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## *Laurel Bellows is president-elect nominee*

### **Delegates adopt numerous policies; Board approves priorities for the year**

The ABA House of Delegates, meeting Feb. 14 during the Midyear Meeting in Atlanta, adopted new policies on a wide range of topics, and the association's legislative priorities were established for this session of Congress.

Topics addressed by the ABA's 560-member policymaking body included proposals for cuts in fiscal year 2011 funding for the Legal Services Corporation, efforts to prevent and remediate bullying and youth-to-youth harassment, mandatory civic education in elementary, middle and secondary schools, and methods to alleviate the state court funding crisis.

Prior to the delegates' meeting, the ABA Board of Governors approved a list of legislative and governmental priorities that will be the focus of advocacy efforts by the association's Governmental Affairs Office during the First Session of the 112th Congress (see page 7).

During the meeting, the House of Delegates nominating committee selected Laurel G. Bellows, of Chicago, to be president-elect nominee of the association. If elected at the Annual Meeting in August, Bellows will serve one year as president-elect before becoming ABA president in August 2012 for a one-year term (see page 5).

The following is a summary of the legislative recommendations approved by the delegates.

#### **Administrative Law**

**SEC Requirements.** Urges Congress to revise the definition of "person" subject to Securities and Exchange Commission reporting requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of the source and chain of custody of mineral ore sold to fund firearms and provide other support for rebel militias and even some government soldiers in the ongoing armed conflict in the Democratic Republic of the Congo.

#### **Civic Education**

**Civic Education.** Urges federal, state, territorial and local governments to require civic education for elementary, middle and secondary students in the nation's public schools, and to provide competitive grant funding for programs to meet this requirement.

*see "Midyear," 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 had exceeded its authority. The FTC appealed the decision and delayed implementation of the rule for all entities through 12/31/10. Oral arguments were 11/15/10. P.L. 111-219 (S. 3987) clarifies that lawyers are not creditors under the act. On 3/4/11, the circuit court dismissed the appeal and declared the case moot — a victory for the ABA.</p>			<p>President signed P.L. 111-219 (S. 3987) on 12/18/10.</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 6.</b></p>
<p><b>Health Care Law.</b> P.L. 111-148 (H.R. 3590), the Patient Protection and Affordable Care Act, and P.L. 111-152 (H.R. 4872), the Health Care and Education Reconciliation Act, overhaul the nation’s health care system. H.R. 2 would repeal health care reform law. An amendment proposed to S. 223 would have repealed the law. H.R. 5 would preempt state medical liability laws.</p>	<p>House passed H.R. 2 on 1/19/11. Judiciary Cmte. held a hearing on H.R. 5 on 1/20/11 and approved the bill on 2/16/11.</p>	<p>Senate rejected health care repeal amendment to S. 223 on 2/2/11.</p>	<p>President signed P.L. 111-148 (H.R. 3590) on 3/23/10 and P.L. 111-152 (H.R. 4872) on 3/30/10.</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.</b></p>
<p><b>Judicial Independence.</b> No cost-of-living adjustment was provided for federal judges in 2010 and 2011. S. 348 and H.R. 727 would establish an inspector general for the federal judiciary.</p>	<p>H.R. 727 was referred to the Judiciary Cmte. on 2/15/11.</p>	<p>S. 348 was referred to the Judiciary Cmte. on 2/15/11.</p>		<p><b>Supports prompt filling of judicial vacancies. Opposes initiatives that infringe upon the separation of powers between Congress and the courts.</b></p>
<p><b>Legal Services Corporation.</b> P.L. 112-4 (H.J. Res. 44), a continuing resolution, includes \$420 million, current funding, for the LSC through 3/18/11. H.R. 1, continuing fiscal year 2011 appropriations legislation, includes a \$70 million cut in LSC funding for the current year.</p>	<p>House passed H.R. 1 on 2/19/11.</p>	<p>Senate failed to pass H.R. 1 on 3/9/11.</p>	<p>President signed P.L. 112-4 (H.J. Res. 44) on 3/2/11.</p>	<p><b>Supports an independent, well-funded LSC. See page 5.</b></p>

## ABA urges sentencing guidelines changes

The ABA urged the U.S. Sentencing Commission Feb. 16 to fix the advisory federal guidelines for the sentencing of high-loss economic crimes, pointing out that the guidelines have been criticized in recent judicial opinions as “patently absurd on their face” and a “black stain on common sense.”

