

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 10, 1990

PRESENT: Adler; Agress; Albert; Ange; Avery; Baker; Berman; Bracken; Brenner; Brick; Bucki; Buzard; Cedarbaum; Clarke; Coffey; Cometa; Connolly; Cooke; Costello; Cregg; Daly; Davidson; DelleCese; Demarest; Dollard; Duckworth; Dyer; Eppler; Fales; Farrell; A. Fisher; K. Fisher; Freedman; Gaal; Galloway; Geltzer; Gershon; Ginsberg; Goldblum; Goldstein; Grogan; Gross; Haig; H.G. Hall; Harper; Hassett; Hawkins; Heming; Hesterberg; Hoffmann; Horan; Hurd; Hyman; Jaffe; Kahn; Kennedy; T. Kenney; Kessler; King; Klein; Leinhardt; Liebschutz; Long; Lowe; Luria; MacCrate; Madigan; Mahoney; Marrero; McDonough; McDowell; McGlinn; McGoldrick; Meng; Minardo; Moore; A. Murray; C. Murray; Neimeth; Netter; Obold; Offermann; Opotowsky; Ostertag; Pearl; Peckham; Penzel; Perles; Pfeifer; Pruzansky; Pulley; Raisch; Reich; Reid; K. Reilly; Reiniger; Reizes; Rice; Richardson; Ritholz; Robfogel; E. Robinson; Roper; Rosiny; Rubin; Santemma; Schapiro; Schlenker; Schumacher; Small; Souther; Stack; Stave; Stern; Stoloff; Sussman; Tenney; Thuillez; Troeger; Van Benschoten; Vigdor; Walker; Wanderman; Witmer; Wolf; Woodman; Yanas; Zalayet.

1. Approval of minutes of June 22-23, 1990 meeting. The minutes were approved as distributed.
2. Report of Treasurer. Mr. Gershon summarized the Treasurer's report covering the period January 1 to September 30, 1990, copies of which had been circulated to the members of the House. He outlined the status of the major fund categories contained in the budget, and advised that the Association remained in sound financial condition at the three-quarter point in the fiscal year, with the Finance Committee projecting a year-end surplus of approximately \$600,000. With regard to the surplus, Mr. Gershon noted that this was normal for the second year following a dues increase, as the surplus would be expected to sustain operations for the ensuing year. The report was received with thanks.
3. Presentation by Finance Committee of the proposed 1991 income and expense budget. John G. McGoldrick, a member of the Finance Committee, summarized the significant components contained in the proposed 1991 budget, and advised that the recommended amounts would maintain the sound financial condition of the Association for the ensuing year. He stated that \$155,000 had been included in the expense portion of the budget to assist The New York Bar Foundation in paying the debt service on the \$2.7 million borrowed in connection with the Bar Center expansion. Mr. McGoldrick indicated that the Association officers were conferring with The Foundation to determine the best and most economical approach for liquidating this debt, and that once the various options had been studied, a full report would be presented to the House and authorization would be sought to pursue the

recommended course of action. Following discussion, a motion was adopted approving the proposed 1991 income and expense budget as submitted.

4. Report and proposed Bylaws amendment by Committee on Bylaws. John P. Bracken, Chair of the Committee on Bylaws, summarized a proposed Bylaws amendment drafted at the request of the Nominating Committee to provide for the selection of alternates to fill vacancies which might arise on the Nominating Committee. He outlined the procedure formulated by the Committee on Bylaws, and noted it paralleled that utilized for the selection of the regular members of the Nominating Committee, including the consultation process at the local level, as instituted in 1988. Mr. Bracken advised that the proposed amendment would assist in ensuring that the various judicial districts were represented fully at meetings of the Nominating Committee, thus aiding the committee in discharging its responsibilities in an effective manner.

Discussion then ensued as to the operation and effect of the proposed amendment. During this discussion, concern was raised that the Bylaws would permit a sitting member of the Nominating Committee to remove ineligibility for other Association office by resigning from the committee prior to any meeting at which nominations were to be considered, and that this might raise an appearance of impropriety. It was suggested that this perception could be avoided by adopting language which would preclude individuals elected to the Nominating Committee from being nominated for other office during their one-year term. It was the sense of the House that the incorporation of such a limitation would be appropriate, and that the Committee on Bylaws should consider same in advance of the Annual Meeting in January 1991.

A majority of the members of the House then subscribed to the proposed amendment as presented for filing with the Secretary for consideration at the January 1991 Annual Meeting of the Association with the understanding that, pursuant to the Bylaws, further germane revisions to the proposal, such as that discussed at this meeting, could be raised for consideration at that time.

