ABA WATCH

AUGUST 2008

Recommendations on Racial Profiling, International Criminal Court, and Medical Care To Be Considered at ABA Annual Meeting

The American Bar Association's House of Delegates will consider a number of resolutions at its annual meeting in New York City on August 11 and 12. If adopted, these resolutions become official policy of the Association. The ABA, maintaining that it serves as the national representative of the legal profession, may then engage in lobbying or advocacy of these policies on behalf of its members. What follows is a summary of these proposals.

Medical Care

Recommendation 117B, proposed by the Individual Rights and Responsibilities Section, urges the ABA to oppose "all federal, state, and territorial legislation and policies that interfere with a medical provider's ability to recommend and provide, with the patient's informed consent, medical procedures that, in accordance with reasonable medical judgment, best protect the patient's health."

The recommendation is offered in light of recent legislative attempts "to interfere with a patient's ability to receive medically appropriate care." The Terri Schiavo case and *Gonzales v. Carhart* are offered as examples of such attempts. The sponsor notes, "The *Carhart* decision marked the first time that the Court has ever held that physicians can be prohibited from using an otherwise lawful medical procedure deemed necessary by the physician to benefit the patient's health." While the recommendation "does not categorically oppose Congressional authority to outlaw specific medical procedures…it argues that whatever authority Congress (or any governmental entity) may have, it should not be exercised in ways that harm the health of patients." The sponsor emphasizes in the recommendation's accompanying report, "The legal and ethical principles at the foundation of the recommendation are well-settled and not controversial."

In providing a historical and legal context for this recommendation, the sponsor details the U.S. Supreme Court decisions that legalized abortion, clarified the right to privacy, and affirmed the right of physicians to use their "medical judgment for the preservation of the life or the health of the mother." The

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The American Bar Association and Gun Control

The American Bar Association, under the auspices of its Special Committee on Gun Violence, has actively promoted gun control in its lobbying on Capitol Hill and in its proposals before the ABA House of Delegates. In early 2008, the Association's *amicus brief* in *District of Columbia v. Heller* called for the reversal of the D.C. Circuit decision to end the Washington, D.C. gun ban and affirmation of the individual right to bear arms.

ABA Watch offers an overview of the ABA's policies and lobbying efforts concerning gun control and discusses what actions may be taken in light of the decision in *Heller.*

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INSIDE

FROM THE

EDITORS

In its mission statement, the American Bar Association declares that it is the "national representative of the legal profession." And, not surprisingly, as the largest professional legal organization in the world, many policy makers, journalists, and ordinary citizens do in fact look to the ABA as a bellwether of the legal profession on matters involving law and the justice system. This is why debate about the work and the activities of the ABA—and the role that it plays in shaping our legal culture—is so very important.

ABA WATCH has a very simple purpose—to provide facts and information on the Association, thereby helping readers to assess independently the value of the organization's activities and to decide for themselves what the proper role of the ABA should be in our legal culture. We believe this project is helping to foster a more robust debate about the legal profession and the ABA's role within it, and we invite you to be a part of this exchange by thinking about it and responding to the material contained in this and future issues.

In this issue, we offer an overview of the ABA's policy on gun control, offered in light of the recent decision in the *Heller* case. We also discuss an ethical issue concerning attorneys fees by the ABA Standing Committee on Ethics and Professional Responsibility considered last Fall. We also profile several of the award winners at the ABA's Annual Meeting. And, as in the past, we digest and summarize actions before the House of Delegates.

Comments and criticisms about this publication are most welcome. You can email us at info@fed-soc.org.

Attorneys Fee Negotiations

Last Fall, twenty leading ethics professors, from across the ideological spectrum, submitted a letter to the ABA's Standing Committee on Ethics and Professional Responsibility regarding the propriety of direct attorney negotiation of contingency fees with settling defendants. Since its founding, "the Ethics Committee has focused its efforts on the development of model national ethics standards and the drafting of definitive ethics opinions interpreting and applying those standards. In 1984 it undertook an effort to encourage nationwide adoption of a new set of ethics rules, the Model Rules of Professional Conduct."

The letter proposed that the Committee issue a Formal Opinion to establish a per se ban on direct negotiation with settling defendants in the absence of statutory authorization. They maintain that the Model Rules of Professional Conduct, as the governing set of ethical standards in over forty states, call for this ban or, alternatively, require steps to curb the most ethically questionable dangers by allowing clients or classes ways to assess the ethical propriety of the attorneys' fees or to challenge fees before a suitable forum.

The most relevant model rules, as listed by the letter's signatories, are:

- 1.5(a), which bars "unreasonable" fees;
- 1.7, stating, "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest;" and
- 1.8, providing: "(f) A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; and (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship.

The authors use the example of the tobacco settlement to demonstrate why ABA Committee action is required, declaring, "We believe it clear that in many of the State proceedings the fees paid to plaintiffs' counsel were excessive if not literally shocking and in violation of the fiduciary standard of reasonableness set forth in Rules 1.5 and 1.8 of the Model Rules—both in terms of appearances and realities. Thus, the inhibitions and effective barriers against ethics reviews contained in the [tobacco] agreement—their provisions inhibiting judicial review of the fees and their companion provisions calling for unethically excess fees be remitted to the defendant tobacco companies—make the need for ethics rules and monitoring and, in our view, for Committee action, manifest and compelling."

According to the signatories, "We submit that such guidance is necessary to ensure that client rather than attorney interests remain at the heart of all representations, that fiduciary standards apply to such representations, and that the process of enforcing legal ethics and fiduciary standards will become serious and operational."

Professor Lester Brickman of Cardozo School of Law, a signatory to the letter, expanded on these points in a

September 25, 2007 op-ed in the *Wall Street Journal.* He asserts there are serious ethical issues involved, writing, "When lawyers negotiate their fees directly with a settling defendant, bypassing their client, they are at grave risk of violating a fundamental premise of the legal system: that lawyers owe clients their undivided loyalty and the obligation to always act in their clients' best interests." Professor Brickman maintains that these provisions often bypass judicial review; the attorneys argue in court that objections to the privately negotiated fees should be dismissed because the reduction in the fee would only benefit the defendant, not the plaintiffs.

