

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
FEBRUARY 1, 2008
MARRIOTT MARQUIS, NEW YORK, NEW YORK**

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PRESENT: Aaron; Abernethy; Adler; Alcott; Alden; Badway; Barreiro; Barson; Bartlett; Bienstock; Borsody; Boyers; Bracken; Branda; Breen; Brown Spitzmueller; Brown, G.; Brown, T.; Buholtz; Buonora; Burke, J.; Burke, P.; Burns; Buzard; Byrne; Cahn; Campos; Cartright; Casey; Castellano; Chambers; Chase; Chin; Christian; Clarke; Cloonan; Coffey; Cohen, C.; Cohen, D.; Cohn; Copps; Cullum; Cummings; Davidoff; Davis; Denton; Dohn; Donoghue; Doyle, J.; Doyle, V.; Draper; Drayton; Duffy; Edmunds; Egan; Eppler; Farley; Fernandez; Finerty; Fink; Fishberg; Fisher; Franchina; Frank; Freedman; Gall; Gerstman; Getnick; Gingold; Goldblum; Golinski; Good; Gordon Oliver; Gorgos; Gouz; Grays; Gross, J.; Gross, M.; Gutekunst; Haelen; Haig; Hassett; Hayes; Herrmann; Higgins; Hoffman; James; Kamins; Kelly; King; Kobak; Kougasian; Krane; Kretser; Lamantia; Larose; Larson; Lawrence; Leber; Leinhardt; Levin; Levy; Lieberman; Liebman; Lindenauer; Lomuscio; Longo; Luskin; Lynch; MacCrate; Madigan; Makofsky; Manias; Margolin; Markhoff; Martin; Marwell; May; McCarthy, Jeremiah; Meislahn; Meyer; Mihalick; Miller, M.; Millett; Millon; Minkowitz; Miranda; Moore; Moy; Murray; Nashak; Nathanson; Netter; O'Donnell; O'Neill; Ostertag; Palermo; Peterson; Porcellio; Potter; Pruzansky; Purcell; Reed; Reynolds; Richardson; Rider; Rifkin; Robinson; Rodriguez; Romero; Rosenthal; Rosiny; Rosner; Rothstein; Russell; Salkin; Samber; Schraver; Sciortino; Sconiers; Selinger; Seymour; Sheehan; Sherman; Sigmond; Silkenat; Smith, G.B.; Smith, T.; Smolowitz; Sonberg; Spelfogel; Standard; Steingberg, H.; Stempel; Stenson; Sterrett; Sunshine, J.; Sunshine, N.; Szochet; Terranova; Tharp; Thompson; Tilton; Tyler; Wachtler; Wallach; Walsh, O.; Welby; Williams, B.; Wilson; Wimpfheimer; Winkler; Witmer; Young; Younger; Zulack.

Ms. Leber presided over the meeting as Chair of the House.

1. Approval of minutes of November 3, 2007 meeting. A motion was adopted accepting the minutes as previously distributed.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by President Kathryn Grant Madigan to members of the House at the Annual Meeting, was received with thanks.
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. On behalf of the Nominating Committee, Ms. Madigan reported that the Committee had nominated the following individuals for election to the indicated offices for the 2008-2009 Association year: President-Elect: Michael E. Getnick, Utica; Secretary: C. Bruce Lawrence, Rochester; Treasurer: Seymour W. James, Jr., New York City; and Vice Presidents: First District – Claire P. Gutekunst and Susan B. Lindenauer, New York City; Second – Barry M. Kamins, Brooklyn; Third – Hon. Rachel Kretser, Albany; Fourth – Patricia L.R. Rodriguez, Schenectady; Fifth – David M. Hayes, Syracuse; Sixth – David A. Tyler, Ithaca; Seventh – David M. Schraver,

Rochester; Eighth – David L. Edmunds, Jr., Buffalo; Ninth – John S. Marwell, Mount Kisco; Tenth – John H. Gross, Hauppauge; Eleventh – David Louis Cohen, Kew Gardens; Twelfth – Lawrence R. Bailey, Jr., New York City. Nominated as members-at-large of the Executive Committee were Vincent E. Doyle, III, Buffalo; Timothy J. Fennell, Oswego; David P. Miranda, Albany; Peter J.W. Sherwin, New York City; Lauren J. Wachtler, New York City; Stephen P. Younger, New York City; Hermes Fernandez, Albany; and Eileen D. Millett, New York City.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

