



Equal Rights and
Social Justice Are
Everyone's
Responsibility

IRR NEWS REPORT

AMERICAN BAR ASSOCIATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

Drinan Award, CLE Programs Highlight Midyear Agenda

Thousands of lawyers from across the country will gather in Los Angeles for the ABA Midyear Meeting from Feb. 6 through 12. Headlining the various Section events is the presentation of the annual Father Robert F. Drinan Distinguished Service Award. The Section also will present two CLE programs, give a pro bono presentation to students from South Central Los Angeles, and sponsor a recommendation before the House of Delegates.

On Friday, Feb. 8, Martha Barnett will receive the Section's 2008 Father Robert F. Drinan Distinguished Service Award for her contributions to the Section and the ABA as a whole. Barnett, a former ABA President and past IRR Section Chair, is currently a partner at the law firm of Holland & Knight, where she continues to make significant contributions to the law in the areas of health, public policy, and sustainable development.

The Section's CLE programming will include a Feb. 8 program spon-



sored by the Committee on Sexual Orientation and Gender Identity entitled, *The Constitutionality of Denying Federal Rights and Protections to Married Same-Sex Couples*. On Feb. 9, the Committee on the Rights of Women will present *Hot Topics in Title IX and How You Can Get Involved*, which will examine high-profile Title IX student and athlete litigation in California and discuss broader national trends in this area of the law.

On Saturday, Feb. 9, the Public Education Committee will host a panel presentation for high school students from the South Central Gifted Scholars Program, which works with disadvantaged, highly motivated, inner-city students to help them succeed in college and graduate school, develop their full

potential as professionals, and become future leaders within their communities.

During the meeting of the House of Delegates, the Section will present a recommendation seeking to help safeguard the separation of church and state in public schools. Submitted by the Committee on Public Education, the recommendation calls for increased diligence and effort by school officials to avoid and prevent endorsement or promotion of religion on school grounds while also affording students and teachers reasonable accommodation of religious practice and belief.

In addition to these events, the Section will hold its Winter Council meeting on Feb. 8 and 9. The *Human Rights* Editorial Board and the Death Penalty Moratorium Project will each hold a meeting during the conference.

For more information on the Midyear Meeting schedule, please visit our website (www.abanet.org/irr).

ABA Response to Pakistan Crisis	2
Supreme Court Update	3
Sarah Weddington: Roe v. Wade at 35	4
Legislative Update	6
Upcoming Events	8

Death Without Justice

A Guide for Examining the Administration of the Death Penalty in the United States

by Stephen F. Hanlon

On October 29, the Death Penalty Moratorium Project presented the key findings of its three-year State Assessment Project at the National Press Club in Washington, D.C. Project Chair Stephen F. Hanlon delivered the following remarks to open the panel discussion.

Throughout its history, the American Bar Association has worked to ensure the American people a fair and accurate criminal justice system that accords due process and delivers fair and impartial justice to society and to those who are accused. In large part, the ABA has done that by developing standards

addressing components of the criminal justice system, from investigation of crime to appeal of conviction and petitions for clemency. The ABA is very proud of the fact that many of its proposed standards have been adopted by the courts.

As a legal institution, the ABA takes no position on the whether or not the death penalty should be an available punishment. Instead, it has called for all death penalty jurisdictions across the country to impose a temporary halt—that is, to stop—all actual executions until they could review their systems in detail to ensure those systems deliver fair

and accurate justice, according each defendant due process under law. To assist and prod the states and federal government into conducting those reviews, the ABA Section of Individual Rights and Responsibilities developed protocols setting benchmarks for criminal justice systems that administer the death penalty fairly and accurately.

For a variety of reasons, the association launched its State Death Penalty Assessment Project, in which it preliminarily examined the death penalty systems in Alabama, Arizona, Florida, Georgia, Indiana, (see Hanlon, p. 2)

AIDS Coordinating Committee to Host Law & Practice Conference

On April 9-10, 2008, the ABA AIDS Coordinating Committee, chaired by Shelley D. Hayes of Washington, DC, will host a national continuing legal education (CLE) conference on *HIV/AIDS Law and Practice: From Local Client to Global Workforce*, at the Hilton Anatole Hotel in Dallas, Tex. The conference will examine a broad range of cutting-edge domestic and international issues in HIV/AIDS law, with an additional focus on the pandemic's impact on the private sector and the pivotal role the business community (including corporate counsel) can play in stemming the spread of HIV. Ambassador Mark R. Dybul, U.S. Global AIDS Coordinator, will give a keynote address on April 9.

