

A Message from Section Chair, C. Elisia Frazier



I am honored to serve you as Chair of the Section of Individual Rights and Responsibilities. For nearly fifty years the Section has provided leadership to the legal profession in protecting and advancing human rights, civil liberties, and social justice.

The Section's theme this bar year is "More to Overcome: Civil Rights in the 21st Century." To usher in the new year, the Section will hold a first-of-its-kind CLE conference in Memphis, Tenn. on Oct. 21-23, 2010, addressing the ever-changing civil and human rights challenges we face in this country and abroad. We have selected exciting programs on a variety of issues that will inform and equip attendees with the knowledge and enthusiasm to return home and address these issues in their communities. We know a lot has been accomplished in the past forty years, but

our mission has not been fully achieved – we have miles to go before we rest. In addition to the fall meeting, the Section will hold three other meetings. A schedule of the meetings for 2010-11 is listed on page 8. Please note the dates and plan on joining us at one of the meetings.

This year also marks the 20th anniversary of the Thurgood Marshall Award and Dinner. Since 1992, the award has recognized the accomplishments of many giants of the legal profession – each of whom exemplified Justice Marshall's commitment to the causes of civil and human rights in this country. To commemorate the Award's remarkable history, each month the Section will profile a past award recipient on our website, highlighting his/her contributions to the advancement of civil rights, civil liberties, human rights, and social justice in the U.S. In addition, former clerks of Justice Marshall have agreed to reflect on their time with Justice Marshall. These reflections will also be published on our website. Finally, we will host a panel of past award recipients at the 2011 ABA Annual Meeting in Toronto to conclude the Section's series of discussions on "Debunking the Myth of a Post-Racial Society." I hope you will all mark your

calendars and plan to attend the panel discussion and the 20th anniversary Thurgood Marshall Award Dinner on Saturday, Aug. 6, 2011.

The Section is particularly proud of the work of its committees, through which we educate the public, cultivate ABA policy recommendations, and develop CLE programming. To ensure that our committees remain active and engaged, I have divided our existing committees into four divisions: the Civil Rights Division, led by **Katherine H. O'Neil** and **Mary L. Smith**; the Constitutional Rights Division, led by **Virginia E. Sloan**; the Individual and Group Rights Division, led by **Kylar W. Broadus**; and the Specialized Practice Division, led by **Seth Miller**. Each Division Director is an experienced member of the Section and the Association whose duty is to help his/her committees navigate the year ahead. I am honored to welcome our new Division Directors to the Section Council.

The Section is collaborating with other civil rights organizations and minority bar associations to increase awareness and provide solutions for the critical civil rights issues of the day. For example, we are working with the Lawyers' Committee for

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Section to Host Civil Rights Conference in Memphis, Tenn.



On Oct. 21-23, the Section will sponsor its first three-day civil rights CLE conference in Memphis, Tenn. The new conference format will combine CLE programming, governance, and networking opportunities in one meeting. To kick off the three-day meeting, **Memphis Mayor A.C. Wharton** will welcome conference participants at an opening ceremony at the Peabody Hotel. Other events will include a keynote

luncheon with an address by **U.S. Congressman Steve Cohen** (D-TN); a book signing and discussion with **D'Army Bailey**, author of *The Education of a Black Radical: A Southern Civil Rights Activist's Journey 1959-1964*; and a *Taste of Memphis* Dinner Dance to be held at the **National Civil Rights Museum** and featuring a sampling of local barbecue and live jazz and blues music.

Conference programming will feature three showcase programs followed by eight concurrent track programs on issues of civil rights, human rights, and constitutional law. The opening showcase, "Debunking the Myth of a Post-Racial Society," will feature **John Payton**, President and Director-Counsel of the NAACP Legal Defense Fund; **Bryan Stevenson**, founder and Executive Director of the Equal Justice

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Legislative Update

After a five-week recess, Congress resumed session on Sept. 13. With midterm elections just around the corner, it is unlikely that any major legislation will be considered in the month before Election Day; however, one issue that remains at the forefront of discussion is the expiration of the Bush tax cuts. President Obama's preferred plan would extend most of these reductions, allowing only those for individuals making more than \$200,000 and families making more than \$250,000 to expire. Most Republicans favor full extension of the tax cuts, while Democrats are divided on the issue—some favor a one-year full extension for stimulus reasons; others would like the cuts to expire.

