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## *LSC, civil rights tax relief, pay fairness top agenda*

### **ABA Day in Washington draws nearly 300 bar leaders for Capitol Hill visits**

Nearly 300 bar leaders trekked to Capitol Hill in April for face-to face meetings with their senators and representatives during the ABA’s fourteenth annual ABA Day in Washington coordinated by the association’s Governmental Affairs Office.

This year’s discussions with members of Congress focused on ABA support for the following legislation:

- Legal Services Corporation (LSC) Reauthorization and Funding. The LSC, which has continued to exist through annual appropriations since the program’s last authorization in 1981, is currently funded at \$420 million. Because other funding sources have plummeted recently, the ABA is urging Congress to increase LSC funding to at least \$440 million. Reauthorization legislation pending in Congress, the Civil Access to Justice Act, would increase the authorized annual LSC appropriation to \$750 million, lift certain restrictions, and improve governance and accountability (see article, page 8);

- Civil Rights Tax Relief Act. Victims of discrimination are penalized by current tax laws requiring them to pay taxes on settlements, which could include multiple years of back pay and awards of noneconomic damages, in the year they are received. The proposed legislation would exclude non-economic damages from gross income and spread out the tax burden by allowing income averaging for back and front pay covering multiple years and received in a lump sum; and

- Paycheck Fairness Act. Already passed by the House, this legislation would strengthen the Equal Pay Act of 1963 to assure that women get equal wages for equal work. Pay equity, according to the ABA, is key to the financial security of millions of families and to long-term economic recovery.

Michael Bedke, a member of the Standing Committee on Governmental Affairs from Tampa, Florida, who was attending ABA Day for the first time, said that he found the ABA to be viewed by legislators as an “honest broker” in the legislative process because the association does not have a political action committee.

Linda Klein, of Atlanta, Georgia, emphasized that ABA Day participants are not paid lobbyists and cover their own costs to attend the event. Noting that “the members of Congress know that you care about the issues,” she was pleased that her ABA visits in support of the Civil Rights Tax Relief Act brought attention to

*see “ABA Day,” page 3*



# LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
<p><b>Independence of the Legal Profession.</b> 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 delayed implementation of the rule for all entities until 6/1/10.</p>				<p><b>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.</b></p>
<p><b>Health Care Law.</b> 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><b>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.</b></p>
<p><b>Judicial Independence.</b> 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><b>Supports increased judicial pay. Opposes initiatives that infringe upon the separation of powers between Congress and the courts.</b></p>
<p><b>Legal Services Corporation.</b> P.L. 111-117 (H.R. 3288) includes \$420 million for the LSC in fiscal year 2010 and lifts a restriction on collection of statutorily authorized attorneys' fees by LSC lawyers. S. 718 and 3467 would reauthorize the LSC and lift several restrictions.</p>	<p>House passed H.R. 2847 on 6/18/09. Judiciary subc. held LSC reauthorization hearing on 10/27/09 and 4/27/10.</p>	<p>Senate passed H.R. 2847 on 11/5/09. S. 718 was referred to Health, Education, Labor and Pensions Committee on 4/1/09.</p>	<p>President signed P.L. 111-117 (H.R. 3288) on 12/16/09.</p>	<p><b>Supports an independent, well-funded LSC. See page 8.</b></p>

## ABA supports repeal of “Don’t Ask, Don’t Tell”

ABA President Carolyn B. Lamm expressed to congressional leaders last month the association’s strong support for repeal of the “Don’t Ask, Don’t Tell” statute.

Current law, enacted in 1993 as 10 U.S.C. §654, prohibits military commanders from asking about a recruit’s sexual orientation as part of the processing for accession into the U.S. armed forces. The policy, however, also codified the military ban on homosexual conduct or open declaration of homosexuality by military personnel, which the 1993 law stated was a “longstanding element of military law that continues to be necessary in the unique circumstances of military service.”

“Subjecting a person to discharge from military service on the basis of sexual orientation is, and always has been, a denial of the very constitutional protections that the oath administered to military members calls upon servicemembers to protect,” Lamm wrote in an April 26 letter to the House and Senate Armed Services Committees and House and Senate leaders.

