106TH CONGRESS WRAP-UP
January 1999 – December 2000

AMERICAN BAR ASSOCIATION
GOVERNMENTAL AFFAIRS OFFICE

The 106th Congress, which will be better know for its impeachment of President Clinton than for major legislative initiatives, finally adjourned December 15.

Staying late in October and coming back for a lame duck session resulted in this Congress being in session about the same total time as recent predecessor Congresses and enacting a comparable number of pieces of legislation. The enactments, however, tended not to be major bills, with notable exceptions such as legislation giving permanent normal trade status to China.

Despite the generally modest overall record of the Congress, there were many significant achievements for the Association's governmental affairs program. Major highlights included:

- An increase of $25 million in Legal Services Corporation funding for FY 2001, the third year in a row for which an increase has been obtained, bringing the program's funding to $330 million.

- An increase of $5 per hour each year in the rate of compensation paid to assigned counsel providing representation in the federal courts under the Criminal Justice Act, bringing the rates to $75 per hour for in-court time and $55 per hour for out-of-court time; in addition, an almost 50% increase in the case compensation maximums for both felony and misdemeanor cases under the Act. The approval for FY 2001 of $4 million for the Thurgood Marshall Scholarship program, which will be administered by the Council on Legal Education Opportunity or CLEO. This represents the first federal funding for law school scholarships for disadvantaged students since FY 96.

- A cost of living increase for federal judges in both years of the Congress, bringing the pay for federal District Court judges to $145,100.

- The approval of the ABA-drafted Strengthening Abuse and Neglect Courts Act, or "SANCA," which authorizes $25 million to state and local courts to assist them in improving their handling of child abuse and neglect cases.

- The defeat in the Senate of a proposed Constitutional amendment to carve out an exception to the First Amendment's freedom of speech clause for flag-burning cases.

- The enactment of civil asset forfeiture reform legislation to, inter alia, shift the burden of proof from a property owner to the government to establish that an asset was indeed used in a crime and is subject to forfeiture.

- The approval of $40 million for civil legal representation for victims of domestic abuse under a 4-year reauthorization of the Violence Against Women Act.

- The rejection of efforts to repeal the McDade-Murtha legislation regarding the application of state ethical codes to government lawyers.

The ABA's voice was, of course, heard on many other issues as well. The Association lobbied on 115 issues during this Congress, Association representatives testified on 28 occasions, and over 180 letters advocating ABA policy positions were sent to federal officials. A detailed description of actions taken on issues of interest to the ABA and the organized bar follows.

LEGISLATION CLEARED OR ENACTED

Administrative Law Judge Pay

P.L. 106–97, enacted at the end of the First Session and supported by the ABA, gave the President the authority to authorize annual cost-of-living adjustments (COLAs) for Administrative Law Judges. The President immediately exercised that authority and raised ALJ pay for FY 2000 by 3.4 – 3.8%, depending on the level of basic pay. ALJs will receive another COLA for FY 2001; the amount of the COLA has not yet been announced.

ALJ pay has suffered because it is linked to the Executive Schedule, which covers top executives from all three branches of government, including members of Congress and Article III judges. Since Congress has been reluctant to support COLA increases for itself, all employees whose salaries are linked to the Executive Schedule also have been denied salary increases. As a result of P.L. 106-97, COLAs for ALJs have been de-linked from those awarded to other Executive Schedule employees; the new pay adjustment process for ALJs is now similar to that used to determine COLAs for members of the Senior Executive Service, which was designed to provide reliable and regular pay adjustments.

Civil Asset Forfeiture

On April 25, 2000, President Clinton signed ABA-supported legislation, H.R. 1658, to reform the federal civil asset forfeiture laws. H.R. 1658 became Public Law No. 106-185. The passage of this law was a priority for the bill's chief sponsor, House Judiciary Committee Chair Henry Hyde (R-IL), and its principal supporters in the Senate, Judiciary Committee Chair Orrin Hatch (R-UT) and Senator Patrick Leahy (D-VT). P.L. 106-185 requires the government to prove by a "preponderance of the evidence" that property is subject to forfeiture and to show that there was a substantial connection between the property and the crime. As urged by the ABA, the law also creates a uniform innocent owner defense protecting property owners who did not either know of or acquiesce in the illegal conduct.

Community Renewal

President Clinton and House Speaker Dennis Hastert (R-IL) forged a bipartisan consensus to draft community renewal legislation to revitalize low- and moderate-income communities. The House attached the Community Renewal Tax Relief Act of 2000, H.R. 5662, to the conference report of the FY 2001 Labor, Health and Human Services, and Education Appropriations bill, H.R. 4577. The conference report was presented to President Clinton on December 15, 2000, and signed into law as P.L. 106-554 on December 21, 2000. The ABA has policy on community renewal in favor of: increasing the Low Income Housing Tax Credit (LIHTC) and indexing for inflation thereafter; increasing tax incentives for private sector investment in low- and moderate-income communities; and facilitating individual or family development accounts. The provisions on tax incentives and increasing the LIHTC were included in the conference report.

Courthouse Construction Funds

The Federal Judiciary and the Administration have been at odds over funding for court facility projects for several years. From 1997 through 2000, the President's proposed budget submissions to Congress omitted all funds for courthouse construction. Congress nevertheless appropriated funds for FY 99, but not for FY 2000.

Even though the President's proposed FY 2001 budget included approximately $500 million for courthouse construction, the issue remained contentious during the Second Session because of disagreements over proposed projects and courtroom sharing. The Consolidated Appropriations Act of 2001, P.L. 106-554, which incorporated the FY 2001 Treasury/Postal Service appropriations conference report, includes funds for four courthouse projects for 2001 and provides advance funding for four more courthouse projects in 2002.

DNA Backlog

H.R. 4640 would assist states in reducing the backlog of biological samples awaiting DNA analysis. The legislation, which was signed into law as P.L. 106-546 on December 19, 2000, would provide $170 million in grants to the states to process convicted defender DNA samples and to reduce the backlog of crime scene samples by expanding state laboratory facilities and allowing states to contract with private labs. The legislation also includes a Senate-sponsored "sense of the Congress" provision regarding the obligation of grantee states to ensure access to post-conviction DNA testing. Related legislation, S. 3045, to authorize grants to upgrade state and local crime labs, also was signed into law as P.L. 106-561 on December 21, 2000. The ABA has no policy on this legislation, but the ABA supports adherence to certain principles concerning DNA evidence collection in conjunction with the investigation of a criminal case.

