The ABA House of Delegates, convening in Chicago Aug. 6 and 7 during the association’s Annual Meeting, approved an array of new policies and welcomed a new president and House of Delegates chair.

Chicago Lawyer Laurel G. Bellows accepted the presidential gavel from outgoing President Wm. T. (Bill) Robinson III to become the association’s president for 2012-2013. Bellows said she will focus on ending human trafficking, promoting gender equity and addressing cybersecurity issues during her presidential year (see article, page 5). James R. Silkenat assumed the office of president-elect for the year, and will become president in August 2013.

Robert M. Carlson of Montana will serve as chair of the House of Delegates for a two-year term.

Other highlights of the meeting included the awarding of the ABA Medal, the association’s highest honor, to Morris S. Dees Jr., founder of the Southern Poverty Law Center, and appearances by Supreme Court Justice Ruth Bader Ginsberg at programs addressing opera and the law and comparative constitutional law focusing on North America and the Middle East. In addition, showcase continuing legal education sessions focused on the Nuremburg trials, health care reform cases, forensic science, voter registration issues, privacy and Facebook, and diversity in the global environment.

During its meeting, the delegates approved several recommendations of the ABA Commission on Ethics 20/20 that amend the ABA Model Rules of Professional Conduct, and the delegates will take up additional recommendations at the Midyear Meeting in February 2013. The recommendations resulted from a three-year study of how globalization and technology are transforming the practice of law and how the regulation of lawyers should be updated in light of those developments.

The following is a summary of policies approved by the House of Delegates.

**Administrative Law**

*Regulatory Cooperation.* Urges federal agencies to pursue regulatory cooperation with relevant foreign authorities where appropriate and consistent with their legal authority, statutory mandates and regulatory mission. Urges federal agencies to work with foreign counterparts to develop common regulatory agendas, harmonized regulatory standards, information exchanges and mutual recognition of tests and inspections; to promote core principles of sound administrative and regulatory process; and to recommend corrective legislation
### Independence of the Legal Profession

S. 1483 would subject many lawyers to anti-money laundering and suspicious activity reporting requirements under the Bank Secrecy Act when they help clients establish companies. H.R. 4014 would amend the Federal Deposit Insurance Act to clarify that when banks or other supervised entities submit privileged information to the Consumer Financial Protection Bureau during examination or other regulatory processes, the privilege would not be waived as to third parties.

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<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
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<tbody>
<tr>
<td>Independence of the Legal Profession.</td>
<td>House passed H.R. 4014 on 3/26/12.</td>
<td>S. 1483 was referred to the Homeland Security and Governmental Affairs Committee on 8/2/11.</td>
<td>Supports preservation of the attorney-client privilege and work product doctrine and opposes governmental policies, practices and procedures that erode these protections. See pages 7 and 9.</td>
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### Health Care Law

P.L. 111-148 (H.R. 3590) and P.L. 111-152 (H.R. 4872), overhauled the nation’s health care system. H.R. 6079 would repeal the health care reform law. An amendment proposed to S. 223, transportation legislation, would have repealed the law. The Supreme Court ruled 6/25/12 that the health care mandate in the law is constitutional. H.R. 5 and S. 218 would preempt state medical liability laws.

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### Judicial Independence


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<tr>
<td>Judicial Independence.</td>
<td>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. H.R. 3572 was referred to the Judiciary Cmte. on 12/6/11.</td>
<td>S. 348 was referred to the Judiciary Cmte. on 2/15/11. S. 755 was referred to the Finance Committee on 4/7/11. Judicial Cmte. approved S. 410 on 4/7/11. Judicial Cmte. held a hearing on S. 1945 on 12/6/11 and approved the bill on 2/9/12.</td>
<td>Supports prompt filling of judicial vacancies. Opposes initiatives that infringe upon the separation of powers between Congress and the courts.</td>
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### Legal Services Corporation

P.L. 112-55 (H.R. 2112), fiscal year 2012 appropriations legislation, includes $348 million for the LSC. H.R. 5326, fiscal year 2013 appropriations legislation, includes $328 million the LSC. The Senate Appropriations Committee included $402 million in its FY 2013 bill.

