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Delegates approve resolutions in numerous areas

New policy addresses disposition of detainees at Guantanamo Bay

The ABA House of Delegates approved numerous new policy positions during the ABA Midyear Meeting in Boston last month, including one that addresses U.S. governmental review and disposition of detainees at Guantanamo Bay, Cuba.

Debate on the resolution centered on the timing of the vote, with proponents emphasizing the importance of making the ABA's position known now without waiting for further action by the Obama administration. President Obama issued an executive order Jan. 22 calling for an immediate halt to pending military commission proceedings, a review of the cases of those imprisoned at Guantanamo, and the closure of the detention facility within one year.

The new ABA policy calls on the government to prosecute detainees charged with violations of criminal law in Article III courts unless "the attorney general certifies, in cases involving recognized war crimes, that prosecution cannot take place before such courts and can be held in other regularly constituted courts in a manner that comports with fundamental notions of due process, traditional principles of the laws of war, the Geneva Conventions, and the Uniform Code of Military Justice."

The policy also calls for the prompt release or resettlement of detainees who are not determined to be "enemy combatants" and urges that the remaining detainees be granted prompt habeas corpus hearings with full due process rights and access to counsel.

Additional highlights of the Midyear Meeting included a wide range of programs and educational events and the setting of this year's legislative and governmental priorities by the Board of Governors (see page 7). Stephen N. Zack, of Miami, was nominated ABA president-elect in line to become association president in August 2010 (see article, page 5).

The following is a summary of major policy resolutions approved by the delegates.

Administrative Law

Administrative Law Judges. Urges the Office of Personnel Management, as part of its mandate to select the best qualified candidates for federal administration see "*Midyear Meeting,*" page 4

LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
<p>Independence of the Legal Profession. No legislation has been introduced to reverse the privilege-waiver and employee rights provisions in the Justice Department's policy 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. The Justice Department issued new privilege waiver guidelines 8/28/08. The Securities and Exchange Commission announced a new guidance on 10/14/08. P.L. 110-322 (S. 2450) adopted new Rule of Evidence 502 regarding inadvertent disclosure of privileged materials.</p>			<p>President signed P.L. 110-322 (S. 2450) on 9/19/08.</p>	<p>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.</p>
<p>Health Care Law. The president held a Forum on Health Reform at the White House on 3/5/09. Numerous bills have been introduced and hearings held on various aspects of the health care system. No legislation has been introduced to impose a cap on non-economic damages in medical malpractice lawsuits and also cap punitive damages, eliminate joint liability on non-economic damages, or impose a federal statute of limitations in those cases.</p>				<p>Supports increased access to health care for all Americans. Opposes federal legislation to preempt state medical liability laws or legislation to require patients injured by malpractice to use "health courts" that take away jury trials.</p>
<p>Judicial Independence. S. 220 and H.R. 486 would create an inspector general for the judicial branch to investigate claims of misconduct against federal judges. S. 200 would waive Section 140 to allow federal judges to receive a cost-of-living increase for fiscal year 2009.</p>	<p>H.R. 486 was referred to the House Judiciary Committee on 2/9/09.</p>	<p>S. 200 and S. 220 were referred to the Senate Judiciary Committee on 1/11/09 and 1/13/09, respectively.</p>		<p>Supports increased judicial pay. Opposes initiatives that infringe upon the separation of powers between Congress and the courts.</p>
<p>Legal Services Corporation. H.R. 1105, omnibus fiscal year 2009 appropriations legislation, includes \$390 million for LSC.</p>	<p>House passed H.R. 1105 on 2/25/09.</p>	<p>Senate passed H.R. 1105 on 3/10/09.</p>		<p>Supports an independent, well-funded LSC.</p>

Gun amendment stalls D.C. voting bill

Legislation that would provide the District of Columbia with full voting representation in the House of Representatives was indefinitely postponed March 4 in the House after the Senate added an amendment to its version of the bill that would repeal many of the District's gun control laws.

