IRR NEWS REPORT

AMERICAN BAR ASSOCIATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

Equal Rights and Social Justice Are Everyone's Responsibility

2008 ABA Annual Meeting Preview

On August 7, thousands of attorneys will convene in New York City for the American Bar Association's 2008 Annual Meeting. ABA members and leadership, as well as representatives from other state, local and specialty bar associations will be present for the five-day conference, regarded as the premier gathering of legal professionals in the United States. Programming at the event will include over 200 CLE course offerings; numerous ABA entity meetings and award ceremonies; meetings of the House of Delegates and Board of Governors; and the ABA EXPO, showcasing a plethora of legal products and services. Section programming during the conference will include the Thurgood Marshall Award; a series of CLE and public panels on current topics; and ongoing meetings of the Section Council, committees and projects.

Highlighting the Section program schedule is the 16th annual **Thurgood Marshall Award Dinner**, during which **Judge Nancy Gertner** will be recognized for her decades of work to establish and defend individual rights. Judge Gertner, of the U.S. District Court for the District of Massachusetts, has built a legacy on the bench and earlier as an attorney through her advocacy and rulings in the areas of reproductive rights, school integration, wrongful conviction, and capital justice standards.

Those interested may purchase tickets for $150 per person via the Annual Meeting registration page, or using the form in the Annual Program insert included with this issue of the *News Report*. Table sponsorships of 10 or 20 seats are available at four levels of support. For information on sponsorship benefits, see page 5. Advance ticket orders and sponsorship requests must be made by July 11. Thereafter, tickets may be purchased at the door. Details about the Award Dinner and award history, as well as ticket and sponsorship forms, are available off of the Award Dinner website at http://www.abanet.org/irr/tmaward.

The Section will offer six programs during the conference, four of which will provide participants with CLE credit. Topics covered represent some of the most pressing issues in the individual rights field. For more information on Section programming and co-sponsored programs, please visit the Section website or refer to the July 2008 issue of the IRR E-Newsletter.

The advance registration and hotel reservation period ends on July 8. Registration forms received by Experient after July 8 will be held and processed on site after August 5. Hotel requests received after July 8 cannot be accommodated. Those who miss the advance registration deadline may sign up in person at the ABA Registration Centers located in the Hilton New York. For more information, visit http://www.abanet.org/annual/2008.

Section Leaders to Receive Honors

Four leaders of the Section of Individual Rights & Responsibilities have been recognized in the past months for their outstanding contributions to law. John Payton, Virginia Sloan, Neal Sonnett and Sarah Weddington have recently been or will soon be recognized for their career achievements.

Council member **John Payton** has been named the 2008 recipient of the D.C. Bar Association's own **Thurgood Marshall Award**. The D.C. Bar's Thurgood Marshall Award is presented biennially to an individual who has demonstrated excellence, dedication, and commitment to public interest law and have shown a strong commitment to and excellence in the fields of civil rights and individual liberties. The award was presented during the D.C. Bar's Annual Business Meeting and Awards Dinner on Thursday, June 26.

Special Counsel **Virginia Sloan** was named one of the "**90 Greatest Washington Lawyers of the Past 30 Years**" by Legal Times in the magazine's 30th Anniversary Special Issue, published the week of May 19. The article focuses on private practice, public interest, and career government attorneys, recognizing those included as "Visionaries," "Pioneers" and "Champions." Sloan is recognized as the latter, hailed primarily for her efforts as founder and director of The Constitution Project, a

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Opinion

The Lilly Ledbetter Fair Pay Act

Giving Employees the Tools They Need to Challenge Pay Discrimination

by Jocelyn Samuels

Just over one year ago, the Supreme Court issued its decision in *Ledbetter v. Goodyear Tire & Rubber Co.* – a decision that effectively eviscerates employees' ability to successfully challenge pay discrimination and distorts Congress's intent to eliminate sex and other forms of discrimination in the workplace. Under the Court's ruling, pay discrimination complaints are barred unless they are filed with the Equal Employment Opportunity Commission within 180 (or, in relevant states, 300) days of the date of an employee's first discriminatory paycheck – even when the employee continues to be subject to the wage discrimination. The holding ignores fundamental workplace realities, undermines the incentives Congress created to encourage employers to voluntarily comply with the law, and overturns decades of precedent that applied virtually everywhere in the country. For these reasons, the American Bar Association passed a resolution in August, 2007, calling on Congress to amend the federal anti-discrimination laws to overturn the *Ledbetter* decision.

