

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES  
MARRIOTT MARQUIS, NEW YORK, NEW YORK  
JANUARY 30, 2004**

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**PRESENT:** Alcott; Amoroso; Asarch; Aversa; Ayers; Bailey; M. Bartlett; R. Bartlett; Bauman; Beehm; Berman; Bracken; Brady; Brett; Brown; Butler; Buzard; Campos-Galvan; Cantwell; Castellano; Cerchione; Christian; Cioffi; Clifford; Coffey; Cometa; Cristo; Cuyler; Cyrulnik; Darche; DeFio; Doerr; Dollard; Doyle; Dwyer; Edmunds; Eisman; Enea; Eppler; Evans; Farrell; Fedrizzi; Fennell; Filiberto; Finerty; Fink; Fishberg; Flaherty; Flink; Flood; Franchina; Frazee; Fredrich; Gacioch; Geoghegan; Gerstman; Getnick; Goldenberg; Golinski; Gordon; Green; Gregory; Gross; Gutekunst; Haig; Hanna; J. Harris; Hartman; Hassett; Hayes; Hendricks; Hession; Hoffman; Hollyer; Horan; Ingrassia; R. Jacobs; S. Jacobs; Jaffe; James; Kamins; Karson; Kessler; Kilsch; B. King; Kinum; Kossove; Kougasian; Krane; Kretser; LaFave; Lawrence; C. Lee; Leeds; Lerose; Lesk; Levin; P. Levy; Lewis; MacCrate; Madigan; Mandell; Maney; Marwell; Matalon; Mayer; McShea; Miklitsch; H. Miller; M. Miller; Millman; Milonas; Miranda; Mitzner; Moore; Myers, Nathanson; Netter; Nizin; O'Leary; O'Mara; Ostertag; Palermo; Peradotto; Perlman; Peterson; Pfalzgraf; Plumley; Price; Privitera; Pruzansky; Purcell; Quattlebaum; Ramos; Reed; Reimer; Reitzfeld; Rice; M. Richardson; Richman; Robert; Robertson; Rocklen; Rodriguez; Romero; Rosenthal; Rosner; Rothstein; Safer; Santemma; Schraver; Schultz; Seymour; Shaw; Sherwin; Sherwood; Shulman; Smith; Spellman; Sperendi; Standard; J. Sunshine; N. Sunshine; Sweeny; Tell; Terranova; Tharp; Tishler; Torrent; Treece; Tully; Tyler; Tyo; Vigdor; Wales; Walker; O. Walsh; S. Walsh; Warner; Weinberger; Wimpfheimer; Witmer; Wolford; Zeltner; and Zimmerman.

1. Approval of minutes of November 8, 2003 meeting. In a unanimous voice vote, a motion was adopted approving the minutes as distributed previously.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer James B. Ayers to members of the House at the Annual Meeting, was received with thanks.
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. Paul Michael Hassett, Chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2004-2005 Association year:

**PRESIDENT-ELECT**

A. Vincent Buzard, Rochester

**TREASURER**

James B. Ayers, Albany

**SECRETARY**

Kathryn Grant Madigan, Binghamton

**DISTRICT VICE-PRESIDENTS**

**FIRST**

Mark H. Alcott, New York City  
Stephen D. Hoffman, New York City

**SEVENTH**

C. Bruce Lawrence, Rochester

**SECOND**

Barry M. Kamins, Brooklyn

**EIGHTH**

Sharon Stern Gerstman, Buffalo

**THIRD**

Rachel Kretser, Albany

**NINTH**

Henry S. Berman, White Plains

**FOURTH**

Cristine Cioffi, Niskayuna

**TENTH**

Hon. Joel K. Asarch, Hempstead

**FIFTH**

Michael E. Getnick, Utica

**ELEVENTH**

Seymour W. James Jr., Kew Gardens

**SIXTH**

James C. Gacioch,  
Binghamton

**TWELFTH**

Lawrence R. Bailey Jr.,  
New York City

**MEMBERS-AT-LARGE OF THE EXECUTIVE COMMITTEE**

Donald C. Doerr, Syracuse  
John H. Gross, Northport  
Claire P. Gutekunst, New York City  
David R. Pfalzgraf, Buffalo  
Jay G. Safer, New York City  
David M. Schraever, Rochester

There being no further nominations, a motion was made and carried by unanimous voice vote that the nominations be closed. The Secretary then cast a single ballot for the above-named individuals as officers and members-at-large of the Executive Committee.

