

MEMORANDUM

TO:

FROM:

SUBJECT: 2006 Annual Meeting of the American Bar Association and
Meeting of the House of Delegates

DATE: September 15, 2006

REPORT ON THE ABA ANNUAL MEETING

The 128th Annual Meeting of the American Bar Association (the “ABA”) was held August 7-8, 2006 at the Hawaii Convention Center in Honolulu, Hawaii. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a two-day session. The Nominating Committee also met.

The Nominating Committee sponsored a “Meet the Candidates” Forum on Sunday, August 6, 2006. The following candidates seeking nomination at the 2007 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present: H. Thomas Wells, Jr. of Alabama, candidate for President-Elect for 2007-08 term; Judge Bernice B. Donald of Tennessee, candidate for Secretary for 2008-2011 term (to serve as Secretary-Elect in 2007-08); and James Baird of Illinois, and Alice E. Richmond of Massachusetts, candidates for Treasurer for 2008-2011 term (to serve as Treasurer-Elect in 2007-08).

The Opening Assembly was held on Saturday, August 5, 2006 and remarks were delivered by Justice Anthony Kennedy.

The ABA Medal, the Association’s highest award, was presented to Past President Jerome J. Shestack of Pennsylvania, during the House of Delegates meeting on Monday, August 7, 2006.

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, August 7, 2006 and Tuesday, August 8, 2006. Stephen N. Zack of Florida, presided as Chair of the House.

The Marine Corps presented the colors. The invocation for the House was delivered by Rabbi Gary Glickstein of Temple Beth Sholom, in Miami Beach, Florida. The Chair of the House Committee on Credentials and Admissions, Stephen L. Tober of New Hampshire, welcomed the new members of the House. William C. Hubbard of South Carolina, Chair of the Committee on Rules and Calendar, discussed the rules and

procedures for the House to adhere and presented the Final Calendar for the meeting, which was subsequently adopted by the House.

Deceased members of the House since the 2006 Midyear Meeting were named by the Secretary of the Association, Armando Lasa-Ferrer of Puerto Rico, and were remembered by a moment of silence. Doreen Dodson of Missouri spoke about Robert Hetlage of Missouri, former member of the House of Delegates, who passed away. Kenneth Young of South Carolina gave remarks in remembrance of Charles "Butch" Powell of Alabama, former member of the Board of Governors. Alan Van Etten of Hawaii paid tribute to Burnham "Hod" Greeley of Hawaii, former member of the Board of Governors and acknowledged his contributions for having the Association's Annual Meeting in Hawaii. Mr. Hetlage, Mr. Powell and Mr. Greeley will be greatly missed.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the recommendations presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

Statement by the Chair of the House

Stephen N. Zack of Florida, Chair of House of Delegates, addressed procedures for the House meeting. The delegates' attention was directed to written materials provided and they were introduced to the Rules and Calendar and Tellers Committees and advised of the Committees' functions. All the House committees and staff were thanked for their great work and assistance during the Chair's term in office.

The delegates were informed about the Fund for Justice and Education (FJE) and the ABA Legal Opportunity Scholarship Fund, their roles, accomplishments, the importance of supporting them and how to make contributions. All Delegations reached 100% participation for the first time and were thanked.

The Chair continued, encouraging the delegates to seize the opportunity to carry forward to our legislators the ABA's policy positions by attending ABA Day in Washington, D.C. on April 18 – 19, 2007. The ABA's role in securing funding for the Legal Services Corporation (LSC) was used as an example of what may be accomplished by the organized bar's involvement.

The Chair thanked the House for the privilege of serving the members and the Association. The Chair acknowledged various factors that made his service so enjoyable. The first is the way the House handled the debates and determined policy. The House has shown that vital and even contentious issues can be discussed with reason; that opponents can be accorded courtesy; and that issues can be debated, analyzed, and advocated with professionalism and respect. The second is the diversity in the House - gender, race, religion, ethnicity, sexual preference. The face of the House is the face of America. The third is the scope and depth of the House's agenda. In the last two years, the House

debated many significant issues - the critical issue of judicial independence and privacy and the complex governance issues. Finally, the Chair acknowledged that the 2005 Annual Meeting saw the inauguration of the Issues of Concern to the Profession panels. The panel topics have been timely and thought-provoking.

Statement by the Secretary

Armando Lasaferrera of Puerto Rico, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2006 Midyear Meeting, which was **approved** by the House. On behalf of the Board of Governors, Secretary Lasaferrera presented and referred the House to Report Nos. 177 and 177A, the Board's Informational and Transmittal Reports to the House.

Statement by the ABA President

In his remarks to the House, President Michael S. Greco of Massachusetts, reviewed recent actions benefiting the Association, including his appointment of the ABA's first Long-Range Planning Committee, creation of the Center for Racial and Ethnic Diversity, the Center for Rule of Law Initiatives, and the Center for Access to Justice Initiatives, and the hiring of Executive Director Henry F. White to succeed Robert A. Stein. He discussed his efforts to unify the legal profession worldwide pursuant to his Statement of Core Principles in order to advance and protect the rule of law.

President Greco summarized achievements of his two Commissions and five Task Forces. The Commission on Renaissance of Idealism in the Legal Profession produced new ABA policies and resources to advance lawyers' pro bono and public service. The Commission on Civic Education and the Separation of Powers worked to improve civics education nationwide. The Task Force on Access to Civil Justice produced a groundbreaking policy proposal calling for a defined right to counsel for low-income Americans facing serious civil legal problems, which was unanimously adopted by the House. The Task Force on Hurricane Katrina coordinated the profession's response to unprecedented legal needs arising from hurricane destruction. The Task Force on Attorney-Client Privilege continued to defend the privilege, with the House adopting its new policy recommendations.