Registration for the conference or for individual sessions is now open via the Committee's Web site at <http://www.abanet.org/AIDS/>. For more information, please contact the AIDS Coordination Project by phone at 202.662.1025 or by email at PatesM@staff.abanet.org.

Center for Human Rights Informs ABA Response to Pakistan Crisis

The ABA Center for Human Rights, co-chaired by Jerome J. Shestack of Philadelphia, Penn. and Steven T. Walther of Reno, Nev., and staffed jointly by IRR and the Section of International Law, worked closely with other entities to craft the ABA's responses to the state of emergency imposed in Pakistan by Gen. Pervez Musharraf on Nov. 3. The Center helped develop ABA Pres. William H. Neukom's "Rule of Law" letter urging Musharraf to restore Pakistan's constitution, reinstate its Supreme Court, and release lawyers and advocates wrongly imprisoned or detained. It also helped implement the ABA-sponsored rally of lawyers "Standing up for the Rule of Law" in Washington, D.C. on Nov. 14 in support of lawyers in Pakistan protesting Musharraf's actions. On Dec. 18, the Center co-hosted a briefing of ABA leaders on the latest developments in Pakistan by Hina Jilani, U.N. Special Representative of the Secretary-General on Human Rights Defenders, at Cohen, Milstein, Hausfeld & Toll law firm in Washington, D.C.

On Feb. 11, 2008, at the ABA Midyear Meeting in Los Angeles, the Center will host

a luncheon featuring Alberto J. Mora, Vice President and General Counsel-International of Wal-Mart Stores, Inc. During his tenure as General Counsel of the U.S. Navy, Mora challenged the Defense Department's sanctioned mistreatment of Guantanamo detainees. Tickets will be available for \$75 each.

At the 2008 ABA Annual Meeting in New York City, the Center for Human Rights, IRR and the Section of International Law will co-sponsor a presidential showcase program marking the 60th anniversary of the Universal Declaration of Human Rights, examining the declaration's role in advancing human rights since 1948 and its prospects for future success in an increasingly dangerous world.

More information on the ABA's responses to the crisis in Pakistan is available on the ABA Web site at <http://www.abanet.org/>. For further information about these and other Center projects, visit the Center's Web site at <http://www.abanet.org/humanrights/> or contact its director, Michael Pates, at 202.662.1025 or by email at PatesM@staff.abanet.org.

Hanlon—Death Without Justice (cont'd from front page)

Ohio, Pennsylvania, and Tennessee. Because states have access to resources and information the ABA does not, these assessments are not designed to replace the comprehensive state-funded studies called for by the ABA. Instead, each team's findings provide information on how state death penalty systems are functioning in design and practice. It is our hope that if and when states choose to undertake studies on their own, these assessments will be used in that process.

Over the course of the state death penalty assessments, the ABA has learned an enormous amount about death penalty systems. Each of the state assessments address many of the key aspects of death penalty administration including the preservation and testing of evidence, identification and interrogation procedures, crime laboratories and medical examiners, prosecutors, defense services, the direct appeals process, procedural restrictions and limitations on state post-conviction and federal habeas corpus proceedings, clemency pro-

ceedings, jury instructions, an independent judiciary, racial and ethnic minorities, and mental retardation and mental illness. In deciding which aspects to address, the ABA chose what it considered to be the most important benchmark issues in the legal process.

Each assessment was conducted by a state-based assessment team, recruited by the ABA and the state team leader. Each team was comprised of or had access to current or former judges, state legislators, prosecutors, defense attorneys, state bar association leaders, and law school professors, all of whom had been a part of or studied the state death penalty system. Team members were not required to support or oppose the death penalty or a moratorium on executions, but they were required to approach the issue with an open mind and with thoughtful consideration. From start to finish, each assessment lasted between one and a half years and two and a half years, depending on how long the research and writing process re-

quired.

The one overarching conclusion that can be drawn from the work the ABA did in all states is that death penalty systems are not delivering the justice that American people deserve, expect, and indeed are guaranteed.

Foremost among the problems is the appalling lack of relevant data in many states. However, even in the areas where data was available, serious problems were discovered.

As a result, the ABA urges jurisdictions that impose the death penalty to immediately implement a temporary suspension of executions until there is greater reason to have confidence that fairness and accuracy are being provided in our death penalty systems. Because after over three years of work, the ABA has no confidence that fairness and accuracy are being provided in our death penalty systems. It is in that sense that the death penalty has become a cancer on the American justice system.

