House of Delegates approves wide range of new policies at Midyear Meeting

The House of Delegates was the scene of intense debate Feb. 8 as the delegates considered and approved a range of resolutions, including ones addressing delivery of legal services by non-lawyers, use of a uniform bar exam, and support for video recording of Supreme Court arguments.

The most heated debate centered around a proposed resolution from the Commission on the Future of Legal Services that lays out a framework for regulating the provision of legal services, including services provided by non-traditional legal service providers. The commission explained that given that state supreme courts in the United States are beginning to consider the adoption of regulatory objectives in this area and that providers of legal assistance other than lawyers are already actively serving the American public, it is especially timely and important for the ABA to offer guidance in this area. The commission also explained that the regulatory objectives are different from the legal profession’s core values and serve different functions.

The *ABA Model Regulatory Objectives for the Provision of Legal Services*, were approved after an amendment was added ensuring that nothing in the objectives abrogates in any manner existing policy prohibiting non-lawyer ownership of law firms or the core values adopted by the House of Delegates.

Also prompting debate was a resolution urging bar admission authorities in each state and territory to expeditiously adopt the Uniform Bar Examination (UBE), which is currently offered in 17 states and allows those taking the exam to transport their scores across state lines. A second resolution urges bar admission authorities to consider the impact of the UBE on minority applicants and include subjects, such as Indian law, that are important in their jurisdictions. Both of these resolutions were adopted without revision.

Legislative resolutions included support for legislation to allow video recording of Supreme Court proceedings, modernize the Administrative Procedure Act, improve Medicare and Medicaid billing, and amend intellectual property laws regarding payment of government attorney fees and availability of damages for patent infringement.

The delegates also adopted resolutions to enhance diversity in continuing legal education and on the boards of public companies.

In her speech to the delegates, ABA President Paulette Brown gave an update on her presidential year, highlighting pro bono efforts through the ABA Day of Service, noting improved services to ABA members, spotlighting diversity in the legal profession, and unveiling a short video focusing on implicit bias among judges.

During the meeting, the Nominating Committee announced a diverse slate of women nominees for upcoming association leadership positions: Miami
<table>
<thead>
<tr>
<th>LEGISLATIVE ISSUE</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Immigration.</strong></td>
<td>The president announced 11/20/14 that he would take executive action to provide temporary deportation protection for up to five million undocumented immigrants. A federal district court in Texas issued a temporary injunction blocking implementation. An appeals court panel denied the administration’s request for a stay. The government has appealed the decision to the Supreme Court.</td>
<td>Judiciary Committee held hearings on immigration issues on 4/14/15, 4/29/15, and 10/7/15.</td>
<td>Judiciary Committee held hearings on immigration issues on 3/3/15, 3/17/15, 3/19/15 and 7/21/15. Judiciary Committee held a hearing on unaccompanied immigrant children on 2/24/16.</td>
<td>Supports comprehensive immigration reform that promotes legal immigration based on family reunification and employment skills and a path to legal status for much of the undocumented population currently residing in the United States. Opposes detention except where individual presents a threat to national security or public safety.</td>
</tr>
</tbody>
</table>
ABA cites erosion of criminal intent element but urges careful steps in enacting mens rea legislation

The ABA told the Senate Judiciary Committee last month that the erosion of the criminal intent (mens rea) element in federal criminal laws is a significant problem and directly affects a core principle of the American system of justice — that individuals should not be subjected to criminal prosecution and conviction unless they intentionally engage in inherently wrongful conduct or conduct that they know to be unlawful.

Stephen A. Saltzburg, who serves on the ABA Criminal Justice Section Council and is a past chair of the section, appeared Jan. 20 during a hearing examining whether mens rea provisions should be part of comprehensive bipartisan sentencing reform legislation under consideration in both the Senate and House.

