

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 30, 1987

PRESENT: Members Amdursky, Amrod, Auleta, Baldwin, Ball, Barthold, Bedell, Bermingham, E. Birnbaum, Bowers, Bracht, Bracken, Brenner, Britt, Cannon, Canoni, Chayt, C. Clark, P. Clark, Colish, Cometa, Condon, Connolly, Cox, Daly, Davidoff, DelleCese, DeMarco, Deptula, DiLorenzo, Dollard, Dranoff, Dressner, Driscoll, J.F. Dwyer, J.C. Dwyer, Eiber, Elmer, Elwood, Esteve, Fales, Feerick, Feigenbaum, Ferguson, Field, Floyd, Forger, Freedman, Galbraith, Garamella, Gellert, Geltzer, Gershon, Giordano, Goldblum, Griffith, Hall, Halpern, Hart, Haskel, Heming, Hoffman, Hurwitz, Ierardi, Iovenko, Ippolito, Jeram, H. Jones, S. Jones, Kane, Kaplan, Kaufman, King, Klein, Krieger, LaForge, Lagarenne, Lustgarten, MacCrate, Mahon, Mahony, Malone, Mann, Mannix, Markuson, McDowell, McGlinn, McGoldrick, McGraw, McKay, Miller, Montalbano, Moore, Moreland, Morris, Murphy, A. Murray, K. Murray, Obold, Offermann, Omansky, Ostertag, Palermo, Patterson, Pearl, Penzel, Perkins, Pfeifer, Place, Presutti, Pruzansky, Pugh, Reilly, Reiter, Rice, Richardson, Robfogel, Rosiny, Rosner, Rothstein, Rubin, Rubinton, Santagata, Santemma, Schiller, Schnall, Seymour, Shlufman, Siegel, Simberkoff, Solomon, Stave, Stiles, Sullivan, Sussman, Thompson, Tondel, Torres, Traficanti, Tyler, Ufford, Vigdor, Vitacco, Volk, J. Walsh, Warren, Weaver, D. Whalen, T. Whalen, White, Wilkens, Witmer, Wolfe, Yanas, Yetter, Zimmerman, Zuckerman.

1. Approval of minutes of September 27, 1986 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Yanas' report, which previously had been presented to the members of the House at the Annual Meeting of the Association, was received with thanks.

3. Presentation of 1987 Association budget. Ruth G. Schapiro, Chair of the Finance Committee, summarized the significant items contained in the proposed 1987 budget, and indicated that the recommended amounts would maintain the sound financial condition of the Association for the coming year. A motion was adopted approving the 1987 income and expense budget as proposed by the Finance Committee.

4. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. Haliburton Fales, 2d, Chair of the Nominating Committee, reported that the committee has nominated the following persons for election to the respective offices indicated:

President-Elect

Secretary

Treasurer

Vice-President, First District

Vice-President, Second District

Vice-President, Third District

Vice-President, Fourth District

Vice-President, Fifth District

Vice-President, Sixth District

Henry L. King, New York City

Maxwell S. Pfeifer, Bronx

Richard M. Gershon, Schenectady

Angelo T. Cometa, New York City

Thomas O. Rice, Brooklyn

Thomas M. Whalen, III, Albany

Dudley M. Ferguson, Gloversville

Philip J. Britt, Liverpool

John J. Fitzgerald, Cortland

Vice-President, Seventh District
Vice-President, Eighth District
Vice-President, Ninth District
Vice-President, Tenth District
Vice-President, Eleventh District
Vice-President, Twelfth District

G. Robert Witmer, Jr., Rochester
Francis J. Offermann, Jr., Buffalo
William J. Daly, Ossining
Jon N. Santemma, Mineola
A. Paul Goldblum, Brooklyn
Alexander A. DelleCese, Bronx

Member of the Executive Comm.
Member of the Executive Comm.
Member of the Executive Comm.
Member of the Executive Comm.
Member of the Executive Comm.
Member of the Executive Comm.

John P. Bracken, East Setauket
Jules J. Haskel, Garden City
John R. Horan, New York City
Lawrence E. Lagarenne, Monticello
Archibald R. Murray, New York City
Robert L. Ostertag, Poughkeepsie

There being no further nominations, a motion was made and carried that the nominations be closed. The Secretary then cast a single ballot for the election of the officers and members of the Executive Committee.

