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Stephen N. Zack, ABA President: Protecting Our Basic Values

The Editor interviews Stephen N. Zack, President, American Bar Association.

Editor: Tell us about your Cuban background and the experiences there that taught you the importance of the rule of law.

Zack: My mother came to the United States in 1945 to attend college where she met my father, an American. I lived in Cuba until 1961, when my family's businesses were taken over by Castro. After being put under house arrest for a couple of weeks, my family was able to come to the United States and has been in Miami ever since.

When I was in Cuba I went to a school called Ruston Academy that offered a choice of *El Bachillerato*, a Cuban-style education, or an American-style education. I was raised knowing both English and Spanish. But one day I learned that we were in serious trouble if I spoke English on the street – I could only speak Spanish publicly after the Castro revolution. Those experiences affected me greatly and influenced my decision to launch the initiatives that will be the keystones of my term as president, which I will describe in more detail in the course of this interview.

Editor: Please describe your long-standing relationship with the ABA and why you have dedicated so much of your energies and talents to furthering its objectives.

Zack: Basically, I like lawyers. I very much enjoy the practice of law and believe in the importance of the practice of law. For me, it is my profession, my passion and my hobby. The ABA provides a way to ignite the same enthusiasm in other lawyers, particularly in younger lawyers. In this period of economic hardship, we are seeing lawyer burnout not only in people who have been practicing for 15 or 30 years, but also in those engaged in the first five years of practice. I tell young lawyers



Stephen N. Zack

that being involved in bar activities, whether in the ABA or local or specialty bars, is the best way to avoid lawyer burnout because it expands your horizons.

Many lawyers today can't find a job or are employed in jobs that don't fully utilize their legal talents. Just having a job is not enough. I like to invoke my father's wise words, which have set the tone of my professional career, "Find a job that you like and you will never have to work."

Whatever your current career situation, you can expand your horizons by becoming active in one or more bar associations. This will enable you to maintain and sharpen your legal skills

and put you on track to landing that perfect job.

Editor: Does the ABA serve corporate counsel?

Zack: Absolutely. In fact, as corporate legal departments have grown, involvement in the ABA has become even more important to corporate counsel since its sections and committees bring together in-house and outside counsel in joint efforts involving the most important issues affecting corporate counsel and their companies.

Many of these committees and sec-

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**"Antibribery and Corruption"
Akin Gump Strauss Hauer & Feld LLP Seminar
December 2, 2010**

Stephen N. Zack

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tions work on papers that frequently influence national policy formation. This is particularly important today not only because of the proliferation of legislation and regulation that has occurred in the wake of the economic crisis, but also owing to the need for legal departments to control their costs more effectively. One of the subjects to be discussed at the ABA mid-year meeting in Atlanta will be the trend toward value billing as opposed to hourly billing.

One of the most successful committees is the Corporate Counsel Committee of the Litigation Section, which brings together inside and outside counsel to consider litigation issues. This collaboration replicates the relationship between inside and outside counsel when working on cases for a corporate client.

Many of the sections have corporate counsel committees made up only of corporate counsel. It can feel rather lonely out there practicing law by oneself. You think that things are happening to you that aren't happening to other people. However, when you have the opportunity to work on these committees where you meet people in the same position you are in, you realize that they are grappling with similar issues. And you also find that working together generates many good ideas for serving your clients. That is one of the greatest advantages of being involved in the ABA.

Editor: I understand that you are launching a number of initiatives. Tell us first about the Task Force on the Preservation of the Justice System.

Zack: The first evidence that we were going to have a loss of our liberty in Cuba was the attack on the judiciary. I guess that always precedes a loss of liberty. As a 14 year old, I did not fully understand its implications and how it related to the dreadful things that my family and I were experiencing at the time.

Triggered by the economic crisis, the current underfunding of the judiciary is not only an attack on our liberty, but also undermines our recovery. Take Florida, for example – less than one half of one percent of its budget goes to funding the entire justice system. California has already closed 18 courts, and 140 courts are scheduled to be closed unless they get financing. These actions are accompanied by furloughing court personnel, which includes not only judges but public defenders, prosecutors, other court personnel and eliminating victim-assistance programs and other aspects of the justice system.

This attack on our justice system is justified by the economic crisis. Yet, it actually hampers recovery because investors will not invest in a country or state where the justice system is weak.

I have selected David Boise and Ted Olsen, both of whom have distinguished themselves in defending our liberties before the Supreme Court, as chairs of the new Task Force, which includes 20 of the most distinguished lawyers in the country, men and women, Republican and Democrat. They are charged with bringing their recommendations back to

our House of Delegates.

Editor: Describe your new Civics Task Force.

Zack: The Civics Task Force was based on a suggestion made by Justices Souter and O'Connor that the ABA get involved in this area. Justice Souter mentioned that two out of every three graduating high school students believe that the three branches of government are democrat, republican and independent.

