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ABA will work with Obama administration initiative

Legal information is focus of ABA resource for servicemembers and their families

The ABA, participating in a May 9 briefing for the Congressional Military Family Caucus, told Capitol Hill staff about [ABA Home Front](#), a new website providing an information center where servicemembers and military families can find resources for understanding legal issues and obtaining legal assistance for their problems.

The unveiling of ABA Home Front in early May followed the Obama administration's release in January of a government-wide review to bring together the federal government's resources, identify new opportunities across the public and private sectors, and lay the foundation for a coordinated approach to supporting military families. The review, "Strengthening Our Military Families: Meeting America's Commitment," identified priorities for providing better services for military families and led to the establishment of the administration's Joining Forces national initiative.

The ABA website, which complements other online resources, features information about the Servicemembers' Civil Relief Act, which provides legal protections for active-duty military and their families, and a directory of programs providing legal services to military families. The site also is a resource for lawyers who are interested in providing pro bono representation for military members or in providing lawyer-to-lawyer consultation with military legal assistance attorneys.

The site will be expanded to include additional information about landlord-tenant disputes, health law, immigration, contracts and leases, and employment law.

One of the ABA's legislative and governmental priorities for this year, Access to Legal Services, supports strengthening legal protections and access to legal assistance for active-duty military, their families and veterans. ■

ABA Day in Washington

More than 250 bar leaders were in Washington April 12-14 for the annual ABA Day in Washington, an opportunity for participants to meet their senators and representatives to discuss important issues affecting the justice system and the legal profession.

See photo highlights on pages 4 and 5.

LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
<p>Independence of the Legal Profession. 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 Federal Trade Commission's application of the Red Flags Rule to lawyers. On 10/30/09, the court ruled that the FTC had exceeded its authority. The FTC appealed the decision and delayed implementation of the rule for all entities through 12/31/10. Oral arguments were 11/15/10. P.L. 111-219 (S. 3987) clarifies that lawyers are not creditors under the act. On 3/4/11, the circuit court dismissed the appeal and declared the case moot — a victory for the ABA.</p>			<p>President signed P.L. 111-219 (S. 3987) on 12/18/10.</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. H.R. 2 would repeal health care reform law. An amendment proposed to S. 223, transportation legislation, would have repealed the law. H.R. 5 and S. 218 would preempt state medical liability laws.</p>	<p>House passed H.R. 2 on 1/19/11. Judiciary Cmte. held a hearing on H.R. 5 on 1/20/11 and approved the bill on 2/16/11.</p>	<p>Senate rejected health care repeal amendment to S. 223 on 2/2/11. S. 218 was referred to the Judiciary Committee on 1/27/11.</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.</p>
<p>Judicial Independence. No cost-of-living adjustment was provided for federal judges in 2010 and 2011. S. 348 and H.R. 727 would establish an inspector general for the federal judiciary. S. 755 and H.R. 1416 would help state courts collect overdue court-ordered financial obligations through interception of federal tax refunds. S. 410 would authorize cameras in federal district and appellate court for civil trials.</p>	<p>H.R. 727 was referred to the Judiciary Cmte. on 2/15/11. H.R. 1416 was referred to the Ways and Means Committee on 4/7/11.</p>	<p>S. 348 was referred to the Judiciary Cmte. on 2/15/11. S. 755 was referred to the Finance Committee on 4/7/11. Judiciary Cmte. approved S. 410 on 4/7/11.</p>		<p>Supports prompt filling of judicial vacancies. Opposes initiatives that infringe upon the separation of powers between Congress and the courts. See page 6.</p>
<p>Legal Services Corporation. P.L. 112-10 (H.R. 1473), continuing appropriations for fiscal year 2011, includes \$404.2 million for the LSC. The president requested \$450 million for the program in his fiscal year 2012 proposed budget.</p>	<p>House passed H.R. 1473 on 4/14/11. A House Appropriations subcommittee held a hearing on LSC on 4/5/11.</p>	<p>Senate passed H.R. 1473 on 4/14/11.</p>	<p>President signed P.L. 112-10 (H.R. 1473) on 4/15/11.</p>	<p>Supports an independent, well-funded LSC.</p>

ABA promotes Guidance to combat money laundering

The ABA reassured key Senate leaders April 27 regarding the association's commitment to educating and encouraging practicing lawyers throughout the country to follow the *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing*, which was adopted by the ABA House of Delegates in August 2010.

