DISSENT OF REP. CYNTHIA MCKINNEY TO HR 6054
THE MILITARY COMMISSIONS ACT OF 2006

September 2006

President Bush relies on various authorizations for his initiation of the conflicts and wars in Afghanistan and Iraq and in the "war on terrorism", in the course of which thousands of individuals, both U.S. citizens and aliens have been captured and detained for indefinite periods. Before addressing the nature and legality of creating special courts to try these people for alleged crimes of war it is necessary to examine the legality of the wars, conflicts and conditions of their capture and detention and the standing legal precedents and protocols that should guide those activities.

These detainees have been held, interrogated and mistreated outside the protection of the US Constitution and the principles and legal procedures that insure due process as well as outside the protections and protocols of the Geneva Convention of 1949 and later, including Article 3 and Article 4, and against proscriptions of the International Commission of the Red Cross, United Nations agreements and provisions, and international laws of war and other treaties.

In addition, President Bush issued a Military Commission Order 1 on March 31, 2002 and a series of Military Commission Instructions on April 30, 2002 creating an unprecedented new form of tribunal with rules and procedures not consistent with the Uniform Code of Military Justice that is the authority and guide for the creation of such tribunals, which also violates the Constitutional guarantees due anyone facing possible conviction and sentencing by a court, and the provisions of the Geneva Convention protocols for protected persons and fair trials.

LEGAL AUTHORITY

The legal basis claimed for these actions, in both public statements and legal memoranda adopted by this administration, has allegedly been the Authorization of the Use of Military Force (AUMF) legislation passed by Congress on September 14, 2001, and October 16, 2002 respectively, and the power implicitly granted the president in times of war as Commander in Chief under Article II, Section 2 of the U.S. Constitution, and the historical and legal precedents for the use of military commissions in U.S. history, as well as court decisions in reaction to them.

In fact, the AUMF passed on September 4, 2001 was to be limited by the provisions of the War Powers Act of 1973, requiring regular Congressional review and oversight, and contains no language about military commissions or the granting of any extra-legal or extra-Constitutional powers to the president, nor does the language of the Constitution imply the right of the president to act without Congressional consultation or beyond the balance of powers guaranteed in its articles. In July, 2006 the Supreme Court ruled in *Hamdan vs. Rumsfeld* that these Military Commissions, as constituted, were in violation of both Constitutional and international law, including Common Article 3 of the Geneva Convention and lacked necessary Congressional authorization and approval.

THE WAR IN AFGHANISTAN

The AUMF of September 14, 2001 became Public Law 107-40 on September 19 and authorized the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons…" Implicit support was given to the "global war against terrorism" and the US invasion of Afghanistan by the United Nations Security Council in resolutions passed between September and December 2001, despite clear U.N. provisions against wars of aggression.

This war was never declared by Congress, and AUMF approval was based on evidence never presented in public to the American people or to Congress that apparently relied solely on the testimony of individuals in detention in undisclosed locations, subjected to torture and cruel and degrading punishments for the claim that Osama bin Laden was ultimately responsible for the attacks. It is also clear that the war against the Taliban regime was planned and prepared long before the attacks of September 11, and announced to surrounding countries by Secretary of State Colin Powell in the summer of 2001.

Despite repeated offers from the Taliban, the government of Afghanistan, to meet the accords of international law and procedures by turning bin Laden over to an international tribunal for interrogation and trial for crimes against humanity, the U.S. administration carried out a war of aggression that toppled the government of Afghanistan and caused massive and ongoing suffering to its population without capturing Osama bin Laden or most of the key leadership of his organization to date.

A large body of detainees was captured, or turned over to U.S. forces by Northern Alliance combatants and detained in Afghanistan, and then transferred to a special prison at Guantanamo Bay, Cuba, on property controlled by the United States. While several hundred of these detainees have been released from detention, most without trail or combat status review, hundreds also remain in indefinite custody and detention without charges or trials pending. Those pending trial are not guaranteed release upon acquittal of charges of crimes of war.

THE WAR ON IRAQ

Another undeclared war of aggression was carried out under the subsequent AUMF of October 13, 2002, following years of aerial bombardment and economic sanctions that led to countless civilian deaths and massive suffering under the covert and overt attacks by U.S. forces. The AUMF was passed in Congress on the basis of what is now recognized as false assertions, manipulated intelligence and the testimony of detainees under duress of torture, regarding both the presence and imminent development or use of weapons of mass destruction in Iraq, and the linking of Iraq to Osama bin Laden and the attacks of 9/11.