The amendment, attached to S. 160 before the Senate passed the legislation by a 61-37 vote on Feb.

26, would repeal the District's ban on semiautomatic weapons, eliminate the city's registration for most guns, and drop criminal penalties for possessing an unregistered firearm in the District. The amendment's sponsor, Sen. John Ensign (R-Nev.), maintained that his amendment is necessary to protect the Second Amendment rights of D.C. residents and bring the District's gun laws in line with the

March 2008 Supreme Court decision in *District of Columbia v. Heller*, 554 U.S. ____ (2008), which struck down the District ban on handgun ownership as a violation of the Second Amendment. The Supreme Court did, however, recognize the public interest in regulating gun ownership.

The House bill, H.R. 157, which the House Judiciary Committee approved Feb. 25 by a 20-12 vote, had been expected to reach the House floor for a vote the week of March 2. Uncertainty over the gun amendment prompted the leadership to postpone a vote to allow more time for discussion on how to move forward.

The core provisions of both H.R. 157 and S. 160 would establish the District of Columbia as a congressional district for representation in the House and also would provide a new House seat for Utah, the state that would be next in line, according to the last U.S. census, to receive an additional seat.

The ABA supports the legislation, emphasizing in a Feb. 10 letter to all senators that the United States is the world's only democratic nation that does not grant citizens of its capital voting representation in the national legislature.

"Our nation is devoting significant resources to promoting representative democracy abroad, and yet we have more than 500,000 American citizens residing in the District of Columbia who are not afforded that right at home," ABA Governmental Affairs Director Thomas M. Susman wrote. ■

House passes Elder Abuse Victims Act

The House passed legislation Feb. 11 that would authorize the Department of Justice to provide grants to state and local law enforcement agencies, prosecutors and courts for improving the investigation and prosecution of elder abuse and to improve services to victims of such crimes.

H.R. 448, sponsored by Rep. Joe Sestak (D-Pa.) and passed by an overwhelming 397-25 vote, also includes provisions for a study and report to Congress on state laws and procedures regarding elder abuse and neglect, and recommendations for improving elder justice in the United States.

Grants under the legislation would provide training, technical assistance, policy development, multidisciplinary coordination and other types of support for state and local prosecutors and courts handling elder-justice related cases. Also included is creation of a Center for the Prosecution of Elder Abuse, Neglect and Exploitation to advise and support local prosecutors and courts nationwide.

Grants also would be awarded under a new Elder Serve Victims Grants Program to carry out a three-year effort to support facilitating and coordinating programs for victims of elder abuse. Grant recipients would be required to establish an Emergency Crisis Response Team program for immediate short-term emergency services, including shelter, care services, food, clothing, and transportation to medical or legal appointments.

In a Feb. 9 letter included in *Congressional Record* coverage of House debate on the bill, ABA Governmental Affairs Director Thomas M. Susman emphasized that "elder justice is central to any viable notion of the rule of law and social justice" and the "serious problems faced daily by victims of elder abuse cannot be remedied unless the justice system is given the resources to address those problems effectively." It is believed that each year as many as five million elders are abused, neglected or exploited, and the National Center for Elder Abuse estimates that only one in six cases is reported.

The ABA, Susman said, supports enactment of H.R. 448 as a "significant step in addressing the inexcusable and growing national problem of elder abuse, neglect and exploitation."



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tive law judge positions, to consider judicial status in good standing as a satisfactory alternative to any requirement that candidates be ac-

dated in Federal Civil Rule of Procedure 26(c).

Judicial Selection. Urges bar associations and the highest court of each state to establish, for those who have an interest in serving in

expand the use of mediation in appropriate situations to resolve criminal matters prior to actual case filings, thereby providing a means for diversion from the criminal justice system.

Child Victims. Urges all levels of government to ensure that child victims of criminal conduct have prompt access to legal advice and counsel and to specialized services and protections such as those provided by child advocacy centers approved and accredited by the National Children's Alliance; and supports legislation or court rules to provide them with independent attorneys.

