

MINUTES

The meeting convened at 7:04 pm with Chairperson Anne Wagley presiding.

ROLL CALL

Present: Donald Brody, Elliot Cohen, Leslieann Cachola, Steven Freedkin Rita Maran, Thom Seaton, Michael Sherman, PhoeBe ANNE (sorgen), Anne Wagley, Jamie Wright

Absent: Roya Arasteh, John Lavine, Mark McDonald

COMMENTS FROM THE PUBLIC

1. Michael Page, Berkeley-Palma Soriano Sister Cities Association, regarding the proposed resolution to send a letter to Cuba from the Berkeley City Council.
2. Selma Spector, Berkeley-Palma Soriano Sister Cities, addressing response letter on Cuban human rights.
3. Thomas Kelly regarding resolution on AI's opposition to Cuban government.
4. John Murcko, Bay Area Cuba Medical Committee, regarding the proposed resolution to send a letter to Cuba from the Berkeley City Council.
5. Cynthia Johnson regarding proposed resolution on Cuba.
6. David Welsh, Pastors for Peace-US Cuba Friend shipment Caravan, regarding proposed resolution on Cuba.

ACTION ON MINUTES

M/S/C (*sorgen, Sherman*) to approve the minutes from the regular meeting of October 20, 2003 with corrections. **Ayes:** *Cachola; Freedkin, Maran, Seaton, Sherman, sorgen, Wagley*; **Noes:** *None*; **Abstain:** *Brody, Cohen, Wright*; **Absent:** *Arasteh, Lavine, McDonald*.

Commissioners Brody, Cohen, and Wright abstained from the vote because they were not present at the October meeting.

**Peace and Justice Commission
Minutes – November 3, 2003**

ACTIONS TAKEN

CUBA: HUMAN RIGHTS ABUSES

M/S/C (*Freedkin, Sherman*) That the Peace and Justice Commission, in lieu of offering a recommendation on the proposed resolution regarding human rights in Cuba at this time, resolves to host a community forum at which the diversity of views regarding this issue in our community can be discussed, the facts and context of this issue can be explored, and an attempt to discover areas of agreement can be made. After the forum has taken place, the Commission will report back to the City Council and may offer recommendations at that time. **Ayes:** *Cachola, Cohen, Freedkin, Maran, Sherman, sorgen, Wagley, Wright*; **Noes:** *Brody, Seaton*; **Abstain:** *None*; **Absent:** *Arasteh, Lavine, McDonald*.

MONITORING PATRIOT ACT RELATED ACTIVITIES

M/S/C (*Cohen, Maran*) to approve the following report and recommendations regarding the monitoring of Patriot Act related activities:

Introduction

Since the events of September 11, 2001, our society has seen a steady erosion of civil liberties as the population has grappled with how best to deal with the potential threats from terrorism. While there is much debate about the nature and seriousness of these threats, the City of Berkeley has been steadfast in its commitment to provide maximum protection of citizens' civil liberties and constitutional rights. Specifically, on three occasions the City Council has spoken out on the danger to civil liberties and constitutional rights created by the so-called Patriot Act. In specific the City adopted Resolutions Nos. 61,747-N.S. and 61,449-N.S. to protect the constitutional rights and civil liberties of the public from Justice Department directives, executive orders and Patriot Act provisions that weaken or destroy our civil rights and liberties.

Events occurring in last spring's protests against the war in Iraq have demonstrated, however, that further protections and clarifications are called for in defense of our Constitutional rights to freedom of speech and freedom of assembly. On April 7, 2003, police officers in the City of Oakland opened fire on peaceful anti-war protesters at the Port of Oakland, leading to what the New York Times called the "most violence between protesters and authorities anywhere in the country since the start of the war with Iraq." (*"Lockyer needs to alter CATIC culture" Oakland Tribune May 25, 2003, p. 8*). Fortunately, Berkeley was spared such violence during the anti-war protests and both protesters and the Berkeley Police Department are to be commended for their exercise of peaceful, good judgment.