James E. Felman, co-chair of the ABA Criminal Justice Section’s Committee on Sentencing, testified before the commission that judges would be willing to follow the guidelines if the guidelines made more sense.

He explained that the present guidelines, because they have been relentlessly ratcheted upward since they were put in place in 1987, routinely call for sentences at or near life without parole for defendants who typically have no criminal history. As a result, some judges opt to impose significantly lower sentences while others adhere to the guidelines, creating a regime in which the punishment turns as much on the philosophy of the sentencing judge as it does on the facts of the offense.

The ABA House of Delegates addressed the issue at the February Midyear Meeting by adopting a resolution urging the Sentencing Commission to complete a rigorous and comprehensive assessment of the guidelines for all economic crimes, particularly those involving high loss amounts. An assessment is intended to ensure that the guidelines are proportional to offense severity and that they adequately take into consideration individual culpability and circumstances, Felman said.

Basing his comments on the newly passed policy, Felman specifically suggested that the commission:

- re-evaluate the emphasis on both monetary loss and multiple specific offense characteristics that,

in combination, tend to overstate the seriousness of some offenses;

- place greater emphasis on mens rea and motive in relation to an offense, the defendant’s role in the offense, where and to what extent the defendant received a monetary gain from the offense, and the nature of the harm suffered by victims of the offense; and

- examine ways that states with sentencing guidelines systems address economic crimes.

The ABA testimony was presented during a hearing focusing on implementation of congressional directives in two major laws enacted last year: the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Patient Protection and Affordable Care Act.

The new laws, according to Felman, call for yet more upward ratcheting of the penalties for economic crimes that include health care fraud and securities and bank fraud. He pointed out that the Department of Justice recently announced its concerns that the guidelines have lost the backing of a

large part of the judiciary and indicated that the commission should determine whether reforms are needed.

He cautioned, however, that the commission should begin to revisit the guidelines not with an idea of what it thinks Congress or the Justice Department want but also with what the judiciary will respect and follow.

During the hearing, witnesses representing federal prosecutors and public defenders agreed that a comprehensive review of the guidelines is needed.

Preet Bharara, U.S. attorney for the Southern District of New York, expressed that there are not consistently tough and fair outcomes, particularly in the context of high-loss, large-scale fraud cases.

Hector Dopico, supervisory assistant federal public defender for the Southern District of Florida, maintained that none of the evidence suggests that the fraud guidelines produce sentences that are too low to satisfy the purposes of sentencing. ■

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## Senate passes patent overhaul bill

The Senate passed patent legislation March 8 that was hailed by President Obama as the “most significant patent reform in over half a century.”

“This long-overdue reform is vital to our ongoing efforts to modernize America’s patent laws and reduce the backlog of 700,000 patent applications,” Obama said, adding that the bill, S. 23, “won’t just increase transparency and certainty for inventors, entrepreneurs and businesses,” it will “help grow our economy and create good jobs.”

The ABA, which does not have policy on the overall legislation, does support provisions that would institute a “first-inventor-to-file” rule for obtaining a patent – an action that would replace the United States’ current and more complex “first-to-invent” standard that relies on “proof-of-invention dates.”

The United States stands alone in the world in using the “first-to-invent” standards, and the change, according to the ABA, would advance the objective of greater international patent law harmonization.

The association also supports language added as an amendment to the bill during Senate debate that would eliminate fee diversion and allow the U.S. Patent and Trademark Office to keep the fee revenue it generates

*see “Patent reform,” page 6*

## Midyear Meeting \*\* Midyear Meeting

*continued from front page*

### Courts/Judiciary

**Case Management.** Supports the ongoing efforts by the Administrative Office of the U.S. Courts to update and enhance the functionality of the federal judiciary's Case Management/Electronic Case File system to continue to meet the case filing needs of judges, chambers, clerks' offices, the bar, debtors, litigants, claimants, trustees and other users in light of changing technology.

