

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 25, 1991

PRESENT: Agress; Ange; Avery; Baker; Barbash; Barnett; Barnosky; Barthold; Bashian; Beckerman; Bergen; Berman; Besunder; Bracken; Brand; Brenner; Brick; Bucki; Buzard; Cavanaugh; Cedarbaum; Clarke; Coffey; Cometa; Connolly; Cooke; Corcoran; Costello; Cregg; Daly; Darche; Davidson; DelleCese; Dollard; Dyer; Eppler; Fales; Farrell; Field; A. Fisher; K. Fisher; Frank; Freedman; Gaal; Galloway; Garrison; Geltzer; Gershon; Ginsberg; Goldstein; Gordon; Grogan; Gross; Haig; H.G. Hall; J. Hall; Handschu; Harley; Harper; Hassett; Headley; Heming; Hesterberg; Hoffmann; Horan; Jaffe; Jones; Kahn; Kennedy; J. Kenney; Kessler; King; Klein; Lamb; Leinhardt; Liebschutz; Long; Lowe; Luria; Madigan; Mahoney; Markuson; Marrero; McDonough; McDowell; McGlinn; McGuirk; Meng; Minardo; Mitchell; Moore; A. Murray; C. Murray; Neimeth; Netter; Oberman; Obold; Offermann; Opotowsky; Ostertag; Palermo; Pearl; Peckham; Penzel; Perrin; Pfeifer; Pruzansky; Pulley; Raisch; Raysman; Reed; Reich; K. Reilly; Reiniger; Reizes; Rice; Richardson; Rifkin; Riley; Ritholz; Robfogel; B. Robinson; E. Robinson; Roper; Rosiny; Rubin; Rybak; Santagata; Santemma; Schapiro; Schell; Schumacher; Schwartz; Seward; Seymour; Small; Souther; Spellman; Stave; Stern; Stoloff; Sussman; Tenney; Thuillez; Troeger; Valdes; Vigdor; Wagner; Walker; Wanderman; Williams; Witmer; Wolf; Yanas; Zalayet.

1. Approval of minutes of November 10, 1990 meeting. The minutes were approved as distributed.
2. Report of Treasurer. Mr. Gershon's report, which previously had been presented to the members of the House at the Annual Meeting of the Association, was received with thanks.
3. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. Maryann Saccomando Freedman, Chair of the Nominating Committee, reported that the committee had nominated the following individuals for election to the respective offices as indicated:

President Elect: John P. Bracken, Islandia
Secretary: Archibald R. Murray, New York City
Treasurer: Richard M. Gershon, Albany

District Vice Presidents:

First: John R. Horan, New York City
Second: Thomas O. Rice, Brooklyn
Third: Thomas P. Connolly, Albany
Fourth: David R. Seward, Gloversville
Fifth: M. Catherine Richardson, Syracuse
Sixth: Kathryn Grant Madigan, Binghamton

Seventh: Robert J. Pearl, Rochester
Eighth: Joseph D. Bermingham, Buffalo
Ninth: William J. Daly, Ossining
Tenth: Joshua M. Pruzansky, Smithtown
Eleventh: A. Paul Goldblum, Brooklyn
Twelfth: Maxwell S. Pfeifer, Bronx

At-Large Members of the Executive Committee:

Grace Marie Ange, Buffalo
Nicole A. Gordon, New York City
Robert L. Haig, New York City
Frank M. Headley, Jr., Bronxville
Howard D. Stave, Forest Hills
G. Robert Witmer, Jr., Rochester

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 officers and members-at-large of the Executive Committee.

4. Consideration of Association position regarding proposed court rule affecting the sealing of court records. Michael A. Cooper, Chair of the Commercial and Federal Litigation Section, summarized the section's position favoring the adoption by the Office of Court Administration of a proposed rule to govern the sealing of court records in civil actions in the trial courts. He stated the section's belief that the rule was consistent with existing law and ensured a reasonable balance between the interests favoring disclosure and those favoring confidentiality of information. Richard J. O'Keeffe, Chair of the Trial Lawyers Section, outlined that section's views in opposition to the promulgation of the proposed rule as too broad and sweeping a standard which would discourage settlements, especially in sensitive cases. Robert D. Sack, Chair of the Subcommittee on Proposed Sealing Rules of the Special Committee on Media Law, expressed the committee's agreement with the general thrust of the rule coupled with its recommendation that it be modified to conform to the common law and constitutional principles cited in the committee's report. Following discussion, which included the House granting the privileges of the floor to Prof. Arthur R. Miller of Harvard University Law School to address the issue, a motion was approved stating the Association's position that: a) there had been no evidence or demonstration of need for the proposed rule; and, b) in the absence of such demonstrated need, the rule not be adopted, given the potential negative effect that promulgation could have on the state's previously overburdened system of justice.

