

## **BAR WATCH BULLETIN - MONDAY, AUGUST 8**

We report live today from the ABA Meetings in Toronto.

### **Ted Olson and David Boies Co-Awarded ABA Medal**

Ted Olson and David Boies were jointly awarded the ABA Medal, the Association's highest honor, during Monday's House of Delegates proceedings. It was the first time the medal had been jointly awarded. Olson and Boies serve as co-chairmen for the ABA Task Force on Preservation of the Justice System. Stephen Zack, outgoing ABA President, presented the award, stating that "Together they [the honorees] can only be described as a force of nature." Zack praised their honesty, integrity, and civility, and he alluded to their opposition on the *Bush v. Gore* litigation as demonstrative of those traits.

Boies remarked that there was "no greater honor a lawyer could have" than this award. He stated the legal profession faced many challenges, and lawyers should reinvigorate themselves. He hoped they could make society more "just, fair, and democratic." Olson discussed civility, and noted it is in the constitution of the ABA that respect and congeniality is required for one another, the courts, the rule of law, and the legal profession. He endorsed passage of Recommendation 302 to raise awareness of judicial budget cutbacks, as "Justice is in jeopardy." Olson briefly mentioned his work with Boies, including the California Proposition 8 case. He expressed his admiration for Boies, and noted it was a pleasure to work with him.

### **Remarks by Stephen Zack, ABA President**

ABA President Stephen Zack addressed the ABA House of Delegates on Monday morning. Zack discussed that increasing "value" and "visibility" had strengthened the Association and stabilized membership. A new telemarketing campaign increased membership by 13,000 members, and 5,000 additional members were attracted through a second campaign. The Student, Judicial, and Solo and Small Firm Divisions all increased their membership. Dues collection will exceed its projections by \$2 million. However, membership dues are nearly \$10 million less than where they were four years ago.

Zack discussed his presidential initiatives and how the ABA would "get in the way" of policies against its mission, such as defunding the LSC or U.S. Presidential policies that would violate the constitution. He noted that the 10% vacancy rate on the federal bench was "unacceptable," and called for greater resources for state courts. Zack stated, "We must continue to get in the way of all those who want to close our courts and stand up for the rest of America as it is our obligation to do so." He also emphasized the need for increased civics education. He praised the work of the Commission on Hispanics Rights and Responsibilities and called for increased diversity in the legal profession. He spoke against racial profiling and ending birthright citizenship. He also discussed the "Katrina Rule" to enable lawyers to temporarily practice outside their states in the event of disaster.

### **Bill Robinson Assumes ABA Presidency**

Bill Robinson assumed the ABA Presidency on Monday afternoon. Robinson announced he would be continuing Stephen Zack's presidential initiatives. He complimented the ABA's work on immigration, financial services, and diversity. In particular, he emphasized, "Diversity must continue to be of importance to everyone in this organization...Diversity enhances all of us, individually and as an association."

He addressed membership declines, stating that recent surveys consistently revealed that lawyers believe the ABA has done a fine job promoting the rule of law, but it is not offering compelling reasons to become members.

Robinson endorsed the work of the Task Force on Preservation of the Justice System, and he noted that this issue gives the ABA the ability to demonstrate it can make a difference.

### **House of Delegates Action**

Recommendation 10A, sponsored by the Bar Association of the District of Columbia and two other committees, urged "applicable governmental entities to take all appropriate measures to ensure that the National Criminal Instant Background Check System (NICS) is as complete and accurate as possible." The January 8 Arizona shootings, which injured Representative Gabrielle Giffords, were cited as a reason why this policy was needed. Cynthia Orr of the National Association of Criminal Defense Lawyers spoke in opposition to the recommendation because it could create unintended consequences by allowing prohibited persons to slip through loopholes. She also cited concerns that people would be placed on the list that did not belong on it. The recommendation was adopted.

Resolution 11-1, sponsored by Edward Haskins Jacobs VI, proposes a constitutional amendment to include language "to defend the right to life of all innocent human beings, including all those conceived but not yet born." Jacobs stated that a fundamental problem in the United States is that the unborn are voiceless and do not have anyone advancing their views. The motion was postponed indefinitely.

Recommendation 102, proposed by the National Native American Bar Association (NNABA) and the Center for Racial and Ethnic Diversity, along with eight other cosponsors, "urges the Law School Admissions Council and ABA-approved law schools to require additional information, including Tribal Citizenship, Tribal affiliation or enrollment number, and/or a 'heritage statement', from individuals who indicate on their applications for testing or admission that they are Native American." Mary Smith of the NNABA framed the issue as "box checking," and this creates ethical concerns. She stated that it is also a pipeline issue because the number of American Indian attorneys is over-represented by ABA statistics due to false "box checking." The recommendation was passed.

