RESOLUTION AGAINST TORTURE

PRESBYTERIAN CHURCH (USA)

Human Rights in a Time of Terrorism
A Call for a Commission of Inquiry

Approved by the 217th General Assembly
of the Presbyterian Church (U.S.A.)

2006

Resolution on Human Rights in a Time of Terrorism and Torture
A resolution approved by the 217th General Assembly (2006) and
Petitions Against Torture Overture from the
Presbytery of San Francisco to the 217th General Assembly (2006)

FOR STUDY AND ACTION

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September 2006

Dear Friends:

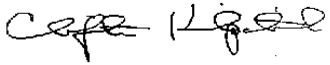
The 217th General Assembly approved this resolution on "Human Rights in a Time of Terrorism and Torture" and directed me to post it on the website of our church (see http://www.pcusa.org/oga/publications.htm). At the same time, given the importance of this subject, the Advisory Committee on Social Witness Policy is making this statement available in this print form for study use.

The Presbyterian Church (U.S.A.) has been among the strongest supporters of human rights law, an area of significant success in 20th Century Protestant Christian witness generally. One part of this has been our now 20-year history of preparing human rights updates for Christian education and public policy use. Previous General Assembly actions are noted in the background materials to this year's resolution; copies can be found in the Advisory Committee's Social Policy Compilation.

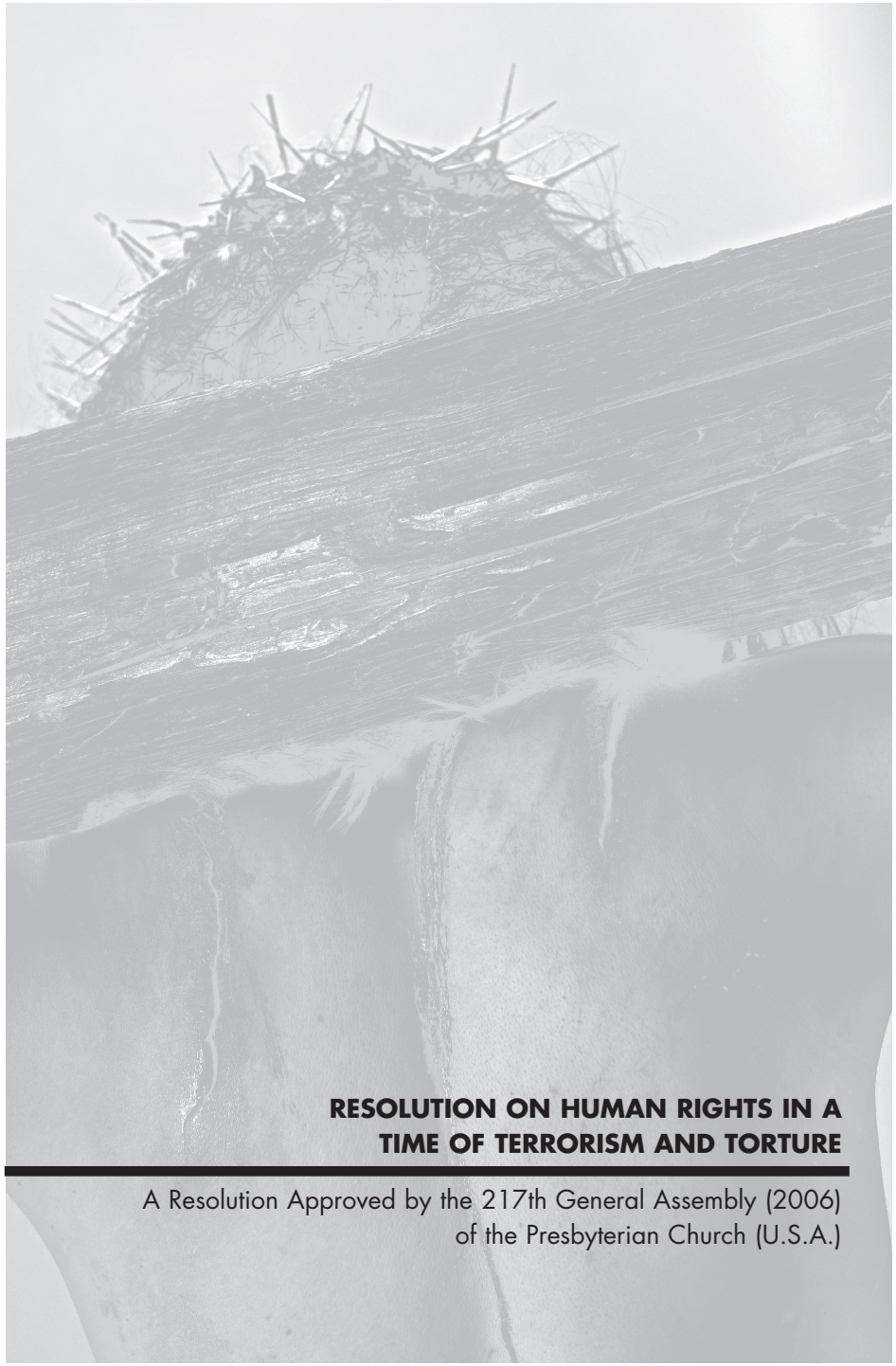
Along with the resolution and its study paper is printed a second action of the Assembly, a petition calling for a formal congressional inquiry into how torture came to be used in U.S. military and other prisons. This action began in a congregational study group, was adopted by San Francisco Presbytery, and then was concurred in by five other presbyteries. Together with the strong support of the Assembly itself, these actions show a firm consensus in our Church that torture is inconsistent with Christian faith, as well as counterproductive for intelligence gathering.

