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Inside This Issue

Regular Features

Defending Liberty Pursuing Justice

ABA wins case against FTC

Circuit court rules that lawyers are not subject to Gramm-Leach-Bliley

The U.S. Court of Appeals for the District of Columbia Circuit ruled Dec. 6 that the Federal Trade Commission (FTC) exceeded its statutory authority when it determined that attorneys engaged in the practice of law were covered by the Gramm-Leach-Bliley Act (GLBA), a law enacted in 1999 to regulate financial institutions.

The ruling was a victory for the ABA and the New York State Bar Association (NYSBA), which, joined by several other bar associations, had sought a declaratory judgment against the FTC after the commission determined that lawyers and law firms engaged in certain financial activities were considered "financial institutions" under Title V of the law. Among other consequences, this determination mandated that the lawyers adhere to regulations requiring that they issue annual written privacy notices to their clients.

Prior to filing suit against the FTC, the ABA, the NYSBA and numerous other bar associations had asked the FTC to clarify whether it was taking the position that the privacy provisions of the act and the implementing regulations governed attorneys engaged in the practice of law. The ABA and other bars also requested exemption from the act if the FTC intended to regulate attorneys under the act. While maintaining that Congress did not confer authority on the commission to regulate the confidentiality, privacy and security of information disclosed by clients to their attorneys, the bar associations also supported their request for an exemption by pointing out that all attorneys and lawyers within each

see "GLBA," page 8

Congress weighs habeas changes

The Senate and House considered changes to habeas corpus procedures on several fronts last month, including a conference committee vote Nov. 16 to incorporate competent-counsel provisions from a comprehensive habeas bill into H.R. 3199, the reauthorization of the USA Patriot Act.

The same day the Senate Judiciary Committee was holding its second hearing on the comprehensive Senate bill, S. 1088, conferees considering H.R. 3199 inserted provisions that would shift responsibility from the federal appeals courts to the U.S. attorney general to determine whether states are meeting certain requirements for providing competent counsel in state court proceedings. If a state complies with certain standards, the state can opt-in and receive expedited time frames for review of capital habeas petitions.

The provisions inserted into H.R. 3199 would require the U.S. attorney general to set the standards for adequate counsel and decide whether a state complies. The attorney general's decisions could be appealed only to the U.S. Circuit Court of Appeals for the District of Columbia.

In ABA testimony submitted to the

see "Habeas," page 8

LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
Independence of the Bar. The U.S. Court of Appeals for the D.C. Circuit issued a ruling 12/6/05 in a case filed by the ABA that the Federal Trade Commission (FTC) went beyond its statutory authority by including lawyers under Title V privacy provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA).				**Opposes any federal laws or regulations that would preempt or interfere with state rules protecting the confidential attorney-client relationship, including the Federal Trade Commission rules applying the privacy protection provisions of Title V of the GLBA. See front page.**
Federal Tort Laws. S. 5 and H.R. 516 would expand jurisdiction of federal courts over certain class action cases. S. 354, H.R. 5 and H.R. 534 would cap pain and suffering and punitive damage awards in medical liability cases. S. 397 and H.R. 800 would protect gun manufacturers, sellers and traders from almost all ordinary civil liability.	H.R. 516 and H.R. 534 were referred to the Judiciary Committee on 2/3/05. House passed S. 5 on 2/17/05. Judiciary Committee approved H.R. 800 on 5/25/05. House passed H.R. 5 on 7/28/05. House passed S. 397 on 10/20/05.	Judiciary Committee approved S. 5 on 2/3/05. Senate passed S. 5 on 2/10/05. Senate passed S. 397 on 7/29/05.	President signed P.L. 109-2 (S. 5) on 2/18/05. President signed P.L. 109-92 (S. 397) on 10/26/05.	**Supports amending ERISA to allow causes of action to be brought in state and territorial courts against employer-sponsored health plans under state and territorial laws; legislation establishing the use of ADR procedures for resolving disputes between patients and group health plans; federal legislation addressing asbestos litigation issues and class actions. Opposes creating a special tort standard for the gun industry**.
Immigration. S. 119 and H.R. 1172 would ensure that unaccompanied alien children have counsel to represent them in immigration proceedings. S. 1033, S. 1438 and H.R. 2330 seek better enforcement of border security and would reform the nation's immigration system. H.R. 4437 would strengthen enforcement of immigration laws and border security.	H.R. 1172 and H.R. 2330 were referred to the Judiciary Committee on 3/8/05and 5/12/05, respectively. Judiciary Committee approved H.R. 4437 on 12/8/05.	Judiciary Committee approved S. 119 on 4/14/05. S. 1033 and S. 1438 were referred to the Judiciary Committee on 5/12/05 and 7/20/05, respectively.		**Supports the appointment of counsel at government expense to assist unaccompanied children in immigration proceedings. Supports the humane treatment and legalization of unlawful aliens living in the United States.**
Judicial Independence. P.L. 109-115 (H.R. 3058), fiscal year 2005 appropriations legislation, would waive Section 140 of P.L. 97-92 to allow federal judges to receive a cost-of-living adjustment (COLA).	House passed H.R. 3058 conference report on 11/18/05.	Senate passed H.R. 3058 conference report on 11/18/05.	President signed P.L. 109-115 (H.R. 3058) on 11/30/05.	**Opposes initiatives that infringe upon the separation of powers between Congress and the courts. Supports increased judicial pay. Opposes enactment of any legislation to change constitutional law by limiting federal court jurisdiction in specific areas.**
Legal Services Corporation. P.L. 109-1-8 (H.R. 2862), fiscal year 2006 appropriations legislation, includes $330.8 million for the LSC.	House passed H.R. 2862 conference report on 11/9/05.	Senate passed H.R. 2862 conference report on 11/16/05.		**Supports an independent, well-funded LSC. See page 7.**

