New ABA policies adopted by HOD cover wide range of crucial issues

New policies adopted this month by the ABA House of Delegates during the association’s Midyear Meeting cover an array of issues in the areas of criminal justice, individual rights, the judiciary and business law.

During its Feb. 10 session, the delegates heard from ABA President Silkenat, who focused his remarks on the need for a Legal Access Job Corps, protection of voting rights, and government action to prevent gun violence.

Silkenat, whose Legal Access Job Corps Task Force held a forum Feb. 9, said the ABA should help coordinate and assist programs on the national, state and local levels that are connecting the unmet legal needs of the country with the unmet employment needs of young lawyers.

Silkenat also said that the ABA must be involved in preserving voting rights, which he said are under attack, and in encouraging voter participation. This year’s Law Day theme, he noted, is “American Democracy and the Rule of Law: Why Every Vote Matters.”

He cited ABA efforts urging enactment of legislation to curb gun violence and limit access to assault weapons and lamented that Congress has not approved strong gun control measures following the Sandy Hook shootings in December 2012. He urged a national discussion on gun violence issues.

In addition to the adoption of new policies by the delegates, a highlight of the meeting was the Board of Governors’ approval of the governmental and legislative priorities for this session of the 113th Congress. The priorities, based on a survey of bar leaders and ABA members and the joint recommendation from the Standing Committee on Governmental Affairs and the Governmental Affairs Office, are encompasses under nine broad categories: Access to Legal Services, Campaign Finance and Election Law Reform, Criminal Justice System Improvements and Gun Violence Prevention, Elimination of Discrimination, Immigration Reform, Independence of the Judiciary, Independence of the Legal Profession, International Rule of Law, and National Security and Civil Liberties.

Other highlights included the selection of New Jersey lawyer Paulette Brown to be president-elect nominee to assume the ABA presidency for a one-year term in August 2015 (see page 4), and the nomination of Phoenix lawyer Patricia Lee Refo to become chair of the House of Delegates in August 2014 for a two-year term. The delegates also approved an increase in ABA membership dues effective for fiscal year 2014-2015 and increases in fiscal years 2016, 2017 and 2018 based on cost-of-living increases as determined by the ABA Board of Governors and approved by the delegates.

see “Midyear Meeting,” page 4
<table>
<thead>
<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
</tr>
</thead>
<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>
</tr>
</tbody>
</table>
Senate Judiciary Committee approves smarter sentencing bill

New mandatory minimums added to the bill during markup

The Senate Judiciary Committee took a step toward overhauling the federal sentencing system by approving bipartisan legislation Jan. 30 by a 13-5 vote that would reduce federal mandatory sentencing levels for certain drug offenders and expand the federal safety valve to allow judges more discretion in determining sentences for non-violent drug offenders.

S. 1410, known as the Smarter Sentencing Act, also would allow approximately 8,800 federal prisoners to petition courts for a review of their cases based on the Fair Sentencing Act of 2010, which reduced the sentencing disparity between crack and powder cocaine offenses. This provision addresses the fact that some individuals are still serving sentences that Congress determined to be unjust and racially disparate in 2010.

Even though the bill is primarily aimed at reducing mandatory sentencing for drug crimes, the committee added amendments offered by Sen. Charles E. Grassley (R-Iowa) during markup that would create new mandatory minimums for various abuse crimes, interstate domestic violence crimes, and provision of weapons to terrorists or aiding the development of weapons of mass destruction.

The bill also contains a provision requiring the Justice Department to provide Congress with a comprehensive list of all federal criminal offenses, as well as information on associated penalties, prosecution and mens rea requirements. Also collected would be information on regulations throughout the government that are enforceable by criminal penalties. Federal agencies would be required to make the information available to the public on their websites.

The ABA, which opposes mandatory minimum sentencing, expressed support last December for the provisions in S. 1410 that would reduce lengthy sentences for certain persons convicted of nonviolent offenses.

In a Dec. 9 letter to the committee, ABA Governmental Affairs Director Thomas M. Susman pointed out that several reports have concluded that mandatory minimum sentences are a major contributor to the rising federal prison population, which has grown by an alarming rate of 790 percent since 1980. In addition, the federal prison system is operating at almost 40 percent above capacity, and those convicted of drug offenses make up 50 percent of the prison population. Susman cited a November 2013 Urban Institute report that concluded that the legislation, if enacted, could save taxpayers more than $3 million over 10 years.

“The Smarter Sentencing Act is a much needed first step to creating a fairer criminal justice system, while also addressing the serious safety and budgetary problems that exist in the Bureau of Prisons,” Susman wrote.