On Sept. 9, U.S. District Court Judge Virginia A. Phillips of California ruled the military's "Don't Ask, Don't Tell" policy unconstitutional, calling it a facial violation of the First and Fifth Amendments. The pressure is on for Congress to take up the DADT issue before elections and to decide if the U.S. Department of Justice will repeal the decision. Sen. Kirsten Gillibrand (D-NY) called on the Senate to address DADT despite the short session: "I am confident that we can bring the repeal of 'don't ask, don't tell' up for a vote on the Senate floor in the coming weeks, and I urge all of my colleagues to abide by the oath we all took and end this policy that tears America's moral fabric and hurts our military readiness. I strongly hope that the ruling of this policy as unconstitutional will stand and that the Department of Justice will eventually choose not to appeal." On Sept. 13, Sen. Reid (D-NV) announced that he intends to bring the National Defense Authorization Act for Fiscal Year 2011, the defense authorization bill which contains a provision to repeal DADT, to the Senate floor in the following week. A Republican filibuster is anticipated.

fraud targeting seniors. The bill was referred to the House Committee on Energy and Commerce.

Election Law

On July 27, Sen. Baucus (D-MT) introduced SJ Res 36, proposing an amendment to the Constitution of the United States relative to authorizing regulation of contributions to candidates for state public office and federal office by corporations and labor organizations, and expenditures by corporate entities and labor organizations in support of, or opposition to, such candidates. The joint resolution was referred to the Senate Judiciary Committee.

Environmental Law

On July 15, Rep. Engel (D-NY) introduced H Res 1526, expressing support for the Energy and Climate Partnership of the Americas and its goal to encourage collaboration and cooperation among countries to address the energy and climate change challenges facing the Western Hemisphere. The resolution was referred to the House Committee on Foreign Affairs.

Children and Families

On Aug. 5, Sen. Klobuchar (D-MN) introduced S 3726, to enhance pre- and post-adoptive support services. The bill was referred to the Senate Committee on Finance.

On July 30, Rep. Edwards (D-TX) introduced HR 6027, to amend Title 18, United States Code, to protect youth from exploitation by adults using the Internet. The bill was referred to the House Committee on Oversight and Government Reform.

On July 22, Rep. Cooper (D-TN) introduced HR 5830, to provide for competitive grants for the establishment and expansion of programs that use networks of public, private, and faith-based organizations to recruit and train foster and adoptive parents and provide support services to foster children and their families. The bill was referred to the House Committee on Ways and Means.

Civil Rights/Constitutional Law

On Sept. 13, Sen. Reid (D-NV) introduced S 3772, to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex.

On Aug. 5, Sen. Barrasso (R-WY) introduced

S 3754, to provide funding for the settlement of lawsuits against the federal government for discrimination against black farmers and mismanagement of Native American trust accounts. The bill was referred to the Senate Committee on Finance.

Criminal Law

On July 15, Rep. Conyers (D-MI) introduced HR 5748, to eliminate racial profiling by law enforcement. The bill was referred to the House Judiciary Committee.

On July 1, Rep. Davis (D-IL) introduced HR 5688, to amend Title 18, United States Code, to provide a criminal penalty for torture committed by law enforcement officers and others acting under color of law. The bill was referred to the House Judiciary Committee.

On June 23, Rep. Maloney (D-NY) introduced HR 5575, to establish a grant program to benefit domestic minor victims of sex trafficking. The bill was referred to the House Judiciary Committee.

Elder Law

On July 27, Rep. Klein (D-FL) introduced HR 5884, to establish a separate office within the Federal Trade Commission to prevent

On July 15, Sen. Rockefeller (D-WV) introduced S 3597, to improve the ability of the National Oceanic and Atmospheric Administration, the Coast Guard, and coastal states to sustain healthy ocean and coastal ecosystems by maintaining and sustaining their capabilities relating to oil spill preparedness, prevention, response, restoration, and research. The bill was referred to the Senate Committee on Commerce, Science, and Transportation.

On June 22, Rep. Buchanan (R-FL) introduced HR 5572, to reform the Minerals Management Service and offshore drilling for oil and gas to repeal the limitation of liability of a responsible party for discharge of oil from an offshore facility. The bill was referred to the House Committee on Natural Resources.