ABA opposes cuts in Medicaid program

The ABA asked House Speaker J. Dennis Hastert (R-Ill.) last month to reconsider significant cuts to Medicaid and other provisions that are in budget reconciliation legislation passed by the House Nov. 18 and now ready for conference with the Senate.

The proposed cuts, included in Title III of H.R. 4241, comprise $30.1 billion (or two-thirds) of the total projected $45.3 billion in Medicaid cuts over 10 years. The provisions also would increase beneficiary cost-sharing, limit access to benefits, and restrict eligibility for long-term services.

"These proposed cuts in Medicaid would adversely affect many of our neediest citizens, especially low-income children and their parents, pregnant women, seniors and persons with disabilities and chronic, life-threatening conditions such as HIV/AIDS and cancer," said ABA Governmental Affairs Director Robert D. Evans in a Nov. 11 letter to Hastert.

Evans explained that the Medicaid cut proposals would create unreasonable barriers and burdens to access to care by undermining eligibility and making access to services unaffordable.

"We also believe that the proposed cuts fail to recognize that many middle-income Americans have no other option than Medicaid for meeting the catastrophic costs of long-term care," Evans said, noting that federal and state policies must better define and implement a system that permits this population to share fairly in the cost of long-term care without becoming impoverished.

Evans also expressed opposition to provisions intended to prevent individuals from illegally transferring assets below market value in order to improperly qualify for Medicaid benefits. The provisions,

see "Medicaid," page 4

Two-day symposium highlights rule of law

The Rule of Law Symposium, convened by the ABA Nov. 9-10 in Washington, D.C., drew more than 400 international leaders from business, government, philanthropy and academia to discuss key issues in promoting the rule of law around the world.

At left, Secretary of State Condoleezza Rice (center) was greeted by ABA Immediate Past President Robert J. Grey Jr. (right) and David R. Andrews (left), former legal advisor at the U.S. Department of State. Rice, who spoke at a Nov. 9 luncheon, emphasized the U.S. leadership in developing new international law.

"The Rule of Law and Global Poverty" was one of the topics covered during the conference. Panelists were, from left: Geeta Rao Gupta, president, International Center for Research on Women; Ashraf Ghani, chancellor, Kabul University, and former minister of finance in Afghanistan; moderator Ambassador Harriet C. Babbitt, senior vice president, Hunt Alternatives Fund, and former deputy administrator, USAID; William Easterly, professor of economics, New York University; and Paula Dobriansky, undersecretary of state for democracy and global affairs, U.S. Department of State.

