

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 24, 1997

PRESENT: Members: Abrams; Alderman; Asarch; Ayers; Baldwin; Bass; Baum; Bender; Berlin; Birmingham; Besunder; Bohner; Bracken; Branca; Burgman; Buzard; Cardozo; Cavanagh; Cioffi; Civilette; Clune; Coffey; Cometa; Connery; Cooke; Cunha; D'Angelo; Delle Cese; Denton; Dollard; Doran; Dwyer; Edmead; Effman; Eggleston; England; Eppler; Epstein; Fales; Farrell; Felder; Field; Finerty; R.L. Fink; R.S. Fink; Rosalind Fink; Fisher; FitzGerald; Flink; M. Freedman; Friedman; Gacioch; Gardella; Gauthier; Geltzer; Gerstman; Getnick; Gingold; M.R. Goldstein; P.S. Goldstein; Gorgos; Gregory; Gross; Haig; Hall; Harris; Hartman; Hassett; Hayes; Headley; Heming; Herold; Hesterberg; Hoffman; Horan; Horowitz; Jones; Juliano; Kahler; Kahn; Kamins; Kelly; Kennedy; Kenney; M. Kessler; S. Kessler; Kilsch; King; Kougasian; Krane; Landy; Lawrence; Lazar; Lefkowitz; Levin; C. Levy; P. Levy; Lieberman; Lilly; Logan; J. Longo; M. Longo; Luciano; MacCrate; Madigan; Maldonado; Malito; Mandell; Maney; Manley; Marangos; Markuson; McClusky; McDonough; McGlenn; McQuade; Meng; Millon; Moore; Murray; Naviasky; Netter; Nortz; Nussbaum; O'Leary; Okin; Oliver; Osber; Ostertag; Palermo; Palmer; Pearl; Peckham; Penzel; Peradotto; Periconi; Pfalzgraf; Pfeifer; Porter; Pruzansky; Raylesberg; Reede; Reich; Reizes; Remo; Rice; Richardson; Rider; Robinson; Roper; Rosenbloom; Rosenfeld; Rosner; Ross; Rothstein; I. Rubin; Sanchez; Santemma; Schrauer; Seymour; Sharkey; Souther; Spellman; Standard; Stave; Stokes; Taylor; Terranova; Tharp; Thomashower; Thompson; Tishler; Tomaselli; Torres; Tsimbinos; D. Tyler; J. Tyler; Verhoeven; Vig; Weaver; Whalen; Witmer; Wollman; Yanas; Yudes; Zalayet.

1. Approval of minutes of November 2, 1996 meeting. The minutes were deemed accepted as distributed previously.
2. Memorial to John A.R. Walsh. Past President G. Robert Witmer, Jr. presented a memorial to former House of Delegates member John A.R. Walsh, who had passed away during the latter part of 1996. A moment of silence was observed out of respect for Mr. Walsh's memory and his contributions to the Association and the legal profession. A copy of the memorial is attached to these minutes.
3. Report of Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Thomas O. Rice to the members of the House at the Annual Meeting of the Association, was received with thanks.
4. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. Archibald R. Murray, Chair of the Nominating Committee, reported that the committee had nominated the following individuals for election to the indicated offices for the 1997-1998 Association year:

PRESIDENT-ELECT

James C. Moore, Rochester

SECRETARY

Lorraine Power Tharp, Albany

TREASURER

Thomas O. Rice, Brooklyn

DISTRICT VICE-PRESIDENTS

FIRST:

Kenneth G. Standard, Chappaqua

SEVENTH:

A. Vincent Buzard, Rochester

SECOND:

Gregory X. Hesterberg, Brooklyn

EIGHTH:

Paul Michael Hassett, Buffalo

THIRD:

Miriam M. Netter, Troy

NINTH:

Frank M. Headley, Jr., Scarsdale

FOURTH:

Peter V. Coffey, Schenectady

TENTH:

Thomas J. Spellman, Jr., Smithtown

FIFTH:

Dennis R. Baldwin, Syracuse

ELEVENTH:

Robert J. Bohner, Rego Park

SIXTH:

Leslie N. Reizes, Ithaca

TWELFTH:

Hon. Alexander A. Delle Cese, Bronx

AT-LARGE MEMBERS OF THE EXECUTIVE COMMITTEE

John J. Kenney, New York
A. Thomas Levin, Mineola
Ellen Lieberman, New York City
Kathryn Grant Madigan, Binghamton
Joseph V. McCarthy, Buffalo
Edward S. Reich, Brooklyn

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 aforesaid officers and members-at-large of the Executive Committee for the 1997-1998 Association year.

