Three-day event draws 350 participants

Successful ABA Day focuses on LSC funding, tax accounting issue

This year’s ABA Day in Washington drew 350 lawyers from 49 states and the District of Columbia April 8-10 to meet with members of Congress to discuss issues of importance to the legal profession.

The event, now in its 17th year, is an annual tradition coordinated by the Governmental Affairs Office and cosponsored by the National Conference of Bar Presidents, the National Association of Bar Executives, the ABA Section Officers Conference and the ABA Young Lawyers Division. This year’s meetings focused on the need for increased funding for the Legal Services Corporation (LSC) and the association’s opposition to a tax proposal that the ABA maintains would impose substantial new financial burdens on many law firms.

Attendees urged members of Congress to fund LSC at the Obama administration’s request of a minimum of $430 million for fiscal year 2015. They argued that more Americans than ever – 63.5 million – qualify for civil legal aid and include veterans, domestic violence victims, those coping with natural disasters, and families involved in child custody disputes. Last year, strong lobbying efforts by the ABA and state and local bar associations resulted in a $365 million appropriation – a $25 million increase in spite of current federal budget constraints (see article, page 3).

ABA Day participants also asked their representatives and senators to remove mandatory accrual accounting provisions from draft tax reform legislation being considered in both the House and Senate. The provisions would affect law firms and other types of personal services businesses with annual gross receipts of more than $10 million by requiring them to use the accrual method of accounting rather than the traditional cash receipts and disbursement method.

“ABA Day allows lawyers to create lasting relationships with congressional delegations and key staff members, and helps the ABA public policy team better represent our profession,” according to Linda A. Klein, chair of the ABA Day Planning Committee. “Members of Congress rate constituent visits among the most important things they do, and past experience shows us that when a constituent lawyer travels to Washington just to talk about issues of importance to our justice system, these special efforts work,” she emphasized.

The ABA honored the following members of Congress during a reception and dinner at the Institute of Peace: Sen. Rob Portman (R-Ohio), for his work on combatting sex trafficking and on reducing the high rate of recidivism within the prison population; Sen. Kirsten Gillibrand (D-N.Y.), for leading the charge to repeal the military’s “Don’t Ask Don’t Tell” policy on sexual orientation, her support for the Employment Non-Discrimination Act, and her cosponsorship of the Paycheck Fairness Act; Rep. Mike Quigley (D-Ill.), for his
**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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<tbody>
<tr>
<td><strong>Gun Violence.</strong> S. 150 and H.R. 437 would limit the future sale and transfer of assault weapons and ammunition devices that hold more than 10 bullets. S. 54 and H.R. 452 seek to combat the practices of straw purchasing and illegal trafficking of firearms. S. 374 would strengthen background checks. S. 649, a comprehensive bill, includes numerous gun violence prevention provisions.</td>
<td>H.R. 437 was referred to the Judiciary Committee on 1/29/13; H.R. 452, on 2/4/13.</td>
<td>Judiciary Committee held hearings and approved S. 54 on 3/7/13; S. 53, on 3/11/13; and S. 374, on 3/12/13. Judiciary subc. held a hearing on 2/12/13. Senate began consideration of S. 649 on 4/8/13.</td>
<td></td>
<td>Supports steps to prevent gun violence by strengthening the nation's gun laws.</td>
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ABA urges increased funding for Legal Services Corporation

ABA President James R. Silkenat urged a House Appropriations subcommittee March 31 to fund the LSC at no less than $430 million in fiscal year 2015 – the same amount requested by President Obama.

“At a time when more Americans than ever qualify for and need legal aid, strong federal funding for LSC is more critical than ever,” Silkenat said in a statement submitted to the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies. The number of people eligible for legal aid in fiscal year 2015 is expected to reach an all-time high of 67 million (nearly 30 percent of the population), and the increase in poverty levels and the growing complexity of legal problems faced by the poor will result in increased demand for legal assistance as well, he said.