On June 21, Sen. Begich (D-AK) introduced S 3514, to amend the Outer Continental Shelf Lands Act to prohibit a person from entering into any federal oil or gas lease or contract unless the person pays into an Oil Spill Recovery Fund, or posts a bond, in an amount equal to the total of the outstanding liability of the person and any removal costs incurred by, or on behalf of, the person with respect to any oil discharge

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Legislative Update

for which the person has outstanding liability. The bill was referred to the Senate Committee on Environment and Public Works.

Gun Control

On July 1, Rep. Moran (R-KS) introduced HR 5700, to protect the Second Amendment to the Constitution of the United States rights of members of the Armed Forces and civilian employees of the Department of Defense by prohibiting the Department from requiring the registration of privately owned firearms, ammunition, or other weapons not stored in facilities owned or operated by the Department of Defense, and by prohibiting the Department from infringing on the right of individuals to lawfully acquire, possess, own, carry, or otherwise use privately owned firearms, ammunition, or other weapons on property not owned or operated by the Department of Defense. The bill was referred to the House Committee on Armed Services.

Health Law

On Sept. 14, Rep. Baldwin (D-WI) introduced HR 6109, to amend the Public Health Service Act to require the Secretary of Health and Human Services (HHS) to ensure that each HHS health service program or HHS health survey provides, to the extent the Secretary determines appropriate and practicable, for the voluntary collection of data on the sexual orientation and gender identity of individuals who apply or receive health services through such program, or who respond to such survey. The bill was referred to the House Committee on Energy and Commerce.

On July 22, Sen. Gillibrand (D-NY) introduced S 3632, to provide for enhanced penalties to combat Medicare and Medicaid fraud, a Medicare data-mining system, and a Beneficiary Verification Pilot Program. The bill was referred to the Senate Committee on Finance.

On July 21, Rep. Woolsey (D-CA) introduced HR 5808, to amend the Patient Protection and Affordable Care Act to establish a public health insurance option. The bill was referred to the House Committee on Energy and Commerce.

On June 24, Rep. Lee (D-CA) introduced H Res 1478, supporting the goals and ideals of National HIV Testing Day. The resolution

was referred to the House Committee on Energy and Commerce.

On June 17, Sen. Murray (D-WA) introduced S 3504, to establish a public education and awareness program relating to emergency contraception. The bill was referred to the House Committee on Health, Education, Labor, and Pensions.

Housing Law

On July 22, Rep. Waters (D-CA) introduced HR 5814, to transform neighborhoods of extreme poverty by revitalizing distressed housing, to reform public housing demolition and disposition rules to require one for one replacement and tenant protections, to provide public housing agencies with additional resources and flexibility to preserve public housing units, and to create a pilot program to train public housing residents to provide home-based health services. The bill was referred to the House Committee on Financial Services.

International Law

On July 30, Rep. McCarthy (D-NY) introduced H Res 1599, to reaffirm support for Israel as a longtime friend, ally and strategic partner of the United States and Israel's right to defend itself. The resolution was referred to the House Committee on Foreign Affairs.

On July 22, Rep. Faleomavaega (D-AS) introduced H Res 1551, expressing the sense of the House of Representatives that the United States should promote respect for and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples consistent with U.S. law. The resolution was referred to the House Committee on Foreign Affairs.

On July 21, Rep. Royce (R-CA) introduced H Res 1548, condemning the recent violence against members of the media in the Philippines. The resolution was referred to the House Committee on Foreign Affairs.

On June 17, Sen. Feingold (D-WI) introduced S 3507, to amend the Atomic Energy Act of 1954 to require congressional approval of agreements for peaceful nuclear cooperation with foreign countries. The bill was referred to the Senate Committee on Foreign Relations.

Immigration Law

On Sept. 14, Sen. Kerry (D-MA) introduced S 3776, to provide for safe and humane policies and procedures pertaining to the arrest, detention, and processing of aliens in immigration enforcement operations. The bill was referred to the Senate Judiciary Committee.

On July 20, Rep. Burton (R-IN) introduced HR 5796, to withdraw federal funds from states and political subdivisions of states that interfere with enforcement of federal immigration law. The bill was referred to the House Judiciary Committee.

On July 19, Rep. Mitchell (D-AZ) introduced HR 5769, to amend the Immigration and Nationality Act to provide for the seizure and forfeiture of real property used or intended to be used in alien smuggling. The bill was referred to the House Judiciary Committee.

