

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 7, 1992

PRESENT: Members Adler; Anderson; Ange; Aronson; Ayers; Baker; Baldwin; Barnett; Beckerman; Berger; Birmingham; Besunder; Bracht; Bracken; Brenner; Breslin; Buzard; Cashman; Cedarbaum; Ciulla; Clements; Coffey; Collier; Cometa; Connolly; Corcoran; Cyrulnik; Daly; D'Angelo; Darche; DeLuca; Deptula; Devine; Eiber; Eisenhauer; Farmer; Farrell; Feerick; Field; Fiesinger; Freedman; Friedman; Frye; Geltzer; Gershon; K. Gibbons; W. Gibbons; Goldblum; Goldstein; Gordon; Greisler; M. Gross; Grossman; Haig; Halpern; Haskel; Hassett; Heming; Hesterberg; Jacoby; Kahler; Karan; Kelly; Kennedy; Kenney; Kessler; Labaton; Lagarenne; Lashley; Lee; Levin; Longo; Madigan; Mahoney; Malito; Martusewicz; McCarthy; McDowell; Miklitsch; E. Miller; M. Miller; Millon; Mitchell; Moore; Morris; A. Murray; K. Murray; Offermann; Opotowsky; Ostertag; Patrick; Pearl; Peckham; Pfeifer; Picotte; Pool; Pruzansky; Purcell; Raysman; Reich; K. Reilly; Reizes; Reiniger; Ritholz; Robinson; Roper; Rothstein; Ruffer; Ruslander; Santemma; Schaab; Schumacher; Sklarin; Smith; Spellman; Standard; Steflik; Stevens; Strauss; Sunshine; Tomaselli; Vigdor; Vitacco; Wales; C. Walker; S. Walker; J. Walsh; Weiss; D. White; R. White; Williams; Witmer; Wolman; Wright-Sirmans; Yanas; Zalayet; Zurlo.

1. Approval of minutes of June 27, 1992 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, 1992. He reviewed the major income and expense components of the budget, and noted that in cooperation with The New York Bar Foundation, the outstanding balance on the Bar Center expansion loan had been reduced to \$800,000. Mr. Gershon indicated that the Association remained in sound financial condition at the close of the third quarter of the fiscal year, with a year-end surplus of approximately \$500,000 being anticipated by the Finance Committee. The report was received with thanks.

3. Report and recommendation of the Finance Committee.

a) Approval of new dues category. Thomas O. Rice, Chair of the Finance Committee, summarized the committee's proposal to revise the Association dues structure effective January 1, 1993 to include a new dues category consisting of those members in their fifth and sixth years of practice. He indicated that the dues for the new category would be set at \$90, and explained that the new class would ease the transition from the current \$62 dues level to the \$140 category. Mr. Rice advised that by creating this new class, the Finance Committee was seeking to decrease the erosion of younger members as they enter the higher dues ranges. After discussion, a motion was adopted approving the following resolution:

RESOLVED, that the House of Delegates hereby approves the addition of a new dues category effective January 1, 1993 for those members admitted to practice for five or six years, with dues to be set at \$90 for 1993.

b) Approval of proposed 1993 income and expense budget. Mr. Rice then summarized the major components of the Association's proposed income and expense budget for 1993. Following discussion, a motion was adopted approving the budget as submitted by the Finance Committee.

4. Report and resolution concerning sales tax on legal services. Walter P. Stasiuk of the Committee on Taxation of the New York County Lawyers' Association summarized that organization's report concerning the adverse consequences likely to flow from the imposition by the Legislature of a sales tax on legal services, including the potential shrinkage in the New York economy through the outsourcing of legal services to other jurisdictions by law firms desirous of reducing their tax liability. He also explained the regressive nature of a sales tax and noted the consistent opposition by the New York State Bar Association to previous attempts at imposing such a levy. Discussion then ensued during which members noted that a service tax could create substantial constitutional issues as well. After discussion, a motion was adopted approving the following resolution:

WHEREAS, the State of New York has explored the possibility of imposing a tax on the delivery of legal services as a potential source of new revenue; and

WHEREAS, this issue is of significant concern to the New York State Bar Association and to other bar associations in this state, as attested to by the report of September 24, 1992 submitted by the New York County Lawyers' Association; and

WHEREAS, the imposition of such a sales tax would raise, among other serious legal questions, an issue as to the constitutionality of such a measure, now, therefore, it is

RESOLVED, that the New York State Bar Association hereby continues to oppose any sales tax on legal services as being regressive and unduly burdensome on those least able to afford such a tax; and it is further

RESOLVED, that the New York State Bar Association hereby endorses in principle the report of the New York County Lawyers' Association, encourages other bar associations to adopt similar positions in opposition to any proposed sales tax, and hereby authorizes the officers of the New York State Bar Association to join the New York County Lawyers' Association and other bar associations in taking such actions as may be deemed appropriate in their judgment in furtherance of this resolution.