4. Presentation of the Ruth G. Schapiro Memorial Award. President Levin presented the annual Ruth G. Schapiro Memorial Award to Professor Eileen R. Kaufman of Touro Law School for her exemplary contributions in addressing the concerns of women in society. Professor Kaufman was cited for her teachings, research and advocacy in civil rights, sexual and employment discrimination, access to justice, and gender equality issues.
5. Address by the Chief Judge. Chief Judge Judith S. Kaye addressed the House, providing a preview of the State of the Judiciary report. Judge Kaye cited the importance of bench and bar collaboration in efforts to promote effective procedures, legislation and adequate resources for the legal system. She reviewed developments through the recently instituted fiduciary provisions, expansion of the commercial and drug courts, the matrimonial rules implemented 10 years ago, and the newly issued report and recommendations to enhance pro bono service that is currently out for comment. She also discussed new reports being prepared by Court System commissions on judicial elections, access to court records, and utilization of jurors. The Chief Judge advised that she would pursue studies on the indigent defense systems in the state and the needs of solo and small firm practitioners.
6. Memorial. A memorial was presented for past President Charles E. Heming of New York City by past President Henry G. Miller of White Plains, citing Mr. Heming's dedication to the work of the Association throughout his career.
7. Report and Recommendations of the Special Committee on Association Governance. The Chair of the Special Committee on Association Governance, Dennis R. Baldwin, was joined by Committee member and past President M. Catherine Richardson in a review of the recommendations from the Committee's governance study. Mr. Baldwin advised that the Committee is not pursuing the balance of its recommendations with respect to diversity (i.e., designation the Secretary as Diversity Chair and the creation of a Committee on Diversity) in view of the President's appointment of the new Committee on Diversity and Leadership Development.

Regarding the Committee proposal to add 12 seats to the House by presidential appointment from the racial and ethnic traditionally underrepresented minority groups identified by the National Association of Law Placement, a motion was offered to adopt the recommendation of the Executive Committee that the 12 appointments be subject to ratification by the Executive Committee and with the further proviso that any recommendations made by the Committee on Diversity and Leadership Development to the President concerning individuals for possible appointment be advisory and nonbinding. This was accepted by the movant as a friendly amendment. A motion to amend to include sexual orientation and disability was not adopted in a voice vote with those opposing the modification observing that the purpose was to concentrate this action on racial and ethnic diversity. A further motion to amend to provide that the seats be nominated by

the Nominating Committee, rather than appointed by the President, did not prevail in a voice vote. The movant to a motion to amend to add a 25-year sunset provision accepted an amendment for a 10-year sunset provision; this motion, as modified, was adopted by a standing count of 127-34. In a voice vote, the House then adopted the main motion as modified: adding 12 seats to the House by presidential appointment from the racial and ethnic traditionally underrepresented minority groups identified by the National Association of Law Placement, subject to ratification by the Executive Committee, with the further proviso that any recommendations made by the Committee on Diversity and Leadership Development to the President concerning individuals for possible appointment be advisory and nonbinding, and establishing a 10-year sunset provision.

Following discussion, a motion was adopted by voice vote approving the Committee proposal to increase Section representation on the House. As proposed, sections with up to 1,500 members would receive one delegate; 1,501-2000, two delegates; 2,001-3,500, three delegates; 3,500 or more, four delegates; and the Young Lawyers Section would retain its current allocation of four delegates.

A motion was made to support the Committee recommendation to add two members-at-large to the Executive Committee by presidential appointment from a pool recommended by the Committee on Diversity and Leadership Development. An amendment was offered and accepted by the movant for the two seats to promote racial and ethnic diversity to be nominated by the Nominating Committee. A motion to amend to add gender was not approved in a voice vote, with those opposing the measure noting intention to focus this measure on building ethnic and racial diversity. The measure, as modified, was then approved by voice vote.

The House then considered the proposal for eight members-at-large of the Executive Committee to be selected by the Nominating Committee, with at least four from the first district with one of them to be a current or former Section chair, and a further two to be a current former Section chairs. A motion to approve this proposal did not prevail in a standing count of 42 for and 99 against the measure. The Committee did not advance the related provisions in this portion of the report.

With respect to terms of office, a motion was adopted by voice vote approving the following changes in term limits: member-at-large – provide service up to four consecutive terms, instead of the present three; Treasurer, four, rather than the current six. By a standing vote of 89-44, a further motion was adopted approving the reduction of consecutive terms for Vice President from the present six years to four and providing that individuals would be limited to four consecutive terms in the combined capacities of Vice President and member-at-large, rather than the present six. The new term limits to apply to newly elected members of the

Executive Committee. A motion to appoint one of the Executive Committee member-at-large seats from the Young Lawyers Section was ruled out of order.