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

a) As authorized by the House of Delegates, the Association had expanded its efforts to enhance the delivery of voluntary pro bono civil legal services to the indigent through the President's Committee on Access to Justice. He introduced Thomas M. Roberts, who had recently joined the staff as Pro Bono Coordinator to assist these efforts.

b) The four Appellate Divisions had by joint order amended Disciplinary Rule 9-102 of the Code of Professional Responsibility effective January 4, 1991. Mr. Cometa noted that to maintain consistency with the Appellate Divisions, it was necessary to

conform the Association's version of the Code to the recent amendment by the courts. 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 amends DR 9-102 of the Code of Professional Responsibility to conform it to the Disciplinary Rule as promulgated jointly by the four Appellate Divisions in January 1991, and as so amended, hereby approves the Code of Professional Responsibility.

c) In an effort to ease the fiscal crisis in New York State, the Executive Branch and the Legislature were considering the appropriation of funds from the Interest on Lawyer Accounts Fund (IOLA) of New York State to reduce budget deficits in areas unrelated to IOLA. Following discussion, the following resolution was approved unanimously on motion of the House:

WHEREAS, the Interest on Lawyer Accounts Fund (IOLA) of New York State is a trust fund, consisting solely of the interest derived from accounts placed therein by the attorneys of New York in reliance upon the administration of such funds by IOLA as a fiduciary, free from outside influence or control, and

WHEREAS, it appears prudent that such principle be reemphasized at this time of budgetary crisis in the New York State government.

NOW, THEREFORE, it is hereby resolved by the New York State Bar Association that the Association:

1. Strongly supports continued autonomy for the IOLA Board of Directors and the Board's continued exercise of free and uncompromised discretion as a fiduciary for the allocation and disbursement of funds entrusted to its care.
2. Strongly opposes any "appropriation" of IOLA funds or any other attempted assertion of control by the executive or legislative branches of the New York State government in contravention of the IOLA statute and further opposes any amendment of the statute for that purpose.
3. Strongly supports legislation that confirms the freedom of IOLA from the appropriation process.
4. Strongly supports the allocation of IOLA funds solely for the purpose of providing civil legal services to indigent persons in New York State.

Consistent with the foregoing resolution, the House also expressed concern that the revenues derived by the state from the biennial attorney registration program and court filing fees be utilized for court-related purposes so as not to dilute the effectiveness of the Judicial Branch and weaken the administration of justice.

d) The judges of the New York State courts had not received a salary increase since 1987, and were entitled to a fair level of compensation to ensure the continued vitality and independence of the Judicial Branch consisting of highly competent jurists. After discussion, the following resolution was adopted unanimously on motion of the House:

WHEREAS, the judges of the New York State courts have not had a salary increase since 1987; and

WHEREAS, while recognizing current fiscal conditions in the State, the New York State Bar Association believes that the State Judiciary is entitled to a fair level of compensation to ensure the continued vitality of an independent Judicial Branch consisting of highly competent jurists who are struggling to process ever-increasing caseloads with insufficient support and meager resources; and

WHEREAS, other categories of employees in state government service at all levels have received annual pay increases since 1987; it is hereby

RESOLVED, that the New York State Bar Association reaffirms its prior position favoring judicial salary increases and in particular the judicial salary increase proposed in the Chief Judge's 1990 State of the Judiciary message with further annual increases to be enacted thereafter consistent with the salary increases granted to certain other state employees.

e) At the December Bar Association/Office of Court Administration meeting, Chief Judge Wachtler had reported that the Pro Bono Review Committee he appointed was proceeding with its efforts to gather baseline data regarding the current level of voluntary pro bono legal assistance which is being provided. Mr. Cometa indicated that he had advised the Chief Judge of the extensive efforts being undertaken in this area by the Association and the county and local bar associations.

f) At that same meeting, the Chief Judge advised that the Administrative Board had reviewed the report of the Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts, as approved by the House, but had expressed concerns regarding the need to revise the current rule given the limited experience with its application and the fact that it deals with an area in which it would be proper for the Legislature to act. Mr. Cometa indicated that the Association committee would continue to pursue this matter to see if these outstanding concerns can be resolved.

g) The deployment of American troops in the Persian Gulf had given rise to legal questions and problems for reservists called to active duty and their dependents.

He advised that to meet this need for legal assistance by New York residents in military service and their families, the Association was cooperating with local bar associations throughout the state. Mr. Cometa indicated that the Association's activities included the development of an informational brochure for dependents, resource materials for attorneys providing legal assistance, and the formation of a special panel as part of the Lawyer Referral and Information Service.

