

## MSBA/NEW LAWYERS SECTION

### Meeting Minutes

March 19, 2009

**Members Present:** Jennifer Lurken, Mike Miller, Margie Jennings, Laurie Young, Joshua A. Dorothy, John Remakel, David Classen, Todd Schenk, Anne Lindberg, Jessica Slattery Karich, Shanda Pearson, Charlie Delbridge, Christina Weber, Sam Edmunds, Tessa Kowalski, Nicole Harns, Lacey Anderson, Erika Donner, Hanna Wolf.

#### I. Opening Business

- A. Call to Order and introductions at 5:45 P.M. at the MSBA offices. Meeting chaired by Erika Donner.
- B. The minutes of the December, 2008 and February, 2009 meetings are approved.

#### II. New Business

- A. Kathleen Murphy—Family Law Section Presentation. Ms. Murphy wants all sections, particularly the NLS, to be aware of the Family Law Section. They're trying to make their presence known. They have 800+ members across the state, and they are a very active section. They have a number of committees, including one that submits amicus briefs for important cases. They have a publication that puts out 4 issues each year; a subscription to that publication comes with the membership. They have a committee on domestic abuse, which frequently works with legislators. They have a legislative committee as well. It is valuable to be involved in a substantive section of the MSBA because it allows one to get to know attorneys that one will be working with, or against. This section meets monthly, on the second Saturday of every month. The next meeting is Saturday, May 9, 9:30 a.m. to 10:30 a.m., at 600 Nicollet Mall, #380 in Minneapolis. It will be followed by a free, one-hour CLE.
- B. Christina Weber—Budget Update. The MSBA asked the NLS to cut this year's budget from \$15,500 to \$11,500. We are attempting to cut to \$12,500 instead. Of that, the Section has spent almost \$7,500 already, which means we have about \$5,000 remaining for the year. This will be tight.

Further, Christina presented to the MSBA our request for a \$12,500 budget for each of the next three years. She believes it likely that this request will be approved. Mike Miller wondered whether there is an appeals process, in the event that the MSBA does not approve the

Section's request. Nancy Mischel explained that Christina presented to a subcommittee, and that the matter is now in committee. It then will go to the MSBA's governing body, the Assembly, at which our request will either be approved or denied. That will happen in early April.

- C. ABA Spring Conference Funding. Statements of interest for the ABA's Spring Conference in New Orleans were submitted by Erika Donner, Mike Miller, Sam Edmunds, Jennifer Lurken, and Melissa Franzen. The Section can afford to fund three people at \$750 each. The officers' recommendation is to fund Erika and Jennifer Lurken at \$750, and to fund Mike and Sam at \$375 each. The rationale is that Erika, as an officer, gets a "trump card"; Jennifer has not attended a conference yet; and Melissa is receiving some funding from another source. Lacey moved to accept the officers' recommendation; Laurie Young seconded. The motion passes unanimously.

Mark your calendars for future conferences (& due dates for statements of interest):

ABA Annual, Chicago, IL, July 30-Aug. 1, 2009 (statements of interest due to Erika Donner by May 7, 2009).

- D. Update on Bylaws changes. The Section decided to amend its Bylaws this year. The Bylaws contain a provision that states that if the Chair cannot serve, the Vice-Chair shall take his or her place. Likewise, if the Vice-Chair cannot serve, the Secretary shall take his or her place. And finally, if the Secretary cannot serve, the Treasurer shall take his or her place. The Bylaws also contain a provision stating that last year's Vice-Chair will accede to the position of this year's Chair. We wanted to change the former provision such that the Secretary, rather than the Treasurer, was the lowest on the chain of succession, as that conforms to the practice the Section has adopted this year. In addition, the Bylaws were also amended to remove the Executive Committee, which is a now-defunct body.

If the Section approves the changes that were made, the MSBA Assembly would then need to approve the changes.

Mike Miller suggested that those involved in the ABA governance should be included in the Section's Executive Board. There was some confusion about the distinction between the Executive Board and the Executive Committee under the Bylaws. This matter was tabled so that we could figure out the difference between these two bodies, and perhaps further clean up the Bylaws.

- E. Hearsay Committee (Shanda Pearson and Sam Edmunds). The Winter Issue was e-mailed out. The Spring Issue is being put together right now.

There are many submissions for the Spring Issue. Shanda and Sam may have to save some submissions for the Summer Issue.

- F: CLE Committee (Jennifer Lurken and Margie Jennings). A CLE was held before today's meeting, and it was well-attended, with thirty or so people present. It was given by Judge Connolly, on the subject of ethics and professionalism. In May there will be a CLE about online services offered by the MSBA.
- G. Spring Social (Chanel Melin was absent, so Erika Donner gave a report in her stead). The Spring Social will be held at the Liffey in downtown St. Paul, at 5:30 p.m. on Thursday, April 16. It will be right after the April NLS meeting, which will be abbreviated.
- H. Community Service Committee (David Classen). The Choose Law Program will give a presentation from 8:30 to 11 a.m. on March 26<sup>th</sup>. It will be in connection with a school's Career Fair, and will be given to 6<sup>th</sup> to 12<sup>th</sup> graders.
- I. Up and Coming Attorneys. Congratulations to David Classen and Chanel Melin, who were both recognized as "Up and Coming Attorneys."