5. Status report on Bar Center expansion. Henry G. Miller, Chair of the Subcommittee on Project Financing and Fund-Raising of the Ad Hoc Committee on Bar Center Facilities and Space Requirements, summarized the status of the Bar Center expansion project, as authorized at the June, 1986 meeting of the House. He indicated that the Ad Hoc Committee and its Subcommittee on Building Design were coordinating with the project architect, The Saratoga Associates, and the building contractor, L.A. Swyer Co., Inc., to complete design development for the expanded Bar Center. Mr. Miller advised that, assuming a successful fund-raising effort, construction could commence as early as the fall of 1987, with completion possible by late 1988 or early 1989. He indicated that with the assistance of Ketchum, Inc., an informational effort was underway to acquaint the members with the need for expanded facilities to meet the needs of the Association and Foundation into the twenty-first century. Mr. Miller advised that the statewide fund-raising campaign which he would chair would begin in March, and that Messrs. King and Vigdor had consented to serve as vice-chairs for the downstate and upstate areas, respectively. Mr. Miller encouraged the support and participation by the members of the House to ensure the success of the campaign.

6. Report and declaration of Association Task Force on Simplification. Richard A. Givens, Chair of the Association Task Force on Simplification, summarized the report of the task force concerning its activities to simplify the administration of existing statutes and regulations, prevent the adoption of unnecessary legislation or rules and the incorporation of unnecessary complexities in such enactments. Mr. Givens noted that the proposed declaration was intended as a general guide to encourage greater efforts by the Legislature, the Executive Branch and the Bar to simplify the law, and was not being presented to obtain approval for any specific recommendations in connection with the achievement of the goal of simplification. After discussion, the following declaration for simplification was adopted unanimously on motion of the House:

The rule of law is key to our democratic society, expressing our values, protecting our liberties and enabling us to advance as a people. Change and adaptation have characterized our system of law. This capacity to evolve is necessary and desirable in a society which is dedicated to the ends so nobly expressed in the Preamble to the United States Constitution.

These principles carry with them, we believe, an obligation on the part of the Bar to be vigilant that our laws are understandable, efficient and workable. There is reason to believe that these goals are not being served as well as they could be because of the complexity of our laws.

I. Recognizing The Challenge

Both our laws and their implementation constantly become more complex. Some of this is inevitably necessary to deal with problems in a diverse society, especially one experiencing rapid technological and other changes.

Complexity, however -- especially due to overlapping rules, forms and procedures of multiple agencies and levels of government can lead to delay, confusion over legal rights, increased expense, errors, and leeway for arbitrary decisions.

One root of this problem lies in the tendency at times to add more legal rules to deal with each problem even if the problem is caused by existing rules.

Another is the tendency of bureaucracy to add layers to itself and scope to its activities.

With recognition of these tendencies their effects can be overcome. This can sometimes produce a large net dividend to the public and to the effectiveness of the legal system.

II. More Careful Consideration of New Legal Requirements

For these reasons before any new legal requirement is adopted, consideration should be given to:

1. Whether the problem is caused by an existing legal rule which may not be necessary in its present form;
2. What side effects the proposed requirement would be likely to have; and
3. Whether better enforcement of existing requirements with existing tools might be a better solution.

III. Administration of Existing Requirements

In the administration of existing legal requirements, to seek simplicity we recommend:

1. Elimination of all unnecessary internal bureaucratic layers, and levels of approval for routine actions.
2. That all agencies analyze and make public the steps routinely required in performing their most common tasks.
3. That any outside audits and performance reviews that may be conducted, routinely include anonymous interviews with working level employees and middle managers.

IV. Long-Term Perspectives

Many areas of law have become exceedingly complex because the legitimate needs of variegated groups have been dealt with episodically and separately. New options, however, often exist that could benefit all involved with benefits shared among those affected.

We therefore ask the Simplification Task Force and each Section and Committee of the Association to develop goals for the Twenty-First Century which will seek to address the difficult problems confronting the legal system with these factors in mind.

