ABA Day in Washington, the association’s annual lobby day coordinated by the Governmental Affairs Office, drew over 400 bar leaders to Washington, D.C., April 25-27 to meet with their members of Congress.

The event — attended this year by participants from all 50 states, the District of Columbia and the Virgin Islands — is an opportunity for ABA members to convey the association’s views on priority issues of importance to the legal profession.

This year, attendees urged their members to support increased funding for the Legal Services Corporation (LSC) to assist low-income Americans with civil legal needs and to enhance access to justice for homeless veterans and those at risk of homelessness.

The ABA supports a fiscal year 2018 appropriation of $450 million for LSC, which would increase the corporation’s current funding level of $385 million by $65 million. ABA Day participants emphasized that, despite limited resources, legal aid programs annually assist nearly 1.9 million Americans across the country, including veterans, domestic-violence victims, aging Americans, rural populations, women, and natural disaster victims.

Reacting to the Trump administration’s fiscal year 2018 budget blueprint proposing elimination of LSC funding, the bar leaders emphasized that the LSC is the backbone for America’s civil legal aid and pro bono system. During their visits, the ABA Day participants delivered more than 19,000 Legal Aid Defender cards to congressional members with personalized messages created by their constituents through the Legal Aid Defender grassroots campaign organized by the Governmental Affairs Office.

Bar leaders also urged their members of Congress to enact the Homeless Veterans Legal Services Act, which would expand access to legal services for homeless veterans and those at risk of homelessness by authorizing the secretary of Veterans Affairs to partner with public and private entities to help fund a portion of the cost of legal services.

In her ABA Day message to participants, ABA President Linda A. Klein said, “Our legislative program is based on the relationships you cultivate at ABA Day. We could not do this without your help.”

The event’s Opening Session included keynote speeches in support of the ABA’s work on legal services by Sen. Dan Sullivan (R-Alaska), Reps. Susan Brooks (R-Ind.) and Brian Fitzpatrick (R-Pa.), and LSC President James J. Sandman. A breakfast briefing the next day featured James Burnham, senior associate counsel to the president in the Office of White House Counsel, who told the group that the administration has made filling the more than
# 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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<tr>
<td><strong>Criminal Justice.</strong></td>
<td>H.R. 968 and H.R. 969 were referred to the</td>
<td>S. 328 and S. 330 were referred to the</td>
<td>Supports federal sentencing reform to</td>
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<td>House Judiciary Cmte. on 2/7/17.</td>
<td>Senate Judiciary Cmte. on 2/7/17.</td>
<td>address explosive growth in prison</td>
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<td>S. 573 was referred to the Senate</td>
<td>population and costs. Supports JJDPA</td>
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<td>certain civil asset forfeiture reforms.</td>
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<td><strong>Federal Courts.</strong></td>
<td>House passed H.R. 985 on 3/9/17 and</td>
<td>S. 237 was referred to the Senate</td>
<td>Supports adequate judicial resources and</td>
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<td>H.R. 720 on 3/10/17.</td>
<td>Judiciary Cmte. on 1/30/17.</td>
<td>opposes efforts to infringe on separation</td>
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<td>Judiciary subc. held a hearing on</td>
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<td>splitting the Ninth Circuit on 3/16/17.</td>
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Legislative Boxscore:

Criminal Justice. S. 328 and H.R. 968 would confer jurisdiction on the U.S. district courts to provide declaratory and injunctive relief against systemic violation of the right of counsel. S. 330 and H.R. 969 would establish a federal Defender Office for Supreme Court Advocacy to ensure right to counsel. S. 573 would establish a National Criminal Justice Commission.

H.R. 968 and H.R. 969 were referred to the House Judiciary Cmte. on 2/7/17.

S. 328 and S. 330 were referred to the Senate Judiciary Cmte. on 2/7/17.

S. 573 was referred to the Senate Judiciary Cmte. on 3/8/17.


S. 237 was referred to the Senate Judiciary Cmte. on 1/30/17.

President signed P.L. 114-113 (H.R. 2029) on 12/18/15. President signed P.L. 114-254 (H.R. 2028) on 12/10/16.

