

# Revised 10D

**UNANIMOUSLY ADOPTED BY VOICE VOTE AS AMENDED**

**AMERICAN BAR ASSOCIATION**

**NEW YORK STATE BAR ASSOCIATION**

**CRIMINAL JUSTICE SECTION**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1. RESOLVED, that the American Bar Association hereby expresses its support for and
2. solidarity with the Pakistani bar and bench; and
  
3. FURTHER RESOLVED, that given the importance of an independent bar, an independent
4. judiciary, and a just constitution as cornerstones of the rule of law, the American
5. Bar Association calls upon the President of Pakistan to restore Pakistan's constitution as
6. it existed before the November 3, 2007, emergency decree; reinstate Pakistan's Supreme
7. Court justices and high court judges who were removed from office and refused to take
8. oaths of loyalty to the executive branch; and release all judges, lawyers and other people
9. who were wrongly arrested during the state of emergency.

REPORT

On November 3, 2007, the President of Pakistan, then-General Pervez Musharraf, announced the suspension of the Constitution of Pakistan and the imposition of emergency rule, ostensibly to halt efforts to destabilize the country by extremists. As the Pakistan Supreme Court was preparing to rule on whether Musharraf could legally be reelected president while still serving in the Army, Musharraf ousted and arrested the Chief Justice, along with those justices who refused to take an oath of loyalty to the president. Since that time, many of these judges and their families have remained in confinement, along with lawyers and others who opposed the imposition of emergency rule. Before President Musharraf announced the restoration of the Constitution and the end of emergency rule effective December 15, 2007, he passed decrees and amended the Constitution to prevent people from using the courts to challenge the president's actions. In Pakistan there remain curbs on freedom of the press; independent judges have been replaced by those with allegiance to the President; and judges and lawyers remain in detention. The government's actions have only served to increase economic and political instability and jeopardize the ability of the Pakistani people to participate in the full, fair and independent democratic process that many envision, including through elections this February, marked most pointedly by the assassination of former Prime Minister Benazir Bhutto on December 27, 2007.

Lawyers in the United States have not been silent in the face of these actions. Across the country, lawyers have rallied in support of their colleagues in Pakistan. On November 3, 2007, the very day emergency rule was declared in Pakistan, the New York State Bar Association adopted a resolution expressing solidarity with our Pakistani colleagues and calling for the prompt restoration of the rule of law in Pakistan. Both the American Bar Association and state and local bars called upon lawyers to demonstrate their commitment to justice; lawyers gathered on the steps of the courthouse in New York City on November 13, 2007 and in front of the United States Supreme Court in Washington, D.C. on November 14, 2007. On December 13, 2007, ABA President Neukom and a delegation of leaders of the American Bar Association delivered a petition containing the signatures of 13,000 lawyers to the Ambassador of Pakistan in Washington, Mahmud Ali Durrani, calling for the restoration of the Pakistani constitution as it existed before November 3, 2007; the reinstatement of judges who were removed from office; and the release of protesters who were wrongly arrested.

However, it is essential that the American Bar Association's governing body, its House of Delegates, express its support for the rule of law in Pakistan, including the restoration of the constitution as it existed before November 3, 2007, the reinstatement of Supreme Court justices and high court judges who were removed from office, and the release of those wrongfully detained.

The rule of law is essential to the effective functioning of a free and democratic society; chaos and instability result from its absence. Crucial to the rule of law is a free and independent judiciary. Judges should never be subject to detention because of fears about their potential rulings, and no judge should be required to take an oath of allegiance as a condition of judicial

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office. Likewise, the ability of lawyers to advocate for a free and fair society should not be impeded or obstructed by threats and detention.

The country of Pakistan is in crisis, a crisis that threatens not only the Pakistani people but also the peace and stability of the surrounding area. We believe that this crisis should be confronted through the full restoration of constitutional rights; the immediate release of judges, lawyers and other persons detained merely for exercising their civil rights; and the restoration of a free and independent judiciary. We call upon the government of Pakistan to restore the rule of law and thereby work toward full democratic participation for its people.

Respectfully submitted,

Kathryn Grant Madigan, President  
New York State Bar Association  
February 2008

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations  
(Please refer to instructions for completing this form.)

Submitting Entity: New York State Bar Association

Submitted By: Kathryn Grant Madigan, President

1. Summary of Recommendation(s). The American Bar Association should formally express its support for and solidarity with the Pakistani bar and to urge the immediate release of those wrongfully detained; the restoration of Pakistan's Supreme Court justices; an end to the practice of requiring judges to take oaths; and the full restoration of the rule of law in Pakistan.
2. Approval by Submitting Entity. The New York State Bar Association House of Delegate approved its resolution on November 3, 2007.
3. Has this or a similar recommendation been submitted to the House or Board previously?  
No.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?  
  
None of which we are aware.
5. What urgency exists which requires action at this meeting of the House?  
  
Judges, lawyers and civic leaders remain in detention in Pakistan; parliamentary elections are scheduled to be held on February 18, 2008.
6. Status of Legislation. (If applicable.)  
  
N/A
7. Cost to the Association. (Both direct and indirect costs.)  
  
None.
8. Disclosure of Interest. (If applicable.)  
  
N/A

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9. Referrals.

None

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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## **EXECUTIVE SUMMARY**

### **SUMMARY OF THE RECOMMENDATION**

This resolution urges the ABA to express its support for and solidarity with the Pakistani bar and to urge the immediate release of those wrongfully detailed; the restoration of Pakistan's Supreme Court justices; an end to the practice of requiring judges to take oaths; and the full restoration of the rule of law in Pakistan.

### **SUMMARY OF THE ISSUE WHICH THE RECOMMENDATION ADDRESSES**

In November 2007, the President of Pakistan announced the suspension of the Pakistani constitution and the imposition of emergency rule. Numerous judges, lawyers and civic leaders were detained and, while emergency rule ended on December 15, 2007, many remain under detention. In addition, there remain curbs on the press and independent judges have been replaced with those having loyalty to the President.

### **EXPLANATION OF HOW THE PROPOSED POLICY POSITION WILL ADDRESS THE ISSUE**

This policy is needed for the ABA to formally express its desire for the full restoration of the rule of law in Pakistan.

### **SUMMARY OF ANY MINORITY VIEWS OR OPPOSITION WHICH HAVE BEEN IDENTIFIED**

No minority or opposing views have been identified.