“The ABA has a long tradition of actively opposing discrimination, such as the intolerable denial of a person’s civil rights based on solely his or her identity as a member of a minority group,” Lamm wrote to Congress. She emphasized that the ABA opposed enactment of the “Don’t Ask, Don’t Tell” policy in 1993 because the policy established a form of discrimination that was not based on the character of the servicemember’s contribution to the national defense.

“The harm we foresaw has since come to pass,” she said, pointing out that more than 13,000 men and women – many of them highly trained specialists such as pilots, sharpshooters and translators – have been dismissed from service under the law.

Lamm noted that over the past

17 years, the association has remained sensitive to the special status of the armed forces and military leaders, who must use the tools at their disposal to maintain order and discipline. The “Don’t Ask, Don’t Tell” policy itself makes clear that lesbian, gay and bisexual people long have served honorably in the military. The fact that others may react negatively when they learn they are serving with a lesbian, gay or bisexual servicemember is not a sufficient basis to exclude those members from the opportunity to serve their country, she emphasized.

In a separate letter to Secretary of Defense Robert M. Gates, Lamm expressed appreciation for the careful consideration with which he is exploring how repeal of the policy would be implemented, and she acknowledged the

many collateral matters that will have to be sorted out. After President Obama announced his support for repealing the policy, Gates appointed a Working Group in February on the issue that is scheduled to release an assessment Dec. 1.

In response to a request from House Armed Services Committee Chairman Ike Skelton (D-Mo.) for guidance on the matter, Gates and Joint Chiefs of Staff Chairman Michael Mullen recommended that Congress, before taking action on legislation, allow the Pentagon “to conduct a thorough, objective and systematic assessment of such a policy change; develop an attentive comprehensive implementation plan, and provide the president and Congress with the results of this effort in order to ensure that this step is taken in the most informed and effective manner.” ■

## ABA Day provides face-to-face meetings

*continued from front page*

the legislation and some new cosponsors.

“I can’t imagine not coming back next year,” said Alice Bruno, of Connecticut. Bruno, a member of the ABA House of Delegates, was “incredibly impressed” with the webinars held in advance to familiarize attendees with the issues and the briefings and concise materials provided by the association for the visits. Pauline Weaver and Linda Kim, of California, agreed, pointing out that even if they were not able to make an official visit to a legislator’s office, they dropped off materials.

Laurel G. Bellows, chair of the ABA Day Planning Committee, welcomed the participants and emphasized that members of the organized bar are “the nation’s strongest advocates for adequate funding and resources essential to preserve our justice system.”

Cosponsors of ABA Day were the National Conference of Bar Presidents, National Association of Bar Executives, ABA Section Officers Conference and ABA Young Lawyers Division. The Standing Committee on Governmental Affairs, chaired by President-elect Nominee Wm. T. (Bill) Robinson III, also played a pivotal role in planning the event.

The Hill visits were not the only highlights of the three-day event. At a welcome dinner at the Canadian Embassy, the association announced awards to the following members of Congress for their specific efforts to improve the American justice system: Sens. Richard Lugar (R-Ind.) and Olympia Snowe (R-Maine) and Reps. Steve Cohen (D-Tenn.) and Rep. John Lewis (D-Ga.). This year’s Grassroots Advocacy Awards went to the Hon. Jodi B. Levine, of Oklahoma City, Oklahoma; the Hon. Howard H. Dana Jr, of Portland, Maine; the Illinois State Bar Association; and the Tennessee Bar Association. (See photos, pages 4 and 5.) ■

# “ABA Day in Washington” - April 20-22, 2010



Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) shared a view of the Mall during a visit with the Vermont delegation and other bar leaders: From left are: Ira Pilchen, ABA Office of the President; ABA Governmental Affairs Director Thomas M. Susman; Vermont Bar Association (VBA) Executive Director Robert Paolini; Richard T. Cassidy, chair, ABA Standing Committee on Delivery of Legal Services; Frank H. Langrock, VBA delegate to the ABA House of Delegates; Sen. Leahy; ABA President Carolyn B. Lamm; VBA President Eileen M. Blackwood; and VBA President-elect Therese Corsones.