4. Address by Hon. Judith S. Kaye, Chief Judge of the State of New York. Chief Judge Kaye addressed the House of Delegates with respect to the status of Unified Court System initiatives, noting that she would not deliver a State of the Judiciary Address until the issue of judicial compensation had been resolved. She focused on initiatives relating to family justice, together with the status and implementation of recommendations made by task forces and commissions. The report was received with the thanks of the House.
5. Presentation of the Ruth G. Schapiro Memorial Award. Ms. Madigan presented the annual Ruth G. Schapiro Award to Hon. Jacqueline W. Silbermann, Deputy Chief Administrative Judge for Matrimonial Matters.
6. Report of the President. Ms. Madigan provided a written report on recent initiatives, a copy of which is appended to these minutes, as well as a public relations activity report. Ms. Madigan also summarized the significant items set forth in the written attachment.
7. Memorial to Eugene C. Gerhart. Past President Robert L. Ostertag presented a memorial to Eugene C. Gerhart, former Editor-in-Chief of the *New York State Bar Journal*, who passed away in October 2007. A moment of silence was observed out of respect for Mr. Gerhart's memory and his contributions to the Association and the legal profession. A copy of the memorial is appended to these minutes.
8. Report of Committee on Membership. Claire P. Gutekunst, chair of the Committee, reported that the Association experienced a net gain in membership of 2.5% in 2007, as compared to a total growth of 3% over the prior four years. She noted that non-resident members comprise 24% of the membership, with the greatest membership gains in this category. She reported on several membership initiatives, including the President's Membership Challenge: a 5% overall increase in membership during that period, with a 10% increase in section membership over the next three years and a 10% per-year increase in law student membership. Packets of materials were distributed to the House, with a request that each House member recruit three new members by May 31, 2008. The report was received with thanks.
9. Report of Task Force on Eminent Domain. Patricia E. Salkin, chair of the Task Force, reported that the Task Force had prepared a final report with five additional

recommendations aimed at providing transparency in eminent domain procedure, supplementing the Task Force's initial report approved by the House in April 2006. After discussion the House adopted the following resolution:

WHEREAS, the Task Force on Eminent Domain was appointed to provide legal analysis and recommendations regarding the law of eminent domain following the decision of the United States Supreme Court in *Kelo v. City of New London*; and

WHEREAS, the Task Force issued an interim report, approved by the New York State Bar Association on March 31, 2006 making eight initial recommendations regarding eminent domain; and

WHEREAS, the Task Force has now issued its final report, containing five additional recommendations relating to the use of eminent domain when contemplated by a local government or public authority for redevelopment of an area or to conduct an economic development project;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby endorses the final report and recommendations of the Task Force on Eminent Domain; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such steps as they may deem warranted to implement this resolution.

10. Report and recommendations of Task Force on Town and Village Justice Courts. Ms. Salkin, chair of the Task Force, presented the Task Force's report and recommendations to remove barriers to lawyers serving as justices, upgrade technology and physical facilities, and provide additional training and education. She thanked the Bar Association of Nassau County and the New York City Bar Association for meeting with the Task Force and supplying copies of their respective reports to the Task Force. Lance D. Clark, President of the Bar Association of Nassau County, and Barry M. Kamins, President of the New York City Bar Association, outlined their associations' respective reports, which had been provided to the House for informational purposes. After discussion, the House adopted the following resolution:

WHEREAS, in June 2006 Chief Judge Kaye and then Chief Administrative Judge Lippman announced the undertaking by the Office of Court Administration of a comprehensive review of New York State's Justice Court system, which culminated in November 2006 in OCA's release of the Action Plan for Justice Courts; and

WHEREAS, the Action Plan identified four primary areas of reform (Justice Court operation and administration; auditing and financial controls; education and training for justices and clerks; and facility security and public protection) to address shortcomings and deficiencies identified in the Justice Court system; and

WHEREAS, the New York State Bar Association thereafter appointed the Task Force on Town and Village Justice Courts for the purposes of developing a set of recommendations for the Association to consider with respect to appropriate next steps in addressing access to justice in the town and village courts across the state; and

WHEREAS, the Task Force has released its report commenting on various aspects of OCA's Action Plan, and set forth recommendations for improving the Justice Court system, including measures to facilitate implementation of this Association's position, adopted in January 2001, that all justices in town and village courts be lawyers; it is hereby

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Task Force on Town and Village Justice Courts; and it is further

RESOLVED, that the officers of the Association are hereby authorized to submit the report and recommendations to Chief Judge Kaye and Chief Administrative Judge Pfau for appropriate consideration, and to take such further action as they may deem warranted to implement this resolution; and it is further

RESOLVED, that the Association shall continue to study the fiscal implications of the Task Force's recommendations and to consider ways to improve the efficiency of New York's town and village justice courts.

