

**AMERICAN BAR ASSOCIATION
HOUSE OF DELEGATES
2010 MIDYEAR MEETING
ORLANDO, FLORIDA**

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AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON SPECIALIZATION
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

1 RESOLVED, That the American Bar Association extend the accreditation of the Social
2 Security Disability Advocacy program of the National Board of Social Security
3 Disability Advocacy, division of the National Board of Legal Specialty Certification of
4 Wrentham, Massachusetts until the adjournment of the House of Delegates meeting in
5 August 2010.

EXECUTIVE SUMMARY

1. Summary of Recommendation

That the American Bar Association extend the accreditation of the Social Security Disability Law Advocacy certification program of the National Board of Social Security Disability Advocacy, a division of the National Board of Legal Specialty Certification to August 2010 so that they have the additional time needed to make the changes requested by the Standing Committee. This program has been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993.

2. Summary of Issue

To respond to the need to offer an extension to the accredited program so that they can address the changes requested by the Standing Committee and continue to meet the standards adopted by the House of Delegates.

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate certifying organizations that apply for accreditation, reaccreditation and the desire to certify programs and to keep them intact.

4. Summary of Minority Views or Opposition

No opposition has been identified.

AMERICAN BAR ASSOCIATION
MARITIME LAW ASSOCIATION OF THE UNITED STATES
TORT TRIAL AND INSURANCE PRACTICE SECTION
SECTION OF INTERNATIONAL LAW
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges the United States Senate to ratify the
- 2 United Nations Convention on Contracts for the International Carriage of Goods Wholly or
- 3 Partly by Sea, also known as “the Rotterdam Rules.”

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The ABA House of Delegates should urge the United States Senate to ratify the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (UNCITRAL), also known as the “Rotterdam Rules.”

2. Summary of the Issue that the Resolution Addresses

Presently, trading nations operate under a number of conflicting cargo shipping regimes. Most nations subscribe to one of the following conventions: the Hague Rules (1924); the Hague-Visby Rules (1968) as later amended; or the Hamburg Rules (1978). As sea carriage is predominantly an international activity, uniformity and predictability are much desired. In practice, the existing conventions remain subject to each nation’s interpretation, resulting in further complication. Current rules governing international cargo transportation contracts are fragmented by trade lane and transport mode, are widely perceived as favoring vessel owners over cargo owners, and have failed to keep pace with a global transition to containerized cargo and electronic shipping documents.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Rotterdam Rules, if widely adopted, will facilitate uniform cargo liability rules for ocean and related inland transportation, will create a more level playing field for cargo interests, and will recognize and encourage the use of modern information technology in global trade. It is believed that early ratification by the United States would influence similar action by other trading nations.

4. Summary of Minority Views

None

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
COMMISSION ON HOMELESSNESS AND POVERTY
STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges federal, state, territorial and local
2 governments to increase the opportunities of youth involved with the juvenile or criminal justice
3 systems and to prevent the continuing discrimination against those who have been involved with
4 these systems in the past by limiting the collateral consequences of juvenile arrests,
5 adjudications, and convictions.

6
7 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and
8 local governments to adopt and enforce laws and policies which:

9
10 Prohibit employers, colleges, universities, vocational and technical schools, financial aid
11 offices, licensing authorities and similar agencies from inquiring about or considering an
12 arrest of a juvenile that did not lead to a finding of guilt, an adjudication or a conviction,
13 or basing the denial of educational or vocational opportunities to applicants on such
14 arrest;

15
16 Prohibit colleges, universities, financial aid offices, and other educational institutions
17 from inquiring about or considering any juvenile adjudication(s) or convictions that
18 occurred as a juvenile when determining whether a student is a candidate for admission;

19
20 Prohibit employers and educational institutions from considering any records pertaining
21 to an arrest, adjudication or conviction of an applicant that occurred while the applicant
22 was a juvenile if such records have been sealed or expunged by the court;

23
24 Prohibit employers and employment licensing authorities:(1) from considering juvenile
25 adjudications or criminal convictions unless engaging in the conduct underlying the
26 adjudication or conviction would provide a substantial basis for denial of a benefit or
27 opportunity even if the person had not been adjudicated or convicted, and (2) if the
28 underlying conduct does provide such a basis:(a) from considering a juvenile
29 adjudication, if three years have passed following the applicant's discharge from custody
30 or supervision without being adjudicated or convicted of a subsequent offense; and (b)
31 from considering a criminal conviction, if five years have passed following the
32 applicant's release from custody or supervision without being convicted of a subsequent
33 offense.

34
35 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and
36 local governments to adopt and enforce policies encouraging employers, colleges, universities,
37 financial aid offices, licensing authorities and other agencies to give consideration to a juvenile's
38 successful completion of a community re-entry program or the terms of their probation.

102A

39 FURTHER RESOLVED, That the American Bar Association urges federal, state territorial and
40 local governments to adopt and enforce policies encouraging employers, colleges, universities,
41 financial aid offices, licensing authorities and other agencies to include on applications clear
42 definitions of legal terms such as arrest, adjudication, and conviction.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The ABA has a long history of addressing the collateral consequences faced by adjudicated and convicted persons through its Criminal Justice Standards.¹ This resolution represents an extension of all of the already published standards to include areas where collateral consequences occur not by “operation of law”² but rather through a policy, procedure or by the discretion of an employer or admissions committee. Laws, rules, regulations and policies that require disclosure of juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based upon a mistake(s) made when they were a child. The ABA recognizes the language used by the United States Supreme Court in *Roper v. Evans*, 543 U.S. 551 that children are different than adults because of: “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”³ Therefore, the ABA is recommending that the collateral consequences of committing a crime as a youth be severely reduced by reducing barriers to education and vocational opportunities because of a juvenile incident. Furthermore there should be limited exceptions that only exist when the incident is directly relevant to the position sought or a concern of a school.

B. Issue Recommendation Addresses.

The recommendation addresses juvenile collateral consequences.

C. How Proposed Policy Will Address the Issue.

The proposed policy will provide legislators, employers, educators and others with guidelines on what should not be considered regarding juvenile justice records.

D. Minority Views or Opposition.

There are minority views on both sides of the issue, some feel that the policy does not go far enough in that all collateral consequences stemming from a juvenile situation should be abolished. While others believe that there are some incidences where juvenile contact with the criminal justices system should be considered. This resolution represents the compromise between those two sides.

¹ Juvenile Justice Standards, Standards relating to Disposition (1979); ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualifications of Convicted Persons No. 3, (2004).

² Juvenile Justice Standards, Standards relating to Disposition, Standard 1.2.I (1979).

³ *Roper v. Evans*, 543 U.S. 551, 569 (2005).

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

COMMISSION ON HOMELESSNESS AND POVERTY

COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW

COMMISSION ON YOUTH AT RISK

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial and local
- 2 legislative bodies and governmental agencies to support the development of simplified *Miranda*
- 3 warning language for use with juvenile arrestees.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation calls for jurisdictions to develop “*Miranda*” warnings in wording that facilitates understanding by juveniles subject to custodial interrogation.

B. Issue Recommendation Addresses.

Juveniles as a class are less intellectually developed than adults. When provided the typical *Miranda* warnings given to adults, many juveniles are unable to understand the rights and information that the warnings are intended to convey. This recommendation addresses the issue by calling for *Miranda* warnings in wording written to be understood by the juveniles.

C. How Proposed Policy Will Address the Issue.

The proposed policy will address the issue by increasing awareness of the difficulty that some juveniles have in comprehending their rights even when read the typical *Miranda* warning and encourage alternative language to be drafted and available when juveniles are subject to interrogation.

D. Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
COMMISSION ON HOMELESSNESS AND POVERTY

REPORT TO THE HOUSE OF DELGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges local, state, territorial and federal
- 2 governments to undertake a comprehensive review of the misdemeanor provisions of their
- 3 criminal laws, and, where appropriate, to allow the imposition of civil fines or nonmonetary civil
- 4 remedies instead of criminal penalties, including fines and incarceration.

102C

EXECUTIVE SUMMARY

A. Summary of Recommendation

The recommendation calls for urges local, state, territorial and federal governments to undertake a comprehensive review of the misdemeanor provisions of their criminal codes, and, where appropriate, to allow the imposition of civil fines or nonmonetary civil remedies instead of criminal sanctions.

B. Issue Recommendation Addresses

The criminal justice system is currently facing some serious challenges to the prosecution and conviction of criminals, as well as the effective representation of defendants. Problems with overcrowding, over burdened prosecutors and public defenders with unfeasible caseloads, and understaffing are among the many hindrances to the justice system.

C. How Proposed Policy Will Address the Issue

This recommendation will allow prosecutors and public defenders to focus on more important cases, while also maintaining oversight and control over violators of traffic offenses through the civil system.

D. Minority Views or Opposition

No opposition to this recommendation is known to exist at this time.

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges policy making bodies of federal, state,
2 local and territorial courts to adopt, a procedure whereby a criminal trial court shall conduct at a
3 reasonable time prior to a criminal trial, a conference with the parties to ensure that they are
4 fully aware of their respective disclosure obligations under applicable discovery rules, statutes,
5 ethical standards and the federal and state constitutions and to offer the court's assistance in
6 resolving disputes over disclosure obligations.

102D

EXECUTIVE SUMMARY

A. Summary of Recommendation.

That the American Bar Association urges federal, state, local and territorial governments to adopt at a reasonable time prior to trial, a trial court shall conduct a conference with the parties to ensure that they are fully aware of their respective disclosure obligations under applicable discovery rules, statutes, ethical standards and the federal and state constitutions and to offer the court's assistance in resolving disputes over disclosure obligations.

B. Issue Recommendation Addresses.

How the judiciary may minimize the danger of wrongful convictions.

C. How Proposed Policy Will Address the Issue.

Courts should, in addition to their powers in overseeing the discovery process, hold a pre-trial conference that specifically focuses on discovery issues and the disclosure of exculpatory information. At such a conference, the parties may be required to identify material that has been disclosed and will address any outstanding disclosure issues. By holding a conference devoted to this issue, courts will help assure that the subject of disclosure is treated with the seriousness that it deserves.

D. Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
COMMISSION ON YOUTH AT RISK
COMMISSION ON HOMELESSNESS AND POVERTY
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial, and local
2 governments to ensure that judicial, administrative, legislative, and executive authorities expand,
3 as appropriate in light of security and safety concerns, initiatives that facilitate contact and
4 communication between parents in correctional custody and their children in the free
5 community. Such initiatives should:
6
7 (a) to the extent practicable, assign prisoners to a facility located within a reasonable
8 distance from the prisoner’s family or usual residence;
9
10 (b) encourage and support no cost or low cost public transportation between urban
11 centers and prisons for families of prisoners;
12
13 (c) revise visitation rules, including those related to hours and attire, to facilitate extended
14 contact visits between parents and their minor children, and assure that information is
15 made available to parents regarding opportunities to visit with their children;
16
17 (d) modify visitation areas to accommodate visits by young children;
18
19 (e) provide reasonable opportunities for inmates to call and write their minor children at
20 no cost or at the lowest possible rates;
21
22 (f) seek to reduce barriers that limit opportunities for children in foster care to visit their
23 incarcerated parent, and make available services to help address the trauma that these
24 children face resulting from parental incarceration;
25
26 (g) adopt or expand programs on parenting and parenting skills available to incarcerated
27 prisoners with minor children, and provide their family members with services designed
28 to strengthen familial relationships and child safety, permanency, and well being
29 outcomes; and
30
31 (h) provide the opportunity for incarcerated parents to participate meaningfully in
32 dependency-related court proceedings involving their children and ensure competent and
33 consistent legal counsel to aid them in these cases.

102E

34 FURTHER RESOLVED, That the American Bar Association urges states, territories, and the
35 federal government to adopt policies and procedures, to the extent consistent with security,
36 safety, and privacy concerns, that require child welfare agencies to track the incarceration status
37 of the parents of children in foster care, and that facilitate communication between the child
38 welfare system and the corrections system regarding the incarceration status of the parents, the
39 location of the parents' correctional facilities, and subsequent transfers of the parents to other
40 correctional facilities.

41
42 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and
43 local governments to clarify that incarceration alone should not be grounds for judicial
44 termination of parental rights, nor does incarceration negate child welfare agency requirements
45 to provide reasonable efforts that may aid in facilitating safe, successful, and appropriate parent-
46 child reunification; and

47
48 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and
49 local governments to explore the use of innovative means of providing opportunities for
50 parent/child contact and communication, including but not limited to intergovernmental
51 contracts, and alternatives to incarceration such as privately operated residential facilities.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation urges jurisdictions to expand their efforts to facilitate contact and communication between parents in custody and their children in the free community by considering eight enumerated initiatives relating to visitation, telephonic and written communications, and improved parenting skills. To ensure that such measures extend to incarcerated parents whose children are in foster care, it also promotes policies and procedures to improve communications between child welfare agencies and correctional agencies.

B. Issue Recommendation Addresses.

The recommendation seeks to ameliorate the adverse impact of parental incarceration on the parent/child relationship generally and with respect to parent/foster child in particular.

C. How Proposed Policy Will Address the Issue.

The proposed policy suggests eight specific steps for jurisdictions to consider in order to improve the parent/child relationship both while the parent is in custody and after the parent is released.

D. Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
COMMISSION ON HOMELESSNESS AND POVERTY
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
COMMISSION ON YOUTH AT RISK
STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS
REPORT TO THE HOUSE OF DELEGATES

1 RESOLVED, That the American Bar Association urges bar associations, and law schools to
2 consider and expand, as appropriate, initiatives that assist criminal defendants and prisoners in
3 avoiding undue consequences of arrest and conviction on their custodial and parental rights.
4 Such initiatives should include:
5
6 (a) training criminal defense counsel to: 1) ascertain whether their clients have minor
7 children and if so, to ascertain the location of the children; and, 2) to advise clients with
8 minor children as to the consequences of arrest and conviction on their custodial and
9 parental rights and on how to obtain further assistance in avoiding those consequences;
10
11 (b) developing models for training lawyers about the collateral effects of arrest and
12 conviction on their parenting rights that can be distributed to bar associations; and
13
14 (c) establishing programs to provide criminal defendants and prisoners with no cost or
15 low cost legal assistance on family law issues, including the avoidance of foster care
16 through kinship care and guardianship arrangements.
17
18 FURTHER RESOLVED, That the American Bar Association urges Congress to eliminate
19 restrictions that prohibit recipients of Legal Services Corporation funds from providing legal
20 assistance to prisoners on family law issues.

102F

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation urges bars, bar associations and law schools to expand initiatives to provide criminal defendants and prisoners quality legal assistance that will help them avoid undue consequences of arrest and conviction regarding their parental rights. It also urges Congress to allow Legal Services' to provide prisoners with legal assistance on family law issues and other constitutionally guaranteed rights.

B. Issue Recommendation Addresses.

Arrest and conviction often adversely affect both the arrested, convicted, or incarcerated parent and the parent's child or children. This recommendation seeks to reduce those adverse affects, including avoidance of unwarranted foster care.

C. How Proposed Policy Will Address the Issue.

The proposed policy addresses the issue by calling for training that will help defense counsel recognize, and advise their clients about, collateral consequences of arrest and conviction on parental rights and family law issues.

D. Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges the President and the Attorney General
2 to assure that lawyers in the Department of Justice do not make decisions concerning
3 investigations or proceedings based upon partisan political interests and do not perceive that they
4 will be rewarded for, or punished for not, making a decision based upon partisan political
5 interests; and
6
7 FURTHER RESOLVED, That the American Bar Association urges the leaders of state, local and
8 territorial legal offices to assure that lawyers in their offices do not make decisions concerning
9 investigations or proceedings based upon partisan political interests and do not perceive that they
10 will be rewarded for, or punished for not, making a decision based upon partisan political
11 interests.

