ABA Day draws hundreds of bar leaders to Capitol Hill for annual lobbying event

ABA president testifies in support of an overhaul of the immigration court system

DOJ reverses decision to suspend funding for Legal Orientation Program during cost-benefit analysis

ABA Day in Photos

Legislation would restore availability of Pell Grants for incarcerated individuals

ABA supports ratification of Marrakesh Treaty to ensure access to publications for the print disabled

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More than 300 bar leaders travel to Capitol Hill for ABA Day in Washington

More than 300 bar leaders from 48 states, the District of Columbia, and the U.S. Virgin Islands traveled to Capitol Hill April 10-12 for the annual “ABA Day in Washington,” an opportunity to lobby on issues of critical importance to the legal profession.

ABA Day, coordinated by the ABA Governmental Affairs Office and now in its 22nd year, featured hundreds of face-to-face visits with members of Congress. During the meetings, participants focused on two programs that have been targeted for elimination by the Trump administration: the Legal Services Corporation (LSC) and the Public Service Loan Forgiveness Program (PSLF). The bar leaders also expressed ABA support for the Legal Orientation Program (LOP) for immigration detainees, which the Justice Department (DOJ) had announced April 10 it was planning to pause for a cost-benefit analysis.

LSC. Even though the administration proposed elimination of LSC, Congress approved a $25 million increase for fiscal year 2018 that brought LSC funding to $410 million. Nevertheless, ABA Day participants emphasized that 86 percent of low-income Americans receive inadequate or no legal help for their civil legal problems and urged Congress to restore the program’s funding level to at least the inflation-adjusted fiscal year 2010 level of $482 million. The federal funding, they said, provides support for legal services offices in every congressional district, and individuals helped by the offices include domestic-violence victims, veterans, seniors, rural residents, women, and natural disaster victims.

PSLF. This program, established in 2007 to provide loan forgiveness for qualified borrowers who have made 120 timely payment on their federal direct loans while employed full-time in public service jobs, has been caught up in larger discussions about higher education affordability as Congress considers reauthorization of the Higher Education Act. Without PSLF, employers would be unable to fill lower-paid positions serving the public – such as legal aid attorneys, public defenders or prosecutors – because of the staggering amount of student debt most new lawyers have when they graduate. ABA Day participants urged their members of Congress to allow the program to continue to function as envisioned until there has been an opportunity to assess the impact of the program.

LOP. The bar leaders were the first to alert many members of Congress about DOJ’s intention to suspend the LOP program as of April 30 - a decision the department later reversed. The program’s services, offered since 2003 to individuals in immigration detention facilities around the country, include group legal-rights presentations, individual orientations, self-help workshops, and pro bono referrals. These services have resulted in cost savings, greater

see “ABA Day,” page 8
## LEGISLATIVE BOXSCORE

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<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>Immigration.</strong> The president announced a new travel ban restricting entry into the country from eight countries. Federal judges temporarily blocked the ban for those seeking entry from six of the eight countries. The Supreme Court has allowed some of the restrictions to go into effect. The president announced he is phasing out the Deferred Action on Childhood Arrivals (DACA) program by March 5, 2018. Federal courts have blocked the president’s order.</td>
<td>House passed H.R. 1215 on 6/28/17. House passed H.R. 985 on 3/9/17. House passed H.R. 720 on 3/10/17.</td>
<td>Senate failed to pass several proposals to address the DACA program. Judiciary subc. held a hearing on the immigration court system on 4/18/18.</td>
<td>President signed P.L. 115-50 (H.R. 510) on 8/18/17.</td>
<td>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. Supports legislation that includes a path to citizenship for certain undocumented persons who enter the country as minors and have significant ties to the United States. See page 3.</td>
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ABA urges major restructuring of immigration courts

ABA President Hilarie Bass, testifying April 18 before the Senate Judiciary Subcommittee on Border Security and Immigration, urged a major restructuring of the nation’s immigration courts to ensure a fair and effective system for adjudicating immigration cases.

“We believe that restructuring the immigration adjudication system into an independent Article I court and increasing access to counsel and legal information are the best solutions to promote independence, fairness, efficiency, and accountability in the system,” Bass told the subcommittee.

She emphasized that the immigration courts issue life-altering decisions each day that may deprive individuals of their freedom, may separate families that include members who are U.S. citizens; and may be a matter of life and death for those seeking asylum. The current system, however, “lacks the basic structural and procedural safeguards that we take for granted in other areas of our justice system,” she said.

