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Regular Features

ABA president emphasizes due process protections

ABA urges Congress to assure safeguards in FISA legislation

As Congress began consideration last month of legislation to amend the Foreign Intelligence Surveillance Act (FISA), ABA President William H. Neukom urged members to make sure that "any proposed changes are necessary and consistent with the system of checks and balances required by the U.S. Constitution."

"It is critical for Congress to fully understand the asserted basis for the surveillance activities conducted since 9/11 to ensure that any revisions establish an effective and constitutionally sound legal framework to meet surveillance needs going forward," Neukom wrote Oct. 12 to members of the Senate Select Committee on Intelligence.

FISA, originally enacted in 1978 and amended several times over the years, established a special FISA Court to hear governmental applications for and to grant court orders approving electronic surveillance or physical searches in the United States to obtain foreign intelligence information. Also created by the act was a Court of Review to hear appeals from the government when the applications are denied by the FISA Court. In the wake of the terrorist attacks of 9/11, however, President Bush authorized a secret National Security Agency (NSA) program that permitted the interception of al Qaeda communications into and out of the United States without first obtaining a FISA court order. That controversial program, revealed in December 2005, was terminated, and new surveillance activities are now being governed under the Protect America Act (PAA), a temporary measure enacted in August that expires in February.

In his letter, Neukom emphasized that the ABA is concerned that the PAA lacks adequate safeguards such as meaningful judicial review and comprehensive congressional oversight. Congress approved the PAA quickly to address loopholes in wiretapping coverage that the Bush administration identified and maintained had left the country vulnerable to terrorist attack.

The PAA allows the government to conduct warrantless electronic surveillance of foreign targets, including those communicating with individuals in the United States. The government submits the procedures for surveillance to the FISA Court later for approval. According to the ABA, this is a great expansion of the warrantless surveillance of American citizens without adequate checks and balances to prevent invasions of privacy.

In his letter, Neukom said any new legislation should include appropriate reporting requirements to Congress, such as disclosure of the number of U.S. persons whose communications are acquired and/or disseminated. This information, he said, could be disclosed without reference to specific cases to protect classified information, sources and methods.

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LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
Independence of the Legal Profession. S. 186 and H.R. 3013 would reverse the privilege-waiver and employee rights provisions in the Justice Department's McNulty Memorandum and other similar federal agency policies that instruct federal law enforcement officials to consider these factors in determining whether corporations and others should receive credit for cooperation − hence leniency − in government investigations.	Judiciary subc. held a hearing on the McNulty Memorandum on 3/8/07. Judiciary Committee approved H.R. 3013 on 8/1/07.	S. 186 was referred to the Senate Judiciary Committee on 1/4/07. Judiciary Committee held a hearing on S. 186 on 9/18/07.		**Supports preservation of the attorney-client privilege and work product doctrine and opposes governmental policies, practices and procedures that erode these protections, including the routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage.**
Health Care Law. S. 243 would impose a cap on non-economic damages in medical malpractice lawsuits and also cap punitive damages, eliminate joint liability on non-economic damages, and impose a federal statute of limitations in those cases. S. 244, narrower legislation, would limit liability in medical liability cases in the field of obstetrics and gynecology. H.R. 2549 would provide certainty in the Medicare set-aside process for workers' compensation settlements.	H.R. 2549 was referred to the Ways and Means and Energy and Commerce Committees on 5/24/07.	S. 243 was referred to the Health, Education, Labor and Pensions Committee on 1/10/07. S. 244 was referred to the Judiciary Committee on 1/10/07.		**Urges the legal and medical professions to cooperate in seeking a solution to medical liability problems and maintains that federal involvement in the area is inappropriate. In particular, the ABA opposes caps on pain and suffering awards, supports retaining current tort rules on malicious prosecution, collateral sources and contingent fees, and believes that the use of structured settlements should be encouraged. It supports certain changes at the state level in the areas of punitive damages, jury verdicts and joint and several liability.**
Judicial Independence. S. 461 and H.R. 785 would create an inspector general for the judicial branch to investigate claims of misconduct against federal judges. Numerous court-stripping bills have been introduced. S. 352 and H.R. 2128 would provide for media coverage of federal court proceedings. S. 1638 and H.R. 3753 would increase federal judicial pay.	H.R. 785 and H.R. 3753 were referred to the Judiciary Cmte. on 1/31/07 and 10/4/07, respectively. Judiciary subc. held a hearing on judicial salaries on 4/19/07. Judiciary Cmte. held a hearing on H.R. 2128 on 9/27/07.	S. 461 and S. 1638 were referred to the Judiciary Committee on 1/31/07, and 6/15/07, respectively. Judiciary Committee held a hearing on cameras in the courtroom on 2/14/07.		**Opposes initiatives that infringe upon the separation of powers between Congress and the courts. Supports increased judicial pay. Opposes any legislation to change constitutional law by limiting federal court jurisdiction in specific areas.** **See page 6.**
Legal Services Corporation. The House approved $377 million for the LSC in fiscal year 2008 as part of H.R. 3093. The Senate approved $390 million.	House passed H.R. 3093 on 7/26/07.	Senate approved its version of H.R. 3093 on 10/16/07.		**Supports an independent, well-funded LSC.** **See page 4.**

