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State Bar launches news blog

Comprehensive site offers latest legal news updates on Guantanamo detainees

By Nick Parrella

In response to a growing interest among lawyers, citizens and the news media concerning the interplay between terrorism trials and their impact on broader civil rights issues, the State Bar's Committee on Civil Rights recently launched a comprehensive legal blog that provides news updates and analysis of issues concerning the Guantanamo Bay detainees.

The new blog will provide, in one place, the latest developments and issues pertaining to the detention and trial of those detained at Guantanamo Bay Naval Base in Cuba and elsewhere.

The blog also will provide in-depth analysis of the emerging policy issues endemic to the struggle against international terrorism.

Entitled "Guantanamo and Beyond: A Blog on Executive Detention, National Security and Due Process," it can be viewed by both attorneys and the general public through the State Bar Web site at http://nysbar.com/blogs/executivedetention.

Committee members will update the blog with a post that provides the latest news on one area of discussion—presenting a summary of the issue with the latest information from a variety of outside resources.

"Over the last decade, since 9/11, there has been an ongoing and unprecedented dialogue between the executive, legislative and judicial branches concerning the most fundamental issues of national security, individual liberty and due process. Central to this discussion have been policy decisions and judicial determinations regarding the detention, treatment and rights of those detained at Guantanamo Bay," said Fernando A. Bohorquez, Jr. of New York (Baker & Hostetler LLP), chair of the Committee on Civil Rights.

"With this new blog, we hope to provide a dynamic, one-stop resource for the public and members of the Bar to monitor, understand and stay abreast of the latest and most critical developments on these important issues," he said.

President Michael E. Getnick (Getnick Livingston Atkinson & Priore, LLP of Utica and of counsel to Getnick & Getnick of New York City) commended Bohorquez and Committee Secretary Patrick Campbell for their diligence and dedication.

"The Committee on Civil Rights has done a remarkable job chronicling the events and issues arising from the detention of those at Guantanamo Bay," said Getnick. The blog "will be an invaluable resource for lawyers and non-lawyers alike."