Supreme Court Update

On Dec. 10, in **Kimbrough v. United States**, No. 06-6330, the Court held 7-2 (opinion by Ginsburg; dissenting opinions by Thomas and Alito) that under *United States v. Booker*, the cocaine Sentencing Guidelines are advisory only and that the United States Court of Appeals for the Fourth Circuit erred in holding that a sentence outside the guidelines is *per se* unreasonable when it is based on a disagreement with the sentencing disparity for crack and powder cocaine offenses. The Court ruled that a judge must consider the Guidelines but may determine that, in a particular case, “a within-Guidelines sentence is ‘greater than necessary’ to serve the objectives of sentencing.” In making the determination the judge may consider the disparity between the Guidelines’ treatment of crack and powder cocaine offenses.

Petitioner Derrick Kimbrough pled guilty to conspiracy to distribute crack and powder cocaine; possession with intent to distribute more than 50 grams of crack cocaine; possession with intent to distribute powder cocaine; and possession of a firearm in furtherance of a drug trafficking offense before the United States District Court for the Eastern District of Virginia. Under the advisory Sentencing Guidelines, the District Court calculated Kimbrough’s sentence to be 228 to 270 months. The Court then compared this range with the range that would apply had Kimbrough committed the same offenses with powder cocaine (97 to 106 months inclusive of the 5-year mandatory minimum for the firearm). The Court noted that the case demonstrated the unjust effect of crack cocaine sentencing guidelines and concluded that the statutory minimum sentence would meet the objectives of sentencing. Kimbrough was then sentenced to 180 months in prison and 5 years of supervised release. The United States Court of Appeals for the Fourth Circuit vacated the sentence stating that a sentence “outside the guidelines range is *per se* unreasonable when it is based on a disagreement with the sentencing disparity for crack and powder cocaine offenses.”

The United States Supreme Court granted certiorari and considered whether the crack/cocaine powder sentencing guidelines were advisory in this case. The court reviewed its decision in *United States v. Booker*, 543 U.S. 220 (2005) where it held

that the mandatory Sentencing Guidelines violated the Sixth Amendment. The court also reviewed Congress’ intent when it adopted legislation establishing the 100:1 ratio and the Sentencing Commission’s findings after the legislation had been enacted.

The Sentencing Commission initially used the 100-to-1 ratio to define offense levels for crack and powder offenses but later determined that the sentencing disparity was unwarranted because research and data no longer supported the premise that crack was significantly more dangerous than powder cocaine, that the crack/powder disparity was inconsistent with the Act’s goal of punishing major drug traffickers more severely than low-level dealers (as major traffickers deal in powder while street level sellers sold crack) and because it promoted an unwarranted disparity on race.

The Court acknowledged that Congress rejected the Commission’s 1995 proposal of a 1:1 ratio but noted that Congress never stated that the sentences for crack offenses must exceed powder sentences by a 100:1 ratio and that Congress requested that the Commission recommend a revision of the crack/cocaine ratio. The Court read Congress’ action as a call for proposals to amend both the statute and the Guidelines because of the Commission’s criticisms of the 100:1 ratio. Furthermore, as a result of the 2007 Amendment, the Guidelines now advance a crack/powder ratio that varies between 25 to 1 and 80 to 1. Congress remained silent and implicitly approved the Commission’s actions.

The Court turned to the government’s next argument stating that the advisory status of the Guidelines will not result in disparate sentences because the courts remain bound by the mandatory minimum sentences prescribed in the Act, and there is appellate review for reasonableness. Further, district courts must consider the sentencing practices in other courts and the “cliffs” that result from statutory mandatory minimum sentences.

The Court went on to state that the sentencing judge has greater familiarity with the individual defendant before him than the appeals court or the Commission and is therefore in the best position to consider the sentence. Here, the District Court properly considered the Guidelines range followed by the circumstances of the crime. Kimbrough

had no prior felony convictions, served his country in combat and had a history of steady employment. The court noted that the Commission’s report criticizing the 100:1 ratio and acknowledging that crack cocaine had not caused the damage that was earlier alleged it would. In comparing the guideline range for crack and the range for powder cocaine, the Court surmised that the 100:1 ratio created an unwarranted disparity. The District Court did not craft a ratio of its own, rather it “imposed a sentence sufficient but not greater than necessary” to accomplish sentencing goals and that the crack cocaine guidelines resulted in a sentence that was higher than necessary. The District Court undertook appropriate considerations and did not commit any procedural error. The 4.5 year sentence reduction Kimbrough received was not an abuse of discretion.