Defense Department Authorization

On October 30, 2000, H.R. 4205, the Defense Authorization Bill for Fiscal Year 2001, became Public Law No. 106-398. The ABA actively lobbied on three provisions that were included in one or more versions of the bill.

Section 506 of the Senate version of the legislation, which would have restricted judicial review of military selection board decisions, was not included in the final legislation. The ABA-opposed provision would have removed jurisdiction from federal courts for any claims of an officer for failure of selection, unless that officer's case had been referred to a special selection board and the officer had received favorable action from that special selection board. Perhaps the worst aspect of Section 506 is that in those few cases where the court would still have jurisdiction and found error, the court would have been limited to just one remedy—remanding the case for consideration by another selection board.

The military wills provision included in the final legislation as Section 551, "Recognition by States of Military Testamentary Instruments," makes it easier to recognize wills prepared for those eligible to receive military legal assistance by establishing uniform procedural requirements. It amends Chapter 53 of Title 10 of the United States Code by adding a new section, 1044d, that makes a military will (1) exempt from any requirement of form, formality, or recording that is provided for wills or codicils under state law; (2) have the same legal effect as a will prepared and executed in accordance with the laws of the state concerned; and (3) valid for probate in the courts of the state concerned. The ABA supported this provision.

The federal security clearances provision included in the final legislation as Section 1071, "Limitation of Granting Security Clearances," imposes restrictions on the issuance of federal security clearances. It prevents a member of the Armed Forces or an employee, officer or contractor of the Department of Defense from being granted a security clearance if the person has: (1) been convicted of a crime in a U.S. court and was sentenced to more than one year; (2) unlawfully used a controlled substance; (3) been deemed mentally incompetent; or (4) been dishonorably discharged from the Armed Forces. The ABA opposed this legislative proposal; however, there was some improvement in its final form as it was modified to include waiver authority for the Secretary of Defense and the secretary of the military department concerned.

Digital Signatures

The digital signatures legislation, Electronic Signatures in Global and National Commerce Act, or E-SIGN, was signed into law as P.L. 106-229 on June 30, 2000, and went into effect on October 1, 2000. It gives the same legal effect to electronic signatures, contracts and records that is given to paper ink signatures, contracts and records. It requires consumer consent and does not apply to some documents covered by the U.C.C., court documents, or documents that must be filed in paper format for national security or law enforcement reasons. The ABA does not have policy regarding federal legislation on this issue, but does have policy in support of states using the Uniform Electronic Transactions Act as a model when drafting state electronic signatures legislation.

Diversity in Legal Education – The Thurgood Marshall Legal Educational Opportunity Program

Authorized in the Higher Education Act of 1997, the Thurgood Marshall Program is a multi-faceted initiative to encourage low-income, minority and disadvantaged students to attend and complete law school. The program has an authorized funding level of $5 million dollars, but has

remained unfunded for the past two years. Then-ABA President Bill Paul testified before the Labor, Health and Human Services, and Education Subcommittee of the House Appropriations Committee in April 2000, urging Congress to fully fund the program. H.R. 5656, the FY 2001 Labor, Health and Human Services and Education Appropriations bill, provides $4 million for the Marshall Program. H.R. 5656 was combined with several other appropriations bills in an omnibus measure, H.R. 4577, passed by Congress on December 15, 2000 and signed into law as P.L. 106-554 on December 21, 2000. The Thurgood Marshall Program will be administered by the Council on Legal Education Opportunity, making this the first time since 1996 that CLEO has received federal funding.

Federal Courts Improvement Act

H.R. 1752, the Federal Courts Improvement Act, introduced at the request of the Judicial Conference of the United States, passed the House on May 23, 2000. Several provisions were stripped from the bill during committee consideration, including provisions to eliminate in-state plaintiff diversity jurisdiction; lower the age at which Article III judges may take senior status; and reverse the decision of the Supreme Court in *Lexecon Inc. v. Milberg Weiss*. Senator Charles Grassley (R-IA) subsequently introduced a modified version of this stripped-down bill as S. 2915. The Senate and House quickly passed the bill and the President signed it into law as P.L. 106-518 on November 13, 2000. The legislation includes provisions that give magistrate judges contempt authority; increase certain bankruptcy filing fees; authorize the Judiciary to set, collect, and retain fees for the use of electronic filing; authorize a circuit executive for the Court of Appeals for the Federal Circuit; modify jury selection; and increase the maximum compensation amounts for CJA attorneys.

HIV/AIDS

In both sessions of the 106th Congress, amendments to the District of Columbia appropriations bills, P.L. 106-113 and P.L. 106-552, forbidding both federal and city funding for needle exchange programs were passed. For FY 2001, the city must also restrict needle-exchange operations from being conducted within 1000 feet of schools and other locations. The ABA supports needle-exchange programs as an effective AIDS prevention strategy.

The Ryan White CARE Act was reauthorized in the Second Session of the 106th Congress. P.L. 106-345 changes the basis of the grant formula to states and localities from the number of AIDS cases within a ten-year span to the number of HIV cases within a year. This will improve the responsiveness of the program by assuring that these emergency funds are available when the likelihood of future full-blown AIDS cases is at its greatest and not several years after AIDS has been a local public health problem in a jurisdiction. The ABA supported this provision**.**

Hague Convention on Intercountry Adoption

The Hague Convention on Intercountry Adoption provides uniform standards and procedures to facilitate the process for and protect the integrity of intercountry adoptions. It also has provisions to discourage child trafficking, child abductions and fraud. Legislation to implement the treaty was introduced in the House as H.R. 2909 and the Senate as S.682 early in the 106th

Congress. After reconciling differences in the two bills, the final version of the implementing legislation, H.R. 2909, was passed by the House on September 18, 2000. The Senate gave its advice and consent to ratification of the Hague Convention and passed the implementing legislation by voice vote on September 20. On October 6, 2000, President Clinton signed the legislation into law as P.L. 106-229. The ABA supported ratification of the Hague Convention.

