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## *Wells emphasizes the LSC as central foundation*

# ABA urges LSC reauthorization, lifting of some restrictions

Maintaining that the Legal Services Corporation (LSC) is “essential in helping secure access to justice for all Americans,” ABA Immediate Past President H. Thomas Wells Jr. urged Congress Oct. 27 to pass bipartisan legislation to reauthorize, strengthen and improve the Corporation.

Testifying before the House Judiciary Subcommittee on Commercial and Administrative Law, Wells emphasized the solid bipartisan congressional support the LSC enjoys as well as backing from the legal community and the American people. He cited a recently completed Harris poll demonstrating strong national support for providing free legal services to qualified low-income families.

“The LSC is the central foundation for the legal aid system: other components – state and local funding and pro bono contributions by private lawyers – are catalyzed by LSC seed funding and serve to supplement the LSC resources,” he said.

One significant problem, however, is that resources provided to the LSC – including \$390 million in federal funding for the current fiscal year – are not able to be used to maximum effect because of restrictions placed on LSC-funded programs, he testified.

Wells expressed ABA support for eliminating three restrictions that have been included in LSC appropriations riders since 1995: preventing recipients of LSC funding from freely utilizing state, local, private and other non-LSC funds to provide needed legal assistance to poor clients; preventing LSC recipient programs from obtaining statutorily permitted attorneys’ fees; and restricting class actions.

Wells noted that the ABA was part of the compromise in 1995 that imposed the restrictions as a way to save the LSC from elimination, but he said “it’s time to take a hard look at those restrictions, learn from how the restrictions have been in many cases overreaching, and work together to improve the delivery of legal services to the poor.”

Reauthorization legislation introduced in the Senate and House would increase the LSC’s authorization to \$750 million and eliminate some restrictions. Both S. 718, sponsored by Sen. Tom Harkin (D-Iowa), and H.R. 3467, intro-

*see “LSC,” page 4*

# LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
<p><b>Independence of the Legal Profession.</b> On 7/29/09, the Federal Trade Commission (FTC) announced a 90-day delay until 11/1/09 for a "Red Flags Rule" that would include attorneys in the definition of "creditor" and require lawyers to implement programs to detect, identify and respond to activities that could indicate identity theft. The ABA filed a lawsuit against the FTC on 8/27/09 and a motion for partial summary judgment on 9/23/09 to block the Rule's application to lawyers. On 10/30/09, the court ruled that the FTC has exceeded its authority. The FTC delayed implementation of the rule until 6/1/10.</p>				<p><b>Opposes the application of the FTC's "Red Flags Rule" to lawyers. 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. See page 5.</b></p>
<p><b>Health Care Law.</b> The president held a Forum on Health Reform at the White House on 3/5/09. Numerous bills have been introduced and hearings held on various aspects of the health care system, including H.R. 3200, H.R. 3962, S. 1679 and S. 1796. S. 1347 and H.R. 1478 would repeal the <i>Feres</i> Doctrine, which prohibits members of the armed forces and their families from suing the military for negligent medical care during their service.</p>	<p>Judiciary subcommittee held a hearing on H.R. 1478 on 3/25/09, and approved the bill on 5/19/09. House passed H.R. 3962 on 11/7/09.</p>	<p>S. 1347 was referred to Judiciary Committee on 6/24/09. Health, Education, Labor and Pensions approved draft health care legislation (introduced as S. 1679) on 7/15/09. Finance Committee concluded markup of draft health care reform bill (introduced as S. 1796 ) on 10/2/09.</p>		<p><b>Supports increased access to health care for all Americans. Opposes federal legislation to preempt state medical liability laws or legislation to require patients injured by malpractice to use "health courts" that take away jury trials. Supports S. 1347 and H.R. 1478. See pages 3 and 9.</b></p>
<p><b>Judicial Independence.</b> P.L. 111-8 (H.R. 1105) waived Section 140 to allow federal judges to receive a 2.8 percent cost-of-living increase for fiscal year 2009. S. 220 and H.R. 486 would create an inspector general for the judicial branch. S. 1653 and H.R. 3362 would authorize new federal judgeships.</p>	<p>H.R. 486 was referred to the Judiciary Cmte. on 2/9/09. H.R. 3362 was referred to the Judiciary Cmte. on 9/29/09.</p>	<p>S. 220 was referred to the Judiciary Committee on 1/13/09. Judiciary subc. held a hearing on S. 1653 on 9/30/09.</p>	<p>President signed P.L. 111-8 (H.R. 1105) on 3/11/09.</p>	<p><b>Supports increased judicial pay. Opposes initiatives that infringe upon the separation of powers between Congress and the courts.</b></p>
<p><b>Legal Services Corporation.</b> The House included \$440 million for the LSC in H.R. 2847, fiscal year 2010 funding legislation. The Senate Appropriations Committee approved \$400 million for the LSC in its version of the bill. S. 718 and 3467 would reauthorize the LSC and lift some restrictions.</p>	<p>House passed H.R. 2847 on 6/18/09. H.R. 3467 was referred to Judiciary Committee on 9/22/09. Judiciary subc. held an LSC reauthorization hearing on 10/27/09.</p>	<p>Senate passed H.R. 2847 on 11/5/09. S. 718 was referred to Health, Education, Labor and Pensions Committee on 4/1/09.</p>		<p><b>Supports an independent, well-funded LSC. See front page.</b></p>

