



NACDL NEWS

By Jack King, NACDL Director of Public Affairs & Communications

NACDL Sends Criminal Justice Advice to Obama Transition Team

The National Association of Criminal Defense Lawyers, in conjunction with the Constitution Project and 25 other organizations and individuals, spent this past summer and fall developing criminal justice and national security policy recommendations for the next administration.

The criminal justice policy catalog is entitled "Smart on Crime: Recommendations for the Next Administration and Congress." A broad group of experts vetted these recommendations to assess their substantive and political viability. For each issue area, the report:

- ❖ Identifies and summarizes the problems to be addressed;
- ❖ Evaluates possible solutions and identifies potential areas of agreement;
- ❖ Notes potential supporters of the identified solutions and discusses opposing arguments;
- ❖ Identifies experts who can provide further analysis; and
- ❖ Provides hyperlinks to other materials that explore the issues in greater depth.

The first few sections of "Smart on Crime" provide a broad overview of the criminal justice system as it now exists; indicate objectives that must be afforded priority consideration; identify items for executive and legislative action, from arrest and pre-indictment through sentencing and beyond; promote corrections reform; and list participating indi-

viduals and organizations. NACDL experts David B. Smith, Kyle O'Dowd, and Stephanie Martz contributed specific recommendations regarding:

- ❖ Federalization of state crimes and overcriminalization in general;
- ❖ Protection of the attorney-client privilege;
- ❖ Federal grand jury reform; and
- ❖ Asset forfeiture reform.

Coalition organizations hope that the recommended policy changes will enhance public confidence in a system confronting undeniable human costs and overwhelming fiscal costs. Americans of all political stripes, and especially professionals with experience in every aspect of the criminal justice system, recognize that the criminal justice system is failing too many, costing too much, and helping too few.



On Nov. 12, 2008, NACDL hosted a delegation of leading Russian criminal defense lawyers and legal educators at its headquarters in Washington, D.C. The study tour was arranged as part of the American Bar Association's Rule of Law Initiative. NACDL staff members made substantive presentations concerning different aspects of the U.S. criminal justice system.

National Security And Guantánamo Issues Addressed

Another coalition transition memorandum to which NACDL contributed is "Liberty and Security: Recommendations for the Next Administration and Congress," a catalogue of key liberty and national security issues and policy recommendations.

Michael Price, NACDL national security coordinator, one of the contributors, said, "This catalogue is a blueprint for the Obama administration. It reflects the consensus of experienced scholars, advocates, and practitioners on how best to resolve some of the most complicated national security issues facing our country."

Highlights of the issues addressed in the paper include: (1) closing the prison facilities at the U.S. Navy base at Guantánamo Bay, Cuba — how and why; (2) ending secret detentions, extrajudicial "extraordinary renditions" and torture; and (3) prosecuting terrorism suspects in accordance with the U.S. Constitution and federal law.

NACDL strongly opposes "national security court" proposals, as do the rest of the coalition members. The association's Board of Directors adopted a resolution providing that individuals accused of involvement with terrorist activity should be prosecuted in the federal court system; however, NACDL believes that individuals accused of violating the Laws of War as unprivileged belligerents should be charged and prosecuted under the Uniform Code of Military Justice, consistent with the Geneva Conventions.

The "Smart on Crime" catalogue is available online at <http://www.2009transition.org/criminaljustice/index.ph>. "Liberty and Security" can be found at <http://2009transition.org/liberty-security>. Links to both documents can be found at www.nacdl.org.

New Administration May Be Responsible For Guantánamo Trials

In what may well have been the last major hearing during the Bush administration in the case against the five "high-value" Guantánamo detainees accused of coordinating the 9/11 attacks, each defendant began the day-long proceeding on Dec. 8 by indicating his desire to confess and plead guilty to all charges. But when the court reconvened after lunch, Khalid Sheikh Mohammed withdrew his request to plead and his co-defendants immediately followed suit due in large measure to lawyers from the John Adams Project. The project is a partnership between the National Association of Criminal Defense Lawyers and the American Civil Liberties Union that sponsors expert civilian capital trial counsel to assist the under-resourced military defense counsel for several Guantánamo detainees.

Speaking before a full courtroom, alleged mastermind Mohammed proclaimed, "I know we're in big drama. I just want to plead." A few minutes later Walid bin Attash called the hearings "a play." The phrase "show trials" hung in the air as the court began the first post-election hearings in Guantánamo.

Michael Price, NACDL's national security coordinator, stated that "although the accused may sit in a courtroom, the Military Commissions lack the basic guarantees of due process and equal protection that are the cornerstone of American values and American justice."

Military Judge Steven Henley noted that he received a letter from the five accused dated Nov. 4 indicating their request to withdraw all pending motions filed on their behalf, plead guilty, and "confess." Judge Henley, however, refused the request from two of the defendants, Ramzi Binalshibh and Mustafa al-Hawsawi, since their competence to waive counsel and stand trial remains in doubt. Binalshibh has been put on psychotropic medication, possibly to treat schizophrenia, while the basis for concern about al-Hawsawi's mental state is still classified. All five, however, were held in the CIA's "high-value detainee" program for three-and-a-half to four years and subjected to prolonged periods of isolation, psychological manipulation and abuse, and the cruel, inhuman and degrading treatments euphemistically called "enhanced interrogations techniques," such as waterboarding.

