

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
APRIL 8, 2000

PRESENT: Abrams; Adler; Alcott; Anglehart; Asarch; Aydelott; Ayer; Baldwin; Barasch; Batra; Bergen; Bohner; Bowler; Bracken; Buckley; Buzard; Cashman; Clements; Cloonan; Coffey; Coleman; Cometa; Connery; Connolly; Copps; Cyrulnik; Darche; DeFritsch; Denton; Dietz; DiGirolomo; Doerr; Doyaga; Eggleston; Eppers; Farrell; Fink; FitzGerald; Franchina; B. Freedman; H. Freedman; M. Freedman; Gardella; Gerstman; Gifford; Giordano; Glover; Golinski; Gorgos; Graber; Gutleber; Haig; H. Hall; Hallenbeck; Handlin; Hassett; Headley; Helmer; Hodges; S. Hoffman; Hoyer; Hutchinson; Inclima; Jacoby; Kahn; Katzman; Kelly; Kennedy; Kenney; Kenny; M. Kessler; S. Kessler; Kilpatrick; Kilsch; F. Klein; Krane; Kranis; Kretser; Lagarenne; Landy; Lawrence; Levin; N. Levy; P. Levy; Lieberman; Lindenauer; Mawhinney; McCarthy; McGlenn; Midonick; Mihalick; Miklitsch; Millon; Miranda; Moore; Nashak; O'Brien; Opatowsky; Ostertag; Patrick; Paul; Peradotto; Pfalzgraf; Pfeifer; Priore; Pruzansky; Purcell; Rahn; Reede; Reich; Reizes; J.T. Reynolds; Rice; Richardson; Rifkin; Roach; Roper; Rosner; Rothkopf; Samel; Schraver; H. Schumacher; Shapiro; Silkenat; Standard; Steinman; Stenson; Stewart; Sunshine; Swidler; Terranova; Tharp; Tippins; Tishler; Tyler; Uebelhoer; Vitacco; Whalen; Witmer; Wolf.

1. Approval of minutes of January 28, 2000 meeting. The minutes were deemed accepted as distributed previously.

2. Report of Treasurer. Mr. Headley summarized the Treasurer's report covering the period January 1 - February 29, 2000. He reviewed the major income and expense items contained in the budget and noted that they were consistent with the Finance Committee's estimates for the initial two months of the fiscal year. He observed, in comparison with 1999, that total continuing legal education revenue had increased by approximately \$302,000 for the first two months of the year, as had income from membership and section dues. Mr. Headley indicated that expenses were higher than the previous year due to heightened continuing legal education activity and section programming. He stated that the Association remained in sound financial condition and, as required under the Bylaws, the audited report for the 1999 fiscal year would be presented at the June House meeting. The report was received with thanks.

3. Election of Nominating Committee and NYSBA Delegates to ABA House of Delegates. M. Catherine Richardson, Chair of the Nominating Committee, reported that the committee had nominated Joshua M. Pruzansky, Maryann Saccomando Freedman and James C. Moore as members-at-large of the Nominating Committee and Mr. Pruzansky as its Chair for the 2000-2001 Association year. A motion was adopted electing said Chair and members. Ms. Richardson then reported that the Nominating Committee had selected John P. Bracken to serve as an alternate at-large member. A

motion was adopted electing Mr. Bracken to that position. Ms. Richardson next reported that the vice-presidents 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 2000-2001 Association year:

FIRST DISTRICT

MICHAEL A. COOPER
ROSALIND S. FINK
PETER M. KOU GASIAN
CRAIG A. LANDY
MICHAEL MILLER
SUSAN PORTER
CAROL R. SHERMAN
EUGENE P. SOUTHER
MARTTIE L. THOMPSON
ALAN ROTHSTEIN, FIRST ALTERNATE
NORMAN L. REIMER, SECOND ALTERNATE
MARILYN J. FLOOD, THIRD ALTERNATE