## Health bill includes McCarran-Ferguson provisions

*ABA testifies in favor of repeal and safe harbor provisions*

Comprehensive health care reform legislation passed by the House Nov. 7 includes provisions supported by the ABA to partially repeal the insurance industry's antitrust exemption under the McCarran-Ferguson Act, which has been in place since 1945.

The House health care reform package, H.R. 3962, incorporates the provisions of H.R. 3596, a bill amended and reported Oct. 21 by a 20-9 vote in the House Judiciary Committee. As approved by the committee, H.R. 3596 would extend federal antitrust enforcement over health insurers and medical malpractice insurance issuers – specifically prohibiting price-fixing, bid rigging and market allocations.

The bill also includes an amendment attached during the Oct. 21 markup that added a limited number of “safe harbor” exceptions for certain precompetitive conduct by insurers. These include collecting and distributing historical loss data and performing actuarial services that do not involve a restraint of trade.

The ABA supported the inclusion of safe harbors in the legislation in testimony presented Oct. 8 before the House Judiciary Subcommittee on Courts and Competition Policy.

Ilene Knable Gotts, chair of the ABA Section of Antitrust Law, testified that for the past 20 years the ABA has maintained that the McCarran-Ferguson Act, which largely exempts the insurance industry from the federal antitrust laws, should be repealed and replaced with legislation permitting certain cooperative activities between insurers to continue.

For all other conduct, the ABA position is that the insurance industry should be subject to the same



**The panel appearing before the House Judiciary Subcommittee on Courts and Competition Policy during the Oct. 8 hearing included (from left): James D. Hurley, member, Medical Professional Liability Subcommittee, American Academy of Actuaries; Peter J. Mandell, former president, California Orthopaedic Association; Ilene Knable Gotts, chair of the ABA Antitrust Law Section; and David Balto, senior fellow, Center for American Progress.**

antitrust rules as other industries. The association recommends, however, that states retain the authority to regulate the business of insurance.

“The safe harbors are not intended to alter existing antitrust policy, rather they are intended to serve the important objective of deterring private litigation that might, post-exemption, challenge conduct that, in the unique circumstances of the insurance industry, may actually promote competition,” Gotts said in her House testimony and also in a statement submitted for an Oct. 14 Senate Judiciary Committee hearing on S. 1681, narrower Senate legislation that does not include the safe harbors.

During the Senate hearing, Senate Majority Leader Harry Reid (D-Nev.) testified that providing an antitrust exemption for insurance companies “has been anticompeti-

tive and damaging to the American economy.”

McCarran-Ferguson provisions were not included in health care legislation approved by the Senate Finance Committee or the Senate Health, Education, Labor and Pensions Committee earlier this year.