5. Report of Special Committee on AIDS and the Law. Hon. Renee A. White and Steven L. Kessler, Co-Chairs of the Special Committee on AIDS and the Law, summarized the report of the committee with respect to the legal issues associated with AIDS. They outlined relevant medical concepts as well as the recommendations formulated by the committee to address AIDS-related issues in the fields of criminal justice, health law, housing, insurance, labor and employment, matrimonial law, and

trusts and estates law. Because of the complexity and sensitivity of this area, they noted that many of the proposals had been developed in consultation with other interested committees and sections of the Association, and that these recommendations were intended to educate the legal profession, the Legislature and the public regarding the legal aspects of AIDS. They noted that in anticipation of the presentation of the matter to the House, the Executive Committee had approved the report with the deletion of the health law recommendation set forth at page 21 that the courts and the Legislature refrain from requiring that HIV positive health care workers or employees engaged in potentially high risk occupations inform their patients or clients of such HIV status. Following discussion, the House voted initially to approve the report as amended by the Executive Committee. However, after further discussion, during which it was noted it would be unfair to absent members to approve a report that had been listed as informational in the materials provided in advance of the meeting, a motion was adopted to accept the report as revised with the understanding that the committee would be invited to present the matter for formal approval at the next meeting.

6. Report of Court Management Study Steering Committee. A. Paul Goldblum, Chair of the Court Management Study Steering Committee, outlined the committee's objective of providing the Association with guidance in the selection of an appropriate vehicle to study the effectiveness of the court system's management based on the need for such information which was identified during the recent judiciary budget crisis. He noted that the committee had perceived a need for two aspects of such a study, one to satisfy the public's need to be informed regarding the condition of the court system, and a second to create within the Association a body of knowledge and the ability to monitor the court system in a manner oriented to the concerns of attorneys. He advised that after a report given by the committee on the previous day, the following resolution had been adopted by the Executive Committee:

RESOLVED, that the President appoint a body directed (1) to develop and present to the Executive Committee a proposal for the retainer of a consultant who will develop a plan for a study of the court system designed to respond to the need to increase the public's confidence in the courts, including a campaign to obtain political and financial support for that study; (2) to coordinate our bar association's committees and sections in their cooperation with those studies; and (3) to monitor continuously the activity of the court system and to constitute a resource for the bar and the public when such information is needed.

The report was received with the thanks of the House.

7. Individual Assignment System.

a) Report of OCA Review Committee on the Individual Assignment System.

Jonathan Lippman, the Office of Court Administration's Deputy Chief Administrator for Management Support and the Chair of the OCA Review Committee on the Individual Assignment System, summarized that committee's report and recommendations with respect to the operation of the Individual Assignment System. He described the methodology utilized in the conduct of the study, including outreach

efforts to obtain input from bar groups. He expressed appreciation to the Association for the suggested improvements which had been forwarded to OCA following the April and June meetings of the House of Delegates. Mr. Lippman then explained the specific recommendations and legislative initiatives proposed to improve IAS in the areas of case processing, trial assignment methods, case tracking and case management practices.

b) Report of Action Unit No. 6.

Maxwell S. Pfeifer, Chair of Action Unit No. 6, presented the action unit's report and comments with respect to the IAS system, noting that the OCA study fairly reflected the recommendations the action unit had put forth in its June 1992 report and that it also addressed the need for local autonomy over many practices while providing a uniform basic framework for litigation. Discussion then ensued regarding the report during which several members of the House expressed concern regarding the proposals affecting the regulation of motion practice. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, early in 1992 Chief Judge Sol Wachtler established a Review Committee on the Individual Assignment System (IAS), charged with evaluating IAS and making any recommendations necessary to meet New York State's present and future civil justice needs; and

WHEREAS, the Review Committee sought broad input from both the bench and the bar soliciting their views, experiences and recommendations on IAS; and

WHEREAS, in June 1992 this Association accepted as preliminary and as amended the reports of Action Unit Number 6 and the Commercial and Federal Litigation Section regarding IAS and authorized their submission to the Review Committee with the caveat that all of the recommendations may not be appropriate for implementation in every area of the state; and