Elder Law

Guardianship. Encourages federal funding for training, research, exchange of information on practices, consistent data collection, and development of state, local and territorial standards regarding adult guardianship.

Nursing Home Arbitration. Opposes the use of mandatory, binding pre-dispute arbitration agreements between a long-term facility and a resident of such a facility; supports legislation that would invalidate such arbitration agreements and opposes legislation that would authorize such agreements; and supports additional refinements to legislation and regulations that would accomplish these objectives through a method other than amending Chapter 1 of the Federal Arbitration Act.

Election Law

D.C. Voting Rights. Supports prompt enactment of legislation, such as the District of Columbia House Voting Rights Act of 2009, to grant equal voting rights in Congress for the District of Columbia.

Environmental Law

Climate Challenge. Urges law

see "Midyear Meeting," page 5



Robert E. Juceam (right), an immigration lawyer in New York City with the firm of Fried Frank Harris Shriver & Jacobson LLP, moderated a panel discussion Feb. 13 on health care for immigration detainees. Experts appearing on the panel were (from left): Rebekah Rosado, Office for Civil Rights and Civil Liberties, Department of Homeland Security; Megan H. Mack, ABA Commission on Immigration; Laura Rótolo, American Civil Liberties Union of Massachusetts; and Dr. Robert L. Cohen, New York City.

tively licensed attorneys in good standing.

Attorney-Client Privilege

Immediate Appeal. Supports the right of participants in federal proceedings to take an immediate appeal from an order that rejects a claim of attorney-client privilege and on that basis requires the production of information or materials for which the privilege has been claimed.

Courts/Judiciary

Sunshine in Litigation. Opposes the proposed Sunshine in Litigation Act or similar legislation that would impose additional requirements for entering or modifying protective orders beyond those currently man-

the judiciary, a voluntary preselection/election program designed to provide individuals with a better appreciation of the role of the judiciary and to assist them in making a more informed decision regarding whether to pursue a judicial career.

Criminal Justice

Juvenile Sex Offenders. Urges Congress and state legislatures to re-examine and revise laws, policies and practices that require youth, based upon a juvenile court adjudication, to register as sex offenders or be subject to community notification provisions otherwise imposed upon adult sex offenders.

Mediation. Urges federal, state, territorial and local governments to

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firms and other law organizations to adopt the ABA-EPA Law Office Climate Challenge to promote sustainable development in the practice of law.

Ethics

Conflict of Interest. Amends Model Rule of Professional Conduct 1.10 (Imputation of Conflicts of Interest: General Rule) to permit the screening of a lawyer who moves laterally from one private law firm to another and to require that prompt written notice of the screening be given to any affected former clients so that conflicts of interest that apply to the moving lawyer under Model Rule 1.9 (Duties to Former Clients) are not imputed to all the other lawyers in the new law firm.

Family Law

Child Custody. Opposes the enactment of federal legislation that would create federal-question jurisdiction in child custody cases, including cases involving service-member-parents; and urges states to enact legislation prohibiting denial of child custody to a servicemember based solely on absence due to military deployment.

Immigration

Due Process. Supports legislation and/or administrative standards to ensure due process and access to appropriate legal assistance for persons arrested or detained in connection with immigration enforcement actions and to provide emergency assistance to their minor children; and encourages bar associations to raise awareness of the rights available to individuals taken into custody during workplace immigration enforcement actions and to assist in provision of pro bono legal services.

Sponsorship for Permanent Residence. Supports the enactment of legislation and the implementa-

tion of public policy to enable a U.S. citizen or lawful permanent resident who shares a mutual, interdependent, committed relationship with a non-citizen of the same sex to sponsor that person for permanent residency in the United States.

Military Law

Civil Relief. Urges Congress to amend the federal Servicemembers Civil Relief Act (SCRA) to clarify that a private right of action exists under SCRA and to provide that a prevailing plaintiff in such an action may recover reasonable attorneys' fees.

National Security

Guantanamo Bay Detainees.

