

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
THE OTESAGA, COOPERSTOWN, NEW YORK  
JUNE 25, 1994

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Present: Members: Abramowitz; Abrams; Adelman; Adler; Agress; Alden; Ange; Armstrong; Asarch; Baldwin; Baum; Bavoso; Birmingham; Bohner; Bongiovanni; Bracken; Branca; Brenner; Burgman; Buzard; Castel; Ciulla; Coffey; Cohn; Cometa; Connolly; Cooke; Corcoran; CyruInik; Daly; Davidson; DelleCese; Denton; Dorsey; Dowling; Drinkwater; Dwyer; Edmead; Eppler; Epstein; Farrell; Field; Finerty; R.L. Fink; R.S. Fink; Fishberg; Freedman; Friedman; Frye; Gardella; Geltzer; Gingold; P.J. Goldstein; P.S. Goldstein; Gutleber; Haig; Hall; Halpern; Hansen; Hart; Hartman; Haskel; Headley; Heming; Hoffman; Horowitz; Houck; H. Jones; M. Jones; Kamins; Kelly; Kennedy; M. Kessler; S. Kessler; Kilsch; Kmiotek; Lagarenne; Lamb; Landy; Lawrence; Lazar; Levin; Lindenauer; M. Longo; Mack; Madigan; Malfitano; Maney; Marten; McCarthy; McDonald; McDonough; McGlenn; Meng; Meyer; Miklitsch; M. Miller; Millon; Minardo; Moore; Moreland; Morris; A. Murray; K. Murray; Netter; Offermann; Oliver; Ostertag; Ostrow; Palermo; Palmer; Patrick; Pearl; Penzel; Pfalzgraf; Pfeifer; Pruzansky; Radding; Remo; Rice; Richardson; Rider; B. Robinson; E. Robinson; Ross; Rothstein; Ruslander; Rybak; Sachs; Sienko; Sirmans; Souther; Spellman; Standard; Steflik; Stevens; Sunshine; Taisey; Terranova; Tharp; Tomaselli; Triebwasser; Troeger; Vigdor; Vitacco; Waldauer; Wales; C. Walker; S. Walker; J. Walsh; Weaver; Wee; White; Williams; Windstein; Witmer; Yanas.

1. Approval of minutes of April 16, 1994 meeting. The minutes were approved as distributed.
2. Introduction of new members. The new members of the House of Delegates who had assumed office on June 1 were introduced and welcomed by Mr. Pfeifer.
3. Inauguration of G. Robert Witmer, Jr. Mr. Pfeifer announced that in keeping with the duties and responsibilities of the office of President, in 1993 the Association had instituted a formal swearing-in of the President to be performed each year at the June meeting of the House of Delegates, given the close proximity of the Cooperstown meeting to the commencement of the President's term of office on June 1. The oath of office was then administered to G. Robert Witmer, Jr. by his father, Hon. G. Robert Witmer, Sr., retired Associate Justice of the Appellate Division, Fourth Department.
4. Report of Treasurer. Mr. Rice reviewed the audited balance sheet for the year ending December 31, 1993, and indicated that the Association had completed the previous year with a loss of \$177,000. He stated that this was not a matter for concern, as \$122,000 of this figure represented an appeals settlement entered into with the Internal Revenue Service on terms favorable to the Association to resolve a challenge by the IRS to the tax exempt status of royalty income received by the NYSBA in

connection with various member benefit programs. Mr. Rice then summarized the Treasurer's report covering the period January 1 to May 31, 1994. He reviewed the major income and expense items for the initial five months of 1994, and noted that through the cooperative efforts of the Association and The New York Bar Foundation, the outstanding balance remaining on the Bar Center expansion loan had been reduced to \$150,000. He also explained that the Association's fixed assets had increased while current assets had experienced a corresponding decrease to reflect the acquisition of the Bar Center's new computer system with hardware and software valued at some \$900,000. Mr. Rice indicated that the Association remained in sound financial condition as it neared the mid-point of the current fiscal year. The report was received with thanks.