Immigration Detention Standards

ABA negotiations with the Department of Justice over a two-year period to ensure that immigrants held in INS-operated detention facilities would have reasonable access to legal counsel bore fruit in early 1999 with the issuance by the DOJ of the first-ever written standards in this area. Previously, lack of telephone access to pro bono programs, lack of knowledge of the applicable law, and other barriers prevented most detainees from securing, and pro bono attorneys from supplying, critically needed legal advice and counsel. Since then, negotiations have continued over the development of standards applicable to the 55% of detainees housed in state and local jails and prisons; these separate standards were issued October 9, 2000, and again represent a major step forward in ensuring access to justice.

Indigent Defense Funding/Criminal Justice Act (CJA)

The final Commerce, Justice, State, the Judiciary and Related Agencies (CJS) FY 2001 appropriations bill was signed into law as P.L. 106-553 on December 21, 2000. The law includes a $5 per hour increase in CJA panel attorney rates, bringing the rates generally to $75 per hour for in-court time and $55 per hour for out-of-court time. The House-passed version of the CJS spending bill included the $5 per hour increase; the Senate Appropriations Committee-reported version of the CJS bill contained no increase in CJA funding. In 1999, Congress approved a $5 per hour increase for FY 2000. The ABA supports a flat $75 per hour rate for panel attorneys.

Indigent Defense Funding/CJA Maximums

On November 13, 2000, S. 2915, the Federal Courts Improvement Act of 2000 was signed into law as P.L. 106-553. A section of the legislation increases the case compensation maximum amounts for attorneys appointed under the CJA by approximately 44 percent. For example, the compensation maximum for felony trial work was raised from $3,500 to $5,200, and for misdemeanors from $1,000 to $1,500.

Inter-American Convention Against Corruption

The Inter-American Convention Against Corruption is a treaty that establishes international standards to combat public corruption in international business transactions by members of the Organization of American States. The ABA testified in favor of ratification of the treaty on May 2, 2000. The Senate passed the resolution of ratification on July 27, 2000. No implementing legislation was needed because U.S. law already complies with the treaty provisions.

International Criminal Court (ICC)

On December 31, 2000, the President signed the Treaty of Rome, which establishes an ICC to investigate and try individuals accused of war crimes, genocide and crimes against humanity. The ICC was first approved by 120 countries on July 17, 1998, at a U.N. conference without U.S. support for the final language. The court will enter into force when 60 countries have ratified the treaty; 27 have done so to date. Citing concerns with the court's proposed jurisidiction, which the U.S. plans to address in further negotiations, President Clinton will not submit the treaty to the Senate for ratification. For several years, Congress has included provisions in annual appropriations bills prohibiting use of State Department funds for any activity relating to the ICC unless the United States became a party to the court, or for extradition or transfer of U.S. citizens to the ICC. In addition, legislation introduced in the 106th Congress, S. 2726 and H.R. 4654, would have prohibited any U.S. agency from cooperating with the proposed ICC, cut off U.S. military aid to non-NATO countries that ratify the treaty, and limited the use of U.S. forces for peacekeeping missions. The House International Relations Committee held a hearing on H.R. 4654. The Senate Foreign Relations Committee held a hearing on S. 2726. No further action was taken, but it is expected that the legislation will be reintroduced early in the 107th Congress. The ABA supports the establishment of a permanent International Criminal Court and urges the United States to play an active role in that process.

Judicial Branch Appropriations for FY 2000 and FY 2001

During the First Session, Congress enacted a consolidated spending bill for FY 2000, P.L. 106-113, which included $3.95 billion for the entire judicial branch, an amount approximately $300 million over the Judiciary's FY 99 budget. Following an intense campaign by the Administrative Office of the U.S. Courts, which projected that the proposed Senate funding level of $3.8 billion would require staffing reductions of between 8 and 11 %, the conferees took the unusual step of agreeing to a higher budgetary amount than was in either the original Senate or House bill.

The Federal Judiciary submitted an appropriation request totaling $4.42 billion for FY 2001, an increase of approximately 11% over its appropriation for FY 2000. P.L 106-553, which includes the FY 2001 Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill, provides the Federal Judiciary with approximately $4.25 billion for FY 2001, more than a 6.5% increase over last year's appropriation.

Judicial Compensation

Legislation, S. 248 and H.R. 698, was introduced during the First Session that would have repealed Section 140 of P.L. 94-42 (requiring specific statutory authority for cost-of-living adjustments to judicial salaries) and provided for automatic annual COLAs for federal judges, but it died in Congress without receiving any action. Unlike the 105th Congress, there was little enthusiasm during the 106th Congress for enacting broad judicial compensation reform legislation. Instead, Congress authorized a 3.4% COLA for judges for FY 2000 and a 2.7% COLA for FY 2001. This was accomplished by not including language in the Treasury appropriations bill, P.L. 106-554, that would have blocked a COLA for top-level officials,

including judges, and by including a waiver of Section 140 in the Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill, P.L. 106-553. The ABA supported these actions.

As an alternative way of boosting judicial salaries, a provision was added to the Senate version of the Commerce, Justice, State, the Judiciary and Related Agencies FY 2001 appropriations bill that would have repealed the ban on honoraria for judges. The ban was originally enacted as part of the Ethics Reform Act of 1989 and applied to all three branches of government. It was a trade-off for what was supposed to be regular and automatic COLAs for judges and other high-level government officials. The provision was opposed by many different groups, including the ABA, and was dropped from the conference report.

Judicial Vacancies/New Judgeships

At the close of the 106th Congress, there were 66 vacant Article III judicial positions and 41 nominations pending before the Senate Judiciary Committee, only four of whom had received a hearing. The overall vacancy rate fell from approximately 10% at the beginning of the 106th Congress to approximately 7% at the close of the Congress. Even though the vacancy rate was reduced, 22 court seats were declared judicial emergencies by the Judicial Conference of the United States, based on criteria involving the length of the vacancy and estimated caseload – more than existed at any other time during the 106th Congress. In total during the 106th Congress, Clinton nominated 118 individuals and the Senate confirmed 73 nominees and rejected one. During the Second Session, the President made 47 nominations, the Senate confirmed 39 judges and three individuals withdrew their nominations.