The immigration courts are under the jurisdiction of the Executive Office for Immigration Review (EOIR) in the Department of Justice with its personnel and operations subject to direct control of the U.S. attorney general. This, according to Bass is “a fatal flaw to the reality — and perception — of independence.”

Bass testified that any major system restructuring should be aimed at attaining the following goals: independence, fairness and perceptions of fairness; professionalism of the immigration judiciary; and increased efficiency.

The ABA proposal for establishing an Article I system would create a Standing Referral Committee to screen and recommend candidates for judicial appointments. The judges would have fixed terms and would only be removed by the appointing authority for incompetency, misconduct, neglect of duty, malfeasance or disability.

Bass cited current challenges to the independence of immigration judges, including a recent announcement by the Justice Department that the judges would be subject to case production quotas and deadlines as individual performance measures. The ABA instead recommends a judicial performance review model based on the ABA’s Guidelines for the Evaluation of Judicial Performance, which emphasize judicial improvement, process over outcomes, and judicial integrity and independence rather than rapid disposition of cases.

“Timeliness and efficiency are important but must not come at the cost of fairness and due process,” she said. She also emphasized the ABA’s support for the right to appointed counsel for vulnerable populations such as unaccompanied children and the mentally ill and disabled as well as for those who are indigent. Another important program, which the department had announced it was planning to suspend pending a cost-benefit review, is the Legal Orientation Program that provides legal information to detainees in immigration detention facilities across the county (see article, this page).

Also testifying at the hearing in support of establishing the immigration courts under Article I was Ashley Tabaddor, president of the National Association of Immigration Judges, who said that “Band-aid solutions alone cannot solve the persistent problems facing our immigration courts.” Other witnesses included EOIR Director James R. McHenry III; Rebecca Gambler, Government Accountability Office; and Andrew R. Arthur, Center for Immigration Studies.
ABA Day in Washington 2018

ABA President Hilarie Bass, Justice Award recipient House Minority Leader Nancy Pelosi (D-Calif.), and Patricia Lee Refo, chair, ABA Day Planning Committee

James P. DeAngelo, president emeritus, Pennsylvania Legal Aid Network (PLAN); Mary F. Platt, chancellor, Philadelphia Bar Foundation; Justice Award recipient Rep. Brian Fitzpatrick (R-Pa.); PLAN President-Elect Kim Berkeley Clark; PLAN Executive Director Samuel Milkes, and PLAN President John William Alberstadt Jr.

Margret L. White, president-elect, Iowa State Bar Association (ISBA) Young Lawyers Division; ISBA President-Elect Thomas Levis; ISBA Executive Director Dwight Dinkla; ABA President-Elect Bob Carlson; Sen. Charles Grassley (R-Iowa); ABA President Hilarie Bass; and David L. Brown, ABA Board of Governors

James Holmes, ABA Standing Committee on Governmental Affairs; Laura Farber, ABA House of Delegates; Justice Award recipient Sen. Dianne Feinstein (D-Calif.); Anna Romanskaya, ABA Day Planning Committee; Ruthie Ashley, ABA House of Delegates; and Negeen Sadeghi-Movahed, chair-elect, ABA Law Student Division

Texas Appeals Court Judge Brett Busby; Denise Scofield, trustee, Texas Access to Justice Foundation (TAJF); Justice Award recipient Sen. John Cornyn (R-Texas); Texas Supreme Court Judge Eva Guzman; Roland K. Johnson, past president, State Bar of Texas; Trish McAlister, TAJF executive director; Jocelyn Fowler, TAJF staff attorney; and ABA Governmental Affairs Director Thomas M. Susman
Rep. Krysten Sinema (D-Ariz.)

Sen. Angus King (I-Maine) with Maine State Bar Executive Director Angela Weston and President Susan B. Driscoll

ABA President Hilarie Bass and Senate Majority Leader Mitch McConnell (R-Ky.)

Gif Thornton, Tennessee Bar Association (TBA) legislative counsel; TBA President-Elect Jason Pannu; Ahsaki Ewnuiki Baptist, president, TBA Young Lawyers Division; Rep. David Kustoff (R-Tenn.); Berkley Schwarz, TBA director of Public Policy and Government Affairs; TBA Executive Director Joyce Lyn Stevenson; and Allan Ramsaur, TBA executive director emeritus.