On July 15, Johanns (R-NE) introduced S 3593, to require the federal government to pay the costs incurred by a state or local government in defending a state or local immigration law that survives a constitutional challenge by the federal government in federal court. The bill was referred to the Senate Judiciary Committee.

On June 22, Sen. Franken (D-MN) introduced S 3522, to protect children affected by immigration enforcement actions. The bill was referred to the Senate Judiciary Committee.

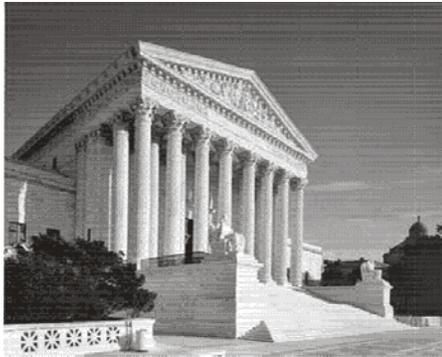
Indian Law

On Aug. 10, Rep. Pomeroy (D-ND) introduced HR 6100, to establish a commission to conduct a study and provide recommendations on a comprehensive resolution of impacts caused to certain Indian tribes by the Pick-Sloan Program. The bill was referred to the House Committee on Natural Resources.

On Aug. 5, Sen. Begich (D-AK) introduced S 3740, to supplement state jurisdiction in Alaska native villages with federal and tribal resources to improve the quality of life in rural Alaska while reducing domestic violence against Native women and children, as well as reducing alcohol and drug abuse. The bill was referred to the Senate Committee on Indian Affairs.

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Supreme Court Update



ABA Amicus Briefs

In an unusual move, the American Bar Association (ABA) filed amicus briefs in a federal court lower than the United States Supreme Court. The move was prompted by recently proposed Arizona legislation S.B. 1070, which makes it a crime for an alien to be in Arizona without carrying documentation that he or she is registered with the U.S. government. The bill also bars state or local officials or agencies from restricting enforcement of federal immigration law and penalizes those sheltering, hiring, and transporting illegal aliens. Critics of the bill have argued that enforcement of the law would encourage racial profiling. The ABA argues that S.B. 1070 is an attempt by Arizona to usurp exclusive federal authority to manage and supervise immigration law enforcement. In *Lozano v. Hazleton* (2010), the United States Court of Appeals for the Third Circuit struck down the Illegal Immigration Relief Act adopted in Hazleton, PA and held that it usurped the federal government's exclusive authority to regulate immigration. (Under the act landlords who rented to illegal immigrants would be fined, and companies that gave illegal immigrants jobs would be denied business permits). The mayor of Hazleton, Lou Barletta, plans to appeal the decision.

The ABA has also filed an amicus brief in *Abbott v. United States* No. 09-479; *Gould v. United States* No. 09-7073, consolidated cases raising the following questions:

No. 09-479: (1) Whether the term “any other provision of law” of 18 U.S.C. §924(c) includes the underlying drug trafficking offense or crime of violence; and (2) if not, whether it includes another offense for possessing the same firearm in the same transaction?

sentence provided by 18 U.S.C. §924(c)(1)(A) apply to a count when another count already carries a greater mandatory minimum sentence?

18 U.S.C. §924(c)(1)(A) provides in pertinent part: Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—(i) be sentenced to a term of imprisonment of not less than 5 years.

In his case, Abbott was convicted of four counts: conspiracy to possess with intent to distribute a controlled substance, possession of more than five grams of cocaine base, possession of a firearm in furtherance of a drug trafficking crime, and possession of a firearm by a convicted felon. The district court sentenced Petitioner Abbott to serve the fifteen year mandatory minimum sentence for violating the Armed Career Criminal Act because he had three previous convictions for violent felonies or serious drug offenses but also imposed the five year mandatory minimum sentence under Section 924(c) to run consecutively to the fifteen year sentence.

Petitioner Abbott argues that this is incorrect. He asserts that there should not be an additional 5 year sentence because the Armed Career Criminal Act provides the greater mandatory minimum sentence referenced in the “except” clause of §924(c)(1)(A) for carrying/using/possessing a firearm. Petitioner contends that there should be a plain reading of the statute. The “except” clause in 18 U.S.C. § 924(c) exempts defendants from the mandatory minimum sentences provided in § 924(c)(1) if those defendants receive a higher mandatory minimum sentence under either another subsection of §924(c) or “any other provision of law”. The “except” clause clearly encompasses any mandatory minimum sentences that are triggered by §924(c).

arguments in his case where he pled guilty to conspiracy to possess with intent to distribute a controlled substance (the quantity of drugs required a minimum sentence of 10 years) and possession of a firearm in furtherance of a drug trafficking crime. Gould also contends that because of 924(c)(1)(A)'s “except” clause and the 10 year minimum sentence required for the drug trafficking crime, the firearm crime is not subject to the five year minimum sentence under 18 U.S.C. 924(c)(1)(A)(i).