The judicial confirmation process during the Second Session of the 106th Congress was particularly beset by partisan wrangling and lengthy delays. At the start of the session, 19 Republican senators threatened to halt any further votes on judicial nominees. While this was resolved by action of the majority leader, it marked the beginning of many impasses that had to be resolved. One notable compromise involved an agreement made by leadership during the end of 1999 to vote up or down by March 15, 2000, on two long-standing nominees from California, both of whom finally won confirmation. After no activity in March or April 2000, the Senate confirmed 16 nominees in May, seven in June, five in July, and four in early October. There was no further Congressional action on nominees for the rest of the 106th Congress.

P.L. 106-113, the Consolidated Appropriations Act for FY 2000, authorized nine Article III district court judgeships -- four for the Middle District of Florida, three for the District of Arizona and two for the District of Nevada. During the Second Session, the Judicial Conference sent a revised request for the creation of 63 new judgeships, 10 for the courts of appeals and 53 for district courts. P.L. 106–553, the Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill for FY 2001, created 10 additional district judgeships, which are not included in the year-end judicial vacancy and confirmation statistics, above.

Legal Services Corporation

The FY 2001 funding bill for the Departments of Commerce, Justice, State, the Judiciary and

Related Agencies, P.L. 106-553, includes $330 million for the Legal Services Corporation, $25 million more than the FY 2000 level. The $330 million is subject to an across-the-board .22 percent reduction, reducing LSC's funding by $726,000. The FY 2000 level represented a $5 million increase over the prior year's level.

In 2000, the House of Representatives approved $275 million. The Senate Appropriations Committee recommended $300 million due to insufficient funding available for the entire CJS bill. The full Senate never considered the CJS bill to avoid dealing with several controversial issues unrelated to LSC. Instead, an informal House/Senate "conference" committee, working closely with the White House, ultimately agreed on the final $330 million. Key votes in the 106th Congress included the House votes in both 1999 and 2000 on the Serrano-Ramstad-Delahunt Amendments to restore LSC's funding to $250 million and $275 million, respectively, overturning the House Appropriations Committee recommendations for each year of $141 million.

The Legal Services Corporation has been operating since 1980 without a renewed authorization and has continued to exist by virtue of its annual appropriations. Reauthorization legislation has not been introduced since the 104th Congress.

Medical Records Privacy

Under the 1996 Health Insurance Portability and Accountability Act, P.L. 104-191, Congress was given an August 21, 1999 deadline to pass medical records privacy legislation. Absent final congressional action, the law directed the Secretary of Health and Human Services to implement regulations protecting the privacy of medical records stored electronically. Although many legislative proposals were introduced and hearings held throughout both the 105th and 106th Congresses, consensus could not be reached on a medical records privacy bill. On October 29, 1999, proposed privacy regulations were unveiled by the Administration and final regulations were issued on December 20, 2000. While the ABA supports some aspects of the regulations, the ABA believes they are insufficient to provide adequate privacy protection for identifiable health information.

Older Americans Act Reauthorization

On November 13, 2000, the President signed legislation, P.L. 106-501, reauthorizing the Older Americans Act of 1965 for five years. The Act is the nation's major source of support for services for older persons in greatest social and economic need. It funds a variety of state and local elder rights and advocacy programs, including legal assistance, statewide legal hotlines, the long-term care ombudsman, elder abuse prevention, and a legal assistance developer responsible for coordinating advocacy efforts in each state. On a national level, the Act funds legal assistance support centers (including the American Bar Association's Commission on Legal Problems of the Elderly) and other centers. Among other provisions, P.L. 106-501 retains legal assistance as a priority service exempt from cost-sharing by recipients; continues funding for statewide elder law hotlines and national legal assistance support; and continues the position of state legal assistance developer -- all strongly supported by the ABA. In correspondence during

consideration of reauthorization, the ABA emphasized the importance of the Act's legal programs in providing high-quality service to the nation's most vulnerable elders.

Religious Practices Protection

In response to the U.S. Supreme Court's nullification of the Religious Liberty Restoration Act of 1994, legislation was passed this Congress and signed into law as P.L. 106-274 to prohibit any governments from implementing a land-use regulation that places a substantial burden on the religious exercise of a person, including a religious assembly or institution, in cases affecting interstate commerce or federally-funded programs unless the government demonstrates that imposition of the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. Likewise, no government may impose a substantial burden on the religious exercise of a person residing in or confined to an institution that affects interstate commerce or federally funded programs unless the same standard is met. The ABA supports the legislation in principle.

Social Security

On April 7, 2000, the President signed ABA-supported legislation, P.L. 106-182, which repeals the earnings limit on the Social Security benefits of beneficiaries who are between the ages of 65 and 69.

State Justice Institute

The conference report to the Commerce, Justice, State, the Judiciary and Related Agencies FY 2001 appropriations bill, signed into law as P.L. 106-553, adopted the Senate proposal of $6.85 million for the State Justice Institute, an amount equal to its FY 2000 appropriation and this year's funding request. The House had originally proposed that the Institute receive only $4.5 million for FY 2001. The ABA supports continued appropriations for the Institute.

Strengthening Abuse and Neglect Courts Act

President Clinton signed legislation on October 17, 2000, that will provide grants to state courts for reforms in child abuse and neglect and foster care cases. The Strengthening Abuse and Neglect Courts Act of 2000, P.L.106-314, provides grant authority for up to $10 million per year for five years to eligible state and local courts to assist them in implementing computerized case-tracking systems and to develop and promote model systems. Another $10 million per year for two years will be available for eligible state and local courts to help currently backlogged courts to hire additional hearing officers, extend hours or to take other steps targeted to end the backlog of child abuse, neglect and foster care cases. The ABA played a substantial role in this legislative success, having drafted the original proposal over two years ago and worked throughout the legislative process to support its enactment.

