Inside This Issue

This year’s event “historic”

ABA Day draws bar leaders from all 50 states and the District of Columbia

For the first time, representatives from all 50 states, the District of Columbia and the Virgin Islands attended the annual ABA Day in Washington, an opportunity for participants to meet face-to-face with their representatives and senators to advocate on issues of importance to the legal profession.

This year, 330 bar leaders came to Washington for the three-day event, which was coordinated by the Governmental Affairs Office (GAO) and the ABA Day Planning Committee and cosponsored by the ABA Section Officers Conference, the association’s Young Lawyers Division, the National Conference of Bar Presidents and the National Association of Bar Executives.

In another first, participants posted their experiences and comments on Twitter.

“Your participation ensures that crucial information in support of equal access to justice is presented to Congress by the organized bar,” ABA Day Planning Committee Chair William C. Hubbard emphasized in his welcome message. “You are the strongest advocates for adequate funding and resources essential to preserve our justice system,” he said.

Those visiting their legislators this year focused on three critical issues:

• urging Congress to fund the Legal Services Corporation at $402 million for fiscal year 2013;
• supporting S. 755 and H.R. 1416, federal tax-intercept legislation to address the crisis in state court funding; and
• ensuring the protection of victims of crime and violence through passage of S. 1925, reauthorization of the Violence Against Women Act.

In addition to more than 400 visits on Capitol Hill, the event featured a welcome dinner at the Canadian Embassy, where ABA President Wm. T. (Bill) Robinson III recognized the following members of Congress with Justice Awards: Sens. Kay Bailey Hutchison (R-Texas), Lindsey Graham (R-S.C.), Jack Reed (D-R.I.) and Patty Murray (D-Wash.), and Reps. Hal Rogers (R-Ky.) and Elijah Cummings (D-Md.).

During a reception hosted by Justice Sonia Sotomayor at the U.S. Supreme Court, Hubbard presented Grassroots Advocacy Awards to George Cauthen of South Carolina, Jonathan Ross of New Hampshire, Betty Balli Torres of Texas, the State Bar of Michigan and the Supreme Court of Texas.

Summing up the importance of ABA Day, ABA Governmental Affairs Director Thomas M. Susman, emphasized that participants’ personal connection with legislators “gives credible and effective voice” to the ABA’s message and “enhances the force of our advocacy.”
# LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
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<td><strong>Independence of the Legal Profession.</strong> 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.</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 page 9.</td>
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<td><strong>Health Care Law.</strong> 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.</td>
<td>House passed H.R. 2 on 1/19/11. Judiciary Committee held a hearing on H.R. 5 on 1/20/11 and approved the bill on 2/16/11. House passed H.R. 5 on 3/22/12.</td>
<td>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.</td>
<td>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 &quot;health courts&quot; that take away jury trials.</td>
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<td><strong>Judicial Independence.</strong> No cost-of-living adjustment was provided for federal judges in 2010, 2011 or 2012. 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 and H.R. 2802 would authorize cameras in federal district and appellate court for civil trials. S. 1945 and H.R. 3572 would authorize televising of Supreme Court open proceedings.</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. Judiciary Cmte. approved S. 410 on 4/7/11. Judiciary 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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When Attorney General Eric Holder convened a hearing last month for his Task Force on Children Exposed to Violence, Governmental Affairs Director Thomas M. Susman submitted comments on the ABA’s long history of advocating on behalf of children.

The task force is a part of the Defending Childhood Initiative established by Holder in September 2010 with a goal of protecting children from violence, whether as witnesses or victims. A 2009 study done by the Department of Justice (DOJ) discovered that a shocking 60 percent of U.S. children were exposed to violence and that violence at an early age is shown to negatively affect physical and psychological growth in the long-term.

In his comments, Susman said the ABA is committed to efforts to prevent and respond “to the violence that children experience as victims and witnesses, and association work has reflected that concern in the adoption of many policy resolutions that address these issues and in its projects and programs.”

In 2010, the ABA worked with DOJ to study how the association could further support the rights of child crime victims under the “Enhancing Legal Professionals’ Responses to Victims of Child Abuse” project. In addition, Susman explained that the ABA has advocated for funding for DOJ projects to evaluate the impact of independent legal counsel on child victims of, and witnesses to, crimes.