WHEREAS, the report of the Review Committee reflects the recommendations made in the report of Action Unit Number 6, accepted by this Association and submitted to the Review Committee, and also addresses the need for local autonomy over many practices while providing a uniform basic framework for litigation; and

WHEREAS, the report of the Review Committee reflects the recommendations made in a report of the Commercial and Federal Litigation Section, approved by this Association in April 1992 and submitted to the Review Committee, in the areas of objection to notices of discovery and inspection and interrogatories, specificity of notices to produce documents for inspection, and open commissions for the conducting of out-of-state depositions;

NOW, THEREFORE, BE IT RESOLVED that the New York State Bar Association approves in general the recommendations contained in the report of the Review Committee with regard to case processing, trial assignment methods, case tracking and case management practices, subject to local needs and adaptation; and

BE IT FURTHER RESOLVED that the New York State Bar Association takes no position with respect to the legislative changes proposed by the Review Committee regarding bills of particulars, but recommends that these changes be the subject of further study; and

BE IT FURTHER RESOLVED that the New York State Bar Association requests the Review Committee to implement the recommendation adopted by this Association in April 1992 relating to self-executing orders and the recommendation accepted by this Association in June 1992 that in limiting the oral argument of motions, argument should not be precluded when requested by counsel.

8. Report of Action Unit No. 4. Jules J. Haskel, Chair of Action Unit No. 4, summarized that group's interim report with respect to judicial selection and its relationship to competency and diversity on the bench. He reviewed Action Unit No. 4's initial recommendations concerning trial court merger and merit selection of judges which were endorsed by the House of Delegates in 1979, noting that the merit selection plan and related criteria approved by the House at that time still remained viable. He also explained the impact of the United States Supreme Court decision in Chisom v. Roemer and the related report of the Governor's Task Force on Judicial Diversity, and the impetus that these might provide for implementing a merit selection process in New York. He noted the constructive role for the action unit in developing a merit selection plan consistent with the 1979 position of the House, the findings of the Governor's Task Force and the dictates of the U.S. Supreme Court. He described the general nature of the merit selection plan being contemplated by the action unit, and noted that the action unit would seek to conduct a series of meetings across the state involving local bar associations to discuss and build support for the proposal. Mr. Haskel indicated that depending on the length of time required to complete this process, the action unit might be prepared to submit its proposal for formal consideration by the House as early as the January 1993 meeting. The report was received with thanks.

9. Report of President. In view of the length of time required to address the other agenda items, Mr. Bracken, in lieu of presenting the usual oral report, briefly summarized the matters set forth in the attached written summary which was distributed to the members of the House. In addition to those topics, he noted that based on discussions at the Executive Committee's dinner the previous evening with Chief Judge Wachtler and Chief Administrator Crosson, he would likely seek a meeting with Governor Cuomo to explore with him the manner in which the Governor could be a positive and constructive force in the administration of justice in the wake of the judiciary budget litigation.

10. Presentation of Ruth G. Schapiro Memorial Award. Mr. Bracken made the initial presentation of the Ruth G. Schapiro Memorial Award to Hon. Judith S. Kaye for her many noteworthy, law-related contributions to the concerns of women, including her involvement with a variety of organizations in addressing issues affecting women and children, as well as speaking and writing on numerous subjects relating to women.

11. Report and recommendation of Commercial and Federal Litigation Section. Joseph D. McCann, Chair of the Government Litigation Committee of the Commercial and Federal Litigation Section, summarized the section's majority report with respect to amending the Federal False Claims Act as it affects the status of government employees to institute qui tam actions following disclosure of fraudulent activity by others. He explained that the majority favored amendment of the Act to preclude government employees who receive original source information in the course of their employment from asserting qui tam status. Mr. McCann indicated that to allow government employees who discover fraud in the scope of their employment to sue and share in any recovery impairs the effective operation of the law, as it permits government employees to realize private gain from information obtained in the course of their employment and creates an appearance of impropriety. Ephraim Z. Schachter presented the minority position which advocates amendment of the statute to impose some restrictions, but not bar federal employees from qui tam status. He indicated that the statute was achieving the desired effect of generating substantial recoveries for the government, and that qui tam suits should be permitted where whistleblowing government employees have been unable to secure action from their superiors. Mr. Schachter indicated that the concerns expressed in the majority position could be satisfied through statutory amendments which would require a government employee to provide advance notice under seal to the appropriate governmental enforcement agency, with that agency being afforded a reasonable period to initiate action before the employee is entitled to commence qui tam litigation. He indicated that parallel clarifying provisions should be included in any New York State statute. Following discussion, a motion was adopted approving the minority position presented by the Commercial and Federal Litigation Section.