Law of the Sea Treaty moves closer to ratification

The U.N. Convention on the Law of the Sea cleared the Senate Foreign Relations Committee Oct. 31 by an overwhelming 17-4 vote, setting the stage for consideration by the full Senate.

The convention, which has the support of the Bush Administration, provides a legal framework governing the use of the oceans and their resources, and more than 150 countries are party to the pact. Negotiated in the 1970s and early 1980s, the treaty was signed by the United States and submitted to the Senate for consideration in 1994 only after major revisions were made in the deep seabed mining provisions. The Bush administration believes that joining the treaty would serve the national security interests of the United States, including the maritime mobility of our armed forces worldwide.

During committee markup, committee Chairman Joseph R. Biden (D-Del) said that remaining outside of the treaty would be a detriment to the U.S. national interests. Those opposed to the treaty requested more hearings on the issue, maintaining that the treaty "places the interpretation and application of the treaty's terms, such as 'military activities' in the hands of international courts and tribunals."

ABA President William H. Neukom expressed the ABA's support for ratification in a statement submitted to the committee in September. He emphasized that all of the principal parties affected – including the military, the energy industry, the communications industry, fisheries, and environmental organizations – are united in recognizing that the United States will benefit by becoming a party to this convention.

He stressed that the United States currently cannot participate in critical discussions now being held and decisions being made that impact U.S. interests in the Arctic and other areas around the world, and that this country must become a party to the convention "to protect our future interests." ■

DEATH PENALTY MORATORIUM: Steve Hanlon (at podium), chair of the ABA Death Penalty Moratorium Implementation Project, unveiled the project's final report Oct. 29. The report calls for a nationwide moratorium on executions based on the findings of a detailed analysis of death penalty systems in eight sample states. The project − which spent the past three years assessing the systems in Alabama, Georgia, Indiana, Ohio, Tennessee, Arizona, Florida and Pennsylvania − found the death penalty processes in those states "deeply flawed" and issued recommendations for improving the systems. Although the ABA has no position in favor or against the death penalty, the association since 1997 has urged a moratorium in each jurisdiction that provides for capital punishment until each jurisdiction conducts a thorough and exhaustive study to determine whether its system meets legal standards for fairness and due process.

Those appearing on a panel discussion with Hanlon, who manages the community services team at Holland and Knight, were (from left): Judge Morris L. Overstreet, former judge on the Texas Court of Criminal Appeals and law professor, Texas Southern University Thurgood Marshall School of Law; Phyllis Crocker, associate dean of academics affairs and law professor, Cleveland-Marshall College of Law at Cleveland State University; Chris Slobogin, the Stephen C. O'Connell chair and professor of law at the University of Florida Fredric G. Levin College of Law; Seth Miller, the project's staff attorney and staff attorney, Innocence Project of Florida; Ray Paternoster, professor, Institute of Criminal Justice and Criminology, University of Maryland; and former Indiana Gov. Joe Kernan.

Senate approves $41.1 million increase for LSC

The Senate approved $390 million − a $41.4 million increase − in fiscal year 2008 funding for the Legal Services Corporation (LSC) last month after defeating a proposed amendment that would have reduced the increase by $20 million.

The amendment, which was offered by Sen. John Thune (R-S.D.), would have redirected $20 million from the LSC to a program to prosecute violent crime on Indian reservations. Thune tried to attach his language to H.R. 3093, the fiscal year 2008 appropriations bill for the Department of Commerce, Justice, State and Related Agencies. The Senate voted 61-32 to table the amendment before passing the entire bill Oct. 16 by a 75-19 vote.

