

WASHINGTON LETTER

ONLINE

A PUBLICATION OF THE GOVERNMENTAL AFFAIRS OFFICE, CELEBRATING
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bar leaders to Capitol Hill**

A record-setting number of bar leaders descended on Capitol Hill April 15-17 for the twelfth annual “ABA Day in Washington,” a chance for the lawyers to meet face-to-face with their senators and representatives.

Coordinated by the ABA Governmental Affairs Office, the event is cosponsored by the Section Officers Conference, the Young Lawyers Division, the National Conference of Bar Presidents, and the National Association of Bar Executives.

This year, the attendees focused their discussions on two priority issues: increased funding for the Legal Services Corporation (LSC), which provides grants to local community-based legal aid programs serving low-income individuals; and S. 186, the Attorney Client Privilege Protection Act, a bill to preserve the attorney-client privilege, which is being threatened by policies in place at the Justice Department and other federal agencies.

ABA Day Photos – Pages 4 and 5

ABA Day Planning Committee Chair Stephen N. Zack, of Miami, said, “The record number of ABA member participants delivered a strong message in support of the Legal Services Corporation and attorney-client privilege.” He noted that, for the first time, all 50 state bars, the D.C. bar and two territorial bars signed a joint letter to Congress urging increased LSC funding to help meet the legal needs of the 50 million Americans who are eligible for LSC services.

Before setting out to their meetings April 16, ABA Day attendees participated in an interactive instructional lobbying workshop featuring role-playing, heard lobbying tips from Rep. Kirsten Gillibrand (D-N.Y.), and received briefings on the two priority issues from two panels of experts.

The breakfast meeting the next day featured Philip Spector, deputy counsel to Sen. Hillary Clinton (D-N.Y.); Michael Strautmanis, chief counsel to Sen. Barack Obama (D-Ill.); and Lee Dunn, counsel to Sen. John McCain (R-Ariz.). They expressed the presidential candidates’ perspectives on issues of importance to the justice system. Sen. Lindsey Graham (R-S.C.) also addressed the group and talked about the urgent need for increased judicial pay and concerns about national security, civil liberties, and treatment of detainees at Guantanamo.

At a Capitol Hill reception, the ABA honored the following members of Congress for specific efforts to improve the American justice system: Sen. Patrick J. Leahy (D-Vt.), Sen. Arlen Specter (R-Pa.), Sen. Pete V. Domenici