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<th>ABA LEGISLATIVE PRIORITY</th>
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Senate committee focuses on human trafficking

The Senate Foreign Relations Committee focused a July 17 hearing on “The Next Ten Years in the Fight Against Human Trafficking: Attacking the Problem with the Right Tools” to discuss ways to combat what committee Chairman John Kerry (D-Mass.) called “modern slavery.”

At the hearing, Kerry emphasized the necessity of passing the Trafficking Victims Protection Reauthorization Act, S. 1301, to “tackle this obviously horrific and unfortunate widespread challenge.”

Kerry’s interest, he said, is on “the underlying causes of human trafficking, including the economic factors that render men, women, and children vulnerable to exploitation” because “slavery whether in the United States or abroad must be recognized, rejected, and eliminated.”

S. 1301, introduced in June 2011 by Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) and reported out of Leahy’s committee in October 2011, would reauthorize and expand programs enacted into law by the original Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations in 2005 and 2008. Similar House bills, H.R. 2830 and H.R. 3589, were introduced by Rep. Christopher Smith (R-N.J.).

Jada Pinkett Smith, an actress and anti-trafficking advocate, spoke at the hearing of the 40,000 people enslaved on American soil at any moment. Noting that the United States has been “a leader in the fight against human trafficking for more than a decade,” she emphasized the importance of reauthorizing the TVPA, which expired last year, and ensuring that anti-trafficking programs receive adequate funding.

Another witness at the hearing, David Abramowitz, vice president of policy and governmental affairs for Humanity United, described trafficking as “one of the most pressing human rights challenges of our time.” He explained some of the target areas his organization is working on to advance “human freedom,” including funding for those who combat trafficking and engaging multinational corporations.

Everyone at the hearing agreed with Abramowitz that “each victim of trafficking and modern day slavery deserves to become a survivor.”

The ABA strongly supports reauthorization of the TVPA, and ABA President Laurel G. Bellows has made human trafficking one of her top presidential priorities for the coming year (see article, page 5).

The association, which adopted policy in 2007 supporting anti-trafficking legislation, approved additional policy on the issue at the August 2011 Annual Meeting that focuses on trafficked children within the United States who are often treated as criminals rather than victims. The policy urges state, local and tribal legislatures to aid minors who are victims of human trafficking in several ways, including permitting their immediate protective custody as dependent children and, except in extreme and compelling circumstances, not charging children under the age of 18 with certain crimes or status offenses that are incident to their trafficking situation.

The policy also urges Congress to enact legislation that enhances state, tribal, territorial and local efforts to combat trafficking of minor children through supporting legal services to victims, shelter and rehabilitative care, and prosecution of adults who are trafficking in minor children. The policy states that federal legislation also should help assure that all noncitizen children who have been exploited for labor, services or commercial sex acts are properly identified as “victims of a severe form of trafficking in persons” as specified in federal law.

Foreign Relations Committee approves Convention on the Rights of Persons with Disabilities

On July 26, the 22nd anniversary of the Americans with Disabilities Act (ADA), the Senate Foreign Relations Committee approved, by a 13-6 vote, the U.N. Convention on the Rights of Persons with Disabilities (CRPD), an international agreement which protects the rights of individuals with disabilities.

The convention also includes broad goals of autonomy, equality, acceptance, and accessibility for disabled persons.

Committee Chairman John Kerry (D-Mass.) lauded the ADA as landmark legislation and stressed how important the convention is to maintaining the ADA’s protections for the 54 million disabled individuals in America and for ensuring the same fair standards for the approximately one billion disabled persons abroad.

Kerry assured committee members that the convention would not affect U.S. law in any way, a major discussion at the markup, emphasizing that current U.S. law far exceeds any requirements within the convention.