A motion to approve the Committee's proposals to revise the formula for awarding representatives to the Nominating Committee was not adopted in a voice vote. The Committee did not proceed with consideration of the other provisions in this section of the report.

8. Report of the President. President Levin reported on the matters below and advised that given time constraints and the numerous items to be addressed at this meeting, he would provide a written report of these and other developments, a copy of which is attached.
  - a. Association History. The newly published history of the New York State Bar Association is available. The 214-page illustrated book describes the major issues, personalities and the impact of the Association in the development of law, legal system and government from the founding of the Association in 1876. *Of Practical Benefit* was produced under the direction of the Special Committee to Commemorate the Association's 125<sup>th</sup> Anniversary, chaired by John Hanna Jr., and was published in cooperation with American Heritage.
  - b. E-Mail Service. A new free service will be available to members enabling them to receive their e-mail through a pass-through address of the Association. The messages will be forwarded to the members regardless of what Internet provider they use or how many times their e-mail account is changed. As this is a pass-through account where information is not stored on Association equipment, security or privacy is not at issue. The service was planned in coordination with the Association Electronic Communications Task Force chaired by David P. Miranda.
  - c. Publications: The Executive Committee Subcommittee on Association Publications, chaired by Kathryn Grant Madigan, is undertaking a study of the content, format and delivery of Association periodicals, including a survey to obtain the perspectives of delegates to the House. A report of the findings and recommendations is expected in April. Advertising also has commenced for an editor-in-chief of the *New York State Bar Journal*.
  - d. Staff Reorganization. Executive Director Patricia K. Bucklin had instituted a staff reorganization in consultation with Association officers to enhance coordination, efficiency and communication. The 16 departments have been combined into 7 work units, overseen by senior directors. The Executive Committee ratified the newly created position of Assistant Executive Director, to assist Ms. Bucklin and Associate Executive Director John A. Williamson Jr., and the designation of L. Beth Krueger to serve in this position. As part of her duties, Ms. Krueger will oversee the

Administrative Services, Meetings and Media Relations areas that also include the Law, Youth & Citizenship Program and The New York Bar Foundation.

The newly established positions of senior director include - Terry J. Brooks, CLE programs, publications and related services; Paula Doyle, Finance and Human Resources; Kathleen R. Mulligan-Baxter, Legal and Governmental Affairs, including the Counsel's Office, Governmental Relations, Pro Bono Affairs and Lawyer Referral and Information Service; Richard J. Martin, Marketing and Information Services, also including MIS, Desktop Publishing and the Website; Patricia K. Wood, Membership Services, also including Law Practice Management and Section Liaison; and Roger Buchanan, Printing and Facilities Operation.

- e. Court System Budget Hearing. He would give testimony at the joint legislative hearing on the proposed budget of the Unified Court System in February. The testimony would support the budget proposal as working for an open and accessible justice system in the times of fiscal constraints and also address issues of critical importance to the Association in facilitating access to legal counsel and the justice system.
- f. Pro Bono Report. The Court System issued a report summarizing the results of a statewide survey of attorneys, showing 46 percent taking pro bono cases, down one percent from the 1997 survey. The percentage of those handling civil matters decreased from 39 to 34 percent. The report recommended actions to enhance volunteer service, including establishment of judicial district bench-bar committees assisted by a statewide committee. The Committee on Legal Aid and President's Committee on Access to Justice are developing a report and recommendations for action at the April meeting and other relevant Association entities are being asked to submit their perspectives.
- g. Annual Meeting. The Annual Meeting programs have been well-received and well attended with attendance of nearly 5,000 or, including participation in multiple programs, approximately 9,500. The President's Summit on the implications of the Patriot Act featured excellent panel discussions with positive feedback from the audience. He asked members to share their views on the change of format from a House dinner to a reception.
- h. Attorney Professionalism Award. The House reception featured the presentation of the Attorney Professionalism Award, recognizing the highest standards of professionalism, integrity and civility, dedicated service to clients and a commitment to promoting respect to the legal system in the pursuit of justice. Receiving this honor was James M. Conboy of Albany.