5. Presentation of Ruth G. Schapiro Award. Ms. Richardson presented the fifth annual Ruth G. Schapiro Award to the Hon. M. Delores Denman, Presiding Justice of the Appellate Division, Fourth Department, for her many noteworthy, law-related contributions to remedying the concerns of women, Ms. Richardson acknowledged Justice Denman's leadership and extensive efforts in addressing gender bias in the

courts, mentoring women in the legal profession, and working to advance the position of women in business, the professions, and the community.

6. Report of President. In view of the length of time required to address the other agenda items, Ms. Richardson, in lieu of presenting the usual oral President's report, submitted the attached written summary to inform the House about significant activities and issues of relevant to the Association.

7. Report of Chair. Mr. Pruzansky advised, as he had done previously, that to allow as much time as possible at meetings for the discussion of substantive items, he had circulated his report as Chair in a written format in advance of the meeting. A copy of that report is attached to these minutes. Consistent with the information set forth in that report, Mr. Pruzansky announced that at the April meeting, the House would be requested to elect five of the NYSBA's eleven delegates to the American Bar Association's House of Delegates. He stated that the Nominating Committee had reported the following nominees for those positions: Maryann Saccomando Freedman, Ralph L. Halpern, James C. Moore, M. Catherine Richardson and G. Robert Witmer, Jr.

8. Report and recommendations of Special Committee to Review the Code of Professional Responsibility. Steven C. Krane, Chair of the Special Committee to Review the Code of Professional Responsibility, continuing the process begun at the June 1996 meeting, summarized amendments proposed to the Disciplinary Rules and Ethical Considerations contained in Canons 6, 7, 8 and 9 of the Code of Professional Responsibility. He also reviewed the process utilized by the committee in considering amendments proposed by other interested parties.

Pursuant to the scheduling resolution adopted at the April 13, 1996 meeting of the House of Delegates, and after discussion, proposed amendments were adopted to the following provisions of the Code of Professional Responsibility: EC 6-2, EC 6-6, DR 7-101, DR 7-102, DR 7-104, EC 7-18, DR 7-107, DR 7-109, DR 7-110, EC 7-34, DR 8-103, and DR 9-102.

After concluding consideration of the amendments proposed to Canons 6 through 9, and after further discussion, the following resolution was approved on motion of the House:

WHEREAS, the New York State Bar Association ("NYSBA") has adopted the Code of Professional Responsibility ("Code"); and

WHEREAS, the Disciplinary Rules of the Code have been expressly incorporated into Rules of Court by the Appellate Division of the Supreme Court ("Appellate Division") in each of the four Judicial Departments in New York State; and

WHEREAS, pursuant to a scheduling resolution adopted April 13, 1996, amendments to the Code have been proposed following review by the Special Committee to Review the Code of Professional Responsibility,

county and local bar associations, interested sections and committees of the NYSBA and other interested organizations; it is

RESOLVED, that the House of Delegates of the NYSBA hereby approves the Code as amended by this House, contingent upon adoption by the Appellate Division of the Disciplinary Rules therein contained; and it is further

RESOLVED, that the Special Committee to Review the Code of Professional Responsibility is hereby authorized to make such non-substantive, stylistic changes as might be necessary to ensure uniformity of language and format throughout the Code; and it is further

RESOLVED, that the officers of the Association are hereby empowered and directed to transmit the Code as amended to the Appellate Division and to take such other and further action as may be required or deemed appropriate to achieve the implementation of the recommended Code amendments.

9. Report and recommendations of Task Force on Family Law. Timothy M. Tippins, Chair of the Task Force on Family Law, reviewed the report by the task force which addressed a broad spectrum of substantive and procedural issues affecting the field of family law. He outlined the recommendations formulated by the group with respect to substantive domestic relations issues including divorce grounds, equitable distribution, child support, spousal support, child custody, domestic violence and abuse. Mr. Tippins also summarized the task force's proposals to resolve systemic and procedural problems in the areas of judicial case management of domestic relations cases, pretrial disclosure, calendar practice, judicial economy, expert witnesses, judicial effectiveness, alternative dispute resolution, the role of law guardians, and access to counsel. He also reviewed the task force's procedure for considering comments submitted by interested individuals and groups. The House then proceeded to consider individually the thirty-two substantive and procedural recommendations proposed by the task force. Separate motions were adopted approving the task force recommendations with respect to grounds for divorce; equitable distribution (with the approval of an amendment that proof of tax impact should be presented to the court so that distribution may be based upon after-tax values, whether the tax liability is immediate or deferred); child support (except the recommendation regarding clarification of the Review and Adjustment statute was defeated); spousal maintenance and support; and child custody (with the approval of an amendment that the NYSBA urge the Legislature to enact legislation promulgating statewide standards for the education, training and performance by sex abuse validators, or any other term used to designate that profession).

In order to complete the balance of the agenda, consideration of the remaining recommendations was deferred until the April meeting. Discussion will resume at that time with the recommendations pertaining to domestic violence, the final substantive area, followed by the procedural proposals made by the task force.

