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Regular Features

Defending Liberty Pursuing Justice

Called significant victory for Rule of Law

ABA applauds Supreme Court decision on use of military commissions

ABA President Michael S. Greco last month called the June 29 Supreme Court decision in *Hamdan v. Rumsfeld* a "significant victory for the Rule of Law and our cherished constitutional protections."

The 5-3 ruling states that the military commissions established by the Bush administration to try suspected terrorists detained at Guantanamo Bay, Cuba, are illegal and "lack the power to proceed." The administration had claimed that it had the authority to create the commissions under the president's executive powers under the Constitution and under P.L. 107-40, the Authorization for Use of Force in Response to the 9/11 Attacks.

Salim Ahmed Hamdan, a Yemeni with ties to al Qaeda, was captured in Afghanistan and turned over to U.S. authorities in 2001. He denied any role in the terrorist attacks of Sept. 11, but was transported to Guantanamo Bay. Hamdan filed a petition for writ of habeas corpus challenging the executive branch's authority to try him before a military commission. The U.S. District Court for the District of Columbia ruled that Hamdan could not be tried by a military commission unless he was determined to be an "unlawful combatant" and not a prisoner of war. Hamdan maintained that he should be tried under the Uniform Code of Military Justice (UCMJ) in accordance with the 1949 Geneva Conventions.

In July 2005, the U.S. Court of Appeals for the D.C. Circuit overturned the district court's decision, paving the way for the military commission to resume activity. The Supreme Court, however, reversed the appeals court's ruling in its June 29 decision, maintaining that the military commissions violated both U.S. law and the 1949 Geneva Conventions because they did not provide defendants with the appropriate legal safeguards required by military courts and because they were not authorized by Congress.

Since February 2002, the ABA has urged the president and Congress to assure that military commissions are governed by the rules of the UCMJ and comply with U.S. international treaty obligations. Greco said that the ABA's representative at the Guantanamo military commission hearings observed first-hand that the ad hoc military tribunal structure was "inherently flawed."

"The ABA urges the president to comply immediately with the Supreme Court's decision by ensuring that any further tribunals abide by appropriate and constitutional procedures, and further urges the Congress to exercise its oversight and legislative authority to assure that the law and regulations governing any tribunal adhere to the rules of the UCMJ and comply with the appropriate provisions of the International Covenant on Civil and Political Rights," Greco said. ■