5. Report of President. Mr. Cometa reported the following matters:

a) As authorized by the Finance and Executive Committees, the Association had expanded its services to members to include a Lawyer Assistance Program to assist attorneys, judges and law students afflicted with problems of alcohol or drug abuse and a Department of Law Office Economics and Management to assist attorneys and law firms with educational programs and information in the area of law office administration procedures and equipment. Mr. Cometa introduced Ray M. Lopez and Stephen P. Gallagher, the respective staff directors for the two new programs. He also reported that, as authorized previously by the House of Delegates, Thomas M. Roberts had been selected to fill the position of Pro Bono Coordinator and would be joining the staff at the end of the year to assist the President's Committee on Access to Justice in its efforts to enhance the delivery of pro bono civil legal services to the indigent.

b) On September 18, 1990, he and Mr. Ostertag had met with representatives of the Office of Court Administration to discuss matters of mutual interest. He indicated that the topics addressed had included the following matters:

i) The 1991-1992 Judiciary budget. Chief Judge Wachtler had advised that the Office of Court Administration would again be seeking the support of the Association for the 1991-1992 Judiciary budget, especially in view of the worsening of the state's financial condition.

ii) Pro bono service. The Chief Judge reiterated his pledge made on Law Day that he would defer pursuing mandatory pro bono legal assistance to the poor for a two-year period to allow the organized Bar time to demonstrate that voluntary activities are at a level sufficient to obviate the need for mandated service. Chief Judge Wachtler reported that to assist this effort, the Administrative Board had adopted resolutions permitting attorney court employees to engage in pro bono activities in courts other than those in which they are employed, and waiving the \$300 biennial registration fee for attorneys engaged solely in pro bono work. Mr. Cometa noted that the Association was also pursuing efforts in this area, such as initiatives to streamline procedures for those individuals seeking *in forma pauperis status*, and the pro bono workshop conducted earlier in the fall by the New York State Conference of Bar Leaders. He indicated that, as announced earlier, with the addition of Mr. Roberts to the staff later in the year, the President's Committee on Access to Justice would be in a position to enhance its efforts in cooperation with county and local bar associations throughout the state.

Messrs. Marrero and Vigdor then supplemented the President's remarks by reporting on the status of the Chief Judge's Pro Bono Review Committee which they co-chair, noting that it will be measuring the success of the private Bar in enhancing voluntary pro bono efforts over the next two years. They indicated that the committee will be collecting base line data and they further encouraged the cooperation of the various bar associations in this effort.

iii) Sanctions for frivolous litigation. Chief Judge Wachtler advised that the proposal by the Association's Special Committee to Consider Sanctions for Frivolous Litigation in New York State, as approved by the House at the April meeting, would be considered by the Administrative Board at its next meeting.

iv) Mandatory continuing legal education. The Chief Judge advised that the Administrative Board would review the proposed plan for mandatory continuing legal education as approved by the House at its June meeting. Mr. Cometa noted that some preliminary concern had been expressed by the courts regarding the reporting and enforcement problems such a plan is likely to generate, and that he would keep the House apprised of developments in this area.

v) Uniform format for Appellate Division rules. The Chief Judge was furnished with the report of the Commercial and Federal Litigation Section, as approved by the House in June, supporting the adoption by the Appellate Divisions of a uniform format for their rules. Mr. Cometa indicated that, as with the preceding item, he would keep the House informed regarding future developments.

vi) Courthouse facilities. The Chief Judge reported that the Office of Court Administration was in the process of pursuing implementation of the capital construction and renovation plans developed by the various localities throughout the state, although delays caused by fiscal and administrative problems were being encountered in New York City.

c) In response to the New York City Mayor's "Safe Streets, Safe City" criminal justice program, the Chief Judge had announced a series of court reforms intended to deal with the anticipated rise in criminal cases. These measures included requests for additional judges, the implementation of community courts at the precinct level to handle low-level misdemeanors, increased reimbursement for court-assigned counsel, and special courtrooms to handle the oldest cases involving violent felonies.

d) The Association had undertaken a major effort to distribute copies of the amended Code of Professional Responsibility to law firms, individual attorneys, county and local bar associations, grievance committees, and law schools. In addition, a panel of experts drawn from the Committees on Professional Ethics and Professional Discipline, and the Special Committee to Review the Code of Professional Responsibility were in the process of making educational presentations to interested bar associations and grievance committees throughout the state.

e) During the 1990 session, six affirmative legislative measures proposed by the Association, with the prior authorization of the Executive Committee, had been enacted into law. Mr. Cometa also noted that, as authorized by the House, the Association had successfully registered its opposition to pending "no fault" divorce legislation containing numerous defects and inadequacies. He reported further that the Association had opposed, although unsuccessfully, the increase in the attorney registration fee and the transfer of court revenues to the state's general fund.

f) In cooperation with The New York Bar Foundation, the Association officers were in the process of developing suitable means, including wall plaques and an illuminated book, to recognize those who had contributed to the Bar Center campaign.

g) In recent weeks, he had attended meetings of a number of sections and committees and their broad range of activities reflected the vital work of the Association on behalf of its members, the legal profession generally, and the public.