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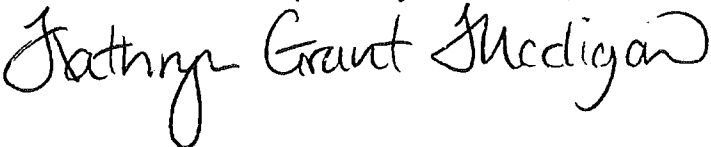
10. Preliminary Report by Committee on Legal Education and Admission to the Bar. Ellen Lieberman, Chair of the Committee on Legal Education and Admission to the Bar, summarized the committee's report concerning the provision of bridge-the gap training to new attorneys making the transition from law school to practice. After reviewing the various studies conducted regarding transitional education, she outlined the committee's proposed educational program for newly-admitted attorneys, indicating that it was consistent with the mandatory continuing legal education rule endorsed by the House of Delegates in 1990. She explained that new attorneys would be required to take instruction in the core subjects of ethics, professional responsibility, client relations and office management, as well as training in one or more of the basic skills areas of problem solving; legal analysis and reasoning; legal research; factual investigation; communication; counseling; negotiation; litigation and ADR procedures; organization and management of legal work; and recognizing and resolving ethical dilemmas. Ms. Lieberman indicated that the transitional education program should encompass twenty-four hours of instruction, including at least six hours of core courses, plus eighteen elective hours so that attorneys could choose subjects most relevant to their practice areas. She also outlined the administrative structure for operating the program as well as potential funding mechanisms. The report was received with thanks, as formal consideration will not take place until the April meeting to allow additional time for review by interested groups.

11. Report and recommendations of Committee on Law Office Economics and Management. Joseph P. Dulin, Jr., Chair of the Committee on Law Office Economics and Management, summarized the committee's proposed revisions to the "Guidelines for Utilization by Lawyers of the Services of Legal Assistants" as adopted by the House of Delegates in 1976. He indicated that the guidelines needed to be updated based on court decisions, ethics opinions and changes in the nature of law practice during the past twenty years. Mr. Dulin then outlined the specific changes proposed to the guidelines, which address the lawyer's professional responsibility in supervising the work of a legal assistant; prohibitions against an attorney aiding a legal assistant in the unauthorized practice of law; the performance of otherwise prohibited functions by a legal assistant when authorized by statute, court rule, case law, or administrative regulation; the preservation of client confidences and the avoidance of conflicts of interest; the prohibitions against the formation of a partnership with a legal assistant where the firm's activities will involve the practice of law and the sharing of legal fees with a legal assistant; the requirement for a lawyer to instruct legal assistants to disclose their non-lawyer status in professional dealings; and the professional development of legal assistants. The report was then received with thanks, with formal consideration being deferred until the April meeting to allow adequate time for review and comment by interested parties.

12. Memorial to Hon. Edward J. Hart. Past President John P. Bracken presented a memorial to former House of Delegates member Hon. Edward J. Hart who had passed away in November 1996. A moment of silence was observed out of respect for Judge Hart's memory and his contributions to the Association and the legal profession. A copy of the memorial is attached to these minutes.

13. Date and place of next meeting. Mr. Pruzansky announced that the next meeting of the House of Delegates was scheduled for Saturday, April 12, 1997 at the Bar Center in Albany, New York.