12. Memorial to Bernard J. Reilly. Mr. Bracken presented a memorial to former Association President Bernard J. Reilly who had passed away recently. A moment of silence was observed out of respect for his memory and for his contributions to the Association and the legal profession. A copy of the memorial is attached to these minutes.

13. Date and place of next meeting. Mr. Murray announced that the next meeting of the House of Delegates will be held on Friday, January 29, 1993 at the Marriott Marquis in New York City.

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New York State Bar Association

November 7, 1992

TO: Members of the House of Delegates

RE: President's Report in Connection with the November 7, 1992 meeting

As you know from reviewing the background materials for our November 7, 1992 House of Delegates meeting, we have a rather lengthy agenda with a number of significant topics to consider. So that we might have adequate time for discussion of those substantive items, I felt it would be helpful for me to depart from the usual oral report format for the President's report and instead provide you with this written summary. While I may take a few moments at the meeting to highlight some particularly significant items, you will be able to read the details at your leisure. In this manner, you can be updated concerning a number of topical issues which I am certain you will find of interest, while conserving time at the meeting for the scheduled business items.

1. **Office of Court Administration.** The Association's quarterly meeting with the Office of Court Administration took place on September 23, 1992 in New York City. Among the items discussed were the following:

a) **Court management study.** Chief Judge Wachtler announced that he had formed an independent committee to evaluate the efficiency of the court system, as the question of such a study had remained open since the settlement earlier in the year of the litigation with the Governor over the Judiciary budget. The study group is headed by Fern Schair Sussman, Executive Director of the Association of the Bar of the City of New York. The other members of the panel are former Assembly Speaker Stanley Fink, past NYSBA President John J. Yanas, former Deputy Chief Administrative Judge Robert J. Sise and former Supreme Court Justice Bernard H. Jackson. As stated by the Chief Judge, this group will be conducting an impartial examination of the court system's management practices utilizing the services of an outside consulting firm familiar with the court management process. Judge Wachtler advised us that he had instructed this group to seek input from bar associations in the course of its study so that the views of the organized Bar might be heard, so I am sure this group will be reaching out to us in due course. As you know from your House materials, given the complexity and seriousness of this issue, I have designated a Court Management Study Steering Committee to evaluate matters from our perspective. This group, which is ably chaired by A. Paul Goldblum, is scheduled to report to you today.

b) **Individual Assignment System.** The Chief Judge apprised us of the status of the Individual Assignment System study being conducted by the Review Committee on the Individual Assignment System which he had designated. Chaired by OCA Deputy Chief Administrator Jonathan Lippman, this committee has conducted a comprehensive



study of the IAS and during the course of its evaluation has sought input from judges, bar groups and individual practitioners. In fact, as part of this review, the committee has considered the recommendations approved by the House at our last meeting in Cooperstown. As with the preceding item, we will have detailed reports presented today by both Mr. Lippman and by Maxwell S. Pfeifer, who chairs Action Unit No. 6, and who has been coordinating with the OCA committee during the course of its study.

c) Judiciary budget. Chief Administrator Matt Crosson updated us regarding the Judiciary budget situation and cautioned that settlement of the litigation with the Governor had not resolved OCA's problems. There still remained the impact of the \$14.5 million deficit rolled over from 1992-92 into the current fiscal year, as well as the federal court determinations with respect to the lag payroll actions. While a reversal of an adverse lag payroll District Court decision by the Second Circuit had in essence restored \$11 million to the court system, these funds had not been released by the Comptroller and were in dispute. The budget situation has left the court system with over three dozen judgeships and scores of non-judicial positions unfilled, and this situation is not likely to improve significantly in the immediate future. In fact, the fiscal reductions incurred in the past two years may necessitate the Chief Judge submitting what appears to be a disproportionately large budget for 1993 just to keep pace with where the court system was two years ago. Bob Witmer, whom I am sure is known to virtually all of you by reason of his lengthy service on the Executive Committee and House of Delegates, testified on our behalf at budget hearings conducted in October by the Office of Court Administration. During the coming months, as OCA goes through the formal submission process, I assure you that we will do all that we can with the Governor and the Legislature to obtain adequate funds for our court system.