The House version of H.R. 3093, passed in July, includes $377 for the LSC. Both figures are above the LSC's current funding of $348 million, which is the highest appropriation the program has received since the LSC was slashed in 1996 from $415 million to $278 million.

ABA President William H. Neukom called the Senate's decision to provide the LSC with a $41.4 million increase "a major victory for millions of low-income citizens who need legal assistance to safeguard their health, housing and other basic necessities." He thanked the more than 60 senators who expressed strong support for the increase, in particular Sens. Barbara Mikulski (D-Md.), Tom Harkin (D-Iowa), Edward M. Kennedy (D-Mass.), Gordon Smith (R-Ore.), Pete Domenici (R-N.M.), Robert Byrd (D-W.Va.), and Thad Cochran (R-Miss.).

"Thank God for Legal Services lawyers," Mikulski said during debate on LSC appropriations. Citing her experience as a Baltimore social worker, she emphasized the role that Legal Services attorneys play in domestic violence situations. "One of the best ways to really help fight crime," she said, "is in those early interventions we can do with families." In addition to helping women and children escape abusive situations, she said, Legal Services lawyers "aid victims of predatory lending or other schemes and other scams" and victims of "unscrupulous landlords of lead-saturated houses."

Harkin also emphasized during debate on the Thune amendment that representing low-income Americans facing foreclosure and battered women are among the top priorities of LSC-funded programs. "Recent studies have shown that the only public service that reduces domestic abuse in the long term is women's access to legal aid, the very assistance this amendment would drastically curtail," he said.

A House-Senate conference committee must now resolve the differences between the House and Senate bills. A continuing resolution that is currently funding federal programs until appropriations bills are passed is set to expire Dec. 14.

In related action, the Senate Judiciary Committee has scheduled a Dec. 6 hearing on access to justice issues. The Hon. Deborah Hankinson, chair of the ABA's Standing Committee on Legal Aid and Indigent Defendants, will testify on behalf of the association. ■

FISA

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"The ABA believes that any future foreign intelligence surveillance must be conducted within the framework of FISA," Neukom wrote, adding that any amendments to FISA should underscore that FISA and Title III of the Criminal Code are the exclusive means for conducting electronic surveillance.

H.R. 3773, FISA legislation approved by the House Judiciary Committee and the House Intelligence Committee, moved to the House floor last month, but action was postponed Oct. 17 after a motion was offered that would have sent the bill back to committee. The motion called for an amendment stating that the bill would not prevent any form of surveillance of Osama bin Laden, al Qaeda or any other designated terrorist organization.

The House bill, which would extend FISA through 2009, would prohibit the targeting of Americans with warrantless surveillance. Americans could, however, be on the other end of a communication under surveillance without a warrant.

Meanwhile, the Senate Select Committee on Intelligence approved a draft Oct. 18 that Chairman John D. Rockefeller IV (D-W.Va.) said would provide strong FISA court review and improved oversight of the collection of information. The draft also includes, however, provisions authorizing targeted immunity to telecommunications companies that provided records to the government under the president's controversial NSA warrantless surveillance program.

The Senate Judiciary Committee held an Oct. 31 hearing on the issue, and was scheduled to begin marking up legislation, S. 2248, in mid-November.

ABA urges separate line-item for LLOC

The ABA urged Congress last month to consider creating an independent budget line-item for the Law Library of Congress (LLOC) to ensure that funding intended to target chronic issues facing the Law Library can be used specifically for that purpose.

Testifying Oct. 24 before the House Administration Committee, Tedson J. Meyers, chair of the ABA Standing Committee on the Law Library of Congress, emphasized that the Law Library of Congress, with more than 2.5 million volumes, is the world's largest law library, and its clientele has expanded beyond the United States to other nations.

He expressed concern, however, that nearly one-third of that collection has not yet been properly catalogued and classified, which may increasingly place those volumes out of the reach from Law Library users.

Praising the leadership of Librarian of Congress James H. Billington, Meyers placed responsibility for the solution on Congress, calling for full funding of the Library of Congress and the Law Library of Congress.

Meyers explained that as a result of the library's international law collection, including the Global Legal Information Network (GLIN), a database of statutes and other legal information from around the world, the LLOC is now recognized as an "anchor for the Rule of Law worldwide."

