

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
THE WALDORF-ASTORIA, NEW YORK CITY  
APRIL 13, 1985  
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PRESENT: Members Amdursky, Amrod, Ashley, Avery, Birnbaum, Blauvelt, Blewett, Block, Brachtel, Britt, Brown, Chayt, Cohen, Colish, Cometa, Compson, Condon, Corrou, Cox, Dadey, Daly, DelleCese, Elmer, Emnett, Fales, Feerick, Ferguson, Field, Fisher, Freedman, Furfure, Garamella, Garaufis, Geltzer, Gershon, Gilinsky, Giordano, Goldblum, Hackbarth, Hart, Haskel, Heming, Hoffberg, Horan, King, Krieger, Lagarenne, Ledina, Lifland, Long, Longo, Lustgarten, Mahony, Malone, Markuson, McDowell, McGowan, McKay, Mealey, Meriam, H. G. Miller, S. W. Miller, Moore, J. E. Murphy, Murray, Newman, Omansky, Pachman, Pauley, Pearl, Perlman, Perrin, Peterson, Pfeifer, Place, Pruzansky, Ritholz, Robfogel, B. P. Robinson, E. T. Robinson, Rosiny, Rubin, Rybicki, Santemma, Schair, Schiller, Schnier, Seymour, Simberkoff, Smith, Spelman, Stave, Thompson, Tobin, Tondel, Torres, Traficanti, Tyler, Vigdor, Vitacco, J. A.R. Walsh, Whalen, White, Witmer, Wolf, Yanas, Zimmer.

1. Approval of minutes of January 25, 1985 meeting.  
The minutes were approved as distributed.

2. Report of Treasurer. Mr. Yanas summarized the Treasurer's report, January 1 to March 31, 1985, and indicated that at the close of the first quarter of the fiscal year, the Association was in sound financial condition with the implementation of the dues increase approved at the November, 1984 meeting. The report was received with thanks.

3. Report of President. Mr. Miller reported the following matters:

a) Chief Judge Wachtler had determined to continue the quarterly meetings between the Office of Court Administration and the three statewide bar associations. He indicated that the most recent meeting had been held on April 9 and the subjects discussed had included the Chief Judge's proposal to establish an individual calendar system, the study on improving the civil litigation process conducted by Action Unit No. 6, and the status of the Uniform Rules for the Trial Courts.

b) The Governor and Chief Judge have appointed a four-member Joint Committee on Judicial Administration to study the broad range of administrative issues affecting the state's courts, with an initial report due by September 30, 1985.

c) At the March 1985 Section Leadership Conference, the sections had proposed an increase in section representation in the House of Delegates. Mr. Miller stated that this proposal was under review by the Committee on Bylaws, and would be discussed by the Executive Committee at its upcoming transition retreat in May.

d) The Governor had released his program bill on the subject of medical malpractice. He outlined the salient features of the proposed legislation, and indicated that the Committee on Tort Reparations, together with other interested committees and sections within the Association, was preparing a detailed response. Mr. Miller advised that a dialogue would be continued with the Governor's office, the legislative leaders and the medical profession to assure that any compromise effected would be in the public interest.

e) Implementation of the Interest on Lawyer Account (IOLA) program was well underway. Mr. Miller encouraged participation by all members of the House and their respective firms.

f) At the suggestion of the Executive Committee he had written to the President of the American Bar Association urging that the ABA explore measures to avoid repetition of the adverse publicity to the legal profession which accompanied the Union Carbide disaster in Bhopal, India.

g) The New York Bar Foundation would be considering a request to fund an Institute for Public Affairs to address various aspects of the legal system and develop recommendations for improvement.

h) Gail Wright had been appointed Chair, and William Mendez Vice-Chair, of the newly formed Committee on Minorities in the Profession.

i) A Special Committee on Entertainment Law was being appointed to address the concerns of practitioners in that field.

j) The Committee on Citizenship Education was cooperating with the New York Daily News to conduct a youth forum in New York City on May 10.

k) The Special Committee on Volunteer Lawyers will be providing assistance to the Covenant House and Phoenix House programs. Mr. Miller invited participation in these worthwhile efforts by interested members of the House.

l) The Executive Committee would be holding a transition retreat in Buffalo from May 2-4 to consider matters involving Association governance and operations, as well as improving relations with local bar associations, the judiciary, Legislature, media and public. Mr. Miller indicated that the

Executive Committee would also be considering methods of increasing participation by women and minorities in the activities of the Association, and encouraged the support of the members of the House for these activities.

4. Election of Nominating Committee. Mr. Vigdor reported that the Nominating Committee had recommended and nominated Haliburton Fales, 2d, Bernard J. Reilly and Nathan J. Robfogel as members-at-large of the Nominating Committee and Mr. Reilly as Chair of the Nominating Committee. A motion was adopted electing said chair and members.