### III. Reports

#### A. Officer Reports

1. Secretary (Charlie Delbridge): No report.
2. Treasurer (Christina Weber): Gave budget report earlier in the meeting.
3. Vice Chair (Lacee Anderson): Lacee received a statement of interest from an Oppenheimer attorney named Dan, who wants to be the Section's liaison to the Food and Drug Law Section. Mike Miller moved to accept him as that liaison; Joshua Dorothy seconded. The motion passes unanimously.

The MSBA Annual Convention is June 24-26. The President's Reception is that Thursday night. The music will once again be provided by the Pot-Bellied Stallions. The late night social, for which the NLS is responsible, will be in a suite at the Canal Park Inn.

4. Chair (Erika Donner): The sales tax on attorney fees is once again being considered by the State of Minnesota. The discussion has been prompted by the shortage of funding for the judicial system.

The Section discussed this issue at some length, with the talk centering on whether or not the Section believed the MSBA should recommend to the legislature that such a tax be implemented, or should instead propose another source of judicial-system funding.

Mike Miller moved for a declaration that the New Lawyers Section of the Minnesota State Bar Association opposes any taxation of legal services in the State of Minnesota. Laurie Young seconded the motion. The motion passed unanimously.

Mike Miller further moved to bind Erika Donner's vote on this issue in the MSBA Assembly to reflect the NLS's now-official position on this matter. Sam Edmunds seconded. The motion passed unanimously.

A further discussion was held on whether court filing fees go, or should go, exclusively to the judiciary, rather than to the state's general fund. Some expressed the opinion that if those fees went exclusively to the judiciary, the legislature may at some point require that the judiciary be entirely self-funded, which would hurt the quality and availability of legal services in the state. Others thought that reserving filing fees only for the judiciary would at least be a good start toward addressing the judiciary's budget shortfall, and would not preclude the possibility of the judiciary continuing to receive funding from the state. Finally, there was discussion that the judiciary may receive federal stimulus money.

#### B. Affiliate Reports

1. Hennepin County Bar Association. The HCBA is putting on an upcoming CLE: Recess with the Judges, on April 1, with a federal court judge. On June 7, the HCBA is planning an outing to a St. Paul Saints game; 80 tickets will be purchased. Those tickets will be going on sale for \$20, which includes the ticket and tailgating before the game. Wills for Heroes training is scheduled for April 2, from 5:30 to 7:30 p.m. Those interested should contact Jennifer Mead at Oppenheimer.
2. Ramsey County Bar Association. No report.
3. ABA/YLD (Mike Miller). Mike prepared a Memorandum regarding the 2009 ABA Midyear Meeting. A copy is attached hereto as Exhibit A.

#### C. Liaison Reports

1. Antitrust Section (Joshua Dorothy). On May 6, this section is putting on a CLE on spotting antitrust issues in order to know when to contact an antitrust professional.
2. Business Law Section (John Remakel). This section is still looking for a legislative liaison to work with lobbyists and monitor new legislation, and then report back to the section. Additionally, the Business Law Institute is scheduled for May 4 and 5. The Banking Law Institute will be held this spring.
3. William Mitchell ABA Law Student Division. There is a networking event scheduled for April 1 at the Restaurant Max in Minneapolis from 5 to 7 p.m., which the Section helped to fund. Attendance is encouraged.

**IV. Adjournment**

- A. The meeting was adjourned at 6:34 p.m.



**MEMORANDUM**

**TO:** The New Lawyers Section of the Minnesota State Bar Association

**FROM:** Michael M. Miller, [michael.miller@knowyourrights.com](mailto:michael.miller@knowyourrights.com), 612-333-4500

**SUBJECT:** 2009 Boston Midyear Meeting of the American Bar Association  
and Meeting of the House of Delegates

**DATE:** March 19, 2009

---

**INTRODUCTION**

As both a member of the Young Lawyers Division of the American Bar Association, as well as your representative to the ABA House of Delegates, I want to take this opportunity to thank those Minnesota NLS members who have been active in the ABA. The organization does a great deal for our profession and truly has a great impact on local, national, and global affairs. (Hint-anyone interested in the legislative efforts of the ABA should consider going to "ABA Day" in Washington D.C. on April 21-23. This event pairs ABA members from each state with their legislators. Minnesota has been active in the past and this is a great opportunity for young lawyers to get involved.)

I know that many of you are already members of the ABA but I also know that some of you are not. You should be. The organization serves as the largest voluntary professional association in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public. The ABA strives to improve our profession, eliminate bias and enhance diversity, and advance the Rule of Law. Please visit <http://www.abanet.org/> to see some of the recent activities of the association.

As some of you may know, I have recently been appointed as the ABA State Membership Chair for Minnesota. This position is focused on increasing the visibility of the ABA in the state as well as recruiting new members. As you can imagine, most membership initiatives are going to be directed towards New Lawyers and Law Students. I will be forming a committee to help in this endeavor so I may be asking for your help in the near future. If you have any interest in joining this committee please let me know. This committee will be a good platform to let the ABA know what you want from it as an organization and can serve to increase your own visibility at both the local and national level. Don't be shy!