Respectfully submitted,

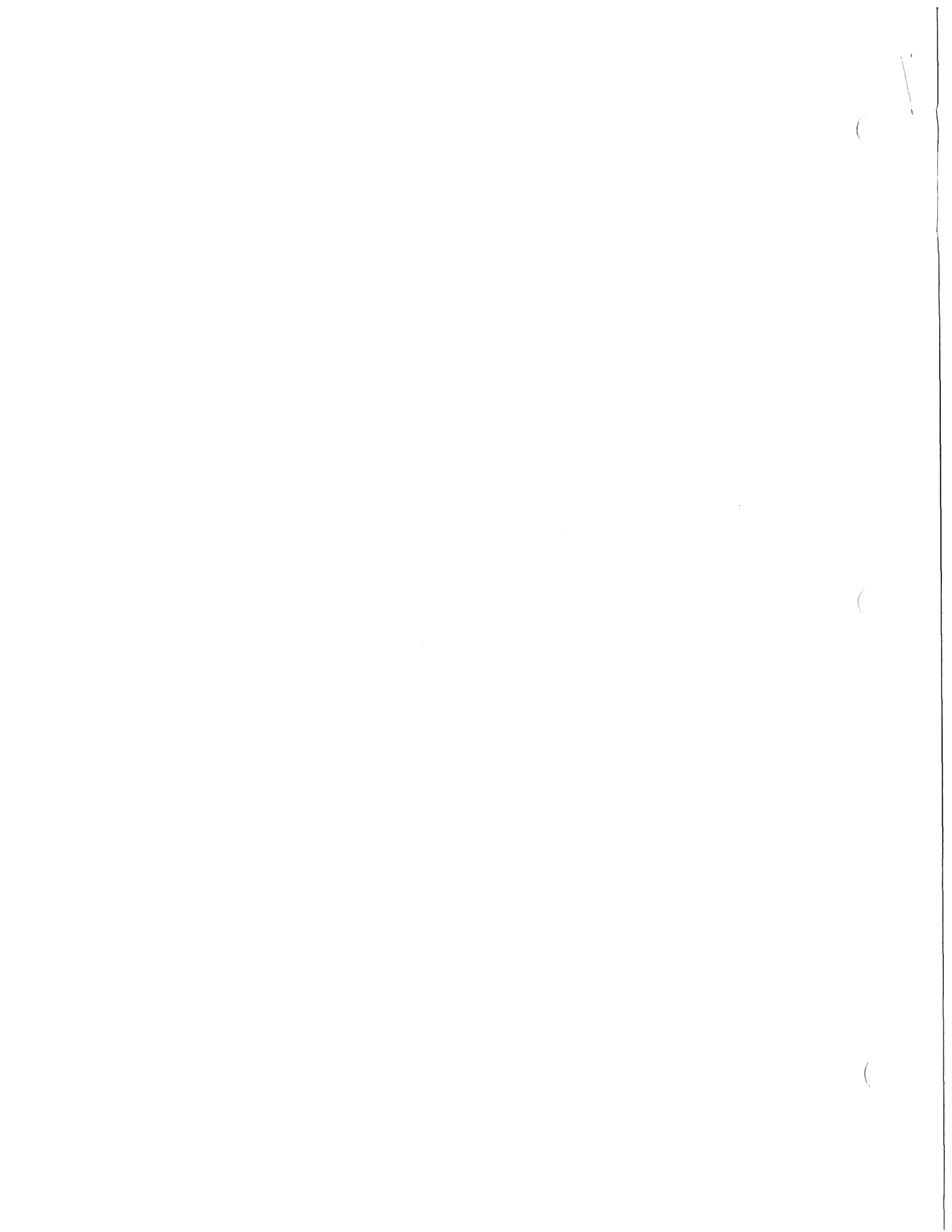
A handwritten signature in cursive script that reads "Kathryn Grant Madigan". The signature is written in black ink and is positioned to the left of the typed name.

Kathryn Grant Madigan
Secretary

NEW YORK STATE BAR ASSOCIATION

In Memoriam

John A.R. Walsh



MEMORIAL
to
JOHN A.R. WALSH

Presented by
G. Robert Witmer, Jr.
Former President
New York State Bar Association
at the
House of Delegates Meeting
January 24, 1997
New York City

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JOHN A.R. WALSH

1947-1996

***L**ast October 18, we lost our friend and colleague, Jay Walsh, after a long and brave battle against diabetes. Although Jay grew up in the Philadelphia area and graduated from Villanova University, it must have been the good country air of Ithaca that persuaded him to settle in Upstate New York after graduation from Cornell in 1972. That and the fact that he had just married his wife, Mary Ellen, who began Cornell Law School the year he graduated.*

Jay settled in Wayne County, just east of Rochester, and by 1975 was practicing on his own and in the process of thoroughly immersing himself in his community. To recount some of Jay's activities provides a powerful insight into his community and the role which Jay played in it. He was president of his local Rotary Club, Grand Knight of the local Knights of Columbus Council, member of his Parish Council, co-teacher with Mary Ellen of preCana classes for couples at their church, counsel to the Wayne County Republican Committee, the Town of Ontario, the Ontario Volunteer Emergency Squad and the Town of Ontario Historical and Landmark Preservation Society, President of the

Wayne County Magistrates Association, a Director of the Wayne County United Way, and Chaplin for cardiac patients at Genesee Hospital.

Jay made an equal contribution to our profession, having been President of the Wayne County Bar Association, President of the Wayne County Legal Education Committee, a member for several years on the Nominating Committee of this Association, and a delegate in this House since 1984.

A couple years ago, I concluded one of my President's messages with a quotation from Oliver Wendell Holmes, who observed of our profession, "Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge so deep in the stream of life - so share its passions, its battles, its despair, its triumphs, both as witness and actor?" Jay's life provides ample proof of that statement.