5. Report and recommendations of the Ad Hoc Committee on the Jury System.

Arthur Norman Field, Chair of the Ad Hoc Committee on the Jury System, provided an overview of the report prepared by the Ad Hoc Committee, and the manner in which it had addressed the proposals made by the Jury Project Committee appointed by the Chief Judge. He outlined the process followed by the Ad Hoc Committee to develop consensus with respect to the recommendations on the jury system, including the involvement of interested committees and sections within the NYSBA, and also coordination with county and local bar associations, which involved a statewide forum conducted on May 20, 1994 by the New York State Conference of Bar Leaders. Mr. Field noted that, at the conclusion of this process, the Ad Hoc Committee concurred in over 90 percent of the recommendations developed by the Jury Project Committee, but did have concerns regarding the balance of the recommendations, to be described in detail by various members of the Ad Hoc Committee. Ad Hoc Committee member Hon. Richard J. Bartlett then outlined the committee's concerns with respect to statewide rules proposed by the Jury Project Committee, particularly those setting minute-by-minute regulation of voir dire, mandating struck juries, and limiting voir dire examination more narrowly than the American Bar Association guidelines. Mr. Field summarized issues with respect to civil matters, including the Ad Hoc Committee's opposition to the proposed \$1,000 voir dire fee and the reduction in the number of peremptory challenges. Committee member Jack S. Hoffinger then addressed issues connected with criminal matters, including the Ad Hoc Committee's opposition to reducing the number of peremptory challenges, and the inappropriateness of considering the need for earlier Rosario disclosure within the context of a study to change the jury system.

Roberta A. Kaplan, Deputy Counsel to the Jury Project Committee responded to the concerns raised by the Ad Hoc Committee and outlined the rationale underlying her group's recommendations.

Mr. Field then offered a resolution for adoption by the House based on the Ad Hoc Committee's report. An amendment was proposed and adopted whereby the initial resolved clause was changed to substitute "New York State Bar Association" for "House of Delegates." A further amendment to withdraw opposition to the reduction of peremptory challenges in criminal matters was defeated by vote of the House. The following resolution was then adopted unanimously on motion of the House:

**RESOLVED**, that the New York State Bar Association approves the Report of the Ad Hoc Committee on the Jury System dated June 25, 1994 and adopts it as the position of the Association.

**RESOLVED**, that the Association expresses its thanks to the Chief Judge and the Chair and members of the Jury Project Committee and asks that the Chief Judge consider appropriate action to implement these Recommendations subject to specific limitations and objections stated in Part VII of the Report of the Ad Hoc Committee on the Jury System.

**RESOLVED**, that the Association recommends to the Chief Judge the implementation of a Program for Education as suggested in Part III of the Report of the Ad Hoc Committee on the Jury System.

6. Presentation of Root/Stimson Award, Public Service Awards and Award of Merit.  
A. Vincent Buzard, Co-Chair of the Committee on Lawyers and the Community, presented the Root/Stimson Award to Keith St. John of Albany for his outstanding service to the community.

Mr. Buzard next presented the Public Service Award to Beatrice Harris Levine for her significant contribution to enhancing the administration of justice.

Peter H. Levy, Co-Chair of the Committee on Lawyers and the Community, presented the Public Service Medal to Alice P. Green for personal courage and integrity.

Mr. Levy then presented the Award of Merit for larger bar associations to the Bar Association of Nassau County in recognition of its outstanding service to the public and the profession through programs administered at the local level.

7. Reports and recommendations re audio-visual coverage of trial court proceedings. Michael Miller, Co-Chair of the Special Committee on Cameras in the Courts of the New York County Lawyers' Association, summarized that group's report with respect to the audio-visual coverage of trial court proceedings. He stated that the report recommended the permanent adoption of Section 218 of the Judiciary Law, which currently governs the experimental use of cameras in the trial courts. He also noted the detailed analysis of this subject performed by the State's Committee on Audio-Visual Coverage of Court Proceedings, chaired by Hon. Burton B. Roberts. He indicated that Judge Roberts' committee had found the experimental program to be a success, and had also recommended that legislation be enacted making camera coverage permanent, with the present restrictions and safeguards being retained.

George Freeman, Chair of the Committee on Media Law, and Madeline Schachter, Chair of that group's Subcommittee on Cameras-in-the-Courts, then summarized the committee's support for the position advocated by the New York County Lawyers' Association. They noted that while their committee would prefer the inclusion of a rebuttable presumption in favor of audio-visual coverage, and deletion of the current provision permitting non-party witnesses in criminal proceedings to require the media to visually obscure their images while they testify, they would forgo pursuing

those points for the sake of uniformity in the recommendation being proposed to the House.