Despite the longstanding prohibi-



AFFILIATE NEWS

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2009 NACDL & AFFILIATE CLE CALENDAR

- January 24** **Georgia: GACDL's Annual Winter Seminar**
Marriott Century Center, Atlanta, Georgia
Contact: GACDL Executive Director Jennifer Carter at 404-248-1777 or e-mail jennrcarter@mindspring.com
- January 24** **Oregon: OCDLA's New Lawyers Seminar**
World Trade Center, Portland, Oregon
Contact: OCDLA Executive Director John Potter at 541-686-8716 or e-mail jpotter@ocdla.org
- February 13-16** **California: CACJ's 2009 Capital Case Defense Seminar**
Monterey Conference Center, Monterey, California
Contact: CACJ Administrative Director Gail Jones at 916-643-1800 or e-mail gailjonescacj@sbcglobal.net
- February 25-26** **NACDL's Capital Mitigation Seminar**
'Teams for Life: Winning Cases Through Mitigation'
Royal Sonesta Hotel, New Orleans, Louisiana
Contact: NACDL's Death Penalty Counsel Terrica Redfield at 404-688-1202 or e-mail tredfield@schr.org. For more details, visit our meetings Web site at www.nacdl.org/meetings
- February 25-28** **NACDL's Midwinter Meeting & Seminar**
'Jazzin' Up Your Defense'
Royal Sonesta Hotel, New Orleans, Louisiana
Contact: NACDL's Education Assistant Akvile Athanason at 202-872-8600 x230 or e-mail akvile@nacdl.org. For more details, visit our meetings Web site at www.nacdl.org/meetings
- March 6** **Indiana: IPDC's Defending Child Molestation Cases Seminar**
Holiday Inn Select Airport, Indianapolis, Indiana
Contact: IPDC Executive Director Larry Landis at 317-232-2490 or e-mail llandis@iquest.net
- March 26-28** **Florida: FACDL's Death Is Different XV Seminar**
Renaissance Orlando Hotel Airport, Orlando, Florida
Contact: FACDL Executive Director Kathryn Bradley at 800-369-9503 or e-mail kbradley@facdl.org
- April 3-4** **NACDL and CACJ's Forensics Seminar**
'Making Sense of Science II'
Westin Casuarina, Las Vegas, Nevada
Contact: NACDL's Education Assistant Akvile Athanason at 202-872-8600 x230 or e-mail akvile@nacdl.org. For more details, visit our meetings Web site at www.nacdl.org/meetings

Simmons Receives Lifesaver Award

The Ohio Association of Criminal Defense Lawyers (OACDL) recently honored Gerald G. Simmons with its Lifesaver Award for his lifetime achievements as a staunch defender in capital

trials. He was the first recipient of the annual award given by OACDL for excellence in capital litigation in honor of former OACDL President Donald Schumacher, who died in 2007. Schumacher successfully represented many capital defendants and specialized in mitigation presentation.

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tion against any testimony of torture coming into the Military Commissions, torture was mentioned a number of times, at least once by Mohammad, who stated, "I do not trust Americans ... not Bush, not the CIA who tortured me." The second reference came from Maj. Jon Jackson, speaking of his client al-Hawsawi, whose competency is now in question "as a result" of torture.

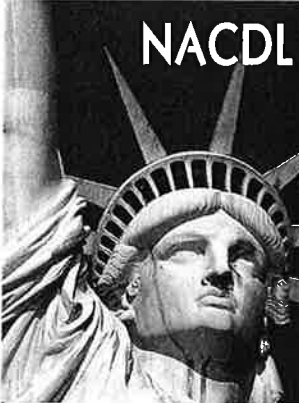
During an examination of Brig. Gen. Thomas Hartmann regarding allegations of unlawful command influence, John Adams Project lawyer Jeff Robinson pressed him on the review of evidence obtained by torture when he was the legal advisor to the Convening Authority. Gen. Hartmann introduced a new phrase into the lexicon of absolution from torture. Speaking of the evidence obtained by so-called "clean teams" (as opposed to the same evidence earlier obtained by torture), Gen. Hartmann embraced this evidence as acceptable under "the attenuation analysis." In the same hearing, former Staff Judge Advocate Capt. McCarthy testified that Gen. Hartmann "was pushing and pushing for tapes of the ICRC interviews," a fact sure to be unwelcome news to the International Committee of the Red Cross.

During the morning session, Judge

Henley asked the prosecution to brief whether the Military Commissions Act prohibits a death sentence if a defendant pleads guilty instead of being convicted at trial. When the hearing resumed at 1 p.m., Mohammed asked Judge Henley, "If we plead guilty, we will not be able to be sentenced to death?" The prospect of a guilty plea resulting in a life sentence rather than death, together with the fact that Judge Henley would not permit all five detainees to enter a plea together, was apparently enough to cause Mohammed, Walid Bin' Attash, and Amar al-Baluchi to withdraw their offers to plead — at least until the issue of Binalshibh and al-Hawsawi's competency is resolved.

It remains unclear whether the competency issue will be resolved before President-elect Barack Obama takes the oath of office on Jan. 20. Binalshibh has been evaluated by a board of military psychiatrists, but his defense team has yet to receive critical discovery regarding his mental and physical health prior to his transfer to Guantánamo Bay in 2006. Mustafa al-Hawsawi, however, has yet to be evaluated, and his defense team has not received any of his medical records.

More information on the John Adams Project is available online at www.aclu.org/johnadams. ■



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