MEMORANDUM

TO:

FROM:

SUBJECT:  2005 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates

DATE:    March 7, 2005

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REPORT ON THE ABA MIDYEAR MEETING

The 66th Midyear Meeting of the American Bar Association (the “ABA”) was held February 9-14, 2005, at the Grand America Hotel in Salt Lake City, Utah. A wide variety of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a one-day session. The Nominating Committee also met.

The Nominating Committee sponsored a “Meet the Candidates” Forum on Sunday, February 13, 2005. The following candidates seeking nomination at the 2006 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present: William H. Neukom of Washington, candidate for President-Elect; and Laurel G. Bellows of Illinois and C. Timothy Hopkins of Idaho, candidates for Chair of the House of Delegates.

THE HOUSE OF DELEGATES


The Utah National Guard led by Command Sergeant Major Del Smith presented the colors. President James Faust of the Church of Jesus Christ of Latter Day Saints delivered the invocation for the House. The Chair of the House Committee on Credentials and Admissions, Stephen L. Tober of New Hampshire, welcomed the new members of the House.
Deceased members of the House were named by the Secretary of the Association, Ellen F. Rosenblum of Oregon, and were remembered by a moment of silence. Laurie D. Zelon of California gave remarks about Robert D. Raven, former President of the Association, who passed away. The Honorable Norma L. Shapiro and Jerome J. Shestack of Pennsylvania spoke about Robert M. Landis, former member of the House of Delegates, who also passed away. Richard J. Podell of Wisconsin gave remarks in remembrance of his brother, James Podell, former chair of the Section of Family Law. Mr. Raven, Mr. Landis and Mr. Podell will be greatly missed.

The House again did not use electronic voting in order to conserve ABA resources.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of action on the recommendations presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

Statement by the Chair of the House

Stephen N. Zack of Florida, Chair of House of Delegates began by recognizing the Committee on Rules and Calendar and the Tellers Committee. He was confident that the House would adjourn in one day, and noted that matters later in the agenda were as important as those introduced earlier.

He noted that the Fund for Justice and Education is the educational arm of the Association and that charitable contributions are needed to fund the critical activities of the Association. The ABA Legal Opportunity Scholarship Fund, which provides scholarships to minority law students as part of the ABA’s initiative to encourage and support diversity in the legal profession, is an FJE project. He requested that all members of the House who have not already donated to the FJE to do so and to ask others in the ABA to do so as well.

He advised that ABA Day in Washington, DC, will be held April 27 - 28, 2005 and that by participating, the members of the ABA can help persuade senators and representatives of the importance of the governmental priorities of the Association. The personal contact of ABA member constituents to those in Congress is integral to the success of the ABA’s lobbying efforts.

House members were reminded of Michael S. Greco’s appointments process for 2005-06 and that the deadline for submitting applications is March 1, 2005. Applications must be submitted electronically through the ABA website.
Chair Zack announced the names of the members of the Scope Nominating Committee which are: Stephen N. Zack of Florida, Christopher L. Griffin of Florida, Chair of the Committee on Scope and Correlation of Work; Walter H. White, Jr. of London, Chair of the Program and Planning Committee of the Board of Governors; Mitchell A. Orpett of Illinois, Chair of the Section Officers Conference; and Michael E. Flowers of Ohio, Immediate Past Chair of the Committee on Scope and Correlation of Work. Those interested in serving on the Committee of Scope were asked to submit applications by March 18, 2005 to any member of the Scope Nominating Committee.

**Statement by the Secretary**

The Secretary, Ellen F. Rosenblum of Oregon, moved approval of the House of Delegates Summary of Action from the 2004 Annual Meeting, which was subsequently approved by the House. On behalf of the Board of Governors, Secretary Rosenblum presented and referred the House to Report Nos. 177 and 177A, the Board’s Informational and Transmittal Reports, and Report No. 177B regarding the Association’s legislative priorities.

**Statement by the ABA President**

ABA President Robert J. Grey, Jr. of Virginia addressed House members regarding the need for investigating allegations of mistreatment of persons held in US military custody. He said that spreading democracy and the need for confidence in the military’s integrity require nothing less, and that the ABA would participate in establishment of a commission appointed by President Bush.

Regarding the attorney-client privilege, President Grey reminded the delegates that it enables the attorney to provide more effective advice. From the public's standpoint, preserving this aspect of the client-lawyer relationship ensures that corporate managers on complex or questionable legal matters will seek the lawyer's advice. He said the ABA would lead the effort to educate policymakers and the general public on the importance of preserving the attorney-client privilege.