The ABA’s Center on Children and the Law is working with the DOJ-funded Safe Start Center and the Family Policy Association to publish a tool and resource guide to help court-appointed attorneys and advocates identify children’s polyvictimization and trauma. The association is hoping with the support of DOJ to use these materials in training lawyers.

The center also is working on a series of other projects to advance the advocacy of child victims. In addition to training materials focusing on recognizing trauma in children, the center is focused on spreading awareness and creating training materials concerning the sensitivity of questioning child victims of violence and crime.

Susman emphasized that the legal profession, through the ABA as its national representative, “recognizes its important role in helping to prevent exposure of children violence, in responding to perpetrators of violence against children and in ameliorating the effects of violence on all children, including those involved in the justice system.”

Based on testimony and comments from four hearings, the task force will issue a final report of findings and recommendations to the attorney general this fall.

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**LAW DAY 2012 celebrated around the country**

“No Courts, No Justice, No Freedom” was the theme of this year’s Law Day, which brought together legal and civic leaders from around the country for events highlighting the need for adequate funding for the courts.

President Obama, who proclaimed May 1 as Law Day USA 2012, said the Law Day theme recalls the historic role the courts have played in protecting the fundamental rights and liberties of all Americans.

“Our courts are the guarantors of civil justice, social order and public safety, and we must do everything we can to enable their critical work,” he said. “The courthouse doors must be open and the necessary services must be in place to allow all litigants, judges and juries to operate efficiently.”

Numerous events were held in conjunction with Law Day, including the following gatherings in DC:

- A news conference at the Newseum featuring representatives from the ABA Task Force on Preservation for the Justice System, the NAACP Legal Defense and Educational Fund, the Conference of Chief Justices, the American Association for Justice and the Chamber of Commerce;
- The annual ABA/Closeup Foundation Teachers Luncheon;
- The annual Leon Jaworski Public Program, sponsored by the ABA Division for Public Education, featuring a panel of experts focusing on “The Courts and Constitutional Democracy in America”; and
- A general counsel summit on state courts.

Law Day was first proclaimed in 1958 by President Eisenhower after being envisioned by then ABA President Charles S. Rhyne. This year’s National Law Day Chair, Mark D. Agrast, emphasized that the 2012 theme should resonate with every citizen. “Open and accessible courts are essential to maintaining the American way of life,” he emphasized.
ABA Day in Washington - April 17-19, 2012

ABA Justice Award recipient Rep. Elijah Cummings (D-Md.) gathers with the Maryland delegation and ABA leaders. From left: Howard County District Court Judge Pamila Brown; Maryland State Bar Association (MSBA) Executive Director Paul Carlin; Rep. Cummings; Paulette Brown, member, ABA Day Planning Committee; MSBA Past President Herbert Garten; ABA President Wm. T. (Bill) Robinson III; ABA Day Planning Committee Chair William C. Hubbard; MSBA President Henry Dugan; President-elect John Kudel; and President-elect Designee Michael Baxter.

ABA House of Delegates Chair Linda Klein; Rep. Mazie Hirono (D-Hawaii); and Margaret Masunaga, Hawaii State Bar Association.

The Florida Bar delegation visited Sen. Bill Nelson (D-Fla.). Front row from left: Berneice Cox, Randi Whitehead, Jane Curran and Maria Henderson. Top row, from left: Judge Thomas Snook; Sen. Nelson; Tremaine “Teddy” Reese, chair, ABA Law Student Division; General Counsel Paul Hill; and Neal Sonnett, member, ABA Board of Governors.

ABA Day participants visiting Rep. Dave Reichert (R-Wash.) from the Washington State Bar Association (WSBA) were (from left): Stan Bastian, chair, Equal Justice Coalition; WSBA President Steve Crossland; Eric González Alfaro, director, Equal Justice Coalition; Rep. Reichert; Barbara Madsen, chief justice, Washington State Supreme Court; Harry Korrell, Legal Services Corporation Board; and Caitlin Davis Carlson, executive director, Legal Foundation of Washington.