The following members from each judicial district, as selected by the vice-president and elected delegates from each judicial district, were nominated as members of Nominating Committee:

1st District	Angelo T. Cometa and John D. Ferrick
2nd District	Edward J. Connolly, Jr. and Bernadette Dolan
3rd District	James E. Brearton and Lawrence E. Lagarenne
4th District	Bernard F. McPhillips and George F. Murphy
5th District	Hugh R. Jones and James S. Kernan
6th District	Thomas R. Emmett and William G. Ruger
7th District	Robert A. Feldman and G. Robert Witmer, Jr.
8th District	Benjamin N. Hewitt and Francis J. Offermann
9th District	William J. Daly and Robert L. Ostertag
10th District	John P. Bracken and Edward T. Robinson, III
11th District	Robert L. Klein and Donald J. Zimmer
12th District	Maxwell S. Pfeifer and Mark B. Rubin

A motion was adopted electing said members.

5. Report of Special Committee to Consider Adoption of ABA Model Rules of Professional Conduct. Mr. Vigdor reported that several local bar associations had contacted him expressing a need for additional time to study and comment on the report of the Special Committee to Consider Adoption of ABA Model Rules of Professional Conduct. Ralph L. Halpern, Chair of the Special Committee, advised that his committee would support a change in the procedure adopted at the previous meeting of the House of Delegates which would permit a full consideration of all aspects of the report. Following discussion, a motion was adopted approving the following amended resolution governing further consideration of the committee report:

RESOLVED, that the resolution adopted by this House of Delegates at the meeting held January 25, 1985 with regard to the Report of the Special Committee to Consider Adoption of ABA Model Rules of Professional Conduct (the "Report") shall be amended and modified in the following respects:

1. The debate and the votes upon the Rules proposed in the Report will be had and taken at the June 1985 meeting of the House of Delegates.

2. In order to be considered by the House of Delegates, all proposed amendments to the Rules of Professional Conduct contained in the Report must be received by the Secretary of the Association on or before May 15, 1985.

3. The Secretary of the Association shall transmit all such comments to members of the House of Delegates on or before June 7, 1985.

4. To focus on the major substantive areas of the Report at the June meeting, the recommendations contained therein shall be divided into the following areas:

a) Confidentiality; withdrawal from employment: Rules 1.2(d), 1.6, 1.16, 3.3, 4.1.

b) Conflicts of interest; vicarious disqualification; successive government and private employment and intermediation: Rules 1.7, 1.8, 1.9, 1.10, 1.11, 2.2.

c) Corporate lawyers: Rule 1.13.

d) Supervisory and subordinate lawyers; reporting misconduct: Rules 5.1, 5.2, 5.3, 8.3.

e) Fees; litigation costs: Rules 1.5, 1.8.

f) Advertising and solicitation: Rules 7.1, 7.2, 7.3, 7.4, 7.5.

g) All other provisions.

5. Each amendment will be taken up in the order noted above. The following procedure will be utilized:

a) Any motion, other than proposed amendments submitted by May 15, 1985 pursuant to this resolution and that adopted by the House on January 25, 1985 will be considered out of order.

b) A representative of the Special Committee will have four minutes to present the proposed Rule to which the amendment is addressed.

c) The sponsor of the amendment will have four minutes to present the amendment.

d) All other speakers will have three minutes to present their views.

e) No speaker may speak more than once except the sponsor of the amendment may speak a second time for three minutes and a representative of the Special Committee will have three minutes to close.

f) A vote on the proposed amendment will then be taken, requiring a majority vote to be adopted.

g) The foregoing procedure shall be repeated with respect to each proposed amendment unless such amendment is so similar to a preceding amendment that the House by a majority vote adopts a resolution dispensing with debate.

6. After all amendments to the Rules have been considered and voted upon by the House, further proceedings with respect to the Rules shall be tabled, except to the following extent:

a) A draft of the Rules reflecting all amendments adopted by the House shall be prepared and transmitted to its members on or before August 16, 1985.

b) Written comments addressed to the desirability of superseding the present Code of Professional Responsibility (the "Code") with the Rules, as then amended, shall be submitted to the Secretary of the Association on or before October 4, 1985, which comments shall be transmitted by the Secretary to the members of the House on or before October 18, 1985.

c) At the November, 1985 meeting of the House, the following resolution shall be voted upon:

RESOLVED, that the House of Delegates of the New York State Bar Association recommends that the Appellate Divisions of the State Supreme Court in the four Judicial Departments adopt the Rules of Professional Conduct proposed by the Special Committee to Consider Adoption of the ABA Model Rules of Professional Conduct in its report dated December 14, 1984 (as amended by this House at its June, 1985 meeting).

d) Should the foregoing resolution be defeated, the House will thereafter consider whether or to what extent it may be necessary or desirable to amend the present Code and the means best suited to consider such amendments.