Mr. Buzard abstained from participating in the discussion and vote.

11. Report of Special Committee on the Civil Rights Agenda. Hon. George Bundy Smith, chair of the Special Committee, reviewed the committee's recommendations with respect to education, juvenile justice, voting, and criminal justice. He noted that comments on the report would be welcome and that he would reconvene the committee to review the comments that are submitted. After discussion, the House adopted the following resolution to govern the submission of comments on and further consideration of the report:

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration of the report and recommendations of the Special Committee on the Civil Rights Agenda ("Special Committee"):

1. The report and recommendations of the Special Committee will be circulated to members of the House, sections and committees, county and local bar associations, and other interested parties.

2. Any comments on the Special Committee's report or particular recommendations contained therein must be submitted in writing to the Secretary of the Association at the Bar Center by May 31, 2008; otherwise they shall not be considered.
 3. All comments received in a timely manner shall then be forwarded by the Secretary to the Special Committee.
 4. The Special Committee shall then review the comments and consider appropriate revisions to its report in light of the comments.
 5. The Special Committee shall then present its report, as it may have been revised, at the appropriate time first to the Executive Committee and then to the House of Delegates for consideration.
12. Report re Medical Malpractice Liability Task Force. Ms. Leber reported that Lucille A. Fontana, the Association's representative to the Task Force, had reported to the Executive Committee the prior day and that her report to the House would be deferred to the April meeting in anticipation of substantive developments.
13. Administrative items. Ms. Leber reported on the following:
- a. Materials left on the tables after the meeting would be recycled by hotel staff.
 - b. At the April 5, 2008 meeting, the House would be requested to elect six of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: A. Vincent Buzard, Rochester; Steven C. Krane, New York City; A. Thomas Levin, Garden City; Kathryn Grant Madigan, Binghamton; Michael E. Getnick, Utica; and Michael L. Fox, New York City (Young Lawyer Delegate).
 - c. At the Annual Meeting earlier in the morning, the proposed Bylaws amendments relating to the establishment of an Audit Committee were approved. As the House is required by the Bylaws to approve the Audit Committee's charge, a motion was adopted to approve the charge as set forth in the report of the Bylaws Committee, which will be incorporated as Appendix B to the amended Bylaws.
 - d. She announced that Nicholas S. Priore, Elected Delegate from the Fifth Judicial District, had passed away in December 2007. A moment of silence was observed in his memory.
14. Date and place of next meeting. Ms. Leber announced that the next meeting of the House of Delegates would take place on Saturday, April 5, 2008 at the Bar Center in Albany.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

Michael E. Getnick

Michael E. Getnick
Secretary



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February 1, 2008

To: Members of the House of Delegates

Similar to the approach followed for the last two House meetings, I am providing you with a written President's report to review at your convenience and to distribute to others as you deem appropriate. This allows me to highlight significant items during my brief remarks at the meeting while freeing as much time as possible for consideration of the substantive reports on our agenda.

You should find the following subjects of interest and representative of the numerous critical issues with which the Association is engaged.

Meetings with OCA. As I have noted in previous reports, the State Bar Leadership meets regularly with the Chief Administrative Judge to discuss matters of mutual concern to the Court System and the Association. Our most recent meeting took place on December 11, 2007, when Bernice Leber, Pat Bucklin and I met with Chief Administrative Judge Ann T. Pfau to discuss a number of topical items. Our agenda included matters such as funding for civil legal services and the new IOLA regulations, proposed caretaker attorney rules, lawyer advertising, court restructuring, judicial selection, indigent defense services initiatives, the ABA's Model Code of Judicial Conduct amendments, our proposed court rule on mass disasters, town and village court studies, e-filing, our final House action re the COSAC report, the status of OCA's establishment of a Guardianship Advisory Committee with representation from NYSBA, the Rural Barriers to Justice Conference, and judicial salaries. As has been the case in the past, our discussions proved to be cordial, open and productive. We will continue to meet quarterly with Judge Pfau.