d) Judicial salary increases. As I am sure most of you are aware from news articles in recent months, the Chief Judge intends to pursue salary increases for the members of the judiciary, whose last raise occurred in 1987. At the meeting, Judge Wachtler noted that since 1980 New York's judiciary has ranked near the bottom nationally in terms of salary growth on a percentage basis. On this same point, Governor Cuomo has created a Temporary State Commission on Judicial Compensation, headed by American Stock Exchange Chairman James Jones to review the adequacy of judicial salaries and to consider whether there should be some permanent mechanism for adjusting judicial salaries in the future. This action by the Governor, however, will have an immediate negative effect on the securing of salary increases. If the commission adheres to its announced timetable, and given the manner in which the legislative process operates with respect to judicial pay increases, the commission approach will have the practical impact of postponing a pay increase for our judges for at least two years. We must seriously question the need for such a commission and the delay it will bring especially in view of the excellent and comprehensive 1988 study conducted by a similar commission chaired by retired Court of Appeals Judge and former Association President Hugh R. Jones. The need has been established; our judges are deserving of a well-earned and long overdue increase. We have as an Association consistently supported an increase for them, and as recently as April 1992 the House, on recommendation of our Commercial and Federal Litigation Section, adopted a resolution urging that judicial salaries be raised. I assure you that we will not accept quietly any delay in this area, but will pursue the salary increase issue vigorously with our full resources.

e) Corporate and commercial litigation. Chief Judge Wachtler noted that the Governor had designated a task force to study the creation of a special court for corporate and commercial litigation (headed by James Melican, general counsel for International Paper). He indicated to us, however, that OCA had already formulated plans to implement on a pilot basis two special Supreme Court parts for commercial litigation in New York City beginning January 1, 1993. If the pilot program, which builds on OCA's efforts to group complex commercial cases under the IAS, proves successful, it can be expanded in the future.

f) Courthouse facilities. Chief Judge Wachtler advised us of the agreement which had been reached with New York City over the courthouse construction and renovation plan. He indicated that the city authorities had agreed to a \$2.8 billion program financed through State Dormitory Authority bonds. He cautioned us that the State Division of the Budget had raised concerns with respect to the bond funding aspect of the plan, and that these could impair or halt implementation of the plan as agreed to by OCA and the City of New York. We will continue to monitor developments in this area, and to do whatever we can to keep the courthouse facilities program moving forward.

2. International Criminal Court. As approved by the House of Delegates at the April meeting at the request of the Commercial and Federal Litigation Section, I presented our proposal to establish an international criminal court to the ABA's House of Delegates at its Annual Meeting in San Francisco. The action by the ABA House followed agreement by us with the ABA's Task Force on an International Criminal Court regarding the nature of the proposal. We will continue to cooperate with the ABA to make this concept a reality, and we will keep you apprised of the progress which is made.

3. Extradition from foreign countries. During its most recent term, the U.S. Supreme Court in U.S. v. Alvarez-Machain, -U.S.- (1992), issued a decision to the effect that, consistent with the U.S.-Mexico Extradition Treaty, agents of the U.S. government could abduct an individual from Mexico, without the consent of that country's authorities, for trial in the U.S. on drug-related charges. This decision has caused strong protest by Mexico and several other nations, which jeopardizes the viability of several extradition treaties. Our International Law and Practice Section is reviewing the issues raised by the Alvarez-Machain ruling and will likely have recommendations in the near future for consideration by the Association.

4. Product liability suits. Earlier this fall, I communicated to the U.S. Senate our Association's disapproval of legislation proposed to limit recoveries in product liability actions. If passed, the legislation would have implemented measures to force injured consumers to settle with corporate defendants rather than litigate, would have restructured the contingent fee system, and would have made the plaintiff liable for defense costs if the plaintiff lost or if the amount of the jury award was less than the settlement offer by the defendant. The measure was opposed by consumer groups as well as the legal profession. The bill fell two votes short of the 60 needed to compel Senate action, so it will not be pursued this year. However, it is possible the bill may be reintroduced in the future, but we will be prepared to oppose any efforts designed to limit the rights of the American consumer.

