

MEMORANDUM

TO:

FROM:

SUBJECT: 2010 Midyear Meeting of the American Bar Association and
Meeting of the House of Delegates

DATE: March 16, 2010

REPORT ON THE ABA MIDYEAR MEETING

The 71st Midyear Meeting of the American Bar Association (the “ABA”) was held February 8-9, 2010 at the Walt Disney World Dolphin Hotel in Orlando, Florida. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a two day session and the proceedings of the House of Delegates were made available via webcast. The Nominating Committee also met.

The Nominating Committee sponsored a “Meet the Candidates” Forum on Sunday, February 7, 2010. Laura G. Bellows of Illinois, candidate for President-Elect, seeking nomination at the 2011 Midyear Meeting, gave a speech to the Nominating Committee and to the members of the Association present.

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, February 8 and Tuesday, February 9, 2010. William C. Hubbard of South Carolina, presided as Chair of the House.

The Evans High School Junior ROTC presented the colors. The invocation for the House was delivered by Paulette Brown of New Jersey. The Chair of the House Committee on Credentials and Admissions, C. Elisia Frazier of Georgia, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for this meeting of the House. The motion was **approved**.

Chair Hubbard recognized all those lawyers who had served in the House of Delegates for more than 25 years.

Deceased members of the House were named by the Secretary of the Association, Hon. Bernice B. Donald of Tennessee, and were remembered by a moment of silence. Chair Hubbard also asked for recognition of those who had given their lives in Iraq and Afghanistan, as well as those who have suffered so much in Haiti.

Chair Hubbard recognized William Reece Smith, of Florida, on a point of personal privilege regarding the passing of F. William McCalpin of Missouri. Past President Smith paid tribute to F. William McCalpin who died December 9, 2009. He described his service for over 50 years to the Association, noting that he had first served in the House of Delegates in 1966. He told delegates he was a member of the American College of Trial Lawyers and practiced at the St. Louis law firm of Lewis, Rice & Fingersh from 1948 to 1991. He recounted his many years of service to the organized bar at local, state and national levels including as president of the Bar Association of Metropolitan St. Louis. He highlighted his service as Assistant Secretary and Secretary of the American Bar Association and his work as Chair of numerous ABA entities. He told delegates that Mr. McCalpin's life was characterized by the 3Cs of professionalism – character, competence, commitment.

Mr. McCalpin's crowning contribution was his commitment to legal services to the poor, where he was an early and vocal defender of the Legal Services Corporation and had much to do with its creation in 1974. Past President Smith pointed out Mr. McCalpin was Board Chair of LSC in 1979 and that he stood strongly in opposition to efforts to cut its funding in 1981. He was committed to access to justice and testified that to eliminate funding for LSC would be to deny our nation's commitment to equal justice under the law. His work to develop and assure organized legal aid for the bar was recognized in 1988 by the ABA for exceptionally distinguished service with the ABA Medal. Past President Smith read a letter from the U.S. Secretary of State Hillary Rodham Clinton paying tribute to Bill McCalpin. He told the delegates Mr. McCalpin has been identified as one of the five most important people in the history of legal services in the U.S. He said his life should remind us of our calling to be great.

Chair Hubbard recognized Paula E. Boggs of Washington on a point of personal privilege to recognize Joseph H. Gordon, Sr. of Washington, the longest serving member of Washington delegation. She recounted his 57 years of service to the bar including work on the ABA Board of Governors and as Association Treasurer. She told delegates he had attended well over 100 consecutive ABA meetings since 1952. She paid tribute to his work for the Association and to the state of Washington and noted that the Association is far richer for his contribution.

Chair Hubbard recognized Gibson Gayle, Jr. of Texas on a point of personal privilege to recognize Joseph H. Gordon, Sr. for his 50 years of friendship, his dedication and devotion to the Association.

Chair Hubbard recognized Mary K. Ryan of Massachusetts on a point of personal privilege to pay tribute to Jack P. Driscoll of Massachusetts, a former president of the Boston Bar Association. She paid tribute to his penchant for action and recounted his work in dealing with the critical issues facing the profession and the community. She pointed out his

love for the Association and this House and that at the time of his death, he was chair-elect of the Senior Lawyers Division. She expressed her gratitude for his many contributions.

Chair Hubbard recognized Robert E. Clifford of Illinois on a point of personal privilege to recognize Daniel Robert Thies of Massachusetts for his work in organizing ABA Day at Harvard University. Mr. Clifford also urged members to contact him with suggestions on how to improve the Association's web site.

Judy Perry Martinez of Louisiana, Chair of the Committee on Rules and Calendar provided a report on the Final Calendar for the House, including recently filed reports, as well as Informational Reports from the Board of Governors. She noted the receipt of one additional bar association report 10A and two late filed reports, 300 and 301. Ms. Martinez moved to consider the late filed reports, adopt the Final Calendar and approve the list of individuals who sought privileges of the floor. All three motions were **approved**.

She also referred to the consent calendar, noting the deadline for removing an item from the consent calendar.

She noted the rules for limited debate applicable to certain resolutions. She also moved a special rule for consideration of Resolution 177B. The motion was **approved**.