Immigration. The president issued executive orders on 1/25/17, and 1/27/17 followed by a revised executive order 3/6/17 on border security, immigration enforcement, and visa and refugee programs. Federal judges temporarily blocked the orders nationwide that suspended entry from majority-Muslim countries.

President signed P.L. 114-113 (H.R. 2029) on 12/18/15.

Supports improvements in the immigration court and adjudication system. Opposes mandatory detention and supports alternatives to detention. Supports access to counsel and due process safeguards.

Legal Services Corporation (LSC), P.L. 114-113 (H.R. 2029), included $385 million for LSC in FY 2016. P.L. 115-31 (H.R. 244) extends current LSC funding level through 9/30/17. President’s FY 2018 budget blueprint issued on 3/16/17 includes no funding for LSC.


Supports an independent, well-funded LSC. See front page and page 8.
**ABA urges DHS to modify search procedures for lawyers’ devices**

**Concerns about protecting confidentiality of client information**

ABA President Linda A. Klein urged the Department of Homeland Security (DHS) this month to take steps to ensure that proper policies and procedures are in place during border crossings to prevent the erosion of important legal principles.

In a May 5 letter to DHS Secretary John Kelly and Acting General Counsel Joseph Maher, Klein expressed serious concerns about standards that permit U.S Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) officers to search and review the content of lawyers’ laptop computers, cell phones, and other electronic devices at U.S. border crossings without any showing of reasonable suspicion. These devices typically contain client information that is inherently privileged or otherwise confidential.

“The ABA understands and supports the critical role that DHS, CBP and ICE play in protecting our national security,” Klein wrote. “But just as border security is fundamental to national security, so too is the principle of client confidentiality fundamental to the American legal system.”

She explained that the ABA has consistently fought to preserve the attorney-client privilege, the work product doctrine and the confidential lawyer-client relationship. For example, the association worked with the National Security Agency (NSA) and other federal agencies in 2014 to ensure the confidentiality and attorney-client privileged status of lawyer-client communications intercepted or otherwise received during surveillance activities.

Those same concerns prompted the ABA in its May 5 letter to urge DHS to clarify Section 5.2 of the CBP Directive No. 3340-049 (Border Search of Electronic Devices Containing Information) and Sections 6.1 and 8.6 of the ICE Directive No. 7-6.1 (Border Searches of Electronic Devices). These directives have resulted in CBP officers and ICE special agents exercising sweeping powers to search electronic devices at the border, with or without reasonable suspicion of any wrongdoing.

Although the CBP and ICE directives include some requirements for special review and handling of materials that appear to be legal in nature or are identified as protected by attorney-client or attorney work product privilege, Klein expressed concern that these requirements are not sufficiently clear or comprehensive.

She pointed out that courts have generally permitted “routine” cursory border searches of travelers’ computers and other electronic devices as an exception to the Fourth Amendment prohibition against warrantless searches without probable cause, but the Ninth Circuit has concluded that an intrusive forensic search of a computer hard drive is not “routine” and requires reasonable suspicion to be permissible. Klein also cited legal precedent from the Southern District of Texas concluding that during routine border searches, customs officials may not take the “nonroutine step” of reading an attorney’s privileged documents without a warrant or subpoena.

She suggested that DHS provide explicit written guidance to CBP and ICE officials stating that when a lawyer is traveling across the border with a device identified as containing privileged or confidential client information, the device can be subjected only to a routine cursory physical inspection and the electronic documents on the device cannot be read, duplicated, seized or shared unless the officials first obtain a subpoena based on reasonable suspicion or a warrant supported by probable cause.

In addition, Klein urged that the directives be revised to clarify the specific standards and procedures that CBP and ICE agents must follow before the contents of a lawyer’s electronic device can be searched or seized at the border.

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**Omnibus FY 2017 funding bill averts shutdown**

President Trump signed legislation May 5 that extends funding for the federal government through the Sept. 30 end of fiscal year 2017, continuing most programs at their fiscal year 2016 funding levels.

The new law, P.L. 115-31 (H.R. 244), maintains LSC funding at $385 million and provides an increase to $481.5 million for grant programs under the Violence Against Women Act (VAWA) that includes a $1 million increase to $5 million for the VAWA elder abuse grants.