Reflecting the principles underlying the ABA resolution, the U.S. House of Representatives promptly passed the Lilly Ledbetter Fair Pay Act, which reinstates prior law to make clear that compensation discrimination claims accrue whenever a discriminatory compensation decision or practice is adopted, when a person becomes subject to the decision or practice, or when a person is affected by the decision or practice, including whenever he or she receives a discriminatory paycheck. That legislation is currently pending in the Senate, which in April fell only three votes short of the 60 votes needed to proceed to debate on the bill. The prime Senate sponsor, Senator Edward M. Kennedy (D-MA), has vowed to continue to press for enactment of this critical legislation during this session of Congress.

At a time when women continue to make, on average, only 77 cents for every dollar paid to men – and when numerous cases attest to the pervasiveness of pay discrimination that continues to occur – it is essential that Congress act to restore the tools employees need to challenge pay discrimination against them. By authorizing pay claims to be filed based on the receipt of any discriminatorily reduced paycheck, the Lilly Ledbetter Fair Pay Act establishes a bright line rule – the "paycheck accrual rule" – to determine when compensation discrimination claims accrue. The Act codifies the only rule that ensures the effective protection of, and furthers the Congressional purposes behind, the anti-discrimination laws.

- **The Act serves Congress's goals of eliminating discrimination in the workplace and promoting voluntary compliance.** Because the Act states that each discriminatory paycheck, rather than simply the original decision to discriminate, triggers a new claim filing period, employers have a strong incentive to regularly evaluate their pay scales and address any discriminatory pay practices. The Act thus eliminates the incentive created by the *Ledbetter* decision for employers to conceal discrimination for 180 days and then be insulated from any challenge.

- **The Act ensures that employers do not benefit from discrimination.** The *Ledbetter* decision provides employers whose compensation decisions are not challenged within 180 days a financial windfall with every discriminatory paycheck that they issue thereafter. The Act corrects this problem by ensuring that employers are not immunized from challenges to ongoing discrimination.

- **The Act responds to workplace realities.** Compensation discrimination differs from other types of discrimination because of the general secrecy surrounding payroll information in the workplace. Few employees have concrete information about the decisions underlying their own compensation, let alone the compensation of their coworkers. And unlike other forms of discrimination, paychecks are not announced, or treated by employees, as adverse employment actions. As a result, an employee may experience compensation discrimination for a long time before he or she is aware of it. Moreover, pay disparities which start small – and which employees may thus be loathe to challenge initially -- are likely to accumulate over time, as percentage raises, bonuses, and retirement contributions are based on a reduced platform. The Act takes account of these realities.

- **The Act allows employees to assess the validity of their claims before challenging compensation discrimination.** The Act sets the right balance between premature and stale claims. Employees have every incentive to challenge compensation discrimination as promptly as possible. But under the Act, employees will be able to take the time to evaluate and confirm that they have been subject to discrimination without forfeiting their right to file a charge. Without such a rule, employees may be forced to file charges preemptively – a result that serves neither employees nor employers.

- **The Act provides a clear and familiar way to evaluate the timeliness of compensation discrimination claims.** The Act simply restores prior law, which had been applied by the EEOC and nine of the ten federal courts of appeals to have considered the issue before the *Ledbetter* decision. In addition, both employers and employees benefit from the certainty created by the rule, which ensures that both plaintiffs and defendants will be able readily to determine the timeliness of claims without protracted litigation.

In April of this year, the Senate voted on a motion to proceed to consideration of the

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Legislative Update

Two pieces of legislation recently dominated Congressional news. The Military Construction and Veterans Affairs and Related Agencies Appropriations (H.R. 2642) Act allocates more than $250 billion over ten years to defense spending, as well as numerous domestic projects. The Food, Conservation, and Energy Act of 2008 (H.R. 6124) provides for $307 billion in agricultural subsidies and support over the next five years. Both bills have stirred partisan controversy in the legislature.