Martin B. Adelman, the delegate from the Criminal Justice Section, summarized that section's endorsement of permanency for media coverage, but with the proviso that there be no coverage of a trial if counsel for a party objects. He stated that this approach would best protect a client's rights to due process and a fair trial, as counsel would be in the most advantageous position to assess the fears and concerns of their prospective witnesses, and should be able to object to media coverage if a witness may be lost or unduly affected. Representatives of the Trial Lawyers Section and the Committee on Tort Reparations expressed their support for this position. Consistent with the recommendation of the Criminal Justice Section, the House adopted a motion to amend Subsection 5(a) of proposed Section 218 of the Judiciary Law to read as follows:

With the consent of counsel for all parties audio-visual coverage of judicial proceedings, except for arraignments and suppression hearings, shall not be limited, except for a finding by the presiding trial judge of good or legal cause.

A further motion was then approved by the House to support the permanent adoption of Section 218 of the Judiciary with the aforestated amendment concerning the consent of counsel for the parties to audio-visual coverage.

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

a) The position adopted by the House at the April 16, 1994 meeting opposing enforcement of 26 U.S.C. §60501 by the IRS through the imposition of economic penalty assessments against attorneys failing to disclose the source of cash fee payments exceeding \$10,000 had been communicated to that agency. He indicated a response had been received from the office of the IRS' counsel to the effect that while IRS was willing to discuss the issue, it was not likely to change its position readily. Mr. Witmer advised that the Criminal Justice Section was studying this response to determine what further steps should be taken. He stated he had also contacted Sen. Moynihan to assist the section in pursuing further discussion of this matter with appropriate governmental authorities.

b) Based on the action taken by the House at the April 16, 1994 meeting, the Ad Hoc Committee on Fiduciary Compensation had pursued negotiations with the Legislature's Advisory Committee on the EPTL and SCPA. He indicated these discussions had resulted in minor modifications being made to the proposed Section 2307A of the SCPA. He stated that these modifications were consistent with the position adopted by the House and were endorsed by the Executive Committee before being filed with the Legislature. He reported that the Judiciary Committee in both houses of the Legislature had the proposal under consideration, and that the Senate might seek to amend the measure to permit written acknowledgment by the testator to occur prior to the execution of the will, as well as concurrently or subsequently. He indicated that the House would be kept informed regarding developments with respect to this matter.

c) Recently the ABA had released a discussion draft of information gathered by its Commission on Nonlawyer Practice to document the apparent growth in the use of nonlawyers to handle legal matters, as well as determine the implications of nonlawyer practice for society, the client and the legal profession. Mr. Witmer noted that the ABA was accepting comments on the draft and would hold an open hearing on the matter at its upcoming meeting in New Orleans. He indicated he had appointed Robert J. Pearl as Chair of an Ad Hoc Committee on Nonlawyer Practice to coordinate the NYSBA's response to the ABA's discussion draft.

d) On June 27, he and Mr. Pfeifer would be attending the regular quarterly meeting with Chief Judge Kay and OCA's senior leadership to discuss matters of mutual interest. He stated that the scheduled topics included the outcome of the House discussion of the reports on the jury system and cameras in the courtroom, the status of the NYSBA's Task Force on the Profession, courthouse facilities, the electronic recording of court proceedings, the Association's appointment of a Task Force on Family Law in furtherance of the resolution adopted at the April 16 House meeting, and the status of the Appellate Divisions' consideration of the recommendations by the Task Force on the Law Guardian System as endorsed by the House in 1991.

e) The appointment of the Task Force on the Profession had been completed, with former Association President Haliburton Fales 2d serving as Chair. Mr. Witmer advised that the task force had held its initial meeting on June 16 and during the coming months it would be analyzing issues, formulating recommendations, and coordinating the Association's actions to improve the delivery of legal services, advance client relations, and enhance the public's perception of the profession. He indicated this would involve an examination of issues relating to professional development throughout an attorney's career, and a consideration of methods to enhance the education of the profession, public understanding of the role of attorneys, and the effective functioning of the disciplinary process and advertising regulations. He noted that the House would be kept advised concerning this group's study.

