

**Adopted by Voice Vote
August 9, 2004**

AMERICAN BAR ASSOCIATION

**ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
TASK FORCE ON TREATMENT OF ENEMY COMBATANTS
CRIMINAL JUSTICE SECTION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
SECTION OF INTERNATIONAL LAW AND PRACTICE
SECTION OF LITIGATION
CENTER FOR HUMAN RIGHTS
BEVERLY HILLS BAR ASSOCIATION
BAR ASSOCIATION OF SAN FRANCISCO
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE
SECTION OF BUSINESS LAW
NEW YORK STATE BAR ASSOCIATION
VIRGIN ISLANDS BAR ASSOCIATION
NEW YORK COUNTY LAWYERS' ASSOCIATION**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association condemns any use of torture or other
2 cruel, inhuman or degrading treatment or punishment upon persons within the custody or
3 under the physical control of the United States government (including its contractors) and
4 any endorsement or authorization of such measures by government lawyers, officials and
5 agents;
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7 FURTHER RESOLVED, That the American Bar Association urges the United States
8 government to comply fully with the Constitution and laws of the United States and
9 treaties to which the United States is a party, including the Geneva Conventions of
10 August 12, 1949, the International Covenant on Civil and Political Rights, the
11 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
12 Punishment, and related customary international law, including Article 75 of the 1977
13 Protocol I to the Geneva Conventions, to take all measures necessary to ensure that no
14 person within the custody or under the physical control of the United States government
15 is subjected to torture or other cruel, inhuman or degrading treatment or punishment;
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1 FURTHER RESOLVED, That the American Bar Association urges the United States
2 government to: (a) comply fully with the four Geneva Conventions of August 12, 1949,
3 including timely compliance with all provisions that require access to protected persons
4 by the International Committee of the Red Cross; (b) observe the minimum protections of
5 their common Article 3 and related customary international law; and (c) enforce such
6 compliance through all applicable laws, including the War Crimes Act and the Uniform
7 Code of Military Justice;

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9 FURTHER RESOLVED, That the American Bar Association urges the United States
10 government to take all measures necessary to ensure that all foreign persons captured,
11 detained, interned or otherwise held within the custody or under the physical control of
12 the United States are treated in accordance with standards that the United States would
13 consider lawful if employed with respect to an American captured by a foreign power;

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15 FURTHER RESOLVED, That the American Bar Association urges the United States
16 government to take all measures necessary to ensure that no person within the custody or
17 under the physical control of the United States is turned over to another government
18 when the United States has substantial grounds to believe that such person will be in
19 danger of being subjected to torture or other cruel, inhuman or degrading treatment or
20 punishment;

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22 FURTHER RESOLVED, That the American Bar Association urges that 18 U.S.C.
23 §§2340(1) and 2340A be amended to encompass torture wherever committed, and
24 regardless of the underlying motive or purpose;

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26 FURTHER RESOLVED, That the American Bar Association urges the United States
27 government to pursue vigorously (1) the investigation of violations of law, including the
28 War Crimes Act and the Uniform Code of Military Justice, with respect to the
29 mistreatment or rendition of persons within the custody or under the physical control of
30 the United States government, and (2) appropriate proceedings against persons who may
31 have committed, assisted, authorized, condoned, had command responsibility for, or
32 otherwise participated in such violations;

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

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1 FURTHER RESOLVED, That the American Bar Association urges the United States
2 government to comply fully and in a timely manner with its reporting obligations as a
3 State Party to the Convention Against Torture and Other Cruel, Inhuman or Degrading
4 Treatment or Punishment;

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6 FURTHER RESOLVED, That the American Bar Association urges that, in establishing
7 and executing national policy regarding the treatment of persons within the custody or
8 under the physical control of the United States government, Congress and the Executive
9 Branch should consider how United States practices may affect (a) the treatment of
10 United States persons who may be captured and detained by other nations and (b) the
11 credibility of objections by the United States to the use of torture or other cruel, inhuman
12 or degrading treatment or punishment against United States persons.