

BAR WATCH BULLETIN - TUESDAY, AUGUST 9

Reporting live from the ABA Meetings in Toronto.

House of Delegates

Recommendation 10B, proposed by the New York State Bar Association, “recommends that law schools, law firms, law examiners, CLE providers and others concerned with continued professional development provide the knowledge, skills, values, habits and traits that make up the successful modern lawyer.” Stephen Younger, who introduced the recommendation, said the New York State Bar had established a task force to assess the state of the legal profession. Its findings questioned whether young lawyers were properly equipped to enter the legal profession. The task force recommended that there should be an enhanced emphasis on practice-ready young lawyers. The Task Force worked with the Young Lawyers Division to formulate its recommendations. Pauline Schneider of the Section of Legal Education spoke “in opposition” to the recommendation, although she admitted that the Section took no position on it because the Section did not have an opportunity to review this late-filed recommendation. Many schools have clinical programs to help students be ready to practice law, though she acknowledged that not all schools had sufficient resources. She acknowledged that in these economic times, law schools may need to provide even greater opportunities. The Section is reviewing standards to accommodate the practice and the environment in which students are graduating in today. Schneider reminded the delegates that the Section is the recognized accrediting body for American law schools, and that the Department of Education, which accredits the Section, insists that it is separate and independent from the ABA. The Section, thus, is careful not to be viewed as “captive” of the ABA. She urged delegates to consider whether this recommendation is appropriate to adopt. Vincent Doyle from the New York Bar insisted the recommendation is appropriate and had been carefully vetted. The recommendation was adopted with some opposition.

Recommendation 300, proposed by the Commission on Civic Education in the Nation’s Schools, “recommends that state, local, and territorial bar associations urge state and local legislatures, education commissions and school boards to mandate civic education classes/courses in elementary, middle and secondary public schools.” Paulette Brown, co-chair of the Commission, introduced the recommendation and noted the Commission had confirmed that civics education had nearly disappeared from the curriculum of high school students, largely as a result that it would not appear on standardized tests. The recommendation was adopted.

Recommendation 303, proposed by the Commission on Hispanic Legal Rights and Responsibilities and at least nine other cosponsors, urges “Congress to reject any resolution proposing an amendment to the United States Constitution that would alter, in any way, the granting of United States citizenship under the Fourteenth Amendment to any persons born in the United States (including territories, possessions and commonwealths) based upon the citizenship or immigration status of one or both parents at the time of the person’s birth.” Cesar Alvarez, chair of the Commission, spoke in favor of the recommendation. He briefly discussed the work of the Commission and related he was “shocked” at the findings of its public hearings: that there is an “unprecedented,” concerted effort in parts of the country to target and discriminate against

Hispanics. According to Alvarez, the status of Hispanics has deteriorated in this country, and the ABA needs to educate people on the negative branding of Hispanics and Latinos. He did not address any specifics of the recommendation. Tom Saenz of the Commission also spoke, and he said that immigration is exploited to demonize the Latino community. This proposal responds to an “extreme” effort to change the Citizenship Clause of the Constitution. It is “arduous and divisive” to attempt to change this Clause. No one spoke in opposition to the recommendation. The recommendation was adopted.

Delegates Robert Gaudet, Jr., Royce Murray, Heather Hodges, Joseph Federici, Benjamin Davis, Brant McGee, and Sharon Payant sponsor Recommendation 305, which “encourages the European Commission (EC) to adopt rules allowing for class actions within the 27 Member States.” Benjamin Davis of the International Law Section introduced the recommendation, and he urged its adoption. The EC is currently considering whether it should adopt class actions. According to the report accompanying the recommendation, “The experience of the United States with class actions is very fruitful. Class actions provide greater access to justice for people who would not otherwise be able to bring their claims, e.g. as in discrimination cases such as *Brown v. Board of Education of Topeka*.” He stated that the problems are with the characterization of the class action as a tool for collective redress; not whether this is plaintiff or defense-friendly. He acknowledged that there are concerns that this recommendation is being “steam-rolled.” Davis maintained that class actions are a “normal, healthy part of the American system.” Davis refuted the International Law Section’s comments, submitted in April under ABA Blanket Authority, stating “class actions may result in the involuntary coercion of defendants into settlement.”