The American Bar Association agrees with petitioners in its brief. It contends that petitioner's construction of §924(c) supports congressional intent to impose a harsh penalty for a crime of violence or drug trafficking involving firearms that is at least the minimum required under section §924(c) while allowing courts to impose a greater sentence that is “otherwise provided by §924(c) or any other provision of law,” where warranted to achieve society's purposes.

Upcoming Arguments

The U.S. Supreme Court has heard or soon will hear a number of cases addressing issues relevant to the work of the Section:

In *National Aeronautics and Space Administration v. Nelson*, No. 09-530, the Court will decide whether the government violates a federal contract employee's constitutional right to informational privacy by (1) asking in the course of a background investigation whether the employee has received counseling or treatment for illegal drug use that has occurred within the past year and/or (2) asking the employee's designated references for any adverse information that may have a bearing on the employee's suitability for employment at a federal facility – when the employee's and reference's responses are used only for employment purposes, and the information obtained is protected under the Privacy Act, 5 U.S.C. §552a.

In *Snyder v. Phelps*, No. 09-751, the Court will decide: (1) Whether the prohibition of awarding damages to public figures to compensate for the intentional infliction of emotional distress, under the Supreme Court's First Amendment precedents, applies to a case involving two private persons regarding a private matter; (2)

No. 09-7073: Does a mandatory minimum Petitioner Gould proposes similar

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Supreme Court Update (cont.)

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whether the freedom of speech guaranteed by the First Amendment trumps its freedom of religion and peaceful assembly; and (3) whether an individual attending a family member's funeral constitutes a "captive audience" who is entitled to state protection from unwanted communication.

In *Skinner v. Switzer*, No. 09-9000, the Court will hear arguments on whether a convicted prisoner seeking access to biological evidence for DNA testing may assert that claim in a civil rights action under 42 U.S.C. § 1983, or whether such a claim may be asserted only in a petition for writ of *habeas corpus*.

In *Kasten v. Saint-Gobain Performance Plastics Corp.*, No. 09-834, the Court will consider if an oral complaint is a violation of the Fair Labor Standards Act protected

conduct under the anti-retaliation provision, 29 U.S.C. § 215(a)(3).

In *Sossamon v. Texas*, No. 08-1438, the Court will decide whether states and state officials may be subject to suit for damages for violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§2000cc to 2000cc-5.

In *United States v. Tohono O'odham Nation*, No. 09-846, the Court will decide whether 28 U.S.C. 1500 deprives the Court of Federal Claims of jurisdiction over a claim seeking monetary relief for the government's alleged violation of fiduciary obligations if the plaintiff has another suit pending in federal district court based on substantially the same operative facts, especially when the plaintiff seeks monetary relief or other overlapping relief in the two suits.

In *Flores-Villar v. United States*, No. 09-5801, the Court will decide whether Congress' decision to impose a shorter physical-presence requirement on unwed citizen mothers of foreign-born children than on fathers of foreign-born children through 8 U.S.C. 1401 and 1409 (1970) violates the Fifth Amendment's guarantee of equal protection.

In *Walker v. Martin*, No. 09-996, the Court will decide whether under state law in California, a prisoner may be barred from collaterally attacking his conviction when the prisoner "substantially delayed" filing his *habeas* petition. In federal *habeas corpus* proceedings, is such a state law "inadequate" to support a procedural bar because (1) the federal court believes that the rule is vague and (2) the state failed to prove that its courts "consistently" exercised their discretion when applying the rule in other cases?

Legislative Update (cont.)

National Security

On July 22, Rep. Ros-Lehtinen (R-FL) introduced H Con Res 303, recognizing the growing threat that al Qaeda and its affiliates in Africa, particularly al Shabaab and al Qaeda in the Islamic Maghreb, pose to the United States and its allies and interests. The resolution was referred to the House Committee on Foreign Affairs.

