Events held around the country
Annual Law Day 2014 focuses on voting rights and the rule of law

“American Democracy and the Rule of Law: Why Every Vote Matters” was the theme of this year’s Law Day USA, a May 1 celebration initiated by the ABA that has grown to include weeks of events conducted by bar associations, courts, schools and other organizations throughout the country.

In his Law Day proclamation, President Obama recognized the individuals who fought in the past for the right to vote, pointing out that over the centuries the country has made legal changes that eliminated formal voting restrictions based on wealth, race, and sex and also have extended the right to vote to younger adults. He said, however, that “despite this hard-fought progress, barriers to voting still exist and the right to vote faces a new wave of threat.”

“As we reflect on the trials and triumphs of generations past, we must rededicate ourselves to preserving those victories in our time,” Obama said. He urged state and local election officials to implement the recommendations of the bipartisan Presidential Commission on Election Administration and advocated that Congress update the Voting Rights Act.

President Eisenhower issued the first Law Day proclamation in 1958 after then ABA President Charles S. Rhyne envisioned Law Day as a day to celebrate the rule of law. This year, ABA leaders participated in numerous events, including a dialogue on voting with 350 high school students, a breakfast with high school teachers, a national roundtable on voting, and the annual Leon Jaworski Public Program featuring a panel discussing “The Vote: When Does Suffrage Become Universal?”

“The ABA has identified a host of problems across the country that undermine the sacred right to vote – the most American right,” ABA President James R. Silkenat said. This year, on the eve of the 50th anniversaries of passage of both the Civil Rights Act of 1964 and the Voting Rights Act of 1965, he stated that “we can recommit ourselves to democracy by exercising our franchise and by removing barriers that prevent our neighbors from legally casting their vote.”
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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Federal Courts. P.L. 113-46 (H.R. 2775), included $51 million in additional funding for the federal judiciary as part of fiscal year 2014 continuing appropriations through 1/15/14. P.L. 113-76 (H.R. 3547), consolidated fiscal year 2014 appropriations legislation, included $6.9 billion for the federal judiciary, restoring previous funding reductions due to sequestration. S. 1385 would increase the number of Article III judgeships.

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Immigration. S. 744 would overhaul the nation’s immigration system. Numerous House bills address immigration issues, including: H.R. 2131 (visas for skilled workers); H.R. 1772 (E-verify program); H.R. 1773 (farmworkers); H.R. 2778 (state and local law enforcement); and H.R. 1417 (border security). A discharge petition was filed in the House to force an immigration vote.

ABA opposes legislation to cut mental health program

Protection and advocacy efforts would be eviscerated

The ABA is opposing a proposal to cut authorized funding for Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) programs and to bar the programs from using funds to provide critical legal services on behalf of groups of individuals with serious mental illness.

In a March 31 letter to the House Energy and Commerce Subcommittee on Health, ABA Governmental Affairs Director Thomas M. Susman explained that PAIMI mandates that Protection and Advocacy agencies (P&As) in every state and territory protect and advocate for the rights of individuals with mental illness and investigate incidents of abuse and neglect of these individuals in all public and private facilities and in community settings. The agencies also have the authority to provide legal representation and other advocacy services to people with severe mental disabilities.

Provisions in H.R. 3717, the proposed “Helping Families in Mental Health Crisis Act of 2013,” would reduce PAIMI funding from $36 million to $5 million, an action that the ABA maintains would leave the 57 state and territorial programs without vital funds that are used to protect and serve some of the nation’s most vulnerable citizens. Last year, P&As under the federally funded PAIMI program provided information and referral services to 35,500 individuals and provided training to more than 80,000 individuals, family members, mental health planners and social service professions.

In addition, more than 15,000 individuals received critical legal services through systemic advocacy and litigation – legal assistance that would be prohibited under H.R. 3717. Susman highlighted the efforts of Disability Rights of Washington, a PAIMI agency that joined others in filing a class action lawsuit to compel intensive, individualized mental health services for Medicaid-eligible young people in their communities. The case led to an agreement allowing for additional treatment of children at home rather than in psychiatric facilities.