The Senate Judiciary Committee approved S. 2123, the Sentencing Reform and Corrections Act, in October, and the House Judiciary Committee approved H.R. 3713, the Sentencing Reform Act, in November. Neither comprehensive bill includes mens rea provisions, but the House committee also approved H.R. 4002, the Criminal Code Improvement Act sponsored by Rep. James Sensenbrenner (R-Wis.) that includes a default mens rea standard for federal criminal provisions that are silent as to any required criminal intent element. A Senate mens rea bill, S. 2298, was introduced by Sen. Orrin G. Hatch (R-Utah).

Saltzburg expressed concerns shared by many organizations over the proliferation of criminal offenses at all levels. He stated that the ABA believes Congress should strengthen the criminal intent requirements and enact a provision that would operate going forward to require that new criminal statutes and regulations include provisions that indicate the criminal intent requirement for every offense or, if silent, be subject to a general default provision that would require a given standard of such intent for conviction.

He added, however, that the ABA is concerned about applying a new mens rea requirement to previously enacted laws since no one can point to any source that includes all specific federal criminal laws and therefore no one knows the impact that a new default intent requirement would have on existing law. Because of this, Saltzburg said the results of the Inventory of Federal Criminal Law that would be authorized in S. 2123 should be known before retroactive application of a default mens rea standard. That section of S. 2123 would require the attorney general to report back to the Senate and House Judiciary Committees within one year after enactment with an inventory of all criminal statutory and regulatory provisions for which no mens rea element is required.

Saltzburg emphasized that time is growing short for the full Senate to act on the much-needed compromise reforms in S. 2123 that were the result of “commendable bipartisan work of the leaders and members of this committee.” He said the association “would support a similar careful compromise on mens rea, if it can be found, but if not, would urge the Senate to pass S. 2123 soon.”

Also testifying on the panel with Saltzburg was former U.S. Attorney General Edwin Meese III, the Ronald Reagan Distinguished Fellow Emeritus at the Heritage Foundation. Meese emphasized that inadequate criminal intent requirements harm individuals and society, and he urged that mens rea reform be included as part of the current criminal justice reform effort.

Robert Weissman, president of Public Citizen, urged against a blanket willfulness standard, which he said “would make it much harder for prosecutors to criminally prosecute companies and individual executives responsible for the manufacture of dangerous drugs and food that kill or sicken consumers, or who act otherwise to imperil consumers, swindle the public, endanger their workers, or poison the environment.” Such a standard would prompt corporations and corporate officials to pursue strategic ignorance of the law and company actions in order to avoid criminal liability, he testified.

see “Mens rea,” page 11
The Board of Governors reaffirmed the ABA legislative and governmental priorities for the 114th Congress (see page 9).

Other highlights of the meeting were numerous panel discussions delving into topics such as the school-to-prison pipeline, social media and human trafficking, a public health approach to gun violence, and the impact of stand-your-ground laws. Programs also included a convocation on preventing conflict between police and communities of color, an opportunity to visit the California-Mexico border and an immigrant detention facility; and a tour of a services provider for homeless veterans.

The following is a summary of new policies adopted by the delegates.

**Administrative Law**

*Administrative Procedure Act (APA).* Urges Congress to amend the APA rulemaking provisions to modernize the act to help enhance public participation in the rulemaking process and to provide clearer direction to federal agencies.

**Alternative Dispute Resolution**

*Health Care Disputes.* Urges lawyers and all interested parties to encourage the informed and voluntary use of alternative dispute resolution (ADR) processes as an effective, efficient and appropriate means to resolve health care disputes. Opposes the use of binding forms of ADR involving patients in medical malpractice disputes, disputes with private managed health care organizations, or involving residents in disputes with long-term care facilities or similar health care institutions, unless the parties agree to do so voluntarily and knowingly after the dispute arises.

**Children/Families**

*Emotional and Behavioral Disorders.* Urges that state, local, territorial and tribal child welfare and juvenile justice agencies develop comprehensive policies and that state courts improve oversight for the administration of psychotropic medications for children in their custody; recommends that attorneys and judges become better educated on this subject; and urges Congress to enact legislation to require data collection from states.