Ms. Martinez noted that the deadline for submission of Reports with Recommendations for the 2010 Annual Meeting is May 4, 2010, while the deadline for Informational Reports is June 4, 2010. The members of the House were reminded that the Drafting Committee, chaired by Palmer Gene Vance II of Kentucky, is available to assist anyone in drafting resolutions prior to the filing deadline.

Chair Hubbard thanked Ms. Martinez for her exemplary service.

Later in the day, Ms. Martinez moved the items on the consent calendar. The motion was **approved**.

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

William C. Hubbard of South Carolina, Chair of the House, reviewed procedural matters. He recognized the Committee on Rules and Calendar and the staff members who support the committee. Chair Hubbard introduced the Tellers Committee and reviewed the procedures for speaking. He recognized and thanked all the members who serve on House committees. During the meeting, he also recognized several other members of the Association staff including Martin D. Balogh for his efforts in dealing with hotel logistics in

light of the weather, Adrienne P. Barney for her work on the overhead projections during the House proceedings and Carri L. Kerber for her work on technology for the House.

Chair Hubbard addressed the importance and need for the work of the Fund for Justice and Education (“FJE”) and urged every House member to support it financially. He urged delegates to make a contribution and ensure 100% participation by the House by the annual meeting in San Francisco.

Chair Hubbard highlighted the work of the Legal Opportunity Scholarship Fund which was started in 1999. It funds scholarships to minority law students and over the last years has provided over \$3 million in minority scholarships. He urged the delegates to support it financially.

He discussed the obligations and responsibilities of House members to take legislative priorities to lawmakers in Washington, D.C. He asked each delegate to be part of the Grass Roots Action Team and attend ABA Day on April 20-22, 2010, in Washington D.C., under the direction of Laurel Bellows of Illinois.

Chair Hubbard announced that at the 2010 annual meeting, the House will elect one member for a full-term and two members to unexpired terms due to vacancies on the Committee on Scope and Correlation of Work. He detailed the procedures for submitting nominations.

Chair Hubbard also described the appointments process in connection with the new ABA year when Stephen N. Zack of Florida will become President of the Association.

Statement by the Secretary

Hon. Bernice B. Donald of Tennessee, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2009 Annual Meeting, which was **approved** by the House.

On behalf of the Board of Governors, Secretary Donald presented and referred the House to Report Nos. 177, 177A and 177C, the Board’s Informational, Transmittal and Legislative Priorities Reports.

Statement by the ABA President

Chair Hubbard recognized and welcomed President Carolyn B. Lamm of the District of Columbia to the House for remarks.

She talked about pursuing dreams that all people have and told the delegates she has pursued her dream to lead the ABA. She used the metaphor of flying to recount the last months and the economic downturn and how it has affected all of us including our firms, friends, colleagues, families and association. She told us the ABA’s advocacy on behalf of the public and the profession is strong, but we must make it stronger; the financial condition

of the Association is strong, but must be stronger; and the membership is the largest of its kind in the world, but we must grow it.

She told delegates about 70% of the members of the profession have found a reason not to join the ABA, and that many of them have identified our dues as a reason. She noted that the ABA has struggled too long with value and relevance to members. For too long, it has played catch-up on technology and its use. She told members we can overcome all these challenges but not on auto-pilot, that the status quo is not acceptable and that we cannot survive and prosper by doing business as usual. These challenges call for strong leadership and bold ideas. She called on all of us to be part of the solution. She told us that all had answered the call and thanked the executive committee, the board and the staff for their work and unanimity.

President Lamm described internal events since August including staff changes and budget issues and the good progress made in these areas. She told the delegates about work being done on non-dues revenue. She highlighted Bob Clifford's work on the web site and technology issues. She reported on the executive director change and commended Thomas R. Howell, Jr. for the job he is doing as Interim Executive Director. She told of the progress of the search committee and indicated she anticipated a new Executive Director by August. She also reported on other staff promotions and changes. She reported that after a challenging ride, your ABA is stronger and better and has landed successfully.

She also reported on the equally successful external events. She recounted the Association's good work through its task forces on issues such as financial regulation, attorney-client privilege and preemption. She previewed upcoming task forces that will report to the House this year. She described in detail the important work of the Commission on the Economic Crisis and its many accomplishments. She highlighted Resolution 301 dealing with law students and young lawyers' debt. She expressed her pride in the diversity work done by the Presidential Diversity Commission chaired by Judge Ellen Rosenblum. She provided details on the need for and purpose of Ethics 20/20, a 3-year project led by Michael Traynor and Jamie S. Gorelick. She described the success of the ABA's advocacy efforts.

Finally and most importantly, she described the Association's membership initiative and the goal to reach 50% of the profession. She told delegates there were three parts that were approached strategically. The first was last year's value assessment of 12 segments of our profession led by Laurel G. Bellows and Maury B. Poscover. The second dimension is pricing led by the Standing Committee on Membership. She commended the committee for its incredibly hard work and Chair Trish Refo for the breathtakingly good job she has done on the substance, the strategy and education of our Association on the study. She reported that leadership and the Board of Governors support the membership proposal before the House. Third, she told the House that the Association has retained a marketing firm to assist in reaching all segments of our profession and help craft a message to reach our profession. She highlighted new member initiatives and voiced her belief that our efforts will result in a significantly stronger and larger ABA.

