

RESOLUTION 07-03-2008

DIGEST

Torture and Abuse: Enforcement of Prohibitions

Encourages U.S. adherence to existing laws against using torture.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution encourages U.S. adherence to existing laws against using torture. This resolution should be approved in principle because it is consistent with the duty of each member of CDCBA to support and defend the Constitution of the United States and the principles on which it is founded.

This resolutions urges the California Congressional Delegation to “memorialize and advise the United States Senate, and the House of Representatives, and appropriate persons and agencies within the Executive Branch” that we must honor the words and meaning of the Constitution of the United States, the Geneva Conventions, the Convention Against Torture and the Uniform Declaration of Human Rights. While there are some who have interpreted the words of the Constitution and the other enumerated documents to allow “a little torture” or “torture in limited circumstances,” generally speaking, “We, the people” are against torture in any of its forms. Simple humanity requires no less. As attorneys who have sworn (or affirmed) to support and defend the Constitution, it is our responsibility to remind our leaders that it is not acceptable to abandon the law “a little” or “under limited circumstances.”

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates urges the California Congressional Delegation to memorialize and advise the United States Senate, and the House of Representatives, and appropriate persons and agencies within the Executive Branch, that the Conference urges America faithfully and broadly so enforce the letter and spirit of all American constitutional and statutory provisions, and all international treaties and conventions, prohibiting torture and abuse against all detainees anywhere.

PROPONENT: National Lawyers Guild, Los Angeles Chapter

STATEMENT OF REASONS:

This Resolution: This resolution seeks to eliminate captive torture and abuse, but not by changing any of the terms of our Constitution, the Geneva Conventions, the Convention Against Torture, or any other enactment. Rather, we must turn our country back toward actual and

conscientious enforcement and administration of these same salutary enactments, and away from lapses and failures of the past several years.

We have condoned and even required extreme and excessive interrogative pressures on powerless captives. These are virtually unprecedented. Our government should be urged to seek full enforcement of cited laws.

Existing Law: A number of sturdy legal enactments on torture exist. These cover interrogations of detainees in connection with our Middle Eastern activities.

(1) High among these is our Constitution's Eighth Amendment against inflicting cruel and unusual punishment; and

(2) The Geneva Conventions, especially common article III outlawing, for all persons captured in an armed conflict, "cruel treatment, torture [and] outrages upon personal dignity, in particular, humiliation and degrading treatment;" and

(3) The international Convention against Torture, entered into by America, banning similar conduct; and

(4) The United States Torture Statute, 18 U.S.C., Section 2340, a codification of the Convention Against Torture; and

(5) The United States Code of Military Justice, forbidding inter alia cruelty and mistreatment.

Despite all of these, there has been substantial torture and abuse in interrogation of prisoners held by Americans in the Iraq and Afghanistan conflicts.

The Problem: Our laws against torture are all too often unenforced.

America suffers thereby in stature and world repute. Its military men and women suffer too, and are in danger of retaliation or capture.

For our present (but then only prospective) attorney general to say, as he did before the Judiciary Committee, that he could not determine if waterboarding was torture, was at best disingenuous.

Other tortures and abuses of detainees, usually in combination, include physical assaults; prolonged sleep deprivation; enforced nakedness; continuous extreme loud noises and grating music; use of threatening dogs; exposure to cold; stress positions; condoned rape; sexual humiliation and death threats to detainees or family; and on and on. High level denials or redefining torture become insignificant in light of contrary facts and directives within government documents.

The American Bar Association, as early as 2004, takes a strong position against torture, which

"...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)...." The Torture Papers (Cambridge University Press), edited by Karen Goldberg and Joshua Dratel, 1132, 1132-1164 (ABA resolution and useful report).

Many hundreds of detainees appear to have been tortured and abused.

Torture is not only legally and morally wrong, but generally valueless or detrimental in interrogation. The CIA itself has said that patient reasonable questioning works better. Many detainees know no secrets anyhow; and that most people under torture will give much information, of intense unreliability.

IMPACT STATEMENT:

The laws, statutes and rules affected by this resolution are: U.S. Constitution; Eight Amendment; Convention against Torture; Geneva Convention; Common Article III; U.S. Torture Statute – 18 U.S.C. Section 2340; U.S. Code of Military Justice. None of the laws would need to be changed. The impact would be entirely positive, as the resolution seeks to advance better and stronger administration and enforcement of these anti-torture laws by the United States government.

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