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Nomination cleared on a 68-31 vote

Senate confirms Sotomayor to be Associate Justice of Supreme Court

Following three days of debate, the Senate voted 68-31 on Aug. 6 to confirm Sonia Sotomayor as the first Hispanic associate justice of the U.S. Supreme Court.

Nine Republicans joined the Democrats to vote in favor of confirmation. Sen. Edward M. Kennedy (D-Mass), who indicated his support, was unable to vote because of illness. The new associate justice was sworn in Aug. 8 at the Supreme Court by Chief Justice John G. Roberts Jr.

Justice Sotomayor, the third woman to serve on the high court, is a graduate of Princeton University and Yale Law School and began her career as an assistant district attorney in Manhattan before entering private practice. President George H.W. Bush first appointed her to the federal bench in 1992 to serve on the U.S. District Court for the Southern District of New York; President Clinton elevated her to the Second Circuit Court of Appeals in 1998.

Reflecting on her qualifications and the historic nature of her confirmation, President Obama said that the "Senate has affirmed that Judge Sotomayor has the intellect, the temperament, the history, the integrity and the independence of mind to ably serve on our nation's highest court."

During confirmation hearings last month before the Senate Judiciary Committee, the nominee summed up her judicial philosophy: "It is simple: fidelity to the law. The task of a judge is not to make the law – it is to apply the law."

She maintained that her 17-year record on the bench "reflects my rigorous commitment to interpreting the Constitution according to its terms; interpreting statutes according to their terms and Congress's intent; and hewing faithfully to precedents established by the Supreme Court and my circuit court," adding that "in each case I have heard, I have applied the law to the facts at hand."

Kim J. Askew, chair of the 15-member ABA Standing Committee on the Federal Judiciary, and Mary M. Boies, the Standing Committee's Second Circuit representative and lead evaluator of the Sotomayor nomination, appeared July 16 before the Senate committee to present the ABA committee's rating of the nominee's professional qualifications – her integrity, professional competence and

LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
<p>Independence of the Legal Profession. On 7/29/09, the Federal Trade Commission (FTC) announced a 90-day delay until 11/1/09 for a "Red Flags Rule" that would include attorneys in the definition of "creditor" and require lawyers to implement programs to detect, identify and respond to activities that could indicate identity theft.</p>				<p>Opposes the application of the FTC's "Red Flags Rule" to lawyers. 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. See page 3.</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, including H.R. 3200. S. S. 1347 and H.R. 1478 would repeal the <i>Feres</i> Doctrine, which prohibits members of the armed forces and their families from suing the military for negligent medical care during their service.</p>	<p>Judiciary subcommittee held a hearing on H.R. 1478 on 3/25/09, and approved the bill on 5/19/09. Education and Labor, Ways and Means, and Energy and Commerce Committees approved different versions of H.R. 3200, health care reform legislation.</p>	<p>S. 1347 was referred to Judiciary Committee on 6/24/09. Health, Education, Labor and Pensions approved draft health care legislation on 7/15/09.</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. Supports S. 1347 and H.R. 1478.</p>
<p>Judicial Independence. P.L. 111-8 (H.R. 1105) waived Section 140 to allow federal judges to receive a 2.8 percent cost-of-living increase for fiscal year 2009. S. 220 and H.R. 486 would create an inspector general for the judicial branch to investigate claims of misconduct against federal judges.</p>	<p>H.R. 486 was referred to the Judiciary Committee on 2/9/09.</p>	<p>S. 220 was referred to the Judiciary Committee on 1/13/09.</p>	<p>President signed P.L. 111-8 (H.R. 1105) on 3/11/09.</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. P.L. 111-8 (H.R. 1105), omnibus fiscal year 2009 appropriations legislation, includes \$390 million for LSC. The House included \$440 million for LSC in H.R. 2847, fiscal year 2010 funding legislation. The Senate Appropriations Committee approved \$400 million for LSC. S. 718 would reauthorize the LSC and lift some restrictions.</p>	<p>House passed H.R. 1105 on 2/25/09. Appropriations subc. held a hearing on 4/1/09. House passed H.R. 2847 on 6/18/09.</p>	<p>Senate passed H.R. 1105 on 3/10/09. Approps. Cmte. approved funding bill on 6/25/09. S. 718 was referred to Health, Education, Labor and Pensions Committee on 4/1/09.</p>	<p>President signed P.L. 111-8 (H.R. 1105) on 3/11/09.</p>	<p>Supports an independent, well-funded LSC.</p>