On July 15, Rep. Rangel (D-NY) introduced HR 5741, to require all persons in the United States between the ages of 18 and 42 to perform national service, either as a member of the uniformed services or in civilian service in furtherance of the national defense and homeland security, and to authorize the induction of persons in the uniformed services during wartime to meet end-strength requirements of the uniformed services. The bill was referred to the House Committee on Armed Services.

On July 1, Rep. Franks (D-MA) introduced HR 5675, to improve border security and to increase prosecutions and penalties for illegal entry into the United States, and to prevent and combat the smuggling of weapons of mass destruction into the United States. The bill was referred to the House Committee on Homeland Security.

Veteran Affairs

On July 29, Rep. Filner (D-CA) introduced

HR 5953, to direct the secretary of Veteran Affairs to display in each facility of the Department of Veteran Affairs a Women Veterans Bill of Rights. The bill was referred to the House Committee on Veterans' Affairs.

On July 26, Sen. Wyden (D-OR) introduced S 3650, to amend Chapter 21 of Title 5, United States Code, to provide that fathers of certain permanently disabled or deceased veterans shall be included with mothers of such veterans as preference-eligible for treatment in the civil service. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs.

On July 22, Rep. Israel (D-NY) introduced HR 5841, to authorize the secretary of Veterans Affairs to establish public-private partnerships for the treatment and research of post-traumatic stress disorder. The bill was referred to the House Committee on Veterans' Affairs.

On June 17, Rep. Foxx (R-NC) introduced HR 5555, to amend Title 38, United States Code, to provide for eligibility for housing loans guaranteed by the Department of Veterans Affairs for the surviving spouses of certain totally disabled veterans. The bill was referred to the House Committee on Veterans' Affairs.

Volunteers Needed for Election Protection 2010!

Election Protection is the nation's largest non-partisan voter protection coalition. It guides voters through the voting process, helping to ensure all eligible American citizens have the opportunity to cast a meaningful ballot and have that vote counted.

The ABA has been a co-sponsor of Election Protection since its inception in 2004, providing support to the legal effort led by the Lawyers' Committee for Civil Rights Under Law. Election Protection seeks the pro bono assistance of lawyers, law firms, bar associations, and corporate legal departments with many aspects of Election Protection 2010. Assistance is needed with local Legal Committees; staffing and hosting the national voter hotline; and preparing materials. Individual law firms and corporate legal departments may volunteer for one or all of the above.

To volunteer, visit the Election Protection website at <http://www.866ourvote.org/>.



Section Civil Rights Conference (cont.)

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Initiative; and **Gloria Browne-Marshall**, Associate Professor of Constitutional Law at John Jay College of Criminal Justice (CUNY) who will discuss the theory that the election of President Obama signaled the resolution of issues of race and ethnicity in the U.S.

“Speaking Freely, Living Securely: An Update on Freedom of Speech in the Post-9/11 Era,” will feature a panel discussion on the balance between national security and freedom of speech in light of the recent Supreme Court ruling, *Holder v.*

Humanitarian Law Project, and Congress’ extension of the USA Patriot Act.

A final showcase program, “Who Owns Your Genes?” will explore the legal rights of patients whose cells form the basis for medical research. The panel will examine two case studies: Henrietta Lacks, an African American woman dying of cervical cancer whose cells were removed during a routine biopsy and used in subsequent medical research around the world without compensation; and the Havasupai tribal citizens, whose blood samples were used for unauthorized genetic studies. Panelists will include **Stephen F. Hanlon**, Pro Bono counsel

to the Havasupai Tribe in their lawsuit against the university that conducted the genetic studies; and **Dr. Roland Matthews**, Chair of the Department of Obstetrics and Gynecology at The Morehouse School of Medicine.

Additional programming will focus on issues of the environmental and social impact of the recent BP oil spill; civil remedies for litigating human trafficking cases; racial discrimination in jury selection; and hate crimes/hate speech.

For more information about the Fall Conference, please visit the Section’s webpage at <http://www.abanet.org/irr>.

AIDS Committee to Hear Testimony on HIV and Criminal Law

A resurgent trend in the United States and abroad to impose criminal sanctions related to HIV disclosure and transmission has serious implications for HIV prevention. On October 18, 2010, from 9:00 a.m. to 3:00 p.m., the ABA AIDS Coordinating Committee, chaired by Shelley D. Hayes, of Washington, D.C., will conduct a day-long hearing to examine these implications under the headings, “Policymaker Perspectives on Criminalization”; “Personal Perspectives on Criminalization”; “Gender Perspectives on Criminalization”; and “Alternatives to Criminalization”.