102G

EXECUTIVE SUMMARY

A. Summary of Recommendation.

This Recommendation urges the President and the Attorney General to assure that decisions to appoint, promote, assign and terminate United States Attorneys and other lawyers in the Department of Justice are neither rewards nor punishments for making decisions concerning investigations or proceedings based upon partisan political interests.

B. Issue Recommendation Addresses.

That the leaders of state, local and territorial legal offices assure that decisions to appoint, promote, assign and terminate lawyers in their offices are neither rewards nor punishments for making decisions concerning investigations or proceedings based upon partisan political interests.

C. How Proposed Policy Will Address the Issue.

This resolution is simply intended to urge the leaders of governmental law departments to assure that government lawyers make decisions concerning investigations and proceedings without regard to partisan politics. If investigations or proceedings are not initiated because of partisan political considerations, the damage to the rule of law is also substantial. If the public were to believe that individuals or entities are given a free pass to violate the law with impunity, the basic concept of equal justice under law would be undermined.

D. Minority Views or Opposition.

None.

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges federal, state, local and territorial
2 governments to provide sufficient funding, infrastructure, equipment and other support necessary
3 to:
4

- 5 1. Facilitate basic and applied scientific research to improve, validate, and set
6 standards for various forensic science disciplines; annually assess and establish a
7 prioritized agenda of research and other needs; identify and evaluate already
8 existing but not yet published research to forensic science disciplines and make
9 such research publicly available; scientifically validate forensic science
10 disciplines or methods where such validation or the limits of specificity are
11 unclear or in doubt; develop future technologies and methods that will assist in
12 answering questions posed in criminal investigations or that will increase
13 laboratory capacity to meet the demand for forensic science services and the
14 means to meet such demands;
15
- 16 2. Require mandatory accreditation of all government and private forensic
17 laboratories and forensic service providers that offer examination conclusions,
18 interpretations or testimony to the recommended ISO 17025 standard or other
19 similarly appropriate accreditation standard; and to include reasonable timeline
20 and enforcement provisions for implementation and compliance.
21
- 22 3. Develop and make available effective and enforceable programs for certification
23 of qualified laboratory analysts, examiners, identified forensic science service
24 providers and others who offer examination conclusions, interpretations or
25 testimony consistent with the recommended standards of accreditation (2. above),
26 the proposed national code of ethics (7. below) and other standards recommended
27 in this resolution;
28
- 29 4. Develop standards for the development of validated protocols encompassing best
30 practices for analysis by discipline and method, including standards for such
31 rigorous quality assurance and quality control measures as internal peer review;
32 maintenance of appropriate testing or examination documentation to facilitate
33 external peer review by other experts and internal and external performance
34 audits; regular proficiency testing; and corrective action procedures when
35 proficiency testing or case work errors are discovered;

102H

- 36 5. Adopt standards regarding the communication of scientific testing results whether
37 by written report or oral testimony, including wherever possible, uniform
38 terminology and report content;
- 39
- 40 6. Adopt standards that reasonably ensure public and private laboratory management
41 and staff is free from undue pressure, internal or external, commercial or
42 financial, that may affect the quality or integrity of the laboratory examination or
43 analysis;
- 44
- 45 7. Develop a national code of ethics for all forensic science disciplines to be adopted
46 by forensic science societies, accrediting organizations and certification entities as
47 an enforcement mechanism for compliance;
- 48
- 49 8. Conduct research into the study of human error, contextual and confirmational
50 bias and methods and strategies for overcoming such limitations;
- 51
- 52 9. Provide necessary incentives to encourage students in physical and life sciences to
53 pursue studies in fields critical to forensic sciences; establish standards for
54 forensic science education programs; develop funding mechanisms and incentives
55 to encourage student entry into service in the forensic sciences including forensic
56 pathology, and other enhanced undergraduate, graduate and continuing education
57 opportunities; and
- 58
- 59 10. Develop and implement or facilitate the implementation of standards and
60 programming for the training of law enforcement, lawyers and judges in forensic
61 science.
- 62

63 FURTHER RESOLVED, That the American Bar Association urges Congress to provide funding
64 to the National Institute of Forensic Science (NIFS) to prepare, in conjunction with the Centers
65 for Disease Control and Prevention and the Federal Bureau of Investigation, forensic scientists
66 and crime scene investigators for their potential roles in managing and analyzing evidence from
67 events that affect homeland security, so that maximum evidentiary value is preserved and the
68 safety of these personnel is guarded. This preparation also should include planning and
69 preparedness (to include exercises) for the interoperability of local forensic personnel with
70 federal counterterrorism organizations.

71

72 FURTHER RESOLVED, That the American Bar Association urges federal, state, county, local
73 and territorial governments to enact legislation and provide necessary funding requiring all
74 offices charged with the duty of conducting medico-legal death investigations to meet mandatory
75 accreditation or professional practice standards within a reasonable time frame; provide for the
76 development of appropriate standards in consultation and collaboration with the National
77 Institute of Health and its Center for Disease Control and Prevention (CDC), the National
78 Association of Medical Examiners, and the American Board of Medico-legal Death
79 Investigators; adopt a standard in which such death investigations are conducted under the

80 supervision of a board certified forensic pathologist; and ensure that all death investigation
81 facilities meet current CDC requirements.

82

83 FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation
84 and authorize and appropriate funds necessary to achieve the nationwide interoperability of the
85 Automated Fingerprint Identification System (AFIS); adopt the fifteen recommendations made
86 by the 2008 National Academy of Sciences report *Ballistic Imaging* for improving the
87 effectiveness of the National Integrated Ballistic Information Network (NIBIN) through
88 operational and technological improvements; develop and implement training for law
89 enforcement officers and evidence collection units in optimizing the effectiveness of NIBIN; and
90 facilitate the development and implementation of a systems interoperability strategy for current
91 and future forensic database systems.

92

93 FURTHER RESOLVED, That the American Bar Association urges federal, state, local and
94 territorial governments, legislative bodies and courts to provide the funds and other resources
95 necessary to assure that in criminal cases an accused is able to obtain the testing or re-testing of
96 evidence and experts which meet the accreditation and certification requirements listed herein, to
97 provide testimonial or other assistance to the defense when necessary to assure the accused a fair
98 trial or sentencing proceeding.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation urges American Bar Association supports the funding and other legislative efforts necessary to strengthen the forensic science community in its mission of providing accurate, timely, reliable and scientifically valid evidence to the nation's criminal justice system.

B. Issue Recommendation Addresses.

The need to provide the funds, resources and other legislative support necessary to effectively integrate the forensic science community into this nation's system of homeland security as outlined in the National Academy of Sciences report, *Strengthening Forensic Science in the United States: A Path Forward*.

C. How Proposed Policy Will Address the Issue.

The proposed policy suggests eight specific steps for to be considered in order to improve the work of the forensic science community, and be better able to respond not only to resolving issues related to criminal investigations but also to provide aid and assistance in times of natural and man-made mass disasters.

D. Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.

AMERICAN BAR ASSOCIATION
SECTION OF CRIMINAL JUSTICE
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
COMMISSION ON IMMIGRATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association adopts the black letter of the ABA
2 *Criminal Justice Standards on the Treatment of Prisoners* dated February 2010, to supplant the
3 *ABA Criminal Justice Standards on the Legal Status of Prisoners*.

4
5 FURTHER RESOLVED, That Standards 7-10.2 and Standards 7-10.5 through 7-10.9 of
6 the *ABA Criminal Justice Mental Health Standards* are supplanted by Standard 23-6.15 of the
7 *ABA Criminal Justice Standards on the Treatment of Prisoners*.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation is to approve a new set of *ABA Criminal Justice Standards on the Treatment of Prisoners* to supplant the previous *ABA Criminal Justice Standards on the Legal Status of Prisoners* that were approved in 1981 and 1985. (In August 2003, Part VIII of those Standards addressing civil disabilities of convicted persons was superseded by a new set of *ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons*.) Further, the recommendation would supplant six Standards on prisoners with mental illness or mental retardation in the *ABA Criminal Justice Standards on Mental Health* approved in 1984. The proposed Standards consist of eleven Parts: General Principles; Intake and Classification; Conditions of Confinement; Rules of Conduct and Discipline; Personal Security; Health Care; Personal Dignity; Rehabilitation and Reintegration; Grievances and Access to Courts; Administration and Staffing; and Accountability and Oversight.

B. Issue Recommendation Addresses.

The recommendation addresses myriad issues related to corrections and the treatment of prisoners under the various Parts listed in A, above.

C. How Proposed Policy Will Address the Issue.

The proposed policy will provide legislators, correctional administrators, correctional staff, defense attorneys, courts, health care providers, prisoner rights advocates, prisoners and others detailed and well-considered guidance in handling a wide variety of corrections-related issues.

D. Minority Views or Opposition.

The proposed Standards were approved without opposition by the members of the drafting Task Force, the Criminal Justice Standards Committee, and the Criminal Justice Section Council. At all stages, advice was sought from interested individuals and organizations on particular issues, and prior to the first and second readings by the Section Council, the entire draft Standards were widely circulated to potentially-interested ABA entities and non-ABA organizations and individuals. The comments in response almost unanimously praised the product, even when specific suggestions to improve it were made. (Such suggestions were all considered and many incorporated.) The American Correctional Association (which sent representatives to most Task Force meetings) advised that it would neither approve nor disapprove the proposed Standards. The U.S. Department of Justice (which sent representatives to most Task Force, Standards Committee and Council meetings where the proposed Standards were discussed) found that extensive government clearance procedures precluded its taking a position on the Standards.

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges Congress to ensure that funding for the
2 John R. Justice Prosecutors and Defenders Incentive Act of 2008 (Section 951 of PL 110-315) is
3 expanded beyond its original authorization of \$25 million to cover the actual national need.
4
5 FURTHER RESOLVED, That the American Bar Association urges Congress to lift the proposed
6 expiration of the John R. Justice Prosecutors and Defenders Incentive Act of 2008.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

This Recommendation urges Congress to ensure that funding for the John R. Justice Prosecutors and Defenders Incentive Act of 2008 (Section 951 of PL 110-315) is expanded beyond its original authorization of \$25 million to cover the actual national need.; and urges Congress to lift the proposed expiration of the John R. Justice Prosecutors and Defenders Incentive Act of 2008.

B. Issue Recommendation Addresses.

It attempts to expand and enhance an existing federal student loan repayment program for prosecutors and public defenders and requests certain action be taken immediately given 1) the year and a half delay in implementing the program, and 2) the program's fixed six year duration, among other things.

C. How Proposed Policy Will Address the Issue.

This resolution is simply intended to urge Congress to lift the proposed expiration of the John R. Justice Prosecutors and Defenders Incentive Act of 2008.

D. Minority Views or Opposition.

None.

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association adopts the Model Act
- 2 Governing Standards for the Care and Disposition of Disaster Animals,
- 3 dated February 2010 and recommends its adoption by state and territorial
- 4 legislative bodies.

1 **AMERICAN BAR ASSOCIATION**
2 **MODEL ACT GOVERNING STANDARDS FOR THE CARE AND**
3 **DISPOSITION OF DISASTER ANIMALS**
4 **(February 2010)**
5

6 **Section 1. Short Title**
7

8 This Act may be cited as the “Standards for the Care and Disposition of
9 Disaster Animals”
10

11 **Section 2. Purpose**
12

13 The purpose of this Act is to provide certainty of ownership for disaster
14 animals by providing an owner with a specific time frame by which the
15 owner must reclaim companion animals following a declared federal disaster
16 or state emergency, and to provide an animal shelter with specific guidelines
17 as to how long disaster animals must be held prior to their disposition.
18

19 **Section 3. Definitions**
20

21 As used in this Act:
22

23 (1) “Animal Shelter” means: a physical facility or entity, including
24 those utilizing private homes, operating for the purpose of providing
25 temporary or long term shelter to lost, unwanted or abandoned
26 animals, that is recognized and approved by the state or local
27 authority. For the purposes of this Model Act, the singular, as in
28 “Animal Shelter,” shall include the plural, as in “Animal Shelters,”
29 and vice versa.
30

31 (2) “Disaster Animals” means domesticated companion animals that
32 have become separated from an owner as the result of a Class #1 or
33 Class #2 Event. Disaster animals include those found on private
34 property or running at large, as well as, owner surrendered or
35 relinquished companion animals. Feral animals are excluded from this
36 Act.
37

38 (3) “Companion Animals” mean domesticated animals, such as a dog,
39 cat, bird, rabbit, rodent, or turtle that are traditionally kept in the home

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40 for pleasure rather than for commercial purposes, can travel in
41 commercial carriers, and be housed in temporary facilities.
42 Companion animals do not include reptiles (except turtles),
43 amphibians, fish, insects/arachnids, farm animals (including horses),
44 and animals kept for racing purposes or animals held by a registered
45 research facility under the federal Animal Welfare Act. Feral animals,
46 animals covered by the federal Animal Welfare Act or by regulations
47 issued under that act, and any other animals held for use in or used in
48 research are excluded from this Act

49

50 (4) “Owner” means the person having title to companion animals.

51

52 (5) “Feral Animals” means animals that do not have an owner.

53

54 (6) “Holding Period” means the length of time that disaster animals
55 are cared for by an animal shelter and not disposed of, except by
56 humane euthanasia.

57

58 (7) “Reclaim” means the taking back of possession of disaster animals
59 by the owner or an agent of the owner.

60

61 (8) Class #1 Event - State declared emergency for a county or portion
62 of county requiring companion animals’ owner to leave their
residences for more than 24 hours.

63

64 (9) Class #2 Event - Federally declared disaster requiring companion
65 animals’ owner to leave their residences for more than 24 hours.

66

67 (10) “Tracking Information” means available information about the
68 owner, physical description and health history of the disaster animal,
69 photographs of the disaster animal, information about where the
70 disaster animal was found and transported to, recommended course of
71 treatment, and communications with an owner, including holding
72 period extension by contract.

73

74 (11) “Approved Website” means a website approved by the state
75 veterinarian.

75

76 (12) “Extension by Contract” means extensions of the mandated
77 holding period based upon an agreement between the owner and
78 animal shelter for an additional time period.
79

80 (13) “Shelter Animals” means companion animals living at an animal
81 shelter before a Class #1 or Class #2 Event.
82

83 **Section 4. Provisions for Disaster Animals**
84

85 (a) Disaster animals taken from a disaster area or delivered to an animal
86 shelter following a Class #1 or Class #2 Event will be kept by the animal
87 shelter that receives the disaster animals according to the applicable holding
88 period, unless the owner of the disaster animals agrees otherwise in writing.
89 After the applicable holding period has passed for disaster animals, then the
90 animal shelter has the authority to dispose of the disaster animals as allowed
91 under state law when there is no Class #1 or Class #2 Event, unless the
92 owner has an extension by contract with the animal shelter for additional
93 time. An owner who does not retake possession of their disaster animals by
94 the end of the applicable holding period plus any extension by contract
95 thereof, has abandoned the disaster animals and any new owner shall have
96 unencumbered title to the disaster animals.
97

98 (b) Holding periods:
99

100 (1) Class #1 Event - A disaster animal brought in to an animal shelter
101 shall be kept by the animal shelter for 30 days.
102

103 (2) Class #2 Event - A disaster animal brought to an animal shelter
104 shall be kept for 90 days after the posting of a photograph and tracking
105 information about the disaster animal sufficient to give notice to an owner
106 on an approved website. The holding period for the animal shelter shall be
107 six months if posting on an approved website does not occur. This
108 requirement may be modified by the State Veterinarian or as otherwise
109 determined by the State Veterinarian.
110

111 (c) During the holding period, the animal shelter is fully authorized to
112 provide or arrange for necessary veterinary health services that are in the
113 best interests of the disaster animal as may be determined by a veterinarian.
114 Disaster animals that exhibit ownership by the presence of a tag or

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115 identification chip or was removed from a private residence, including
116 fenced adjacent land, may not be spayed or neutered without the written
117 permission of the owner unless it is medically necessary as may be
118 determined by a veterinarian.