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LEGISLATIVE BOXSCORE

| ABA LEGISLATIVE PRIORITY | HOUSE | SENATE | FINAL | ABA POSITION |
|--|--|--|---|---|
| <p>Independence of the Legal Profession. S. 186 and H.R. 3013 would reverse the privilege-waiver and employee rights provisions in the Justice Department's McNulty Memorandum and other similar federal agency policies that instruct federal law enforcement officials to consider these factors in determining whether corporations and others should receive credit for cooperation – hence leniency – in government investigations. S. 2450 would adopt proposed Rule of Evidence 502 regarding inadvertent disclosure of privileged materials.</p> | <p>Judiciary subc. held a hearing on the McNulty Memorandum on 3/8/07. Judiciary Committee approved H.R. 3013 on 8/1/07. House passed H.R. 3013 on 11/13/07.</p> | <p>S. 186 was referred to the Senate Judiciary Committee on 1/4/07. Judiciary Committee held a hearing on S. 186 on 9/18/07. Judiciary Committee approved S. 2450 on 1/31/08. Senate passed S. 2450 on 2/27/08.</p> | | <p>Supports preservation of the attorney-client privilege and work product doctrine and opposes governmental policies, practices and procedures that erode these protections, including the routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage.</p> |
| <p>Health Care Law. S. 243 would impose a cap on non-economic damages in medical malpractice lawsuits and also cap punitive damages, eliminate joint liability on non-economic damages, and impose a federal statute of limitations in those cases. S. 244, narrower legislation, would limit liability in medical liability cases in the field of obstetrics and gynecology. H.R. 2549 would provide certainty in the Medicare set-aside process for workers' compensation settlements. S. 2662 and H.R. 5480, Medicare funding warning legislation, include medical liability provisions.</p> | <p>H.R. 2549 was referred to the Ways and Means and Energy and Commerce Committees on 5/24/07. H.R. 5480 was referred to the Ways and Means Committee on 2/25/08.</p> | <p>S. 243 was referred to the Health, Education, Labor and Pensions Committee on 1/10/07. Senate rejected attaching the language of S. 244 as an amendment to farm legislation 12/13/07. S. 2662 was referred to the Finance Committee on 2/25/08.</p> | | <p>Urges the legal and medical professions to cooperate in seeking a solution to medical liability problems and maintains that federal involvement in the area is inappropriate. In particular, the ABA opposes caps on pain and suffering awards, supports retaining current tort rules on malicious prosecution, collateral sources and contingent fees, and believes that the use of structured settlements should be encouraged. It supports certain changes at the state level in the areas of punitive damages, jury verdicts and joint and several liability.</p> |
| <p>Judicial Independence. S. 461 and H.R. 785 would create an inspector general for the judicial branch to investigate claims of misconduct against federal judges. S. 352 and H.R. 2128 would provide for media coverage of federal court proceedings. S. 1638 and H.R. 3753 would increase federal judicial pay.</p> | <p>Judiciary subc. held a hearing on judicial salaries on 4/19/07, and approved H.R. 3753 on 12/12/07. Judiciary Committee held a hearing on H.R. 2128 on 9/27/07.</p> | <p>Judiciary Committee approved S. 1638 on 1/31/08. Judiciary Committee held a hearing on cameras in the courtroom on 2/14/07 and approved S. 352 on 3/13/08.</p> | | <p>Opposes initiatives that infringe upon the separation of powers between Congress and the courts. Supports increased judicial pay. Opposes any legislation to change constitutional law by limiting federal court jurisdiction in specific areas.</p> |
| <p>Legal Services Corporation. P.L. 110-161 (H.R. 2764) includes \$350.49 million for the LSC in fiscal year 2008. President Bush requested \$311 million in his proposed fiscal year 2009 budget.</p> | <p>House passed H.R. 2764 on 12/17/07. Appropriations subc. held a hearing on 4/2/08.</p> | <p>Senate passed H.R. 2764 on 12/18/07.</p> | <p>President signed P.L. 110-161 (H.R. 2764) on 12/26/07.</p> | <p>Supports an independent, well-funded LSC.</p> |

More resources needed for death penalty cases

ABA Past President Michael S. Greco testified April 8 that the “administration of the death penalty in America is woeful,” and said more resources – financial and human – must be committed to improve the situation and achieve the right to a fair trial for all citizens.

Greco, testifying before the Senate Judiciary Subcommittee on the Constitution, said that capital cases are the most visible and complicated of all criminal cases, and the consequences of making mistakes in these cases are the most extreme. Despite this knowledge, state governments have failed for many years to take the steps they must to address longstanding and systemic problems in the death penalty counsel system, he said.

Greco explained that while the ABA has not taken a position on the constitutionality or appropriateness of the death penalty, the association has adopted a series of policies concerning the administration of capital punishment and first adopted the *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* in 1989. The guidelines, greatly expanded and updated in 2003, are now the accepted standard for the defense of death penalty cases and have been adopted in a number of death penalty jurisdictions.

In addition, the association helps provide volunteer legal representation for indigent death row inmates through its Death Penalty Representation Project.

Greco said that the ABA approved additional policy in 1997 urging a halt to executions until discrimination was eliminated and fundamental fairness and due process were guaranteed to those facing capital punishment. The action, he explained, was prompted by two developments: enactment of the Antiterrorism and Effective Death Penalty Reform Act, which im-

posed statutes of limitations on death row appeals for the first time and sharply curtailed the availability of appellate review; and elimination of all federal funding to the Post-Conviction Defender Organi-

zation. Greco also testified that the lack of adequate legal representation for capital defendants and death row prisoners is the largest and most problematic issue.

Bryan A. Stephenson, executive director of the Equal Justice Initia-



ABA Past President Michael S. Greco and Bryan A. Stephenson, executive director of the Equal Justice Initiative of Alabama, testified at the April 8 hearing on death penalty representation.

zations that had represented many death row prisoners and had advised appointed and pro bono lawyers who handled capital habeas corpus cases in state and federal courts.

