

## RESOLUTION 6-18-2003

### DIGEST

#### War on Terrorism: Protection of Civil Liberties

Asks the Conference to (a) recommend that California's Congressional representatives pursue amendments to legislation and oversight of executive actions that jeopardize constitutionally protected individual rights, and (b) continue support for the American Bar Association's resolution concerning detention of non-citizens.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### History:

Similar to resolution 1-09-02, which was approved in principle.

#### Reasons:

This resolution asks the Conference to (a) recommend that California's Congressional representatives pursue amendments to legislation and oversight of executive actions that jeopardize constitutionally protected individual rights, and (b) continue support for the American Bar Association's resolution concerning detention of non-citizens. This resolution should be disapproved because the recommendation to Congress proposes no specific course, and the Conference's support for the referenced American Bar Association resolution has already been expressed.

When threatened by hostile forces, a society naturally pursues greater security, and steps to identify and apprehend enemies may impinge on personal freedoms. In attempting to strike an appropriate balance, the government is tempted to jettison individual liberties for the sake of collective safety. For instance, in the wake of the 9/11 attacks, Congress adopted legislation—and the executive branch has pursued programs—that were designed to prevent further terrorist acts but which may violate constitutionally protected rights to due process and privacy. Thus, the policy underlying this resolution is sound.

Little purpose is served, however, by merely endorsing general principles. To be effective a resolution should address a specific problem with a concrete proposal. This resolution generically exhorts California's Congressional representatives to protect constitutional rights but proposes no particular legislative action. It should be disapproved as too unfocused to yield practical benefits.

The second part of this resolution is unnecessary. In 2002, this Conference approved in principle resolution 1-09-02, which expressed support for the American Bar Association's resolution concerning detention of non-citizens. As a result, the Conference sent a letter to the American Bar Association expressing that support. There is no apparent need to send, or utility in sending, another letter.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations reaffirms its commitment to resolution 1-09-02, and recommends that the California Congressional delegation support legislation amending portions of the PATRIOT Act and the Homeland Security Department Act that violate rights guaranteed to individuals in the United States Constitution and Bill of Rights and United Nations Charter; and that the delegation members hold hearings on Executive Orders and orders of the Federal Bureau of Investigation, Central Intelligence Agency, and other surveillance agencies that allegedly violate such rights and negate the duties of the Executive branch and independent agencies; or otherwise address such concerns.

FURTHER RESOLVED, that the Conference of Delegates of California Bar Associations continues to support the resolution of the American Bar Association with respect to the November 13, 2001 Military Order Regarding "Detention, Treatment and Trial of Certain Non-Citizens in the War against Terrorism", in view of the continued detention and treatment and lack of trials of those held at Guantanamo Bay and other undisclosed locations.

PROPONENT: National Lawyers Guild San Francisco Bay Area Chapter

#### STATEMENT OF REASONS

Existing Law: Protections of civil liberties, due process, civil rights, and human rights are set forth in the United States Constitution, article 1, section 9, amendments 1, 4, 5, 6, 7, 8, 13, 14, 15, 19, 24, and the United Nations Charter, a ratified treaty, in articles 55 and 56. Many provisions of the PATRIOT Act and of the Homeland Security Act cover actions of citizens and noncitizens in the United States never previously subject to federal regulation or surveillance, as do many provisions of executive Orders and orders of the Attorney General, Central Intelligence Agency Director, Federal Bureau of Investigation Director, and other national security agencies.

This Resolution: Calls upon members of the California delegation to the United States Congress to support the rights and duties set forth in the United States Constitution and in treaty commitments made by the United States.

The Problem: It is a fundamental precept that in times of crisis it is imperative that the government respect constitutional rights and liberties and procedural due process, even as it protects life, property and national security. Adherence to constitutional rights is particularly essential in times of national crisis and turmoil. Yet, Congress hurriedly passed the PATRIOT Act and the Homeland Security Department Act, admittedly without reading all of the contents of these laws. The President has issued a number of Executive Orders on these topics, and the Attorney General and Federal Bureau of Investigation and Central Intelligence Agency Directors have issued orders that have not been reviewed. Such actions have resulted in, but are not limited to, the following problems:

1. Detention of United States citizens by the federal government, holding them incommunicado, indefinitely, without charging them with any crimes, and without affording them access to legal counsel.
2. Requiring all men from certain countries with large Islamic populations to report to the Immigration and Naturalization Services, regardless of the legality of their status, or whether they have been charged with any illegal act, and then turning them over to the Immigration and Naturalization Service for quick deportation without opportunity to consult with counsel or to notify their families, etc.
3. Failure to disclose the names, detention facilities and charges against detainees and insuring their immediate access, not only to attorneys and family members, but also to consular officials.
4. Passage of the Homeland Security Department Act, and statements by the first Secretary of the Department, have raised concerns about the commitment of the Secretary to uphold constitutional rights, including First Amendment rights—the right to form and to join labor unions and the right to strike.
5. Proposal for a Total Information Awareness program that will make available to government officials at all levels information about virtually all individual citizens and noncitizens including, but not limited to: name, address, Social Security number, phone number, e-mail address, web page, bank and account number, credit cards.

6. Requirement that each school provide the United States Army with the name of every 18-year-old boy so that the Department of Defense or one of the branches of the military can send them publicity to encourage them to join a branch of the military, as well as a notice to register for the draft, unless a parent requests that the name of their child not be so submitted.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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