In Nov. 6 letters to Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) and House Judiciary Committee Chairman John Conyers Jr., ABA President Carolyn B. Lamm called the McCarran-Ferguson provisions in H.R. 3596 an “important and welcome step.” In her letter to Leahy, she urged him to offer, as an amendment to the comprehensive Senate health care reform legislation, an amended version of S. 1681 that specifically would provide for safe harbors for cooperative behavior that clearly has legitimate procompetitive consequences. ■

## LSC is central foundation for closing justice gap



**ABA Immediate Past President H. Thomas Wells Jr. (left) chats with House Judiciary subcommittee Chairman Steve Cohen (D-Tenn.) and Harrison McIver III, executive director/CEO, Memphis Area Legal Services Inc., following the Oct. 27 hearing on the LSC.**

duced by Rep. Robert C. “Bobby” Scott (D-Va.), would eliminate the prohibition on the collecting of statutorily authorized attorneys’ fees, would address in different ways class action suits, and would lift certain restrictions on the use non-federal funds.

Another roadblock to closing the justice gap, he said, is that the legal aid system’s other funding sources are insufficient or unstable. Most state governments are now partners in the efforts to provide legal aid to the poor, but the amounts contributed by the states vary widely. He also emphasized that other sources of funding, particularly Interest on Lawyer Trust Account (IOLTA) programs, are market driven and not a stable form of support. In 2008, IOLTA programs experienced a 23 percent decline in income, and projections for 2009 show an additional decrease in income of about 67 percent.

He said that the ABA promotes generous contributions of pro bono service and money by private lawyers and seeks to catalyze pro bono contributions through the ABA

Center for Pro Bono. In addition, the ABA provides support and leadership for charitable giving through the ABA Resource Center for Access to Justice Initiatives and through long-time advocacy of IOLTA programs. The ABA also sponsored a National Celebration of Pro Bono last month featuring more than 500 events nationwide.

An example of pro bono initiatives in the states highlighted by Wells is the innovative justice “4ALL” campaign launched in 2008 by the North Carolina Bar Association to increase access to legal services for the poor through a five-prong approach to educate, legislate, donate, participate and provide loan repayment assistance.

During the hearing, Michael D. McKay, vice chairman of the 11-member LSC Board of Directors, emphasized that the LSC has concentrated its efforts over the last two years on improving governance practices and the board’s oversight of the corporation’s financial and compliance responsibilities.

ABA President Helaine M. Barnett, whose term as president ends

Dec. 31, noted that the people who come to LSC-funded programs are “truly among the most vulnerable in our society,” and every day legal aid attorneys help low-income clients avoid unlawful eviction and the prospect of homelessness, escape domestic violence and maintain custody of their children.

“These lawyers not only open the door to justice, in many cases they help prevent the downward spiral of the poor into costly public support,” she said. ■

### MCA is amended

President Obama signed the fiscal year 2010 Defense Authorization Act Oct. 28, making changes in the military commission system that was enacted in 2006 to try individuals detained at Guantanamo Bay and designated as “enemy combatants” as part of the nation’s anti-terrorism efforts.

The president suspended active military commission proceedings at Guantanamo Bay when he took office in January 2009 and announced in May that the Department of Defense would make several changes to the rules governing military commissions to “restore the commissions as a legitimate forum for prosecution while bringing them in line with the rule of law.”

The new law, P.L. 111-84 (H.R. 2647), would exclude statements obtained by torture or cruel, inhuman or degrading treatment and eliminate the distinction between statements taken before and after the Detainee Treatment Act of 2005 was enacted. In determining whether other statements by the accused may be admitted, the new law introduces a voluntariness standard requiring the military judge to consider the totality of the circumstances. Hearsay

*see “Military,” page 8*

## ABA applauds introduction of sentencing bill

The ABA applauded the leadership of Sen. Richard Durbin (D-Ill.) last month when he introduced the “Fair Sentencing Act,” which would eliminate the sentencing disparity for crimes involving crack and powder cocaine.

Under the current sentencing structure in place since 1986, a conviction for selling five grams of crack cocaine garners the same five-year mandatory minimum sentence as a conviction for selling 500 grams of powder cocaine, a disparity that has come to be called the “100-to-1 ratio.” Durbin’s bill, S. 1789, would completely eliminate the disparity by establishing a 1-1 sentencing ratio and would increase the quantity of crack cocaine needed to trigger a mandatory sentence. Possession of 500 grams of crack and 500 grams of powder cocaine would trigger a mandatory minimum sentence of five years; 5,000 grams of crack or powder would trigger a 10-year sentence.