The recommendation’s report contended, “Empirical research demonstrates that defendants are *not coerced into settlement* at all...The comments of the Section of International Law did not cite any empirical research, and they do not adequately reflect the views of all lawyers in the Section, or of the victims, consumers, and others who desperately need the kind of access to justice that only class actions can provide. The comments presented a strong pro-defense firm bias. They were not balanced with a perspective that was sympathetic to consumers, victims, or other plaintiffs.”

Michael Byowitz from the International Law Section spoke in opposition. He stated that Davis mischaracterized the Section’s consideration. Anti-trust class action is controversial in the United States, and both plaintiff and defense counsel were represented in discussions. Section comments were balanced and acknowledged divergent views.

Delegate Joseph Krauss from the Section of Antitrust Law moved to postpone the recommendation indefinitely. He noted that the report acknowledges that the commentary period for the EU ended in April, and there had been sufficient time to submit comments. The characterization by delegate Davis of the comments as “pro-defense” is false. Davis opposed the motion and refuted the charges.

The motion was postponed indefinitely with some opposition.

ABA President-Elect Laurel Bellows

ABA President-Elect Laurel Bellows, who previously served as ABA Chairman of the House of Delegates, addressed the House on Tuesday morning. She credited previous ABA presidents Carolyn Lamm and Steve Zack for helping to set the agenda and priorities for the Association.

She stated, “We are a nation of laws, and not of men and women... We matter because we have a proud tradition that stretches back to our founders and framers. We understand that democracy is fragile and we understand what the Declaration of Independence affirms: we have been endowed with inalienable rights, among them life, liberty and the pursuit of happiness.”

According to Bellows, priorities of the legal profession include stopping trafficking of women and children, changing legal education to better understand clients, proposing national legislation to ensure national security and to retain rights to privacy, to secure trial by jury, to protect judicial independence, and to speak out against inequality. She declared, “I must say that this country is finally having a conversation against racial and ethnic bias, although there is less of a conversation about gender diversity.”

Bellows concluded, “We are responsible for assuring that our laws are fair, that the application of our laws are fair, that our institutes of justice are accessible. So I ask you to join me and make America a place where the strong are more just and the weak are more secure... Will you stand with me for a better America now?”

Other News from the Meeting

- ABA legislative priorities include full funding and reauthorization for the Legal Services Corporation; reauthorization of the Violence Against Women Act; federal sentencing reform; increased indigent defense funding; and passage of the Employment Non-Discrimination Act and Paycheck Fairness Act. The Association continues to oppose “federal measures that would interfere with the ability of victims to obtain redress for their injuries, such as caps on economic damages and pain and suffering awards.” Regarding federal judicial nominations, the ABA maintains, “The current pace of confirmations, which is barely keeping up with the rate of attrition, is inadequate for the job.” The ABA “continues to urge both the Administration and the Senate to engage in a concerted and sustained effort to expedite the process.”
- While the ABA has not taken a position regarding a judicial ethics code for Supreme Court justices, the ABA observes, “Persistent concern over the lack of transparency in the recusal process for justices of the U.S. Supreme Court and renewed accusations of ethical impropriety have led to the introduction of legislation that would establish recusal standards for, and apply the Judicial Code of Conduct to, the U.S. Supreme Court.” The Government Affairs office “is carefully monitoring this volatile issue.”
- The BOG approved a request of the Commission on Sexual Orientation and Gender Identity to offer an annual Stonewall Award.
- Membership in the ABA continues to decline, though the rate of deceleration is slowing. There was a 1% decline in ABA membership this past year.
- About 30% of ABA members have opted out of receiving ABA emails.
- Bloomberg will highlight a number of ABA publications on its new legal site.