

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, NEW YORK  
APRIL 3, 1993

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PRESENT: Members Adler; Ayers; Baker; Baldwin; Barnett; Baum; Berger; Birmingham; Besunder; Blyth; Bracken; Brenner; Breslin; Buzard; Cashman; Cedarbaum; Clements; Coffey; Cohn; Cometa; Connolly; Corcoran; Daly; D'Angelo; Darche; Davidson; Deptula; Dowling; Doyle; Egelfeld; Eiber; Eisenhauer; Elmer; Eppler; Farmer; Farrell; Feerick; Feigenbaum; Ferguson; Field; Fiesinger; Fink; Friedman; Frye; Geltzer; Gershon; K. Gibbons; Goldblum; Goodstein; J. Gross; M. Gross; Haig; Halpern; Handschu; Hart; Haskel; Hassett; Heming; Jacoby; Jaffe; H. Jones; M. Jones; Kahler; Kahn; Karan; Kelly; Kennedy; Kenney; Kessler; Lagarenne; Lee; Levin; Lindenauer; Longo; Lovejoy; Mackey; Madigan; Malito; Markuson; Marlow; McCarthy; McDonald; McDowell; Meyer; Miklitsch; M. Miller; Millon; Minardo; Moore; Morris; A. Murray; K. Murray; Offermann; Opotowsky; Ostertag; Patrick; Pearl; Peckham; Pfeifer; Picotte; Pisani; Pool; Pruzansky; Raysman; Reilly; Reiniger; Richardson; Ritholz; Robinson; Roper; Rothstein; Ruffer; Ruslander; Schaab; Schumacher; Simberkoff; Spellman; Standard; Stern; Swartwood; Tharp; Tomaselli; Triebwasser; Troeger; Vigdor; Vitacco; Wales; C. Walker; S. Walker; Weiner; Weiss; R. White; Williams; Windstein; Witmer; Wollman; Wright-Sirmans; Yanas; Zalayet; Zurlo.

1. Approval of minutes of January 29, 1993 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Gershon summarized the Treasurer's report covering the period January 1 - February 28, 1993. He reviewed the major income and expense components of the budget and advised that they were within the Finance Committee's estimates for the initial two months of the fiscal year. He indicated that the Finance Committee had approved major upgrades to the Association's computer, word processing and typesetting systems at a total estimated cost of \$1.25 million, as well as repairs to the older portion of the Bar Center, which had not been involved in the 1990 renovation, at an approximate cost of \$500,000. He stated that payment for these expenses would be drawn from a combination of special funds established for such purposes, a portion the Association's long-term undesignated reserves, and borrowed funds of some \$500,000. Mr. Gershon noted that this multi-source funding approach would minimize borrowing costs without seriously depleting the Association's reserves. He stated that with these projected expenditures, the Association remained in sound financial condition. He noted further, as required by the Bylaws, the audited financial report for the 1992 fiscal year would be presented at the June meeting of the House. The report was received with thanks. Note was also made that Mr. Gershon was completing his term as Treasurer, and appreciation was expressed for his service in that capacity during the past six years.

3. Election of Nominating Committee and NYSBA Delegates to ABA House of Delegates. John J. Yanas, Chair of the Nominating Committee, reported that the committee had nominated Angelo T. Cometa, Robert L. Ostertag and John A.R. Wals., as members-at-large of the Nominating Committee and Mr. Cometa as its Chair for the 1993-94 Association year. A motion was adopted electing said Chair and members. Mr. Yanas then reported that the Nominating Committee had selected Neil D. Breslin to serve as an alternate at-large member. A motion was adopted electing Mr. Breslin to that position. Mr. Yanas 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 1993-94 Association year:

<u>DISTRICT</u>	<u>MEMBERS</u>	<u>ALTERNATES</u>
First:	John J. Kenney Cora T. Walker	Nicole A. Gordon
Second:	Miriam Cyrulnik Avery Eli Okin	Jeffrey S. Sunshine
Third:	David S. Williams John J. Yanas	Joseph Jaffe
Fourth:	Dudley M. Ferguson Thomas J. McDonough	Edward J. Grogan
Fifth:	James F. Dwyer Kevin M. Reilly	Roscoe A. Eisenhauer, Jr.
Sixth:	Peter W. Mitchell Leslie N. Reizes	James F. Lee
Seventh:	Thomas M. Trevett Merle M. Troeger	Maureen Pilato Lamb
Eighth:	Carl L. Bucki Maryann Saccomando-Freedman	Daniel A. Rybak
Ninth:	Joseph F. Longo Arthur L. Pulley	John K. McGuirk
Tenth:	Robert W. Corcoran Harvey B. Besunder	A. Thomas Levin
Eleventh:	Bernard M. Eiber Robert L. Klein	Gary M. Darche
Twelfth:	Mark B. Rubin Richard Weinberger	Alexander A. DelleCese

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

Mr. Yanas then reported that the Nominating Committee had selected the following individuals to serve a two-year term commencing in August 1993, as delegates to the House of Delegates of the American Bar Association: Angelo T. Cometa, Maryann Saccomando-Freedman, Ralph L. Halpern, Charles E. Heming, and Susan S. Robfogel.

A motion was adopted electing said individuals.

4. Report and recommendation of International Law and Practice Section. Arnold J. Schaab, past Chair of the International Law and Practice Section, and section member Prof. Charles Biblowit summarized a report with reference to the decision by the United States Supreme Court in U.S. v Alvarez-Machain, involving the circumstances under which a Mexican citizen had been seized by federal agents in Mexico and returned to the United States for trial on murder charges. They explained the section's concern regarding the Supreme Court's narrow decision that the conduct by the federal officers was not violative of the extradition treaty between the United States and Mexico. Messrs. Biblowit and Schaab stated that the actions in question contravened international law, as they violated the fundamental obligation of one nation to respect the sovereignty and territorial integrity of another country. Following discussion, a motion to table further discussion and action was defeated. After further discussion and amendment, the following resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association:

REGRETS the decision of the United States Supreme Court in United States v. Alvarez-Machain;

DEPLORES the abduction from Mexico of Dr. Alvarez-Machain by agents of the United States in violation of international law;

EXHORTS the Executive and Legislative Branches of the Government of the United States, and state and local governments, to adhere to international law in all matters relating to rendition and extradition from foreign countries.

5. Report and recommendations of Action Unit No. 4. Jules J. Haskel, Chair of Action Unit No. 4, and action unit reporter George F. Carpinello summarized the recommendation developed by the action unit for amendment of the State Constitution to implement a judicial merit selection plan for all courts, with the exception of part-time city, town and village courts. They explained the principles underlying the action unit's proposal and the manner in which it would address the U.S. Supreme Court decision in Chisom v. Roemer, as well as the findings by a gubernatorial task force that New York courts fail to reflect the diversity of the state's communities. They reviewed the salient features of the action unit's model plan to provide for both statewide and local judicial selection commissions, the manner in which those commissions would select up to

three well-qualified individuals from whom the Governor or other appointing authority would select judges, subject to legislative confirmation. Discussion then ensued concerning the model plan, following which separate motions were offered to enhance local control of the proposed nominating commissions by decreasing the number of gubernatorial appointments to the statewide and departmental commissions from five to three and eliminating gubernatorially-appointed district-wide at large positions from the district commissions. These motions were defeated by vote of the House. A further motion to change all references to merit selection contained in the model plan and resolution to appointive selection was defeated. An amendment to the action unit's resolution with reference to retention elections was accepted. As amended, the following resolution was adopted on motion of the House:

**RESOLVED**, that this House of Delegates hereby endorses and reaffirms the position adopted by the New York State Bar Association in 1979 in support of the concept of merit selection as a means for enhancing judicial diversity and ensuring the selection of highly qualified jurists for the courts of New York State; and it is further

**RESOLVED**, that this House of Delegates hereby endorses in principle the merit selection plan proposed by Action Unit No. 4 which is designed to achieve the following objectives:

- a) a judiciary of the highest quality;
- b) greater diversity on the bench reflective of the composition of the community;
- c) a more open selection process which creates rather than limits opportunities for judicial service and heightens awareness of the opportunities for judicial office;
- d) organized Bar participation in the judicial selection process;
- e) lay participation in the judicial selection process;
- f) make serving in judicial office attractive and available to a wide segment of the Bar by lessening the influence of partisan politics and the need to raise substantial campaign funds; and it is further

**RESOLVED**, that this House of Delegates, pursuant to the proposal of the New York County Lawyers' Association, hereby amends the merit selection plan proposed by Action Unit No. 4 to provide for a retention election at the conclusion of the term of an incumbent judge who wishes to serve an additional term wherein the electorate would decide his or her retention based upon the recommendation of a public commission; and it is further

**RESOLVED**, that this House of Delegates hereby authorizes and empowers the officers of this Association to take such steps as may be deemed necessary to effectuate this resolution.