ABA cites concern about MCA proposals

As hearings continued last month in the House and Senate on proposed revisions to the Military Commissions Act of 2006, the ABA expressed concerns about provisions in S. 1390, the National Defense Authorization Act for Fiscal year 2010, which was passed by the Senate July 23.

In a July 20 letter to all Senators during floor consideration of S. 1390, ABA Governmental Affairs Director Thomas M. Susman wrote that the ABA does not believe military commission proceedings as currently envisioned will provide the “level of fairness that is consistent with our values and essential to our credibility in the rest of the world.”

Since enactment of the MCA, the ABA has urged the federal government to establish fair procedures that comport with due process and justice, Susman said. He emphasized that, despite some improvements, the proposed revisions embodied in S. 1390 fail to address a number of significant concerns, including the use of coerced and hearsay evidence as well as the resource constraints under which defense counsel must operate.

The ABA maintains that the resource constraints violate the right to effective assistance of counsel guaranteed by the Sixth Amendment and that there remains a serious and unfair imbalance compared to prosecution resources. Susman pointed out that the Office of the Chief Defense Counsel is seriously understaffed and legitimate requests for funding for investigators, experts, and mitigation specialists have been denied. Even pro bono independent experts cannot participate unless the government determines that they have a “need to know.”

Citing ABA policy adopted in August 2003, Susman said the

ABA calls upon Congress and the executive branch to ensure that all defendants before any military commission receive the zealous and effective assistance of counsel. The association revised the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases in 2003 to apply specifically to military commission proceedings.

The guidelines require defense teams – consisting of at least two qualified attorneys, one investigator and one mitigation specialist – with sufficient experience and training to provide high-quality legal representation to those who face execution if convicted.

Susman further explained that the ABA believes that the federal courts have proven themselves fully capable of handling prosecutions that would come before military

commissions. ABA policy adopted in February 2009 calls for “all individuals who have been or are expected to be charged with violations of criminal law” to be “prosecuted in Article III federal 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 House-passed defense authorization bill, H.R. 2647, does not contain military commission language, and a House-Senate conference committee is expected to reconcile differences between the two bills by early September. ■

FTC delays “Red Flags Rule” for 90 days

Possible regulation of lawyers still troubling, Wells says

ABA President H. Thomas Wells Jr., while pleased that the FTC has taken “a very vital step” by delaying enforcement of the “Red Flags Rule” until Nov. 1, said that the commission’s continued assertion that it can, as it sees fit, regulate lawyers under the provisions is troubling and unacceptable to the ABA.

The “Red Flags Rule,” mandated by the 2003 Fair and Accurate Credit Transactions Act (FACTA), requires that “creditors” and “financial institutions” implement programs to detect, identify and respond to activities that could indicate identity theft. The FTC interprets a broad definition of “creditor” that includes businesses that provide services and bills for those services at a later date to encompass attorneys, doctors and other professionals.

In delaying the effective date of the rule for 90 days, the FTC was responding to deep concerns expressed by Congress, the ABA and more than two dozen state and local bar associations that applying the rule to lawyers “threatens the independence of the profession from federal controls – independence that is fundamental to the lawyer’s role as client confidante and advocate.” Applying the rule to lawyers “undercuts an unbroken history of strong regulation” of the legal profession by state bars and supreme courts, Wells said.