In the area of equal access to justice, President Grey said that the American justice system is failing when the poorest defendants are not provided with trained and prepared defense counsel. He urged lawyers to call on state lawmakers for increased funding for indigent defense.

**Statement by the Treasurer**

The Treasurer, Allan J. Joseph of California, referred the House to his detailed written report, and then reported on the following: The Board of Governors, elected leaders and staff are meeting the goal of updating financial policies and practices
resulting in operations that are realistic and sustainable. A dues increase is not recommended at this time. Dues income is the primary source of revenue to the Association. All agencies of the ABA must coordinate their activities to recruit new members while maintaining the existing membership base.

**Statement by the Executive Director**

Robert A. Stein of Illinois, Executive Director and Chief Operating Officer of the ABA, referred to his written report and noted that membership numbers continue to reflect the high regard of lawyers for the ABA. Staff responded positively to address financial concerns of the Association during the past year, both participating in the thinking leading to action and implementing the resulting cost-saving policies and strategies. The new offices will facilitate Association operations at a savings.

**Report of the Nominating Committee**

The Nominating Committee met on Sunday, February 13, 2005. On behalf of the committee, James R. Silkenat of New York, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

**Officer of the Association**

**President-Elect (2005-06)**

Karen J. Mathis of Colorado

**Members of the Board of Governors (2005-08)**

**District Members**

District 1: Richard T. Cassidy of Vermont
District 2: Rosemary E. Giuliano of Connecticut
District 4: Roderick B. Mathews of Virginia
District 6: Harry S. Hardin III of Louisiana
District 12: David E. Funkhouser of Iowa

**Section Members-at-Large**

**Section of International Law**
Don S. DeAmicis of Massachusetts
**Section of Real Property, Probate and Trust Law**
Raymond J. Werner of Illinois

**Minority Member-at-Large**

Alison R. Nelson of Michigan

**Woman Member-at-Large**

Carol E. Dinkins of Texas

**Young Lawyers Member-at-Large**

Suzanne E. Gilbert of Florida

**Remarks by President-Elect Nominee Mathis**

Karen J. Mathis of Colorado, Incoming President Elect, made brief remarks to the House and stated that the job of the president-elect of the ABA is to serve. She acknowledged the extraordinary service of each House member, and the ABA collectively, including that of the Young Lawyers Division, the General Practice Section the Litigation Section, and the CEELI, African, Asian, South American and Iraq Law Initiatives. Ms. Mathis also acknowledged the extraordinary leadership of President Grey and his undertaking of the American Jury Initiative.

During her year as President, she intends to build upon the tradition of service. She stated that there is a need for service as the baby boom generation ages and retires. Lawyers can dedicate drive and energy to serving our communities. And lastly, as lawyers there is a special obligation to the citizens of the world who often struggle to develop and maintain the rule of law. Ms. Mathis said she will continue the work of President Grey and President-Elect Greco and urged lawyers to work together to enhance and strengthen the important work of the Association.

**II. RECOMMENDATIONS VOTED ON BY THE HOUSE**

A brief summary of the action taken on recommendations brought before the House follows. The recommendations are categorized by topic areas and the number of the recommendation is noted in brackets.
**ADMINISTRATIVE LAW**

[114] On behalf of the Section of Administrative Law and Regulatory Practice, Thomas M. Susman, DC, moved revised Recommendation 114, urging Congress to amend and modernize the adjudication provisions of the Administrative Procedure Act and to expand certain fundamental fair hearings provisions of that Act by enacting legislation consistent with the draft bill entitled, “Federal Administrative Adjudication in the 21st Century”, dated February 2005. The recommendation was approved as revised.

**ASBESTOS LITIGATION**

[109A] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin, TX, moved Recommendation 109A, urging the federal government to undertake an urgent study of the impact that the federal government has had in the causation of asbestos-related injuries over time and identifying the appropriate role for the federal government in the solution of the present asbestos litigation crisis, without altering the responsibility of others. The recommendation was approved.

[300B] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin, TX, moved revised Recommendation 300B, recommending that states and territories establish by statute or regulation, standards for the operation of screening vans or other forms of mass screening for asbestos-related conditions to prevent medical screenings from being conducted inaccurately and being misused, but not to prevent legitimate monitoring of health. The recommendation was approved as revised.

[300C] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin, TX, moved Recommendation 300C, recommending that states and territories adopt the Model Statute of Limitations for Asbestos, dated February 2005, governing the accrual of actions for injury, illness or wrongful death based upon exposure to asbestos. The recommendation was approved.