Professor Brickman argued that the bar holds a critical place in curbing this practice. He wrote, "The failure of the legal profession to enforce its ethical rules and lawyers' fiduciary obligations is an indelible indictment of the bar's claim to self-regulation based on its acting in the public interest. The need for ethical guidance is thus clear and compelling, and the body that has the chance to issue such guidance is the American Bar Association's Standing Committee on Ethics and Professional Responsibility."

Ultimately, the Committee declined to offer guidance, contending that the types of settlements referenced are "best addressed by the courts that have been entrusted as a matter of law with the supervision of the suits in question, not by an interpretation or application of the Model Rules of Professional Conduct." The Committee noted that the kinds of settlements referenced by the signatories were supervised by the courts, relevant to Scope [15] of the Model Rules of Professional Conduct. According to the Committee, "The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general."

The Committee's assessment was unanimous: ultimately this is a legal, not ethical, issue. However, critics of the Committee's decision question why it bypassed an issue that some of the country's leading legal ethics experts contend at its core is an ethical issue. The Committee did not offer an opinion on the legality of this conduct in its response.

To view both the critics' letter and the ABA's response, please visit http://www.fed-soc.org/abawatch.

ABA Reacts to *Boumediene* Decision

ABA Watch has previously followed ABA policies regarding the war on terrorism.[1] We offer an update to recent ABA activity in this regard.

Anti-Terrorism and Civil Liberties Policies

"Anti-terrorism and preservation of civil liberties" remains one of the top ten "Legislative and Governmental Priorities" of the American Bar Association. The ABA's Governmental Affairs lobbies on these policies before Congress and the Executive Branch, writing letters and testifying at hearings.

This priority incorporates the following components:

- "The ABA urges that individuals detained as "enemy combatants" be afforded certain procedural rights such as access to counsel and the opportunity for meaningful judicial review of their status, including the right to petition for *habeas corpus."*
- Supporting only limited use of military tribunals "authorized to conduct trials of suspected terrorists… that the procedures for trials and appeals be governed generally by the Uniform Code of Military Justice, and that all defendants have the opportunity to receive the effective representation of civilian defense counsel."
- Opposition to "torture or other cruel, inhuman or degrading treatment of detainees in U.S. custody."

Guantanamo

In light of this top policy priority, the American Bar Association has continued to call for "fair trials" at Guantanamo and criticized the Bush Administration's policies concerning those charged in terrorism cases. ABA President William Neukom has followed the lead of his predecessors and remained outspoken on this issue.

On February 27, Neukom wrote to President George W. Bush protesting the procedures in place to try detainees at the Guantanamo military commissions. Neukom expressed his and the ABA's "strong concerns… that the military commission system at Guantanamo does not adhere to established principles of due process fundamental to our nation's concept of justice." He conveyed his dismay that detainees could

not "challenge their detention by *habeas corpus,* and the standards for admissibility of evidence could allow for convictions based on rank hearsay." He also denounced the admissibility of evidence acquired by coercion, including evidence acquired through waterboarding.

According to Neukom, trials should be governed by the Uniform Code of Military Justice and international treaty obligations. In particular, detainees should be represented by their counsel of choice, receive full attorney-client privilege protection, have adequate time and facilities to prepare a defense, the ability to examine evidence and confront witnesses, and access to an independent and impartial tribunal.

Neukom suggested that the ABA's guidelines for capital cases should be employed for the detainees. The Defense Department should pair its military lawyers with civilian counsel to ensure fair trials. Neukom also denounced the "significant imbalance between the resources allocated to the prosecution."

Neukom concluded, "We do not believe military commission trials can or will provide the level of fairness that is consistent with our values and essential to our credibility in the rest of the world." Neukom offered the ABA's assistance "to ensure that these cases comport with the rule of law." However, Neukom did not offer to find civilian counsel for detainees charged in the tribunals, as the Department of Defense previously asked. The ABA had previously agreed to help find lawyers but withdrew its support last year, after objecting to the government's trial procedures.

Expanding on these points, in a March 24, 2008 op-ed, Neukom called for "Fair Trials at Guantanamo—Why They Matter to All of Us." He expressed his "grave concerns about the process by which Guantanamo detainees will be tried." In particular, he was troubled by the lack of habeas corpus review for detainees and inadequate staffing for Guantanamo detainee defense counsel. He worried that these inadequacies would result in trials that would "leave a cloud of doubt and distrust."

Neukom was concerned at how the international community would view the Guantanamo trials. He declared, "Meeting the highest standards of justice will make a powerful statement to the world: No matter how deep our anger, America's commitment to the rule of law stands strong. Suspects convicted through fair trials will be seen as criminals, not martyrs. In this way, and this way only, can the trials we conduct, and the unimpeachable judgments that we reach, begin to the put the tragedy of September 11 behind us."

Amicus Activity

The ABA filed briefs in both *Hamdi v. Rumsfeld* and *Padilla v. Rumsfeld*, both favoring habeas corpus rights and judicial review for the enemy combatants. In filing two more briefs in cases argued before the U.S. Supreme Court in the 2007 term, the ABA made similar arguments.

In *Boumediene v. Bush,* the Court considered a case that arose on a writ of habeas corpus filed on behalf of detainees at Guantanamo Bay challenging the legality and constitutionality of their detention as enemy combatants pursuant to the Military Commissions Act of 2006.

In August 2007, the ABA filed a brief in *Boumediene,* arguing that habeas corpus is fundamental to our constitutional scheme and only narrow, limited exceptions are allowed. Furthermore, the denial of habeas to Guantanamo detainees is inconsistent with the constitution and the rule of law.

The brief's premise rested on the ABA's strong opposition to the provision of the Military Commission Act of 2006 that sought to strip courts of jurisdiction to consider existing habeas claims for certain alien detainees. The ABA argued that habeas corpus is the "cornerstone of the rule of law" and has been throughout history. Denying the petitioner's right to habeas review would be inconsistent with what the framers of the Constitution intended. Furthermore, denial based on the distinction that Guantanamo is not "sovereign territory" would be at odds with the history and language of the Suspension Clause, which is designed to prevent such evasion.

The ABA also contended that reaffirmation of habeas rights will help restore the United States' historic role as a model for the rule of law in the global community. Several international cases, treaties, and legislative materials were cited by the ABA, including cases from the United Kingdom, the European Court of Human Rights, the Supreme Court of Canada, the Israeli Supreme Court, European Parliament, the United Nations, and the Organization of American States. According to the ABA, "Respect for the rule of law encourages its adoption abroad, solidifies our relations with other nations, and protects Americans abroad. The denial of habeas corpus to Guantanamo detainees undermines these important goals."