Lawyer Advertising. At our January 2006 meeting, the House proposed revisions in the rules governing lawyer advertising based on the recommendations of the Task Force on Lawyer Advertising, so ably chaired by Bernice Leber. Our proposals were then considered by the Appellate Division and, with some modification, were adopted by the four departments. Thereafter, in Alexander v. Cahill, the rules were challenged in the U.S. District Court for the Northern District of New York, and five of the provisions were found unconstitutional. The court system filed an appeal with the U.S. Court of Appeals for the Second Circuit. Given our interest and involvement in the process, the Executive Committee at its October 29, 2007 meeting authorized the filing of an amicus curiae brief with the Second Circuit. The brief was

prepared on a pro bono basis by Bernice Leber and her firm, Arent Fox, has now been filed with the Second Circuit. Oral argument will likely be held in mid-March. We extend our sincere appreciation to Bernice and her firm for all their work, and we will keep you posted concerning the outcome of this appeal.

Legislative priorities. Each fall, with input from interested sections and committees, our Committee on Legislative Policy and our Steering Committee on Legislative Priorities confer and develop a proposed set of priorities for the upcoming legislative session. These proposals are then presented to the Executive Committee and, with that body's approval, become the Association's prime focus for the legislative session. For 2008, the Executive Committee has approved six priorities, and we have provided you with a brochure which outlines the salient elements of each. The priorities are:

- **Judicial Salary Reform for the Judges of the State of New York.** The salaries of New York's judges were last adjusted in 1999, when they were brought into parity with those of federal district court judges. Since then the salaries of our state's judges have fallen far behind, especially when the impact of inflation is considered. In addition to a salary increase, we support the creation of a quadrennial commission on compensation to recommend appropriate salary increases on a regular basis going forward.
- **Court reform.** Reorganization of New York's overly complex and costly court system and the implementation of a commission – based appointive process to select our judges are the twin pillars of the Association's court reform program. We view the achievement of these two reforms as critical to promoting public trust and confidence in our state's court system.
- **Access to the Justice System for Impoverished Persons.** Access to justice is fundamental to our mission as an Association and a long-term priority. It is essential that everyone, regardless of their economic status, have access to the court system. Our priority in this area embraces civil justice for low-income consumers and support for the establishment of an Independent Indigent Defense Commission, with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York's public defense system in criminal cases.
- **Equal Rights for Same-Sex Couples.** Based on the House position adopted in April 2005, we will continue to press for the enactment of legislation affording same-sex couples the ability to obtain the comprehensive set of rights and responsibilities now available to opposite-sex couples whether through a domestic partnership registry, civil unions, or an amendment to the statutory definition of marriage.
- **The Compact for Long-Term Care.** As endorsed a number of years ago by the House, the Compact would provide a fair and equitable way to finance long-term care for the elderly and disabled in New York. This initiative is designed to increase the use of private funds for long-term care while maintaining the safety net that Medicaid was intended to provide. The elderly and disabled would be expected to pay a fair share of their long-term care costs after which the

government would provide a financial subsidy for additional long-term care services. This is a win-win in that it will produce savings to both the system and the state's taxpayers, while enabling our elderly and disabled to retain their dignity and independence.

- **Support for the legal profession.** This item comports with the Association's long-standing tradition of supporting proposals that benefit the legal profession as a whole. It embraces legislative proposals that would benefit the profession, assist in protecting citizens' rights, and facilitate the lawyer's role in enhancing our system of justice, as well as opposing measures that would have a detrimental effect on those principles.

We will pursue those priorities vigorously throughout the 2008 legislative session. I have written to Governor Spitzer to apprise him of these objectives, and will be seeking to meet with him and the legislative leadership to advocate for their adoption.

In mentioning these priorities, I should emphasize that in pursuing them, we want to reassure our bar leaders that we will not be ignoring priorities from previous years or disregarding other affirmative legislative proposals emanating from our sections and committees and approved by the Executive Committee. As in the past, we will certainly continue to seek the adoption of these other measures and will not lose sight of them.

State of the State Message. On January 9th, Pat Bucklin and I attended the Governor's State of the State message at the State Capitol. The Governor's address focused on health care, education, the economy and setting a more moderate tone for future dealings with the Legislature, but did not make specific mention of the courts, criminal justice issues, or the long-overdue judicial salary increase. In the aftermath of his speech, spokespersons for the Governor's office stated that he remains committed to a judicial salary increase. In a press release geared towards the State of the State speech, I reiterated our support for the Compact for Long-Term Care as one means of helping the Governor achieve quality and cost-effective health care for New Yorkers, as well as our unwavering support for a judicial salary increase.

OCA budget. In December, The Office of Court Administration submitted the 2008-2009 fiscal year judiciary budget proposal to Governor Spitzer. The Judiciary is seeking \$2.27 billion from the State's General Fund, which represents a 9.5 percent increase over the \$2.07 billion the courts are receiving during the current fiscal year. 7 percent of this increase represents a judicial pay increase, which has been included. In regard to the All Funds budget, which includes the General Fund request, as well as money from the Federal Government and other sources, the Judiciary's total request is \$2.52 billion, which represents an increase of \$115.9 million, or 4.8 percent over the current fiscal year.