Silkenat explained that LSC’s current level of funding, $365 million, is just $65 million more than LSC’s appropriation was in 1980. Adjusted for inflation, the 1980 appropriation would be more than $850 million today, he said. LSC is the largest provider of civil legal assistance to low-income Americans, and LSC grants fund legal aid programs in all 50 states, the District of Columbia and Puerto Rico.

He emphasized that LSC programs assist a variety of clients, including veterans returning from war, domestic violence victims, seniors, those with disabilities, low-income military families, those struggling with housing matters such as foreclosures and evictions, people coping with the after-effects of natural disasters, and families dealing with child custody issues.

“Legal assistance is necessary not only for the millions of low-income Americans struggling to keep their jobs, stay in their homes and provide for their families, but also for the functioning of the U.S. court system,” Silkenat said. Increasing numbers of individuals representing themselves have hindered the judicial process, according to the Conference of Chief Justices, and LSC funds provide more efficiency in the courts by providing lawyers to represent individuals or to provide guidance to those who choose to represent themselves.

Silkenat pointed out that LSC also provides the infrastructure and framework for most pro bono services provided by private lawyers through public-private partnerships.

“Without adequate funding for LSC that can be used to provide this framework, the justice gap would be further exacerbated,” he said. The ABA president also explained that other sources of legal aid funding have declined in recent years, including Interest on Lawyer Trust Accounts (IOLTAs) and state appropriations.

He urged support for the Pro Bono Innovation Fund, an initiative first funded this year for the creation of new and innovative projects to promote and enhance pro bono initiatives throughout the country.

Silkenat also emphasized the ABA’s long history of supporting civil legal assistance to those in need. The association formed the ABA Standing Committee on Legal Aid and Indigent Defendants in 1920, and in 1964 then ABA President Lewis F. Powell Jr. urged expansion of legal aid services for the poor. The ABA, along with many others, assisted in this effort, and LSC was established by Congress and the Nixon administration in 1974.

ABA urges withdrawal of 2008 immigration opinion

The ABA is urging U.S. Attorney General Eric H. Holder Jr. to withdraw what the ABA calls an “ill-reasoned and pernicious” Justice Department opinion issued in 2008 in Matter of Silva-Trevino that permits an immigration judge to consider evidence outside the record of a noncitizen’s conviction when determining immigration consequences of criminal convictions.

In a March 11 letter to Holder, ABA President James R. Silkenat said the opinion, issued by former Attorney General Michael Mukasey, “upended a century of precedent applying categorical analysis of convictions in immigration cases, including convictions for “crimes involving moral turpitude.” The categorical approach permits immigration adjudicators to rely solely on the legal interpretation of the criminal statute and what was determined in the criminal court proceeding, thereby avoiding any retitigation of the underlying conduct.

The Mukasey opinion provided that there can be a new adjudication by the immigration courts of the facts beyond what was established in the criminal case to determine the immigration classification of an offense.

In February, the U.S. Court of Appeals for the Fifth Circuit became the fifth federal court of appeals to reject the 2008 opinion and conclude that the Immigration and Nationality Act “unambiguously forbids fact-finding beyond the record of conviction to determine if an immigrant is removable based upon a conviction for a crime involving moral turpitude.” The Fifth Circuit ruling, issued in Silva-Trevino v. Holder, remanded the case to the Board of Immigration Appeals for further proceedings. Silkenat emphasized that the time is appropriate to withdraw the 2008 opinion in light of

see “Silva-Trevino” page 9
ABA Day — April 8-10, 2014

ABA President James R. Silkenat (center) with Grassroots Award recipients (from left) Tom Barnett, executive director, State Bar of South Dakota; South Dakota Chief Justice David Gilbertson for Bench and Bar of South Dakota; Stephen Saltzburg, former chair, Criminal Justice Section; and Mark Sullivan, former chair, ABA Standing Committee on Legal Assistance for Military Personnel.