Urges the U.S. government to ensure review and disposition of detainees held at Guantanamo Bay, Cuba, according to specified guidelines consistent with the Supreme Court's decision in *Boumediene v. Bush* and President Obama's 1/22/09 executive order on "Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities."

See "Midyear Meeting," page 6

Stephen N. Zack is president-elect nominee

ABA President-elect Nominee Stephen N. Zack, a partner in the law firm of Boies, Schiller and Flexner, vowed last month to focus his presidency on civics education, civil rights and multiculturalism.

Zack, a Cuban-American who has practiced law in Miami for more than 35 years, said he also plans to convene a commission to focus on Hispanic legal rights, including immigration, voting and consumer rights.

If elected at the ABA Annual Meeting in August, he will begin his one-year term as president in August 2010.

A member of the House of Delegates since 1988 and a former chair of that body as well as a former member of the Board of Governors, Zack has a long record of service to the association. Most recently, he was member-at-large of the Long Range Planning Committee of the Board of Governors, a member of the Center for Racial and Ethnic Diversity, a member at large of the Section of International Law, and secretary of the American Bar Endowment. He is a life fellow of the American Bar Foundation. He also served on the Commission on the Judiciary in the 21st Century and is a former chair of the ABA Latin American Council.

A former president of the Florida State Bar, he was president of the National Conference of Bar Presidents and is a former chair of the Standing Committee on Bar Activities and Services.

Zack received his law degree from the University of Florida.



Stephen N. Zack

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Panelists at a Feb. 14 program sponsored by the ABA's AIDS Coordinating Committee presented a legal roadmap for the Obama administration to use in addressing HIV/AIDS issues. Presenters were (from left): Denise McWilliams, AIDS Action Committee of Massachusetts; moderator Wendy Parmet, Northeastern University School of Law; Ravinia Hayes-Cozier, National Minority AIDS Council, Washington, D.C.; and Catherine Hanssens, founder and director, Center for HIV Law and Policy, New York City.

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Social Security

Attorneys' Fees. Urges Congress to enact legislation amending Title 28, U.S. Code, to provide for the direct payment of attorneys' fees and costs to the attorney representing a prevailing party in certain Social Security Disability Insurance and Supplemental Security Income claims.

Tort and Insurance Practice

Flood Coverage. Recommends that federal, state and territorial governments enact legislation with appropriate funding that would allow private insurers and reinsurers to make available broadened insurance protection for property damage arising from storms, including damage from wind, wind-driven rain and flood caused by storm surge, but excluding damage arising from other types of floods.

Financial Infrastructure. Urges Congress to address the consequences of natural catastrophes by strengthening the financial infra-

structure and by developing programs that increase availability of affordable insurance in areas highly exposed to catastrophes, while not competing with the private market; and urges Congress to enact multiple changes to the National Flood Insurance Program to put it on a sound actuarial basis.

Catastrophic Risks. Urges the federal government to take steps to undertake a study to identify barriers in current laws and regulations to the issuance of catastrophe-linked securities and to remedy them through legislative enactment; and urges state and territorial governments to take certain steps to encourage capital markets to finance the assumption of catastrophic risks.

Liquidity Needs. Urges the federal government to address the liquidity needs of individuals and businesses in the aftermath of future natural catastrophes; and recommends steps to be taken to speed recovery and reduce some of the

losses incurred by residents affected by catastrophes, including tax incentives for private insurers to encourage catastrophe risk-taking.

Insurance Availability. Urges state, territorial and local governments to use specified tools to mitigate losses from future megacatastrophes to ensure the ongoing availability and affordability of insurance for natural disasters.

Federal Standards. Urges the federal government to provide additional disaster preparedness funds and use multiple tools to mitigate losses from future megacatastrophes, including establishing risk-appropriate federal construction standards, requiring cost-effective retrofitting measures, and adopting land-use policies that discourage constructions in the regions of the country exposed to high risk.