"As American corporations have discovered, the Law Library of Congress has become the 'mother lode' of reliable information on foreign and comparative law," Meyers testified, adding that access to such information is crucial for government and private lawyers involved in supporting American enterprise abroad and foreign investment here at home.

The House Administration Committee hearing on Library of Congress management issues Oct 24 brought together the following participants (from left): former Rep. William H. Orton, member, ABA Standing Committee on the Law Library of Congress; Hon. William S. Sessions, member, advisory commission, ABA Standing Committee on the Law Library of Congress; Law Librarian of Congress Rubens Medina; Librarian of Congress James H. Billington; and Tedson J. Meyers, chair, ABA Standing Committee on the Law Library of Congress, who testified on behalf of the ABA.

A separate budget line-item would help achieve stability for GLIN and for the law library staff, who would not have to depend on allocation or shifting of funds by others within the Library of Congress's administration, Meyers testified. In addition, he said that a clearer understanding of the federal contribution would make it easier for the Law Library to solicit outside financial partners for the Law Library's work.

Former Rep. William H. Orton, a long-time member of the ABA standing committee, also testified on his own behalf, echoing the need for a separate line-item for the Law Library and noting the heavy budget constraints the Law Library has suffered for more than 15 years.

"If a law library is to remain current in the law, it must acquire, catalogue, classify and shelve new materials with days or weeks at the longest," Orton said. He explained that the Law Library relies upon the Library of Congress to catalogue and classify materials, a process that may take years.

"Without the resources to keep pace with the increased cost for the acquisition and maintenance of these valuable legal materials, the Law Library cannot continue to complete its mission," he said.

House Administration Committee Chairman Robert A. Brady (D-Pa.) convened the hearing amid concerns about the security of the inventory of the Library of Congress collection, cataloging, and the status of the Law Library.

Billington told the committee that the Law Library is working to reclassify approximately 675,000 volumes – more than one quarter of the Law Library's collection − to make all of the collection more easily accessible.

He also emphasized that the library will continue to approach bibliographic and inventory control as critical components of the overall collection security. ■

ABA comments on judicial conduct draft rules

The ABA commended the Judicial Conference Committee on Judicial Conduct and Disability last month for responding to association concerns in drafting rules that address problems faced by chief circuit judges as they implement the Judicial Conduct and Disability Act of 1980.

The draft rules, issued for comment July 16, are based on the recommendations of the Judicial Conduct and Disability Act Study Committee, a group appointed in 2004 by then Chief Justice William H. Rehnquist and chaired by Associate Justice Stephen G. Breyer. Rehnquist appointed the committee after members of Congress voiced concerns about how complaints against judges were being handled.

"By providing definitive guidance to the circuits, these mandatory draft rules will promote greater uniformity and transparency in the implementation of the act," according to comments on the draft rules submitted by the ABA to the committee Oct. 15. Relevant entities within the association that reviewed the draft rules included the Judicial Division, the Standing Committee on Federal Judicial Improvements and the Standing Committee on Professional Discipline.

Association policies adopted in 1993 and 1994 reaffirmed support in principle for the 1980 act and offered three recommendations for strengthening it: increasing public awareness and understanding of the act; adopting procedures to permit anonymous complaints to be brought to the attention of the chief judge; and urging the development of a system for the dissemination of information with goals of developing a body of precedent and enhancing public education about judicial disciplinary mechanisms.

Specifically, the association commended Draft Rule 24, which supports publication on the court's public website of all final orders and supporting memoranda. The draft rule also expands on the guidance in the current Illustrative Rules by authorizing and encouraging the chief circuit judge to publicize orders that appear to have precedential value and requiring the publication of selected illustrative orders on the judiciary website.

The association expressed concern about draft Rule 3(b)(1) and its commentary regarding the definition of and what constitutes "misconduct," which is defined as "conduct prejudicial to the effective and expeditious administration of the business of the courts" with some specific examples. The association recommended that the rule be amended to define misconduct to include violations of the Code of Conduct for United States Judges and that the Code of Conduct should provide standards of conduct applicable to proceedings under the act. The commentary, according to the ABA, should still explain that it is not intended that disciplinary action be appropriate for every violation of the Code's provisions.

