

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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December 15, 2005

Hon. Bill Frist, Majority Leader
509 Hart Senate Office Building
Washington, DC 20510

Dear Senator Frist:

We understand that changes are being negotiated that would raise the gravest concerns regarding the Graham-Levin-Kyl Amendment to the Defense Authorization Bill, and would effectively render meaningless the McCain Amendment so overwhelmingly supported in both Houses of Congress. The information we have is that the changes would permit the use of coerced testimony in proceedings against detainees to determine if they are, or should remain, enemy combatants, and would strip all U.S. courts of jurisdiction over any action against anyone involved in the detention of aliens at Guantanamo.

How can we as a nation, in good conscience:

- use evidence obtained by torture in determining whether someone should be indefinitely detained;
- leave people being held by our government with no recourse if they are tortured;
- insulate Americans who torture from any court action?

The Law Lords reminded us in its decision just one week ago that the prohibition on the use of evidence derived from torture belongs to the foundations of the common-law system. Any retreat from that rule would raise grave doubt as to the ability of the military tribunals to meet minimum standards of justice.

We also understand there are proposals to relieve federal officials of liability if a reasonable person would not know that he or she was violating the law by torturing or abusing a person or if the person has a defense of superior orders of the sort recognized in Rule 916 of the Manual for Courts Martial. Such proposals could have the effect of shielding a federal employee from liability for knowingly torturing a person, and turn the issue on whether the employee can claim he or she was doing it lawfully or following superior orders. While a

defense of superior orders should not be eliminated per se, there is very strong reason to question the legality of orders or opinions which sanction torture or cruel, inhuman and degrading treatment. Moreover, these provisions, taken collectively, undermine our commitment to the rule of law and display an open lack of confidence in our own courts and legal system.

We urge you to oppose such changes.

Very truly yours,

A handwritten signature in cursive script that reads "Bettina B. Plevan".

Bettina B. Plevan