

# 109th ANNUAL STATE BAR MEETING

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1/15/86

## Chief Judge To Rehab

By Sol Wachtler

Judge Wachtler is Chief of the New York Court of Appeals.

I believe that the same propriety which demands courtroom decorum imposes an equal demand for proper court facilities. The time for band-aid paint has passed.

Joseph W. Bellacosa, the Chief Administrative Judge, and I, have been touring some of the courthouses in the State of New York. Conclusions are inevitable.

We were very good at courthouses during the 19th century. Part of the 20th century, these buildings were to be used solely as landmarks, or exhortation of the century courthouse architecture, perhaps they would have some useful societal purpose that should be their limitation of them can no longer be courthouses.

The fact is that half of the courthouses having court facilities are more than fifty years old, many of them one hundred or more years old. A large percent of our court facilities are in need of major repair and renovation. Half of the trial courtrooms in the State are in urgent need of maintenance and refurbishment.

### Imperative Need

The court system of New York has a few needs more pressing than the need to improve substandard, dilapidated courthouses. Those who work in and use the courts are entitled to decent, clean, respectable places in which to conduct the business of justice. When the people of New

## Vigdor Looks Back, Projects Future Of New York State Bar Association

By Justin L. Vigdor

Mr. Vigdor is President of the New York State Bar Association.

Perhaps because, as we gather for this 109th Annual Meeting, it is the midpoint of my term of office, I am somehow inclined to look both backwards and forwards. As long as I am indulging that feeling, it seems to me that there is no point in limiting the backward glance to the past year which is obviously fresh in our memories. Nor is there much point in looking forward only to the next few coming months, the programs for which are largely already in place. No I thought, let's enjoy a real go at it.

Imagine with me the founding of our Association — 91 delegates representing each of the state's then eight judicial districts — convening in 1876, at the call, incidentally, of a committee of the Association of the Bar of the City of New York. They and their contemporaries were in the midst of the centennial observance of



Justin L. Vigdor

the Declaration of Independence. Taking the time to travel to Albany, they there resolved "that it is expedient that a State Bar Association be now formed." Dues, established several months later, were \$5.00 per

year. Tickets for the first annual dinner were \$2.00 apiece. The Association's total expenses for the first annual meeting were \$414.91, less than the room charge for one person for three nights at the Marriott this year. Those charges included this item: "One hundred dinners were bespoken... sixty-one tickets only were taken leaving a deficit of \$78.00." Wisely, the following year, the committee on arrangements guaranteed only 75 dinners.

Ulysses S. Grant was the President of the United States, Morrison R. Waite was the Chief Justice of the United States Supreme Court and

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## OCA Development Placed In Historical Perspective

By Joseph W. Bellacosa

Judge Bellacosa is the Chief Administrative Judge, Unified Court System.

In thinking about how to implement the policies of Chief Judge Wachtler this past year, I saw as one of my first tasks the unravelling of an enigma — the Office of Court Administration. What was it all about? What should it be all about? From my former post at the Court of Appeals and from my various experiences with the judicial branch for over 20 years, I had some distant sense of the entity known as OCA. This year, however, I was drawn like the moth to the flame in that I had to figure out what it was all about from very close up, without suffering self-immolation. I met with the various



Joseph W. Bellacosa

## Bar's Cooperation Urged For New I.A.S. to Succeed

By Milton Mollen

Justice Mollen is the Presiding Justice of the Appellate Division, Second Department.

Monday, January 6, 1986, will be recorded as a milestone in the evolution of the New York State court system. It is the day on which a promising and much-heralded new approach to court and case management



# Vigdor Looks Back, Projects Future

Continued from page 29

Sanford E. Church was the Chief Judge of the Court of Appeals. There was probably no dearth of litigation since five volumes of decisions of the Court of Appeals were published that year. Female lawyers (now approaching 20 percent of the Bar and about 35 percent of all lawyers under age 35) were not among our professional forebears at that time. Nor could they have been, because not a single female lawyer was admitted to the New York State Bar until ten years later.

## Baseball League Formed

All years have their great moments but, by any test, the year of our founding, was quite a year. General Custer and his entire force were wiped out by Sitting Bull and his Sioux warriors at Little Big Horn. Colorado was admitted to the Union as the Centennial State. The National Baseball League was formed. The most disputed presidential election in our history occurred when Samuel J. Tilden, the winner of the popular vote, was deprived of the presidency by Congress, which credited Rutherford Hayes with the disputed electoral votes from four states.

Alexander Graham Bell received a patent for a device that transmitted sound over wire, calling to his assistant in another room "Mr. Watson, come here, I want you." The telephone and the typewriter, another new invention, were both displayed at the Centennial Exposition in Philadelphia that year. A lawyer's life would never again be the same!

