Inside This Issue

House of Delegates actions produce wide range of new policies

Attorney General Lynch cites ABA role in success of Smart on Crime initiative; cites evolving challenges

New ABA President Paulette Brown announces initiatives to enhance diversity of the profession, pro bono efforts, and ABA membership

ABA says refugees are entitled to representation at overseas interviews

ABA supports recommendations to empower Indian tribes with juvenile justice decision-making authority

Bills would create mandatory minimum sentences for illegal reentry into the United States

Core objective of independent agency regulatory bill is in line with ABA policy

Regular Features

Legislative Boxscore

Judicial Vacancies/Confirmations

Paulette Brown assumes ABA presidency

House of Delegates approves wide array of new policies during Annual Meeting

The 559-member ABA House of Delegates, tackling an array of policy recommendations during its Aug. 3-4 session during the association’s Annual Meeting, approved new legislative policies ranging from domestic violence to cybersecurity.

The delegates also approved changes to the ABA Constitution and Bylaws and adopted the recommendations of the ABA Task Force on the Financing of Legal Education, a group chaired by former ABA President Dennis W. Archer that spent a year studying the financing issues.

Other highlights of the meeting included a keynote address by U.S. Attorney General Loretta E. Lynch (see page 4) and the passing of the presidential gavel from William C. Hubbard to New Jersey lawyer Paulette Brown, the first African-American woman to serve as the association’s president (see page 5). Linda A. Klein, of Atlanta, assumed the position of president-elect in line to become president in August 2016. New Mexico lawyer Roberta Cooper Ramo, who became the first woman ABA president 20 years ago, received the ABA Medal, the association’s highest award.

Attendees also had an opportunity to participate in a wide range of programs, including panel discussions on the Voting Rights Act, over-incarceration, cybersecurity, immigration detention, bias in the justice system, Cuba-U.S. relations, same-sex marriage, and Magna Carta. A panel of four solicitors general shared their experiences representing the government before the Supreme Court. The Commission on the Future of Legal Services also continued its public hearings seeking more effective and efficient ways to provide legal services.

The following is a summary of legislative resolutions approved by the delegates.

Civil Rights

Section Name Change. Approved the request of the ABA Section of Individual Rights and Responsibilities to change its name to the ABA Section of Civil Rights and Social Justice to more accurately reflect the work of the section and its membership.

Sexual Orientation and Gender Identity. Recognizes that lesbian, gay, bisexual, transgender and queer (LGBTQ) people have the right to be free from attempts to change their sexual orientation and gender identity. Urges governments to enact laws that prohibit state-licensed professionals from using conversion therapy on minors and to protect minors, particularly minors in their care, from being subjected to conversion therapy by state-licensed professionals.
# LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>LEGISLATIVE ISSUE</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
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<tbody>
<tr>
<td><strong>Federal Courts.</strong> P.L. 113-235 (H.R. 83), fiscal year 2015 consolidated and further continuing appropriations legislation, included $6.7 billion for the federal judiciary. The president’s fiscal year 2016 budget request includes $6.96 billion for the federal judiciary.</td>
<td>Appropriations subcommittee held a hearing on judicial funding on 3/25/15. Appropriations Committee approved $6.9 billion for the federal judiciary on 6/17/15.</td>
<td>Appropriations subcommittee held a hearing on judicial funding on 3/24/15. Appropriations Committee approved $6.9 billion for the federal judiciary on 6/23/15.</td>
<td>Supports adequate judicial resources and opposes efforts to infringe on separation of powers or undermine the judiciary.</td>
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<tr>
<td><strong>Legal Services Corporation (LSC).</strong> P.L. 113-235 (H.R. 83), fiscal year 2015 consolidated and further continuing appropriations legislation, included $375 million for LSC. The president’s fiscal year 2016 budget request includes $452 million for the program.</td>
<td>Appropriations Committee approved $300 million for LSC on 5/20/15.</td>
<td>Appropriations Committee held a hearing on 3/27/15. Appropriations Committee approved $385 million for LSC on 6/11/15.</td>
<td>President signed P.L. 113-235 (H.R. 83) on 12/16/14.</td>
<td>Supports an independent, well-funded LSC.</td>
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**Domestic and Sexual Violence.** Urges colleges and universities to recognize the rights of students to receive an education free from sexual harassment, sexual assault, stalking, gender-based violence, and intimate partner violence. Urges Congress to increase funding for the Office for Civil Rights in the Department of Education and the Office on Violence Against Women in the Department of Justice to support efforts to enforce Title IX of the Education Amendments of 1972 and other relevant laws to assure that fair procedures are utilized in the hearing and disposition of complaints. Urges governments to adopt meaningful remedies and vigorous enforcement mechanisms, including civil remedies, while assuring that the rights of the accused are recognized, respected and protected, and to fully fund implementation of such remedies and enforcement.