**State Court Funding.** Urges Congress to enact legislation that would amend the federal tax code to let states recover overdue court-ordered financial obligations – including court-ordered victims' restitution, fines, fees and costs – by intercepting federal tax refunds that are due to the debtors who owe the debts to the states.

**ALJ Independence.** Reaffirms the judicial independence and authority granted to the Central Panel Administrative Law Judges in the Model Act Creating a State Central

Hearing Agency, adopted by the House of Delegates in February 1997.

### Criminal Law

**Disclosure.** Urges federal, state, territorial, tribal and local courts to adopt a procedure whereby a criminal trial court shall disseminate to the prosecution and defense a written checklist, prepared by local prosecutors and defense attorneys, delineating in detail the general disclosure obligations of the prosecution under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny and applicable ethical standards. Also provides that any omissions or deficiencies in the written checklist should not relieve either the prosecutor or defense counsel of their legal and ethical responsibilities with respect to providing and seeking disclosures.

**Post-conviction Relief.** Urges Congress to amend 28 U.S.C. §§ 2241(d) and 2255 (f) (1) to provide equitable tolling of the one-year statute of limitations for filing for post-conviction relief when the prisoner shows good cause, includ-

ing situations in which a prisoner has exercised due diligence and has timely requested his attorney to file a §2254 petition or a §2255 motion and the attorney has failed to do so in a timely manner.

**Sentencing.** Urges the U.S. Sentencing Commission to complete a rigorous and comprehensive assessment of the Federal Sentencing Guidelines for high-loss economic crimes to ensure that the guidelines for such crimes are proportional to offense severity and adequately take into consideration individual culpability and circumstances.

**Juvenile Offenders.** Urges federal, state, tribal, local and territorial governments to use electronic monitoring and home detention at government expense for juvenile offenders who are legally eligible for secure detention but whose risk of flight or further offending does not require secure pre-trial detention or incarceration.

### Disability Law

**Survivor Benefits.** Urges Congress to enact legislation amending Title 10, U.S. Code, to permit the payment of military Survivor Benefit Plan benefits to a special needs trust for the benefit of a disabled beneficiary.

**Disaster Mitigation.** Endorses the Recommendations for an Effective National Mitigation Effort, a white paper on hazard mitigation prepared by the National Emergency Management Association, which urges collaborative partnerships across professional disciplines and equal partnerships among government subdivisions as a starting point.

### Environmental Law

**Toxic Substances.** Urges Congress to enact legislation to reform the Toxic Substances Control Act that would, among other things, enhance the Environmental Protec-

*see "Midyear," page 5*



Tallahassee lawyer Jack Levine, at podium, moderated a panel discussion on the development of youth courts, specialized diversion programs for juveniles who are sentenced by their peers. Those appearing on the panel were (from left): Sheryl Teske, Clayton County, Georgia; William Brown, Gordonsville, Virginia; Irene Sullivan, Pinellas Park, Florida; Stefan Campagna, Hempstead, New York; and Katie Self, Sarasota, Florida. During the Midyear Meeting, the House of Delegates adopted a resolution urging governments to create and provide appropriate support for such programs, which currently are serving more than 125,000 youth each year in more than 1,000 community-based programs.



# Midyear Meeting \*\* Midyear Meeting

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tion Agency's ability to ensure the safety of chemical substances in commerce and encourage public confidence in, and broad stakeholder understanding of, federal chemical control authorities and regulatory policies and practices.

### **Individual Rights**

#### ***D.C./Territorial Representation.***

Urges the House of Representatives to restore the right of D.C. citizens and citizens in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico and the U.S. Virgin Islands to have their elected congressional representatives vote on proposed legislation considered by the full House.

### **Intellectual Property**

***DNA Technology.*** Supports evaluation of inventions relating to DNA technology by the same uniform standards that apply in evaluating patent eligibility of inventions relating to other natural materials or subject matters, and opposes new exclusionary rules for DNA that go beyond the long-standing exceptions to patent eligibility recognized by the U.S. Supreme Court.

### **Legal Education**

***Law School Clinics.*** Reaffirms support for ethical independence of law school clinical programs consistent with the ABA Model Rules of Professional Conduct, and opposes attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs and courses.