During an April 3 subcommittee hearing on H.R. 3717, David L. Shern, president and CEO of Mental Health America, agreed with the ABA and said that the legislation should seek to improve PAIMI rather than dismantle it. “While the system surely can be improved and might benefit from the use of more alternative dispute resolution techniques like psychiatric advance directives and mediation-oriented dispute resolution, the wholesale abandonment of the PAIMI function would be disastrous in our current systems,” he testified.

ABA urges RGA to retract anti-lawyer political ad

ABA President James R. Silkenat urged Republican Governors Association (RGA) Chair Gov. Chris Christie to retract a new video ad aired last month that vilifies South Carolina gubernatorial candidate Vincent Sheheen for his work as a criminal defense attorney.

Sheheen, a South Carolina state senator, is running against incumbent Gov. Nikki Haley.

“A fundamental tenet of America’s justice system and constitution is that anyone who faces loss of liberty has a right to legal counsel,” Silkenat wrote in an April 25 letter to the RGA and Christie. “Lawyers have an ethical obligation to uphold that principle and provide zealous representation to people who otherwise would stand alone against the power and resources of the government – even to those accused or convicted of terrible crimes,” he said. Rule 1.2 (b) of the ABA Model Rules of Professional Conduct states that “[a] lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.”

Silkenat said that this legal ethics provision is also consistent with longstanding American legal tradition. He pointed out that for hundreds of years, dating back to John Adams’ passionate defense of British soldiers after the
Justice Department unveils clemency initiative

ABA president welcomes initiative

The Department of Justice (DOJ) launched a clemency initiative April 23 that will encourage qualified federal inmates to petition to have their sentences commuted or reduced as part of the “Smart on Crime” initiative announced last year by U.S. Attorney General Eric H. Holder Jr. during the ABA’s Annual Meeting.

At a news conference, Deputy Attorney General James M. Cole explained that the Fair Sentencing Act of 2010, which reduced unfair disparities in sentences for offenses involving crack cocaine, did not apply to those who were sentenced before enactment of the law. As a result, many federal prisoners sentenced under the old regime will spend far more time in prison that they would if they had been sentenced today for exactly the same crime. The initiative is not limited, however, to crack offenders but is open to prisoners who:

- are currently serving a federal sentence in prison and likely would have received a substantially lower sentence if convicted of the same offense today;
- are non-violent, low-level offenders without significant ties to large-scale criminal organizations, gangs or cartels;
- have served at least 10 years of their sentence;
- do not have a significant criminal history;
- have demonstrated good conduct in prison; and
- have no history of violence prior to or during their current term of imprisonment.

After an extensive screening process by DOJ attorneys, those who appear to meet the criteria will be offered the assistance of experienced pro bono attorneys in preparing their clemency applications. “Let there be no mistake,” Cole said, “this clemency initiative should not be understood to minimize the seriousness of our federal criminal law and is designed, first and foremost, with public safety in mind.”

The older stringent punishments that are out of line with sentences imposed under today’s law erode people’s confidence in our criminal justice system, Cole said, indicating he is confident that the clemency initiative will go far to promote the most fundamental of American ideals – equal justice under law.

ABA President James R. Silkenat welcomed the department’s action. “Public confidence in the criminal justice system is directly linked to fairly imposed punishments, a principle President Obama and the Department of Justice recognize and appear poised to advance,” he said in a statement. The ABA, which opposes mandatory minimum sentencing, supports retroactive application of the Fair Sentencing Act and steps that would reduce lengthy sentences for certain people convicted of nonviolent crimes and has long urged broader use of the executive clemency and pardon power.