**CRIMINAL JUSTICE**

[108A] On behalf of the Criminal Justice Section, Neal R. Sonnet, FL, moved revised Recommendation 108A, urging jurisdictions to enact statutes to adequately compensate individuals who have been convicted and incarcerated for crimes they did not commit and identifying factors that should be considered in drafting such statutes. The recommendation was approved as revised.

[108B] On behalf of the Criminal Justice Section, Stephen A. Saltzburg, DC, moved Recommendation 108B, urging federal, state, local and territorial governments to reduce the risk of convicting the innocent, while increasing the likelihood of convicting the guilty, by ensuring that no prosecution should occur based solely upon uncorroborated jailhouse informant testimony. The recommendation was approved.
CRIMINAL JUSTICE (cont.)

[108C] On behalf of the Criminal Justice Section, Neal R. Sonnett, FL, moved revised Recommendation 108C, urging federal, state, local and territorial governments to reduce the risk of convicting the innocent by establishing standards of practice for defense counsel in serious non-capital criminal cases. The recommendation was approved as revised.

[301] On behalf of the Criminal Justice Section, Stephen A. Saltzburg, DC, moved Recommendation 301, urging Congress to take specified steps to assure that federal sentencing practices are effective, fair and just, and effectuate the goals of sentencing set forth in the Sentencing Reform Act. The recommendation was approved.

HOMELESSNESS AND POVERTY

[111] On behalf of the Commission on Homelessness and Poverty, William H. Hoch, OK, moved Recommendation 111, urging Congress and the President to support the establishment of a federal affordable housing trust fund to increase the availability of affordable housing consistent with certain principles. The recommendation was approved.

IMMIGRATION LAW

[112] On behalf of the Commission on Immigration, Richard Pena, TX, moved Recommendation 112, supporting the repeal of annual numerical caps that result in undue delays in the granting of lawful permanent residence to those individuals who have already been granted asylum status in the United States. The recommendation was approved.

INDIVIDUAL RIGHTS AND RESPONSIBILITIES

[104] On behalf of the Section of Individual Rights and Responsibilities, C. Elisia Frazier, GA, moved revised Recommendation 104, opposing governmental actions and policies that interfere with patients’ abilities to receive from their healthcare providers (a) all of the relevant and medically accurate information necessary for fully informed healthcare decision-making; and (b) information with respect to their access to medically appropriate care, whether or not the provider chooses to offer such care. Ms. Frazier noted that the report accompanying the recommendation had been revised to address concerns raised by various entities and individuals as it relates to the purpose of the recommendation. Charles Weiss, MO, and Kathleen Burke, OH, spoke in opposition to the recommendation. Howard T. Wall III, TN, and President-Elect Michael S. Greco, MA, spoke in support. The recommendation was approved as revised.
INTELLECTUAL PROPERTY LAW

[102] On behalf of the Section of Intellectual Property Law, Donald R. Dunner, DC, moved Recommendation 102, supporting enactment of legislation providing that the right to a patent shall belong to the inventor who first files an application for patent containing an adequate disclosure under 35 U.S.C. §112 of the invention or, in the event of an assignment of rights, shall belong to the assignee thereof. Kenneth G. Standard, NY and Sharon Stern Gerstman, NY, spoke in opposition stating that the recommendation would stifle creativity and hurt small inventors. Q. Todd Dickinson, CT, and Rick D. Nydegger, UT, spoke in support of the recommendation. The recommendation was approved.

INTERNATIONAL LAW

[106] Robert L. Weinberg, DC, the District of Columbia Bar Delegate, moved revised Recommendation 106, calling upon the United States government to take all necessary and proper actions within its power to end the ongoing atrocities (including genocide, crimes against humanity and war crimes) in Darfur, Sudan. Jerome J. Shestack, PA, and John J. Curtin, Jr., MA, spoke in support of the recommendation. The recommendation was approved as revised.

JUDICIAL SYSTEM

[103] On behalf of the Judicial Division, Cheryl Cesario, IL, presented Recommendation 103, adopting the black letter Guidelines for the Evaluation of Judicial Performance, dated February 2005, to replace the original guidelines of 1985, which have been updated to reflect developments in judicial performance evaluation. The recommendation was approved.