An ABA working group analyzing the rule and its potential impact on

see “Red Flags Rule,” page 8

ABA committee presents “well qualified” rating

continued from front page

judicial temperament.

“The Standing Committee unanimously concluded that Judge Sotomayor merits our highest rating and is “well qualified” for appointment to the Supreme Court of the United States,” Askew said. “Judge Sotomayor has distinguished herself throughout her career as a prosecutor, lawyer in private practice, judge and adjunct professor and legal lecturer.”

The ABA Standing Committee has a unique role in the judicial confirmation process as the only non-governmental organization asked by the President and the Senate Judiciary Committee to evaluate nominees for positions on all federal Article III and territorial courts. Prospective nominees to the lower federal courts are evaluated on a pre-nomination basis; nominees to the Supreme Court, on a post-nomination basis. Each evaluation is based on a comprehensive, non-partisan, non-ideological peer review of a nominee’s professional qualifications. The evaluations of Supreme Court nominees are more extensive than those for the lower courts.

For the Sotomayor evaluation, the ABA Standing Committee initially contacted 2,600 individuals, including every federal judge, state judges, lawyers, and community and bar representatives who potentially had knowledge of the nominee’s qualifications. The evaluation was based on responses received from more than 850 individuals, including interviews with more than 500 people; analysis of more than 1,000 of Judge Sotomayor’s opinions, speeches and other writings by reading groups; and an in-depth personal interview of the nominee by Askew and Boies.

Two of the nation’s leading law



Kim J. Askew, chair of the ABA Standing Committee on the Federal Judiciary, and Mary M. Boies, the lead evaluator for the Sotomayor nomination, presented a “well qualified” rating for the nominee when they appeared before the Senate Judiciary Committee July 16.

schools, Georgetown University Law Center and Syracuse University College of Law, formed reading groups composed of professors who are recognized experts in the substantive areas of law they reviewed. The third reading group, the Practitioners’ Group, was composed of nationally recognized lawyers with substantial trial and appellate practices.

The Standing Committee concluded, according to Askew’s testimony and a letter to the Senate Judiciary Committee, that “Judge Sotomayor has a reputation for integrity and outstanding character and is universally praised for her diligence and industry.” In addition, the Standing Committee said the nominee “has an outstanding intellect and strong analytical abilities, sound judgment, an exceptional work ethic, and is known for her detailed courtroom preparation and thorough decisions. As a judge she has written on a range of complex issues and has mastered even the

most difficult and arcane areas of law.”

The Standing Committee also found that her judicial temperament meets the high standards for appointment to the Supreme Court. After thoroughly reviewing concerns about Judge Sotomayor’s judicial temperament expressed by a very small number of those interviewed, the committee “was persuaded by the overwhelming number of judges and lawyers who praised Judge Sotomayor for her patience, courtesy and collegiality; believed her style of questioning was appropriate and temperate; and appreciated her preparedness and ability to hone in on the issues, and commitment to making decisions based on a thorough analysis of the facts presented and the law,” Askew testified.

Askew said the Standing Committee also addressed comments made by Judge Sotomayor in speeches that recently raised ques-

see “Sotomayor,” page 8

In-Depth: Sentencing

Sentencing bills moving ahead in House

Legislation to eliminate the 100-1 disparity in sentencing for crack and powder cocaine offenses garnered House Judiciary Committee approval last month by a 16-9 vote, and another bill to allow federal judges to impose sentences below mandatory minimum terms in certain cases awaits the committee's consideration.

H.R. 3245, sponsored by Rep. Bobby Scott (D-Va.) and approved by the committee July 29, would eliminate the 100-1 disparity in



Rep. Bobby Scott (D-Va.)

sentencing for crack and powder cocaine offenses, a sentencing structure that requires 100 times the amount of powder as crack cocaine to trigger the same five-year and 10-year mandatory sentences even though the drugs are pharmacologically identical.