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**Midyear Meeting**

continued from front page

lawyer Hilarie Bass, president-elect (see article, page 5); Deborah Enix-Ross, chair, House of Delegates; Mary L. Smith, secretary; and Michelle A. Behnke, treasurer.

In addition, the Board of Governors reaffirmed the ABA legislative and governmental priorities for the 114th Congress (see page 9).

Leigh-Ann Buchanan, chair of the ABA Coalition on Racial & Ethnic Justice, moderated a program on “stand your ground” laws featuring the documentary, “3½ Minutes, Ten Bullets.” She was joined by Steven Jansen, task force member and vice president of the Association of Prosecuting Attorneys, and Joshu Harris, a member of the task force.

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The Section of International Law and its Mexico Committee hosted an event during the Midyear Meeting on rule of law reform. Moderator Patrick Del Duca (center), the section’s publications officer, was joined by featured speakers Judge Margaret McKown, U.S. Court of Appeals for the Ninth Circuit, and Magistrado Manuel González Oropeza, a member of the Sala Superior of Mexico’s Federal Electoral Court and a member of the Council of Europe’s Venice Commission.
to learn about progress that is being made.

**Reproductive Technology.** Adopts the ABA Model Act Governing Assisted Reproductive Technology Agencies (ART), which provides model licensing legislation governing ART agencies, and recommends consideration and adoption of the Model Act by appropriate government agencies and legislatures.

**Surrogacy.** Urges the U.S. State Department to seek – in negotiations concerning a possible Hague Convention on private international law concerning children – recognition of the clear distinctions between adoption and surrogacy and allow individual member counties to regulate surrogacy as deemed appropriate by those countries without imposing new international restrictions on surrogacy arrangements.

**Civil Rights**

**Equal Rights Amendment (ERA).** Supports constitutional equality for women and urges the extension of legal rights, privileges and responsibilities to persons, regardless of sex; reaffirms support for ratification of the ERA; and calls on all bar associations to support and take up the pursuit of ERA ratification.

**Criminal Justice**

**Prisoner Emails.** Urges the Department of Justice and the Federal Bureau of Prisons to amend their policies with respect to monitoring emails between attorneys and their incarcerated clients to permit attorneys and clients to communicate confidentially via email and thereby maintain the attorney–client privilege. This would provide those emails with

**President-elect Nominee Hilarie Bass highlights association’s role in resolving justice issues**

Miami lawyer Hilarie Bass, who was selected to be the association’s president-elect nominee during the Midyear Meeting, expressed pride in the work of the association in a speech Feb. 8 to the House of Delegates and said she is “greatly humbled” to be given the “opportunity to lead the ABA in the great work we know it will continue to accomplish in the future.”

“Every day, in every state of this country, justice issues are resolved in more efficient and humane ways as a direct result of the work of this association, its members and its leaders,” she said. She highlighted the ABA’s role in the development of sentencing reform legislation, assistance to victims of domestic violence, and international children’s issues.

If elected at the ABA Annual Meeting in August, Bass will serve a one-year term as president-elect before becoming president in August 2017.

Bass has been involved in the ABA for more than 30 years and is a former chair of the ABA Section of Litigation, where she spearheaded creation of a Task Force on Implicit Bias in the Justice System. She also has served on the association’s Board of Governors and House of Delegates, headed several House of Delegates committees, and chaired numerous other ABA entities, including the Legal Opportunity Scholarship Committee, Council for the Fund for Justice and Education, and Committee on Public Education and the Law.

Her areas of concentration at Greenberg Traurig, where she has practiced for more than 30 years and is a shareholder and co-president, include complex commercial litigation and arbitrations, class action defense, securities fraud defense and banking litigation. Selected as a top lawyer by numerous publications, she is also widely recognized for her pro bono work on behalf of two foster children in a case that led to the elimination, on constitutional grounds, of the 20-year-old ban on gay adoption in Florida.

Bass earned her B.A. from The George Washington University and her J.D. from the University of Miami Law School, where she was editor of the law review. She serves on the Board of Trustees for the University of Miami.
ABA President Paulette Brown expressed the association’s deepest sympathy to the family of Supreme Court Justice Antonin Scalia, who died Feb. 12 at age 79.