He reviewed the work of the Task Force on Domestic Surveillance in the Fight against Terrorism, and the Task Force on Presidential Signing Statements and the Separation of Powers Doctrine, both of which produced recommendations designed to protect the system of checks and balances and separation of powers, that were overwhelmingly adopted by the House as new ABA policies.

President Greco urged the Association to continue its critical leadership role in safeguarding the rights of the American people and the rule of law.

ABA Medal Presentation

President Michael S. Greco presented the ABA Medal, the Association's highest award, to Past President Jerome J. Shestack of Pennsylvania. Mr. Shestack made the following remarks:

He has had two passions in life. One is his wife, Marciarose, who has given him more than 50 years of love, wisdom, sharing and happiness. A parallel passion was the law and its promise to create a just society. He grew up in the Depression years. His grandfather, a rabbi, taught him that the most important verse in the bible was "Justice, Justice, shall thou pursue." Those words resonated and were a natural pathway to efforts to redress potholes of injustice in our society. Helping to better the lot of others brings joy and the satisfaction of a full life.

He realizes that change is invariably slow and incremental. The poet Wallace Stevens wrote: "I can't make the world quite round. I patch it as I can." And so, he has lived a life of patching.

He also learned that to bring about change, you need help. The collective help from the House, which made civil rights, legal services to the poor, rights of the disabled, women's rights and human rights all part of ABA mainstream policy has been invaluable. But it was a long struggle to achieve this.

Events in which this nation has sanctioned torture, sedition, curtailment of judicial independence, and other erosions of Constitutional values saddens him. The challenge for the ABA is to preserve security and yet remain true to the values that have made this nation a champion of liberty.

One grows old when dreams become regrets and hopes turn to resignation. His dreams have not become regrets. He still dreams of a just society and the triumph of human dignity and worth. And his hopes are still vibrant that our profession will lead in that compelling quest.

Statement by the Treasurer

The Treasurer, William T. Robinson, III of Kentucky, referred the House to his detailed written report, and then reported on the following:

As we conclude the 2006 ABA fiscal year, the finances of the Association are very secure. In large part, this is a result of the dedicated leadership of Catherine Richardson, of New York, as Chair of the Finance Committee of the Board of Governors, and supported by the expertise and hard work of Bob Stein, Executive Director, Janet Gibbs, CFO, and Kay Geary, ABA Controller. Because of the discipline and hard work of the Officers, Board of Governors and Senior Management over this past year, the Association has put approximately \$2 million into the Dues Warehouse for the balance of this three-year dues cycle to further fund needed programs and services of the Association. The Permanent Reserve is at \$40 million (up from a low of \$25 million just a few years ago), but still well short of ABA policy calling for a balance in the Permanent Reserve of 50% of the General

Revenue Operating Budget of \$109 million for this coming year. Accuracy and transparency are continuing goals of the financial team at the ABA. Moreover, the ABA has adopted for the first time, a multi-year, internal audit plan utilizing inside and outside, auditing expertise and resources. The 5-year internal audit plan has been developed by the ABA Standing Committee on Audit under the dedicated and able leadership of John Krsul as Chair.

Statement by the Executive Director

Robert A. Stein, ABA Executive Director and Chief Operating Officer, addressed the House and announced that this was his 24th and final statement to the House as Executive Director.

He introduced his family as they are an extremely close family, and they have been a part of his work on behalf of the Association. His wife, Sandy has been his partner, best friend, and has been with him every step of the way during the past twelve years – and every step of the way for more than four decades. All three of their children were introduced – all daughters, all lawyers, and all members of the ABA. Linda Stein, Laura Stein, Karin Stein O’Boyle. All six of their grandchildren were also introduced. Robert Routh, Sarah Routh, Amanda Conrad, Chris Conrad, Matthew O’Boyle and Erin O’Boyle.

He was also joined in the well of the House by his outstanding Senior Management team and terrific Executive Director’s office state, who have served him and the House so well.

Mr. Stein referred the House to his written report, Report #3, and informed that there was great news to share about the Association. The Association will establish a new all-time record high in membership this year – over 411,000 members. The finances are in great shape. The Association will end the year, for the 12th consecutive year, with a substantial surplus of revenues over expenses. The technology systems are state of the art.

Mr. Stein stated that, “the ABA has never been larger, financially stronger, or more relevant in addressing the important public policy issues facing our nation than it is today. Let us celebrate the ABA.” He thanked the officers of the ABA, the Board of Governors and the House of Delegates. He concluded his report by saying, “I am proud to be a lawyer. I am proud to be part of our great profession. And I am very proud to be a member of the American Bar Association.”

Passing of the President’s Gavel

Chair Stephen N. Zack recognized President Greco for purposes of passing the gavel to President-Elect Karen J. Mathis, of Colorado. In her remarks to the House of Delegates, incoming ABA President Karen J. Mathis, of Colorado, called on members to join her in making service a priority of the legal profession. She reminded the House of President John F. Kennedy’s inaugural address that called the nation to service. He said, “Ask not.” President Mathis remarked that “as lawyers, we answered the call. We serve because it is in our nature to do so. When we serve, we are more productive members of

our communities. We are better protectors of our legal system. We are better citizens. We are better people.”

President Mathis acknowledged that many of the Association’s members are approaching retirement age. She observed that “we Baby Boomers have reshaped every social institution we touched, and retirement will be no exception. The greatest challenge facing the profession and the Association in the coming years is the movement of the Baby Boom generation into active retirement. In the next 10 years an unprecedented number of lawyers are going to leave the full-time practice of law. Thus far, we’ve done very little to address it, but the time has come.”

Karen Mathis outlined what she called her Second Season of Service presidential initiative, which is created to address the needs of Boomer lawyers. Under her leadership the ABA will provide information, leadership, and guidance to help the whole profession cope with the challenges and opportunities of unprecedented numbers of lawyers attaining retirement age.