Members of the Illinois State Bar Association displayed their Grassroots Advocacy Award. From left are: President John G. O'Brien; board member Paula Holderman; Mitchell Orpett, ABA Board of Governors; President-elect Mark D. Hassakis; Executive Director Bob Craghead; Ann Breen-Greco, vice chair, National Conference of the Administrative Judiciary; and ABA Planning Committee Chair Laurel G. Bellows.



Social Security Administration (SSA) Commissioner Michael J. Astrue (left) chatted with Grassroots Advocacy Award recipient Jodi B. Levine (right), an SSA administrative law judge, and Daniel Solomon (center), an ALJ from the Department of Labor and a member of the ABA House of Delegates.



Rep. Bill Shuster (R-Pa.) (center) met with Pennsylvania Bar Association Past President Andrew Susko and Samuel Milkes, executive director, Pennsylvania Legal Aid Network.



Sen. Olympia Snowe (R-Maine) accepted her Congressional Award from ABA President Carolyn B. Lamm, accompanied by Maine State Bar Association Treasurer Diane Dusini and Executive Director Julie G. Rowe.



Rep. Walter B. Jones Jr. (R-N.C.) (second from left) sat down with representatives of the North Carolina Bar Association: Executive Director Allan Head; President-elect Gene Pridden; Kimberly Crouch, director of governmental affairs; and Roberta King, chair-elect of the bar association's Young Lawyers Division.



State Bar of Michigan President-elect W. Anthony Jenkins (left) discussed the issues with House Judiciary Committee Chairman John Conyers Jr.



Rep. Betsy Markey (D-Colo.) (right) welcomed (from left): James Carr, council member, ABA Tort Trial and Practice Section; Robert E. Stein, chair, ABA Standing Committee on Legal Aid to Indigent Defendants; Colorado Bar Association (CBA) Assistant Executive director Dana Collier-Smith; and CBA President David M. Johnson.



The Indiana delegation celebrated the Congressional Award received by Sen. Richard Lugar (R-Ind.). From left: Indiana State Bar Association (ISBA) Associate Executive Director Susan Jacobs; Sen. Lugar; ISBA Executive Director Thomas A. Pyrz; ISBA President Roderick H. Morgan; Indiana Bar Foundation Executive Director Charles Dunlap; and ISBA Past President R. William Jonas Jr.



Congressional Award winners Reps. Steve Cohen (D-Tenn.) and John Lewis (D-Ga.).

*Photos by Lisa Helfert and Joyce Boghosian*

## More funds needed for homelessness programs

### *Two federal efforts target homeless children and youth*

The ABA expressed strong support April 27 for increasing the federal investment in the only two government efforts targeted at providing critical services to homeless children, youth and families: the Department of Education's Education for Homeless Children and Youth (EHCY) program and the Department of Health and Human Services Runaway and Homeless Youth Act (RHYA) programs.

In a letter to House and Senate appropriators, ABA Governmental Affairs Director Thomas M. Susman pointed out that the president has recommended level funding in fiscal year 2011 of \$65 million for EHCY and \$116 million for RHYA. The ABA is recommending that the EHCY funding be increased to \$140 million and that RHYA funding be raised to \$165 million.

In his letter, Susman pointed out that homelessness is affecting an unprecedented number of children and youth in the face of one of the worst economic crises in the nation's history. During the 2008-2009 school year, public schools enrolled more than one million homeless children and youth, representing a 47 percent increase from the year before. Because homelessness is accompanied by a higher likelihood of multiple school transfers, school truancy, dropout, and lower standardized test scores, homeless students often require additional support if they are to be able to participate in any educational program, he said.

"Local school districts," he emphasized, "use

EHCY funds for outreach and identification, enrollment assistance, transportation assistance, school records transfer, immunization referrals, tutoring, counseling, school supplies, assessment, professional development for educators, and referrals for community services."

Explaining the need for more funding for the RHYA programs, Susman said the programs provide critical outreach, shelter, and transitional living resources to the nation's unaccompanied youth. Last year, more than 5,200 homeless youth were turned away from transitional living projects and maternity group homes due to lack of space. The increased funding level would assist more than 1,655 youth with stable housing, offer more than 17,000 youth emergency shelter services, and allow street outreach programs to make contact with more than 340,000 additional youth.