119

120 (d) During the holding period an animal shelter may place a disaster animal
121 in a private home or other animal shelter either in the state or out of the state
122 so long as available tracking information is kept, and any transfer out of
123 state is authorized by the state veterinarian. In no case shall title to a disaster
124 animal be awarded to a new owner until after the holding period has expired,
125 together with any extension by contract thereof.

126

127 (e) If the owner of a disaster animal contacts an animal shelter about a
128 disaster animal but is unable to assume possession of the disaster animal by
129 the end of the applicable holding period, then the owner may request the
130 animal shelter to keep the disaster animal for up to an additional 30 days, if
131 the owner is willing to pay the cost of care as established by the animal
132 shelter for the disaster animal during the extension by contract. The animal
133 shelter may require payment of the costs as a condition of extending the
134 holding period. If by the end of the extension by contract the disaster animal
135 has not been reclaimed by the owner, then the animal shelter may treat the
136 holding period as expired. The animal shelter shall advise an owner of the
137 dates of the required holding period and opportunity for extensions by
138 contract, if any owner inquiry is made

139

140 (f) If an animal shelter becomes inoperative because of a Class #1 Event or
141 Class #2 Event, then all the companion animals removed from the animal
142 shelter shall be treated as disaster animals by whoever takes control of the
143 companion animals, unless records that accompany the shelter animals
144 demonstrate that it was lawfully permissible to transfer title to the shelter
145 animals before a Class #1 or Class #2 Event. If these records are available,
146 then the shelter animals would not be treated as disaster animals.

147

148 (g) If the owner of a disaster animal has contacted the animal shelter
149 responsible for the disaster animal before the end of the holding period to
150 reclaim the disaster animal, but the animal shelter or other possessor of the
151 disaster animal refuses to return the disaster animal, then any transfer of title
152 agreement by the shelter to a new owner is voidable by court order.

153

154 **Section 5. Private Keeping of Disaster Animals**

155

156 Any individual, who is not working under the authority of an animal shelter,
157 who takes possession of disaster animals, shall transfer the disaster animals
158 as quickly as reasonably possible to an animal shelter along with available
159 tracking information.

160

161 **Section 6. Movement of Animals**

162

163 (a) No disaster animals may be removed from the State without the
164 permission of the State Veterinarian or by satisfying such requirements as
165 might be established by the State Veterinarian.

166

167 (b) Except as provided above, anyone who knowingly removes disaster
168 animals from the state is subject to a civil fine of up to \$1,000 per offense.

169

170 **Section 7. Exemptions**

171 (a) This Act shall not limit an animal control authority or agent thereof from
172 humanely euthanizing an animal in accordance with existing state law.

173 (b) This Act does not impose any affirmative duty on an animal shelter to
174 admit disaster animals.

175 (c) This Act shall not restrict or interfere with the general powers of the
176 State Veterinarian [or Department of Agriculture] [Department of Health],
177 including the power to quarantine or restrict the movement of disaster
178 animals, or to exercise powers provided by law.

179 (d) This Act shall not be construed as preventing veterinary care for disaster
180 animals either before or after they are brought to an animal shelter.

181 **Section 8. Effective Date**

182 This Act shall take effect July 1, 20xx.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

This Recommendation calls for states and territories to adopt a statute to establish guidelines for animal shelters and mandatory minimum hold periods for companion animals following disasters.

2. Summary of the Issue that the Resolution Addresses

The Recommendation is intended to address a problem that arises with animal rescue operations in disasters, when many companion animals, primarily dogs and cats, are separated from their owners, abandoned, or otherwise dislocated. The animals that survive usually end up in animal shelters with an uncertain fate, because the animal shelters become overwhelmed with animals and there are often no guidelines for how long a shelter must keep an animal, how and when they may adopt the animal out, or when they may otherwise move the animal.

In the wake of Hurricane Katrina, many owners found the location of their companion animals, only to discover that their companion animal had been adopted by a new family, or even euthanized because of the lack of shelter space or other problems. Many ownership disputes and much human and animal suffering resulted from the lack of guidelines as to what shelters can do with companion animals and how long they keep a companion animal before taking action.

3. Please Explain How the Proposed Policy Position will Address the Issue

The recommended model statute can be used by the states and territories in establishing guidelines and hold periods for disaster animals, providing a safe harbor for shelters and greater certainty for owners concerning the time periods available to them to seek, find and recover their companion animals. It does not require any government agency to accept the financial or physical burden of disaster animals. It does not change the legal status of animals already in government control but is an aid for those animal shelters that voluntarily accept responsibility for disaster animals. This is done by providing clearer guidelines on what should be done by the holding agency to allow the owners to find their animals and stating how long to hold the

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animals. The provisions also seek to limit difficulties experienced in the past by requiring that the animals be kept in the state of the disaster for a minimum period rather than having the animals scattered across the county.

4. Summary of Minority Views or opposition which have been identified:

No minority or opposing view has been identified

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association opposes the adoption of legislation by
- 2 Congress that merges medical payment components of workers compensation and medical
- 3 payment components of automobile insurance with health insurance, commonly referred to as
- 4 Universal 24 Hour Health Coverage.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Congress is urged not to adopt legislation that merges medical payment components of workers compensation and medical payment components of automobile insurance with health insurance, commonly referred to as Universal 24 Hour Health Coverage.

2. Summary of the Issue that the Resolution Addresses

Workers' compensation health benefits are administered with wage replacement and other benefits in a coordinated manner and comprise more than 50% of the estimated \$90 Billion in annual workers' compensation benefits. As a result, the health portion cannot simply be taken out of the workers' compensation systems as a draft Senate committee amendment proposed without examining its broader implications and the extraordinary disruptions it would cause for all of the parties to workers' compensation systems.

The concept of Universal 24-Hour Health Coverage involves providing, in a single policy, medical benefits for all of an employee's injuries and diseases, whether work-related or not. There are no compelling reasons to expand the number of issues being addressed in the pending federal health insurance legislation by invoking the failed policy of Universal 24-Hour Health Coverage and completely disrupting and overturning the provision of medical benefits through existing federal, state and territorial workers' compensation systems. This is particularly so when the full ramifications of such a major step have not been explored, much less fully explored with the participation of all of the parties to the federal, state and territorial workers' compensation systems.

3. Please Explain How the Proposed Policy Position will Address the Issue

It will enable the Association to educate Congress about the failed attempts to adopt Universal 24-Hour Health Coverage since the 1970's and provide the affected parties the time and an opportunity to participate in an organized debate of an issue that affects every person and business in the United States.

“Workers' compensation is a very important field of the law, if not the most important. It touches more lives than any other field of the law. It involves the payments of huge sums of money. The welfare of human beings, the success of business, and the pocketbooks of consumers are affected daily by it.

Judge E. R. Mills, Singletary v. Mangham Construction, 418 So.2d 1138 (Fla. 1st DCA, 1982)

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4. Summary of Minority Views

None identified.

AMERICAN BAR ASSOCIATION
SECTION OF LITIGATION
SECTION OF CRIMINAL JUSTICE
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
SECTION OF INTERNATIONAL LAW
DEATH PENALTY REPRESENTATION PROJECT
COMMISSION ON IMMIGRATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges the United States and upon state and
2 territorial governments to work to ensure that the fundamental protections of Article 36 to the
3 Vienna Convention on Consular Relations (“Article 36”) are extended fully and without obstacle
4 to foreign nationals within United States borders; and

5 FURTHER RESOLVED, That the American Bar Association urges the United States to work to
6 ensure that the fundamental protections of Article 36 are extended fully and without obstacle to
7 United States citizens in foreign countries; and

8 FURTHER RESOLVED That the American Bar Association urges the President and Congress to
9 renew the United States’ commitment to the implementation of the Vienna Convention and to the
10 enforcement of its obligations under the United Nations Charter and the Optional Protocol to the
11 Vienna Convention by:

12 (1) Seeking means to fully implement the decision of the International Court of Justice in
13 *Avena and Other Mexican Nationals* through legislation and other means, where possible;

14 (2) Recognizing that disputes arising out of the interpretation of the Vienna Convention
15 and related questions of international law should be decided by the International Court of Justice;
16 and

17 (3) According the decisions of the International Court of Justice with regard to those
18 disputes binding force within the United States, including honoring and enforcing any
19 International Court of Justice judgments to which the United States is a party; and

20 FURTHER RESOLVED That the American Bar Association urges the President and Congress,
21 as well as state and territorial executives, officials, and legislatures, to advance the
22 implementation of and compliance with Article 36 of the Vienna Convention in the United States
23 through the following measures:

24 (1) Drafting and adopting appropriate legislation that would codify the protections of
25 Article 36 of the Vienna Convention into United States and state law, including but not limited to
26 the following:

27 (a) Enacting legislation requiring that a person who is arrested or detained shall be
28 advised without delay that if the arrestee or detainee is a foreign national, the foreign national
29 has a right to communicate with an official from the consulate of the foreign national’s country,
30 and that if the arrestee or detainee chooses to exercise this right the advising officer notify the
31 pertinent official in the officer’s agency or department of that fact; and

32 (b) Enacting legislation that renders procedural default rules inapplicable to an
33 assertion in criminal cases that the defendant’s right under Article 36 has been violated; and

34 (2) Developing federal, state and territorial policies and procedures that enhance United
35 States compliance with Article 36 of the Vienna Convention, such as the following measures:

36 (a) Advising an arrestee or detainee as part of the booking process that foreign
37 nationals have an Article 36 right to communicate with an official from the consulate of the
38 foreign national’s consulate;

39 (b) Adopting, as appropriate, policies and procedures that reflect and abide by the
40 principles set forth in model guidelines or standards such as those promulgated by the United
41 States Department of State or by Commission on Accreditation of Law Enforcement Agencies,
42 regarding compliance with the Vienna Convention consular notification requirements;

43 (c) Taking steps to ensure that knowledge of these polices and procedures and of
44 the right to consular notification is disseminated to federal, state, and local law enforcement
45 personnel;

46 (d) Taking steps to ensure that a magistrate or judge informs a defendant at the
47 first appearance that foreign nationals have an Article 36 right to communicate with an official
48 from the consulate of the foreign national’s consulate;

49 (e) Providing training for prosecutors, defense counsel, judges, and law
50 enforcement personnel as to the United States’ obligations under Article 36;

51 (f) Taking steps to ensure that for countries on the mandatory notification list, that
52 mandatory notification does occur in all cases; and

53 FURTHER RESOLVED, That the American Bar Association urges prosecutors and criminal
54 defense attorneys to become knowledgeable about the Vienna Convention’s consular notification
55 requirements and work to ensure effective exercise of those rights by foreign national
56 defendants, including through the following measures:

57 (1) For prosecutors, assuming a responsibility to verify that a foreign national criminal
58 defendant has been informed of the right to consular notification, and verifying that any request
59 has been honored or that mandatory notification requirements have been met;

60 (2) For criminal defense attorneys in all cases, complying fully with ABA Guideline 10.6
61 "Additional Obligations of Counsel Representing a Foreign National" contained in the ABA
62 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases
63 (rev. 2003); and

64 FURTHER RESOLVED, That the American Bar Association urges state and territorial
65 bar associations, in matters involving foreign national defendants, to establish local links with
66 consulates in the United States to assist the consulates in finding counsel for foreign national
67 defendants, to provide other appropriate assistance to the consulates, to seek periodic
68 assessments from consulates as to compliance with Article 36 by the United States and state and
69 local governments, and to work with the consulates to propose and implement any necessary
70 reforms and improvement.

EXECUTIVE SUMMARY

1) Summary of the Issue Which the Recommendation Addresses

The Vienna Convention on Consular Relations (VCCR) is a binding multilateral treaty that codifies the rights, privileges, immunities, and functions of consulates worldwide. Article 36(1)(b) of the VCCR regulates the provision of timely consular information, notification, and assistance to detained foreign nationals. When international delegates met to draft the Convention in the 1960s, the United States successfully lobbied for the inclusion of an Optional Protocol, a binding enforcement mechanism that would grant the International Court of Justice (ICJ) with jurisdiction over claims arising from the VCCR.

Since ratifying both the Convention and the Optional Protocol in 1969, the United States has consistently relied on the VCCR and its binding enforcement mechanisms to safeguard the consular rights of its citizens in other countries. At home, however, the record of U.S. compliance with Article 36 obligations has been inconsistent, and at times deficient—even in cases that resulted in death sentences. Despite efforts by the State Department and Justice Department to promote compliance, many states continue to fall short of Vienna Convention standards, and only three states have enacted legislation addressing consular notification requirements. The inconsistent enforcement of the VCCR threatens the individual rights not only of foreign nationals arrested in the United States but also of American citizens detained abroad who rely on reciprocal compliance.

For more than a decade, the ABA has stood at the forefront of efforts to enhance the fairness of criminal justice proceedings by securing full compliance with the United States' Article 36 obligations. In 1998, the House of Delegates adopted a resolution calling for domestic law enforcement officials to provide foreign nationals with timely notice of their right to consular assistance and advocating the more widespread dissemination of information relating to that right. Four years earlier, the House of Delegates reaffirmed the ABA's commitment to the rule of international law when it recommended that the United States recognize the jurisdiction of the International Court of Justice in any legal dispute concerning a treaty or a question of international law. The ABA has also been, through a series of amicus curiae briefs to the Supreme Court, a staunch advocate of individual rights under Article 36 and judicial remedies for their violation.

Despite these efforts by the ABA, recent actions have weakened American commitment to VCCR obligations. The U.S. Supreme Court, in *Sanchez-Llamas v. Oregon* (2006), contradicted the ICJ in concluding that Vienna Convention claims are subject to the application of state procedural default rules. Subsequently, in *Medellin v. Texas* (2008), the Court held that the nation's treaty obligations under the VCCR, the Optional Protocol, and the U.N. Charter, without implementing congressional legislation, do not make ICJ decisions enforceable in domestic courts. In addition, the Bush Administration recently withdrew from the Optional Protocol.

2) How the Proposed Policy Position Will Address The Issue

In light of these recent developments, it is essential that the ABA unequivocally affirm its longstanding commitments to the international rule of law and to Article 36 compliance. To that effect, the recommendation encourages United States authorities to uphold Vienna Convention principles domestically through political action and improved domestic compliance. The complexity of these issues and the wide array of actors involved demands that we address this crucial concern in a variety of ways, including recommending implementing legislation at the national and state levels, advocating improved compliance procedures for law enforcement agencies, and facilitating the provision of competent and well-informed counsel to arrested foreign nationals.

3) Summary of the Recommendation

The recommendation calls for legislative and executive bodies to take steps to ensure enforceable Article 36 rights in the United States. We urge federal and state legislative bodies to adopt laws implementing Article 36 requirements domestically and preventing procedural default rules from overriding VCCR rights. We further urge the Obama Administration to renew the nation's commitment to the Optional Protocol, thereby making clear the United States' faith in the ICJ to sustain the international rule of law.

The recommendation also builds off the ABA's 1998 recommendations, advising a set of measures designed to further domestic compliance with Article 36 obligations. We urge law enforcement authorities to implement Miranda-like warnings advising foreign nationals of their Article 36 rights as soon as they are detained and identified, and to adopt the State Department's recommended compliance procedures. We urge counsel for accused foreign nationals, in all criminal defense proceedings, to comply with ABA consular notification procedures previously limited to death penalty cases. We urge federal and state public defenders and Criminal Justice Act panels to disseminate knowledge of VCCR rights and appropriate procedures for exercising them to counsel who may represent foreign nationals. And we recommend that the ABA itself provide educational materials and resources to U.S.-based consular officials who may otherwise have difficulty identifying competent local counsel in response to VCCR requests.

