

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, NEW YORK  
NOVEMBER 2, 1991

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PRESENT: Members Adler; Ange; Aronson; Baker; Baldwin; Banner; Barnett; Barnosky; Berman; Bermingham; Besso; Besunder; Blyth; Brachtl; Bracken; Brand; Brevorka; Cedarbaum; Clements; Coffey; Cohn; Cometa; Connolly; Connors; Cooke; Cooper; Daly; D'Angelo; Darche; Davidson; DelleCese; DeLuca; Duckworth; Dwyer; Egelfeld; Eiber; Feigenbaum; Field; Fink; Fitzgerald; Fox; Freedman; Frye; Galloway; Geltzer; Gershon; Goldblum; M.J. Goldstein; M.R. Goldstein; Grogan; M. Gross; Grossman; Haig; Harper; Haskel; Hassett; Headley; Heming; Hesterberg; Hoffmann; Jacoby; Jaffe; Jones; Kamins; Karan; Kellar; Kennedy; T. Kenney; Kessler; Klein; Lashley; Lee; Levin; Lindenauer; Long; Madigan; Maher; Mahoney; Maney; Markuson; McDonough; McDowell; McGlinn; Meng; Meyer; E. Miller; Millon; J. Mitchell; P. Mitchell; J.C. Moore; Morris; Murray; Neimeth; Netter; O'Brien; O'Keefe; Okin; Opatowsky; Ostertag; Patrick; Pearl; Peckham; Pfeifer; Pruzansky; Purcell; Radigan; Raysman; Reich; Reiniger; Reizes; Rice; Rifkin; Riley; Roper; Rosiny; Rothstein; Ruffer; Russell; Santemma; Schell; Schumacher; Sienko; Simberkoff; Small; Souther; Spellman; Stave; Stern; Strauss; Sussman; Troeger; Vigdor; Walker; J. Walsh; Weiner; D. White; R. White; Williams; Witmer; Wolf; Woodman; Wright-Sirmans.

1. Approval of minutes of June 22, 1991 meeting. The minutes were approved as distributed.
2. Report of Treasurer. Mr. Gershon summarized the Treasurer's report covering the period January 1 to September 30, 1991, copies of which had been circulated to the members of the House. He reviewed the status of the major budget categories, and advised that the Association remained in sound financial condition at the three-quarter point in the fiscal year, with the Finance Committee projecting a year-end surplus of approximately \$200,000. The report was received with thanks.
3. Report and recommendations of Finance Committee.
  - a) Continuation of affordable dues program. Thomas O. Rice, Chair of the Finance Committee, summarized the recommendation by the Finance Committee that the affordable dues program, which had been introduced in 1990 on a two-year trial basis, be continued for an additional two years. He explained the purpose, functioning and utilization of the program, as well as the need to develop further data before a final determination is made to make the program permanent, or whether modifications are warranted based on experience, such as making reduced dues available to particular categories of members. Following discussion, a motion was adopted authorizing extension of the program for a further two-year trial period.



the judicial branch. He indicated that subsequent efforts in this regard had proved unsuccessful. Mr. Ostertag advised that the Executive Committee had also resolved, in the event mediation failed, that authorization should be sought from the House of Delegates to file an *amicus curiae* brief in the budget litigation, should such course be deemed appropriate in the Executive Committee's judgment. He explained that this approach would require a departure from the "Rules for the Filing of *Amicus Curiae* Briefs on Behalf of the New York State Bar Association" to allow for filing a brief at the trial court level addressing issues of fact as well as law. After discussion, the following resolution was approved by unanimous vote of the House:

**RESOLVED**, that the House of Delegates hereby authorizes the Executive Committee to file an *amicus curiae* brief addressing relevant issues of law and fact at the trial court level in litigation arising from the judicial branch budget, should such action be deemed appropriate by the Executive Committee.

In connection with the budget, Mr. Ostertag encouraged the members of the House, as well as the county and local bar associations, to contact legislators as an additional avenue for generating support for adequate judicial branch funding.

Mr. Ostertag also noted that with the curtailment of arbitration parts, particularly in the metropolitan New York area, due to budget constraints, smaller claims could not be tried because of the mandatory arbitration requirements of Part 28 of the Rules of the Chief Judge. He reviewed the Executive Committee's position that Part 28 should be suspended during the budget crisis to allow the affected class of cases to proceed to trial. After discussion, the following resolution was adopted on motion of the House:

**WHEREAS**, Part 28 of the Rules of the Chief Judge require submission to arbitration of all suits for \$10,000 or less, and

**WHEREAS**, no suit for \$10,000 or less is permitted to proceed to trial until after it has been submitted to such arbitration, and

**WHEREAS**, the current budget crisis has caused the suspension of the arbitration process in certain courts, and

**WHEREAS**, suits for more than \$10,000 are being sent to trial, it is therefore

**RESOLVED**, that the New York State Bar Association requests that the Chief Judge suspend the operation of Part 28 for the duration of said budget crisis in those courts where the arbitration process has been suspended.