Rep. Jim Langevin (D-R.I.); and Thomas W. Lyons III, past president, Rhode Island Bar Association


State Bar of Wisconsin Past President Francis Deisinger, State Bar of Wisconsin President-Elect Chris Rogers; Sen. Ron Johnson (R-Wis.); and State Bar of Wisconsin President Paul Swanson

Robert Weinberg, Bar Association of the District of Columbia; Del. Eleanor Holmes Norton (D-D.C.); Donald Dunner, DC Bar; and Lillian Gaskin, DC delegation captain.

Photo Credit: ABA Communications and Media Relations
Find more photos here.
Legislation introduced recently in the Senate and House would restore Pell Grant eligibility for individuals incarcerated in federal and state prisons to reduce recidivism by giving prisoners greater opportunity to successfully return to their communities.

S. 2423, introduced by Sen. Brian Schatz (D-Hawaii) and 15 cosponsors, and H.R. 254, introduced by Rep. Danny K. Davis (D-Ill.) and five cosponsors, would amend the Higher Education Act of 1965 to remove language added in 1994 that prohibits prisoners from receiving Pell Grants. A three-year experimental pilot program instituted by President Obama in 2015, however, has allowed approximately 4,000 inmates at more than 100 correctional facilities to enroll in Pell Grant-funded programs. The pilot program, known as Second Chance Pell, will expire at the end of this year.

“When we give people in prison an opportunity to earn an education, our communities are safer, our taxpayers save money, and we can end the cycle of recidivism,” Schatz said when introducing his legislation on Feb. 14. “The Restoring Education and Learning (REAL) Act would restore a program we know already works and give people a real chance to rebuild their lives.”

Schatz pointed out that higher education can have a dramatic impact on reducing the national recidivism rate of 43.3 percent within three years. He cited a Texas Department of Criminal Justice study that found that higher education reduced recidivism to 13.7 percent for former prisoners who earned an associate’s degree, 5.6 percent for those earning a bachelor’s degree, and less than 1 percent for those earning a master’s degree.

He also emphasized estimates showing that an investment of $1 million in prison education programs prevents approximately 600 crimes, while the same amount of funding would only prevent approximately 350 crimes if invested in incarceration alone.

The ABA adopted policy in 2015 supporting restoration of the Pell Grant program for incarcerated individuals who qualify under existing need-based criteria. The background report accompanying the policy notes that Pell Grant funding directly counters recidivism problems by “helping equip individuals for reintegration into society successfully with diplomas, skills and certification.”

The ABA background report states that there is little indication that removing prisoners from Pell Grant eligibility in 1994 produced any tangible benefits for society and may have reduced public safety and exacted severe social and financial costs. A 2013 study by the Rand Corporation reported that incarcerated individuals who received an education while in prison were 43 percent less likely to be arrested than inmates who did not receive additional education.

More than 60 public safety, civil rights, and educational organizations support the legislation.

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**Judicial Vacancies/Confirmations—115th Congress**

(as of 4/24/18)

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<tr>
<th>Court</th>
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<tr>
<td>Totals</td>
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*Includes territorial judgeships*
ADOPTION AND FOSTER CARE REPORTING: The ABA Governmental Affairs Office worked with the ABA Center on Children and the Law to submit comments April 16 opposing a proposed two-year delay for implementation of a final rule issued in 2016. The final rule seeks to ensure that child welfare agencies are gathering comprehensive data to help the agencies more effectively address the needs of children and families to ensure safety, permanency and well-being. Issued by the Department of Health and Human Services’ Administration for Children and Families (ACF), the final rule made long-overdue changes to the Adoption and Foster Care Analysis and Reporting System (AFCARS) by incorporating data requirements that have arisen since its establishment in 1993 that have resulted from subsequent legislation and regulations, including the Every Student Succeeds Act (ESSA) and the updated Indian Child Welfare Act (ICWA) regulations. In a letter to ACF Policy Division Director Kathleen McHugh, ABA Governmental Affairs Director Thomas M. Susman emphasized that postponing the effective date of the final rule when states are already more than a year into the implementation process would disrupt efforts to revise data collection systems and would create burdens and unnecessary confusion for state agencies. He noted that three new data categories – Education, LGBTQ and ICWA – are critical to future child welfare data collection. “Updates to data collection requirements included in the final rule are long-awaited and are the result of robust and thoughtful discussion over many years. These requirements are tailored to address current areas of weakness in data collection and reporting and should not be delayed,” Susman wrote.