7. Report of Joint Task Force on Liability Insurance Coverage. James C. Moore, Chair of the Joint Task Force on Liability Insurance Coverage, reviewed the analysis which had been made of the current market for professional liability insurance in New York, including the availability and demand for such coverage. He also described the factors which had contributed to the current liability insurance problem, including the cyclical nature of the industry, the contraction in the reinsurance market, and the operation of the civil justice system. Mr. Moore summarized the Task Force's recommendations that consideration be given the retention of an independent consultant to study the feasibility of forming a bar-sponsored captive insurer to provide professional liability insurance for attorneys; that a more active role should be taken in the efforts by the American Bar Association to develop new reinsurance markets for lawyers' malpractice insurance; and that increasing emphasis should be given to loss prevention in continuing legal education programs.

Mr. Heming advised that the report had been reviewed by the Executive Committee, and in cooperation with The Association of the Bar of the City of New York, a joint steering committee would be formed to consider the implementation of the Task Force's recommendations, especially those dealing with the feasibility study for forming a captive carrier, including relevant cost and planning considerations.

8. Report of President. Mr. Heming reported the following matters:

a) After reviewing comments submitted by interested sections and committees with respect to the second report of the Governor's Advisory Commission on Liability Insurance, the Executive Committee had endorsed, in principle, the recommendations presented by the Governor's Commission in the following areas: application of the assumption of risk doctrine in cases of recreational injury; indemnification of corporate directors and officers; exemption from liability for non-manufacturing sellers of products under certain conditions so long as the manufacturer

can be sued in New York; limiting the liability of contractors and owners for construction site accidents to instances where there has been a showing of supervision and control; enhancement of the authority of the Superintendent of Insurance to police the tort of insurer bad faith within New York's current legal framework; utilization of itemized verdicts in appropriate cases; permitting municipalities to shift to commercial and multiple dwelling property owners liability for failure to remove snow and other transient surface obstructions from abutting sidewalks; limitation of municipal tort liability during a grace period for properties acquired pursuant to in rem foreclosures; elimination of a landowner's liability to someone entering property with intent to commit a crime, and expanding the categories of recreational use for which a landowner may open property without assuming a duty to keep property safe or warn of hazardous conditions. Mr. Heming advised that a statement summarizing the foregoing points, including all appropriate qualifications noted by the Executive Committee, had been forwarded to the Governor's Commission, the Legislature, and other interested parties.

b) The Executive Committee had endorsed enactment of the federal judicial salary increases recommended by President Reagan, as well as such further increases as may be necessary to achieve the higher salary levels proposed by the Federal Commission on Executive, Legislative and Judicial Salaries.

c) The Special Committee to Improve Courthouse Facilities, in cooperation with the Office of Court Administration and other interested groups, was continuing to support the enactment of legislation to provide for the renovation and repair of courthouses. He indicated that in pursuing this objective, the committee was also expressing the Association's concern regarding proposed increases in court fees as a partial funding source.

d) Action Unit No. 4 was continuing its efforts to secure the second passage of trial court merger legislation to bring the necessary referendum before the voters.

e) Based on its review of reports prepared by interested sections and committees, the Executive Committee had reaffirmed its position favoring the enactment of living will legislation, and had expressed its disapproval of legislation to replace the guardian ad litem system with an Office of Public Guardian.

f) The Committee to Confer with the Committee of the State Medical Society was cooperating with the State Medical Society to develop a videotape designed to assist physicians and attorneys in the handling of child abuse cases. Mr. Heming noted that The New York Bar Foundation had made a \$1500 grant to support the project.

g) Based on the evaluation of Court of Appeals nominees conducted by the Committee on Judicial Selection, he had testified before the Senate Judiciary Committee in favor of Judge Bellacosa's confirmation as Associate Judge.

h) Following review of the 1987-1988 Judiciary Budget by the Committee on Judicial Administration, he had submitted a statement to the Legislature endorsing adoption of the budget as proposed.

i) The Committee on Judicial Administration will be conducting a thorough study of the Individual Assignment System, including a detailed, statewide survey. Mr. Heming indicated that the committee was conferring with expert consultants to ensure that the survey is comprehensive and objective.

j) The resolution approved at the September, 1986 meeting of the House with regard to the media advertising of tobacco products had been placed on the

agenda for consideration at the upcoming meeting of the ABA's House of Delegates.

9. Report of Special Committee on Lawyers in Public Service. Whitney North Seymour, Jr., Chair of the Special Committee on Lawyers in Public Service, summarized the committee's report and recommendations entitled, "Encouraging Public Service by Lawyers," dealing principally with professional recognition and law student awareness. Following discussion, a motion was adopted unanimously approving the report and recommendations as presented by the committee.