The concept of “preventive war” is not allowed as a justification for wars under international law, and cannot be considered self-defense, nor was this war authorized by the United Nations Security Council. Iraq was incapable of mounting a credible defense, much less an attack on the United States. In the war of aggression waged against Iraq, the United States was responsible for a disproportionate use of force, attacks on civilian populations, hospitals and critical infrastructures, the use of weapons prohibited by international treaty and convention, the destruction of a government and occupation of sovereign territory, and the extrajudicial use of murders and assassinations.

The President specifically authorized these assassinations to be carried out by the CIA (using Predator UAVs) and Special Operations forces under the Department of Defense to kill anyone designated as an “enemy combatant” by the President, apparently without rescinding the 1976 Executive Order of President Ford forbidding assassinations abroad involving U.S. government personnel.

Another large body of captives continue to be put in custody and detained by U.S. forces, both inside and outside Iraq, and subjected to torture and cruel, degrading punishments while placed beyond the legal protections of the Constitution, the Geneva Convention and international law and treaties the U.S. is bound by.

THE WAR ON TERRORISM

Yet another legally undeclared and undefined “war on terrorism” has been predicted by the current administration to last beyond our lifetimes, and to involve as many as 60 countries in a global battlefield that extends to include the United States as a combat zone, requiring the creation of a new military regional command, NORTHCOM to direct and carry out combat operations inside the United States.

In response to the attacks on September 11, 2001, thousands of U.S. residents, both citizens and aliens, were rounded-up in mass arrests, many secretly arrested and indefinitely detained without the Constitutional rights that extend to any people on U.S. soil or controlled territories, and the legal procedures and due process rights that U.S. authorities are required to provide them. Many of these individuals were never charged with crimes and were released or continued in detention without trials for periods of months and years. These detainees also complained of torture and cruel or degrading treatment.

MATERIAL WITNESSES, IMMIGRANTS AND CITIZENS

Since the attacks of September 11, 2001, tens of thousands of legal and illegal immigrants residing inside the United States were arrested and detained beyond the resolution of their immigrant status or in same cases for long periods before hearings or deportation, with a special focus on Arabs, Muslims and South Asians who suffered racial profiling, social dislocation, and being brutalized, held incommunicado, without legal rights and often in solitary confinement.

These immigrants and other U.S. citizens and permanent residents were arrested by the Justice Department as “material witness seizures” in clear violations of the International Covenant for Civil and Political Rights and the Constitutional protections that extend to all on U.S. soil.

Certain U.S. citizens were seized and detained inside the United States or abroad with no right to challenge in courts, depicted as “enemy combatants”, transferred to military custody without a judicial hearing on the facts or legality of their detention. Also, their status under Geneva Convention rules was effectively decided unilaterally by the President, rather than by a Combat Status Review or civilian court.

EXTRAORDINARY RENDITIONS

The Bush administration, in violation of U.S. statures and international law, used both the CIA and U.S. military personnel to track, capture, drug and bind, and transport individuals identified by the President as past or potential terrorists or those who are assumed to have special knowledge about terrorist plots or perpetrators, both U.S. citizens and aliens, here and abroad, and rendered them outside the justice and law. These individuals are taken from inside other sovereign nations or our own to foreign countries where torture is practiced or to secret detention centers beyond oversight or legal intervention where detainees are known to have been tortured.

Another group of hundreds of captured individuals were part of these secret renditions to locations outside the reach of law and justice. Some of these secretly held prisoners have recently been acknowledged and transferred to a new U.S, prison facility at Guantanamo Bay, Cuba. Such renditions involve elaborately planned clandestine seizure and transport by covert operatives and flights arranged by the Central Intelligence Agency, and were initially used by the Clinton administration to bring terrorists or other international criminals to justice by returning them to proper jurisdictions and authorities here and abroad. The current administration has illegally reversed their purpose.

INDEFINITE DETAINMENT

In order to justify these thousands of arrests, captures and detentions which place these individuals outside the reach and protection of U.S. Constitution, law and treaty provisions, the Bush administration has created a special category of “enemy combatants” in the “war on terror” which in practice has not been limited to aliens or non-citizens, or to people captured hors de combat, or even to actual combatants. Recently released interrogation transcripts from Camp X-Ray at Guantanamo Bay, Cuba clearly indicate that many individuals were held and interrogated solely on the basis of having been captured or turned over to U.S. control in the combat areas. Many of these have been released again without any clear definition of the criteria involved, while others remain in indefinite detention without rights or charges proffered.