5. Report and recommendation of Commercial and Federal Litigation Section regarding modifications to Rule 11 of the Federal Rules of Civil Procedure. Shira A. Scheindlin, Chair of the Commercial and Federal Litigation Section, summarized the section's report dealing with recommended improvements to Rule 11 of the Federal

Rules of Civil Procedure, which addresses attorney sanctions. She outlined the difficulties encountered under the current strictures, and the nature of revisions drafted by the Advisory Committee on Civil Rules of the Judicial Conference of the United States. Ms. Scheindlin indicated that to avoid shortcomings perceived in that proposal, a separate group of attorneys and judges had formulated a "Bench-Bar Proposal to Revise Civil Procedure Rule 11." She reviewed the section's position with regard to the matter, which was generally in accord with the Bench-Bar alternative, with some modification. Ms. Scheindlin stated that the section's position was consistent with that adopted by the House in 1990 with respect to sanctions under state court rules and would: endorse the "paper as a whole" approach, with some modification; support the permissive, instead of mandatory, imposition of sanctions; impose Rule 11 liability on culpable non-signers; permit a broader range of sanctions; provide safe harbor provisions; and require specific findings when Rule 11 violations are found. Following discussion, a motion was adopted approving the position proposed by the Commercial and Federal Litigation Section with respect to modification of Rule 11 of the Federal Rules of Civil Procedure.

6. Report and recommendation of Commercial and Federal Litigation Section regarding federal judicial vacancies. Shira A. Scheindlin, Chair of the Commercial and Federal Litigation Section, reviewed the number and duration of federal judicial vacancies in the Second Circuit, and the adverse impact the lack of judges had on the resolution of cases, particularly the delays being encountered in disposing of matters. She outlined the section's concern not only that the current vacancies be filled expeditiously, but that the efficiency of the nomination and confirmation process for federal judges be improved so as to eliminate undue delay in the future. After discussion, the following resolution was adopted on motion of the House:

**WHEREAS**, there are currently thirteen judicial vacancies in those federal courts of the Second Circuit located within the State of New York; and

**WHEREAS**, there is currently one vacancy on the Second Circuit Court of Appeals; and

**WHEREAS**, the United States District Court for the Southern District of New York currently has seven judicial vacancies, one fourth of all authorized positions, one of which has existed since 1988 and two of which have existed since 1989; and

**WHEREAS**, the Judicial Conference of the United States has declared that a judicial emergency exists with respect to three judicial vacancies in the Southern District; and

**WHEREAS**, the United States District Court for the Eastern District of New York currently has three judicial vacancies which have existed since December, 1990; and

**WHEREAS**, the United States District Court for the Northern District of New York currently has two judicial vacancies which have existed since December, 1990; and

**WHEREAS**, the aforesaid vacancies have slowed the disposition of cases, especially civil cases in the Southern District, and have contributed to an alarming increase in the backlog of cases in the United States District Courts for the Southern, Eastern and Northern Districts of New York; and

**WHEREAS**, the vacant judgeships have caused delays in the administration of justice, made it more difficult for the judges in the United States District Courts for the Southern, Eastern and Northern Districts of New York, and have also raised concerns that the administration of justice has been adversely affected; and

**WHEREAS**, the Commercial and Federal Litigation Section of the New York State Bar Association believes that continuing judicial vacancies deprive the public of expeditious civil and criminal justice;

**NOW, THEREFORE, BE IT RESOLVED THAT** the New York State Bar Association urges President Bush, Senators D'Amato and Moynihan, the United States Department of Justice and all others involved in the judicial selection, nomination and confirmation process to take immediate action to fill these vacancies and help alleviate what has become a severe problem affecting the administration of justice in the federal courts in the State of New York; and it is further

**RESOLVED**, that in light of the fact that judicial vacancies have been a continuing problem in the Second Circuit, all parties involved in the process of selection, nomination and confirmation of federal judges undertake to develop methods to improve the efficiency of the processes by which federal judges are nominated and confirmed in order to reduce the time during which judicial positions are vacant.