6. Report and recommendation by Task Force on the Law Guardian System. John R. Horan, Chair of the Task Force on the Law Guardian System, summarized the task force's report and recommendations to deal with the problems related to rising caseloads in Family Court and the need to ensure skilled and effective representation for children in various court proceedings. He indicated that to address these issues, the majority of the task force was recommending legislation which would build on many of the recommendations contained in earlier studies of the law guardian system by strengthening and modernizing the current Appellate Division structure while creating a central Office of Law Guardian Services to assume most of the law guardian responsibilities presently exercised by the Office of Court Administration. He explained the specific elements of the proposal, and also noted that a minority of the task force favored an alternative approach involving the enhancement of the Appellate Division authority in this area rather than creating a new central agency. After discussion, a motion was adopted approving the following resolution:

RESOLVED, that the House of Delegates of the New York State Bar Association hereby approves in principle the report of the Task Force on the Law Guardian System and further approves the particular recommendations and legislative proposal submitted by the majority of the Task Force.

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

a) The Nominating Committee had nominated the following individuals for election at the April 1991 meeting of the House to a two-year term as delegates to the American Bar Association House of Delegates: Angelo T. Cometa, Charles E. Heming, Maryann Saccomando Freedman, Henry L. King and Susan S. Robfogel.

b) In the near future, the Office of Court Administration would be mailing 6,000 random, anonymous questionnaires to attorneys to obtain data regarding the level of pro bono civil legal assistance being provided in 1990. As co-chair of the President's Committee on Access to Justice, Mr. Ostertag asked that any members receiving such a questionnaire respond to assist this data-gathering effort.

8. Tribute to New York State Bar Journal Editor Eugene C. Gerhart. Mr. Cometa, with members of the Board of Editors of the New York State Bar Journal, paid tribute to Eugene C. Gerhart for 30 years of dedicated service as Editor of the Journal. A copy of Mr. Cometa's remarks is attached to these minutes.

9. Memorial to Edwin F. Russell. Harold A. Meriam, Jr. presented a memorial to former Association President Edwin F. Russell, who passed away recently. A moment of silence was observed out of respect for 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 the next meeting. Mr. Ostertag announced that the next meeting of the House of Delegates will be held on Saturday, April 13, 1991 at the Marriott Wind Watch in Hauppauge, New York.

TRIBUTE TO EUGENE C. GERHART, EDITOR, *NEW YORK STATE BAR JOURNAL*

A few weeks ago, as I was preparing a President's Message for an upcoming issue of the Bar Journal I took stock of our Association as we closed out the decade of the 80s and rang in the 90s. It gave me a chance to measure our accomplishments, noting opportunities that have been seized, reflecting on opportunities that have been lost, but most importantly, looking at the opportunities for growth and service that lie ahead.

The president's term is brief. There are advantages to its brevity! I am reminded of something that Henry Miller, when he was president, had often repeated at various meetings, "the president's only power is to appoint committees. The rest is a matter of taking direction from the volunteers." The truth of the matter is, the program of the Association continues through the devoted service of its members and the work product of its committees, sections and staff.

Nearly 30 years ago a small but significant event occurred in the life of this organization. One which I am sure most of us here are not aware of. The president at the time was Chauncey Belknap and the Association had 11,000 members. The association was relatively young and we had just initiated a program of Continuing Legal Education in upstate New York. Our committee reports and other products that accrue from our meetings and deliberations, were published but not nearly as widely as they are today.

Our publications are ambassadors representing the state bar and jurisdictions beyond our boundaries as well as the resource that our membership depends on. The fact is, our deeds are vitally important to the work of the bar but it is our words, particularly our printed words which, in a sense transcend our acts and remain long after we go on to other things.

In 1961 as the Association began to broaden the scope of its activities, its then Executive Director, John Berry, requested that one of his responsibilities — the editorship of what was then called the *New York State Bar Bulletin* — a job that he willingly had assumed for 10 years — be transferred to a volunteer.

And so, upon the recommendation of the Committee on Public Information, which had general jurisdiction over The Bulletin, the Executive Committee designated Eugene C. Gerhart of Binghamton to assume the editorship starting with the February 1961 issue of the *New York Bar Bulletin*.

This morning we recognize Gene Gerhart for his 30 years of dedicated service to the Association as Editor in Chief of the *New York State Bar Journal*. He has devoted a large part of his professional life to making the *Journal* a scholarly publication of note among the many publications produced by the organized bar.

In turning the responsibilities of The Bulletin over to Gene, John Berry said that publishing a Bar Association Bulletin is a challenge, to say the least. Gene understood perfectly the need to produce a publication that had to compete with a lawyer's already limited reading time.

It had to be something that would discuss issues of fundamental importance to lawyers and provide timely information on statutory changes and pertinent articles on practice and law office operation.

Gene was a superb choice because he has a wealth of experience and a sound sense of lawyer's problems. It's difficult to balance the competing interests of readers and in looking through nearly 30 years' worth of Bar Journals, I'm not sure how he managed to accomplish it.