If the treaty is ratified, the United States would be obliged to uphold its own laws and report to the United Nations on these relevant laws.

During the markup, committee members debated whether the CRPD could be used in Article III courts to interpret U.S. law. Proponents of the

see “Disability rights,” page 9
continued from front page

U.S. Supreme Court Justice Ruth Bader Ginsburg participated in a discussion on comparative constitutional systems with a panel that included (from left): M. Cherif Bassiouni, emeritus law professor at DePaul University; Morris J. Fish, Supreme Court of Canada; Ginsburg; Salim Joubran, Israeli Supreme Court; Irwin Cotler, Député de Mont-Royal, Canada; and moderator Michael Traison of the law firm of Miller Canfield. The panel focused on systems in the United States, Israel, Canada and the Middle East.
Elder Abuse. Urges state, territorial, tribal and local courts and community organizations to collaborate in establishing court-focused elder abuse initiatives that serve victims or potential victims of elder abuse, and urges such programs to implement specified principles as appropriate for each initiative and jurisdiction.

Gun Violence
Gun Possession Inquiries by Physicians. Opposes governmental actions and policies that limit the right of physicians and other health care providers to inquire of their patients whether they possess guns and how they are secured in the home or to counsel their patients about the dangers of guns in the home and safe practices to avoid those dangers.

Immigration
Detention Standards. Adopts the ABA Civil Immigration Detention Standards, dated August 2012, to govern the treatment of persons in the U.S. immigration detention system.

Haitian Family Reunification. Urges the Department of Homeland Security to create a Haitian Family Reunification Parole Program to expedite entry into the United States of already-approved Haitian beneficiaries of family-based visa petitions.

Individual Rights
Public Participation. Urges federal, state and territorial legislatures to enact legislation to protect individuals and organizations that choose to speak on matters of public concern from meritless litigation designed to suppress such speech, commonly known as SLAPPs (Strategic Lawsuits Against Public Participation).

Racial and Ethnic Profiling. Amends the ABA’s 2008 policy that urges legislation, policies and procedures to provide

New ABA president lays out full agenda for the coming year

Chicago lawyer Laurel G. Bellows, who began her one-year term as ABA president this month, has set an agenda that includes working toward abolishing human trafficking, improving national cybersecurity, promoting gender equity, and emphasizing the importance of jury trials.

Addressing the ABA House of Delegates Aug. 6, Bellows emphasized that lawyers matter and that the ABA is “universally recognized as the leading voice of the legal profession and the leading proponent and defender of the rule of law.”

She established a Task Force on Human Trafficking in the United States to “mobilize the legal profession to pursue justice for victims of the modern day slave trade and to launch a national public awareness campaign” about the issue. She also created a Task Force on National Cybersecurity to identify and address cybersecurity and cyber-espionage challenges that pose a threat to the country’s security and the security of private industry, including law firms.

She indicated that she will push for new laws and policies that encourage gender fairness, which she said is critical to the health and viability of the legal profession and the economy. She has asked the ABA Commission on Women in the Profession and a specially appointed Gender Equity Task force to work on these issues.

Bellows is directing the ABA’s Commission on the American Jury Project to take the lead in working with courts, rulemaking bodies, state legislatures and the organized bar to promote the importance of juries and jury reform and the ABA standards on the jury system.

Bellows is a former chair of the ABA House of Delegates and has held numerous leadership positions within the association, including chairing the ABA Commission on Women in the Profession. As a member of the ABA Board of Governors, she also chaired the Finance Committee.

A former president of the Chicago Bar Association, she founded the Women’s Alliance and also chaired the National Conference of Bar Presidents. She served on the Illinois Supreme Court Commission on the Administration of Justice and on the U.S. Senate Judicial Nominations Commission for Illinois. In 2006, she was named one of the 28 Power Lawyers in the City by Chicago Magazine and was listed among the 25 most influential working mothers in the country in 1997 by Working Mother magazine.