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

a) At its June meeting, the Executive Committee, based on a report by the Committee on Women in the Law, had endorsed a pending Assembly resolution to have investigated the cases of women convicted of felonies related to domestic violence. Following communication of that position to the Governor and the legislative leaders, the Director of Criminal Justice had responded advising of steps being taken to evaluate the clemency process, as well as measures being implemented to address the needs of women in prison and to deal more effectively with domestic violence situations before they result in criminal conduct. He indicated that the Committee on Women in the Law would continue to monitor developments in this area.

b) In support of the position adopted at the June House meeting to restore judicial immunity removed by court decision, Michael A. Cooper, immediate past Chair of the Commercial and Federal Litigation Section, had testified at congressional hearings held on the subject. Mr. Ostertag also reported that legislation had been introduced containing most of the points advocated by the Association.

c) The position adopted by the House in June with respect to the report of the Appellate Division Task Force had been communicated to the Chief Judge, the Governor and the legislative leaders. Mr. Ostertag noted that while funding had been approved to add five justices to the Appellate Division, Second Department, implementation was unlikely in the immediate future due to the fiscal constraints confronting the judicial branch.

d) The resolutions adopted by the House at its last meeting with respect to the Legal Services Corporation had been communicated to Congress, and the House would be kept advised of developments in this area.

e) The Legislature had failed to either extend or make permanent the experimental program for audio-visual coverage of trial court proceedings. He indicated that those involved with this matter were hopeful that disagreements between the Senate and Assembly, particularly with regard to the issue of witness consent, could be resolved and legislation enacted during the next session to reinstate the program.

f) On September 24, 1991, he and Mr. Bracken had met with representatives of the Office of Court Administration to discuss matters of mutual interest. He stated that the topics addressed, in addition to the judiciary budget, had included the following:

i) Courthouse facilities. The Chief Administrator reported that while over forty courthouse improvement projects had been completed by upstate communities, New York City was seeking to defer major elements of its court facilities plan due to financial problems. He indicated that OCA's Capital Plans Review Board would hold a public hearing before taking any action on the proposed delay. Mr. Ostertag indicated the Association would be kept apprised of developments in this area.

ii) Prompt hearing of custody matters in Family Court. Mr. Ostertag noted that concerns raised by the Executive Committee regarding the need for more expeditious handling of custody matters in Family Court were under discussion between the Chief Administrator and the Association's Family Law Section, and that OCA's Family Court Rules Advisory Committee would be reviewing the matter to see if improvements could be implemented.

iii) Lawyer referral services regulation. The Chief Judge indicated that the report and recommendations of the Association's Special Committee on Lawyer Referral Services Regulation had been taken under advisement by the Administrative Board and, at the suggestion of that body, the Appellate Divisions would be designating a committee to review the NYSBA report. Mr. Ostertag stated that the Association would be kept advised concerning any future action taken by the courts.

iv) Pro bono survey. The Chief Judge announced that the results of the *pro bono* survey conducted by the Pro Bono Review Committee which he had appointed were about to be released. He indicated he was encouraged by the level of bar activity disclosed by the survey, and that the court system would continue to

cooperate with the organized bar in facilitating voluntary *pro bono* efforts to avoid, if at all possible, the imposition of a mandatory plan.

g) Consistent with the previous actions taken by the House in connection with the Bar Center expansion and financing, the Executive Committee had approved resolutions requested by Norstar Bank guaranteeing the fifteen year mortgage that The New York Bar Foundation would be undertaking to repay the \$1.5 million balance remaining on the Bar Center expansion debt.

h) The Executive Committee had authorized the Committee on Mental and Physical Disability to pursue grant funding from hospital groups to produce a television program on the "Delivery of Medical and Legal Services to Persons with Deafness and Hearing Impairments."

i) Together with Messrs. Bracken and Cometa, he had attended the recent session of the Mid-Atlantic Conference of Bar Leaders at which a number of relevant topics had been discussed including funding for judiciary operations and courthouse facilities, as well as the proposals drafted by the ABA's Commission on Evaluation of Disciplinary Enforcement to improve attorney discipline programs in the various states.

j) The Young Lawyers Section was in the process of developing expanded programming which would be responsive to the needs of its members.