President Lamm closed by telling delegates that you realize that your dreams are not

for yourself, but for those who will come after you. She said 130 years ago, a small group of lawyers dreamed that America would have one American Bar Association that would speak with one voice. For over a century, that voice has been heard. She told us that now we are the keepers of that original dream, not only for ourselves, but for generations to come. She recounted her dream to leave them with a more powerful and flexible association. To do this, she urged us to make bold decisions, change the way we do things and to see it through. Regardless of the times, she said there must be a strong voice and secure home for America's lawyers. She announced confidently that we are America's Bar Association.

Statement by the Treasurer

Chair Hubbard welcomed the Association's Treasurer for a report and remarks to the House.

Treasurer Alice E. Richmond of Massachusetts began by making a reference to a quote by Franklin D. Roosevelt to highlight the last months. She referred members of the House of Delegates to her written report. She reported that the ABA's finances remain strong and that she and the financial services staff are reviewing and revising financial processes and technical systems to be the best we can be. She introduced and welcomed Kathryn Shaw, the new CFO of the Association.

She reported the fiscal year end on August 31, 2009 saw consolidated revenues exceed expenses by \$5.1M. That included a \$3.3 contribution from the dues warehouse for an actual surplus of \$1.8M. As of December 31, 2009, there was \$14.1M in the dues warehouse.

As of August 31, 2009, the Association had \$107.8M in assets. That is a 30% decrease from the prior year's end or \$46.5M, mostly due to a drop in the value of the investment portfolio and an increase in pension liability. She reported that the Association reduced debt on its Washington, DC building. The operating revenue of the Association was \$206M as of August 31, 2009 which is a 2.3% reduction. \$84.0M of that is dues revenue. She informed the House that an external audit of the Association was performed and was clean.

She reviewed a chart showing dues trends. She also reviewed non-dues revenue. She highlighted \$40M gifts and grants, up \$500,000 from last year. She reviewed the consolidated trend of non-dues revenue chart. Treasurer Richmond told delegates there was a \$2.7M decline in expenses and reviewed the operating expense trends chart. She noted that 80% of expenses are geared toward programs and that demonstrated efficiency and is very good.

The Treasurer noted that investments fell 12% or \$24.6M in value. She reported that the investment allocations have been altered and there has been a recovery in value of \$4.7M since August 31, 2009. Over a three year period, she reports we exceeded our benchmarks. She reviewed the total pension obligation chart and indicated that unfunded liability went from \$19.2M to \$45.4M. She said this is highly volatile and noted the unfunded liability had been reduced by \$7.3M in the last four months. She reviewed the

other changes including the development of cash flow projections, and highlighted adherence to the principle that we will not spend what is not there. She reviewed the cash and cash equivalents chart and noted a \$10.3M decline last year and \$8.8M more decline in the last four months. She also reviewed the revenue trend to expenses chart. Revenues are going down and reported they are working hard on revenues and expenses. She reviewed the permanent reserve and noted it is down to \$44.2M. It is \$46.6M as of December 31, 2009.

Treasurer Richmond noted the Association has done a lot in the financial services, but there is much left to do. She closed by telling the delegates the current issues facing the Association are: increase membership, value proposition, economic downturn, pension, non-dues revenue strategy, and publishing roadmap. She said we need to identify the strategies to deal with these issues, plan for them and execute them.

Chair Hubbard thanked her for her report.

Statement by the Interim Executive Director

Chair Hubbard recognized Thomas R. Howell, Jr. of Illinois, Interim Executive Director and Chief Operating Officer of the ABA for remarks.

He introduced himself and noted he had been on the job for 3 months after having served as General Counsel of the ABA. He referred the delegates to his written report. He reported the ABA is on budget, programs and projects are on schedule and that the ABA has a strong, capable and dedicated management team in place. He expressed and urged appreciation for all the Association staff and the delegates responded with applause. On behalf of the staff, he looks forward to working with the Association.

Chair Hubbard thanked Mr. Howell.

Welcome by The Honorable Bill Nelson, Florida Senator

Chair Hubbard introduced Senator Bill Nelson who was elected to the U.S. Senate in 2000 and is recognized as the leading Congressional expert on NASA. He noted his service in the U. S. House of Representatives, and his six day trip aboard the space shuttle Columbia and his record of work on behalf of Floridians.

Senator Nelson thanked the Association for coming to the aid of the Haitian people and its work in creating the Haiti Legal Development Fund. He recounted that he was the only lawyer who had flown in space. Based on his 37 years of service, he gave the delegates several observations about our profession and how it interacts with his in public service.

He told the delegates we have a legal system accessible to all, especially the least and most vulnerable among us. A challenge in remaining a just society is to ensure that everyone aggrieved or harmed can find a place in our system for justice. To effectively represent clients, attorneys must have the tools to do so. These tools include a fair and impartial judiciary. He discussed the selection and confirmation of federal judges. He also

discussed the need for robust funding for the poor and legal services. He pointed out there remains a justice gap and commended the Association's work in that area.

He discussed the need to take on the attitude of a public servant in a way that extends beyond the walls of our offices and commented that we are committed to those principles. He said this country needs healing and it needs to change the public discourse. He told the House we need civility, not savagery and we need to start listening to one another. He called on the delegates as leaders of the profession to use their talents as conciliators and mediators to influence political discourse positively.