The bill’s sponsors, Sens. Richard J. Durbin (D-Ill.) and Mike Lee (R-Utah), will continue to seek greater bipartisan support for the legislation as they prepare to bring the measure to the full Senate for a vote.

There has been no action on the companion bill, H.R. 3382, which is pending in the House Judiciary Committee.

Over-Criminalization Task Force extended

The House Judiciary Committee approved a six-month extension for its bipartisan Over-Criminalization Task Force by a voice vote Feb. 5.

The task force, which is now authorized through Aug. 4, 2014, was first established for six months in May 2013 to assess the nation’s criminal justice system and develop recommendations for improving the system.

In December, the ABA urged the committee to extend the task force so that it can continue to provide a forum for a constructive conversation on the problems of over-criminalization in the system. The association expressed support for the task force’s early focus on assessing the scope of the program, the erosion of mens rea requirements, and regulatory solutions.

Additional time, according to ABA Governmental Affairs Director Thomas M. Susman, will give the task force the opportunity to more closely examine other issues, including overuse of mandatory minimum sentencing, federalization of crimes, proliferation of collateral consequences of conviction, and the related need to overhaul the federal criminal code.

Rep. Jim Sensenbrenner (R-Wis.), who leads the 10-member task force with Rep. Bobby Scott (D-Va.), said the criminal code is “muddled and outdated,” and that he would continue to work with members of the task force to review federal laws and identify “common-sense, bipartisan solutions.” “Our goal,” he said, “remains to codify and modernize the criminal code.”
In addition, Midyear Meeting programs featured town hall meeting and panel discussions on a variety of topics, including the school-to-prison pipeline, the Winter Olympics and Russia’s anti-gay legislation, education rights of homeless children, cybersecurity, and how lawyers can help address poverty in America.

The following is a summary of policies adopted by the delegates.

**Business Law**

**Parallel Actions.** Urges executive, judicial and legislative governmental bodies at the federal, state and territorial levels to engage in actions designed to reduce unnecessary tension, expense and litigation, and to foster inter-court, inter- and intra-agency and inter-party cooperation and coordination in cases where parallel actions or proceedings arise under both bankruptcy or insolvency law and asset forfeiture or analogous regulatory enforcement law. Recommends specific action that should be taken by the governmental bodies.

**Labor Trafficking and Child Labor.** Adopts the black letter Model Principles of the ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor, and urges businesses to adopt and implement their own business and supplier policies on labor trafficking and child labor that are consistent with the Model Principles.

**Children/Families**

**Foster Care and Homelessness.** Urges governments to enact and implement legislation and policies that prohibit youth from transitioning from foster care to homelessness or to a situation where a former foster youth will lack a permanent connection to a supporting adult. Provides specific steps and reforms, and urges the legal profession and the judiciary to improve and enhance support for foster youth transitioning to adult independence.

**Exposure to Violence.** Urges the development and adoption of trauma-informed, evidence-based approaches and practices on behalf of children and youth involved in the justice system who have been exposed to violence, including victims of child abuse and neglect or other crimes and those subject to delinquency or status offense proceedings. Urges bar associations to work with judges, lawyers and other professionals to develop and implement training programs in trauma awareness, knowledge and skills for judges, child welfare attorneys, prosecutors, defense counsel and law students.

**Courts/Judiciary**

**Judicial Security.** Urges all state, local and territorial legislative bodies and governmental agencies
ABA president calls LSC and judiciary funding “major victory”

ABA President James R. Silkenat called substantial fiscal year 2014 funding for the Legal Services Corporation (LSC) and the federal judiciary a “major victory for access to justice for all Americans” after President Obama signed a consolidated appropriations bill last month.

P.L. 113-76 (H.R. 3547), which funds federal programs through September 30, 2014, provides $365 million for LSC, a $24 million increase above its 2013 sequestration level. The appropriations measure also includes a $326 million increase in discretionary funding for the federal judiciary, which brings total judiciary discretionary funding to $6.516 billion, approximately the level it was before sequestration cuts went into effect last year.

“Congress should use the bipartisan sentiment expressed in this budget to protect the LSC and the judiciary from future debilitating cuts in the name of sequestration,” Silkenat said in a Jan. 17 statement. “This spending bill is an important demonstration of both parties’ commitment to justice,” he added.

The judiciary funding amount, which includes $1.044 billion for the Defender Services Program, restores almost all of the funding lost to sequestration in 2013 for paying court-appointed panel attorneys who represent indigent defendants in federal criminal cases.