4) Summary of Minority Views or Opposition

No opposition or minority views have been expressed.

AMERICAN BAR ASSOCIATION

**COMMISSION ON HOMELESSNESS AND POVERTY
CRIMINAL JUSTICE SECTION
NATIONAL CONFERENCE OF SPECIALIZED COURT JUDGES
STANDING COMMITTEE ON ARMED FORCES LAW
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association supports the development of
2 comprehensive, systemic approaches to address the special needs of veterans within civil
3 and criminal court contexts, including but not limited to proceedings involving veterans
4 service-related injuries, disorders, mental health and substance abuse needs, through
5 diversionary programs that connect veterans to appropriate housing, treatment and
6 services through partnerships with the local Veterans Affairs Medical Centers,
7 community-based services and housing providers.
8

9 FURTHER RESOLVED, That the American Bar Association urges state, local, and
10 territorial courts to facilitate the development of Veterans Courts, including but not
11 limited to, specialized court calendars or the expansion of available resources within
12 existing civil and criminal court models focused on treatment-oriented diversionary
13 proceedings.
14

15 FURTHER RESOLVED, That the American Bar Association adopts the following
16 principles for Veterans Courts to the extent appropriate and feasible for each jurisdiction:
17

- 18 1) Participation is voluntary and the constitutional rights of participants are retained.
- 19
- 20 2) Veterans Courts or the resources devoted to veterans within existing civil and
21 criminal court models will utilize the participation of a caseworker and legal
22 representative with coordination from federal Veterans Affairs employees, veteran
23 service agencies, community-based service providers, and local agencies to assess
24 the needs of and provide veterans with appropriate housing, treatment, services,
25 job training, and benefits.
26
- 27 3) Veterans Courts or the resources devoted to veterans within existing civil and
28 criminal court models include mentoring sessions with other veterans.
29
- 30 4) In the criminal court context, participants in the diversion program have all
31 qualifying charges reduced or dismissed, or traditional sanctions waived,
32 including where appropriate and feasible, more serious charges, commensurate
33 with completion of appropriate treatment and services. Where charges are

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- 34 dismissed, public access to the record is limited, where appropriate and feasible as
- 35 provided by state or local law, including through expungement.
- 36
- 37 5) The success of Veterans Courts or additional resources devoted to veterans within
- 38 existing civil and criminal court models is measured through the following
- 39 outcomes:
- 40
- 41 a) prevention and reduction of homelessness among veterans;
- 42
- 43 b) reduction of recidivism;
- 44
- 45 c) recovery achieved through compliance with the individual treatment plan of the
- 46 veteran;
- 47
- 48 d) improved communication and reunification with family members, when
- 49 appropriate;
- 50
- 51 e) successful elimination of legal barriers to self-sufficiency;
- 52
- 53 f) reentry to the workforce, enhanced job opportunities, and reintegration with the
- 54 community;
- 55
- 56 g) economic savings to the courts, criminal justice and public health systems, and
- 57 the community;
- 58
- 59 h) connection to VA benefits, long term supportive housing, and other benefits for
- 60 participants whose service related disabilities are so severe as to prevent their
- 61 return to the workforce.

EXECUTIVE SUMMARY

Summary of Recommendation:

The recommendation supports the development of comprehensive, systemic approaches to address the special needs of veterans through diversionary programs that connect them to appropriate housing, treatment and services through partnerships with the local Veterans Administration Medical Centers, community-based services and housing providers. The recommendation sets forth key principles for Veterans Court Programs, recognizing that administration of the programs will differ depending on the particular needs, goals and challenges of a jurisdiction.

Summary of the Issue Which the Recommendation Addresses:

The recommendation recognizes the emergence of Veteran Court Programs across the country and reflects the common goals and due process protections all Veteran Court Programs share. We emphasize that the recommendation highlights best practices from existing Veterans Courts and does not seek to impart mandates that would stifle innovation. The intent of the recommendation is to promote a framework within which courts have the flexibility to develop constructive models that work best for them locally to achieve positive outcomes.

Explanation of How the Proposed Policy Position Will Address the Issue:

This recommendation would enhance the Association's efforts to foster the creation of specialized Veterans Court Programs by providing guiding principles for emerging programs.

Summary of Any Minority Views or Opposition Which Have Been Identified:

None to date.

AMERICAN BAR ASSOCIATION
COMMISSION ON HOMELESSNESS AND POVERTY
COMMISSION ON YOUTH AT RISK
COMMISSION ON DOMESTIC VIOLENCE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges Congress to increase funding for
2 programs under the Runaway and Homeless Youth Act and other laws in order to more
3 effectively intervene and end homelessness for youth, ages 12 through 24.
4

5 FURTHER RESOLVED, That the American Bar Association urges state, local, and territorial
6 governments to revise their laws, policies and practices in light of the emergence of new models
7 and best practices in the law to help runaway and homeless youth and their families, including:

- 8 1) Assisting, as victims of crime, instead of arresting, children who have engaged in
9 prostitution or other forms of commercial sexual exploitation; and
- 10 2) Assisting, instead of arresting and using the courts to unnecessarily detain, children who
11 have been forced out of their homes or who have run away from homes that are abusive
12 or neglectful; and
- 13 3) Ensuring that safe and loving families can be supported and that reunification can occur
14 expeditiously, where appropriate, or, when reunification is not possible, assisting youth to
15 locate kinship care options or clarify guardianship status and find sufficient access to
16 services provided by public child welfare agencies or other community-based agencies
17 offering residential care.

18
19 FURTHER RESOLVED, That the American Bar Association urges Congress, state, local, and
20 territorial governments to improve statutory definitions, as well as data collection and reporting
21 systems, in order to:

- 22 1) Assist in better defining unaccompanied, homeless youth as within those categories of
23 individuals eligible for family preservation services, independent living support, court
24 orders for protection from physical violence and sexual assault, and other child welfare
25 services; and
- 26 2) Accurately count the number of runaway and homeless youth, as well as youth who are
27 sexually trafficked or otherwise victimized by commercial sexual activity.

28
29 FURTHER RESOLVED, That the American Bar Association, urges the Federal Government to:

- 30 1) Assist local communities in establishing plans to end youth homelessness, which include
31 specific recommendations for the role of federal and state governments in abating youth
32 homelessness, including implementation of model laws developed to address issues
33 related to youth homelessness;

34
35

105B

- 36 2) Increase coordination among the federal departments of Housing and Urban
37 Development (HUD), Health and Human Services (HHS), and Justice to address the
38 crisis of youth homelessness by identifying promising practices in housing assistance to
39 homeless youth;
- 40 3) Focus on youth homelessness among those formerly in the child welfare and juvenile
41 justice systems, including offering at least 50,000 youth housing opportunities on an
42 annual basis to these and other homeless youth; and
- 43 4) Enhance the integration and collective analysis of data compiled by federal, state, local,
44 and territorial systems.

EXECUTIVE SUMMARY

Summary of Recommendation:

The recommendation urges Congress to increase funding for programs under the Runaway and Homeless Youth Act and other laws in order to more effectively intervene and end homelessness for youth, ages 12 through 24.

Summary of the Issue Which the Recommendation Addresses:

Youth homelessness is disturbingly common, yet runaway and homeless youth remain a largely invisible segment of the homeless population. Although the prevalence of youth homelessness is difficult to measure, researchers estimate that nearly eight percent of youth experience homelessness. With at least one million youth on the streets, in shelter, or precariously housed in doubled-up circumstances —and thousands more leaving the juvenile justice system, mental health facilities, and the foster care system every year—the problem of youth homelessness continues to grow. Homeless youth often exist within ‘grey areas’ of family law with no responsible guardians and have special legal problems that serve as barriers to stable housing and desperately needed services. Lawyers can and should play a critical role in addressing youth homelessness, and this policy will enable the American Bar Association to lend its voice in support of funding for desperately needed housing and services supported by the Runaway and Homeless Youth Act.

Explanation of How the Proposed Policy Position Will Address the Issue:

This recommendation would enhance the Association’s efforts to advocate for increased resources offered under the Runaway and Homeless Youth Act. Additionally, the policy would enhance the implementation of best practices for addressing youth homelessness at the federal, state, local and territorial levels.

Summary of Any Minority Views or Opposition Which Have Been Identified:

None to date.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON PARALEGALS
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association grants approval
2 to College of the Canyons, Paralegal Studies Program, Santa Clarita, CA; Herzing
3 University Atlanta, Legal Studies Program, Atlanta, GA; Saint Mary-of-the-Woods
4 College, Paralegal Studies Program, Saint Mary-of-the-Woods, IN; Baker College of
5 Clinton Township, Associate Degree in Paralegal Program, Clinton Township, MI;
6 Edison Community College, Paralegal Studies Program, Piqua, OH; and Portland
7 Community College, Paralegal Program (Cascade, Central and Rock Creek locations),
8 Portland, OR.

9 FURTHER RESOLVED, That the American Bar Association
10 reapproves the following paralegal programs: Mt. San Antonio College, Paralegal/Legal
11 Specialty Program, Walnut, CA; Norwalk Community College, Legal Assistant Program,
12 Norwalk, CT; Widener University Law Center, Legal Education Institute, Wilmington,
13 DE; South University, Paralegal/Legal Studies Program, West Palm Beach, FL;
14 Eastern Kentucky University, Paralegal Programs (Richmond, Corbin, Danville,
15 Manchester, Lancaster, Somerset, Hazard, and Lexington locations), Richmond, KY;
16 Bowling Green Community College of Western Kentucky University, Paralegal Studies
17 Program, Bowling Green, KY; Webster University, Legal Studies Program, St. Louis,
18 MO; Metropolitan Community College, Legal Assistant Program, Omaha, NE;
19 Cumberland County College, Paralegal Studies Program, Vineland, NJ; Long Island
20 University C.W. Post Campus, Paralegal Program, Brookville, NY; University of Toledo,
21 Paralegal Studies Program, Toledo, OH; Rose State College, Paralegal Studies Program,
22 Midwest City, OK; University of Oklahoma Law Center, Legal Assistant Education
23 Program, Norman, OK; Central Carolina Technical College, Legal Assistant/Paralegal
24 Program, Sumter, SC; Greenville Technical College, Paralegal Program, Greenville, SC;
25 Utah Valley University fka Utah Valley State College, Legal Studies Program, Orem,
26 UT; Edmonds Community College, Paralegal Program, Lynnwood, WA; and
27 Western Technical College fka Western Wisconsin Technical College, Paralegal Program,
28 LaCrosse, WI.

29 FURTHER RESOLVED, That the American Bar Association withdraws
30 the approval of Pikes Peak Community College, Paralegal Program, Colorado Springs,
31 CO, and Boise State University, Paralegal Studies Program, Boise, ID, at the requests of
32 the institutions.

33 FURTHER RESOLVED, That the American Bar Association extends the
34 terms of approval until the August 2010 Annual Meeting of the House of Delegates for
35 the following programs: University of Alaska Anchorage, Paralegal Certificate Program,
36 Anchorage, AK; Auburn University at Montgomery, Paralegal Education Program,
37 Montgomery, AL; University of Arkansas Ft. Smith, Legal Assistance/Paralegal
38 Program, Ft. Smith, AR; Pima Community College, Paralegal/Legal Assistant Program,
39 Tucson, AZ; Cerritos Community College, Paralegal Program, Norwalk, CA; Cuyamaca
40 College, Paralegal Studies Program, El Cajon, CA; MTI College, Paralegal Studies
41 Program, Sacramento, CA; San Francisco State University, Paralegal Studies Program,
42 San Francisco, CA; Santa Ana College, Paralegal Studies Program, Santa Ana, CA;
43 University of California Irvine Ext, Paralegal Certificate Program, Irvine, CA; University
44 of California UCLA Ext, Paralegal Training Program, Los Angeles, CA; University of
45 LaVerne, Legal Studies Program, LaVerne, CA; West Valley College, Paralegal
46 Program, Saratoga, CA; Arapahoe Community College, Paralegal Program,
47 Littleton, CO; Georgetown University, Paralegal Studies Program, Washington, DC;
48 Broward Community College, Legal Assistant Program, Pembroke Pines, FL; Edison
49 State College fka Edison College, Paralegal Studies Program, Fort Myers, FL; Florida
50 State College at Jacksonville fka Florida Community College at Jacksonville, Legal
51 Studies Institute, Jacksonville, FL; Athens Technical College, Paralegal Studies Program,
52 Athens, GA; South University, Paralegal/Legal Studies Program, Savannah, GA; Loyola
53 University Chicago, Institute for Paralegal Studies, Chicago, IL; Roosevelt University,
54 Paralegal Studies Program, Chicago, IL; Southern Illinois University, Paralegal Studies
55 Program, Carbondale, IL; William Rainey Harper College, Paralegal Studies Program,
56 Palatine, IL; Daymar College, Paralegal Studies Program, Owensboro, KY; Morehead
57 State University, Paralegal Program, Morehead, KY; Sullivan University, Paralegal
58 Studies Program, Lexington, KY; Herzing University fka Herzing College, Legal
59 Assisting/Paralegal Studies Program, Kenner, LA; Elms College, Paralegal and Legal
60 Studies Program, Chicopee, MA; Community College of Baltimore County, Legal
61 Assistant Program, Baltimore, MD; Oakland Community College, Paralegal Program,
62 Farmington Hills, MI; Oakland University, Paralegal Program, Rochester, MI;
63 Mississippi University for Women, Paralegal Studies Program, Columbus, MS; Central
64 Piedmont Community College, Cato Campus, Paralegal Studies Program, Charlotte, NC;
65 Fayetteville Technical Community College, Paralegal Technology Program, Fayetteville,
66 NC; Montclair State University, Paralegal Studies Program, Upper Montclair, NJ;
67 New York University, Institute of Paralegal Studies, New York, NY; Chancellor
68 University fka David N. Myers University, Paralegal Education Program, Cleveland, OH;
69 College of Mount St. Joseph, Paralegal Studies Program, Cincinnati, OH; Columbus
70 State Community College, Legal Assisting Program, Columbus, OH; RETS College,
71 Legal Assisting/Paralegal Program, Centerville, OH; University of Cincinnati Clermont,
72 Paralegal Technology Program, Batavia, OH; Bucks County Community College,
73 Paralegal Studies Program, Newtown, PA; Community College of Philadelphia, Paralegal
74 Studies Program, Philadelphia, PA; South University, Paralegal/Legal Studies
75 Program, Columbia, SC; Kaplan Career Institute, Paralegal Studies Program, Nashville,
76 TN; Pellissippi State Technical Community College, Paralegal Studies Program,

77 Knoxville, TN; South College, Paralegal and Legal Studies Program, Knoxville, TN; Lee
78 College, Legal Assistant Program, Baytown, TX; Texas State University, Legal Studies
79 Program, San Marcos, TX; J. Sargeant Reynolds Community College, Paralegal Studies
80 Program, Richmond, VA; and Chippewa Valley Technical College, Paralegal Program,
81 Eau Claire, WI.

EXECUTIVE SUMMARY

1. Summary of the Recommendation(s)

The Standing Committee on Paralegals recommends that the House of Delegates grants approval to six paralegal education program, grants reapproval to eighteen programs, withdraws the approval of two programs, and extends the term of approval of fifty-two programs.

2. Summary of the Issue which the Recommendation(s) Address

The programs recommended for approval and reapproval in the enclosed report meet the Guidelines for the Approval of Paralegal Education Programs.

3. An Explanation of How the Proposed Policy Position Will Address the Issue

The programs recommended for approval and reapproval in this report have followed the procedures required by the Association and are in compliance with the Guidelines for the Approval of Paralegal Education Programs.

4. A Summary of any Minority Views or Opposition which have been Identified

No other positions on this recommendation have been taken by other Association entities, affiliated organizations or other interested groups.