LEGISLATIVE BOXSCORE

ABA LEGISLATIVE PRIORITY	HOUSE	SENATE	FINAL	ABA POSITION
Independence of the Bar. The U.S. Court of Appeals for the D.C. Circuit issued a ruling 12/6/05 in a case filed by the ABA that the Federal Trade Commission (FTC) went beyond its statutory authority by including lawyers under Title V privacy provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA). The FTC did not appeal.				**Opposes any federal laws or regulations that would preempt or interfere with state rules protecting the confidential attorney-client relationship, including the FTC rules applying the privacy protection provisions of Title V of the GLBA.**
Federal Tort Laws. S. 5 and H.R. 516 would expand jurisdiction of federal courts over certain class action cases. S. 354, S. 22, S. 23, H.R. 5 and H.R. 534 would cap pain and suffering and punitive damage awards in medical liability cases. S. 1337 would authorize funding for states to develop alternatives to medical tort litigation. S. 397 and H.R. 800 would protect gun manufacturers, sellers and traders from almost all ordinary civil liability. S. 852 and S. 3274 would create an asbestos trust fund as an alternative administrative remedy for compensating workers exposed to asbestos.	H.R. 516 and H.R. 534 were referred to the Judiciary Committee on 2/3/05. House passed S. 5 on 2/17/05. Judiciary Committee approved H.R. 800 on 5/25/05. House passed H.R. 5 on 7/28/05. House passed S. 397 on 10/20/05.	Senate passed S. 5 on 2/10/05. Senate passed S. 397 on 7/29/05. Senate began consideration of S. 852 on 2/6/06, but the bill stalled 2/14/06. Senate failed to invoke cloture on S. 22 and S. 23 on 5/8/06. Judiciary Committee held a hearing on alternatives to medical liability litigation on 6/22/06.	President signed P.L. 109-2 (S. 5) on 2/18/05. President signed P.L. 109-92 (S. 397) on 10/26/05.	**Supports amending ERISA to allow causes of action to be brought in state and territorial courts against employer-sponsored health plans under state and territorial laws; establishing the use of ADR procedures for resolving disputes between patients and group health plans; and federal legislation addressing asbestos litigation issues and class actions. Opposes creating a special tort standard for the gun industry**. **See page 3.**
Immigration. S. 119 and H.R. 1172 would ensure that unaccompanied alien children have counsel to represent them in immigration proceedings. S. 1033, S. 1438, S. 2611 and H.R. 2330 seek better enforcement of border security and would reform the nation's immigration system. S. 2454 and H.R. 4437, among other things, would eliminate judicial review in an array of situations.	H.R. 1172 was referred to the Judiciary Committee on 3/8/05. House passed H.R. 4437 on 12/8/05.	Judiciary Committee approved S. 119 on 4/14/05. Senate passed S. 2611 on 5/25/06.		**Supports the appointment of counsel at government expense to assist unaccompanied children in immigration proceedings. Supports the humane treatment and legalization of unlawful aliens living in the United States.**
Judicial Independence. P.L. 109-115 (H.R. 3058), fiscal year 2006 appropriations legislation, waives Section 140 of P.L. 97-92 to allow federal judges to receive a cost-of-living adjustment (COLA).	House passed H.R. 3058 conference report on 11/18/05.	Senate passed H.R. 3058 conference report on 11/18/05.	President signed P.L. 109-115 (H.R. 3058) on 11/30/05.	**Opposes initiatives that infringe upon the separation of powers between Congress and the courts. Supports increased judicial pay. Opposes any legislation to change constitutional law by limiting federal court jurisdiction in specific areas.**
Legal Services Corporation. The House version of H.R. 5672 includes $338 million for the LSC in fiscal year 2007; the Senate subcommittee version, $327 million.	House passed H.R. 5672 on 6/27/06.	Appropriations subcommittee approved H.R. 5672 on 7/11/06.		**Supports an independent, well-funded LSC.** **See page 4.**

ABA concerned about "health courts" idea

The ABA, while supporting the use of and experimentation with voluntary alternative dispute resolution techniques as welcome components of the justice system, expressed concerns last month that current proposals to create health courts could undermine the constitutional and other legal rights and remedies of injured patients.

"The ABA firmly supports the integrity of the jury system, the independence of the judiciary and the right of consumers to receive full compensation for their injuries, without any arbitrary caps on damages," Cheryl Niro, an incoming member of the ABA Standing Committee on Medical Professional Liability, testified June 22 before the Senate Health, Education, Labor and Pensions Committee. "It is for these reasons that ABA opposes the creation of any health court system that undermines these values by requiring injured patients to utilize health courts rather than utilizing regular state courts in order to be compensated for medical negligence," she explained.

S. 1337, introduced by committee Chairman Mike Enzi (R-Wyo.) and Sen. Max Baucus (D-Mont.), would authorize funding for states to create demonstration programs to test alternatives to medical tort litigation. The programs would include early disclosure and compensation, administrative determination of compensation, and special health care courts. Enzi called his legislation a "fresh approach" to solving the medical liability problem.

According to Niro, medical malpractice cases under current health courts proposals would be removed from the court system and placed in health courts operated by an administrative agency; judges and juries would be replaced by fact-finders with training in science or medicine; and injured patients would be forced to give up their right to a jury trial. A schedule of awards would be established that is similar to the Workers' Compensation system; however, unlike that no-fault system, under which injured workers obtain a guaranteed award for waiving their right to a jury trial, injured patients who pursue their claims through health courts still would be required to prove liability. According to Niro, the schedule of awards is a de facto cap on non-economic damages that would work to the disadvantage of women, children and the elderly and has been found to be unconstitutional in at least 13 states.