Top row from left: ABA Justice Award recipient Rep. Harold Rogers Jr. (R-Ky.) and ABA President Wm. T. (Bill) Robinson III. Seated from left: John Rosenberg, Charles English, and Gene Vance from the Kentucky Bar Association.

State Bar of Nevada President-elect Frank Flaherty and President Connie Akridge with Sen. Dean Heller (R-Nev.).

Lynn Allingham of Alaska, member, ABA House of Delegates; and Supreme Court Justice Sonia Sotomayor.

Grassroots Advocacy Award individual recipients (front row from left) were George Cauthen, South Carolina Bar; Betty Balli Torres, Texas Access to Justice Foundation; and L. Jonathan Ross, New Hampshire Bar Association. Also on the front row is Julie Fershtman, accepting the award for the Michigan State Bar. Back row is ABA Day Planning Committee Chair William C. Hubbard; Justice Nathan Hecht and Chief Justice Wallace Jefferson, accepting for the Supreme Court of Texas; and ABA President Wm. T. (Bill) Robinson III.
ABA supports Medicare Secondary Payer legislation

The ABA expressed support last month for legislation to address confusion and uncertainty in situations where Medicare is a secondary rather than the primary payer of medical expenses related to workplace injuries.

H.R. 5284, sponsored by Reps. Dave Reichert (R-Wash.) and Mike Thompson (D-Calif.), would establish a predictable and efficient set-aside approval process that provides reasonable protection for injured workers and Medicare, according to the ABA.

Congress passed the Medicare Secondary Payer Act (MSP) in 1980 as a way to control the expanding costs of the Medicare program by identifying specific conditions under which Medicare is a secondary payer when another source of funds for medical treatment is available. In 2001, the Centers for Medicare and Medicaid Services (CMS), which administers the Medicare programs, determined that the Medicare Set-Aside Arrangement (MSA) is the recommended method of protecting Medicare’s future. An MSA creates a trust account setting aside a portion of a settlement for future medical expenses.

Currently, workers’ compensation settlements that overlap with Medicare coverage are subject to lengthy, cumbersome review by CMS to ascertain appropriate “set-aside” coverage amounts for medical expenses. The MSP Act is being used by Medicare to assert the right to review and challenge settlements of Workers’ Compensation claims, and CMS has adopted internal procedures for prior review of proposed workers’ compensation settlements even though there is no statute or regulation providing for that.

In an April 26 letter to Reichert and Thompson, ABA Governmental Affairs Director Thomas M. Susman commended the legislators for incorporating certain principles in H.R. 5284 that reflect ABA policy adopted in February 2005.

“These principles,” Susman said, “include establishing clear criteria for when a set-aside may be reviewed by CMS, creating a time frame within which CMS must provide information regarding conditional payments, and establishing an appeal procedure if the parties dispute the CMS ruling regarding the allocation of settlement proceeds.”

Introducing the bill April 27, Reichert said, “This is a much-needed ‘common sense’ reform to ensure that Medicare claims are handled in a way that is more efficient so that the parties involved can move forward swiftly and with certainty to protect injured workers. Our bill gives injured workers the confidence that their health care claims will be processed in a fair and timely way.”

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Judicial Vacancies/Confirmations — 112th Congress*  
(as of 5/8/12)

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<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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<tr>
<td>US Supreme Court (9 judgeships)</td>
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<td>US Courts of Appeals (179 judgeships)</td>
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<tr>
<td>US District Courts (678 judgeships)</td>
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<td>73</td>
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<tr>
<td>Court of International Trade (9 judgeships)</td>
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<td>0</td>
<td>0</td>
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<tr>
<td><strong>Totals</strong></td>
<td><strong>79</strong></td>
<td><strong>32</strong></td>
<td><strong>85</strong></td>
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*Includes territorial judgeships
LEGAL SERVICES CORPORATION (LSC): After the Senate Appropriations Committee voted last month to increase the LSC’s funding level from $348 million to $402 million in fiscal year 2013, the House Appropriations Committee followed that vote with support for a decrease in the corporation’s funding to $328 million. The LSC appropriation is part of legislation that funds the Departments of Commerce and Justice, science programs and related agencies (CJS), and the House and Senate are expected to vote on their versions of the fiscal year 2013 CJS bill this month. The ABA is urging Congress to approve a $402 million appropriation, the amount requested by President Obama in his budget request. According to the association, the need for legal services for poor Americans has never been greater, and that need already far outstrips the federal funding that LSC grantees receive. “We have an obligation to ensure a strong funding level for LSC so that our courts can function effectively and veterans, the elderly, disaster victims and families facing foreclosure have somewhere to turn for free legal advice,” ABA President Wm. T. (Bill) Robinson III said in a statement supporting increased funding.

