



Inside This Issue

Elena Kagan becomes fourth woman to serve on the U.S. Supreme Court 1

President Obama signs Fair Sentencing Act to reduce cocaine sentencing disparity 3

House passes bill to create National Criminal Justice Commission 3

ABA suggests technical fix for arbitration bill 4

Tribal law and order legislation enacted to address high crime rate 5

ABA President Lamm Meets the press to discuss current issues 5

ABA urges prompt action on filling of federal judicial vacancies 6

President signs financial reform law with practice-of-law exclusion 8

Regular Features

Legislative Boxscore 2

Judicial Vacancies/Confirmations 6

Washington News Briefs 7

Is sworn in Aug. 7 as Associate Justice

Senate confirms Kagan nomination to the Supreme Court by 63-37 vote

Elena Kagan became the fourth woman in history to serve on the U.S. Supreme Court Aug. 7 when she was sworn in by Chief Justice John G. Roberts Jr. two days after the Senate confirmed her nomination by a 63-37 vote.

Fifty-six Democrats, two independents and five Republicans voted in favor of Kagan's nomination; 36 Republicans and one Democrat opposed the appointment. Kagan, 50, replaces 90-year-old Justice John Paul Stevens, who retired this year after serving on the court since 1975.

At a White House reception following Kagan's confirmation, President Obama recognized Kagan's "formidable intellect and path-breaking career – as an acclaimed scholar and presidential advisor, as the first woman to serve as dean of the Harvard Law School, and most recently as solicitor general."

During the reception, Kagan spoke of her new role as not just an honor but "an obligation to protect and preserve the rule of law in this country, an obligation to uphold the rights and liberties afforded by our remarkable Constitution, and an obligation to provide what the inscription on the Supreme Court building promises: equal justice under law."

The ABA Standing Committee on the Federal Judiciary, which evaluates the professional qualifications of nominees to the federal courts, unanimously concluded that Kagan merited the highest rating of "Well Qualified" to serve on the Supreme Court.

The 15-member committee based its evaluation on interviews with judges, lawyers, law professors and community representatives from across the United States, the ABA committee's own reading of the nominee's major writings, reports of three reading groups of scholars and practitioners, and an in-depth personal interview of the nominee conducted by ABA committee Chair Kim J. Askew and lead investigator William J. Kayatta Jr. Askew and Kayatta presented the committee's evaluation to the Senate Judiciary Committee July 1 during the Kagan confirmation hearings (see July 2010 *Letter*). ■

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. The ABA filed a lawsuit against the FTC on 8/27/09 and a motion for partial summary judgment on 9/23/09 to block the Rule's application to lawyers. On 10/30/09, the court ruled that the FTC has exceeded its authority, and the FTC announced 2/26/10 that it would appeal the decision. The FTC has delayed implementation of the rule for all entities until 12/31/10.</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.</p>
<p>Health Care Law. P.L. 111-148 (H.R. 3590), the Patient Protection and Affordable Care Act, and P.L. 111-152 (H.R. 4872), the Health Care and Education Reconciliation Act, overhaul the nation's health care system. The president held a Forum on Health Reform at the White House on 3/5/09. 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. House passed the final version of H.R. 3590 on 3/21/10 and the final version of H.R. 4872 on 3/21/10.</p>	<p>Senate passed H.R. 3590 on 12/24/09 and the final version of H.R. 4872 on 3/25/10.</p>	<p>President signed P.L. 111-148 (H.R. 3590) on 3/23/10 and P.L. 111-152 (H.R. 4872) on 3/30/10.</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. No cost-of-living adjustment was provided for federal judges for fiscal year 2010. S. 220 and H.R. 486 would create an inspector general for the judicial branch. S. 1653 and H.R. 3362 would authorize new federal judgeships.</p>	<p>H.R. 486 was referred to the Judiciary Cmte. on 2/9/09. H.R. 3362 was referred to the Judiciary Cmte. on 9/29/09.</p>	<p>S. 220 was referred to the Judiciary Committee on 1/13/09. Judiciary subc. held a hearing on S. 1653 on 9/30/09.</p>		<p>Supports increased judicial pay. Opposes initiatives that infringe upon the separation of powers between Congress and the courts. See front page and page 6.</p>
<p>Legal Services Corporation. A House draft bill includes \$440 million for the LSC in fiscal year 2011 and would lift a restriction on class actions. S. 3636 includes \$430 million and lifts a restriction on use of non-LSC funds. S. 718 and 3467 would reauthorize the LSC and lift several restrictions.</p>	<p>Judiciary subc. held LSC reauthorization hearings on 10/27/09 and 4/27/10. House Approps. subc. approved draft bill on 6/29/10.</p>	<p>S. 718 was referred to Health, Education, Labor and Pensions Committee on 4/1/09. Senate Approps. Cmte. approved S. 3636 bill on 7/22/10.</p>		<p>Supports an independent, well-funded LSC. See page 7.</p>