Below, you will find a summary of the ABA Meeting that occurred in February 2009 and the House of Delegates meeting in particular. You will see that two Minnesotans were recognized (pages 2 and 6) and that a diverse set of resolutions were debated. If you have any questions or concerns about the issues debated or are simply curious about what issues may be on the horizon, please let me know, I would be happy to discuss these with you. Finally, if you are already an ABA member (or are thinking about it!) feel free to contact me to discuss your involvement. The ABA is a huge entity and there is a "home" in the association for everyone. I'm sure we can find a way for you to get involved and get noticed.

## REPORT ON THE ABA MIDYEAR MEETING

The 70<sup>th</sup> Midyear Meeting of the American Bar Association was held February 11-16, 2009, at the Sheraton Boston Hotel and Hynes Convention Center in Boston, Massachusetts. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a one day session and the proceedings of the ABA House of Delegates were made available via webcast. (This was a first!)

The Nominating Committee also met on Sunday, February 15, 2009, where a local judge from Minnesota made a great impression! The Nominating Committee sponsored a "Meet the Candidates" Forum. The following candidates seeking nomination at the 2010 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present: Wm. T. (Bill) Robinson III of Kentucky and H. William Allen of Arkansas (has since withdrawn from the race), candidates for President-Elect; Linda A. Klein of Georgia and David C. Weiner of Ohio, candidates for Chair of the House of Delegates; **Hon. Cara Lee Neville of Minnesota**, David S. Houghton of Nebraska and Pauline A. Weaver of California, candidates for Secretary; and Lucian T. Pera of Tennessee, candidate for Treasurer.

\*Judge Neville did a terrific job and is currently leading a talented pool of candidates for the position of Secretary of the ABA. Please offer her your support when you see her! (In my extremely biased opinion, there is no better qualified person for the position of Secretary and the Association will be greatly served by her nomination!)

## THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the "House") met on Monday, February 16, 2009, William C. Hubbard of South Carolina, presided as Chair of the House.

The Boston Police Department Honor Guard presented the colors. The Massachusetts State Police Pipes and Drums played the bagpipes after the colors were presented. The invocation for the House was delivered by Llewelyn G. Pritchard of Washington. 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. Chair Hubbard recognized Harper Estes, president of the State Bar of Texas, on a point of personal privilege in special recognition of Gibson Gayle of Texas who is serving his 50<sup>th</sup> year of consecutive service in the House. He spoke of his example as a servant leader, great Texan and great American. Mr. Gayle was recognized by the House with a standing ovation. He expressed pride in being a lawyer because of the integrity, dedication, selfless devotion to duty and public spiritedness of members of the House.

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. (page 10)

## **I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES**

### **Statement by the Chair of the House**

Chair Hubbard thanked the House for its dedication to the work of the House. He 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 expressed the goal that there would be 100% support for the FJE by the Chicago Annual Meeting, similar to 2 years ago.

He highlighted the work of the Legal Opportunity Scholarship fund which was started in 1999. It funds 15 scholarships of \$20,000 each to minority law students. 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 21-23, 2009 in Washington D.C. He also asked members to make a difference by talking to the legislators from their communities regarding justice issues.

Chair Hubbard announced there is a position open on the Committee on Scope and Correlation of Work which will be elected at the Chicago Annual Meeting. Nominations should be submitted to a member of the Committee by March 15, 2009.

Chair Hubbard reminded delegates that President-elect Lamm has established a process for presidential appointments which will close on March 2, 2009.

### **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 2008 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 and 177B, the Board's Informational and Legislative Priorities Reports.

Deceased members of the House were named and remembered by a moment of silence. Robert T. Gonzales of Maryland was recognized on a point of personal privilege to remember M. Peter Moser of Maryland, member of the House of Delegates and former Treasurer of the ABA.

## Statement by the ABA President

ABA President H. Thomas Wells, Jr. of Alabama greeted the House and expressed his honor to serve during the first meeting of the House of Delegates under the leadership of William Hubbard and his team. He recognized and thanked his wife Jan for her support and contributions.

President Wells reflected on the 200<sup>th</sup> anniversary of the birth of Abraham Lincoln as our greatest lawyer-president. He reminded delegates that this year's Law Day would celebrate Lincoln's legacy of liberty, thanked the Illinois State Bar Association for its gift of a bronze replica bust of Abraham Lincoln, Prairie Lawyer, and highlighted the upcoming remarks of Walter Dellinger on "America's Greatest Lawyer."

He reported on a recent Board of Governors' meeting in Birmingham, Alabama and the evolution of that city as a symbol of hope and peace in the area of civil rights. He urged the delegates to follow the example of the Association's Board of Governors and to sign the Birmingham pledge (authored by a Birmingham attorney). Signors pledge to remove prejudice and treat all people with respect.

Since his last remarks to the delegates in August 2008, he reported that the Association has continued to be faithful to the common core values of access to justice, independence of the bar and judiciary, diversity and the rule of law. But he also reflected on the changes in those intervening months. A new administration had brought new opportunities for the ABA to discuss core values and work together with the administration.

An economy that had worsened since August presents new challenges. He told the delegates that lawyers are called to lead in turbulent times. While lawyers are affected by the downturn, there is no better time to boost membership and highlight association resources available to all members.

He also said lawyers are called to make a positive difference in our society and highlighted four areas in which this was happening: Access to Justice, Independence of the Judiciary, Diversity and the Rule of Law.