**Civil Protection Orders.** Urges governments to enact civil protection order statutes regarding domestic, intimate partner, sexual, dating, and stalking violence that extend protection to lesbian, gay, bisexual and transgender individuals.

**Gender-based Violence.** Recognizes freedom from domestic, dating and sexual violence and stalking and all other forms of gender-based violence as fundamental human rights, and urges governments to recognize this and enact and adopt resolutions affirming the right of women, men and children to live free from domestic, dating and sexual violence and stalking.

**Criminal Justice**

**Juvenile Delinquency Records.** Adopts the Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records, which mandates that courts, probation offices and law enforcement agencies keep juvenile court and law enforcement records confidential.

**Monitors.** Adopts the black letter of the ABA Standards for Criminal Justice: Monitors, which outline best practices for the appointment and retention of monitors, also known as independent private sector compliance officers or inspectors general engaged by organizations pursuant to a court order, civil remedial action, settlement or agreement with governmental entities to ensure the organizations’ compliance with the law and to reduce waste, abuse and fraud.

**Pell Grant Eligibility.** Urges Congress to restore Pell Grant eligibility for prisoners who qualify under existing need-based criteria in order to facilitate reentry and reduce recidivism.

**Forensic Science.** Urges the National Commission on Forensic Science, established by the Department of Justice in 2013, to develop a model curriculum in law and forensic science and to provide training in that curriculum for federal, state, local, territorial and tribal judges.

**Cybersecurity**

**Judicial System.** Urges legislatures and governments to provide the funding necessary to develop, implement and maintain appropriate cybersecurity programs for the courts and to train court personnel on methods to counter threats and protect judicial information systems from cyber intrusions or data breaches.

**Election Law**

**Wait Times at Polls.** Urges election administrators, officials and legislators at the federal, state, local, territorial and tribal levels to adopt and implement policies designed to achieve a 30-minute maximum per-voter wait time at the polls.

**Election Observers.** Supports observation of elections in the United States by observers duly selected by the Organization for Security and Cooperation in Europe (OSCE) and other international organizations of which the United States is a member; urges legislative bodies and governmental agencies to enact laws and adopt rules, regulations and policies that expressly permit the direct observation of the election process by OSCE observers; and urges governments to ensure that voters are registered, that voting places are open and that waiting times and voting procedures are equal to those available to other citizens.

see “Annual Meeting,” page 4

continued from page 3

government officials and political leaders to welcome and support accredited international election observers of the OSCE.

Legal Education

Bar Admissions. Replaces 1994 policy and urges state and territorial bar licensing entities to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses or treatment and instead to use questions that focus on conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical and professional manner. Bar licensing entities are not precluded from making reasonable and narrowly tailored followup inquiries concerning an applicant’s mental health history under certain circumstances.

Standards. Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making several technical amendments to the ABA Standards and Rules of Procedure for Approval of Law Schools.

Attorney General recognizes ABA’s efforts; sees more challenges ahead

U.S. Attorney General Loretta E. Lynch, speaking at the General Assembly Aug. 1 during the ABA’s Annual Meeting, recognized the ABA’s role at the forefront of efforts to strengthen the legal profession, enhance the administration of justice, and ensure the rule of law.

"Your ideals, your mission and your passion have attracted the largest membership of any voluntary professional organization in the country," she said, "and you should all be proud that, time and again, year after year, project after project, you have harnessed the dedication of that impressive following and channeled it forcefully toward improving our system of justice." She noted that, with ABA support, the Department of Justice “Smart on Crime” initiative that was launched two years ago at the ABA Annual Meeting has been “a resounding success and a rare point of bipartisan agreement.” She said the department “continues to employ the principles of the initiative as we take important steps on issues like sentencing reform and education for incarcerated individuals.”