The disparity, created by Congress in 1986 and 1988 as part of the Anti-Drug Abuse Acts, was based on myths perpetuated at the time that claimed, for example, that crack cocaine caused violent behavior or that it was instantly addictive. Since then, research and extensive

analysis by the U.S. Sentencing Commission has revealed that these assertions are not supported by sound evidence and in retrospect were exaggerated or simply false.

The ABA has called the disparity "unjustifiable and plainly unjust" and maintains that it has resulted in penalties that sweep too broadly, apply too frequently to lower-level offenders, overstate the seriousness of the offenses, and produce a large racial disparity in sentencing." In a July 27 letter to the House Judiciary Committee, ABA Governmental Affairs Director Thomas M. Susman said the ABA has been on record for the past 14 years in support of enactment of legislation to eliminate the disparity and refocus federal law enforcement efforts toward major drug traffickers.

"The ABA believes that enactment of this much-needed legislation is the most significant single step Congress can take to address manifest unfairness in the sentencing process and to reduce racial disparities in the federal justice system," he wrote.

The association also strongly supports H.R. 3327, which was approved July 28 by the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security. That bill, according to the ABA, would provide federal judges with appropriate guidance and direction in sentencing and result in improving fairness in federal sentencing.

H.R. 3327 would amend current law to allow judges to issue a sentence lower than the mandatory minimum "if the court finds that it is necessary to do so to avoid" conflict with fundamental factors that judges are directed to consider in formulating sentences. Such factors include the nature and circum-

stances of the offense and the history and characteristics of the defendants.

ABA seeks sound policy

During a July 22 subcommittee hearing on over-criminalization of conduct and over-federalization of criminal law, George Washington University law professor Stephen A. Saltzburg, testifying on behalf of the ABA, said mandatory minimum sentencing fails to achieve sound sentencing policy goals.

Saltzburg, immediate past chair of the ABA Criminal Justice Section, emphasized that federal mandatory minimum sentencing has resulted in an enormous growth in the U.S. prison population over the past two decades. He explained that mandatory minimum sentences shift the discretion away from judges toward prosecutors, forcing judges to sentence thousands of first-time non-violent drug offenders to unconscionably long prison terms.

At the same time, he pointed out, state and local governments, most often led by prosecutors, are utilizing cost-effective alternatives to incarceration, including drug treatment and community-based confinement, that result in lower rates of recidivism than those experienced by prison populations.

In a letter sent July 28 to the House Judiciary Committee, the ABA emphasized that mandatory minimum sentencing results in unfair sentences by treating offenders convicted of unlike offenses exactly the same regardless of differences in circumstances. "H.R. 3327 would provide much-needed balance in federal sentencing by permitting sentencing judges to consider those highly relevant factors related to individual offenders," according to the ABA. ■

Civil Rights Tax Relief legislation introduced

Sens. Jeff Bingaman (D-N.M.) and Susan Collins (R-Maine) and Reps. John Lewis (D-Ga.) and F. James Sensenbrenner (R-Wis.) reintroduced bipartisan legislation June 25 that would address excessive and unfair tax treatment of settlements and awards in employment rights cases.

Since 1996, non-economic damages recovered in employment discrimination and other employment and civil rights cases have been taxable, penalizing victims of discrimination under all federal, state and local laws providing for the enforcement of civil rights and regulating employment relations. In addition, lump-sum settlements or awards that compensate for lost back pay over a period of years are taxable at the rate of the year of receipt, which creates a higher tax burden than if the money had been earned in the normal course of employment. In contrast, the Internal Revenue Service does not tax non-economic damages received as a result of personal injury.

The proposed Civil Rights Tax Relief Act (CRTRA), S. 1360 and H.R. 3035, would amend the Internal Revenue Code to exclude non-economic damages from gross income and permit income-averaging for back pay received in a lump sum. The provisions would put employment discrimination plaintiffs on a more equal footing with

plaintiffs in personal injury cases by removing the current differences in the tax treatment between the two groups.