### **Legal Research**

***Law Library of Congress.*** Supports efforts by the Law Library of Congress and the Library of Congress to create and continue programs that (1) develop, maintain and enhance the Law Library's services, facilities, operations and

## Chicago lawyer Laurel G. Bellows named ABA president-elect nominee

Chicago lawyer Laurel G. Bellows was selected last month to be the association's president-elect nominee and, if elected at the Annual Meeting in August, she will serve as president-elect for one year before assuming the presidency in August 2012.

Bellows, principal of the Bellows Law Group PC, told the ABA House of Delegates Feb. 4 that her vision for the ABA is for the association to "take the lead in framing the debate on the great issues that affect the rights and liberties of all Americans."

The legal profession has always been "the bulwark of our democracy," she said. "We have a unique responsibility to ensure that when it comes to justice, no one is left behind."

Bellows, a former chair of the ABA House of Delegates, has served as chair of the ABA Commission on Women in the Profession and headed the Finance Committee during her tenure on the ABA Board of Governors. She also is a former president of the 22,000 member Chicago Bar Association, where she founded the Women's Alliance, and was president of the National Conference of Bar Presidents. She has served on the Illinois Supreme Court Commission on the Administration of Justice.

A graduate of the University of Pennsylvania and Loyola University School of Law, Bellows was on the *Crain's Chicago Business* annual list of Power Players in 2006 and on its list of Chicago's 100 Women of Influence in 1996.



**Laurel G. Bellows**

staff, and the acquisition of materials and their preservation and care, and (2) utilize the best technologies and methods available to make the Law Library's vast and growing collections accessible.

### **Legal Services**

***Legal Services Corporation (LSC).*** Opposes any proposal to cut funding for the LSC for fiscal year 2011, and urges Congress to support increased funding of the Corporation to the level necessary to provide needed services to low-income Americans.

### **Military Law**

***Military Justice.*** Urges states

and territories to adopt the Model State Code of Military Justice and the Model Manual for Courts-Martial to provide an updated body of law to govern state National Guard forces who, when mobilized for state missions, are not subject to the Uniform Code of Military Justice.

### **Public Contract Law**

***Due Process.*** Opposes the adoption of legislation by Congress that would mandate suspension or debarment of a single entity or class from bidding on or receiving fed-

*see "Midyear," page 8*

## Appeals court dismisses FTC appeal in Red Flags case; seals ABA victory in fight against coverage of lawyers

The U.S. Court of Appeals for the District of Columbia Circuit agreed with the ABA's position this month that the Federal Trade Commission (FTC) cannot regulate lawyers under the Red Flags Rule that requires "creditors" to establish and implement programs to detect, identify, and respond to activities that signal possible identify theft.

ABA President Stephen N. Zack emphasized that the circuit court's decision "confirmed that Congress rejected the FTC's logic for imposing the Red Flags Rule on lawyers, which is that lawyers are creditors by billing clients after serving them." The association, in addition to filing suit against the FTC, was instrumental in enactment last December of the Red Flags Clarification Act, which the circuit court cited in its March 4 decision.

The court found that the Clarification Act altered the definition of "creditor" under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) to make clear that a creditor's allowance of deferred payment alone could not trigger the identify theft protection requirements. The court also vacated an October 2009 district court ruling that the FTC exceeded its authority by applying its Red Flags Rule to practicing lawyers.

"There can be no confusion here that the Clarification Act served to moot the ABA's claims in this case," the court stated. "The new legislation is clearly aimed at the precise matter in dispute." The court explained that it is well established that a case must be dismissed as moot if new legislation addressing the matter in dis-

pute is enacted while the case is still pending.

The case began in August 2009 when the ABA filed a complaint stating that the FTC's application of the Red Flags Rule to lawyers was "arbitrary, capricious and contrary to law" and that the FTC had "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 FACT Act; or any legally supportable basis for application of the Red Flags Rule to lawyers engaged in the practice of law."

The FTC argued that the term "creditor," as defined by the act, covers all entities – including lawyers – that regularly provide services or goods before seeking payment. The commission appealed the district court's ruling in the ABA's favor and maintained that the Clarification Act, while narrowing the scope of entities subject to the FACT Act's identify theft prevention provisions, provided no categorical exemption for lawyers. ■

## Patent reform

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from patent applications for its own use.

