

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
THE OTESAGA, COOPERSTOWN, NEW YORK  
JUNE 24, 1989**

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**PRESENT:** Adler, Agress, Ange, Aronson, Baker, Barthold, Basch, Baxter, Beckerman, Birmingham, Bowers, Bracken, Brenner, Brevorka, Bucki, Clarke, Cometa, Connolly, Cooke, Corcoran, Cox, Cregg, Davidson, DelleCese, DeMaio, Dollard, Dunne, Dwyer, Dyer, Eiber, Emerson, Eppler, Esteve, Faga, Farrell, Ferguson, Fisher, Fitzgerald, Freedman, Geltzer, Gershon, Goldblum, Gordon, Greco, Grobosky, Grogan, Haig, Hall, Hart, Hawkins, Headley, Heming, Horan, Hurd, Hyman, Jaffe, Jones, Kaufman, Kenney, King, Koeltl, Liebschutz, Longo, Luther, MacCrate, Madigan, Markuson, Marrero, Martusewicz, McDonald, McGlenn, McGoldrick, McGraw, McKay, Millon, Moore, Morris, Murphy, A. Murray, C. Murray, K. Murray, Netter, Oberman, Obold, O'Brien, Offermann, Ostertag, Patterson, Pearl, Penzel, Perles, Perrin, Pfeifer, Pruzansky, Pugh, Pulley, Rachlin, Reizes, Rice, Richardson, Ritholz, Robinson, Rosiny, Rybak, Sampson, Santemma, Schapiro, Schnall, Seward, Simberkoff, Small, Smith, Souther, Spellman, Stave, Stiles, Taylor, Vigdor, Walker, Wanderman, Weaver, Williams, Witmer, Wolf, Yanas, Zinni.

1. Introduction of new members. The new members of the House who had assumed office on June 1 were introduced and welcomed by Mr. Cometa. The following is a list of the new members of the House: Roger Bennett Adler; Stephen D. Aronson; Richard T. Aulisi; Ellen L. Baker; John J. Barnosky; Eli B. Basch; Barbara Miller Baxter; Gerald Beckerman; Harold J. Brand, Jr.; Carl L. Bucki; Herbert L. Camp; John D. Doyle; John R. Dunne; Sharon L. Dyer; Klaus Eppler; Jacob Epstein; Charles F. Foote; Melvin D. Freidel; Kenneth T. Gibbons; Carmel J. Greco; Scott F. Harley; Theodore D. Hoffmann; Joseph Jaffe; Irwin Kahn; Thomas V. Kenney, Jr.; John G. Koeltl; Wallace L. Leinhardt; Sanford J. Liebschutz; Carl D. Lobell; Frederick C. Luther; Kathryn Grant Madigan; Gloria C. Markuson; Victor Marrero; Kim H. Martusewicz; Steven E. Millon; Philip G. Minardo; James C. Moore; Michael S. Oberman; Jon H. Porter; Joshua M. Pruzansky; Lauren D. Rachlin; Leslie N. Reizes; Daniel A. Rybak; David S. Sampson; Ruth G. Schapiro; Flora Schnall; Roy J. Schwartz; Robert A. Small; Jules L. Smith; Thomas J. Spellman, Jr.; Thomas M. Stark; Fern Schair Sussman; James F. Taylor; Merle M. Troeger; Fred B. Wander; Richard Weinberger; Frank V. Zinni.

2. Approval of minutes of April 15, 1989 meeting. The minutes were approved as distributed.

3. Report of Treasurer. Mr. Gershon reviewed the audited balance sheet and statement of revenues for the year ending December 31, 1988 and indicated that the Association had completed the year with a previously anticipated deficit of approximately \$49,000, which amount was covered by the surplus from the preceding year. He then summarized the Treasurer's report for the period January 1 to May 31, 1989 and indicated that the Association remained in sound financial condition as it neared the midpoint of the current fiscal year. The report was received with thanks.