According to the ABA, the CRTRA restores the pre-1996 tax treatment of non-economic damages in employment discrimination cases, and victims of discrimination, employers and the administration of justice will all benefit from the legislation. The association and other supporters, including the National Employment Lawyers Association, maintain that the legislation will significantly reduce the costs of employment and civil rights cases.

Congress addressed another portion of civil rights tax relief in 2004, when the American Jobs Creation Act included provisions eliminating double taxation of attorneys' fees in employment discrimination, civil rights and other cases. The provisions, which were part of the Civil Rights Tax Relief Act proposed during the 108th Congress, allow plaintiffs an above-the-line deduction for attorneys' fees and costs paid by or on behalf of the plaintiff in specific employment and discrimination cases, and preclude such payments from being subject to the Alternative Minimum Tax or the 12 percent floor on itemized deductions.

No action has been scheduled on the bills.

Judicial Vacancies/Confirmations — 111th Congress (as of 8/10/09)

<u>Court</u>	<u>Current Vacancies</u>	<u>Pending Nominations</u>	<u>Confirmations</u>
US Supreme Court (9 judgeships)	0	0	1
US Courts of Appeals (179 judgeships)	20	7	0
US District Courts (678 judgeships)	68	9	0
Court of International Trade (9 judgeships)	0	0	0
Totals	68	16	1

Washington News Briefs

EQUAL JUSTICE FOR THE MILITARY: A bill to provide due process and equal treatment under law to military servicemembers cleared the House Judiciary Subcommittee on Courts and Competition Policy July 30. H.R. 569, the Equal Justice for Our Military Act of 2009, is supported by the ABA, which adopted policy in 2006 supporting expansion of the Supreme Court's appellate jurisdiction over military cases under 28 U.S.C. § 1259. The bill would permit all court-martialed servicemembers who face dismissal, punitive discharge or confinement for a year or more to petition the Supreme Court for discretionary review through writ of certiorari regardless of any action taken by the U.S. Court of Appeals for the Armed Forces (CAAF). Before approving the bill, the panel adopted an amendment to delay implementation for 180 days to allow the Supreme Court to develop rules for considering servicemember appeals. In a statement submitted to the subcommittee in June, ABA President H. Thomas Wells Jr. said, "Our military servicemembers regularly place their lives on the line in defense of freedoms we frequently take for granted. The very least they deserve is to be accorded the same due process rights in uniform to which they would be entitled out of uniform. To do otherwise demeans their service and denigrates the democratic ideals for which they risk their lives."

LAW LIBRARY OF CONGRESS: The House passed ABA-supported legislation July 30 that, among other things, would establish a separate federal budget line-item for the Law Library of Congress to promote accountability in the institution's maintenance and administration. Currently, the Law Library's budget is incorporated into the appropriations for the entire Library of Congress. H.R. 2728, the William Orton Law Library Modernization and Improvement Act, is named for former Rep. William Orton of Utah, an active member of the ABA Standing Committee on the Law Library of Congress who died earlier this year. The legislation would authorize a one-time appropriation of \$3.5 million to be used for a necessary catalogue and reclassification project and establish the William Orton Program, a private-public partnership to support enhanced services and programs. The Law Library, the largest collection of legal publications in the world, houses more than 2.65 million legal volumes and periodicals and is also responsible for the Global Legal Information Network (GLIN) and THOMAS, the Library of Congress digital record and database.