- i. Jury System. The Committee on the Jury System has issued an interim report on several issues under examination by the Chief Judge's Commission on the Jury, which is considering means of utilizing jurors, and the Court System Jury Trial Project pilot programs on ways to enable jurors to be more active participants in the process. Consistent with positions previously taken by the House, the Committee called for no reduction in peremptory challenges, observing that such challenges aid in providing for fair and impartial juries; did not favor permitting oral questioning from jurors to witnesses, noting the difficulty of determining the appropriateness of the questions and enforcing rules of evidence; and recommended not permitting written questions by jurors pending further study and review. These positions have been communicated to the Commission for input during the development of its study. The Committee is examining additional issues under study by the Commission and Project, as well as other matters and approaches relating to the jury process and plans to report to the Executive Committee and House in April. The Committee has surveyed relevant committees and sections and administrative judges to gain their experience and input on these topics.
  - j. Judicial Selection. To continue to address and make recommendations on judicial selection and related issues, he has appointed a Special Committee on Court Structure and Judicial Selection to be chaired by the Hon. Richard D. Simons of Rome, charged with examining and making recommendations on issues expected in the report to be completed by the Court System's Commission to Promote Public Confidence in Judicial Elections (Feerick Commission) later in the year, as well as other matters in this area.
9. Report and Recommendations of the Special Committee to Review the Code of Judicial Conduct. Marjorie E. Gross, Chair of the Special Committee to Review the Code of Judicial Conduct, summarized the recommendations of the Committee concerning the interim report of the Court System's Commission to Promote Public Confidence in Judicial Elections (Feerick Commission). While agreeing with the majority of the proposals, the Committee had several substantive objections, including considering the proposed discretionary recusal as unworkable; citing the need to give guidance on the distinction between announcing a judge's views on legal or political issues and making a pledge, promise or commitment; seeing, as overly broad, the proposal to require a lawyer to disclose to the parties whether he/she or the client has ever made political clients to the judge; and seeking adoption of language on judges' nonpublic statements on pending or impending cases. The Committee also called for certain modifications in drafting.

Discussion then ensued with various perspectives on the recommendations of the Special Committee, including recommendations to support the Special Committee and to make certain modifications of the recommendations. Also discussed were

the effect of mandatory recusals, the reporting requirements and related provisions on judges and attorneys in less-populated areas, and the alternative of making available online searchable contribution lists. It was announced that the Executive Committee had adopted the following motion endorsing for positive House action the report of the Special Committee with the following exceptions and comments:

- a. The Executive Committee opposes and does not endorse the Special Committee's proposed expansion of the definition of "contribution" and its proposed expansion of attribution to contributions made to judicial candidates.
- b. The Executive Committee urges the Feerick Commission to modify its proposed comment 3.28 to proposed rule section 100.3(E)(3) from "Nothing in this rule speaks to the question of attribution of contributions by individual members of an entity" to "This rule does not require attribution of any contribution to a lawyer or firm other than the contribution made by the lawyer. This rules does not require aggregation of contributions made by individual members of a firm."

Following further discussion, a motion was then adopted by voice vote opposing the proposed mandatory recusal measures and the proposed reporting requirement amendments to the Disciplinary Rules of the Code of Professional Responsibility and, instead, calling for political contributions in general to be available on a searchable database and opposing the Special Committee's proposals to expand the definition of "contribution" and to expand attribution of contributions made to judicial candidates. By a standing vote of 72-24, the House then adopted the main motion to approve the Special Committee report and recommendations as amended in the prior motion. Plans were made to communicate this position to the Feerick Commission.

10. Report and Recommendations of the Commercial and Federal Litigation Section on Electronic Access to Court Records. Peter J. Pizzi, Co-Chair of the Committee on the Internet and Litigation, presented the Commercial and Federal Litigation Section's report and recommendations on providing electronic access to court records. The Section urged adoption of the equivalent of the PACER system used in federal courts that permits electronic access to docket sheets, pleadings, motions, affidavits and exhibits, orders, decisions and judgments by registering and opening an account. The Section further called for privacy protections, excluding certain personal information from electronically filed documents, similar to federal guidelines. As a priority, the Section recommended making judicial opinions and orders accessible online. The Executive Committee's endorsement was announced. The Court System's Commission on Public Access to Court Records is examining and developing recommendations on the Court System's policies on the availability of court records on the Internet. A motion



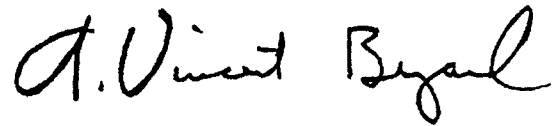
was adopted by voice vote unanimously approving the report and recommendations.