“These two steps taken by Congress, in our view, have had disastrous consequences on the quality and availability of legal representation for persons facing a possible death sentence and have significantly and regrettably heightened the risk that an innocent person may be executed,” Greco testified.

He highlighted the results of assessments conducted over the past four years by the ABA Death Penalty Moratorium Implementation Project, which studied the death penalty systems in eight states: Alabama, Arizona, Florida, Georgia, Indiana, Pennsylvania, Ohio and Tennessee. The assessments, which revealed grave problems in each state, pinpointed the quality and availability of compe-

tent legal representation for capital defendants and death row prisoners as the largest and most problematic issue. He emphasized that even in states where there are public defender systems, funding and compensation for attorneys remain low and resources for investigations and experts are scarce. He also pointed out that the states with the most active death rows are those that have historically poor records of providing competent counsel to people accused of capital crimes.

Judge Carolyn Engle Temin of Pennsylvania proposed three steps: provide that all persons accused of capital crimes are eligible for appointed counsel regardless of their financial condition; enact the ABA guidelines into law as the minimum requirements for counsel in capital

see “Death penalty,” page 10

“ABA Day in Washington” - April 15-17, 2008



ABA Day honoree Rep. Robert C. “Bobby” Scott (D-Va.) (center) displays his award with ABA President William H. Neukom (left), and ABA Past President Robert J. Grey Jr.



Craig A. Orraj, president, State Bar of New Mexico Board of Bar Commissioners (left), and ABA President-elect H. Thomas Wells Jr. (right) presented Sen. Pete V. Domenici (R-N.M.) with an ABA Day award.

ABA Day honoree Sen. Arlen Specter (R-Pa.) (center) at the Capitol Hill reception with (from left): Nevin Mindlin, legislative director, Pennsylvania Bar Association; Clifford Haines, vice president, Pennsylvania Bar Association; Judge Bernice D. Donald, U.S. District Court, Western District of Tennessee; Andrew Susko, president, Pennsylvania Bar Association; and Sam Milkes, executive director, Pennsylvania Legal Aid Network.



ABA Day participants from South Carolina met with Sen. Lindsey O. Graham (R-S.C.). From left: Pamela Roberts, chair, ABA Commission on Women in the Profession; Lanneau Wm. Lambert Jr., president, South Carolina Bar; Sen. Graham; William C. Hubbard, member, ABA House of Delegates; Leah Johnson, assistant executive director, South Carolina Bar; and George B. Cauthen, member, Standing Committee on Legal Aid and Indigent Defendants.



Attendees from Ohio visited Rep. Robert E. Latta (R-Ohio). From left: Stephan Stover, Ohio State Bar Association (OSBA); OSBA President-Elect Gary Leppla; William Weisenberg, OSBA assistant executive director; Rep. Latta; Barbara J. Howard, member, ABA Board of Governors; David Weiner, member, ABA House of Delegates; OSBA President Robert Ware; and Nicole VanderDoes, member, Young Lawyers Division.



Rep. David Obey (D-Wis.) (left) greets Diane Diel, president of the State Bar of Wisconsin, as Dean Dietrich, chair of the Wisconsin State Bar Ethics Committee, looks on.



Rep. Rodney Frelinghuysen (R-N.J.) (center) talks with ABA Immediate Past President Karen J. Mathis (left) and Wayne Positan, immediate past president of the New Jersey State Bar Association.



Those meeting with Sen. John D. Rockefeller IV (D-W.Va.) (center) were from left: West Virginia State Bar President-Elect Dwane Tinsley; G. Nicholas Casey Jr., West Virginia delegate to the ABA House of Delegates; West Virginia State Bar President Steven Johnston Knopp; and Anita Casey, West Virginia State Bar executive director.

Sen. Patrick J. Leahy (D-Vt.) (center) accepts his ABA Day award from Samuel Hoar Jr., president, Vermont Bar Association; Sam Hoar; Richard Cassidy, member, ABA Board of Governors; Vermont Bar Association Executive Director Robert Paolini; ABA Legislative Counsel Larson Frisby; and Frank Langrock, president-elect, Vermont Bar Association.



Law Day celebrates 50th anniversary

“The Rule of Law: Foundation for Communities of Opportunity and Equity” is the theme of this year’s Law Day, which is celebrating its 50th anniversary.