Access to Justice – He recounted the efforts to ensure that IOLTA funds were fully insured by FDIC. He urged a renewed commitment to fundraising for legal services and access to justice. He detailed the plans for the National Pro Bono Celebration October 25-31 and ABA Day on April 21-23 as well as continuing efforts to support access to justice on the criminal side for public defenders, education for policy makers and standards for indigent defense. He reminded us that such efforts showcase our profession as one committed to improving the society we serve.

Independence of the Judiciary – He reviewed budget issues in the states that challenge the ability of state courts to deliver justice and described the National Summit on Fair & Impartial State Courts to be held May 7-9 in Charlotte, NC.

Diversity – He emphasized the shared commitment that our laws and

courts must be accessible to everyone including those who have been historically ignored or mistreated, going beyond race, ethnicity and gender, to also include sexual orientation, gender identity and those with disabilities. He detailed the plans for the National Diversity Summit in June this year in Washington, D.C.

Rule of Law – He reported on this indispensable component of our core values and described the work of the ABA in providing legal assistance and support in 40 countries in the world.

Finally, he reminded us that we must hold our core values regardless of our practice area, regardless of our political affiliation, regardless of who our clients are, in times of war and peace, in times of prosperity and impoverishment and in times of crisis and calm. This crucial work we do allows us to answer our proud calling as lawyers and makes a difference as a profession.

### **Statement by the Treasurer**

ABA Treasurer Alice E. Richmond of Massachusetts presented a PowerPoint presentation on the budget and also referred House members to her written report.

She reviewed the long term investment accounts, dues warehouse and operating results for 2007 and 2008. She recounted that since June 2008 long term investments have lost 31% of their value or \$57 million. She discussed the significance of this loss of value as it relates to the budget. She reviewed the effect on the employee pension portfolio that will require increased contributions. Last year, \$5 million was contributed and this year may require a contribution of twice that amount or more.

She suggested that the ABA should seek to increase revenues, both dues and non-dues revenue. She highlighted that non-dues revenue in the Sections of the Association is rising while the non-dues revenue of the Association itself is flat. She will be examining what the Sections are doing to see where non-dues revenue of the Association can be increased.

She showcased the changes to the ABA Journal, both print and on-line versions and its ad revenue. She reviewed the web page, the award it has won and increased ad revenues.

Treasurer Richmond reiterated her focus on non-dues revenue and urged delegates to patronize the Association's partners services and programs. She summarized her first months in a Winston Churchill quote – "success consists of going from failure to failure without loss of enthusiasm." She said the association has a strong financial foundation in place, and she is optimistic that we will find opportunity in difficult times.

### **Statement by the Executive Director**

Henry F. White Jr. of Illinois, ABA Executive Director and Chief Operating Officer spoke and focused on three areas: Communications, Finances and Membership.

Communications – A new monthly report has been developed for the Board of Governors including all ABA activities, finances and personnel. The section dealing with activities is also forwarded monthly to all entity chairs and chair-elects as well as the SOC and deans of all ABA law schools. Concurrently, a community website has been developed and hopefully its growth will enable the ABA to attract attention not only from the legal community at large but also from the general population.

Finance – Present trends suggest that the Association will conclude fiscal year 2009 with a surplus. However, fiscal year 2010 will present severe challenges as very preliminary and very conservative revenue numbers projected for fiscal year 2010 are down 10%.

Membership – The Association has commenced an unprecedented campaign for membership to instill the need for membership in the DNA of everyone associated with the ABA. The goal, with the use of outside consultants, will be to develop a plan of action creating a cohesive message emphasizing service to our members, improve our profession, eliminate bias and enhance diversity, and advance the Rule of Law.

In conclusion Mr. White advised that the ABA may look different structurally in a few years, but with the continued enthusiasm and support of its members, the ABA will maintain fidelity to its mission and goals and thrive in the future.

### **Report of the Nominating Committee**

The Nominating Committee met on Sunday, February 15, 2009. **As you will note, our very own Fred Finch has been nominated to the Board of Governors of the Association.** This is a very prestigious nomination. I'm sure everyone will congratulate Mr. Finch when they see him at local bar events! (The Minnesota State Delegation was honored to accompany Mr. Finch into the well of the House when his nomination was recognized.)

On behalf of the committee, James R. Silkenat of New York, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

### **MEMBERS OF THE BOARD OF GOVERNORS (2009-2011)**

#### **District Members**

District 3: Amelia H. Boss of Pennsylvania

District 5: Charles E. English, Sr. of Kentucky

***District 9: Frederick E. Finch of Minnesota***

District 14: Mark I. Schickman of California

District 15: Steven C. Krane of New York

District 16: G. Nicholas Casey, Jr. of West Virginia

District 17: C. Timothy Hopkins of Idaho

**Section Members-at-Large**

Criminal Justice Section

Neal R. Sonnett of Florida

Section of Environment, Energy and Resources

R. Kinnan Golemon of Texas

**Judicial Member-at-Large**

Hon. Leslie Miller of Arizona

**Minority Member-at-Large**

Mary L. Smith of Illinois

**Young Lawyer Member-at-Large**

Kendyl T. Hanks of New York

**OFFICER OF THE ASSOCIATION**

**President-Elect (2009-2010)**

Stephen N. Zack of Florida

**Remarks by President-Elect Nominee**

Chair Hubbard recognized Stephen N. Zack, President-Elect Nominee of the American Bar Association. Mr. Zack expressed appreciation for the confidence and support of the Nominating Committee. He paid special tribute to Chesterfield Smith as his mentor, his friend and his hero who he sat next to in the House of Delegates 30 years ago. He recalled the advice that Chesterfield Smith gave him then – what the House of Delegates does is important because it is the obligation of our profession and this House to speak truth to power.