Bellows, a graduate of the University of Pennsylvania and Loyola University School of Law, is a founder of the Bellows Law Group, where she has practiced employment law for more than 30 years.
Judicial Vacancies/Confirmations — 112th Congress*
(as of 8/15/12)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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<tbody>
<tr>
<td>US Supreme Court (9 judgeships)</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>US Courts of Appeals (179 judgeships)</td>
<td>14</td>
<td>6</td>
<td>14</td>
</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
<td>61</td>
<td>25</td>
<td>83</td>
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<tr>
<td>Court of International Trade (9 judgeships)</td>
<td>2</td>
<td>1</td>
<td>0</td>
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<tr>
<td>Totals</td>
<td>77</td>
<td>32</td>
<td>97</td>
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*Includes territorial judgeships

A panel titled “Immigration, Race and Incarceration in the United States” featured (from left): Lisa Marquardt, assistant public defender, Maryland Office of the Public Defender; Sara Dill, criminal defense and immigration lawyer; and broadcast journalist Maria Hinojosa. The panel was moderated by professor and immigration lawyer Margaret Stock.

Duties to ban law enforcement’s use of racial and ethnic profiling to also ban use of religious profiling and characteristics indicative of religious affiliation.

Legal Education

**Consumer Information.** Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in amending the ABA Standards and Rules of Procedure for Approval of Law Schools regarding Standard 509 (Consumer Information) and Rule 16 (Sanctions). The amendments clarify the obligations of law schools with respect to the reporting and publication of consumer information and strengthen the range of sanctions that may be imposed for violations of the standard.

Legal Ethics/Legal Profession

**Ethics 20/20.** Amends the ABA Model Rules of Professional Conduct and Commentary in six areas: lawyers’ use of technology and confidentiality; lawyers’ use of technology and client development; ethical implications of retaining lawyers and non-lawyers outside the firm to work on client matters (i.e., outsourcing); the detection of conflicts of interest in a manner consistent with a lawyers’ duty of confidentiality when lawyers move from one firm to another, merge, or there is a sale of a law practice; practice in a new jurisdiction of a lawyer who has been engaged in the active practice of law while pursuing admission; and reducing the time in practice requirement to three to five years for admission by motion.

**Rural Areas.** Urges governmental support of efforts to address the decline in the number of lawyers practicing in rural areas and access to justice issues for residents in rural America.

Tort Law

**Dangerous Dog Laws.** Urges legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous dog/reckless owner laws that ensure due process protections for owners and to repeal any breed-discriminatory or breed-specific provisions.

Annual Meeting ** Annual Meeting

**Annual Meeting continued from page 5**

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FINANCIAL ACCOUNTING STANDARDS: The Financial Accounting Standards Board (FASB) voted July 9 to withdraw proposed amendments to the Financial Accounting Standards that the ABA maintains would have substantially increased the amount of privileged information companies must report in connection with periodic disclosures of litigation loss contingencies. The board voted 5-2 to end the five-year effort to write a new accounting standard for loss contingencies after concluding that “improvements to financial reporting are more likely to be achieved through robust compliance than through additional standard setting,” according to FASB Chairman Leslie Seidman. FASB issued an initial exposure draft in 2008 and addressed many of the ABA’s concerns when it issued a revised draft in 2010. In the ABA’s subsequent comments submitted to the board in September 2010, however, then ABA President Stephen N. Zack said the ABA continued to question the need for FASB to change existing disclosure standards with regard to loss contingencies. Following the FASB decision to withdraw its proposed revisions, the board issued an invitation on July 12 for stakeholders to comment on a proposed overall financial statement disclosure framework as a first step in collecting broad input on ways to improve the effectiveness of disclosures. The invitation to comment suggests a number of possibilities rather than proposing specific changes, and FASB plans to hold several interactive forums on the proposal. The deadline for comments on the new proposed disclosure framework is Nov. 16.