RESALE PRICE MAINTENANCE: The House Judiciary Subcommittee on Courts and Competition Policy approved legislation July 30 that would undermine

a 2007 Supreme Court decision that is consistent with ABA policy concerning resale price maintenance agreements between seller and buyers. The decision, *Leegin Creative Leather Products v. PSKS Inc.*, 127 S. Ct. 2705 (2007), overruled a 96-year-old precedent that vertical agreements between a supplier and its distributor or retailer on the minimum resale prices for the supplier's product are per se violations of Section I of the Sherman Act. H.R. 3190, sponsored by Rep. Henry C. "Hank" Johnson (D-Ga.), would reverse the *Leegin* decision by reinstating the rule that such minimum resale price agreements are illegal per se under the Sherman Act. In testimony on the issue before the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, James A. Wilson, chair of the ABA Antitrust Section, said the Supreme Court ruling is consistent with several of its prior decisions over recent decades. ABA policy maintains that agreements between a buyer and seller setting the price at which the buyer may resell goods or services should not be illegal per se but should be evaluated under the antitrust rule of reason. Similar legislation, S. 148, has been introduced by Sen. Herb Kohl (D-Wis.).

SSA ELECTRONIC SIGNATURES: At the request of Social Security Administration (SSA) Commissioner Michael J. Astrue, the ABA recently explored the use by SSA of electronic signatures for applications and authorizations to disclose medical information in Social Security disability cases. In a July 21 letter to Astrue, ABA Governmental Affairs Director Thomas M. Susman said the ABA supports the use of electronic signatures by the government when appropriate security techniques, practices and procedures have been adopted for the signatures, provided the government addresses in detail the manner in which the privacy and security of personal health information is to be protected. To respond to the commissioner's request, the association formed a Subcommittee on SSA Disability and Electronic Signatures as part of the ABA Medical Records Project, and Thomas Smedinghoff, past chair of the ABA Section of Science and Technology, conducted extensive research on the subject. A document produced by Smedinghoff following discussions with the subcommittee and the Governmental Affairs Office, lists the issues that the association believes should be addressed if electronic signatures are used. The issues emphasize that SSA should continue to protect the confidentiality of personally identifiable health information from any source. The SSA commissioner sent the ABA a letter of appreciation July 31 for the "thoughtful feedback," saying the "research will be useful in helping us to ensure we're covering all the bases."

ABA opposes incorporation transparency bill

Objects to government-mandated reporting by legal profession

The ABA expressed opposition June 30 to S. 569, legislation to combat money laundering, tax evasion and terrorist financing that includes provisions to impose government-mandated suspicious activity reporting obligations on the legal profession.

In a letter to Sen. Joseph Lieberman (I-Conn.), chairman of the Senate Committee on Homeland Security and Governmental Affairs, ABA Governmental Affairs Director Thomas M. Susman wrote that the ABA is concerned with two aspects of the legislation: federal mandates regulating state incorporation practices and the creation of a new group of “financial institutions” known as “formation agents” that could include lawyers. The letter will be part of the record of a June 18 hearing on the legislation.

The new federal mandates would require states to maintain beneficial ownership information that would be made available to law enforcement authorities by the states upon request or subpoena. These provisions are based on strong concerns expressed by the Permanent Subcommittee on Investigations and the Financial Action Task Force that the formation process for U.S. companies is at risk of exploitation by money launderers, tax evaders and terrorist financiers. This, in part, is due to the fact that law enforcement often is unable to locate the beneficial owners of privately held entities.

Susman said that while the ABA recognizes the need to improve company formation processes and increase visibility of persons forming nonpublic entities in the United States, the association believes that S. 569 “would impose undue burdens on state authorities and legitimate businesses at a time when the U.S. financial system and the domestic economy are under severe stress.”

He said the definition of formation agent established under the bill would include “any person involved in forming a corporation, limited liability company, partnership, trust or other legal entity.” The ABA is con-

cerned that the definition of formation agents, who would be required to develop mechanisms to detect possible money laundering in the formation of entities, would appear to include lawyers involved in the process.

“This legislation would therefore, for the first time, impose new, enhanced anti-money laundering compliance requirements on the legal profession and would treat lawyers as if they were banks,” Susman said.

The designation of formation agents as financial institutions, he said, also could potentially impose suspicious activity reporting (SAR) requirements on lawyers, which could erode the attorney-client privilege and create conflict between lawyers and their clients.