He congratulated President Wells and President-Elect Lamm on their work this year. He thanked past ABA presidents, the Florida delegation and expressed a desire to live up to the example of past ABA presidents from Florida. He also thanked his firm and particularly his spouse, Marguerite, whom the House recognized.

He remarked that these are difficult times for all Americans and the legal profession. He said we will be challenged, our freedoms will be challenged and our rights will be challenged, and these will not be hypothetical situations. We know our rights are at stake when we see attacks on the judiciary and inadequate funding for the judiciary.

He recalled the importance of hope for his grandfather, even as they left Cuba on a dark day many years ago. His grandfather told him they would never be refugees again because if America fell, there would be no place else to go. He told delegates that when we preserve justice and defend liberty in the United States, we do so for the world.

He recounted that in 1960, the Cuban Constitution was identical to the United States Constitution. This tells us that a constitution is just words unless those words are understood, the obligations are accepted and the liberties are protected. He expressed concern for the lack of public knowledge of our Constitution and Bill of Rights. He called on delegates to demand that civics be taught in our schools so that the next generation understands our government and will be ready to defend our liberty.

Finally, he mentioned a number of great liberators in the United States and throughout the world and noted they had also been great lawyers. He assured delegates that they would have been members of our Association today as we defend liberty and preserve justice every day in every way.

### **Remarks on "America's Greatest Lawyer: Abraham Lincoln in Private Practice and Public Life"**

Chair Hubbard introduced Walter E. Dellinger III to speak on "America's Greatest Lawyer: Abraham Lincoln in Private Practice and Public Life." Mr. Dellinger is the Douglas B. Maggs Professor of Law at Duke University and head of the appellate practice at O'Melveny & Myers in Washington, D.C. He was acting solicitor general for the 1996-97 term of the United States Supreme Court. He argued nine cases before the Court, which were the most that had been argued by a solicitor general in a term in over 20 years.

Mr. Dellinger's thesis was that Abraham Lincoln was America's greatest lawyer and that his greatness was in significant measure due to his lawyering skills. Beginning with Mr. Lincoln's life on June 16, 1858, he detailed what Abraham Lincoln had done as a lawyer – handling more than 2000 cases, hundreds of cases in the Illinois Supreme Court and hundreds of cases in the federal courts later known as the 7<sup>th</sup> Circuit.

He recounted the techniques Abraham Lincoln used as a lawyer that he later used in public life: astonishing candor and directness, ability to persuade, dedication to accomplishment of an actual objective (as opposed to making points or showing oratory skills), the strategy of conceding points, the capacity to ignore non-essential points, reconceptualizing the issue and harmonizing deeply felt principles with personal humility and existential doubt. Mr. Dellinger asserted that no one better lived out the admonition – "hate the sin, but love the sinner" and illustrated these points with letters and events from Lincoln's life.

Mr. Dellinger detailed the speech that Mr. Lincoln gave to the state Republican party on June 16, 1858, showing how his views were different from Senator Douglas' views. What he did that day changed his life and the history of the country. He noted that Abraham Lincoln was the only person in national history to become a national figure, beginning with a speech analyzing a U.S. Supreme Court case.

After this speech, the Lincoln Douglas debates began in seven Illinois cities. Mr. Dellinger recounted the challenges facing Mr. Lincoln as he debated Mr. Douglas and the arguments he made to rebut each one. He recounted the final articulation of Lincoln's views in his 2<sup>nd</sup> inaugural speech where President Lincoln said the war would

not end without ending slavery, that 100,000 men of color had fought for the union, the country had promised freedom, and that a promise made is a promise kept.

He closed by describing the state of Mr. Lincoln's circumstances on June 16, 1858 and noted that he died just over 6 years later. In that short time, he changed the world.

### **Remarks on the "State of the State Courts"**

Chair Hubbard introduced the Honorable Margaret H. Marshall, President of the Conference of Chief Justices and Chief Justice of the Massachusetts Supreme Judicial Court.

The Chief Justice thanked President Wells and Chair Hubbard for the opportunity to address the ABA House of Delegates. She pointed out that justice issues led to the creation of the Conference of Chief Justices sixty years ago. She pointed out that this was the first time the president of the Conference had addressed the ABA House of Delegates and she thanked President Wells for his address to the Conference of Chief Justices earlier this year. She stated it was very important for the two organizations to join together this year because a strong state court system is critically important. Excluding bankruptcy filings, 384,000 cases were filed in the federal system. But there were 47.3 million non traffic cases filed in the state courts in 2007.

For two centuries, the country has benefited from the independence of the judiciary, but we should never take it for granted. She told the House that state courts are in a crisis and a perfect storm is coming because of 3 issues: inadequate funding, inability to provide access to all, and the single greatest threat which is politicization of the state judiciaries. She asked a question to the delegates – are we approaching the minimum level of funding below which state courts cannot efficiently operate?

She discussed the single greatest threat to judicial independency which is fairly modern and uniquely American – the flood of money coming into courtrooms by way of expensive and volatile judicial elections.

