President signs omnibus appropriations bill with increased funds for ABA-backed programs

President Obama signed a $1.1 trillion fiscal year 2015 appropriations package Dec. 16 that increases funding for several ABA-supported programs but sets the stage for debate early next year on immigration funding.

H.R. 83 funds most of the government through Sept. 30, 2015, but extends funding only through Feb. 15, 2015, for the Department of Homeland Security (DHS), which includes immigration programs. The move was in response to the president’s recent executive announcement that may grant protection from deportation to up to five million undocumented immigrants. Opponents of the president’s actions will be considering ways that Congress can limit DHS immigration funding and activities through legislation or in the courts.

The appropriations package also continues to prohibit the use of funds for the transfer of Guantanamo detainees to the United States for prosecution in Article III courts or for construction or acquisition of facilities in the United States for the detention or imprisonment of Guantanamo detainees.

Programs of interest to the ABA that will see increased funding this year include:

• **Federal Judiciary.** The judiciary receives $6.7 billion in discretionary appropriations, an increase of $182 million, or 2.8 percent. This amount is essentially equal to the judiciary’s re-estimated funding request for the year. The legislation includes provisions extending temporary judgeships in eight district courts. “We are very pleased with the fiscal year 2015 appropriation for the judiciary,” said Judge John Bates, director of the Administrative Office of the U.S. Courts. “The funding levels are sufficient to enable the courts to operate effectively, he said.

• **Legal Services Corporation (LSC).** A $10 million increase in funding for LSC brings the program’s total to $375 million, which includes $343.15 million for basic field programs and required independent audits; $4.35 million for the Office of Inspector General, $18.5 million for management and grant oversight, $4 million for client self-help and information technology, $4 million for the Pro Bono Innovation Fund, and $1 million for loan repayment assistance. The legislation continues to restrict the use of funds by LSC grantees for participation in abortion-related litigation.

• **Criminal Justice.** Justice Department funding includes a $65 million increase to $2.3 billion for various state and local grant programs, including: $430 million for violence against women programs, with $42.5 million for legal assistance for victims; $68 million for Second Chance Act programs; $5 million for veterans treatment courts; $252 million for juvenile justice grants and mentoring; $41 million in new funding for addressing the backlog of sexu-
### Federal Courts

**H.R. 83**, omnibus fiscal year 2015 appropriations legislation, includes $6.7 billion for the judiciary. S. 1385 would have increased the number of Article III judgeships. S. 2769 and H.R. 5683 would have clarified the jurisdiction of the U.S. Court of Federal Claims and made it easier for parties pursuing claims in multiple court to obtain complete relief.

<table>
<thead>
<tr>
<th><strong>ABA LEGISLATIVE PRIORITY</strong></th>
<th><strong>HOUSE</strong></th>
<th><strong>SENATE</strong></th>
<th><strong>FINAL</strong></th>
<th><strong>ABA POSITION</strong></th>
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<tr>
<td><strong>Judiciary Committee held a hearing on the judiciary on 10/29/13.</strong></td>
<td><strong>Judiciary Committee held a hearing on judiciary funding on 7/23/13 and on S. 1385 on 9/10/13.</strong></td>
<td><strong>President signed H.R. 83 on 12/16/14.</strong></td>
<td><strong>Supports protection of the federal judiciary from future deficit reduction. Supported S. 1385. See front page and page 6.</strong></td>
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### Gun Violence

P.L. 113-57 (H.R. 3626) reauthorized the Undetectable Firearms Act. S. 150 and H.R. 437 would have limited the future sale and transfer of assault weapons. S. 54 and H.R. 452 sought to combat the practices of straw purchasing and illegal trafficking of firearms. S. 374 would have strengthened background checks. S. 649, a comprehensive bill, included numerous gun violence prevention provisions.

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<td><strong>House passed H.R. 3626 on 12/3/13. H.R. 437 was referred to the Judiciary Cmte. on 1/29/13; H.R. 452, on 2/4/13.</strong></td>
<td><strong>Senate passed H.R. 3626 on 12/9/13. Judiciary Cmte. 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.</strong></td>
<td><strong>President signed P.L. 113-57 (H.R. 3626) on 12/9/13.</strong></td>
<td><strong>Supports steps to prevent gun violence by strengthening the nation’s gun laws.</strong></td>
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### Immigration

S. 744 would have overhauled the nation’s immigration system. Numerous House bills addressed immigration issues, including: H.R. 2131; H.R. 1772 ; 1773; H.R. 2778; and H.R. 1417. H.R. 5230 and S. 2648 addressed the influx of unaccompanied children entering the country at the southwest border. President Obama announced 11/20/14 that he would take executive action to address immigration.