The Executive Office for Immigration Review (EOIR) will receive a $20 million increase over its fiscal year 2016 amount for a total of $440 million. This will allow EOIR to add 10 new immigration judge teams to process immigration reviews and address the backlog of pending cases. The legislation also includes funding for the Court Improvement Program that provides support for improving state court processes for handling foster care and adoption cases.

Congress is already working on the fiscal year 2018 appropriations bills after receiving a budget blueprint from the president in March ahead of the administration’s formal request, which is expected to reach Capitol Hill on May 23.
ABA Day in Washington 2017

Front Row (from left): Michelle Hunter, executive director, State Bar of Texas; Trish McAlister, executive director, Texas Access to Justice Commission; Betty Balli Torres, executive director, Texas Access to Justice Foundation; Harriet Miers, Standing Committee on Governmental Affairs; Justice Eva Guzman; Justice Award honoree Rep. Mac Thornberry (R-Texas); Harry Reasoner, chair, Texas Access to Justice Commission; Judge Lora Livingston, chair, Standing Committee on Legal Aid and Indigent Defendants; Eduardo Rodriguez, past president, State Bar of Texas. Back Row: Frank Stevenson, president, State Bar of Texas; William Whitehurst, past president, State Bar of Texas; Richard Tate, chair, Access to Justice Foundation; Gabe Thomas Vick Jr., president-elect, State Bar of Texas; and Justice Ken Wise.

Laveeda Morgan Battle, president, Legal Services of Alabama Board of Directors; Joe Fawak, president, Alabama Law Foundation Board of Trustees; Justice Award honoree Sen. Richard Shelby (R-Ala.); past ABA President Tommy Wells; and Tracy Daniel, executive director, Alabama Law Foundation.

Julia Wilson, executive director, One Justice and the Legal Aid Association of California; Jim Burgess, State Bar of California; Laurence Pulgram, chair, ABA Section of Litigation; Sen. Dianne Feinstein (D-Calif.); Laura Farber, ABA House of Delegates; Jim Holmes, Standing Committee on Governmental Affairs; Anna Romanskaya, chair, ABA Young Lawyers Division; Chris McConkey, One Justice; Ruthe Ashley, ABA Board of Governors; and Ireneo Reus III, ABA Young Lawyers Division.

Supreme Court Justice Elena Kagan welcomed the group to the Grassroots Awards reception.

Erica Grinde, ABA Board of Governors; ABA President-elect Nominee Bob Carlson; and Bruce Spencer, president, State Bar of Montana visit Sen. Steve Daines (R-Mont.).
ABA President Linda A. Klein, Justice Award honoree Sen. Mazie Hirono (D-Hawaii) and ABA Day Planning Committee Chair Trish Refo.

Anita Casey, executive director, West Virginia State Bar; West Virginia State Bar President-elect Dean Rohrig; ABA President Linda A. Klein; Rep Evan Jenkins (R-W.Va.); and West Virginia State Bar President Meshea Poore.

Therese Corsones, executive director, Vermont Bar Association (VBA); Fritz Langrock, member, ABA Standing Committee on Delivery of Legal Services; Sen. Bernie Sanders (D-Vt.); VBA President Michael Kennedy; and VBA President-elect Dan Maguire.

Massachusetts Bar Association President Jeffrey Catalano; ABA President Linda A. Klein; MBA President-elect Christopher Sullivan; Justice Award honoree Rep. Joseph P. Kennedy III (D-Mass.); Boston Bar Association (BBA) President-elect Mark Smith; and BBA President Carol Starkey.

Sen. Bob Corker (R-Tenn.) greets Ann Jarvis Pruitt, executive director, Tennessee Alliance for Legal Services, and Tennessee Bar Association President-elect Lucian Pera.

Judy Perry Martinez, ABA House of Delegates; Dona Renegar, president-elect designee, Louisiana State Bar Association (LSBA), and LSBA President Darrel J. Papillion discuss issues with Rep. Mike Johnson (R-La.).