She told the House that the Conference of Chief Justices views the ABA as its staunchest ally and deeply appreciates the countless initiatives of local and state bar associations to support state courts. The Conference looks forward to the ABA's Conference on Fair and Impartial Courts scheduled for May this year.

She urged the delegates to stay the course, because as leaders, they are positioned to make a difference. She asked the House to be an advocate for merit based selections of judges and adequate compensation and asked for assistance in educating local communities.

She pointed out that lawyers possess the keys to justice and the courts and that our system depends on the equal commitment of judges and lawyers working together. She closed by telling the delegates that lawyers matter, constitutions matter, courts matter and asked the delegates to join in a campaign to remind our citizens of the importance of the judiciary.

## 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. (The greatest "buzz" revolved around Recommendations 109/110 involving the screening of lawyers when they change firms. This recommendation had been tabled from the last House meeting in August 2008 and everyone was eagerly awaiting the great debate that was sure to accompany the proposal. We were not disappointed as impassioned speeches were delivered by heavy hitters on both sides of the issue. As newer lawyers-those more likely to be changing firms-I'm sure that all of you will understand the importance of this issue. See page 11.)

### AMENDMENTS TO HOUSE RULES OF PROCEDURE

[11-1] Mark L. Schickman of California moved Recommendation 11-1 amending §45.2(d) of the House Rules of Procedure to clarify that the Committee on Rules and Calendar shall ensure that reports which accompany Reports with Recommendations conform with the final language of recommendations, if revised or amended by the House of Delegates. The proposal was **approved**.

[11-2] Hon. Pamila J. Brown of Maryland moved Recommendation 11-2 amending §45.2 of the House Rules of Procedure to provide that, where appropriate, all recommendations adopted by the House of Delegates which urge state legislatures, courts or bar associations to take action shall be understood to include legislatures, courts and bar associations of territories, tribes, local governments, the Commonwealth of Puerto Rico and the District of Columbia. Tom Bolt of the Virgin Islands and Robert L. Weinberg of Virginia spoke in support of the recommendation. The proposal was **approved**.

### ATTORNEY-CLIENT PRIVILEGE

[301] On behalf of the Section of Litigation, David C. Weiner of Ohio moved Recommendation 301 as revised supporting the right of participants in federal proceedings to take an immediate appeal from an order that rejects a claim of attorney-client privilege and on that basis requires the production of information or materials for which the privilege has been claimed. The recommendation was **approved as revised**.

### CRIMINAL JUSTICE

[101A] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Recommendation 101A urging Congress and state legislatures to re-examine and revise laws, policies and practices that require youth to register as sex offenders or be subject to community notification provisions otherwise imposed upon adult sex offenders, based upon a juvenile court adjudication. The recommendation was **approved**.

[101B] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Recommendation 101B as revised urging federal, state, territorial and local governments to initiate, continue and expand the use of mediation as a means to resolve criminal matters, specifically at a time prior to actual case filing. The recommendation was **approved as**

revised.

[101C] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Recommendation 101C supporting legislation and/or administrative standards to ensure due process and access to appropriate legal assistance for persons arrested or detained in connection with immigration enforcement actions and encouraging bar associations to raise awareness of the rights available to individuals taken into custody during workplace immigration enforcement actions. The recommendation was **approved**.

[101D] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Recommendation 101D urging federal, state, tribal, local and territorial governments to ensure that child victims of criminal conduct have prompt access to legal advice and counsel and to specialized services and protections such as those provided by child advocacy centers approved and accredited by the National Children's Alliance. The recommendation was **approved**.

### **ENVIRONMENTAL LAW**

[103] On behalf of Section of Environment, Energy and Resources, R. Kinnan Golemon of Texas moved Recommendation 103 urging law firms and other law organizations to adopt the ABA-EPA Law Office Climate Challenge. The recommendation was **approved**.

### **ETHICS AND PROFESSIONAL RESPONSIBILITY**

[109/110] On behalf of the Standing Committee on Ethics and Professional Responsibility, Robert H. Mundheim of New York moved Recommendation 109 as revised amending Model Rule of Professional Conduct 1.10 ("Imputation of Conflicts of Interest: General Rule") to permit the screening of a lawyer who moves laterally from one private law firm to another, so that conflicts of interest that apply to the moving lawyer under Model Rule 1.9 ("Duties to Former Clients") are not imputed to all the other lawyers in the new law firm. James M. McCauley of Virginia presented the minority report in opposition to Recommendation 109.

Lawrence J. Fox of Pennsylvania rose to a point of personal privilege to pay tribute to Robert Mundheim. Mr. Fox then moved to substitute Recommendation 110 as revised for revised Recommendation 109. Recommendation 110 would amend Model Rule of Professional Conduct 1.10 ("Imputation of Conflicts of Interest: General Rule") and related Comments by adding new subsections to permit certain lawyers whose participation was not significant and who did not learn material confidential information to go to work for an adversary law firm without client consent so long as the transferring lawyer is screened and provides appropriate certification of compliance with the screen. C. Elisia Frazier of Tennessee, Robert P. Collings of Massachusetts, John T. Berry of Florida and Timothy W. Bouch of South Carolina spoke in favor of the motion to substitute. Paula E. Boggs of Washington, Albert C. Harvey of Tennessee, Abraham Charles Reich of Pennsylvania, H. Thomas Wells, Jr. of Alabama and T. Maxfield Bahner of Tennessee spoke in opposition to the motion to substitute.