On March 25, 2008, the Supreme Court heard oral argument in the consolidated cases of *Munaf v. Geren* and *Geren v. Omar* on the jurisdiction of federal courts over habeas claims of American citizens held in Iraq. In its brief, the ABA argued that meaningful review of

detention is fundamental to the rule of law and that habeas corpus is deeply rooted in the common law and the United States' constitutional system. The ABA further argued that due process requires that every detainee be informed of the allegations against him and afforded a meaningful opportunity to challenge his detention. The ABA maintained that the government's position regarding habeas corpus writs undermines the rule of law and the independence of the judiciary. The ABA took issue with the fact that the detainees are being detained based "solely on untested allegations." Moreover, citing *Hamdi v. Rumsfeld*, the ABA argued that participation in a multinational force should not defeat jurisdiction over American officers, claiming that the writ of habeas corpus does not act upon the detainee but upon the custodian. Subsequently, a judgment of an Iraqi Court should not affect the jurisdiction of a United States court over a prior habeas petition of a United States citizen.

Supreme Court Decisions

On June 12, the Supreme Court decided both cases. In *Munaf v. Geren,* the Court ruled, "*Habeas corpus* does not require the United States to shelter such fugitives from the criminal justice system of the sovereign with authority to prosecute them… [T]he petitioners state no claim in their *habeas* petition for which relief can be granted, and these petitions should have been promptly dismissed." The ABA did not release a statement reacting to this ruling.

Also on June 12, the Supreme Court, in a 5-4 decision, ruled that detainees at Guantanamo Bay have a constitutional right to seek habeas review in the federal courts. Neukom responded:

> Today's ruling reaffirms the vision of our founders, and helps restore the credibility of the United States as a leading advocate and model for the rule of law across the globe. It will solidify our relations with other nations, and will protect Americans abroad. The American Bar Association cares deeply about protecting our national security, while preserving the liberties enshrined in our Constitution. *Habeas corpus* is the cornerstone of the rule of law in the United States. Adhering to this fundamental tenet of our legal system will simply require that we provide a fair process for determining which detainees should continue to be detained. U.S. courts have risen to the challenge of hearing cases involving national security for more than 200 years. They can and will continue to do so.

2008 ABA Annual Meeting

The International Law Section will sponsor a showcase panel discussion at the ABA Annual Meeting on "Individual Rights, Terrorism, and the Rule of Law: The World After 9/11." *ABA Watch* will cover this panel discussion along with other related issues at the ABA's Annual Meeting in New York City.

Endnotes

1 Most recently, see the February 2006 issue on "The ABA, the War on Terrorism, and Civil Liberties" and the August 2006 issue, "The ABA, the Separation of Powers, and Executive Power."

Resolutions to be considered...

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sponsor also describes the attempts to restrict partial-birth abortion methods (named as the intact dilation and extraction procedures by the sponsor) in the decades since *Roe v. Wade*. According to the sponsor, "The major change in the law attendant to the *Carhart* opinion is the new willingness of Congress and the Court to disregard the health of patients and the medical judgment of their medical providers." The majority's reliance on *Jacobson v. Massachusetts* was "especially inapt."

The sponsor declares, "Determinations of what best protects a patient's health are individualized judgments that can only be made with respect to a particular person in particular circumstances." However, "medical treatment decision-making latitude is not absolute." The sponsor contends that "reasonable medical judgment" is needed. Furthermore, the medical provider's freedom to practice medicine is subject to the doctrine of "informed consent."

According to the sponsor, the ABA should be prepared to not only support legislative attempts to assure the availability of medical procedures to best protect the patient's health, but also oppose attempts to interfere with "a medical provider's ability to provide medical care that best protects a patient's health—regardless of the specific medical procedure at issue." No opposition is known to this recommendation, according to its sponsor.

Critics contend that the sponsor is describing a legal, ethical, and medical consensus that does not exist. They maintain that the sponsor does not consider the perspectives of many medical and ethical experts who disagree on the necessity of procedures such as partial-birth or intact D&X abortion. Even some abortion-rights proponents would assert that the procedure is rarely, if ever, medically necessary. For example, Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, was quoted in the *New York Times* as stating, "In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along." Former Surgeon General C. Everett Koop has testified that "partial-birth abortion is never medically necessary

Judicial Nominations

Recommendation 118, proposed by the Standing Committee on Federal Judicial Improvements and at least thirteen other ABA entities, proposes changes in how federal judges should be selected. The sponsors propose:

- The ABA should support the selection of judges who are diverse, who possess sufficient competence, integrity, and judicial temperament;
- Judges should provide advance notice of their intention to leave the bench or to assume senior status;
- That the ABA should "encourage the senators in each state jointly to appoint (in cooperation with others not of their party when appropriate) bipartisan commissions of lawyers and other leaders, reflecting the diversity of the profession and the community, to evaluate the qualifications of prospective district judges and to recommend possible nominees whom their senators might suggest for the President's consideration;
- "That the American Bar Association endorses the use of bipartisan commissions to consider and recommend prospective nominees for the United States Courts of Appeals;"
- "That the American Bar Association recommends that the President consult with Senate leaders of both parties and the home state senators in advance of submitting nominations;" and
- That the ABA urge the President and the Senate to promptly fill vacancies, particularly those candidates recommended by bipartisan commission.

In the accompanying report, the sponsors acknowledge "the nomination and confirmation

to protect a mother's health or her future fertility." The American Medical Association Policy H-5.982 on "Late-Term Pregnancy Termination Techniques" declares, "According to the scientific literature, there does not appear to be any identified situation in which intact D&X is the only appropriate procedure to induce abortion, and ethical concerns have been raised about intact D&X. The AMA recommends that the procedure not be used unless alternative procedures pose materially greater risk to the woman."