President Obama signs Fair Sentencing Act

Legislation would reduce powder-crack cocaine sentencing disparity

President Obama signed legislation Aug. 3 that reduces the 100-1 federal sentencing disparity between powder and crack cocaine-related offenses.

Enactment of the new law, P.L. 111-220 (S. 1789), is “a victory for common sense, bipartisanship and indeed for the American people,” according to ABA President Carolyn B. Lamm, who issued a statement July 28 after the House cleared the bill for the president’s signature. “This is a substantial and important step toward fair and responsible sentencing policy,” she said.

Under the sentencing structure that has been in place since 1986, a conviction for selling five grams of crack cocaine garners the same five-year mandatory minimum sentence as a conviction for selling 500 grams of powder cocaine. This 100-1 ratio was based on an erroneous assumption that crack carries with it a greater degree of violence and weapon possession, as well as a greater addictiveness than powder cocaine.

The legislation reduces this 100-1 ratio to an 18-1 ratio by increasing the amount of crack cocaine necessary to trigger the five-year mandatory minimum sentence. The bill also eliminates the mandatory minimum sentence for simple possession of crack cocaine.

In a July 21 letter to all members of the House, ABA Governmental Affairs Director Thomas M. Susman explained that the 100-1 ratio has had the unintended consequence of directing federal enforcement resources to low-level drug offenders instead of major and significant drug traffickers and has long perpetuated racially disparate sentences and given rise to the perception of unfairness in the law and justice system. Although the major-

ity of crack cocaine users are white, 80 percent of those convicted of federal crack offenses are African American, Susman pointed out.

“Although we believe the complete elimination of the sentencing disparity is the correct solution, we recognize that the enactment of this reform bill at this time represents an historic bipartisan opportunity to improve fairness in a deeply flawed federal sentencing policy,” he wrote.

Approval of final legislation was the result of the efforts of a bipartisan coalition in the Senate led by Sens. Jeff Sessions (R-Ala.), ranking minority member of the Senate Judiciary Committee, and Richard

Durbin (D-Ill.). The compromise led to unanimous Senate approval of S. 1789 in March.

In addition to the ABA, numerous supporters of the legislation include the U.S. Sentencing Commission, the National District Attorneys Association, the Judicial Conference of the United States, the National Association of Police Organizations, the Federal Law Enforcement Officers Association and the International Union of Police Associations. Also supporting the new law are the National Association of Evangelicals, Prison Fellowship and a large number of civil rights, sentencing policy, criminal justice, and legal organizations. ■

National Criminal Justice Commission would examine system

The House passed a bill July 27 that would establish a National Criminal Justice Commission to examine the criminal justice system in its entirety and make recommendations for reform.

H.R. 5143 – sponsored by Reps. William Delahunt (D-Mass.), Darrell Issa (R-Calif.), Marcia Fudge (D-Ohio), Tom Rooney (R-Fla.) and Robert C. “Bobby” Scott (D-Va.) – would provide the first comprehensive look at the system since President Johnson’s Commission on Law Enforcement and Administration of Justice issued its report and recommendations more than 45 years ago.

“The need for comprehensive review is clear,” ABA Governmental Affairs Director Thomas M. Susman wrote to all members of the House July 26. “At every stage of the criminal justice process – from the events preceding arrest to the challenges facing those reentering the community after incarceration – serious problems undermine basic tenets of fairness and equity, as well as the public’s expectations for safety.”