SECOND DISTRICT

MIRIAM CYRULNIK
DAVID J. DOYAGA
ALLEN LASHLEY, ALTERNATE

THIRD DISTRICT

RACHEL KRETZER
MIRIAM M. NETTER
LORRAINE I. REMO, ALTERNATE

FOURTH DISTRICT

MARK M. RIDER
NICHOLAS E. TISHLER
PAUL L. WOLLMAN, ALTERNATE

FIFTH DISTRICT

DAVID M. HAYES
M. CATHERINE RICHARDSON
NICHOLAS S. PRIORE, ALTERNATE

SIXTH DISTRICT

KATHRYN GRANT MADIGAN
DAVID A. TYLER
JAMES C. GACIOCH, ALTERNATE

SEVENTH DISTRICT

CAROLYN G. NUSSBAUM
G. ROBERT WITMER, JR.
JUSTIN L. VIGDOR, ALTERNATE

EIGHTH DISTRICT

GRACE MARIE ANGE
ERIN M. PERADOTTO
PAUL C. WEAVER, ALTERNATE

NINTH DISTRICT

JOSEPH F. LONGO
MARY ELLEN MANLEY
ROBERT L. OSTERTAG
HENRY S. BERMAN, ALTERNATE

TENTH DISTRICT

HARVEY B. BESUNDER
ROBERT W. CORCORAN
VINCENT A. MALITO
JON N. SANTEMMA
EMILY F. FRANCHINA, FIRST ALTERNATE
EDWARD J. GUTLEBER, SECOND ALTERNATE

ELEVENTH DISTRICT

SEYMOUR W. JAMES, JR
ARTHUR N. TERRANOVA
CATHERINE R. GLOVER, ALTERNATE

TWELFTH DISTRICT

LAWRENCE R. BAILEY, JR.
RICHARD M. HOROWITZ
ROBERT S. SUMMER, ALTERNATE

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

Ms. Richardson then reported that the Nominating Committee had selected the following individuals to serve a two-year term commencing in August 2000 as delegates

to the House of Delegates of the American Bar Association: John P. Bracken, Steven C. Krane, Maxwell S. Pfeifer, Joshua M. Pruzansky and Thomas O. Rice. A motion was adopted electing said individuals. Ms. Richardson then reported that the Nominating Committee had selected Jonathan L. Bing to serve as Young Lawyer Delegate to the ABA House for a similar two-year term. A motion was adopted electing Mr. Bing.

4. Presentation of Trial Lawyers Section National Trial Advocacy Awards. In cooperation with Anthony J. DeMarco, Jr., Chair of the Trial Lawyers Section Committee on Trial Advocacy Competition, Mr. Rice presented the Trial Lawyers Cup and Scholarship to Syracuse University College of Law as the Region II school placing highest in the National Trial Advocacy Competition. Hofstra University School of Law was recognized for its second place finish. Representatives of the two schools acknowledged the awards and expressed their appreciation for the valuable training provided by the competition.

Former Trial Lawyers Section Chair Gunther H. Kilsch then presented an award to Mr. DeMarco on behalf of the section recognizing his twenty-two years of dedicated volunteer service in organizing and administering the trial advocacy program. Mr. DeMarco expressed appreciation for the award, noting the benefit of the program in properly training future advocates.

5. Memorial to Hon. M. Dolores Denman. Hon. Judith S. Kaye, Chief Judge of the State of New York, presented a memorial to Hon. M. Dolores Denman, Presiding Justice of the Appellate Division, Fourth Department, and a past member of the House of Delegates, who had passed away in January. In her remarks, Chief Judge Kaye acknowledged Justice Denman's contributions to the law and the legal profession, as well as the consummate humanity with which she exercised her judicial responsibilities. A copy of the memorial is attached to these minutes.

6. Report and recommendations of Ad Hoc Committee on the Jury System. Charles F. Crimi, Jr., the Chair of the Ad Hoc Committee on the Jury System, summarized the committee's report with respect to voir dire procedures in civil and criminal cases. He reviewed the impact on jury selection of civil case court rules adopted in 1996, as well as concerns raised by attorneys in both civil and criminal cases about the imposition of restrictions on the length of time available to question jurors. He reported that to assess the situation, the committee had coordinated with the Trial Lawyers Section and the Committee on Tort Reparations to survey their members as to civil cases, and had cooperated with the Criminal Justice Section to survey defense counsel and prosecutors regarding criminal cases. Mr. Crimi outlined the civil survey results with respect to time restrictions, consent challenges and peremptory challenges. He summarized the committee's recommendations that courts maintain flexibility and confer with counsel to provide adequate time for voir dire based on the nature of the case, that statutorily provided consent challenges be continued, and that in cases

involving multiple parties on a side with different interests, judges should exercise discretion to grant additional peremptory challenges and allocate the side's total peremptories among the parties as appropriate. Mr. Crimi also summarized the results of the criminal survey and the committee's recommendations that judges confer with attorneys and incorporate their suggestions in questionnaires and questions to be asked from the bench, that courts focus on providing adequate time for voir dire depending on the complexity of the case, and that judges use reminders to counsel as a means of moving voir dire rather than issuing directives or cutting off questions. Discussion then ensued, during which several members noted that a major concern identified in the report was the need for reasonable time to be allotted for the selection of juries. A motion was then adopted approving the report and recommendations as submitted by the committee.