To see more photos, go to the ABA Governmental Affairs Office website.
ABA reiterates opposition to mandatory accrual accounting proposals

As Congress focuses on developing major tax reform legislation this year, ABA President Linda A. Klein reiterated ABA opposition April 21 to any proposals that would accelerate the tax liability of law firms and other personal service businesses by requiring them to switch from the simple cash method of accounting they are currently using to the more complex accrual method.

In separate letters to the Senate Finance Committee and the House Ways and Means Committee, Klein emphasized that the mandatory accrual accounting proposals — including House and Senate proposals affecting firms with annual gross receipts over $10 million that were first proposed during the 113th Congress — would create unnecessary new complexity in the tax law and increase compliance costs. In addition, she said, by requiring these businesses to pay their taxes on accrued income up front instead of when the income is actually received, the proposals would cause substantial financial hardship to many lawyers, law firms and other personal service businesses, and would be a job killer.

Klein explained that current law permits businesses to use the cash method of accounting, in which income is not recognized until cash or other payment is actually received, if they are individuals or pass-through entities such as partnerships or Subchapter S corporations or their average annual gross receipts for a three-year period are $5 million or less. In addition, all law firms and other personal service businesses are exempt from the revenue cap and can use the cash method of accounting regardless of their annual revenues, unless they have inventory.

The mandatory accrual accounting proposals would raise the gross receipts cap to $10 million while eliminating the existing exemption for law firms and other personal service business, other sole proprietorships and pass-through entities, and farmers. Although the proposals would allow certain small business taxpayers with annual gross receipts in the $5 million to $10 million range to switch to cash accounting — an idea to which the ABA is not opposed — Klein maintained that the proposals would significantly complicate tax compliance for a far greater number of small businesses.

If law firms and other personal service businesses are required to use the more complex accrual method of accounting, she said, they would be forced to calculate and then pay taxes up front on multiple types of accrued income and would need to keep much more detailed work and billing records and hire additional accounting and support staff. Many firms also would be required to borrow money or use their scarce capital merely to pay their taxes, Klein added.

In addition to requiring law firms and personal service businesses to pay tax on phantom income, the proposals would adversely affect clients by forcing many law firms to collect their fees in advance or im-

Judicial Vacancies/Confirmations—115th Congress*  
(as of 5/16/17)

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<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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<tr>
<td>US Supreme Court (9 judgeships)</td>
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<td>US Courts of Appeals (179 judgeships)</td>
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<td>US District Courts (678 judgeships)</td>
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<td>Court of International Trade (9 judgeships)</td>
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<td>Totals</td>
<td>123</td>
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*Includes territorial judgeships
INTERAGENCY COUNCIL ON HOMELESSNESS: The ABA expressed strong support last month for S. 743, a bill introduced March 28 by Sens. Jack Reed (D-R.I.) and Susan Collins (R-Maine) to strengthen the U.S. Interagency Council on Homelessness (USICH), which was established by the Stewart B. McKinney Homeless Assistance Act of 1987. In an April 17 letter to the bill sponsors, ABA Governmental Affairs Director Thomas M. Susman noted that the legislation is particularly timely in light of President Trump’s proposed elimination of USICH in his fiscal year 2018 preliminary budget and the Oct. 1, 2017, expiration date of USICH’s authorization. Susman explained that the council does important work coordinating the efforts of 19 government agencies to combat homelessness. “Without the agency’s efforts, federal and federally supported local initiatives to end homelessness will take more time and cost more money,” he emphasized. The ABA is a strong supporter of USICH, particularly its role in leading efforts toward ending veteran homelessness, highlighting homeless courts, and calling for an end to the criminalization of homelessness. “Homelessness is a complex problem that requires a collaborative, comprehensive approach,” Reed explained in a press release announcing his bill. “Thanks in large part to the leadership, guidance, and best practices of [USICH], we have made real progress in ending and preventing homelessness.” He added that in the current budgetary environment “we need a wise and creative arm to help our communities identify and maximize resources and opportunities where possible, to ensure we are actually addressing homelessness, and not contributing to it.” S. 743 was referred to the Senate Banking, Housing and Urban Affairs Committee.