Introduced by Rep. Edwards (D-TX) and passed by the House of Representatives in June 2007, the defense bill allocates approximately $165 billion in funding for the wars in Iraq and Afghanistan. The Senate version of the bill incorporates, among other items, an amendment by Sen. Webb (D-VA) allocating $51 billion in new veterans' educational benefits. Some Republican lawmakers objected to this and other domestic spending amendments, and President Bush previously threatened to veto any war spending measure that exceeded his $108 billion request. Passed by the Senate on May 22, the bill will be sent back to the House for consideration as amended.

On May 22, both houses of Congress voted to override the presidential veto of H.R. 6124, commonly referred to as "the farm bill." Included in the measure is approximately $10 billion in additional spending on food stamps and other nutritional assistance programs. A provision in the bill would also give right to action for approximately 75,000 African-American farmers who missed the claims deadline in the 1999 settlement of a class-action discrimination suit against the USDA. The farm bill's critics, a group that includes President Bush and a small number of Republican as well as Democratic legislators, argue that agricultural subsidies contribute significantly to the rising cost of food.

Other legislation of particular interest to the Section is described on the following pages.

Children/Families

On May 22, the Senate passed S. 1965, to protect children from cyber crimes, including crimes by online predators, to enhance efforts to identify and eliminate child pornography, and to help parents shield their children from material that is inappropriate for minors. The legislation, introduced by Sen. Stevens (R-AK), was sent to the House of Representatives on June 3, where it was assigned to the Committee on Energy and Commerce.

On June 6, Sen. Casey (D-PA) introduced S. 2980, to amend the Child Care and Development Block Grant Act of 1990 to improve access to high quality early learning and child care for low-income children and working families. The legislation was assigned to the Senate Committee on Health, Education, Labor, and Pensions.

Civil Rights/Constitutional Law

On May 21, the president signed into law H.R. 493, the Genetic Information Nondiscrimination Act of 2008. Introduced by Rep. Slaughter (D-NY), the law prohibits discrimination on the basis of genetic information with respect to health insurance and employment.

On May 21, Rep. Frank (D-MA) introduced H.R. 6115, to amend Title 1, United States Code, to eliminate any federal policy on the definition of marriage. The legislation was assigned to the House Committee on the Judiciary.

Criminal Law

On June 6, Rep. Weiner (D-NY) introduced H.R. 5981, to reauthorize certain DNA-related grant programs under the Justice For All Act of 2004. The bill was assigned to the House Committee on the Judiciary.

On May 15, the Senate Committee on the Judiciary approved S. 1515, to establish a domestic violence volunteer attorney network to represent domestic violence victims. The legislation, introduced by Sen. Biden (D-DE), has been placed on the calendar of business to be considered by the Senate. If enacted, the legislation would allocate $16 million in funding to the ABA's Commission on Domestic Violence to solicit, train, and organize attorneys into a central network. On May 25, 2007, then ABA Governmental Affairs Acting Director Denise A. Cardman sent a letter in support of the legislation.

On May 14, Rep. Schiff (D-CA) introduced H.R. 6060, to amend Title 18, United States Code, to enable increased federal prosecution of identity theft crimes and to allow for restitution to victims of identity theft. The bill was assigned to the House Committee on the Judiciary.

Education

On May 13, the President signed S. 2929, to temporarily extend the programs under the Higher Education Act of 1965. The legislation, introduced by Sen. Kennedy (D-MA), was passed by the House of Representatives on May 6 and by the Senate on May 7.

On May 7, the President signed H.R. 5715, to ensure continued availability of access to the federal student loan program for students and families. The legislation, introduced by Rep. Miller (D-CA), was passed by the Senate on April 30 and by the House of Representatives on May 1.

Elder Law

On May 22, Sen. Smith (R-OR) introduced S. 3053, to amend Title XI of the Social Security Act to provide grants for eligible entities to provide services to improve financial literacy among older individuals. The legislation was assigned to the Senate Committee on Finance.

Election Law

On May 22, Sen. Cornyn (R-TX) introduced S. 3073, to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of absentee ballots of absent overseas uniformed services voters. The legislation was assigned to the Committee on Rules and Administration.