The violence that occurred at the Port of Oakland was apparently triggered, at least in part, by a "potential violence" bulletin sent by the California Anti-Terrorism Information Center. This Center is part of the apparatus set up as part of the "War on Terrorism" under recent anti-terrorist legislation such as the Patriot Act. (*Oakland Tribune May 18, 2003 p. 1*)

The police violence at the Port of Oakland as well as the actions of the California Anti-Terrorism Information Center indicate that the protections afforded in Council Resolutions cited above may be inadequate to prevent the occurrence of similar episodes here in Berkeley.

Peace and Justice Commission Minutes – November 3, 2003

Statement of Commission Jurisdiction

The Peace and Justice Commission has a mandate to advise the City Council on issues of peace and justice. The scope of the Commission's purview includes support for human rights (*Berkeley Municipal Code (BMC) 3.68.070 A*), the development of proposals in furtherance of peace and justice (*BMC 3.68.070 C*), research to assess information relevant to the peace and social justice (*BMC 3.68.070 E*), and the development of ways to resolve conflict that are non-violent and can be applied at the local and national level (*BMC 3.68.070 F*). The Peace and Justice Commission has prepared this report and recommendations to inform the City Council as to the potential weaknesses in the existing protections of Citizens' Constitutional rights and to help insure that Berkeley's resolutions on the Patriot Act are complied with properly and then strengthened to prevent any episodes in Berkeley like that which occurred at the Port of Oakland.

History and Evidence of Need for Improvement

On September 10, 2002 the Berkeley City Council adopted Resolution 61,747, which commits the Berkeley Police Department and other law enforcement and city agencies not to discriminate against any person on the basis of ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, marital status, physical or mental disability or religion. The resolution further requires city agencies and departments to use all possible leverage to ensure that Federal and State law enforcement officials acting within the city operate in accordance with the policies of the Berkeley Police Department; and that neither the Police nor other City employees or departments engage in law enforcement activities that threaten the civil rights and civil liberties of the people of Berkeley, such as surveillance, wiretaps, and securing of private information, which the Patriot Act and Executive Orders authorize absent a specific court approved warrant. The resolution also specifies that organizations should not be monitored based on their religious or political views.

The Resolution defines when such activity may be permissible by specifying that no information about political, religious or social views, associations, or activities should be collected unless the information relates to "public safety concerns or establishes suspicion of criminal activity or the potential for criminal activity."

Although this requirement initially seemed adequate to prevent abuses, recent experience in the City of Oakland has brought to our attention that these safeguards may be inadequate ("*State monitored war protesters*" *Oakland Tribune* May 18, 2003 p.2; "*Lockyer needs to alter CATIC culture*" *Oakland Tribune*, May 25, 2003, p.8).

The California Terrorist Information Center admits it has been gathering information on political activists since its creation. Center spokesman Mike Van Winkle justified the spying stating that since the war being fought was a war against international terrorism, protesting the war itself could be considered a terrorist act. (*Oakland Tribune*, May 18, 2003 p. 1 "*State monitored war protesters*").

The Center is required to limit intelligence it gathers, analyzes and disseminates to information based upon a reasonable suspicion that criminal acts will be committed. Ed Manavian explained that because blocking traffic violated the law, a protest with thousands of people that could block

Peace and Justice Commission
Minutes – November 3, 2003

traffic was sufficient to meet the criteria for issuing the potential violence bulletin. (*Oakland Tribune, May 18, 2003 p. 1 "State monitored war protesters"*).

The fact that the criterion requiring a reasonable suspicion of criminal activity was interpreted so broadly in at least one instance that we know of indicates that our Berkeley resolutions that restrict intelligence gathering activity on a similar basis may need to be strengthened and better monitored if we are to accomplish our goal of protecting the constitutional rights and civil liberties of the public.