Scalia was appointed to the court by President Ronald Reagan in 1986, four years after Reagan had chosen him for a seat on the U.S. Court of Appeals for the District of Columbia Circuit.

A 1961 graduate of Harvard Law School, Scalia first practiced and taught law before entering government service in 1971 as general counsel of the Office of Telecommunications Policy. He chaired the Administrative Conference of the United States from 1972 to 1974 and was assistant attorney general for the Office of Legal Counsel from 1974 to 1977. He returned to academia and was a law professor at the University of Chicago from 1977 to 1982, when he was appointed to the federal judiciary.

Prior to his elevation to the Supreme Court, Scalia was an active member of the ABA, serving as chair of the Section of Administrative Law in 1981-1982 and as chair of what is now the Section Officers Conference in 1982-83.

President Obama has indicated that he plans to submit a nominee to the Senate to fill the vacancy left by Scalia’s death.

Once a nominee is named, the ABA Standing Committee on the Federal Judiciary will evaluate the integrity, professional competence and judicial temperament of the nominee. The 15-member committee, chaired by Karol Corbin Walker, does not take into account a nominee’s philosophy, political affiliation or ideology.

Judicial Vacancies/Confirmations—114th Congress* (as of 2/26/16)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
</tr>
</thead>
<tbody>
<tr>
<td>US Supreme Court (9 judgeships)</td>
<td>1</td>
<td>0</td>
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</tr>
<tr>
<td>US Courts of Appeals (179 judgeships)</td>
<td>9</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
<td>62</td>
<td>28</td>
<td>14</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
<td>4</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>76</strong></td>
<td><strong>37</strong></td>
<td><strong>16</strong></td>
</tr>
</tbody>
</table>

*Includes territorial judgeships
AGING: In a Jan. 7 letter to House Speaker Paul Ryan (R-Wis.), ABA Governmental Affairs Director Thomas M. Susman urged that the House Permanent Select Committee on Aging be reestablished as “an important step” to ensure that Congress effectively addresses issues of importance to older adults. Originally established in 1974, the committee ceased operation in 1992. While the Senate still has a panel addressing elder issues—the Senate Special Aging Committee—there is no comparable committee in the House. “During its existence...the Select Committee on Aging held over 1,000 hearings and issued reports that led to advances on issues of vital importance to older persons,” Susman explained, citing work the committee did on guardianship, Medicare, elder abuse, Social Security, and more. He emphasized the importance of having a committee dedicated solely to issues of concern to seniors and noted that, according to the U.S. Census Bureau, more than 20 percent of Americans will be over the age of 65 by the year 2050.

CLASS ACTIONS: One of the House’s first votes this session was passage of H.R. 1927, a class action bill opposed by the ABA. The legislation would circumvent the Rules Enabling Act to amend Rule 23 of the Federal Rules of Civil Procedure to mandate that no federal court shall certify any proposed class seeking monetary relief for personal injury or economic loss unless the party affirmatively demonstrates that each proposed class member suffered the same type and scope of injury as the named class representative or representatives. In a Jan. 6 letter to House Speaker Paul Ryan (R-Wis.) and House Minority Leader Nancy Pelosi (D-Calif.), ABA Governmental Affairs Director Thomas M. Susman pointed out that data from the Federal Judicial Center show that current screening practices for determining when a class action case can proceed are working well. “In addition to circumventing the traditional judicial rulemaking process, the legislation would severely limit the ability of victims who have suffered a legitimate harm to seek justice collectively in a class action lawsuit,” Susman wrote. He also noted that the Judicial Conference of the United States is currently reviewing Rule 23 and that the Supreme Court is poised to issue rulings in cases focusing on questions concerning class certification.