Standards for Claims. Recommends that state and territorial governments adopt specified standards for handling residential and small business insurance claims for property damages resulting from hurricanes or storms and undertake studies of the handling of property claims; and urges Congress to enact legislation directing the National Flood Insurance Program to participate in mediation programs established by the states and territories so there is a single mediation venue for resolving all disputes for insurance claims resulting from hurricanes or storms.

Uniform State Laws

The delegates approved the following uniform state laws: the Uniform Unsworn Foreign Declarations Act; the Revised Uniform Unincorporated Nonprofit Association Act; the Uniform Common Interest Owners Bill of Rights Act; the Uniform Common Interest Ownership Act; and the 2008 Amendments to the Uniform Interstate Family Support Act. ■

2009 Legislative and Governmental Priorities

Adopted by the ABA Board of Governors in February 2009

See more details on the Governmental Affairs Office website at <http://www.abanet.org/poladv>

Access to Legal Services. The ABA supports: adequate funding for civil legal services through the Legal Services Corporation and for indigent criminal defense through the Criminal Justice Act; legal assistance as a matter of right for low-income military personnel; and the reinstatement of the tax-preferred status of group legal services benefits.

Anti-Terrorism and Preservation of Civil Liberties.

The ABA urges that Guantanamo detainees who are charged with criminal law violations be prosecuted in Article III courts. If the Attorney General certifies that a detainee cannot be prosecuted in such courts, prosecution should occur in other regularly constituted courts, consistent with due process, the laws of war, the Geneva Conventions and the UCMJ. Detainees no longer considered to be enemy combatants should be released or resettled, and any remaining enemy combatants should be granted prompt habeas corpus hearings with full due process rights and access to counsel. The ABA urges enactment of legislation that outlines procedures for use in federal civil cases implicating the state secrets privilege.

Criminal Justice System Improvements and Protection of Rights.

The ABA urges Congress and the President to maintain a balance between public safety needs, protection of our civil liberties, and the integrity of the justice system. The ABA urges Congress to maintain federal habeas corpus review of state convictions and to provide federal resources necessary to assure adequate representation at trial and on appeal for capital defendants. The ABA opposes enactment of mandatory minimum sentences, and supports drug sentencing reform and broader reliance on alternatives to incarceration for non-violent offenders. The ABA supports federal legislation to: expand programs to support the successful re-entry of ex-offenders into the community; establish a federal program to address the use of racial profiling; reauthorize the federal Juvenile Justice and Delinquency Prevention Program; fund state programs that provide services to youth at risk; and improve the response of the federal, state, territorial and local governments and of the criminal and civil justice systems to elder abuse, neglect and exploitation.

Health Care Law. The ABA opposes federal legislation to preempt state medical liability laws or legislation to require patients injured by malpractice to use "health courts" that take away jury trials. The ABA supports federal legislation to: enact a "Patients' Bill of Rights"; provide for predictability and efficiency in the Medicare set-aside process in Workers' Compensa-

tion cases; protect private medical records; and increase access to health care for all Americans.

Immigration. The ABA supports legal immigration based on family reunification and employment skills, legal protections for unaccompanied children, due process safeguards in immigration and asylum adjudications, and judicial review of such decisions.

Independence of the Legal Profession. The ABA believes that primary regulation and oversight of the legal profession should continue to be vested in the court of highest appellate authority of the state in which the attorney is licensed. The ABA opposes federal laws or regulations that would interfere with state rules protecting the confidential attorney-client relationship.

Independence of the Judiciary. The ABA supports adequate funding for the federal judiciary, including an immediate and substantial increase in federal judicial compensation, and the prompt filling of judicial vacancies. The ABA opposes: legislative initiatives that erode the judicial process (including curtailment of federal court jurisdiction in constitutional cases) or infringe upon the separation of powers between Congress and the courts; and federal legislation that circumvents the Rules Enabling Act.

Legal Remedies to Eliminate Discrimination. The ABA endorses legal remedies and voluntary actions to eliminate or prevent discrimination that take into account as a factor race, origin, or gender. The ABA supports: funding for the Thurgood Marshall Legal Education Opportunity Program; enactment of the Civil Rights Tax Relief Act; full voting representation in Congress for District of Columbia residents; and enactment of the Lily Ledbetter Fair Pay Act.