Chair Hubbard thanked him for his inspiring and challenging remarks.

Remarks on the "State of the State Courts"

Chair Hubbard introduced the Honorable Christine M. Durham, President of the Conference of Chief Justices and Chief Justice of the Utah Supreme Court to address the House on the State of the State Courts.

The Chief Justice thanked the House of Delegates for the privilege to address the House. She was pleased to continue the tradition of addressing the House, as begun last year by her predecessor. She told us that the mission of the Conference of Chief Justices is to improve the administration of justice throughout the states and territories by promoting the effectiveness, independence and vitality of state judicial systems. This is done by advancing policies, by educating leaders, by exchanging information and by supporting the concept of adequate resources for state courts. She stressed the importance of efficiency and effectiveness in the administration of justice as well as the ability to be fair and impartial. She indicated her belief that institutional independence is linked to decisional independence. She described the many aspects of each concept.

She discussed the national role of the Conference of Chief Justices. In addition to improving the administration of justice in each state system, the Conference stresses the need for a national voice to educate policy makers about needs and concerns. She pointed out that state courts decide more than 95% of all claims filed in the U.S. Given that, the voice of the Conference matters.

She updated the House since last year on the recession and its effect on the state courts. These include court closings, pay freezes, hiring freezes, furloughs and pay reductions. There is growing concern that things may never return to normal in state court systems. She described collaborative efforts to provide funding by the Conference and the American Bar Association. She outlined a number of initiatives by courts to reduce costs through efficiency, innovation and re-evaluation of all systems. She told us that the public and media realize that courts are the heart and soul of this country's commitment to justice for all and that they are and must be part of the engine for economic recovery. She explained this by reference to a Florida study about mortgage foreclosures. She discussed the need for reform of state judicial elections and the effect of the Caperton and Citizens United decisions.

She closed by saying that lawyers and judges properly understand their roles in

society and their institutions as an integral part of the constitutional experiment that is the American system of justice. She expressed her appreciation for the ABA and its positions, advocacy and support. She noted the good work on Ethics 20/20. She thanked President Carolyn Lamm for her work and dialogue with the Conference of Chief Justices. She looks forward to working cooperatively with the American Bar Association to improve the state court system.

Chair Hubbard thanked her for her remarks.

Report of the Nominating Committee

The Nominating Committee met on Sunday, February 7, 2010. On behalf of the committee, Thomas R. Curtin of New Jersey, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

MEMBERS OF THE BOARD OF GOVERNORS (2010-2013)

District Members

District 7: Cheryl I. Niro of Illinois

District 8: Edith G. Osman of Florida

District 10: James S. Hill of North Dakota

District 11: James F. Carr of Colorado

District 13: Carlos A. Rodriguez-Vidal of Puerto Rico

District 18: James Dimos of Indiana

Section Members-at-Large

Section of Legal Education and Admissions to the Bar

Peter A. Winograd of New Mexico

Section of Public Contract Law

Mary Ellen Coster Williams of Maryland

Woman Member-At-Large

Michelle A. Behnke of Wisconsin

OFFICERS OF THE ASSOCIATION

President-Elect for 2010-2011

Wm. "Bill" T. Robinson, III of Kentucky

Chair of the House of Delegates for 2010-2012

Linda A. Klein of Georgia

Secretary for 2011-2014 (to serve as Secretary-Elect in 2010-2011)

Honorable Cara Lee Neville of Minnesota

Treasurer for 2011-2014 (to serve as Treasurer-Elect in 2010-2011)

Lucian T. Pera of Tennessee

Remarks by President-Elect Nominee

Chair Hubbard recognized President-Elect Nominee Wm. T. (Bill) Robinson III and welcomed him for remarks to the House of Delegates.

President-Elect Nominee Bill Robinson began his remarks “at the top” by thanking his spouse and best friend, Joan Robinson. He then thanked his law firm Frost Brown & Todd LLC for its support. He also paid tribute to President Carolyn Lamm and President-Elect Stephen Zack for their dynamic leadership and told the delegates he is committed to follow in their "big footsteps" with continuity of leadership.

Robinson told the delegates that the Association has confronted significant challenges in the past and has successfully worked through each of them. He is confident that we will find opportunities in the challenges of today and tomorrow. We will need to be agile, creative and maintain a healthy sense of urgency. He said we need to be reminded of what has brought us together – the obligation and privilege of providing volunteer public service, a privileged responsibility that we fulfill in part by our volunteer work in the organized bar, including the ABA. This volunteer service is part of our professional DNA and can be found everyday in conference rooms, in bar associations, in court houses and in the House of Delegates itself. He remarked that more recently, the quality of volunteer lawyer work has been substantially enhanced by diversity. The boards, committees and task forces of our associations more broadly and better reflect the diversity of our society and we are enriched by it. We must continue to strengthen diversity in our profession, our bar associations and the ABA. He told us that all these constructive concepts are familiar to us because we live them year after year in public service and professional volunteer commitment. We know the work needs to be done and we do it enthusiastically without considering the financial cost to self from doing so. He promised to promote, support and recognize volunteer lawyer service at every opportunity.