7. Report of Committee on Professional Discipline. Harold M. Halpern, Chair of the Committee on Professional Discipline, summarized the committee's report regarding its evaluation of New York State's attorney discipline system and review of the American Bar Association study of this subject. He outlined the committee's recommendations for achieving a more uniform system within the structure of the four judicial departments, and indicated that the report and recommendations would be presented for final consideration by the House at the June meeting.

8. Report of Committee on Association's Action Program. Mr. Smith, Chair of the Committee on Association's Action Program, summarized the report of the committee proposing the establishment of Action Unit No. 7 to consider and make recommendations concerning the improvement of the criminal process. Upon motion, the following resolution was adopted:

RESOLVED that the House of Delegates hereby directs the President to establish Action Unit No. 7 on "The Proper, Effective and Efficient Administration of Justice in the Criminal Justice System":

1. To examine into any or all aspects of the criminal justice system within the State of New York, including substantive as well as procedural law, with particular attention to features of the criminal process which have been the subject of investigation and criticism by authorities on the criminal law or by the communications media and the general public; to consider proposals for reform at any stage of the criminal process between investigation and arrest through trial and sentence, with the objective of making the system more effective and efficient through the avoidance of unjustified delays and the elimination or modification of particular proceedings found to be unnecessary or ineffective; to make pointed inquiry (without limiting the generality of the Action Unit's investigations or its desirable freedom to move from a stated subject of inquiry to another suggested by the prior inquiry itself) into the efficiency and merits of procedures currently criticized and suggestions for reform from groups of legislators and other officials of government and groups of lawyers, or from the general public, including such current subjects of concern as the elimination or reform of the grand jury system and the granting of complete immunity to grand jury witnesses, the many forms of suppression hearings and their feasible simplification, the facilitation of discovery, all aspects of calendar practice and jury selection in criminal trials, the limitation or other control of plea bargaining and mandatory (or normally required) determinate sentences; to consider, in the context of looking toward improvement of the administration of the criminal process, any provisions of substantive criminal law which are anomalous or have become outmoded or are otherwise counter-productive toward the proper, overall functioning of the criminal justice system; and, generally, in all considerations of reform of the criminal process to make the system more effective or efficient, to be aware of the controlling principles of constitutional law and be guided by the polar principle that the criminal justice system must, at all events, be as fair as it is efficient.

2. To seek the cooperation of and offer its own cooperation to judges and court administrators of the local, state and Federal courts within the State, local bar associations and



bar associations organized in relation to particular courts within the State; law schools and academic representatives or groups generally; educational, civic and public interest organizations; the communications media; executive or administrative agencies of the State and Federal government and Federal, state or local legislators; and, in general, organizations of citizens interested in the improvement of the criminal justice system; all of the foregoing cooperation recommended by and with Action Unit No. 7 having the purpose of making use of factual information developed or problems found and reported on by others, in order to use the work of all available agencies, organizations and people in furnishing useful studies of fact or law on germane subject matter and to develop criticisms, suggestions, facts, tests and experiments (including pilot and working programs) for the Action Unit's detailed study designed to improve the efficiency of and more general satisfaction with an effective criminal process as a result of eliminating or changing existing procedures, introducing new procedures or adopting and adapting refinements of details in methods of carrying out the investigation of and trial and punishment for crime, from arrest to sentence, with due consideration of constitutional principles and the demands of fairness as well as effectiveness and efficiency.

3. During the course of or upon the completion of the Action Unit's study of particular programs or major areas of the criminal justice system, to formulate such judgments or declarations of opinion and conclusions about the criminal process as may appear to be within the proper concern of the State Bar Association; to seek thereupon the adoption of relevant policy statements by the Executive Committee and/or the House of Delegates; in the case of procedural proposals requiring legislation or judicial rule-making, to recommend and formulate policy statements for adoption by the House of Delegates and/or the Executive Committee and, at the direction of either such body, to take authorized and appropriate means thereafter to implement legislative action or judicial rule-making in accordance with the express Association policy.

Action Unit No. 7 shall conduct its deliberations and carry out its programs, studies and activities in close association with all existing committees of the Association having cognizance in areas related to the concerns of the Action Unit, including the Committees on Judicial Administration, Courts of Appellate Jurisdiction, the separate Committees on the various Federal, State and Local Courts and the Committee on Courts and the Community, as well as the Committees on the Federal and State Constitutions. The same shall be true as to sections having similar cognizance in areas related to the concerns of the Action Unit, including particularly the Trial lawyers, Judicial and Criminal Justice Sections. Such committees and

sections shall cooperate with and assist Action Unit No. 7 by furnishing reasonably available information, reports and material requested by the Action Unit. Action Unit No. 7 shall further consult with any sections of the Association which shall request such consultation and the Action Unit shall conduct its business with due recognition of the expertise available in the field of its activity within many of the sections and committees of the Association.