These detentions are often arbitrary in purpose, and not universally related to the duration of hostilities, war or conflict since hundreds have been released following interrogation and often torture on grounds never promulgated and apparently unrelated to pending charges or acquittals by military reviews or trials. Recent

proposed legislation and testimony by administration officials reveals that the duration of some detentions will extend beyond trial and acquittal or termination of sentence of those tried by Military Commissions, short of life imprisonment or death penalties.

TORTURE AND CRUEL AND DEGRADING PUNISHMENT

The Bush administration, through classified legal memoranda, legislative signing statements and executive directives from the White House, the Pentagon and the Central Intelligence Agency have attempted to exempt their conduct from the laws of war and U.S. laws and procedures, as well as the standards outlined in Army Field Manual 35-42, based on the Geneva Convention protocols, which have determined the interrogations and treatment of detainees for the last 50 years in cases of capture during conflict, combat or war, on and off U.S. soil and their detention as prisoners.

Torture is being redefined in these memoranda and proposed, classified changes to the Army Field Manual, as exempting any abuse short of actions that might result in organ failure and death. In more recent proposed legislation the internationally prohibited cruel and degrading punishments are being redefined as only those which “shock the conscience”, effectively and unilaterally modifying the terms of the Geneva Convention and the Convention Against Torture, as well as the War Crimes Act of 1996, and Detainee Treatment Act and long-established practices and training that are based on those standards, without seeking consent of Congress before acting on them, and without seeking the necessary international consideration and consensus that prohibits any nation from breaking the rules of reciprocity in regard to laws of war and combat.

All categories of captives are protected, both before and after any determination of their combat status, under Article 3 and Article 4 of the Geneva Convention and its protocols, which has been incorporated into U.S. practice and policy prior to legislation affirming these principles. The United States has always tried to set the example by training troops and commanders to extend protections and shun any abusive treatment whatsoever towards captives or detainees. Under the Geneva Convention rules any cruel and degrading punishment, physical abuse or excessive discomfort, and any form of torture are prohibited in the treatment of all unarmed captives, whether prisoners of war (POW), civilians, non-combatants, or unauthorized combatants of any kind, even if suspected of taking part in crimes of war. Their required and immediate Combat Status Review may improve aspects of

their rights and treatment or their release, but it is never used to deprive them of the basic rights and protections extended to all.

The torture that has been carried out by U.S. forces and intelligence operatives, or by surrogates in the secret prisons abroad has taken the form of beatings, water-boarding (immersion), electroshocks, extreme temperature or noise levels, denial of pain medication for injuries, severe burning, deprivation of food, water and sleep, threats against family members, extended shackling in painful positions, self-inflicted coerced pain, extended isolation, sensory deprivation, denial of medical care, suffering loss of limbs or permanent injuries and death, mental breakdown and illness, disappearances from families or countries of origin.

"ENEMY COMBATANTS"

The terms "enemy combatant" or "alien unlawful enemy combatant" from the proposed new legislation have no precedent or recognition in international or domestic law or treaty. No such category exists under the Geneva Convention combat status categories. The vaguely defined term was introduced by the current administration after the terrorist attacks in 2001 in order to create a category of people who were beyond the Convention and U.S. laws, and whose rights and protections could be ignored and dismissed for purposes of interrogation or fighting the "war on terror". Interestingly, most of the specifics used to identify unlawful enemy combatants match Geneva convention definitions of a protected category, the expansion of that definition to include certain suspected proscribed activities moves them out from under that protection before trying them.
In practice "enemy combatants" can be citizens or aliens, combatants or their supporters, those suspected of terrorist activities or crimes of war now or in the future, those who harbor terrorists, and even those not involved in combat or captured outside any combat zone. The proposed definition expands to activities far beyond the commission of crimes of war or even terrorism to undefined acts "triable by Military Commissions". The range of offenses that both define a person as an enemy combatant and are then used to detain and prosecute the person are outside the scope of existing international law or accord in relation to war.

At the same time, proposed legislation is attempting to undermine the legal accountability of U.S. personnel for their participation in prohibited torture and crimes of war that can potentially lead to the death penalty under the Geneva Convention. There is no guarantee that the proposed vague definition for "alien unlawful enemy combatant" used to allow their trials by Military Commissions would not be applied to all other cases of detention in the future. There is no

guarantee that U.S. citizens will not be detained, stripped of their Constitutional rights, and even stripped of citizenship without a full and fair trial or even a judicial hearing or determination prior to their deportation or indefinite detention.