Lynch emphasized that the country faces deep, varied and evolving challenges that will require a concerted effort to combat and overcome. She said that the department is taking a series of proactive steps to neutralize threats to the country’s security, including partnering with local communities to identify the seeds of homegrown terrorism before they take root. In addition, the department is paying particularly close attention to security threats in cyberspace, including those that take aim at American innovation and imperil the privacy of American consumers. The department also is intensifying and expanding its efforts to fight against human trafficking through a new interagency initiative.

She also spoke of the recent tragedies that have awakened the nation to the breakdowns in the relations between law enforcement officials and the people they serve and said that, going forward, the Justice Department “intends to serve as a committed partner to every community to identify strategies that will advance public safety, strengthen relations, and foster the enduring trust and respect they need to thrive.”

“I have no illusions that progress will be easy to achieve – in strengthening our nation or delivering help to its most vulnerable members,” Lynch said. “But this country, like this extraordinary gathering, has never shied away from seemingly intractable challenges…We will bring about the better future that our communities deserve.”
Task Force on the Financing of Legal Education that include: mandating enhanced financial counseling for prospective and current students on student loans and repayment programs; urging all participants in the student loan business and process, including law schools, to develop and publish easily understood versions of the terms of various loan and repayment programs; encouraging the Council of the Section of Legal Education and Admissions to the Bar to return to collecting expenditure, revenue and financial aid data annually for each law school and to make public the information on legal education that it maintains; and encouraging law schools to be innovative in developing ways to lower costs for law students.

**Litigation**

**Diversity Jurisdiction.** Urges Congress to amend 28 U.S.C. §1332 to change the definition of “citizenship” to provide that any unincorporated association shall, for diversity jurisdiction purposes, be deemed a citizen of its state of organization and the state where the entity maintains its principal place of business.

**Native Americans**

**Children and Violence.** Adopts and urges prompt implementation by the administration, Congress, and state and tribal governments of specific recommendations contained in Ending Violence so Children Can Thrive, the November 2014 report of the U.S. Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence.

**New ABA President Paulette Brown announces initiatives**

“Creative collaboration” is the tool that ABA President Paulette Brown will use as she undertakes an ambitious agenda to enhance diversity in the profession and increase the association’s membership.

In her Aug. 3 speech to the House of Delegates during the Annual Meeting in Chicago, Brown said her efforts to further the association’s work toward a more diverse and inclusive profession and to highlight the tremendous value of the ABA can only be achieved through association-wide collaboration as well as partnering with external organizations – efforts that are already taking place.

“We are a nation driven by interconnectedness of diverse, vibrant multicultural communities. Yet our profession does not reflect the people we serve,” she said. To rectify this, Brown, a partner at the law firm of Locke Lord in Morristown, New Jersey, has launched the Commission on Diversity and Inclusion 360, which aims to give lawyers from all backgrounds a “seat at the table” and to develop sustainable action plans for advancement of diversity over the next 10 years. The commission also will develop implicit bias training materials for judges, prosecutors and public defenders.

“Diversity and Inclusion will closely examine equal justice and rule of law issues to address a system where disparities are often stark and ambiguous,” Brown said.

As part of another initiative, Main Street ABA, Brown will visit at least two states a month during her presidency and invite young lawyers and law students to join her as she visits local Boys & Girls Clubs to plant the seeds that may produce future lawyers.

She also is planning “And Justice for All: An ABA Day of Service,” a signature pro bono event Oct. 30 to mobilize tens of thousands of lawyers to volunteer their legal services.

Her fourth initiative, ABA Everyday, will promote the benefits of ABA membership and “showcase the tremendous value of our association, with all its entities, and help our members expand their legal skills, expand their connections to the legal community, and make the most of their personal time,” she said.

Brown has held numerous leadership positions within the ABA. She has been a member of the House of Delegates since 1997 and is a former member of the Board of Governors and its executive committee as well as the Governance Commission. She chaired the ABA Council on Racial and Ethnic Justice and is a past co-chair of the Commission on Civic Education in our Nation’s Schools. A former president of the of the National Bar Association, she has repeatedly been named as a New Jersey Super Lawyer and as one of the Best Lawyers in America in the area of commercial litigation.

Brown earned her J.D at Seton Hall University School of law and her B.A. from Howard University.
ABA urges representation at overseas refugee interviews

ABA president says there is no reason to deny refugee applicants access to counsel

The ABA requested last month that the Department of Homeland Security (DHS) reverse its current ban on access to counsel in overseas refugee interviews.