Lawyers practicing alone, or in very small firms with one or two others, transacted their business in Dickensian law offices. I imagine that they immersed themselves in their work without worrying about billable hours and certainly they had no need to share their income with the federal, state or city governments. Documents were still, painstakingly, being produced by the hands of scrivener clerks by the light of gas lamps since Edison's incandescent lamp was yet three years off. No one, I suspect, even dared to suggest "make me ten copies of this and five copies of that." "Guaranteed overnight courier," was limited, I assume, to one's own city. Formal ethical standards were nonexistent since they first came into being when the American Bar Association adopted the Canons of Professional Ethics in 1908. Advertising, reintroduced in 1977 as a result of *Bates v. Arizona State Bar*, and still controversial, was common place.

## Educational Requirements

Education requirements virtually did not exist. However, legal education, which, to that point, had almost been exclusively by clerkship was about to enter a fundamental new phase under the influence of Christo-

to \$10.00. Like dues, law offices did not change radically or rapidly. Of course, electric lights replaced gas lamps and typewriters and telephones became commonplace. But, with modest improvements in style and functionality, telephones and typewriters basically remained the last word in office equipment modernity until after World War II when the pace of change accelerated and indeed the character of our professional lives was fundamentally altered. This seemingly slow rate of change, I suppose, is not so startling, when seen in perspective. Alvin Toffler, in "Future Shock," dramatically reminded us in 1970:

"... if the last 50,000 years of man's existence were divided into lifetimes of approximately sixty-two years each, there have been about 800 such lifetimes. Of these 800, fully 650 were spent in caves.

"Only during the last seventy lifetimes has it been possible to communicate effectively from one lifetime to another — as writing made it possible to do. Only during the last six lifetimes did masses of men ever see a printed word. Only during the last four has it been possible to measure time with any precision. Only in the last two has anyone anywhere used an electric motor. And the overwhelming majority of all the material goods we use in daily life today have been developed within the present, the 800th lifetime."

The great figures who peopled American law during the last quarter of the 19th century passed on. The Holmeses became the Pounds, Brandeises, Cardozos, Hands and then the great jurists of our time. The typewriters became electric and then turned into word processors and intelligent work stations. Telephones grew into vast communications networks of computers, local and remote, electronic mail, and other amenities which now seem to obsolesce one another every three to five years. And, our Association has meanwhile grown to 45,000 members, 75 committees, 17 sections and a \$6 million per year operating budget.

## The Future

Now, for a look into the future. What do the next 90 or 100 years have in store for the legal profession? Normally, I would argue that anyone with a grain of common sense should avoid climbing out on brittle tree limbs. Long term predictions are obviously in the tree limb category. But Alvin Toffler urges courage: "... It's time to erase once and for all the popular myth that the future is unknowable. The difficulties ought to chasten and challenge not paralyze."

Chastened and challenged, therefore, let me eschew paralysis and do some "mind stretching" or "blue sky-ing" about the year 2086; assuming, of course, that mankind's irrational po-

for attorneys to assist in sorting out the implications of these complicated dealings will increase. Therefore this trend should not be viewed as a threat but as a natural progression within the environment and even as a release from rather mundane procedures."

Naisbitt is probably speaking of the next two or three decades rather than the coming century, but, in any event, for me the implications for a society inundated with computers and having outer space, itself, as its new "frontier" are, at once, titillating and terrifying. Rather than speculating about whether mega-multi-state law firms will become mega-multi-planet firms or whether litigation will disappear since the outcome of controversies will be predetermined by computers or whether the profession will continue to grow at the current rate and lawyers will therefore number about 3½ million, I would rather make two predictions that I feel fairly comfortable about and express one devout wish.

## Judicial Norms

In the first place, I am certain that society will still be governed by judicial norms of some sort. However much the legal system will have changed to adapt to the conditions which then exist, I suspect that future legal scholars, studying our jurisprudence will easily discern familiar roots. Secondly, I feel confident that some group of professionals, be they called lawyers or some other name, will be assisting others in applying and interpreting those norms to human needs and to the institutions and instrumentalities that human beings will have created. I also believe that every coming generation of lawyers will assume the responsibility for helping to shape the future of the profession by reinterpreting its obligations and responsibilities so that it will continue to serve the public by solving its problems, assisting it to conduct its business and to avoid and resolve disputes.

My wish is that lawyers, the world over, will, as urged in the recent report of the Committee on International Arms Control of the Association of the Bar, bring their talents and skills of organization, advocacy, negotiation and draftsmanship to the eradication of this threat to mankind and to the extension of the rule of law to the behavior of governments and all man-made institutions so that all peoples may live in peace and enjoy the blessings of justice.

One hundred years from now as one hundred years ago, the words of Holmes, from a 1878 lecture to Harvard undergraduates will still ring true: "The law is the calling of thinkers ... a man may live peacefully in the

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1900. Advertising, reintroduced in 1977 as a result of *Bates v. Arizona State Bar*, and still controversial, was common place.