She also outlined her Youth at Risk initiative. The initiative is “a national service project aimed at the most troubled young people in our country, who risk being caught up in the juvenile and criminal justice systems. They are foster kids, truants, gang members, and just plain kids who have lost their way.”

President Mathis concluded by enlisting Association members to a new commitment to service. “Your involvement at this moment in your life can be the most ennobling work of your career. Dedicate the next 20 years of your life to public service. Then you can say, ‘My work is done,’ until then, ‘ask not’.”

Remarks by New Executive Director

Henry F. White, Jr., was introduced as the new Executive Director and Chief Operating Officer of the ABA, effective October 1.

Mr. White stated how honored and humbled he was to be selected to serve as the executive director of such an august organization. He indicated that his military background and Jesuit education provided him with the tools he believes are necessary to be an effective executive director. He is excited to begin this new challenge and looks forward to working with the members of the Association.

Election of Officers and Members of the Board of Governors

The Chair of the Steering Committee of the Nominating Committee, James R. Silkenat of New York, moved the election of the following officers of the Association and members of the Board of Governors for the terms indicated. The House **unanimously elected** these individuals.

Officers of the Association

President-Elect (2006-2007)

William H. Neukom of Washington

Chair of the House of Delegates (2006-2008)

Laurel G. Bellows of Illinois

Members of the Board of Governors (2006-2009)

District Members

District 3: Wayne J. Positan of New Jersey

District 5: Larry S. McDevitt of North Carolina

District 9: Charles A. Weiss of Missouri

District 14: Laurie D. Zelon of California

District 15: Bettina B. Plevan of New York

District 16: W. Scott Welch III of Mississippi

District 17: William P. Curran of Nevada

Section Members-at-Large

Section of Health Law

E. Paul Herrington III of Kentucky

Section of Law Practice Management

Gary Munneke of New York

Judicial Member-at-Large

Louraine C. Arkfeld of Arizona

Minority Member-at-Large

Anthony N. Upshaw of Florida

Young Lawyer Member-at-Large

Matthew L. Nelson of California

Law Student Member-at-Large (2006-2007)

Brian Redar of Florida

It was noted that the Association's Constitution provides that the President-Elect automatically becomes the President at the conclusion of the Annual Meeting and Karen J. Mathis of Colorado will assume that office.

Remarks by President-Elect Nominee

In his remarks to the House, President-Elect Nominee William H. Neukom of Washington, discussed the Association's status as an enduring institution. He pointed to the emergence of an era of leadership for the ABA. In order to maintain and expand that leadership, he urged that the Association continue to be a welcoming, inclusive and diverse fellowship of lawyers committed to improving legal skills, the profession, and the legal process.

Mr. Neukom described the central theme of his approach to ABA leadership: pursuing justice by bringing the rule of law into the mainstream of the ABA and the ABA more into the mainstream of America. He described the rule of law as a set of universal principles, encompassing the substantive goals of the ABA, that focus on promotion of a rules-based system of self-government with a strong and accessible legal process featuring diverse, competent and independent judges and lawyers.

He discussed plans for three major projects to advance a universal approach to the rule of law. The first involves reaching out to many disciplines outside the law to identify shared areas of concern and projects to advance the common pursuit of more equitable systems of justice worldwide. The second project will result in a rule of law index, which will provide an objective instrument that nations can use to evaluate their systems of law and justice. The third project is to commission a Nobel-quality study and paper to determine whether and how the rule of law serves as a necessary prerequisite for sustainable economic development, participatory government, and communities characterized by opportunity and equity.

Mr. Neukom called on all lawyers, from general practitioners to international specialists, to see the rule of law as the essential framework for their professional and community work.

Scope Nominating Committee

On behalf of the Scope Nominating Committee, J. Anthony Patterson of Texas, Chair of the Section Officers Conference, nominated Jeffrey J. Snell of Ohio for a five-year term as a member of the Committee on Scope and Correlation of Work. The House subsequently elected Mr. Snell to the Committee on Scope and Correlation of Work.

Delegate-at-Large Election Results

Chair Zack reported the results of the Delegates-at-Large Election as follows: Hilarie F. Bass of Florida; Llewelyn G. Pritchard of Washington; Pauline A. Schneider of Washington, DC; Tom Bolt of the Virgin Islands; Seth Rosner of New York; and Robert M. Carlson of Montana.

Issues of Concern to the Profession Panel Discussion

On Monday, the House suspended its usual agenda to showcase a discussion titled: "Liberty vs. Security." Distinguished panelists, included moderator Catherine Crier, Court

TV anchor, writer and former Texas judge, and members: Elizabeth Rindskopf Parker, dean of the University of the Pacific McGeorge School of Law and former general counsel of the Central Intelligence Agency and the National Security Agency; Neal Sonnett, former assistant U.S. attorney and chief of the criminal division for the Southern District of Florida, now a Miami defense lawyer who chairs the ABA Task Force on Presidential Signing Statements and Separation of Powers; and John Yoo, professor of law at the University of California at Berkeley School of Law and former deputy assistant attorney general, deemed to be an architect of the legal foundation of the Bush Administration's policies in the war on terrorism. The panel debated constitutional and legal questions raised by anti-terrorism activities.

Professor Yoo: The Constitution creates a different decision system in wartime. Most Americans are not accustomed to it because we do not fight a lot of wars. In fact, civil liberties were restricted by presidential orders during the Civil War and World War II. We would have been at war with the former Soviet Union had it engaged in acts of the kind Americans have experienced since 9/11. Why treat an organized terrorist network and its state sponsors differently? The question should not be whether civil liberties are limited, but what limitations are appropriate and when does it end? The legal system must be sufficiently flexible to allow the President to lead in a war where precedent does not provide all the answers.