Jay was a Country Lawyer in the finest tradition of our profession, and would easily fit the description provided as follows by Justice Robert H. Jackson:

[The Country Lawyer] did not specialize, nor did he pick and choose clients. He rarely declined service to worthy ones because of inability to pay. Once enlisted for a client, he took his obligation seriously. He insisted on complete control of the litigation - he was no

mere hired hand. But he gave every power and resource to the cause. He identified himself with the client's cause fully, sometimes too fully. He would fight the adverse party and fight his counsel, fight every hostile witness, and fight the court, fight public sentiment, fight any obstacle to his client's success. He never quit. . . . He moved for new trials, he appealed; and if he lost out in the end, he joined the client at the tavern in damning the judge - which is the last rite in closing an unsuccessful case, and I have officiated at many. . . .

He loved his profession, he had a real sense of dedication to the administration of justice, he held his head high as a lawyer, he rendered and exacted courtesy, honor and straightforwardness at the Bar. . . . The law to him was like a religion, and its practice was more than a means of support; it was a mission.

Two traits of Jay which I will never forget were his friendship and his courage. Jay was living proof of the definition of "friendship." He did not envision this as a passive relationship, but one in which he actively sought to be of assistance. Even if that assistance was to point out the error of his friends' ways - to which several of us in this House can attest who on occasion spoke in favor of a dues increase.

Jay taught us not only how to live, but how to die. A lesson which we each must learn. Jay fought diabetes for 38 of his 49 years, and in that battle suffered heart surgery, kidney dialysis, a loss of both feet and ultimately his life. Yet he never lost his will to live life to the fullest, or his outwardly cheerful demeanor. Not when he was fighting back from the amputation of his first leg, vowing not to be restricted to a wheelchair and learning to walk again, and not even in the hospital after the second amputation did he bemoan his fate to his visitors. Even during those most trying of times, he continued his law practice (preparing real estate closings from his hospital bed), and his involvement in our Association, including attending some of our House meetings in a wheelchair.

Although we will miss Jay terribly, we are thankful for and will remember his friendship, his contributions and the lessons which we have learned from him, and we are grateful that his wife and companion of 24 years, Mary Ellen, has replaced him in our House of Delegates.

I ask for a moment of silence in memory of our friend and colleague, Jay Walsh.

New York State Bar Association

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M. CATHERINE RICHARDSON

President
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One Lincoln Center
Syracuse, NY 13202
315/422-0121
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February 18, 1997

To: Members of the House of Delegates

Re: President's report in connection with January 24, 1997 meeting

As those who attended the last meeting of the House in New York City know, the time required to complete the other agenda items precluded my presenting the usual President's report. I felt it was more important that adequate time be allotted to the discussion of the other matters on the agenda, without my imposing on that time. However, in lieu of that oral report, I am submitting the following summary of significant items for your review, as I believe that the Association is involved in a number of areas that you should find of interest.

1. Judiciary budget. In December, the Judicial Branch submitted a \$935.5 million budget request for the 1997-98 fiscal year to the Legislature. This figure represents a \$42 million, or a 4.7 percent increase over the current year. The budget proposal includes funds to hire 198 new employees for the trial courts, primarily to staff parts dealing with criminal and family violence matters. Five new judges would be added to the New York City Housing Court; \$1 million would be dedicated to provide additional legal support for county level judges; \$2 million would be allocated to improve courthouse security; and \$3.3 million would be spent for computer automation projects. We have found the Judiciary budget request to be sound and reasonable - seeking funds at a level that will permit the court system to function efficiently. We will continue to support this proposed spending plan as it makes its way through the legislative process during the coming weeks.

2. Task Force on Electronic Communications. To facilitate the development of the NYSBA's Home Page presence and the utilization of the Internet by our sections and committees, I have appointed a Task Force on Electronic Communications with Joseph D. Bermingham, Jr. of Buffalo as Chair. During the coming months, Joe's group will be responsible for efforts to enhance the use of rapid communications at all levels of our Association. Not only should we be able to communicate more effectively with each other by utilizing the latest developments in computer technology, but we are hopeful of being able to assist members in gaining electronic access to government and court information enabling them to practice more efficiently and cost-effectively.

3. LobsenzStevens. In keeping with our goal of developing an enhanced media presence for the Association and wider public exposure for its positions and activities, the NYSBA's new public relations consultant, LobsenzStevens of New York City, was of considerable assistance during the Annual Meeting in gaining coverage for the NYSBA by major publications, television and radio stations. I am comfortable that we are moving towards projecting a more forceful public image and attaining broader dissemination of our views on critical matters.

4. Tort reform. Not unexpectedly, tort reform is likely to be a major issue during the 1997 legislative session. So that we can address legislative proposals in a timely and fair manner, I am in the process of designating a special committee whose membership is balanced equally between attorneys for plaintiffs and defendants. This composition will enable us to view any proposed legislation from the perspective of opposite sides and determine if there are issues regarding which the Association can adopt a uniform position or, if not, at least provide the Legislature with reasoned views on both sides. Former President John P. Bracken and past Torts, Insurance and Compensation Law Section Chair David M. Gouldin will co-chair the group. I will endeavor to keep you informed concerning developments as the session progresses.