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

7. Report and recommendations of Committee on Professional Ethics regarding the Code of Judicial Conduct. In view of the number of other significant items on the agenda, as well as to afford additional time for interested groups and individuals to comment with respect to the amendments proposed to the Code of Judicial Conduct, Marjorie E. Gross of the Committee on Professional Ethics requested that consideration of this item be deferred until the June meeting of the House of Delegates. A motion was adopted postponing consideration of the proposed amendments until the June meeting, with the procedures as set forth in the scheduling resolution adopted at the January 29, 1993 meeting to remain in effect, with the exception that the deadline for the submission by interested parties of amendments to the proposal offered by the Committee on Professional Ethics would be extended to May 1, 1993.

8. Report and recommendation of Special Committee to Improve Courthouse Facilities. A. Paul Goldblum, Chair of the Special Committee to Improve Courthouse Facilities, summarized the committee's report concerning the status of efforts to correct inadequacies and deficiencies in the state's courthouses. He reviewed the impact of the Court Facilities Act of 1987, the development of master plans for facilities improvements by the various localities throughout the state, and the progress being made toward implementation of those plans. He then described the difficulties and delays which had been encountered in New York City, as well as the steps taken to address those problems. Mr. Goldblum also outlined the major construction and renovation plans undertaken in other locales of the state, including difficulties which had arisen in some areas. He noted that it would be appropriate for the Association to express its support for the imposition of the sanction provided for under the Court Facilities Act of 1987, should such become necessary in the judgment of the Court Facilities Capital Review Board and the Chief Administrator of the Courts. After discussion, the following resolution was adopted on motion of the House:

**WHEREAS**, the physical condition of courthouses and court related facilities has a profound effect on the efficiency, dignity and public respect for the judicial system, and

**WHEREAS**, decades of neglect have left many of our localities with obsolete, inefficient, dilapidated and undignified court facilities, and

**WHEREAS**, the Court Facilities Act of 1987 (L.1987, c. 828) increased various court fees in order to create a fund from which to contribute to the cost of restoring, repairing and rebuilding the court facilities of the state, required the localities to prepare plans for the restoration, repair and rebuilding of their facilities, and created a Court Facilities Capital Review Board to approve and enforce such plans, and

**WHEREAS**, past experience has demonstrated that political pressure upon localities to provide for such facilities is inadequate in the face of pressure to meet competing needs of such localities, and

**WHEREAS**, Judiciary Law §39 (3a), providing for interception of state aid and its return to the general fund in the event of failure of a locality to meet its obligations under said section is the only remedy provided by the Legislature in 1976 and reaffirmed in 1987,

**BE IT THEREFORE RESOLVED THAT**, while recognizing the drastic nature of the remedy provided by said section, the New York State Bar Association urges the Court Facilities Capital Review Board and the Chief Administrator of the Courts of the State of New York to impose such sanction whenever the default of a locality under Judiciary Law §39 (3a) has been finally determined.

9. Report and recommendations of Solo and Small Firm Practitioners Advisory Committee. Andrew M. Schnier, Chair of the Solo and Small Firm Practitioners Advisory Committee, summarized the steps taken by the committee in monitoring the implementation of the various recommendations contained in the report of the Task Force on Solo and Small Firm Practitioners as presented to the House at the April 1992 meeting. He outlined the follow-up actions taken by the advisory committee to coordinate with the relevant sections and committees in this regard. He also reviewed additional activities undertaken by the advisory committee during the past year, including participation in Association programs relating to solo and small firm practitioners, as well as networking with NYSBA sections and committees, local bar groups, and other bar associations throughout the United States which are focusing on the problems of solo and small firm practitioners. Mr. Schnier then reviewed the recommendations developed by the advisory committee for further actions to assist those in the solo or small firm environment, including the formation of a Special Committee on Solo and Small Firm Practitioners to provide an ongoing entity within the Association to meet the special needs of this category of practitioners and to coordinate the Association's outreach efforts to them. After discussion, the following resolution was adopted on motion of the House:

**WHEREAS**, a significant number of the members of the New York State Bar Association (the "Association") who are in private practice are either members of small firms of two to five members or are in solo practice; and

**WHEREAS**, the House of Delegates recognizes the valuable contributions made by solo and small firm practitioners in the provision of legal services to the public and to the profession in general, and wishes to insure that the needs and concerns of these lawyers are adequately addressed by the Association; and

**WHEREAS**, the House of Delegates on April 4, 1992 received and accepted the Report and Recommendations of the Task Force on Solo and Small Firm Practitioners and 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 actions; it is hereby

**RESOLVED**, that the House of Delegates receives and accepts the follow-up Report of the Solo and Small Firm Practitioners Advisory Committee; and it is further

**RESOLVED**, that after any necessary further study and comment, the Executive Committee continue to 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 additional matters which present policy issues which should be decided by the House.

10. Report of President. Mr. Bracken reported the following matters:

a) He had testified before the Legislature in support of the Judiciary budget. He noted that it appeared tentative agreement had been reached on an \$843.7 million budget, which was some \$22 million below the Judiciary's requested funding level. He indicated that through this reduction as well as the utilization of surplus funds from the Court Facilities Incentive Aid Fund, the previously identified \$57 million shortfall would be covered without the need to increase court fees.

b) Consistent with the resolution adopted at the January 1993 meeting, the Association had expressed its support for judicial salary increases to governmental leaders. He indicated that raises had been included in the tentative budget agreement consistent with the formula proposed by the Temporary State Commission on Judicial Compensation. Mr. Bracken expressed appreciation to the New York County Lawyers' Association for the impetus which it had provided in this area.

c) The New York State Court Management Study Committee had released the study of the state court system conducted by the National Center for State Courts and the Justice Research Institute. He reviewed the general nature of the recommendations which had been offered to improve the functioning of the Unified Court System and advised that the report had been referred to the Association's Special Committee on the Judicial System, chaired by John R. Horan, for review.

d) Victor Marrero had been nominated for the 1993 ABA Pro Bono Publico Award based on his extensive involvement in this area. Mr. Bracken stated that he had written to the ABA in support of Mr. Marrero's nomination.

e) The Committee on Legal Education and Admission to the Bar had expressed concerns regarding the manner in which the dates for the July 1993 bar examination had been selected and the impact this would have on applicants. Based on these concerns, the Association, in conjunction with the deans of thirteen law schools, had contacted the Court of Appeals to request reconsideration of the July examination dates.

f) As an outgrowth of discussions with officials of the Association of the Bar of the City of New York and the Governor's Counsel, Governor Cuomo had been invited to appear at the Bar Center to share with bar leaders his vision for New York's justice system. Mr. Bracken indicated that when the arrangements had been made, members of the House would be invited to participate.

g) The Executive Committee and the Board of Directors of The New York Bar Foundation had approved the renegotiation on favorable terms of the \$800,000 balance remaining on the Bar Center expansion loan.

h) Pursuant to the position adopted by the House at the January meeting, he had contacted Chief Judge Kaye to apprise her of the recommendation that a joint study commission be appointed to evaluate the experimental program for the electronic recording of court proceedings. He indicated that the Chief Judge had taken this recommendation under advisement and would apprise the Association of her decision.

i) The Committee on Judicial Selection, chaired by David L. Hoffberg, had evaluated the seven nominees for Chief Judge and had communicated its findings to Governor Cuomo. He indicated the committee had found Judge Kaye well qualified to assume the office of Chief Judge. Mr. Bracken noted he had attended her swearing in ceremony on March 23, which was followed by a reception at the Bar Center.

j) As approved by the Executive Committee in January, the Finance Committee and staff were pursuing implementation of the Software Defined Network long-distance telephone program offered by AT&T. He indicated that efforts were in progress to secure commitments from sufficient law firms to reach the 5,000,000 minute annual usage minimum required of the Association to allow for the execution of the necessary contracts with AT&T. Mr. Bracken indicated the House would be kept apprised of developments with respect to this item.

k) The annual section leaders conference would be held on April 27 and 28 to afford an opportunity for the Association and section leadership to review matters of policy and procedure, as well as improve coordination and communication.

l) The Committee on Women in the Law had developed a five-year comparison of participation by women on committee and sections as well as in positions of leadership in the Association. Mr. Bracken indicated that while this study indicated greater involvement by women compared to five years ago, he had contacted the sections to encourage higher levels of participation by women and minorities.