On Dec. 10, in **Watson v. United States**, No. 06-571, the Court held 9-0 (opinion by Souter) that a person who receives a firearm in exchange for drugs does not “use” it within the meaning of 18 U.S.C. §924(c)(1)(A), which criminalizes the use of a firearm in connection with a drug trafficking offense.

Petitioner, Michael Watson, approached a government informant for a gun. The informant then asked if Watson could pay for the firearm in narcotics and they both met with an undercover agent posing as a firearms dealer. Watson gave the undercover agent Oxycontin in exchange for a .50 caliber semiautomatic pistol. After Watson was arrested, the officers found the pistol in his car and prescription medicines, guns and ammunition in his house. Watson, pled guilty to violating 18 U.S.C. §924(c)(1)(A), which sets a mandatory minimum sentence for a person who “during and in relation to any crime of violence or drug trafficking crime...for which the person may be prosecuted in a court of the United States, uses or carries a firearm...” but reserved the right to appeal the factual basis for the conviction and sentence. Watson questioned whether receipt of a firearm as payment for drugs constituted “use” of it in relation to a drug trafficking offense within the meaning of 18 U.S.C. §924(c)(1)(A) and *Bailey v. United States*, 516 U.S. 137 (1995). In *Bailey*, the

(see Supreme Court Update, p. 7)

Roe v. Wade at 35

a Q & A with Sarah Weddington



January 22 marked the 35th anniversary of the U.S. Supreme Court's landmark decision in *Roe v. Wade*, which overturned all state and federal laws outlawing or restricting abortion in conflict with the right to privacy as guaranteed by the Due Process Clause of the Fourteenth Amendment.

Dr. Sarah Weddington argued before the Supreme Court on behalf of the petitioner. She is currently an adjunct professor at the University of Texas at Austin and the head of the Weddington Center, her civil advocacy and leadership organization. She has long been an active member of the Section and currently serves on the IRR Council. Dr. Weddington joins us in this issue to discuss the progress and current state of reproductive rights.

There have been significant changes in the political landscape since the *Roe v. Wade* decision, but 35 years later the topic is still hotly contested. How do you view the current status of reproductive health rights? What are some of the biggest threats?

Thirty-five years later, it is far easier to remember the exhilaration of victory and the impact of the Court's decision than to outline all of the numerous threats.

However, clearly the biggest threat is the future composition of the Supreme Court. In fact, I believe the future of reproductive health rights will, in large part, be decided on Election Day, Nov. 4, 2008. The person elected President of the United States is the person who will make Supreme Court appointments, and within that appointment power is the ability to decide the future of reproductive health rights. Also, numerous state and federal officials will be elected; collectively they have a critical role in proposing and passing or defeating legislation that will have a decisive impact on the future of reproductive health rights.

Regarding the U.S. Supreme Court, Justice John Paul Stephens, who has long been a friend of IRR positions on reproductive health, is now 87. I am hoping for his continued service, but I am realistic that he might choose to leave the Court during the administration of the next President. Justice Ruth Bader Ginsburg is 74 and appears frail; she had colon cancer a few years ago. I hope that reports indicating that she is doing well are accurate, but it's realistic to be concerned about her health. It's important

that Justices Stephen Breyer and David Souter continue to serve. Justice Anthony M. Kennedy in past cases has favored the positions of each side of reproductive issues; he is considered a "swing" vote. But his most recent vote was with Justices Antonin Scalia, Clarence Thomas, Samuel Alito, Jr., and Chief Justice John Roberts, Jr. in favor of the constitutionality of federal legislation to restrict access.

We must have a president who will appoint Justices who support *Roe v. Wade* and the constitutional nature of reproductive health choices. Justice Stevens is a crucial vote, and his replacement will likewise be crucial. The Democratic candidates for President are all pro-choice. Republican candidates, to varying degrees, currently support restricting reproductive options; clearly the evangelical wing of that party is pushing candidates to be more and more in opposition to the legality and availability of reproductive health choices.

As I said, nothing is more important during the coming months than who is elected President. Other elections are also worthy of time and effort to secure victories for candidates who support reproductive health choices.

Those who oppose reproductive freedom are well organized and tenacious. Contests involving availability of contraceptives, the ability of women to purchase the morning-after pill from pharmacists, multiple provisions in legislation introduced in state legislatures and Congress to restrict availability of reproductive health services, and meas-

ures to make abortion either illegal or illegal except for very limited exceptions are among the current challenges.

Many have noted how young you were during *Roe*, and that it was your first contested case. What were some of the challenges you faced as a young female attorney? What difficulties were involved in taking on such a high-profile case in the public interest?