Mr. Sonnett: The President's declaration that the war on terrorism will never end cannot excuse the erosion of civil rights and constitutional protections. The Supreme Court has ruled that the Geneva conventions apply to the people held at Guantanamo. They are entitled to due process. Nor is anyone suggesting open hearings about secret surveillance, only that the president should comply with the law. FISA was passed because government agencies were abusing their surveillance capabilities. We are in the same position now. War powers granted to the President by Congress are not a "blank check." The Supreme Court has recognized that Congress must be involved. Legislation linked to surveillance must be followed.

Dean Parker: The administration lacks credibility based on the way it has made decisions where the Congress is supposed to be involved. World War II is not the order of the day. Ours is not the first society to deal with this level of threat. How can we work within our structures and systems to maintain basic values? The CIA has experience working with Congress. If Secretary Rumsfeld can now ask Congress for guidance on how U.S. personnel can avoid violating the War Crimes Act, why couldn't this have been done in the past?

II. RECOMMENDATIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on recommendations brought before the House follows. The recommendations are categorized by topic areas and the number of the recommendation is noted in brackets.

ABA CONSTITUTION, BYLAWS AND HOUSE RULES OF PROCEDURE

[11-1] Secretary Armando Lasar-Ferrer of Puerto Rico moved Report 11-1 on behalf of Edward Jacobs of the U.S. Virgin Islands, who presented Report 11-1 amending §1.2 of the Constitution to include the following language as one of the purposes of the Association: “to defend the right to life of all innocent human beings including all those conceived but not yet born.” C. Elisia Frazier of Tennessee, moved to postpone indefinitely consideration of the proposal. The House approved the motion to **postpone indefinitely**.

[11-2] Robert Gonzales of Maryland, moved Report 11-2 amending §2.1(g) of the Constitution to realign District 2 and District 4 based on changes in lawyer population figures. Kay Hodge and Roy Hammer of Massachusetts, spoke in support of the proposal. Robert Grey and Tracy Giles of Virginia, and Carolyn Lamm of the District of Columbia spoke in opposition to the proposal. The proposal was **not approved**.

[11-3] The House **approved by consent** Report 11-3 amending §26.1(c) of the Bylaws to change the term of the law student member-at-large of the Board of Governors from a two-year term to a one-year term.

[11-4] Harvey Rubenstein of Delaware **withdrew** Report 11-4 amending §31.7 of the Bylaws to provide that at least two members of the Standing Committee on Ethics and Professional responsibility must be solo practitioners and two must be small term practitioners in a firm with 2-5 lawyers; and that at least two members of the Standing Committee on professional discipline must be solo practitioners and two must be small firm practitioners in a firm with 2-5 lawyers. Anthony Palermo of New York, raised a point of inquiry regarding the withdrawal.

[11-5] Report 11-5 proposed the following housekeeping amendments to the Association’s Constitution, Bylaws and House Rules of Procedure:

[Report 11-5(A)] amending §2.2(c) and §6.12 to include facsimile and electronic communication as appropriate means for giving notice was **approved as revised by consent**.

[Report 11-5(B)] deleting the last sentence in §6.2(a)(4), “At the conclusion of the 1995 Annual Meeting, those persons elected as Assembly Delegates serve the remainder of their terms as Delegates-at-Large” was **approved by consent**.

[Report 11-5(C)] deleting the last sentence in §6.4(c), “However, a local bar association that has fewer than 2,000 members and was represented in the House at the 1990 Annual Meeting is entitled to a delegate until the conclusion of the Annual Meeting in 2005” was **approved by consent**.

[Report 11-5(D)] rewording §6.4(e) to read: “A state or local bar association may not be represented in the House if its governing documents discriminate with respect to membership because of race, sex, religion, creed, color, national origin, ethnicity, age, sexual orientation or persons with disabilities” was **approved by consent**.

[Report 11-5(E)] amending §6.6 to change the reference of “International Associates” to “Non-U.S. Lawyer Associates” was **approved by consent**.

[Report 11-5(F)] amending §29.4(e) to read, “...effectuate the filling of vacancies in the case of elected members of the Board, other than the members-at-large; ...” was **approved by consent**.

[Report 11-5(G)] amending §47.1 so that the president and executive director of each association and organization and the chair of each Section will receive the Summary of Action was **approved by consent**.

ADMINISTRATIVE LAW

[119] On behalf of the Section of Administrative Law and Regulatory Practice, Thomas Susman of the District of Columbia, moved Report 119 urging Congress to amend the Lobbying Disclosure Act of 1995 to extend the registration and reporting obligations with respect to lobbying coalition membership and grassroots lobbying. The recommendation was **approved**.

ANTITRUST LAW

[307] On behalf of the Section of Antitrust Law, James Wilson of Ohio moved Report 307 urging that Fed. R. Civ. P. 12(b) (6) be interpreted to require that a complaint alleging a conspiracy in violation of Section 1 of the Sherman Act must allege facts constituting more than mere parallel conduct and ordinary business behavior. The recommendation was **approved**.

ATTORNEY-CLIENT PRIVILEGE

[10B] On behalf of the New York State Bar Association, Mark Alcott of New York, **withdrew** Report 10B recommending that prosecutors and other enforcement authorities should not directly or indirectly pressure, request or encourage an entity to refuse to advance, reimburse or indemnify legal fees and expenses of a current or former director, officer, employee or agent of the entity.

[120D] On behalf of the Section of Litigation, Lawrence Fox of Pennsylvania moved Report 120D urging federal and state courts to adopt consistent rules to address how the courts and counsel should resolve issues involving claims of inadvertent disclosure of materials protected by the attorney-client privilege or work product doctrine. The recommendation was **approved**.

[302A] On behalf of the Task Force on Attorney-Client Privilege, R. William Ide of Georgia,

moved Report 302A supporting the preservation of the attorney-client privilege and work product doctrine in connection with audits of company financial statements and urging the Securities and Exchange Commission and other relevant organizations to adopt standards, policies, practices and procedures and take other appropriate steps to ensure that attorney-client privilege and work product protections are preserved throughout the audit process. Myles Lynk of Arizona spoke in support of the recommendation. The recommendation was **approved**.