Maryann Foley, ABA House of Delegates; Sen. Lisa Murkowski (R-Alaska); and Lynn Allingham, ABA House of Delegates.

Rep. Michelle Lujan Grisham (D-N.M.) (center) with (from left): John T. Chavez; ABA Secretary-Elect Mary T. Torres; Gloria Valencia-Weber, Legal Services Corporation Board of Directors; Ron Rhea, State Bar of New Mexico; Erika Anderson, president, State Bar of New Mexico; and Peter Winograd, State Bar of New Mexico.
John Rosenberg, Kentucky Bar Association; Rep. Hal Rogers (R-Ky.); Marcia Milby Ridings, ABA Board of Governors; and Gene Vance, president, Fayette County Bar Association.

Jim Carr and Bob Stein, Colorado Bar Association; Terry Ruckriegle, president, Colorado Bar Association; and Sen. Mark Udall (D-Colo.).

Rosalind Mouser, past president, Arkansas Bar Association; Rep. Steve Womack (R-Ark.); and Jim Simpson, president, Arkansas Bar Association.

Members of the Ohio delegation with congressional awardee Sen. Rob Portman (R-Ohio). From left: Angela M. Lloyd, executive director, Ohio Legal Assistance Foundation (OLAF); Martin Mohler, president-elect, Ohio State Bar Association (OSBA); OSBA President Jonathan Hollingsworth; OSBA Executive Director Mary Amos Augsburger; H. Ritchey Hollenbaugh, OLAF board president; Sen. Portman; Barbara Howard, ABA House of Delegates; Michael Flowers, ABA Board of Governors; and William Weisenberg, OSBA assistant executive director.

Congressional honoree Rep. Mike Quigley (D-Ill.) (third from left) with Bob Glaves, Chicago Bar Association; ABA President James R. Silkenat; ABA Immediate Past President Laurel G. Bellows; John G. Levi, chair, Legal Services Corporation Board of Directors; Jessica Bednarz, program director, Chicago Bar Foundation; and Justice Tom Kilbride, Supreme Court of
Judicial Conference accepts ABA’s proposed grand jury change

Accepting a change recommended by the ABA, the Judicial Conference of the United States approved an amendment in March to the federal judiciary’s Model Grand Jury Charge that clarifies that grand jurors must consider charges against each person separately when charges are brought against more than one person.

Previous language in Paragraph 23 of the Model Charge advised grand jurors that they may indict “all of the persons or only those persons who they believed properly deserve indictment.” The new language reads: “(a) Paragraph 23. Frequently, charges are made against more than one person. It will be your duty to examine the evidence as it relates to each person, and to make your finding as to each person. In other words, where charges are made against more than one person, you may indict only those persons who you believe properly deserve indictment. You must remember to consider the charges against each person separately.”

The ABA’s proposed amendment was based on policy adopted by the ABA House of Delegates in February 2013. The association maintained that the previous language in Paragraph 23 was ambiguous and may have been taken to suggest that a blanket indictment by the grand jury would be permissible even if some of the persons, were they to be considered separately, would not deserve indictment.

In a March 13 letter to ABA Governmental Affairs Director Thomas M. Susman, Julie A. Robinson, chair of the Judicial Conference Committee on Court Administration and Case Management, expressed appreciation for the ABA’s work and input.

The change accepted by the Judicial Conference was one of three amendments proposed by the ABA that were part of the policy adopted by the association in 2013. The two proposals not accepted by the Judicial Conference would have amended Paragraph 25 and Paragraph 10 of the Model Charge.

The change proposed for Paragraph 25 would have replaced “should vote to indict” with “may vote to indict only” where the evidence is sufficiently strong in order to ensure that grand jurors understand they are not bound to indict. The second ABA proposal would have deleted Paragraph 10, which instructs grand jurors not to consider punishment when deciding whether to indict.