"The ABA opposes legislation that places a dollar limit on recoverable damages and operates to deny full compensation to a plaintiff in a medical malpractice action," Niro said. "The ABA recognizes that the nature and extent of damages in a medical malpractice case are triable issues of fact that may be decided by a jury and should not be subject to formulas or standardized schedules," she emphasized.

Also testifying was Duke law professor Neil Vidmar, who said that most of the claims about juries and the tort system do not stand up to empirical scrutiny. He agreed with the ABA that some proposals for alternatives or changes to the tort system would abolish or severely curtail the constitutional right to trial by jury. In addition, he emphasized that alternatives to courts should be voluntary on the part of patients.

Philip K. Howard, chairman of Common Good, supported special health courts because he said the current system has contributed to a debilitating distrust that makes reforming health care almost impossible. Health courts, he said, "can offer guidance on standards of care and the predictability needed for trust."

ABA witness Cheryl Niro expressed the ABA's concerns about health courts proposals at a June 22 Senate hearing.

Sen. John Cornyn (R-Texas), who also testified at the hearing, is drafting legislation that he said would address the concerns of Sen. Edward M. Kennedy (D-Mass.), the ranking minority member of the Senate committee.

Kennedy emphasized in his statement for the hearing that "voluntariness is the first and most fundamental standard by which we should evaluate all alternative dispute resolution proposals."

The choice between a traditional court proceeding and the alternative process must be an informed choice made after the injury has occurred, he said, and merely obtaining the patient's signature on one more consent form at the time he or she first visits a physician or enters a hospital is not sufficient.

"Such pro forma procedures make a mockery of informed consent, turning the principle of voluntary participation into a sham," he maintained. ■

ABA urges full funding in FY 2007 for LSC

House votes to restore funding to $338 million

The House voted June 27 to reject a cut in LSC funding that had been approved by the House Appropriations Committee and restore $25 million for fiscal year 2007, bringing the amount for the program in the House bill to $338 million.

The funding was restored when members voted 227-185 to approve an amendment to H.R. 5672, the appropriations bill for science, the Departments of Justice and State, and related agencies. The amendment, offered by Rep. David Obey (D-Wis.), restored LSC funding in the bill from $313 million to $338 million, the level the LSC received in fiscal year 2003 before several years of level funding and government-wide cuts eroded the program's appropriation. Current LSC funding is $326.5 million.

"You simply cannot have justice in this country if you do not have adequate access to its court system," Obey said during debate on his amendment. He pointed out that LSC-funded programs are the nation's primary source of legal assistance to women who are victims of violence and that recent cuts in the program already have led to the closing of field offices around the country.

In a series of correspondence to the House Appropriations Committee and all representatives, ABA Governmental Affairs Director Robert D. Evans cited the overwhelming need for adequate LSC funding. The letters pointed out that widespread bipartisan support for the LSC was demonstrated when 160 representatives wrote to House appropriators to request a funding increase for the program. In a July 6 letter to the Senate Appropriations Subcommittee on Commerce, Justice and Science, ABA President Michael S. Greco also cited bipartisan support in the Senate, noting that 54 senators joined Sens. Gordon Smith (R-Ore.) and Edward M. Kennedy (D-Mass.) in a letter supporting an LSC appropriation of $358 million. That amount is the same funding the Senate approved last year.

The LSC Board of Directors, appointed by President Bush and led by Frank Strickland of Georgia and Lillian BeVier of Virginia, requested $411 million, a figure also supported by the ABA. President Bush, however, proposed a $16 million funding cut that would reduce LSC funding to $310.2 million, which is less than the LSC received in fiscal year 1981.