[302B] On behalf of the Task Force on Attorney-Client Privilege, R. William Ide of Georgia, moved Revised Report 302B recommending that prosecutors, investigators and enforcement authorities should not, directly or indirectly, demand request or encourage an entity to discipline, sanction or terminate any employee because of that employee's decision to exercise his or her Fifth Amendment right against self-incrimination. Richard Janis of the District of Columbia, Robert Grey of Virginia and Mark Alcott of New York spoke in support of the recommendation. The recommendation was **approved as revised**.

BOARD OF GOVERNORS RECOMMENDATION AND REPORT WITH RECOMMENDATION ON ARCHIVING

[177A] On behalf of the Board of Governors, Secretary Lasa-Ferrer moved approval of the continuation of Special Committees and Commissions as listed in the Board of Governors Transmittal Report to the House of Delegates. The list of Special Committees and Commissions was **approved**.

[400] The House **approved by consent** Report 400 recommending that certain Association policies that pertain to public issues and are 10 years old or older be archived.

CIVIC EDUCATION

[102] On behalf of the Commission on Civic Education and Separation of Powers, Robert Rawson, Jr. of Ohio, moved Report 102 encouraging all lawyers and judges to be personally and actively engaged in civic education in their communities and schools to work to increase Americans' understanding of the role of separation of powers in our constitutional democracy, and urging policymakers at all levels of government to ensure that all students experience high quality civic learning. The recommendation was **approved**.

CIVIL LEGAL AID

[111] On behalf of the Standing Committee on Legal Aid and Indigent Defendants, William Whitehurst of Texas, moved Report 111 adopting revised *Standards for the Provision of Civil Legal Aid*, dated August 2006 and recommending implementation of the Standards by entities providing civil legal aid to the poor. The recommendation was **approved**.

[112A] On behalf of the Task Force on Access to Civil Justice, Howard Dana, Jr. of Maine, moved Report 112A urging federal, state, and territorial jurisdictions to provide legal counsel as a matter of right at public expense to low income persons in those categories of

adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody as determined by each jurisdiction. Marshall Wolf of Ohio, proposed a friendly amendment. Michael Greco of Massachusetts spoke in support. Mark Agrast raised a point of inquiry. The recommendation was **unanimously approved as amended**.

[112B] On behalf of the Task Force on Access to Civil Justice, Howard Dana, Jr., of Maine, moved Report 112B adopting the *Principles of a State System for the Delivery of Civil Legal Aid*, dated August 2006, which describe a system for the delivery of civil legal aid that provides a full-range of high quality, coordinated and uniformly available civil law-related services to the state's or territory's low-income and vulnerable populations in sufficient quantity to meet their civil legal needs. The recommendation was **approved**.

CLIENT PROTECTION

[104] On behalf of the Standing Committee on Client Protection, Robert Welden of Washington, moved Revised Report 104 amending Rules 1 and 10 of the *Model Rules for Lawyers' Funds for Client Protection*, dated August 2006, to address issues primarily arising from the multijurisdictional practice of law. William H. Neukom of Washington spoke in support of the recommendation. The recommendation was **approved as revised**.

CRIMINAL JUSTICE

[107] On behalf of the Section of Criminal Justice, Stephen Saltzburg of the District of Columbia moved Report 107 adopting the black letter *ABA Criminal Justice Standards on DNA Evidence*, dated August 2006, which address collecting, preserving and use of DNA evidence, testing of DNA evidence, pretrial proceedings, trial, post-conviction, charging by DNA profile and DNA databases. The recommendation was **approved**.

[300A] on behalf of the Commission on Effective Criminal Sanctions, Stephen A. Saltzburg of the District of Columbia, **withdrew** Report 300A encouraging jurisdictions, with prosecutors and others, to develop community supervision programs that allow less serious offenders to avoid incarceration and a conviction record.

[300B] On behalf of the Commission on Effective Criminal Sanctions, Stephen A. Saltzburg of the District of Columbia, **withdrew** Report 300B urging jurisdictions to develop graduated sanctions, including brief periods of community detention where appropriate, for violations of probation and parole.

[300C] on behalf of the Commission on Effective Criminal Sanctions, Stephen A. Saltzburg of the District of Columbia, **withdrew** Report 300C urging state agencies and licensing boards to develop and enforce policy on the employment of people with convictions, including the contractors and vendors who do business with the state.

[300D] On behalf of the Commission on Effective Criminal Sanctions, Stephen A. Saltzburg of the District of Columbia, **withdrew** Report 300D urging jurisdictions to limit access to and use of criminal history records for non-law enforcement purposes.

[300E] On behalf of the Commission on Effective Criminal Sanctions, Stephen A. Saltzburg of the District of Columbia, **withdrew** Report 300E urging jurisdictions to charge defenders with an ethical duty to advise their clients of the collateral consequences of conviction, and to provide additional funds to public defender and legal aid offices to enable them to assist offenders in removing or neutralizing those collateral consequences.

[300F] On behalf of the Commission on Effective Criminal Sanctions, Stephen A. Saltzburg of the District of Columbia, **withdrew** Report 300F urging prosecutors, judges, parole officers and others who exercise discretion in the justice system to participate in training that will give them greater understanding of what elements should be considered in the exercise of their discretion.

DIVERSITY IN THE PROFESSION

[113] On behalf of the Advisory Council on Diversity in the Profession, Sharon Stern Gerstman of New York, moved Report 113, urging all state, territorial and local bar associations to work with national, state and territorial bar examiners, law schools, universities and elementary and secondary schools to address significant problems facing minorities within the pipeline to the profession. The recommendation was **approved**.

