

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, NEW YORK  
APRIL 8, 1995

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PRESENT: Members: Abramowitz; Adelman; Adler; Alden; Ange; Baldwin; Baum; Berger; Birmingham; Bohner; Bongiovanni; Burns; Buzard; Cashman; Castel; Chesler; Ciulla; Clements; Coffey; Cohn; Cometa; Connolly; Cooke; Corcoran; Cyrulnik; Daly; Davidson; Delle Cese; Denton; Dollard; Dwyer; Edmead; Edwards; Eppler; Epstein; Fales; Farrell; Finerty; R.L. Fink; R.S. Fink; Friedman; Frye; Gacioch; Gardella; Geltzer; Gingold; P.S. Goldstein; Gross; Gutleber; Haig; Hall; Halpern; Handschu; Hansen; Hartman; Haskel; Headley; Herold; Horowitz; M. Jones; Kamins; Karson; M. Kessler; S. Kessler; Kettle; Kilsch; Lagarenne; Landy; Lawrence; Leinhardt; Levin; Lindenauer; Lobis; Lubell; Madigan; Maldonado; Malito; Maney; Marten; Martusewicz; McCarthy; McDonald; McDonough; McGlinn; Meng; Meyer; Miklitsch; M. Miller; Minardo; Morris; K. Murray; Netter; Norfleet; O'Connell; Offermann; Ostertag; Ostrow; Patrick; Pearl; Penzel; Periconi; Pfeifer; Picotte; Pool; Pruzansky; Purcell; Radding; Remo; Rice; Richardson; Rider; B. Robinson; E. Robinson; Rosiny; Ross; Rothstein; Ruslander; Sienko; Sirmans; Spellman; Standard; Steflik; Sunshine; Taisey; Terranova; Tharp; Tishler; Tomaselli; Torres; Troeger; Vigdor; Vitacco; Waldauer; C. Walker; S. Walker; J. Walsh; Weiner; White; Williams; Windstein; Witmer; Yanas; Zurlo.

1. Approval of minutes of January 27, 1995 meeting. The minutes were approved as distributed.
2. Report of Treasurer. Mr. Rice summarized the Treasurer's report covering the period January 1 - February 28, 1995. He reviewed the major income and expense components contained in the budget and stated that they were within the Finance Committee's estimates for the initial two months of the fiscal year. He reported that revenues were approximately \$600,000 higher than for the comparable period in 1994 due primarily to the dues increase which had taken effect on January 1, 1995. He also reported that The New York Bar Foundation had made final payment of the outstanding balance on the Bar Center expansion loan, completely liquidating the obligation owed to Fleet Bank. He also explained the restated format being used for the financial reports distributed to the House and noted that these would reflect more accurately the status of income received in one fiscal year which should be recorded in connection with the ensuing year's budget. Mr. Rice stated that the Association remained in sound financial condition and that, as required in the Bylaws, the audited financial report for the 1994 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. Robert L. Ostertag, Chair of the Nominating Committee, reported that the committee had nominated John P. Bracken, Thomas P. Connolly and Archibald R. Murray as members-at-large of the Nominating Committee and Mr. Bracken as its

Chair for the 1995-96 Association year. A motion was adopted electing said Chair and members. Mr. Ostertag then reported that the Nominating Committee had selected Eugene J. Morris to serve as an alternate at-large member. A motion was adopted electing Mr. Morris to that position. Mr. Ostertag 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 1995-96 Association year:

**FIRST DISTRICT**

JOHN J. KENNEY  
CORA T. WALKER  
NICOLE A. GORDON, ALTERNATE

**SECOND DISTRICT**

AVERY ELI OKIN  
JEFFREY S. SUNSHINE  
MIRIAM CYRULNIK, ALTERNATE

**THIRD DISTRICT**

RICHARD M. GERSHON  
JOHN J. YANAS  
NEIL D. BRESLIN, ALTERNATE

**FOURTH DISTRICT**

MATTHEW J. JONES  
WILLIAM T. MECONI  
MARK M. RIDER, ALTERNATE

**FIFTH DISTRICT**

ROSCOE A. EISENHAUER, JR.  
KEVIN M. REILLY  
LOUIS P. DILORENZO, ALTERNATE

**SIXTH DISTRICT**

DAVID M. GOULDIN  
JAMES F. LEE  
CHRISTOPHER DENTON, ALTERNATE

**SEVENTH DISTRICT**

MAUREEN PILATO LAMB  
C. BRUCE LAWRENCE  
T. MARY MCDONALD, ALTERNATE

**EIGHTH DISTRICT**

MARYANN SACCOMANDO FREEDMAN  
JOSEPH V. MCCARTHY  
DANIEL A. RYBAK, ALTERNATE

**NINTH DISTRICT**

HENRY S. BERMAN  
H. GLEN HALL  
HON. SAM D. WALKER, ALTERNATE

**TENTH DISTRICT**

ROBERT W. CORCORAN  
JOHN H. GROSS  
HAROLD A. MAHONY, ALTERNATE

**ELEVENTH DISTRICT**

A. PAUL GOLDBLUM  
SIDNEY F. STRAUSS  
ARTHUR N. TERRANOVA, ALTERNATE

**TWELFTH DISTRICT**

JOSEPH DIFEDE  
STEVEN E. MILLON  
ROY J. SCHWARTZ, ALTERNATE

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

Mr. Ostertag then reported that the Nominating Committee had selected the following individuals to serve a two-year term commencing in August 1995 as delegates to the House of Delegates of the American Bar Association: Angelo T. Cometa, Maryann Saccomando Freedman, Robert L. Geltzer, M. Catherine Richardson and G. Robert Witmer, Jr. A motion was adopted electing said individuals.

4. 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. Witmer & Pfeifer presented the Trial Lawyers Cup and Scholarship to Brooklyn Law School as the law school from New York State placing highest in the National Trial Advocacy Competition. Syracuse University College of Law was recognized for its second place finish among New York schools in the competition.

5. Reports by the Committee on Professional Discipline and the Task Force on the Profession re the attorney discipline system. Frank R. Rosiny, Chair of the Committee on Professional Discipline, and Haliburton Fales, 2d, Chair of the Task Force on the Profession, presented preliminary summaries of the reports by their respective groups with reference to the attorney discipline system. Mr. Rosiny outlined the study of the lawyer discipline system conducted by the Committee on Professional Discipline, and the recommendations for improvement developed as a result of that review. He indicated that the committee was proposing the adoption by the four Appellate Divisions of uniform rules to govern lawyer discipline. He noted that through court rule, greater public access to disciplinary proceedings would be permitted where opening the proceedings would be in the public interest and where probable cause existed that an attorney had committed acts of serious professional misconduct. He also stated that the proposed uniform rules would have the effect of limiting the use of hearing panels by the grievance committees in the First Department. Mr. Fales then reviewed the recommendations formulated by the Task Force on the Profession, observing that his group shared common goals with the Committee on Professional Discipline (achieving greater uniformity among the four departments, allowing earlier public access to disciplinary proceedings, and promoting a speedier and more efficient system), but differed in the details for accomplishing those goals. He outlined the task force's recommendation that Sec. 90(10) of the Judiciary Law be amended to open disciplinary proceedings to the public once a determination has been made that probable cause exists to believe serious professional misconduct has occurred, and proposals that the Association develop statewide mediation and diversion programs.

A scheduling resolution was then introduced to govern formal consideration of the two reports at the June 1995 meeting of the House of Delegates. In discussing the proposed resolution, the House requested, to facilitate debate, that a chart be prepared and distributed in advance of the June meeting setting forth the major points of difference between the two reports and that the House be permitted to vote separately on those issues. After further discussion, the following resolution was unanimously adopted on motion of the House:

**RESOLVED**, that the House of Delegates hereby adopts the following procedures to govern consideration at the June 24, 1995 meeting of the report of the Committee on Professional Discipline and that portion of the report of the Task Force on the Profession relating to disciplinary issues:

1. At the April 8, 1995 meeting, the Committee and the Task Force each will make a preliminary presentation of their respective reports and respond to any questions or comments which may be posed by members of the House.