The association also found that a specific example of misconduct – treating litigants or attorney in an un-

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Judicial Vacancies/Confirmations — 110th Congress (as of 11/8/07)

Court	Current Vacancies	Pending Nominations	Confirmations
US Supreme Court (9 judgeships)	0	0	0
US Courts of Appeals (179 judgeships)	14	9	5
US District Courts (678 judgeships)	33	15	29
Court of International Trade (9 judgeships)	0	0	0
Totals	47	24	34

Washington News Briefs

GROUP LEGAL SERVICES

The ABA is urging senators and representatives to cosponsor and support enactment of S. 1130 and H.R. 1840, bipartisan legislation to reinstate and make permanent tax-favored status for employer-paid legal services plans. Sens. Gordon Smith (R-Ore.) and Blanche Lincoln (D-Ark.) introduced S. 1130, and Rep. Pete Stark (D-Calif.), Rep. Dave Camp (R-Mich.) and 35 cosponsors, including House Judiciary Committee Chairman John Conyers Jr. (D-Mich.) and House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) , sponsored H.R. 1840. Both bills would revive Section 120 of the Internal Revenue Code. Enacted in 1976, Section 120 created a tax incentive for employers to provide group legal services benefits for employees and their families by excluding from gross income the cost of this benefit. When Section 120 expired in 1992, many employers discontinued their group legal benefits plans, causing the employees and retirees to lose access to affordable preventative legal services. "The ABA has long supported group legal services plans as a way to increase access to the justice system for low-and middle-income workers and their families," according to ABA President William H. Neukom. "These plans allow covered individuals to address legal issues before they become significant problems, reducing demands on already overburdened court systems and instilling confidence in our justice system." Neukom said.

NATIVE HAWAIIANS

The House passed legislation Oct. 24 by a 261-153 vote that would allow indigenous Native Hawaiians to choose a political framework that would lead to a native governing entity to best serve their cultural and civic needs and that could be recognized by the U.S. government. H.R. 505, introduced by Rep. Neil Abercrombie (D-Hawaii), would return self-governance to Native Hawaiians, who for 1,000 years practiced self-determination in an organized political framework before the overthrow of the Hawaiian Monarchy by U.S. agents acting without official sanction in 1893. Supporters of the bill see it as a necessary step following the signing of a congressional joint resolution in 1993 acknowledging that the overthrow of the Hawaiian kingdom was illegal and issuing an apology. Opponents claim that allowing Native Hawaiians the right to self governance would imperil the constitutional rights of non-Native Hawaiians to equal protection under the law. The ABA supports the right of Native Hawaiians to seek federal recognition of a native governing entity within the United States similar to that which American Indians and Alaska Natives possess under the Constitution. In an Oct. 23 letter to all representatives, ABA Governmental Affairs Acting Director Denise A. Cardman urged enactment of H.R. 505, pointing out that the "courts have upheld Congress' power to recognize indigenous nations and have specifically recognized that this power includes the power to re-recognize nations whose recognition has been compromised in the historical past." The House bill has been sent to the Senate, where the Senate Indian Affairs Committee approved a similar bill, S. 310, in May.

REPORTERS' SHIELD

A bill passed by the House Oct. 16 by an overwhelming 398-21 vote would establish a reporters' privilege at the federal level to protect the free flow of information between journalists and confidential sources. H.R. 2102, sponsored by Rep. Rick Boucher (D-Va.), would prevent courts from compelling reporters to provide testimony, produce documents or reveal sources unless the court determines that: a crime has been committed; an act of terrorism or significant harm to national security could be prevented; or prosecutors prove that the public interest in compelling disclosure outweighs the public interest in gathering or disseminating news. Prior to House passage, changes were made in the bill to address national security concerns, but the legislation still faces a veto from President Bush. The Senate version of the legislation, S. 2035, cleared the Senate Judiciary Committee Oct. 4, and is ready for floor action. The ABA supports the House and Senate bills in principle, urging enactment of a shield law that would require any party seeking to subpoena journalists to force disclosure of information to demonstrate that the information sought is essential to a critical issue in the matter; all reasonable alternative sources for acquiring the information have been exhausted; and the need for information clearly outweighs the public interest in protecting the free flow of information.