"The ABA remains committed to making the *Guidance* an effective resource for lawyers who provide legal services to clients across the United States," ABA Governmental Affairs Director Thomas M. Susman wrote to Sens. Carl Levin (D-Mich.) and Tom Coburn (R-Okla.), who serve as chair and ranking minority member of the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations.

In his [letter](#), Susman provided a detailed summary of the steps the ABA has taken to implement the *Guidance*. Recent steps have included a letter from ABA President Stephen N. Zack to all state and local bar association presidents and other key bar leaders across the country urging them to educate their members about the *Guidance*. The ABA also has reached out to the Conference of Chief Justices for help disseminating the *Guidance* to state supreme courts and their state bar agencies, planned the publication of a monograph or book and DVD, and developed numerous continuing legal education programs. In addition, the association is working with the Association of American Law Schools and others in an effort to incorporate anti-money laundering content into law school curriculum, among other things.

In his [letter](#) to the bars, Zack explained that the ABA developed the *Guidance* after the intergovernmental body known as the Financial

Action Task Force on Money Laundering (FATF) issued comprehensive anti-money laundering and counter-terrorist financing standards followed by a broad risk-based guidance for the legal profession in 2008. The FATF guidance identified the money laundering and terrorist financing issues specific to the legal profession and outlined the risk factors that lawyers need to consider in developing a risk-based system. Instead of offering detailed directions, however, the FATF guidance urged the legal profession to develop its own effective guidelines.

The ABA and its Task Force on Gatekeeper Regulation and the Profession responded by working with several other specialty bars to craft the voluntary *Guidance*. The resulting *Guidance* enables U.S. lawyers to assess the money laundering and terrorist financing risk posed by each client and allows the lawyers to combat money laundering by

taking prudent, appropriate steps based on the individual situation rather than adhering to a burdensome and difficult "one-size-fits-all" approach.

"This voluntary, legal profession-initiated effort will help lawyers comply with their existing state bar ethical duties and other legal obligations, while effectively combating money laundering and terrorist financing," Zack told the bar leaders. He also emphasized that the *Guidance* will help eliminate the need for federal legislation or agency regulations in this area, pointing out that in recent years Levin and Rep. Carolyn Maloney (D-N.Y.) introduced bills that would have imposed onerous anti-money laundering obligations on lawyers and opened the door to regulation that would have required lawyers to report certain confidential information to the government in violation of state bar ethical rules. ■

ABA opposes permanent adoption of temporary sentencing amendment

The ABA submitted [comments](#) in March opposing the U.S. Sentencing Commission's proposal to permanently adopt a temporary emergency amendment to the U.S. Sentencing Guidelines that was put in place last year upon enactment of the Fair Sentencing Act (FSA), which reduced the sentencing disparity between crack and powder cocaine offenses.

The temporary emergency amendment is scheduled to be in place until Oct. 31, 2011, while the commission follows the annual process for approval of permanent amendments to the guidelines. In addition to reducing the powder-crack sentencing disparity from 100-1 to 18-1, the law, P.L. 111-220, increased the amount of crack cocaine required to trigger imposition of a mandatory minimum sentence, eliminated the five-year mandatory minimum sentence for first-time possession, and incorporated aggravating and mitigating factors for drug trafficking offenses.