11. Report and Recommendations of the Suffolk County Bar Association on the Property Condition Disclosure Act. Representing the Suffolk County Bar Association, Douglas J. Lerosé announced postponement of the presentation on its proposal to seek repeal of the Property Condition Disclosure Act, to provide opportunity to receive additional input.
12. Report of the Special Committee on Issues Affecting Same-Sex Couples. A status report on the development of a report and recommendations of the Special Committee on Issues Affecting Same-Sex Couples was presented by its Chair, Michael Whiteman. The Committee has designated a reporter to prepare a scholarly report that will identify issues and the various approaches including legislation, rules and other means, and describe the provisions and experiences of other jurisdictions. These segments of the report will be followed by the Committee's conclusions and recommendations. The report and recommendations are expected to be issued in the fall of 2004 and considered by the Executive Committee and House in November 2004. As this is later than the time anticipated in the motion by the House calling for the establishment of the Committee, a motion was made and adopted by unanimous voice vote to modify the schedule to reflect the planned November 2004 presentation.
13. Report of The New York Bar Foundation. Given the extensive agenda and discussion, time constraints and the earlier presentation of Foundation initiatives during the Foundation Annual Meeting, Foundation President Robert L. Haig advised that he would waive giving an oral report at this time.
14. Report of the Chair. President-Elect Standard gave the following report as Chair of the House:
  - a. Delegates to ABA House. At the April 3, 2004 meeting, the House would be asked to elect six of the NYSBA's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals for those positions: A. Vincent Buzard of Rochester, Steven C. Krane of New York City, A. Thomas Levin of Mineola, Robert L. Ostertag of Poughkeepsie, Maxwell S. Pfeifer of the Bronx, and, as the Young Lawyers delegate, Manuel Campos-Galvan of New York City.
  - b. Judicial Nominations. House action is needed to rename a standing committee. To avoid confusion with the state Commission on Judicial Nomination that presents a list of nominees for the Court of Appeals for the Governor's consideration and to clarify the purpose of the Association's Committee on Judicial Selection, which reviews those nominated by the Commission, he requested that the Association

Committee be renamed as the Committee to Review Judicial Nominations. A motion was adopted by unanimous voice vote approving this change.

- c. In Memory. A moment of silence was observed for the late Lawrence E. Lagarenne of Monticello who had served, among other positions, as Third District Vice-President and Member-at-Large on the Executive Committee and as a member of the House.
15. Date and Place of the Next Meeting. President-Elect Standard announced that the next meeting would be held on Saturday, April 3, 2004 at the Bar Center in Albany.

Respectfully submitted,



A. Vincent Buzard  
Secretary



# New York State Bar Association

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## PRESIDENT'S REPORT TO THE HOUSE OF DELEGATES January 30, 2004

1. **Staff reorganization.** Effective January 1, 2004, our Executive Director *par excellence*, Pat Bucklin, put in place a staff reorganization plan that she had been developing over the past several months in consultation with the Association officers. This new organizational structure will improve effectiveness, efficiency and communication at the staff level. The ultimate product should be heightened levels of service to the Association and its membership, while making the best and most economical use of staff resources.

Over the years, our staff had grown to 110, divided among 16 separate departments. Pat has combined these separate departments into seven new work units which will not only ease administration, but will allow for the coordination of resources and talent within those units. To assist her and John Williamson in the oversight of the new units, Pat has named L. Beth Krueger to a new number three position on the staff as Assistant Executive Director.

Beth is being designated as Assistant Executive Director in recognition of her expertise, work and dedicated service. This represents the establishment of a new position, so the Executive Committee on January 29, 2004 formally ratified and approved this designation.

As part of her new responsibilities, Beth will oversee the Administrative Services, Meetings and Media Relations functions. This will include our Meetings, Media Services, and Public Affairs Departments, along with the Law Youth and Citizenship Program and The New York Bar Foundation.

In addition to Beth, six other individuals have been named as Senior Directors, each charged with overseeing new work unit combinations as follows:

\* Paula Doyle has become Senior Director in charge of the Finance and Human Resources area. This will include our Human Resources and Finance Departments.

\* Kathleen R. Mulligan-Baxter becomes Senior Director in charge of Legal and Governmental Affairs. This includes our Counsel's Office, Departments of Governmental Relations and Pro Bono Affairs, as well as our Lawyer Referral Service.

\* Richard J. Martin is Senior Director in Charge of Marketing and Information Services. His areas of supervision will include Marketing, MIS, Desktop Publishing and Web Site.

\* Patricia K. Wood is Senior Director for Membership Services. She will be in charge of Membership, Law Practice Management and our Section Liaison.

\* Terry J. Brooks is Senior Director for Continuing Legal Education. Under him Jean Nelson remains the Associate Director for the department, focusing primarily on programs, while Daniel McMahon will be Director for CLE Publications.

\* Roger Buchanan is Senior Director for Print Facilities and Operations. He is in charge of our Graphics operations, as well as our Print Shop and Building Maintenance.