Susman noted that the “machinery” responsible for criminal justice is larger and more complex than ever and the overlap between federal and state law is greater. He emphasized that a discussion re-examining criminal justice priorities must include state, local and federal law enforcement officers, prosecutors, defense attorneys, judges, corrections officials, treatment providers, victims, probation

See “Criminal Justice,” page 4

ABA suggests technical fix for arbitration legislation

The ABA expressed concerns last month about specific language in pending arbitration legislation that the association maintains could have certain “profound and unintended negative consequences” regarding the international commercial arbitration process.

The provisions are part of H.R. 1020, the Arbitration Fairness Act, broad legislation that is ready for markup in the House Judiciary Committee. The bill would declare that no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment, consumer or franchise dispute or a dispute arising under any statute intended to protect civil rights.

In a July 13 letter to House Judiciary Committee members, ABA Governmental Affairs Director Thomas M. Susman explained that the ABA has not taken a position on the overall legislation. The association has developed several proposed technical amendments, however, that he said would “preserve the benefits of international commercial arbitration, while still protecting the consumers, employees, franchisees, and civil rights claimants that the bill is designed to help.”

Susman said the proposed amendments would correct provisions in the legislation that the association believes could inadvertently void many existing international commercial arbitration agreements, add significant costs and delays to the commercial arbitration process, potentially discourage international commercial parties from engaging in commerce with U.S. companies, and put the United States at risk of breaching the spirit – if not the letter – of longstanding treaty obligations.

The bill would add a series of carve-outs to the Federal Arbitration Act (FAA) by altering Chapter 1 of Title 9 of the U.S. Code – an

action the ABA believes could inadvertently unravel the reliability and predictability of business dispute resolution. The proposed ABA amendments would establish a new Chapter 4 of Title 9 of the U.S. Code rather than alter Chapter 1. By locating changes outside of the FAA, the ABA maintains, the bill would avoid undermining decades of judicial precedents.

The ABA amendments also seek to preserve the balance of the roles between courts and arbitrators for the types of disputes that the bill is not intended to cover. According to the ABA, language in Section 4 of the bill would apply to all arbitration, not just those involving consumers, employees, franchisees and civil rights claimants. Therefore, Section 4 would require every arbitrator to halt proceedings if a party merely alleges that a contract involving parties of any description was for any reason invalid or unenforceable, even if that party had no specific objection to the arbitration clause itself and does not dispute that there was an agreement to arbitrate.

This would mark the United States as a jurisdiction no longer considered a friendly forum for commercial arbitration, according to the ABA.

The association also recommended that, because the term “civil rights” is not easily defined, the legislation should specify which statutes the legislation is intended to cover and that only those statutes that directly address the problem of discrimination should be included.

A final area that should be addressed, according to the ABA, is arbitration for international franchises. The bill’s sweeping prohibition against all predispute agreements to arbitrate franchisor/franchisee disputes does not protect the rights of U.S. franchisors or franchisees to use arbitration in their non-U.S.-related operations.

Under the proposed ABA amendment, all international franchise operations would be excluded from the bill’s coverage when the franchisor or the franchisee is foreign. ■

Criminal Justice

continued from page 3

and parole officers, academics, victim advocacy groups, other public interest organizations, ex-offenders and ordinary citizens – all of whom have a tremendous stake in the justice system.

Bipartisan members of the National Criminal Justice Commission established by the legislation would be appointed by the legislative and executive branches and charged with making findings and recommendations regarding prevention and deterrence strategies, improving cost-effectiveness, and ensuring the interests of justice at every step of the criminal justice system.

Following passage by the House, the legislation was sent to the Senate, where similar legislation, S. 718, sponsored by Sen. Jim Webb (D-Va.), is pending on the Senate calendar.

ABA Annual Meeting Aug. 5-10, 2010 San Francisco

Read complete coverage of House of Delegates action at the Annual Meeting in next month’s issue of the *ABA Washington Letter*.

www.abanet.org/poladv/publications.shtml

New law addresses tribal justice issues

Violent crime rate in Indian country is nearly twice the national average overall

President Obama signed the Tribal Law and Order Act of 2010 last month to address the violent crime rate in Indian country – a rate that is nearly twice the national average overall but more than 20 times the national average on some reservations.