The bases for our study and advocacy are found in our prayer, worship and scripture reading. Although some persons who suffer torture are themselves guilty of serious crimes, our hearts go out even to these "enemies." We share not only a common humanity, but a loving Creator God who shows us better ways to "do justice, love mercy and walk humbly" together.

Yours in Christ,



Clifton Kirkpatrick
Stated Clerk of the General Assembly



RESOLUTION ON HUMAN RIGHTS IN A TIME OF TERRORISM AND TORTURE

A Resolution Approved by the 217th General Assembly (2006)
of the Presbyterian Church (U.S.A.)

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RESOLUTION ON HUMAN RIGHTS IN A TIME OF TERRORISM AND TORTURE

The 217th General Assembly (2006) approved the following (*Minutes, 2006,* Part I, pp.50,51; 867-876).

1. Approve the *"Resolution on Human Rights in a Time of Terrorism and Torture,"* and direct the Stated Clerk to make the recommendations and background available on the website of the Presbyterian Church (U.S.A.), www.pcusa.org.

2. Affirm that the General Assembly of the Presbyterian Church (U.S.A.) opposes the use of torture and all forms of 'cruel, inhuman, or degrading' interrogation by all agencies, employees, or agents of the United States government, and all foreign governments and/or combatants, and supports the application of the Geneva Conventions to all enemy soldiers and the humane treatment with due process for all combatants held by U.S. forces anywhere in the world, and supports the provisions of the Bill of Rights and the principles of judicial review and congressional oversight over Executive branch operations, now including counterterrorism, Homeland Security, and domestic surveillance programs, both classified and publicly acknowledged;

3. Endorse congressional and judicial remedies for the use of torture and illegal detention by agencies of the U.S. government, such as the appointment of a special counsel, open hearings, appropriate investigation, and legislation outlawing the use of "extraordinary rendition" and extraterritorial prison facilities.