Recommendations to Council:

1. The City Council should amend City of Berkeley Resolution Nos. 61,747-N.S. and 61,449-N.S. to require that the nature of "the public safety concerns" or "criminal activity" which would justify information gathering or dissemination on suspected terrorist groups specifically exclude legitimate expressions of political opinion and acts of non-violent civil disobedience.
2. Sunshine laws that shed light on police and security agency information-gathering activities are the best assurance we can have of that Berkeley's policies adopted to protect and support citizens' civil liberties and Constitutional rights in the face of government encroachment are in fact implemented. But in addition to public disclosure requirements, if Berkeley's City Council resolutions are to have any meaningful effect, there must be some mechanism to see that they are carried out. Toward this end the Peace and Justice Commission urges the adoption of a requirement that the City Manager prepare a quarterly report, which would provide the following seven categories of information.
 - i. A disclosure of any funding or grants related to terrorism and provide information as to where the funding is from, what the program consists of, what City resources are dedicated to it, what the cost to the City is, both financially and with regard to staff time, and what agency is involved and who can be contacted for more information so that it can be determined if these efforts comply with Council Resolutions relevant to the Patriot Act.
 - ii. A listing of all agreements and/or co-operative relationships that exist between City departments and agencies and any non-City entities that involve joint action, or the gathering, collecting, or disseminating of information about "terrorism" and/or political, religious or social views or associations.
 - iii. Without disclosing the names of individuals targeted, a report of all activities involving surveillance, wiretaps, the use of informants and other activities used to obtain from or provide information to State, Federal or other local agencies. This disclosure should specify the name and designation of the program or agreement under which the information is collected or shared, the specific agency or department, the legal authority under which the information is being collected, the specific law or laws that are the criminal predicate for gathering the information,

Peace and Justice Commission
Minutes – November 3, 2003

and a statement of the number of persons upon whom entries, files or data have been gathered.

- iv. A listing of what efforts have been made by City agencies or departments to comply with Resolution 61,747 requirement that it use all possible leverage to ensure that Federal and State law enforcement officials acting within the City with the authorization of the Patriot Act and/or Executive Orders not engage in law enforcement activities such as surveillance, wiretapping, and securing of private information, that threaten civil rights and civil liberties of the people of Berkeley.
 - v. A list of what efforts have been made by City agencies or departments to comply with Resolution 61,747 requirement to insure that persons or groups being monitored by the City, Federal or State agencies are not being monitored based solely upon their political, religious or social views, or their associations, and an explanation of what steps are being taken to insure that such monitoring does not cover the activities of persons involved in such groups.
 - vi. A listing of what the City of Berkeley has done pursuant to Council Resolution 61,449 to follow the lead of the cities of Portland and Detroit in prohibiting our police from responding to requests from the federal government to question named individuals, until it be determined that these orders do not violate the California or United States Constitution.
 - vii. Disclosure of any other information the City Manager deems relevant to the monitoring of the activities pertinent to this measure.
3. The City Council should adopt a specific policy requiring that before the City of Berkeley, or any department, agency or employee thereof may co-operate with an outside agency in gathering, collecting, or disseminating information about political, religious or social views, associations, or activities in the name of anti-terrorist activities, that said outside agency be required to provide written documentation detailing the nature of the relevant "public safety concerns or suspected criminal activity" and the statutory authority under which such agency action is being taken.
 4. The City Council should enact an ordinance that prohibits any City agency, department or employee from applying for or accepting any grants for gathering, sharing or collecting information regarding "terrorist" activities in absence of the passage of an ordinance authorizing the same.

Ayes: *Unanimous*; **Absent:** *Arasteh, Brody, Cohen, Wright.*

MEDICAL MARIJUANA

M/S/C (*Cohen, Sherman*) to rescind the action approved at the September 2003 regular meeting regarding medical marijuana. **Ayes:** *Unanimous*; **Absent:** *Arasteh, Lavine, McDonald.*

**Peace and Justice Commission
Minutes – November 3, 2003**

IMPRISONMENT OF BERKELEY LECTURER

M/S/C (Cachola, Seaton) to approve the following Resolution regarding the imprisonment of Dr. Dariush Zahedi, a lecturer at the University of California at Berkeley:

WHEREAS, Chapter 3.68 of the Berkeley Municipal Code (BMC) which contains the initiative ordinance creating the Peace and Justice Commission sets forth the definition of “social justice” to include “respect for human rights, and the abhorrence of exploitation and all forms of oppression.” BMC § 3.68.030; and