DOMESTIC VIOLENCE

[110] On behalf of the Standing Committee on Domestic Violence, Esther Lardent of the District of Columbia, moved Revised Report 110 urging federal, state, territorial, local and tribal governments to enact or amend domestic violence civil protection order statutes that provide protection to victims who are in a romantic or intimate relationship with the perpetrator of domestic violence or have been in a romantic or intimate relationship with the perpetrator, but do not necessarily have a child with, live with, or are married to the perpetrator of the violence. Larry McDevitt of North Carolina spoke in support. The recommendation was **approved as revised**.

FAMILY LAW

[114] On behalf of the Young Lawyers Division, Patricia Sexton of Missouri, moved Report 114 adopting the *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, dated August 2006, which would clarify the role of parents' attorneys in the same type of cases. Peter Langrock of Vermont, proposed an amendment. Richard Podell of Wisconsin, Timothy Walker of Colorado and David Wolfe of New Jersey spoke in opposition to the amendment. John Ratnaswamy of Illinois spoke in support of the amendment. The amendment was defeated by a vote of 150; 207. Steven Krane of New York, proposed a friendly amendment that was accepted by the proponent. The recommendation was **approved as amended**.

FEDERAL JUDICIARY

[115] The House **approved by consent** Report 115 as submitted by the National Conference of Federal Trial Judges supporting legislation which provides relief from

excessive rents charged to the Judiciary by the General Services Administration by requiring that the rent charges for courthouse and other judicial facilities provided to the judiciary not exceed GSA's actual costs of operating and maintaining the facilities and prohibiting the inclusion by GSA any capital costs, real estate taxes or administrative fees.

[116] On behalf of the Standing Committee on Federal Judicial Improvements, Stephen Saltzburg of the District of Columbia, moved Report 116 urging Congress to amend 28 U.S.C. §1259 (3) and (4) to permit discretionary review by the Supreme Court of the United States of decisions rendered by the United States Court of Appeals for the Armed Forces that deny petitions for review of courts-martial convictions or deny extraordinary relief. The recommendation was **approved**.

[308] On behalf of the Standing Committee on Federal Judicial Improvements, Lawrence Fox of Pennsylvania, moved Report 308 opposing legislation such as H.R. 5219 and S. 2678 (109th Congress) that would establish a statutory Office of Inspector General for the Judicial Branch for the purpose of conducting investigations of matters pertaining to the Judicial Branch, including possible misconduct in offices of judges and judicial proceedings. The recommendation was **approved**.

HOMELESSNESS AND POVERTY

[108A] On behalf of the Commission on Homelessness and Poverty, Steven Binder of California, moved Revised Report 108A adopting principles for Homeless Court Programs and approving the criteria for individual participation recognizing that administration of the programs will differ depending on the particular needs, goals and challenges of a jurisdiction. Bob Downs of Illinois spoke in support of the recommendation. The recommendation was **approved as revised**.

[108B] On behalf of the Commission on Homelessness and Poverty, Steven Binder of California moved Revised Report 108B urging all federal agencies to include within the definition of "homeless person" individuals who lack a fixed, regular and adequate nighttime residence including those who, due to loss of housing, economic hardship, or similar reasons, are sharing the housing of others or living in motels, hotels or camping grounds. Mary Pat Toups of California and Myles Lynk of Arizona spoke in support of the recommendation. The recommendation was **approved as revised**.

INDIVIDUAL RIGHTS AND RESPONSIBILITIES

[122A] On behalf of the Section of Individual Rights and Responsibilities, C. Elisia Frazier of Tennessee, moved Report 122A which without taking a position supporting or opposing the death penalty, urged each jurisdiction that imposes capital punishment to implement specific policies and procedures as it relates to mental illness. The recommendation was **approved**.

[122B] On behalf of the Section of Individual Rights and Responsibilities, Richard Macias of California, moved Report 122B urging the federal, state, local and territorial governments to enact legislation prohibiting discrimination on the basis of actual or perceived gender identity or expression, in employment, housing and public accommodations. The

recommendation was **approved**.

INTELLECTUAL PROPERTY LAW

[306] On behalf of the Section on Intellectual Property Law, Donald Dunner of the District of Columbia, moved Report 306, supporting the retention of the test used to determine when a claimed invention that consists of combining or modifying previous inventions is obvious and therefore not eligible for a patent. The recommendation was **approved**.

INTERNATIONAL LAW

[120B] On behalf of the Section of Litigation, JoAnne Epps of Pennsylvania, moved Revised Report 120B urging the United States Government to support the Darfur peace accord signed May 5, 2006, to support the efforts of the International Criminal Court, the United Nations and the African Union toward the same goals, and to enact legislation to implement the Darfur Peace and Accountability Act of 2006. Robert Weinberg of the District of Columbia spoke in support of the recommendation. The recommendation was **approved as revised**.

[123A] On behalf of the Section of International Law, William Hannay III of Illinois moved Report 123A urging the United States government to promptly sign, ratify and implement the Hague Convention on Choice of Court Agreements. The recommendation was **approved**.

[123B] On behalf of the Section of International Law, William Hannay III of Illinois moved Report 123B supporting multinational cooperation and consultation in the formulation of national laws and policies relating to migration and urging the United States government to enter into regional and international discussions and agreements governing the flow of workers. The recommendation was **approved**.

[123C] On behalf of the Section of International Law, A. Joshua Markus of Florida, **withdrew** Report 123C urging the U.S. Patent and Trademark Office to amend 37 C.F.R. §§ 11.6 and 11.7 to permit the registration and continued qualification to practice before the USPTO of any attorney at law who (a) demonstrates the necessary scientific, technical, character, language and professional qualifications and (b) passes the USPTO examination for registration, without regard to the applicant's citizenship, country of residence or visa status of resident aliens.

[303] On behalf of the Section of Science and Technology Law, Ellen Flannery of the District of Columbia, moved Report 303 urging the U.S. Government to become a signatory to the *United Nations Convention on the Use of Electronic Communications in International Contracts*. The recommendation was **approved**.