The report accompanying the ABA policy recommendation maintained that the three proposed changes aimed “to help bolster the historic role of the grand jury as an independent entity—the bulwark of liberty it can be—and to ensure that the grand jury fulfills its vital and proper role in the criminal justice system.” The changes also make clear, according to the report, that the grand jury retains discretion with the Supreme Court’s opinion in Vasquez v. Hillery, 474 U.S. 254, 263 (1986) that the grand jury “is not bound to indict in every case where a conviction can be obtained.”

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**Judicial Vacancies/Confirmations—113th Congress* (as of 4/18/14)**

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
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<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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<td>US District Courts (678 judgeships)</td>
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<tr>
<td>Court of International Trade (9 judgeships)</td>
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<tr>
<td><strong>Totals</strong></td>
<td><strong>86</strong></td>
<td><strong>50</strong></td>
<td><strong>64</strong></td>
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*Includes territorial judgeships
WASHINGTON NEWS BRIEFS

DRUG SENTENCING: The ABA expressed strong support last month for a proposed amendment to the U.S. Sentencing Guidelines that would lower the Drug Quantity Table across drug types for determining sentences for drug crimes. The amendment, approved April 10 by the U.S. Sentencing Commission, would reduce the Drug Quantity Table offense levels by two to reduce the disproportionate role that the single factor of drug quantity plays in sentences tied to mandatory minimums for drug offenses. If the amendment goes into effect, “offenders who do not have significant roles in drug distribution offenses will receive sentences that are more appropriately distinguishable from more serious offenders,” ABA Governmental Affairs Director Thomas M. Susman wrote in a March 18 letter to Sentencing Commission Chair Patti H. Saris. He pointed out that a commission study of the proposed amendment showed that adoption of the change would have a significant impact on the length of sentences, but he noted that the problem of overseverity in drug sentencing will ultimately require reform of the statutory mandatory minimum provisions that remain in effect for federal drug offenses. Susman said that the proposed two-level reduction across the Drug Quantity Table “would still provide for significant punishment for drug offenses, while more appropriately giving account for individual culpability, deterrence and the overall seriousness of the offense.” The ABA has long opposed mandatory minimums because they lead to sentences that are excessive and arbitrary and promote the concept that punishment is determined by charging decisions made by prosecutors. The commission will submit the proposed drug quantity amendment and other proposed amendments to Congress on May 1. If Congress raises no objections, the revised guidelines would go into effect in November 2014.

LOAN FORGIVENESS: The ABA Governmental Affairs Office is marshalling ABA advocacy resources to oppose a proposal in President Obama’s fiscal year 2015 budget that would modify the Public Service Loan Forgiveness Program (PSLF) to set a limit on the amount of federal student loans that may be forgiven under the program. PSLF, created in 2007 through the active leadership of the ABA, forgives a portion of federal student loan debt for individuals who commit at least 10 years to public service, including government and nonprofit charitable organizations. The program, in conjunction with the federal Income Based Repayment Option, allows eligible borrowers to repay loans at an affordable percentage of their income, discharging any remaining balance upon completion of 120 monthly payments. It is not unusual for law students to graduate with more than $100,000 in student loan debt, and the administration’s proposed cap of $57,500 would leave many borrowers with a substantial portion of their original loans to repay. “Lawmakers should be concerned because if the limit is ever enacted,” observed ABA Governmental Affairs Director Thomas M. Susman, “it would deprive government and public service employers, including state and local prosecutors, public defenders, and civil legal aid offices, a critically needed tool to fulfill their public missions. This would, in turn, deprive vulnerable clients of the services these highly trained professionals can provide. Lawyers choosing a public service career path should be commended, not compromised.” The first group of enrolled public service workers will be eligible for forgiveness under PSLF in 2017.