CORRECTIONS REFORM: The House Judiciary Committee approved a key piece of its criminal justice reform initiative Feb. 11 when it cleared H.R. 759, the Recidivism Risk Reduction Act, for action by the full House. The bill would require the attorney general to develop a Post-Sentencing Risk and Needs Assessment System directed at reducing recidivism; provide tools to implement recidivism programs in prisons; and develop training programs for Bureau of Prisons officials. The legislation also would set forth procedures for all prisoners who are at low risk of returning to prison after release to be transferred to pre-release custody such as a halfway house or home supervision. “By using a targeted approach for each prisoner, we can lower the risk of recidivism,” committee Chairman Robert Goodlatte (R-Va.) said. “Fewer recidivists mean fewer prisoners in the future and even greater savings to the American taxpayer.” The ABA supports expansion of in-prison programming such as that included in the legislation.

SECOND CHANCE ACT: The House Judiciary Committee approved a bill Jan. 12 to reauthorize the Second Chance Act, which ABA President Paulette Brown maintained in a letter to the committee “is essential to providing continuity for its evidence-based and cost-effective support for programs that improve reentry from prisons, jails, and juvenile facilities and that serve, not incidentally, to advance public safety.” The bipartisan bill, H.R. 3406, was introduced last summer and has 58 cosponsors. Brown, in her Jan. 11 letter to committee Chairman Robert Goodlatte (R-Va.) and Ranking Member John Conyers Jr. (D-Mich.), explained that more than 50 percent of the people released from prison every year are reincarcerated within just three years because of challenges they face when returning to their communities. She said that “smart-on-crime” policies can help decrease this through providing services to help the recently released individuals find employment, secure housing, and obtain other services. Brown also emphasized that initiatives under the act can also save taxpayer dollars. “By providing the resources needed to coordinate reentry services and policies at the state and local levels,” she wrote, the bill “will ensure that the tax dollars spent on corrections do not simply fuel a revolving door in and out of prison.”

Save the Date!
ABA Day in Washington
April 19-21, 2016
the same confidentiality protections as traditional letter mail.

Sexual Conduct. Urges legislatures to review all statutes criminalizing consensual noncommercial sexual conduct, in private and between persons who have the legal capacity to consent, and to repeal or amend such statutes to ensure that such conduct is not made criminal. Urges legislatures to repeal or amend any statutes, regulations or policies that denigrate persons who engaged in constitutionally protected sexual conduct.

Courts/Judiciary

Supreme Court Video Recording. Urges the U.S. Supreme Court to record and make available video recordings of its oral arguments to allow citizens to access and better understand the process through which the court arrives at its decisions.

Diversity

Continuing Legal Education (CLE). Encourages all state, territorial and tribal courts, bar associations and other licensing and regulatory authorities that have mandatory or minimum CLE requirements (MCLE) to modify their rules to include, as a separate credit, programs regarding diversity and inclusion for the legal profession of all persons regardless of race, ethnicity, gender, sexual orientation, gender identity or disabilities, and programs regarding the elimination of bias. Resolves that the ABA will assist in the development and creation of diversity and inclusion CLE programs to ensure attorneys can meet their MCLE requirements.

Health Law

Advanced Practice Providers. Urges Congress to enact legislation and the Centers for Medicare and Medicaid Services to implement regulations and guidance permitting the locum tenens (temporary) services delivered by advanced practice providers during staffing shortages to be billed in a manner commensurate with the locum tenens services furnished by physicians.

Intellectual Property Law

Attorney Fees. Opposes intellectual property laws and agency and court interpretations of intellectual property laws that impose the payment of the government’s attorney fees on a party challenging a decision of the U.S. Patent and Trademark Office in federal district court, unless the statute in question explicitly directs the courts to award attorney fees. Supports an interpretation or a statutory clarification of 15 USC § 1071(b)(3) and 35 USC § 145 that the term “expenses” as provided for in those sections does not include government attorney fees.

Patent Infringement. Supports interpretation and application of the statutory six-year patent damages period (35 USC § 286) as limiting availability of the judicially created laches defense as a bar to legal damages for patent infringement, and as not limiting availability of laches as a defense where equitable relief, such as injunctive relief and ongoing royalties, is sought.