2. Any written comments on the Committee or Task Force proposals must be submitted in writing to the Secretary of the Association at Bar Headquarters on or before June 1, 1995. All written comments shall be distributed to the members of the House prior to the June 24, 1995 meeting.
3. At the June 24 meeting, consideration of the Committee and Task Force proposals shall be as follows:
  - a. The Committee and the Task Force each will be given an opportunity to present a brief overview of their reports and recommendations.
  - b. The Committee and the Task Force will make presentations on the following issues raised in their respective reports, followed by debate and vote by the House:
    - i. The creation of a statewide mediation model and a statewide diversion model to be implemented by the Appellate Divisions.
    - ii. The elimination of the use of hearing panels to make findings of misconduct and recommendations concerning sanctions.
    - iii. Opening formal disciplinary proceedings to the public.
    - iv. Such other and further issues as may be raised by written comments submitted prior to June 1, 1995.
  - c. A vote on a resolution encompassing the position of the House on all of the issues set forth in subparagraph b will then be taken.
4. All those wishing to speak to a particular topic may do so for no more than three minutes.

6. Consideration of proposed resolution re legislation affecting the testing of newborns for HIV. House member Robert W. Corcoran and Steven L. Kessler, Chair of the Special Committee on AIDS and the Law, appeared to advise that the issues related to legislation affecting the testing of newborns for HIV would not be pursued at this meeting. The latter read a stipulation entered into with Mr. Corcoran to the effect that it would be premature for the Association to adopt a formal position on this issue prior to the Legislature putting its proposals into final form and that, in the interim, interested Association groups should refrain from issuing public statements on this matter.

7. Report of Ad Hoc Committee on Non-Lawyer Practice. Robert J. Pearl, Chair of the Ad Hoc Committee on Non-Lawyer Practice, summarized that committee's report with respect to non-lawyer practice. He outlined the nature of non-lawyer practice in New York State, noting the function performed by traditional paralegals in assisting attorneys to deliver high quality legal services to clients at an affordable cost. He also described the increase in other types of unsupervised legal technicians, and the nature of New York's regulatory mechanism in this area. Mr. Pearl also reviewed the activities of the ABA's Commission on Nonlawyer Practice in analyzing the problems in this field. He further summarized the unmet legal needs of the poor and lower middle class which are causing people of moderate means to seek lower cost alternatives to retaining an attorney. Mr. Pearl then reviewed the committee's recommendations in support of the expanded use of the traditional paralegal, the continued study of the regulation of non-lawyers, the active enforcement of unlawful practice of law statutes, and the consideration of alternative delivery systems for lawyers' services. He noted that comments were being invited from interested groups prior to formal action being requested with respect to the committee's report at the June meeting. The report was received with thanks.

8. Report of President. Mr. Witmer reported the following items:

a) On March 15, 1995, he had met with Chief Judge Kaye and senior OCA officials to discuss matters of mutual interest which had included:

i) The 1995-96 Judiciary budget and court facilities. Chief Judge Kaye had advised that the court system budget, which had been reduced after preliminary discussion with the Governor, appeared likely to be adopted by the Legislature. She had noted that budget difficulties in New York City had resulted in inadequate staff allocations by the city for court facilities maintenance and cleaning. Mr. Witmer noted that Chief Administrative Judge Millonas had formed a committee to address this problem, and that A. Paul Goldblum, Chair of the Association's Committee on Judicial Administration, had been appointed to the group.

ii) Computerized case tracking. OCA had advised that it is seeking to implement a computerized case tracking system in Manhattan and the surrounding area to allow attorneys to access key data regarding case status in Supreme Court or Civil Court. Mr. Witmer also reported concerning the status of the experimental program to offer Law Journal Extra to a test group of NYSBA members as part of the effort by the Special Committee on New York Law/Net to develop an electronic network for the Association.

iii) Improvement of the legal profession. Judge Kaye advised that the Committee on the Profession and the Courts would likely have a draft report ready for release later in the spring, to be followed by meetings with various bar groups before a final version is released in the fall.