6. Report of Chair. Mr. Ostertag reported the following matters:

a) In his capacity as co-chair of the President's Committee on Access to Justice, the committee would, with the cooperation of the county and local bar associations, as well as the Chief Judge's Pro Bono Review Committee, encourage the enhancement of voluntary pro bono civil legal assistance to the indigent and the gathering of meaningful data regarding the extent of these efforts throughout the state.

b) As President-Elect, he had attended numerous Association section and committee meetings, local bar association functions, American Bar Association

meetings and the recent session of the Mid-Atlantic Conference of Bar Leaders as part of the joint effort with Mr. Cometa to ensure cooperative efforts among bar groups at the local, state and national levels.

7. Memorial to Hon. David W. Peck. Robert MacCrate presented a memorial to Hon. David W. Peck, a former Association President and Presiding Justice of the Appellate Division, First Department, who had passed away recently. A moment of silence was observed out of respect for his memory and his contributions to the Association and the legal profession. A copy of the memorial is attached to these minutes.

8. Memorial to Robert B. McKay. Dean John D. Feerick presented a memorial to Robert B. McKay, a former member of the House of Delegates and Chair of the Special Committee to Consider Mandatory Continuing Legal Education in New York, who had passed away during the summer. A moment of silence was observed out of respect to his memory and his contributions to both the Association and the legal profession. A copy of the memorial is annexed to these minutes.

10. Date and place of next meeting. Mr. Ostertag announced that the next meeting of the House of Delegates will be held on Friday, January 25, 1991 at the Marriott Marquis in New York City.

MEMORIAL TO DAVID W. PECK
DECEMBER 3, 1902 - AUGUST 23, 1990
PRESENTED AT NEW YORK STATE BAR ASSOCIATION
HOUSE OF DELEGATES MEETING
NOVEMBER 10, 1990
ALBANY, NEW YORK

David Warner Peck was the sixty-fifth President of the New York State Bar Association serving in 1962-63. He died on August 23, 1990 in his 88th year.

Born in Crawfordsville, Indiana in 1902, he entered Wabash College in his hometown at the age of 16, having skipped his senior year of high school. He graduated from Wabash in three years with distinguished honors and worked his way through Harvard Law School as a tutor who sometimes had as many pupils as any faculty member.

Upon graduation he spent two months with White & Case in New York City before joining the staff of United States Attorney Emory R. Buckner in the Southern District of New York where he served for three years. He left in 1928 and spent two years in multinational legal activity with the International Telephone and Telegraph Company.

In May 1930 David Peck joined Sullivan & Cromwell, became a partner in 1934, and led the firm's litigation practice until he accepted Governor Thomas E. Dewey's appointment to the New York State Supreme Court in Manhattan in 1943. Two years later Governor Dewey appointed Judge Peck to the Appellate Division, First Department, and two years after that designated him the Court's Presiding Justice. It is said that he was the youngest justice ever to hold that position.

On the bench he initiated the practice of annually recruiting a new law clerk and left his distinctive mark on each one. They in turn formed a devoted band who proudly claimed for themselves the title of "Peck's Paragons."

As Presiding Justice he conducted a ten-year campaign to reduce congestion in the courts which resulted in significantly reducing calendar delay in the courts to its lowest point in 57 years. During this period he was selected by President Dwight Eisenhower to serve as a Member of the Permanent International Court of Arbitration at The Hague, on which he continued to serve until 1963.

At the end of 1957 Justice Peck left the bench to rejoin Sullivan & Cromwell to resume his role as a trial and appellate advocate of great distinction. He served on various federal and state committees and commissions and in 1959 succeeded Governor Nelson A. Rockefeller as Chairman of the New York Commission on Revision and Simplification of the State Constitution. Elected President of the New York State Bar Association in 1962, three years later he became Chairman of the Board of the American Arbitration Association, a post he held for the next five years.