Political ad causes ABA concern

continued from page 3

1770 Boston Massacre, “we have valued the importance of legal representation, even for those who are disfavored by society.” The RGA ad, Silkenat said, sends a disturbing message to lawyers – that their clients’ past actions or beliefs will stain their own careers, especially if they want to serve their country in public office.

South Carolina Bar President Anne Paylor, in a statement issued April 22, announced that the state bar has launched a website to educate the public and help defend the legal profession against blanket political attacks against lawyers performing their professional duties. Both Silkenat and Paylor emphasized that their organizations do not endorse political candidates. The presidents of the Pennsylvania Bar Association and New Jersey State Bar Association also sent letters critical of the ad to their governors, both of whom are members of the RGA.

Earlier this year, Silkenat also voiced ABA concern over the harsh criticism regarding the legal work of Debo Adegbile, President Obama’s nominee to head the Justice Department Civil Rights Division. The Senate failed to invoke cloture on Adegbile’s nomination March 5 after many opponents based their opposition to his nomination on his legal work on the case of Mumia Abu-Jamal, who was convicted of the 1981 murder of Philadelphia police officer Daniel Faulkner. The Legal Defense Fund became involved in Abu-Jamal’s appeal of his death in 2006 when Adegbile was director of litigation for the organization.

“Adegbile’s work, like the work of ABA members who provide thousands of hours of pro bono legal services every year, is consistent with the finest tradition of this country’s legal profession and should be commended, not condemned.” Silkenat wrote to the Senate Judiciary Committee prior to the committee’s 10-8 vote approving the nomination in February.
Today we will petition our federal government representatives and senators, seeking their help in our quest for providing the benefits of our nation’s system of laws to those who need legal services but cannot afford them.

The meetings we will have today, and maybe those you held yesterday, in many instances are with individuals who are very wary of legal services activities, are concerned about deficits and the need to cut or balance spending to live within our means as a country, or have both worries.

No senator or representative need be wary of legal services activities. Yes, issues have existed in the past. Today, to address concerns raised in the past, accommodating restrictions are placed on the use of federal funds, and even other funds intermixed with those federal funds. Unfortunately, though, people remember...what they heard decades ago from a constituent or what they even experienced themselves.

That is why we carry into every legislative office we visit one piece of paper that lists all the things legal services programs do not do and cannot do. No class actions, no redistricting cases, no abortion-related litigation, no prisoner cases, no cases involving assisted suicide, no undocumented aliens except in domestic violence cases. In other words, no hot-button political issues.

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We have found that garnering support for legal services to the poor among legislators or members of the executive branch is more successful when we can demonstrate that providing additional resources to provide such services is cost-effective: money spent is money saved.

Lawmakers concerned about the wise use of funds can’t really argue with the wisdom of spending a little to save a lot. For example, when a family whose home is being taken from them by an unscrupulous landlord or by illegal lending practices receives legal help and their home is preserved, the family does not find itself homeless needing government help to a much greater extent than if they could stay in their home.

We have found that members of Congress and state legislatures want to be assured that clients and their situations are carefully screened for eligibility. LSC, and we, can without doubt give them that assurance. We also can tell them that once carefully scrutinized for qualification, it is estimated that only one in five legitimate legal needs can be served. There can be no question about need.

Understanding the need for the infrastructure for legal services to the poor and the real use of the funds provided, appropriators are more likely to be a friend. Even then they want also want to be assured everyone else is doing their part, including the legal profession.

Building on the Legal Services Corporation framework, our state court systems, bar associations, and organizations like the Access to Justice commissions and foundations are able to partner to meet the goal of providing access to justice for all.

Increasingly, state legislatures, like Texas, [also] are providing state funding to assist in the effort. And certainly government, state or federal or both, is not asked to do it alone. Lawyers in Texas donate in a year’s time pro bono services in an amount that is conservatively estimated to be valued at one half of a billion dollars.