S. 23 will now be sent to the House, where House Judiciary Committee Chairman Lamar Smith (R-Texas) is drafting a House version of the legislation. ■

### Judicial Vacancies/Confirmations — 112th Congress (as of 3/11/11)

<u>Court</u>	<u>Vacancies</u>	<u>Pending Nominations</u>	<u>Confirmations</u>
US Supreme Court (9 judgeships)	0	0	0
US Courts of Appeals (179 judgeships)	17	9	1
US District Courts (678 judgeships)	78	38	9
Court of International Trade (9 judgeships)	0	0	0
Totals	95	47	10

## **Legislative and Governmental Priorities Adopted by the ABA Board of Governors February 2011**

### **Access to Legal Services**

Supports increased funding for civil legal services through the Legal Services Corporation (LSC), Violence Against Women Act (VAWA) programs, and other federal programs that provide legal services for the poor. Supports reauthorization of LSC and VAWA. Urges increased federal support for quality state public defense systems. Supports strong legal protections and access to legal assistance for active-duty military, their families and veterans. Urges legislators and policymakers, including the bar, to find innovative and effective ways to ensure that veterans, particularly those experiencing homelessness or following a period of incarceration, receive their due benefits and services for achieving self-sufficiency.

### **Criminal Justice System Improvements and Protection of Rights**

Urges a balance between public safety and protection of our justice system and individual liberties. Opposes mandatory minimum sentences and supports the broad expansion of alternatives to incarceration, particularly for nonviolent offenses. Supports federal funding for indigent defense representation in criminal cases and urges stronger federal habeas corpus review of state convictions and resources to assure capital defendants have representation at trial and on appeal. Supports legislation to reauthorize the Second Chance Act; ensure that convictions' collateral sanctions are not an undue barrier to jobs, housing, voting or privacy; and address racial and ethnic disparities in the justice system.

### **Eliminating Discrimination and Protecting Civil Liberties**

Endorses legal remedies and voluntary actions to eliminate or prevent discrimination based on race, origin or gender, and opposes any efforts to roll back current anti-discrimination laws. Advocates for antiterrorism laws and policies that respect our core constitutional principles and preserve essential liberties. Urges that Guantanamo detainees be prosecuted in Article III courts unless the Attorney General certifies that the trials cannot take place before such courts and can be held in other courts, consistent with due process, laws of war, the Geneva Conventions, and the Uniform Code of Military Justice. Opposes torture or other cruel, inhuman or degrading treatment of detainees in U.S. custody. Supports the transfer or release of detainees who are not enemy combatants.

### **Health Care Law and Tort Reform**

Opposes federal legislation to preempt state medical liability laws to limit compensation to patients injured by malpractice, or legislation to require patients injured by malpractice to use "health courts" instead of jury trials. Endorses the use of alternatives to litigation for resolution of medical malpractice disputes, but only when such alternatives are entered into on a

voluntary basis after a dispute has arisen. Supports federal legislation to provide for clear, predictable, and consistent procedures for medical set-aside settlement proposals.

### **Immigration**

Supports measures to improve the immigration court system and to increase due process safeguards, including access to counsel, for those in removal proceedings. Opposes mandatory detention of those in removal proceedings, supports alternatives to detention, and supports strengthening the ICE National Detention Standards and promulgating them into enforceable regulations. Supports comprehensive immigration reform that promotes legal immigration based on family reunification and employment skills and that provides for new legal channels for future workers, a path to legal status for much of the undocumented population currently residing in the United States, and enhanced border security.

### **Independence of the Judiciary**

Urges prompt filling of federal judicial vacancies. Supports adequate funding for the federal judiciary and legislation to modify the method by which judges receive cost-of-living adjustments. Opposes legislative initiatives that undermine the judicial process, infringe upon separation of powers, or circumvent the Rules Enabling Act. Urges legislative enactment of procedures for federal civil cases involving the state secrets privilege.