4. Status report concerning Bar Center expansion. For the benefit of the new members, Mr. Yanas summarized the status of the Bar Center expansion since the June 1988 meeting of the House of Delegates at which approval had been given to

proceed with a reduced project at a cost of \$6.8 million. He reported that consistent with this action, the Ad Hoc Committee on Bar Center Facilities and Space Requirements had coordinated with The Saratoga Associates, the project architect, to complete the redesign for the project which will incorporate improvements in the existing Bar Center with renovations to the adjacent townhouses at Nos. 5 and 6 Elk Street and the construction of a fourteen foot addition to the rear of the latter buildings. Mr. Yanas noted that the necessary contracts had been executed with the L.A. Swyer Co., the general contractor, and that work had commenced with a formal wall breaking ceremony on November 22, 1988. He indicated that since that time work had been progressing on schedule, with completion anticipated no later than June 1990.

Mr. Yanas reported that interim financing arrangements had also been put in place with Norstar Bank of Upstate NY. He advised that the statewide fund-raising campaign had raised \$3.8 million thus far, with \$1.1 million of this amount having been pledged during the renewed effort of the past year. Mr. Yanas stated that the campaign would be continuing in all areas of the state during the ensuing months. He urged those members of the House who had not yet contributed to do so, as the level of support demonstrated by the Association's governing body would be critical to receiving favorable responses from law firms, foundations and corporations which were being approached by the campaign volunteers.

**5. Report and recommendation of Commercial and Federal Litigation Section.** Eli R. Mattioli, Chair of the Committee on Federal Statutes of Limitations of the Commercial and Federal Litigation Section, summarized the section's report which recommends the enactment of comprehensive federal statutes of limitations to promote the uniform and efficient resolution of limitations issues connected with federal civil claims. Citing the manner in which the lack of uniform statutes of limitations has affected areas of law such as securities regulation, civil rights and labor law, he noted the confusion, inconsistency and litigation which have been generated. Mr. Mattioli outlined the remedial action proposed by the section, including the enactment of statutes of limitations for the major federal statutory causes of action that presently lack them; the enactment of a general "catch-all" statute of limitations to govern all causes of action not otherwise provided for; and the enactment of uniform tolling provisions to govern the application of all federal statutes of limitations. After discussion, the following resolution was adopted on motion of the House:

**RESOLVED**, that the House of Delegates hereby approves the report of the Commercial and Federal Litigation Section with respect to statutes of limitations in federal litigation and further approves the particular recommendations for legislation set forth at page 16 of said report.

**6. Report of Committee on Association Insurance Programs.** James C. Moore, Chair of the Committee on Association Insurance Programs, summarized the history and growth of the sponsored insurance program since its inception, and the detailed evaluation of the program which the committee had conducted during the past two years, including the performance of the Bertholon-Rowland Corp. as administrator in comparison with the services offered by similar organizations. He detailed the circumstances with respect to the renewal of administrative services and royalty agreements with Bertholon-Rowland and advised the House of the approval letter received from the State Insurance Department. Mr. Moore described plan improvements

under consideration with Bertholon-Rowland, especially those relating to professional liability insurance and health care coverage, and indicated that developments in these areas would be announced in the near future. After Mr. Moore responded to questions and comments from members of the House, the report was received with thanks.

**7. Presentation of Root/Stimson Award, Public Service Awards and Award of Merit.** Hon. Domenick L. Gabrielli, a member of the Committee on Lawyers and the Community, presented the Root/Stimson Award to attorney James R. Murdock, Jr. of Ticonderoga for outstanding service to the community.

Joseph D. Birmingham, Jr., Chair of the Committee on Lawyers and the Community, presented the Public Service Award to Dennis J. Wittman of the Genesee County Victim Assistance Program, for his outstanding contribution to the betterment of the administration of justice. The Public Service Medal was presented posthumously by Mr. Birmingham to Alphonse B. Deal, a Supreme Court Clerk in New York County, for demonstrating exemplary courage in protecting the integrity of governmental operations and the system of justice.