ADAM WALSH REAUTHORIZATION: Earlier this month the House passed H.R. 3976, legislation to reauthorize the 2006 Adam Walsh Child Protection and Safety Act, which seeks to protect communities from those who have committed sex crimes against children. The bill, introduced by Rep. James Sensenbrenner (R-Wis.), would reauthorize key programs of the act for five years at amounts reflecting the fiscal year 2012 appropriations levels. One of the programs reauthorized would be the Sex Offender Registry and Notification Act (SORNA), a uniform system of sex offender registries that applies to all offenders. The ABA, which opposed the original act’s treatment of juvenile offenders as adults, adopted additional policy in 2009 urging Congress to amend the Adam Walsh Act regarding sexual crimes committed by juveniles to require juvenile court judges to consider factors relevant to the specific offense and the individual juvenile offender in determining whether they should be placed on sex offender registries, subjected to sex offender registration requirements and community notification of their offenses, or otherwise face additional restrictions generally placed on adult sexual offenders. According to the ABA, sexually inappropriate behavior by children requires a response that recognizes the major differences between youth and adult sex offenders in order to best serve the interests of the child as well as those of the community. H.R. 3976 responds to those concerns by modifying key provisions in the act to reduce its overly severe treatment of juvenile offenders, including requiring placement of such offenders on registries viewed only by law enforcement entities and not on public registries.

WOMEN IN AFGHANISTAN: Rep. Susan A. Davis (R-Calif), the ranking minority member of the Military Personnel Subcommittee of the House Armed Services Committee, and former Massachusetts Lt. Gov. Kerry Healey of the Department of State Partnership for Justice Reform in Afghanistan spoke about the status of women in Afghanistan at a panel discussion sponsored July 19 by the Women in National Security Initiative of the ABA Standing Committee on Law and National Security and the ABA Governmental Affairs Office. Davis described a recent House Armed Services Committee oversight trip to Afghanistan where a bipartisan delegation of members of Congress and professional staff visited Kabul, Helmand and Kandahar to receive updates on progress in Afghanistan. They also met with Afghan women during a female shura, or consultation. While overall conditions for women have improved since 2001, there have been recent attacks against women, including the assassination of the country’s director of the Ministry of Women’s Affairs and acid attacks at several schools for girls. Healy said that she believes that education is the key to gender equality, and there are about 2 million more girls in school now than there were when the Taliban fell in 2001. Davis described the conditions in detention centers where women are detained for various moral crimes, such as running away from an abusive household. ABA President Laurel Bellows, who introduced the panelists, said “there is no question that the women of Afghanistan have a long road to travel before they achieve full equality, but events such as this help raise awareness and provide depth to the discussion.” The panel’s moderator was Jill Rhodes, a member of the ABA standing committee. Also participating in the event were Jaime Cheshire, senior advisor to House Armed Services Committee chairman Rep. Howard P. “Buck” McKeon (R-Calif.), and Debra Wada, deputy minority staff director for the committee.
ABA urges steps to curb prison overcrowding/costs

The ABA urged Congress this month to enact federal legislation to address out-of-control prison costs and prison overcrowding.

Then ABA President Wm. T (Bill) Robinson III, in a statement submitted to the Senate Judiciary Committee for the record of an Aug. 1 hearing titled “Rising Prison Costs: Restricting Budget and Crime Prevention Options,” said the hearing “can serve as an important step toward generating a higher level of congressional scrutiny of costly, outdated and, in important respects, ineffective federal corrections spending policies and related sentencing laws.”

Robinson pointed out that in 1980 the federal prison system housed 24,000 people at a cost of $333 million. Since then, however, the federal prison population has exploded with a 700 percent increase to 217,000 inmates at an annual cost of $6 billion, a 1700 percent increase in spending.