AMERICAN BAR ASSOCIATION**COMMISSION ON WOMEN IN THE PROFESSION
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
COUNCIL ON RACIAL AND ETHNIC DIVERSITY
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
SECTION OF LITIGATION
SENIOR LAWYERS DIVISION
BEVERLY HILLS BAR ASSOCIATION
NATIONAL LGBT BAR ASSOCIATION
BAR ASSOCIATION OF SAN FRANCISCO
NEW YORK COUNTY LAWYERS ASSOCIATION
PHILADELPHIA BAR ASSOCIATION****REPORT TO THE HOUSE OF DELEGATES****RECOMMENDATION**

- 1 RESOLVED, That the American Bar Association urges Congress to enact legislation that would
2 provide more effective remedies, procedures and protections to those subjected to pay
3 discrimination, including discrimination on the basis of gender, and would help overcome the
4 barriers to the elimination of such pay discrimination that continue to exist. Such enhanced
5 remedies and procedures should include:
6
- 7 1. Allowing prevailing plaintiffs to recover compensatory and punitive damages in Equal
8 Pay Act (“EPA”) cases;
9
 - 10 2. Enabling an EPA lawsuit to proceed as a class action pursuant to Rule 23(b)(3) of the
11 Federal Rules of Civil Procedure;
12
 - 13 3. Prohibiting employers from retaliating against employees for sharing salary information;
14
 - 15 4. Permitting an employer to assert an affirmative defense in an EPA action, only where the
16 pay differential between men and women is not related to gender, is related to job
17 performance, and is consistent with business necessity;
18
 - 19 5. Allowing wage comparisons between female and male employees in facilities within the
20 same county or similar political subdivision, not merely within the same facility;
21
 - 22 6. Enhancing the United States Equal Employment Opportunity Commission's ability to
23 collect and survey pay data from employers; and
24
 - 25 7. Reinstating the United States Department of Labor's collection of gender-based data in
26 the Current Employment Statistics Survey.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The recommendation urges Congress to enact legislation that would provide more effective remedies, procedures and protections to those subjected to pay discrimination, including discrimination on the basis of gender, and would help overcome the barriers to the elimination of such pay discrimination that continue to exist.

2. Summary of the Issue that the Resolution Addresses

Evidence demonstrates that sex discrimination is still far too pervasive in the workplace and that current anti-discrimination laws are inadequate to address the persistent barriers that women face in employment, in both the private and public sectors. In particular, the promise that women will receive equal pay for equal work – first guaranteed to them in the Equal Pay Act of 1963 (29 U.S.C. § 206(d)) - - has never been fully realized.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Paycheck Fairness Act (S. 182/H.R. 12) would amend the Fair Labor Standards Act of 1938 ("FLSA") to provide more effective remedies and procedures for those subject to sex-based wage discrimination, and require the federal government to be more pro-active in combating wage disparities. The Paycheck Fairness Act would strengthen the Equal Pay Act of 1963 ("EPA") by closing certain loopholes that have prevented the EPA from fulfilling Congress' intent to eliminate discrimination in the payment of wages on the basis of sex.

4. Summary of Minority Views

The Commission is not aware of any formal opposition at this time.

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

1 RESOLVED, That the American Bar Association urges the United States to ratify the
2 Comprehensive Nuclear Test Ban Treaty.

EXECUTIVE SUMMARY

(a) Summary of the Recommendation.

The recommendation urges the United States to ratify the Comprehensive Nuclear Test Ban Treaty (CTBT).

(b) Summary of the issue(s) which the recommendation addresses.

The CTBT is an international agreement designed to create a permanent, global, legally-binding and all-encompassing prohibition on any nuclear explosions. 182 countries have signed the CTBT and 150 have signed but not ratified but not signed (including the United States).

(c) How the proposed policy position will address the issue.

The proposed policy position will enable the ABA to speak up supportively when Congress considers ratifying the CTBT.

(d) Summary of any minority views of opposition which have been identified:

None identified.

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
CENTER FOR HUMAN RIGHTS
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges the United States to ratify and
- 2 implement the United Nations Convention on the Rights of Persons with Disabilities.

EXECUTIVE SUMMARY**(a) Summary of the Recommendation.**

The recommendation urges the United States to ratify and implement the United Nations Convention on the Rights of Persons with Disabilities.

(b) Summary of the issue(s) which the recommendation addresses.

The Convention on the Rights of Persons with Disabilities is the first global convention to specifically address the rights of persons with disabilities. The convention draws on existing human rights conventions and fills the gap between the promise such conventions offer to promote and protect the rights of persons with disabilities and existing practice. The United States signed the convention on July 30, 2009 but the U.S. Senate has not begun the process of evaluating possible ratification.

(c) How the proposed policy position will address the issue.

The proposed policy position will enable the ABA to speak in support of ratification when the U.S. Senate deliberates the issue.

(d) Summary of any minority views of opposition which have been identified:

None identified.

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges that legislation be enacted to provide
2 procedures for implementing on an expedited basis commitments in existing treaties where the
3 President reports to the Congress that binding measures are necessary to avoid the imminent risk
4 of breach by the United States; and

5 FURTHER RESOLVED, That the American Bar Association urges the Executive Branch, with
6 respect to future treaties,

7 (i) to seek treaty language consistent with its intent as to whether treaty provisions are
8 self-executing;

9 (ii) to identify in treaty transmittal documents which provisions of the treaty are self-
10 executing and how non-self-executing provisions of the treaty will be implemented; and,

11 (iii) as a general rule, if implementing legislation is required for U.S. compliance, not to
12 bring the treaty into force until that legislation is enacted; and

13 FURTHER RESOLVED, That the American Bar Association urges the Senate, with respect to
14 future treaties, as a general rule, to declare in resolutions of advice and consent which provisions
15 are self-executing and its expectation, where new implementing legislation is required, that the
16 treaty will not be brought into force for the United States until such legislation is enacted.

EXECUTIVE SUMMARY**(a) Summary of the Recommendation.**

The recommendation urges that legislation be enacted to provide procedures for implementing commitments in existing treaties on an expedited basis where the President reports to the Congress that binding measures are necessary to avoid the imminent risk of break by the U.S. Urges that the Executive Branch, with respect to future treaties, seek treaty language consistent with its intent as to whether treaty provisions are self-executing; to identify in treaty transmittal documents which provisions are self-executing and how other provisions will be implemented; and if implementing legislation is required for U.S. compliance, not to bring the treaty into force until that legislation is enacted. Also urges the Senate, with respect to future treaties, to declare in resolutions of advice and consent which provisions are self-executing and its expectation, in instances where new implementing legislation is required, that the treaty will not be brought into force for the U.S. until such legislation is enacted.

(b) Summary of the issue(s) which the recommendation addresses.

The recommendation addresses the issue of treaties without clear treaty provisions as to whether or not they are self-executing and urges the Executive Branch and Congress to adopt such language.

(c) How the proposed policy position will address the issue.

The proposed policy position will enable the ABA to support the Executive Branch, with respect to future treaties, to seek treaty language consistent with its intent as to whether treaty provisions are self-executing and how other provisions will be implemented.

(d) Summary of any minority views of opposition which have been identified:

None identified.

AMERICAN BAR ASSOCIATION
SECTION OF INTELLECTUAL PROPERTY LAW
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges courts to interpret the statutory first sale
2 doctrine in Section 109(a) of the U.S. Copyright Act and the copyright owner's importation right
3 in Section 602(a) to exclude application of the first sale doctrine to the importation of goods
4 embodying a copyrighted work that were not manufactured in the United States.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The recommendation urges courts to interpret the statutory first sale doctrine in Section 109(a) of the U.S. Copyright Act and the copyright owner's importation right in Section 602(a) to exclude application of the first sale doctrine to the importation of goods embodying a copyrighted work that were not manufactured in the United States.

2. Summary of the Issue that the Resolution Addresses

U.S. copyright law grants the owner of a copyrighted work authority to prohibit the importation into the U.S. of goods embodying that work that were acquired abroad. Another provision of copyright law, known as "the first sale doctrine," permits the owner of a copy of a copyrighted work that is "lawfully made" under U.S. law to dispose of it without authorization by the copyright owner. The resolution addresses the intersection of these two provisions. This issue has received renewed public attention with the Ninth Circuit's interpretation in its decision in *Omega S.A. v. Costco Wholesale Corp.* holding that goods made outside the U.S. are not made under U.S. law, and thus are subject to the authority of the copyright owner to bar their importation. A petition for grant of certiorari to review the Ninth Circuit's interpretation is pending in the U.S. Supreme Court.

3. Please Explain How the Proposed Policy Position will Address the Issue

Should the petition be granted, the policy would provide authority for the Association to support the holding in the case. The resolution will enable the Association to be heard on the issue.

4. Summary of Minority Views

None known at this time.

AMERICAN BAR ASSOCIATION
COMMISSION ON YOUTH AT RISK
COMMISSION ON HOMELESSNESS AND POVERTY
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

1 RESOLVED, That the American Bar Association urges Congress, state,
2 territorial, tribal, and local governments to enact child welfare financing laws
3 and/or implement policies to reform the child welfare financing structure to end
4 the current fiscal incentives to place children in foster care. These reforms in law
5 and policy should:

6
7 (a) Encourage keeping or reunifying children safely with their birth
8 families by increasing the amount and flexibility of funding available for the
9 following services:

- 10
11 1. child abuse and neglect prevention;
12 2. family preservation and support;
13 3. family reunification; and
14 4. post-permanency support.
15

16 Services should include direct access or connection to programs for
17 affordable housing, transportation, anti-poverty supports, substance abuse
18 and mental health treatment, aid in addressing domestic violence,
19 parenting instruction and peer parent support programs, and quality parent
20 representation programs.

21
22 (b) Maximize access to federal, state, tribal, territorial and local
23 revenue streams so as to enhance the availability of those services by:

- 24
25 1. Allowing states, if they safely reduce the number of
26 children in foster care, to reinvest federal foster care funds that
27 would have been expended on such placements into other child
28 welfare services aimed at further reducing the need for foster care;
29

- 30 2. Reauthorizing and expanding the federal child welfare
31 waiver program and simplifying the waiver application process to
32 encourage use of federal funds in testing innovative approaches to
33 delivering child welfare services with the goal of strengthening
34 families; and

35 3. Evaluating policies and formulas for funding distribution to
36 ensure adequate federal and state support for services to children
37 and families at risk of becoming involved in the child welfare
38 system, so that these services are readily available in
39 neighborhoods with high rates of poverty, child abuse and neglect,
40 and placements of children in foster care.

41
42 FURTHER RESOLVED, That the American Bar Association urges Congress, the
43 states, tribes, counties and territories to pass child welfare financing laws and/or
44 implement policies that encourage all types of permanency for children, including
45 safe and stable reunifications, by creating an enhanced federal permanency
46 encouragement initiative that will reward states for increasing their rates of safe
47 and stable parental reunifications and relative guardianships, as well as for
48 adoptions.

49
50 FURTHER RESOLVED, That the American Bar Association urges Congress to
51 amend Title IV-E of the Social Security Act consistent with the principles above.

52
53 FURTHER RESOLVED, That the American Bar Association urges state and local
54 bar associations to actively support the development and implementation of
55 these laws and policies.

EXECUTIVE SUMMARY

1. Summary of Recommendation

This recommendation urges Congress, state, territorial, tribal, and local governments to enact child welfare financing laws and/or implement policies to reform the child welfare financing structure to end the current fiscal incentives to place children in foster care.

2. Summary of the Issue that the Resolution Addresses

Today, there are over 500,000 children in foster care nationwide. Many of these children could go home, or would not have been removed in the first place, if their families had prompt access to quality prevention, reunification and post-reunification services. Too often, these services are not available to families because of the way the child welfare infrastructure is financed. States rely on federal money to help pay for a range of child welfare services. However, federal money for our child welfare systems across the country disproportionately funds out-of-home care. This creates an incentive for states to place children at risk of abuse or neglect into foster care, rather than provide other interventions and services to help keep children and families safely together. This structure also limits state and local child welfare agencies' ability to provide needed and quality family reunification and post-permanency services. This is not good for children or families.

3. Please Explain How the Proposed Policy will Address the Issue

This recommendation encourages the federal government, states, counties, tribes and territories to enact child welfare financing laws and policies that reform the child welfare financing structure to end the current fiscal incentives for states to place children in foster care at the expense of providing services that can help keep children and families safely together. Specifically, this recommendation proposes: (1) increasing the amount and flexibility of funds available for child abuse and neglect prevention, family preservation, family reunification, and post-permanency support services; and (2) maximizing access to county, state, and federal revenue streams to enhance the availability of the aforementioned services. Additionally, this recommendation urges adopting a federal permanency encouragement initiative that rewards states for increasing their rates of safe and stable parental reunifications and relative guardianships, as well as for adoptions. The proposals in this recommendation align child welfare financing with the goals of child welfare law – to keep children and families safely together, if possible.

4. Summary of Minority Views

No opposition to this recommendation has been identified.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association approves the Uniform Real Property Transfer On
2 Death Act, promulgated by the National Conference of Commissioners on Uniform State Laws in
3 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested
4 therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Real Property Transfer On Death Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

Asset-specific mechanisms for the non-probate transfer of property and funds are now common – the proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in pay on death (POD) bank accounts, are good examples of property that have benefitted from this trend in modern property law. However, a straightforward, inexpensive, and reliable means of passing real property, which may be a decedent's major asset, directly to a beneficiary is not generally available. The Uniform Real Property Transfer on Death Act (URPTODA) enables an owner of real property to pass it to a beneficiary upon the owner's death by a similar mechanism – simply, directly, and without probate. Under URPTODA, the property passes by means of a recorded transfer on death (TOD) deed. URPTODA sets forth the requirements for the creation and revocation of a TOD deed, and clarifies the effect of the TOD deed for all parties while the transferor is living and after they pass away. A TOD deed is effective without consideration, and without notice or delivery to the beneficiary. Beneficiaries take the property subject to allowed claims against the transferor's estate. An intended beneficiary may disclaim all or part of his/her beneficiary interest in the property. Finally, URPTODA provides optional form language for TOD deeds.

3. Please explain how the proposed policy position will address the issue.

Approval of the Uniform Real Property Transfer On Death Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association approves the Uniform Collateral Consequences of
2 Conviction Act, promulgated by the National Conference of Commissioners on Uniform State Laws in
3 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested
4 therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Collateral Consequences of Conviction Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2009 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. At or before arraignment individuals will be advised of the particular collateral consequences associated with the offense for which they are charged. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. Formal advisement promotes fairness and compliance with the law

The Act provides mechanisms for relieving collateral sanctions imposed by law. The Act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The Act also creates a Certificate of Restoration of Rights. The Certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Collateral Consequences of Conviction Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association approves the Uniform Collaborative Law Act,
- 2 promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an
- 3 appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Collaborative Law Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The Uniform Collaborative Law Act, promulgated by the Uniform Law Commission in 2009, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory frame work is necessary in order to guarantee the benefits of the process and to further regulate its use. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.

The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Act. This approach is consistent with the Formal Opinion (07-447, issued in August 2007) of the ABA Standing Committee on Ethics and Professional Responsibility, which explicitly deemed collaborative law as an ethical practice of law. Additionally, the Act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the Act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Collaborative Law Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

The Section on Litigation has indicated opposition to Collaborative Law generally, and the Uniform Collaborative Law Act in particular.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association approves the Uniform Statutory Trust Entity Act,
2 promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an
3 appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Statutory Trust Entity Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2009 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The Uniform Statutory Trust Entity Act (USTEA) addresses the need for a uniform law to regulate statutory business trusts. This need arises from the increasing popularity of statutory trust entities, chiefly in the structured finance and mutual fund industries. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts. The case law on statutory trusts is sparse. USTEAs validate the statutory trust as a permissible form of business organization and bring the disparate and often inadequate existing state laws into uniformity.