LAW AND AGING

[118] On behalf of the Commission on Law and Aging, Larry McDevitt of North Carolina, moved Report 118 encouraging state and territorial bar associations and other attorney licensing entities to adopt practice rules that establish guidelines to allow pro bono legal service by qualified, retired or otherwise inactive lawyers, under the auspices of qualified

legal services or other non-profit programs. The recommendation was **approved**.

LEGAL EDUCATION

[100] The House **approved by consent** the recommendation submitted by the Standing Committee on Paralegals granting approval, reapproval and extension of the term of approval to several paralegal education programs, withdrawing the approval of three programs at the request of the institution and withdrawing one program due to the termination of accreditation of the program.

[106A] On behalf of the Section of Legal Education and Admissions to the Bar, Sidney Eagles, Jr. of North Carolina, **withdrew** Report 106A concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting Interpretation 302-10 providing opportunities for law student participation in pro bono activities, as an addition to the *Standards for Approval of Law Schools and the Interpretations of the Standards*, dated August 2006.

[106B] On behalf of the Section of Legal Education and Admission to the Bar, Jose Garcia-Pedrosa of Florida moved Report 106B concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Standards 210-212 concerning equal opportunity and diversity, of the *Standards for Approval of Law Schools and the Interpretations of the Standards*, dated August 2006. Edward Hannan of Wisconsin made a motion to refer the Report back to the Council stating that the mandatory language raises ambiguity and suggests adding language to 211(a) and (b). Scott Partridge of Texas and Sharon Stern Gerstman of New York raised points of inquiries. Robert Grey of Virginia spoke in opposition to the motion to refer back to the Council. The motion to refer back to the Council was defeated. Paulette Brown of New Jersey spoke in opposition to the recommendation. Pauline Schneider of the District of Columbia spoke in support of the recommendation. Estelle Rogers of the District of Columbia, Sharon Stern Gerstman of New York and Jack Goldstein of Texas raised points of inquires. Bob Weeks of California moved to reconsider the vote on the motion to refer back to the Council. The motion to reconsider was defeated. Lillian Apodacca of New Mexico, Gary Palm of Illinois and Paulette Brown of New Jersey spoke in opposition to the main motion. Diane Yu of New York and Estelle Rogers of the District of Columbia spoke in support of the recommendation. The recommendation was **approved**.

[301A] On behalf of the Section of Legal Education and Admissions to the Bar, Jose Garcia-Pedrosa of Florida, moved Report 301A adopting revisions to the *Model Rule for the Licensing and Practice of Foreign Legal Consultants*, dated August 2006. Peter Langrock of Vermont raised a point of inquiry. The recommendation was **approved**.

[301B] On behalf of the Section of Legal Education and Admissions to the Bar, Sidney Eagles, Jr. of North Carolina, moved Report 301B concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Chapters 2 (Organization and Administration), 5 (Admissions and Student Services) and 8 (Council Authority, Variances and Amendments) of the *Standards for Approval of Law Schools and the Interpretations*, dated August 2006. The recommendation was **approved**.

LITIGATION

[120A] On behalf of the Section of Litigation, Patricia Refo of Arizona, moved Report 120A urging federal, state and territorial courts to adopt consistent rules to govern the scope of required disclosures for discovery of testifying experts and their reports and that draft expert reports and attorney-expert communications relating to the expert's report be protected from discovery in accordance with the proposed resolution. Stephen Saltzburg of the District of Columbia, Dennis Drasco of New Jersey, David Weiner of Ohio, and Scott Partridge of Texas spoke in support of the recommendation. Bert Tigerman of California, W. Scott Welch III of Mississippi, Janice Mulligan of California, Marc Sallus and J. Anthony Vittal of California spoke in opposition. Myles Lynk of Arizona and Mark Agrast of the District of Columbia raised points of inquiries. The recommendation was **approved by a vote of 207;137**.

[120C] On behalf of the Section of Litigation, Lawrence Fox of Pennsylvania moved Report 120C encouraging law firms to consider: (a) alternatives to mandatory minimum billing requirements that would reduce undue emphasis on lawyers' billable hours; and (b) compensation systems that recognize and reward attorneys based on factors in addition to the number of hours they bill to client matters. Patricia Sexton of Missouri spoke in support of the recommendation. The recommendation was **approved**.

PRESIDENTIAL SIGNING STATEMENTS

[304] On behalf of the Task Force on Presidential Signing Statements and the Separation of Powers, Neal Sonnett of Florida moved Report 304 opposing as contrary to the rule of law and our constitutional system of separation of powers, a President's issuance of signing statements to claim the authority or state the intention to disregard or decline to enforce all or part of a law he/she has signed, or to interpret such a law in a manner inconsistent with the clear intent of Congress. Thomas Susman of the District of Columbia offered a friendly amendment that was accepted by the proponent. W. Scott Welch III, of Mississippi moved to postpone indefinitely. Michael Greco of Massachusetts, Stephen Saltzburg and Mark Agrast of the District of Columbia, Neal Sonnett of Florida and Mary Pat Toups of California spoke in opposition to the motion to postpone indefinitely. Kathleen Burke of Ohio spoke in support of the motion. Anthony Palermo of New York and Kathleen Odle of Colorado raised points of inquires. The motion to postpone indefinitely was defeated by a vote of 99;272. Steven Krane of New York spoke in opposition to the recommendation. The recommendation was **approved as amended**.

PROFESSIONAL DISCIPLINE

[105] On behalf of the Standing Committee on Professional Discipline, Hon. Barbara Kerr Howe of Maryland, moved Report 105 supporting the efforts of the U.S. Trade Representative to encourage the development of transparency disciplines on domestic regulation in response to Article VI (4) of the GATS requiring the development of "any necessary disciplines" to be applicable to service providers and supporting the U.S. Trade

Representative's participation in the development of additional disciplines on domestic regulation. Gerald Vandewalle of North Dakota spoke in opposition to the recommendation. Cheryl Niro of Illinois spoke in support. The recommendation was **approved**.