Robinson talked of the great sense of responsibility he feels, but said is reassured by two principles that have guided him throughout his professional career. The first is that the primary responsibility of a lawyer is the representation of others with hard work and a sincere sense of fiduciary responsibility. That is what he will endeavor to accomplish as he represents the Association and our profession.

Second, Robinson sees his nomination as a continuation of his long working partnership with many members of the ABA including members of the House. Whatever is accomplished during his term of leadership will largely be the result of our working together, side by side. As he looked out to the House, he was reminded of and noted our mutual friendship, encouragement and support. He told the delegates that his year as President,

2011-2012, will be a great success if ABA members can look back and say with confidence: "That was a great year to be a member of the American Bar Association – just look at what we accomplished together!"

Chair Hubbard thanked Bill Robinson and indicated he looked forward to Robinson's leadership with great anticipation, expressing gratitude for his past service.

Remarks Regarding Commission on Ethics 20/20

Chair Hubbard recognized Michael Traynor of California, Co-chair of the Commission on Ethics 20/20.

Mr. Traynor reported that we need to address new challenges of the digital generation and the global economy. He told the delegates new issues of data security, confidence, choice of law, and disciplinary enforcement are presented. Vigilance is important to make sure ethical guidance does not lag too far behind technology. He noted that technology and globalization affect us all. Mr. Traynor cited family law as an example.

He told delegates that last August, President Lamm created the Commission on Ethics 20/20 for a tenure of three years. Mr. Traynor expressed appreciation for the encouragement of President-Elect Zack and President-Elect Nominee Robinson. He told the House the Commission will be guided by three principles: protection of the public; preservation of our core professional values; and maintenance of a strong independent and self-regulated profession.

He noted the Commission has no preconceived notions about the issues, but will do their best and not shy away from controversial issues. He informed the House of the subcommittees and a website and promised transparency. He reported they held their first meeting last September and their first public hearing on February 5, 2010. They will hold their second public hearing in August at the ABA Annual Meeting.

He expects to have a report and recommendations on the outsourcing issue at the Midyear Meeting in 2011. They will have a comprehensive report and recommendations by the end of the 3-year term.

Chair Hubbard thanked him.

Remarks Regarding Executive Director Search Committee

William C. Hubbard of South Carolina, Chair of the Executive Director Search Committee, reported on the progress of the executive director search. Due to the weather, some of the interviews scheduled have been postponed. He reported five interviews will be done at this meeting and 5-10 more interviews soon. After 15-18 interviews in the first round, they expect to have a second round of indepth interviews with a smaller number of individuals. He asked the House to share with him any thoughts regarding qualities to be sought in an individual for the position of executive director.

Issues of Concern Panel Discussion

Chair Hubbard introduced the House to a panel presentation by the House Committee on Issues of Concern to the Profession regarding the nomination and confirmation process for Supreme Court Justices. He told the delegates that many in the legal profession and the public at large believe that the process should be improved. The American Bar Association, as the voice of the legal profession, should help lead that reform. The panel was designed to help ABA leadership and the House of Delegates identify those issues where the ABA can develop policy that might lead to constructive reform. He introduced Barbara J. Howard of Ohio, chair of the House Committee on Issues of Concerns to the Profession. She introduced both panelists: Christopher Eisgruber, Provost of Princeton University and author of "The Next Justice: Repairing the Supreme Court Appointments Process," and Dahlia Lithwick, a contributing editor at Newsweek and senior editor at Slate.

Ms. Lithwick began by discussing news stories about the possibility of two vacancies on the U.S. Supreme Court. Mr. Eisgruber discussed the historical sweep of the confirmation process. He said confirmations have always been political, contentious and nasty, and he cited to the example of John Rutledge, a George Washington nominee. He told delegates we are in a period where it has been more contentious since 1968 with seven nominees who were not confirmed or were withdrawn. In the preceding 70 years before 1968, only one nominee was rejected. He said four things have changed to cause this: (a) the United States Supreme Court has become more prominent as a political actor in our society; (b) Presidents now give more attention than ever before to the ideology of their nominees. Ideology and party affiliation have been important and it always has been that way since at least 1795, but there has been much more scrutiny and aggressiveness in the last 40 years; (c) hearings are different than they used to be. It used to be nominees would not appear at hearings; and (d) the country and legal community is becoming increasingly polarized in our judicial views.

He said the question is what can realistically be done. It is false hope to remove politics. It was designed to be political. It will remain so.

Ms. Lithwick provided a perspective from a very close vantage point. Her concerns are that neither the Senate nor the nominee has fared well. She said the conversations are framed at the edges of political ideology and things on the edge are given great attention. She voiced concern that the nominee is polarized because the process is so personal.

Mr. Eisgruber voiced three recommendations for what is achievable: (a) educate people about the process; (b) separate concerns of the kind the ABA raises from political issues; and (c) moderate and avoid the extreme.

He suggested we ought to learn the nominee's judicial philosophy and views on judicial deference. He sees the ABA's role as one of education.

The panelists also discussed the role of experience and whether we will see justices

selected from other than a pool of Courts of Appeal judges. They pointed out that every member of the current court has had prior federal judiciary experience for the first time in history. Mr. Eisgruber indicated he is skeptical that the president will step out of the federal judiciary experience mold.

Ms. Lithwick discussed the Sotomayor's nomination process and made several observations. There were a number of questions from the delegates to which the panelists responded.

