

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

NEW YORK
CITY BAR

PRESIDENT

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October 14, 2005

The Honorable Bill Frist
Majority Leader
509 Hart Senate Office Building
Washington, DC 2051

The Honorable Harry Reid
Minority Leader
528 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader Frist and Minority Leader Reid:

I am writing on behalf of the New York City Bar Association¹ to urge you to include the McCain Amendment on treatment of enemy detainees in H.R. 2863, the Fiscal Year 2006 Department of Defense Appropriations Conference Report. This Amendment, which was passed by the Senate by a vote of 90-9, seeks to codify and preserve long-established basic standards of treatment for enemy detainees by the United States Government in times of war. This Amendment is vital to protect American servicemen and women, American values, and America's relationships and reputation around the world.

The Association agrees with the overwhelming majority of senators that the documented evidence of detainee mistreatment by Americans, at Abu Ghraib and elsewhere, demands an unequivocal legislative statement that such behavior must never be countenanced and must end. This Amendment accomplishes that by forcefully reminding and mandating that the laws we have always followed with respect to the treatment of America's enemies in custody remain in force, without granting any special status or privilege to those detainees. First, the Amendment sets uniform standards for the treatment or interrogation of those detained by the Department of Defense by requiring the application of the standards of the US Army Field Manual on Intelligence Interrogation. Second, the Amendment reaffirms that all those in US custody shall not be subjected to cruel, inhuman or degrading treatment, a standard which has been and remains the law of the land.

Opposition to the Amendment incorrectly presumes that it cedes ground to the enemy in the Global War on Terror by inappropriately regulating the treatment of suspected or proven terrorists. The Amendment does no such thing. Senator McCain

¹ The New York City Bar Association is an independent non-governmental organization with a membership of more than 22,000 lawyers, judges, law professors and government officials, principally from New York City, but also from around the United States and from 50 other countries.

eloquently placed the matter in its appropriate context by comparison to his experience as a prisoner of war in Vietnam:

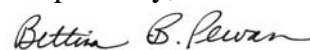
Our enemies didn't adhere to the Geneva Convention. Many of my comrades were subjected to very cruel, very inhumane and degrading treatment, a few of them even unto death. But every one of us knew, every single one of us knew and took great strength from the belief that we were different from our enemies, that we were better than them, that we, if the roles were reversed, would not disgrace ourselves by committing or countenancing such mistreatment of them. That faith was indispensable not only to our survival, but to our attempts to return home with honor. Many of the men I served with would have preferred death to such dishonor.

The enemies we fight today hold such liberal notions in contempt, as they hold the international conventions that enshrine them such as the Geneva Conventions and the treaty on torture in contempt. I know that. But we're better than them, and we are the stronger for our faith. And we will prevail. I submit to my colleagues that it is indispensable to our success in this war that our servicemen and women know that in the discharge of their dangerous responsibilities to their country they are never expected to forget that they are Americans, the valiant defenders of a sacred idea of how nations should govern their own affairs and their relations with others – even our enemies.

We agree that our servicemen and women will be well served by the Amendment. As you consider this matter, the Association would be pleased to provide advice and historical perspective on the rule of law with respect to treatment of detainees. In that regard, we refer you to our report, "Human Rights Standards Applicable To The United States' Interrogation of Detainees," (published just before public disclosure of the Abu Ghraib prison scandal) and its Supplement (published just after Abu Ghraib), in which our Committees on International Human Rights and Military Affairs and Justice discussed at length the legal standards applicable to the interrogation of detainees (both available online at http://abcny.org/Publications/record/Vol_59_%20no_1.pdf, at pp. 183-270 and 271-280, respectively).

Thank you for considering our views. If you have the need for further information in your consideration of this important matter, we would be glad to provide assistance.

Respectfully,



Bettina B. Plevan

cc: Senator John McCain