[117] On behalf of the Section of Business Law, Amelia Boss of Pennsylvania, moved Report 117 supporting the Proposed Attorney Discipline Amendments to the Federal Rules of Bankruptcy Procedure that would clarify the authority of bankruptcy courts to discipline attorneys engaging in a pattern of misconduct and require district or bankruptcy courts to adopt and enforce local disciplinary rules and procedures with respect to attorneys practicing before bankruptcy courts and which comply with the *ABA Model Federal Rules of Disciplinary Enforcement* and the *ABA Standards for Imposing Lawyer Sanctions*. The recommendation was **approved**.

RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION

[121A] On behalf of the Commission on Renaissance of Idealism in the Legal Profession, Mark Agrast of the District of Columbia, moved Report 121A urging solo and small firm attorneys, larger law firms, corporate law departments and government and military law offices to encourage their lawyers, partners as well as associates, to service their communities through pro bono and public service activities consistent with applicable rules of professional conduct and adopts *Pro Bono Policies and Procedures*, dated August 2006 to provide their lawyers with opportunities to do pro bono work and to adopt specific internal policies and procedures to support such work.. The recommendation was **approved**.

[121B] On behalf of the Commission on Renaissance of Idealism in the Legal Profession, Mark Agrast of the District of Columbia, moved Report 121B urging law schools to require legal employers that recruit on campus to disclose, and to make available to the schools' students and alumni, specific information regarding the employer's pro bono policies, practices and activities and urging law schools to adopt the *Pro Bono Disclosure Requirements for Law School Recruiters*, dated August 2006. The recommendation was **approved**.

[121C] On behalf of the Commission on Renaissance of Idealism in the Legal Profession, Mark Agrast of the District of Columbia, moved Report 121C urging all federal, state, local and territorial courts to develop programs, in collaboration with state, local and territorial bar associations and pro bono programs and legal services offices, to encourage, facilitate and recognize pro bono representation of indigent parties in civil cases. The recommendation was **approved**.

SUBSTANCE ABUSE

[109] On behalf of the Standing Committee on Substance Abuse, Barbara Howard of Ohio, moved Revised Report 109 urging all federal, state, territorial and local legislative bodies and governmental agencies to adopt laws and policies that require health and disability insurers who provide coverage for the treatment of both abuse and dependence on drugs and alcohol to do so in a manner that is based on the most current scientific protocols and standards of care. The recommendation was **approved as revised**.

TAX LAW

[101] On behalf of the Section of Taxation, Paul Sax of California, moved Report 101 adopting the *Model State Administrative Tax Tribunal Act*, dated August 2006 and recommending to state and territorial legislatures the adoption of the Act. The recommendation was **approved**.

TORT AND CONSUMER PROTECTION LAWS

[103] On behalf of the Tort Trial and Insurance Practice Section, Janice Mulligan of California, **withdrew** Report 103 opposing the promulgation by federal agencies of rules or regulations that pre-empt state tort and consumer protection laws in instances where state laws hold parties to a higher or stricter standard than that being promulgated by a federal agency, unless there is Congressional authority.

UNIFORM STATE LAWS

[305] On behalf of the National Conference of Commissioners on Uniform State Laws, Howard Swibel of Illinois, moved Report 305 approving the Uniform Emergency Volunteer Healthcare Practitioners Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2006 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein. The recommendation was **approved**.

YOUTH AT RISK

[10A] On behalf of the Colorado Bar Association, Dwight Smith of Oklahoma, moved Revised Report 10A urging federal, state, territorial, tribal and local governments to assure that adequate and appropriate services are made readily available to at-risk youth and their caretakers by ensuring that community mental health systems serving youth are reinvigorated and significantly expanded to provide greater access to troubled youth and their caretakers. Elizabeth Starrs of Colorado, spoke in support of the recommendation. The report was **approved as revised**.

CLOSING BUSINESS

Passing of Chair's Gavel

At the conclusion of the business meeting, after expressing his thanks to the hosts and all responsible for the success of the Annual meeting, along with a reminder about the 2007 Midyear Meeting to be held in Miami, Florida, Chair Zack introduced Laurel G. Bellows of Illinois as the new Chair of the House of Delegates and recognized how

fortunate the House was to be chaired by a person with such a long history of leadership in the ABA. The Chair then returned to his delegation of the House, which he stated was the best position in the ABA.

In remarks to the House, Ms. Bellows stated it was a pleasure to applaud the work of Steve Zack as Chair of the HOD over the past two years. As leader of the policy making body that provides the foundation for work in which the Association engages, Mr. Zack steered the House with a sure hand and a ready smile. The House became accustomed to his humor. He always took the issues seriously, but never himself.

All were welcome to the well of the House to debate; all were encouraged to speak frankly on issues of grave concern to our profession and our Association. All were treated with respect and every issue was given full airing. Ms. Bellows noted that Mr. Zack was never arrogant, but always strong. Debate was thorough, but the House adjourned on time with Steve always mindful of the professional demands of the volunteers that comprise the House. He displayed both courtesy and confidence while overseeing debate on governance issues, domestic surveillance, immigration standards, and presidential signing statements. It took creativity and leadership to establish emerging issues discussions which began with Justice Breyer on the topic of judicial independence, followed by effects of hurricane disasters on the administration of justice and recently the panel on security vs. privacy.

Mr. Zack's qualities of leadership were proven time and time again. Ms. Bellows thanked him for his energy and dedication to making the policy on which the Association relies. "As you return to your Florida delegation and assume your new position as Chair of ABA Day, please know that you have helped make every member of the House proud of their role as delegates and proud to be members of the ABA."

At approximately 12:00 noon on August 8, 2006, William C. Hubbard of South Carolina moved that the House adjourn, *sine die*.