The budget request contains no appropriations for additional judges, but does propose funding for an additional 139 non-judicial positions, mainly for security and operations in Family, City and District Courts. Additional funding of some \$7.9 million is being sought for law guardians, as well as funds for travel and training for judges.

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We view the Court System's budget as reasonable and prudent and, as in prior years, will testify in support of its adoption at legislative hearings.

Judicial salary increase. As noted above, this ongoing issue will continue as one of our key legislative priorities during the 2008 session. We will continue our all-out efforts to secure a long-overdue judicial salary adjustment for our state's judges and to "de-link" it from a legislative pay increase. We were heartened that both the Governor and the Senate have expressed support for this "de-linkage", with the latter body passing a bill to that effect in December. While the stalemate still persists, we are hopeful that our efforts will bear finally fruit this year. I want to express my sincere appreciation to our countless members who responded positively to our request that they contact their state legislators on this critical issue. We pledge our full support for ongoing efforts in this area until the long-overdue pay increase for our judges becomes a reality.

Federal judicial salaries. Perhaps not as highly publicized as the plight of state judges, judges sitting on the federal bench are also deserving of a salary increase. A U.S. District Court judge currently earns \$165,200 annually. While this is more than our state judges earn, national studies have pointed out that since 1969 a federal judge's salary has declined by some 25 percent when adjusted for inflation. Chief Justice Roberts, in his year-end report on the state of the judiciary, asked Congress to make a federal judicial salary increase "a first order of business" in 2008. Last fall federal judicial pay increase bills were introduced in both the House and the Senate. District Court judges' salaries would increase to \$218,000; Circuit Court judges' salaries would rise from \$175,100 to \$231,000; Associate Justices on the U.S. Supreme Court would see an increase from \$203,000 to \$267,900, and the Chief Justice would increase from \$212,000 to \$279,900. Consistent with our prior support for reasonable pay raises for federal judges, I have written to our state's Senators and representatives in the House urging passage of the legislation.

Thirteenth District. In December, Governor Spitzer signed legislation which creates a new Thirteenth Judicial District for Staten Island, effective January 1, 2009. This is the first new district in the state since the Bronx was made the Twelfth District in 1981. We offer our congratulations to Staten Island on its elevation to district status, and, going forward, will add a Vice-President and Elected Delegates to our House from the new district, as well as representatives on the Nominating Committee.

Committee to Review Judicial Nominations. On December 31, 2007, Hon. Carmen Beauchamp Ciparick completed her fourteen-year term on the Court of Appeals. In October, the State Commission on Judicial Nomination had released the names of its nominees for the position. In addition to Judge Ciparick, who was eligible for renomination, the Commission also named Hon. Helen E. Freedman, a Manhattan Supreme Court Justice, and attorneys George P. Carpinello, Jeremy G. Epstein and Past Association President Steven C. Krane. These names were forwarded to Gov. Spitzer to make the final selection. As it has so ably done in the past, our Committee to Review Judicial Nominations reviewed the qualifications of the five nominees and found all to be well qualified to fill the position. Our findings were forwarded to Governor Spitzer to aid him in making his selection of the final nominee. After

the Governor announced the renomination of Judge Ciparick, we advised the Senate Judiciary Committee of our findings to assist the confirmation process. I was delighted to join the family, friends and colleagues of Judge Ciparick at her investiture at the Court of Appeals Hall on January 8th, and the reception for her at the Bar Center following the official ceremony.

Judicial Selection. Near the close of the 2007 legislative session, Governor Spitzer had submitted a judicial selection program bill to provide for the selection of judges through the establishment of judicial nominating commissions to recommend nominees to him for appointment to the Appellate Division, the Supreme Court, the Court of Claims, the County Court, the Surrogate's Court, and the Family Court, as well as establish fourteen-year terms of office for those judges. However, given the rulings by the U.S. District Court for the Eastern District and the Second Circuit Court of Appeals in the Lopez-Torres case invalidating New York's convention process for selecting candidates for Supreme Court Justice, and the pending appeal to the United States Supreme Court, the legislation did not gain any traction in the legislature. During the summer, in concert with the New York City Bar, the Fund for Modern Courts, and the City of New York, we filed an amicus curiae brief with the U.S. Supreme Court arguing that New York State's current judicial nominating system was unconstitutional. The case was argued on October 3, 2007, and on January 16, 2008 the Supreme Court issued its decision which, by unanimous vote, upheld New York's convention process. Although the Court's ruling upheld the constitutionality of the current system, the opinions of some of the Justices referenced the shortcomings inherent in the process leaving open an opportunity for statutory change. We view this as an opportunity to pursue remediation through amendment of our State's Constitution to enact a commission-based appointment system, which will significantly enhance the likelihood that our best and brightest will serve on the bench. As noted above, reform of the judicial selection process is one of our key legislative priorities for 2008. We will continue to pursue this court reform initiative with the Governor and the Legislature to do what we can to secure action on this crucial issue.