"A real crisis exists for the millions of low-income persons who are unable to access the justice system; many of these individual have expanded legal need or are suddenly poor because of natural or other disasters," Greco wrote. Most recently, legal aid programs across the country have struggled to provide assistance to the victims of Hurricanes Katrina, Rita and Wilma.

The Senate Appropriations subcommittee, which considered LSC funding July 11, provided $327 million – level funding from fiscal year 2006. Sen. Tom Harkin (D-Iowa) is expected to offer an amendment to increase funding to close to $358 million when the full committee considers the bill. ■

House panel approves D.C. bill

The House Government Reform Committee approved legislation in May that would treat the District of Columbia as a congressional district and provide the 550,000 residents with a voting member of the House.

H.R. 5388, sponsored by Rep. Tom Davis (R-Va.), cleared the committee by an overwhelming vote of 29-4 and was hailed by Del. Eleanor Holmes Norton (D-D.C.) as "historic." This marked the first time a House committee reported a bill that would give those who live in the nation's capital an opportunity for full representation in the House.

"We are now prepared to walk the full distance first to equal citizenship in the People's House and one day, when the dawn breaks in America for equality and freedom for all, representation in the Senate as well," Norton said. The committee failed to approve another bill, H.R. 5410, sponsored by Norton to provide D.C. with two senators in addition to one representative.

In addition to D.C. representation, H.R. 5388 also would add a new House seat for the state of Utah based on projections from the 2000 Census. Because D.C. is overwhelmingly Democratic and Utah overwhelmingly Republican, Davis noted that the bill is "partisan neutral."

The ABA supports the principle that citizens of the District of Columbia should no longer be denied the fundamental right belonging to other American citizens to elect voting members of the Congress that governs them. In a June 16 letter to members of the House Judiciary Committee, which must now consider the bill, ABA Governmental Affairs Director Robert D. Evans wrote that the disenfranchisement of D.C. residents "violates a central premise of representative democracy

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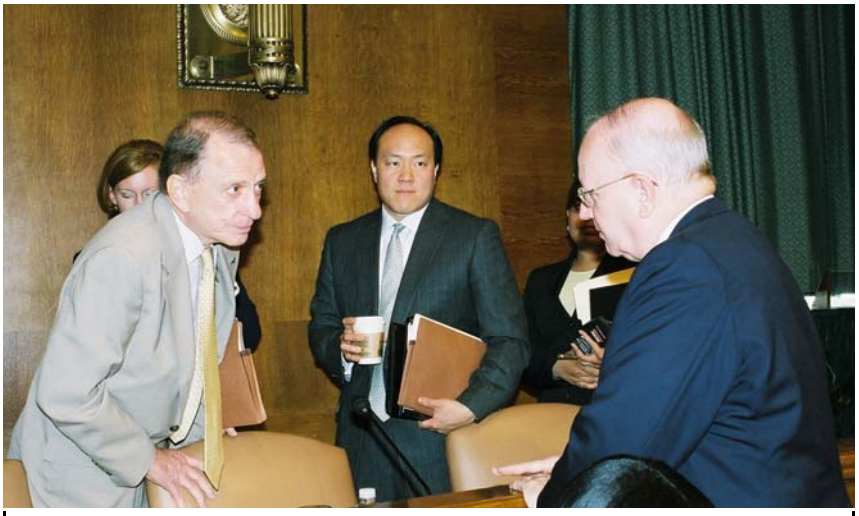
ABA backs repeal of McCarran-Ferguson

Recommends "safe harbors"

The ABA urged Congress June 20 to repeal the McCarran-Ferguson Act, which largely exempts the insurance industry from federal antitrust laws, and replace the act with a series of "safe harbors" to make clear that certain types of activities by insurers do not violate antitrust laws and are in fact pro-competitive and beneficial to the American economy.



Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) greets ABA witness Donald C. Klawiter (right) following a June 20 hearing on the McCarran-Ferguson Act. Looking on is Harold Kim, chief civil counsel for the committee.