The issue at the heart of the hearing is whether prosecuting a person who knows he or she is HIV-positive and has unprotected sex without disclosing that fact is an appropriate moral deterrent and an effective HIV prevention policy. Proponents argue that those who use HIV as a “deadly weapon” against unsuspecting partners deserve to be prosecuted, and that prosecutions and the threat of incarceration will deter others from such intentional or reckless behavior. Opponents counter that such a policy will deter individuals from getting tested for HIV, which is a key to prevention, while stigmatizing all HIV-positive people as potential criminals and thus encouraging non-disclosure. The Committee will explore these issues in-depth and produce an informational report for federal and state policymakers.

The hearing, to be held at The George Washington University Elliott School of International Affairs in Washington, D.C., is open to ABA members and the public, but space is limited. For more information, visit the AIDS Committee’s Web site at <http://www.abanet.org/AIDS>. To testify or to attend the hearing (lunch to be provided), contact the ABA AIDS Coordination Project at aidsproject@staff.abanet.org or 202/ 662-1025.

Section-Sponsored Marriage Equality Recommendation Becomes ABA Policy

During the 2010 ABA Annual Meeting, the ABA House of Delegates overwhelmingly passed Resolution 111, urging “state, territorial, and tribal governments to eliminate all of their legal barriers to civil marriage between two persons of the same sex who are otherwise eligible to marry.”

The Section-sponsored resolution was supported by 27 official co-sponsors representing a wide variety of ABA entities and state and local bar associations, including the New York State Bar, which served as one of the resolution’s two primary sponsors. Other co-sponsors included: the ABA GP Solo Division, the ABA Young Lawyers Division, the ABA Commission on Women in the Profession, the ABA Commission on Racial and Ethnic Diversity in the Profession, the Hispanic National Bar Association, and the National Asian Pacific American Bar Association.

According to the ABAJournal.com:

A lineup of ABA leaders, both past and present, spoke in favor of the resolution. Incoming ABA President Stephen Zack asked “Why would anyone in this country not want two people who love each other to enjoy the blessings of marriage and the protections of law?”

Former ABA President Tommy Wells told the House that “our citizens of the same sex who are being denied the right to a civil marriage are only seeking to participate in an equal basis in a foundational institution of our civil life. They simply want to

share in the legal blessings that we give to married couples. It can only strengthen marriage.”

The adoption of Resolution 111 could not have come at a more perfect time—just one week prior, U.S. District Court Chief Judge Vaughn Walker ruled California’s Proposition 8 unconstitutional because it violated the due process and equal protection clauses of the Fourteenth Amendment.

Resolution 111 builds upon many other Section-sponsored resolutions opposing discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons that have been adopted by the ABA House of Delegates, including:

- A 1989 resolution urging passage of statutes that prohibit discrimination on the basis of sexual orientation.
- A 1995 resolution opposing discrimination on the basis of sexual orientation in matters of child custody.
- A 2004 resolution opposing efforts to enact a federal constitutional amendment that would prohibit states from recognizing same-sex marriage.
- An August 2009 resolution urging repeal of Section 3 of the Defense of Marriage Act; DOMA section 3 denies federal marital benefits and protections to lawfully married same-sex spouses.

For a full copy of the report with recommendation, visit <http://www.abanet.org/irr/annual2010/Resolution111.pdf>.

20th ANNUAL THURGOOD MARSHALL AWARD

AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES



This ABA bar year marks the 20th Anniversary of the Thurgood Marshall Award and Dinner. Since 1992, the award has recognized the accomplishments of many giants of the legal profession – each of whom exemplified Justice Marshall's commitment to the causes of civil and human rights in this country.

To commemorate the Award's remarkable history, each month the Section will profile a past award recipient and highlight the

contributions of these men and women to the advancement of civil rights, civil liberties, human rights, and social justice in the U.S. Like Justice Marshall himself, these individuals are a testament to the power and impact for change that the legal profession has to offer.

Established by the American Bar Association and the Section of Individual Rights and Responsibilities in 1992, the

Thurgood Marshall Award honors U.S. Supreme Court Justice Thurgood Marshall, who epitomized individual commitment, in word and action, to the cause of civil rights in this country. The award recognizes similar long-term contributions by other members of the legal profession to the advancement of civil rights, civil liberties, and human rights in the United States.

