

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
MARRIOTT MARQUIS, NEW YORK CITY  
JANUARY 26, 2001**

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**PRESENT:** Abrams; Adler; Alcott; Amoroso; Anglehart; Asarch; Attea; Auspitz; Ayers; Bailey; Barasch; Batra; Bergen; Bing; Bleakley; Bohner; Bracken; Brett; Buckley; Buzard; Capell; Cashman; Castellano; Chakansky; Chambers; Christian; Clements; Cloonan; Cometa; Copps; Corcoran; Cyrulnik; Dale; Darche; Davis; DeFritsch; Dietz; DiGirolomo; DiLorenzo; Doerr; Dollard; Doyaga; J. Dwyer; M. Dwyer; Eggleston; Eisman; Eppers; Eppler; Evanko; Fedrissi; Fennell; Fetter; Field; Filiberto; Finerty; Fishberg; FitzGerald; Flink; Flood; B. Freedman; H. Freedman; M. Freedman; Friedman; Futter; Galloway; Gardella; Gerstman; Getnick; Gillespie; Gingold; Giordano; Golden; Goldstein; Graber; Gross; Gutleber; Handlin; Harris; Hartman; Hassett; Headley; Heller; Herold; Hirsch; R. Hoffman; S. Hoffman; Hoyer; Inclima; Jacoby; Jaffe; James; Karson; Kelly; Kendall; Kenny; M. Kessler; Kilsch; D. Klein; M. Klein; Kougasian; Krane; Kranis; Kretser; Krooks; Lagarenne; Landy; Lawrence; Leber; Levin; Lieberman; Lindenauer; Longo; Madigan; Mandell; Maney; Manley; Mawhinney; Mayer; McCarthy; Meng; Mihalick; Miklitsch; Millon; Minkowitz; Moore; Morse; Mosenson; Nashak; Netter; O'Brien; Omara; Ostertag; Palmer; Paul; Peckham; Perticone; Pfalzgraf; Pfeifer; Priore; Purcell; Quattlebaum; Rahn; Reich; Reiniger; Reizes; J. Reynolds; Richardson; Rifkin; Rocklen; Rothberg; Rothkopf; Russo; Safer; Seymour; Shapiro; Silkenat; Sloan; Souther; Spellman; Steinman; Stenson; N. Sunshine; Terrelonge; Tharp; Tippins; Tishler; Torres; Uebelhoer; Vigdor; Vitacco; Wales; L. Walsh; O. Walsh; Webb; Wimpfheimer; Witmer; Yates.

Prior to the commencement of regular business, Mr. Hassett introduced the new Director of Pro Bono Affairs, Diane Burman.

1. Approval of minutes of November 4, 2000 meeting. The minutes were deemed accepted as distributed previously.
2. Report of Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Frank M. Headley Jr. to members of the House at the Annual Meeting of the Association, was received with thanks.
3. Presentation of Ruth G. Schapiro Memorial Award. Mr. Hassett presented the ninth annual Ruth G. Schapiro Memorial Award to Joan L. Ellenbogen for her exemplary work in family law, in professional development, mentoring of women in the law, and addressing issues of concern to women in the profession and society. Ms. Ellenbogen addressed the House, expressing appreciation for this honor and citing the importance of continued initiatives on behalf of women in the profession and public.

4. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. James C. Moore reported for the Chair of the Nominating Committee, Joshua M. Pruzansky, that the committee had nominated the following individuals for election to the indicated offices for the 2001-2002 Association year:

**PRESIDENT-ELECT**

Lorraine Power Tharp, Albany

**SECRETARY**

A. Thomas Levin, Mineola

**TREASURER**

Frank M. Headley Jr., Scarsdale

**DISTRICT VICE PRESIDENTS**

**FIRST**

Mark H. Alcott, New York City  
Stephen D. Hoffman, New York City

**SEVENTH**

C. Bruce Lawrence, Rochester

**SECOND**

Edward S. Reich, Brooklyn

**EIGHTH**

Joseph V. McCarthy, Buffalo

**THIRD**

James B. Ayers, Albany

**NINTH**

Joseph F. Longo, White Plains

**FOURTH**

Peter D. Fitzgerald, Glens Falls

**TENTH**

A. Craig Purcell, Hauppauge

**FIFTH**

James F. Dwyer, Syracuse

**ELEVENTH**

Gary M. Darche, Flushing

**SIXTH**

Eugene E. Peckham, Binghamton

**TWELFTH**

Lawrence R. Bailey Jr., New York City

**AT-LARGE MEMBERS OF THE EXECUTIVE COMMITTEE**

Sharon Stern Gerstman, Buffalo  
Michael E. Getnick, Utica  
Matthew J. Kelly, Albany  
Gunther H. Kilsch, New York City  
Bernice K. Leber, New York City  
Susan B. Lindenauer, New York City