President Eisenhower issued the first Law Day proclamation in 1958 after then ABA President Charles S. Rhyne established Law Day as a day to celebrate the rule of law. While the official date for Law Day is May 1, the celebration has grown to encompass weeks of activities conducted by schools, bar associations, courts and other organizations throughout the country.

“This year we focus on a theme that involves not only all Americans but all people throughout the world,” ABA President William H. Neukom said in his Law Day message. “The rule of law is not just a matter of concern to lawyers and judges; it affects people from all walks of life and in all fields of endeavor: clergy, teachers, workers, physicians, journalists, engineers, architects, public safety officials, military leaders, human rights advocates, environmentalists, and others,” according to Neukom, who has made advancing the rule of law a priority of his ABA presidency.

To celebrate Law Day this year, the annual Leon Jaworski Public Program, held April 30 at the Newseum in Washington, was a national town hall meeting on the rule of law. The program, conducted by the ABA Standing Committee on Public Education,



featured a panel of experts from a broad cross-section of various disciplines. ABA President Neukom presided over the event, which was moderated by NBC Justice Correspondent Pete Williams.

On May 1, the Law Library of Congress celebrated Law Day with a panel discussion examining what the rule of law means to established and emerging countries. Rob Boone, director of the ABA Rule of Law Initiative, participated on the panel. ■

ABA Day in Washington

continued from front page

(R-N.M.), Rep. Jim Ramstad (R-Minn.), and Rep. Robert C. “Bobby” Scott (D-Va.).

This year’s grassroots advocacy honors went to: the State Bar of Wisconsin; the State Bar of South Dakota; G. Nicholas Casey Jr., West Virginia delegate to the ABA House of Delegates and member of the ABA Standing Committee on Governmental Affairs; and Bruce B. Blackwell, president of the Florida Bar Foundation.

Next year’s ABA Day is already on the calendar for April 21-23, 2009.

Judicial Vacancies/Confirmations — 110th Congress (as of 5/1/08)

| <u>Court</u> | <u>Current Vacancies</u> | <u>Pending Nominations</u> | <u>Confirmations</u> |
|---|--------------------------|----------------------------|----------------------|
| US Supreme Court (9 judgeships) | 0 | 0 | 0 |
| US Courts of Appeals (179 judgeships) | 12 | 10 | 7 |
| US District Courts (678 judgeships) | 34 | 22 | 38 |
| Court of International Trade (9 judgeships) | 0 | 0 | 0 |
| Totals | 46 | 32 | 45 |

Senate Committee okays state secrets bill

The Senate Judiciary Committee approved a bill April 24 that would establish new standards for resolving claims involving the state secrets privilege, which is used by the executive branch to keep sensitive national security information from being disclosed in civil lawsuits against the government.

S. 2533 — a bipartisan bill sponsored by Sens. Edward M. Kennedy (D-Mass.), Patrick J. Leahy (D-Vt.) and Arlen Specter (R-Pa.) and supported by the ABA — cleared the committee on an 11-8 vote, but the legislation faces a veto threat from the president. The senators introduced the bill in response to the government's use of the state secrets privilege in a growing number of cases ranging from torture to warrantless surveillance. In the absence of congressional guidance, courts have adopted divergent approaches to dealing with the cases involving the privilege.

"A major concern is that the privilege is being abused to cover up executive-branch wrongdoing," Kennedy said during the bill's markup.

S. 2533 would allow the court *in camera* access to documents and would set rules for asserting the privilege and for determining whether evidence is protected from disclosure by the privilege. The provisions would allow the court to dismiss cases on state secrets grounds and also provide for expedited appeal of any court order under the act.

The bill would require judges to hold a closed hearing to examine actual evidence that the government claims is privileged rather than relying solely on government affidavits. The provisions instruct judges, in cases where the information is determined to be privileged, to order the government to produce unclassified or redacted versions of sensitive evidence, when possible,

to allow cases to forward.

The ABA supports the legislation because it "strengthens the courts' ability to determine the applicability of the privilege in a given situation by enhancing judicial access to the relevant information at issue in a case," according to a letter sent April 2 to Senate Judiciary Committee members.