USTEA more closely resembles a generic corporate code or unincorporated entity law than it does the Uniform Trust Code (UTC). However, nothing in this Act displaces the common law of trusts, or the UTC, with respect to such trusts. The USTEAs use the Delaware Statutory Trust Act as a starting point for the Act but add several innovations. The USTEAs will be used primarily as a business organization tool and will clarify this area of law.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Statutory Trust Entity Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

None have been identified at this time.

AMERICAN BAR ASSOCIATION
SENIOR LAWYERS DIVISION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association dues for lawyers age 60
2 and above shall be one-half of the regular dues for Class 7 members; and that
3 dues for lawyers age 75 and above shall be waived.

EXECUTIVE SUMMARY

1. Summary of the Resolution

The recommendation seeks to encourage and enhance ABA membership retention among Class 7 members by providing a dues reduction for members age 60 and above; and a dues waiver for members 75 and above.

2. Summary of the Issue that the Resolution Addresses

The ABA loses 1,749 members between ages 60 and 65, with a loss of \$697,851 in dues revenue by the fifth year. Many ABA members in the decade of their 60s have been accustomed to having dues paid by their law firms. Law firms are increasingly opting not to pay ABA dues for their members. If lawyers age 60 and above were allowed to pay one-half their former dues, we believe a large number of those who are opting out of the ABA might retain their membership.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Division believes a dues reduction for ABA members age 60 and above, along with a dues waiver for members 75 and above, would encourage membership retention which would generate additional dues from members who would otherwise leave the association.

4. Summary of Minority Views

The Division has no minority views on the subject of the proposal.

AMERICAN BAR ASSOCIATION
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
SECTION OF LABOR AND EMPLOYMENT LAW
SENIOR LAWYERS DIVISION
STANDING COMMITTEE ON LAW AND NATIONAL SECURITY
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges Congress to amend the College Cost
2 Reduction and Access Act (CCRAA) to include both spouses' debt and both spouses' incomes in
3 calculating a total Income Based Repayment (IBR) payment cap for Direct Loans.
4
- 5 FURTHER RESOLVED, That the American Bar Association urges Congress to amend the
6 Higher Education Opportunity Act of 2008 (HEOA) to include "military counsel" as an
7 enumerated public service position eligible for Perkins loan forgiveness.
8
- 9 FURTHER RESOLVED, That the American Bar Association urges Congress to amend 20
10 U.S.C. §§ 1078(b)(1)(M), 1087e(f), and 1097dd(c)(2), by deleting the language, "during a war or
11 other military operation or national emergency."
12
- 13 FURTHER RESOLVED, That the American Bar Association urges Congress to amend I.R.C. §
14 108(f) to exclude from gross income discharges of student loans pursuant to the CCRAA Public
15 Service Loan Forgiveness Program.
16
- 17 FURTHER RESOLVED, That the American Bar Association urges Congress to amend I.R.C.
18 §108(f)(1) to exclude from gross income payments received as part of a Student Loan
19 Repayment Program (SLRP) authorized under 10 U.S.C. §§ 2171 and 2173.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

This recommendation proposes to correct existing deficiencies in government sponsored debt relief for lawyers serving our nation in uniform.

2. Summary of the Issue which the Recommendation Addresses

Student loan debt is a prevalent problem for judge advocates in all the military services. New judge advocates are reporting student loan debt from law school alone that ranges from \$80,000 to \$93,000. Loan relief programs are severely limited within the Department of Defense. Student loan debt is hindering both recruiting and retention in all the military services. Recent initiatives for lawyer student loan relief in the public sector have not addressed the needs of military lawyers.

3. Please Explain How the Proposed Policy Position will Address the Issue

Under the Department of Education Income Based Repayment (IBR) implementing regulations, when two married borrowers both have student loans and file joint tax returns, they will be required to pay up to double the monthly loan payment of two unmarried borrowers in otherwise identical situations (the “marriage penalty”). Although S.2371, passed in December 2007, allows married borrowers to file *separate* income tax returns for purposes of calculating IBR payments, requiring borrowers to file separate income tax returns is not an adequate solution. Such borrowers forego valuable tax benefits by filing separately. This recommendation proposes that the College Cost Reduction and Access Act (CCRAA) be amended to eliminate the “marriage penalty.”

The Perkins Loan Cancellation authority currently provides loan cancellation to judge advocates performing duties in a “law enforcement” function. Some military counsels (*e.g.*, defense counsel) are also an integral part of the military law enforcement system and are not eligible for loan cancellation under current law. The Higher Education Opportunity Act of 2008 (HEOA) amended the Perkins Loan Cancellation authority to include full-time attorneys employed in a defender organization as established under 18 USC § 3006A(g)(2). This recommendation proposes that a similar expansion be made for military counsel serving under 10 USC §§ 806 and 827.

The current statutory authorization for deferment of loans insured by the Department of Education provides for deferment for those serving on active duty, but only “during a war or other military operation or national emergency.” That language and its definition under implementing regulations serve as a severe limitation on the application of deferments for military members, specifically in times of peace. This recommendation proposes that the quoted language be stricken from the law. 20 U.S.C. §§ 1078(b)(1)(M), 1087e(f), & 1097 dd(c)(2).

The Internal Revenue Code, 26 USC § 108(f), provides that discharges of student loans are excluded from gross income if they are pursuant to a loan provision authorizing discharge, and the borrower worked for a certain period of time in certain professions for any of a broad class of employers. The Department of the Treasury, Assistant Secretary for Tax Policy, by letter dated September 19, 2008, to Congressman Sander Levin, confirmed that Public Service Loan Forgiveness under the College Cost Reduction and Access Act meets the requirements of I.R.C. § 108(f). This recommendation proposes that amounts forgiven under CCRAA Public Service Loan Forgiveness be codified as an express provision under I.R.C. § 108(f).

The Internal Revenue Code, 26 USC § 108(f)(1), provides that discharges of student loans are excluded from gross income if they are pursuant to a loan provision authorizing discharge, and the borrower worked for a certain period of time in certain professions for any of a broad class of employers. This recommendation proposes that I.R.C. § 108(f)(1) be amended to provide that amounts received as part of a Student Loan Repayment Program (SLRP) authorized under 10 USC 2171 and 2173 are excluded from gross income.

4. Summary of any Minority Views or Opposition which have been identified.

The ABA General Practice, Solo & Small Firm Division received feedback from the Section of Tax. The Section of Tax responded that the statutory changes called for in the Report and Recommendation seems to be premature. They believe that it may be unnecessary because student loan forgiveness may already qualify under section 108(f). To make the recommended change would thus not only be gratuitous, but also, by codifying loan forgiveness under one public interest program could put into question the tax-free status of loan forgiveness under other similar programs. As to the status of forgiveness of loans made under 10 USC sec. 2171 and 2173, which are loans made to serve in the Armed Forces, the Section of Tax recommends that officials in the Internal Revenue Service be consulted as to whether they consider (and would issue guidance) about qualification of military service as a "certain profession" under section 108(f). The Section of Tax notes that 10 U.S.C. sec. 2173 addresses loans for health care professionals, professions which the legislative history of section 108(f) explicitly addresses. (See Yin letter at link below). Revenue Ruling 2008-34, which involved loan forgiveness programs of law schools, demonstrates that administrative clarification of section 108(f) is possible. The Section of Tax believes that pursuit of the administrative route should precede any vote on amending section 108(f) and thus they would have a difficult time supporting the Report and Recommendation at this time.

http://taxprof.typepad.com/taxprof_blog/files/yin_letter.pdf

AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges the Department of Homeland Security
2 (DHS) to implement the following policies and procedures within the immigration removal
3 adjudication system:
4

- 5 (a) Increase use of prosecutorial discretion by both DHS officers and attorneys to reduce the
6 number of Notices to Appear (“NTA”) served on noncitizens who are prima facie
7 eligible for relief from removal, and to reduce the number of issues litigated;
8
- 9 (b) Give DHS attorneys greater control over the initiation of removal proceedings, and in
10 DHS local offices with sufficient attorney resources, establish a pilot program requiring
11 approval of a DHS lawyer prior to issuance of all discretionary Notices to Appear by
12 DHS officers;
13
- 14 (c) To the extent possible, assign one DHS trial attorney to each removal proceeding;
15
- 16 (d) Cease issuing Notices to Appear to noncitizens who are prima facie eligible to adjust to
17 lawful permanent resident status;
18
- 19 (e) Upgrade DHS's data systems to permit better tracking of detainees within the detention
20 system, and improve protocols for transfers of detainees between detention facilities to
21 ensure notification of family members and counsel; and
22
- 23 (f) Create a position within DHS to oversee and coordinate all aspects of DHS immigration
24 policies and procedures, including asylum matters.
25

26 FURTHER RESOLVED, That the American Bar Association urges Congress to amend the
27 Immigration and Nationality Act (“INA”) regarding the removal of noncitizens convicted of
28 certain crimes that would:
29

- 30 (a) Amend the definition of “aggravated felony” to require that any such conviction must be
31 of a felony and that a term of imprisonment of more than one year must be imposed
32 (excluding any suspended sentence);
33
- 34 (b) Eliminate the retroactive application of the aggravated felony provisions;
35

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- 36 (c) Restore an immigration judge’s authority to consider a discretionary application for
37 cancellation of removal for certain lawful permanent residents convicted of an
38 aggravated felony, based on humanitarian and other grounds. Extend the same
39 eligibility based on humanitarian grounds to deserving lawful permanent residents
40 barred from cancellation by the offense “clock-stop” provision; and
41
- 42 (d) Amend the deportation ground that requires removal based upon conviction of a single
43 crime involving moral turpitude to provide that the conviction must be of a crime for
44 which a sentence of more than one year was imposed.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation supports efforts to alleviate the burden of cases in the removal adjudication system by implementing changes to improve the efficiency and effectiveness of Department of Homeland Security (“DHS”) policies and procedures. The Recommendation includes: (1) increasing the use of prosecutorial discretion by both DHS officers and attorneys to reduce the number of Notices to Appear served on noncitizens who are prima facie eligible for relief from removal, and to reduce the number of issues litigated; (2) giving DHS attorneys greater control over the initiation of removal proceedings; including establishing a pilot program in offices with sufficient attorney resources to require approval by a DHS lawyer prior to the issuance of any discretionary Notices to Appear by a DHS officer; (3) assigning one DHS trial attorney to each removal proceeding, to increase efficiency and facilitate the exercise of appropriate discretion; (4) ceasing issuing Notices to Appear to noncitizens who are prima facie eligible to adjust to legal permanent resident status; (5) upgrading DHS's data systems to permit better tracking of individuals in the immigration detention system, and improve the protocols for transfers of detainees between detention facilities to ensure notification of family members and counsel; and (6) creating a position within DHS to oversee and coordinate all aspects of DHS immigration policies and procedures, including asylum matters.

2. Summary of the Issue that the Resolution Addresses

DHS personnel (including officers in the field) regularly make important decisions regarding the removal of noncitizens. DHS officers have considerable discretion with respect to removal of noncitizens in a variety of circumstances, but there is significant room for improvement in this area that would benefit the entire adjudication system. The current practice of assigning attorneys on a hearing-by-hearing basis in removal proceedings at the immigration courts is a barrier to the effective exercise of prosecutorial discretion and the efficient handling of cases by DHS trial attorneys. Also, ICE has only limited ability to locate detainees once they have been placed in detention.

3. Please Explain How the Proposed Policy Position will Address the Issue

DHS’s enforcement and application of immigration laws have often been inconsistent and confusing. This is unfair to those affected, limits the ability of DHS to take a leadership role on immigration policies, and decreases confidence and trust in the immigration adjudication system. Important cross-cutting issues should be addressed in a coordinated and consistent manner. This Recommendation also urges that DHS personnel use discretion appropriately, assign attorneys to an entire proceeding where possible, and that DHS’s data systems be upgraded to allow better tracking of detainees within the detention system.

4. Summary of Minority Views

None to date.

AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association supports the following measures regarding
2 immigration courts:

- 3
- 4 (a) Increase the number of immigration judges by at least 100, increase the number of law
5 clerks to increase the ratio to one clerk per judge, and increase the number of support
6 personnel;
- 7
- 8 (b) Increase the number of Assistant Chief Immigration Judges, and expand their
9 deployment to regional courts;
- 10
- 11 (c) Provide additional opportunities for training of immigration judges, including training in
12 assessing credibility, identifying fraud, changes to U.S. asylum and immigration law,
13 and cultural sensitivity and awareness; increase funding for in-person training; designate
14 an administrator to facilitate communication among immigration judges; and
- 15
- 16 (d) Increase administrative time available to immigration judges to allow increased
17 participation in live training and opportunities to interact with other immigration judges.
- 18

19 FURTHER RESOLVED, That the American Bar Association supports the adoption of the
20 following measures regarding the immigration judiciary:

- 21
- 22 (a) Provide additional hiring criteria, such as additional questions on applications,
23 interviews and reference checks designed to evaluate a candidate's background, judicial
24 temperament, and cultural sensitivity; and allow more public input in the hiring process
25 by permitting professional organizations to screen candidates during final-level
26 consideration;
- 27
- 28 (b) Protect immigration judges from removal without cause;
- 29
- 30 (c) Establish and implement a new code of conduct based on the ABA Code of Judicial
31 Conduct tailored to the immigration adjudication system.
- 32
- 33 (d) Establish and implement judicial model performance reviews for immigration judges
34 based on the ABA's Guidelines for the Evaluation of Judicial Performance and the
35 Institute for Advancement of the American Legal System's model for judicial
36 performance;

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- 37 (e) Establish a new office in Executive Office of Immigration Review (EOIR) that would
38 segregate the disciplinary function for immigration judges from other supervisory
39 functions, creating and following publicly available procedures and guidelines for
40 complaints and discipline, fully implementing a formal right of appeal/review for
41 adverse disciplinary decisions, and allowing public access to statistical or summary
42 reporting of disciplinary actions (individual disciplinary records themselves would not
43 be made public); and
44
- 45 (f) Improve data collection and analysis regarding the performance of immigration judges
46 and immigration courts, in accordance with GAO recommendations that EOIR develop
47 and maintain appropriate procedures to accurately measure case completion, identify and
48 examine cost-effective options for acquiring the data, and acquiring the necessary
49 expertise to perform useful and reliable analyses of immigration judges' decisions.
50

51 FURTHER RESOLVED, That the American Bar Association recommends the following
52 changes to immigration court procedures:
53

- 54 (a) Require immigration judges to provide more formal, reasoned written decisions that are
55 clear enough to allow noncitizens and their counsel to understand the bases of the
56 decision and to permit meaningful BIA and appellate review;
57
- 58 (b) Limit use of video conferencing to procedural matters in which the noncitizen has given
59 consent;
60
- 61 (c) Encourage immigration courts to hold prehearing conferences as a matter of course in
62 order to narrow the issues and provide clearer guidance to noncitizens and their counsel
63 on evidentiary issues; and
64
- 65 (d) Give priority to completing the installation of digital audio recording systems at all
66 immigration courts to facilitate fair and efficient proceedings.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

This Recommendation supports measures to improve immigration courts and create a more professional, independent and accountable immigration judiciary. The recommendations include a provision to increase the number of immigration judges by approximately 100, increase the number of law clerks to a ratio of one clerk per judge, increase the number of support personnel, and increase the number of Assistant Chief Immigration Judges, and expand their deployment to regional courts. The Recommendation also suggests additional opportunities for training of immigration judges, and an increase in the administrative time available to immigration judges. Further, the Recommendation adds additional hiring criteria, seeks to protect immigration judges from removal without cause, and to clarify and strengthen codes of ethics via consolidation in a new code of conduct based on the ABA Code of Judicial Conduct, tailored to the immigration adjudication system. Additionally, implementation of judicial model performance reviews for immigration judges based on the ABA's Guidelines for the Evaluation of Judicial Performance and the Institute for Advancement of the American Legal System's model for judicial performance. As well as making the disciplinary process more independent and transparent by establishing a new office in Executive Office of Immigration Review ("EOIR") that would segregate the disciplinary function from other supervisory functions, creating and following publicly available procedures and guidelines for complaints and discipline, fully implementing a formal right of appeal/review for adverse disciplinary decisions, and allowing public access to statistical or summary reporting of disciplinary actions (individual disciplinary records themselves would not be made public). Additionally there is a recommendation to improve data collection and analysis regarding the performance of immigration judges and immigration courts, in accordance with the GAO recommendations that EOIR develop and maintain appropriate procedures to accurately measure case completion, identifying and examining cost-effective options for acquiring the data, and acquiring the necessary expertise to perform useful and reliable analyses of immigration judges' decisions.