Edward J. Moses, immediate past Chair of the Committee on Lawyers and the Community, presented the Award of Merit for larger associations to the Bar Association of Nassau County and the Award of Merit for smaller bar associations to the Columbian Lawyers Association in recognition of distinguished professional and public service accomplished through programs administered at the local level.

**8. Report of President.** Mr. Yanas expressed appreciation to Mr. King for his energetic and dedicated leadership as president during the past year, and presented him with a plaque inscribed as follows:

The New York State Bar Association presents this testimonial to Henry L. King in recognition of his devoted service to the Association in the successful furtherance of its ideals and in the promotion of the best interest of the profession through his service as President of the Association 1988-89.

In view of the time required to complete the other agenda items, Mr. Yanas advised that he would forego presentation of the balance of the usual oral report, and submitted the attached written summary for incorporation with these minutes to apprise the members of significant matters.

**9. Report and recommendation of Committee on Lawyer Referral Service.** Robert T. Booth, a present member and immediate past Chair of the Committee on Lawyer Referral Service, summarized the committee's report and recommendations with respect to proposed minimum standards for lawyer referral services proposed by the Ad Hoc Committee on Private Lawyer Referral Services. He outlined the general nature of legitimate problems which the proposed standards were designed to address, but noted the concerns which had been raised with respect to the standards by the committee, as well as by county and local bar associations which operated referral services. Mr. Booth advised that the proposed standards could have an unintended adverse impact on smaller bar-sponsored referral services, causing them to cease operation, thus shifting an increased burden to the Association's Lawyer Referral

and Information Service. After discussion, the following resolution was approved unanimously on motion of the House:

**RESOLVED**, that the House of Delegates of the New York State Bar Association hereby approves the report of the Committee on Lawyer Referral Service dated June 7, 1989, as amended, and further requests that the President appoint a special committee to study the various types of lawyer referral services operating in the state with the goal of determining where problems exist which warrant remedial action, and formulating appropriate means to address such problems for consideration by the House of Delegates and, if approved, for recommendation to the appropriate regulatory authorities.

10. Preliminary report of Special Committee to Consider Mandatory Continuing Legal Education in New York. Robert B. McKay, Chair of the Special Committee to Consider Mandatory Continuing Legal Education in New York, summarized the committee's study of mandatory continuing legal education, as requested by the House of Delegates at the October 1988 meeting. He outlined the general nature of the proposed mandatory continuing education plan developed by the committee and indicated that copies would be distributed in July for review by Association sections and committees, county and local bar associations, and other interested groups. He stated that the proposed plan, if approved, would be implemented by rules adopted by the Court of Appeals, and would be administered by a commission appointed by the Chief Judge and the four Appellate Division Presiding Justices. The plan contemplated attorneys completing 24 hours of study every two years, and would be sufficiently flexible to allow for self study as well as attendance at approved programs. He noted that the Chief Judge and legislative leaders had been apprised of the study. Mr. McKay advised that after comments had been received, a final draft would then be circulated for consideration by the House later in the year.

Discussion then ensued regarding the committee's study, and concern was expressed that further contacts with the Judiciary and the Legislature at this time might convey a misleading impression that the Association had already adopted a position favoring mandatory continuing education. A motion to preclude the circulation of materials outside the membership of the Association, other than the county or local bar associations, until such time as the House of Delegates acts on the question whether the concept of mandatory continuing legal education should be advanced was considered and defeated by vote of the House. A further motion was then adopted that the issue whether the House should support the concept of mandatory continuing legal education be placed high on the agenda for consideration by the House no later than the January 1990 meeting. It was also the sense of the House that the transmittal of the draft plan and any related materials should reflect that the Association had not yet taken a position with respect to mandatory continuing legal education.