The Judicial Conference of the United States announced Feb. 10 that previous hourly panel attorney rates would be restored, and that, beginning March 1, the hourly panel attorney rates will increase to $126 for non-capital representations and $180 for capital representations. Also announced was a 1 percent increase in keeping with the 2014 pay raise for federal employees.

In an emergency move taken last August as a result of sequestration, the conference had been forced to reduce hourly rates by $15 per hour and to defer payments to fiscal year 2015 for some work performed in fiscal year 2014. The new spending plan provides sufficient funding to pay all fiscal year 2014 panel attorney vouchers without deferring any payments into fiscal year 2015.

In a Jan. 8 letter to House and Senate appropriators, Silkenat expressed the ABA’s appreciation for the legislators’ demonstrated commitment to provide the federal judiciary with the financial resources it needs to carry out its many critical constitutional and statutory duties.

In the letter, he also commended the judiciary for heeding concerns that appropriators had stated in their subcommittee reports about the rising costs associated with court space and occupancy. He noted that the judiciary recently adopted two policies that help control the cost of future mandatory spending on rent: a “NO Net New” policy requiring an offset for any increase in square footage within a circuit, and a commitment to reduce space occupancy by 3 percent by the end of fiscal year 2018.

P.L. 113-76 also provides fiscal year 2014 funding for numerous other programs of interest to the ABA, including:

• $67.75 million for the Second Chance Act, which supports prisoner re-entry efforts;
• $417 million for the Violence Against Women Act, including $39 million for civil legal assistance and a $13 million increase to $180 million for the STOP program for training officers and prosecutors;
• increased funding from $18 million to $59 million for improving criminal history records and the National Instant Check System for gun purchaser background checks;
• $4 million for a new Veterans Treatment Court program in the Department of Justice; and
• $3.024 billion for the U.S. Patent and Trademark Office to be derived from user fee revenue.

Farm law includes compromise on SNAP funding

House and Senate negotiators rejected provisions in the House version of comprehensive agriculture legislation that would have reduced the Supplementary Nutrition Assistance Program (SNAP) by $39 billion over the next 10 years, opting instead to reduce the program by $8.6 billion.

The House and Senate approved the conference report in early February, and the president signed the final legislation, P.L. 113-79 (H.R. 2642), on Feb. 7. In addition to extending nutrition programs, the new law reauthorized numerous other programs through fiscal year 2018, include farm income support, crop insurance, conservation, credit assistance, trade, research, international food assistance and rural development.

During conference consideration of the farm legislation, the ABA urged conferees to reject the harsh SNAP cuts in the House version of H.R. 2642 and approve the Senate’s proposed reduction of $4 billion over 10 years. The program, formerly known as food stamps, provides food and nutrition assistance to low-income households and helps approximately 47 million individuals each month.

“We understand that difficult fiscal choices must be made as Congress works to reach balanced federal spending policy,” ABA Governmental Affairs Director Thomas M. Susman wrote to conferees in December. “We are concerned, nonetheless, that proposed reductions to SNAP will result in

see “Farm,” page 9
Bipartisan bills legislation seeks to strengthen the Voting Rights Act


The 5-4 decision struck down the formula in Section 4 of the act that defined jurisdictions with a history of restricting voting rights. Those jurisdictions — all or part of 16 states — were required under Section 5 to submit any proposed changes in their voting procedures for preclearance by the Department of Justice or a three-judge panel of the U.S. District Court of the District of Columbia. The court reasoned that, even though there is no doubt that voting discrimination still exists, the coverage formula, while rational 50 years ago and reauthorized in 2006 as part of bipartisan legislation, was based on “decades-old data and eradicated practices” such as literacy tests and low voter registration and turnout.

The new legislation, S. 1945 and H.R. 3899, would create a Section 4 formula that would allow federal courts to order preclearance if they determine that a state has adopted voting policies that have the effect of discriminating against minorities. The bills also would establish new rules automatically triggering preclearance if a state is shown to have committed five or more voting rights violations during the past 15 years. Four states already fall under that preclearance requirement: Georgia, Louisiana, Mississippi and Texas.

The bills also would strengthen Section 3 of the act, which allows the federal government to “bail in” jurisdictions not covered by Section 4 to federal supervision if plaintiffs show evidence of intentional voting discrimination. Under the new Section 3, any violation of the Voting Rights Act or other federal voting rights law, intentional or not, could be grounds for a bail-in. The bills also would make it easier to gain preliminary injunctive relief from a change in voting practices.