Gene is a graduate of Princeton University and earned his law degree from Harvard. He was admitted to practice in New Jersey in 1938 and after a tour of duty in World War II as a Lieutenant in the U.S. Navy he was admitted to the New York Bar in 1945.

Gene's life has been the written word. He is a renowned author of many books including, "American Liberty and Natural Law," two separate books on the life and times of Justice Robert H. Jackson, another biography of Arthur T. Vanderbilt, and the two volume set that comprise 5,000 memorable legal quotations, "to enliven and embellish law and literary works." His law partner was the late George Coughlin, a past president of our Association.

The American Bar Association recognized his literary talents when it named Gene winner of the Ross Essay Contest, a coveted prize. For 22 years Gene served as a member of the ABA Journal Board of Editors and it was during that time he was selected to become Editor in Chief of our publication.

Those of us who have come in contact with him are well aware of his gentlemanly demeanor, his wisdom and his wit. In fact, Gene may be the only volunteer from whom a bar president takes orders!

Usually when Gene wants something done he uses the might and force of the Court of Appeals to make his point.

I am especially reminded of how often he can cite from memory various decisions of the Court of Appeals to cite as precedent when he is trying to get the best out of an author. Wherever it might be — in the office, the home, or in law school libraries throughout the United States, the *New York State Bar Journal* stands as an important part of Gene's professional records. In the years ahead, future members of our profession will turn to the *Journal* to better understand the growth of the legal profession in our state.

Let me paraphrase from one of Gene's books as I ask him to come forward and accept this recognition on behalf of the Association, "Awards are given only for superior and long service, and are symbols of distinction, those who do earn them are held in high esteem. Easy attainment dims the thrill of conquest, in love as well as work."

For Gene he has succeeded both.

MEMORIAL
to
EDWIN FORTUNE RUSSELL

Presented at New York State Bar Association

House of Delegates Meeting

January 25, 1991

New York Marriott Marquis

EDWIN FORTUNE RUSSELL

Edwin Fortune Russell, born August 27, 1910, died October 4, 1990. His was a kind and gentle nature, his demeanor always that of a gentleman.

He was the 79th President of this Association and, we are proud to say, the third President of the Association from the firm of Cullen and Dykman.

Ed was born in Rochester, New York. His father, Herman Russell, was President of the Rochester Gas and Electric Corporation. This may explain Ed's ultimate choice of the law of public utilities as his metier. He received his B.S. in Chemical Engineering and his M.S. in 1933 from the University of Michigan. In addition to his classwork, which involved many laboratory hours, he managed to become President of his junior class and Chairman of the Engineering College Honor Committee. He was a member of the track team and was Captain in the year 1932. He was Big Ten Conference Indoor and Outdoor Quarter Mile Champion in 1931 and 1932 and holder of the Indoor Quarter Mile Record in 1932. He was awarded the Big Ten Conference Medal for Athletic and Scholastic Achievement in that year.

After leaving Michigan, he spent five years as a cadet engineer at Consolidated Edison Company of New York, during which time he attended New York University Law School, receiving his LLB in 1938, after which he became associated with the firm of Cullen and Dykman, where, except for a period of military service, he remained until his death.

He soon gravitated to the law of public utilities and established a national reputation in that field, particularly in the then new development of the natural gas industry. He was President of the Federal Power Bar Association and a member of the Managing Committee of the Legal Section of the

American Gas Association.

He was, as you all know, an enthusiastic and active member of this Association, serving in many capacities, and finally, as President. A measure of the man was his concern for the Association's staff and his appreciation of their efforts during his tenure in that office. His other bar association activities included the Brooklyn Bar Association, the Westchester County Bar Association, the New York State Bar Foundation and the American Bar Foundation. He was equally dedicated in other areas, having been a member of the vestry of Christ Church in Bronxville, as well as a Trustee of General Theological Seminary. He was Village Counsel to the Village of Bronxville and was Mayor of that village, thereafter serving as Chairman of the Zoning Board of Appeals. His final service in that village was as Justice of the Village Court. He took his responsibilities in that regard very seriously, although I am sure he was pleased to be known as Judge Russell.

When not otherwise engaged, he loved his game of "goff", which he enjoyed at the Siwanoy Country Club, where he hit many an awesome two iron. Here, too, he made his record of service as a member of the Board of Governors, Secretary and President of the Club.

Above all, he was devoted to his family. His beloved Betty, known to many of us here, was his constant companion at the many social occasions we shared. Her death in 1985 was a blow to Ed and to those of us who knew her. They have two children, Edwin Larson Russell and Sarah Russell Etchart, and for many years it was usual to receive a Christmas card bearing a picture of the family, by whom, as well as by his many friends, he is remembered with love.