5. Memorial to Joseph D. Bermingham Jr. Hon. Vincent E. Doyle Jr. presented a memorial to former Executive Committee and House of Delegates member Joseph D. Bermingham Jr., who had passed away on October 5, 2000. A moment of silence was observed out of respect for Mr. Bermingham's memory and his contributions to the Association and legal profession. A copy of the memorial is attached to these minutes.
  
6. Report and recommendations of the 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, summarized the Committee's study and development of the recommendations contained in its report. She described the various proposals which had been divided into five general areas: (a) combating bias and prejudice and promoting access to justice; (b) providing a comprehensible justice system and addressing delays in justice; (c) improving the jury system and ensuring adequacy of court facilities; (d) addressing ethical concerns affecting the bench and bar; and (e) enhancing public understanding and media portrayal. The study included comment on strategies proposed by the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System in these five areas, proposed other recommendations on these concerns, and presented proposals on matters not raised in the Chief Judge's report.

Ms. Lieberman advised that, following her informational report to the House at the November 4, 2000 meeting, the Committee received comments from various Committees, Sections and local bar associations and had made a number of amendments to address issues raised by those entities, including public access to attorney disciplinary proceedings. She advised that the Committee was deferring, to a House meeting later in the year, consideration of the attorney disciplinary proposal to allow additional time for review and comment. It was announced that the Executive Committee had concurred with the requested deferral.

The House then addressed each of the five areas. Separate motions were adopted approving the segments on bias and prejudice and access to justice, the jury system and court facilities, and public understanding and media portrayal. A motion was adopted approving, as amended by House action, the segment on the comprehensible court system and delays in justice to clarify that the proposal to provide for prejudgment interest is made to the extent approved previously by this Association and that the "offer to compromise" recommendation adds an interest element. Prior to this action, a motion to postpone action on the prejudgment interest proposal was defeated. Also in this segment of the report, a recommendation was added supporting the availability of public access law libraries across the state to make the system more user-friendly and promote public understanding. A motion was adopted approving the segment on legal and judicial ethics as modified (absent action on the attorney disciplinary proceedings proposal) to urge, but not call for requiring, use of retainer agreements. Prior to this action, a motion to delete the proposal to require town and village justices to be admitted to

the bar was defeated and a motion to defer action on this segment of the report also was defeated.

7. Report of the President. Mr. Hassett reported on the following matters:
  - a. He plans to give testimony on the Association's behalf for the state legislative hearing on the judiciary budget. He noted that the budget includes provisions for drug treatment and drug court programs, expansion of domestic violence courts, and family, community and civil justice initiatives, as well as reconstruction projects for the Court of Appeals and Appellate Division, Third Department.
  - b. He and President-Elect Krane attended Chief Judge Judith S. Kaye's State of the Judiciary address in which she described the expansion of drug courts with treatment components and integrated domestic violence courts, and plans to seek legislation to broaden the Court System's debt collection on unpaid fines and surcharges to offset the costs of sought-after increased assigned counsel fees, the elimination of automatic jury sequestration, and a reduction in the number of criminal peremptory challenges. Additionally, the Chief Judge announced the institution of an attorney fee dispute resolution program effective June 1, 2001. The plan provides an option for *de novo* review following the dispute resolution's conclusion. The Association will monitor the program to ensure it is fair and workable.
  - c. He met with Chief Administrative Judge Jonathan Lippman to discuss issues of concern and initiatives undertaken by the Court System and Association. Topics included the judiciary budget, plans for the jury summit to be conducted by the Court System, efforts to seek trial court restructuring and increased 18-B assigned counsel fees, developments concerning multidisciplinary practice issues, and the establishment of court rules for mandatory fee arbitration. He announced that Susan B. Lindenauer and Gunther Kilsch will represent the Association at the summit and Charles J. Crimi Jr., Chair of the Ad Hoc Committee on the Jury System, served on the planning committee for this event.
  - d. The Governor's State of the State address referenced the need to reform the mandatory drug sentencing laws and the legislative leadership indicated receptivity in examining this issue. The Governor did not mention assigned counsel fees in his address but subsequently announced, with the legislative leadership's agreement, the formation of a joint task force to study compensation rates for assigned counsel and law guardians. The Association will monitor these developments and continue to press for increased rates.
  - e. The Executive Committee, at its January 25, 2001 meeting, endorsed proposals, as modified, of the Association of the Bar of the City of New York in furtherance of the effort to raise 18-B rates and adequately fund legal assistance for the poor:

To call upon every New York lawyer to take time out on Law Day to do something to further the effort to raise 18-B rates (if action has not been taken by then) and adequately fund legal assistance for the poor;

To call on every bar association to coordinate ways in which lawyers can effectively convey the message that legal services have to be adequately funded and 18-b rates must be increased, whether it be through forums, letter writing, e-mailing or phone campaigns, and the like;

To support a rally in Albany on May 1, organized by the Association of the Bar of the City of New York, to promote funding for 18-b and legal services, and encourage all interested bar associations to send representatives to the rally and then meet with their local legislators to press the point; and

To make available, to lawyers and local bars, materials, and assistance to enable them to effectuate these recommendations.

- f. Proposed amendments to the Disciplinary Rules of the Code of Professional Responsibility concerning multidisciplinary practice proposals, prepared by the Special Committee on the Law Governing Firm Structure and Operation and approved by the House, have been transmitted to the Appellate Divisions for their consideration.
- g. The Association's Lawyer Referral and Information Service has been selected to receive the Cindy A. Raisch Award of the American Bar Association's Standing Committee on Lawyer Referral and Information Service for demonstrating superior service.
- h. Reflecting concerns expressed by the Real Property Law Section, the Governor vetoed legislation that would have required sellers of one- to four-family dwellings to provide buyers with a Property Condition Disclosure Statement. The Section had found the legislation defective in that sellers could be held responsible for disclosing defects about which they may have only constructive knowledge and liable for failing to disclose defects about which they may have no actual knowledge.
- i. A subcommittee of the Special Committee on the Law Governing Firm Structure and Operation is studying issues of multijurisdictional practice. A commission of the American Bar Association is holding hearings and plans a report on this topic.
- j. He represented the Association at a conference of the Chief Judge's Commission on Alcohol and Substance Abuse in the Legal Profession at which

the Commission's action plan was released. While the Association is supportive of efforts to reduce drug and alcohol addiction and wishes to work cooperatively with the Court System, he raised concern that the approach advocated by the Commission may place too much control of existing state and local bar programs within the Court System and cited the need for bar programs to retain the flexibility and autonomy that have worked effectively in the past.

8. Report of the Special Committee on Cameras in the Courtroom. A. Vincent Buzard, Chair of the Special Committee on Cameras in the Courtroom, gave an informational report on the findings and recommendations of the Committee in examining the issues involved in audio-visual coverage of civil and criminal proceedings in the state's trial courts. In 1994, the House recommended allowing camera coverage if the parties consented and with certain limitations. In June 2000, the House directed the establishment of the special committee to evaluate developments and the Association's position. Legislation providing for a 10-year experimental period of audio-visual coverage with certain safeguards sunsetted in 1997. Since then, several judges have permitted cameras in certain trials.

Mr. Buzard described the Committee's procedures in conducting this study, including review of previous Association actions on this issue, analysis of provisions and experience in other jurisdictions, and interviews and outreach regarding experience and perspectives on audio-visual coverage. He also discussed the Committee's consideration of the roles of cameras and recommendations relating to consent, previous legislative safeguards, adequacy of notice, applications for coverage, appeal procedures, safeguards for witnesses, children and victims of domestic violence and sexual assault, protection of the identity of jurors, and limitations on coverage of side bar conferences. The Committee concluded that camera coverage should generally be permitted with certain protections. Mr. Buzard encouraged review and comment on the report in preparation for formal consideration by the House, scheduled for the March 31, 2001 agenda.