7. Report of Task Force to Study "Pay to Play" Concerns. A. Thomas Levin, Chair of the Task Force to Study "Pay to Play" Concerns, presented an informational report on behalf of the task force. He reviewed the recommendations that had been proposed previously by the task force, and adopted by the House of Delegates in January 1999, to address concerns about "pay to play," where attorneys or law firms accept governmental engagements when they have made more than minimal contributions to the campaigns of public officials who award such work. He noted that those recommendations had included the adoption of Ethical Considerations (EC 2-37 and EC 2-38) to the Code of Professional Responsibility explaining the impropriety of "pay to play" and providing objective criteria for the guidance of attorneys, as well as calling for legislative action to clarify existing law in this area, and for the disclosure of substantial political contributions, including both "hard" and "soft" money, by lawyers or law firms.

Mr. Levin also summarized actions taken by the American Bar Association's House of Delegates in adopting amendments to the Model Rules of Professional Conduct and the Model Code of Judicial Conduct to address "pay to play" issues. He reported further that in New York State, the Administrative Board of the Courts had completed its study of the matter and had concluded there was no need to revise the Disciplinary Rules contained in the Code of Professional Responsibility, as any necessary interpretative guidance was provided by the new ethical considerations adopted by the New York State Bar Association. In addition, the Administrative Board had concluded there was no need to adopt additional disclosure requirements, as existing finance disclosure laws make information readily available. Mr. Levin stated that the Administrative Board had essentially adopted the position as endorsed by the House of Delegates, and that no further action was required for the present. The report was received with thanks.

8. Report of President. Mr. Rice advised that, as was done at previous meetings, to allow as much time as possible for the discussion of substantive items, he had furnished a detailed, written report, and would give only a brief summary of significant items. A

copy of the written report is attached to these minutes. Mr. Rice then reported the following matters:

a) On March 26, 2000, Jerome M. Ginsberg of Flushing had passed away. Mr. Rice noted that Mr. Ginsberg had been a member of the House of Delegates from 1987 to 1991 and had been active with several committees and sections of the Association. A moment of silence was then observed out of respect for Mr. Ginsberg's memory and his contributions to the legal profession.

b) Mr. Rice had met on March 21, 2000 with Chief Administrative Judge Lippman to discuss a number of topics of mutual interest, including the status of efforts to secure an increase in 18-B panel fees for assigned counsel; audio-visual coverage of trial court proceedings; the Office of Court Administration's statement on "pay to play" issues; court reorganization; multidisciplinary practice; the unified court system's expanding use of technology; the Chief Judge's Comprehensive Civil Justice Program; the functioning of the experimental Administrative Law Parts in New York City; and Chief Judge Kaye's initiatives to address allegations of political favoritism in the awarding of court assignments by New York City judges. With respect to the implementation of technological advances, Judge Lippman had advised that the placement of scheduling information for thirteen counties on the court system's web site had proceeded smoothly and that OCA was expanding this data by adding counties on a monthly basis. Mr. Rice noted that the Association's relationship with OCA continues to remain open, cordial and constructive.

c) In the wake of the Diallo trial, where camera coverage was allowed at the trial court level, there had been renewed interest in reinstating audio-visual coverage of trial proceedings. He indicated that bills had been introduced in the Legislature, and that these measures were under study by interested sections and committees. Mr. Rice stated that he anticipated comments by NYSBA sections and committees would be discussed at the June meeting of the House of Delegates.

d) In January, the Executive Committee had approved the establishment of a Special Committee on Cyberspace Law. Mr. Rice indicated that the group would be chaired by Madeleine Schacter of New York City and would focus on the legal implications of the issues that confront attorneys as they deal with emerging technology. He advised that the group would likely address topics such as E-commerce, technological advancements, corporate policies, government regulation of the Internet, defamation and privacy.

e) Following an intensive lobbying effort by various groups opposed to tort reform, Senator Volker, a major proponent of reform, had announced there was little likelihood of a tort reform bill being enacted this session. Mr. Rice noted that the Task Force to Consider Tort Reform Proposals continued to present the Association's balanced perspective on the issues.