Concerns with USA Patriot Act provisions cited

ABA president conveys problems with jury, FISA language

ABA President Michael S. Greco urged conferees considering H.R. 3199, the reauthorization of the USA Patriot Act to fight terrorism, to consider ABA concerns in several areas during their negotiations.

Greco said that the association strongly opposes a provision in the House-passed bill to allow federal prosecutors to nullify or disregard a split or hung jury and to provide the prosecutors with a "second chance" jury if they fail to gain a unanimous verdict from the first.

Greco said that this provision would undermine the requirement that guilt be proved beyond a reasonable doubt – a bedrock principle of the American criminal justice system. He explained that current law already requires that jurors in capital cases be "death-qualified," or not so opposed to the imposition of the death penalty that they would refuse to impose it under any circumstance. "The possibility of repeated attempts to obtain death sentences from successive 'death-qualified' juries would heighten to an unreasonable degree the advantage that the state already has," he said.

The ABA also opposes a provision in the House-passed bill to permit the court, on its own motion, to reduce the number of capital jurors to fewer than 12.

"We believe that a jury of 12 is necessary in all serious criminal matters and that it is especially important in capital cases because of the gravity of the punishment," Greco said, adding that a lesser number should be permitted only when a defendant knowingly waives his or her right, in writing or in open court, to be tried by a 12-person jury.

Another area of concern is that there is inadequate congressional oversight of government investigations undertaken pursuant to the Foreign Intelligence Surveillance Act (FISA). Greco urged the conferees to adopt provisions in the Senate version of the bill to enhance oversight by requiring that the attorney general's annual report include specific statistical information on the use of FISA's physical search authority and pen/register trap and trace authority. The ABA also urged that the conferees adopt the Senate version's provisions that do a better job of ensuring that FISA is used only when the government has a significant foreign intelligence purpose and not to circumvent the Fourth Amendment.

Also included in the Senate bill, according to Greco, are desirable but limited protections for targets of roving wiretaps; limits of seven days on delays in notification of search warrants for homes or businesses, with further extensions allowed; and strengthened standards for FISA surveillance orders to ensure that FISA is being used properly.

Greco also recommended that the conferees adopt the Senate's four-year sunset language for certain provisions in the bill.

House and Senate negotiators continued consideration in early December, reportedly reaching an agreement Dec. 8 that now will go to all the conferees for approval. ■

Medicaid

continued from page 3

which Evans said were "punitive and inefficiently targeted," would impose a penalty period beginning on the date when the applicant is otherwise eligible for Medicaid coverage (i.e., when the individual needs long-term care but lacks the income or resources to pay for that care). In addition, the proposal would mandate a five-year look-back period for transfers.

Rather than targeting only those who are deliberately trying to "game the system," the provisions are so broadly worded that they could also punish honest people facing an unexpected health care crisis who have spent down their resources for legitimate reasons – to help out family members, for example.

"We believe this is a time to demonstrate creativity, not parsimony," Evans wrote. "The association encourages state governments to experiment with new and innovative approaches for delivering health and long-term care to economically needy and uninsured populations."

He added that the association opposes structural and financial changes in the Medicaid program that would weaken the current entitlement nature of the program or shared legal obligation of the federal and state governments to provide a comprehensive set of benefits to all individuals who meet eligibility standards.

ABA Day in Washington

May 3-4, 2006

www.abanet.org/poladv/abaday06/home.html

Panel approves marriage amendment

The Senate Judiciary Subcommittee on the Constitution, Civil Rights and Property Rights approved a resolution Nov. 9 that proposes an amendment to the U.S. Constitution that would ban same-sex marriage by defining marriage as "the union of a man and woman."

The issue of same-sex marriage came to the forefront during the 108th Congress after the Massachusetts Supreme Judicial Court declared that the state was violating its constitution by denying the legal, financial and social benefits of marriage to people of the same sex who wish to marry (*Goodridge v. Department of Public Health*, No. SJC-08860, Nov. 18, 2003).

Neither the House nor Senate were able to garner the necessary votes to approve a marriage amendment during the last Congress, and approval is unlikely this Congress as well.

The ABA voiced its opposition to S.J. Res. 1 in a letter to the Senate Judiciary Committee Nov. 1.