Promoting the International Rule of Law. The ABA supports adequate funding for domestic and international agencies that promote the rule of law, including the prompt payment of U.S. assessments to the United Nations for its regular and peacekeeping expenses. The ABA supports ratification of certain international treaties.

Tax Simplification. The ABA supports simplification of the tax laws to the maximum extent possible, consistent with basic equity, efficiency and the need for revenue, so that such laws can be easily understood and complied with by the taxpayers and fairly and consistently administered and enforced by the Treasury Department.

Washington News Briefs

FEDERAL CONTRACTS: Conferees considering H.R. 1, the economic stimulus package enacted last month, dropped a provision from the legislation after the ABA alerted them that the provision could create problems for state and local governments receiving stimulus funds. Section 1205 of the conference report would have required state and local projects supported by funds authorized by the stimulus legislation to comply with federal contracting requirements under the Federal Acquisition Regulations (FAR), which generally govern federal agency contract awards to private sector contractors. Because state and local governments have little or no experience conducting procurements consistent with the FAR requirements, Section 1205 would have imposed onerous administrative burdens on them. The ABA, which has worked with a variety of state and local government organizations to develop a Model Procurement Code for State and Local Governments, urged conferees, in a Feb. 12 letter from ABA Governmental Affairs Director Thomas M. Susman, to “add language to the final stimulus legislation allowing compliance with the Model Code, or its procedural equivalent, to satisfy the competition requirements.” The association maintains that the Model Code represents a best practice for achieving competition and transparency in federally funded state and local procurements and has been used successfully by thousands of past federal grantees contracting for services and construction using federal funds. As a result of the ABA’s efforts, the conferees dropped the troubling provision from the final version of H.R. 1, which was signed into law as P.L. 111-5 on Feb. 17.

NURSING HOME ARBITRATION: Rep. Linda Sanchez (D-Calif.) and Sen. Mel Martinez (R-Fla.) have introduced bills to amend the Federal Arbitration Act (FAA) to invalidate mandatory binding pre-dispute arbitration clauses in agreements between long-term care facilities and residents. “Arbitration agreements are often buried in overly complicated contracts, and many consumers do not realize they are waiving their legal options,” Sanchez said. “We have to protect families and seniors, and that includes giving them the tools they need to protect their full legal rights.” She noted that while arbitration can be an economical and efficient alternative to settling a dispute in court, it can also limit the types of evidence that can be presented and the type of remedies that can be imposed for wrongdoing. The ABA maintains that Congress should take action because of the unfair disadvantage most residents and families face during the time of admission to a nursing home. These admissions typically involve an

older person with multiple chronic conditions just discharged from a hospital, and families are under enormous pressure. There is little time to weigh the options or consult with counsel. As introduced, the legislation, H.R. 1237 and S. 512, would amend Chapter 1 of the FAA, which is applied to a broad range of domestic and international disputes far exceeding the scope of arbitration agreements affected by the legislation. In correspondence to Sanchez and Martinez Feb. 23, the ABA recommended that the provisions be enacted as a new Chapter 4 of the FAA or as a separate statute to avoid unintended consequences caused by any confusion and uncertainty resulting from amending Chapter 1, which has been intact and construed consistently by the courts for more than 80 years.