"The ABA believes that the legislation respects the roles of all three branches of government in addressing state secrets issues," ABA Governmental Affairs Acting Director Denise A. Cardman wrote. She pointed out that courts have a long history of dealing with sensitive national security information and evaluating executive branch determinations through tested and proven procedures such as those

established by Congress in the Freedom of Information Act and the Classified Information Procedures Act.

"Establishing procedures for the courts to conduct more searching judicial review, informed by evidence, will ensure that government assertions of necessity are truly warranted and not simply a means to avoid embarrassment or accountability," she explained, adding that the legislation "will restore the necessary checks and balances among the three branches of government to establish appropriate safeguards for protecting against the disclosure of true state secrets without compromising the effectiveness of our legal system."

Similar legislation, H.R. 5607, is pending in the House. ■

Cloture vote fails on *Ledbetter* bill

The Senate could not muster the votes last month to move ahead on legislation to clarify the timetable for filing wage discrimination suits under federal law.

The Senate's 56-42 vote fell short of the 60 votes required to take up H.R. 2831, a bill that would reverse the Supreme Court decision in *Ledbetter v. Goodyear Rubber & Tire Co.*, 550 U.S. ___ (2007). In that case, decided May 29 of last year, the court ruled that workers must file pay discrimination lawsuits against their employers within 180 days of when the decision to discriminate was made rather than following paychecks over time that reflect the discrimination.

The case arose from the case of Lilly Ledbetter, a Goodyear employee whose pay fell 15 to 40 percent behind that of her male counterparts during her career at the company. When she retired and became aware of the discrepancy, she filed a formal charge with the Equal Employment Opportunity Commission (EEOC) and then a pay discrimination suit. While the trial court awarded her back pay, compensatory damages and punitive damages, the Eleventh Circuit Court of Appeals overturned the verdict. The Supreme Court affirmed the circuit court's decision, ruling that the *Ledbetter* case was time-barred because no discriminatory acts were alleged to have taken place within the 180-day statute of limitations.

In an April 22 letter to all senators, the ABA expressed support for the legislation, saying that the *Ledbetter* decision "tilted pay equity cases out of reach for most employee plaintiffs." ABA President William H. Neukom, in an April 28 statement issued after the failed cloture vote, said it is "urgent that Congress not let the matter rest here" and that the Senate should press forward with efforts to achieve an up-or-down vote on the legislation. He emphasized that the court's ruling "makes it impossible for

See "*Ledbetter*," page 10

Thomas M. Susman will head ABA Governmental Affairs Office

The ABA has chosen Thomas M. Susman, an attorney at the law firm of Ropes and Gray since 1981 and a longtime active member of the association, to be director of its Governmental Affairs Office, effective May 5.

Susman's legislative and regulatory practice involved work on homeland security energy, tax code amendments, regulatory reform, intellectual property protection, environmental protection, access to government information, Native American issues, and antitrust law reform. His regulatory practice spanned a wide range of issues, including freedom of information and privacy, health care, energy efficiency, antitrust, maritime safety and regulation of organ procurement.

Prior to joining Ropes and Gray, Susman served as chief counsel to the Senate Judiciary Subcommittee on Administrative Practice and Procedure, and as general counsel to the committee's Antitrust Subcommittee and to the full Senate Judiciary Committee.

He has been a member of the ABA House of Delegates and Board of Governors and is a past chair of the ABA Section of Administrative Law and Regulatory Practice. He was a co-editor of the ABA's Lobbying Manual (2005).

Susman earned his undergraduate degree at Yale and his J.D. at the University of Texas Law School.

"Leading the ABA's Governmental Affairs Office enables me to return to full-time public interest and public service work," Susman said. "I know first-hand the array of issues on which the association advocates, and how important they are to the profession as well as to all Americans and to others around the world struggling to secure rights under the rule of law."



Thomas M. Susman

ABA supports Elder Justice Act

Joseph D. O'Connor, chair of the ABA Commission on Law and Aging, urged a House Judiciary subcommittee last month to quickly approve H.R. 1783, the proposed Elder Justice Act, which includes provisions for providing legal assistance to victims of elder abuse.