U.S. Patent and Trademark Office Funding

On December 21, 2000, the President signed into law the conference report to accompany the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act for FY 2001. P.L. 106-553 provides $1,039,000,000 in funding for the U.S. Patent and Trademark Office for Fiscal Year 2001. This amount represents $161 million less than anticipated user-fee revenue. It is $134 million more than the amount approved by the House, $48 million less than the funding requested by the President and $128 million less than the amount approved by the Senate. A resolution passed by the ABA House of Delegates in July 2000 calls for the PTO to have the use of all user-fee revenue. The funding provided in the law, while a considerable improvement over the House mark, is nonetheless $161 million short of the funding called for by the ABA. Efforts to include a provision in H.R. 4034, "The Patent and Trademark Office Reauthorization Act," to prohibit the diversion of PTO user-fees were blocked by the objections of the Chair of the House Appropriations Committee.

United Nations Arrears

In November of 1999, after several years of unsuccessful efforts, legislation was enacted to authorize the repayment of U.S. arrears owed to the United Nations. The measure authorizes $926 million over three years – the payment of $819 million of debt the U.S. owes the U.N. and the forgiveness of $107 million the U.N. owes the U.S.. The payment plan authorizes the release of the arrears in three stages upon certification by the Administration to Congress that certain reforms have been enacted by the U.N. and requires the U.N. to accept the $926 million package as full repayment for the $1.56 billion it has assessed in U.S. arrears. Due to the uncertainty as to whether the U.N. will enact the required reforms, the issue of past dues currently remains unresolved. The U.S. will, however, meet its current obligations to the U.N.. In the FY 2001 Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill, P.L. 106-553, Congress provided the requested $846 million for peacekeeping costs and provided for full payment of the U.S.' assessed share of the U.N.'s calendar year 2000 budget. The ABA has long supported the payment of its dues arrearage to the U.N..

Violence Against Women Act (VAWA) Reauthorization

ABA-supported legislation to reauthorize and expand the 1994-enacted Violence Against Women Act passed overwhelmingly in the House on October 6, 2000, and in the Senate on October 11, 2000, as part of the conference report on H.R. 3244, containing five separate crime-related bills, and was signed into law as P.L. 106-368 on October 28, 2000. The final legislation reauthorizes $3.4 billion for existing VAWA programs for five years and creates new program authority to provide civil legal assistance for a wide range of legal needs, transitional housing funds for short-term housing assistance, and supervised visitation centers to assure safe visits in divorce-related situations between family members where there is a history of domestic violence. It also addresses date rape, provides program authority for victims of sexual assault, and creates new program authority to address the legal needs of elder victims of domestic violence.

LEGISLATION THAT DIED

Aggravated Felonies

On September 19, 2000, the House passed H.R. 5062, which would have allowed legal immigrants convicted of a few aggravated felonies to apply for "cancellation of removal" instead of facing automatic deportation. While the bill addressed a few situations where immigrants previously would have been subject to deportation, it still left a large number of immigrants without relief; nonetheless, the ABA supported the measure. Unfortunately, H.R. 5062 was stalled by Senator Phil Gramm (R-TX), and it was not included in any of the last minute bills.

Alternative Dispute Resolution

The 106th Congress considered, but ultimately failed to approve, legislation that would have significantly expanded the use of alternative dispute resolution in several important areas, including health care and the environment. Both the House and Senate passed different versions of managed health care legislation, H.R. 2990, containing ABA-supported provisions that would have expanded patients' rights by creating a system of internal and external review of health care coverage decisions—including the use of ADR. Although House and Senate negotiators worked for many months to reconcile the two bills, they were unable to reach a consensus on various key issues, including the issue of HMO liability. Similarly, in the area of environmental law, the House and Senate considered, but were unable to agree on, several ABA-supported bills (H.R. 1300, H.R. 2580, and S. 1090) that would have encouraged the use of ADR instead of litigation to apportion cleanup responsibility at Superfund toxic waste sites.

Assisted Suicide

Legislation to amend the federal Controlled Substances Act to bar the use of controlled substances by doctors in Oregon to assist patients to kill themselves failed in the 106th Congress when supporters in the Senate could not overcome a filibuster late in the Second Session. The Senate Judiciary Committee on April 27, 2000, approved H.R. 2260, Senate substitute legislation sponsored by Senator Don Nickles (R-OK) based on a bill passed by the House in 1999. The bill was included in the conference report of a year-end tax bill, H.R. 2614, which was successfully filibustered by Senator Ron Wyden (D-OR). This issue is expected to return in the 107th Congress. The ABA does not have policy with regard to the merits of assisted suicide laws, but opposes federal preemption of states on this question.

Association Investment Income Tax

The ABA and other organizations were successful in preventing Congress from adopting an association investment income tax. The Administration's FY 2001 budget proposal contained a provision that would have subjected any investment income in excess of $10,000 to the unrelated business income tax (UBIT) for 501(c)(6) trade and professional associations. The current UBIT rates are between 15% and 35%; and, once many states had applied their own corporate tax to UBIT income, the final tax rate could have been 40% or more for 501(c)(6) organizations. The

vast majority of the members of the House Ways and Means Committee signed a "Dear Colleague" letter opposing the proposal, and it was not considered.

Auto Liability

ABA-opposed federal auto liability legislation was introduced in both the House and Senate in the 106th Congress. S. 837 and H.R. 1475 would have preempted state automobile liability laws and created a system providing two types of coverage. The first type, called "personal protection," was one in which motorists involved in an accident would have recovered from their own insurance company on a no-fault basis for economic losses. The motorist could have sued the responsible party on a fault basis for uncompensated economic damages in excess of his or her policy benefits. However, he or she would not have been able to recover for non-economic losses. The second type of coverage, "tort maintenance," would have allowed drivers to cover themselves for whatever level of economic or non-economic damages they want. Motorists with this type of coverage would have been able to recover both economic and non-economic damages from their own insurance companies after proving fault if involved in an accident with a motorist who had personal protection coverage. These motorists also would have been able to sue the responsible party for economic loss in excess of what their own insurance policies pay. Compensation for accidents involving drivers who each had tort maintenance coverage would not have been affected by the legislation. Hearings were held on S. 837 before the Senate Commerce Committee. No further action took place on the legislation.