See below for the first past recipient profile.

Judge Frank M. Johnson Jr., "Who Altered Forever the Face of the South" 1993 Thurgood Marshall Award Recipient



by Shelley D. Hayes

The South of fifty years ago looked very little like the states we see today. Back then, African American children went to separate schools that focused on courses in industrial training for boys and domestic work for girls. By law, African Americans lived in segregated neighborhoods without the amenities common in other neighborhoods. African American physicians were not permitted to practice in, or admit patients to, most hospitals. Not a single southern state was represented by an African American in the Congress of the United States.

The "New South" we see today owes much to the courage of Judge Frank M. Johnson Jr., the second recipient of the Thurgood Marshall Award. Through faithful application of the rule of law, Judge Johnson, first appointed to the federal bench by President Eisenhower in 1955, altered the course of history in the South and in the nation. Rosa Parks was the

African American woman who in 1955 refused to give her seat to a white rider thus sparking the Montgomery, Alabama, bus boycott and the modern civil rights movement. However, it was Judge Johnson - a son of Alabama - who one year later in *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), joined Judge Richard T. Rives on a three-judge panel in overturning the local law requiring segregation on that city's buses. It was the first of many rulings Judge Johnson authored or participated in where the court found racial segregation in public accommodations to be unconstitutional.

Perhaps most important, Judge Johnson gave real meaning to that cornerstone of our democracy, "one man, one vote." Between 1961 and 1965, he:

- invalidated plans by the city of Tuskegee to redraw city boundaries and, thus, dilute African American voting strength;
- ordered that African Americans be registered to vote if their application papers were equal to the performance of the least qualified white applicant accepted on the voting rolls;
- ordered the city of Montgomery to surrender its voting registration records to the United States Department of Justice; and
- required the State of Alabama to reapportion state legislative districts to adhere to the 'one man, one vote' principle.

Images of "Bloody Sunday" - March 7,

1965 - when state and local police attacked more than 500 civil rights marchers with billy clubs and tear gas as they sought to march from Selma to Montgomery have made it into high school text books. Along side those images should be a portrait of Judge Johnson who ordered Gov. George Wallace to permit that march, led by Dr. Martin Luther King Jr., to proceed. Just one week after those images were broadcast around the globe, on March 15, 1965, President Lyndon Baines Johnson presented a bill to a joint session of Congress: that bill later passed and became The Voting Rights Act of 1965.

Today, segregation in public accommodations, education, housing and transportation is illegal, thanks to Judge Johnson. In 2010, nearly all of the states comprising the pre-Civil War Confederacy are represented by at least one African American member in the United States Congress. "One man, one vote" has become a slogan of global significance as it resounds in campaigns worldwide. Through the courageous efforts of Frank M. Johnson Jr. the promise of equality for all moves closer to fulfillment in this country as it moves from aspiration to reality around the world.

"In discharging those duties, I have been guided throughout my 38 years on the federal bench by a single principle - the supremacy of law. It is the obligation of every judge to see that justice is done within the framework of the law. I have attempted to fulfill that obligation by applying the rule of law to the facts before me."

- Hon. Frank M. Johnson Jr.



Section of
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A Message from the Chair (cont.)

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Civil Rights Under Law on two projects: the Election Protection Program and the Prevent Loan Scams Campaign. Please visit our website at <http://www.abanet.org/irr> to learn more about the projects and how you can become involved. I encourage you to regularly check our website to learn about the Section's collaborative efforts, job opportunities, and other items of interest.

One need only turn on the television or pick up a newspaper to know that our work regarding civil rights and civil liberties is far from complete. I hope you will consider volunteering your time and expertise to help the Section balance the discussion on these important issues by actively participating with one of our committees or attending a Section meeting. Please feel free to contact me at anytime to share your ideas, concerns and suggestions. I am looking forward to a successful year and I thank you for your support and commitment to the Section.

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Upcoming Events

IRR Fall Conference

Oct. 21-23, 2010
Memphis, Tenn.

ABA Midyear Meeting

Feb. 9-15, 2011
Atlanta, Ga.

IRR Spring Council Meeting

Apr. 8-9, 2011
Washington, D.C.

ABA Annual Meeting

Aug. 5-10
Toronto, Canada