In 1967, when I graduated from the University of Texas (hereinafter "UT") School of Law, there were very few women attorneys. There were only 5 women among the approximately 125 students who started in my law class of June, 1965. Even though I graduated with good grades, I was unable to secure an offer from a law firm. Instead I accepted employment from my evidence professor John Sutton, Jr., on an American Bar Foundation project to revise the Canons of Ethics (later the Code of Professional Responsibility).

A group of graduate students at UT had established a little alcove in a building across from the campus with the purpose of telling women about contraception. At that time, the UT Health Center had a policy that no contraception could be given to a woman unless she certified that she was within six weeks of marriage.

When women began asking them about information regarding abortion, the graduate students researched both legal and illegal options. The question posed to me was: "Can we tell women the information we have about access to abortion, or would we be prosecuted as accomplices to the crime of abortion?"

I didn't know the answer to that question, but I told them that I would go to the law library and look it up. At that point I had done uncontested divorces, wills for people with virtually no assets, and one adoption for my uncle. I was anxious to practice law, and I was willing to volunteer my services. My trip to the library was the beginning of the journey that resulted in *Roe v. Wade*.

The difficulties included necessary research in preparation for filing and pursuing the case, both as to procedure and substance. Because of my lack of experience, I had to research case aspects that more experienced attorneys would have known.

Roe v. Wade at 35

Additionally, the case involved the generally time-consuming work involved in a Supreme Court case. Although attorney time was donated, we also had to raise funds for the case expenses. An enormous amount of time was spent talking to potential counsel for potential amicus curiae parties, educating groups about our work and progress, and responding to press inquiries.

Another difficulty is that work on the issues of the case never seems to end. Most cases end with the decision of the highest court. However, the issues involved in the progeny of *Roe* and reproductive cases have accelerated and expanded in the years since the 1973 decision.

How different do you think the legal field is today for young and/or female attorneys than when you began practicing law?

I believe the legal field has increasingly recognized the talents and abilities of young and/or female attorneys. Law schools now typically enroll close to a 50 - 50 mix of male and female students. Female law professors now dot the landscape of law school classrooms and Dean's offices. Both women and minority graduates are sought after by legal employers and clients. The range of practice opportunities has greatly expanded. Lawyers are dramatically more apt to appear before a female judge, at least in the lower courts. (However, we now have only one female U.S. Supreme Court Justice, as opposed to two before the resignation of Justice Sandra Day O'Connor.)

Opportunities for young female and minority attorneys have dramatically expanded when contrasted with "my day" of 40 years ago. I am so grateful for the progress that those passing years have brought. What a delight it is to watch the young, talented – and increasingly female or minority – attorneys in operation.

What role can young lawyers have in continuing to secure and defend individual rights?

There are a variety of roles that young lawyers can play – and are playing – today in securing and defending individual rights, and reproductive rights in particular.

Organizations that support the principles of reproductive health care adopted by IRR are often in need of legal counsel or assistance. Those same organizations are often

seeking people to serve as board members or in advisory capacities. Legislative hearings rely upon the testimony of persons who are knowledgeable and involved; legal skills contribute to the effectiveness of lawyers in public debate and testimony. Lawyers can write letters to the editor in newspapers and other publications to enhance the public consideration of issues. One of the current difficulties is the lack of availability of services particularly to those who are poorer; more time and effort is needed in the public arena to help resolve that problem. Lawyers in some states, like Texas, provide pro bono services to teens who follow state provisions for judicial approval to seek abortion services without parental involvement when the teen can demonstrate sufficient maturity.

Some young lawyers have sought election and serve as officials in various bodies where relevant key issues are being debated; they become leaders on issues of importance relevant to individual rights, and reproductive rights in particular. Across the country, other young lawyers participate in Law Day activities sponsored by bar organizations. Through their work, important educational activities about individual rights is carried out.

In some instances, young lawyers have considerable assets. Their financial contributions to candidates, groups and causes can have a tremendous impact on the outcome of key issues.

I have thoroughly enjoyed my participation in the legal and public process of deciding key issues. There are myriad ways in which young lawyers can and do contribute to the defense of and education about individual rights; many of us, as we age, are increasingly cheering young attorneys forward and hoping that they will successfully expand individual rights.

Do you have any other thoughts or reflections you would like to share?

First, I am grateful that we are able to celebrate *Roe v. Wade* and its principles. People talk to me in many settings when they know that I'm the lawyer who tried *Roe v. Wade* in the Supreme Court. Sometimes they tell me stories seared into their memory about situations before *Roe* and the tragedies that often accompanied unplanned pregnancies. They often point out the tremendous, positive difference that

Roe has made in their lives and in the lives of people they know. Other people have said how grateful they are that they have never experienced an unwanted pregnancy, but how strongly they feel that, should that ever occur, the right to make decisions belongs to them alone.