f) Chief Judge Kaye was continuing to press for an increase in 18-B panel fees for attorneys providing indigent representation to a level of \$75 per hour for felonies and \$60 for misdemeanors. He noted that the Chief Judge's plan would be funded in part by diverting from the state's general fund some \$70 million in court-generated fees from surcharges and fines. The Governor continues to oppose this initiative. Mr. Rice reported that litigation had been commenced by others in both state and federal court challenging the current 18-B rates. He indicated the Association had engaged the services of a lobbyist and would continue to press for legislative action to secure an increase.

g) In January, the grants made by the IOLA Board to legal services organizations had reflected shifts and reductions from prior years. He stated that legal services providers had expressed concerns about the apparent shift in funding priorities as well as the process that had been utilized. Mr. Rice advised that the Committee on Legal Aid and the President's Committee on Access to Justice had written to the IOLA Board to express their concerns about the grant-making procedures, while emphasizing the valuable role that various models provide in the delivery of legal services, including support organizations and bar-sponsored pro bono programs. He stated that he and Mr. Hassett would be meeting with the Chair of the IOLA Board to express in person the Association's support for a grant funding process that encompassed the full scope of legal service providers.

h) In furtherance of the House's approval in January of the proposal by the Commission on Providing Legal Services for the Middle Income Consumers, legislation had been introduced to establish a mechanism for the simplified resolution of cases under \$75,000.

i) The Administrative Board of the Courts, in March, had announced that attorneys will be able to obtain continuing legal education credit for performing pro bono services and for judging high school mock trial competitions.

j) In April, the ABA's Section of Legal Education and Admission to the Bar would be hosting a conference in Indianapolis on "Law Schools and the Legal Profession" to explore the current state of legal education and look to the future relationships between legal education and the practicing bar. Mr. Rice indicated the Association was maintaining close contact with the deans of New York's law schools, as the ABA program may serve as a basis for convening an annual session in New York for the deans, bar leaders and court officials to address issues focusing on legal education.

k) On April 28, the Executive Committee would hold a special meeting to consider the report of the Special Committee on the Law Governing Firm Structure and Operation, following which the report would be circulated to the members of the House, NYSBA sections and committees, and to the county and local bar associations

represented in the House. He encouraged House members to review the report, and to compare it to the report anticipated from the ABA Commission on Multidisciplinary Practice in mid-April. Mr. Rice stated that the report of the Special Committee would be considered at the June 24 House meeting, so that the NYSBA's views could be brought before the ABA's House of Delegates in July.

l) He expressed appreciation to the members of the House for their encouragement and cooperation during his tenure as President, and acknowledged the other officers, staff and Executive Committee for their counsel and support. The House members acknowledged Mr. Rice's service with a standing ovation.

9. Preliminary report by Special Committee on Public Trust and Confidence in the Legal System. Ellen Lieberman, Chair of the Special Committee on Public Trust and Confidence in the Legal System, and committee member Susan B. Lindenauer presented a preliminary status report on behalf of the committee. Ms. Lieberman explained that the committee had been appointed in November 1999 to coordinate with a similarly named group appointed by Chief Judge Kaye. She indicated that in May 1999, the Chief Judge's committee had released a report outlining issues and strategies impacting the public's confidence in the legal system. Ms. Lieberman stated that the report by the Chief Judge's committee had been prepared to advise a five person delegation, which included former Association President James C. Moore, that attended the 1999 National Conference on Building Public Trust and Confidence in the Justice System in Washington, D.C. Ms. Lieberman advised that the Chief Judge's committee would be engaged in pursuing the strategies outlined in the report over several years, and that the NYSBA committee had been divided into five subcommittees to facilitate coordination with the Chief Judge's group in the major subject areas contained in the 1999 report. The areas of concentration of the five subcommittees are as follows: bias and prejudice/access to justice; media portrayal and public understanding; legal and judicial ethics; user-friendly, comprehensive court system/delays in justice; and jury system experience/adequate funding for court facilities. She indicated that the NYSBA committee would seek comment from relevant Association sections and committees as well as input from other bar groups so that informed guidance could be furnished to the Chief Judge's group. She then outlined issues that were being addressed in the areas of delays in the justice system and the need to develop a comprehensive court system, particularly in achieving court reorganization. She also touched on issues of bias and prejudice that were under consideration, and noted the preliminary view of the NYSBA that court staff and administrators needed to be included with judges in any remedial efforts. Ms. Lindenauer then outlined matters under consideration with respect to the jury system, including the lack of fair compensation for jurors in local court cases and the need to provide additional orientation for grand jurors. She also described issues relating to court facilities, including the need to improve maintenance, as well as to encourage law firms to donate used furniture and equipment to enhance the courthouse environment. Ms. Lieberman stated that the committee planned to present a more comprehensive report later in the year. The report was received with thanks.