“Overcrowding plagues the federal system, operating at almost 40 percent over capacity,” Robinson said, “but we cannot build ourselves out of this crisis.” He explained that disproportionate investment in prison expansion has diminished attention to viable and fiscally sound alternatives to prison and weakened the concept that prison should be the sanction of last resort.

He noted that the federal government wastes precious taxpayer dollars when it incarcerates nonviolent offenders whose actions would be better addressed through alternatives to prison and that bipartisan reforms in the states have expanded proven alternatives to prison that save money and still safeguard the public. These reforms, which can serve as models for federal changes, include: providing for probation rather than jail time for possession of less than a gram of drugs; expanding eligibility for community sentencing; reducing time-served for certain categories of nonviolent offenders; and removing mandatory minimums for first-time offenders. Such changes, Robinson said, have led to the first overall decline in state prison populations since 1980.

Robinson said that estimated savings in the first year alone from instituting specific reforms would include $200 million if Congress makes crack cocaine sentencing reforms retroactive and $41 million if statutory language is clarified for calculating time credits for good behavior. He also recommended that Congress enact legislation that would expand use of probation and expungement of criminal convictions for low-level offenders, institute a review process to accelerate supervised release eligibility, enhance elderly nonviolent offender early-release programs, and restore proportionality to drug sentencing.

In addition, the Bureau of Prisons should be required to use its existing authority to make better use of residential reentry centers, home confinement and the residential drug abuse program as well as compassionate release.

Boston Police Commissioner Edward F. Davis testified at the hearing that “we need to continue our focus on taking violent offenders off our streets while creating comprehensive response to drug offenders – one that encourages treatment and effective supervision when they are released.”

“Sentencing reform works,” according to Senate Judiciary Committee Chairman Patrick J. Leahy (D -Vt.), who emphasized that “taxpayer dollars can be used more efficiently to better prevent crime than simply building more prisons.”

Get Involved!

Join the ABA Grassroots Action Team, your opportunity to play a role in the development and enactment of public policy that furthers the interests of justice, promotes the legal profession, and establishes the rule of law.

Join Now
ABA concerned about Federal Reserve Board proposal

The ABA expressed its serious concerns July 31 about a Federal Reserve Board proposal to require banking holding companies to report detailed information regarding their legal reserves for pending and probable litigation claims.

Then ABA President Wm. T. (Bill) Robinson III, writing to the Federal Reserve System’s Board of Governors, expressed the association’s appreciation for the board’s efforts to gather additional data regarding the operational loss exposures of banking holding companies in an effort to preserve the safety and soundness of the banking system. He cautioned, however, that the proposed changes to the Comprehensive Capital Analysis and Review data collection schedules could “weaken fundamental attorney-client privilege and work product protections, undermine the confidential lawyer-client relationship and the right to effective counsel, and severely prejudice banks in defending against lawsuits.”

Robinson explained that banks and other companies establish their legal reserves for litigation claims in close consultation with their lawyers. Because these consultations almost always involve confidential communications between the client and the lawyer, as well as extensive legal analysis and the exercise of professional judgment by the lawyer in weighing the relative strengths of claims defenses, the resulting legal reserve determinations are inherently privileged and work product protected. “By requiring banks to submit privileged and confidential legal reserves information to the board, the proposal risks chilling and seriously undermining the confidential lawyer-client relationship,” he said.

“Lawyers and their bank clients alike may lose confidence that their private communications and the lawyer’s professional analysis, judgment and advice will remain confidential.” Therefore, Robinson noted, the proposal could affect both the willingness of bank clients to be fully candid with their lawyers and the lawyers’ willingness to provide expert counsel to the banks, “thereby interfering in a substantial way with the banks’ right to counsel.” He also expressed concern that the proposal could severely prejudice the banks’ legal positions in pending and probable litigation matters by informing adversaries of how the banks and their lawyers weigh the strengths and weaknesses of claims.

Robinson urged the board to withdraw the proposal and to continue its constructive dialogue with the legal profession, the banking community and other stakeholders to create new data collection procedures.