Clifford E. Haines of Pennsylvania moved the previous question on the motion to substitute and the House approved the motion to close debate on the motion to substitute. The House **defeated** the motion to substitute Recommendation 110 for Recommendation 109.

The House proceeded to consider revised Recommendation 109. Elizabeth A. Alston of Louisiana moved to amend Recommendation 109. Diane L. Karpman of California spoke in favor of the motion to amend. Albert C. Harvey of Tennessee spoke in opposition to the motion to amend. The motion to amend Recommendation 109 was defeated.

Carolyn B. Lamm of the District of Columbia spoke in favor of Recommendation 109. Joanne A. Epps of Pennsylvania and Lawrence J. Fox of Pennsylvania spoke in opposition to Recommendation 109. It should be pointed out that the ABA Young Lawyers Section had voted on this issue previously (during the YLD meeting in New York, August 2008) and bound the section's delegates to the ABA House to vote in favor of the resolution.

The recommendation was **approved as revised**.

#### FAMILY LAW

[106] On behalf of the Section of Family Law, Timothy B. Walker of Colorado moved Recommendation 106 opposing the enactment of federal legislation that would create a federal-question jurisdiction in child custody cases, including cases involving servicemember-parents and urging states to enact legislation prohibiting denial of child custody to a servicemember based solely on absence due to military deployment. The recommendation was **approved**.

#### INDIVIDUAL RIGHTS AND RESPONSIBILITIES

[108] On behalf of the Section of Individual Rights and Responsibilities, Mark D. Agrast of the District of Columbia moved Recommendation 108 supporting the enactment of legislation and the implementation of public policy to enable a United States citizen or lawful permanent resident who shares a mutual, interdependent, committed relationship with a non-citizen of the same sex to sponsor that person for permanent residence in the United States. Robert E. Juceam of New York spoke in favor of the recommendation. The recommendation was **approved**.

#### JUDICIARY

[112] The House **approved by consent** Recommendation 112 as submitted by the Judicial Division urging the Office of Personnel Management as part of its mandate to select the best qualified candidates for federal administrative law judge positions, to consider judicial status in good standing as a satisfactory alternative to any requirement that candidates be active licensed attorneys in good standing.

[113] On behalf of the Standing Committee on Judicial Independence, William K. Weisenberg of Ohio moved Recommendation 113 urging state, local and territorial bar associations and the highest court of each state to establish, for those who have an interest in serving in the judiciary, a voluntary pre-selection/election program designed to provide individuals with a better appreciation of the role of the judiciary and to assist them

in making a more informed decision regarding whether to pursue a judicial career. The recommendation was **approved**.

### LAW AND AGING

**[111A]** The House **approved by consent** Recommendation 111A as submitted by the Commission on Law and Aging encouraging the federal government to provide funding and support for training, research, exchange of information on practices, consistent collection of data, and development of state, local and territorial standards regarding adult guardianship.

**[111B]** On behalf of the Commission on Law and Aging, Joseph D. O'Connor, Jr. of Indiana moved Recommendation 111B as revised opposing the use of mandatory, binding, pre-dispute arbitration agreements between a long-term care facility and a resident of such facility or person acting on behalf of such resident, and opposing legislation and regulations that would authorize, encourage or enforce such agreements. David M. English of Missouri spoke in favor of the recommendation. Jonathan J. Cole of Tennessee spoke in opposition to the recommendation. The recommendation was **approved as revised**.

### LEGAL EDUCATION

**[100]** The House **approved by consent** Recommendation 100 as submitted by the Standing Committee on Paralegals granting approval, reapproval and the extension of the term of approval to several paralegal education programs.

### LITIGATION

**[10C]** On behalf of the Ohio State Bar Association, Kathleen B. Burke of Ohio moved Recommendation 10C opposing the Sunshine in Litigation Act of 2007 (S 2449) on other legislation that would impose similar requirements of burdens for entering or modifying protective orders beyond those in Federal Civil Rule of Procedure 26(c). The recommendation was **approved**.

### MILITARY LAW

**[114]** On behalf of the Standing Committee on Legal Assistance for Military Personnel, Lora J. Livingston of Texas moved Recommendation 114 urging Congress to amend the federal Servicemembers Civil Relief Act (the SCRA) to clarify that a private right of action exists under the SCRA and to provide that a prevailing plaintiff in such an action may recover reasonable attorney's fees. James F. Williams of Washington spoke in favor of the recommendation. The recommendation was **approved**.

### RULE OF LAW

**[10A]** On behalf of the New York State Bar Association, Fernando A. Bohorquez, Jr. of New York moved Recommendation 10A as revised urging U.S. courts to grant to detainees all rights granted to habeas petitioners consistent with Federal statutory habeas criminal law principles where applicable, appropriate to the facts and circumstances of that

petitioner's case. Albert C. Harvey of Tennessee moved to postpone indefinitely consideration of the recommendation. M. Joe Crosthwait, Jr. of Oklahoma and G. Judson Scott Jr. of California spoke in favor of the motion to postpone indefinitely. Neal R. Sonnett of Florida, Mark D. Agrast of the District of Columbia and Stephen A. Saltzburg of the District of Columbia spoke in opposition to the motion to postpone indefinitely. Armando Lasaferrer of Puerto Rico moved the previous question on the motion to postpone indefinitely and the House approved the motion to close debate on the motion to postpone indefinitely. The motion to postpone indefinitely was defeated. The recommendation was **approved as revised**.