10. Report of The New York Bar Foundation. Maryann Saccomando Freedman, President of The New York Bar Foundation, advised that a detailed summary of The Foundation's activities was contained in the 1999 annual report, which had been distributed at the January meeting. She also noted that an updated edition of *The Courts of New York*, an informational volume for non-lawyers, had just been published. Ms. Freedman advised that she was completing her term as President, and observed that many of the initiatives identified three years ago by The Foundation board to enhance the organization's visibility and raise the level of support for its activities had either been implemented or were well along. In this regard, she noted the annual fund campaign inaugurated in 1999, as well as changes made in the structure of The Fellows to enhance giving opportunities and involvement in the work of The Foundation. She also noted that over the past three years, The Foundation had made some \$750,000 in grants to worthwhile, law-related organizations. Ms. Freedman expressed appreciation to the members of the board for their involvement, guidance and support during her tenure. She also expressed thanks to Christine Beshar, who had served sixteen years as Treasurer, as well as to L. Beth Krueger for her capable staff assistance. Ms. Freedman also thanked the members of the House for their support and generosity. The report was received with thanks.

11. Report of the Special Committee on the Law Governing Firm Structure and Operation. Steven C. Krane, Vice Chairperson of the Special Committee on the Law Governing Firm Structure and Operation, reported on the status of the committee's studies stemming from the resolution adopted by the House of Delegates in June 1999 with respect to multi-disciplinary practice. He indicated that, as committee Chair Robert MacCrate had reported at previous meetings, the committee's early work had involved detailed research into a broad range of topics, such as the changing demography of the profession; the effects of specialization, information technology, advertising and law practice management; and cooperative arrangements with other professionals to provide a factual predicate for the committee's report. He indicated that following completion of the initial, information-gathering phase, the committee had analyzed the issues raised by various proposals to amend the law governing lawyers to allow multidisciplinary practice structures and control by non-lawyers. He indicated that during the second phase, the committee had considered the professional responsibilities of lawyers and law firms and the role of an independent legal profession in maintaining the rule of law. Mr. Krane advised that based on its analysis, in the final chapter of the report, the committee made recommendations as to what changes, in the public interest, should be made to the law governing lawyers and law firms. He noted that the recommendations addressed ancillary services offered by lawyers and law firms; interprofessional "strategic alliances" and other contractual relationships between lawyers and nonlawyers; lawyers working for organizations that provide consulting services and financial products to the public; unauthorized practice of law issues; and transfers to nonlawyers of ownership or control over entities practicing law. Mr. Krane stated that the Executive Committee would consider authorizing release of the report at a special meeting to be held on April 28, 2000. He explained that the report would then

be placed on the agenda for the June 24 House of Delegates meeting, and urged House members and other interested groups to review the report carefully to facilitate informed discussion at the June meeting. Mr. Krane also observed that the American Bar Association and a number of other state bar associations were studying multidisciplinary practice, with the ABA Commission on Multidisciplinary Practice being expected to release a report within the next several days. He suggested that discussion of the ABA and NYSBA positions would likely occur at the July 2000 ABA meeting in New York City. The report was received with the thanks of the House.

12. Report of Chair. Mr. Hassett announced the following matters:

a) Bar associations entitled to delegates to the House of Delegates had filed their designations of delegates for the 2000-2001 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 2000-2001.

b) He recognized the retiring members of the House and expressed appreciation to them for their service. He expressed similar gratitude to the retiring members of the Executive Committee and to Mr. Rice for his energetic leadership and thoughtful guidance during the past year.

13. Date and place of next meeting. Mr. Hassett announced that the next meeting of the House of Delegates was scheduled for Saturday, June 24, 2000 at The Otesaga, Cooperstown, New York.

Respectfully submitted,



Lorraine Power Tharp
Secretary

NEW YORK STATE BAR ASSOCIATION

In Memoriam

M. Dolores Denman

MEMORIAL
to
M. DOLORES DENMAN

Presented at
New York State Bar Association
House of Delegates Meeting
April 8, 2000
Albany, New York

M. DOLORES DENMAN

1931-2000

I am deeply grateful to the House of Delegates for this pause in your proceedings to offer a memorial to a phenomenal Presiding Justice, an admired jurist, a cherished friend, M. Dolores Denman. I am grateful as well for the Resolution presented by Maryann Saccomondo Freedman, and adopted by the House of Delegates at its January meeting, shortly after Judge Denman's death, now—incredibly—nearly three months ago. Your Resolution astutely identifies two memorable facets of Judge Denman's life: first, her "outstanding contribution to the law and the legal profession" and second, her "consummate humanity."

