

Report on the Mid-Year Meeting of the ABA House of Delegates

By William D. Johnston¹, Esquire

This is to report on the recent session of the American Bar Association's House of Delegates, which took place on February 11 during the ABA Mid-year Meeting in Los Angeles.

To say the obvious, Southern California provided a wonderful setting for the meeting of the House members. For me, the House involvement was preceded by attending a meeting of the board of directors of the American Judicature Society, which decided to co-sponsor certain of the "recommendations and reports" to come before the House.

I also enjoyed the opportunity to catch up with two friends in the LA area, and I was foolish enough to agree to a pick-up basketball game suggested by the teenage son of one of the friends. Nothing that knee surgery and years of physical therapy won't take care of!

As before, I was impressed with the work of so many in preparation for the House of Delegates session. Various groups within the ABA identified issues of concern, prepared recommendations and supported those recommendations with detailed reports. In addition, the groups considered consistency or conflict with any previously-adopted ABA policies, and they vetted recommendations and reports with other groups within and outside the ABA.

Likewise, I was impressed with the handling of the recommendations closer in time to—and during—the House session. Items expected to be non-controversial were placed on the Consent Calendar (subject to later removal if appropriate). Revised versions of recommendations were prepared and circulated to address

concerns prompted by earlier drafts. Some recommendations and reports were withdrawn by their sponsors, for further consideration prior to the next meeting of the House.

When all was said and done, the House considered and voted on 27 recommendations. The recommendations ranged from adopting "housekeeping" amendments to the ABA certificate of incorporation, to urging revisions to the policies, laws, programs, and procedures of federal, state, territorial, and tribal governments, to calling for the restoration of the Rule of Law in Pakistan.

Thus, recommendations were adopted that:

- Urged the development and assessment of *innovative long-term care programs* such as the "Compact for Long-term Care," as a reasonable and fair solution to long-term care financing;
- Urged the preservation and enhancement of *ecosystems* to address worldwide issues of climate change;
- Urged the establishment of independent commissions for the *redistricting of congressional and legislative districts*;
- Urged the establishment of programs for the representation (and other assistance) of *victims of identity theft*;
- Urged the vigorous prosecution of cases of *elder abuse, neglect and financial exploitation*;
- Amended Rule 3.8 of the ABA Model Rules of Professional Conduct to identify *prosecutors' obligations when they know of new evidence* establishing a reasonable likelihood that a convicted defendant did not commit the offense of which he or she was convicted;
- Adopted the black letter *ABA Criminal Justice Standards on Professional Investigations*;
- Urged the authorization and implementation of *sentencing laws and rules of procedure* that protect public safety while giving mitigating consideration to youthful offenders;
- Urged the revision of laws, court rules, policies, and prosecutorial practices related to *dual jurisdiction youth* (abused

and neglected youth with juvenile "dependency" cases who are charged with acts of delinquency);

- Encouraged efforts to increase *public understanding of the "Religion Clauses" of the U.S. Constitution* as they apply in public elementary and secondary schools;
- Approved the *Model Act Governing Assisted Reproductive Technology*;
- Urged Congress to enact legislation to promote the providing of *legal services to veterans and members of the Armed Forces*;
- Approved the *Uniform Rules Relating to the Discovery of Electronically Stored Information Act*;
- Approved the *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*;
- Approved the *Uniform Interstate Depositions and Discovery Act*;
- Approved the *Uniform Limited Cooperative Assistance Act*;
- Supported *fee levels for immigration and naturalization benefits* that are not so burdensome as to deter eligible applicants from filing, and urged adequate funding to implement those fee levels;
- Supported the issuance of federal regulations that codify the *Department of Homeland Security Immigration and Customs Enforcement National Detention Standards*, and supported improvement, periodic review, and increased oversight of detention standards;
- Adopted the *Model Rule on Conditional Admission to Practice Law*;
- Concurred in the action of the ABA Section of Legal Education and Admissions to the Bar in adopting *an interpretation concerning the sufficiency of a law school's bar passage rate*;
- Supported retention of the *10-day time limit in Rule 8002 of the Federal Rules of Bankruptcy Procedure for filing a notice of appeal* from a judgment, order or decree in a bankruptcy case; and
- Expressed *support for and solidarity with the Pakistani Bar and Bench*, and urged the restoration of Pakistan's constitution, the reinstatement of Pakistan's

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Supreme Court justices and high court judges, and the immediate release of all judges, lawyers, and other persons who were wrongly arrested during the state of emergency called by the President of Pakistan.