k) He had met recently with the Governor's Counsel to discuss possible legislation to allow funding for the mandatory continuing legal education program approved by the House of Delegates. Mr. Ostertag indicated he was advised that the Governor supported mandatory continuing legal education, but had reservations with respect to a separate funding bill given the fiscal condition of the state. He noted that from the conversation with the Governor's Counsel, he deduced that to cover the state's anticipated budget deficit for the next fiscal year, the governmental leaders may consider a sales tax on legal services as well as seeking to access the IOLA Fund for general budget purposes. Mr. Ostertag indicated a committee was already in place with respect to the IOLA issues and that he would be forming a separate committee to study the sales tax question so that the Association would be prepared to oppose any adverse measures in an expeditious and effective manner.

l) At its meeting on November 1, 1991, the Nominating Committee had selected Archibald R. Murray to succeed Mr. Bracken as President-Elect in 1992 when the latter assumes the Presidency.

m) The Task Force on Solo and Small Firm Practitioners would be holding a conference at the Bar Center on November 15 and 16 to explore issues of concern to solo and small firm practitioners, and that following the conference, the task force would prepare a report summarizing the results of the meeting as well as future activities and initiatives to address the concerns raised by the attendees.

8. Report and recommendation of Criminal Justice Section regarding federal habeas corpus reform. Terrence M. Connors, past Chair of the Criminal Justice





MEMORIAL  
TO

**RUTH G. SCHAPIRO**

Presented at New York State Bar Association  
House of Delegates Meeting  
November 2, 1991  
Albany, New York



## RUTH G. SCHAPIRO

A life-long resident of New York City, Ruth G. Schapiro graduated from Columbia Law School in 1950 and was admitted to the bar in that same year. Following association with Paul Weiss Rifkind Wharton & Garrison, Ruth joined the firm of Proskauer Rose Goetz & Mendelsohn where she became nationally recognized in her chosen area of expertise, tax law. So highly regarded in her field was she that in 1978, then President Carter appointed her to the Tax Court Nominating Commission on which she served until 1981.

Married to Don Schapiro, Ruth found time while practicing law and raising two children to sit on the Board of Directors of the Columbia Law School Alumni Association, to Chair the Columbia Law School Symposium, to Chair the Advisory Committee of the New York University Institute on Federal Taxation, to serve on the Tax Advisory Group of the American Law Institute Federal Income Tax Program, to lecture and to write extensively on tax law.

Ruth's commitment to her profession led her to contribute actively to the organized bar, serving The Association of the Bar of the City of New York and the New York County Lawyers' Association as Chair of various of their committees, and the American Bar Association as Co-Chair of its Task Force on Subchapter C of the Internal Revenue Code.

Ruth's achievements and contribution to this Association are many, varied, and enviable. Elected to our House of Delegates in 1981, Ruth also served as Chair of the Finance Committee, as a member of the Executive Committee, Chair of the Tax Section and Chair of the Women in the Courts Committee.

But while her achievements are impressive, to merely list them, without more, does no justice to Ruth Schapiro. To merely list them says nothing of the rare blend of intelligence and sensitivity she brought to every job she took on. To merely recite the litany of Ruth's accomplishments says nothing of her warmth, her generosity, her interest and caring for those with whom she lived and worked, and for people in general. It was that generosity, that interest, that caring, so evident in her leadership, that encouraged and inspired all who worked with her to actively participate, apply their skills, offer their perspectives, develop their ideas and bring them to fruition, in short, to do their very best.

It was that interest and that caring that was reflected in the Tax Section, under Ruth's leadership, speaking out against tax exemptions and benefits for private schools that discriminate on the basis of race.

It was that interest, that caring, and her generosity in sharing her own time and talent that made Ruth the perfect choice for this Association's first Chair of the Committee on Women in the Courts. The Committee's initial report, developed under Ruth's guidance, received Executive Committee and House endorsement in 1987 and has been the springboard for subsequent reports, actions and leadership, not just by the Committee but by this Association with respect to gender-related issues affecting both the public and the profession.

It is fitting that every year at our annual meeting we shall be reminded of this extraordinary woman when the educational programs on gender-related issues, instituted under Ruth's leadership, are presented. It is fitting that through that legacy, Ruth Schapiro, who so indelibly touched so many lives in life, shall continue to touch uncounted lives for many years to come.

No one grieves Ruth's loss more than her husband of 39 years, our friend, Don, Ruth's children Jane and Bob, and her sister, Miriam. No one gave Ruth more obvious pride than Don and her children. It was a warming sight to see Ruth and Don together at bar functions, sharing the pleasure of being with each other, of being with their friends and colleagues, sharing the satisfaction and pleasures of their mutual profession.

We shall miss that sight. We shall miss Ruth.

A fine woman walked among us. We were privileged to know her. She was our colleague. She was our friend. We miss her with sadness. We remember her with love.

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