"While the ABA has taken no position either favoring or opposing laws that would allow same-sex couples to enter into civil marriages, we oppose attempts to restrict the ability of each state to determine the qualifications for civil marriage between two persons within its jurisdiction," ABA Governmental Affairs Director Robert D. Evans wrote. He said that proposals such as S.J. Res. 1 intrude upon the traditional authority of each state to establish its own laws governing civil marriage and debase the constitutional system of checks and balances.

Evans also emphasized that the Constitution should not be amended absent "urgent and compelling circumstances," and no urgent need for a marriage amendment has been demonstrated. While the majority of state legislatures and courts currently are wrestling with this issue and considering various proposed changes, at present 49 states grant civil marriage licenses exclusively to heterosexual couples and 16 states have adopted state constitutional amendments banning same-sex marriages. "The states are not shirking their responsibilities or waiting for Congress to intervene; indeed, state legislatures are vigorously engaged in finding workable, legal solutions to one of the most socially charged issues of our time and are responding to the needs and wishes of their residents," he concluded.

No further action has been scheduled for S.J. Res. 1, and H.J. Res. 39, an identical resolution introduced in the House by Rep. Dan Lungren (R-Calif.), is pending in the House Judiciary Subcommittee on the Constitution. ■

REVIEW OF THE FIELD: The ABA Standing Committee on Law and National Security hosted its 15th Annual Review of the Field Nov. 3-4 in Arlington, Virginia. Among those providing insight were representatives from the executive branch and Capitol Hill. Those appearing on the "Views from the Hill" panel were, from left: Scott W. Stucky, majority general counsel, Senate Committee on Armed Services; Brandon Milhorn, general counsel, Senate Select Committee on Intelligence; Jeremy Bash, minority general counsel, House Permanent Select Committee on Intelligence; and Jonathan Scharfen, majority chief counsel, House Committee on International Relations. Keynote speakers included His Excellency Nabil Fahmy, ambassador of the Arab Republic of Egypt to the United States; Mary Margaret Graham, deputy director of collections, U.S. Office of the Director of National Intelligence; John Bellinger III, legal advisor, Department of State; and Peter Verga, principal deputy assistant secretary for homeland defense, Department of Defense.

ABA urges courts to experiment with cameras

The ABA told the Senate Judiciary Committee last month that the ABA remains committed to the belief that all federal courts should experiment with electronic media coverage of both civil and criminal proceedings based on a judge's discretion.

"Courts that conduct their business openly and under public scrutiny protect the integrity of the federal judicial system by guaranteeing accountability to the people they serve," according to ABA Governmental Affairs Director Robert D. Evans, who submitted a letter for the record of a Nov. 9 committee hearing on the issue. "Ultimately, we all benefit because informed, engaged and civic-minded citizens are central to the vitality and preservation of our democratic institutions."

Evans said that while the ABA supports the objective of expanding electronic coverage of federal court proceedings, it is not time for Congress to step in and mandate electronic coverage of federal judicial proceedings on a temporary or permanent basis. "We hope instead that you will engage the federal judiciary in an ongoing discussion and urge the Judicial Conference to authorize and encourage the district courts, courts of appeals and the U.S. Supreme Court to experiment with electronic coverage of their proceedings."

Several bills have been introduced. H.R. 2422, sponsored by Rep. Steve Chabot (R-Ohio), and similar legislation, S. 829, sponsored by Sen. Charles Grassley (R-Iowa), would allow a presiding judge in appellate and district courts to permit photographing, electronic recording, broadcasting, or televising of their proceedings. Rep. Ted Poe (R-Tex.) and Sen. Arlen Specter (R-Pa.) have introduced H.R. 4380 and S. 1768, respectively, to permit the televising of Supreme Court proceedings. Both the Poe and Specter bills contain language allowing coverage of open sessions unless the justices decided by a majority vote that televising the proceedings would constitute a violation of the due process of one or more of the parties involved.

"Courts that conduct their business openly and under public scrutiny protect the integrity of the federal judicial system by guaranteeing accountability to the people they serve."

During the hearing, most of the committee members and witnesses said they believed that broadcasting of court proceedings promotes the general public's knowledge and understanding of the judicial system. The Judicial Conference, which allowed a pilot project in the 1990s, remains generally opposed to cameras in trial courtrooms and currently authorizes only federal appellate courts to permit electronic coverage in accordance with promulgated guidelines.