2. **Committee on Association Publications.** Kate Madigan has been chairing the Committee on Association Publications, a subcommittee of the Executive Committee. This committee has been conducting a review of Association publications (the Law Digest, New York State Bar Journal, and State Bar News) in order to improve the delivery of information and legal content that is most valuable to members in their practice. In order to better understand the needs of members, their preferences as to the manner in which information is delivered, and to have a sound basis for making any recommendations for changes in our publications, the committee has been conducting a survey of House members to obtain their views. This survey has been mailed to the members. If you have not already done so, please complete and return the survey, as it is critical to developing short and long-term plans with respect to Association publications. All responses are anonymous and will be kept confidential.

3. **Appointment of Robert S. Smith to the Court of Appeals.** Judge Smith's appointment was confirmed on January 12, 2004. He has taken office, filling the vacancy on the State Court of Appeals created when Hon. Richard C. Wesley resigned upon his appointment to the U.S. Court of Appeals for the Second Circuit. Judge Smith was found "well qualified" for appointment by our Committee on Judicial Selection, which is chaired by Peter V. Coffey from Schenectady. Our committee's findings were conveyed first to Governor Pataki to assist in the appointment process, and then to the Senate Judiciary Committee to aid the confirmation process.

4. **Non Commercial Sustaining Announcements.** You may recall that at the November House meeting, we played three separate radio announcements geared to the theme of "Lawyers Protect Your Rights." These radio spots dealt with the topics of HIV/AIDS, adoption, and the role of lawyers as trusted advisors. These informative pieces, known as non commercial sustaining announcements, were prepared by the Association's Committee on Public Relations and were aired from early October to early November 2003 in cooperation with the New York State Broadcasters Association. Data is now in from the Broadcasters Association concerning the value of the announcements in terms of comparable advertising time. For the investment of \$30,000, the Association received air time valued at over \$975,000 if it had been purchased at normal advertising rates, a return of over 30 times the NYSBA's investment. This educational approach has proven valuable in educating the public about the law and the role of lawyers, and the Association will continue to pursue similar initiatives with the Broadcasters Association in the future. The Finance Committee has approved inclusion of funds for continuation of this program in the next Association budget.

5. **E-mail address.** I am pleased to note the accomplishment of another project referenced in my earlier reports. As a service to members, in cooperation with the Electronic Communications Task Force, which is chaired by David P. Miranda of Albany, we have arranged for a "nysbar.com" e-mail address to be made available free to all NYSBA members. This initiative will enable members to have a permanent e-mail address which will continue for the duration of their membership, but will permit them to actually receive their e-mail at whatever address they wish, through whatever internet service provider they choose. The nysbar.com address will automatically forward e-mail to any address designated by the member. Clients and members of the public will be able to contact participating members by e-mail at nysbar.com, thus lending an added level of convenience and prestige to their e-mail communications. In addition, members will be able to respond in a manner which will indicate that the response comes either from the nysbar.com address or the member's other e-mail address, at the option of the member. We are presently in the process of doing a "soft opening" with selected members, and the address will be announced generally within the next 45-60 days. Full registration information and instructions for this service free to members will be posted on the Web site.

6. **Judge Lippman meeting.** We had another of our regular meetings with Chief Administrative Judge Jonathan Lippman, on Monday, January 26, 2004. Discussion topics on the agenda for this meeting included the interim report of the Commission to Promote Public Confidence in Judicial Elections; the integrity of the judiciary/judicial selection process; the judiciary budget for fiscal year 2004-2005; the new court fees enacted during the last legislative session and steps taken to address concerns raised about problems with the administration of the new fees, OCA's recent report with respect to pro bono service; reform of the Rockefeller drug laws; electronic access to court records; and the status of the study being conducted by our Committee on the Jury System.

7. **OCA report on pro bono.** On January 15, 2004, OCA issued a report summarizing results of a statewide survey of attorney involvement with pro bono matters. The results showed a slight overall decline of one percent, to 46 percent, in the percentage of attorneys taking pro bono cases since the last survey was conducted in 1997. There was a more pronounced decline in the percentage of attorneys taking civil matters, from 39 to 34 percent. The report was based on results gleaned from 3,839 responses gathered from attorneys statewide. It should be noted that the definition of pro bono used for this survey is more limited than the one used in 1997, and the current definition includes only services provided without charge to indigent persons or organizations which serve the needs of indigent persons. The survey covered 3.52 percent of the state's attorneys in February 2003, addressing pro bono activity for 2002.