ARMS EXPORTS: ABA President James R. Silkenat commended the Obama administration April 14 for issuing a directive on U.S. arms exports that includes specific human rights protections, and he suggested that the Atrocities Prevention Board conduct a comprehensive review of such exports to ensure that U.S.-origin weapons do not inadvertently contribute to atrocities. The Foreign Assistance Act provides that, except under narrowly-defined circumstances, no security assistance — including certain arms sales — “may be provided to any country the government of which engaged in a consistent pattern of gross violations of internationally recognized human rights.” In a letter to board Chairman Stephen Pomper, Silkenat wrote that a preliminary analysis conducted by the ABA Center for Human Rights found that 11 countries authorized to receive more than $10 million worth of arms exports in fiscal year 2012 appear to have engaged in gross human rights violations consistently over the last three years. “We appreciate that the U.S. government conducts vigorous vetting of foreign security units receiving U.S. security assistance but are nonetheless concerned that not all arms exports are subject to such vetting, and that military equipment — including especially small arms that can greatly contribute to atrocities — can be highly fungible,” he wrote.

ABA Annual Meeting
Aug. 7-12, 2014
Boston, Massachusetts
Senate fails to move forward on Paycheck Fairness Act

The Senate failed this month to garner the 60 votes necessary to proceed to consideration of the proposed Paycheck Fairness Act, a bill supported by the ABA.

The bill, S. 2199, proposes much-needed modifications and improvements to the Equal Pay Act of 1963, which prohibits an employer from paying unequal wages to male and female workers who perform jobs under similar work conditions that require substantially equal skills, effort and responsibility unless there is a legitimate reason for a pay differential. The bill also would seek to prohibit employers from retaliating against employees who inquire about or disclose their wages to other employees as part of a complaint or investigation.

No Republicans voted for the bill, and Sen. Angus King (D-Maine) joined the Republicans in opposition. The proposal was also blocked in 2010 and 2012 by Republicans, who maintained that legislation is not necessary and would impose additional burdens on businesses. Senate Majority Leader Harry Reid (D-Nev.) changed his vote from yea to nay so that he may bring S. 2199 to the floor again.

“The bill will help strengthen the economy by improving the present and future economic welfare of working women, who comprise about one-half of the workforce and are the primary breadwinners in more than 13 million American families,” ABA President James R. Silkenat wrote in an April 7 letter to all senators.

In his letter, Silkenat responded to some prevalent misperceptions regarding the legislation. He said the bill will not:

• discriminate against male employees because the provisions would apply equally to men and women who experience sex-based wage discrimination;
• create a new mandate to compel businesses to pay their female work force substantially more money to eliminate the existing wage gap;
• make employers liable for any and every wage differential;
• eviscerate legitimate use of the “factor other than sex” defense;
• interject the government in the pay decisions of businesses; or
• spawn enormous verdicts against employers that will bankrupt businesses and further jeopardize a frail economy.

The bill, Silkenat said, is “designed to provide a greater incentive for all employers to abide by law, not to encourage more lawsuits.”

The Paycheck Fairness Act “does not alter the basic scheme” of the Equal Pay Act or “impose unreasonable burdens on employers; indeed the majority of its proposed changes are borrowed from other civil rights statutes that have proved more effective in eradicating workplace discrimination,” he said.

President Obama, who supports the Paycheck Fairness Act, took related action April 8 when he issued an executive order and a presidential memorandum to help combat pay discrimination and strengthen enforcement of equal pay laws. The executive order prohibits federal contractors from retaliating against employees who choose to discuss their compensation. The presidential memorandum instructs the secretary of Labor to establish new regulations requiring federal contractors to submit summary data on compensation paid to their employees, including data about sex and race.

ABA Day in Washington

continued from front page

leadership in opposing the mandatory accrual accounting legislation, his support for increased LSC and federal court funding, and his work as a champion for LGBT equality; and Rep. Blaine Luetkemeyer (R-Mo.), for his leading role in opposing accrual accounting provisions and his consistent support for the LSC and full FDIC protection for Interest on Lawyer Trust Accounts.