Chair Hubbard thanked the panelists and the House Committee on Issues of Concern to the Profession.

II. RECOMMENDATIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on recommendations brought before the House follows. The recommendations are listed in chronological order and the number of the recommendation is noted in brackets.

[100] The House **approved by consent** Recommendation 100 as submitted by the Standing Committee on Specialization, extending the accreditation of the Social Security Disability Advocacy program of the National Board of Social Security Disability Advocacy, division of the National Board of Legal Specialty Certification of Wrentham, Massachusetts.

[101] The House **approved by consent** Recommendation 101 as submitted by the Maritime Law Association of the United States, urging the United States Senate to ratify the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, also known as the "Rotterdam Rules."

[102A] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Revised Report 102A urging federal, state, territorial and local governments to increase the opportunities of youth involved with the juvenile or criminal justice systems and to prevent the continuing discrimination against those who have been involved with these systems in the past by limiting the collateral consequences of juvenile arrests, adjudications and convictions. The recommendation was **approved as revised**.

[102B] On behalf of the Criminal Justice Section, William N. Shepherd of Florida moved Report 102B urging federal, state, territorial and local legislative bodies and governmental agencies to support the development of simplified *Miranda* warning language for use with juvenile arrestees. The recommendation was **approved**.

[102C] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Report 102C urging federal, state, local and territorial governments to undertake a comprehensive review of the misdemeanor provisions of their criminal laws, and, where appropriate, to allow the imposition of civil fines or nonmonetary civil remedies instead of criminal penalties, including fines and incarceration. The recommendation was **approved**.

[102D] On behalf of the Criminal Justice Section, William N. Shepherd of Florida moved Revised Report 102D urging policy making bodies of federal, state, local and territorial courts to adopt a procedure whereby a criminal trial court shall conduct, at a reasonable time prior to a criminal trial, a conference with the parties to ensure that they are fully aware of their respective disclosure obligations under applicable discovery rules, statutes, ethical standards and the federal and state constitutions and to offer the court's assistance in resolving disputes over disclosure obligations. Herbert B. Ditorz, Jr. of the District of Columbia spoke in favor of the recommendation. The recommendation was **approved as revised**.

[102E] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Report 102E urging federal, state, local and territorial governments to ensure that judicial, administrative, legislative and executive authorities expand, as appropriate in light of security and safety concerns, initiatives that facilitate contact and communication between parents in correctional custody and their children in the free community. The recommendation was **approved**.

[102F] On behalf of the Criminal Justice Section, William N. Shepherd of Florida moved Report 102F urging bars associations and law schools to consider and expand, as appropriate, initiatives to assist criminal defendants and prisoners in avoiding undue consequences of arrest and conviction on their custodial and parental rights and urges Congress to eliminate restrictions that prohibit recipients of Legal Services Corporation funds from providing legal assistance to prisoners on family law issues. The recommendation was **approved**.

[102G] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Report 102G urging the President and the Attorney General to assure that lawyers in the Department of Justice do not make decisions concerning investigations or proceedings based upon partisan political interests and do not perceive that they will be rewarded for, or punished for not, making a decision based upon partisan political interests. The recommendation was **approved**.

[102H] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia **withdrew** Report 102H urging federal, state, local and territorial governments to provide sufficient funding, infrastructure, equipment and other legislative efforts necessary to strengthen the forensic science community in its mission of providing accurate, timely, reliable and scientifically valid evidence to the nation's criminal justice system.

[102I] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Revised Report 102I adopting the black letter of the ABA Criminal Justice Standards on the Treatment of Prisoners, dated February 2010, to supplant the ABA Criminal Justice Standards on the Legal Status of Prisoners. The recommendation was **approved as revised**.

[102J] On behalf of the Criminal Justice Section, John D. Roman of Florida moved Report 102J urging Congress to ensure that funding for the John R. Justice Prosecutors and

Defenders Incentive Act of 2008 (Section 951 of PL 110-315) is expanded beyond its original authorization of \$25 million to cover the actual national need. The recommendation was **approved**.

[103A] On behalf of the Tort Trial and Insurance Practice Section, James F. Carr of Colorado moved Revised Report 103A adopting the Model Act Governing Standards for the Care and Disposition of Disaster Animals, dated February 2010, and recommends its adoption by state and territorial legislative bodies. The recommendation was **approved as revised**.

[103B] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Report 103B opposing the adoption of legislation by Congress that merges medical payment components of workers compensation and medical payment components of automobile insurance with health insurance, commonly referred to as “Universal 24-Hour Health Coverage.” The recommendation was **approved**.

[104] On behalf of the Section of Litigation, Joanne A. Epps of Pennsylvania moved Report 104 urging the United States, state and territorial governments to work to ensure that the fundamental protections of Article 36 to the Vienna Convention on Consular Relations (“Article 36”) are extended fully and without obstacle to foreign nationals within United States borders. Robert A. Stein of Minnesota spoke in favor of the recommendation. Brian Charles Miller of Texas spoke in opposition to the recommendation. The recommendation was **approved**.