In enacting the new law, P.L. 111-211 (H.R. 725), the president noted July 27 that the legislation

builds on reforms announced earlier this year by the attorney general to increase prosecutions of crimes committed in Indian country. More assistant U.S. attorneys and victim-witness specialists will be hired, and a new position of National Indian Country Training Coordinator will be created to work with prosecutors and law enforcement officers.

The president said he intended to send “a clear message that all of our people – whether they live in our biggest cities or our most remote reservations – have the right to feel safe in their own communities and to raise their children in peace, and enjoy the fullest protection of our laws.”

Provisions in the law supported by the ABA 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 association strongly supports the amendments added during Senate consideration of the legislation that strengthen protection and assistance for victims of gender-based violence, according to a July 20 letter sent to all members of House by ABA Governmental Affairs Director Thomas M. Susman. He explained that these provisions will provide funding for legal assistance for victims of gender-based violence as well as training and education about gender-based violence and the needs of victims.

ABA President Carolyn B. Lamm also expressed ABA support for the legislation in an Aug. 3 statement, saying that the new law is a critical positive step forward with its numerous provisions to fight sexual assault, domestic abuse and other violent crimes.

“There are numerous ways the law will work against gender-based violence, including the promise of better funding, community-based projects and efforts that better hold the perpetrators accountable,” she said. ■

ABA president meets the press

ABA President Carolyn B. Lamm, meeting with reporters in Washington last month, unveiled the preliminary results of a Coalition for Justice survey of 1,000 state trial judges that revealed that the economic downturn is having a “profound effect” on access to justice.

Sixty percent of the judges said that fewer people were being represented by lawyers, and 62 percent indicated a significant negative impact for the parties not represented by counsel. The survey also showed that the top four areas of growth in cases are also the top cases in which self-representation is most problematic: domestic relations, common law issues, foreclosures and housing.



ABA President Carolyn B. Lamm at a July 12 news conference.

Lamm pointed out that the ABA and state and local bars are developing creative solutions to the problem. For example, California requires civil legal aid financed by court fees when basic human rights are at issue, and the D.C. Bar has set up bilingual kiosks with touch screens providing forms and self-help information.

Judicial vacancies also are exacerbating the problem of access to justice, Lamm said. She noted that there are currently 100 vacancies in the federal courts. During the 111th Congress, the Senate has confirmed 40 of President Obama’s 87 nominees (see article, page 6).

Other topics covered during the news conference included the amicus brief filed by the ABA urging the federal district court in Arizona to bar enforcement of the state’s recently enacted immigration law and student loan repayment during the economic crisis (see July 2010 *Letter*).

ABA urges Senate, Obama administration to move quickly to fill federal judicial vacancies

The ABA reported earlier this month that the persistently high rate of federal judicial vacancies, combined with the low number of confirmations, is fast approaching crisis proportion and urged the Senate and the Obama administration to move more quickly to fill the positions.

In correspondence to the president, Senate leaders and all senators, outgoing ABA President Carolyn B. Lamm expressed concerns that the partisanship that has long characterized the judicial nomination and confirmation process and the persistently high number of vacancies are creating “strains that will inevitably reduce the quality of our justice system and erode public confidence in the independence and impartiality of our federal courts.”

She pointed out that the vacancy rate has hovered around the 100 mark for the past six months and the lack of progress in reducing the rate this session is especially worrisome in light of the number of judges who have reached, or are fast approaching, retirement age. Eighteen judges have announced their intention to retire in the next year, and several additional vacancies will no doubt arise as a result of judicial elevations, deaths and resignations, she said.

The letters outlined the following actions to avert a potential crisis and preserve the quality and vitality of the federal judiciary:

- the president and the Senate should make prompt filling of federal judicial vacancies a priority with each party devoting time and resources to the ef-

fort in a spirit of mutual respect and bipartisanship;

- the administration should make a concerted effort to shorten the time between vacancy and nomination and submit a nomination to the Senate for every outstanding Article III judicial vacancy, with special due diligence in nominating individuals to the 46 currently vacant seats that have been identified as “judicial emergencies” by the Administrative Office of the U.S. Courts; and
- the Senate should give every nominee an up-or-down vote within a reasonable time after the nomination is reported by the Senate Judiciary Committee.