4. Request the Stated Clerk and the Moderator of the 217th General Assembly (2006) to include salient concerns of this report in any public summary of the actions of the assembly directed to public officials, ecumenical partners, and church leaders;

5. Encourage members, sessions, presbyteries, and synods to pray for all victims of human rights abuse and those who persecute them, particularly in their observances of Human Rights Day (each December 10), to seek ways to assist these victims and prevent further abuse of others;

6. Authorize the Office of the Stated Clerk, as in the case of conscientious objectors, to express support for the principled refusal on grounds of Christian conscience by Presbyterian military, intelligence, and other personnel who are asked to participate in coercive and/or covert detention of prisoners;

7. Authorize the Stated Clerk, in consultation with the Advisory Committees on Litigation and the Constitution and the Advisory Committee on Social Witness Policy, to express support for the protection of the right of privacy for U.S. citizens against intrusion by government or private entities; and

8. Urge all Presbyterians, while being attentive to issues of human rights related to U.S. policy and practice, to continue to advocate for human rights in the many places around the world where those rights are in jeopardy.

RATIONALE

I. Introduction

For the past eighteen years, the Advisory Committee on Social Witness Policy (ACSWP) and its predecessor bodies have worked with the Worldwide Ministries Division (WMD); [National Ministries Division (NMD) through the] Office of Corporate Witness and the Presbyterian Washington Office (PWO), and the [Congregational Ministries Division (CMD)] Presbyterian United Nations Office (PUNO) to provide a brief overview of human rights concerns around the world. This resolution on Human Rights focuses on the United States, as our nation has gone from being a leader in the cause of human rights to a cause for alarm among democratic nations. None of the observations in this report are pleasant to make, nor are they meant to delineate the full scope of human rights' concerns in the world. Ongoing, entrenched human suffering and pervasive abuse of power continue to plague the peoples of the world.

This resolution follows the biblical model provided by the prophet Amos, who surveyed the countries around Judah with judgments attributed to God, before turning to Jerusalem. Amos summarizes the sins of each of the nations and warns, "... for three transgressions ... and for four, I [God] will not revoke the punishment" (Amos 2:6). He addresses his greatest grief to his own nation: "[Woe to] those who are at ease in Zion ... O you that ... bring near a reign of violence ... you have turned justice into poison and the fruit of righteousness into wormwood" (Amos 6:1, 3, 12). We also feel the weight of Jesus' words, "... first take the log out of your own eye, and then you will see clearly to take the speck out of your neighbor's eye" (Matt. 7:5).

The policy basis for this resolution is strong, as human rights concerns of the assembly date back well before the church's advocacy for the *Universal Declaration of Human Rights*. A strong sample comes from the 1937 assembly:

> "Every person being thus infinitely valuable in the sight of God, all are to be regarded as equally entitled to the rights granted by society or inherent in them as human beings* Personality being of infinite worth, there are areas of personal life which no state, no economic or social force should be authorized to invade. The claims of the totalitarian state to dominion over all the acts and thoughts of its subjects must be rejected. Freedom of thought and its expression, freedom of assembly, freedom of religious worship, and freedom of conscience that commands one to act in obedience to God and not in submission to man-made decree, must be preserved as the foundation statutes of a Christian brotherhood." (*Minutes,* PCUSA, 1937, Part I, p. 217)

Past General Assembly Human Rights Reports also contain valuable Bible studies and human rights documents.

War remains the chief cause of widespread human rights violations, though acts of terrorism are also dramatic violations of human rights by non-State actors. There are also cultural factors such as female genital mutilation in parts of Africa and selective abortion in parts of Asia that discriminate against women.

In Africa, the Darfur region of the Sudan remains a major concern of the international community, as massive displacement of Black Sudanese groups by Arabs from the northern part of that country continues, using rape and even slavery as means for a kind of "ethnic cleansing." Border areas of Chad are reportedly also being terrorized. Civil warfare in Liberia appears to have stopped; warfare continues in parts of the Congo, on the Ethiopian/Eritrean border, in parts of Somalia and Sierra Leone. (Trade in "conflict diamonds" is also being more regulated.) The government of Meles Zenawi in Ethiopia is blamed for violently refusing to cede power to an elected government, for massacres on June 8 and November 1–5, and for the imprisonment of 100,000 or more civilians in concentration camps. In Nigeria, relatively low-level warfare between Christian and Muslim regions has ended. Zimbabwe remains a dictatorship under Robert Mugabe with forced displacement of shantytowns and widespread malnourishment.