The sentencing disparity had led to draconian sentences for low-level offenders rather than serious and major drug traffickers and was associated with a highly disproportionate concentration of African-American individuals sentenced for crack offenses. The temporary emergency amendment, however, circumscribed the remedial effects of the FSA by reducing the number of eligible defendants and decreasing the amount of the sentencing reduction for qualifying individuals. The temporary amendment raised the base offense levels of crack and powder from 24 grams to 30

see "*Fair Sentencing Act*," page 8

“ABA Day in Washington” - April 12-14, 2011



Sen. Susan Collins (R-Maine) (center) greets Maine State Bar Association Executive Director Julie Deacon and President David S. Wakelin.



White House Counsel Bob Bauer talked about judicial confirmations.



ABA President Stephen N. Zack (left) presents a congressional award to Sen. Jeff Merkley (D-Ore.).



Keynote speaker Rep. James Clyburn (D-S.C.) (left) chats with ABA Day Planning Committee Chair William C. Hubbard and former Michigan Bar President Reginald Turner.



Sen. John Kerry (D-Mass.) (right) discusses the issues with Judge Robert B. Collings, magistrate judge for the U.S. District Court for the District of Massachusetts, National Conference of Federal Trial Judges; Boston Bar President-elect Lisa Goodheart; and Boston Bar President Donald Frederico.



ABA Governmental Affairs Director Thomas M. Susman, ABA President-Elect Nominee Laurel G. Bellows, Sen. Max Baucus (D-Mont.), State Bar of Montana President Joseph Sullivan, ABA House of Delegates Chair Linda Klein, and Robert Carlson, Montana delegate to the ABA House of Delegates completed a productive meeting.



Monte Mollere, access to justice director for the Louisiana State Bar Association, is welcomed by Sen. Mary Landrieu (D-La.).



Sen. Michael B. Enzi (R-Wyo.) (right) receives an ABA congressional award from Joe Bluemel, Wyoming delegate to the ABA House of Delegates, and Wyoming State Bar Executive Director Sleeter Dover.



L. Jonathan Ross, New Hampshire delegate to the ABA House of Delegates, New Hampshire Bar Association (NHBA) President Marilyn McNamara and Russell F. Hilliard, NHBA delegate to the ABA House of Delegates, meet with Sen. Kelly Ayotte (R-N.H.) (right) and a member of her staff.



John Rosenberg, founder, Appalachian Research and Defense Fund of Kentucky; Charles English, ABA Board of Governors; Senate Minority Leader Mitch McConnell (R-Ky.); ABA President-elect Wm. T. (Bill) Robinson III; ABA Executive Director Jack Rives; and Richard Cullison, executive director of Legal Aid of the Bluegrass, talked about Legal Services Corporation funding during their meeting.



Rep. Howard Coble (R-N.C.) (right) listens to North Carolina Bar Association Executive Director Allan Head.

Photos by Lisa Helfert and Joyce Boghosian

Senate committee approves cameras-in-courts bill

A bill approved last month by the Senate Judiciary Committee would allow federal trial and appellate judges to permit the photographing, electronic recording, broadcasting or televising to the public of court proceedings over which they preside except when the action might constitute a violation of any party's due process rights.

The committee approved the bill, S. 410, by a 12-6 vote on April 7. Similar legislation has cleared the panel during the past three Congresses, but has stalled in the full Senate.

"Letting the sun shine in on federal courtrooms will give Americans an opportunity to better understand the judicial process," according to Sen. Charles E. Grassley (R-Iowa). Grassley, who introduced the bipartisan legislation with Sen. Charles Schumer (D-N.Y.), emphasized that the presence of cameras in the courts would not be mandatory and would be at the sole discretion of the judges. The bill also

includes provisions for mandatory guidelines to be set by the Judicial Conference of the United States for obscuring the identities of vulnerable witnesses.

Nineteen states allow news coverage in most courts, 16 allow coverage with slight restrictions, and the remaining 15 allow coverage with stricter rules. Grassley said that S. 410 includes provisions to ensure that the introduction of cameras and other broadcasting devices into federal courtrooms goes as smoothly as it has at the state level.