“Representation of counsel would assure that refugees are given a fair chance to navigate the admission process successfully while protecting their human rights,” then ABA President William C. Hubbard wrote in a July 24 letter to DHS Secretary Jeh Johnson, DHS Deputy Secretary Alejandro Mayorkas, and León Rodríguez, director of U.S. Citizenship and Immigration Services. “Presence of a legal advocate at interviews can also aid the U.S. government interviewer by bridging linguistic, cultural and psychological gaps,” he explained.

Refugees applying for resettlement through the U.S. Refugee Admission Program (USRAP) must navigate a complicated admission process that includes a minimum of four interviews with United Nations and U.S. officials, and they must submit numerous documents for both evidentiary and identification purposes. Most refugee applicants do not speak English, and many suffer from mild to severe cases of Post Traumatic Stress Disorder as a result of persecution.

Hubbard asserted that, because USRAP is a compulsory administrative proceeding, refugees are entitled to be allowed representation by counsel at no expense to the government under implementing regulations for the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA). From 1982 to 1992, INS officially interpreted the INS regulations − 8 CFR § 292.5(b) − as allowing counsel in the context of refugee asylum applications occurring outside the United States. In 1992, however, INS abruptly revised this prior analysis of the regulations through a memo to the Office of International Affairs.

In addition, Hubbard said that because refugees are required to appear in person for their interviews, they are covered under Section 555 (b) of the APA, which provides that a person compelled to appear in person before an agency is entitled to be accompanied, represented and advised by counsel.

He emphasized that it has been documented that the presence of counsel improves the efficiency and fairness of the process and is one of the key determinates to a positive case outcome. Hubbard concluded that there is no legislative, regulatory or practical reason to deny refugee applicants access to counsel.

A change in the agency’s interpretation, he said, could be made through an internal memorandum and would not require any statutory or regulatory change to bring the agency into compliance with the plain language of longstanding regulations.

Judicial Vacancies/Confirmations—114th Congress*  
(as of 8/17/15)

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<th>Court</th>
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<td>(9 judgeships)</td>
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<td>Court of International Trade</td>
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<tr>
<td>(9 judgeships)</td>
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<tr>
<td>Totals</td>
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*Includes territorial judgeships
Association supports empowering Indian tribes with decision-making authority in juvenile justice cases

The ABA urged last month that Indian tribes be empowered with meaningful decision-making authority about their juvenile justice systems and that greater emphasis be placed on providing alternatives to incarceration and culturally appropriate intervention and support.

In a letter submitted for the record of a July 15 oversight hearing held by the Senate Indian Affairs Committee, the ABA expressed support for the 12 recommendations from the Indian Law and Order Commission’s (ILOC) report entitled “A Roadmap for Making Native America Safer.”

The recommendations in the independent national advisory commission’s report, released in November 2013, are grounded in findings that Native youth are among the most vulnerable group of children in the United States as a result of centuries of harmful public policies that continue to inflict intergenerational trauma on children in Indian country.

“Upon entering the juvenile justice system, tribal youth are further endangered by being thrust into an exceedingly complicated web of jurisdictional rules and sentencing limitations that subject them to complex and inadequate federal and state juvenile justice systems,” ABA Governmental Affairs Director Thomas M. Susman wrote in the ABA letter.

He highlighted recommendations that would:
• strengthen tribal jurisdiction by allowing tribes to opt out of state and federal juvenile jurisdiction or give tribes the right to consent to U.S. attorneys’ decisions;
• provide additional resources for tribes to address youths’ need for treatment;
• provide alternatives to incarceration within the federal, state and tribal justice systems;
• detain violent juveniles within a reasonable distance from their homes;
• amend the Federal Delinquency Act to include tribes and extend tribal authority to oversee prosecution of juveniles as adults; and
• improve cooperative measures between tribes and local government.

“The recommendations of the ILOC Report regarding juvenile justice in Indian country seek to replace outdated and top-down bureaucracies with locally based approaches that will enable tribal governments to provide justice in their own communities and more effectively address the disproportionate amount of violence occurring in Indian country today,” he said.

ABA opposes mandatory minimums for illegal reentry

Congress is taking a closer look at punishments for undocumented immigrants who have been deported but later illegally reenter the United States.

Several bills pending before the House and Senate would create new mandatory minimum sentences for such offenses. Current law subjects persons convicted of illegal reentry to a sentence of up to two years, unless the person has a criminal record. In those cases, the individual could receive a sentence of up to 20 years.