f) In furtherance of the resolution adopted at the April 16 House meeting, he was in the process of appointing a Task Force on Family Law to undertake a comprehensive examination of all major facets of matrimonial and family law practice, and that Timothy M. Tippins had been designated as Chair of the group.

g) On June 14 and 15, he and Mr. Pfeifer had met with leaders of nearly all of the Association's 22 sections to address items such as services, administrative and financial support for section activities, and the enhancement of communication and coordination both among the sections and with the Association. He indicated that the discussions had produced a number of concrete suggestions, such as utilizing computer technology to assist the sections in distributing information and reports, increasing the exposure of section programs and reports in NYSBA publications, and forming a section council to promote the exchange of information at the leadership level. Mr. Witmer observed that initiatives such as these should serve to strengthen the role of the sections within the Association and improve the value of section services furnished to the members.

h) Given the comparatively limited attendance at the Annual Dinner held in January, the officers and Executive Committee were considering shifting the dinner to earlier in the Annual Meeting week and modifying its format to encourage greater participation. He indicated that the House would be kept advised regarding developments with respect to this item.

i) Inasmuch as the Association was in the final year of its normal three-year dues cycle, the Finance Committee was considering the need for a dues increase for 1995 to sustain operations for the next three years. He noted that the Finance Committee was sensitive to the economic pressures confronting many attorneys, and was evaluating a variety of cost containment measures to minimize the amount of any needed dues increase, or the possibility of deferring it until 1995. Mr. Witmer noted there would be an opportunity for full discussion of this item when the budget is presented at the fall House meeting.

j) Consistent with the recommendation for enhanced public and professional education contained in the report by the Ad Hoc Committee on the Jury System, the Committee on Lawyers and the Community would be coordinating with the various county and local bar associations concerning appropriate educational initiatives.

k) To assist participation by new members of the House, an orientation program had been instituted this year in conjunction with the June meeting. He expressed appreciation to John P. Bracken and M. Catherine Richardson for organizing and conducting the session.

l) The New York Bar Foundation was seeking to enhance its grant activities in furtherance of its charitable purposes on behalf of the profession and the public and would welcome contributions.

m) He had traveled to a number of county and local bar associations in all areas of the state, and would continue to do so during his term as a means for enhancing communication between the NYSBA and the local bar groups.

n) Former Association President J. Boyd Mullan had passed away recently and that a suitable memorial to him would be presented at the next meeting of the House.

o) The annual report to the membership had been distributed at this meeting. He expressed appreciation to staff member L. Beth Krueger for her role in the preparation of the report.

p) Mr. Witmer expressed appreciation to Mr. Murray for his energetic and dedicated leadership as President during the past year, and presented him with a plaque inscribed as follows:

The New York State Bar Association presents this testimonial to Archibald R. Murray in recognition of his devoted service to the Association in the successful furtherance of its ideals and in the promotion of the best interest of the profession through his service as President of the Association 1993-94.

9. Memorial to Hon. Domenick L. Gabrielli. Hon. Richard D. Simons, Associate Judge of the New York State Court of Appeals, presented a memorial to retired Court of Appeals Judge Hon. Domenick L. Gabrielli, who had passed away earlier in the year. A copy of the memorial is attached to these minutes.

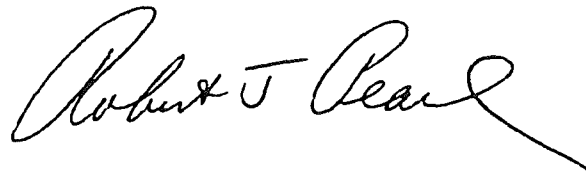
10. Report and recommendations of Intellectual Property Law Section re model state trademark bill. Rory J. Radding, former Chair of the Intellectual Property Law Section and its current delegate to the House, and Marc A. Liberstein, Co-Chair of the section's Trademark Committee, summarized the section's report and recommendation that the Association endorse the adoption of a revised Model State Trademark Law. They indicated that the adoption of a revised model statute at the state level would maintain conformity with statutory revisions enacted at the federal level, and would enhance uniformity among the various state trademark laws. They also noted that the new model state statute would facilitate the removal of unused registrations from the New York State Register of Trademarks, improve the state's application examining process, and encourage the owners of marks to register them in New York. Because of the time required to address the preceding agenda items, action concerning this report was deferred until the November House meeting.