Bankruptcy Reform

Although the 106th Congress passed sweeping bankruptcy reform legislation by overwhelming margins immediately before adjourning for the year, the bill died when Congress was unable to override President Clinton's veto. The legislation, H.R. 2415 (H. Rept. 106-970), was designed to curb perceived abuses in the bankruptcy system by requiring more affluent debtors to file for bankruptcy under Chapter 13 instead of Chapter 7, thereby forcing those debtors to repay a larger portion of their debts over time. The legislation also contained many additional changes to the bankruptcy code, including new priorities for certain types of creditors and a new national cap on homestead exemptions. In addition, the bill also would have authorized direct appeals of final bankruptcy court orders to the regional courts of appeal and permitted bankruptcy lawyers to share referral fees with non-profit attorney referral services. The ABA supported the narrow provisions in H.R. 2415 regarding direct appeals and attorney referral services while generally opposing those portions of the bill that would have created new priorities for certain types of creditors. The Association has no policy on most of the other key bankruptcy issues addressed in the legislation, however, including the central issue of a "means test" for debtors.

Cameras in the Courtroom

Several bills were introduced this Congress that would have authorized federal judges to permit electronic coverage of court proceedings. H.R. 1752, the House version of the Federal Courts Improvement Act, contained a camera provision that was dropped during committee consideration. Identical bills, H.R. 1281 (Chabot, R-OH) and S. 721 (Grassley, R-IA), introduced during the First Session, would have authorized the presiding judge in any court

proceeding (civil or criminal) to permit electronic coverage. Senator Grassley's Judiciary Subcommittee on Administrative Oversight and the Courts held a hearing on S. 721 on September 6, 2000, but no further action occurred. Later that month, Senator Arlen Specter (R-PA) introduced S. 3086, a more limited bill that would have authorized television coverage of oral arguments in the Supreme Court unless the Justices decided in a particular case that it would violate the due process rights of one of the parties. This bill, like the others, died in committee. The ABA supports further experimentation with electronic coverage of federal court proceedings.

Campaign Finance Reform

For the fourth straight year, campaign finance reform proponents were unable to garner enough votes to avoid a filibuster in the Senate, thereby killing any chance of enactment of comprehensive campaign finance legislation in the 106th Congress. The House had passed its version of campaign finance reform, H.R. 417, on September 14, 1999, by a vote of 252-177. Both bills contained provisions that would have increased disclosure requirements, regulated issue advocacy advertising and banned unlimited soft money contributions to political party committees. Congress did pass a small, targeted campaign finance bill that requires political committees organized under Section 527 of the Internal Revenue Code to report their expenditures and to disclose the names of donors who contribute more than $200 to the group. These groups were not previously subject to disclosure requirements. An attempt to broaden the legislation to include other categories of non-profit organizations was not successful. President Clinton signed the bill into law on July 1, 2000. The ABA supports full disclosure of campaign contributions and expenditures, reasonable contribution limits adjusted and indexed for inflation, a ban on the solicitation and use of soft money, and partial public financing of presidential and congressional campaigns.

DNA Testing

Several bills were introduced to provide for post-conviction DNA testing in federal cases. The Innocence Protection Act of 2000, introduced in the Senate as S. 2690 (Leahy, D-VT, and Smith, R-OR) and in the House as H.R. 4167 (Delahunt, D-MA, and LaHood, R-IL), would have, among other provisions, established rules and procedures governing applications for DNA testing by federal convicted offenders. Senate Judiciary Committee Chairman Orrin Hatch (R-UT) introduced a bill, S. 3130, in the closing days of the session which would have authorized federal prisoners to obtain testing if the prisoner made a "prima facie showing" that DNA evidence would establish actual innocence. Hearings on the issue were held in the House and Senate Judiciary Committees. A "sense of the Congress" provision was added to the DNA backlog bill, noted above. ABA supports DNA testing of convicted persons consistent with specified principles.

Death Penalty Moratorium

Senators Russ Feingold (D-WI) and Carl Levin (D-MI) introduced The National Death Penalty Moratorium Act of 2000, S. 2463, that would have suspended executions at the federal and state levels while a national blue-ribbon commission reviewed the administration of the death penalty.

At the end of the session, Senator Feingold also introduced S. 3048, a bill to impose a moratorium solely on federal executions. In the House, Representative Jesse Jackson, Jr. (D-IL) introduced companion measures to the Feingold bills as H.R. 5237 and H.R. 5236, respectively. Hearings were held in both houses on issues related to the death penalty, but not specifically on the moratorium bills. ABA Presidents Bill Paul and Martha Barnett each wrote to President Clinton urging him to consider a moratorium on federal executions until a comprehensive study could be undertaken of the federal capital punishment system. While President Clinton did not respond to these letters, he did indicate to the media that he did not believe a federal moratorium was needed at this time.

Death Penalty Procedures

Bills were introduced in both houses of Congress to improve the administration of the death penalty on the federal and state levels. The Innocence Protection Act of 2000 was introduced in the Senate as S. 2690 by Senator Patrick Leahy (D-VT) and in the House as H.R. 4167 by Representatives William Delahunt (D-MA) and Ray LaHood (R-IL). Among other provisions, the Act would have established incentives to the states to improve the quality of legal representation in capital cases (based on ABA standards), given juries in federal prosecutions the option of sentencing defendants to life without parole, and encouraged states to give juries in capital cases information on sentencing options. The ABA testified in support of the Act's counsel provisions at a House Judiciary subcommittee hearing in June 2000. The Senate did not hold a hearing on the legislation.

Direct Submission of the Federal Judiciary's Budget

Senator Thad Cochran, (R-MS) introduced S. 1564 on September 5, 1999, to enable the Judicial Branch to submit its entire proposed budget, including a budget for court facility projects, directly to Congress, rather than only as part of the President's unified budget submission. S. 1564 was designed to prevent the President from directly or indirectly changing the Judiciary's budget request and the GSA's courthouse construction request. This ABA-supported legislation was reported out of committee but died with the adjournment of Congress.

Division of the Ninth Circuit

S. 253 (Murkowski, R-AK, and Gorton, R-WA) would have divided the Ninth Circuit Court of Appeals into three regional divisions, mirroring the recommendations of the Commission on Structural Alternatives for the Federal Courts of Appeals, a commission created by Congress in 1997. Senate and House Judiciary subcommittees held hearings, but no further action was taken. The ABA opposes mandatory restructuring of the Ninth Circuit as well as various other recommendations of the Commission.