With regard to the Schiavo case, the IRR Section described the decision as holding that "wrenching medical decisions should be made by those closest to and most knowledgeable about the details and subtleties of the case at hand. Such decisions must be made by health care providers, consensually with their patients, on an individual basis, with the patient's interests in the practitioner's mind, and with appropriate latitude for him or her to exercise reasonable medical judgment." The report states that "the only one who can agree to the performance of a medically-indicated procedure is the patient." It is unclear how the proposal grapples with a central question in the Schiavo case: who determines when the feeding tube is removed from a brain-damaged or comatose patient without a living will? Many would believe that the legal, medical, and ethical questions in this case are far from "well-settled and not-controversial."

International Criminal Court

Recommendation 108A, sponsored by the ABA's Section of International Law, "urges the United States Government to expand and broaden United States interaction with the International Criminal Court (ICC), including cooperation with the Court's investigations and proceedings." The recommendation "calls on the United States Government to participate in future sessions of the ICC's governing body, the Assembly of State Parties, and preparations for the Review Conference to be held in 2010."

The accompanying report cites the United States government as pursuing a policy of "hostility and disengagement" toward the ICC. This policy, according to the report, diverges from "traditional U.S. leadership on international justice issues." The report specifically cites the American Servicemembers' Protection Act (ASPA) as the statute prohibiting assistance with the ICC. According to

processes for district and more so for circuit judges have become problematic.... [T]he level of vitriol in the process appears to have increased." While "principled disagreement" of what constitutes judicial temperament and legal competence should exist, this recommendation "can enhance these procedural values even while recognizing that the Constitution vests the nomination authority in the President and the confirmation authority in the Senate, and recognizing as well that political and partisan tensions are to a degree endemic in the selection process."

In describing the ideal "truly bipartisan commission" of both lawyers and non-lawyers, the sponsors stress that the commissions reflect "the various elements and specializations within the bar and that overall commission membership reflect the diversity in the population of the state or part of the state served by the judicial district."

The report also details its recommendation "that the President consult, before deciding on nominees, with the Senate leadership and home state senators of both parties." This consultation would not compromise the President's authority to nominate judges; rather, it would help avoid protracted Senate confirmation battles.

The sponsors do not define a timetable for Presidential nomination and Senate confirmation. Instead, the sponsors call for "promptness."

Critics of this recommendation maintain that the Constitution does not call for consultation with the Senate in the nominations process. Article II, Section 2 of the Constitution states the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" judges. Alexander Hamilton further clarified this clause in *Federalist 66*, stating "There will, of course, be no exertion of *choice* on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves *choose*—they can only ratify or reject the choice of the President." Thus the bipartisan commissions described in the report could only offer advice, and not choice of nominee, to the president.

Critics also maintain that the President already consults with Senators of both parties in advance

the report, the ASPA prohibits cooperation with the ICC, restricts U.S. participation in UN peacekeeping missions, prohibits transfers of law enforcement information to the ICC, and authorizes the president 'to free members of the Armed Forces of the United States' that are detained or imprisoned by the ICC."

The report also asserts that criticisms of the ICC are outdated, citing that "after six years of operation the ICC has proven itself to be a responsible judicial institution."

The sponsors of the resolution contend that participation in the 2010 Review Conference will expand interaction with the ICC and "will be a long start toward re-establishing the worldwide credibility of a strong American commitment to the international rule of law."

Those that oppose increased cooperation with the ICC do so on the grounds that the ICC may behave in a "reckless or politically motivated way." There is also concern regarding the ICC's power to exercise jurisdiction over citizens of countries who have not signed the Rome Statute founding the ICC. Furthermore, some may argue that the ASPA is a necessary protection against ICC encroachment on American sovereignty.

Feres

Recommendation 10B, sponsored by the Bar Association of the District of Columbia, "urges Congress to examine the 'incident to service' exception to the Federal Tort Claims Act (FTCA) created by the Supreme Court in *Feres v. United States.*" The recommendation proposes that "only the exceptions specifically provided in the Act limit active duty military members' access to the courts when they are victims of tortious government conduct."

Furthermore, the recommendation proposes amending the FTCA to "provide that the exception limiting access for conduct that occurs in combatant activities applies 'during time of armed conflict' rather than 'during time of war.'"

The accompanying report asserts that the military exclusion to the FTCA exceeds its adopted statutory language as a result of the *Feres* Doctrine, which the report calls "lawful discrimination" that treats active duty service members "differently than all other persons." Under the *Feres* Doctrine, military personnel cannot bring claims against the United States through the FTCA for injuries incurred during non-combatant activities.

The recommendation proposes a return to the written statutory exceptions to the FTCA as opposed to the *Feres* Doctrine, which critics have described as overly broad and in need of revision.

The recommendation contends, "The Supreme Court's *Feres* Doctrine has rendered active duty service members unable to be compensated in situations where it is clear that Congress never intended the *Feres* criteria to apply" and "that it seems entirely appropriate to end this discriminatory doctrine."

Those who oppose repeal of the *Feres* Doctrine have argued it would "endanger the chain of command by allowing service members to, in effect, sue their commanders." Sponsors of the recommendation contend that the current exceptions in the FTCA provide "ample protection" for any actions that challenge commands during combatant activities. Others maintain that the

of nomination. However, the President is under no constitutional obligation to cede nominating power to these lawyers. Furthermore, this could create another bureaucratic barrier to what should be a smooth-running process. Additionally, greater discretion to Senators could lead to more nominees being recommended based on patronage. The risk of a President selecting on patronage is far smaller, as presidents have often articulated their judicial philosophy while campaigning and hired accordingly.

Some critics have questioned why abolishing the blue slip process was not addressed in the recommendation. On their view, changing this policy, which effectually allows a home-state Senator to veto a Presidential choice, would do more to reform the system. Blue-slipped nominees are often denied hearings, votes, and are sometimes not even nominated. These critics charge that the blue slip process, exerted by home-state senators, is a *part* of the problem, not the solution. Blue slips, which have been exerted on personal, political, and ideological grounds, are too often tools of the opposing party to block a Presidential nominee from being confirmed.

Finally, critics question whether any of these reforms would succeed in thawing the "polarized climate" of nominations in recent years. A President would still be free to make his own choice of nominee. A Senator, for whatever reason, could still decide not to support a nominee. The logjam in confirming judicial nominees would likely continue.

repeal of the *Feres* doctrine poses the risk of opening up the door for an increase in litigation brought by military personal against the United States.

Voting Guidelines

Recommendation 119A, sponsored by the Standing Committee on Election Law, urges adoption of new amendments to the ABA's *Election Administration Guidelines and Commentary*. The proposed amendments deal with voter registrar conduct and provisional ballots.