5. Pro bono survey. In October, Chief Judge Wachtler's Pro Bono Review Committee released its survey of *pro bono* civil legal services provided by New York attorneys in 1991. The statistics for 1991, when compared with those for the previous year, show that the percentage of attorneys providing *pro bono* legal assistance was up marginally - 49 percent in 1991 as opposed to 48 percent in 1990. However, the average number of hours contributed by those attorneys rose substantially from 36 hours in 1990 to 44 hours last year. It is estimated that these figures convert into over two million hours devoted to *pro bono* by New York lawyers in 1991, despite the severely depressed economic situation which exists in our state. We can all be proud to be associated with these selfless individuals who have given so freely of their time and talent on behalf of the indigent. During the coming months, I want to assure you that in cooperation with our President's Committee on Access to Justice, we will continue our efforts to enhance the provision of voluntary *pro bono* civil legal services to avoid the imposition of a mandatory program by the Chief Judge.

6. Membership survey. As our membership continues to grow and diversify, and as the nature of legal practice evolves, we recognize that our members' needs will change accordingly. To ensure that we remain responsive to our members, the Membership Committee, chaired by Eric Roper of New York City, has proposed that a survey of our members be undertaken. The Finance Committee has approved this initiative, and the necessary plans are now being put in place. To measure the level of member satisfaction with present services and gain an understanding of future expectations, a variety of methods will be used to gather information, including mail surveys, telephone contacts and focus groups. If you are contacted as part of this process, I ask that you cooperate so that we might obtain as accurate and complete a view of our membership as possible. When the survey has been completed and analyzed, we anticipate being able to use the results in reshaping existing services or developing new initiatives which will keep our organization vital and dynamic in the coming years.

7. Annual Meeting. Based on recommendations by the Ad Hoc Committee on Annual Meeting, chaired by former Association President Angelo T. Cometa, the Executive Committee has approved a number of changes in the format of the Annual Meeting, primarily with respect to the Annual Dinner, to recapture the previous level of member interest and participation in this event. These changes will be evident at the Annual Dinner this coming January, and include elimination of the formal dress requirement and the dais, reducing the honored guest list, instituting a general cocktail reception for all guests preceding the Annual Dinner, shifting the presentation of the Fifty-Year Lawyer Award to another function during the Annual Meeting, offering headline entertainment to dinner attendees, setting per person ticket prices at \$125 or less, encouraging the participation of firms at the dinner, and appointing an entertainment committee to coordinate the selection of future entertainment with the officers and staff. We anticipate that these changes will reverse the declining attendance experienced in recent years, and revitalize the Annual Dinner as a centerpiece of the Annual Meeting.

8. Anniversary of Family Court. This year marks the 30th anniversary of the Family Court in the State of New York. In view of this milestone, as well as the current emphasis being placed on many critical children's issues, the Committee on Juvenile Justice and Child Welfare, chaired by Lucia B. Whisenand of Syracuse, is planning

symposium to address these issues during the Annual Meeting in January. Program details will be released as we draw closer to the meeting, and I would encourage your participation and attendance at such a timely and significant event.

9. **Electronic recording of court proceedings.** As I am sure you are aware, earlier this year, as a cost savings measure, OCA substituted tape recorders for stenographic reporters in Surrogate's Court. A number of Surrogates initiated legal action to enjoin this experimental program which had been included as part of the 1992-93 Judiciary budget. During the summer, the State Supreme Court ruled that the Chief Administrator had exceeded his authority in implementing the program. OCA has appealed the lower court decision to the Appellate Division, which has stayed the injunction pending resolution of the appeal. Our Trusts and Estates Law Section will continue to monitor the progress of this case and will advise us should developments warrant any action by the Association.

10. **Mid-Atlantic Conference of Bar Leaders.** Last month, we hosted this year's meeting of the Mid-Atlantic Bar Conference. The conference draws its representation from the state bars of Delaware, Maryland, New Jersey, Pennsylvania, New York, and the District of Columbia. It affords an opportunity for the President, President-Elect, Immediate Past President and Executive Director from each of these bars to gather and discuss problems and concerns common to our region. Among the issues addressed at our most recent session were long-range planning, solo and small firm practitioners, diversity within the bar, and dealing with growth in both the legal profession and the association environment. It is reassuring to note that our Association is not only aware of such topical issues, but is deeply involved in addressing them in a constructive manner, as evidenced by the ongoing work of our Task Force on Solo and Small Firm Practitioners.

11. **Request of Sullivan County Bar Association.** I recently received a request from the Sullivan County Bar Association that we address concerns connected with a ruling by the New York Court of Appeals which extended the statute of limitations for legal malpractice from three to six years based on a theory of contractual liability. The Sullivan County Bar has noted that this added period of exposure could have an adverse impact on professional liability insurance premiums. We have asked our Committee on Civil Practice Law and Rules, as well as the Trial Lawyers Section and the Commercial and Federal Litigation Section, to review this matter, and will be reporting the outcome of their study to you as soon as it has been completed.