The OCA report recommends that the court system divide the state into ten districts, with each district to have a committee composed of attorneys and judges, to develop plans for increasing pro bono participation. The local committees would be assisted by a statewide committee that would help with media campaigns and address difficult problems, such as issues involving malpractice coverage for attorneys performing pro bono service. OCA has asked for comments on the report by April 15, 2004. The report is being reviewed by relevant groups in the Association, such as the President's Committee on Access to Justice, the Committee on Legal Aid, the Criminal Justice and Family Law Sections, and others. Proposed comments will be ready for consideration and action at the April meetings of the Executive Committee and House of Delegates, in order to submit NYSBA's comments within the designated period.

**8. Special Committee on Court Structure and Judicial Selection.** Developments over the past several months with respect to the activities of some judges involving charges of criminal, or at least unethical conduct, as well as questions raised concerning the judicial selection processes in some areas, have created concerns in the press and among members of the public. Hence, the appointment by the Chief Judge of the Commission to Promote Public Confidence in Judicial Elections. Given the nature of the recommendations presented in the commission's interim report and anticipating that group's further report later this year, I have appointed a Special Committee on Court Structure and Judicial Selection, with Hon. Richard D. Simons as Chair, to prepare comments and proposals relevant to this subject. This will place the Association in an optimal position to comment effectively and in a timely manner with respect to the Commission's recommendations, and also to deal with any other relevant judicial selection issues that may arise. The House and Executive Committee will be kept informed concerning developments, with the new committee to report to them as appropriate.

**9. Association History.** Under the direction of the Special Committee to Commemorate the Association's 125<sup>th</sup> Anniversary, chaired by John Hanna, Jr. of Albany, the history of the Association's first century and a quarter is now available. Entitled, "Of Practical Benefit," and published in cooperation with American Heritage, the volume covers the Association's history from its founding in 1876 through 2001, its 125<sup>th</sup> year. The work recounts the rich history of the Bar of New York State and the NYSBA during this period. It chronicles major issues, leading personalities and the impact of the Association and its members on government, law and the justice system. The price of the book is \$50, which includes tax, shipping and handling, and it may be purchased through the Association's CLE Department either by telephone (800) 582-2452 or e-mail at cle@nysba.org.

**10. Judiciary budget.** The State budget deficit is estimated by some at \$6 to \$8 billion. Judge Lippman has serious concerns about the passage of the Judiciary budget for the 2004-2005 fiscal year, and for the first time in years, the Governor has made some comments adverse to the Judiciary budget. Judge Lippman has described the court system's budget proposal as spartan in nature. If fringe benefits are excluded, as they are by most state agencies, then the budget request totals \$1.4 billion, or an increase of 1.3 percent at a time when the caseload is rising by about 4.8 percent annually. If fringe benefits are included, the budget is \$1.7 billion, representing an increase of 4.5 percent. It should be noted that the Judiciary budget represents only 1.5 percent of total state spending, and that the increase consists largely of mandated expenses and contractual pay raises for court employees. As we have done in the past, the Association will support the Judiciary budget request, which is both fair and reasonable.

**11. 18-B roster.** As we predicted, the new and more reasonable 18-B rates that took effect January 1 (\$75 per hour for Family Court and felony matters and \$60 an hour for misdemeanors), has served to alleviate the shortage of attorneys to represent the indigent in Family Court in Manhattan. The number of attorneys certified to handle Family Court cases in Manhattan and the Bronx has risen by some 15 percent since last August. A more modest increase of some six percent has occurred in Brooklyn, Queens and Staten Island. This boost in Family Court representation has also been aided by the fact that the Legal Aid Society's contract with NYC, which requires it to pick up at least 86 percent of all Criminal Court arraignments, has "dried up" criminal work for some 18-B attorneys and has spurred them to accept Family Court work to make up the difference. The Association will continue to monitor developments in this area.

Unfortunately, the increase in the 18-B rates may be an example of the law of unintended consequences. Some counties, concerned about the rising costs of providing mandated representation to the indigent, have created, or are considering creation of, public defender offices. We are concerned that

counties continue to provide adequate representation for the indigent, regardless of the means which they choose. To review this issue, and enable us to promote effective representation where constitutionally mandated, I am appointing a Special Committee, to be chaired by Vincent E. Doyle, III of Buffalo, and we will be looking forward to the report of that committee.

**12. House of Delegates dinner.** As part of an effort to try different approaches to revitalize Annual Meeting events and to increase attendance, this year we hosted a reception for the House of Delegates, section and committee chairs, at the Marriott Marquis. This was in place of the traditional dinner which had been at the Tavern on the Green, and more recently at the Rainbow Room, and which had been suffering from declining attendance. The Special Committee to Review the Annual Meeting, which President-Elect Ken Standard chairs, will be surveying members regarding their reaction to this change in event. If it is favorable, then we will likely retain the reception. However, if the preference is to return to the dinner format, we will likely do so in future years.