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### Legal Services Corporation (LSC)

H.R. 83, omnibus fiscal year 2015 appropriations legislation, includes $375 million for the LSC.

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<tr>
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<tr>
<td><strong>House passed H.R. 83 on 12/11/14.</strong></td>
<td><strong>Senate passed H.R. 83 on 12/13/14.</strong></td>
<td><strong>President signed H.R. 83 on 12/16/14.</strong></td>
<td><strong>Supports an independent, well-funded LSC. See front page.</strong></td>
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Association receives high praise from Senate Judiciary Committee Chairman Leahy

The ABA Commission on Domestic & Sexual Violence (CDSV), which celebrated its 20th anniversary this year in conjunction with the 20th anniversary of enactment of the Violence Against Women Act (VAWA), commemorated the occasion Nov. 19 with a reception in Washington, D.C.

ABA President William C. Hubbard, addressing a group of approximately 100 attendees, said that “the Commission on Domestic & Sexual Violence has been the voice of the legal profession on the critical issues of protecting victims and their families for 20 years, and we plan to continue this essential work for years to come.”

Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), appearing in a video about the commission shown for the first time at the reception, expressed high praise for the ABA’s work in fighting domestic violence and for the association’s strong support of VAWA. Leahy said he did not think Congress would have been able to pass VAWA reauthorization legislation in 2013 “had it not been for the help we got from the ABA.”

The commission was created by the ABA after release in August 1994 of The Impact of Domestic Violence on Children, a report produced by six ABA entities that recommended the creation of a multidisciplinary task force or commission on domestic violence. Roberta Cooper Ramo, who unveiled the report with then ABA President R. William Ide III, became the association’s first woman president the next year and made domestic violence a high priority for the association and the legal profession.

The commission, chaired by Miami lawyer Angela C. Vigil, conducts training to better equip lawyers to assist victims of domestic and sexual violence, provides legal resources to support lawyers who represent victims, connects lawyers with local organizations through its National Domestic Violence Pro Bono Directory, and develops important policies addressing domestic violence for adoption by the ABA House of Delegates.

Bill signed by the president benefits IOLTAs

During the final days of the 113th Congress, the Senate cleared ABA-supported legislation for the president that assures that IOLTA accounts set up at credit unions receive the same level of federal insurance protection that banks provide ($250,000 per person per institution).

The legislation, signed by the president on Dec. 18, was needed because the National Credit Union Administration (NCUA) has not provided insurance coverage if the funds are held on behalf of a client who is not a federally insured credit union member.

H.R. 3468, sponsored by Reps. Ed Royce (R-Calif.) and Ed Perlmutter (D-Colo.), will ensure that client funds are protected regardless of whether an IOLTA is in a credit union or in a bank. Sen. Angus King (I-Maine) led the effort to pass this legislation in the Senate.

The revenue from IOLTAs is a significant source of funding for programs providing legal services
ProBAR celebrates 25 years of pro bono legal assistance

The South Texas Asylum Representation Project (ProBAR) — established in 1989 by the ABA, the State Bar of Texas and the American Immigration Lawyers Association as thousands of adults and families from war-torn counties in Central America were detained at the border — last month commemorated 25 years of providing legal assistance through pro bono representation.

A Nov. 17 celebration in Texas was attended by ABA President William C. Hubbard; members of the ABA Commission on Immigration; ABA Chief Human Resources Officer and Chief Diversity Officer Valeria Stokes; Nancy Andrade, lead counsel, ABA Commission on Hispanic Rights and Responsibilities; current and former ProBAR lawyers and volunteers; and former ProBAR clients.

ProBAR Director Kimi Jackson (third from left) and former directors Meredith Linsky, Anne Marie Gibbons and Bob Lang

The project, overseen by ABA Commission on Immigration staff in the association’s DC office, began with one attorney and a paralegal and has grown to nearly 40 staff members in two offices in Harlingen, Texas. The offices focus on providing “Know Your Rights” presentations, legal screening services and pro bono representation to adults and unaccompanied children in detention throughout the Rio Grande Valley.

During the summer of 2014, ProBAR dealt with a tremendous influx of unaccompanied children who were primarily fleeing El Salvador, Honduras and Guatemala for various reasons, including the high incidence of violence from gangs and drug cartels. Children continue to arrive today, but in lower numbers.

