

November 8, 2005

Dear Senator:

As the Senate considers S. 1042, the Department of Defense Authorization bill, I write to express the views of the American Bar Association on several proposed amendments relating to the detention, treatment and trial of individuals in the custody of the United States.

The revelations last year of abuses by United States personnel of prisoners captured in the Afghanistan and Iraq conflicts dismayed the American public and severely damaged our nation's reputation as a leader in promoting human rights and the international rule of law. As a nation founded on the rule of law, we must ensure adherence to the letter and spirit of both U.S. and international law regarding the treatment of detainees, bring to justice those who violate these laws, and provide for sufficient judicial review for detainee cases, including, where appropriate, the opportunity for habeas corpus petitions in federal civilian courts.

To help accomplish these goals, we urge you to support an amendment offered by Senator Carl Levin to establish an independent, bipartisan commission to investigate U.S. policies and practices relating to the treatment of detainees in the custody of the Department of Defense since September 11, 2001. This proposed commission's purpose, in part, will be to prepare a full account of detention and interrogation practices carried out by the United States and to provide recommendations designed to help ensure that our future treatment of prisoners will adhere faithfully to the Constitution and laws of the United States and treaties to which the United States is a party.

In addition, we understand there may be an amendment offered by Senator Lindsey Graham that would eliminate the right of detainees to petition for a writ of habeas corpus. The ABA strongly opposes enactment of such a provision. Habeas corpus relief is an important symbol of our nation's commitment to constitutional values and based upon a simple idea: an individual should be protected from unlawful imprisonment. It would be precipitate and unwise to limit habeas corpus rights without careful legislative study and hearings on the constitutional, legal and policy implications of such an action.

Thank you for your consideration of our views on these important issues.

Sincerely,



Robert D. Evans