RESTORING RIGHTS AND JUSTICE

None of the cited legislative or statutory authorities for the creation or use of the Military Commissions ordered by the White House really address or allow them, including the two AUMF laws, the Detainee Treatment Act of 2001, nor the arrogated powers allegedly based on Article II of the Constitution, but it is the case that the Constitution as interpreted by the Supreme Court and in practice historically makes clear that the President and the Congress can create and regulate military commissions or tribunals in times of war or domestic emergency, and suspend the rights of certain clearly identified classes of belligerents. Over time, the formation and procedures of such tribunals have been incorporated into law, specifically into sections of Title 10, US Code that codify the Uniform Code of Military Justice (Article 21) and in the Laws of War (Article 15).

In recent American history the use of such tribunals was based on the exigencies of battle or political assassination, and following World War II they have been based legally and in form on the Military Rules of Evidence and the Manual for Courts Martial procedures that have developed over decades under the UCMJ and in military court decisions or civilian court appeals and reviews. The current proposals would move them away from this imperfect but more reasonable and fair legal system in many ways, repeating errors of the past that informed the current practices and rules. In our history, the rights of citizens and non-citizens alike have been based on and enjoyed the broad protections of our Constitution and settled international law and reciprocal protocols. There is no need to abandon these protections, including habeas petition rights, even if a small and clearly defined category of people suspected of having committed crimes of war should more logically be prosecuted by a Military Commission than a civilian court.

There is also a principle established by the Supreme Court at the end of World War II and by the Posse Comitatus Act that followed the Civil War that if civilian courts are functional then military courts should not replace that function, especially for citizens or other protected groups. Military tribunals have traditionally been used to try belligerents in declared wars where the exigencies of war and timing made them imperative. Using them for detainees now having spent years in captivity far from the battlefield or zone of combat has much less compelling justification.

CURRENT LEGISLATION INADEQUATE

The Military Commissions created under President Bush's special orders and instructions in 2002 have been ruled by the Supreme Court to be unconstitutional in many aspects, in violation of international law and convention, and in defiance of the required balance that Congressional review and involvement should bring. Based on vague definitions and ill-informed legal rationale, they should best be abandoned in favor of methods of jurisprudence and rights established over time in our country and by the world community rather than supported with new legislation that may result in additional court review and reversal. While the conflict we fight in may be new, the reasons to retain our respect for Constitutional principles and rights and international accords have stood the test of time and should not be compromised or abandoned. In fact, they are our best defense.

Unfortunately, both HR 6054, the Military Commissions Act of 2006, based closely on White House proposals to get Congressional approval and sanction for their illegal activities and programs, and the closely aligned substitute proposed by Rep. Ike Skelton which was defeated by the HASC during mark-up, itself based on a bi-partisan Senate bill promoted by Senators McCain, Warner, Graham and Levine, fail to address many of the worst excesses of the proposed Military Commissions. Among the Constitutional, legal and international treaty rights not incorporated into either version are:

AUTHORITIES AND LIMITATIONS

Legislate any new version of Military Commissions to conform exactly to and satisfy the ruling of the Supreme Court in *Hamdan vs. Rumsfeld* rather than to legalize the excesses of the version adopted by President and rejected by the court.

The existing limitations on and balances to Presidential powers even in times of declared war. Courts and Congress cannot rely on assurances of "good faith" intentions to concede their role in balance of power and oversight.

Any existing or future Authorization of the Use of Military Force passed by Congress must require oversight, regular review, transparency and clear criteria for a deadline requiring a full declaration of war or cessation of hostilities as well as defined limits to Presidential powers under the AUMF.
(War Powers Act, 1973)

The necessary Congressional oversight and review of the conduct of the "war on terror" or other armed conflicts under the provisions of the War Powers Act of 1973 as well as their own Constitutional mandate to declare and fund wars. Require Congressional hearings, oversight and review of all agencies involved in the capture and indefinite detention of any persons, citizen or not excluding arrests by recognized police agencies for commission of actual crimes.

Clearly codify and define who can be classified as an "enemy combatant" of any sort, and who cannot. Under the original Military Commission Order, the definition included anyone who "is or was a member of Al Qaeda", or who "engaged in, aided or abetted a conspiracy to commit acts. The definition should not be self-referential, making the suspicion of a crime sufficient to override a presumption of innocence or define the status without a speedy hearing or right of appeal following initial detention. No U.S. citizen who is not engaged in direct combat or hostilities against U.S. forces abroad and who commits a crime of war in that combat zone should be designated as an "enemy combatant" or detained and tried under military control.