LIBRARY OF CONGRESS: The ABA emphasized to Congress last month that further funding cuts to the Library of Congress, which houses the Law Library of Congress, would not only affect the ability of Congress to do its job, but would severely negatively impact the public, including teachers, scholars, lawyers and small business owners. In letters to members of the House and Senate Appropriations Subcommittees on the Legislative Branch, ABA Governmental Affairs Director Thomas M. Susman noted that the ABA, through its Standing Committee on the Law Library of Congress, supports the work of the Library and its Law Library. Susman urged the appropriators to agree to the Library’s fiscal year 2013 request to maintain funding at the current level with a very modest increase to account for inflation. He explained that when funding was reduced for fiscal year 2012, the Library eliminated 186 positions, and some Library programs already have been adversely affected. Susman pointed out that not only does the Library respond to requests on a wide range of issues, the Law Library has had an important role in restoring world governments. For example, when the Taliban destroyed the legal documents of the Afghan people, the Law Library was one of the few institutions in the world that maintained the historic records and was able to help reconstruct the country’s legal system. The Law Library also helped rebuild the Haitian justice system after the 2010 earthquake destroyed Haiti’s legal records. In addition to advocating for funding to enable the Law Library to preserve hard copies of legal materials and further develop access to materials online, Susman urged Congress to provide full funding for transferring materials to appropriate storage facilities and for building Ft. Meade Mod5, a new storage facility to relieve the overcrowded conditions on Capitol Hill. He explained that this would allow the Library to continue an acquisitions program consistent with its stature as one of the world’s finest libraries. The Library and Law Library, with collections built up over 212 years, are truly “national treasures,” Susman said, adding that the ABA hopes that Congress can find the “means to protect and enhance the value of these treasures for the benefit of all Americans, now and for generations to come.”

IMMIGRATION: The ABA Commission on Immigration released an updated version April 19 of “Know Your Rights,” an educational video for individuals held in immigration detention facilities around the country. The 45-minute video offers information on how to navigate the court system and what to expect while detainees await their day in court. The commission is working with U.S. Immigration and Customs Enforcement to distribute the video to the 250 detention centers that house more than 400,000 men and women each year, of which 80 percent do not have lawyers. “Our goal is to increase access to justice for the hundreds of thousands of detainees facing deportation and permanent separation from their families. Reliable information is especially important since we know that so many detainees won’t be able to obtain a lawyer and will be forced to represent themselves,” said Karen T. Grisez, chair of the ABA commission, which collaborated on the project with the American Immigration Lawyers Association, the Florence Immigrant and Refugee Rights Projects, Detention Watch Network and the National Immigrant Justice Center. During an event unveiling the video, ABA President Wm. T. (Bill) Robinson III said, “This new video will provide a crucial tool to thousands of adults held in immigration detention each year, particularly those held in smaller, more remote facilities with no legal orientation program. It will help to promote a fair legal process and to provide meaningful access to justice.”
Senate passes VAWA reauthorization bill; House action next

The Senate, after rejecting proposals to narrow the scope of Violence Against Women Act (VAWA) reauthorization legislation, passed the bill April 27 by a 68-31 vote.

The ABA-supported legislation, S. 1925, would extend programs that provide services to victims of domestic violence, dating violence, sexual assault and stalking and has the support of the White House.

The legislation would add uniform nondiscrimination provisions to VAWA that for the first time would provide inclusive language to ensure that victims seeking assistance cannot be denied services based on gender identity or sexual orientation, as well as race, color, religion, national origin, sex or disability. The bill also would strengthen tribal criminal jurisdiction over individuals who assault Native American spouses and dating partners in Indian country and would make available previously issued but unused visas to illegal immigrants who are victims of domestic abuse.