With respect to registrar behavior, the recommendation proposes, "Volunteer registrars should not engage in any discriminatory practices in the dissemination, acceptance and submission of registration forms (e.g., refusal to disseminate, accept and submit registration forms on the basis of race or partisan affiliation)." They also urge, "Volunteer registrars should not attempt to influence, through force or intimidation, the decisions of applicants."

Guidelines for provisional ballots include:

- In situations where voter registration is in dispute the voter must be offered a provisional ballot. The provisional ballots must be "segregated and secured until a determination of validty is made."
- "Election officials should provide assurance that eligibility issues will be dealt with promptly and that voters will be notified of the disposition of the ballot in question."
- "States and localities should not vest poll workers with duties that allow them the capacity to invalidate a provisional ballot; including, but not limited to, procedures requiring a poll worker to sign a provisional ballot application or affidavit in order for the ballot to be counted."
- "The information relating to the decision whether to count or reject provisional ballots must be publicly available, so that administrative errors can be identified and poll worker training can be improved."
- "In jurisdictions that require the voter to cast the ballot in the precinct to which the voter is assigned, resources should be made available to the poll worker to make every practicable effort to direct the voter to the correct precinct."

According to the recommendation's accompanying report, these amendments are meant to "enhance the integrity and public perception of the electoral process" and allow "the greatest access to the ballot box." Furthermore, the amendments are expected to set out clear guidelines for registrars in regards to electioneering activity and to clarify procedures for provisional balloting. The Standing Committee on Election Law hopes to see these changes enacted and signed to law as it did in 2002 in The Help America Vote Act, which incorporated many portions of the ABA's *Election Administration Guidelines and Commentary.* The Standing Committee urges these changes be made prior to the 2008 presidential election.

Racial Profiling

Recommendation 104C, sponsored by the Criminal Justice Section, the National Association of Criminal Defense Lawyers, the Commission on Immigration, and the Center for Racial and Ethnic Diversity, urges state, local, and territorial governments "to enact effective legislation, policies, and procedures, to ban law enforcement's use of racial or ethnic characteristics not justified by specific and articulable facts suggesting that an individual may be engaged in criminal behavior, hereinafter termed 'racial profiling.'"

The recommendation also urges law enforcement agencies to adopt policies pursuant to the above recommendation that includes the following:

- "Written policies, training, and supervision necessary to effectively implement the ban and funding necessary for these purposes"
- "Data collection, on all police stops and searches, whether of drivers and their vehicles or pedestrians"
- "Independent analysis of data collected, and publication of both the data and the analysis;" and
- "Funding for police agencies to be made contingent on compliance with these requirements."

These recommendations are designed to strengthen the ABA's current Policy on Police Racial and Ethnic Profiling by providing "a definition of the invidious use of race or ethnicity as a criteria in conducting stops, searches, or other law enforcement investigative procedures either solely or as one factor among others."

However, the resolution does note that in "infrequent circumstances," racial and ethnic characteristics may be used if "justified by specific and articulable facts" that suggest engagement in criminal behavior (e.g., street gangs known to be identified by their ethnic makeup).

The recommendation and the accompanying report propose data collection and analysis by law enforcement agencies in order to ensure the success of a ban on racial and ethnic profiling. The recommendation does permit exceptions to this rule when the size of some law enforcement agencies makes it impractical to take

such measures. The recommendation suggests that law enforcement agencies funding be contingent upon enforcement of the ban.

According to the report, when enacted, these measures will provide "increased citizen trust and cooperation." Furthermore, these procedures may prevent expensive litigation directed towards state and local governments. The report also notes that an increase in plea bargains may result, "saving scarce judicial and law enforcement resources."

Critics of this resolution take issue with the recommendation's focus on data collection and analysis. Over-emphasizing data collection in law enforcement may encourage officials to concentrate on meeting certain quotas that may not be in the interest of effective law enforcement. Data collection quotas overlook the fact that crimes are committed by disparate groups from different social, economic, and ethnic backgrounds. Furthermore, although profiling in the traditional law enforcement context is not always merited, the proposal does not allow for sufficient exceptions in identifying suspects in the current war on terror. Finally, some critics contend that the extent to which racial profiling occurs has been greatly exaggerated by a number of flawed studies.

Correctional Facilities

The Criminal Justice Section proposes Recommendation 104B, urging all levels of federal, state, tribal, local, and territorial governments to "develop comprehensive plans to ensure that the public is informed about the operation of all correctional and detention facilities." The recommendation calls for the establishment of "public entities that are independent of any correctional agency to regularly monitor and report publicly" on conditions within these facilities.

The recommendation also calls for the ABA's adoption of the "Key Requirements for Effective Monitoring of Correctional and Detention Facilities," which provides 20 requirements for independent agencies to meet when monitoring detention facilities. The following are some of the requirements:

- "The monitoring entity is independent of the agency operating or utilizing the correctional or detention facility."
- "The monitoring entity has the duty to conduct regular inspections of the facility, as well as authority to examine, and issue reports on, a particular problem at one or more facilities."
- "Facility and other governmental officials are authorized and required to cooperate fully and promptly with the monitoring entity."
- "The monitoring entity has the authority to conduct both scheduled and unannounced inspections of any part or all of the facility at any time."
- "The monitoring entity has the authority to conduct confidential interviews with any person, including line staff and inmates, concerning the facility's operations and conditions; to hold public hearings; to subpoena witnesses and documents; and to require that witnesses testify under oath."
- "Subject to reasonable privacy and security requirements as determined by the monitoring entity, the monitoring entity's reports are public, accessible through the Internet, and distributed to the media, the jurisdiction's legislative body, and its top elected official."

According to the recommendation's accompanying report, the establishment of independent monitoring agencies and their adherence to these requirements will foster "transparency and accountability" in the operations of detention facilities. These measures would apply to all detention facilities "both public and private."

The report also asserts that "the federal government can and should play a central role" in increasing transparency in our nations detention facilities. The recommendation requests that the federal government offer technical assistance and training to monitoring entities, develop common definitions for data collection, and mandate that federally funded facilities be monitored by at least one independent entity.