12. **Copyright restrictions.** As a service to our members and other bar associations, we are considering a rephrasing of the copyright restriction on Association publications and similar materials to facilitate their reproduction for use in connection with educational programs by other groups. Hopefully, this will foster improved educational use of our materials while still giving due credit to the NYSBA and the contributing authors.

13. **Special Committee to Review CPR.** In view of the ongoing interest which exists among members of the profession in the Code of Professional Responsibility, as well as proposed amendments to the Code which seem to arise with some regularity from a variety of sources, I have appointed a Special Committee to


Review the CPR which will be chaired by Marjorie E. Gross of New York City. The committee will be charged with reviewing those issues, such as the sale of a law practice, which are directly related to the Code, as well as the consideration of possible amendments to maintain conformity with court decisions or changes in court rules.

14. **Section Meetings.** This fall President-Elect Archibald Murray and I have attended as many of our section meetings as we possibly could. It has been gratifying for us to witness firsthand the degree of enthusiasm, professionalism, and involvement which our members bring to their sections and the Association. We are truly fortunate to have such dedicated individuals involved on our behalf in so many substantive fields of practice.

15. **Confidentiality of communications to members of lawyer assistance committees.** This past April, based on a recommendation by our Committee on Lawyer Alcoholism and Drug Abuse, the House endorsed amendments to DR 1-103(A) of the Code of Professional Responsibility and Section 499 of the Judiciary Law to ensure the confidentiality of communications to and among members of lawyer assistance committees administered by the state and local bar associations. These measures, which are consistent with the approach advocated by the American Bar Association as well as procedures functioning in other states, will be of considerable help to lawyer assistance committees in the rehabilitation of those attorneys afflicted by alcohol or drug abuse. Since April, our committee has been conferring with the Chief Judge, the Presiding Justices of the four Appellate Divisions, and the legislative leaders to secure implementation of the Code revision and the statutory change. We are hopeful that these efforts will result in positive action by the Appellate Divisions and the Legislature in the near future so that our proposed initiatives can be put in place.

As is evident from the foregoing items, the Association is actively involved in a number of topical and significant areas. We can take considerable pride in our Association, which is making a constructive contribution to the improvement of the legal profession and society generally. I am humbled by the dedication of our volunteer members who give so generously of their time and professional talent on our behalf. During the remainder of my term, I pledge to you that I will do all that is within my power to assist you, as well as our sections and committees, in maintaining the preeminent status of the New York State Bar Association.