During debate on the bill, senators rejected a substitute amendment offered by Sens. Kay Bailey Hutchison (R-Texas) and Charles E. Grassley (R-Iowa) that would have removed the new provisions and, among other things, instituted additional mandatory minimum sentences for certain aggravated sexual assault crimes. The Senate also voted against including an amendment proposed by Sen. John Cornyn (R-Texas) to require the Justice Department to direct more funds toward reducing the DNA-testing backlog related to rape investigations. Also defeated was a third amendment offered by Sen. Amy Klobuchar (D-Minn.) that would have authorized grant funds to be used for DNA backlog testing and allowed grants toward audits of the backlog. The DNA backlog issue is expected to be addressed in separate legislation.

“The Violence Against Women Act has been the single most effective federal effort to respond to the epidemic of domestic violence, dating violence and stalking in this country,” ABA President Wm. T. (Bill) Robinson III wrote to all senators April 26 in support of S. 1925. Robinson emphasized that reauthorizations in 2000 and 2005 improved the act and that the current bill was carefully crafted to reflect discussion with more than 2,000 advocates and experts across the country.

He also pointed out that the ABA policy adopted in 2008 strongly supports legislation and appropriate

see “VAWA,” page 9

LEGAL SERVICES: ABA President Wm. T. (Bill) Robinson III participated April 18 in a White House Forum on the State of Civil Legal Assistance. Those appearing on the panel were (from left): former Attorney General Richard Thornburgh; White House Counsel Kathryn Ruemmler; Will A. Gunn, general counsel, Department of Veterans Affairs; moderator Martha Minow, Harvard Law School dean and LSC Board vice chair; Jess H. Dickinson, Mississippi Supreme Court justice; Robinson; Illinois Attorney General Lisa Madigan; and Mark Childress, deputy chief of staff to President Obama.
ABA opposes CFPB proposed rule on privileged information

The ABA last month urged the Consumer Financial Protection Bureau (CFPB) to withdraw a proposed rule that the association believes would improperly pressure both bank- and non-bank-supervised entities to submit privileged information to the CFPB.

In addition, the association maintains that the proposed rule would fail to achieve its stated objective of protecting the privileged status of information once it is submitted to the bureau in connection with the bureau’s supervisory and regulatory processes.

ABA President Wm. T (Bill) Robinson III expressed ABA concerns that these and other key aspects of the proposed rule could undermine and weaken, rather than safeguard, fundamental attorney-client privilege and work product protection.

In his April 12 comment letter to Monica Jackson in the CFPB Office of the Executive Secretary, Robinson said the bureau should encourage Congress to promptly enact legislation such as H.R. 4014, a bill that passed by the House March 26. The legislation, which the ABA endorsed in February, would create a single consistent standard for the treatment of privileged information submitted to all federal agencies that supervise banks, including the CFPB. Unlike the proposed rule, the legislation would preserve the privileged status of materials submitted to the bureau, he emphasized.

Robinson also questioned language in the proposed rule stating that the bureau has the legal authority to force both depository and non-depository entities it supervises to produce information protected by the attorney-client privilege and the work product doctrine. Contrary to the CFPB’s position, Robinson said that the Dodd-Frank Wall Street Reform and Consumer Protection Act, which established the CFPB, does not grant the bureau the authority to compel supervised entities to produce privileged or work product protected materials.

Because the proposed rule is based in part on the CFPB’s unfounded assertion that it has authority to require production of privileged materials, Robinson explained, the proposed rule may not protect the privileges status of that information or prevent third parties from accessing it.

The ABA also expressed serious concerns over the effect the proposed rule could have on the relationship between supervised entities and their lawyers.

“By pressuring supervised entities to submit privileged and work product materials, the bureau’s policy risks chilling and seriously undermining the confidential lawyer-client relationship,” Robinson wrote. He added that any policy to regularly seek the production of privileged or work product protected materials and information could discourage supervised entities from seeking and obtaining the expert legal representation that they may need, thereby interfering in a substantial way with the fundamental right to counsel.

He also warned that the adoption of the proposed rule could cause, rather than discourage, litigation over the bureau’s alleged authority to compel production of privileged material.

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. © 2012 American Bar Association. All rights reserved. Please address correspondence to:


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