In 2013, ProBAR served 6,500 unaccompanied children and 3,200 detained adults. This year’s total number of those represented is expected to be double, particularly with regard to the children.

Once a child is detected by Border Patrol agencies, he or she is transported to a Customs and Border Protection (CPB) processing station and held while being processed. By law, children may be held no longer than 72 hours but sometimes are there as long as 15 days. Children from contiguous countries (Canada and Mexico) may be deported immediately by CPB officers, but those entitled to a formal removal hearing are transferred to the custody of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services, which places them in ORR shelters.

Historically, about 85 percent of the unaccompanied children were placed with approved sponsors within about 35 days to await their removal proceedings in the heavily backlogged immigration court system. The surge of unaccompanied children has resulted in accelerated reunification in as little as seven days without traditional legal screenings, and these children have no rights to appointed counsel or guardians ad litem even though see “ProBAR,” page 8
U.S. Attorney General Eric H. Holder Jr. announced a new guidance Dec. 8 for federal law enforcement agencies that expands a 2003 policy barring racial and ethnic profiling to include national origin, gender, gender identity, religion and sexual orientation.

The new policy applies a uniform standard to all law enforcement, national security and intelligence activities conducted by Justice Department law enforcement components and state and local law enforcement law officers participating in federal law enforcement task forces. The policy does not, however, apply to security screening in airports and border checkpoints.

In announcing the new guidance, Holder said that biased law enforcement practices not only perpetuate negative stereotypes and promote mistrust of law enforcement, they are counterproductive to the goal of good policing.

A memorandum issued by the department set out two standards:

• In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, federal law enforcement officers may not use race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity to any degree, except that officers may rely on listed characteristics in a specific suspect description; and

• In conducting all activities other than routine or spontaneous law enforcement activities, federal law enforcement may consider race, ethnicity, gender, national origin, religion, sexual orientation or gender identity to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons possessing a particular listed characteristic to an identified incident, scheme, or organization, a threat to national or homeland security, a violation of federal immigration law, or an authorized intelligence activity. In relying on any of the listed characteristics, an officer must also reasonably believe that the activity to be undertaken is merited under the totality of the circumstances.

The guidance also requires federal law enforcement agencies to take specific steps on training, data collection and accountability.

Holder explained that the guidance is the product of five years of “scrupulous review” and “codifies important new protections to those who come into contact with federal law enforcement agents and their partners.” He added that the guidance “brings enhanced training oversight and accountability to federal law enforcement across the country, so that isolated acts do not tarnish the exemplary work that’s performed by the overwhelming majority of America’s hard-working law enforcement officials each and every day.”

The ABA adopted policy in 2008 urging federal, state, local and territorial governments to enact effective legislation, policies, and procedures to ban racial or ethnic profiling by law enforcement agencies and police officers engaging in domestic law enforcement.

When legislation was introduced early in the 112th Congress to end racial profiling and grant the United States or an individual injured by racial profiling the right to obtain declaratory or injunctive relief, ABA Governmental Affairs Director Thomas M. Susman expressed ABA support for the legislation.

“When law-abiding citizens are treated differently by those who enforce the law simply because of their race, ethnicity, religion or national origin, they are denied the basic respect and equal treatment that is the right of every American,” Susman wrote.

He added that the practice of using race as a criterion of law enforcement undermines the progress that has been made toward racial equality since passage of sweeping civil rights legislation decades ago.

There was no action on legislation during the 112th Congress or 113th Congress, but representatives from the Leadership Conference on Civil and Human Rights and the American Civil Liberties Union expressed support for such legislation during a Dec. 10 hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights titled “The State of Civil and Human Rights in the United States.”

House panel revives debate over cameras in courts

The issue of cameras in the courtroom received renewed attention this month as the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet held a hearing Dec. 3 on H.R. 917, the Sunshine in the Courtroom Act.

The bill, introduced last year by Rep. Steve King (R-Iowa), would permit the presiding judge of a federal district or appellate court (including the Supreme Court) to authorize electronic media coverage of both criminal and civil proceedings in accordance with mandatory guidelines promulgated by the Judicial Conference of the United States.

The ABA sent a letter Dec. 9 for the record of the hearing, commending the committee for continuing to focus public attention on this issue and expressing support for the objectives of the legislation.