The ABA opposes government-mandated SAR obligations on the legal profession, but has been working diligently to enhance the ability of legal professionals to identify and avoid illicit money laundering activities, Susman explained. ■

“Red Flags Rule”

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the legal profession emphasized that lawyers do not extend credit in the manner envisioned by FACTA and that failure to apply the rule to lawyers would not increase the risk of identity theft. The report noted that developing an identity theft prevention program is resource-intensive, even for low-risk entities such as law firms, and the burden of lawyer compliance with the rule far outweighs any perceived benefit a client might receive.

The FTC announced that during the 90-day delay its staff will redouble efforts to educate small businesses and other entities about compliance with the “Red Flags Rule” and ease compliance by providing additional resources and guidance.

Maintaining that Congress never intended that lawyers be regulated under the law, Wells said the ABA and its counterparts at the state and local levels will continue to work with Congress to clarify that the rule should not apply to the legal profession. The association, he said, is prepared to take the issue to the courts for a final resolution if necessary.

Sotomayor

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tions as to whether she is biased in her decision-making or lacks a commitment to equal justice under the law. Askew emphasized that the Standing Committee unanimously found an absence of any racial, gender, cultural or other bias in Judge Sotomayor’s record.

ABA President Carolyn B. Lamm called the appointment a “historic day” for the nation.

ABA supports provisions in tribal justice bill

The ABA expressed support July 17 for provisions in a tribal law and order bill, S. 797, that would reauthorize the Indian Tribal Justice Technical and Legal Assistance Act of 2000 and the Indian Tribal Justice Act of 1993, which provide funding through the Department of Justice and the Department of the Interior for criminal and legal assistance and for the development and continuing operation of tribal justice systems.

In correspondence earlier this year to Sens. Byron L. Dorgan (D-N.D.), chairman, and John Barrasso (R-Wyo.), ranking member, of the Senate Committee on Indian Affairs, ABA Governmental Affairs Director Thomas M. Susman emphasized that more than 350 tribal justice systems play an important role in Native American communities, handling a wide range of difficult criminal and civil justice problems with far fewer resources than are available to their state and federal counterparts.

Tribal courts, he said, are the “keystone to tribal economic development and self sufficiency,” and federal resources provided to tribal judicial systems, though modest in recent years, have enabled tribal courts and governments to draft and review environmental, domestic violence and other regulatory codes; apply tra-



Sen. Byron Dorgan (D-ND)

ditional and alternative methods and processes to address conflict or wrongdoing in their communities; hire and train judicial personnel; and receive technical assistance services.

Susman emphasized that additional funds are needed to fund Indian Legal Services programs, address additional pressing administration of justice issues and otherwise develop, enhance and continue the operation of tribal justice system.

S. 797, the broad legislation sponsored by Dorgan and the subject of a July 25 committee hearing, would authorize funding for the development and continued operation of tribal justice systems; address critical barriers preventing the safety of American Indian and Alaska Native women by boosting law enforcement efforts; provide

tools to tribal justice officials to fight crime in their own communities; improve coordination between law enforcement agencies; and increase accountability standards.

The ABA specifically supports legislation and appropriate funding to strengthen protection and assistance for victims of gender-based violence, including violence directed toward American Indian and Alaskan Native Women, Susman wrote to Dorgan and Barrasso July 17.

During the July 25 hearing, Thomas J. Perrelli, associate attorney general, emphasized the Department of Justice’s commitment to seeking justice for Indian Country communities and victims of crime. He told the committee that the attorney general will convene a Tribal Nations Listening Conference later this year as an opportunity to consult with tribal leaders on how to address the growing public safety crisis in Indian Country and other important issues affecting tribal communities. He noted that in a typical year, approximately 25 percent of all violent cases opened by U.S. attorneys nationally occur in Indian country.

No further action has been scheduled on the bill, but identical legislation, H.R. 1924, has been introduced by Rep. Stephanie Herseth Sandlin (D-S.D.). ■

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