

Letters

The BSA, the Association, and the Code of Judicial Conduct

I read with dismay the article in the December 17, 2002, *Daily Journal* that stated that the Los Angeles County Bar has urged the state supreme court to institute a canon banning membership in the Boy Scouts of America (BSA) on the part of judges. I do not recall this issue coming to a vote and do not believe it reflects the opinion of the majority of the membership.

I protest this action by the Bar Association in the strongest terms. The U.S. Supreme Court has already made a determination that the Boy Scouts of America is not a "discriminatory organization" and does not illegally discriminate against anyone, let alone gays. The BSA has the right to choose its own members and does so in a fair and unbiased manner. Anyone may join, so long as they fit the target group that the BSA tries to serve.

The Boy Scouts of America has, as its primary purpose, the mission to build character, citizenship, and personal fitness in boys and girls. It has successfully performed this function for almost 100 years, and the ranks of American leaders with scouting experience is a testament to the effectiveness of this organization at building the leaders for this country. Because the BSA tries to build character, it is inevitable that someone will object to how it does so.

If the BSA finds that its efforts at character building are failing, it has the right, according to the U.S. Supreme Court, to eject those members who are not benefiting from the program. The fact that some members of the community feel that this standard is discriminatory is merely a smoke screen for an agenda to force organizations to discriminate in their own preferred manner. Unlike such activists, the BSA is quite open about its agenda, which is to build men and women in a manner that has been proven to work all over the world for almost 100 years.

*Donald S. Roberts
Member,*

Los Angeles County Bar Association

The President and Executive Director Respond

Thank you for expressing your concern as a member of the Los Angeles County Bar Association about the Association's letter to the California Supreme Court asking for a revision in Canon 2C of the Code of Judicial

Conduct. To give you a more complete understanding of the basis of our position, we are enclosing a copy of the letter sent to the chief justice on this issue and will also soon be posting a copy of that letter on our Web site (www.lacba.org/canon2C). When you review our submission to the court, we ask you to consider several points:

1. The Association did not ask the supreme court to explicitly ban membership in the Boy Scouts but rather to rescind an exception to its existing ban on membership in discriminatory organizations, which treats differently, and allows for continued membership in, discriminatory youth organizations. Although we recognize that the effect of our proposed change may well be to ban judicial participation in those chapters of the BSA that abide by the national organization's policy of discriminating on the basis of sexual orientation, the focus of our concern is not the BSA in particular but discrimination in any form. Discrimination by a youth group or any other organization, whatever that group's other qualities, is still discrimination. Our goal is to ensure that the canon is consistent with its stated goal of avoiding judicial membership in organizations that would give rise to a "perception that the judge's impartiality is impaired." Judicial Council Advisory Committee Commentary.

2. The Association's Board of Trustees (which acts on behalf of the Association) discussed this issue at length on September 25, 2002, and at the conclusion of that discussion voted overwhelmingly to send a letter to the supreme court concerning Canon 2C. During the discussion there was no suggestion that it was inappropriate to seek a change in the canon; the only issue was how the Association might most effectively pursue that goal.

The vote is not surprising, given the Association's longstanding opposition to all forms of discrimination. Our bylaws end with this paragraph:

The Los Angeles County Bar Association shall not restrict membership, services, or benefits conferred on the basis of race, color, national origin, religious creed, ancestry, gender, sexual orientation, marital status, age, disability and political affiliation, and is committed to eliminating barriers on those bases within the legal profession and in society as a whole. The

Association shall encourage diversity among its leadership and among those participating at all levels of the Association. It shall be a priority of the Association to promote a climate of public understanding and mutual cooperation for achieving equality of opportunity among the membership.

3. The BSA is candid and explicit about the fact that it discriminates on the basis of sexual orientation. While it is true, as you state, that the supreme court has concluded that the BSA does not discriminate "illegally," the Association's focus is necessarily broader. We are concerned, at the very core of our mission, with the administration of justice. In addressing that concern, we seek to ensure that everyone who enters a courthouse feels secure in the knowledge that no bias of any kind will taint the decision-making process. Regardless of a judge's actual beliefs in relation to the BSA's policies, it could well appear that a judge's membership in the BSA bespeaks an endorsement of the BSA's admittedly discriminatory practices.

We believe the problem is no different from all-too-recent discriminatory practices against women and minorities that prompted concerns about, and canons seeking to avoid, judicial membership in such organizations. The Association took a similar stand in response to those practices and, in the early 1970s, our Board of Trustees reiterated its policy of nondiscrimination by banning Association functions at clubs that discriminated on the basis of race, sex, religion, or national origin (and added sexual orientation or disability in 1987) and urged Association members' firms and the courts to do likewise. In the following decade, both The Jonathan Club and The California Club reversed their discriminatory membership policies.

In sum, the board's recent action stems from our collective and abiding view that the Code of Judicial Conduct can and should be crafted to ensure that those who administer justice and seek to enforce the rule of law are not viewed in the public's mind as endorsing bias or invidious discrimination of any kind.

Thank you again for writing to express your views.

*Miriam Aroni Krinsky
President*

*Richard Walch
Executive Director*