Donald C. Klawiter, chair of the ABA Antitrust Law Section, testified before the Senate Judiciary Committee that the safe harbor provisions are intended to "protect legitimate pro-competitive joint activity by insurers while still subjecting the insurance industry to the antitrust rule of law."

The safe harbors recommended by the ABA would authorize insurers to:

• cooperate in the collection and dissemination of past loss-experience data as long as those activities do not unreasonably restrain competition;

• cooperate to develop standardized policy forms to simplify consumer understanding, to enhance price competition, and to support data collection efforts;

• participate in voluntary joint-underwriting agreements to cooperate with each other in making rates, policy forms and other essential insurance functions, as long as these activities do not unreasonably restrain competition;

• cooperate in making rates, policy forms and other insurance functions if they are participating in a residual market mechanism as long as the residual market mechanism is approved and actively supervised by a state regulatory agency; and

• engage in any other collective activities that Congress specifically finds do not unreasonably restrain competition in insurance markets.

"It is the view of the ABA that all conduct that does not fall within the specific safe harbors should be subject to the same antitrust rules that are applied to all other sectors of the American economy," Klawiter said, adding that the safe harbors are not intended to alter existing antitrust policy.

He also urged that safe harbors be expressly spelled out by Congress in S. 1525, a bill introduced by Sen. Patrick J. Leahy (D-Vt.) to repeal the antitrust exemption for medical malpractice insurance.

Klawiter pointed out that the ABA's policy in this area originated with the recommendations of an ABA commission formed nearly 20 years ago. A task force within the Antitrust Law Section is currently reviewing ABA policy and providing comments to and working with the Antitrust Modernization Commission, an independent agency established by Congress in 2002 to examine whether the need exists to modernize U.S. federal antitrust laws and to identify and study related issues. The ABA comments that have been submitted to the commission reaffirmed the appropriateness of the ABA's existing policies.

Other witnesses supporting repeal of the McCarran-Ferguson Act included J. Robert Hunter, director of insurance for the Consumer Federation of America; and Assistant Attorney General Elinor R. Hoffmann, the Office of the Attorney General of the State of New York.

Those opposed to repeal included Kevin B. Thompson, senior vice president, Insurance Service Office Inc.; Marc Racicot, president, American Insurance Association; and Michael McRaith, director of insurance in Illinois and chair of the Broker Activities Task Force of the National Association of Insurance Commissioners. ■

Proposed marriage amendment fails in Senate

The Senate rejected a resolution June 7 proposing a constitutional amendment intended to ban same-sex marriage, but the House still intends to consider similar legislation this month.

The 49-48 Senate vote fell short of the 60 votes required to limit debate and proceed to a vote on S.J. Res. 1, sponsored by Sen. Wayne Allard (R-Colo.). The Senate resolution and an identical proposal introduced June 6 by Rep. Marilyn Musgrave (R-Colo.), state: "Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the Constitution of any state, shall be construed to require that marriage or other legal incidents thereof be conferred upon any union other than the union of a man and a woman."

In a June 1 letter to all senators, ABA Governmental Affairs Director Robert D. Evans expressed the ABA's staunch opposition to the proposed constitutional amendment, which he said tramples on the traditional authority of each state to establish its own laws governing civil marriage.

"Congress should not rush to judgment and use the constitutional amendment process to impose on the states a rigid viewpoint regarding a controversial issue of great consequence to this nation," Evans wrote.

He noted that no one can assert that the state legislatures are shirking their responsibilities or waiting for Congress to intervene in this area. He explained that 49 states grant civil marriage licenses exclusively to heterosexual couples and 18 states have adopted state constitutional amendments banning same-sex marriages. This year, Alabama, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin will hold statewide referenda on constitutional amendments to ban same-sex marriages, and similar amendments have been proposed and are making their through the legislative process in multiple other states.

Evans maintained that the proposed amendment's language creates interpretive ambiguities that would make it impossible to ascertain the degree to which the amendment would preempt state authority and that its adoption would have sweeping consequences for the states that extend well beyond invalidating or prohibiting same-sex civil marriages.