Critics of this resolution maintain that these measures could be detrimental to the proper functioning of detention facilities. Unhindered access to correctional facilities may increase the likelihood of weapons and contraband being brought into the facility due to the lack of accountability to the primary administrators. This may also lead to undermining the authority of the warden, which could become problematic during a disturbance, medical emergency, or criminal investigation. Furthermore, independent oversight may cause facility staff to be hesitant when dealing with inmates who are very dangerous, and thus compromising the safety of the facility, because independent overseers who are applying vague or open-ended standards may cause guards to use less-than-necessary force. Also, public disclosure of monitoring reports without clear parameters on what should be kept confidential could increase safety and security concerns.

Critics also maintain that several financial issues may potentially arise from policies proposed in this recommendation. Funding for independent monitoring bodies would likely come from federal and state correctional budgets, straining the budget for regular facility operation and jeopardizing resources for treatment and educational programs. This could result in the "federalization" of the prison population that would undermine local solutions to problems that can often be very complex.

Concerns also may arise with an increase in litigation by prisoners. Currently, inmates and their advocates file hundreds of lawsuits each year to address perceived harms. New agencies with broad oversight capabilities may provoke even more time-consuming and expensive litigation.

International Trade

Recommendation 108B, sponsored by the American Bar Association's Section of International Law, resolves that "the ABA supports the contribution that the negotiated liberalization of international trade in goods and services, through government-to-government trade agreements, makes to the spread of the Rule of Law, both at the state-to-state level and within participants' domestic legal systems."

Research for the recommendation's accompanying report was conducted by a Working Group of the ABA Section of International Law's International Trade Committee, which considered the specific question of whether four free trade agreements—the North American Free Trade Agreement (NAFTA), the Central America and Dominican Republic-United States Free Trade Agreement (CAFTA), the United States-Morocco Free Trade Agreement (Morocco FTA), and the United States-Australia Free Trade Agreement (Australia FTA)—contribute to the advancement of the Rule of Law. The ABA has defined the "Rule of Law" (ROL) as "a system of transparent, predictable, understandable, and fair rules and institutions that facilitates the efficient and just functioning of societies." The Working Group submits that these four free trade agreements meet seven analytical categories which the Group believes to advance the Rule of Law: (1-3) transparency in drafting, enacting, and applying laws and regulations; (4-6) regulatory, judicial, and institutional strengthening; and (7) protection of property rights. The Group maintains that FTAs can initiate and facilitate the strengthening of the regulatory, judicial, and institutional regimes necessary to protect property rights. Moreover, the Group believes that a core principle of trade liberalization and the ROL is "non-discrimination" and two provisions of most FTAs—"national treatment" and "most-favored-nation treatment"—reflect a non-discrimination stance.

The report does not fully endorse free trade; however, the sponsor contends its proposal is a "statement that negotiated liberalization effectuated through trade agreement tends to foster the development of the ROL and is, on that account, a good thing."

Tribal Justice

Resolution 117A, sponsored by the Section of Individual Rights and Responsibilities, the Coalition for Justice, and the National Native American Bar Association, "urges Congress to support quality and accessible justice by ensuring, stable, long term funding for tribal justice systems."

According to the accompanying report, the ABA contends that tribal justice systems have not received adequate funding in the past. The report cites studies commissioned by tribal, state, and federal leaders, the U.S. Civil Rights Commission, and Amnesty International as evidence that inadequate funding of tribal justice systems has hindered the pursuit of justice and denied Native Americans of adequate legal resources.

The ABA describes Tribal Justice Systems as the "primary and most appropriate institutions for maintaining order in tribal communities." Furthermore, the report contends that these justice systems are "keystone to tribal economic development and self sufficiency" and that "any serious attempt to fulfill the federal government's trust responsibility to Indian Nations must include increased funding and enhancement of tribal justice systems."

Some critics assert that while the problems Native American communities confront are far-reaching and in need of attention, there are other avenues through which these problems can be channeled. Several states that have Native American lands are subject to Public Law 280, a 1953 law that transferred some jurisdiction over some crimes committed on tribal grounds to several states. While many who advocate for tribal sovereignty oppose state jurisdiction over tribal matters, criminal violations in these areas can be taken into certain state court systems. Furthermore, critics may say the recommendation's reference to tribal difficulties in prosecuting those who are non-native Americans conflicts with U.S. Supreme Court doctrine established in *Oliphant v. Suquamish Tribe,* whereby the court asserted that tribal justice systems cannot prosecute and punish non-native American citizens.

The ABA and Gun Control

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Background

According to the recent memo, "Why Lawyers Should Work to Reduce Gun Violence," the ABA contends that "the gun lobby promotes a vision of a future American society in which gun violence is to be addressed primarily by more guns, a society in which individuals in all walks of life would be armed with concealed handguns. They maintain that gun crime would be deterred by the widespread possession of guns by individuals acting on their own to confront or respond as individuals." The Committee seeks "a different future. Our goal is the establishment of sound laws and an orderly society in which the rule of law makes violence less prevalent and in which individuals are safer and more secure from threats of violence."

This strong anti-gun stance did not develop until the 1960s. As late as 1964, the ABA awarded Robert Sprecher, an Illinois attorney, first prize in the Samuel Pool Weaver Constitutional Law Essay Competition. The essay competition was supported by trust funds provided by Weaver to encourage research and writing about constitutional issues. Sprecher's essay, published in 1965 in the *ABA Journal,* concluded "that we should rediscover the [Second] amendment and broaden the scope of its guarantee of the right of 'the people to keep and bear arms.'"

Around the same time as Sprecher's essay was published, the forerunner to the ABA's Special Committee on Gun Violence was created. The impetus was President John F. Kennedy's assassination. This task force recommended a system of gun licensure and limits on the sale and possession of guns by minors, felons, and fugitives. The ABA supported policies that were later incorporated in the Federal Gun Control Act of 1968.

In the following years, the ABA's House of Delegates supported legislation to limit the sale and possession of cheap, foreign-made handguns; require background checks and waiting periods; upgrade eligibility standards for dealers; encourage gun safety education programs; impose stiffer penalties to deter gun-related crimes; and limit availability of assault weapons. The ABA has also proposed a federal regulatory authority over the gun industry.

