



## THE PRESIDENTIAL CANDIDATES ON CRIMINAL JUSTICE ISSUES

*In mid-October, 2003, the NACDL national office sent a short list of questions to the Bush-Cheney campaign and to the nine declared Democratic candidates in the upcoming presidential primaries. The candidates were asked for their views on the death penalty, DNA evidence, indigent defense, judicial discretion, the war on terrorism, white collar crime and corporate compliance. This survey was conducted for the benefit of our members; NACDL does not rate or endorse candidates for political office.*

*We received responses from five of the Democratic candidates; the Bush-Cheney election committee responded that the President and Vice President have not yet declared their candidacy for office, and it is not responding to these sorts of surveys at this time.*

*Retired U.S. Army General Wesley K. Clark, former Vermont Governor Dr. Howard Dean, and U.S. Senators John Edwards (NC), John Kerry (MA) and Joseph Lieberman (CT) all responded by late December, in line with our request. Reps. Richard Gephardt (MO) and Dennis Kucinich (OH), and candidates Carol Moseley-Braun and the Rev. Al Sharpton did not respond to phone calls and e-mails to their headquarters.*

*The same questions were sent to all candidates. The responses, in alphabetical order of the candidates' names, follow each question.*

— Ralph Grunewald, Publisher  
The Champion

## DEATH PENALTY

**Do you support the death penalty? Under what circumstances, if any, would you support a moratorium on death penalty cases on the federal and state level?**

**GEN. WESLEY K. CLARK:** I believe the death penalty should be available for the most heinous crimes. There are some crimes for which the death penalty is a fair and just punishment. At the same time, I think every person in this country is concerned about reports of innocent people on death row and unfairness in our criminal justice system. The death penalty is too often applied in a discriminatory and uneven way. If we are to carry out the ultimate penalty, it must be with the ultimate safe-



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guards. That's why I support the Innocence Protection Act and other measures to ensure that defendants have access to adequate legal counsel and DNA evidence. I strongly encourage individual states to review application of the death penalty, as Maryland and Illinois have done, and make sure that steps are taken to ensure that the death penalty is not applied in a discriminatory way.

**DR. HOWARD DEAN:** I believe the death penalty should be available for especially heinous crimes, such as terrorism or the murder of police officers or young children.

**SEN. JOHN EDWARDS:** I believe the death penalty is the most fitting punishment for the most heinous crimes, and I support it for those crimes. But I am also deeply troubled that more than 100 individuals sentenced to death have been exonerated. I support reforms in the death penalty to ensure

that capital defendants receive fair trials, with zealous and competent lawyers, and with full access to DNA testing. I co-sponsored the original version of the Innocence Protection Act in order to advance these goals, and would support additional reforms to ensure that death sentences are imposed only on individuals who are guilty of the most heinous crimes, and only after fair trials.

I do not see systemic problems in the federal death penalty to justify a moratorium. States should decide on a state-by-state basis whether to impose a moratorium.

**SEN. JOHN KERRY:** I oppose the death penalty other than in cases of real international and domestic terrorism.

I support a moratorium on the death penalty because I believe that there are serious systemic flaws in the death penalty system, which have resulted in the conviction of people who are innocent. In fact, one hundred and eleven innocent people have already been released from death row because of wrongful convictions.

**SEN. JOSEPH LIEBERMAN:** I

believe that the death penalty must be available as a sanction in the case of the most egregious crimes. I have not supported imposing a complete moratorium on all death penalty cases. However, we have an obligation to ensure that death penalty cases are conducted in a fair and just manner, and the unique nature of the death penalty demands that we provide special protections for those accused of capital crimes. That is why I co-sponsored the Innocence Protection Act (S. 486, 107th Congress), which would have made DNA testing available to all state and federal inmates if the testing has the potential to produce exculpatory evidence relevant to their conviction or sentence and would have ensured that defendants in capital cases receive qualified and competent counsel. This Congress, I am also co-sponsoring the Advancing Justice Through DNA Technology Act (S. 1700), which contains a version of the Innocence Protection Act.

## DNA EVIDENCE

**What is your position on the use of DNA evidence to determine the guilt or innocence of defendants after conviction, and how would you propose to fund such a plan?**

**GEN. CLARK:** I support the Advancing Justice Through DNA Technology Act and the Innocence Protection Act. I strongly believe that DNA evidence can play an important role in the defense and prosecution of crime. We must eliminate the backlog of unanalyzed DNA samples in the nation's crime labs, expand and improve the capacity for crime labs to conduct DNA analysis, train criminal justice and medical personnel in DNA evidence, and promote the use of DNA testing.