LAW LIBRARY OF CONGRESS: The ABA highlighted the work of the Law Library of Congress this month in a May 3 letter urging House appropriators to approve the modest increases included in the fiscal year 2018 budget request submitted by the Library of Congress. ABA Governmental Affairs Director Thomas M. Susman noted that the ABA, through its Standing Committee on the Law Library of Congress, has enjoyed an 85-year relationship with the Law Library and is aware of the special challenges the library faces in serving Congress, the American public, and the world. A recent report to the ABA committee from the Law Library shows that during a five-month period — from Oct. 1, 2016, to March 31, 2017 — the Law Library’s Public Services Division responded to 7,743 inquiries through its Ask A Librarian program, in person or by telephone, including 448 requests from congressional offices and the Congressional Research Service. During that same period, the Law Library’s Foreign, Comparative, and International Law Divisions responded to 173 requests from Congress and 149 from executive-branch agencies. “The informational resources provided by the Library of Congress and its Law Library support business development, job creation, and international relations,” Susman said. “In addition to specific patron requests, the Law Library’s role in restoring world governments through the repatriation of legal materials cannot be overemphasized.” Approximately half of the collection consists of foreign legal materials, he said, and the library is being called upon more and more to do important comparative studies across multiple legal systems. Recognizing the challenges Congress faces in prioritizing funding requests, Susman stressed that funding cuts in the coming year to the Library of Congress and its Law Library may negatively impact members’ constituents, including schoolchildren, teachers, scholars, lawyers, small business owners, as well as Congress. “The priorities identified by the Law Library for next year are important to fulfilling its mission to serve the Congress and the nation effectively, both in preserving hard copies of legal materials and in further developing access to these materials online,” Susman emphasized.

BANKRUPTCY JUDGESHIPS: The House Judiciary Committee approved a bill May 3 by voice vote that would convert 14 existing temporary bankruptcy judgeships to permanent status and authorize four additional permanent judgeships in districts where there are too few judges to handle the persistently high number of bankruptcy filings. In a May 9 letter to committee Chairman Bob Goodlatte (R-Va.) and Ranking Member John Conyers Jr. (D-Mich.), ABA Governmental Affairs Director Thomas M. Susman commended the members for expedited action on the bill, which he said is necessary to avoid temporary bankruptcy judgeships from lapsing on May 25. The bill, H.R. 2266, is based on a rigorous bankruptcy judgeship needs assessment recently conducted by the Judicial Conference of the United States, and Susman said the ABA is concerned that resources are already so strained in the nine bankruptcy courts identified in the bill that the courts will not be able to function effectively if they lose even one of their temporary judgeships. He pointed out that Congress, which has created no additional permanent bankruptcy judgeships since 1992, has been accommodating expanding workloads through a piecemeal approach of creating or extending existing temporary judgeships time and again. Seven of the 14 temporary judgeships in H.R. 2266 were extended last month as part of P.L. 115-31 (H.R. 244), the Consolidated Appropriations Act for 2017 signed by the president on May 5. “Instead of relying on appropriators to temporarily avert the next crisis, your bill will restore stability and functionality to the system by addressing the demonstrated need for permanent bankruptcy judgeships in a comprehensive and lasting manner,” Susman wrote. In a subsequent letter sent May 16 to all members of the House, Susman urged a prompt vote on the bill to “ensure an efficient bankruptcy system.”
ABA President Linda A. Klein has recommended to House and Senate appropriations subcommittees that Congress approve $450 million for the Legal Services Corporation (LSC) in fiscal year 2018, which begins Oct. 1, 2017.

The $450 million funding level would be a $65 million increase over the corporation’s current appropriation of $385 million and would allow LSC-funded offices around the country to continue to provide civil legal services to low-income Americans.

“Funding for equal justice under federal law is a federal duty,” Klein maintained in her statements to the House and Senate Appropriations Subcommittees on Commerce, Justice, Science, and Related Agencies. “The federal funding to promote equal civil justice is the funding for the Legal Services Corporation,” she said.

President Trump’s budget blueprint for fiscal year 2018 proposes to eliminate federal funding for the LSC, but Klein pointed out that the federal government “has legislated — has conferred rights and imposed duties — in all areas important to the lives of our citizens, and justice for all certainly requires access to legal representation in these myriad areas of federal law.” Funding for equal justice under federal law cannot be shouldered by state and local governments as an unfunded mandate, she said.