In the Middle East, the war with terrorism has come to Iraq, although there are signs that the constant bombings of civilians and U.S. troops are part of a simmering civil war, as well as resentment of the occupation. In Lebanon, after the assassination of former Prime Minister Rafik Hariri, Syrian troops withdrew. There have also been votes and other steps toward democracy in Lebanon, Jordan, Saudi Arabia, and Egypt, all of which have also experienced terror attacks. Recent National Assembly elections in Egypt took place amid several violent confrontations by the country's security forces against supporters of Muslim Brotherhood-affiliated candidates. Nevertheless, a significant number of seats in the assembly were gained by the Brotherhood who, on the one hand, have expressed openness to dialogue with the country's Christians but whose campaigns, on the other hand, had manifested flagrant ill will towards them. In Egypt also, the government's decision to deport large numbers of Sudanese refugees after incidents of violent assault by the police, was troubling to human rights observers. In Palestine, Israel continues to annex territory it has occupied since 1967, in defiance of international law. Israel's unilateral withdrawal of settlements in Gaza, without negotiation on the West Bank and Jerusalem and while retaining controls on Gaza's borders and resources, continues to cause pessimism about the revival of a "peace process." The poor and less-educated population of Gaza are themselves seeing intra-Arab violence. Some militant factions continue to shoot mortars into Israeli settlements and send suicide bombers into Israel proper, although the security barrier (or "wall")—generally built on Palestinian land—has reduced the number of suicide bombers.

In Latin America, a war continues in Colombia between a one-time liberation movement and a mixture of government and paramilitary forces, with U.S. observers and drug war operatives active mainly in areas controlled by the government. Human rights work among the 5 million or so displaced persons is itself dangerous, as a recent series of *Presbyterian News Reports* describes. (See six part series by Alexa Smith, www.pcusa.org/pcnews.) Haiti remains a failed state with high levels of violence since the removal of Jean-Bertrand Aristide, under whom there had been violence on a much lesser scale. Guatemala still suffers from violence, especially against Mayan Indians and sometimes involving Presbyterian church members and leaders. Native peoples also suffer in the Amazon River basin in fights over resources, with tribal, religious and human rights leaders killed. Peru continues to have limits on democracy. (See the film *"State of Fear"* based on that country's truth and reconciliation commission after 2002.) Others would point to Venezuela as emulating Cuba, but the Hugo Chavez government seems most concerned about intervention from the outside. Brazil, Argentina, and Chile, especially with Pinochet, are all dealing still with the legacies of brutal dictatorships in the 1960s–80s.

In Asia, Afghanistan remains in part a war zone, and women's rights in particular are limited outside the capital of Kabul. Past reports have noted dictatorships participating in the "war on terror" while oppressing their own citizens, such as Uzbekistan and Turkmenistan. Similar criticisms have been aimed at Azerbaijan and Kazakhstan. Partly due to earthquake tragedies, the Kashmir region has not been a flashpoint between India and Pakistan. Pakistan, Bangladesh, and to a lesser extent, India, continue to have human rights problems, in part due to weak rural legal systems, caste prejudice, and religious discrimination. Cultural prejudice against women leads to some violence and, in the case of girl babies, some selective abortion occurs due to the availability of ultrasound. Christians constitute minorities under pressure in these and many other countries, partly due to their being the most widespread religious group in the world. (See "Washington Discovers Christian Persecution," *New York Times,* 12/21/97.)

Terrorism has struck Bali; the Tsunami has caused great damage but less warfare in Christian and Muslim minority regions of Indonesia. Sri Lanka remains riven by Tamil-Sinhalese tensions, with danger of increased hostilities. Nepal also faces low-level warfare, through Maoist rebels. In the Philippines, pastors and members of the United Church of Christ have been targeted for their work on labor and human rights, while low-level warfare against Muslim groups continues on the island of Mindanao. (Detailed material on the Philippine situation is available from the Asia-Pacific area office and ACSWP.)

