

THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA
THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
THE BAR ASSOCIATION OF SAN FRANCISCO
THE BEVERLY HILLS BAR ASSOCIATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

1 **RESOLVED**, that the American Bar Association urges that, with respect to the November
2 13, 2001, Military Order Regarding "Detention, Treatment, and Trial of Certain Non-
3 Citizens in the War Against Terrorism," or any similar military order that is issued, the President and
4 Congress should assure that the law and regulations governing any tribunal will:

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6 1. Not be applicable to United States citizens, lawful resident aliens, and other persons lawfully present
7 in the United States;

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9 2. Not be applicable to persons apprehended or to be tried in the United States, except for persons
10 subject to the settled and traditional law of war who engage in conduct alleged to be in violation of such
11 law of war;

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13 3. Not be applicable to cases in which violations of federal, state or territorial laws, as opposed to
14 violations of such law of war, are alleged;

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16 4. Not permit indefinite pretrial detention of persons subject to the order;

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18 5. Require that its procedures for trials and appeals be governed by the Uniform Code of Military
19 Justice except Article 32 and provide the rights afforded in courts-martial thereunder, including, but not
20 limited to, provision for certiorari review by the Supreme Court of the United States (in addition to the
21 right to petition for a writ of habeas corpus), the presumption of innocence, proof beyond a reasonable
22 doubt, and unanimous verdicts in capital cases; and

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24 6. Require compliance with Articles 14 and 15(1) of the International Covenant on Civil and Political
25 Rights, including, but not limited to, provisions regarding prompt notice of charges, representation by
26 counsel of choice, adequate time and facilities to prepare the defense, confrontation and examination of
27 witnesses, assistance of an interpreter, the privilege against self-incrimination, the prohibition of ex post
28 facto application of law, and an independent and impartial tribunal, with the proceedings open to the
29 public and press or, when proceedings may be validly closed to the public and press, trial observers, if
30 available, who have appropriate security clearances.

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32 **FURTHER RESOLVED**, That the American Bar Association urges the Executive and Legislative
33 branches, in establishing and implementing procedures and selecting venues for trial by military tribunals,
34 to give full consideration to the impact of its choices as precedents in (a) the prosecution of U.S. citizens
35 in other nations and (b) the use of international legal norms in shaping other nations' responses to future
36 acts of terrorism.