### **Independence of the Legal Profession**

Believes that primary regulation and oversight of the legal profession should continue to be vested in the court of highest appellate authority of the state in which the attorney is licensed, not federal agencies or Congress, and that the courts are in the best position to fulfill that important function. Opposes federal legislation or rules that would undermine traditional state court regulation of lawyers, interfere with the confidential attorney-client relationship, or otherwise impose excessive new federal regulation on lawyers engaged in the practice of law.

### **Promoting the International Rule of Law**

Supports the creation of and adequate funding for domestic and international agencies and programs that promote the rule of law, including the prompt payment of U.S. assessments to the United Nations for its regular and peacekeeping expenses, and enactment of the International Violence Against Women Act. Supports ratification of certain international treaties, including the Convention on the Law of the Sea, the Rome Statute for an International Criminal Court, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities.

## Midyear Meeting \*\* Midyear Meeting

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The Voting Rights Act was the topic of a roundtable sponsored by the Standing Committee on Election Law. Those participating were (from left): Estelle Rogers, Project Vote; Laughlin McDonald, ACLU Voting Rights Project; Dale Ho, NAACP Legal Defense Fund; and Benjamin Griffith, chair of the standing committee.

eral contacts and grants without regard to the existing regulatory framework that provides for agency discretion in suspension and debarment determinations.

### Tax Law

**Transaction Tax Overpayment.** Adopts the Model Transaction Tax Overpayment Act and encourages adoption by appropriate legislative bodies of the act, which applies to state and local taxes that a seller is required to collect from a purchaser on taxable sales and obligated to remit to state and local tax collectors.

### Tort Law

**Medical Practice Standards.** Supports the development and use of evidence-based, clinical or medical practice guidelines or standards regarding patient care and safety that are created by independent organizations comprised of experts, recognizing the need to incorporate updates on a continuous basis and further recognizing that such guidelines are not necessarily synonymous with the applicable standard of care in any particular jurisdiction.

**Medicare Secondary Payer Act.** Urges Congress to acknowledge that there is no regulatory or statutory basis for medical set-asides for third-party liability settlements, judgments or awards under the Medicare Secondary Payer Act, and to provide clear, predictable and consistent procedures for the submission, uniform determination and timely approval of any third-party medical set-aside settlement proposals voluntarily submitted to the Centers for Medicare & Medicaid Services (CMS) in response to the non-binding recommendations of CMS.

**Seized Animals.** Urges federal, state, tribal, territorial and local legislative bodies and governmental agencies to enact laws and implement policies to ensure the humane treatment and disposition of seized animals in a timely manner.

### Youth at Risk

**Bullying.** Urges federal, state, territorial, tribal and local officials to prevent and remediate the existence and dangers of bullying, including cyberbullying and youth-to-youth sexual and physical harassment, by, among other things, defining these acts and developing education programs to assist teachers, parents and children in identifying victims and enhancing appropriate interventions.

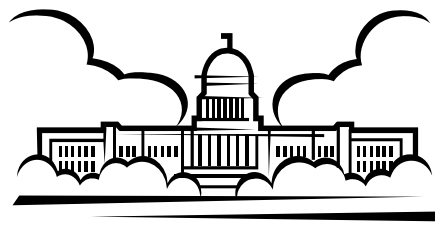
**Teen Courts.** Urges federal, state, territorial, tribal and local governments to create and provide appropriate support for Youth or Teen Courts that will divert youth from the formal consequences of juvenile court petitions, proceedings, adjudications or juvenile justice sanctions.

### Uniform State Laws

The delegates approved the following uniform state laws: Uniform Partition of Heirs Property Act; Uniform Faithful Presidential Electors Act; Uniform Electronic Recordation of Custodial Interrogations Act; Amendment to Article 9 of the Uniform Commercial Code; and Uniform Military and Overseas Voters Act. ■

**ABA Day in  
Washington**

**April 12-14, 2011  
Washington, D.C.**





## Obama announces changes in Guantanamo policy

President Obama, who had sought to close the detention facility at Guantanamo Bay within one year of his January 2009 inauguration, issued an executive order March 7 signaling that the facility will remain open indefinitely with a new review policy for detainees and also announced the resumption of trials before military commissions.

The president said that his actions will “broaden our ability to bring terrorists to justice, provide oversight for our actions, and ensure the humane treatment of detainees.”