In recent years the appointment process for Supreme Court vacancies and the results of that process have caused me to worry about what the future holds. I see the number of Justices who support *Roe* and its progeny declining. As Justice Harry Blackmun wrote before his resignation, "a chill wind blows".

However, polls continue to show that a decided majority of the American public does not want to return to the situation *pre-Roe*. The South Dakota situation recently demonstrated that voters will rise up to defend their right to make their own medical and reproductive decisions when those rights are clearly challenged.

I'm hoping that the coming election for President will once again demonstrate that reality, and that the person selected to be President will be a candidate who supports the availability of reproductive health care and the principal that it is the right of individuals – not the government – to make decisions about such care.

Election Summit

Friday, April 18, 2008
ABA Headquarters
Washington, D.C.

Join fellow Section members and other colleagues to discuss the most pressing issues in the 2008 presidential election.

Program Topics Include:

- Voter Access
- National Security and Civil Liberties
- Public Health and Natural Disasters
- Education
- Criminal Justice

More information will be available soon on the Section website and in the next E-Newsletter.

Legislative Update

Two pieces of legislation relevant to the Section caught the national spotlight during the winter session of the 110th Congress.

The Employment Non-Discrimination Act (H.R. 3685) was passed by the House of Representatives, 235-184, on Nov. 7. If it becomes law, the bill would prohibit employment discrimination on the basis of sexual orientation. Introduced by Rep. Barney Frank (D-MA), it is currently on the Senate legislative calendar. Originally, the bill also prohibited discrimination on the basis of gender identity. Amid speculation that this provision would lead to the bill's failure, such protection was removed from its scope. A separate bill, H.R. 3686, was introduced to prohibit discrimination based on gender identity. It has not been acted upon since referred to the House Committee on Education and Labor.

Majority Leader Harry Reid (D-NV) addressed the Senate on Jan. 23 to urge a vote on S. 2248, the Foreign Intelligence Surveillance Bill of 2007, which would make permanent many of the expanded surveillance permissions granted in the 2001 revision of the Foreign Intelligence Surveillance Act (FISA). The bill has been widely criticized for eroding judicial oversight and granting retroactive immunity from litigation for telecommunications companies that complied with the Bush administration's warrantless wiretapping program. On Jan. 24, the Senate rejected an amendment supported by the Judiciary Committee that would have reinforced judicial oversight and defined FISA as the exclusive legal mechanism for foreign surveillance. Senator Dodd (D-CT) has threatened to filibuster the legislation should it come up for a vote.

Other legislative news of particular interest to the Section is summarized on these two pages.

AIDS/HIV

On Dec. 5, Sen. Reid (D-NV) introduced S. 2415, to require the President and the Office of the Global AIDS Coordinator to establish a comprehensive and integrated HIV-prevention strategy to address the vulnerabilities of women and girls in countries for which the United States provides assistance to combat HIV/AIDS. The bill was referred to the Senate Committee on Foreign Relations.

On Dec 4, Rep. Lee (D-CA) introduced H. Con. Res. 265, supporting the goals and ideals of World AIDS Day. The bill was referred to the House Committee on Energy and Commerce, as well as the House Foreign Affairs Committee.

Children/Families

On Dec. 29, the President signed into law the Medicare, Medicaid, and SCHIP Extension Act of 2007 (S. 2499), providing funding for the three programs through 2009. The bill was introduced by Sen. Baucus (D-MT) shortly after Bush's veto of the Children's Health Insurance Program Reauthorization Act of 2007 (H.R. 3963) on Dec. 12.

Constitutional Law

On Dec. 21, the President signed the OPEN Government Act of 2007. Introduced by Sen. Patrick Leahy (D-VT), the bill amends the Freedom of Information Act (FOIA) to require faster response times to inquiries, and to order a system under which the media and public may track the status of their FOIA requests. An earlier version of the bill would have required federal agencies to disclose information unless it could be proven that disclosure would harm national security. Currently, agencies are required to withhold information if uncertainty exists as to its effect on security.

Courts/Judiciary

On Dec. 3, Sen. Specter (R-PA) introduced S. 2402, to provide for the substitution of the United States in place of electronic communications service providers in certain civil actions related to compliance with the Bush administration's warrantless wiretapping program. The bill was referred to the Senate Committee on the Judiciary.