At a Capitol Hill reception, the association presented grassroots awards to the Bench and Bar of South Dakota, former Criminal Justice Section Chair Stephen Saltzburg, and retired Army Col. Mark Sullivan, a family lawyer from North Carolina who has chaired the ABA Standing Committee on Legal Assistance for Military Personnel.

South Dakota Chief Justice David Gilbertson accepted the Bench and Bar of South Dakota award for tireless efforts to defend and protect impartial courts and to advance access to justice for those living in rural communities. Also receiving an award was Tom Barnett, the executive director of the State Bar of South Dakota, as the mastermind of the strategy that defeated the “JAIL 4 Judges” ballot initiative that threatened judicial immunity.

Saltzburg was recognized for many ABA contributions, including his chairmanship of the ABA Justice Kennedy Commission, which made numerous recommendations for improving the nation’s criminal justice system.

Sullivan, who was instrumental in preventing Congress from enacting legislation to federalize child custody cases involving the military, serves as an invaluable resource for lawyers and lawmakers on military family law matters.
ABA president concerned about recent campaign finance decision

ABA President James R. Silkenat said this month that the recent Supreme Court 5-4 decision in *McCutcheon v. Federal Election Commission*, 572 U.S. ____ (2014), “will result in significant additional money pouring into the campaign finance system and is bound to increase the public concern over undue influence in governmental decision making.”

The April 2 decision reversed a district court ruling and abolished limits on aggregate amounts that individuals may contribute to political candidates and political party committees on the basis that such limits violate the First Amendment. The aggregate limits struck down by the court, which were established by the Bipartisan Campaign Reform Act of 2002, were $48,600 every two years to all federal candidates and $74,600 to political party committees. The contribution limit for individuals remains intact at $2,600 per candidate in primary and general elections.

Absent the aggregate limits, Silkenat said, it will be critical to ensure that the additional money coming into campaigns is not used in a way that circumvents other contributions limits still in place and to ensure full and timely disclosure of all federal contributions and expenditures.

Shaun McCutcheon, an Alabama businessman, and the Republican National Committee filed the case after McCutcheon reached the limit for contributions in the 2012 election cycle and was prevented from contributing to additional candidates. He claimed that the limits violated his constitutional right to participate in the electoral process.

In the decision, Supreme Court Chief Justice John G. Roberts wrote for the majority that the aggregate limits did not further the only legitimate governmental interest for restricting campaign finance — preventing corruption or the appearance of corruption. He also stated that contributing money to a candidate is an exercise of an individual’s right to participate in the political process through both political expression and political association. “The government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse,” Roberts wrote.

In a rare oral dissent from the bench, Justice Stephen G. Breyer called the decision a “disturbing development” that may well open a floodgate of contributions.

Silva-Trevino opinion

*continued from page 3*

the Fifth Circuit opinion and recent Supreme Court precedent reaffirming the categorical approach in criminal and immigration law — *Moncrief v. Holder*, 113 S. Ct. 1678 (2013), and *Descamps v. United States*, 133 S. Ct. 2276 (2013).

“Allowing immigration adjudicators to determine the nature of a conviction by investigating facts that were never a necessary part of the criminal proceedings forces noncitizens to relitigate their criminal cases, which raises serious issues of procedural due process and fairness,” Silkenat said.

He explained that factual inquiry could occur years or decades after the original conviction, when evidence is gone and memories have faded, making the inquiry particularly unreliable. In addition, the predictability provided by the categorical approach, where noncitizens convicted under identical provisions of law face the same immigration consequences, is essential to the operation of the criminal courts.

Withdrawning the 2008 opinion “would correct a decision that has impaired the fair administration of justice in the immigration courts and agencies for almost six years and would restore uniformity, predictability, and fairness to this important area of the law,” Silkenat concluded.

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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](http://www.americanbar.org/advocacy/governmental_legislative_work/publications.html). © 2014 American Bar Association. All rights reserved. Please address correspondence to:


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