### SOCIAL SECURITY

[10B] On behalf of the Connecticut Bar Association, Livia DeFilippis Barndollar of Connecticut moved Recommendation 10B urging Congress to enact legislation amending Title 28, of the United States Code, to provide for the direct payment of attorney fees and costs to the attorney representing a prevailing party in certain Social Security Disability Insurance and Supplemental Security Income claims. David M. English of Missouri spoke in support of the recommendation. The recommendation was **approved**.

### SPECIALIZATION

[104] The House **approved by consent** Recommendation 104 as submitted by the Standing Committee on Specialization reaccrediting the Juvenile Law – Child Welfare program of the National Association of Counsel for Children in Denver, Colorado and extending accreditation of the Family Law Trial Advocacy program of the National Board of Trial Advocacy, a division of the National Board of Legal Specialty Certification of Wrentham, Massachusetts, as designated specialty certification programs for lawyers.

### STATE AND LOCAL GOVERNMENT LAW

[105] On behalf of the Section of State and Local Government Law, Kenneth W. Bond of New York **withdrew** Recommendation 105 urging Congress to enact and the President to sign legislation that would allocate general revenue sharing funds to the several states of the United States of America and their respective local governments and political subdivisions by applying certain standards.

### TORT TRIAL AND INSURANCE PRACTICE

[107A] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas gave an overview of Recommendations 107A-G and moved Recommendation 107A recommending federal, state and territorial governments to enact legislation with appropriate funding that would eliminate any prohibitions or restrictions on participants in the private insurance and reinsurance markets from making available broadened insurance protection for property damage arising from storms, including damage from wind, wind-driven rain and flood caused by storm surge, but excluding damage arising from other types of floods. Frank X. Neuner, Jr. of Louisiana William C. Trotter III of Mississippi and David S. Houghton of Nebraska spoke in support of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was **approved**.

[107B] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107B urging Congress to address the consequences of natural catastrophes by strengthening the financial infrastructure and developing programs that increase availability of affordable insurance in areas highly-exposed to catastrophes, while not competing with the private market. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was **approved**.

[107C] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107C as revised urging the federal government to take steps to encourage capital markets to finance catastrophic risks by: a) undertaking a study through the U.S. Treasury Department to determine what changes in federal laws and regulations would reduce barriers to the issuance of catastrophe (CAT)-linked securities in the United States; and b) enacting legislation as needed to encourage the issuance of catastrophe (CAT)-linked securities. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was **approved as revised**.

#### TORT TRIAL AND INSURANCE PRACTICE (cont.)

[107D] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107D as revised urging the federal government to address the liquidity needs of individuals and businesses in the aftermath of future natural catastrophes to reduce some of the losses by residents affected by the catastrophes. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was **approved as revised**.

[107E] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107E urging state, territorial and local governments to use specific tools to mitigate losses from future mega-catastrophes to ensure the ongoing availability and affordability of insurance for natural disasters. J. Anthony Vittal of California spoke in support of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was **approved**.

[107F] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107F as revised urging the federal government to use specific tools to mitigate losses from future mega-catastrophes by influencing building codes and land-use in certain situations. William C. Trotter III of Mississippi spoke in favor of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was **approved as revised**.

[107G] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107G as revised recommending state and territorial governments to adopt standards for handling residential and small business insurance claims for property damages resulting from hurricanes or storms. Frank X. Neuner, Jr. of Louisiana spoke in favor of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was **approved as revised**.

## UNIFORM STATE LAWS

**[102A]** The House **approved by consent** Recommendation 102A as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Unsworn Foreign Declarations Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

**[102B]** The House **approved by consent** Recommendation 102B as submitted by the National Conference of Commissioners on Uniform State Laws approving the Revised Uniform Unincorporated Nonprofit Association Act (2008), promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

**[102C]** The House **approved by consent** Recommendation 102C as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Common Interest Owners Bill of Rights Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

**[102D]** The House **approved by consent** Recommendation 102D as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Common Interest Ownership Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

**[102E]** The House **approved by consent** Recommendation 102E as submitted by the National Conference of Commissioners on Uniform State Laws approving the 2008 Amendments to the Uniform Interstate Family Support Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

## VOTING RIGHTS

**[10D]** On behalf of the Bar Association of the District of Columbia, Robert L. Weinberg of Virginia moved Recommendation 10D urging the House and the Senate to complete enactment of legislation, such as S. 160 granting a vote to the Representative from the District of Columbia in the House of Representatives, expeditiously during the current session of Congress. The recommendation was **approved**.

## Closing Business

At the conclusion of the meeting of the House on Monday, February 16, Chair Hubbard thanked the House for its hard work and invited the House to a reception hosted by the Florida Bar to honor ABA President-elect Nominee Stephen N. Zack of Florida.

Robert A. Clifford of Illinois was recognized to make a presentation to delegates regarding the 2009 Chicago Annual Meeting. An appearance by Abraham Lincoln was a

highlight of the presentation and included a feature on a number of famous Illinoisans, including the President of the United States.

Hon. Pamila J. Brown of Maryland moved a resolution in appreciation of the Massachusetts lawyers and judges, Special Advisor Roy A. Hammer of Massachusetts and the Massachusetts Bar Association for their work in hosting the meeting. The motion was **approved**.

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