Criminal Justice

On Dec. 7, Rep. Scott (D-VA) introduced H.R. 4109, to provide for the redress of

prison abuses. The bill was referred to the House Committee on the Judiciary.

On Dec. 6, Sen. Schumer (D-NY) introduced S. 2421, to amend the Internal Revenue Code of 1986 to provide tax benefits to individuals who have been wrongfully incarcerated. The bill was referred to the Senate Committee on Finance.

On Dec. 5, Rep. Scott (D-VA) introduced H.R. 4300, to establish a meaningful opportunity for parole for each child offender sentenced to life in prison. The bill was referred to the House Committee on the Judiciary.

On Dec. 5, Rep. Scott (D-VA) introduced H.R. 4283, to amend Title 18, United States Code, to award credit toward the service of a sentence to prisoners who participate in designated educational, vocational, treatment, assigned work, or other developmental programs. The bill was referred to the House Committee on the Judiciary.

Elder Law

On Nov. 13, Sen. Grassley (R-IA) introduced S. 2337, to amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements, and to provide additional consumer protections for long-term care insurance. The bill was sent to the Senate Committee on Finance.

On Nov. 6, Rep. Pomeroy (D-ND) introduced H.R. 4082, to improve the quality of and access to long-term care. The bill was sent to the House Committee on Energy and Commerce, as well as the House Committee on Ways and Means.

Election Law

On Nov 5, Sen. Whitehouse (D-RI) introduced S. 2305, to prevent voter caging. The bill was sent to the Senate Committee on Rules and Administration.

Housing and Homelessness

On Nov 15, the House passed, by a 291-127 vote, H.R. 3915, to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to establish licensing and registration requirements for residential mortgage originators, and to provide certain minimum standards for consumer mortgage loans.

On Nov. 13, Rep. Green (D-TX) introduced

Legislative Update

H.R. 4161, to authorize the Secretary of Housing and Urban Development and the Secretary of Veterans Affairs to carry out a pilot program to prevent at-risk veterans and veteran families from falling into homelessness. The bill was referred to the House Committees on Financial Services and Veterans' Affairs.

International Law/Human Rights

On Dec. 30, the President signed into law S. 2271, the Sudan Accountability and Divestment Act of 2007. Introduced by Sen. Dodd (D-CT), the bill authorizes state and local governments to divest assets in companies that conduct business operations in Sudan and prohibits federal contracts with such companies.

On Dec. 21, the President signed into law the Genocide Accountability Act. This amendment to U.S. Code Title 18 allows the federal prosecution of non-citizens in the U.S. for acts of genocide committed overseas. The bill was passed by the Senate on March 29, 2007 and by the House of Representatives on Dec. 5.

On Dec. 18, the Senate passed the Child Soldier Accountability Act of 2007 (S. 2135). This legislation is intended to prohibit the recruitment or use of child soldiers, to designate persons who recruit or use child soldiers as inadmissible aliens, and to allow the deportation of persons who recruit or use child soldiers. The bill was sent to the House of Representatives, where it was referred to the Committee on the Judiciary.

On Dec. 4, the House passed H.R. 3887, to authorize appropriations for fiscal years 2008 through 2011 for the Trafficking Victims Protections Act of 2000 and to enhance measures to combat forced labor. The bill was sent to the Senate, where it was referred to the Committee on the Judiciary.

Mental and Physical Disability Law

On Nov. 15, Rep. Schakowsky (D-IL) introduced H.R. 4202, to require all newly constructed, federally assisted single-family houses and town houses to meet minimum standards of accessibility for persons with disabilities. The bill was referred to the House Committee on Financial Services.

On Nov. 15, Rep. Kennedy (D-RI) introduced H.R. 4232, to improve mental and substance use health care. The bill was referred to the House Committee on Energy

and Commerce.

Military Law

On Dec. 18, Sen. Mikulski (D-MD) introduced S. 2516, to assist members of the Armed Forces in obtaining United States citizenship. The bill was referred to the Senate Committee on the Judiciary.

On Oct. 29, Rep Slaughter (D-NY) introduced H.R. 3990, to reduce sexual assault and domestic violence involving members of the armed forces and their family members and partners through enhanced programs of prevention and deterrence, enhanced programs of victim services, and strengthened provisions for prosecutions of assailants. The bill was referred to the House Committees on Armed Services, the Judiciary and Veterans' Affairs.

National Security

On Dec. 18, Rep. Harman (D-CA) introduced H.R. 4806, to require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security information. The bill was referred to the House Committee on Homeland Security.