“I strongly believe that the American system of justice is a key part of our arsenal in the war against al Qaeda and its affiliates, and we will continue to draw on all aspects of our justice system – including Article III courts – to ensure that our security and our values are strengthened,” he emphasized.

The periodic review requirements apply to detainees who have been designated for continued detention under the law of war or have been referred to prosecution. Each will receive an initial review before a Periodic Review Board (PRB), followed by a full review every three years and a paper review every six months if the PRB determines the detainee should continue to be detained. A representative will be provided by the government to advocate for the detainee before the PRB, and the detainee also will be allowed to retain private counsel who has the proper security clearances.

The standard for continued detention for those subject to periodic review is met if it is “necessary to protect against a significant threat to the security of the United States.”

If a final determination is made that a detainee no longer constitutes such a threat, the executive order

provides that the secretaries of State and Defense are to identify a suitable transfer location outside the United States, consistent with national security and applicable law and U.S. foreign policy interests.

In action toward reviving military commissions, the secretary of Defense rescinded the suspension that has been in place for the past two years while the administration was reviewing detainee policy. P.L. 111-84, defense authorization legislation enacted in October 2009, made changes in the military commission system, including the exclusion of statements obtained by torture or cruel, inhuman or degrading treatment.

The Obama administration’s attempts to try detainees in federal civilian courts have been thwarted by Congress, which passed legislation prohibiting the Defense Department from using its funds to transfer Guantanamo detainees into the United States for any reason, including prosecution.

The ABA, which has no policy on closing Guantanamo, vigorously supports prosecution in Article III courts of detainees charged with criminal violations, unless the attorney general certifies that prosecution cannot take place before such courts. The ABA also supports transfer or release of detainees who are not enemy combatants. ■

### Senate Judiciary Committee

#### Majority

Sen. Patrick J. Leahy (D-Vt.), Chair  
 Sen. Herb Kohl (D-Wis.)  
 Sen. Dianne Feinstein (D-Calif.)  
 Sen. Charles E. Schumer (D-N.Y.)  
 Sen. Richard J. Durbin (D-Ill.)  
 Sen. Sheldon Whitehouse (D-R.I.)  
 Sen. Amy Klobuchar (D-Minn.)  
 Sen. Al Franken (D-Minn.)  
 Sen. Christopher Coons (D-Del.)  
 Sen. Richard Blumenthal (D-Conn.)

#### Minority

Sen. Chuck Grassley (R-Iowa),  
 Ranking Member  
 Sen. Orrin G. Hatch (R-Utah)  
 Sen. Jon Kyl (R-Ariz.)  
 Sen. Jeff Sessions (R-Ala.)  
 Sen. Lindsey Graham (R-S.C.)  
 Sen. John Cornyn (R-Texas)  
 Sen. Mike Lee (R-Utah)  
 Sen. Tom Coburn (R-Okla.)

### House Judiciary Committee

#### Majority

Rep. Lamar Smith (R-Texas), Chair  
 Rep. Jim Sensenbrenner (R-Wis.)  
 Rep. Howard Coble (R-N.C.)  
 Rep. Elton Gallegly (R-Calif.)  
 Rep. Bob Goodlatte (R-Va.)  
 Rep. Dan Lungren (R-Calif.)  
 Rep. Steve Chabot (R-Ohio)  
 Rep. Darrell Issa (R-Calif.)  
 Rep. Mike Pence (R-Ind.)  
 Rep. J. Randy Forbes (R-Va.)  
 Rep. Steve King (R-Iowa)  
 Rep. Trent Franks (R-Ariz.)  
 Rep. Louie Gohmert (R-Texas)  
 Rep. Jim Jordan (R-Ohio)  
 Rep. Ted Poe (R-Texas)  
 Rep. Jason Chaffetz (R-Utah)  
 Rep. Tom Reed (R-N.Y.)  
 Rep. Tim Griffin (R-Ariz.)  
 Rep. Tom Marino (R-Pa.)  
 Rep. Trey Gowdy (R-S.C.)  
 Rep. Dennis Ross (R-Fla.)

Rep. Sandy Adams (R-Fla.)  
 Rep. Ben Quayle (R-Ariz.)