5. Committee on Judicial Selection. I want to congratulate our Committee on Judicial Selection, ably chaired by Howard D. Stave of Forest Hills, for its fine work this past fall. When vacancies arise on the Court of Appeals, as occurred last year with the retirement of Hon. Richard D. Simons, our committee evaluates the nominees recommended to the Governor to fill the position. Because of statutory time constraints, our committee has a limited period in which to function. Our committee reviewed the nominees and found all to be well qualified. These findings were communicated to Governor Pataki in advance of his appointment of Hon. Richard C. Wesley. I was also able to reinforce our written communication by testifying on behalf of Judge Wesley at his Senate confirmation hearing in January.

6. Meeting with Attorney General Vacco. In mid-January, Josh Pruzansky and I had the privilege of meeting in Albany with Attorney General Dennis C. Vacco. We discussed a number of topics including unlawful practice of the law, the Attorney General's legislative program, mandatory continuing legal education, and opportunities for encouraging greater participation by government lawyers in the work of the organized Bar. In addition, we raised concerns on behalf of our members regarding the Allstate Insurance Company involving orchestrated efforts by this carrier to contact accident victims and settle their automobile liability claims before they could hire an attorney. We found the Attorney General receptive to our concerns. He advised us that he was issuing a memorandum regarding appropriate conduct by insurance carriers, and that he would seek injunctive relief if Allstate failed to comply. We were pleased with the Attorney General's response to an issue of serious import to our members and with serious implications for consumer rights.

7. Meetings with Presiding Justices. During my term, Josh Pruzansky and I share the goal of meeting with the Presiding Justice in each of the four judicial departments. Thus far, I have met with Presiding Justice Cardona in the Third Department, and Josh with Presiding Justice Mangano in the Second. We have discussed a variety of matters with them, including the Association's views on the implementation of the Craco Committee recommendations regarding attorney discipline and the opening of attorney grievance proceedings to the public. We also addressed mandatory continuing legal education, the Code of Professional Responsibility amendments as recently endorsed by the House of Delegates, the establishment of a Fifth Department, and the alternative dispute resolution pilot projects under way in various areas of the state. During the coming weeks, Josh and I will be seeking to meet with Presiding Justices Denman and Murphy to exchange views on these and other topics of interest.

8. Meeting with Quebec Bar Association. On January 13, 1997, Josh and I, together with John E. Blyth of our International Law and Practice Section, had the privilege of meeting at the Bar Center with senior officers of the Quebec Bar Association. The session was cordial and

productive. We discussed at length ways in which the two associations might develop closer ties, including the possibility of conducting joint programs in the future.

9. Craco Committee recommendations. In August 1996, after soliciting comment from bar associations and other interested groups, the Administrative Board of the Courts approved a program for pursuing implementation of various recommendations developed by the Committee on the Profession and the Courts, known popularly as the Craco Committee. Essentially, OCA will be utilizing two bench-bar task forces to accomplish this task - the Task Force on Client Satisfaction and the Task Force on Attorney Professionalism and Conduct. Using subgroups, the Task Force on Client Satisfaction will be preparing draft legislation to open attorney disciplinary proceedings to the public upon the filing of formal charges; developing a pilot program for the resolution of fee disputes; formulating a pilot program for employing letters of engagement in different areas of legal representation; and drafting a statement of client rights and responsibilities. Operating in similar fashion, the Task Force on Attorney Professionalism and Conduct will be developing a prototype mandatory continuing legal education program for the New York bar; recommending revisions to Part 130 of the Rules of the Chief Administrator to offer a more effective deterrent to frivolous litigation; drafting a code of conduct articulating proper standards of professional conduct; drafting a disciplinary rule requiring disclosure in advertising by attorneys as brokers; and developing a prototype for a state ethics institute. During the coming weeks, we will maintain a close liaison with these groups, seeking to express the Association's views in the foregoing areas, and keep you informed concerning developments.

10. Amicus curiae briefs. In December, the Executive Committee authorized participation by the Association in an amicus curiae brief being filed by the Florida Justice Institute and other bar groups in the U.S. Supreme Court in *Washington Legal Foundation v. Texas Equal Access to Justice Foundation*. This case involves an appeal from a Fifth Circuit decision holding the Texas IOLTA program unconstitutional on the ground that lawyers' clients have a property right in the interest collected on lawyers' trust accounts. The brief joined in by the NYSBA argues for the preservation of IOLTA, which is one of the financial underpinnings for providing supplemental funding for civil legal services throughout the country.

