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September 13, 2004

Laura Goldin  
Executive Director  
Conference of Delegates of California Bar Associations  
3450 Sacramento Street #521  
San Francisco, CA 94118

Dear Ms. Goldin:

The National Lawyers Guild, San Francisco Bay Area Chapter is submitting an emergency, late-filed resolution concerning recent and continuing revelations of torture and other violations of international law carried out by United States service men and women and, allegedly, proposed by the very highest level of the United States government.

The resolution deals with a matter of substantial importance to the bar and the public.

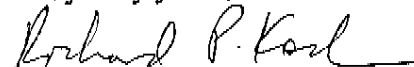
The extraordinary revelations about treatment of detainees in Iraq, Afghanistan and Cuba did not come to light until April, 2004, well after the deadline for submitting resolutions to the CDCBA. The two-month deadline was past as continuing information was, and still is, being discovered.

The American Bar Association issued its own resolution on August 9, 2004 asking for an independent, bipartisan Commission. This resolution before the CDCBA asks the Conference to join in that request.

The subject matter of the resolution will not be before the Conference at its meeting unless this resolution is filed.

Congress and the public are entitled to a thorough, independent investigation to determine whether top government officials have led the U.S. into violations of international and U.S. law, and treaties.

Very truly yours,



Richard P. Koch

## **RESOLUTION ELF-1-2004**

### Establishment Of Commission To Investigate Violation Of Convention Against Torture

RESOLVED, that the Conference of Delegates of California Bar Associations urges the California Congressional Delegation to support an independent, bipartisan Commission with subpoena power to prepare a full account of detention and interrogation practices carried out by the United States, to make public findings, and to provide recommendations designed to ensure that such practices adhere faithfully to the Constitution and laws of the United States and treaties to which the United States is a party.

FURTHER RESOLVED, that the Conference of Delegates of California Bar Associations joins with the American Bar Association August 25, 2004 resolution which reads as follows:

RESOLVED, That the American Bar Association condemns any use of torture or other cruel, inhuman or degrading treatment or punishment upon persons within the custody or under the physical control of the United States government (including its contractors) and any endorsement or authorization of such measures by government lawyers, officials and agents;

FURTHER RESOLVED, That the American Bar Association urges the United States government to comply fully with the Constitution and laws of the United States and treaties to which the United States is a party, including the Geneva Conventions of August 12, 1949, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and related customary international law, including Article 75 of the 1977 Protocol I to the Geneva Conventions, to take all measures necessary to ensure that no person within the custody or under the physical control of the United States government is subjected to torture or other cruel, inhuman or degrading treatment or punishment

FURTHER RESOLVED, That the American Bar Association urges the President and Congress, in addition to pending congressional investigations, to establish an independent, bipartisan commission with subpoena power to prepare a full account of detention and interrogation practices carried out by the United States, to make public findings, and to provide recommendations designed to ensure that such practices adhere faithfully to the Constitution and laws of the United States and treaties to which the United States is a party, including the Geneva Conventions, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and related customary international law, including Article 75 of the 1977 Protocol I to the Geneva Conventions;

Proponent: National Lawyers Guild, San Francisco Chapter

STATEMENT OF REASONS

Existing Law: All treaties made under the authority of the U.S.(shall be part of) “the Supreme Law of the Land...” The U.N. Charter, the Geneva Conventions, and other treaties and charters are thus part of the Supreme Law of the Land. *U.S. Constitution, Article VI, Cl. 3.*

The United States is a signatory to the U.N. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

<http://www.un.org/documents/ga/docs/53/plenary/a53-253.htm>

Torture or conspiracy to torture by those acting under color of law are Federal crimes punishable by imprisonment for up to twenty years. Jurisdiction applies when the torturer is a US National, regardless of the location of the torture. *U.S. Code, Title 18, Section 2340A*

This Resolution: Calls upon the United States Congress to take action to investigate conduct which has recently come to light. It also asks that steps be taken to ensure that treatment of prisoners comply with the treaties, conventions and law of the land.

The Problem: In the spring of 2004, graphic photographs taken at Abu Ghraib prison in Iraq revealed that abuse and torture had been inflicted on Iraqi detainees by American military forces. While first reports blamed these abuses on a handful of low-level soldiers, worldwide outcry prompted several investigations into conditions at Abu Ghraib along with conditions at detention centers in Afghanistan and Guantanamo Bay, Cuba. Memorandums of law from the Justice Department and the White House revealed that the abuses had been condoned by the highest levels of American government.

Two investigations have now been concluded. The first, Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade, by the U.S. Army states that abuses clearly did occur at Abu Ghraib. The report assigns responsibility for those abuses to sadistic soldiers, lack of discipline among the commanders at the prison and a failure of communication. The second, Independent Panel to Review DOD Operations, chaired by James Schlesinger, former Secretary of Defense, found that abuses of varying severity occurred at different locations and were widespread.

These investigations are valuable. However, the institutions responsible for the abuses are investigating themselves. Congress and the public are entitled to a thorough, independent investigation to determine whether Bush, Cheney, and officers of the Bush administration have led the U.S. into violations of international and U.S. law by declaring that torture was legal in violation of the “Supreme Law of the Land,” and Federal statutes, thereby violating their oath. Members of the Bush administration commissioned the Justice Department's Office of Legal Counsel to prepare and execute documents and other memoranda that purported to hold the members of the Bush administration and the CIA unaccountable for torture orders it issued.

The National Lawyers Guild requests that the Conference of Delegates support the ABA request for a bipartisan commission to investigate torture and abuse. This Resolution upholds and defends the Constitution and laws of the U.S., promotes respect for the rule of law, and

contributes to the education of the legal profession, the science of jurisprudence, and professional excellence.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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