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## **NEW YORK STATE BAR ASSOCIATION COMMITTEE ON STATE CONSTITUTION: SUMMARY OF 1990 ACTIVITIES**

*Constitutional convention.* The highlight of the 1990 year was the committee meeting with the Hon. Evan A. Davis, the Governor's counsel. Treating the State Constitution article by article, he outlined the many important contemporary issues that are ripe for consideration by a constitutional convention. He cited the experience of the Governor in finding the Legislature unresponsive to proposals for constitutional amendment and suggested that such proposals might fare better at a convention. The referendum on calling a convention, mandated by Article XIX for 1997, could be scheduled by the Legislature for an earlier date. Mr. Davis said he was open-minded about the wisdom of calling a convention and welcomed the Committee's views. Discussion followed. The Committee informed him of its position in 1987 that there was no perceived need for a convention. However, the subject was left open.

*Governor's proposal for a limited legislative initiative.* The Committee studied the Governor's bill to amend the Constitution to compel the Legislature to act on any proposal on which 250,000 signatures had been obtained. A critique of the bill was offered to the Governor's counsel at the meeting referred to above. Based on discussion, a memorandum was subsequently drafted for Committee review.

*Reapportionment.* In anticipation of reapportionment following the 1990 United States Census, the Committee did preliminary research on the feasibility of preparing and publishing a "plain English" version of the constitutional provision corrected to reflect controlling constitutional doctrine. The project was not pursued; instead, the Committee considered the proposal for a redistricting commission adopted by the 1967 New York State Constitutional Convention. Columbia Professor Richard Briffault was invited to comment based on his comparative study of reapportionment in other jurisdictions for the New York City

Charter Revision Commission. Professor Briffault then undertook at the Committee's suggestion to prepare an article for the State Bar Journal analyzing the 1967 proposal and making his own recommendations for reform of the reapportionment process in New York State.

*Mandatory retirement of appointed judges.* The Committee had submitted to the Executive Committee of the Association a legal memorandum concluding that Congress had not intended by the Federal Age Discrimination Act to supersede state provisions mandating retirement of appointed judges.<sup>1</sup> During 1990 the Committee monitored the progress of this issue in the courts.<sup>2</sup>

*Education goals.* The Committee adopted as a specific goal of its activities, in the interest of effective advocacy of human rights, the education of the Bar on the New York State Constitution's guarantees of individual liberty.

*Forum on the finance articles of the Constitution.* Prompted by the budget crises of the 1990 Session and the Legislature's creation of a Temporary State Commission on State and Local Fiscal Policies,<sup>3</sup> the Committee explored, with the Municipal Law Section of the Association, joint sponsorship of a forum at which the constitutional issues before the Commission would be presented. At year end such a forum was under consideration.

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1. The New York Constitution requires their retirement at age 70.

2. In 1991, the United State Supreme Court held that states are not barred by either the Act or the Constitution from setting ages at which judges must retire. *Gregory v. Ashcroft*, 111 S. Ct. 2395, 2408 (1991).

3. Act of June 11, 1990, ch. 220, 1990 N.Y. Laws 703 (McKinney).