When I came to the United States, the Cuban constitution was in many respects identical to the American Constitution. My personal experiences confirmed that those fine words in the Cuban constitution are just that! Fine words – unless people understand their rights and obligations as citizens. And Justice O'Connor said it better than anybody, "Knowledge of our democracy isn't transferred in the gene pool. We have to teach it to each generation."

After leaving Cuba and picking up my education in a U.S. high school, I found that civics was a required subject in the ninth and tenth grades. Today, it is either an elective or not even offered in most high schools.

The ABA is taking on this issue through its American Bar Academy project, which is designed to encourage lawyers to volunteer to go into high schools over a long weekend, like the Presidents' Day weekend, and teach civics to high school students. At the end of that weekend, the attendees will receive a certificate from the ABA as a symbol of having completed the course. We hope that this will be a first step toward reinstating civics as an important part of the high school curriculum. I am asking law firms and legal departments to let students come for a day to work in a law firm so they can experience what it is like to be a lawyer and get a sense of the importance of the rule of law. We also are seeking corporate partners for this project.

The other thing that we are in the process of trying to do is to have an ABA national civics test. This might take the form of an entry in a publication like *Parade* magazine taking the form of a competition between parents and kids about their knowledge of civics – about the American Constitution and the Bill of Rights. We want to bring a discussion of civics, of our Constitution and our Bill of Rights, back to the dining room table. That is where it belongs and that is where it has been missing.

Editor: Tell us about the Task Force dealing with Hispanic legal rights and responsibilities.

Zack: Today 20 percent of America is Hispanic-American. It is the largest minority in the country and the fastest growing. Yet, only three percent of attorneys are Hispanic Americans. There are many reasons for this, including pipeline and cultural issues. The Task Force will be looking at this and other issues with a mandate to report on how this growing minority in our society can be fully integrated into U.S. society. Dedication to diversity is the goal of one of the four mission statements of the ABA.

This Task Force will also focus on issues related to immigration. Part of the

problem is that many people are saying that there is no solution. The ABA issued a report six months ago that is the most comprehensive report on immigration reform in the last 50 years. It involved 15,000 hours of pro bono time from Arnold & Porter, a terrific law firm, and provides a comprehensive road map for dealing with immigration problems.

Editor: What should our readers know about the "Katrina Rule" and the ABA's work on disaster preparedness within the justice system?

Zack: First, the ABA is moving on a number of fronts to better prepare the profession and our judicial system for disaster. Our committee has really ramped up this year and is chaired by a past president of the Louisiana State Bar Association, so he knows the issue well.

Second, at the time of Hurricane Katrina there were thousands of lawyers from around the country who wanted to provide pro bono assistance to people in Louisiana. But the supreme court of Louisiana said that doing so would be tantamount to the unauthorized practice of law. The model rule gets around such roadblocks by allowing lawyers to come into states where there is a disaster for a short period of time and provide those services. We are asking for the supreme courts of all of our states to agree to this

now in advance of the next emergency.

Also, the ABA will be offering a range of disaster planning tools to lawyers and law firms in early 2011. We hope they will be especially helpful to small and solo practitioners, some of whom may work for you as specialists in an area of the law. Understand what they will be doing if disaster strikes.

Finally, we must also prepare for the worst – a manmade disaster. How will we respond to an attack regarding fundamental questions, such as the suspension of habeas corpus, as was done under both Lincoln and Roosevelt? Now is the time to consider these matters. It will be too late if an event occurs.

Editor: Any final words for our readers?

Zack: The ABA has never offered more value to all lawyers than it does right now. It is the vanguard against damaging and unnecessary regulation of the profession, such as the "Red Flags Rule," and safeguards all of the profession's ideals. It provides national-level networking with the best lawyers in fields ranging from antitrust to real estate. And it makes members better lawyers, helping them in their lives and careers. Today's ABA membership is a smart choice for in-house counsel, and their voice is appreciated and heard within the organization.

Whistleblower

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program that both adhere to the fundamental purpose of Dodd-Frank but also preserve essential components of compliance programs that the government itself has recognized as being an integral part of responsible and effective corporate governance.

¹ Jessica Holzer & Fawn Johnson, *Larger Bounties Spur Surge in Fraud Tips*, Wall St. J., Sept. 7, 2010.

² Pub. L. No. 100-704 (1988).

³ 15 U.S.C. § 78u-1(e) (2006).

⁴ *Id.*

⁵ See U.S. Sec. & Exch. Comm'n, Office of Inspector General, Report No. 474, Assessment of the SEC's Bounty Program 4 (Mar. 29, 2010); U.S. Sec. & Exch. Comm'n, Litig. Release No. 21601, SEC Awards \$1 Million for Information Provided in Insider Trading Case (July 23, 2010) available at <http://www.sec.gov/litigation/litrelases/2010/lr21601.htm> (last visited September 13, 2010).