Estate Tax

Representative Jennifer Dunn (R-WA) introduced estate tax legislation, H.R. 8, that would have amended the Internal Revenue Code to phaseout the estate and gift taxes over a 10-year period. It passed the House, 279-136, on June 9, 2000, and it passed the Senate, 59-39, on July 14, 2000.

President Clinton vetoed the legislation on August 31, 2000, and a House attempt to override the veto failed on September 7, 2000. The ABA has policy on the estate tax, but not regarding its repeal at the federal level.

Ethical Rules for Prosecutors

The Department of Justice sought to repeal the McDade-Murtha law passed in the 105th Congress to ensure that Department of Justice lawyers are subject to state ethics rules. The Department was responding in part to a recent decision by the Oregon Supreme Court, which held, in construing an Oregon ethics rule based on ABA Model Rule 8.4, that it is unprofessional misconduct for lawyers, including lawyers engaged in criminal investigations, to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Working with the Conference of Chief Justices and others, the ABA was successful in helping to deflect efforts to attach repeal language to various appropriations bills.

Farmworkers

Legislation (H.R. 4548, H.R. 4056, S. 1814 and S. 1815) was introduced in both the House and the Senate to revise the H-2A agricultural guestworker program and create new foreign agricultural guestworker programs. Proponents of the legislation claim that there is a shortage of farmworkers; however, the ABA and other organizations contend that there is no such labor shortage. In addition, the ABA supports legislation that would give permanent legal resident status to those foreign farmworkers who already live in the U.S.. The House Judiciary Committee's Subcommittee on Immigration favorably reported the Agricultural Opportunities Act (H.R. 4548). While it appeared that the farmworker legislation might be included as part of a last minute package, the ABA's lobbying efforts contributed to the defeat of the legislation.

Flag Desecration

For the third Congress in a row, lawmakers failed to approve a constitutional amendment to prohibit the physical desecration of the United States flag. The proposed amendment would have authorized Congress to pass legislation criminalizing flag desecration and was designed to overturn a U.S. Supreme Court decision that nonviolent flag burning is a form of free speech protected under the First Amendment. The House passed its flag amendment, H.J. Res. 33, on June 24, 1999, by a vote of 305-124. On March 28, 2000, the Senate fell four votes short of the two-thirds majority needed to pass a constitutional amendment with a vote of 63-37 on S.J. Res. 14. The ABA opposes the amendment.

Gun Safety Legislation

The school shooting rampage that occurred in April 1999, in Littleton, Colorado, along with a growing list of cities filing suit against the gun industry, brought about a heightened period of Congressional attention to firearms issues in the First Session of the 106th Congress but ultimately not final legislation. In the month after the Columbine shootings, as a result of a wave of strong, nationwide public pressure, the Senate debated gun amendments for eight days, and passed S. 254, juvenile crime legislation, by a 73-25 vote on May 5, 1999. Several ABA-

supported provisions were included in the Senate-passed legislation: gun show background checks; mandatory sale of handgun trigger locks; a ban on importation of high-capacity ammunition feeding devices; and a ban on juvenile possession of military assault weapons. The House of Representatives, however, after following a tortuous procedural path, defeated its counterpart legislation, H.R. 2122, on June 18, 1999, by a 280-147 vote. H.R. 2122 was decisively voted down following adoption of "poison pill" amendments that would have left most gun-show sales unregulated and would have repealed current law restricting interstate sales of firearms. Senate and House conferees were appointed in late July 1999. They met on August 3, 1999, but never met again in the remaining 14 months of the 106th Congress. With overwhelming passage of state referenda in Colorado and Oregon to require criminal background checks for sales at gun shows and with the gain of support in the newly elected Senate, this issue is sure to return in the next Congress.

Health Care Liability

A House-Senate conference was unable to resolve differences between the two bodies' passed versions of managed care legislation. The House-passed version of the managed care legislation, H.R. 2990, contained ABA-supported provisions to amend ERISA to give patients in employer-sponsored health care plans the ability to bring a cause of action against their plans under applicable state tort laws. Due to ERISA, enrollees in employer-sponsored health care plans are generally not permitted to sue their health plans under state law for damages resulting from denial of appropriate care. The Senate-passed version of H.R. 2990 did not contain provisions to remove the ERISA preemption of state laws and permit such causes of action to be brought against employer-sponsored health care plans. Subsequent to House and Senate passage of H.R. 2990, an attempt was made to attach the provisions of the House-passed legislation to Defense Department authorization legislation. After that attempt failed, the Senate passed a proposal offered by Majority Whip Don Nickles (R-OK) that would have provided patients with a limited right to bring a cause of action.

"Judicial Activism"

ABA-opposed legislation to restrain the Federal Judiciary was reintroduced in the 106th Congress. Senator Orrin Hatch (R-UT) introduced S. 248, a bill that is identical to S. 2163 from the 105th Congress, and Representative Tom Delay (R-TX) introduced H.R. 12 which is identical to last Congress' H.R. 3781. Representative Joel Hefley (R-CO) and Senator Robert Smith (R-CO) introduced H.J. Res. 11 and S.J. Res. 16 respectively. These resolutions proposed a constitutional amendment to require reconfirmation of federal judges every ten years. None of the bills received any committee action during the 106th Congress.

H.R. 3400, the first and only court-stripping bill of the 106th Congress, was introduced in the House by Representative Ron Paul (R-TX) on November 16, 1999, to strip the inferior federal courts of jurisdiction to hear partial-birth abortion cases. It was referred to the House Judiciary Committee, where it received no action.

On a related issue, and in response to the Washington Post's reporting about judges who attended expense-paid seminars but failed to disclose the trips on their annual financial reports, Senators

John Kerry (D-MA) and Russ Feingold (D-WI) introduced S. 2990, the Judicial Education Reform Act of 2000, on July 27, 2000. The bill would have prohibited judges from accepting "anything of value in connection with a seminar." It would have established a separate education fund and required the Federal Judicial Center to authorize funding only for "seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded judiciary." The bill also contained a prohibition against accepting "anything of value in connection with a seminar" unless the judge participates as a speaker or panel participant, or otherwise presents information, and federal judges are not the primary audience. The legislation was referred to the Senate Judiciary Committee where it received no action. The ABA has no current policy position on S. 2990 but is in the process of examining the issues it raises.