9. Report and recommendations of Committee on Attorneys in Public Service. Henry M. Greenberg, Chair of the Committee on Attorneys in Public Service, summarized the "Fundamental Concepts Concerning Government Lawyers and Government Interests" that had been prepared by the Committee as part of efforts to encourage involvement in bar associations by government lawyers. It was noted that the Executive Committee had endorsed the report at its November 3, 2000 meeting. Mr. Greenberg said that the Concepts, modeled on similar principles adopted by the American Bar Association, are intended to address concerns that have been raised regarding the ability and opportunity of government lawyers to be actively involved in bar association work. A motion was adopted approving the Concepts.
10. Report of the Chair. Mr. Krane advised that the House, at the March 31, 2001 meeting, would be asked to elect five of the NYSBA's eleven delegates to the

American Bar Association House of Delegates. He stated that the Nominating Committee had reported the following nominees for those positions: Paul Michael Hassett of Buffalo, M. Catherine Richardson of Syracuse, Lorraine Power Tharp of Albany, and James C. Moore and G. Robert Witmer Jr., both of Rochester.

11. Date and place of next meeting. Mr. Krane announced that the next meeting of the House of Delegates was scheduled for Saturday, March 31, 2001 at the Bar Center in Albany, New York.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lorraine Power Tharp". The signature is written in black ink and is positioned centrally on the page.

Lorraine Power Tharp  
Secretary





NEW YORK STATE BAR ASSOCIATION

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*In Memoriam*

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**Joseph D. Bermingham, Jr.**



JOSEPH D. BERMINGHAM, JR.



MEMORIAL  
to  
JOSEPH D. BERMINGHAM, JR.

*Presented at the  
New York State Bar Association  
House of Delegates Meeting  
January 26, 2001  
New York Marriott Marquis*



# JOSEPH D. BERMINGHAM, JR.

1938-2000

**T**hank you, Mr. President. I am honored by your invitation to memorialize my good friend and former partner, Joe Bermingham.

*Sometimes we speak of a member of our legal profession as a lawyer's lawyer. Joe Bermingham was a lawyer's lawyer. We mean the phrase as a compliment and we assume everyone knows what it means. When used to describe Joe Bermingham, it means that while he was one of us, he was a little bit better lawyer than we. He was the lawyer we would go to if we needed a lawyer because his advice was always sound and reasonable and his representation was as good as you could get. He represented his clients with zeal and dedication. His was a brilliant mind. In both the local and state bar associations, he was a leader. Joe was President or Vice President of just about every organization he joined, including the Western New York Trial Lawyers, Erie County Bar Association and the New York State Bar Association. He was respected and admired for his innovative approach to old problems and his sense of fairness.*





*In 1993, the Erie County Bar honored Joe as the lawyer of the year for outstanding service and advocacy.*

*He was my partner for many years until I went on the bench in 1979. He remained my friend and while I didn't see him every day or even every week, I knew, as many others knew, that Joe would always be there for you whenever the need arose. You knew where he stood on any issue. He specialized in representing people and that often took guts. That is where he excelled because he really cared and it showed. His clients ranged from a member of the Buffalo Hells Angels to the head of a corporation charged with embezzlement to an indicted lawyer to the victim of medical malpractice.*

*I was delighted in the last months of his life to see him at work as a Principal Law Clerk for the Erie County Surrogate. We all knew he was sick, but Joe never let it show. He continued to work, advising people who came to him in a sound and reasonable way. He was still the consummate lawyer.*

*In his private life, he was a devoted husband to Ann Bermingham and the father of four children. He was active in his church. As active as he was in his professional life, so was he in his private life, again becoming an officer of such divergent groups as the Soccer League, Marriage Encounter and others. He was charitable, kind, generous with his time and always helping others.*



*He died in Hospice in Buffalo at the age of 62. I saw him two days before his death. He knew his time was near, and when I mentioned how hard the last few months must have been for him, his response, a typical Joe Bermingham response, was that "it was harder on my family." He died and left a void in our profession that will not be easy to fill. We are truly diminished by his absence.*