iv) State Court ADR Project. Judge Kaye advised that the State Court ADR Project, which is co-chaired by Fern Schair and Margaret Shaw, was evaluating various ADR models and anticipated releasing a report during the summer, to be followed by hearings in the fall.

v) Commercial Court. Judge Kaye announced that a working group had been designated, with Judge Milonas and Robert L. Haig as co-chairs, to consider the feasibility and benefit of establishing a Commercial Court, or a Commercial Division of State Supreme Court, to facilitate the handling of complex commercial matters. It was

indicated that as part of its study, the group would be evaluating issues regarding funding, resources and the impact of such an initiative on other litigants.

b) On March 21, 1995, he had met with Attorney General Vacco to discuss matters which included the procedures for the investigation of unlawful practice of the law complaints, opportunities for participation by the Attorney General's staff in the activities of the Association, and ways in which the Association could make membership more attractive to government attorneys.

c) Late last year, the Secretary of State's office had issued an opinion with respect to the completion of real estate contracts by brokers, which opinion had been interpreted by some brokers as allowing them to prepare and complete contracts for the sale of real property. Given concerns that had been raised regarding possible unlawful practice of the law issues, Mr. Witmer indicated he had requested that the Real Property Law Section look into the matter, and that discussions were in progress with the Secretary of State's office.

d) The Association had a joint program underway with the State Broadcasters Association whereby 150 radio stations statewide were providing, for a modest charge, air time to broadcast four separate public service advertisements concerning jury service and the Association's "Know Your Rights" series of public information pamphlets.

e) On May 25, 1995, at various locations throughout the state, the Elder Law Section would be sponsoring a day-long program aimed at providing the public with an opportunity to learn about health care proxies and living wills. Mr. Witmer indicated this program was being presented in cooperation with other organizations including AARP, the Medical Society of the State of New York, and the State Office for the Aging.

f) The joint committee designated by the Office of Court Administration and the NYSBA to review the experimental program for the electronic recording of court proceedings in Surrogate's Court and the Court of Claims had released its report. He indicated that the report recommended continuation of the program and its incremental expansion to other courts. Mr. Witmer advised that the report had been circulated to interested groups in the Association.

g) The Criminal Justice Section was actively pursuing the position adopted by the House of Delegates concerning the reporting requirements imposed by the Internal Revenue Service in connection with cash fees exceeding \$10,000 paid to attorneys. He advised that these actions had included meeting with Attorney General Reno, and that the IRS was in the process of developing a regulatory program in this area. He indicated that the Criminal Justice Section would continue to monitor developments.

h) As part of his ongoing effort to foster communications with county and local bar associations, he had recently visited the Dutchess County and Saratoga County Bar Associations.

i) The Committee on State Constitution had prepared a report favoring the constitutional amendment on debt reform which was before the Legislature for second passage during the current session to allow for its submission to the voters. Mr. Witmer indicated that the Executive Committee had endorsed the report in principle at its April 7, 1995 meeting to allow for further discussion with the Legislature in advance of consideration by the Executive Committee at the June 1995 meeting.

j) The Executive Committee was engaged in a strategic planning process geared towards establishing priorities and building a consensus for the future direction of the Association. He stated that the participants included the current and incoming members of the Executive Committee, members of the Finance Committee, selected section and committee chairs, former presidents, those with experience in other bar groups, and key staff members to ensure a broad-based and diverse evaluation of the Association and its needs. Mr. Witmer noted that an initial session had been held over two days in February, 1995 and had led to the development of general strategic objectives in the areas of professionalism, the legal system, communications and membership. He advised that four separate task forces were presently in the process of preparing recommendations for specific goals and initiatives to implement these general strategic visions. He noted that these proposals would be reviewed, refined and prioritized when the full retreat group next met on May 12, 1995 and that the House would be kept informed as to developments.

k) Elizabeth M. Derrico would be leaving the Association's staff to assume the position of Associate Director of the ABA's Division of Bar Services. The House joined Mr. Witmer in expressing appreciation to Ms. Derrico for her past service to the NYSBA and in wishing her well in her new position.