“Tactics to delay votes on nominees that are launched for reasons not associated with their qualifications blatantly inject politics into the process” and “waste the time of the Senate and increase the time a nominee is in limbo,” Lamm said.

She emphasized that Senate leaders should seek to avoid scheduling delays over nominees who have bipartisan support and should discourage and dissuade their colleagues from using the judicial confirmation process to advance or defeat other legislative objectives.

Lamm said that “Congress should take action to support, not undermine, the vital work of the federal courts” and stressed that all three branches of government must be robust and strong to advance the important work of government. ■

Judicial Vacancies/Confirmations — 111th Congress (as of 8/13/10)

<u>Court</u>	<u>Current Vacancies</u>	<u>Pending Nominations</u>	<u>Confirmations</u>
US Supreme Court (9 judgeships)	0	0	2
US Courts of Appeals (179 judgeships)	19	12	10
US District Courts (678 judgeships)	81	33	30
Court of International Trade (9 judgeships)	0	0	0
Totals	100	45	42

Washington News Briefs

NURSING HOME ARBITRATION: The ABA supports the goals of nursing home arbitration legislation pending in the House Judiciary Committee. The bill, H.R. 1237, and its Senate companion, S. 512, would invalidate mandatory pre-dispute arbitration clauses in agreements between long-term care facilities and residents. In a June 22 letter to members of the committee, ABA Governmental Affairs Director Thomas M. Susman wrote that Congress should take action because of the unfair disadvantage most residents and families face during the time of admission to a nursing home. Such admissions, he said, typically involve an older person with multiple chronic conditions being discharged from the hospital. The patient and the patient's family are not in a position to comprehend the legal ramifications of a mandatory agreement during this time of enormous pressure, he emphasized. "To let nursing homes use the time of admission as a decision point to waive rights of legal redress in the courts is not good public policy," Susman said. Both H.R. 1237 and S. 512 would amend Chapter 1 of the Federal Arbitration Act (FAA), which has been intact and in place for more than 80 years and is applied to a broad range of domestic and international disputes far exceeding the scope of arbitration agreements affected by the legislation. The ABA is urging that the nursing home arbitration provisions be enacted as a separate Chapter 4 or as a separate statute, to avoid unintended confusion and consequences. Markup of the bill is expected this fall.

LEGAL SERVICES CORPORATION (LSC): The Senate Appropriations Committee approved a bill July 22 that would provide \$430 million in fiscal year 2011 for the LSC – a \$10 million increase. The Senate bill, S. 3636, also would lift a restriction on the use by LSC grantees of non-federal funds except in litigation involving abortion or litigation on behalf of prisoners. The \$10 million increase for the program is contingent on certification by the LSC Board of Directors chairman and the LSC president that the corporation has implemented recommendations made in 2007 by the Government Accountability Office and in 2008 and 2009 by the LSC Inspector General. The Senate amount is \$10 million less than the \$440 million approved June 29 by the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies. The House panel voted as part of its bill to lift the restriction on the ability of LSC-funded programs to consolidate related client cases into class-action lawsuits. In a July 20 letter to Senate appropriators, ABA President Carolyn B. Lamm urged that the LSC receive at least \$440 million for fiscal year 2011 as the next step toward

closing the justice gap and meeting the critical need that exists today because of the rise in foreclosures, unemployment and related issues resulting from the economic downturn. She also urged the Senate to include provisions from the House bill that would lift the class-action restriction. As Congress continues to consider fiscal year 2011 funding for the program, the ABA submitted its support Aug. 2 for confirmation of two nominees to serve on the LSC Board of Directors. In an Aug. 2 letter to the Senate Health, Education Labor and Pensions Committee, ABA President Carolyn B. Lamm and Robert E. Stein, chair of the ABA Standing Committee on Legal Aid and Indigent Defendants, wrote that Harry Korell, of Washington, and Father Pius Pietrzyk, of Ohio, demonstrate views and qualifications that meet the ABA criteria for serving on the board. On July 27, President Obama renominated Julie A. Reiskin of Colorado to the board for a term ending in 2013. The ABA expressed support earlier for Reiskin's confirmation when she was nominated for a different term on the board. The Senate committee is expected to consider the nominations later this year.