Legislation and lobbying. Responding to requests from our Section and Committee leaders for additional legislative training beyond what we provide during our spring Section Leaders Conference, on November 14, 2007, we sponsored a half day workshop at Arent Fox in New York City. This session was geared towards providing representatives from interested Sections and Committees with the information necessary to successfully advance legislative initiatives at both the state and federal level, as well as maintain compliance with the complexities of New York's lobbying regulations.

As I mentioned in my November President's report, I am deeply committed to working collaboratively with our local bars on federal legislative initiatives of mutual interest. Consistent with this objective, we are currently working with Barry Kamins, President of New York City Bar Association and Catherine Christian, President of the New York County Lawyers' Association so that we can have coordinated presence as part of the American Bar Association's Lobby Day, April 15-17, 2008 in Washington, D.C. We are planning to add a day to our schedule so that we can meet with our Senate and Congressional leaders on matters of particular importance to New York lawyers.

Law, Youth and Citizenship Program. The Law, Youth and Citizenship Program recently launched an online Civics Roadmap for New York Educators at www.nyscms.org. This new website presents a pre K through grade 12 civics education scope and sequence for New York State teachers, supervisors, and curriculum developers, including the following components: Concepts, Content Understandings, Learning Objectives, Knowledge Goals, Learning Skills and Civic Dispositions. Materials are broken down by grade level, linked to state and national standards, and offer each grade a variety of teacher-friendly classroom activities. The website was the product of cooperative efforts among our LYC Program and other state and national entities. Funding was provided for this innovative roadmap by the NYSBA, the New York Consortium for Civic Education and the Carnegie Foundation. This project is only the most recent example of the novel concepts that our LYC program has developed to bring the law and civics to the classroom in a meaningful and absorbing way for our young people.

Membership Challenge. January 1, 2008 was the official "kick off" of the first year of our three-year Membership Challenge. Our goal is to increase the Association's membership by a minimum of 5 percent (and hopefully more) by December 31, 2010, grow each of our Sections by 10 percent during that time period, and increase law student membership by 10 percent each year between now and 2010. At year-end, we reached a new membership milestone of over 74,000 members. Nonetheless, we must continue to be proactive in membership recruitment and retention if we are to keep pace with the growth of the profession in our state, and I am calling on our staff and bar leaders at all levels to assist us in expanding our membership base. Our Membership Committee, under the capable leadership of its Chair, Claire Gutekunst, has assumed a lead role in this critical initiative, with Committee member Steve Younger rendering superb service as Chair of the Subcommittee on the 2010 Membership Challenge.

As part of our effort, I am challenging each member of the House of Delegates to recruit one new member, each year, between now and 2010. Claire Gutekunst will be addressing the House during this meeting regarding this aspect of the Membership Challenge. As Association leaders, you are in the ideal position to promote the value and relevance of NYSBA membership. We are asking you to share this information and enthusiasm with your colleagues. With your help, we can meet and exceed our 2010 membership challenge goals.

ABA Awards. I am very pleased to announce that the NYSBA has been selected to receive an American Bar Association Award for Outstanding Law Day Activities. The award is one of four that will be presented on February 8, 2008 during the ABA's Mid-Year Meeting in Los Angeles. The Association is being recognized for its film "Mock Trial 101," which is narrated by Hon. Victoria A. Graffeo, Associate Judge of the Court of Appeals, and features high school mock trial teams from upstate and downstate schools. We are also being honored for our Youth Service Advocate Program, which recognizes students for age-based law-related volunteer service. It was especially gratifying to win the award during the year that Chief Judge Kaye was the ABA's Law Day Chair. My thanks to our fine staff from several departments for their excellent work in developing these award-winning initiatives.