WHEREAS Chapter 3.68 of the BMC which contains the initiative ordinance creating the Peace and Justice Commission sets forth several functions of the Peace and Justice Commission, including, but not limited to, “(A) Advise the Berkeley City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice, including, but not limited to support for human rights and self-determination throughout the world; (B) Help create citizen awareness around issues of social justice [and] (C) Help develop proposals for the City Council in furtherance of the goals of peace and justice, and help publicize such actions in the community;” BMC § 3.68.070; and

WHEREAS, peaceful resolution of conflict is further enhanced by academic freedom which requires, at a minimum, the protection of university and college professors and lecturers from physical harm and from imprisonment without due process of law; and

WHEREAS, various media outlets in the Bay Area and elsewhere recently have reported that in July, 2003, Iranian authorities arrested and detained Dr. Dariush Zahedi, a lecturer at the University of California at Berkeley; and

WHEREAS, various Bay Area media outlets also have reported that in that same month, Zahra Kazemi, an Iranian-born Canadian journalist, was killed due to a fractured skull while being interrogated by Iranian intelligence agents after she was arrested for taking pictures at Evin prison, where Dr. Zahedi is now being held;¹ and

WHEREAS, the family of Dr. Zahedi, as well as many among the faculty, staff, administration, and student population of University of California at Berkeley, and among the greater Berkeley community, are very concerned about his safety and well-being and would like him to return home as soon as possible.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley joins with Human Rights Watch, Amnesty International, the United States State Department, University of California at Berkeley Chancellor Robert Berdahl, members of Congress, and many other concerned citizens and organizations in expressing their deep concern for the health and safety of Dr. Zahedi.

¹ Wikipedia, the free encyclopedia, “Zahra Kazemi” (http://en.wikipedia.org/wiki/Zahra_Kazemi) accessed October 23, 2003; *See, also*, attached articles on Dr. Zahedi and Ms. Kazemi.

Peace and Justice Commission
Minutes – November 3, 2003

BE IT FURTHER RESOLVED, that the City of Berkeley, in furtherance of its ideals of freedom of expression and freedom from intimidation, urges that all reasonably possible peaceful actions be taken to secure the release of Dr. Zahedi so that he may return safely to the United States.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley sends the following letter to the Iranian Ambassador to the United Nations, Mr. Mohammad Javad Zarif, which expresses the concern of the City of Berkeley for the safety and well-being of Dr. Zahedi:

Dear Ambassador Zarif:

Several newspapers have reported that Dr. Dariush Zahedi, a lecturer at the University of California at Berkeley and director of West Coast operations of the American Iranian Council, has been imprisoned for several months in Iran. It is our understanding that Dr. Zahedi has long-supported an improvement in relations between the United States and the Iranian government and is a scholar who has studied and written about your country.

Press reports state that Dr. Zahedi has been jailed on unspecified charges, and also that he was found not to be involved in espionage. They state that he is now being held in Evin Prison in Tehran.

You may know that last year several residents of Berkeley traveled to Iran to help deliver 500 wheelchairs for the disabled. This action reaffirmed the close relationship between our City and the Iranian people. We believe that many of our fellow Americans also hope for closer ties to your nation.

Thus we are very concerned about the safety and well being of Dr. Zahedi. We are also quite concerned that Dr. Zahedi's continued imprisonment will only harm relations between our two countries at a time when many American citizens, including many in Berkeley, look forward to improving the current relationship which exists between our two countries.

We therefore respectfully request that you communicate with your government our concerns about the safety and well being of Dr. Zahedi and our strong desire and hope that he is allowed to return to the United States as soon as possible.

Respectfully yours,

The Council of the City of Berkeley
Ayes: *Unanimous*; **Absent:** *Arasteh, Lavine, McDonald.*

NEXT MEETING

The next regular meeting will be on Monday, December 1, 2003, at 7:00 pm at the North Berkeley Senior Center.

The meeting was adjourned at 9:25 pm.

Peace and Justice Commission
Minutes – November 3, 2003

Respectfully submitted

Manuel Hector Jr., Secretary
Peace and Justice Commission