ABA Day 2008

April 15 - 17, 2008

Hyatt Regency
Washington, D.C.

Join your fellow ABA, state, local and specialty bar leaders for this annual "lobby day." Your active participation is vital to our successfully educating Congress on issues of importance to lawyers.

Take part in an interactive lobbying workshop, visit your Senator and Representative, and get briefed on the legislative agenda of our congressional leaders.

Register and find out more online at:
<http://www.abanet.org/poladv/abaday08>

Supreme Court Update

(continued from p. 3)

Court held that §924(c)(1) required active employment of the firearm.

The United States Court of Appeals for the Fifth Circuit affirmed the decision of the United States District Court for the Middle District of Louisiana by relying on Circuit precedent to determine that Watson "used" a firearm. The U.S. Supreme Court granted certiorari to resolve whether a person "uses" a firearm within the meaning of 18 U.S.C. §924(c)(1)(A) when the person trades narcotics to obtain a gun. The Supreme Court reasoned that with no statutory definition, the meaning of "uses" must turn on the reasonable and normal everyday meaning of the word. When Watson turned over the gun, everyday speech would not be that Watson used the gun in the trade. Secondly, this Court's holding in *Smith v. United States*, 508 U.S. 223 (1993), that a criminal who trades his firearm for drugs "uses" it within the meaning of 924(c)(1) does not make the opposite transaction of trading drugs for a firearm constitute "use" of the firearm. *Bailey* also does not help to answer whether Watson used the firearm because its holding states that a gun must be made use of actively, whereas here the court is trying to determine if any use at all occurred. Finally, the neighboring provision, 18 U.S.C. §924(d)(1), "which authorizes seizure and forfeiture of firearms intended to be used in criminal offenses" suggests that receipt can be "use" but is too general. It states that a gun can be "used" in a receipt crime, but not who is "using" the gun. It does not specify if "use" applies both parties to the transfer, or only one, or which party.

The Court also has heard or soon will hear arguments in the following cases:

Crawford v. Marion County Election Board, 07-21; **Indiana Democratic Party v. Rokita**, 07-25 - Whether an Indiana statute requiring in-person voters to produce government-issued photo identification violates the First and Fourteenth Amendments to the United States Constitution.

Baze v. Rees, 07-5439 - Does the use of lethal injections with the current chemical composition violate the Eighth Amendment when other chemicals pose less risk of pain and suffering? Is a state required to be prepared to maintain life in the event a stay of execution is granted after the inmate has been given the lethal injection?

Upcoming ABA and Section Events

ABA Midyear Meeting

February 6-12, 2008
Los Angeles, CA

ABA Day 2008

April 15-17, 2008
Hyatt Regency
Washington, D.C.

Robert F. Drinan Distinguished Service Award Reception

February 8, 2008
Hyatt Regency Century Plaza
Los Angeles, CA

Spring Council Meeting

April 17, 2008
ABA Headquarters
Washington, DC

Center for Human Rights Luncheon

February 11, 2008
Hyatt Regency Century Plaza
Los Angeles, CA

IRR Election Summit

April 18, 2008
ABA Headquarters
Washington, DC

HIV/AIDS Law and Practice Conference

April 9-10, 2008
Anatole Hotel
Dallas, Tex

ABA Annual Meeting

August 7-12, 2008
New York, NY

IRR News Report is published quarterly by the American Bar Association Section of Individual Rights and Responsibilities. 740 15th Street, N. W., Washington, D. C. 20005; tel.: 202/662-1030; fax: 202/662-1032; e-mail: irr@abanet.org.
IRR News Report Editor: Samuel Feinson

Section Officers:

Robyn S. Shapiro, Chair
Neal R. Sonnett, Chair-elect
Gloria Browne-Marshall, Vice Chair
Richard Podell, Secretary
Roy A. Hammer, Finance Officer
C. Elisia Frazier, Section Delegate
Richard M. Macias, Section Delegate
Robert E. Stein, Immediate Past Chair

Section Staff:

Tanya Terrell, Director
Patrice McFarlane, Assistant Director
Deborah Fleischaker, Project Dir. (DP)
Michael Pates, Project Director (AIDS/HR)
Tarrria Burwell, Section Administrator
Sam Feinson, Staff Assistant
Luke Polcyn, Project Assistant (AIDS/HR)
Hisham Srouf, Intern
Mara Theophila, Intern

Section of Individual Rights and Responsibilities
American Bar Association
740 15th Street, N.W.
Washington, D.C. 20005-1022

Non-Profit Organization
U.S. Postage
Paid
Washington, D.C.
Permit No. 8118