LAW LIBRARY OF CONGRESS: ABA President Hilarie Bass emphasized last month that the “extent and breadth of the work performed by the Law Library of Congress cannot be overstated,” and she urged Congress to approve the Law Library’s funding request of $17.129 million for fiscal year 2019. The amount, part of the total request of $672.655 million for the Library of Congress, would be a 12.4 percent increase for the Law Library. Bass, in a March 30 letter to House Appropriations Committee Chairman Rodney P. Frelinghuysen (R-N.J.) and Ranking Member Nita M. Lowey (D-N.Y.), acknowledged that the Library of Congress received added support in fiscal year 2018 after several years of reduced budgets. She pointed out that the ABA and its Standing Committee on the Law Library of Congress have a particularly strong interest in and expertise regarding the services offered by the Law Library and have enjoyed an almost 90-year relationship serving as a resource for the institution. Bass also emphasized that, while the Law Library supports all branches of government, the executive branch’s reliance on the Law Library’s foreign law expertise is steadily increasing, with requests last year for legal opinions reflecting a 40 percent increase over the past four years. Examples of the issues on which the Law Library provides expertise include labor disputes, medical malpractice, legislation on border crossings, landlord-tenant law, marriage and child custody law, tax law, patent law, and real estate law. Numerous nonprofit organizations and law firms receive assistance obtaining information about foreign laws, and congressional offices obtain analyses of various American and foreign laws. “Clearly, the Library of Congress and its Law Library are important components of business development, job creation, and international relations,” she said. She added that the ABA supports the priorities for next year, which include preserving hard copies and further developing online access of legal materials.
ABA backs Marrakesh Treaty to expand access for the print disabled

The ABA expressed support this month for prompt ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, and for enactment of implementing legislation to clarify U.S compliance with the treaty.

“Ratifying the treaty would help open doors to countries worldwide, allowing literature to be disseminated in accessible formats with no borders,” ABA Governmental Affairs Director Thomas M. Susman wrote in an April 17 letter to the leadership of the Senate Committees on Foreign Relations, and Judiciary. The letter will be included in the record of an April 18 Senate Foreign Relations Committee hearing.

In his letter, Susman explained that the treaty, which is administered by the World Intellectual Property Organization (WIPO), requires contracting parties to adopt exceptions and limitations in their domestic copyright laws to permit reproduction of public works into accessible formats usable by individuals with a range of disabilities that interfere with the effective reading of printed material.

While the United States has adopted such exceptions, over 130 countries designated by WIPO have not. As a result, the reproduction for personal use of works in Braille or other writing systems for the disabled in those countries may constitute a copyright violation, and the import or export of accessible formats across international borders may not be allowed.

During the hearing, there was overwhelming support for the treaty from the witnesses, who included Manisha Singh, assistant secretary for the Bureau of Economic and Business Affairs at the State Department; ABA Board of Governors member Scott C. LaBarre, who appeared on behalf of the 50,000 member National Federation of the Blind; Alan Robert Adler, of the Association of American Publishers, and Jonathan Band, from the Library Copyright Alliance.

ABA Day

continued from front page

immigration court efficiency, and fairness and due process (see article, page 3).

Patricia Lee Refo, chair of the ABA Day Planning Committee, told attendees that their participation “sends a message to members of Congress and the administration that lawyers are actively engaged in the democratic process to improve access to justice and advance the rule of law.” She noted that the association has seen over the years that what the bar leaders do on Capitol Hill during ABA Day makes a difference.

Keynote speakers during the event included Reps. Debbie Dingell (D-Mich.), Kyrsten Sinema (D-Ariz.) and Adam Schiff (D-Calif.), as well as Assistant Attorney General Beth Williams, and past ABA President and LSC Board member Robert J. Grey Jr.

Justice Awards Recognize Members of Congress

This year’s recipients of the Justice Awards, presented by ABA President Hilarie Bass to recognize members of Congress for their support for LSC and their leadership in the pursuit of justice for all, were: House Minority Leader Nancy Pelosi (D-Calif.) for opposing legislation that would restrict access to the civil justice system; Rep. Brian Fitzpatrick (R-Pa.) for his efforts to enhance access to the civil justice system; Senate Majority Whip John Cornyn (R-Texas) for his commitment to ensuring access to justice for domestic violence and trafficking victims; and Sen. Dianne Feinstein (D-Calif.), for her efforts to ensure that the Senate Judiciary Committee has an opportunity to consider the ABA’s peer assessments of the professional qualifications of federal judiciary nominees prior to their confirmation hearings.

During the awards presentation, Pelosi thanked the association for its ABA Day advocacy. “We stand with you” and are grateful for the ABA’s “steadfast commitment to an independent judiciary,” she said.

Next year’s ABA Day is scheduled for April 9-11, 2019.