"Ironically, the joint resolution's lack of clarity will need to be resolved through litigation that will require federal and state courts to make the very kind of interpretive decision regarding sensitive social matters that supporters of the proposed amendment intend to prevent through its passage," Evans said.

President Bush, who expressed support for the proposed amendment June 3 in his weekly radio address, maintains that state legislatures are trying to address the marriage issue but are being thwarted across the country by "activist judges who are overturning the expressed will of the people." ■

Judicial Vacancies/Confirmations — 109th Congress (as of 7/10/06)

Court	Current Vacancies	Pending Nominations	Confirmations
US Supreme Court (9 judgeships)	0	0	2
US Courts of Appeals (179 judgeships)	16	13	11
US District Courts (678 judgeships)	29	15	32
Court of International Trade (9 judgeships)	0	0	1
Totals	45	28	46

Washington News Briefs

FLAG DESECRATION: The Senate rejected legislation June 27 that would have amended the U.S. Constitution to allow Congress to prohibit desecration of the U.S. flag. S.J. Res. 12, sponsored by Sen. Orrin G. Hatch (R-Utah), fell one vote shy, in a 66-34 vote, of the necessary two-thirds vote required for passage of constitutional amendments. The resolution is intended to reverse the Supreme Court's 1989 decision in Texas v. Johnson, 491 U.S. 379, which held that flag burning is a form of political expression protected by the free speech clause of the First Amendment. In a June 9 letter to all senators, ABA President Michael S. Greco urged members to reject the proposed amendment because it would "enshrine a restriction on our fundamental rights to free speech in the very document that protects our individual liberties." Greco further stated, "Few things are more offensive to most Americans than the desecration of our flag. But, as important as the flag is to all of us, we must never protect it at the expense of the constitutionally protected freedoms it symbolizes." The association supports the protection of the right to express one's beliefs, whether it be satisfaction or discontent, with the government through peaceful words or conduct, both of which are protected by the First Amendment.

FOSTER CARE: President Bush signed legislation July 3 to improve protections for foster children and to hold states accountable for the safe and timely placement of children across state lines. P.L. 109-239 (H.R. 5403), introduced in May by Rep. Tom DeLay (R-Texas) before he resigned from the House, amends the Social Security Act to require that each state plan for foster care and adoption assistance includes provisions to speed up the process of placing children in foster homes across state lines, especially when children can be united with relatives. States also must complete, in a timely manner, home studies required by another state. The new law also amends the definition of "case review system" to increase the required frequency of state caseworker visits to a child who is placed in foster care outside the state in which the child's parents reside; requires a child's health and education record be supplied to the child at no cost when he or she leaves foster care; and provides for the foster parents' right to be heard in any proceeding respecting their foster child. To facilitate a child's foster or adoptive placement, the law authorizes $10 million over the next four years to provide incentive payments of $1,500 for each interstate home study done by a state within 30 days of a request. The ABA played a significant role in the development of the legislation. A 2003 ABA recommendation calling for reform of interstate placement of children led to introduction of similar legislation by DeLay in the 108th Congress. That measure passed the House by voice vote, but the Senate did not act on the bill. The ABA continued to work with House and Senate leadership on improving the legislation until final passage.

NATIVE HAWAIIANS: Supporters last month could not garner the 60 votes necessary to advance a vote on S. 147, a bill to establish a process to obtain federal recognition for an indigenous Hawaiian governing entity. The 56-41 vote on June 8 effectively eliminated any chance the bill would be passed this Congress. S. 147, sponsored by Sens. Daniel K. Akaka (D-Hawaii) and Daniel K. Inouye (D-Hawaii) would allow Native Hawaiians to choose a political framework that could be recognized by the federal government and would best serve their unique cultural and civic needs. The bill would support an indigenous governing entity for Native Hawaiians within the state of Hawaii. For 1,000 years prior to the overthrow of the Hawaiian Monarchy in 1893, Native Hawaiians practiced self-determination in an organized political framework. In 1993, a joint resolution known as the Apology Resolution (P.L. 103-105), acknowledged the United States' responsibility for the illegal overthrow of the Hawaiian kingdom and issued an apology to the Native Hawaiian people. The resolution also committed the United States to acknowledge the longstanding issues resulting from the overthrow and to provide a proper foundation of reconciliation between the United States and Native Hawaiians.