The ABA House of Delegates adopted policy on the issue in February that, in addition to supporting increased funding for the federal programs, urges state, local and territorial governments to revise their laws, policies and practices and improve statutory definitions and data collection. The policy also urges the federal government to assist local communities in establishing plans to end youth homelessness and supports increasing coordination among federal departments in identifying promising practices in housing assistance to homeless youth. ■

### Judicial Vacancies/Confirmations — 111th Congress (as of 5/9/10)

<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)	16	10	7
US District Courts (678 judgeships)	85	33	14
Court of International Trade (9 judgeships)	0	0	0
<b>Totals</b>	<b>101</b>	<b>43</b>	<b>22</b>

## Washington News Briefs

**LAW DAY:** “Law in the 21st Century: Enduring Traditions and Emerging Challenges” is the theme of this year’s Law Day USA. In his Law Day proclamation, President Barack Obama said the theme “reminds us to draw upon and adapt our time-honored legal traditions to meet the demands of a global era.” “In an increasingly interconnected world, legal issues of human rights, criminal justice, intellectual property, business transactions, dispute resolution, human migration, and environmental regulation affect us all. The enduring principles of due process and equal protection of the law, judicial independence, access to justice, and a firm commitment to the rule of law will continue to allow us to address today’s concerns while anticipating tomorrow’s challenges.” the president said. President Eisenhower issued the first Law Day proclamation in 1958 after then ABA President Charles S. Rhyne envisioned Law Day as a day to celebrate the rule of law. While the official date is May 1, the celebration has grown to encompass weeks of events conducted by schools, bar associations, courts and other organizations throughout the country. In her ABA Day message, ABA President Carolyn B. Lamm said that “we must renew our commitment to the enduring principles of law, become knowledgeable about other legal systems, recognize the need to adapt our practices and acquire new cultural understandings, all to better serve the public and our clients’ changing needs.” Lamm presided over the annual Leon Jaworski Public Program held April 27 at the Woodrow Wilson Center in Washington, D.C., which featured a panel discussion focusing on the theme. The program was hosted by the ABA Division for Public Education.

**RULE OF LAW:** The ABA is urging a House Appropriations subcommittee to maintain funding for rule of law programs in fiscal year 2011, emphasizing the importance of targeted foreign assistance that enhances legal systems and institutions that are grounded in the rule of law. In a statement submitted March 26 for hearings before the subcommittee on State, Foreign Operations and Related Programs, ABA President Carolyn B. Lamm said that such targeted assistance is “a critical component of U.S. foreign, economic and national security policy to foster democracy and sustainable development.” Lamm said that the ABA’s Rule of Law Initiative (ABA ROLI), which receives federal funding, implements programs to increase public understanding of and respect for the rule of law; to work for just law, including human rights, and a fair legal process; to assure meaningful access to justice for

all persons; and to preserve the independence of the legal profession and the judiciary. ABA ROLI efforts are carried out primarily by members of the American legal profession, with some serving on a pro bono basis for periods of up to two or more years. Lamm specifically requested the panel’s support for continued funding for ABA ROLI programs, which she said are “a highly cost-effective mechanism for advancing the rule of law and democracy abroad.”

**CRIMINAL JUSTICE COMMISSION:** Bipartisan legislation introduced April 26 in the House would establish a National Criminal Justice Commission to undertake an 18-month comprehensive review of the nation’s criminal justice system. The legislation – sponsored by Reps. William Delahunt (D-Mass.), Darrell Issa (R-Calif.), Marcia Fudge (D-Ohio) and Tom Rooney (R-Fla.) – would require the 14-member bipartisan commission to study all areas of the criminal justice system, including federal, state, local and tribal governments’ criminal justice costs, practices and policies. Following the study, the commission would make recommendations for changes in oversight, policies, practices and laws designed to prevent, deter and reduce crime and violence, reduce recidivism, improve cost-effectiveness, and ensure the interest of justice at every step of the criminal justice system. The bill is similar to S. 714, legislation sponsored Sen. Jim Webb (D-Va.) that was amended and approved by the Senate Judiciary Committee in January (see February 2010 *Letter*). The creation of a national commission is supported by more than 100 organizations, including the ABA, which adopted policy in August 2009 supporting federal legislation providing for a national study of the state of criminal justice in the United States.