In the letter, ABA Governmental Affairs Director Thomas M. Susman recounted the ABA’s “long and cautious history” on the issue since 1937 and underscored the ABA’s support for expanded experimentation with electronic media coverage of civil and criminal proceedings.
ABA supports further experimentation with video coverage of courts

continued from page 5

“We, like many congressional supporters of this legislation, believe that courts that conduct their business under public scrutiny protect the integrity of the federal judicial system by advancing accountability and providing an opportunity for the people they serve to learn about the role of the federal courts in civic life,” Susman explained.

The Supreme Court, which is not subject to the governance of the Judicial Conference, has never permitted video recordings of oral arguments. Susman did acknowledge that the court has taken significant steps to increase transparency and expedite access to oral arguments. The lower federal courts have engaged in limited experimentation with electronic coverage of civil proceedings. Electronic media coverage of criminal proceedings currently is prohibited by Rule 57 of the Federal Rules of Criminal Procedure.

The Judicial Conference authorized its first three-year pilot project in seven district and appellate courts in the early 1990s, but thereafter decided to terminate coverage despite a favorable assessment of the project by the Federal Judicial Center.

The ABA and other organizations strenuously objected, and in 1996 the Judicial Conference partially reversed its position and allowed electronic media coverage of federal appellate courts.

Recognizing the persistent interest of Congress, the media, and the public in expanding public access to court proceedings, the Judicial Conference initiated another pilot project to permit judges in 14 district courts to authorize video recordings of civil proceedings in accordance with promulgated guidelines. The pilot project, which will terminate in July 2015, will be evaluated by the Federal Judicial Center.

Susman praised the new pilot project and said that the Judicial Conference’s willingness to reexamine the bases for its views opposing expanded coverage and to reevaluate its policies in light of the results is a welcome change.

The ABA hopes that at the conclusion of this pilot project, Congress will “engage the Judicial Conference in rigorous discussion over the Federal Judicial Center’s analysis of the pilot project and will work to make sure that empirical data inform future decisions with regard to expanding electronic media coverage of federal court proceedings,” Susman said.

At the hearing, however, the Honorable Julie A. Robinson, a judge on the United States District Court for the District of Kansas, testified against H.R. 917 on behalf of the Judicial Conference.

“If enacted, this legislation will have the potential to impair substantially the fundamental rights of citizens to a fair trial, while undermining court security and the safety of jurors, witnesses, and other trial participants, including judges,” Robinson said. She emphasized the need to protect the privacy of all participants, and said she believes that the level of threat to federal judges may be heightened if proceedings are recorded. She also stressed the importance of protecting witnesses from potential intimidation or retaliation — something that would be made more difficult with cameras in the courtroom.

“I reject the idea that cameras will do any harm,” bill sponsor King said during the hearing, adding that there should be a “robust debate to weigh the pros and cons” presented by his bill.

Judicial Vacancies/Confirmations—113th Congress* (as of 12/18/14)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
</tr>
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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>7</td>
<td>2</td>
<td>23</td>
</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
<td>43</td>
<td>13</td>
<td>109</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>53</td>
<td>16</td>
<td>134</td>
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*Includes territorial judgeships  + Returned to the president 12/16/14
TORTURE: The Senate Select Committee on Intelligence publicly released a redacted version of the Conclusions and Executive Summary Dec. 8 of its, “Study of the Central Intelligence Agency’s Detention and Interrogation Program.” The full study, which was conducted by Intelligence Committee staff between 2009 and 2012 and totals more than 6,700 pages, remains classified but has been provided to the White House, the CIA, the Justice Department, the Defense Department, the State Department and the Office of the Director of National Intelligence. The contents of the study, which covers CIA actions following the terrorist attacks of Sept. 11, 2001, are controversial. The ABA had urged public release of the document with portions that are essential to national security redacted. “Public release of the study would provide long-overdue accountability at home and abroad,” then ABA President Laurel G. Bellows wrote to the White House in June 2013, adding that release also would demonstrate that the United States is committed to fulfilling its international obligations to investigate allegations of torture. Americans also for the first time would be able to evaluate claims about the lawfulness of, necessity for, and effectiveness of the CIA’s use of “enhanced interrogation,” she wrote. ABA policy adopted in 2004 condemns any use of torture or other cruel, inhuman or degrading treatment or punishment upon persons within the custody or under the physical control of the United States and any endorsement or authorization of such measures by government lawyers, officials and agents. The detailed policy urges the U.S. government to take specific actions to ensure that all foreign persons within the custody or under the physical control of the United States are treated in accordance with standards that the United States would consider lawful if employed with respect to an American captured by a foreign power. It also urges the U.S. government to pursue vigorously (1) the investigation of violations of law, including the War Crimes Act and the Uniform Code of Military Justice, with respect to the mistreatment or rendition of persons within the custody or under the physical control of the U.S. government, and (2) appropriate proceedings against persons who may have committed, assisted, authorized, condoned, had command responsibility for, or otherwise participated in such violations.

