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## Inside NACDL

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### *Inside NACDL*

*By Norman L. Reimer*



## The New President's Criminal Justice To-Do List

At its Fall Meeting in Tampa, NACDL's Board of Directors took several actions (see page 12 in this issue) that underscore the urgent challenges confronting President-Elect Barack Obama. The global economic meltdown and two wars will top an inbox unlike anything confronting a new president in at least a generation. But, make no mistake, criminal justice issues cry out for presidential action. The new president will ignore them at his peril. They implicate paramount constitutional imperatives to which the president will swear allegiance when he takes the oath of office on January 20th — ensuring justice, providing for the common defense, and securing the blessings of liberty.

Topping the list are myriad injustices that have embarrassed our nation and pervasively undermined the country's moral standing in the world. These include extraordinary rendition, international kidnapping, detention without charge, torture, and an adjudicative process that denigrates the Constitution and Bill of Rights. These injustices may be summed up by reference to one word that has become an icon of governmental excess: Guantánamo.

NACDL's Board of Directors has called for the immediate closure of the camps and the repeal of the Military Commissions Act. The detainees at Guantánamo, who even the government concedes are not enemy combatants, including the Uighurs whose case is now on appeal to the District of Columbia Circuit, should be set free at once. Those individuals who can be shown to have violated the laws of war as unprivileged belligerents should be prosecuted under the Uniform Code of Military Justice, consistent with the Geneva Conventions. And those captured and detained in accordance with international law, and against whom there is sufficient lawfully obtained evidence of criminality, should be tried in Article III courts.

To restore America's standing in the world, President-Elect Obama should close the detention camps at Guantánamo within hours of taking the oath of office. Nothing would do more to begin the process of international healing and restore the United States to the position of moral authority that it held in the hours immediately after the calamity of 9/11.

NACDL's Board also endorsed the Justice Integrity Act, proposed legislation to address racial and ethnic disparities in the federal justice system by mandating the creation of pilot programs to evaluate racial and ethnic fairness in the practices of U.S. Attorney's Offices. There is reason to believe that congressional leaders are intent on moving this legislation with dispatch. The new president has compelling reasons to support the legislation. Indeed, the time has come for the government to acknowledge, once and for all, the role of racial disparity in the U.S. criminal justice system.

For too long, the public has tolerated policies that disproportionately and unjustifiably disadvantage minorities. Gross imbalance in incarceration rates, disparate application of capital

punishment, and continued reliance upon racial and ethnic profiling can no longer be tolerated. Abundant evidence that the juvenile justice system deals more harshly with minorities, and emergent evidence that diversion programs are more generally available to more affluent and less diverse populations, cannot be ignored.

The painful truth is that the last vestiges of racial and ethnic inequality in American society remain prevalent in the criminal justice system. Understandable jubilation at the election of the nation's first African American president cannot obscure this reality. The new president must display the courage and vision to acknowledge these truths. Indeed, it is likely that passions and expectations among minority communities will spur the new administration and the new Congress to bold action.

Immigration enforcement policy is a third area in which NACDL seeks urgent reform. Continuing the work of the Operation Streamline Task Force, headed by Cynthia Hugar Orr, NACDL's newly installed president-elect, the Board has called for broad action to stop the misuse of our criminal justice system as a substitute for rational and humane immigration policies. Mass arrests, resulting in prefabricated assembly-line processing that denies fundamental constitutional rights, are an embarrassing stain on this nation of immigrants.

Having utterly failed to deliver immigration reform, despite President Bush's vow to provide a path to citizenship for the 20 million hard-working immigrants, the current administration has reversed course and resorted to mass prosecution and deportation in a craven act of betrayal. These policies are destroying communities, spreading a tidal wave of fear, and stoking the incendiary embers of xenophobia. (See page 14.) In a breathtaking display of cowardice, rather than confront the root causes of illegal immigration, once again the political establishment turns to the criminal justice system for a quick fix.

But history has shown that criminal prosecution is the least effective means of shaping social policy. It plays to anger and satiates the thirst for vengeance, but fixes nothing. It destroys lives, snuffs out hope, and demeans our national character. A nation cannot prosecute its way out of a socio-economic problem that is driven by the irresistible allure of the American dream. Let us hope that Barack Obama can look at this problem with fresh eyes. If he does not, it would be a tragedy if we turn our nation of immigrants into a nation of criminals.

Beyond these three issues, there is a long menu of criminal justice issues that must be addressed in the coming years: overcriminalization, overfederalization, sentencing reform, innocence initiatives, grand jury reform, and indigent defense funding are just a few examples. But if the new president acts boldly on Guantánamo, racial inequity, and immigration enforcement policy, he can set a new tone — one that restores justice to the American criminal justice system. Holding high the torch of justice is the most effective tool ever conceived to safeguard national security and preserve liberty.

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