

2017 ANNUAL MEETING REMARKS

John S. Kiernan, President, New York City Bar Association

It's a pleasure to be able to provide a thumbnail summary of our Association's work over a year of remarkable engagement. As you know, the City Bar plays many roles in enhancing the lives and professional development of our lawyer members. All of these roles warrant recognition and celebration. But my remarks this evening will focus initially on our Association's policy agenda, which has generated some of the most significant developments worth reporting to you this evening.

Even in ordinary and unruffled times, our 160 committees generate, on an almost continuous basis, a remarkable outpouring of public expressions of views, in the form of reports, proposals for legislature or regulatory change, letters to governmental decision-makers, transitional memos to newly-elected Presidents, governors and mayors, public forums on matters of debate and amicus curiae briefs to courts. This year featured all of that and more – more than 170 such reports since this time last year. As a bar association, we have witnessed and engaged on a succession of seminal-seeming developments in the past 12 months. These events have included the advancement of a progressive city and state agenda on a scale almost without precedent regarding matters about which the City Bar has long advocated. These events have also included the challenges presented by a presidential administration pressing for changes some of which carry significant implications for our Association's historical mandate to protect and advance the rule of law, ensure protection of the rights and interests of the vulnerable, and support ongoing improvements in the fair, orderly and efficient administration of justice.

Amid all this activity, when legal historians of our City look back on 2017, they may mark it foremost as the year of the passage of the transformative piece of legislation known as 214-a, which provides for free legal representation to everyone under 200% of the poverty line who faces eviction from a home. This is the most significant step toward a legislative application of so-called civil-*Gideon* to ensure counsel for someone facing threatened loss of one of the essentials of life since the Supreme Court attached that right to everyone facing a potential loss of liberty 54 years ago in *Gideon v. Wainwright*. Through our Pro Bono and Legal Services Committee, the City Bar actively supported this legislation. We commissioned an analysis by the consulting firm of Stout Risius & Ross of the expected savings associated with providing this counsel – in avoided public and private costs of homelessness, and in other avoided costs – which became a significant component of the debate. We provided written and oral testimony in support of the legislation to the City Council, and worked with other groups in communicating with the Mayor’s Office of the Civil Justice Coordinator to advance consideration of this proposal and discuss how to phase it in. We can hope, without being accused of naiveté, that this legislation may be the first step toward a day when the notion that a poor person could be evicted from a home without counsel will be as unthinkable to our national consciousness as sending a person to prison without counsel seems now.

There has also been a year of truly extraordinary movement in N.Y. state and city efforts toward criminal justice reform – largely in areas in which our Criminal Justice Committee and our Task Force on Mass Incarceration have substantially participated and provided substantial advocacy. This year has seen New York at long last relinquish its position as one of only two

states that set age 16 as the age of adult criminal responsibility, passing raise-the-age legislation that our Association has long urged. New state legislation this year provides for increased state funding for constitutionally required representation of indigent criminal defendants, and for better criminal justice practices like the recording of interrogations and the requirement that lineups or photographic identifications be conducted by people who do not know which person is the suspect. In New York City, pilot projects for officers to use body-worn cameras are underway, low-level misdeeds have been decriminalized into violations, and diversions proposed as an alternative to incarceration (particularly for young people and for non-violent crimes) have increased significantly. The population of our City's jails has been reduced by 50% in only a few years, with the same period witnessing a continuing decrease in crime.

As a general historical matter, concern about the plight of prisoners tends to get public and political attention only in rare moments in time. But this is one of those moments and there appears to be more to come. Our Association has also advocated earnestly for, and we have ambitions to achieve, reform of a bail system that makes ability to obtain bail often dependent on unregulated decisions by private bail bond enterprises, and that causes large numbers of people who present no serious flight risk to be kept in jail awaiting trial for non-violent crimes for months or years because they cannot afford bail that is often less than \$1,000. Prisons' and jails' practices in using solitary confinement for discipline are undergoing fundamental change, inmates' mental health needs are getting attention they have not gotten before, and a City Council Commission led by our State's former Chief Judge and the Mayor have raced each other to see who would be first to propose formally that the Rikers Island jail be closed and replaced

with new local jails in each borough. Police reform is also a matter of intense dialogue, as to which the City Bar has provided an important forum in events featuring our City's Police Commissioner O'Neill and NYPD general counsel Larry Byrne.

Our Association has made important public contributions to many other developments, large and small, in the past year:

- When President Trump announced the travel ban in late January, eight days before the ABA's Midyear Meeting, the City Bar became the originating sponsor of a proposed ABA resolution calling on the President to withdraw his executive order. Our report, generated over a few sleepless nights by members of our Immigration Committee, quickly gained co-sponsors, and nine days later – a tremendously fast turnaround time, given the usual “tugboat pushing an ocean liner” nature of the ABA's deliberative processes – the 400,000 member ABA's House of Delegates overwhelmingly approved our proposed resolution.
- In the diversity area, our Benchmarking report on diversity statistics, slowness of progress and thoughts about how to improve results at New York City's largest firms received enormous attention in the legal community and national press coverage, and stimulated dialogue within many individual firms, in which our staff frequently participated as visiting consultants. After we co-signed a letter with a large collection of affinity bars calling for insertion of a diversity, inclusion and anti-bias component as part of the 24 hours' training in New York's two-year CLE requirements, we found ourselves, at the request of the State CLE Board, taking the lead in presenting the reasons for this

proposal and in building statewide consensus that recently led to the CLE Board's unanimous recommendation of our proposal to the Administrative Board.