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Supreme Court Update

On June 12, in **Boumediene v. Bush**, No. 06-1195; **Al Odah v. United States**, No. 06-1196, the Court held 5-4 (opinion by Kennedy; dissenting opinion by Roberts, C.J.) that petitioners -- aliens detained at the U. S. Naval Station at Guantanamo Bay, Cuba, after being cap-tured in Afghanistan or elsewhere abroad and designated "enemy combatants" by the Department of Defense Combatant Status Review Tribunals (CSRTs) -- have the constitutional privilege of habeas corpus and are not barred from seeking the writ or invoking the Suspen-sion Clause's protections because they have been designated as enemy combatants or because of their presence at Guantanamo.

In *Hamdi v. Rumsfeld*, 542 U. S. 507, 518, 588–589, five Justices recognized that detaining individuals captured while fighting against the United States in Afghanistan for the duration of that conflict was a funda-mental and accepted incident to war. Thereafter, the Defense Department established CSRTs to determine whether individuals detained at Guantanamo were "enemy combatants." Denying membership in the al Qaeda terror -ist network that carried out the September 11 attacks and the Taliban regime that supported al Qaeda, each petitioner sought a writ of habeas corpus in the District Court, which ordered the cases dis-missed for lack of jurisdiction because Guantanamo is outside sover-eign U.S. territory. The D.C. Circuit affirmed, but the Supreme Court re-versed, holding that 28 U.S.C. §2241 extended statutory habeas jurisdiction to Guantanamo. See *Rasul v. Bush*, 542 U. S. 466, 473. Petitioners' cases were then consolidated into two proceedings. In the first, the district judge granted the Government's motion to dismiss, holding that the detainees had no rights that could be vindi-cated in a habeas action. In the second, the judge held that the de-tainees had due process rights.

While appeals were pending, Congress passed the Detainee Treat-ment Act of 2005 (DTA), §1005(e) of which amended 28 U.S.C. §2241 to provide that "no court, justice, or judge shall have jurisdiction to . . . consider . . . an application for . . . habeas corpus filed by or on behalf of an alien detained . . . at Guantanamo," and gave the D.C. Circuit "exclusive" jurisdiction to review CSRT decisions. In *Ham-dan v. Rumsfeld*, 548 U. S. 557, 576–577, the Supreme Court held this provi-sion inapplicable to cases (like petitioners') pending when the DTA was enacted. Congress responded with the Military Commissions Act of 2006 (MCA), §7(a) of which amended §2241(e)(1) to deny jurisdic-tion with respect to habeas actions by detained aliens determined to be enemy combatants, while §2241(e)(2) denies jurisdiction as to "any other action against the United States . . . relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement" of a detained alien determined to be an enemy combatant. MCA §7(b) provides that the 2241(e) amendments "shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after [that] date . . . which relate to any as-pect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained . . . since September 11, 2001."

The D.C. Circuit concluded that MCA §7 must be read to strip from it, and from all federal courts, jurisdiction to consider petitioners' ha-beas applications; that petitioners are not entitled to habeas or the protections of the Suspension Clause, U. S. Const., Art. I, §9, cl. 2, which provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it"; and that it was therefore unneces-sary to consider whether the DTA provided an adequate and effective substitute for habeas.

In reviewing this ruling, the Supreme Court explained that the Suspension Clause is designed to protect against cycli-cal abuses of the writ by the Executive and Legislative Branches. It protects detainee rights by a means consistent with the Constitu-tion's essential design, ensuring that, except during periods of formal suspension, the Judiciary will have a time-tested device, the writ, to maintain the "delicate balance of governance." Separation-of-powers principles, and the history that influenced their design, inform the Clause's reach and purpose.

The Court rejected the Government's argument that the Clause affords petitioners no rights because the United States does not claim sovereignty over Guantanamo. While not questioning that Cuba maintains sovereignty, in the legal and technical sense, over Guantanamo, it did not accept the Government's premise that de jure sovereignty is the touchstone of habeas jurisdiction, noting that common-law habeas' history provides scant support for this proposition and that it is inconsistent with the Court's precedents and contrary to fundamental separation-of-powers principles. It concluded further that extraterritoriality questions turn on objective factors and practical concerns, not formalism. The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, but not the power to decide when and where its terms apply. To hold that the political branches may switch the Constitution on or off at will would lead to a regime in which they, not the Court, say "what the law is." *Marbury v. Madison*, 1 Cranch 137, 177.