Respectfully submitted,



John P. Bracken

NEW YORK STATE BAR ASSOCIATION

In Memoriam

Bernard J. Reilly



MEMORIAL
to
BERNARD J. REILLY

Presented at New York State Bar Association

House of Delegates Meeting

November 7, 1992

Albany, New York



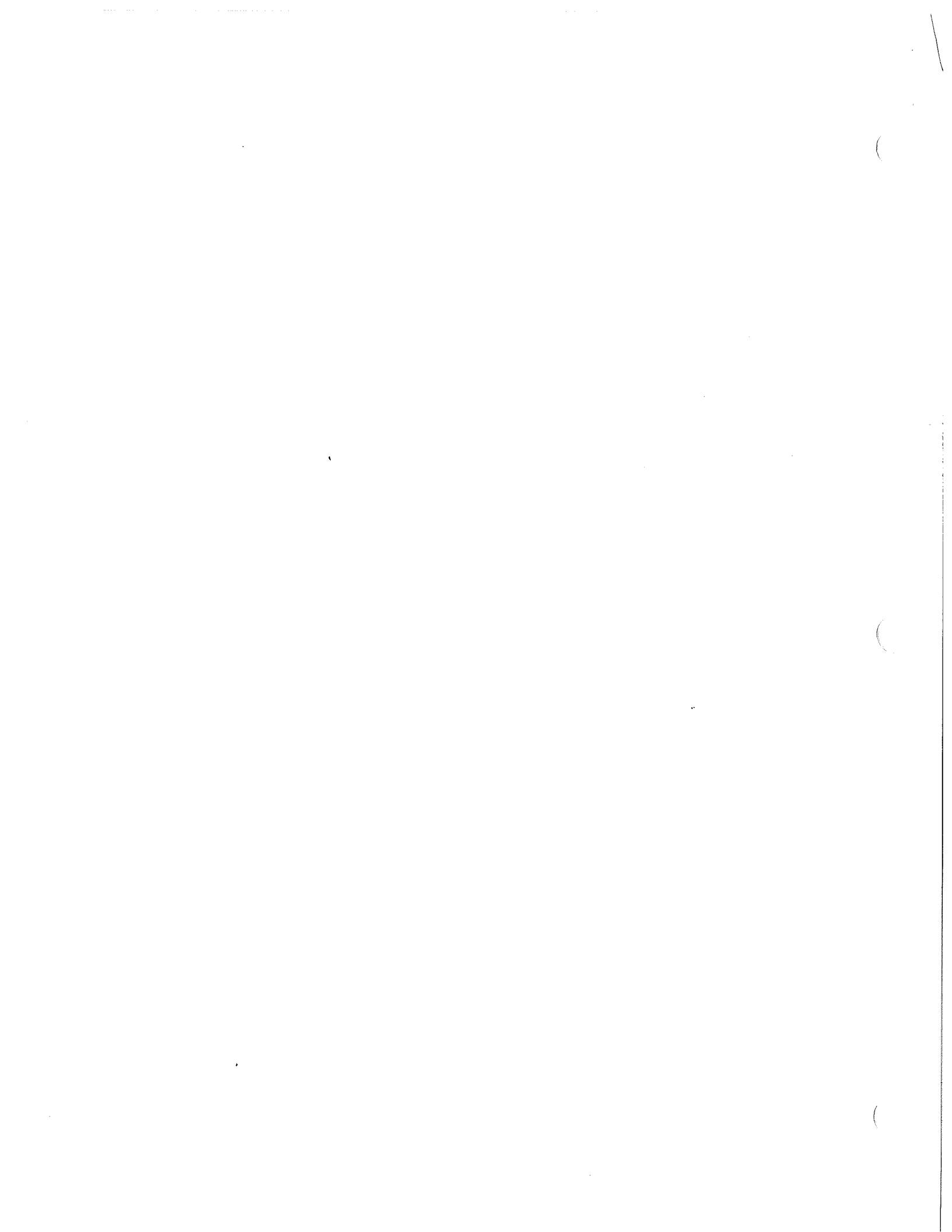
BERNARD J. REILLY

I can't think of anyone who didn't like Bernard J. Reilly. The near mischievous twinkle in his eye, his incessant good nature . . . even in times of great personal stress . . . the endless inventory of jokes and humorous anecdotes . . . fully validated the impression that he was, indeed, the last of the leprechauns.

He was the proverbial gentleman from the old school, mannerly and even courtly, yet at the same time totally unpretentious . . . a man who genuinely cared for people . . . his family, clients, partners, numerous friends . . . and with an obvious passion . . . his brothers and sisters at the bar.

A long time member of the Babylon (Suffolk County) law firm of Reilly, Like and Schneider, he was graduated from Manhattan College and Fordham Law School. During World War II, he served with the U.S. Army infantry in Europe and later in Okinawa and Japan. Joe held numerous positions of honor, both public and private, during his distinguished professional career. He was President of the Suffolk County Bar Association from 1969 to 1970, a member of this House since its inception and, of course, President of our Association from 1982 to 1983.

Although those of us who knew Joe well recognized that beneath that broad smile which could light up a room . . . there was a serious, thoughtful and deeply religious man . . . it would hardly be fitting to memorialize Joe in any ritual involving silence! When you were with Joe, the air was filled with lively chatter, warm fellowship and boisterous laughter . . . the product of his infectious Irish wit. I think it more appropriate . . . and I think Joe would have wanted . . . to have one of his delightful anecdotes, with which he often times regaled this House, to serve as his tribute.



One of his favorite stories was the following:

For many years, a number of hunters would, in the fall, go to a particular cabin and there they would consult with a guide and hire a dog. That particular dog's name was Lawyer and he was the hardest working, most intelligent and resourceful hunting dog that any had ever seen. Each and every year the hunters would return after a successful day in the field to laud the talents of that wonderful dog — Lawyer. Finally, after many years, the hunters suggested that the dog's name should be changed and that he should be elevated and renamed Judge. The following year the same hunters appeared at the guide's cabin and requested the dog, Judge, but this time, the guide refused them and simply said you wouldn't want him any more, ever since we changed his name, all he does is sit on his rump all day and bark.

Joe left his unique and lasting imprint on this Association as well as upon each of us whose life he touched. On a personal note, he was a friend and mentor. I join his many friends and colleagues and express, on behalf of this House, our sorrow at his passing and our condolence to his family.