Appoint and fund the legally mandated but uninitiated federal Civil Liberties Review Board and include any and all detainees in its scope, meeting the requirement that each federal agency or entity has at least one full time staff member assigned to protect civil liberties and rights.

Support current legislative challenges such as H Res 990 requiring that the AUMF of October 13, 2002 be revisited and modified in light of current changes following full and open debate by Congress, thereby restoring their prerogative and duty to oversight and the separation of powers that denies the arrogation of increased or unitary executive powers in times of emergency or war.

Reaffirm our commitment to the laws of war and international agreements that insure reciprocity by all nations in their treatment of captured belligerents or others in the zone of combat during conflicts or wars. Reaffirm the Constitutional spheres of authority and rules of war within those spheres, and reaffirm our commitment to all treaties signed and covenants agreed to in regard to the United Nations. Do not exempt American military personnel from the Geneva Conventions, the War Crimes Act of 1996 or reduce the standing definitions of war crimes to a more minimal standard. Do not accept the current legislative language that asserts that the Geneva Convention is "not a source of judicially enforceable individual acts", since military personnel are taught and directed in their acts by its provisions.

RIGHTS OF DETAINEES

Right to a timely (10-15 day) Combat Status Review following capture and detention, conducted in the combat zone while witnesses and information can be obtained. (Geneva Convention)

Right to the protections of the Geneva Convention which apply to all detainees arrested, whether US citizens or foreign nationals, and whether or not citizens of a country we are at war with, or if aligned with a country or group not a signatory to the Conventions, and whether or not captured in the territory of a signatory country. Geneva Convention Common Rule 3 requires minimum protection of anyone caught hors de combat.

Right to a reasonably limited period between detention and any criminal charges (48 hours in U.S. law) or release from custody, which would reflect the conditions of capture and the need for detention and interrogation, but which would not exceed all legal limits or subject individuals to indefinite detention without charges or trial (30-45 days maximum).

Right to restricted communication with family and unrestricted with counsel or government officials from the beginning of the detention.

Right to access to International Commission of the Red Cross visitation and inspection of facilities and treatment of detainees under international law and established procedures.

No secret rendition or detention, including access to counsel and initiation of habeas review for wrongful detention.

Right of accused to be present during public proceedings, and to view all evidence presented against the defendant, barring evidence that is classified by source or method in such a way that it cannot be redacted, summarized or conveyed, and therefore cannot be introduced or used as the sole or partial basis for conviction. (MRE 505)

Right to file a writ of habeas in any federal civilian court challenging detention or timely procedures, reminding federal courts to intervene in a timely way during crises or war in the public interest to protect Constitutional rights and safeguards.

Right to all guaranteed due process legal rights that are part of any established proceeding barring those that would require full disclosure of classified information despite its withdrawal as evidence, and prohibition of any and all evidence obtained under coercion or hearsay unless it clearly fits existing standards under the MRE for review.

Right to promulgated standards for release from detention and access to administrative and judicial reviews. No indefinite detention without provable cause given judicial review. Release from detention following acquittal of charges or determination that person was wrongly detained or not a threat. Set a maximum time for detentions solely for the purpose of interrogation (30-45 days).

No suspension of full Constitutional, statutory and other rights accorded to any U.S. citizen regardless of conditions of capture unless they are eligible to be tried under international laws of war for crimes that allow an international court to have jurisdiction, requiring a U.S. federal court review of such claims.

No death penalty sentence without unanimous consent of full Commission, all other convictions and sentencing requiring at least 2/3 of Commission appointed.

Reaffirm the rights of immigrants, both legal and illegal, once arrested or detained to access to counsel, speedy public hearings, and no deportation based on secret or coerced evidence in either Immigration hearings or FISA court proceedings. Prohibit any automatic deportations based on alien or ethnic criteria or suspicion of threat not proven by criminal acts.

Right against “preventive detention” based on anything less than imminent and demonstrable danger of overt actions of criminal intent.

LEGAL PROCEDURES

Military Commissions meet the standards of the Geneva Convention Article 3, requiring a “regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”
(Common Article 3)

No use of Military Commissions where exigencies of war or emergency do not exist or would not prohibit use of established courts with jurisdiction based on alleged crimes and not on categories of detainees. Refer crimes against humanity to

international tribunals instead and only try crimes of war in combat zones. Commissions should not apply to the vast number of detainees cited above.