The Judicial Conference and the Supreme Court historically have opposed electronic coverage of court proceedings. Since 1996, the Judicial Conference has authorized each court of appeals to determine the circumstances in which cameras, if any, may be permitted in their courts in civil cases. Last September, the Judicial Conference, announced a three-year pilot project "to evaluate the effect of cameras in federal district courts and the public

release of digital video recording of some civil proceedings." A call went out this past March encouraging districts to participate in the project.

The ABA supports further experimentation with cameras in the courts under guidelines promulgated by the Judicial Conference. The association maintains that courts that conduct their business openly and under public scrutiny protect the integrity of the federal judicial system by guaranteeing accountability to the people they serve. ■



Judicial Vacancies/Confirmations — 112th Congress* (as of 5/11/11)

<u>Court</u>	<u>Vacancies</u>	<u>Pending Nominations</u>	<u>Confirmations</u>
US Supreme Court (9 judgeships)	0	0	0
US Courts of Appeals (179 judgeships)	17	10	2
US District Courts (678 judgeships)	74	40	19
Court of International Trade (9 judgeships)	0	0	0
Totals	91	50	21

*Includes territorial judgeships

Washington News Briefs

LAW SCHOOL TRANSPARENCY: ABA President Stephen N. Zack explained ABA's activities last month with regard to helping potential law students make informed choices about law schools. Zack was responding to Sen. Barbara Boxer (D-Calif.), who asked the ABA to provide her with information regarding the accuracy and transparency of law school admissions and post-graduation employment data. In her March 31 letter to the ABA president, Boxer expressed concerns about allegations in news reports that post-graduation and salary information provided by law schools is sometimes falsified to raise the schools' position in the annual *U.S. News and World Report* law school ranking. In an April 27 [response](#) to Boxer, Zack noted that the association is actively disseminating information to potential law students and the general public. The association, he said, has produced a paper entitled "The Value Proposition of Attending Law School," which has been recognized in traditional press and by legal bloggers for its simple, clear approach to helping potential law students weigh their choices. In addition, the ABA encourages students to use the ABA-Law School Admission Council (LSAC) *Official Guide to ABA-Approved Law Schools*, which includes extensive chapters on job opportunities, careers and salaries. He also provided a response from the ABA Section of Legal Education and Admissions to the Bar, which is the Department of Education's recognized accreditor for legal education. The section stated that two of its committees are working on recommendations to improve transparency and provide additional employment, placement and salary information. The recommendations, once finalized, will be submitted to the LSAC for further action. "The Section of Legal Education is dedicated to ensuring that potential law students have as much information as possible to make an informed decision about whether to enter law school and, if so, what school to attend," according to the section.

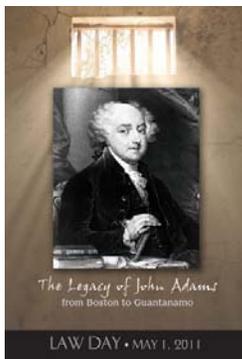
PATENT REFORM: The House Judiciary Committee approved patent reform legislation by a 32-3 vote last month that is similar to a bill overwhelmingly passed by the Senate in March. Although the ABA does not have a position on the overall legislation, the association supports a provision in both bills, H.R. 1249 and S. 23, to institute a "first-inventor-to-file" rule for obtaining a patent. The United States is the only country in the world using the more complex "first-to-invent" standard that relies on "proof-of-invention dates." The bills also include provisions supported by the ABA to allow the U.S. Patent and Trademark Office (USPTO)

to keep the fee revenue it generates, an action that would eliminate diversion of USPTO fees for other purposes. H.R. 1259 has been referred to the House Budget Committee for consideration before proceeding to the House floor for a vote.