Action Unit No. 7 shall make timely reports of its activities to the Executive Committee and House of Delegates under the conditions heretofore stated as to policy and other major determinations, and whenever such a report is requested.

9. Presentation of Media Awards. Hon. Domenick L. Gabrielli, Chair of the Committee on Media Awards, in recognition of outstanding reporting on the administration of justice, made presentations to the winning entries in the listed categories:

#### BROADCASTING

##### Radio Stations in New York State

Ann Reynolds, WEBR Newsradio of Buffalo, for a program entitled "The Death Penalty - Another Look"

##### National Radio

Velma Cato, NBC Radio Network News, New York City, for the program "My Brother's Keeper"

##### Television

Richard Wexler, WXXI-TV of Rochester for a program entitled "Family Justice"

#### MAGAZINES

##### Magazines in New York State

Neal Hirschfeld, New York Daily News, New York City, for the article "Conscience and the Criminal Lawyer"

##### National Magazines

Evan Thomas, Kenneth Banta, Anne Constable of Time Magazine, New York City, for an article entitled "Court at the Crossroads"

#### NATIONAL WIRE SERVICE

Timothy Harper, The Association Press, New York City, for an article on "Rape Laws - An Enormous Change in U.S. Computer Evidence"



## NEWSPAPERS

### Investigative or Analytical Reporting (under 100,000 circulation)

Keith George of the Binghamton Press Co., Binghamton, for an article entitled "Parole: Does it Work?"

### Investigative Analytical Reporting (over 100,000 circulation)

Rose Ciotta of the Buffalo News, Buffalo, for the article "The Unpunished Crime"

### Continuing Coverage of Law-Related News (under 100,000 circulation)

Judith A. Rife, Times Herald-Record, Middletown, for an article entitled "Delay Stings DA's Operation"

### Continuing Coverage of Law-Related News (over 100,000 circulation)

Kathleen Kerr and B.D. Colen of Newsday, Melville for the article entitled "Hard Choices"

### National Newspapers

Neil Roland of the Army Times, Springfield, Virginia, for the series "Massive Errors in Drug Testing Misidentify Soldiers as Drug Users"

### Weeklies

David Kirkwood of the Scarsdale Inquirer, Scarsdale, for the series "Scarsdale Creche Case"

10. Presentation of Trial Lawyers Section National Trial Advocacy Competition Awards. Anthony J. DeMarco, Jr., Chair of the Trial Lawyers Section and also its Committee on Trial Advocacy Competition, presented the Trial Lawyers Cup and Scholarship to Syracuse University College of Law as the law school placing highest in the regional eliminations for the National Trial Advocacy Competition. A certificate of merit was presented to Albany Law School in recognition of that institution's second place finish in the regional competition.

11. Report of Chairman. Mr. Vigdor reported the following matters:

a) Bar associations entitled to delegates had filed their designations of delegates for the year 1985-1986. On motion said designations were approved as filed, and a further motion was adopted approving the filed roster of members of the House as the official list for 1985-1986.

b) Pursuant to the Bylaws, the terms of several special committees were due to lapse at the close of the current Association year. Upon motion adopted by the House, the terms of

the following special committees were extended for an additional year:

- Alternatives to Court Resolution of Disputes
- Copyright Law
- Group and Prepaid Legal Services Plans
- Improve Courthouse Facilities
- Interest on Lawyer Account (IOLA) Advisory Committee
- Military and Veterans Affairs
- Patents and Trademarks
- Procedures for Judicial Discipline
- Public Access to Information and Proceedings
- Specialization in the Law
- Volunteer Lawyers

c) The areas of interest and degree of activity demonstrated by several special committees warranted their conversion to standing committee status. Upon motion adopted by the House, the following special committees were designated as standing committees:

- Association House Committee
- International Trade and Transactions
- Juvenile Justice
- Law Day
- Lawyer Alcoholism and Drug Abuse
- Lawyers and the Community
- Social Services

d) The Special Committee to Improve Courthouse Facilities was coordinating with the Office of Court Administration and other bar associations to develop a program for securing needed improvements to courthouse facilities.

e) Action Unit No. 4 was cooperating with other interested groups to secure enactment of court merger legislation consistent with the resolution adopted previously by the House of Delegates.

f) The Special Committee on Specialization in the Law will be presenting its report and recommendations to the House at the November, 1985 meeting for preliminary discussion.

12. Date and place of next meeting. Mr. Vigdor announced that the next meeting of the House of Delegates will be held the weekend of June 22, 1985 at The Otesaga in Cooperstown. He advised that with the number of significant items scheduled for discussion, there might be a need for a two-day session.