Petitioners have met their burden of establishing that the DTA review process is, on its face, an inadequate substitute for ha -beas. Among the constitutional infirmities from which the DTA po-tentially suffers are the absence of provisions allowing petitioners to challenge the President's authority under the AUMF to detain them indefinitely, to contest the CSRT's findings of fact, to supplement the record on review with exculpatory evidence discovered after the CSRT proceedings, and to request release. The statute cannot be read to contain each of these constitutionally required procedures. MCA §7 thus effects an unconstitutional suspension of the writ.

In considering both the procedural and substantive standards used to impose detention to prevent acts of terrorism, the courts must accord proper deference to the political branches. However, security subsists, too, in fidelity to freedom's first principles, chief among them being freedom from arbitrary and unlawful restraint and the personal liberty that is

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AIDS Coordinating Committee Hosts Successful AIDS Law Conference

The ABA AIDS Coordinating Committee hosted a national conference, *HIV/AIDS Law and Practice: From Local Client to Global Workforce*, on Apr. 9 and 10, 2008, at the Hilton Anatole Hotel in Dallas, Tex.

Participants ranged from federal officials (Chris Cagle, Ph.D., U.S. Centers for Disease Control & Prevention; Henry Francis, M.D., U.S. Food & Drug Administration; Francis E. Ashe-Goins, R.N., M.P.H., U.S. Department of Health and Human Services; and Rear Admiral Deborah Parham-Hopson, Ph.D., U.S. Public Health Service, U.S. Department of Health and Human Services) to international human rights activists (Joanne Csete, Firelight Foundation and Jonathan Cohen, Open Society Institute, both formerly with Human Rights Watch).

Despite disruptions caused by airline cancellations and severe storms, nearly 100 participants convened for this year's conference to discuss cutting-edge AIDS law issues in a two-track program -- one for HIV lawyers and policy advocates; the other, for business lawyers and executives. Topics included, among many others, "HIV in the Workplace: Global Demographics in 2008 and Beyond"; "Employees with HIV: Are Your Clients Ready?"; "Employer Obligations to HIV-positive Employees"; and "Human Rights and HIV/AIDS".

Conference materials are available on the Committee's website at http://www.abanet.org/AIDS/conferences/2008/materials.html.

Section Begins LGBT Domestic Violence Project and Holds Exploratory Summit

In April 2008, the American Bar Association (ABA) hosted an historic meeting of leaders from the domestic violence; lesbian, gay, bisexual, and transgendered (LGBT); criminal justice; legal; judicial; and advocacy communities to identify the most crucial and immediate legal needs of LGBT victims of domestic violence and to develop an action agenda to inform the ABA's LGBT domestic violence project. Nearly 50 representatives from across the country participated in two days of structured discussion about legal remedies for LGBT domestic violence victims and about non-legal challenges practitioners may face in representing these communities.

The invitational summit was part of an ABA Enterprise Fund grant awarded to the ABA Section of Individual Rights and Responsibilities, the Commission on Domestic Violence, and the Criminal Justice Section to develop training and education for lawyers and advocates who represent LGBT victims of domestic violence.

Domestic violence is a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation and emotional, sexual or economic abuse to control the other partner in the relationship. The violence is not defined by physical acts, rather it is a combination of factors that impact the entire family, community, and workplace. The victim and perpetrator may be married or unmarried; heterosexual, gay or lesbian, bisexual or transgender; living together, separated or dating. In fact, more than 4 in every 10 incidents of domestic violence involves non-married persons.

Although research regarding the rates of domestic violence in LGBT relationships is not extensive, studies indicate that as many as 46% of lesbian and gay men report abuse by a current or former partner. In 2003, the National Coalition of Anti-Violence Programs conducted a survey of its member organizations and affiliated programs and reported 6,523 LGBT domestic violence incidences in eleven cities and regions in the U.S. and Toronto, Ontario. Other studies have shown that 20% to 35% of men and women in gay and lesbian relationships experience domestic violence. These studies indicate that the rates of domestic violence in LGBT relationships are the same as those in heterosexual relationships. Nonetheless, LGBT victims of domestic

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Section Leaders to Receive Honors

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bipartisan nonprofit that seeks consensus solutions to difficult legal and constitutional issues.