ABA President James R. Silkenat commended the bipartisan effort by Sensenbrenner and Leahy as well as the numerous cosponsors from both parties.

“The Voting Rights Act has given generations of Americans confidence that their right to vote will be preserved,” he said. “The undeniable history and continued legacy of race-based and politically motivated voting discrimination demands that the ballot box be guarded. Congress now has the opportunity to modernize the decades-old Voting Rights Act and continue the important contribution to America’s voting public by this landmark civil rights law.”

The ABA adopted policy in August 2013 urging Congress to enact legislation to address the “severe blow” that the Supreme Court decision had on voting rights.

The association emphasized in an amicus brief to the court that although litigation may be brought against jurisdictions under Section 2 of the act, such litigation after a voting change is already in place is extremely complex and costly.

Judicial Vacancies/Confirmations—113th Congress* (as of 2/21/14)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
</tr>
</thead>
<tbody>
<tr>
<td>US Supreme Court (9 judgeships)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>US Courts of Appeals (179 judgeships)</td>
<td>16</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
<td>80</td>
<td>53</td>
<td>32</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>96</td>
<td>63</td>
<td>46</td>
</tr>
</tbody>
</table>

*Includes territorial judgeships
GUARDIANSHIP: Bipartisan legislation to help state courts assess adult guardianship and conservatorship proceedings and improve their guardianship systems is ready for full Senate action after approval in December by the Senate Judiciary Committee. S. 975, sponsored by Sens. Amy Klobuchar (D-Minn.) and Sen. John Cornyn (R-Texas), would make state courts eligible for funds already authorized under the Elder Abuse Act of 2009. Grants awarded under the program would be used to set up demonstration projects and to assess the performance of court-appointed guardians and conservators, who are assigned to make personal and financial decisions on behalf of incapacitated adults. The bill also would provide grants for steps toward improving appointment and oversight, including use of electronic filing and requiring background checks for potential guardians and conservators. “Seniors deserve to live their lives safe from abuse and mistreatment,” Klobuchar emphasized when introducing the bill last May. “While most court-appointed guardians are undoubtedly professional, caring and law-abiding, there is mounting evidence that some guardians use their position of power for their own gain. This legislation would help increase accountability and oversight of guardians and protect those who are most vulnerable,” she said. The bill, approved by a 14-4 committee vote, is similar to legislation that cleared the committee during the 112th Congress but did not receive a full Senate vote.

INTERNAL REVENUE SERVICE (IRS) FUNDING: The ABA expressed concerns this month that the recent trend of funding reductions for the IRS is adversely affecting the agency’s ability to properly serve taxpayers and enforce the tax laws that Congress enacts. In a Feb. 5 letter to the leaders of the Senate and House Appropriations Subcommittees on Financial Services and General Government, ABA Taxation Section Chair Michael Hirschfeld explained that the fiscal year 2013 sequestration, which was felt throughout the government, adversely affected not only IRS employees, but also the taxpayers and representatives with whom they interact on a daily basis. He pointed out that funding limits have precluded the IRS from filling vacant positions left when senior personnel have retired. There also has been a marked decline the agency’s ability to provide timely telephone assistance and answer taxpayer correspondence, and the funding cuts have affected the ability of taxpayers to meet with the Office of Appeals to resolve cases administratively. At the same time, the IRS is struggling to maintain enforcement activities to close the tax gap, estimated at nearly $400 billion per year. The agency also has new roles it is required to perform by law in the implementation of the Foreign Account Tax Compliance Act and the Affordable Care Act. “If the Service does not soon receive increased funding, we fear that more and more important functions will be affected, and the continuing and future investments that are necessary to recruit and train the best employees, build modern infrastructure, and effectively administer the tax laws will not be made,” Hirschfeld wrote. He urged the committees to restore recent funding reductions and encouraged Congress to consider whether the legislative budgeting process can be adjusted to take into account the unique IRS role.