11. Report of Chair. Mr. Pfeifer reported that Action Unit No. 7, which had been created by the House to develop recommendations to improve the criminal law process, had completed its work. A motion was adopted discharging Action Unit No. 7 with the thanks of the House.

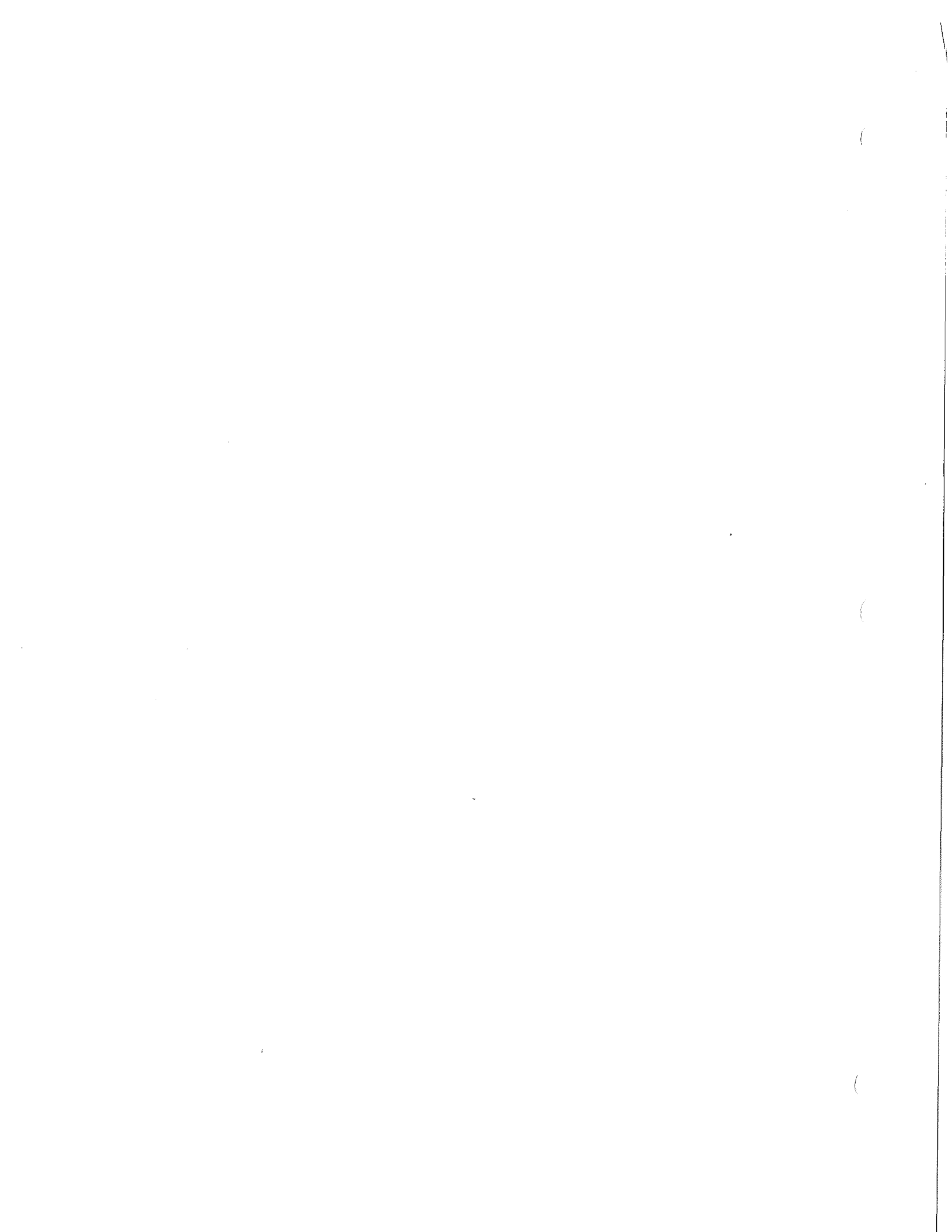
12. Report of New York County Lawyers' Association regarding federal diversity jurisdiction. Mr. Pfeifer announced that due to the press of the other business items before the House, this report, which had been distributed for informational purposes, would not be presented orally.

13. Date and place of next meeting. Mr. Pfeifer announced that the next meeting of the House of Delegates will be held on Saturday, November 5, 1994 at the Bar Center in Albany, New York.