I would not unduly extend this moment, or this morning, by detailing the extraordinary contributions of Judge Denman to the law and to the legal profession. You, of course, know them well—from her honors graduation, to her rise through the ranks of the profession to the highest reaches of our State court system, all along the way throwing open doors, mentoring, holding out a hand to others, herself exemplifying and insisting upon the very highest and best of our noble profession and system of justice. The law was Judge Denman's lifelong ambition, and she

honored it magnificently to her last breath. Next week the home of the Fourth Department will officially be named for her, a testament to her exquisite taste and ferocious tenacity. As we all know, without Judge Denman that building would never have happened..

But instead of dwelling on Judge Denman's innumerable contributions, I would like to focus on that rare second quality identified in your Resolution: her "consummate humanity." The words "consummate humanity" immediately bring to mind this anonymous note, received by Eighth District Administrative Judge Vincent Doyle in January:

"Thirty years ago, I got into some minor trouble with the law. I came in front of Judge Denman in Buffalo City Court. Thank God. She had the sensitivity to dismiss the charges and my record was cleared. That action changed my life.

"Today I am a lawyer. About one-half of the work that I perform is pro bono. In Judge Denman's honor, I will try to increase that even more.

"Next year my daughter enters law school. I will encourage her to perform one-half of her work pro bono, also, in honor and in memory of Judge Denman.

"There must be thousands of stories similar to mine. That dear, charming lady changed so many lives for the better.

"She graced our world, and it will be so dreary without her."

"A Lucky woman"

Well, I'm a lucky woman too. Indeed, every single one of us here, irrespective of gender, is fortunate to have worked alongside, been inspired by, befriended, known, known of, Presiding Justice Denman. She changed so many lives for the better.

During her lifetime, and especially during the past few months, I've heard Judge Denman described again and again by the contrasts, the polar opposites that uniquely characterized her. Elegance with grit. Tough but compassionate. Gin and Shakespeare—she surely loved both. She equally enjoyed running up charges with her “Gal Pals” (as she called them), and revising charges with her PJI Pals. From Judge Denman I learned about lip-liners—which we purchased together at the Saks Fifth Avenue cosmetics counter, and I learned about how better to implement reforms, and to choose Law Guardians, and to live courageously in the face of a devastating disease.

I know no after words to describe this truly amazing blend of polar opposites than Judge Denman's own words, delivered before this very body when she accepted the Ruth G. Schapiro Award just a few years ago. Still in my mind I carry the picture of her remarks to you that day—a commanding presence, meticulously dressed and groomed, every now and then brushing a stray lock of hair back from her face. (How many times have we seen that gesture?) And here's what she said:

“When women started entering the business and professional worlds in large numbers approximately 20 years ago, they thought they had to emulate the qualities exhibited by men in order to gain acceptance and be successful. We were treated to

the spectacle of dozens of women in man-tailored suits with little bow ties. Not only did women start to dress like men, but they affected a brusque, aggressive manner in order to submerge their femininity and thought they had to walk over people to prove they were tough. That phase is happily over.

“I believe that we have seen and will continue to experience an interesting confluence of events. As more women have entered the law and have risen to positions from which they can exercise influence and make their voices heard, they have directed attention to problems that have existed for years but were never brought to the forefront: the problems of battered women, of physically and sexually abused children, of lack of representation of children in custody and neglect cases. It is then ironic that those same qualities that were for so long seen as impediments to admitting women to the practice of law—our acute sensibilities, our need for caring and nurturing relationships—are the very qualities being brought to bear on these destructive social problems. It may be true generally that men are tougher minded, more aggressive and rule-oriented and that women place more value on human relationships and on bringing about harmony, but I suggest that a stable, moral and healthy society requires a blend of those views.”

What a blend, what a confluence of those attributes she was! Aggressive, principled, tough-minded—but at the same time gentle, caring, kind.

I read in one friend’s tribute to Judge Denman the observation that she had simply “slipped away, almost without notice.” And

I fully understand that sentiment, because it seemed that overnight Judge Denman was gone from our midst. That, of course, was her deliberate choice, her conscious decision, the script she wrote for herself—to leave Buffalo in the absolute fullness of life in December, and spend her final weeks in seclusion with her closest family. “Slipped away”? Yes. But “without notice”? Hardly. Because that is the script we will write—missing her, remembering her, honoring her just as we do today, celebrating the outstanding contributions and consummate humanity of a loving, much-loved, truly remarkable human being.