Chair-elect **Neal Sonnett** will be presented with the 2008 **John H. Pickering Award of Achievement** during the 2008 ABA Annual Meeting. Presented by the ABA Senior Lawyers Division, the award honors individuals who have demonstrated outstanding legal ability and a distinguished record of service to the profession and their communities, resulting in significant contributions to improving access to justice for all. A dinner will be held in his honor on Friday, August 8, 2008, at 7:30 p.m. at the New York Athletic Club in New York City. Tickets are available for $125 per person, and may be purchased through the Annual Meeting online registration page.

Council member **Sarah Weddington** has been named a recipient of the **Margaret Brent Women Lawyers of Achievement Award**, presented by the ABA Commission on Women in the Profession. Established in 1991, the award honors outstanding women lawyers who have achieved professional excellence in their area of specialty and have actively paved the way to success for others. It is named for Margaret Brent, the first female attorney in the United States. The award luncheon will take place on Sunday, August 10, from 11:30 p.m. to 1:00 p.m. at the Sheraton New York Metropolitan Ballroom. Tickets for this event are also available via the Annual Meeting registration page at $125 each.

If you know someone who is going to be recognized for his or her legal or career accomplishments, please let us know! Email the Section at irr@abanet.org and we will publish an announcement in IRR News Report, in the E-Newsletter and/or on the Section website.

Supreme Court Update

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secured by adherence to the separation of powers.

On June 12, in **Munaf v. Geren**, No. 06-1666; **Geren v. Omar**, 07-394, the Court held unanimously (opinion by Roberts, C.J.) that a federal court has the jurisdiction to entertain a petition for writ of habeas corpus from an American citizen detained abroad by the United States military even if the military is part of a multinational force acting pursuant to international authority and not solely United States authority. However, the federal court may not exercise its habeas jurisdiction to enjoin the United States from transferring individuals alleged to have committed crimes and detained within the territory of a foreign sovereign to that nation's government for criminal prosecution.

The Multinational Force–Iraq (MNF–I) is an international coalition force composed of 26 nations, including the United States. It oper-ates in Iraq under the unified command of U.S. military officers, at the Iraqi Government's request, and in accordance with United Na-tions Security Council Resolutions. Pursuant to the U. N. mandate, MNF–I forces detain individuals alleged to have committed hostile or warlike acts in Iraq, pending investigation and prosecution in Iraqi courts under Iraqi law.

Shawqi Omar and Mohammad Munaf are American citizens who voluntarily traveled to Iraq and allegedly committed crimes there. They were each captured by military forces operating as part of the MNF–I; given hearings before MNF–I Tribu-nals composed of American officers, who concluded that petitioners posed threats to Iraq's security; and placed in the custody of the U.S. military operating as part of the MNF-I.

Family members filed next-friend habeas corpus petitions on behalf of both petitioners in the United States District Court for the District of Columbia. In Omar's case, after the Department of Justice informed Omar that the MNF–I had decided to refer him to the Central Criminal Court of Iraq for criminal proceedings, his attorney sought and ob-tained a preliminary injunction from the District Court barring Omar's removal from United States or MNF-I custody. Affirming, the D. C. Circuit first upheld the District Court's exercise of habeas jurisdiction, finding that *Hirota v. MacArthur*, 338 U. S. 197, did not preclude review because Omar, unlike the habeas petitioners in *Hirota*, had yet to be convicted by a foreign tribunal.

Meanwhile, the District Court in Munaf's case dismissed his habeas petition for lack of jurisdiction. The court concluded that *Hirota* controlled and required that the petition be dismissed for lack of ju-risdiction because the American forces holding Munaf were operating as part of an international force—the MNF-I. The D. C. Circuit agreed and affirmed. It distinguished its prior decision in Omar, which upheld jurisdiction over Omar's habeas petition, on the grounds that Munaf had been convicted by a foreign tribunal while Omar had not.

The United States Supreme Court granted certiorari and held that the habeas statute extends to American citizens held overseas by American forces operating subject to an American chain of com-mand. The Government's argument that the federal courts lack ju-risdiction over the detainees' habeas petitions in such circumstances because the American forces holding Omar and Munaf operate as part of a multinational force was rejected.