9. Report of Chair. Mr. Pfeifer reported the following matters:

a) Bar associations entitled to delegates to the House of Delegates had filed their designations of delegates for the 1995-1996 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 1995-1996.

b) On the occasion of Mr. Witmer's final appearance before the House as President, Mr. Pfeifer congratulated him for his accomplishments in that office and presented him with a framed copy of the July 1995 issue of the Bar News photograph of his inauguration.

c) In preparation for his assuming the office of President on June 1, he was, in consultation with President-Elect Designate M. Catherine Richardson, reviewing the activities of the various committees as part of the 1995-1996 appointment process. Mr. Pfeifer advised that as an initiative to control costs while maintaining the Association's effectiveness, he was planning to eliminate some fifteen committees which were no longer necessary, or to combine them with other committees having similar interests. He indicated he was desirous of hearing from House members their views concerning the manner in which the House functions and their thoughts regarding how the current process might be improved.

10. New business.

a) Mr. Witmer summarized the nature and status of tort reform legislation pending in Congress which would significantly alter the civil justice system. He indicated that to address the relevant issues in expeditious fashion, he had appointed a Committee on Lawyers to Evaluate Action for Reform, chaired by former Association President John P. Bracken, and that the committee represented a diverse cross-section of Association groups interested in this topic. He noted that the committee had presented a resolution at the April 7, 1995 meeting of the Executive Committee, and the resolution had been endorsed unanimously for favorable action by the House of Delegates. A. Vincent Buzard, a member of the committee, then summarized the committee's report and recommendation opposing federalization of the tort system. He indicated the committee's view that the issues under consideration by Congress were best addressed at the state level. After discussion, the following resolution was adopted by voice vote on motion of the House:

**WHEREAS**, the United States Senate is considering legislation that will drastically change the civil justice system; and

**WHEREAS**, the predicate underlying such a dramatic change in our civil justice system is not warranted by existing facts; and

**WHEREAS**, the proposed legislation effectively denies people full and equal access to the courts, thereby restricting their opportunity to hold wrongdoers accountable for their actions, and

**WHEREAS**, the real or perceived abuses in the system by the parties to lawsuits can best be addressed locally and be resolved by the individual states, their legislatures, judiciary, and voters; a position advocated by the New York State Bar Association since 1984; it is therefore

**RESOLVED**, that the New York State Bar Association urges Senators D'Amato and Moynihan and other government officials in decision making positions to oppose this legislation; and it is further

**RESOLVED**, that the New York State Bar Association urges Senators D'Amato and Moynihan to vote against cloture in the event of any attempt to limit debate relating to said legislation; and it is further

**RESOLVED**, that the New York State Bar Association urges Senators D'Amato and Moynihan to provide for full and open hearings regarding the civil justice legislation now pending in the United States Senate.

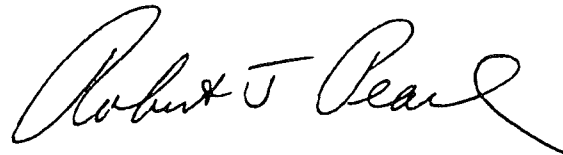
b) Stephen G. Brooks, a member of the Committee on Legal Aid and the President's Committee on Access to Justice, reported concerning the Legal Services Corporation funding debate presently taking place in Congress. He outlined the effect of the current year's \$15 million reduction imposed on the Legal Services Corporation and the nature of budget cuts anticipated for the future. He described the role of a steering committee formed to coordinate activities among the state and local bar



associations in support of the Legal Services Corporation, and he noted that on April 7, 1995, the Association's Executive Committee had adopted a resolution opposing any significant reduction in or elimination of funding for the Legal Services Corporation, as well as opposing any additional restrictions on the activities of legal services attorneys that would reduce the delivery of legal services to the poor. He described the need for contact with Congress to support the continuation of an adequately funded Legal Services Corporation, and urged the members of the House to participate actively in this effort. The report was received with thanks.

11. Date and place of next meeting. Mr. Pfeifer announced that the next meeting of the House of Delegates was scheduled for Saturday, June 24, 1995 at The Otesaga, Cooperstown, New York.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert J. Pearl". The signature is written in black ink and is positioned above the printed name and title.

Robert J. Pearl  
Secretary