SUNSHINE IN LITIGATION: The Senate Judiciary Committee is set to mark up legislation this month that, according to the ABA, would "impose additional unnecessary requirements on, and restrict the discretion of, federal courts in a way that will only increase the time and expense of litigation." S. 623, known as the Sunshine in Litigation Act of 2011, would amend Rule 26(c) of the Federal Rules of Civil Procedure to require courts to make a particularized finding of fact that a discovery protective order would not restrict the disclosure of information relevant to the protection of public health and safety. ABA President Stephen N. Zack expressed ABA opposition to the bill in a May 4 [letter](#) to Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) and Ranking Member Charles Grassley (R-Iowa). Zack explained that the Judicial Conference Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Civil Procedure have studied the issue since the 1990s and have found "no significant problems of protective orders impeding access to information that affects the public health or safety." The ABA president also emphasized in his letter that the bill circumvents the Rules Enabling Act, the procedure established by Congress to ensure that changes to the federal rules are thoroughly reviewed. He stated that the current version of Rule 26(c) is and has been an appropriate and effective way to protect the rights of both litigants and the public without overburdening the administration of justice in the federal courts. "The ABA is deeply concerned that seeking a day in court will become a luxury item if courts and cases cannot operate with greater efficiency and speed. Problems with federal judicial vacancies and court underfunding already wreak havoc with case schedules and the resulting time it takes to resolve a dispute," Zack concluded, adding that "these expensive new rules would cost everyone, and make access to justice even more of a luxury item."



Law Day celebrates legacy of President John Adams



In his April 29 Law Day proclamation, President Obama encouraged all Americans to celebrate and reflect upon the example of President John Adams, whose “legacy of dedication to fairness and the rights of the accused has been carried forward by members of the legal profession for more than two centuries.”

The annual Law Day, first proclaimed in 1958 by President Eisenhower after being envisioned by then ABA President Charles S. Rhyne, celebrates the rule of law. The celebration, officially set for May 1, has grown to encompass weeks of events conducted by schools, bar associations, courts and other organizations throughout the country. The association’s Division for Public Education provides extensive resources and materials to help teachers and bar leaders create and promote Law Day activities.

This year’s theme, “The Legacy of John Adams: From Boston to Guantanamo,” recognizes Adams’ role in defending a British officer and several soldiers charged with firing into a crowd of protestors and killing five civilians in the 1770 Boston Massacre.

ABA President Stephen N. Zack pointed out in his Law Day message that Adams’ acceptance of the case, in the face of mass public outcry, showed the world that America is “a government of laws, not of men.” This year’s theme, Zack said, “fosters understanding of the historical and contemporary role of lawyers in defending the principle of due process and the rights of the accused.”

Zack and National Law Day Chair Kim J. Askew participated in the annual Leon Jaworski Public Program held April 25 in Washington, D.C. The program, established in 2001, featured a panel discussion on the Law Day theme.

Fair Sentencing Act

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grams, the level set by the commission in 2007, to 26 grams and 32 grams, thereby assigning a range that begins at 63 months to offenders who meet the 28-gram threshold that triggers the 60-month statutory minimum.

“To maintain consistency with the goals of the FSA and ABA policy, the ABA advocates implementation of the FSA with the base offense levels set to the 2007 levels of 24 and 30,” the comments stated, maintaining that there is no evidence in the legislative history of the FSA to support the changes.

While the ABA opposes the permanent implementation of the temporary emergency amendment, the association does support retroactive application of a permanent amendment to the drug quantity tables. The commission estimates that 15,227 offenders would be eligible for sentence reductions under retroactive application.

“These sentencing reductions would both reduce racial sentencing disparities and provide relief to the prison system,” the comments said. Even if there are some additional resources required by retroactive application, “this is a small price to pay for the more important goal of achieving justice and fairness within the federal sentencing system,” the comments concluded. ■

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.americanbar.org/advocacy/governmental_legislative_work/publications.html. © 2011 American Bar Association. All rights reserved. Please address correspondence to:

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

Rhonda J. McMillion, editor; Rhonda.McMillion@americanbar.org
Jacklyn Schay, legislative associate; Jacklyn.Schay@americanbar.org