"The Elder Justice Act would create an infrastructure and provide resources needed to develop and implement a nationally coordinated strategy in collaboration with the states to make elder justice a reality," O'Connor said in a statement

submitted for the record of a hearing on the legislation held April 17 by the Subcommittee on Crime, Terrorism and Homeland Security. He emphasized that the growing national problem of elder abuse, neglect and exploitation is a national tragedy that causes serious harm to between 500,000 to 5 million individuals each year.

No current federal law adequately and comprehensively addresses these issues, and there are very limited resources available to those in the field, he said.

The bill would provide grants to support training about elder abuse for "health care, social and protective services providers, law en-

forcement, fiduciaries (including guardians), judges and court personnel, and victims advocates." In addition, legal assistance for older persons would, among other things, protect them from exploitation by caregivers or those with power of attorney. He said that the bill also would provide grants to support hiring and training of prosecutors and provide resources to their offices in an effort to increase prosecutions of elder abuse.

Others testifying at the hearing included Rep. Rahm Emanuel (D-Ill.), who sponsored the bipartisan legislation with more than 100 cosponsors; and Robert Blancato, *see "Elder Justice Act," page 10*

Washington News Briefs

HEALTH CARE DECISIONS: The Senate and House passed resolutions last month expressing congressional support for the goals and ideals of first National Health Care Decisions Day, which was celebrated April 16 to raise public awareness of the need to plan ahead for health care decisions related to end-of-life care and medical decisionmaking. S. Con. Res. 73, introduced by Sen. Ron Wyden (D-Ore.), and H. Con Res. 323, sponsored by Rep. Phil Gingrey (R-Ga.), support advance care planning for all adult Americans and encourages each person in the United States who is over the age of 18 to prepare an advance directive to assist loved ones, health care providers and others in honoring their wishes regarding medical care. The resolutions also encourage health care, civic, educational, religious, and private and nonprofit organizations to raise public awareness by encouraging individuals to prepare advance directives. The National Health Care Decisions Day initiative — a collaborative effort of national, state and community organizations, including the ABA — is committed to ensuring that all adults with decisionmaking capacity in the United States have the information and opportunity to communicate and document their health care decisions. In an April 2 letter, ABA Governmental Affairs Acting Director Denise A. Cardman expressed support for the initiative and highlighted the ABA's longstanding support of advance planning legal tools, including the recognition of the Uniform Rights of the Terminally Ill Act and the subsequent Uniform Health-Care Decisions Act. The association also supported the enactment of the Patient Self-Determination Act of 1990, which guarantees patients the right to information about their rights under state law regarding accepting or refusing medical treatment.

CHILD ABUSE: The ABA urged congressional appropriators April 21 to support fiscal year 2009 funding that would provide the authorized levels of \$84 million for basic state grants, \$80 million for community-based prevention grants, and \$37 million for discretionary research and demonstration grants under the Child Abuse Prevention and Treatment Act (CAPTA). In letters sent to members of the House and Senate Appropriations Subcommittees on Labor, Health and Human Services (HHS) and Education, ABA Governmental Affairs Acting Director Denise A. Cardman emphasized the importance of increased CAPTA appropriations to “provide the resources needed to stem the tide of child maltreatment.” She said that CAPTA basic grants have not kept pace with what the states and communities need to protect children. The most recent HHS data, she said, revealed that in 2005, almost 900,000 of the more than 3 million reports of possible abuse and

neglect were substantiated, but the victims in almost 40 percent of those substantiated cases received no services. The same year, close to 1,500 children died as a result of abuse or neglect and more than three-quarters of those killed were under age four. She explained that increasing community-based prevention grants would help support proven, cost-effective approaches to preventing child abuse and neglect. She added that increased funding for research and program innovations would provide support for field-initiated research model program development, training, technical assistance and data collection authorized by CAPTA. The subcommittees currently are holding hearings and drafting their appropriations recommendations for programs under their jurisdiction for fiscal year 2009, which begins Oct. 1, 2008.