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## House panel urged to approve LSC legislation

Sen. Tom Harkin (D-Iowa) and Rep. Robert C. “Bobby” Scott (D-Va.), the lead sponsors of legislation to reauthorize the Legal Services Corporation (LSC), appeared together April 27 before a House Judiciary subcommittee to highlight the need to expand and improve vital civil legal services to low-income citizens.

“Because of the economic downturn, demand for legal services is skyrocketing,” Harkin said in his statement. Recalling his experience early in his career as a legal aid attorney, he said he knows firsthand that without access to an attorney, the poor are often powerless in the face of injustice and wrongdoing.

Scott, who was the original board chairman of the Peninsula Legal Aid Center, emphasized that the importance of the LSC has not diminished since it was established in 1974. He noted that reauthorization legislation, introduced as H.R. 3764 in the House and S. 718 in the Senate, would authorize \$750 million per year for the program, which currently is funded at \$420 million. Both bills also provide for more effective governance and oversight of the LSC.

The bills also would lift many, but not all, of the restrictions placed on the program through appropriations bills over the years since 1996, including the restriction on collecting statutorily authorized attorneys’ fees, prohibitions on what programs can do with non-federal funds, and restrictions on bringing of class action lawsuits under certain conditions.

Prohibitions would remain on abortion-related litigation and some limits on the types of clients LSC-funded programs may represent, including prisoners challenging prison conditions and people convicted of illegal drug possession in public housing eviction proceedings.

John G. Levi, the recently elected chair of the LSC Board of Directors, testified that the LSC has historically supported reauthorization because it represents an expression of ongoing support for the mission of the LSC. The \$750 million annual authorization in the bill, he said, is approximately the amount appropriated in 1981 when adjusted for inflation. In 1981, the LSC for the first and only time achieved sufficient funding

to reach the “minimum access” level of providing two lawyers for every 10,000 poor people. He noted that currently a least 54 million Americans are eligible for civil legal assistance under LSC’s income guidelines. By most estimates, however, 80 percent of the legal needs of low-income people go unmet.

“The people who come to our programs are in search of fair treatment and solutions to pressing legal problems,” Levi said. “Legal aid lawyers not only open the doors to justice, they provide assistance at a crucial moment in the lives of the poor, helping them get back on their feet and helping prevent a downward spiral into costly public support.” He said that even as the need for LSC programs increases, funding resources are dwindling. A major source of funding, Interest of Lawyers Trust Accounts (IOLTA) is eroding because of the drop in short-term interest rates and the decline in real estate transactions, he said.

Levi also told the panel that the LSC Board took steps to begin a nationwide search for a new LSC president at its April 16-17 meeting.

LSC Inspector General Jeffrey E. Schanz summarized the actions his office has undertaken during the past 18 months to address Government Accountability Office concerns about use of federal funds by the LSC. He also recommended some amendments to the legislation that he said would protect the oversight role of the Inspector General’s Office.

Other testimony presented at the hearing included support for the legislation by Rebekah Diller, deputy director of the Justice Program of the Brennan Center for Justice at New York University School of Law. Kenneth F. Boehm, chairman of the National Legal and Policy Center, opposed the legislation, maintaining that it “eviscerates most of the bipartisan reform that have been supported by Congress as part of the LSC’s appropriations every year since 1996.”

The ABA strongly supports LSC reauthorization, making it a priority issue during the recent ABA Day in Washington (see front page). The ABA believes that some restrictions should be lifted and that reauthorization will strengthen LSC corporate governance and accountability. ■

**The monthly *Washington Letter* reports news of national public interest to the legal profession, including congressional, executive branch and ABA activities concerning the association’s legislative priorities. The newsletter is published by the Governmental Affairs Office as a service to ABA members and national, state and local bar associations. Full text is available on the Internet at <http://www.abanet.org/poladv/publications.shtml>. © 2010 American Bar Association. All rights reserved. Please address correspondence to:**

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