To further these goals, the Special Committee was founded in 1994 "to address the problem of gun violence and to articulate policy regarding the regulation of firearms in our society." Representatives from eight other ABA entities, including the Criminal Justice Section, the Section of Litigation, and the Public Education Division, are represented on the Committee. Its current chairman is John C. Cruden, a former president of the District of Columbia Bar. At the Committee's founding, the ABA House of Delegates reaffirmed its earlier firearms policies.

The Special Committee launched its more comprehensive gun-control strategy with proposals to the ABA House of Delegates in August 1994. The policies, which were adopted by the House, called for a new "national agenda" to address the problems of violence in society, emphasizing the risks, causes, and costs of gun violence. This campaign would "educate the public and lawmakers regarding the meaning of the Second Amendment, to make widely known the fact that the United States Supreme Court and lower federal courts have consistently, uniformly held that the Second Amendment right to bear arms is related to 'a well-regulated militia' and that there are no federal constitutional decisions which preclude regulation of firearms in private hands." The ABA also would "promote the provision of volunteer legal research for and assist government entities seeking to enact or enforce laws aimed at reducing gun violence." Additionally, the ABA called for a strengthened federal role to reduce gun violence, expansion of the list of those who are prohibited from possessing a gun, increased safety regulations including trigger-locks, increased background checks and registration requirements, and increased taxes on handguns and ammunition. [In 1998, the ABA expanded its efforts to address gun violence by minors, incorporating school-based peer mediation programs, gun education, and support for increased law enforcement to prevent gun access.]

According to the sponsor, the 1994 resolution was justified because of "the history of lax enforcement of both federal and state firearms laws." The resolution's accompanying report suggests that a total handgun ban was considered by the drafters, but rejected because it "would leave the Association with little to say and perhaps without a meaningful role in the actual legislative work expected to occupy lawmakers in the next several years." Ultimately, the Task Force "reached the consensus that the real political battle in the area of firearms regulation to reduce gun violence will be with regard to eliminating unregulated sales and requiring personal and business accountability for all firearms." ABA critics speculated that this report portended the Association's turn to litigation, rather than legislative remedies, to the "scourge of gun violence."

Two years later, in 1996, the "accountability" issue arose as the House of Delegates adopted a recommendation urging amendment of the Gun Control Act of 1968 to provide a private cause of action for those victims sustaining an injury or damage as a result of the Act's violation. The recommendation was offered at a time when several cities were considering class action lawsuits against gun manufacturers to recover costs (e.g., criminal investigation and emergency medical costs) associated with gun crimes. The ABA also supported legislation to adopt and extend state laws to provide civil claims for relief for those victims suffering an injury or damage as a result of a violation of state, territorial, or municipal laws regulating the use, sale, possession, license, ownership, or control of firearms or ammunition.

By 2001, the House of Delegates voiced its opposition to legislation that would create special legal immunity for the firearms industry from civil tort liability.

In 2004, the ABA House of Delegates adopted another recommendation urging implementation and enforcement of existing gun laws at all levels of government. The recommendation also urged full implementation of the National Instant Criminal Background Check Systems (NICS) and legislation to require retention of gun sales background check records for 90 days.

Another ABA policy, proposed by the Special Committee on Gun Violence in 2007, urged bans to exclude guns from workplaces and private property. According to sponsor John Cruden, the Constitution offered special protections to private property rights. The protection of safety and life were among the highest forms of constitutional protection. Regulations in OSHA and the Brady Bill would provide backing for these additional restrictions. He emphasized that this recommendation "was not anti-gun;" rather, it was "anti-gun violence." The resolution was adopted without opposition.

Capitol Hill Activity

The ABA's Governmental Affairs Office has submitted several letters and testified before both House and Senate Committees on gun control in recent years.

In October 2005, the ABA expressed its strong opposition to S. 397 and H.R. 800, the "Protection of Lawful Commerce in Arms Act." The bill sought "to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages or injunctive or other relief resulting from the misuse of their products by others." The ABA opposed the bill, claiming "the proposed legislation would sweep away the legitimate rights of those harmed by industry negligence while claiming to limit only novel or 'frivolous' claims." Additionally, because firearms are not regulated under the Consumer Product Safety Act, the bill "would unwisely and unnecessarily intrude into an area of traditional state responsibility." Passage "would also undermine responsible federal oversight of consumer safety." The proponents of the bill contended it was needed to prevent industry-wide lawsuits. The bill was adopted as law by the 109th Congress by a wide margin, and it was later upheld by the Second Circuit Court of Appeals in April 2008.

In May 2006, the ABA submitted letters to the House Judiciary Committee on several pending gun bills. The ABA expressed its strong support for H.R. 1415, which would amend the Brady Handgun Violence Prevention Act to make changes to the National Instant Criminal Background Check System (NICS). According to the ABA, "H.R. 1415 would provide a needed push to speed implementation of the NICS system used in conducting instant background checks prior to gun purchases." The bill stalled in Committee.

The ABA also voiced its opposition to H.R. 5092, the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) "Modernization and Reform Act of 2006," which sought to restrict the Bureau's gun show enforcement activities. The bill would allow intermediate fines and license suspensions of 30-90 days against gun dealers who deliberately violate the law, but it would not force action if inadvertent errors were committed. The ABA asserted that the preferred changes "would neither modernize nor reform ATF but would serve to further weaken the agency and its service of public safety." The National Rifle Association differed, asserting that the bill would "improve [ATF's] process for punishing the few [federally licensed firearms dealers] who violate the law." The bill did not become law in the 109th Congress.

The ABA also denounced H.R. 5005, the "Firearms Corrections and Improvements Act of 2006." The bill would have amended several firearms provisions of the federal criminal code, including lifting some restrictions on machine guns for contractors providing national security services, prohibiting the Attorney General from charging any tax or fee for background checks by the national instant criminal background check system, and limiting trace records. The ABA "believes that the public interest in stronger enforcement of gun laws and the use of gun crime trace data by law enforcement agencies

at all levels of government are compelling reasons to continue to collect such data and for its disclosure and dissemination as public data." The legislation "would effectively prevent law enforcement agencies from using gun trace data to develop effective enforcement strategies." The bill passed the House Judiciary Committee by a vote of 21 to 11, though was not adopted before the end of the 109th Congress.