**DR. DEAN:** I support passage of Senator Leahy's Innocence Protection Act which would expand and fund access to DNA testing.

**SEN. EDWARDS:** DNA testing is an extraordinary advance that can do tremendous good — both convicting the guilty and freeing the innocent. We must ensure adequate access to DNA testing at trial and, where that fails, in post-conviction proceedings. This is a matter of fairness to defendants and victims, and a matter of justice for the guilty. I have supported numerous bills to extend access to DNA testing, including access in *habeas corpus* proceedings.

**SEN. KERRY:** I don't believe that the starting point should be *after* conviction, but rather immediately upon arrest. Our criminal justice system will be most effective in deterring crime when people are confident in the fairness and certainty of the outcomes. We should make use of new technologies such as DNA and other forensics to the maximum extent possible and we should give defendants access to that technology as well. America wins equally when the guilty are convicted and the innocent are acquitted. I will support funding for this program as part of a broader criminal justice initiative.

**SEN. LIEBERMAN:** I support providing those convicted of crimes access to DNA testing when such testing may help prove the defendant innocent of the crime of which he or she was convicted. As discussed above, I co-sponsored both last Congress' Innocence



Protection Act and this Congress' Advancing Justice Through DNA Technology Act, both of which provide access to post-conviction DNA testing.

## INDIGENT DEFENSE

Indigent defense systems are often underfunded and understaffed, and public defenders often have large caseloads and minimal contact with defendants, as a result. Do you see a role for the federal government to provide assistance to alleviate problems present in the state systems?

**GEN. CLARK:** Public defenders are an incredibly important and necessary part of our justice system. Without them, many defendants would not receive a fair trial. I would support measures, such as the Innocence Protection Act, that provide assistance to states and help them establish basic standards of competency. And I support measures that encourage qualified young lawyers to become public defenders. I believe the federal government can play a role in ensuring that public defenders are adequately compensated by increasing the hourly rate paid to defenders appointed by federal courts.

**DR. DEAN:** I support efforts to improve the quality of indigent defense in criminal cases, including Senator Leahy's Innocence Protection Act. Federal support for state criminal justice systems should be used to improve both the prosecution and defense functions.

**SEN. EDWARDS:** The right to counsel is one of the bedrocks of our criminal justice system, and that right means little unless defendants have access to lawyers who can mount a competent defense. Unfortunately, due to the terrible budget crises in the states, funding for indigent defense has

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been squeezed even more than is the norm. I

support at least \$30 billion in fiscal relief for state and local governments, which would relieve this pressure on state systems.

**SEN. KERRY:** Absolutely. The starting point is providing defendants a competent defense, which is guaranteed by the Constitution. If the defendant is indigent, then competent defense should be provided. Too often, this is not the case. It makes no sense to provide a lackluster defense and then to litigate trial competency issues through the *habeas* system for years to come.

Indigent defense systems are primarily the responsibility of the states (and other local jurisdictions) and I would not change that system. Nevertheless, it is appropriate for the federal government to supplement state resources to ensure an effective and fair system of justice.

**SEN. LIEBERMAN:** I firmly believe that indigent defendants in criminal cases deserve competent counsel. Our justice system needs to be just that — a system of *justice* — and convicting anyone without enabling them to have the assistance of competent counsel is not justice. As mentioned above, I am co-sponsoring the Advancing Justice Through DNA Technology Act, which authorizes a Justice Department grant program to improve the quality of legal representation provided to indigent defendants in state capital cases.



## JUDICIAL DISCRETION

Judicial discretion with respect to sentencing has been narrowed in recent months. Do you support restoring greater discretion to judges in federal sentencing, or do you support the current trend? How would you resolve the inherent conflict between the federal sentencing guidelines scheme and the federal mandatory minimum sentencing scheme?

**GEN. CLARK:** I strongly oppose the narrowing of judicial discretion that has occurred under the Bush Administration. As President, I'd want to listen to professional prosecutors and judges to figure out what changes we need to make in our system. Sometimes mandatory sentences are appropriate, but I haven't seen any evidence that — as a general rule — mandatory minimum sentences make us safer. We need to make sure that we are getting the right folks off the street for the right amount of time, and that means finding the right mix of judicial discretion and federal mandates. We need to look at the system as a whole — granting judges and prosecutors greater discretion could certainly be part of an overall strategy to make our criminal justice system more fair and effective.

I also oppose the PROTECT Act. Among other curtailments, the proposed bill all but forbids prosecutors from agreeing to downward departures from the rigid federal sentencing guidelines, increasing the chance that individual punishments won't actually fit individual crimes. It also instructs prosecutors to report judges that order



departures from sentencing guidelines — creating the very real possibility that judges will be put on a DOJ blacklist.