MEMORIAL TO ROBERT MCKAY
NEW YORK STATE BAR ASSOCIATION
NOVEMBER 10, 1990

Thank you for the honor of delivering this tribute in memory of Robert McKay on behalf of the New York State Bar Association. Bob was a dearly valued member of the legal profession and a devoted servant of justice. When earlier this year he received the Legal Aid Society's Servant of Justice Award, he commented: "Tonight you have bestowed upon me my highest and best title. There can be no better appellation than Servant of Justice; those three simple words are uniquely satisfying. However little I may have achieved to justify that designation, I like to believe it has been my unconscious aspiration throughout my professional life."

I was privileged to work with this wonderful person in matters involving legal education, the organized bar, and law reform. I, like so many others, was touched and inspired by his commitment to making ours a better profession and this a better world in every way possible.

All of the ideals for the profession expressed in the Code of Professional Responsibility were actualized in Bob's life in the law. He assisted courts, law schools, bar associations and other bodies in developing and advancing the standards of our profession. He helped improve the legal system through writings, service on numerous task forces, and participation on committees and programs far too numerous to list. He facilitated access to legal services by people of limited means through his leadership of groups devoted to serving the poor. And he upheld by his service and conduct the honor of the profession, inspiring respect and confidence for it everywhere he travelled.

Bob McKay's imprint is on every part of the profession -- legal education, admission to the bar, legal ethics, lawyers' disciplinary standards, and law reform. He reminded us in all his work that law is a profession with moral imperatives and that lawyers must be good people because they set the moral tone for justice and fairness. It is no wonder that lawyers of all age groups have described in recent months how he was their role model. It can be said without fear of contradiction that his life in the law equals or surpasses those of the most distinguished American lawyers of the 20th Century.

Bob McKay was born in Wichita, Kansas, in 1919, to loving parents -- his father the manager of a steel mill, his mother a homemaker. He attended the University of Kansas, excelling as a debater and student leader. Upon his graduation in 1940, he entered Kansas Law School, only to have his legal studies cut short by World War II. He served with distinction during the war, beginning as a private and leaving with the rank of Captain in the United States Army.

Following the war, he attended Yale Law School and, upon his graduation in 1947, he served with the United States Department of Justice's Office of Alien Property. His

His public service to society at large was of similar magnitude. His most conspicuous was as chairman of the New York State Commission on Attica. This Commission, like no other before it, dramatized the failures of our correctional system. But Bob was never satisfied by simply reporting on failures without laying out, as his Commission did, an ambitious and constructive agenda for improving the system. He chaired as well the Boards of such distinguished citizen groups as the New York Civil Liberties Union and Citizens Union. At the time of his death he was engaged in other important public positions working to raise government ethical standards in New York State as a member of the New York City Campaign Finance Board and the New York State Ethics Commission.

For the organized bar at all levels, Bob McKay was always there. He was never one to say no to a request for help, especially if the request did not involve compensation. He was everyone's first choice to take on an important assignment dealing with the integrity and dignity of the legal profession. He served as a member of the committee on the model rules of professional conduct which has led to the elevation of professional standards throughout the country. His pioneering work in clinical education and alternative dispute resolution contributed to important changes in those fields, including the development at law schools all over the country of courses on arbitration, mediation and negotiation. Bob was an early teacher of ADR at his own school.

His Chairmanship of the Special Committee to Consider Mandatory Continuing Legal Education in New York is well known to this House. Commenting on the energetic debate which occurred in this body in June, Conrad Harper recently stated: "Bob won the battle in the only way Bob McKay ever won: There was no ostentation, no noise, merely the serenity of a great man doing a great work."

Some glimpse of how special he was to our profession can also be gleaned from the fact that at the time of his death he was serving as the chair of three bar committees and two law school advisory boards, and as a member of a dozen other boards and committees involved with issues of justice.

It is hard to imagine the legal profession without Bob McKay. He was our treasured resource for solving intractable problems and bringing us together to achieve new heights of greatness. He remained ever so optimistic and always was in the forefront of defending the profession, reminding people "that lawyers are not by nature troublemakers, but instruments of the rule of law and the guarantors of an orderly society, working under constitutions, statutes, and rules." His aspirations were that we could and should do more.

Since his death on July 13, there has been an outpouring of tributes and memorials to Bob all over the United States. The New York Times declared in an editorial of July 18th: "In an age marked by suspicion of both leadership and the legal profession; Robert McKay was in a trusted class by himself." Hardly a meeting of the organized bar has taken place since July without the recording of gratitude and admiration for his noble life in the law.

THE WRITINGS OF ROBERT B. MCKAY*

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* This listing represents only a selection.