11. Report and recommendation of Finance Committee concerning a reduced dues program. Mr. Gershon summarized the study made by the Finance Committee of the feasibility of implementing a dues waiver program, as suggested at the October 1988 meeting of the House. He outlined the features of the proposed dues reduction program which was being recommended for adoption on a two-year trial basis. Mr. Gershon indicated that rather than reducing dues for any particular categories of members, the program will permit individual members whose financial circumstances are such that payment of full dues would constitute a financial hardship to waive a portion of their dues at levels of 25, 50, 75 or 100 percent, upon self-certification that such waiver

is necessary. After discussion, the following resolution was adopted unanimously on motion of the House:

**RESOLVED**, that the House of Delegates of the New York State Bar Association hereby approves the implementation on a two-year trial basis of the dues waiver program as recommended by the Finance Committee in its May 1989 report.

12. **Election of district representatives to the Nominating Committee.** As an item of unfinished business carried forward from the previous meeting, Mr. Cometa reported that the vice-president and elected delegates from the Sixth District had nominated Dwight R. Ball and Gordon E. Thompson to serve as representatives from that district to the Nominating Committee. A motion was adopted electing Messrs. Ball and Thompson as district representatives.

13. **Date and place of next meeting.** Mr. Cometa announced that the next meeting of the House of Delegates will be held on Saturday, October 28, 1989 at the Holiday Inn Crowne Plaza, White Plains, New York.

July 26, 1989

To: Members of the House of Delegates

Re: President's Report in Connection  
with the June 24, 1989 House Meeting

As those members who attended the June 24 meeting of the House in Cooperstown already know, the time required to complete the other agenda items precluded my giving the usual President's report, other than to recognize Henry King for his outstanding leadership of the Association during the past year. I felt it was important that sufficient time be allocated to the other agenda topics, without my detracting from that time. Consequently, in lieu of that oral report, I am submitting the following summary of significant items for your review, as I believe that the Association is in the process of addressing a number of topical issues which you should find of interest.

1. Office of Court Administration. The Association's quarterly meeting with the Office of Court Administration took place on June 13, 1989 in New York City. Among the items discussed were the following:

a) Additional judges. Chief Judge Wachtler advised us, based on information from the legislative leaders, he anticipated that the impasse existing between the Senate and Assembly with regard to the additional thirteen Court of Claims Judges would be resolved and the necessary authorization given to establish those positions. While the Legislature subsequently adjourned without taking action, everyone connected with the process remains hopeful that approval for the judges will be given when the Legislature next convenes.

b) Courthouse facilities. Chief Administrator of the courts Matthew J. Crosson reported that the program to improve courthouse facilities is progressing. Some twenty plans for upstate counties have been approved thus far, and major difficulties with respect to the facilities at 80 Centre Street in New York City have been resolved, which should permit the renovation of that structure over the next three to four years. Sites for additional facilities in New York City's other boroughs are being identified as well. As has been our past practice, the Association will continue to cooperate with the Office of Court Administration and local bar groups to secure much-needed court facilities throughout the state.

c) Mandatory continuing legal education. Prof. Robert B. McKay, who chairs the Association's Special Committee to Consider Mandatory Continuing Legal Education in New York, provided the Chief Judge with a status report concerning the committee's activities and outlined the general terms of the mandatory continuing education plan which it is drafting. The Chief Judge and the courts are withholding comment for the present to permit the House to consider and formulate an official position with respect to this issue.

d) Mandatory pro bono. The Chief Judge advised that he anticipated release of the report by the Committee to Improve Availability of Legal Services during the summer. Actually, the report was released on June 30, 1989 and I will soon appoint a special committee to study the report and make recommendations, if the committee feels it is needed. The Chief Judge advised that bar associations will then be allotted

time to review and comment on the committee's proposals. He indicated statewide hearings will be scheduled for the fall, and that bar groups will have the opportunity to present their views. No formal action is contemplated before the end of this year, so there will be an opportunity for the Association to address this issue in an effective manner.

e) Attorney discipline system. Chief Judge Wachtler noted that, as stated in recently published news accounts relating to the situation involving Presiding Justice Murphy and the Departmental Disciplinary Committee for the First Department, the full Appellate Division had filed with the Court of Appeals a complete report of its investigation into the manner in which the committee's chief counsel and his assistant had been discharged. In response to a recommendation contained in the report that a statewide, centralized attorney discipline system be implemented, we have transmitted to each of the four Presiding Justices a copy of the Committee on Professional Discipline's "Comprehensive Study of the State Discipline in New York State" which the House had approved in 1985. That report had recommended retention of the present four department systems, but with the adoption of modifications to promote greater uniformity. We will continue to monitor and report on developments in this area.