**DR. DEAN:** I oppose mandatory sentencing laws, which deprive judges of the discretion they need to impose proper sentences in light of relevant offense and offender characteristics. Mandatory sentencing, especially in drug cases, has contributed to unjustified racial disparity in the criminal justice system. I favor sentencing guidelines under which judges may depart up or down from a presumptive sentencing range, subject to appellate review. A well-constructed sentencing guideline system strikes the right balance between sentencing uniformity and judicial discretion. I am concerned about the current trend in federal law toward overly rigid sentencing rules.

**SEN. EDWARDS:** Judges need discretion to ensure that they can take the unique circumstances of different cases into account. But judges should not have so

much discretion that they can decide cases based on irrelevant factors like race, which unfortunately still can happen in our criminal justice system. We need a balance.

Particularly during the Bush Administration, our system has taken away too much judicial discretion. Even “tough on crime” judges

have protested. We should listen to them. For example, we must revisit recent legislation that discourages judges from downwardly departing in sentencing. And while some mandatory minimum sentences are appropriate, we must revisit those minimums — particularly in drug sentencing — which are unfair, which have racially disproportionate effects, and which too harshly punish young people who still can become productive citizens.

**SEN. KERRY:** I favor restoring limited discretion in sentencing to federal judges. The

Sentencing Guidelines were not



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intended to eliminate discretion, but rather to provide significant ranges within which judges could sentence in order to assure uniformity.

**SEN. LIEBERMAN:** I believe that our sentencing laws must balance the need for consistency in punishment with the recognition that each individual and each crime is different. Although I therefore believe that it is the responsibility of the legislative branch to set sentencing parameters and support establishing Sentencing Guidelines and in some cases, mandatory minimum sentences, I also believe that judges must have some room to take into account each defendant’s and each crime’s circumstances when sentencing defendants. I believe that we should be careful when establishing mandatory minimums, that mandatory minimums should be the exception rather than the rule and that we should be open to re-evaluating any particular mandatory minimum sentence, but I also believe that mandatory minimum sentences are in some cases appropriate and effective ways of deterring and punishing crime.

## **WAR ON TERRORISM**

**Which provisions of the USA-PATRIOT Act would you like to see repealed or amended, if any, and why?**

**GEN. CLARK:** I believe that law enforcement should have access to all necessary tools to deal with the problems of terrorism, which is why I’m calling for an immediate \$140 billion investment in homeland security. But I don’t believe that we can win a war on terror if we give up the essence of who

we are as Americans. That’s why I think that Congress should fully review the so-called USA-PATRIOT Act — and repeal the provisions that go too far. The USA-PATRIOT Act was jammed through Congress in a matter of weeks,

when the country was still in shock from the horrific attacks of September 11th. It wasn’t carefully drafted and it wasn’t fully debated. More troubling is that, in just two years, the Act has grown the tentacles that many feared. Recently, a Justice Department report admitted that John

Ashcroft has actually expanded the substantial reach of the Act, using it to snoop in secrecy for evidence of crimes that have nothing to do with terrorism. I am concerned that the USA-PATRIOT Act goes too far in expanding the authority of government investigators, and that it does so without sufficient oversight. We need to make sure that we are taking responsible measures to meet the needs of the time. That’s why I’ll call on Congress to fully review each provision of the Act, study the ways in which each has been used in practice, and eliminate those provisions that unduly threaten our civil liberties.

**DR. DEAN:** The USA-PATRIOT Act was passed soon after the September 11 attack without sufficient debate. I favor a comprehensive review of the Act to determine which provisions are needed to combat terrorism, and which are overbroad or unnecessary. Among the aspects of the USA-PATRIOT Act which concern me are those which allow law enforcement agents to obtain library records, student records and personal financial information without meaningful judicial review, and those which allow the use of “sneak and peak” searches, even in non-terror cases. In addition, the Bush Administration has employed a number of tactics outside the scope of the USA-PATRIOT Act which I oppose, including the lengthy detention of suspects without the right to counsel or sufficient judicial review.

**SEN. EDWARDS:** I support numerous changes to the USA-PATRIOT Act. For example, the provision allowing seizure of library records must be rewritten so that the judge is required to review the facts underlying the



application, not just to rubber stamp a certification. The provision allowing searches without notice to the target must be rewritten to limit the circumstances in which those searches are allowed. Greater public disclosures must be required. And the whole Act must be reviewed.