The Court also rejected the Government's contention that the District Court lacks jurisdiction in these cases because the multinational character of the MNF–I, like the multinational character of the tribunal at issue in *Hirota*, means that the MNF-I is not a United States entity subject to habeas. The present cases differ from *Hirota* in several respects. The Government successfully argued in *Hirota* that General MacArthur was not subject to United States authority, that his duty was to obey the Far Eastern Commission and not the U. S. War Department, and that no process this Court could issue would have any effect on his action. Here, in contrast, the Government acknowledges that U.S. military commanders answer to the President. These cases also differ from Hirota in that they concern American citizens, and the Court has indicated that habeas jurisdiction can de¬pend on citizenship. See e.g., Johnson v. Eisentrager, 339 U. S. 763, 781.

The Court further held, however, that Federal district courts may not exercise their habeas jurisdiction to enjoin the United States from transferring individuals alleged to have committed crimes and detained within the territory of a foreign sovereign to that sovereign for criminal prosecution because petitioners state no claim in their habeas petitions for which relief can be granted, their habeas petitions should have been promptly dismissed, and no injunction should have been entered.

LGBT Domestic Violence Project

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violence have been largely underrepresentated by domestic violence service providers, including legal service providers.

Lack of Legal Services for LGBT Victims of Domestic Violence

Currently, there are no domestic violence shelters – the primary form of assistance for heterosexual female victims of domestic violence – exclusively for LGBT victims of domestic violence in the U.S. and less than a handful of attorneys whose practice is devoted entirely to providing legal assistance to LGBT victims of domestic violence. This lack of dedicated legal services is particularly disturbing because the legal system provides one of the most effective tools available to victims of domestic violence to ensure their safety and to reduce violence. Moreover, in most jurisdictions, LGBT survivors are eligible for civil and criminal protections from domestic violence. However, without well-trained attorneys to provide accessible legal services to LGBT victims, these protections go unused.

The primary goals of the ABA LGBT domestic violence project are to provide increased legal resources to LGBT domestic violence victims and to raise awareness about this issue. For more information about the project visit www.abanet.org/irr/enterprise/lgbt/.

Legislative Update

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On May 1, Sen. Feingold (D-WI) introduced S. 2659, to amend the Help America Vote Act of 2002 to require states to provide for voter registration on election days. Rep Ellison (D-MN) introduced an identical bill, H.R. 5946), to the House of Representatives. The Senate legislation was assigned to the Senate Committee on Homeland Security and Government Affairs, while its counterpart was assigned to the House Committee on House Administration.

Health Law

On May 13, Rep. Velázquez (D-NY) introduced H.R. 6033, to promote training and employment for public housing residents in home-based health services so such residents can provide Medicaid-covered home-based health services to elderly and disabled persons receiving public housing assistance from the Department of Housing and Urban Development. The legislation was assigned to the House Committees on Financial Services, Ways and Means, and Energy and Commerce.

Housing/Homelessness

On May 2, Sen. Reid (D-NV) introduced S. 3975, to provide additional funds for affordable housing for low-income seniors, disabled persons, and others who lost their homes as a result of Hurricanes Katrina and Rita. The legislation was assigned to the Senate Committee on Banking, and the Committee on Housing and Urban Affairs.

Immigration Law

On May 13, Sen. McGovern (D-MA) introduced H.R. 6034, to amend the Immigration and Nationality Act to provide for relief to surviving spouses and children. The legislation was assigned to the House Committee on the Judiciary.

On May 13, Rep. Lofgren (D-CA) introduced H.R. 6039, to amend the Immigration and Nationality Act to authorize certain aliens who have earned a master's or higher degree from a United States institution of higher education in a field of science, technology, engineering, or mathematics to be admitted for permanent residence. The legislation was assigned to the House Committee on the Judiciary.

On May 12, Sen. Menendez (D-NJ) introduced S. 3005, to require the Secretary of Homeland Security to establish procedures for the timely and effective delivery of medical and mental health care to all immigration detainees in custody. The legislation was assigned to the Senate Committee on the Judiciary.

International Law

On May 15, the House of Representatives passed H.R. 5834, the North Korean Human Rights Reauthorization Act of 2008. The legislation, introduced by Rep. Ross (R-FL), will go on to the Senate for consideration. If passed, the bill would amend the North Korean Human Rights Act of 2004 to authorize appropriations through 2012 for programs to promote human rights in North Korea, and to provide assistance to North Korean expatriates.