I am also pleased to announce that retired Court of Appeals Judge, Hon. George Bundy Smith, who chairs our Special Committee on the Civil Rights Agenda, will receive the 2008 Spirit of Excellence Award from the ABA Commission on Racial and Ethnic Diversity in the Profession. The award will be presented on February 9th at the ABA's Mid-year Meeting in Los Angeles. Judge Smith will be one of seven recipients of the award, which was established to celebrate the efforts and accomplishments of lawyers who work to promote a more racially and ethnically diverse profession.

Attorney-client privilege. As an organization, we have continued to express our strong concerns about the federal government's encroachment on the attorney-client privilege through Department of Justice policies as set forth in separate memoranda by Deputy U.S. Attorney General Larry D. Thompson and by Deputy Attorney General Paul J. McNulty. These policies encourage organizations to waive their attorney-client privilege and related attorney work-product protection, to refuse to pay counsel fees to employees suspected of impropriety, and to fire employees who assert constitutional or other privileges. To address these erosions of the attorney-client privilege, and consistent with the position adopted by the House of Delegates in 2006, we have called on the federal government to end these practices and support the passage of remedial legislation, titled the Attorney-Client Privilege Protection Act. I am pleased to report that this measure was passed by the House of Representatives this past November. However, the Senate version of the legislation currently remains in the Senate Judiciary Committee. We continue to pursue steps to have the Act brought to the Senate floor for a vote. I want to thank everyone who responded to my call for our members to contact Senators Clinton and Schumer to advance and pass this legislation. I pledge our continued efforts until we secure adoption of this essential remedial statute.

Public service messages. At the November House meeting, we played a series of short public service radio messages focusing on Civil Gideon/Civil Right to Counsel, lawyers doing the public good, and the importance of pre-planning with a health care proxy. These radio spots, known as non-commercial sustaining announcements, are played on radio stations across the state pursuant to an arrangement with the State Broadcasters Association, whereby for a contribution of \$30,000, we receive air time for the spots valued at over \$550,000, if they were purchased commercially. During the four week period from October 15 to November 11, 2007, our announcements were run 3,242 times, with 1,697 of them in prime drive time, on 178 radio stations from Buffalo to Long Island.

Annual Meeting events. I am pleased to report that during this week's Annual Meeting, we have had a number of popular and well-attended events. On Monday evening, we hosted our fifth annual Celebrating Diversity in the Bar reception. Colleagues from local minority bar associations joined NYSBA members and representatives from our sections in an event which has grown in popularity each year since its inception. We are indebted to our co-sponsors, including our Committees on Diversity and Leadership Development, Membership, Minorities in the Profession, Women in the Law and Civil Rights. We were also pleased to present the Diversity Trailblazer Award to Taa Grays, who among her myriad bar activities, is a member of the House and chairs the Committee on Women in the Law. She is also the

immediate past chair of the Executive Council of the New York State Conference of Bar Leaders.

On Tuesday evening, the Committee on Attorneys in Public Service had an excellent turn out for its reception at which the 2008 Awards for Excellence in Public Service were presented to Mark L. Davies and Barbara F. Smith.

On Wednesday, our Presidential Summit was once again a popular and crowded event with two outstanding panel presentations. Chief Judge Kaye moderated the first session, titled "Breaking the Cycle for Youth at Risk," which focused on law-related issues involving youth at risk, including ratification of the UN Convention on the Rights of the Child and an examination of recent research on adolescent brain development. The panel, which included Immediate Past ABA President Karen Mathis, also addressed strategies for reducing Family Court and criminal justice involvement, mentoring and coaching programs for adolescents, including youth in foster care, and the role of the bar and the legal community. Past Association President Steve Krane moderated the second session, titled "Providing Legal Services in a Globalized World: Radical Change, Opportunity or Both?" Our panel, which included Past Association President Jim Moore, leaders from our International Law and Practice Section as well as academic experts, had a spirited and thoughtful discussion regarding the ways in which the globalization of the world's economies is affecting the operations of law firms and the ways in which legal services are and will be delivered.

On Thursday, we hosted our seventh annual "Justice for All" Luncheon, at which we recognized our Empire State Counsel honorees who have provided at least 50 hours of free legal services to the poor during the preceding calendar year. Our keynote speaker was Lloyd Constantine, Senior Advisor to Governor Spitzer, who addressed the Governor's 2008 agenda for legal services to the poor.

This year's Annual Meeting has featured a week of outstanding events, educational programs, and the opportunity to meet and greet friends and colleagues.