In summary, approaching the most difficult-to-convince individual senator or representative, we hope we can do the following:

• eliminate fears or misconceptions about how appropriated funds will be used;
• provide concrete examples of highly sympathetic people whose lives have been saved or changed for the better;
• describe mechanisms that ensure accountability for the programs that use public funds; and
• choose the right messengers to present the case to a lawmaker for legal services to the poor.

We should be equipped to show what a failure to provide access to our justice system for the poor means in human cost and potential economic loss. Importantly though, we should share our views of how, by not providing for access to justice to our most vulnerable, we severely damage our reputation as a fair and honorable nation truly built on our belief in liberty and justice for all.

Access to justice and our courts should be available to the poor in our society. It is a goal for which we all should strive, and we need the help of our lawmakers. We can be most proud when all of our people have access to that system of justice, regardless of wealth or stature.

LSC: What Members of Congress Need to Know

Harriet Miers, a longtime ABA member, is former White House counsel and a commissioner on the Texas Access to Justice Commission. She inspired this year’s ABA Day participants with her speech during the April 9 Breakfast Briefing on Capitol Hill. The following are excerpted remarks from that presentation.
ABA urges funding for Elder Justice Act

The ABA is urging Congress to provide fiscal year 2015 appropriations for the Elder Justice Act (EJA), which has received no funding since it was enacted with bipartisan support in 2010 as part of P.L. 111-48, the Patient Protection and Affordable Care Act.

In an April 25 letter to House and Senate appropriations subcommittees, ABA Governmental Affairs Director Thomas M. Susman expressed the ABA’s vigorous support for the Obama administration’s budget request of $25 million to fund programs authorized by the EJA. The act, he said, is intended to provide resources to “prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation.”

The $25 million includes $13.8 million to strengthen Adult Protective Service (APS) programs in states through creation of an APS National Data System and grants to states to interface with the system. The remaining $11.2 million would be used for research to create credible benchmarks for elder abuse, neglect and exploitation prevention as well as program development and evaluation. This would be done through national demonstration grants to test a variety of methods to detect and prevent elder abuse.

Susman emphasized in his letter that elder abuse in the United States is a problem not defined by socio-economic, racial or ethnic status.

The 2010 National Elder Mistreatment Study estimated that five million elders are victims of abuse each year. That number, however, may be only “the tip of the iceberg,” Susman said, because the 2011 New York State Elder Abuse Prevalence Study revealed that 24 out of every 25 instances of abuse go unreported.

Another study by the MetLife Mature Market Institute reported that older victims lose an estimated $2.9 billion per year due to financial exploitation, and direct medical costs associated with elder abuse have been estimated by researchers to exceed $5 billion annually.

“Providing federal funding to better understand, treat and combat elder abuse is an investment in the health, dignity and economic future of our nation,” Susman said.

The House and Senate Appropriations Subcommittees on Labor, Health and Human Services, Education and Related Agencies, which have jurisdiction over EJA funding, are currently holding hearings on funding for fiscal year 2015.

Judicial Vacancies/Confirmations—113th Congress* (as of 5/13/14)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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</thead>
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<tr>
<td>US Supreme Court (9 judgeships)</td>
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<td>0</td>
</tr>
<tr>
<td>US Courts of Appeals (179 judgeships)</td>
<td>13</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
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<td>33</td>
<td>60</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
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<td>0</td>
<td>2</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>74</strong></td>
<td><strong>39</strong></td>
<td><strong>79</strong></td>
</tr>
</tbody>
</table>