2. 1988-89 Report to the Membership. Henry King, my immediate predecessor, has prepared a comprehensive report to the membership covering the 1988-89 Association year. It is being published as an insert in the July issue of the State Bar Journal, and you are encouraged to read this report which demonstrates the Association's vitality, growth and breadth of activity during the past year.

3. Juvenile Justice awards. On May 2, the Committee on Juvenile Justice and Child Welfare presented its Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare to Senator Mary B. Goodhue of Mt. Kisko and Member of the Assembly Albert Vann of Brooklyn. In addition, Hon. Robert P. Patterson, Jr., Federal District Judge and a former Association President, received a special award for his longstanding interest in issues relating to juvenile justice and his support for the creation of the committee in 1979.

4. 1989 Association General Meeting. The Special Committee on Association Meetings advises that plans are well under way in cooperation with the Westchester County Bar Association and other bar groups in the Ninth District for the 1989 General Meeting which will be held in White Plains October 26-28, 1989. You will be receiving all the necessary registration and program information as we draw closer to the meeting.

5. Amicus curiae brief. At the request of the Committee on Legal Aid, and with the authorization of the Executive Committee, the Association has filed an amicus curiae brief with the Appellate Division, First Department, in Donaldson v. State of New York, a case involving the right to counsel in eviction proceedings coming before the Housing Court in New York City. In the brief, without taking a position on the merits of the case, the Association has apprised the court of the detailed legal needs survey of the indigent undertaken by the Committee on Legal Aid and its findings with respect to the need for legal assistance by low-income families in connection with housing matters.

6. IOLA Fund. Under the able direction of former Association President Justin L. Vigdor, who chairs its Board of Trustees, the Interest on Lawyer Account Fund of the State of New York continues to make substantial progress in implementing the mandatory IOLA program. With the cooperation of local bar associations and banking institutions, the Fund has approximately one-half the banks and attorneys in the state enrolled in the program. The Fund will continue its efforts to obtain full compliance.

All eligible Association members are urged to participate, if they are not already doing so, as their involvement will aid considerably in generating additional funds for civil legal services programs.

**7. Meeting with the President of The Association of the Bar of the City of New York.** On June 13, Angelo Cometa and I met with Jim Oliensis, President of The Association of the Bar of the City of New York, to discuss topics of mutual interest, including random audit of attorney trust accounts, the enhancement of opportunities for minorities in the legal profession, mandatory continuing legal education, mandatory pro bono, and the amendments to the Code of Professional Responsibility presently before the Appellate Divisions. We found this exchange of views both informative and helpful, and may seek similar meetings with other bar groups as a means of promoting improved communications.

**8. Minorities in the profession.** During the coming months, Angelo Cometa and I will be exploring various avenues for increasing minority participation in the Association. We will be arranging to attend meetings of the various ethnic and minority bar associations, as well as gathering representatives from these groups to discuss their problems and concerns.

**9. The homeless.** Given the rise in homelessness both nationally and in the state, Angelo and I are in the process of gathering and analyzing data to determine if there is a constructive role for the Association in addressing the legal problems of the homeless. I will keep you advised of any initiatives that the Association might consider undertaking in this area.

**10. Cameras in the courtroom.** As I am sure you know, the Legislature has refined and extended for an additional two years the experimental program for audio-visual coverage of trial court proceedings. In advance of this action, the position taken by the House at the April 15 meeting was conveyed to the Legislature to ensure that the Association's views were considered. In response to the comments of the Association and those by other interested groups, the following modifications were made to the experimental program: requests for coverage must be made at least seven days in advance of the commencement of the proceedings to be covered; the consent of the parties is required for coverage of arraignments and suppression hearings; witnesses may request an exemption from coverage; provision has been made for the formation of a temporary advisory commission to report to the Chief Judge; and rules are to be promulgated governing the submission of materials to the Office of Court Administration.