Also in December, at the request of our Elder Law Section, the Executive Committee approved the filing of an amicus brief with the New York Court of Appeals in *Matter of Cricchio v. Pennisi*, a case involving the establishment of a supplemental needs trust for disabled Medicaid recipients. The brief argues that a supplemental need trust may be established on behalf of a disabled person without requiring the repayment of Medicaid benefits received by the person prior to the establishment of the trust.

11. January 23, 1997 meeting of Executive Committee. The day before the House meeting in January, the Executive Committee met and considered several matters concerning which I believe you should be informed. They are as follows:

a) Committee on Civil Practice Law and Rules. Based on a recommendation by the Committee on Civil Practice Law and Rules, the Executive Committee approved the filing of a proposed amendment to the CPLR with respect to privileged communications. With the growing use of computers and electronic mail, our CPLR Committee was concerned that if privileged communications are transmitted via computer, questions could be raised whether the requisite level of confidentiality is present to avoid waiver of the privilege. Hence, our committee has proposed,

4. Tort reform. Not unexpectedly, tort reform is likely to be a major issue during the 1997 legislative session. So that we can address legislative proposals in a timely and fair manner, I am in the process of designating a special committee whose membership is balanced equally between attorneys for plaintiffs and defendants. This composition will enable us to view any proposed legislation from the perspective of opposite sides and determine if there are issues regarding which the Association can adopt a uniform position or, if not, at least provide the Legislature with reasoned views on both sides. Former President John P. Bracken and past Torts, Insurance and Compensation Law Section Chair David M. Gouldin will co-chair the group. I will endeavor to keep you informed concerning developments as the session progresses.

5. Committee on Judicial Selection. I want to congratulate our Committee on Judicial Selection, ably chaired by Howard D. Stave of Forest Hills, for its fine work this past fall. When vacancies arise on the Court of Appeals, as occurred last year with the retirement of Hon. Richard D. Simons, our committee evaluates the nominees recommended to the Governor to fill the position. Because of statutory time constraints, our committee has a limited period in which to function. Our committee reviewed the nominees and found all to be well qualified. These findings were communicated to Governor Pataki in advance of his appointment of Hon. Richard C. Wesley. I was also able to reinforce our written communication by testifying on behalf of Judge Wesley at his Senate confirmation hearing in January.

6. Meeting with Attorney General Vacco. In mid-January, Josh Pruzansky and I had the privilege of meeting in Albany with Attorney General Dennis C. Vacco. We discussed a number of topics including unlawful practice of the law, the Attorney General's legislative program, mandatory continuing legal education, and opportunities for encouraging greater participation by government lawyers in the work of the organized Bar. In addition, we raised concerns on behalf of our members regarding the Allstate Insurance Company involving orchestrated efforts by this carrier to contact accident victims and settle their automobile liability claims before they could hire an attorney. We found the Attorney General receptive to our concerns. He advised us that he was issuing a memorandum regarding appropriate conduct by insurance carriers, and that he would seek injunctive relief if Allstate failed to comply. We were pleased with the Attorney General's response to an issue of serious import to our members and with serious implications for consumer rights.

7. Meetings with Presiding Justices. During my term, Josh Pruzansky and I share the goal of meeting with the Presiding Justice in each of the four judicial departments. Thus far, I have met with Presiding Justice Cardona in the Third Department, and Josh with Presiding Justice Mangano in the Second. We have discussed a variety of matters with them, including the Association's views on the implementation of the Craco Committee recommendations regarding attorney discipline and the opening of attorney grievance proceedings to the public. We also addressed mandatory continuing legal education, the Code of Professional Responsibility amendments as recently endorsed by the House of Delegates, the establishment of a Fifth Department, and the alternative dispute resolution pilot projects under way in various areas of the state. During the coming weeks, Josh and I will be seeking to meet with Presiding Justices Denman and Murphy to exchange views on these and other topics of interest.

8. Meeting with Quebec Bar Association. On January 13, 1997, Josh and I, together with John E. Blyth of our International Law and Practice Section, had the privilege of meeting at the Bar Center with senior officers of the Quebec Bar Association. The session was cordial and

New York State Bar Association

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January 15, 1997

To: Members of the House of Delegates

Re: Report of Chair

As commenced at the Cooperstown meeting, I continue to dispense with the traditional formal report by the Chair of the House to allow maximum time for the discussion of substantive agenda topics. President Richardson will be reporting on major activities and policy matters relating to the Association.

The only "housekeeping" item to note is that at the April 12 meeting, we will elect five of the NYSBA's delegates to the American Bar Association House of Delegates.

The NYSBA has a total of eleven delegates, who serve staggered terms. Five positions are to be filled in April for a two-year term, commencing at the conclusion of the ABA's Annual Meeting in August. The other six positions do not become vacant until 1998.