Legal proceedings follow UCMJ Article 36 provisions in terms of Military Rules of Evidence and the Manual for Courts Martial so that rules are “uniform insofar as practicable” with the established protections. Do not add to or amend Title 10 USC 47 in this regard or add new offenses to the code.

Establish procedures to insure public transparency of CSR and Military Commission proceedings including public disclosure of the outcomes of each decision, conviction or sentence at frequent and regular intervals. Use existing Military Rules of Evidence and do not minimalize the standards for acceptance of evidence, allowing some discretion on the part of the judge.

Charges under Military Commissions should relate solely to participation in crimes of war as defined by the Geneva Convention and other standing U.S. law and treaty. Creation of additional or new charges relating to aiding, abetting or supporting such crimes is not proper, and those should be adjudicated in other courts with a broader jurisdiction.

Do not amend the War Crimes Act of 1996 to redefine only “serious” or “grave beaches” as illegal or actionable.

Independent appointment of the convening authority, the trial judges, and the commission members will prevent undue influence by the President or the Secretary of Defense. Similarly, fully independent and unrestricted post-action review by existing and established military appeal courts (Court of Appeals for the Armed Forces) and all federal courts of appeal including the Supreme Court should be available regarding the Combat Status Review, any conviction or sentence by a Military Commission, a required review in the case of a death penalty or life sentence, and any other issues of habeas or mandamus that arise. Creation and appointment of special appeal panels, limitation of appeal of death penalty sentences to the President, limitation on the specific areas of appeal available, and retroactive or ongoing consolidation of habeas petitions into a single circuit should not be allowed.

TORTURE

Renew our commitment to international anti-torture standards and withdraw all Presidential executive orders, legal memoranda, directives, legislative signings,

proposed legislative changes, modification of standards of evidence, and changes to existing military or intelligence regulations, manuals or directives that in any way alter our practice or procedures, enumerations of specific methods or levels of abuse that distinguish some as less than torture, or prohibitions or reliance on established definitions of torture. Reaffirm our support for all Geneva Convention articles and protocols relating to torture or any cruel or degrading treatment it prohibits, withdraw our reservations to the international Convention Against Torture and preserve our own laws prohibiting torture or mistreatment of detainees or any prisoner held within or without the United States by any arm of government from local police to federal prisons and military brigs.

Prohibit the use of torture both by military and intelligence agency employees or assets and subcontractors, private security forces, or any public or private institution with control over the movement or treatment of long-term inmates, delinquents, mental or health patients or residents. Prohibit the use of torture by any covert operation abroad or inside the United States. Prohibit the facilitating diagnostic or treatment roles of medical or psychiatric/psychological personnel in any military or civilian use of torture, even if not directly involved in the abuse. Prohibit the study of or experimentation on any techniques to be used in torture and the training of any such techniques or methods to other governments or organized forces by any U.S. military or civilian government personnel or subcontractors.

Restore the use of Army Field Manual 34-52 without proposed modifications and continue the universal training of non-coercive interrogation standards to all military service members and to forces and police abroad, and apply the same standards to all intelligence or civilian agencies of the federal, state or local governments and police forces.

Require regular independent reviews of all places of detainment by International Commission of Red Cross and federal agencies to be sure that conditions of imprisonment, transfer and treatment meet the established standards of the Bureau of Prisons and prohibit excessive shackling or stress positions and sensory deprivation. Establish a procedure to insure the ability of detainees to formal complaints, protected from retaliation, about their conditions and treatment that are not dealt with solely by prison guards or administrators but afford external investigations and review.

Resources:

Hamdan v. Rumsfeld, Supreme Court, June 29, 2006 #05-184

Guantanamo and the Abuse of Presidential Power, Joseph Margulies

Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism, David Cole

Military Tribunals & Presidential Power: American Revolution to the War on Terrorism, Louis Fisher

Oath Betrayed: Torture, Medical Complicity and the War on Terror, Steven H. Miles, M.D.

National Security and Military Law in a Nutshell, Charles Shanor and Lynn Hogue.

Military Commission Order and Instructions, Department of Defense and President Bush, 2001

4th Geneva Convention and protocols of signatories

United Nations Security Council Resolutions 1368, 1373, 1377, 1378, 1383, 1386 (2001)

Public Law 107-40, *Authorization of the Use of Military Force*, September 18, 2001

Public Law 107-243, *Authorization of the Use of Military Force Against Iraq Resolution of 2002*, October 16, 2002