**11. Code of Professional Responsibility.** The coordinating committee designated by the four Appellate Divisions to review the Association's proposed amendments to the Code of Professional Responsibility has completed its study and reported its recommendations to the four departments. Once the Appellate Divisions have completed their review of the committee report, we anticipate that they will then respond formally to the Association, which is likely to occur sometime this fall. I will keep you advised as to developments in this most important area.

**12. Committee on Judicial Selection.** Our Committee on Judicial Selection for a number of years has assisted in the appointment process for State Court of Appeals Judges by interviewing and evaluating the candidates and then reporting its findings to the Governor. The committee is now considering whether it can perform a similar beneficial function in connection with appointments to the Appellate Division, and is conferring with the Governor's office as to this possibility.



13. June 22-23 meeting of the Executive Committee. On the two days immediately preceding the House meeting in Cooperstown, the Executive Committee met and considered several matters concerning which I believe you should be informed. They are as follows:

a) Family Court. In response to a report by the Committee on Juvenile Justice and Child Welfare regarding the rise in case filings in Family Court and the lack of judges to meet this crisis, the Executive Committee has taken the position that the Governor, Chief Judge and legislative leaders should be contacted to alert them to the problem and to seek funding for additional Family Court Judges and non-judicial support personnel. Efforts will also be made to increase the budget of the Juvenile Rights Division of the Legal Aid Society, which acts as law guardian to most of the children who come before Family Court in New York City.

b) Lawyer alcoholism and drug abuse. Acting on a recommendation by the Committee on Lawyer Alcoholism and Drug Abuse, the Executive Committee approved in concept the establishment within the Association of a professionally staffed educational and outreach program to aid in assisting impaired attorneys. The program anticipates cooperating with local bar groups and rehabilitation centers, as well as disseminating information, training lawyers in the intervention process, monitoring recovering lawyers, and assisting with impaired lawyers in all areas of the state. Before implementing the program, it will be necessary for the officers to evaluate relevant budgetary considerations, but we are hopeful that it can be established to enhance the opportunity for chemically-dependent attorneys to receive effective treatment and long-term support.

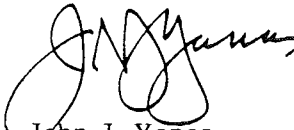
c) International law. At the behest of the International Law and Practice Section, the Executive Committee has endorsed ratification by the United States of the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods. If ratified, the convention will provide a reasonably clear set of choice of law rules to apply in controversies between parties having their businesses in different countries, thus eliminating uncertainty for American businesses regarding what choice of law rules would be invoked by the courts.

d) Judicial evaluations. The Executive Committee heard a preliminary report from the Committee on Judicial Administration recommending the institution of a judicial evaluation program on a three-year pilot basis. We also received comments from the Judicial Section with respect to the proposal. In view of the complexities inherent in any evaluation system, which would require the cooperation of the Bench and the Bar, the Committee on Judicial Administration has been asked to reconsider its proposal and to confer with representatives of the Judiciary and county bar associations which have implemented evaluation programs successfully at the local level. After this has been done, we anticipate further discussion by the Executive Committee and will keep you advised as to future developments.

e) Law guardian system. The Task Force on the Law Guardian System gave a status report concerning its efforts to secure improvements in the law guardian system as it functions in New York. The task force is in the process of discussing the situation with the four Appellate Division Presiding Justices, and anticipate being in a position to furnish a more comprehensive report to the Executive Committee and House of Delegates later this year.

As is evident from the foregoing summary, the Association continues its involvement in a myriad of issues having a significant bearing on the legal profession. I can safely say that this is possible only through the commitment of our members especially those taking an active role on our sections and committees. I am grateful for their willing donation of so much time and talent in furthering the work of the Association. I applaud their efforts, and I assure you I will do all in my power during the balance of my term to sustain the Association in its position of leadership in serving the profession and the public.

Respectfully submitted,



John J. Yanas