“The Senate legislation will improve both the reality and perception of fairness in federal sentencing by rebalancing a policy that has resulted in significant racial disparities,” ABA President Carolyn B. Lamm said in a statement issued Oct. 15. The bill also “will refocus federal resources away from local, neighborhood crime to major national drug traffickers, and it will do so without compromising the public’s needs for safety and effective law enforcement,” she said.

At the time the 100-1 disparity was enacted, crack was believed to be more harmful and its users more violent, but current research has shown there is little difference between the physiological impact of crack and powder and that crack is not linked to significantly more violence than powder cocaine.

In testimony submitted to a Senate Judiciary subcommittee in April, ABA Governmental Affairs Director Thomas M. Susman cited a 2006 report by the U.S. Sentencing Commission revealing that approximately 62 percent of federal crack cocaine convictions involve low-level drug activity such as simple possession and street sales of user-level quantities of crack. He also noted a 2007 Sentencing Commission report that pointed out that while 82 percent of those sentenced under federal crack cocaine laws were African-American, 66 percent of crack cocaine users are Caucasian or Hispanic.

At the April hearing, the Justice Department also expressed support for completely eliminating the disparity. Others supporting Durbin’s bill include the NAACP, the American Civil Liberties Union, and Families Against Mandatory Minimums.

The House also is devoting attention to the issue. In July, the House Judiciary Committee approved H.R.

3245, similar legislation introduced by Rep. Robert C. “Bobby” Scott (D-Va.). That bill now is pending in the House Energy and Commerce Committee. ■

### ABA president calls Red Flags decision an “important victory”

A judge on the U.S. District Court for the District of Columbia issued a summary judgment ruling Oct. 30 that the Federal Trade Commission (FTC) exceeded its authority by applying its “Red Flags Rule” regarding identity theft to practicing lawyers.

Following the decision, the FTC announced that the enforcement deadline for the rule, which had been scheduled to go into effect Nov. 1, is postponed until June 1, 2010, for financial institutions and creditors subject to the rule. The commission has not announced whether it would appeal the court’s ruling.

“This ruling is an important victory for American lawyers and the clients we serve,” ABA President Carolyn B. Lamm said in a written statement. By voiding the FTC’s overbroad interpretation of the Fair and Accurate Credit Transactions Act’s (FACTA) reach, the court “has ensured that lawyers stay focused on the mission of their work: providing aid and counsel to the individuals and organizations that need us,” she said.

The judge’s ruling was the result of a lawsuit filed by the ABA in August asking the U.S. District Court for the District of Columbia to bar the FTC from including lawyers under the rule, which will require “financial institutions” and “creditors” to implement programs to detect, identify and respond to activities that signal possible identity theft. The FTC has stated that the term “creditor,” as defined by the act, covers all entities – including lawyers – that regularly provide services or goods before seeking payment.

In issuing the ruling, the judge concurred with the ABA’s complaint, which stated that the FTC’s application of the Rule to lawyers is “arbitrary, capricious and contrary to law” and that the FTC “has failed to articulate, among other things: a rational connection between the practice of law and identity theft; an explanation of how the manner in which lawyers bill their clients can be considered an extension of credit under the FACTA; or any legally supportable basis for application of the Red Flags Rule to lawyers engaged in the practice of law.”

The ABA was represented by a team led by Steven Krane, a partner in the law firm of Proskauer Rose.

# New ABA policy opposes CFPA provisions

The ABA Board of Governors approved policy Oct. 31 opposing provisions in H.R. 3126, legislation to create a Consumer Financial Protection Agency (CFPA), or other legislation that would grant any federal financial regulatory agency new authority to regulate lawyers.

The policy recommendation, sponsored by the ABA Task Force on Financial Markets Regulatory Reform, authorizes the ABA to oppose provisions in the legislation that would impose new regulations on lawyers engaged in the practice of law if the new regulations adversely affect the confidential attorney-client relationship or undermine the ability of state courts to supervise and discipline the lawyers.