*Includes territorial judgeships
APPROPRIATIONS: The Commerce-Justice-Science (CJS) fiscal year 2015 funding bill approved by the House Appropriations Committee May 8 includes $350 million for the Legal Services Corporation (LSC), an amount $15 million below the program’s current funding level but $50 million more than the committee recommended last year. The committee’s LSC figure includes a $500,000 increase to $3 million for the Pro Bono Innovation Fund, which supports LSC efforts to involve more private attorneys in the delivery of legal services. In a March 31 statement to the subcommittee, ABA President James R. Silkenat emphasized that strong federal funding for LSC is critical as more Americans than ever qualify for and need legal aid. The committee bill also includes funding for other programs supported by the ABA: $7 billion for the Bureau of Prisons; $425.5 million for violence against women programs; $3.458 billion for the U.S. Patent and Trademark Office to be derived from fees; $58.5 million to improve the National Instant Criminal Background Check System; $5 million for the veterans treatment courts; and $62.5 million for Second Chance Act grants for programs to help offenders reconnect with their communities after they have served their prison sentences. The full House is expected to vote on the legislation within the next few weeks. The Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies has not yet completed action on its version of the legislation.

INTEREST ON LAWYER TRUST ACCOUNTS (IOLTAS): The House passed legislation May 7 that would benefit IOLTAs by allowing credit unions to insure the trust accounts for up to $250,000, the same level of coverage provided by banks. The bill, H.R. 3468, would ensure that there is parity in the treatment of trust accounts covered by the National Credit Union Share Insurance Fund and the Federal Deposit Insurance Corporation (FDIC). A lawyer who receives funds that belong to a client must place those funds in a lawyer trust account separate from the lawyer’s own money, and interest from these IOLTAs provide one of the largest funding sources for civil legal services. “This legislation would benefit state charitable programs receiving revenue from IOLTAs by providing attorneys the ability to hold client funds in credit unions, which have historically provided higher interest rates than other financial institutions,” ABA President James R. Silkenat wrote in a May 6 letter. Silkenat explained that more than 90 percent of IOLTA grants fund the delivery of legal services to the poor, and support legal aid and pro bono legal assistance to veterans, domestic violence victims, those coping with the after-effect of natural disasters, and those undergoing foreclosures and other housing issues. Rep. Ed Perlmutter (D-Colo.), a cosponsor of the bill, noted that, under the legislation, if a credit union were ever to fail and needed to be dissolved, then the client funds held in an escrow account would be insured and thus protected, regardless if the beneficiary is a member of the credit union or not. The bill, which passed by voice vote, also has the support of the National Credit Union Administration, the National Association of Federal Credit Unions and the Credit Union National Association.

ABA Annual Meeting Aug. 7-12, 2014 Boston, Massachusetts
ABA continues fight against mandatory accrual accounting provisions

The ABA is continuing its efforts to oppose draft tax reform legislation that would have negative consequences for many lawyers and law firms.

The association is urging Congress to remove certain key provisions from draft tax reform bills proposed by the House Ways and Means Committee and the Senate Finance Committee that would require all law firms and other personal service businesses with annual gross receipts over $10 million to use the accrual method of accounting rather than the traditional cash receipts and disbursement methods.

An April 8 meeting hosted by the ABA Governmental Affairs Office, in conjunction with the association’s senior leadership and its ABA Membership and Marketing Department, brought representatives from 35 law firms together to discuss the impact of the provisions. ABA President James R. Silkenat and President-elect William C. Hubbard emphasized to the group that the provisions would cause substantial hardship for law firms and other personal services businesses by requiring them to pay tax on income they have not yet received and may never receive.

ABA Associate Governmental Affairs Director Larson Frisby explained the ABA’s extensive lobbying efforts to defeat the provisions, which the Joint Committee on Taxation has estimated would generate $23.6 billion in additional revenue over 10 years that could be used to pay for a variety of unrelated spending or tax reduction proposals. He also noted that the accrual issue was a focus of this year’s ABA Day in Washington event, which brought more than 350 bar leaders to Washington for Capitol Hill visits, and that at least 21 state and local bars now formally oppose the mandatory accrual accounting proposal.

In addition, the Governmental Affairs Office and several of its coalition partners briefed 50 House staff members April 21 on the harmful effects the accrual accounting legislation would have on the legal, accounting and medical professions as well as on the overall economy.