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The Champion

June, 1995

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DEPARTMENT: NACDL NEWS: LEGISLATIVE ROUND-UP

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TEXT:

[*56] This has been a frenetically paced six months for NACDL's legislative program. So many members and staff have tried to stem the Republican tidal wave of reactionary, oppressive and ill-advised legislation. Unfortunately, it often seems as if there is no end in sight.

Proposed and Pending Legislation

The Republican crime bill, called the "Taking Back Our Streets Act" (T.B.O.S.A.), which was part of the Republican promised "Contract with America," overwhelmingly passed the House of Representatives, with the exception of the repeal of the Assault Weapons [*57] Ban and the federalization of state street crime involving guns (through the creation of new mandatory minimum sentences), which House Speaker Newt Gingrich (R.-GA) managed to separate from the remainder of the crime bill for later consideration.

Consideration of the repeal of the Assault Weapons Ban and the new mandatory minimum sentences were to occur in May. However, it is possible that it will be deferred further given the Senate's current consideration of its proposed crime legislation (including anti-terrorist measures) and the Oklahoma City bombing. The Court's *Lopez* decision also complicates the gun plans.

In summary, the T.B.O.S.A. provisions that passed the House were those curtailing the exclusionary rule to allow the admission of evidence seized in warrantless searches if the officer acted in "good faith;" imposing severe restrictions on *habeas corpus* petitions; eliminating all drug prevention funding and the establishment of drug courts included in last year's crime bill (Violent Crime Control and Law Enforcement Act of 1994); mandating restitution for direct and indirect victims of crime, regardless of the offender's ability to pay; restricting prisoner lawsuits; and authorizing \$ 10 billion dollars for building more prisons to house violent offenders, while disallowing funds to build alternative correctional facilities.

Senators Dole (R.-KS) and Hatch (R.-UT) have introduced their version of T.B.O.S.A. in the Senate (S. 3). Senators Spector and Hatch have also offered S. 623, specifically addressing *habeas corpus* "reform." According to NACDL Legislative Committee Co-Chair Elisabeth Semel, its provisions are substantially similar to H.R. 729 and S. 3, creating strict time limits for filing and deciding federal *habeas* petitions and greatly decreasing the likelihood of evidentiary hearings in district court. Unlike S. 3, the Spector-Hatch "compromise" would not eliminate 21 U.S.C. § 848(q) funding for federal *habeas*.

Among the low points of S. 3 are: the *abolishment* of the Fourth Amendment Exclusionary Rule and the creation in its stead of a tort claim with a cap of \$ 30,000 in almost all cases; the almost complete evisceration of *habeas* relief; an increase in mandatory minimum offenses; the *complete exemption* of federal prosecutors from ethical rules other than those adopted by the Attorney General, and allowance of contact by federal prosecutors and agents with opposing parties known to be represented by counsel; the creation of a new obstruction of justice offense for attorneys; the shifting of the burden of proof in cases involving an alleged involuntary or coerced confession, from the prosecution to the defendant; further restrictions on the application of the mandatory minimum safety valve; and the mandatory

treatment of juveniles 13 and over charged with violent crimes as adults (with no opt-out provisions for Native Americans on reservations).

Status of Legislation

As stated, all of the TBOSA provisions except for the new mandatory minimum gun offenses passed the House easily. Hearings have been conducted on some of the Senate proposals.

On March 7, the Senate Judiciary Committee held a hearing on Confessions and the Fourth Amendment Exclusionary Rule (Section 507 of S. 3). NACDL, through a joint drafting effort by President Gerry Goldstein, Leslie Hagin, Paul Levine, Paul Petterson, Elisabeth Semel, Jeralyn Merritt and John Flannery, submitted written testimony in opposition to the proposals (and its House counterpart, H.R. 666).

On March 28, the Senate Judiciary Committee held a hearing on proposed *habeas* bills (S. 3 and S. 623, H.R. 729). Again, NACDL prepared and provided written testimony in opposition to the legislation.

On April 6, the House Judiciary Committee held its first "general" hearing on terrorism and the first proposed anti-terrorism bill (H.R. 896). NACDL, through President Gerry Goldstein, submitted a lengthy written statement for the record and asked to testify at future House and Senate Judiciary Committee hearings on the Senate version of the proposed legislation. The proposals are the Clinton administration's *Omnibus Counterterrorism Act of 1995* (H.R. 896, S. 390); Title VI of S. 3; and Senator Dole's S. 735 (which contains the Republicans' "*habeas* reform" package.) By the time you read this, House Judiciary Committee Chair, Hyde (R-IL) and Rep. McCollum (R-FL) will have introduced their own international and domestic terrorism bill, essentially akin to the administration's international and domestic proposals.

[*58] NACDL has suggested in its written statement that a more appropriate name for the anti-terrorism proposals would be the *McCarthyism, Korematsu and Star Chamber Renewal Act*. All of these proposals contain massive assaults on the Bill of Rights, and would inflict more damage on constitutionally protected liberties than any other legislation in recent memory.

While NACDL was not provided an opportunity to speak at the April 27 and early May hearings on terrorism before the Senate and House Judiciary Committees, President Goldstein did submit another detailed written statement in opposition for the record.

Hearings have not been scheduled on Sections 501 and 502 of S. 3, providing for the exemption of federal prosecutors from state and local ethical rules, and making it a criminal offense (obstruction of justice) for a lawyer to "knowingly" make a "false" statement of law or fact in a pleading. NACDL has submitted written opposition to these provisions, and is requesting a hearing and permission to provide testimony regarding them.

On May 11, the House Appropriations Committee held a hearing on funding for indigent defense services. Paul Petterson and Leslie Hagin were successful in obtaining an invitation for NACDL to testify. Indigent Defense Committee Co-Chair Rick Kammen testified, and a written statement was submitted.

Word is that Judiciary Committee Chair Orrin Hatch is drafting a new primary Senate Crime bill; NACDL pressure needs to be applied there through Counsel Mike O'Neil at Fax # (202) 224-9102.

It is likely the House and Senate versions of the crime bills will go to conference around the time of the Fly-In. However, the Oklahoma bombing and President Clinton's desire to push through his anti-terrorist legislation, may delay this timetable. Finally, the House Crime Subcommittee chaired by Rep. McCollum, and the Senate Judiciary Committee chaired by Sen. Hatch will hold hearings on such abusive police cases as Waco and Ruby Ridge starting in June, in the House.