H.R. 3126, as amended and approved Oct. 22 by the House Financial Services Committee and Oct. 29 by the House Energy and Commerce Committee, includes a general lawyer exclusion. The lawyer exclusion is largely nullified, however, by a broad exception that would allow the new agency to regulate lawyers engaged in “financial activity,” which is defined expansively in Section 101(19) of the legislation. The lawyer exclusion is further limited by a second exception that would subject most lawyers to the restrictions and reporting requirements and the examination standards and procedures of Section 129 of the bill.

Because there is no exclusion for financial activities that are incidental to the performance of legal services, these provisions would effectively grant the new

agency broad new powers to regulate various types of lawyers, including tax lawyers, consumer credit lawyers, real estate lawyers, bankruptcy debtor lawyers and any type of lawyer who provides advice or assists borrowers in consolidating or settling their debts or avoiding foreclosure, including general practitioners and family lawyers. The bill also could be read to include any lawyers who hold client funds in a trust or escrow account.

House leaders are now attempting to reconcile the differences in the two separate versions of the bill approved by the House Financial Services Committee and the House Energy and Commerce Committee before scheduling floor action on the legislation. ■

## ABA Midyear Meeting

February 3-9, 2010  
Orlando, Florida

### Judicial Vacancies/Confirmations — 111th Congress (as of 11/10/09)

<u>Court</u>	<u>Current Vacancies</u>	<u>Pending Nominations</u>	<u>Confirmations</u>
US Supreme Court (9 judgeships)	0	0	1
US Courts of Appeals (179 judgeships)	21	11	2
US District Courts (678 judgeships)	76	11	4
Court of International Trade (9 judgeships)	0	0	0
<b>Totals</b>	<b>97</b>	<b>22</b>	<b>7</b>

## Washington News Briefs

**FEDERAL PREEMPTION FORUM:** An online video is available of an Oct. 1 forum sponsored by the ABA Task Force on Federal Agency Preemption of State Tort Laws. The 16-member task force, staffed by the Governmental Affairs Office, brought together representatives from eight organizations to present their views on federal preemption. Tulane University Law School professor Edward F. Sherman, the task force chair, moderated the forum. The link is: <http://www.abanow.org/2009/10/iffering-views-on-federal-agency-preemption-of-state-tort-laws-voiced-at-aba-panel/#>.

**PATIENT SAFETY AND MEDICAL LIABILITY:** Stephan Landsman, a professor at DePaul College of law, represented the ABA at an Oct. 26 meeting of the Agency for Healthcare Research and Quality's National Advisory Council's Subcommittee on Patient Safety and Medical Liability Reform Demonstrations. Landsman is a member of the Standing Committee on Governmental Affairs Subcommittee on Medical Malpractice and Health Care Reform. The meeting brought together experts to comment on a new demonstration initiative launched by the Department of Health and Human Services to test models for improving patient safety and reducing preventable injuries, fostering better communication between doctors and patients, ensuring patients are compensated in a fair and timely manner, and reducing liability premiums. The \$25 million in funding for the initiative will include support for demonstration grants and planning grants to states and health systems and a rapid and comprehensive review of current efforts targeting patient safety and medical liability. The application deadline for the grants is Jan. 20, 2010. Landsman focused his comments on patient safety and the need to reduce medical errors. He emphasized ABA policy adopted in 2008 that urges federal, state and territorial legislative bodies to adopt legislation establishing pilot programs that enable and encourage medical personnel to report hospital events that, if repeated, could threaten patient safety. He said that such pilot programs address both liability and patient safety. Landsman also said ABA policy supports enactment of state and territorial legislation relating to the pain, suffering, or death of a person that would provide that certain apologies by a medical provider or the staff of a medical provider, as the result of unanticipated outcomes of medical care, shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest for any purpose in a civil action for medical negligence.