The ABA, which adopted policy in February supporting the legislation, submitted comments to the U.S. Commission on Civil Rights in March maintaining that the legislation is rooted in the Constitution. "The framers recognized the importance of maintaining a system of federal recognition of indigenous nations within our borders and empowered Congress through the Indian Commerce Clause and the Treaty Clause to achieve those goals. Further, the federal courts have noted that Congress' power to recognize indigenous nations includes the power to re-recognize nations whose recognition had been compromised in the past," ABA Governmental Affairs Director Robert D. Evans wrote to the commission. Opponents of the bill, however, argue that granting self-determination to Native Hawaiians would violate the equal protection rights of others by creating a system of benefits disadvantaging Hawaiian natives of other ethnicities. There has been no action on similar legislation, H.R. 309, which is pending in the House Resources Committee.

ABA weighs in on new SSA rule for disability process

Congress and the Social Security Administration (SSA) last month began assessing a new rule that went into effect in March to improve the disability determination process for the Disability Insurance (DI) and Supplemental Security Income (SSI) programs.

In a June 14 letter for the record of a hearing before the House Ways and Means Subcommittee on Social Security, ABA Governmental Affairs Director Robert D. Evans noted that there is much in the new rule "with which the ABA is pleased."

The ABA supports the new rule's provisions for a quick disability determination process for those who are clearly disabled. The objective of the process is to make favorable decisions in such cases within 20 days after the claim is received by the state disability determination agency. In addition, the rule eliminates the reconsideration step of the current appeals process by creating a new position − the Reviewing Official (RO) − to review state agency determinations upon the request of the claimant. Elimination of the reconsideration step is supported by the ABA.

Evans also commended SSA Commissioner Jo Anne B. Barnhart for retaining in the new rule the non-adversarial, de novo hearings before an administrative law judge (ALJ) appointed under the Administrative Procedure Act.

The final rule also includes a gradual shift from the current Appeals Council to a new Decision Review Board (DRB) to review ALJ determinations at the agency's request. Claimants who disagree with the ALJ determination may file a request for review in U.S. district court.

Evans noted that the ABA has not taken a position on whether the new rule should retain or eliminate the Appeals Council, but he said it is important for SSA to develop indicators to show if the DRB is working and to demonstrate if it has added value during the first year of operations. The same type of indicators also should be developed, he said, to see how the new position of the RO is operating.

During the hearing, Barnhart said the SSA will begin implementation in the Boston Region for claims filed on or after Aug. 1, 2006. After full implementation in this region − which includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont − the SSA will wait one year before expanding to other regions. ■

D.C. vote

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and the ideal, voiced by Thomas Jefferson, that governments 'derive their just powers from the consent of the governed.' "

It is particularly ironic, Evans noted, that American troops, some of whom are residents of the District of Columbia, have been fighting in Baghdad to give its citizens the right to vote in national legislative elections when similar rights are denied to citizens in our own capital. This "undermines the U.S. message of equality under the law," he said.

Evans said that the ABA concurs with the conclusion reached by other legal experts that Congress has the constitutional authority to provide voting representation in the House. That authority is granted by Article 1, Section 8, Clause 17, of the Constitution. The clause, known as the "District Clause," confers upon Congress the power "to exercise exclusive legislation, in all cases whatsoever, over such District...."

Opponents of the legislation contend that the Constitution requires that the District of Columbia, established as a federal district, should be treated differently from a state.

There has been no action scheduled on H.R. 5388 by the House Judiciary Committee.

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

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