The reception was held on the evening of January 29, 2004, and I'm pleased that so many of you, together with our Section and committee chairs, were able to attend. Please make sure to send your comments to me or Ken, at [president@nysba.org](mailto:president@nysba.org)

**13. Attorney Professionalism Award.** With the change in format for the Thursday evening House function from a dinner to a reception, the Attorney Professionalism Award, which was given each year by the Committee on Attorney Professionalism at the dinner, was presented at the reception. This year's recipient is James M. Conboy of Albany, who was recognized for maintaining the highest standards of professionalism, including dedicated service to clients, a commitment to promoting respect for the legal system in the pursuit of justice and the public good, outstanding ethical conduct, competence, good judgment, integrity and civility.

**14. Attorney Fee Regulations.** Some time ago, I reported to you on the submission of a petition to the Administrative Board to change the rules for contingency fees, mandating a reduction in those fees where cases settled at an early stage. While there is no indication that such a rule change is being considered, we also recognized that there is considerable debate going on about other fee provisions, including the fees which are awarded in class actions and other litigation formats.

In order that we be prepared to deal with this subject, I have appointed a Special Committee to review attorney fee regulations, co-chaired by almost President-Elect A. Vincent Buzard and Past President Steven C. Krane. This committee has begun its study of these issues, and we look forward to hearing from them in the near future.

**15. Presidential Summit.** On Wednesday, January 28, 2004, we had our blue ribbon special, the Presidential Summit, focusing on the controversial Patriot Act I and II. Our panels were moderated by Dean Joseph Bellacosa, who was even better than his usual excellent presentations. The panelists included Viet Dinh, the principal author of the Patriot Act, and now a professor of law at Georgetown University; Robert Cleary, former US Attorney for New Jersey; Nadine Strossen, President of the ACLU, Manhattan defense attorney Gerald Lefcourt; ABA President-Elect Robert Grey, Jr.; attorney Richard D. Emery; Brooklyn Law School Professor Susan Herman, and John C. Maloney, Jr., Chair of the NYSBA Committee on Federal Constitution and Legislation.

This event was initiated last year by President Tharp, and was a highlight of the Annual Meeting. This year, with that experience under our belt, we were able to replicate the success of the first year, and I think we have established this event as the signature event of the week. I hope that the Committee to Review the Annual Meeting will agree, and make this a permanent fixture.

**16. Committee on the Jury System.** I am particularly pleased to inform you that our Committee on the Jury System, chaired by Peter D. FitzGerald of Glens Falls, has completed an interim report, which has been transmitted to the OCA Commission on the Jury.

Our Committee has recommended against reducing the number of peremptory challenges, in favor of consent dismissals of jurors, against permitting jurors to ask questions directly to jurors, and against placing limits on the time required to pick juries. The Committee also has proposed that no new rules be implemented to permit jurors to submit questions to be asked of witnesses by the court, pending completion of pilot programs.

Our Committee is continuing its work, and we hope to have a final report for consideration by the House in April.

**17. Activities.** In addition to innumerable meetings, conferences, telephone calls, e-mails, interviews, and the like, since the last Executive Committee and House of Delegates meetings, I have visited with or attended events at German Radio, the Corporate Counsel Section, the Commercial Courts of New York City, Nassau-Suffolk Law Services, the Judicial Section, the Queens County Bar Association, the Committee on Cyberspace Law, the ABA Fellows from New York, the Seventh District bar leaders, the New York County Lawyers, the International Law and Practice Section, the ABA Committee on Rules of Judicial Conduct, lunch with the Deans of the law schools in New York State, the Brooklyn Bar Association, the New York State Society of Certified Public Accountants, the New York Press Club, the Committee on Modern Courts, and the Public Relations Committee. I also spoke at the dedication of the new Furman Hall building at New York University School of Law. But, the highlight of that period of time was a trip to explore the Cuban legal system, spending five days in Havana (together with our International Law Section Past Chair Les Reizes and Secretary Jack Zulack), meeting with Cuban lawyers, law professors, judges, political scientists, representatives of the US Interest Section, and a foreign consulting firm and an international accounting firm. More about this in a coming President's Page, and elsewhere. I expect that we will have some opportunities later in the year for one or more similar trips for NYSBA members, and I will be giving you information on this shortly.

**18. Annual Meeting.** Once again, we have broken all records for this meeting. We have 5000 individual paid registrants, and more than 9500 individual program attendees (some people attend more than one program). New York lawyers are superb.