement of a civil action; and it is further

RESOLVED, that interested sections and committees of the Association coordinate in providing members to a special drafting committee to develop legislation to implement the foregoing statement of policy and to improve on legislation passed by the Legislature and presently before the Governor for signature with respect to Section 306-a of the Civil Practice Law and Rules.

17. Date and place of next meeting. Mr. Bracken announced that the next meeting of the House of Delegates was scheduled for Saturday, June 27, 1992 at The Otesaga, Cooperstown, New York.