⁶ See e.g. Dodd-Frank, Pub. L. No. 111-203, § 748 (2010) (providing for incentives and protections for individuals that provide information in connection with enforcement actions brought under the Commodity Exchange Act).

⁷ Dodd-Frank, §922(a).

⁸ Securities Exchange Act of 1934, § 21F(b)(1), amended by Dodd-Frank, § 922(a).

⁹ *Id.* § 21F(a)(3)(A).

¹⁰ *Id.* § 21F(a)(3)(B).

¹¹ *Id.* § 21F(a)(3)(C).

¹² *Id.* § 21F(a)(1), (b).

¹³ *Id.* § 21F(a)(6).

¹⁴ *Id.* § 21F(c).

¹⁵ *Id.* § 21F(h)(1)(A).

¹⁶ *Id.* § 21F(h)(1)(A)(i) – (iii).

¹⁷ *Id.* § 21F(h)(1)(A).

¹⁸ *Id.* § 21F(h)(1)(C).

¹⁹ See e.g. S. Rep. No. 111-176, at 110 (2010) (citing testimony that stated "whistleblower tips detected 54.1% of uncovered fraud schemes in public companies."); Association of Certified Fraud Examiners, *2010 Global Fraud Survey* at 4-5 (stating that the results of one survey indicate "the typical organization loses 5% of its annual revenue to fraud" and that "[g]iven the high costs of occupational fraud, effective fraud prevention measures are critical").

²⁰ Press Release, U.S. Sec. & Exch. Comm'n, SEC Announces Initiative to Encourage Individuals and Companies to Cooperate and Assist in Investigations (Jan. 13, 2010) available at <http://www.sec.gov/news/press/2010/2010-6.htm> (last visited Sept. 13, 2010).

²¹ *Id.*

²² U.S. Sec. & Exch. Comm'n, Securities Exchange Act of 1934 Release No. 44969, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001) available at <http://www.sec.gov/litigation/investreport/34-44969.htm> (last visited Sept. 13, 2010).

²³ U.S. Sec. & Exch. Comm'n, Division of Enforcement, Enforcement Manual 127-128 (Jan. 13, 2010).

²⁴ See e.g. Roel C. Campos, Commissioner, U.S. Sec. & Exch. Comm'n, *Speech by SEC Commissioner: How to be an Effective Board Member* (Aug. 15, 2006) available at <http://www.sec.gov/news/speech/2006/spch081506rcc.htm> (last visited Sept. 20, 2010) ("From the perspective of the SEC, let me say again – participating in, overlooking, or ignoring red flags indicating possible fraudulent accounting is not a business decision.... If the directors do not conduct an independent investigation, they are not acting reasonably or in good faith and should not be protected by the business judgment rule.")

²⁵ See e.g. Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Former Executives in Illegal Scheme to Enrich CEO With Perks (Mar. 15, 2010) available at <http://www.sec.gov/news/press/2010/2010-39.htm> (last visited Sept. 20, 2010) (announcing enforcement action and settlement of charges against the former chairman of a corporate audit committee, alleging the individual "failed to respond appropriately to various red flags concerning [] expenses and [] related party transactions." The SEC also alleged that "internal auditors raised concerns to [the individual], yet [he] failed to take meaningful action to further investigate the matter and he omitted critical facts in a report to the board concerning" the alleged misconduct.)

²⁶ United States Sentencing Commission, *Guidelines Manual*, § 8C2.5(f) (Nov. 2009).

²⁷ *Id.* § 8C2.5(g).

²⁸ *Id.* § 8B2.1(b)(5)(C).

²⁹ One 2005 study found that some corporations expend more than \$10 million a year on compliance and ethics programs. The median expenditure across all industry groups ranged from \$150,000 to \$249,000 a year. See Ronald E. Berenbeim, The Corporate Board, Inc., Research Report R-1393-06-RR, *Universal Conduct: An Ethics and Compliance Benchmarking Survey 8-9* (2006). A 2008 survey of Global 2000 corporations conducted by Integrity Interactive Corporation found that corporations spend approximately \$80 per employee each year on compliance and risk management programs. See Press Release, Integrity Interactive Corporation, Integrity Deduces Formula for Ethics & Compliance Spending at Global Companies (Oct. 7, 2008) available at <http://www.integrityinteractive.com/docs/Compliance-Spending-10-07-08-FINAL.pdf> (last visited Sept. 15, 2010).

³⁰ S. Rep. No. 111-176, at 110 (2010).

³¹ Exchange Act, § 21F(h)(1).

³² See Dodd-Frank, § 924(a).

³³ See S. Rep. No. 111-176, 110-112 (2010) (addressing Section 922 and the new whistleblower program without addressing its potential effects on corporate compliance programs).

Please email the interviewee at szack@aba.org with questions about this interview.