PAYCHECK FAIRNESS ACT: ABA President Carolyn B. Lamm urged the Senate leadership July 26 to work toward prompt passage of S. 182, the Paycheck Fairness Act. In a letter to Senate Majority Leader Harry Reid (D-Nev.) and Minority Leader Mitch McConnell (R-Ky.), Lamm emphasized that the legislation proposes much-needed modifications and improvements to the Equal Pay Act of 1963, passed by Congress specifically to prohibit gender-based wage discrimination. "Fifty years after passage of this historic civil rights legislation, wage discrimination remains a persistent widespread and pernicious problem," Lamm wrote, pointing out that with a record 71 million women in the workforce, gender-based wage discrimination hurts American families. "By helping improve the present and future economic welfare of working women, the Paycheck Fairness Act will help countless families pay their bills and achieve financial security. As the recession continues to take its toll, passage of this legislation is one small but significant step that Congress can take to help working families and strengthen our economy," Lamm said. She also noted that the White House Middle Class Task Force announced last month that a key recommendation of its Equal Pay Enforcement Task Force is the swift enactment of the act so that federal officials will have adequate tools to fight wage discrimination. The House passed its version of the legislation, H.R. 12, in January 2009. The Senate is expected to act on the bill this fall.

President signs consumer financial protection law with broad practice-of-law exclusion

President Obama signed financial regulatory reform legislation July 21 that includes ABA-supported language to exclude lawyers representing consumer clients from an additional layer of federal regulation.

The new Consumer Financial Protection Act — contained a larger financial reform package, P.L. 111-203 (H.R. 4173), enacted into law in response to the 2008 financial crisis — subjects financial institutions to more oversight and establishes a new Consumer Financial Protection Bureau that will be housed in the Federal Reserve.

Upon signing the legislation, the president said the “American people will never again be asked to foot the bill for Wall Street’s mistakes,” and he emphasized that the reforms in the law “represent the strongest consumer financial protections in history.”

The lawyer exclusion language states that the new Consumer Financial Protection Bureau “may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.”

The exclusion does not limit the ability of the bureau to regulate lawyers who are engaging in other commercial activities, however, nor does it affect other provisions in the legislation that simply transfer current federal regulatory authority from existing agencies to the bureau. The final wording of the “Exclusion for Practice of Law” was determined by a House-Senate conference committee that ultimately decided to adopt language similar to that contained in the House-passed version of the legislation.

The association and numerous state and local bar associations had maintained that adoption of an overly narrow attorney exclusion in the Senate-passed version of the bill would have subjected many bankruptcy lawyers, litigators, family lawyers, real estate lawyers, tax lawyers and general practitioners to burdensome and

unnecessary federal regulation. Such regulation would have undermined the confidential attorney-client relationship, preempted traditional state court regulation and supervision of lawyers, and denied essential legal representation to consumers with debt problems, the association maintained.

ABA President Carolyn B. Lamm praised congressional leaders for agreeing to include a broad exclusion in the final bill and for recognizing “the importance of maintaining the historic role of state supreme courts’ regulatory authority over the practice of law.”

House Judiciary Committee Chairman John Conyers Jr. (D-Mich.), in a statement published in the July 15 *Congressional Record*, highlighted various parts of the new law that the Judiciary Committee helped shape, including the practice-of-law exclusion. While noting that the exclusion would not — and should not — prevent the bureau from regulating lawyers engaged in commercial activities outside the practice of law, he emphasized that the exclusion makes clear that the bureau would not have the authority to regulate conduct by attorneys that is part of the practice of law or incidental to the practice of law.

He also clarified that the exclusion covers not just licensed attorneys, but also paralegals, legal secretaries, investigators and others performing such activities under the supervision of the attorney.

Conyers also stressed the importance of harmonizing other similar federal agency regulations with the new practice-of-law exclusion. “We would hope that this carefully considered statutory provision will also serve as a model for other federal agencies considering new regulations that might cover conduct engaged in by attorneys as well as others, so as to better ensure that important consumer protection objectives are achieved consistent with safeguarding the ability of our “officers of the court” to fulfill their ethical obligations under our legal system,” he said. ■

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American Bar Association, 740 15th Street, N.W., Washington, D.C. 20005-1022. (202) 662-1017.

Rhonda J. McMillion, editor; mcmillionr@staff.abanet.org