New York State Bar Association

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April 8, 2000

To: Members of the House of Delegates

Re: Report of President

As I have done for past meetings, I am furnishing the following written summary of matters of interest to preserve as much time as possible for the consideration of other substantive items at the April 8, 2000 House of Delegates meeting in Albany.

- Meeting with Chief Administrative Judge Lippman. On March 21, we met with Chief Administrative Judge Lippman in New York City. Consistent with prior meetings of this nature, we were able to cover a wide range of subjects of interest to both the bar and the Office of Court Administration. We discussed efforts to secure an increase in 18-B panel fees for assigned counsel; cameras in the courtroom; OCA's "pay to play" statement; court reform; mandatory continuing legal education; multidisciplinary practice; the expanding use of technology by the unified court system; the Chief Judge's Comprehensive Civil Justice Program; the functioning of the experimental Administrative Law Parts in the City of New York; and the Chief Judge's initiatives to address allegations of political favoritism in the awarding of court assignments by New York City judges. In the area of technology, Judge Lippman reported to us that the placement of scheduling information for thirteen counties on the court system's Web site went smoothly, and OCA is expanding this data by continuing to add counties on a monthly basis. He anticipates completing a substantial expansion in the number of counties being covered by the end of the calendar year. With respect to court reorganization, OCA will continue to press for trial court merger, even if the number of courts to be merged into Supreme Court is reduced from the original proposal. The Chief Judge plans to keep this issue visible in hopes of gaining positive movement during the remainder of the legislative session. I am pleased to state that our relations with the judiciary remain open and cordial, and that Judges Kaye and Lippman continue to be sensitive to the concerns of the organized bar.
- Cameras in the courtroom. As I am sure you are aware, at the outset of the Diallo murder trial in Albany earlier this year, the trial judge ruled unconstitutional the ban on televising trial court proceedings and permitted television coverage of the trial pursuant to the

rules which the Legislature had allowed to lapse. The positive effects stemming from the broadcast of the DiIollo trial have sparked renewed interest in reinstating cameras in the trial courts. Bills have been introduced in the Senate and the Assembly, and just recently the Governor released his proposed bill. These measures have been circulated to interested sections and committees within the Association for study. Unfortunately, the timing of these submissions was such that it did not allow a reasonable period for our groups to review and prepare proposed positions for your consideration at this meeting. However, we anticipate that the legislative schedule is such that it will still afford us an opportunity to address this issue at the June meeting in Cooperstown. We will certainly keep you apprised of developments in this area.

- Special Committee on Cyberspace Law. I am pleased to report that at its January meeting, the Executive Committee endorsed the creation of a Special Committee on Cyberspace Law. This group is intended to focus on the legal implications of the issues that confront attorneys as they deal with emerging technology. We are in the process of appointing the group, which Madeline Schachter of New York City has graciously agreed to chair. We anticipate that the new committee will address a broad range of issues that impact practitioners, including E-commerce, technological advancements, corporate policies, government regulation of the Internet, defamation and privacy. Given the growing importance of computers and the Internet to the practice of law, we expect that this new committee will prove a constructive resource in the Association's efforts to address these burgeoning issues.

- Tort reform. According to recent news articles, tort reform appears to be a dead issue for the balance of the current legislative session. Intensive lobbying by the New York State Trial Lawyers Association has caused Sen. Volker, a major proponent of tort reform, to announce there is little, if any, likelihood that his reform bill will be adopted in light of the opposition that has been raised. The Governor's staff has been quoted to the effect that the administration does not want to submit a bill this year that can pass in only one house; rather, Governor Pataki prefers to see if some genuine compromise can be arrived at in the future. As has been our past approach, the NYSBA's Task Force to Consider Tort Reform Proposals, co-chaired by John P. Bracken and David M. Gouldin, continues to present the Association's balanced perspective on the issues. We will keep you advised should there be any significant movement on tort reform during the balance of the session.