[113] On behalf of the American Jury Project, Patricia Lee Refo, AZ, moved revised Recommendation 113, adopting the ABA Principles Relating to Juries and Jury Trials dated February 2005 and recommending that the appropriate entities review and revise, as appropriate, their respective Standards so as to eliminate any conflicts with the Principles and urging state, local and territorial bar associations to improve the management of jury trials by promoting the implementation of the Principles. Rudolph Garcia, PA, proposed an amendment to the revised recommendation, which was accepted by the proponents. W. Scott Welch, MS, also proposed an amendment to the recommendation. H. Thomas Wells, Jr., AL, spoke against the amendment. The Welch amendment was defeated. The recommendation was approved as revised and amended.
LEGAL EDUCATION

[100] The House approved the recommendation submitted by the Standing Committee on Paralegals, granting approval, reapproval and extension of the term of approval to several paralegal education programs, and withdrawing the approval of one program at the request of the institution.

[105A] On behalf of the Section of Legal Education and Admissions to the Bar, Jose R. Garcia-Pedrosa, FL, moved Recommendation 105A, concurring with the decision of the Council of the Section of Legal Education and Admissions to the Bar in granting provisional approval to the John Marshall Law School, in Atlanta, Georgia. The recommendation was approved.

[105B] On behalf of the Section of Legal Education and Admissions to the Bar, Sidney S. Eagles, Jr., NC, moved Recommendation 105B, concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting additions and revisions to Standards 302 and 305 of the Standards for Approval of Law Schools and the Interpretations of the Standards, dated February 2005. The recommendation was approved.

[302] On behalf of the Section of Legal Education and Admissions to the Bar, Sidney S. Eagles, Jr., NC, moved Recommendation 302, concurring with the decision of the Council of the Section of Legal Education and Admissions to the Bar that Western State University College of Law in Fullerton, CA, be granted provisional approval. The recommendation was approved.

LITIGATION

[109C] On behalf of the Tort Trial and Insurance Practice Section and the Section of Litigation, Dennis J. Drasco, NJ, moved revised Recommendation 109C, supporting the judicial rulemaking process set forth in the Rules Enabling Act, for principles of federalism and the current version of Rule 11 of the Federal Rules of Civil Procedure and opposing legislative changes to Rule 11, including changes proposed in the “Lawsuit Abuse Reduction Act” (H.R. 4571). James K. Carroll, LA, spoke in support of the recommendation. The recommendation was approved as revised.

SCIENCE AND TECHNOLOGY LAW

[110] On behalf of the Section of Science and Technology Law, Ellen J. Flannery, DC, moved revised Recommendation 110, calling upon Congress and the Administration to take steps to ensure that the visa issuance process is more effective and efficient, particularly for those who seek to conduct scientific or scholarly research in the United States and supporting policies to enhance homeland and national security and efforts to establish new visa policies and procedures to bolster security. The recommendation was approved as revised.
SPECIALIZATION

[101] The House approved the recommendation submitted by the Standing Committee on Specialization, granting accreditation to the Social Security Disability Law program of the National Board of Trial Advocacy of Wrentham, Massachusetts, as a designated specialty program for lawyers.

TORT TRIAL AND INSURANCE PRACTICE

[109B] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin, TX, moved Recommendation 109B, recommending that the federal government amend the Medicare Secondary Payer Act (42 U.S.C. § 1395y(b), et seq.) to return an appropriate level of certainty, predictability and efficiency to the Medicare set aside process that has significantly burdened, delayed and disrupted settlements in state, federal and territorial Workers’ Compensation systems throughout the country. The recommendation was approved.

UNIFORM STATE LAWS

[107A] The House approved recommendation 107A submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Wage Withholding and Unemployment Insurance Procedure Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2004 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.

[107B] On behalf of the National Conference of Commissioners on Uniform State Laws, Fred H. Miller, OK, moved Recommendation 107B, approving the Uniform Real Property Electronic Recording Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2004 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein. The recommendation was approved.

[107C] The House approved recommendation 107C as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Residential Mortgage Satisfaction Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2004 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.

VETERANS’ AFFAIRS

[8A] On behalf of the Pennsylvania Bar Association, Michael H. Reed, of PA, moved Recommendation 8A, supporting legislation to repeal the statutory provision preventing veterans from paying an attorney to represent them in connection with their claims for federal benefits. The recommendation was approved.
Closing Business

At the conclusion of the meeting of the House on Monday afternoon, February 14, 2005, after various expressions of gratitude and reminders about the 2005 Chicago Annual Meeting, to be held August 4-9, 2005, Chair Zack recognized Robert M. Carlson, MT, who moved the host resolution expressing appreciation to the Utah State Bar and the 2005 Midyear Advisory Committee, co-chaired by James B. Lee and Paul T. Moxley, for the hard work done in connection with this meeting. The recommendation was approved. On behalf of the Committee on Rules and Calendar, William C. Hubbard, SC, then moved that the House adjourn sine die.