S. 1762 and H.R. 3011 would create a mandatory minimum for illegal reentry of five years, regardless of a person’s criminal record or other relevant circumstances, such as asylum-seeker status or a relationship with U.S. family members.

S. 1812 would create a five-year mandatory minimum sentence for illegal reentry for anyone with a prior “aggravated felony” conviction, which is broadly defined to include crimes such as failure to appear in court as well as more serious offenses.

The ABA, which has long supported sentencing reform and opposes mandatory minimums, sent a letter to Senate and House Judiciary Committee leaders on July 30 speaking against these proposals.

“As bipartisan commitment builds to reform our nation’s criminal justice system, including by reducing incarceration levels, it makes no sense to suddenly reverse course by creating new mandatory minimums that could lead to the construction of new federal prisons or create unprecedented overcrowding in the federal prison system,” ABA Governmental Affairs Director Thomas M. Susman wrote. He cited data from the U.S. Sentencing Commission and the Bureau of Prisons revealing that increasing mandatory minimums for these offenses would cost taxpayers an estimated $2 billion each year and add a net of 65,000 prisoners to the federal prison population—requiring that either 20 new prisons be built or that current prisons increase their capacities to 167 percent.

“Mandatory minimum sentences are ‘one size fits all’ justice and inevitably produce sentences that do not fit the particular facts and circumstances of both the offense and the person who committed it,” Susman said.

“By treating all offenders the same, mandatory minimum sentences frequently produce irrational and excessive punishments and contribute to unwarranted sentencing disparity,” he said. On a final note, Susman concluded that there “is no demonstrable link between federal mandatory minimums and any decline in crime.”

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**ABA Supports Empowering Indian Tribes with Decision-Making Authority in Juvenile Justice Cases**

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ABA supports independent agency regulatory bill

The ABA expressed strong support last month for S. 1607, bipartisan legislation that seeks to expand presidential involvement in the rulemaking activities of independent regulatory agencies.

The bill – which was introduced by Sens. Rob Portman (R-Ohio), Mark Warner (D-Va.) and Susan Collins (R-Maine) – would affirm the president’s authority to issue an executive order requiring independent regulatory agencies to comply, to the extent permitted by law, with regulatory analysis requirements currently applicable to executive agencies when adopting new regulations.

“The core objective of S. 1607 falls squarely within longstanding ABA policy that the Constitution’s choice of a unitary executive justifies presidential involvement in rulemaking activities of federal agencies,” ABA Governmental Affairs Director Thomas M. Susman wrote to Senate Homeland Security and Governmental Affairs Committee Chairman Ron Johnson (R-Wis.) and Ranking Member Thomas R. Carper (D-Del.)

Susman explained that ABA policy, first adopted in 1986 and reiterated in 1990, supports greater presidential coordination, review and oversight of the regulatory process for both executive and independent agencies because the president:

• is in the best position to centralize and coordinate the regulatory process, particularly with the proliferation of administrative agencies that often have overlapping responsibilities;

• is electorally accountable, unlike administrative officials, to the people and is the only official in government with a true national constituency; and

• has the unique ability, by virtue of the president’s accountability and capacity for interagency coordination and centralization, to energize and direct regulatory policy in a way that would be impossible if that policy were to be set exclusively by administrative agency officials.

“From the standpoint of sound policy in the federal rulemaking process, we believe that there is no meaningful difference between the ‘independent agencies’ and those agencies to which the current executive order (E.O. 12866) applies,” Susman said. E.O. 12866, issued by President Clinton in 1993, requires agencies, among other things, to assess the cost of proposed regulations and submit those that are economically significant to the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) for review.

Susman noted that the report underlying the ABA’s 1990 policy resolution acknowledges the perspective that some functions of independent agencies might be hampered in certain circumstances by presidential oversight, but he said several specific provisions in the bill appear to be designed to accommodate such concerns.

For example, the bill provides that OIRA’s assessment of a draft rule would be “nonbinding,” and OIRA would lack power to prevent the independent agency from going forward with its proposed rule until the two sides’ differences are settled. By contrast, E.O. 12866 allows OIRA to “return” a rule to an executive agency if it is dissatisfied with the rule.

Susman explained that although the ABA takes no position on specific provisions of this type, the association urges Congress to pay particular attention to ensuring that implementation of the legislation would not impair the ability of independent agencies to perform their statutory functions.