Barbara Bergman, president of the National Association of Criminal Defense Lawyers (NACDL) supported the legislation, but said her group would like to see the bills amended to authorize cameras in district court criminal proceedings and interlocutory appeals only with the express consent of the parties. ■

Judicial Vacancies/Confirmations — 109th Congress (as of 12/8/05)

Court	Current Vacancies	Pending Nominations	Confirmations
US Supreme Court (9 judgeships)	1*	1	1
US Courts of Appeals (179 judgeships)	13	6	7
US District Courts (678 judgeships)	35	14	7
Court of International Trade (9 judgeships)	1	1	0
Totals	50	22	15

**Justice Sandra Day O'Connor has announced her retirement, effective when a successor is confirmed.*

Washington News Briefs

APPROPRIATIONS: President Bush signed a $62.9 billion fiscal year 2006 appropriations package Nov. 22 that includes funding for several programs supported by the ABA. P.L. 109-108 (H.R. 2862) includes funding for science, the Departments of State, Justice and Commerce, and related agencies. The package provides $330.8 million for the Legal Services Corporation (LSC), subject to a .28 percent across-the-board reduction also included in the law. The reduction brings this year's LSC funding down to $329.8million. In determining the final LSC appropriation, conferees included the House amount for the program rather than the $358.5 million that the Senate has included in its version of the legislation. In approving the lower amount, the conferees dropped $8 million that had been designated for providing legal services to recent hurricane victims. The State Justice Institute (SJI), another program strongly supported by the ABA, received a 34 percent increase in funding to $3.5 million to provide federal grants for improving state court administration. This increase follows several years of attempts in Congress to eliminate federal funding for the program, which must now require that grantees provide a cash match of not less than 50 percent of the total cost of their projects. Also included in the new law is $386.5 million for violence against women programs, which encompasses $39.2 million for legal assistance for victims. The U.S. Patent and Trademark Office is appropriated $1.6 billion.

NINTH CIRCUIT SPLIT: The ABA last month reiterated its strong opposition, on both substantive and procedural grounds, to provisions to restructure the U.S. Court of Appeals for the Ninth Circuit. A plan to split the Ninth Circuit into two circuits passed the House Nov. 18 as part of H.R. 4241, budget reconciliation legislation. In a Nov. 9 letter to House Speaker J. Dennis Hastert (R-Ill.), Minority Leader Nancy Pelosi (D-Calif.), and all members of the House, ABA Governmental Affairs Director Robert D. Evans emphasized that proposals to split the court system's largest circuit have repeatedly failed to become law because there is no consensus within Congress or among members of the bench and bar of the Ninth Judicial Circuit that circuit division in either necessary or beneficial. He added that even with the ranks of those who favor division, no consensus has emerged over the best way to divide the circuit. The provisions in H.R. 4241 are identical to those of H.R. 4093, a bill sponsored by House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) and approved by that committee on Oct. 25 (see November 2005 *Letter*). The ABA submitted a written statement in opposition to H.R. 4093. The provisions would retain California, Hawaii, Guam and the Northern Mariana Islands in the Ninth Circuit and would create a new Twelfth Circuit covering Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington. "Inclusion of this amendment in H.R. 4241 is an attempt to circumvent the normal legislative process and stifle discussion and debate on a controversial issue of great importance to the justice system; indeed six bills proposing various divisions of the Ninth Circuit are currently under consideration by this Congress," Evans said. He added that circuit restructuring is a costly and momentous venture that should not be undertaken unless a clear consensus has developed within the Ninth Judicial Circuit and among members of Congress that such restructuring is unquestionably needed. The Senate passed S. 1932, its version of budget reconciliation Nov. 3 without the Ninth Circuit provisions. Conferees will be resolving differences between the two versions this month.

JUDICIAL SECURITY: The House passed a bill Nov. 9 in response to recent violence against judges and their families. H.R. 1751, sponsored by Rep. Louie Gohmert (R-Texas) and passed by an overwhelming 375-45 vote, would for the next four years authorize $20 million annually to assess and implement changes for courtroom safety and security planning and an additional $20 million annually to hire additional marshals to protect judges. The ABA supports provisions in the legislation to require regular consultation between the U.S. Marshals Service and the Administrative Office of the U.S. Courts as well as permanent redaction on federal financial disclosure statements of judge and judicial employees of information that might endanger a particular judge or family member. The association is concerned, however, about the bill's provisions enhancing or creating new mandatory minimum sentences and the establishment of a new federal offense involving Internet transmission of certain information about judges. There has been no action on similar Senate bills: S. 1605, sponsored by Sen. Jon Kyl (R-Ariz.), and S. 1968, sponsored by Senate Judiciary Committee Chairman Arlen Specter (R-Pa.).