DREAM ACT

The Senate rejected attempts last month to proceed to a vote on S. 2205, a bipartisan bill to provide individuals who entered the country as children and meet certain strict criteria with an opportunity to pursue legal residence. Supporters of the bill − sponsored by Sens. Richard J. Durbin (D-Ill.), Chuck Hagel (R-Neb.) and Richard Lugar (R-Ind.) − failed by a 52-44 vote to garner the 60 votes required to continue consideration of the bill. The ABA supports the legislation, which is knows as the DREAM Act (the Development, Relief and Education for Alien Minors Act of 2007). In an Oct. 23 letter to all senators, ABA Governmental Affairs Acting Director Denise A. Cardman explained that the DREAM Act would require individuals to earn the opportunity for legal residency. To be eligible for conditional legal residency under the act, individuals must be able to demonstrate that, among other things, they: have been admitted to an institution of higher education; have graduated from high school or passed a General Education Development (GED) test; entered the country before the age of 16; have lived in the United States for at least five years; have demonstrated good moral character; and have no criminal record. In order for the conditional status to be removed, they must have completed at least two years of college toward a four-year degree or served two years of military service. Cardman pointed out that the majority of these young people were brought to the United States by their parents and this is the only home they have ever known. "It is in the nation's best interest to provide these individuals with an opportunity to earn legal permanent residence," she said.

House passes Employment Non-Discrimination Act

The House passed legislation Nov. 7 that would extend existing employment-inequity provisions of federal law to establish protections against workplace discrimination based on sexual orientation.

H.R. 3685, the Employment Non-Discrimination Act (ENDA), passed the House by a 325-184 vote. The bill would make it unlawful to hire, discharge or discriminate against any individual based on actual or perceived sexual orientation. ENDA defines sexual orientation as "homosexuality, heterosexuality or bisexuality," and would enhance protections for sexual orientation by clarifying the nature of the protected class and the basis of the prohibited actions. If enacted, the legislation would be the first federal prohibition against sexual orientation discrimination by private employers.

During floor debate on H.R. 3685, members approved a manager's package that would exempt from ENDA all religious organizations that are currently exempt from portions of the Civil Rights Act and specifies that the bill would not affect the federal definition of marriage as being between a man and a woman as provided in P.L. 104-199. The House also adopted an amendment that would allow employers to condition employment on marital status.

The bill as passed has come under harsh criticism from those disappointed that the legislation is narrower than an earlier bill, H.R. 2015, which also included protections against workplace discrimination based on both gender-identity and perceived sexual orientation. Supporters of H.R. 2015 feared, however, that H.R. 2015 would fail to garner enough votes for passage.

In an Nov. 6 letter to all members of the House, ABA Governmental Affairs Acting Director Denise A. Cardman urged passage of H.R. 3685, emphasizing that "federal protection of minority groups, including the lesbian, gay and bisexual populations, encourages diversity in the workplace and the benefits that flow from it."

She noted that the ABA also supports legislation to prohibit discrimination on the basis of actual or perceived gender identity or expression in employment, housing and public accommodations.

"Gender identity and gender expression protections would aid those who do not conform to stereotypical male or female gender expectations, not only transgender persons" she said, pointing out that studies indicate that transgender and other gender nonconforming people face severe discrimination in all public aspects of their lives, particularly employment.

"We know that many Americans, regardless of sexual orientation, experience discrimination because their dress or behavior does not match that traditionally associated with their gender. In the employment context the result can be a significant loss of human potential," Cardman said.

While she said the association is disappointed that gender identity will not be addressed in H.R. 3685, enactment of the legislation nevertheless will be a "significant contribution to civil rights jurisprudence." ■

Judicial discipline

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necessarily hostile manner – is too vague and should be re-written for greater clarity.

In addition, the association comments recommended that the Judicial Conference request that the Committee on Codes of Conduct consider revising the Code of Conduct for United States Judges to reflect the rules-based approach in the Model Code of Judicial Conduct adopted by the ABA in 2007. In the new Model Code, black letter rules are limited to statements regarding what a judge shall, shall not or may do, and statements as to what a judge should do are confined to comments.

The Judicial Conference Committee on Judicial Conduct and Disability, after reviewing the comments on the proposed rules, will prepare another draft for the Judicial Conference to consider at its March 2008 meeting. ■

The monthly *Washington Letter* reports news of national public interest to the legal profession, including congressional, executive branch and ABA activities concerning the association's legislative priorities. The newsletter is published by the Governmental Affairs Office as a service to ABA members and national, state and local bar associations. Full text is available on the Internet at http://www.abanet.org/poladv/letter/home.html. **© 2007 American Bar Association. All rights reserved.**
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