**DOMESTIC VIOLENCE:** ABA President Carolyn B. Lamm said last month in a letter to Sen. Barbara Mikulski (D-Md.) that health insurers should not be permitted to

deny coverage to victims of domestic violence. In her letter to Mikulski, who chaired a hearing Oct. 15 on the gap in health care costs and coverage between men and women in America, Lamm noted that when the ABA adopted policy in 1995 opposing this form of discrimination, domestic violence was the single largest cause of injury to young adult women. At the time, victims were being denied insurance coverage on the pretext that their status as abuse victims amounted to a pre-existing condition. Today, domestic violence continues to be a leading cause of injury to young adult women, and in eight states and the District of Columbia it remains legally permissible to deny a woman health insurance coverage because of her status as a survivor of domestic violence. "When it comes to health insurance, women are discriminated against," Mikulski said during the hearing, which was held before the Senate Committee on Health, Education, Labor and Pensions. "We pay more – in higher premiums – and get less. Often we are denied care, whether it's because pregnancy is considered a pre-existing condition, or because we're not covered for preventive and wellness initiatives," she stated. Mikulski pointed out that the health care reform package approved by the HELP Committee includes provisions to make sure that women have equal insurance benefits for equal premiums.

**LEGAL EDUCATION:** A recent Government Accountability Office (GAO) report concluded that a move to a more hands-on, resource-intensive approach to legal education and competition among law schools for higher published rankings appear to be the main factors increasing the cost of law school, while ABA accreditation requirements appear to play a minor role. In addition, the report states that most law school officials do not cite ABA accreditation standards as having an impact on minority access at their schools. The report concluded that differences in educational attainment among some minority groups reduce their representation in the law school applicant pool. In a statement responding to the GAO findings, ABA President Carolyn B. Lamm said that "the ABA remains committed to addressing law student debt, to broadening the pipeline, and assisting diverse law graduates with success to create a more diverse and inclusive legal profession." She added that "we must commit as a nation to making sure that academic resources are available to enable each student to achieve his or her full potential." Lamm also suggested that it may be time to reexamine the impact of law school rankings. "It can be tempting to view all law schools on a single scale," she said, "but that ignores that law schools have identified differing missions, serve different needs and offer different values, all while meeting basic legal educational needs."

## SCGA holds first Fall Meeting in Washington, DC

The ABA Standing Committee on Governmental Affairs (SCGA), chaired by Wm. T. Robinson III, convened Oct. 13 for an all-day meeting in Washington, D.C.

The committee, ABA Governmental Affairs Office (GAO) Director Thomas M. Susman, and members of

the GAO staff explored a number of ways it can assist GAO in implementing the ABA's legislative advocacy program.

### Military Commissions

*continued from page 4*

evidence is still admissible.

The statute also requires the secretary of Defense to prescribe regulations for the appointment and performance of defense counsel in capital cases, an area of concern to the association. In their conference report and joint explanatory statement, the conferees stated that they expect the secretary, in prescribing regulations, "to give appropriate consideration to the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (February 2003) and other comparable guidelines."

The association revised its guidelines in 2003 to apply specifically to military commission proceedings. The guidelines require defense teams – consisting of at least two qualified attorneys, one investigator and one mitigation specialist – with sufficient experience and training to provide high-quality legal representation to those who face execution if convicted.

Earlier this year, ABA Governmental Affairs Director Thomas M. Susman urged Congress to engage in a thoughtful and deliberative process to examine the MCA implementation. In correspondence to the Senate during its consideration of the legislation in July, Susman explained that the ABA believes the federal courts have proven themselves fully capable of handling prosecutions that would come before military commissions. ABA policy adopted in February 2009 calls for "all individuals who have been or are expected to be charged with violations of criminal law" to be "prosecuted in Article III federal courts, unless the Attorney General certifies, in cases involving recognized war crimes, that prosecution cannot take place before such courts and can be held in other regularly constituted courts in a manner that comports with fundamental notions of due process, traditional principles of the laws of war, the Geneva Conventions and the Uniform Code of Military Justice."



ABA President Carolyn B. Lamm, SCGA Chair Wm. T. Robinson III, GAO Director Thomas M. Susman, and GAO Legislative Counsel Lillian B. Gaskin.

During the meeting, the committee heard from the SCGA Subcommittee on Medical Malpractice and Health Care Reform, a group formed at Robinson's request and chaired by SCGA member Janice Mulligan. The committee decided to prepare a letter, which was sent Nov. 3, to the director of the Congressional Budget Office (CBO) in response to Oct. 9 correspondence to the Senate by the CBO on "the effects of proposals to limit costs related to medical malpractice ('tort reform')."