A few notes and personal observations: First, members of the Delaware State Bar Association should be proud that the DSBA co-sponsored the recommendation which calls for the restoration of the Rule of Law in Pakistan. Many thanks to DSBA President Betsy McGeever and to the other members of the Executive Committee for their thoughtfulness (and nimbleness) in considering and embracing this important co-sponsorship opportunity.

Second, to let you know, I voted in favor of all of the recommendations except one, and I supported three of the recommendations with some reservations.

The recommendation which I did not support was directed to the non-endorsement of religion in public schools. While I agreed in principle with the aim of the

recommendation, I was concerned that the language of the recommendation was overbroad and that the supporting report itself acknowledged that certain significant aspects of the related area of law remain (in the words of the report) “murky” or uncharted.

The first of the recommendations which I supported with reservations was the proposal in connection with long-term care financing. The DSBA had declined to co-sponsor the proposal in advance of the meeting of the House because of concerns voiced by our Association’s Elder Law Committee about some of the specifics of the “Compact for Long-term Care,” described in the report that accompanied the proposal. Because proponents of the proposal made clear during the House debate that the “Compact” is intended merely as an example to be considered rather than as a model to be emulated, I was comfortable in voting in favor of the proposal. (I also was pleased to hear strong support from the ABA Senior Lawyers Division.)

In addition, I supported with reservations the proposal in connection with the Model Rule on Conditional Admission to Practice Law. This was one of the two most hotly debated proposals to come before the House. The thrust of the Model Rule is to allow for conditional admission of persons who (in the words of the Rule) have “demonstrate[d] recent rehabilitation from chemical dependency or successful treatment for mental or other illness, or from any other condition this Court deems appropriate...” I would have preferred full, rather than conditional, admission (to provide an admittee with the best opportunity to succeed, without the possible stigma of “conditional admission” resulting from disclosure to an employer or client), but I concluded that even conditional admission would be preferable to implement in states that currently do not allow for that form of licensure (and thus do not encourage the related support and rehabilitation).

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other legal fields, such as the alternate entities area of business law, Delaware is also regarded as the law of choice around the country. Delaware's leadership appears to be a product of constructive interaction among the judiciary, members of the Bar and our legislature.

In Re: New lawyers are obviously the future of the Delaware Bar and its reputation as one of the best, if not the finest Bar, in the country. Is there any advice that, based on your experience, you would offer to new admittees to the Delaware Bar?

AMT: My simple advice to new admittees is to get out of the office as much as possible and to be involved in the community. You'll become better lawyers. Despite the practice of law seeming to demand more of our time, we must find time for family, community service, and personal activities. Hopefully more lawyers will run for public office, provide *pro bono* legal services, and assume leadership positions in our charities and in the Bar Association. ☺

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And I supported with reservations the other most hotly debated proposal—that which tied law school accreditation by the ABA to bar exam passage rates. I was concerned that implementation of the proposal could result in some law schools placing undue emphasis on “teaching to the test” in preparing students to take and pass a bar exam. I also was struck by concerns raised by the ABA Minority Caucus, the National Bar Association, and others that the bar passage standard could have a disparate impact on minorities—with law schools in turn admitting fewer minorities in order to enhance bar results and thus maintain accreditation. But, throughout the House debate, it was clear that we really had no viable alternative to adopting the proposal (which already had been reworked), given positions taken by the U.S. Department of Education from which the ABA derives its accreditation authority. I was heartened by assurances from the proponents that they would closely monitor the implementation and report back to the House.

Finally, by way of personal observation, I would be remiss if I were not to acknowledge and thank State Delegate Harvey Rubenstein for his helpful insights as I continue to attempt to navigate the House of Delegates on behalf of the DSBA.

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A more detailed report of the House of Delegates proceedings is available at www.abanet.org. As always, I welcome your reaction to what occurred during the most recent session of the House, and I welcome your thoughts in advance of the next session (in New York City, during the August 7-12, 2008 ABA Annual Meeting). Please contact me at (302) 571-6679 or wjohnston@ycst.com. And, if you haven't already done so, please consider attending ABA meetings—and joining ABA sections and committees—in support of what you are doing as an attorney or as a judge, and as a way to meet some terrific new colleagues. ☺