Respectfully submitted,



Robert J. Pearl  
Secretary





IN MEMORIAM  
DOMENICK L. GABRIELLI  
1912-1994

Domenick L. Gabrielli was born on December 13, 1912 and died March 25, 1994. In the 81 years allotted to him, he lived an extraordinary life of public service and personal accomplishment. Over the course of his career Judge Gabrielli maintained a keen interest in the legal profession and its betterment, an interest exemplified by his work with the organized Bar. He was a member of this Association and its judicial section, served as a member of the Association's Special Committees on Lawyers and the Community and Chaired its Municipal Law Section and Media Awards Committee. In 1983 the Association recognized his service to the profession by awarding him its highest honor, one of many he received and surely the most treasured, the Bar Association's Gold Medal. It is appropriate that The New York State Bar Association memorialize him today.

Judge Gabrielli's exposure to the law actually started when he worked as a shoe shine boy in the local courthouse. It progressed more formally with his education at St. Lawrence University and later at Albany Law School, where he was an Editor of the Law Review. He was admitted to the Bar in 1937 and

practiced privately and as Corporation Counsel of several municipalities in Steuben County until World War II intervened. Following service as a lieutenant in the Navy, he served in rapid succession as District Attorney, County Court Judge, Supreme Court Justice in both the Trial Court and the Appellate Division, and finally as Associate Judge on the New York State Court of Appeals. For several years following his retirement, he was of counsel to the firm of Nixon, Hargrave, Devans & Doyle.

As might be expected from Judge Gabrielli's background, his first love was the criminal law and as a judge he frequently wrote on subjects of profound procedural and substantive concern in that area, both for the Court and as a dissenter. But even the most casual perusal of the Reporters reveals that he was comfortable with all areas of the law. His writings were crisp and his reasoning incisive and his decisions have lost little of their vitality even twelve years after his retirement from the Court of Appeals. Some significant writings include the three Wein decisions<sup>1</sup> which held constitutionally valid important State financial programs, Brescia v Fitts<sup>2</sup> which established the right of a child to open up a support agreement between parents and People v Kibbe,<sup>3</sup> the seminal case on causality in homicide

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<sup>1</sup>Wein v Beame, 43 NY2d 326; Wein v Levitt, 42 NY2d 300; Wein v City of New York, 36 NY2d 610.

<sup>2</sup>56 NY2d 132

<sup>3</sup>35 NY2d 407

prosecutions. Judge Gabrielli also had the rare satisfaction of seeing the reasoning of his dissents in People v Onofre<sup>4</sup> and in People v Belton subsequently followed by the United States Supreme Court.<sup>5</sup>

Judge Gabrielli was a loyal alumnus of Albany Law School serving as a member of its Board of Trustees for many years and taking a particular interest in its Gabrielli Moot Court Program, named in his honor.

He is survived by his wife Dorothy, a daughter Veronica Gabrielli Dumas, a son Michael, four grandchildren and one great grandchild.

I had a unique opportunity to assess Judge Gabrielli because his career and mine had striking parallels. When he was transferred from the Appellate Division, Third Department to the Appellate Division, Fourth Department, his home department, I took his place in Albany. When he left Rochester to join the Court of Appeals I took his place in the Fourth Department. Finally, when Judge Gabrielli retired from the Court of Appeals in 1982, Governor Cuomo appointed me to fill his seat on that Court. From these moves I learned, as perhaps no other could, of the high esteem and affection his former associates had for him. Employees in the courthouses, from judges to janitors, respected his judicial skills, proudly claimed his friendship and

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<sup>4</sup>51 NY2d 476; see, Bowers v Hardwick, 478 US 186

<sup>5</sup>(Belton I) 50 NY2d 447; see, New York v Belton, 453 US 454

remembered endless anecdotes about his personal kindnesses. Indeed, their admiration was so great that I frequently kidded Mike, telling him that I was the only person in the State happy to see him promoted. But, of course, that was not true. His skills and talents were such that none could doubt his worthiness for advancement, and the bonds of friendship were so strong that hundreds happily shared in his successes.

He was a man of great warmth and substance and I join with you, as his friend, in mourning his loss and, as a citizen of this State, in celebrating his life of service.

Richard D. Simons