LAW SCHOOL ADMISSIONS/DISABILITIES: A panel of the California Third District Court of Appeal cited ABA policy when it ruled Jan. 13 that those administering the Law School Admissions Test (LSAT) must provide accommodations for test takers with disabilities to better ensure that test results reflect the skills of the test takers and not their disability. The accommodations are required by AB 2122, a California law signed in September 2012 that was set to take effect in January 2013. A superior court judge issued a preliminary injunction, however, barring implementation of the law pending trial after the Law School Admission Council (LSAC) sued the state, claiming that the law violated its rights by singling out LSAC and no other testing agencies. The appellate court panel reversed that decision after determining that the new law targets only LSAC because other testing agencies are already providing accommodations. The panel recognized ABA support for AB 2122, explaining that the association’s policy, developed by the ABA Commission on Disability Rights and approved by the ABA House of Delegates in February 2012, is based on a finding that a “major contributing factor to the lack of representation of individuals with disabilities in the legal profession can be attributed to the barriers individuals face when taking the LSAT.” The ABA had conveyed its support for AB 2122 in 2012 in a letter from then ABA President Laurel G. Bellows urging Gov. Edmund G. Brown to sign the legislation.
ABA urges changes to strengthen child trafficking draft legislation

The ABA expressed support last month for efforts by the House Ways and Means Committee to advance legislation to address sex trafficking and foster youth.

Commenting Jan. 16 on draft legislation entitled “Preventing Trafficking and Improving Opportunities for Youth in Foster Care,” ABA Governmental Affairs Director Thomas M. Susman said that the ABA supports the following:

- explicit requirements that state and local child welfare agencies identify, document and serve child victims of sex trafficking;
- a federal mandate to ensure prompt reporting of every child missing from agency care and expeditious efforts to locate and return those children to care; and
- a stronger role for the Children’s Bureau of the Department of Health and Human Services in helping child welfare agencies better prevent and address child trafficking.

Susman recommended several changes to strengthen the sex trafficking section of the draft, including provisions that would add safe and stable housing to child welfare agency responsibilities for trafficking victims and would ensure that child welfare agencies are also responsible for undocumented, unaccompanied children and youth who may be receiving services under the Trafficking Victims Protection Act.

He also pointed out that many abused and neglected children never enter foster care, so it is important to collect data not only on the number of foster children who are sex trafficked but on how many of the children found by child protective services to be maltreated in their homes were also trafficking victims. It is also important, he noted, to know how many youth already out of foster care and living on their own have been trafficking victims.

The ABA recommended that language be added to the draft’s provisions regarding permanency efforts on behalf of foster youth. Susman said the draft should ensure the inclusion of efforts to reconnect foster youth with their adult siblings, provide for independent legal counsel to protect the youth’s legal interests, and ensure continued health care access for youths who exit foster care.

Susman emphasized that “no youth should be discharged from foster care without having safe and secure housing.” pointing out that too many youth discharged from foster care quickly become homeless.

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation

ABA urges changes to strengthen child trafficking draft legislation
ABA applauds introduction of civil justice tax fairness legislation

The ABA expressed support this month for bipartisan legislation that would promote tax fairness in the treatment of civil rights and employment cases by excluding non-economic damages from gross income and eliminating the taxation for lump-sum recoveries at artificially high rates.

“Current tax laws penalize victims of discrimination under all federal, state and local laws that provide for the enforcement of civil rights or regulate the employment relationship,” ABA Governmental Affairs Director Thomas M. Susman wrote Feb. 3 to the Senate and House sponsors of the legislation.

He explained that, unlike victims of personal physical injury, victims who prevail on civil rights and employment-related claims must pay taxes on non-economic damages and are required to pay taxes on potentially many years of income in one year when they receive lump sum payment settlements.

S. 1224 − introduced by Sens. Ben Cardin (D-Md.) and Susan Collins (R-Maine) − and H.R. 2509 − introduced by Reps. John Lewis (D-Ga.), Robert C. “Bobby” Scott (D-Va.), Aaron Schock (R-III.) and Jim Sensenbrenner (R-Wis.) − address this discrimination.

The legislation, known as the Civil Justice Tax Fairness Act, would treat non-economic damages received by plaintiffs in discrimination cases in the same manner as comparable damages in personal injury cases and allow income averaging for discrimination victims who receive settlements or awards of several years of front or back pay in one year.

Other organizations supporting the legislation include the National Employment Lawyers Association, the Association of Corporate Counsel, the Leadership Conference on Civil and Human Rights, and AARP.

Farm measure reduces SNAP funding

failure to support millions of American families and children in maintaining the basic necessity of adequate food and nutrition.”

The ABA House of Delegates adopted new policy Feb. 10 during the association’s Midyear Meeting urging governments to promote the human right to adequate food and nutrition for all through increased funding, development and implementation of strategies to prevent infringement of that right. The policy also urges the U.S. government to make the realization of a human right to adequate food a principal objective of U.S domestic policy.

Follow the Governmental Affairs Office on Twitter!

You can follow us at @ABAGrassroots for updates on GAO activities as well as the scoop on what is happening inside the Beltway.

For more information, contact Jared Hess at Jared.Hess@americanbar.org.