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

11. Report and recommendations of New York County Lawyers' Association. Robert Klipstein of the New York County Lawyers' Association summarized that organization's "Proposal to protect the U.S. labor market, accommodate the needs of U.S. employers of family care givers and protect the rights of undocumented aliens." He outlined \*



difficulties encountered by many working families who are compelled to hire undocumented aliens to care for children or disabled relatives, the impact this has on the American job market and the effect current federal statutes have on alien workers in the United States. He described the manner in which the immigration laws currently operate with respect to alien workers and summarized the proposal developed by the New York County Lawyers' Association to balance the interests of American families in need of care givers, the U.S. labor market, and undocumented foreign workers, including amendments which would be required to the Immigration and Nationality Act implement the proposal. Following preliminary discussion, a motion was adopted to table further consideration until the next meeting to permit review of the proposal by interested sections and committees.

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

a) Bar associations entitled to delegates had filed their designations of delegates for the 1993-1994 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 1993-1994.

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
- 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
- Review the Proposed Code of Evidence for the State of New York
- Volunteer Lawyers

13. Memorial to John E. Berry. Past President Hon. Hugh R. Jones presented a memorial to retired Executive Director John E. Berry who had passed away recently. A copy of the memorial is attached to these minutes.

14. Date and place of next meeting. Mr. Murray announced that the next meeting of the House of Delegates was scheduled for Saturday, June 26, 1993 at The Otesaga, Cooperstown, New York.

**NEW YORK STATE BAR ASSOCIATION  
TRIBUTE TO JOHN E. BERRY  
PRESENTED BY HON. HUGH R. JONES  
AT THE HOUSE OF DELEGATES MEETING  
ON APRIL 3, 1993**

John E. Berry was surely the Dean of all Bar Association Executives.

After graduating from Syracuse University (cum laude; Phi Beta Kappa) and Cornell Law School, brief periods of private practice in Binghamton and Syracuse, and military service from private to first-lieutenant, John was recruited in 1948 to become the Executive Assistant at the New York State Bar Association. Traveling through the titles of Executive Assistant, Executive Secretary, and Executive Director, he served the Association with dedication and distinction for 30 years until his retirement November 1, 1978. He was the first Honorary Fellow of The New York Bar Foundation. He was a Founder, Secretary, and President of the National Conference of Bar Executives.

When he was engaged by Lewis Ryan, then President of the Association, the Association had a staff of two secretaries, a budget of \$61,500, and 6,000 members. On his retirement, he left an organization with a staff of fifty persons, a budget of \$3 million, and a membership of 30,000.

John relished and fostered new ideas. He was a strong supporter and perfecter of the "section" concept of the organization of bar association energies. It was during his reign that continuing legal education blossomed.

On his retirement, the twenty then living former Presidents of the Association, on each of whom he had "lavished special care," paid tribute to

the wisdom, the imagination, the selflessness, the essentiality of his quiet guidance and support. He was then described above all as "beloved", as "intelligent, affable, understanding, sensitive, sincere," as "perceptive, skeptical, diligent and almost ruthlessly efficient" in serving the Association.

In one sense perhaps his greatest contribution to the well being of the New York State Bar Association was his perceptive recruitment and retention over the years of a superb staff. It was he who left us Bill Carroll when he retired.

John possessed a characteristic rare among strong executives. During his long tenure, despite opportunity and what must have been temptation on occasion, he never fostered a group of personal followers; there was never a group of "Old Berry Boys" to be favored with desirable assignments or to be selectively promoted to Association recognition.

After he left us, John retired to Western Massachusetts. In recent years he had not been in good health. His wife Susan died in 1979 and John died on January 25, 1993, leaving a son John, a daughter Jill and five grandchildren.

We salute and celebrate John E. Berry and express our great gratitude for the enormous and special contributions that he made to the vitality and success of the New York State Bar Association.