Recommendation 103B, proposed by the Commission on Youth at Risk, "urges Congress to modify immigration laws to take into account the best interests of minor children who may be affected by a parent, legal guardian, or primary caregiver's immigration detention or removal." Laura Farber of the sponsoring Commission stated that 30% of children in immigrant families lack at least one legal parent, although many of these children are American born. Deportation

leaves “severe consequences” for these children. Data should be collected to determine the extent of the problems. The recommendation was adopted.

Recommendation 104B, proposed by the Section of Administrative Law, “urges Congress to update and strengthen federal lobbying laws by requiring fuller reporting of lobbying activities, forbidding certain conflicts of interest, and providing for more effective enforcement of the Lobbying Disclosure Act of 1995.” Randolph May of the Section noted that the lack of transparency that surrounds much of the lobbying process raises questions, and this recommendation would seek to shed light on some of the ambiguities and promote disclosure. The recommendation was adopted.

Recommendation 105A, proposed by the Criminal Justice Section and the Commission on Immigration, “urges the U.S. Sentencing Commission to complete a comprehensive assessment of the guidelines for child pornography offenses, to ensure that those guidelines are proportional to offense severity, and adequately take into consideration individual culpability and circumstances.” Steve Saltzburg of the Criminal Justice Section noted that mandatory minimums have resulted in longer sentences, and that sentencing guidelines need to be reexamined to see if they make sense. Saltzburg related that many judges have questioned the guidelines. Former ABA President Martha Barnett spoke in opposition, contending that the nature of criminal child pornography required strong sentences. She stated that guidelines were not strict enough. Bill Shepherd of the Criminal Justice Section spoke next, noting that he had prosecuted many of these kinds of cases. He said the recommendation did not call for anyone to condone this behavior, but to look at some areas of sentencing to determine if the amounts were appropriate. He pointed out that minimum recommended sentences could be even shifted upward as a result of the study. The recommendation was adopted with opposition.

Recommendation 107, sponsored by the Standing Committee on Judicial Independence, “urges states to establish clearly articulated procedures for judicial disqualification determinations and prompt review of denials of requests to disqualify a judge.” William Weisenberg, chairman of the Committee, introduced the resolution. He stated that the underlying principle is that no one should be a judge in his or her own case. It addresses problems found in states with judicial elections, and he noted that 80% of the public perceives that campaign support influences the decision-making ability of judges. The conference of chief justices also recognizes this problem and adopted its own judicial disqualification policy. The recommendation was adopted without opposition or debate.

Recommendation 302, sponsored by the Task Force on Preservation of the Justice System, “urges state, territorial, and local bar associations to document the impact of funding cutbacks to the judicial systems in their jurisdictions, to publicize the effects of those cutbacks to create coalitions to address and respond to the ramifications of funding shortages to their justice systems.” The recommendation was unanimously adopted.

Recommendation 111A, proposed by the Young Lawyers Division, “urges Congress to enact legislation that assists individuals who are experiencing financial hardship due to excessive levels of student loan debt but are not covered by the provisions of the student loan overhaul passed into law on March 30, 2010.” Keri-Ann Baker of the Young Lawyers Division

acknowledged that she had assumed too much student loan debt. She stated it will affect her future family life and her career choices. She proposed that more latitude and repayment terms be extended to law student debt, particularly for public interest lawyers. Alyssa Ehrlich, a Young Lawyers delegate, also noted the decreasing number of jobs and salaries offered to graduates. The recommendation was adopted.

Recommendation 111B, sponsored by the Young Lawyers Division, “urges all ABA-approved Law Schools to report employment data that identifies whether graduates have obtained full-time or part-time employment within the legal profession, whether in the private or public sector, or whether in alternative professions and whether such employment is permanent or temporary.” David Wolfe, chair of the Young Lawyers Division, stated that recent media accounts have shed light on the real employment data and cost for attending law school. The Division has termed it the “truth in law school education resolution.” The recommendation was adopted.

Recommendation 113A, sponsored by the Section of International Law, “opposes federal or state laws that impose blanket prohibitions on consideration or use of foreign or international law and opposes federal or state laws that impose blanket prohibitions on consideration or use of the entire body of law or doctrine of a particular religion.” The sponsor referenced the Oklahoma law on sharia law as an example of this. He described this as “bad public policy,” and these kinds of laws violate the United States constitution. The recommendation was adopted without debate.

Recommendation 115, sponsored by the Standing Committee on Gun Violence, “supports federal, state, territorial and local laws that give law enforcement authorities broad discretion to determine whether a permit or license to engage in concealed carry should be issued in jurisdictions that allow the carrying of concealed weapons, and opposes laws that limit such discretion by mandating the issuance of a concealed carry permit or license to persons simply because they satisfy minimum prescribed requirements.” David Pasternak of the Standing Committee of Gun Violence spoke in favor of the resolution. The recommendation “is to defeat and discourage gun violence.” He invoked the January Arizona shootings, and he mentioned that Arizona had loosened its restrictions on concealed weapons before the incident. The recommendation was adopted with only a small amount of opposition.