#### Educational Requirements

Education requirements virtually did not exist. However, legal education, which, to that point, had almost been exclusively by clerkship was about to enter a fundamental new phase under the influence of Christopher Columbus Langdell at Harvard who argued that "the law is a science . . . [and] can only be learned and taught in a university by means of printed books . . . What qualifies a person, therefore, to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes, not experience in short, in using law, but experience in learning law." Small wonder, then, that Judge Jerome Frank in his 1949 book, *"Courts on Trial"* labeled Langdell a neurotic genius whose "escapist devotion to the case method stamped itself on the educational programs of our leading law schools [and whose] . . . spirit choked American legal education for the better part of a century."

Oliver Wendell Holmes, Jr., then age 35, teaching constitutional law and jurisprudence at Harvard, editing the *American Law Review* and Kent's Commentaries was busy crystallizing his theory of the origin and nature of law. The international recognition accorded his published lectures, *"The Common Law,"* won him a seat on the Massachusetts Supreme Court where he was to serve for 18 years before going on to 30 years of distinguished service on the United States Supreme Court.

Not even in the wildest dreams of a brilliant scholar and theorist such as Holmes could it then have been envisioned that conveyancing, trusts, negotiable instruments, and the handful of other then current fields of practice would one day compete for a practitioner's lifetime dedication with public and private law of all varieties; with taxation, securities, labor, aviation, antitrust, environmental, computer law — to name just a few — not to speak of a myriad sub-specialties.

#### Administrative Agencies

Administrative agencies at all levels — that "Fourth Branch" of government, which so pervasively influences our professional and personal lives, was still unborn — awaiting the creation of the Interstate Commerce Commission in 1887, some eleven years later. Who could have then foreseen how the evolutionary growth of the common law would be explosively transformed by the coming avalanche of legislation and administrative rules and regulations.

From our founding in 1876, the Association's growth was slow but steady. By 1892 our members numbered about 300 out of approximately 11,000 lawyers in the State. Dues however were not increased until 1928 — from \$5.00 to \$6.00 and then again shortly thereafter, in 1930, from \$6.00

to the extension of the rule of law to the behavior of governments and all man-made institutions so that all peoples may live in peace and enjoy the blessings of justice.

One hundred years from now as one hundred years ago, the words of Holmes, from a 1876 lecture to Harvard undergraduates will still ring true: "The law is the calling of thinkers . . . a man may live greatly in the law as well as elsewhere; that there as well as elsewhere his thought may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable. All that life offers any man from which to start his thinking or his striving is a fact. And if this universe is one universe, if it is so far thinkable that you can pass in reason from one point of it to another, it does not matter very much what that fact is. For every fact leads to every other by the path of the air. Only men do not yet see how, always. And your business as thinkers is to make plainer the way from some thing to the whole of things; to show the rational connection between your fact and the frame of the universe."

#### Information Based

John A. Naisbitt, author of "Megatrends," in a June 1984 article in the *American Bar Association Journal*, assures us that in the information based society which the world has become, ". . . our need for the legal profession increases, . . . and, despite what the doomsayers predict for lawyers, the opportunities for the profession are great . . . As transactions between people (and their machines) become more complex, the demand

## Elderly Assistance Planned By Young Lawyers Section

By Carl L. Bucki

Mr. Bucki is Chair of the Young Lawyers Section.

Under the leadership of its Chairman, Paul J. Yesawich, III, the Young Lawyers Section has promoted young lawyer participation in all aspects of the State Bar Association. In particular, the Section has continued to accept greater responsibility for community service, particularly in the field of legal assistance to the elderly.

The Young Lawyers Section is now in the final stages of completing a Handbook on Law for the Elderly. Martin S. Hyman, the Section's Vice Chairman, has coordinated the Handbook's drafting, which in large measure has been completed by Section members who are associated with the Vice Chairman's firm of Weil, Gotshal & Manges. A grant from the Young Lawyers' Division of the American Bar Association will partially finance an initial printing of the Handbook.

#### Law for the Elderly

The Young Lawyers Section will distribute its Handbook on Law for the Elderly throughout the State, to agencies and public service organizations which are devoted to fulfilling the needs of senior citizens. Having already received positive indications of the demand for this type of manual, the Section has begun to explore

options for funding the printing and distribution of additional copies.

The Young Lawyers Section continues to serve as a liaison with all other sections, thereby seeking to promote broad participation by younger lawyers in all phases of Bar Association activity. Thus, the Young Lawyers' Executive Committee has appointed various Section members to serve on standing and special committees of the Association.

#### Writing Competition

At the annual Bar Association meeting in January, the Young Lawyers Section will announce the law student winner of its Hederman writing competition. This award is part of the Section's on-going effort to introduce law students to the importance of affiliation with the State Bar Association. Also in January, the Section will announce the recipient of its third annual Outstanding Young Lawyer's Award. The chairman of the selection committee, Louis P. DiLorenzo, has solicited nominations for this honor from local Bar Associations throughout the State.

In May, the Young Lawyers Section will again sponsor its highly successful Supreme Court admission program. This is designed to provide an opportunity for Section members to obtain admission to the United States Supreme Court, as the highlight of a weekend of events in Washington, D.C. The goal is to attach an appropriate measure of elegance and ceremony to this important occasion.

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