International Law

In-House Counsel. Amends the black letter of Rule 5.5 of the ABA Model Rules of Professional Conduct and the ABA Model Rule for Registration of In-House Counsel to include language specifying that the court of highest appellate jurisdiction may, in its discretion, allow foreign in-house lawyers who do not meet the ABA definition of foreign lawyer because they cannot be “members of the bar” to be able to practice as in-house counsel in

Experts presented a panel discussion Feb. 6 on the pending Supreme Court decision in Evenwel v. Abbott, which addresses whether electoral district boundaries should be based on total population or number of eligible voters. Those participating included (from left) moderator Maria Blanco, executive director of the Undocumented Student Legal Service Center; Thomas A. Saenz, president and general counsel of the Mexican Legal Defense and Educational Fund; and Rachel E. Moran, dean emerita and professor at UCLA School of Law. John C. Eastman, professor at Chapman University School of Law, participated remotely.
# ABA Legislative and Governmental Priorities
## 114th Congress

### Access to Legal Services
- Funding for the Legal Services Corporation
- Legal protection and assistance for members of the military, veterans, and family members

### Civil Justice System Access
- Opposition to proposals that limit access to, or re-dress by, the civil justice system, including legislation that would limit class actions (Rule 23) and change sanction provisions (Rule 11) of the Federal Rules of Civil Procedure without complying with the Rules Enabling Act process
- Opposition to limits on recovery of noneconomic damages

### Criminal Justice System Improvements
- Federal sentencing reform to address explosive growth in prison population and costs
- Prison system reform
- Reauthorization of the Juvenile Justice and Delinquency Prevention Act
- Funding for federal and state indigent defense programs
- Elimination of unjustified racial and ethnic disparities in the criminal justice system

### Elimination of Discrimination
- Enactment, enforcement, and preservation of laws to eradicate discrimination in public life, including employment and voting rights discrimination

### Immigration Reform
- Comprehensive immigration reform
- Access to counsel, including appointed counsel for unaccompanied children, and reform of the overburdened immigration court system
- Opposition to mandatory detention of individuals in removal proceedings and support for strengthening the detention standards and promulgating them into enforceable regulations

### Independence of the Judiciary
- Prompt filling of judicial vacancies
- Support for adequate judicial resources
- Opposition to efforts that infringe on separation of powers or undermine the judiciary

### Independence of the Legal Profession
- Opposition to federal legislation requiring law firms to pay taxes on “phantom” income that has not yet been received
- Support for the attorney-client privilege and work product doctrine and opposition to federal government policies that erode those protections
- Opposition to federal legislation and agency rules that impose excessive new regulations on practicing lawyers or undermine the confidential lawyer-client relationship or state court regulation of the legal profession

### International Rule of Law
- Funding for domestic and international agencies and programs that promote the rule of law

### Legal Education
- Support for public service loan repayment programs for law school graduates and others

### National Security and Civil Liberties
- Support for cybersecurity legislation consistent with enumerated principles and for policies to prevent unauthorized intrusions into lawyers’ computer systems and networks
- Support for prosecution in Article III courts of Guantanamo detainees charged with criminal violations
- Reauthorization of the Terrorism Risk Insurance Act
ABA urges prompt implementation of new education regulations

Law, for first time, addresses students in foster care

The ABA urged the Department of Education to provide guidance and support for state and local education agencies to ensure effective collaboration with child welfare agencies as they implement provisions regarding students in foster care that are included in P.L. 114-95, education legislation signed Dec. 10 by the president.

“For the first time, the Every Student Succeeds Act (ESSA) now contains key protections for students in foster care to promote school stability and success, and requires education agencies to collaborate with child welfare partners,” the association said in comments submitted Jan. 21 to the department.

The comments explained that the dual-agency responsibility for the educational success of students in foster care and the tight timelines for the foster care provisions of the law make it critical that state and local education and child welfare agencies receive prompt information and support toward implementation.