#### Minority

Rep. John Conyers Jr. (D-Mich.),  
 Ranking Member  
 Rep. Howard L. Berman (D-Calif.)  
 Rep. Jerrold Nadler (D-N.Y.)  
 Rep. Bobby Scott (D-Va.)  
 Rep. Mel Watt (D-N.C.)  
 Rep. Zoe Lofgren (D-Calif.)  
 Rep. Sheila Jackson Lee (D-Texas)  
 Rep. Maxine Waters (D-Calif.)  
 Rep. Steve Cohen (D-Tenn.)  
 Rep. Hank Johnson (D-Ga.)  
 RC Pedro Pierluisi (D-PR At-Large)  
 Rep. Mike Quigley (D-Ill.)  
 Rep. Judy Chu (D-Calif.)  
 Rep. Ted Deutch (D-Fla.)  
 Rep. Linda Sánchez (D-Calif.)  
 Rep. Debbie Wasserman Schultz  
 (D-Fla.)

## Senate hearing puts spotlight on elder abuse

Witnesses appearing March 2 before the Senate Special Committee on Aging drew attention to an issue they said often receives far less interest than it deserves: the abuse, neglect and financial exploitation of the nation's senior citizens.

In his opening statement, committee Chairman Herb Kohl (D-Wis.) emphasized that the nation's leaders must regard the issue of elder abuse as a priority. To make his point, Kohl cited the prevalence of the problem in his own state of Wisconsin, where more than 5,000 cases of suspected abuse, neglect or financial exploitation of senior citizens were reported in 2009 – a 9 percent increase over the year before.

Kohl said that in order to address this growing problem, action must be taken to “ensure that federal, state and local agencies work cohesively to combat elder abuse.” On the same day of the hearing, he introduced S. 462, the “Elder Abuse Victims Act,” and S. 464, the “End Abuse in Later Life Act.” The bills would contribute to the resources available to victims of elder abuse and build on provisions in the Elder Justice Act (EJA), the first comprehensive legislation enacted on elder abuse that is part of the Patient Protection and Affordable Care Act (P.L. 111-148) signed by President Obama one year ago. Funds to support EJA's important provisions have yet to be appropriated, how-

ever, and the law lacks justice-related provisions the ABA says are “critically needed to improve the quality of justice for elder abuse victims.”

S. 462 and S. 464, which are supported by the ABA, would authorize funding for victim advocate groups and entities that provide training and other types of support to prosecutors, courts, local law enforcement, and others handling elder justice-related cases.

Kay E. Brown, director of Education, Workforce, and Income Security at the Government Accountability Office (GAO), highlighted a GAO report issued the day of the hearings that concluded that federal leadership is lacking in the elder justice area.

The report, *Elder Abuse: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, found that state Adult Protective Services program resources are not keeping pace with growing caseloads that are becoming increasingly complex and difficult to resolve. The report recommended that the secretary of health and Human Services and the attorney general develop and implement a nationwide APS data system and that Congress should consider requiring HHS to conduct a periodic study to estimate the extent of elder abuse.

Among the witnesses testifying before the committee was former and WWII veteran Mickey

Rooney, who gave an emotional account of having his money and decisionmaking abilities stripped from him by family members, leading to a situation where he was “left powerless” and unable to seek appropriate legal help due to a lack of control over his finances.

He urged Congress to enhance the information and resources available to elder abuse victims so that they can “speak up and begin to take the necessary steps to end the cycle of elder abuse.”

In a letter to Kohl and committee Ranking Member Bob Corker (R-Tenn.), the ABA recommended implementation of specific actions to strengthen the resources available to those providing legal services to victims of elder abuse.

ABA Governmental Affairs Director Thomas M. Susman urged Congress to implement multiple measures, including “creating a nationwide structure for raising public awareness of elder abuse; developing and implementing specialized training about elder abuse for all components of the justice system; and creating task forces or coalitions in each state to examine and develop systemic approaches to elder abuse interventions.”

The letter stated that with federal legislation and an increase in funding, the ABA's recommendations can be implemented, and the much-needed improvement in the quality of justice for elder abuse victims will be realized. ■

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