The recommendations also suggest the following changes to immigration court procedures to ensure fair and efficient proceedings. First, requiring immigration judges to provide more formal, reasoned written decisions that are clear enough to allow noncitizens and their counsel to understand the bases of the decision and to permit meaningful Board of Immigration Appeals ("BIA") and appellate review, second, limiting the use of video conferencing to procedural matters in which the noncitizen has given consent, third, encouraging immigration courts to hold pre-hearing conferences as a matter of course in order to narrow the issues and provide clearer guidance to noncitizens and their counsel on evidentiary issues; and finally, to give priority to completing the installation of digital audio recording systems at all immigration courts to facilitate fair and efficient proceedings.

2. Summary of the Issue that the Resolution Addresses

The existing immigration courts are not doing as good a job as they should in providing fair decision-making and due process to those who become subject to the system. Further, they do not provide efficient and timely decision-making by highly qualified and well-trained

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professionals. This is evident by the harsh criticism immigration courts have faced in recent years — including by federal appellate judges — for inadequate decisions and reasoning and improper behavior by immigration judges. Some problems facing the immigration courts are of a systemic nature, while others affect particular aspects of the system.

Problems affecting the immigration court proceedings include extensive use of oral decisions made without sufficient time to conduct legal research or thoroughly analyze the issues and evidence; problems with courtroom technological resources and support services for judges (including unreliable recording equipment and the lack of timely transcripts); and the use of videoconferencing in ways that may undermine the fairness of proceedings

3. Please Explain How the Proposed Policy Position will Address the Issue

Existing ABA policy recognizes the crucial importance of due process for noncitizens facing removal proceedings, and supports numerous improvements to the immigration bench. However, existent policy does not specifically address the systematic challenges to the system or the exact details of improvements necessary to achieve fair results in immigration proceedings. The immigration courts have too few immigration judges and support staff, including law clerks, for the workload for which they are responsible, the proposed policy specifically seeks to improve these ratios as well as improve the processes for selection and removal of judges, protecting immigration judges from retaliation and supporting unbiased decision making. Further, the recommendations include specific changes to encourage a fair and efficient process, including the use of pre-hearing conferences, limiting video conference hearings to procedural matters, and requiring written decisions and recorded proceedings.

4. Summary of Minority Views

None to date.

AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association supports the following measures regarding
2 administrative review by the Board of Immigration Appeals:

- 3
- 4 (a) Increase resources available to the Board, including additional staff attorneys and
5 additional Board members;
- 6
- 7 (b) Require three-member panel review in all non-frivolous merits cases that lack obvious
8 controlling precedent, and allow single-member review for purely procedural motions
9 and motions unopposed by DHS;
- 10
- 11 (c) Extend the deadline for issuance of single-member decisions from 90 to 180 days from
12 receipt of appeal (i.e., the same deadline as for panel review);
- 13
- 14 (d) Restore the Board's ability to conduct de novo review of immigration judge factual
15 findings and credibility determinations;
- 16
- 17 (e) Issue more precedential decisions and continue to require the full Board to authorize
18 designation of an opinion as precedential;
- 19
- 20 (f) Make non-precedential opinions available to noncitizens and their representatives;
- 21
- 22 (g) Make Affirmance Without Opinion discretionary, and implement a rule that all written
23 decisions include responses to all non-frivolous arguments raised by the parties; and
- 24
- 25 (h) Apply a new code of conduct to Board Members based on the ABA Code of Judicial
26 Conduct, tailored to the immigration adjudication system.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation supports improving the efficiency, transparency and fairness of administrative review by the Board of Immigration Appeals (“BIA” or “Board”) through increasing the resources available to the Board, including additional staff attorneys and additional Board members. Requiring three-member panel review in all non-frivolous merits cases that lack obvious controlling precedent, and allowing single-member review for purely procedural motions and motions unopposed by DHS. The recommendation seeks to extend the deadline for issuance of single-member decisions from 90 to 180 days from receipt of appeal, and restore the Board's ability to conduct a de novo review of factual findings and credibility determinations by an immigration judge. The proposal supports increased precedential decisions, and continuing to require that the full Board designate an opinion as precedential. Non-precedential Board opinions should be made available to noncitizens and their representatives, and Affirmance Without Opinion (“AWO”) decisions should be discretionary. The Board should implement a rule that all written decisions must include responses to all non-frivolous arguments and finally, the recommendations support the application of a new code of conduct to Board Members based on the ABA Code of Judicial Conduct, tailored to the immigration adjudication system.

2. Summary of the Issue that the Resolution Addresses

Review of immigration court decisions by the BIA has the potential to reconcile disparities and correct errors in immigration judge decision making before such cases are appealed, if at all, to the federal circuit courts. In the last several years, the Board has instituted several improvements in its processes. However, the Board’s current review process does not appear to have significantly altered the appeal rate to the circuit courts, or reduced the result of adjudication disparities among the decisions of immigration judges. Furthermore, studies have suggested that single-member review and affirmances without opinion result in decisions that unduly favor the government at the expense of the noncitizen. Therefore, these recommendations are made to improve the processes at the Board, to help the Board achieve its purpose of crafting uniformity in immigration law, exercising oversight, and correcting the errors of immigration judges.

3. Please Explain How the Proposed Policy Position will Address the Issue

Existing ABA policy recognizes the crucial importance of representation for immigrants facing removal, and supports the provision of counsel for indigent noncitizens in removal proceedings who are potentially eligible for relief from removal and cannot otherwise obtain representation. However, existent policy does not directly address the level to which representation should be afforded or the role of the BIA and immigration judges in selection and disciplining attorneys. This recommendation will further current ABA policy, and enhance the means by which adequate legal representation can assist in achieving uniform and fair results in immigration proceedings.

4. Summary of Minority Views

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None to date.

AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association supports the restoration of federal judicial
2 review of immigration decisions and urges Congress to enact legislation:

- 3
- 4 (a) To restore the U.S. Court of Appeals' authority to review discretionary decisions of the
5 Attorney General under the abuse of discretion standard in effect prior to 1996
6 legislation. Such legislation should provide that courts apply a presumption in favor of
7 judicial review and specifically reject attempts by the Attorney General to label
8 additional actions as discretionary and insulate them from review;
- 9
- 10 (b) To permit the courts of appeals to remand cases to the Board of Immigration Appeals
11 ("BIA" or "Board") for further fact finding under the standard provided in the Hobbs
12 Act for other agency actions where the additional evidence is material and there were
13 reasonable grounds for failure to adduce the evidence before the agency. See 28 U.S.C.
14 § 2347(c); and
- 15
- 16 (c) To amend the current 30-day deadline to file a petition for review with the court of
17 appeals to 60 days, with a provision for the petitioner to obtain an extension of an
18 additional 30 days for good cause or upon a showing of excusable neglect.
- 19

20 FURTHER RESOLVED, That the American Bar Association urges the promulgation of
21 regulations requiring that a final order of removal include notice of the right to appeal, the
22 applicable circuit court, and the deadline for filing an appeal.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation supports the restoration of federal judicial review of immigration decisions to ensure that noncitizens are treated fairly in the adjudication process. In addition, it is made to provide oversight by encouraging legislation to restore the U.S. Court of Appeals' authority to review discretionary decisions of the Attorney General under the abuse of discretion standard. Such legislation should provide that courts apply a presumption in favor of judicial review and specifically reject attempts by the Attorney General insulate specific actions from review. The recommendation promotes legislation to permit the courts of appeals to remand cases to the Board of Immigration Appeals ("BIA") for further fact finding under the standard provided in the Hobbs Act for other agency actions where the additional evidence is material and there were reasonable grounds for failure to adduce the evidence before the agency. See 28 U.S.C. § 2347(c); and legislation to change the current 30-day deadline to file a petition for review with the court of appeals to 60 days, with a provision for the petitioner to obtain an extension of an additional 30 days for good cause or upon a showing of excusable neglect. Finally, the recommendation supports a regulation requiring that a final order of removal include notice of the right to appeal, the applicable circuit court, and the deadline for filing an appeal

2. Summary of the Issue that the Resolution Addresses

In 1996, Congress fundamentally restructured judicial review for immigration decisions, restricting noncitizens' access to the federal courts and limiting the judiciary's ability to protect noncitizens' rights. Consequently, there is now a convoluted labyrinth of case law construing the exceptions (and constitutionally required carve-outs to these exceptions) to judicial review of removal orders. Petitioners and the courts of appeals spend valuable time wending their way through this jurisdictional thicket. As a result, judicial resources are not conserved, and it is questionable whether the objective of executing removal orders with dispatch has been achieved. Notwithstanding the statutory limitations on their jurisdiction, the courts of appeals have been faced with an explosion of immigration appeals on their dockets, in 2008, more than 10,000 BIA decisions were appealed, comprising 16.8% of the civil appeals docket of the courts of appeals.

3. Please Explain How the Proposed Policy Position will Address the Issue

The ABA has called for legislation restoring judicial review of immigration decisions to ensure that noncitizens are treated fairly in the adjudication process and also to provide oversight for the government's decision making process. However, reform must go further. Judicial review should be provided at a minimum to the same extent provided for review of other agency actions and administrative adjudication. These recommendations urge the restoration of appellate review over discretionary decisions and the implementation of procedural rules that will help ensure access to meaningful review by the circuit courts.

4. Summary of Minority Views

None to date.

AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association supports the following measures regarding
2 legal representation and legal information for noncitizens in the immigration removal system:
3
- 4 (a) In proceedings raising substantial questions of law, such as appeals to the Board of
5 Immigration Appeals (“BIA”) where a significant legal issue is presented, all appeals to
6 the federal appellate courts, and in the preparation of habeas petitions challenging
7 expedited removal orders, representation should be provided by an attorney. In other
8 matters, attorneys or second-level accredited representatives should be able to represent
9 noncitizens;
- 10
- 11 (b) Permit BIA-recognized nonprofit agencies to charge “reasonable and appropriate fees”;
- 12
- 13 (c) Require immigration judges to consult with local bar associations and other local
14 stakeholders in determining the criteria for inclusion on the pro bono service providers
15 list;
- 16
- 17 (d) Amend the Rules of Conduct to allow for civil monetary penalties to be imposed by
18 immigration judges against government attorneys as well as other representatives; and
- 19
- 20 (e) Expand and improve the Executive Office of Immigration Review pro bono program to
21 facilitate and encourage attorney participation.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation supports measures to improve access to legal representation and legal information for noncitizens in the immigration removal system. This includes a requirement that indigent noncitizens in removal proceedings who are potentially eligible for relief from removal and cannot otherwise obtain representation be represented by an attorney in proceedings raising substantial questions of law, such as appeals to the Board of Immigration Appeals (“BIA”) where a significant legal issue is presented, all appeals to the federal appellate courts, and in the preparation of habeas petitions challenging expedited removal orders. In other matters, attorneys or second-level accredited representatives should be able to represent noncitizens. The Recommendation also supports permitting BIA-recognized nonprofit agencies to charge “reasonable and appropriate fees”; requiring immigration judges to consult with local bar associations and other local stakeholders in determining the criteria for inclusion on the pro bono service providers list; allowing for civil monetary penalties to be imposed by immigration judges against both private and government attorneys; and expanding pro bono programs to facilitate and encourage attorney participation.

2. Summary of the Issue that the Resolution Addresses

Increased representation of noncitizens in removal adjudications will make the system not only fairer, but also more efficient. The ABA already supports extending a right of representation at government expense to indigent noncitizens in removal proceedings who are potentially eligible for relief from removal and cannot otherwise obtain representation. This recommendation supplements the previous policy by providing criteria for when representation should be appropriately provided by an attorney and by non-attorney accredited representatives. Enhancing access to quality representation promises greater institutional legitimacy, smoother proceedings for courts, reduced costs to government associated with *pro se* litigants, and more just outcomes for noncitizens.

3. Please Explain How the Proposed Policy Position will Address the Issue

Existing ABA policy recognizes the crucial importance of representation for immigrants facing removal. Existing policy does not address when attorneys versus accredited representatives should represent noncitizens; appropriate fees for BIA-accredited nonprofit agencies; the role of immigration judges in criteria for inclusion of pro bono legal service providers on the government-provided list; or monetary penalties for attorneys. This recommendation will further current ABA policy, and enhance the means by which adequate legal representation can assist in achieving uniform and fair results in immigration proceedings.

4. Summary of Minority Views

None to date.

AMERICAN BAR ASSOCIATION
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

1 RESOLVED, That the American Bar Association supports the creation of an Article I court, with
2 both trial and appellate divisions, to adjudicate immigration cases, which should have features
3 substantially consistent with the following guidelines:
4

5 1. Selection of Judges

- 6 (a) A Standing Referral Committee should be created to screen and recommend
7 candidates for judicial appointments. The Committee should include certain
8 appellate judges and trial judges from the Article I court. Other governmental and
9 non-governmental stakeholders would be represented on the Committee or have an
10 opportunity to comment on candidates before they are recommended for
11 appointment.
12 (b) The Chief Trial Judge, Chief Appellate Judge, and other appellate judges should be
13 appointed by the President and with the advice and consent of the U.S. Senate.
14 (c) The trial judges should be appointed by the Chief Trial Judge or by the Assistant
15 Chief Trial Judges with the approval of the Chief Trial Judge.

16 2. Tenure

- 17 (a) Appellate and trial judges should have fixed terms, which should be relatively long
18 as in other Article I courts (e.g., 8 to 10 years for trial judges and 12 to 15 years for
19 appellate judges).

20 3. Removal

- 21 (a) Judges may be removed by the appointing authority only for incompetency,
22 misconduct, neglect of duty, malfeasance, or disability.

23 4. Supervision and Evaluation

- 24 (a) Each trial immigration judge would be supervised by the Assistant Chief Trial Judge
25 responsible for the local court on which the judge serves. Each appellate judge
26 would be under the supervision of the Chief Appellate Judge.
27 (b) Performance would be reviewed based on a system using the ABA's Guidelines for
28 the Evaluation of Judicial Performance and the model for judicial performance
29 evaluation proposed by the Institute for Advancement of the American Legal
30 System.

31 5. Discipline

- 32 (a) Judges would be subject to a code of ethics and conduct based on the ABA Model
33 Code of Judicial Conduct, tailored as necessary to take into account any unique
34 requirements for the immigration judiciary.

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35 (b) Complaints against immigration judges at the trial or appellate level would be made
36 directly to a reviewing body established specifically for this purpose. The final
37 decision on disciplinary action would rest with the Chief Appellate Judge as to
38 appellate judges and the Chief Trial Judge as to trial judges. A trial judge would
39 have the right to appeal the adverse action to the court of appeals for the circuit in
40 which he presides, while an appellate judge could appeal to the DC Circuit.