Pursuant to the House resolution adopted November 3, 1984 which governs the process, the names of candidates selected by the Nominating Committee must be announced at the House meeting immediately preceding that at which the election will be held. This procedure is intended to provide due notice in the event members of the House wish to offer other candidates for consideration. In keeping with this mandate, notice is hereby given that the five nominees are:

Maryann Saccomando Freedman, Buffalo
Ralph L. Halpern, Buffalo
James C. Moore, Rochester
M. Catherine Richardson, Syracuse
G. Robert Witmer, Jr., Rochester

Last June we instituted a survey at each meeting to measure your satisfaction with various aspects of the House meeting. Your comments provide the basis for change. The attached summary from November parallels June in indicating overall satisfaction with the format, content and materials.

A survey form will, accordingly, be distributed on January 24. Please take a few moments to complete the survey form and return it to a member of our staff. Your views are the only guidance we receive in structuring the consideration of matters by the House.

Please also note that we are experimenting further with the format of this meeting by assigning times to each of the agenda items. The time estimate for each item is intended as a guide for the convenience of the members of this House and is not intended to limit discussion or debate.

This constitutes my report as Chair.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the left.

Joshua M. Pruzansky
Chair of the House

HOUSE OF DELEGATES

QUESTIONNAIRE - November 2, 1996

55 RESPONSES REC'D

As Chair of the House of Delegates, and on behalf of President Richardson, I would like to welcome you to our fall meeting in Albany.

As stated to you on the questionnaire distributed at the June meeting, among the goals of the present leadership is the enhancement of communications with members of this House as well as making our meetings as substantive and productive as possible. This can only be accomplished by your commitment to the process. Towards that end, you are invited and encouraged to share your thoughts and suggestions and you will, accordingly, find the address, phone and fax number for Catherine and me at the end of this document. If you so wish, you may use this questionnaire which may, upon completion, be given to any of the Association's staff.

It is our intention to distribute a similar questionnaire at the remaining House meetings this Association year.

1. Were the agenda background materials provided to you:
7 Too Detailed Insufficiently Detailed 48 About Right

2. Were the agenda materials supplied to you sufficiently in advance of the meeting to allow adequate time for review:
49 Yes 6 No

3. As to the following agenda items, was the amount of time allocated to discussion:
 - a) Report of the Committee on Civil Rights (agenda item #5):
 Too Much 5 Too Little 50 About Right

 - b) Report of the Special Committee to Review the Code of Professional Responsibility (agenda item #7):
 8 Too Much 2 Too Little 43 About Right

4. Was the position of the Executive Committee on the agenda items of value to your deliberation and ultimate decision:
30 Yes 5 No 19 Somewhat

5. Did this agenda contain sufficient substantive issues to make your attendance worthwhile:

49 Yes 2 No 4 Somewhat

6. What items would you like to see included on the agenda of further meetings?

7. What was your opinion about the length of the meeting:

5 Too Long 2 Too Short 46 About Right

8. Is it your opinion that four (4) House meetings per year are:

1 Too Many 1 Too Few 52 About Right

9. Additional Comments:

Should you wish to communicate with the President or President-Elect regarding this agenda meeting or anything having to do with the House of Delegates or the NYSBA, you can do so at the following addresses:

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MEMORIAL
to
EDWARD J. HART

Presented by
John P. Bracken, Esq.
Former President
New York State Bar Association
at the
House of Delegates Meeting
January 24, 1997
New York City

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EDWARD J. HART

1926-1996

Appellate Division Justice Edward J. Hart died suddenly on November 4, 1996 after suffering a heart attack.

Judge Hart was a graduate of Cornell University and St. John's University Law School.

He was a past president of the Nassau County Bar Association, a past president of the Defense Association of New York, a past member of the American Bar Association House of Delegates and a past member of this House of Delegates.

As a member of the New York State Bar Association, he was chairman of the Tort Reparations Committee. He was a past member of the Judiciary Committee of the Nassau County Bar Association as well as a past member of the Advisory Committee on Civil Practice appointed by the Chief Judge in the Court of Appeals.

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In 1991, he received a Nassau County Bar Association award for Outstanding Service to Both the Legal Profession and the Community at Large for Performing Pro Bono Services.

In addition, Justice Hart was a member of Scribes, the American Society of Writers on Legal Subjects.

Justice Hart was legislative counsel for the New York State Bar Association in the early 70's.

At the time of his death, Justice Hart was acting chair of the Tenth Judicial District Grievance Committee.

Judge Hart's career spanned many years and during that career he had the opportunity to argue cases before the United States Military Court of Appeals as well as the United States Supreme Court.

During the years that he practiced law, he had the reputation of being one of the most tenacious defense counsels trying cases.

As a member of the Appellate Division bench, he was respected for his work ethic as well as his dedication and analytical skills.

The most oft heard comment about Judge Hart was, "while you may not have agreed with him, you always walked away with a high degree of respect".

He will be sorely missed.