In May 2007, the ABA submitted letters to the chair and ranking members of the House and Senate Appropriation Committees' Subcommittees on Commerce, Justice, Science, and Related Agencies urging the exclusion of the Tiahrt Amendments from the FY 2008 Department of Justice Appropriations bill. The Amendment forbids the ATF from releasing data from the ATF's Gun Trace Database to anyone other than police and prosecutors in active criminal investigations. Proponents of the Amendment maintain that releasing the data could jeopardize officers and their investigations, along with witnesses, as anyone would be able to file a Freedom of Information request to gain access to details such as an officer's name or the targeted dealers. The Amendment is also useful in blocking litigation, as it helps protect the privacy of law-abiding gun owners and manufacturers, shielding these owners and manufacturers from lawsuits by politicians, including Chicago Mayor Richard Daley, who have considered suit against the firearms industry. The Fraternal Order of Police supported the Amendment.

The ABA fears the Amendment will impede investigations of gun crimes, stating, "The Tiahrt Amendment prevents ATF from releasing broader crime gun trace or data regarding multiple sales–often a leading indicator pointing to illegal gun trafficking–to the public or even fellow law enforcement agencies in the states or localities. [These] provisions severely restrict and hamper coordination of law enforcement investigations and public scrutiny of illegal gun trafficking." The ABA also maintained the Amendment hampers civil discovery requests.

In the Summer of 2007, revisions were made to the language clarifying that trace data information is always available to law enforcement officials and prosecutors pursuing criminal activity and is not prevented due to geographic jurisdiction.

The *Heller* Case

In November 2007, the Supreme Court granted Certiorari review in the case of *District of Columbia and Mayor Adrian Fenty, Mayor v. Heller*, the first Second Amendment case to be considered by the Court in seventy years. The U.S. Court of Appeals for the D.C. Circuit previously ruled that D.C. gun laws effectively banning handgun ownership were unconstitutional. The Supreme Court agreed to consider whether the Second Amendment grants an individual right to bear arms.

The Special Committee on Gun Violence decided to weigh in on the case, creating a task force to prepare an *amicus* brief with the ABA's Individual Rights and Responsibilities Section. The brief was filed on January 11, 2008. ABA President William Neukom and attorneys Robert Weiner, John Freedman, and Christopher Rhee (all of Arnold & Porter) were listed as counsel on the brief.

As discussed in the February 2008 issue of *ABA Watch,* the authors maintained that the D.C. Circuit decision should "be reversed, because the decision improperly rejected the long and consistent line of precedent on which this Nation has built its entire matrix of gun regulation." The ABA listed two significant interests in the case. First, the organization has placed "a high priority on furthering the rule of law by promoting *stare decisis* in this country and around the world." *Stare decisis,* the ABA declares, "is directly at issue in this case." The D.C. Circuit's opinion "leaves in doubt the constitutionality of a vast federal and state statutory framework of gun control laws and could impede efforts by federal and state legislatures to enact other public safety and crime-fighting legislation."

Second, the authors maintain that the ABA's educational function compels it to explain judicial decisions to the public, the legal profession, and other interested parties. Furthermore, "the ABA has predicated its educational and advisory efforts regarding gun control on the constitutional principle articulated in this Court's opinions: that the Second Amendment ties the right to bear arms to maintenance of a well-regulated militia."

The authors feared the "adverse effects of entangling courts in essentially legislative policy decisions" if the decision of the D.C. Circuit was affirmed. They pronounced, "Judicial entanglement in the gun control debate…will amount to an unwarranted encroachment on the policy prerogatives of the legislative and executive branches. Such a breach of constitutional boundaries, removing an issue from the democratic process, will produce greater public controversy as it frustrates the policy choices of voters."

Critics charged that the brief distorts the true history of gun control litigation. They maintain that there have

been over two dozen occasions of laws being found unconstitutional because they denied an individual right to bear arms. Critics also contended that the Supreme Court's 1939 *Miller* case was ambiguous and did not set an anti-individual rights precedent. Furthermore, they also charged the brief did not consider the actual text of the Second Amendment in its analysis.

Heller Decision

On June 26, the U.S. Supreme Court, in a 5-4 decision, struck down the D.C. gun ban, ruling that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and it is constitutional to use that arm for traditionally lawful purposes, such as self-defense.

ABA President Bill Neukom issued a statement following the ruling:

> The American Bar Association is gratified that the Supreme Court of the United States' ruling in *District of Columbia v. Heller* recognizes the public safety interests in regulating firearms ownership and use. However, the ruling also specifically confers a right to own and use firearms for lawful purposes, such as for self defense in the home. That leaves for further analysis, and appears to support, much of the vast body of regulation that has developed over time based on the needs of law enforcement and the interest of public safety. It leaves the District of Columbia and other jurisdictions the ability to adopt regulations that respond to those legitimate public interests, and retain those already in place. The majority opinion allows limiting the type of firearms that individuals can own to those typically possessed by law abiding citizens for lawful purposes, and permits restrictions on dangerous and unusual weapons. It upholds licensing laws, and restrictions on carrying even permissible weapons in sensitive places. This is not a signal to rescind regulation or ignore legitimate restrictions on gun ownership and use that are grounded in reason and practicality.

Activity at Annual Meeting

At the August 2008 Annual Meeting, the Special Committee on Gun Violence will seek to apply for permanent standing. Special Committee members and several past ABA presidents will propose a special amendment to the ABA Bylaws to create a "Standing Committee on Gun Violence." According to John Cruden, "The proponents maintain that there is an ongoing role for an Association focus and voice that would be appropriate for a standing committee, following 14 years of active and productive work by the Special Committee and its predecessors. The implications of a landmark ruling by the Supreme Court this summer for ABA policy and related public policy suggest that there will be work for an ongoing committee for years to come."

Based on past ABA activity, efforts could include lobbying at the federal level to craft Washington, D.C.'s gun laws, involvement in future litigation, hosting special forums to discuss the effects of gun violence, and/or offering future policies to be considered by the ABA's House of Delegates. As several cities, including Chicago, grapple with the repercussions of the *Heller* decision, the ABA's Special Committee on Gun Violence will remain a voice for reform.

The ABA annual meeting will also feature a panel discussion, "The Second Amendment After *Heller*" featuring Alan Gura, who argued before the Court in the *Heller* case for the plaintiffs, and former United States Solicitor General Walter Dellinger, who argued on behalf of the District of Columbia. *ABA Watch* will cover this program and report on it for Barwatch Email Updates.

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