41 6. Transition

- 42 (a) Existing judges would serve out the remainder of the new fixed terms, which are
43 deemed to have begun at the time of their prior appointment to current positions, and
44 are eligible for reappointment thereafter.
- 45 (b) The Chair of the Board of Immigration Appeals (“BIA” or “Board”) would serve as
46 Chief Appellate Judge of the Article I court until replaced by Presidential
47 appointment.
- 48 (c) The current members of the BIA would become the appellate judges of the Article I
49 court and would serve out the recommended fixed terms, which would be deemed to
50 have begun at the time of their prior appointment to the BIA. Thereafter, these
51 judges would be eligible for reappointment by the President with the advice and
52 consent of the Senate.
- 53 (d) The Chief Immigration Judge in Executive Office of Immigration Review (“EOIR”)
54 would serve as Chief Trial Judge of the new Article I court until replaced by
55 Presidential appointment.
- 56 (e) The current Assistant Chief Immigration Judges would serve as Assistant Chief Trial
57 Judges in the Article I court until replaced by the new method of appointment.
58

59 FURTHER RESOLVED, That as an alternative to an Article I court, the American Bar
60 Association supports the creation of an independent agency for both trial and appellate functions.
61 Such an agency should include an Office of Immigration Hearings (“OIH”) at the trial level and
62 a Board of Immigration Review for administrative appeals, and should have features
63 substantially consistent with the following guidelines:
64

65 1. Selection of Judges

- 66 (a) A Standing Referral Committee should be created to screen and recommend
67 candidates for judicial appointments. The Committee would consist of certain
68 members of the Board and certain immigration judges. Other governmental and non-
69 governmental stakeholders would be represented on the Committee or have an
70 opportunity to comment on candidates before they are recommended for
71 appointment.
- 72 (b) The Chair and members of the Board and the Chief Immigration Judge should be
73 appointed by the President with the advice and consent of the Senate.
- 74 (c) Trial judges should be selected through a competitive, merit-based appointment process,
75 similar to the one used for Administrative Law Judges (“ALJs”) but administered
76 through the personnel office of the independent agency.

77 2. Tenure

- 78 (a) The Chair of the Board would be appointed for a single, relatively short term (e.g., 5
79 to 7 years). At the end of this term, the Chair would be eligible to continue to serve
80 the Board as one of its members for a term of similar length.
- 81 (b) Other Board members would be appointed for fixed, renewable terms (e.g., 5 to 7
82 years).
- 83 (c) The Chief Immigration Judge would be appointed for a relatively short term (e.g. 5
84 to 7 years) and would be eligible to continue as an immigration judge at the end of
85 this term for a new term of similar length.
- 86 (d) Other immigration judges would not be limited to fixed terms

87 3. Removal

- 88 (a) Members of the Board and Chief Immigration Judge would be subject to removal
89 prior to the end of their terms by the President for inefficiency, neglect of duty or
90 malfeasance in office.
- 91 (b) Other immigration judges would be subject to removal only for good cause after an
92 opportunity for a hearing before the Merit Systems Protection Board (“MSPB”)
93 under the same procedures that apply to removal of an ALJ. Any removal would be
94 subject to judicial review.

95 4. Supervision and Evaluation

- 96 (a) Immigration judges would be supervised by the Assistant Chief Immigration Judge
97 responsible for the local court on which the judge served; each appellate judge would
98 be supervised by the Chair of the Board.
- 99 (b) Immigration judges would be exempt from the use of performance appraisals as a
100 basis for training, rewarding, reassigning, promoting, reducing in grade, retaining or
101 removing them. Performance would be reviewed based on a system using the ABA’s
102 Guidelines for the Evaluation of Judicial Performance and the model for judicial
103 performance evaluation proposed by the Institute for Advancement of the American
104 Legal System.

105 5. Discipline

- 106 (a) The agency would have a separate office responsible for receiving, reviewing and
107 investigating complaints filed against Board members and immigration judges.
- 108 (b) The Chair of the Board and the Chief Immigration Judge would have final authority
109 to act.
- 110 (c) Any discipline would be subject to review by the MSPB and subsequent judicial review.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation supports the creation of an Article I court, with both trial and appellate divisions, to adjudicate immigration cases, which should have features substantially consistent with the following guidelines:

-Selection of Judges: A Standing Referral Committee would screen and recommend candidates for judicial appointments. The Chief Trial Judge, Chief Appellate Judge, and other appellate judges should be appointed by the President and with the advice and consent of the U.S. Senate. The trial judges should be appointed by the Chief Trial Judge or by the Assistant Chief Trial Judges with the approval of the Chief Trial Judge.

-Tenure: Appellate and trial judges should have fixed terms, which should be relatively long (e.g., 8 to 10 years for trial judges and 12 to 15 years for appellate judges).

-Removal: Judges may be removed by the appointing authority only for incompetence, misconduct, neglect of duty, malfeasance, or disability.

-Supervision and Evaluation: Each trial immigration judge would be supervised by an Assistant Chief Trial Judge; each appellate judge would be under the supervision of the Chief Appellate Judge. Performance would be reviewed based on a system using the ABA's Guidelines for the Evaluation of Judicial Performance and the model for judicial performance evaluation proposed by the Institute for Advancement of the American Legal System.

-Discipline: Judges would be subject to a code of ethics and conduct based on the ABA Model Code of Judicial Conduct. The final decision on disciplinary action would rest with the Chief Appellate Judge as to appellate judges and the Chief Trial Judge as to trial judges.

-Transition: Existing judges would serve out the remainder of the new fixed terms, which are deemed to have begun at the time of their prior appointment to current positions, and are eligible for reappointment thereafter. The Chairman of the Board of Immigration Appeals ("BIA" or "Board") would serve as Chief Appellate Judge of the Article I court until replaced by Presidential appointment. The current members of the BIA would become the appellate judges of the Article I court and would serve out the recommended fixed terms, which would be deemed to have begun at the time of their prior appointment to the BIA. Thereafter, these judges would be eligible for reappointment by the President with the advice and consent of the Senate. The Chief Immigration Judge in Executive Office of Immigration Review ("EOIR") would serve as Chief Trial Judge of the new Article I court until replaced by Presidential appointment. The current Assistant Chief Immigration Judges would serve as Assistant Chief Trial Judges in the Article I court until replaced by the new method of appointment.

If an Article I court is not established, the Recommendation supports the creation of an independent agency for both trial and appellate functions. Such an agency should include an Office of Immigration Hearings (OIH) at the trial level and a Board of Immigration Review (Board) for administrative appeals, and should have features substantially consistent with the following guidelines:

-Selection of Judges: A Standing Referral Committee should be created to screen and recommend candidates for judicial appointments. The Chairperson and members of the Board and the Chief Immigration Judge should be appointed by the President with the advice and

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consent of the Senate. Trial judges should be selected through a competitive, merit-based appointment process, similar to the one used for Administrative Law Judges (“ALJs”) but administered through the personnel office of the independent agency.

-Tenure: The Chairperson of the Board would be appointed for a single, relatively short term; other Board members would be appointed for fixed, renewable terms. The Chief Immigration Judge would be appointed for a relatively short term. Other immigration judges would not be limited to fixed terms

-Removal: Members of the Board and Chief Immigration Judge would be subject to removal prior to the end of their terms by the President for inefficiency, neglect of duty or malfeasance in office. Other immigration judges would be subject to removal only for good cause after an opportunity for a hearing.

-Supervision and Evaluation: Immigration judges would be supervised by the Assistant Chief Immigration Judge responsible for the local court on which the judge served; each appellate judge would be supervised by the Chairperson of the Board. Performance would be reviewed based on a system using the ABA’s Guidelines for the Evaluation of Judicial Performance and the model for judicial performance evaluation.

-Discipline: The agency would have a separate office responsible for receiving, reviewing and investigating complaints filed against Board members and immigration judges.

2. Summary of the Issue that the Resolution Addresses

Concerns about the lack of independence of immigration judges and the BIA, as well as perceptions of unfairness toward immigrants, have spawned proposals to separate these tribunals from the Department of Justice. The National Association of Immigration Judges (“NAIJ”) and others have long advocated for the establishment of an independent body, either an independent agency or an Article I court, as a necessary step in reforming the immigration adjudication system.

Changes in recent years have only exacerbated these concerns, as resources devoted to enforcement of immigration laws have increased the burden on immigration judges without increasing the resources allocated to adjudication. The calls for independence have become more urgent in this decade in response to politicized hiring of immigration judges. In addition, the Department of Justice has taken the view that immigration judges are merely staff attorneys of the Department. As such, they would be required to comply with rules of conduct applicable to DOJ attorneys, rather than rules of judicial conduct, and would owe their ethical obligations to the Department as their “client.” In such circumstances, the immigration judges can hardly be viewed as independent.

These changes would address widespread concerns regarding both political influence and adjudicatory fairness, while promoting greater efficiency and professionalism within the immigration judiciary.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Article I court has been chosen as the preferred restructuring option, with the independent agency option being a close second choice. Both options offer greater

independence, fairness and perceptions of fairness, professionalism, and efficiency than the current system. The Article I model, however, is likely to be viewed as more independent than an agency because it would be a true court; is likely, as a judicial body, to engender the greatest level of confidence in its results; can use its greater prestige to attract the best candidates for judgeships; and offers the best balance between independence and accountability to the political branches of the federal government.

In providing greater independence, such a restructuring will promote the achievement of three other goals for reform of the removal adjudication system-- fairness and improved perceptions of fairness, a more professional immigration judiciary, and greater efficiency in the adjudication of removal cases.

4. Summary of Minority Views

None to date.

AMERICAN BAR ASSOCIATION
COMMISSION ON DOMESTIC VIOLENCE
SECTION OF FAMILY LAW
CRIMINAL JUSTICE SECTION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
COMMISSION ON HOMELESSNESS AND POVERTY
COMMISSION ON WOMEN IN THE PROFESSION
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
COMMISSION ON YOUTH AT RISK
COMMISSION ON IMMIGRATION
NATIONAL ASSOCIATION OF WOMEN LAWYERS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges Congress to re-authorize and
2 fully fund the Violence Against Women Act and similar legislation that:

- 3
- 4 1. Enhances judicial, legal and law enforcement tools to combat domestic violence,
5 dating violence, sexual assault, and stalking;
6
- 7 2. Improves services for victims of domestic violence, dating violence, sexual
8 assault, and stalking;
9
- 10 3. Strengthens the healthcare system's response to domestic violence, dating
11 violence, sexual assault, and stalking;
12
- 13 4. Provides housing opportunities and economic security for victims of domestic
14 violence, dating violence, sexual assault, and stalking;
15
- 16 5. Provides services, protection, and justice for underserved and vulnerable victims
17 of violence, including children and youth who are victims or are witnesses to
18 family violence, and victims who are disabled, elderly, immigrant, trafficked,
19 LGBT and/or Indian;
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- 21 6. Strives to prevent domestic violence, dating violence, sexual assault, and
22 stalking.

EXECUTIVE SUMMARY

1. Summary of the recommendation

The Recommendation supports reauthorization and funding of the Violence Against Women Act (“VAWA”) and similar legislation that promotes access to justice and safety for victims of domestic violence, dating violence, sexual assault, and stalking within the United States.

2. Summary of the issue which the recommendation addresses

Domestic violence, dating violence, sexual assault and stalking are epidemics in our society with dramatic, negative effects on individuals, families and communities. In response to this national problem, the Violence Against Women Act (“VAWA”) was enacted by Congress in 1994 as part of omnibus anti-crime legislation, with a five-year authorization. In addition to promoting interstate enforcement of civil protection orders, it created new federal rights for victims of domestic violence, imposed new funding eligibility requirements on government and authorized grants for new education and training. It provided increased or new federal funding for a range of programs including rape prevention and education programs, safe homes for victims, shelter grants, youth education and community programs. It also created new federal criminal offenses for interstate acts of domestic violence and a federal civil rights cause of action for victims of gender-motivated violence.

VAWA has since been reauthorized on two occasions, in 2000 and in 2005, and is set for reauthorization again in 2010¹

3. Explanation of how the proposed policy position will address the issue.

The proposed policy position will allow the ABA to act in support of reauthorization and funding of the Violence Against Women Act (“VAWA”) and similar legislation, which will in turn provide essential leadership and resources to the national effort to develop a legal response to domestic violence.

4. Summary of any minority views or opposition which have been identified.

None to date.

¹ Violence Against Women Act of 1994, Pub.L. 103-322, Title IV, Sept. 13, 1994, 108 Stat. 1902; Violence Against Women Act of 2000, Pub.L. 106-386, Div. B, §§ 1001 to 1603, Oct. 28, 2000, 114 Stat. 1491; Violence Against Women Reauthorization Act of 2005, Pub.L. 109-162, Jan. 5, 2006, 119 Stat. 2960.

AMERICAN BAR ASSOCIATION**BRUCE WILDER, ABA MEMBER****REPORT TO THE HOUSE OF DELEGATES****RECOMMENDATION**

- 1 RESOLVED, That the American Bar Association urges the government of the United States, and
2 specifically, the Department of Health and Human Services to undertake measures which would:
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- 4 1. Ensure the least possible disclosure of patients' personally identifiable information contained
5 in the electronic health record (EHR), except in specific instances as required by law, using
6 state-of-the-art technological means, including the determination of quality measures, and
7 facilitation of the conduct of research to advance medical science;
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 - 9 2. Make available to both individual and institutional health care providers, at nominal cost,
10 EHR software with open source code; and
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 - 12 3. Provide for transparent governance and development of open source Health Information
13 Technology (HIT), by a public, non-governmental consortium of interested parties, including
14 but not limited to, consumers, individual health care providers, and individuals with
15 technical, clinical and legal expertise in EHR systems.

EXECUTIVE SUMMARY

1. Summary of Recommendation

Protection of the individual's personal health information and of the confidentiality of physician-patient communications is a necessary component of effective health care delivery.

2. Summary of the issue which the recommendation addresses

Along with the transformation of medical record-keeping to electronic entry, storage, and communication, has come tremendous vulnerability to unauthorized disclosure, propagation of errors, and identity-theft. The need for interoperability of different EHR systems is well-recognized, as is the need for strong data protection. While the security of individual EHR systems has become highly developed within the perimeter of those systems, legislation designed to protect personal health information and the confidentiality of physician-patient communications has relied on complex regulations as to what and to whom personal health information may be disclosed, with the threat of strict enforcement. As a method, this approach leaves much to be desired: (1) It is not clear that all disclosures that are permitted are necessary; (2) Individuals and institutions faced with decisions about what may be disclosed are often uncertain as to how much disclosure is permissible, and may over-react out of fear of incurring penalties; (3) and enforcement where there have been breaches has been uneven, and largely ineffective, at least as far as HIPAA goes. New restrictions and more strict enforcement under the HITECH Act do not alter this fundamental approach and may be counterproductive. Moreover, disclosures that may not be necessary are still permitted, even though HITECH imposes more stringent requirements and exposes handlers of electronically stored health information to the threat of more severe penalties when there is a violation.

3. Explanation of how the proposed policy position will address the issue

The individuals who have the most interest in the protection of personal health information and the confidentiality of physician-patient communications are patients and their doctors. The policy statement asks that the ABA support law and public policy that emphasize the need for technological means to protect privacy and confidentiality to the maximum extent permissible (not just what is required) under law. To achieve this goal, EHR systems that permit the needed flexibility and capacity for innovation by patients and end user health care providers are necessary. For such an environment, it is necessary that the source code of EHR systems be open and available to all parties with a legitimate interest. Of course, it goes without saying that versions of such EHR systems in use need to be governed and maintained by a responsible entity, but it must be an entity that is primarily responsive to the concerns of patients and their doctors. An underlying assumption of this proposal is that an open source EHR system is necessary to achieve that end.

4. Summary of any minority views or opposition which have been identified

To date the only known opposition to open source HIT has been grounded in the proposition that government should not have a role in the design of HIT systems.