The comments urge that several areas be addressed: definitions of “school of origin” and “child in foster care”; clarification regarding state education agency point of contact for students in foster care; and creation of a process to ensure that every local education agency has procedures to support school stability and continuity for students in foster care.

The ABA pointed out that a key protection under the McKinney-Vento Homeless Assistance Act will expire in December 2016 that is available in some states under the definition of “awaiting foster care placement.” That protection has allowed the McKinney-Vento act to assist many students in foster care for more than 10 years with services that have included providing transportation to ensure school stability. The expiration of this protection makes it urgent that the guidance for children in foster care be included in the first set of regulations, according to the comments.

The association emphasized the need for child welfare agencies to develop a process for sharing timely and accurate information about students in foster care to state education agencies.

IRS withdraws proposed donee substantiation rule

Opposition from the ABA and others led the Internal Revenue Service (IRS) to withdraw a proposed donee substantiation rule in January that would have encouraged charitable organizations to collect and report confidential information, including Social Security numbers, from donors contributing $250 or more.

Under current law, donors wishing to take a deduction for their charitable contributions of at least $250 must obtain a contemporaneous written acknowledgment (CWA) or receipt from the donee organization. The proposed rule would have created a specific-use information tax return containing information about charitable contributions received from donors that the donee organization could then submit to the IRS and the donor as an alternative to providing a CWA to donors.

However, the proposal would have required donee organizations to collect their donors’ Social Security numbers and include this sensitive information in the new returns.

“The potential cost in terms of burden on donees, inhibition of donations, and possibly increased identity theft of donor Social Security numbers far outweigh the potential slight administrative benefit to the IRS,” ABA President Paulette Brown wrote to the IRS in December. She emphasized that requiring nonprofit organizations – many of which are small and sparsely staffed – not only to collect donor Social Security numbers if they want to file an informational tax return regarding donors but to protect those Social Security numbers from cyber attack seems “unnecessary, highly risky and overkill.”

Therefore, the justification offered for the proposed rule “does not remotely merit the substantial change to be effected by the proposed rule,” Brown concluded.
the United States and to be so registered.

**Legal Education**

**Uniform Bar Examination (UBE).** Urges the bar admission authorities in each state and territory to expeditiously adopt the UBE in their respective jurisdictions.

**UBE Impact on Minorities.** Urges bar admission authorities to consider the impact on minority applicants in deciding whether to adopt the UBE in their jurisdictions and to consider including subjects not part of the UBE, particularly Indian law in each state or territory with sizable American Indian populations or trust lands.

**Legal Services**

**Regulatory Objectives.** Adopts the ABA Model Regulatory Objectives for the Provision of Legal Services and urges that each state’s highest court, and those of each territory and tribe, be guided by the Model Regulatory Objectives when they assess the court’s existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.

**Uniform State Laws**

The House of Delegates approved resolutions adopting the following six uniform state laws promulgated by the National Conference of Commissioners on Uniform State Laws: Revised Uniform Athlete Agents Act; Revised Uniform Residential Landlord and Tenant Act; Uniform Commercial Real Estate Receivership Act; Uniform Recognition and enforcement of Canadian Domestic-violence Protection Orders Act; Uniform Home Foreclosures Act; and Uniform Trust Decanting Act.

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**Mens rea**

**continued from page 3**

Leslie R. Caldwell, assistant attorney general for the Department of Justice (DOJ) Criminal Division, testified that although DOJ supports the sentencing reform legislation and encourages Congress to pass it, the department maintains that enactment of a default mens rea standard for all existing federal laws would cause extreme and very harmful disruptions to essential federal criminal law enforcement operations. “It would create massive uncertainty in the law and allow defendants charged with serious crimes - including terrorism, violent crime, sexual offenses, immigration violations, and corporate fraud - to embroil federal courts in extensive litigation and potentially escape liability for egregious and very harmful conduct,” she testified.

Caldwell said the results of an inventory of federal criminal laws will allow those who believe there are potential problems with specific statutes to address the deficiencies after a careful examination of each statute. “There is no need for a sweeping, one-size-fits-all, default mens rea,” she concluded.