The group also discussed a recommendation from ABA President Carolyn B. Lamm, who attended the meeting, to explore ways to address problems in the civil justice system.

Other topics included working on legislation to help lawyers deal with large student loan debts during hard economic times, building and energizing the ABA Grassroots Action Team, developing ways to enhance the annual ABA Day in Washington, reviewing the GAO publications, and expanding the annual priorities survey. The committee also is looking into sponsoring more congressional briefings in the coming months. ■



Those attending the Oct. 13 meeting included (from left): Rosemary E. Giuliano; Martin Lybecker; Laurel Bellows, liaison from the ABA Day Planning Committee; Michael A. Bedke; Donald R. Dunner; and Mark H. Tuohey III, liaison from the Commission on the Impact of the Economic Crisis on the Profession and Legal Needs.

## ABA urges enactment of elder justice provisions

Consideration of elder justice proposals moving through both the House and Senate with the support of the ABA could lead to enactment of the first federal legislation addressing elder abuse.

A statement issued by the ABA at an Oct. 19 Capitol Hill briefing expressed the association's support for Elder Justice Act (EJA) provisions that were approved that day by the Senate Finance Committee as part of S. 1796, a comprehensive health care reform package.

The provisions, added as an amendment offered by Sens. Blanche Lincoln (D-Ark.) and Orrin G. Hatch (R-Utah), would establish a "much-needed, multi-pronged, coordinated strategy to address elder abuse, neglect and exploitation at the federal, state and local levels."

The ABA statement emphasized that no current federal law adequately and comprehensively addresses issues of elder abuse, neglect and exploitation, and there are very limited resources available to those in the field directly dealing with these issues. Congress estimates that as many as five million older people are abused, neglected or exploited each year in their homes and in long-term care facilities, but only \$154 million is devoted to this problem compared to more than \$7 billion dedicated to child abuse and domestic violence.

Major provisions approved by the Senate Finance Committee would authorize \$757 million over four years for the EJA to, among other things:

- provide \$400 million for dedicated funding for adult protective services and \$100 million for state demonstration grants to test a variety of methods for detecting and preventing elder abuse;
- establish an Elder Justice Coordinating Council to make recommendations to the secretary of Health and Human Services within two years on the coordination of activities of federal, state, local and private agencies and entities relating to elder abuse, neglect and exploitation; and
- establish a 27-member Advisory Board on Elder Abuse, Neglect and Exploitation to submit a report within 18 months to create short- and long-term multidisciplinary plans for the developing field of elder justice.

Other provisions include establishment and support of Elder Abuse, Neglect and Exploitation Forensic Centers; support for the Long-Term Care Ombudsman Program; and mandates for immediate reporting to law enforcement of crimes in a long-term care facility with civil monetary penalties for failure to report.

Also part of the bill is the establishment of a nationwide program for national and state background checks on direct patient access employees of long-term care facilities.

A comprehensive health care reform bill passed by the House Nov. 7 includes provisions for background checks on direct-care employees of long-term care facilities. The ABA is urging that the full Elder Justice Act provisions be included in the final version of health care reform legislation.

In its statement, the ABA also strongly supported adding additional components that are part of H.R. 448, a bill passed in February by the House. Those provisions, which were part of the original Elder Justice Act legislation first introduced in 2002, would set into motion Department of Justice initiatives at the state and local level, including research on state and federal laws, victim advocacy grants, and training and support for prosecutors, courts and frontline responders who handle elder justice related cases.

In related action Nov. 5, ABA Governmental Affairs Director Thomas M. Susman applauded the Oct. 21 introduction of S. 1821, the Elder Abuse Victims Act (EAVA), which is identical to H.R. 448. Susman – in a letter to the sponsors of the legislation, Sens. Herbert Kohl (D-Wis.), Patrick Leahy (D-Vt.), Barbara Mikulski (D-Md.) and George LeMieux (R-Fla.) – emphasized that "elder justice is central to any viable notion of the rule of law and social justice."

He said that the EAVA, especially if enacted in combination with the Elder Justice Act provisions already included in the Senate Finance Committee health care reform bill, "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." ■

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>. © 2009 American Bar Association. All rights reserved. Please address correspondence to:

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