Klein thanked the subcommittees for previous increases in LSC funding, but pointed out that the corporation still need increased federal funding because other funding sources have diminished since the country’s economic downturn. This includes unusually low interest rates substantially lowering the revenue from Interest on Lawyers’ Trust Accounts (IOLTA). In addition, dozens of studies show that 50 percent to 80 percent of all eligible people seeking legal aid services are turned away due to lack of resources, and the United States is ranked 65th out of 102 countries in the World Justice Project’s 2015 Rule of Law Index for civil justice access.

Klein emphasized that legal aid clients include veterans, older Americans, Americans in rural areas, domestic violence survivors, and natural disaster victims, and that women constitute 70 percent of legal aid clients.

She also cited the cost benefit analyses of funding legal services, highlighting a 2015 Tennessee Bar Association report that revealed $11.21 of economic benefit per dollar invested and noting dozens of other statewide studies all showing similar results. Preventing domestic violence, she said, not only saves a victim the trauma but also the costs of medical treatment, counseling, police protection, and other support valued at over $10,000 per victim per year.

Funding for LSC has been an ABA high priority issue for four decades and has been a featured issue every year during ABA Day in Washington, the association’s annual lobbying event (see front page). Klein noted the establishment in 1920 of the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and a call in 1964 by then ABA President Lewis F. Powell Jr. for expansion of the nation’s legal services. The work of the ABA and many others culminated in President Nixon’s signing of legislation creating the LSC in 1974.

Today, virtually all U.S. Senate and House offices refer constituents to legal aid. State chief justices and court administrators have a consensus in support of LSC, and the late U.S. Supreme Court Justice Antonin Scalia related at the LSC’s 40th anniversary event in 2014 that he and all of his colleagues on the court supported legal aid. In fact, polls show that over 80 percent of people believe it is important that everyone has access to civil legal help.
ABA Day participants represent all 50 states, DC and Virgin Islands

continued from front page

120 judicial vacancies a priority. Also appearing was Sen. Al Franken (D-Minn.), who vowed that Congress would not let LSC funding be eliminated.

Each year, the ABA presents deserving members of Congress with Justice Awards recognizing their support for issues of critical importance to the ABA and the administration of justice. This year’s recipients, recognized at a reception and dinner at the National Museum of Women in the Arts, are: Sen. Richard C. Shelby (R-Ala.), for his continued leadership in securing increased LSC funding and protecting the attorney-client privilege; Sen. Mazie K. Hirono (D-Hawaii), for her commitment to non-discrimination and her efforts to ensure that unaccompanied minors have access to legal and humanitarian protections; Rep. Mac Thornberry (R-Texas), for his leadership in passing the first major reforms in over 30 years to the Uniform Code of Military Justice; and Rep. Joseph P. Kennedy III (D-Mass.), for his commitment to equal rights and his advocacy for adequate funding for LSC.

Supreme Court Justice Elena Kagan welcomed the bar leaders to the U.S. Supreme Court for a reception to honor recipients of this year’s Grassroots Advocacy Awards. Kagan emphasized the importance of LSC and thanked the ABA for supporting the corporation during meetings with members of Congress.

This year’s Grassroots Award recipients are Edwin A. Harnden, of Portland, Oregon, for his efforts to garner lawyer support for the Campaign for Equal Justice and his efforts with political and community leaders to address legal aid funding shortfalls; and Kids in Need of Defense (KIND), an organization that increases awareness about the rights of unaccompanied immigrant and refugee children and facilitates pro bono representation in deportation hearings. The KIND award was accepted by Laurie Carafone, KIND’S co-director of Legal Services, and Christie Turner, the supervising attorney for KIND field offices in Washington, DC, and Virginia.

“It was inspiring to see so many bar leaders from around the country participate in the legislative process by letting members of Congress know how important it is to foster access to civil justice,” ABA Day Planning Committee Chair Trish Refo said. “Our input and the time we spent educating policymakers on these issues was invaluable to the success of ABA Day,” she concluded.

Mandatory accrual accounting

continued from page 6

Klein also emphasized that the mandatory accrual accounting proposals are strongly opposed by more than 30 state, local and specialty bars throughout the country.