[105A] On behalf of the Commission on Homelessness and Poverty, Josephine A. McNeil of Massachusetts moved Revised Report 105A supporting the development of comprehensive, systemic approaches to address the special needs of veterans through diversionary programs that connect veterans to appropriate housing, treatment and services through partnerships with the local Veterans Administration Medical Centers, community-based services and housing providers. Francis J. Brady of Connecticut moved to postpone consideration of Revised Report 105A indefinitely. Robert M. Carlson of Montana and Michael S. Greco of Massachusetts spoke in opposition to the motion to postpone indefinitely. The motion to postpone indefinitely failed. Robert Arnold Weeks of California spoke in favor the recommendation. The recommendation was **approved as revised**.

[105B] On behalf of the Commission on Homelessness and Poverty, Josephine A. McNeil of Massachusetts moved Report 105B urging Congress to increase funding for programs under the Runaway and Homeless Youth Act and other laws in order to more effectively intervene and end homelessness for youth, ages 12 through 24. The recommendation was **approved**.

[106] The House **approved by consent** Recommendation 106 as submitted by the Standing Committee on Paralegals, granting approval and reapproval to several paralegal education programs, withdraws the approval of two programs at the requests of the institutions and extends the term of approval to several paralegal education programs.

[107] On behalf of the Commission on Women in the Profession, Roberta D. Liebenberg of Pennsylvania moved Report 107 urging Congress to enact legislation that would provide more effective remedies, procedures and protections to those subjected to pay discrimination, including discrimination on the basis of gender, and would help overcome the barriers to the elimination of such pay discrimination that continue to exist. James R. Silkenat of New York spoke in favor the recommendation. The recommendation was **approved**.

[108A] On behalf of the Section of International Law, Michael H. Byowitz of New York moved Report 108A urging the United States to ratify the Comprehensive Nuclear Test Ban Treaty. Douglas A. Copeland of Missouri spoke in opposition to the recommendation. The recommendation was **defeated** 175-206.

[108B] The House **approved by consent** Recommendation 108B as submitted by the Section of International Law, urging the United States to ratify and implement the United Nations Convention on the Rights of Persons with Disabilities.

[108C] On behalf of the Section of International Law, Andrew Joshua Markus of Florida moved Report 108C urging that legislation be enacted to provide procedures for implementing on an expedited basis commitments in existing treaties where the President reports to the Congress that binding measures are necessary to avoid the imminent risk of breach by the United States. The recommendation was **approved**.

[109] On behalf of the Section of Intellectual Property Law, Donald R. Dunner of the District of Columbia moved Report 109 urging courts to interpret the statutory first sale doctrine in Section 109(a) of the U.S. Copyright Act and the copyright owner's importation right in Section 602(a) to exclude application of the first sale doctrine to the importation of goods embodying a copyrighted work that were not manufactured in the United States. The recommendation was **approved**.

[110] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Revised Report 110 urging Congress, states, tribal, local and territorial governments to enact child welfare financing laws and/or implement policies to reform the current child welfare financing structure to end the current fiscal incentives to place children in foster care. The recommendation was **approved as revised**.

[111A] The House **approved by consent** Recommendation 111A as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Real Property Transfer on Death Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[111B] The House **approved by consent** the Recommendation 111B as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Collateral Consequences of Conviction Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states

desiring to adopt the specific substantive law suggested therein.

[111C] On behalf of the National Conference of Commissioners on Uniform State Laws, Robert A. Stein of Minnesota **withdrew** Report 111C approving the Uniform Collaborative Law Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[111D] The House **approved by consent** Recommendation 111D as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Statutory Trust Entity Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[112] On behalf of the Senior Lawyers Division, Anthony R. Palermo of New York **withdrew** Report 112 recommending that dues for lawyers age 60 and above shall be one-half of the regular dues for Class 7 members; and that dues for lawyers age 75 and above shall be waived.

[113] On behalf of the General Practice, Solo and Small Firm Division, Brig. Gen. Thomas L. Hemingway of Virginia moved Revised Report 113 supporting a correction to existing deficiencies in government sponsored debt relief for lawyers serving our nation in uniform. Sharon C. Stevens of Oregon spoke in favor of the recommendation. The recommendation was **approved as revised**.

[114A] On behalf of the Commission on Immigration, Karen T. Grisez of the District of Columbia moved Report 114A urging the Department of Homeland Security to implement specific policies and procedures within the immigration removal adjudication system and urges Congress to amend the Immigration and Nationality Act regarding the removal of noncitizens convicted of certain crimes. Carolyn B. Lamm of the District of Columbia and Stephen N. Zack of Florida spoke in favor of the recommendation. The recommendation was **approved**.

[114B] On behalf of the Commission on Immigration, Karen T. Grisez of the District of Columbia moved Revised Report 114B supporting measures to improve immigration courts and create a more professional, independent and accountable immigration judiciary, including a provision to increase the number of immigration judges by at least 100, increase the number of law clerks to a ratio of one clerk per judge, increase the number of support personnel and increase the number of Assistant Chief Immigration Judges, and expand their deployment to regional courts. The Hon. Denise Noona Slavin of Florida spoke in favor of the recommendation. The recommendation was **approved as revised**.

[114C] On behalf of the Commission on Immigration, Karen T. Grisez of the District of Columbia moved Report 114C supporting improving the efficiency, transparency and fairness of administrative review by the Board of Immigration Appeals through increasing the resources available to the Board, including additional staff attorneys and additional Board members. Robert N. Weiner of the District of Columbia spoke in favor of the

recommendation. The recommendation was **approved**.