On May 22, Sen. Biden (D-DE) introduced S. 3061, to authorize appropriations for fiscal years 2008 through 2011 for the Trafficking Victims Protection Act of 2000, to enhance measures to combat trafficking in persons. The legislation was assigned to the House Committee on the Judiciary.

On May 14, Rep. Delahunt (D-MA) introduced H.R. 6054, to establish a United States Human Rights Commission to monitor compliance by the United States with international human rights treaty obligations. The legislation was assigned to the House Committee on Foreign Affairs.

Native Law

On May 22, the Senate passed S. 2062, to amend and reauthorize the Native American Housing Assistance and Self-Determination Act of 1996. A companion bill, H.R. 2786, was passed by the house on Sept. 6, 2007. The legislation, introduced by Sen. Dorgan (D-ND), would reauthorize block grants and housing assistance programs for American Indians and Alaska Natives. One of the bills must pass both chambers of Congress before either can be presented to the President for signing.

Opinion: The Lilly Ledbetter Fair Pay Act

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Lilly Ledbetter Fair Pay Act. To overcome the threat of a filibuster, the Senate needed 60 votes to invoke cloture – or, in other words, to proceed to debate on the merits of the bill. While the final tally fell three votes short of the number needed to proceed, the fact that 57 Senators voted to move to debate on the bill was an extremely strong showing. (The final tally of 56-42 reflected the fact that Senate Majority Leader Harry Reid (D-NV) changed his vote in favor of proceeding for procedural reasons; Senators John McCain (R-AZ) and Chuck Hagel (R-NE) missed the vote.) Advocates are continuing to work to educate Senators and the public about the need for and merits of the Act, and are calling on the Senate to schedule another vote on the bill this session.

If the Senate does succeed in moving to debate on the Act, amendments to weaken the bill may be proposed during the floor consideration of it. In addition, the Office of Management and Budget has issued a Statement of Administration policy noting that senior advisors to President Bush would recommend that he veto the bill if it passes through Congress. But the fact that a strong bipartisan majority of Congress has signaled its support for the Act – and that the public consistently ranks equal pay as one of the most significant issues facing women and their families -- demonstrates that prospects for ultimate enactment of the bill remain strong. Enacting the Lilly Ledbetter Fair Pay Act is a fitting tribute as, this June, we mark the 45th anniversary of the Equal Pay Act and the 44th anniversary of the vote to break the filibuster on the Civil Rights Act of 1964 – and a critical first step in moving the country toward the still elusive promise of equal pay for equal work.

Jocelyn Samuels is Vice President for Education and Employment at the National Women's Law Center, where she focuses on barriers to the advancement of women and girls at school and in the workplace.

Upcoming Events

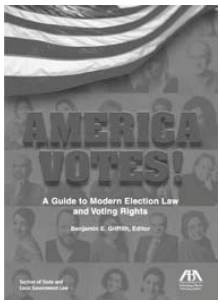
ABA Annual Meeting
Aug. 7-12, 2008
Hilton New York
New York, NY

Thurgood Marshall Award Dinner
August 9, 2008
Hilton New York
New York, NY

NLGLA Lavender Law Conference
Sept. 4-6, 2008
Hyatt Regency Embarcadero
San Francisco, CA

National Training Institute on Civil Legal Remedies for Victims of Human Trafficking
Oct. 2-3, 2008
Washington, DC

America Votes! - A Comprehensive Guide to Election Law



Lawyers, law school professors, election officials, state and local government personnel involved in election administration, election workers and poll workers alike will benefit from this book, which provides a snapshot of America's voting and electoral practices, problems, and most current issues. Edited and written by widely knowledgeable practitioners, the book explores a variety of fundamental areas concerning election law such as: lessons learned from the 2000 and 2004 presidential elections; the Help America Vote Act of 2002; voter equality; language assistance provisions of the Voting Rights Act; the role of election officials; legal aspects of voting technology; and demographic and statistical experts in election litigation.

America Votes! is available for purchase on the ABA Web Store. Those interested may also order a copy by calling the ABA Service Center at 1-800-285-2221.

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