- 18-B panel fees. As I reported to you in January, Chief Judge Kaye remains committed to raising 18-B panel fees from the current level of \$40 an hour for in-court work and \$25 out-of-court. She is seeking to secure \$75 an hour for felony and Family Court matters and \$60 for misdemeanors. This would be coupled with elimination of the differential between in-court and out-of-court rates, as well as removal of the present per-case compensation caps. Judge Kaye's plan would also shift some of the financial burden from localities to the state by diverting to assigned counsel programs some \$70 million in court-generated fees from surcharges and fines from the state's general fund. To date, this proposal has met with opposition from the Governor, who prefers to use any increase in court surcharges to fund services for crime victims. As matters presently stand, none of the budget proposals before the Legislature contain increased 18-B panel funding. However, litigation

has now been commenced in both federal and state courts challenging the current 18-B fee levels. A Long Island practitioner has instituted suit in the Federal District Court for the Eastern District, while the New York County Lawyers' Association has brought an action against the Governor in State Supreme Court. Only time will tell whether either of these actions will help achieve a rate increase. In the interim, we will continue to press the issue in the Legislature, and have engaged the services of a lobbyist to assist our efforts. We will advise you of any developments in this area.

- IOLA. In January, the Interest on Lawyer Account Fund (IOLA) released its latest series of grants to legal services organizations. The changes and, in some instances, reductions in awards from prior years have created concern among legal services providers and bar associations that IOLA has shifted its funding priorities to reduce funds given to groups that bring class action suits against the government. In addition, the IOLA board cut legal service programs oriented towards the provision of training and continuing legal education to legal services attorneys. It has also eliminated funding for bar association pro bono programs. Concern was also expressed that these changes in funding priorities were made without prior notice to grantees.

Barbara Finkelstein, Chair of our Committee on Legal Aid, and C. Bruce Lawrence, Co-Chair of the President's Committee on Access to Justice, wrote jointly to the Chair of the IOLA Board expressing concerns about the grant making procedures and emphasizing that there are many different models of service delivery, with each having an appropriate and valuable role in the overall delivery system. Both committees strongly urged funding for a full range of services, including support services and bar-sponsored pro bono programs. At this juncture, we are uncertain how matters will develop in terms of the future philosophy that will underlie the IOLA grant-making process. However, we will endeavor to maintain communication with the IOLA board and to support grant funding for the full scope of programs.

- Commission on Providing Legal Services for the Middle Income Consumers. At the January meeting, you gave your approval to the proposed plan drafted by the Commission on Providing Legal Services for the Middle Income Consumers to provide a mechanism for the simplified resolution of cases under \$75,000. I am pleased to announce that in furtherance of your authorization, we have obtained sponsors, Senator Dale M. Volker and Assembly Member Robin Schimminger, and secured the introduction of the necessary implementing legislation (S.6870 and A.9897). We will keep you apprised of developments as we pursue enactment of our bill.

- Mandatory continuing legal education. The Administrative Board of the Courts last month announced that attorneys will be able to obtain continuing legal education credit for performing pro bono services and for judging high school mock trial tournaments. Lawyers will be able to earn one CLE credit for every six hours of approved pro bono work, up to a maximum of six credits every two years. Thus, over a two-year period, an attorney would be able to receive six credits for performing thirty-six hours of pro bono service. The final details regarding the mock trial component have yet to be completed, so it is not clear how many

hours lawyers will be able to accumulate towards their CLE requirement by judging trial competitions. However, we will keep you advised in this regard.

- Relationship between law schools and the legal profession. In April, the American Bar Association's Section on Legal Education and Admissions to the Bar will be hosting a conference on "Law Schools and the Legal Profession" in Indianapolis to explore the current state of legal education and look to the future relationship between legal education and the practicing bar. The ABA remains heavily interested in this area, as the National Conference of Bar Presidents presented a bar/law school forum as part of the ABA's meeting in Dallas this past February. We are maintaining close contact with the deans of New York's law schools, as the ABA's activities may well have an impact on us. Depending on future developments, these programs may serve as a basis for convening an annual session in New York involving law school deans, bar leaders and OCA officials to address issues involving legal education.

This completes my final written report to you, as Paul Michael Hassett will have succeeded me as President by the time the House convenes again in Cooperstown. I would, therefore, like to take this opportunity to thank all of you for your support and guidance during my term. I also extend sincere appreciation to Paul for the willing and capable assistance he has provided as President-Elect. Paul has eased my burden considerably during the past ten months and for that I am sincerely grateful. I also want to acknowledge Bill Carroll and his excellent staff at the Bar Center. Their devotion to the Association is unquestioned and is reflected by the ease and smoothness with which the Association functions, despite its complexity. My presidency has been a noteworthy event in my career, and one I will treasure always. Your friendship has helped to make this experience special, and I am grateful for having had the opportunity to serve you and the Association.

Respectfully submitted,



Thomas O. Rice