**SEN. KERRY:** On September 11th 2001, terrorists attacked a nation conceived in liberty, built on justice, founded on equality. A nation of immigrants. And we must fight to defend that nation — not give up the beliefs that make us who we are.

The main problem with the USA-PATRIOT Act is that John Ashcroft is in charge. The Ashcroft Justice Department has refused to even answer basic questions about their use of the PATRIOT Act and there is no question they have overstepped their authority. For example, they have indefinitely held people without access to a lawyer. That is wrong.

There are some parts of the Patriot Act that simply have to go. We need to get rid of unreasonable “sneak and peak” searches that allow investigators to search property without ever telling the owner. We should not allow the FBI unfettered access to business and library records, and we should protect Americans from unchecked government surveillance.

I believe Americans can be secure without giving up their most fundamental freedoms.

**SEN. LIEBERMAN:** I am exceedingly concerned by the allegations of civil liberties abuses by this Administration, whether under the USA-PATRIOT Act or otherwise. Like virtually all of my Senate colleagues, I voted for the USA-PATRIOT Act because I believe that in a post-September 11th world, we need to make sure that law enforcement has the tools it needs to fight the war on terrorism.

But what this Administration has done since then tells me that they just don't have the necessary respect for our nation's foundational commitment to civil liberties, which must be part and parcel of the way in which we conduct ourselves in the war on terrorism. The Ashcroft Justice Department's own Inspector General tells us that in the wake of September 11, the Department abused the rights of hundreds of foreign nationals they encountered during their investigation, instituting a blanket “no bond” policy regardless of whether there was any suspicion of wrongdoing, preventing them from contacting their

families and attorneys, and subjecting them to unusually harsh conditions of confinement, including verbal and physical abuse. We also have reports that DOJ has used its authority to detain so-called “material witnesses” as an excuse to hold individuals they think are connected with terrorism but don't have the goods to charge them with a crime.

The Administration must do better, and as President, I will. As for the USA-PATRIOT Act, fortunately, the Democratic leadership insisted that many of the USA-PATRIOT Act's provisions be temporary. We need to insist that the Bush Administration share with us and the public how it's used those provisions, and before we even think of reauthorizing them, we need to hear the Bush Administration's response to the abuse allegations and have them justify why they should be trusted with these authorities in the future.

### WHITE COLLAR

**Do you believe that criminal sanctions are the most effective and just means to ensure corporate compliance with federal laws and regulations?**

**GEN. CLARK:** As the events of the last two years have taught us, corporate fraud and white collar crimes can seriously undermine our economy. Investors need to have confidence that those who abuse investor trust will be held accountable. The Bush Administration has done too little to support the financial cop on the beat (the SEC). As President, I will ensure that the SEC has the resources necessary for the job. That has not been the case in recent years. Too often in the past, narrow interests have stymied the SEC's efforts to protect investors. My administration will fight for investors. We are going to increase transparency, push for meaningful disclosure and close corporate tax loopholes.

**DR. DEAN:** When corporate officers violate criminal laws, criminal sanctions are entirely justified and necessary. In addition, we need more effective measures to prevent corporate crime, including rules that strengthen the independence of boards of direc-

tors and auditors, and rewards for whistleblowers who expose corporate wrongdoing in a timely manner.

**SEN. EDWARDS:** Corporations and their employees should be subject to many kinds of oversight. While criminal sanctions should not be sought or imposed thoughtlessly, they are a fitting and appropriate response to some corporate misconduct.

**SEN. KERRY:** I believe that in appropriate circumstances where criminal laws have been violated, criminal penalties are warranted. Those who loot the pension plans of hard-working Americans, for example, deserve to be sent to prison for a very long period of time. I will be tougher than the Bush Administration, but tougher on the right people. I would not put Arthur Andersen's 86,000 employees out of work as



**Sen. Joseph Lieberman:** “Where corporations or those who run them engage in wide-spread fraud, causing thousands to lose their life savings, for example, criminal sanctions seem appropriate. In some cases, civil penalties may suffice.”

President Bush did. Rather, I would root out those at Andersen who were responsible for falsifying Enron's financial statements and seek tough penalties against them.

**SEN. LIEBERMAN:** I believe that “white collar” crime can be as harmful to our citizens and as damaging to the fabric of our society as violent crime. Whether criminal sanctions are the most effective and just means to ensure corporate compliance with federal laws and regulations depends on which particular federal law or regulation is at issue. Where corporations or those who run them engage in wide-spread fraud, causing thousands to lose their life savings, for example, criminal sanctions seem appropriate. In short, in some cases, civil penalties may suffice, while in others, the threat of criminal sanction is necessary to ensure compliance and punish wrongdoers. ■