[114D] On behalf of the Commission on Immigration, Karen T. Grisez of the District of Columbia moved Report 114D supporting the restoration of federal judicial review of immigration decisions and urges Congress to enact legislation to ensure that noncitizens are treated fairly in the adjudication process and also to provide oversight for the government's decision making process. Loren Kieve of California and Robert E. Juceam of New York spoke in favor of the recommendation. The recommendation was **approved**.

[114E] On behalf of the Commission on Immigration, Karen T. Grisez of the District of Columbia **withdrew** Report 114E supporting measures to improve access to legal representation and legal information for noncitizens in the immigration removal system.

[114F] On behalf of the Commission on Immigration, Karen T. Grisez of the District of Columbia moved Report 114F supporting the creation of an Article I court, with both trial and appellate divisions, to adjudicate immigration cases, which should have features substantially consistent with specific guidelines, or as an alternative to an Article I court, supports the creation of an independent agency for both trial and appellate functions. The Hon. Denise Noona Slavin of Florida and John Michael Vittone of the District of Columbia spoke in favor of the recommendation. The recommendation was **approved**.

[115] On behalf of the Commission on Domestic Violence, Mark I. Schickman of California moved Report 115 urging Congress to reauthorize and fully fund the Violence Against Women Act and similar legislation that promotes access to justice and safety for victims of domestic violence, dating violence, sexual assault, and stalking within the United States. The recommendation was **approved**.

[116] On behalf of Bruce Wilder, ABA Member, Judy Perry Martinez of Louisiana **withdrew** Report 116 urging the government of the United States and specifically the Department of Health and Human Services to undertake measures which would ensure the least possible disclosure of patients' personally identifiable information contained in the electronic health record, except in specific instances as required by law.

[10A] On behalf of the New York State Bar Association, A. Vincent Buzard of New York, moved Report 10A urging the ABA President to "examine the efforts of U.S. News and World Report to publish a ranking of law firms. Stephen C. Krane of New York moved to postpone consideration of Report 10A indefinitely. Carolyn B. Lamm of the District of Columbia, Nancy H. Rogers of Ohio, Neal R. Sonnett of Florida spoke in favor of the motion to postpone indefinitely. A. Vincent Buzard of New York, Anthony R. Palermo of New York, E. Christopher Johnson, Jr. of Michigan and Stephen P. Younger, Jr. of New York opposed the motion to postpone indefinitely. The motion to postpone indefinitely was defeated 190-209.

Jonathan W. Wolfe of New Jersey moved to amend the recommendation. A point of personal privilege was raised by Roy A. Hammer of Massachusetts regarding the text of the resolution which was read aloud by Secretary Bernice B. Donald of Tennessee. John L. McDonald, Jr. of California and Thomas Bolt of the Virgin Islands raised points of order

which were ruled out of order. Robert N. Weiner of the District of Columbia spoke in favor of the motion to amend. Mark H. Alcott of New York and A. Vincent Buzard of New York spoke in opposition to the motion to amend. **The motion to amend was approved 203-183.**

Ann B. Lask of New York raised a point of personal privilege to clarify certain language. Thomas Bolt of the Virgin Islands moved to amend the recommendation. The motion to amend passed.

Lora J. Livingston of Texas rose to call the question, but because there were no further speakers, the House moved to a vote. Report 10A was **approved as revised and amended.**

[177B] On behalf of the Standing Committee on Membership, Patricia Lee Refo of Arizona moved Report 177B recommending a new dues structure for members of the Association effective for dues commencing with the 2010-2011 fiscal year and each year thereafter. Sharon C. Stevens of Oregon and L. Jonathan Ross of New Hampshire spoke in favor of the recommendation. The recommendation was **approved as revised.**

[300] On behalf of the Section of Litigation, David C. Weiner of Ohio moved Report 300 amending the current method by which Federal Judges are given cost-of-living adjustments (COLAs) to their salaries. The recommendation was **approved.**

[301] On behalf of the Commission on the Impact of the Economic Crisis on the Profession and the Legal Needs, Allan J. Tanenbaum of Georgia moved Report 301 urging Congress, the Executive Branch and/or Commercial Lenders to develop and implement programs to assist law students and recent law school graduates experiencing financial hardship due to deferred or lack of employment (and consequently lack of income) during a period of economic crisis. Daniel Robert Thies of Massachusetts and Jay E. Ray of Texas spoke in favor of the recommendation. The recommendation was **approved.**

Closing Business

At the conclusion of the meeting of the House on Tuesday, February 9, Chair Hubbard recognized and thanked the delegates for their dedication to the work of the House.

Dwight L. Smith of Oklahoma moved a resolution in appreciation of the Florida lawyers and judges and special advisor Suzanne E. Gilbert of Florida for their work in hosting the meeting. The motion was **approved.**

John L. McDonnell, Jr. of California and the California delegation were recognized to make a musical presentation regarding the 2010 San Francisco Annual Meeting.

Chair Hubbard recognized Judy Perry Martinez of Louisiana, Chair of the Rules and Calendar Committee, who then moved that the House adjourn *sine die*. The motion was **approved.**

