



NACDL NEWS

NACDL Criticizes Guantánamo Detainee Review Procedures

By G. Jack King, Jr.

NACDL President E.E. (Bo) Edwards and Joshua Dratel, Co-Chair, NACDL Committee on Military Tribunals & Terrorism, sent a letter to the top lawyer for the Defense Department identifying serious deficiencies in the department's draft administrative review procedures for detainees at Guantánamo Bay Naval Base in Cuba.

Edwards and Dratel wrote DOD General Counsel William J. Haynes, II, saying they were "deeply troubled" at the department's failure to address a number of critical issues. Among the problems they see are:

- Lack of criteria for making determination whether a detainee is or is still "dangerous";
- No time frames for rendering release decisions or re-review;
- No time limits for detention without charge or other disposition and;
- Draft review procedures put the burden on detainee to prove he is "no longer a threat."

The DOD memorandum asserts that "[t]he law of war permits the detention of enemy combatants until the end of an armed conflict." But Edwards and Dratel note that that statement is true only if the alleged combatants are detained pursuant to the Geneva Conventions. The lawyers suggest that the Guantánamo detainees are entitled to POW status unless and until a "competent tribunal" determines otherwise.

The full text of the comment letter can be found on NACDL's Web site at: [http://www.nacdl.org/public.nsf/newsreleases/2004mn010/\\$FILE/DoD_Comments.pdf](http://www.nacdl.org/public.nsf/newsreleases/2004mn010/$FILE/DoD_Comments.pdf)

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Bill Introduced to Bar Citation to Foreign Law

Rep. Tom Feeney (R-FL) introduced H.Res. 568 on March 17 which is aimed at barring citation to foreign law in American courts. Responding to the absurdity of such a resolution — U.S. law is based on English common law, and counsel and courts around the country still cite Blackstone's *Commentaries* today — President E.E. (Bo) Edwards and Prof. Speedy Rice, Co-Chair of the International Affairs Committee, issued the following statement:

"Since the founding of the United States, our government, in all three branches, has maintained American independence while at the same time properly reflecting on world views and opinions. Our founding fathers, while rejecting the tyranny of King George, incorporated the vision and philosophy of many foreign intellectuals, scholars and governments to create the most unique and free people in the world.

"That we still today examine and consider myriad world views is not only correct, but necessary to continue our fine internationalist tradition. In areas such as maritime law, foreign trade, telecommunication, transportation, contracts, tort law and social justice, the consideration of enlightened views is not only the American way, but fundamental to the survival of our country and our own way of life. Our Constitution protects us from being bound by foreign laws but its original intent was never to blind us to foreign law.

"Any attempt to close the courts to

comity and full and transparent implementation of the rule of law, whatever the source, resembles obstinate isolationism in a globally-networked world. NACDL doubts that is what Congress intends, but we are sure it is what Congress will get if it passes H. Res. 568."

Dash Welcomes Cards

NACDL's first President, Sam Dash, is in failing health according to his wife, Sara. She says the Georgetown University Law Professor has been hospitalized for the past three months.

Mrs. Dash says cards and messages cheer him up and he would appreciate hearing from his friends in NACDL. Please send messages to him in care of Sara Dash, 110 Newlands Street, Chevy Chase, MD 20815.

Feeney Amendment Continues to Fuel Debates

By Kyle O'Dowd
NACDL Legislative Director

The new year rang in with a familiar dissonance between the Judiciary and Congress. In his Year-end Report on the Federal Judiciary, Chief Justice Rehnquist complained that the traditional interchange between the Congress and the Judiciary broke down when Congress enacted what is known as the PROTECT Act, making some rather dramatic changes to the laws governing the federal sentencing process. Addressing the U.S. Judicial Conference on March 16, Rep. Jim Sensenbrenner (R-WI), Chairman of the House Judiciary Committee, condemned such judicial criticism of the PROTECT Act, stating, the stridency of these remarks has sometimes taken on a harshness that is not only uncommon, but inconsistent with the historic amity that has governed relations between the Branches. The next day, Justice Anthony M. Kennedy blasted mandatory minimum sentences as unfair, unjust and

unwise during an appearance before a House Appropriations subcommittee, and added, "I do think that federal judges who depart downward are courageous." NACDL Board member Alan Silber joined this ongoing debate at a symposium sponsored by Georgetown's *American Criminal Law Review* on March 31. Addressing the Feeney Amendment and related developments on behalf of NACDL, Silber decried the severity of federal sentences and described how measures that concentrate power in the hands of the Executive prevent judges and defense lawyers from detecting serious misconduct. Other speakers were Congressman Tom Feeney (R-FL), the U.S. Attorney for the Eastern District of Virginia, a DOJ representative, FAMM's counsel, and Sen. Edward Kennedy's (D-MA) crime staffer. ■

About the Author

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Join Us for a Memorable Evening on San Francisco Bay!

Friday, July 30, 2004
NACDL Annual Meeting



Casino Cruise and Dinner on the Celebrations Commodore Yacht

Departure at 7:00 PM
Pier 40 at South Beach Harbor

We invite all NACDL members to join us for a fun and exciting night cruising San Francisco Bay to support NACDL's charitable supporting organization — the FOUNDATION FOR CRIMINAL JUSTICE. Enjoy a memorable 3-hour cruise, a sumptuous meal, and the good company of your NACDL colleagues from across the nation — and help a good cause!

Highlights of the Casino Cruise:

- ♣ Breathtaking views of the San Francisco skyline, the Golden Gate Bridge, Alcatraz and Yerba Buena islands
- ♥ Glorious buffet dinner, including prime rib of beef, chicken, an array of side dishes, and delectable desserts
- ♠ Gaming tables including craps, roulette, and black jack
- ♦ Enjoy some gaming and support the FOUNDATION FOR CRIMINAL JUSTICE! You will receive escalating denominations of gambling chips depending on how much you donate to the FOUNDATION:

Donate \$25 and receive \$25 in chips; donate \$50 and receive \$100 in chips; donate \$100 and receive \$250 in chips; donate \$250 and receive \$500 in chips; donate \$750 and receive \$1,500 in chips; and donate \$1,000 and receive \$2,500 in chips.

Then enjoy the gaming tables and win! The five biggest winners at the end of the evening will receive special prizes.

Also, we will hold an auction for four Web domain names. Details are found on the ad on page 5 of this issue of *The Champion*.

Be a part of this special and memorable opportunity to support the important work of NACDL's FOUNDATION FOR CRIMINAL JUSTICE.

Entry to the Casino Cruise and Dinner is included in the Social Events Package for NACDL's Annual Meeting & Seminar, and includes the cruise of the Bay and the buffet meal. Attendees are invited to bring along friends and colleagues at a cost of \$85.00 per person.

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