- We were also asked to testify in writing and orally to a panel including Chief Judge DiFiore and the Presiding Judges of the four appellate departments about the rules and practices that should govern administration of so-called "limited scope" representations, in which a lawyer enters an appearance for a client but only on an understanding that the lawyer will withdraw if the dispute progresses past a specified point, and it appears likely that new rules, on which we will be invited to comment, will ultimately emerge from this discussion.
- We advocated successfully to eliminate New York from its position as the last holdout among the 50 states in legislating special rules for grants of a broad range of state licenses to spouses of military personnel who are ordered to relocate to our state and want to get new jobs using the skills for which another state has given them a license.
- We are optimistic about achieving legislation or regulatory change in a broad array of areas we have supported, including updates of the class action rules in Article 9 of the CPLR, adoption of the Uniform Fraudulent Conveyance Act, confirmation that the attorney-client privilege applies to prospective clients' conversations with legal referral services, enhancement of the effectiveness of our courts' commercial divisions through a broad array of measures, protection of art appraisers, and the nuts and bolts of a wide range of other pieces of substantive legislation.

- In one particularly satisfying rifle-shot effort, a case involving questions about whether the prevailing party in an arbitration could recover the damage award from its adversary's parent company, our International Arbitration Committee submitted an eight-page amicus brief to the Second Circuit in connection with a motion for reargument or for en banc review, suggesting a reframing of the analysis that differed from what the parties had presented or the court had applied, resulting in an almost unprecedented Second Circuit decision to modify its earlier decision and embrace the different proposed framing in express reliance on the City Bar's analysis.

In the last few months, we have also been focused on four particularly important major projects:

1. As many of you know but many of our fellow citizens and even our fellow lawyers don't, in November of this year New Yorkers will vote on a referendum question presented every twenty years, whether to hold a constitutional convention in 2019. Our Task Force on the Constitutional Convention, which has been working on this topic for more than 18 months, will soon issue its report and recommendation, recognizing that some of the most credible and weighty voices in the Association and around the State have strongly expressed opposing views (including in a public forum we hosted in March). We will be processing the different views into a Bar Association position in the next few weeks. And if a convention takes place, we will be heavily involved in commenting on and trying to shape its agenda.

2. The financial failure of Puerto Rico has deep resonance for New York, as the home of the second largest concentration of Puerto Ricans aside from the island itself and of

many of the financial institutions to which huge unsatisfied obligations are owed. The economic, legal, political and humanitarian issues presented by this bankruptcy and by proposed approaches to addressing it are gargantuan, and our Task Force on Puerto Rico formed last Fall is working to contribute to the intense discussions about how to reconcile competing interests and priorities.

3. We lawyers who participate in court disputes in our legal system and our extremely distinguished judges generally believe we are performing diligently and well, but the clients who experience litigation almost uniformly believe that the resolution of their disputes – whatever their size and complexity – takes far too long and costs far too much. We have pulled together a particularly thoughtful working group to ask some hard questions – legal, procedural and cultural – about how to pursue the next wave of approaches to dispute resolutions that don't take too long and cost too much.

4. With the beginning of a new Presidential administration, many of our committees have followed our long-standing practice of preparing transition memos to identify issues warranting attention and advocate for particular positions. This year was no exception. Those transition memos – about 16 of them – addressed an enormously broad range of issues.

Apart from these subjects, the Association's contributions to the marketplace of legal ideas have been broad and substantial. Among our 171 reports generated in the past year, we have addressed issues of securities regulation, tax, land use, coops and condominiums, animal rights, gender and transgender rights, and innumerable other subjects. Internationally, we contributed to discussions about a more transparent process for selecting the new Secretary-General of the U.N. (while hosting the outgoing secretary general) and spoke out on human

rights abuses in places like Turkey, China, Liberia and Egypt. And we have advocated for continued federal funding of civil legal services and continued efforts toward criminal justice reform on the federal level, in the face of expressions of administration policy that present threats in those important areas.

Our policy agenda has been complimented with many other contributions to the delivery of legal services, to the health of the legal community, and to debates and other educational and social events. Our Justice Center introduced a new program for veterans and responded to a flood of voluntarism over immigration matters, enjoying funding from a particularly successful gala that honored Bloomberg Inc. and the Proskauer firm. We evaluated a large number of judicial candidates. We held highly popular all-day Institutes on White Collar, Employment, City Planning, Diversity, Non-Profit and Trademark, and CLE sessions or discussion events on literally hundreds of topics. We sold out the Great Hall and anterooms for a dazzling Barbara Robinson Series inaugural event in which Justices Ruth Bader Ginsberg and Sonia Sotomayor provided sparkling interview answers to questions posed by Charlie Rose. We roasted Judge Jed Rakoff at our Twelfth Night event, and expanded our Bar at the Bar social events. We have also reached out to increase the attention we pay to the solo and small firm practitioners who make up about a quarter of our membership, to in-house lawyers, and to committee alumni.

In all of this broad range of activity, our Association has benefitted from the extraordinary energy, skill, wisdom and judgment of our Executive Director Bret Parker, our Senior Policy Counsel Maria Cilenti, our policy staff including Mary Margulis-Ohnuma and Elizabeth Kocienda, our Diversity Director Gabrielle Brown, our Director of Communications

Eric Friedman, our City Bar Justice Center leader Lynn Kelly and her tremendous staff, our Vance Center team led by Alex Papachristou, our Library Services led by Richard Tuske, and so many others – Arlene Bein, Martha Harris, Jenneth Grullon, Margot Isaacs and many others who all deserve mention. Their personal breadth of range, their wholehearted belief in our mission and our members and their dynamism are difficult to overstate. They are central to what makes this organization great.

We look forward to as fascinating and exciting year ahead, and particularly look forward to the wonderful development of having our walls graced by the portrait of our immediate past President, Debbie Raskin.