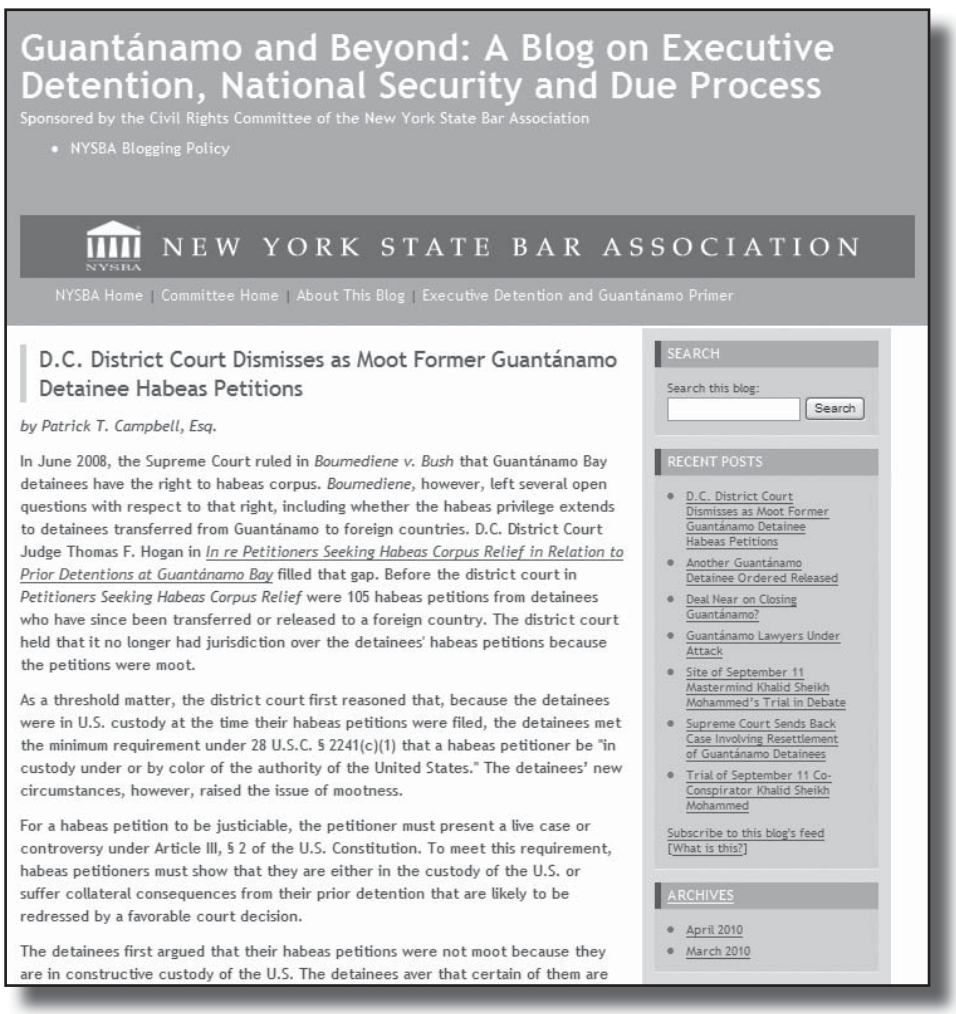
An active committee

The Committee on Civil Rights has been very active on issues regarding the Executive detention of those detained at Guantanamo including:

- crafting the *Report on Executive Detention, Habeas Corpus and the Military Commissions Act of 2006;*
- crafting the State Bar June 2008 House of Delegates resolution endorsing the *Boumediene v. Bush* Supreme Court decision;
- the *Supplemental Report on Boumediene v. Bush and the Procedural Framework for Guantanamo Detainee Habeas Petitions* in July 2008 that addressed the procedures due to detainees on habeas review; and
- a resolution, adopted by the American Bar Association, that called for the Obama Administration to ensure that Guantanamo detainees receive all due process rights afforded to them by law.

The full reports and resolutions can be read at www.nysba.org/newscenter. ◆

Parrella is NYSBA's Associate Director of Communications.



Guantánamo and Beyond: A Blog on Executive Detention, National Security and Due Process

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D.C. District Court Dismisses as Moot Former Guantánamo Detainee Habeas Petitions

by Patrick T. Campbell, Esq.

In June 2008, the Supreme Court ruled in *Boumediene v. Bush* that Guantánamo Bay detainees have the right to habeas corpus. *Boumediene*, however, left several open questions with respect to that right, including whether the habeas privilege extends to detainees transferred from Guantánamo to foreign countries. D.C. District Court Judge Thomas F. Hogan in *In re Petitioners Seeking Habeas Corpus Relief in Relation to Prior Detentions at Guantánamo Bay* filled that gap. Before the district court in *Petitioners Seeking Habeas Corpus Relief* were 105 habeas petitions from detainees who have since been transferred or released to a foreign country. The district court held that it no longer had jurisdiction over the detainees' habeas petitions because the petitions were moot.

As a threshold matter, the district court first reasoned that, because the detainees were in U.S. custody at the time their habeas petitions were filed, the detainees met the minimum requirement under 28 U.S.C. § 2241(c)(1) that a habeas petitioner be "in custody under or by color of the authority of the United States." The detainees' new circumstances, however, raised the issue of mootness.

For a habeas petition to be justiciable, the petitioner must present a live case or controversy under Article III, § 2 of the U.S. Constitution. To meet this requirement, habeas petitioners must show that they are either in the custody of the U.S. or suffer collateral consequences from their prior detention that are likely to be redressed by a favorable court decision.

The detainees first argued that their habeas petitions were not moot because they are in constructive custody of the U.S. The detainees aver that certain of them are

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