ACCESS TO STUDENT AID: The ABA urged members of the Senate Committee on Health, Education, Labor and Pensions and the House Committee on Education and Labor to consider, in the conference on reauthorization of the Higher Education Act, provisions to address “the needless loss of educational opportunity for the many potential students who have past convictions for offenses involving controlled substances.” In an April 24 letter to the committees, ABA Governmental Affairs Acting Director Denise A. Cardman pointed out that prior to the 1998 passage of the Souder Amendment, which denies federal student financial aid to those with past drug convictions, decisions on whether punishment of an individual felon warranted restriction of that person's access to taxpayer-funded financial assistance rested on the judicial official deciding that particular case. She expressed ABA support for S. 2727, a bill introduced by Sen. Christopher Dodd (D-Conn.) that would allow judges to consider the individual circumstances, with input from both prosecutors and the defense, to decide whether or not denial of aid in each particular case is appropriate punishment. “Since its passage, the Souder Amendment has served as a form of second punishment for individuals who had already been subject to criminal sanctions and, in many cases, other civil sanctions,” she said, pointing out that Department of Education statistics reveal that more than 200,000 individuals have suffered this second punishment. The Souder Amendment, Cardman explained, has created a gap in access to education advancement between those with means to pay for their own education, despite prior convictions, and those who, though once convicted of the same or similar crime, cannot afford an education without aid. She urged Congress to include the language of S. 2727 in the final HEA bill.

ABA urges restoration of juvenile justice funds

The ABA urged House and Senate Appropriations subcommittees last month to reject fiscal year 2009 budget recommendations from the Bush administration that would cut federal funding for juvenile justice programs by 57 percent while consolidating them into a single block grant.

In an April 2 letter to the Sub-

Death penalty

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cases; and provide funds for establishing capital public defender offices in states that do not have them or provide additional funds to existing public defender systems.

Donald B. Verrilli Jr., a partner at Jenner & Block, also testified in support of more resources to pay lawyers at a level that enables them to put in the effort needed and to hire experts, including psychologists and those specializing in DNA analysis and social history.

Subcommittee Chairman Russ Feingold (D-Wis.) said it is a "moral imperative" that as long as the country has a death penalty, "we owe it to those who are charged with capital crimes, we owe it to our criminal justice system, and we owe it to the principles of equal justice on which this nation was founded to make sure that those charged with capital crimes have good lawyers who have the resources they need to mount an effective defense." ■

committees on Commerce, Justice, Science and Related Agencies in the House and Senate, ABA Governmental Affairs Acting Director Denise A. Cardman proposed that Congress instead restore funding for three critical juvenile justice programs that have been severely cut in recent years: \$89 million for Title II State Formula Grants, \$95 million for Title V Incentive Grants for Local Delinquency Prevention, and \$250 million for Juvenile Accountability Block Grants. She also expressed support for continued funding at \$70 million for Juvenile Mentoring Grants.

Cardman wrote that the state formula grants provide essential support for public agencies to develop and strengthen juvenile justice systems to prevent delinquency, reduce youth crime, meet vital protection requirements, and keep communities safe. Grants awarded under the incentive grants for local delinquency prevention program help children and youth realize their full potential.

The Juvenile Accountability Block Grant (JABG) provides states and local governments with funds for evidence-based strategies for delinquency prevention and for developing programs promoting greater accountability in the juvenile justice system in many areas, including re-entry, and gang prevention and intervention.

Because an increasing number of earmarks in recent years have

precluded many of the juvenile justice programs from carrying out their purposes, Cardman also recommended that Congress include provisions to prohibiting no more than 25 percent of the discretionary juvenile justice funds from being used for other purposes. ■

Ledbetter

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most victims of pay discrimination to seek redress because few can discover they are victims of unfair pay in such a short time."

"For more than 40 years," he said, "it has been the clear intent of Congress, and of society, to make sure that able workers doing the same work are paid equally" and that "this noble goal should not be swept away by an unrealistic filing deadline."

The bill's future is uncertain, but Senate leaders left open the possibility that the issue may be brought up again before the end of this year. ■

Elder Justice Act

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national coordinator for the Elder Justice Coalition.

S. 1070, elder justice legislation pending in the Senate, does not include any of the law-related provisions supported by the ABA. O'Connor urged that any final legislation include the law-related provisions from the House bill. ■

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 and national, state and local bar associations. Full text is available on the Internet at <http://www.abanet.org/poladv/publications.shtml>. © 2008 American Bar Association. All rights reserved. Please address correspondence to:

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