Mr. Seymour then reviewed a second report prepared by the committee entitled, "Conflict-of-Interest Proposals." He indicated that as an alternative to inflexible statutes which discourage competent individuals from public service, the committee was recommending a disclosure-oriented approach as an effective means for self-enforcement of conflict-of-interest standards. Alexander D. Forger, former Chair of Action Unit No. 2, summarized that body's recommendations for improving the legislative process, as approved by the House in 1975. Mr. Forger noted that these recommendations included the placing of restrictions on lawyer-legislators appearing before state agencies, as disclosure alone was deemed an inadequate remedy in such circumstances. Following discussion of this issue, Mrs. Freedman noted that the report would be considered preliminary in nature and the matter would be recommitted for further study by the committee based on the comments by the members of the House.

10. Report and resolution of Special Committee on Media Law concerning audio-visual coverage of trial proceedings. Peter L. Danziger, member of the Special Committee on Media Law and its Subcommittee on Cameras in the Courtroom, summarized the nature of current legislation to permit audio-visual coverage of proceedings at the trial court level, the status of experimental programs in other jurisdictions, the impact of court decisions in this area, and the prior position of the Association with regard to the subject. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, the House of Delegates of the New York State Bar Association on January 25, 1980 adopted the following resolution with respect to the audio-visual coverage of civil and criminal trials:

RESOLVED, that the House of Delegates of the New York State Bar Association recommends that audio-visual coverage of civil and criminal trials be permitted on a controlled experimental basis in a few selected instances in diverse locations in New York State, including urban, suburban and rural communities, before permanent rules of general application are adopted; provided that audio-visual coverage at the trial court level be permitted only in cases where the parties consent thereto;

WHEREAS, since 1980 there have been significant developments with respect to the audio-visual coverage of court proceedings, including the decision of the United States Supreme Court in Chandler v. Florida, 449 U.S. 560 (1981), the implementation of successful programs in other jurisdictions, and no such jurisdiction has curtailed any such program, and the introduction of statutory amendments in the New York State Legislature authorizing the establishment of an experimental program in this State;

WHEREAS, the aforesaid developments warrant reconsideration by the House of Delegates of its prior position with

specific reference to the proviso that audio-visual coverage be permitted only with the prior consent of the parties; it is

RESOLVED, that the House of Delegates of the New York State Bar Association hereby recommends that audio-visual coverage of civil and criminal trials be permitted on a controlled experimental basis in a few selected instances in diverse locations in New York State, including urban, suburban and rural communities, before permanent rules of general application are adopted; and it is further

RESOLVED, that the House of Delegates of the New York State Bar Association hereby endorses in principle the passage of legislation to effectuate this purpose and permit the audio-visual coverage of civil and criminal trials on a controlled experimental basis.

11. Report of Chair. Mrs. Freedman reported the following matters:

a) The Special Committee to Review the Code of Professional Responsibility was in the process of reviewing the comments received with respect to its draft amendments to the Code of Professional Responsibility, and anticipated having its final proposals prepared for consideration at the April 11, 1987 meeting of the House of Delegates.

b) She would be consulting with the Committee on Administrative Law concerning a study of abuses in the administrative law system with the goal of formulating recommendations for improvement.

c) At the request of Peter G. Stone, Chair of the Special Committee on Media Law, she was distributing to the members of the House his January 13, 1987 letter with respect to the position taken on the advertising of tobacco products.

12. New business. Hon. Renee A. White, Chair of the Criminal Justice Section, summarized potential problems created with respect to legitimate attorneys' fees by the Money Laundering Control Act of 1986 and the need for amendment to remedy these difficulties. After discussion, a motion was adopted unanimously approving the following resolution as the position of the Association:

RESOLVED, that the New York State Bar Association submits that 18 U.S.C. Sec. 1957 of the recently enacted Money Laundering Control Act of 1986 unfairly impacts upon fundamental constitutional rights to effective assistance of counsel and due process of law and will have a deleterious effect upon the adversary system of criminal justice, and urgently requests the Congress of the United States to enact amendatory legislation to exempt monetary transactions involving the bonafide fees an attorney accepts for representing a client who is subject to criminal investigation or any proceeding arising therefrom.

13. Date and place of next meeting. Mrs. Freedman announced that the next meeting of the House of Delegates will be held at the Bar Center in Albany on Saturday, April 11, 1987.