SECOND CHANCE ACT: The ABA urged Congress March 3 to support full funding in fiscal year 2010 for the Second Chance Act, a law enacted in April 2008 to improve coordination of reentry services and policies at the state and local levels for those released from incarceration. The act, strongly supported by the ABA, authorizes \$165 million, including \$55 million for State and Local Reentry Demonstration Projects to coordinate reentry initiatives and implement evidenced based practices and \$15 million for Mentoring Grants to Non-profit Organizations to provide mentoring and other transitional services to adults and youth returning from correctional facilities. In letters to the Senate and House Appropriations Subcommittees on Commerce, Justice, Science and Related Agencies, ABA Governmental Affairs Director Thomas M. Susman noted that more than nine million individuals are released from jail each year, and more than half are reincarcerated within three years of their release. A recent Pew Charitable Trusts study estimated that if the current rate of prison growth continues, inmate populations will increase by 13 percent by 2013, adding more than 192,000 prisoners at a cost of \$27.5 billion. Research confirms that comprehensive coordinated services can reduce recidivism by helping individuals find stable employment and housing. “In these difficult economic times, the barriers to housing and employment will be even greater than in the recent past, and it is all the more important that the Second Chance Act programs be implemented to provide needed assistance and help ward off recidivism,” Susman said. He emphasized that state and local governments and nonprofit organizations around the country are eager to launch and expand innovative reentry programs, and families and communities are desperate to access the services the Second Chance Act will provide.

House bill would stop abuse in residential treatment

Legislation passed by the House Feb. 23 by a 295-102 vote would give parents assurances that troubled children they place in privately run residential treatment programs are receiving appropriate care that meets educational, mental health and other treatment needs.

H.R. 911 seeks to impose standards of care and create greater transparency in the operations of a largely unregulated industry. A recent Government Accountability Office (GAO) report on residential therapy, outdoor wilderness and boot camp programs found that, during 2005 alone, 33 states reported that 1,619 staff members were involved in incidents of abuse in such facilities. Another GAO investigation conducted between November 2006 and March 2008 revealed thousands of instances where teenagers at residential facilities were allegedly abused.

The legislation, sponsored by Reps. George Miller (D-Calif.) and Carolyn McCarthy (D-N.Y.), would direct the Department of Health and Human Services to develop federal standards prohibiting employees at

facilities from denying those in their care necessities such as food and shelter and from physically restraining them except when necessary for the safety of others. The standards also would prohibit physical, sexual and mental abuse, and would require programs to be prepared for medical emergencies. The bill calls for unannounced inspections at least once every two years and for civil penalties of \$50,000 per violation.

Also targeted are deceptive marketing practices that lead parents to believe programs are covered by insurance plans or that those participating in the residential programs will receive transferable education credit.

“By defining clearly which programs are included and imposing minimum legal requirements to operate them, including standards regarding staff qualifications and residents’ physical and emotional safety, H.R. 911 will help to assure that the facilities will actually meet the educational, mental health and other treatment needs of teens who reside there,” ABA Governmental Affairs Director Thomas M. Susman said in a letter sent to all House members Feb. 23. ■

State secrets bills introduced

Legislation was introduced in both the House and Senate Feb. 11 to establish a standardized process for federal courts to use when handling assertions of the state secrets privilege in civil litigation.

The privilege, rooted in the 19th century, allows the government to withhold evidence if the disclosure would harm national security. There have been concerns, however, that courts are deferring to the government without engaging in sufficient inquiry into the assertion of the state secrets privilege and may be dismissing meritorious claims. The privilege has been in-

voked in recent years to dismiss cases challenging the constitutionality of government policies in the war on terror, including warrantless wiretapping, rendition and interrogation practices. Most recently, the Obama administration agreed with the Bush administration’s use of the privilege in *Mohamed v. Jeppesen Dataplan Inc.*, a case pending in the Ninth Circuit Court of Appeals where plaintiffs are seeking to hold a company responsible for supporting CIA rendition flights transporting detainees to countries where they could be tortured.

Senate Judiciary Committee

Chairman Patrick J. Leahy introduced the legislation as S. 412 in the Senate, and Rep. Jerrold Nadler (D-N.Y.), chairman of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, is the primary sponsor of H.R. 984, the House bill.

In testimony last year supporting similar state secrets legislation, ABA President H. Thomas Wells Jr. said ABA policy respects the roles of all three branches of government in addressing state secrets issues and provides that privilege claims should be subject to judicial review under a deferential standard that takes into account the executive branch’s expertise in national security matters.

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