Juvenile Justice

Conferees considering the juvenile justice legislation, H.R. 1501, remained deadlocked over ABA-supported provisions in the Senate version to require, among other things, background checks at gun shows. The ABA did not support the juvenile justice provisions in H.R. 1501, which incorporated "get tough" initiatives with an emphasis on trying children as adults in federal court, as well as mandatory minimum sentences for some juvenile offenses.

Loan Forgiveness

The House on June 12, 2000, passed a Higher Education Act technical corrections bill, H.R. 4504, which included an ABA-supported amendment making prosecutors and public defenders eligible for loan forgiveness under the Perkins student loan program. The provision, approved on a 25-19 vote in committee, would have allowed public defenders and prosecutors to be eligible for the same student loan forgiveness established for police officers and prison guards under the Perkins student loan program. The ABA did not support an amendment adopted in committee, providing that prosecutors and defenders must make less than $30,000 in adjusted annual gross income to be eligible for the program. The provision met with opposition in the Senate Health, Education, Labor and Pensions Committee and time ran out in the session before the Committee could act on the legislation. The ABA also supports a "cafeteria plan" approach to alleviating student loan debt burden by which an employee could set aside pre-tax salary dollars in an account for the repayment of student loans. Discussions were held with several congressional offices toward the end of having legislation introduced in the coming Congress to approve this approach.

Marriage Penalty Tax

Congress addressed the marriage penalty tax by passing H.R. 4810. The bill, which was sponsored by Representative Bill Archer (R-TX), would have reduced the taxes paid by married couples by $89.8 billion over 5 years. The Clinton Administration opposed the bill because it also would have cut taxes for couples unaffected by the marriage penalty, including couples who now pay less filing jointly than they would as single taxpayers. H.R. 4810 was cleared for the White House on July 21, 2000, and vetoed by President Clinton on August 5, 2000. A House attempt to override the veto failed on September 13, 2000. The ABA has policy in support of legislation creating income tax equality between single and married persons.

Privacy

Privacy has been a topic of much discussion and debate in the 106th Congress. One aspect of the debate is the issue of when and how to apply the Fourth Amendment Search and Seizure clause in an e-communication regime comprised of third party transmissions by Internet service providers, wireless remote access devices and multiparty transmissions of communication. This issue was addressed by H.R. 5018 and S. 2928, along with many other proposals. There were several hearings in both the House and Senate on privacy protection. Much of the debate is still in the early stages, but consensus on how to protect privacy in this new electronic era is growing. Other likely legislative proposals include protection for email communications from uncontrolled interception by state and federal law enforcement agencies, protection of Internet users' personally identifiable information against undisclosed uses, and protection of cell phone user's information. The ABA has relevant policy on government seizure of e-mail transmissions, on personal information use by third parties in commerce, and on cell phone use.

Product Liability

Legislation containing ABA-opposed provisions to limit the liability of product sellers died at the end of the 106th Congress. H.R. 2366 (Rogan, R-CA) passed the House. A companion bill, S. 1185 (Abraham, R- MI), was introduced in the Senate. The bills would have placed a cap on punitive damages and limited joint and several liability in civil actions for small businesses with less than 25 employees. The bills would have capped punitive damages at $250,000 or three times compensatory damages, whichever is less. A court would have been able to override the cap if it found a business intentionally acted to cause harm. The limits on liability of sellers would have applied to retailers of all sizes for products they sold but did not alter or manufacture.

Racial Profiling

During the 106th Congress, bills to address the issue of racial profiling were held captive to partisan wrangling. At the beginning of the term, Representative John Conyers (D-MI) and Senator Frank Lautenberg (D-NJ) both introduced legislation similar to that which passed the House during the 105th Congress. HR. 1443 and S. 821 would have required the Attorney General to collect data on the incidence of race-based traffic stops. H.R. 1443 was passed out of committee, but despite bipartisan support in both houses, it was held from floor consideration by the congressional leadership. In the Senate, S. 821 received 21 cosponsors and a committee hearing was held, but further consideration was delayed in the hopes of House passage. Both measures expired at the end of the term. The ABA supported both bills.

Superfund Reauthorization

Despite general agreement that the Superfund program to clean up toxic waste sites has failed to accomplish its objectives, lack of agreement on how best to reform the program again doomed efforts to arrive at a compromise. Two ABA-supported bills, H.R. 1300 and H.R. 2580, cleared the House Transportation and Infrastructure Committee and the House Commerce Committee,

respectively, but neither measure came to a vote in the full House. Meanwhile, the Senate Environment and Public Works Committee held a hearing on another ABA-supported bill, S. 1090, but further action on that measure stalled. The ABA supports various reforms to the Superfund law, including the elimination of joint and several liability, the use of ADR instead of litigation to allocate responsibility, limits on Superfund damages, and greater state authority to clean up and redevelop Superfund and brownfield sites.

Tax Simplification

Many hearings were held both in the House and the Senate on the issue of tax simplification, and the ABA's Tax Section testified on a few of those occasions. The objective was to find ways to make the IRC more accessible and easier for the public to comprehend. Multiple bills on this issue were introduced during the 106th Congress, but no broad tax simplification legislation was enacted. The ABA supports numerous IRC amendments that would result in tax simplification.

Victims' Rights Amendment

After a week of debate, Senate leaders on April 27, 2000, pulled legislation calling for a Constitutional amendment to protect crime victims' rights. Senators Jon Kyl (R-AZ) and Diane Feinstein (D-CA) acknowledged that they did not have the 60 votes they needed to close off debate on the measure, S.J. Res. 3. The proposed amendment would have given victims of violent crimes nine specific constitutional rights, including the right to attend all proceedings related to their cases, the right to speak or submit statements at sentencing and parole hearings, the right to reasonable notice of escape or release of those convicted in their cases, and the right to restitution. Opponents of S.J. Res. 3 argued that Congress should address victims' rights by passing a statute. The ABA supports the protection of victims' rights, whether by constitutional amendment or statute, that conform to several enumerated principles.