As I complete my eighth month as your President, I continue to marvel at the extent and variety of the issues, programs and initiatives with which our Association is involved. We honor you for your continued service to the profession, the public and our justice system. I am humbled by your selfless dedication and commitment to the work of this Association. Working together we have been able to accomplish much and I look forward to our continued collaboration through the balance of my term.

Respectfully submitted,

Kate Madigan

MEMORIAL
to
EUGENE C. GERHART

Presented by
Robert L. Ostertag, Esq.
Former President of the New York State Bar Association
at the
New York State Bar Association
House of Delegates Meeting
February 1, 2008
New York, New York

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Eugene C. Gerhart

Eugene C. Gerhart died on October 27, 2007, at the age of ninety-five years. For thirty-seven years, he served the Association as Editor-in-Chief of our New York Bar Journal. He was an icon of our profession, and I am privileged to have been asked to speak a few words to you in his memory.

Gene was born on April 7, 1912. He graduated from Princeton University in 1934. Throughout his life he looked and conducted himself just as one would have expected a proud Princetonian to have looked and acted. He graduated from Harvard Law School in 1937 and practiced law in New Jersey until he entered the military service during WWII. He served as a Staff Judge Advocate in the United States Navy, and after the war he and his bride, Mary, settled in Binghamton, New York, whence Gene was admitted to our Bar in 1945. He practiced privately in Binghamton and ultimately became a founding member of the law firm of Coughlin & Gerhart, wherein he practiced for 57 years until his retirement in 2002. Coughlin & Gerhart grew to become one of the leading firms in Binghamton and the region.

Gene had a most distinguished career at the Bar, and in addition was active otherwise professionally and in his community. In 1934, for example, he served as a secretary to Judge Manley O. Hudson at the League of Nations in Geneva. For some 34 years, Gene served as General Counsel to the Columbia Mutual Life Insurance Company, and he chaired its Board of Directors for eight years. He served as a member of SUNY's (Cortland) Board of Trustees and chaired it for some time.

Gene was a dedicated member of this Association. In addition, he was a fellow of the New York Bar Foundation and of the American Bar Foundation as well. He served a term as President of the Broome County Bar Association and was a recipient in 1995 of its Lifetime Achievement Award. He was a member of the Binghamton Rotary and served a term as its president. In addition to his 37 years as Editor-in-Chief of the New York State Bar Journal, he also served for 20 years as an Editor of the American Bar Journal.

Aside from Gene's distinguished professional career, he was at least a semi-prolific author of books and articles on the law and otherwise. His most distinguished writings comprised two volumes on the life of Supreme Court Justice Robert H. Jackson of post-WWII Nuremberg trial fame. They were the only biographies on Justice Jackson's life ever written.

I've tried to put together a series of adjectives and descriptive words that best characterize Gene Gerhart as I knew him. Among them are:

- a gentleman;
- a gentle man;
- a quality person, to say the least;
- friendly;
- kindly;
- decent beyond adequate description;
- totally at ease with himself;
- a man of unquestioned integrity;
- a scholar, legal and otherwise;
- wise;
- a man of wise counsel;
- devoted to the spoken and written word;
- bright, bright, bright;
- anxious to assist anyone merely upon request;
- happy with his partners and proud of his firm and its accomplishments;
- and always firm, but humble.

Some people just stand out personally when you meet them. It's sometimes hard to know why, they just do - a word, a glance, a thought, a movement, a vocal inflection. Gene stood out. He looked you in the eye when he spoke with you. He had that little fatherly smile - that twinkle in his eye when he liked you or liked what he had heard. He listened to what you had to say, no matter, in my case at least, how inane. Never in my presence, at least, did he speak unkindly of anyone, though I recall that he didn't suffer fools lightly. He would go to extremes to be helpful. He had that certain charm. He just stood out. For those who might have wanted to know what being a lawyer should be about, one need only to have listened to and observed Gene.

I've taught law at Fordham University School of Law for many years. Before I close down my last class of each semester, I tell my third year students essentially the following:

If you leave here wanting to be a clerk, or a banker, or even a toll collector, fine. Be one. We need such people and they are all honorable endeavors in every way. But if you want to be a lawyer, be one. Act like one. Dress like one. Speak and write like one. Present yourself like one. Think like one. Be respectful of the Court and your colleagues and adversaries - they are not your enemies. And above all, maintain those attributes and qualities you'd like *your* lawyer to possess.

I didn't make all that up. Those are Gene Gerhart's words, spoken to me many years ago (fortunately not at me) as thoughts he believed I might like to impart to my students. Things he considered important. Words he lived by. I've done so, each and every year.

Wherever Gene is up there, he must be happy with his life. He should be.