ASSET FORFEITURE: The federal High Intensity Drug Trafficking Areas (HIDTA) program issued a new 10-point voluntary code of conduct last month to address the problem of questionable seizure of property by police during traffic stops. The code, titled the “21st Century Interdiction Code of Conduct,” emphasizes that the purpose of interdiction is not to enhance law enforcement budgets. Current federal and state civil asset forfeiture laws, originally intended as tools to combat drug crimes, authorize the seizing of property that law enforcement officials have probable cause to believe has been used in illegal activity without the owners of the property being charged with or convicted of a crime. Law enforcement agencies benefit from the net proceeds of such forfeiture by seizing property under federal law rather than state and local law to participate in an equitable sharing program at the Justice Department (DOJ). Recent reports estimate that in the past 13 years state and local police have seized more than $2.5 billion in cash from individuals who were never convicted of crimes. The HIDTA, created in 1988, funds 733 initiatives through 28 operations nationwide to assist federal, state, local and tribal law enforcement agencies in areas determined to be critical drug-trafficking regions. The new code states that members of the Domestic Highway Enforcement community should adhere to the “highest standards of integrity and ethical principles in the performance of traffic safety enforcement activities.” Reform of the civil asset forfeiture system has been recently discussed on Capitol Hill, but there has been no action. Proposed legislation, S. 2644 and H.R. 5502, would have increased the government’s burden of proof in civil forfeiture proceedings and require that proceeds from the disposition of forfeited property be deposited in the Treasury rather than DOJ accounts for law enforcement activities. The ABA, which has long backed reform of the civil asset forfeiture system, supported provisions in the legislation to shift the burden of proof in forfeiture proceedings to the government from individuals whose property was seized.

TEXAS DEATH PENALTY: The 5th Circuit Court of Appeals issued an order Dec. 3 to stay the execution in Texas of Scott Panetti, who was to be executed Dec. 4 for the murder of his mother-in-law and father-in-law in 1992. Panetti’s lawyers filed a brief maintaining that Panetti, who has suffered from mental illness most of his life, is currently not competent to be executed. The court issued the stay to “fully consider the late arriving and complex legal questions at issue in this matter.” In a Nov. 6 letter, ABA President William C. Hubbard had urged Texas Gov. Rick Perry to stay the execution until complete and current information about Panetti’s mental health has been thoroughly considered by a judge to determine whether he is competent to be executed. “This is the only course of action that can ensure that Mr. Panetti receive due process and protection of his rights under the Constitution,” Hubbard said. While the ABA does not have a position on the death penalty per se, ABA policy adopted in 2006 calls for an evaluation of whether a death-sentenced prisoner “has a mental disorder or disability that significantly impairs his or her capacity to understand the nature and purpose of the punishment, or to appreciate the reason for its imposition in the prisoner’s own case.”
Omnibus fiscal year 2015 package signed by the president

continued from front page

al assault kits; and $68 million for missing and exploited children programs. Also seeing a $62 million increase is the Bureau of Prisons, which receives $6.9 billion.

- Elder Justice. New funding of $4 million supports an Elder Justice Initiative to provide competitive grants to states to test and evaluate innovative approaches to preventing and responding to elder abuse.

- U.S. Patent and Trademark Office (USPTO). The bill provides $3.5 billion – a $434 million increase – for the USPTO, which is the estimated amount of fees to be collected by the office during fiscal year 2015. Also included is a provision to allow the office to use, with congressional approval, any excess fees that are collected.

- Social Security Administration (SSA). The SSA receives $11.8 billion for administrative expenses for processing disability cases – a $109 million increase.

- Securities and Exchange Commission (SEC). The legislation includes $1.5 billion for the SEC, which is $150 million more than fiscal year 2014 funding. The SEC appropriation will be offset by collected fees.

One agency experiencing a decrease in funding is the Internal Revenue Service, which drops by $346 million to $10.9 billion. This includes a $162 million decrease to $4.9 billion for enforcement efforts.

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. © 2014 American Bar Association. All rights reserved. Please address correspondence to:

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