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GLBA

continued from front page

state are bound by a duty of confidentiality that is far more broad and protective of consumer privacy than the GLBA provisions. The FTC rejected the request for exemption. After further negotiations, the bar associations filed suit.

The Dec. 6 court ruling affirmed a May 2004 decision of the U.S. District Court of the District of Columbia that the FTC's attempt to regulate lawyers was inconsistent with the statute and also "arbitrary and capricious" in violation of the Administrative Procedure Act. The circuit court panel emphasized, "The states have regulated the practice of law throughout the history of the country; the federal government has not."

The court stated: "When we examine a scheme of the length, detail and intricacy of the one before us, we find it difficult to believe that Congress, by any remaining ambiguity, intended to undertake the regulation of the profession of law – a profession never before regulated by 'federal functional regulators' – and never mentioned in the statute. To find this interpretation defense-worthy, we would have to conclude that Congress not only had hidden a rather large elephant in a rather obscure mousehole, but had buried the ambiguity in which the pachyderm lurks beneath an incredibly deep mound of specificity, none of which bears the footprints of the beast or any indication that Congress even suspected its presence."

ABA President Michael S. Greco said the ruling "underscored that for more than two centuries we have rightly relied on state supreme courts to exercise responsibility for oversight in order to protect and safeguard the confidentiality of attorney-client communications and the public interest."

The ABA and various bar associations also have sought legislative relief from the GLBA requirements. Reps. Judy Biggert (R-Ill.) and Carolyn Maloney (D-N.Y.) have introduced legislation to clarify that the law was not intended to apply to lawyers. ■

Habeas corpus

continued from front page

Senate Judiciary Committee for the Nov. 16 hearing, Hofstra law professor Eric M. Freedman maintained that the attorney general, as the nation's top prosecutor, is not an appropriate officer for deciding whether states have met the standards.

Freedman, who is a member of the Steering Committee of the ABA Death Penalty Representation Project, also expressed the ABA's opposition to other provisions in S. 1088, which he said would, in attempting to speed up the process, "virtually eliminate the ability of federal courts to determine federal issues in cases in which state prisoners (whether facing death sentences or serving prison terms) seek relief by means of habeas corpus."

On another front, ABA President Michael S. Greco expressed the association's opposition last month to a proposed amendment to the Department of Defense authorization bill to eliminate habeas corpus review for detainees held at Guantanamo Bay, Cuba. The amendment to S. 1042, offered by Sen. Lindsey Graham (R-S.C.), would have given jurisdiction to the Court of Appeals for the District of Columbia Circuit to consider only whether a detainee's status determination was conducted consistent with the procedures specified by the secretary of defense for combat status review tribunals.

"This extremely limited review cannot and should not replace the time-honored mechanism of the writ of habeas corpus," Greco wrote in a Nov. 14 letter to all senators. He explained that preserving the opportunity for Guantanamo detainees to seek habeas review in the federal courts will "demonstrate our nation's commitment to its own constitutional values and serve as an important example to the rest of the world."

The final language included in the bill, passed as H.R. 1815 by the Senate Nov. 15, is a modified version of the amendment that would allow prisoners to appeal not only their status but also convictions to the D.C. Circuit. Also included in the bill were provisions sponsored by Sen. John McCain (R-Ariz.) to prohibit the torture of detainees in U.S. custody.

Conferees are expected to meet this month to try to resolve the differences between the Senate and House versions of H.R. 1815. ■

The monthly *Washington Letter* reports news of national public interest to the legal profession, including congressional, executive branch and ABA activities concerning the association's legislative priorities. The newsletter is published by the Governmental Affairs Office as a service to ABA members in the national, state and local bar associations. Full text is available on the Internet at http://www.abanet.org/poladv/letter/home. **Please address correspondence to:**
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