Officially Communist nations continue to practice or condone human rights abuses: North Korea remains a closed society, with much starvation and malnutrition. China's legal and judicial authorities, while improving since Tiananmen Square's suppressions, are still linked to widespread use of extreme interrogation and deprivation of due process, especially in rural areas. After some years of thawing relations with the United States, Cuba imprisoned critics of its regime who received funding from U.S. government agencies. Myanmar, formerly Burma, remains a dictatorship and closed society.

In Europe, there have been steady improvements despite continued problems. This is most dramatically affirmed in the case of Ukraine, where a democratically elected president was poisoned with dioxin but has survived to run his nation despite continued social tensions. United Nations (UN)/North Atlantic Treaty Organisation (NATO) peacekeepers continue to patrol in the Kosovo province of the former Yugoslavia, but some war criminals from the most violent period of ethnic cleansing are being prosecuted. Turkey, possibly an entrant to the European Union in the near future, has moderated its treatment of its Kurdish minority and some dissident writers.

From this brief survey, it is clear that despite widespread international acceptance of the concept of human rights, the actions of governments dramatically limit their exercise. Preemptive legal and extralegal approaches by the U.S. government since 9/11/01 have changed not only U.S. practice but that of some allies: Philippines, Uzbekistan, Saudi Arabia, Israel, Nigeria, Colombia, Haiti, Indonesia, Pakistan, even Mexico. As noted above, in some regions of the world participation in the "war on terror" can become part of a rationale for prosecuting domestic opponents and opposition groups, or allowing them to be targeted by paramilitary and/or "death squad" units. These government opponents and targets are sometimes members of Christian or other religious minorities.

Past human rights updates have described the strengthening of concepts of religious rights, social and cultural rights. The church has also noted the pressure that religious discrimination in some forms of Islamization have put on Christian minorities in some Muslim countries, and how state religions discriminate and penalize Christians in some non-Muslim countries as well such as Sri Lanka, India (in certain provinces), and Israel (in certain respects). Today, however, Christianity as associated with America is being linked with violations of the *Geneva Conventions* and efforts to circumvent human rights generally. This makes the situation of Christian minorities more precarious and weakens evangelism by all Christians.

There are other forms of human rights violations in the world, including bonded child labor, the trafficking of children and women, and the mistreatment of immigrants. With the General Assembly's recent shift to biannual meetings, we encourage Presbyterians to shift with us to website-based reporting for urgent and the most up-to-date information. This resolution focuses upon human rights concerns that have come to the fore regarding U.S. policy and practice, both in dealing with persons incarcerated in the context of efforts to curtail terrorism and in dealing with U.S. citizens, as well. Some of these concerns are delineated below and are reflected in the recommendations placed before the 217th General Assembly (2006).

II. Human Rights and the United States

A. Torture and Detention

Though the headlines have varied, the message has been too often: torture is back, and in American uniform and interrogation rooms. Press stories worldwide have included: the picture of the hooded Iraqi in cruciform position, mocked by wires attached to his near naked body, now a global media icon; names with new meanings such as Abu Ghraib, Baghram Airbase, Guantanamo Bay; alleged secret prisons in Egypt, Saudi Arabia, Uzbekistan, Eastern Europe, as well as Afghanistan and Iraq; Central Intelligence Agency (CIA) agents abducting suspects in one country and sending them to another ("extraordinary rendition"); presidential advisors writing legal defenses of the use of physical and psychological coercion; and public strategies to circumvent the Geneva Conventions and U.S. Constitutional law by indefinite detention without trial in extraterritorial military facilities.

Does the Christian Church remain silent? No, and Presbyterians have joined together to speak out. (See *Call to Say "No!" to Torture* www.pcusa.org/peacemaking/torturestatement.htm.) Conferences on torture in light of the Christian faith have been held in Florida and at Princeton Theological Seminary, and survivors of torture have addressed congregations and presbyteries in several areas.

What we say about the intentional cruelty of U.S. soldiers, spies, and shadowy "contractors" is what we have said about the same cruelty by others: it degrades us all, and must be renounced and repented of before the Living God, whose eye sees into every hidden cell and secret budget allocation. Our basis for speaking: Jesus Christ, the head of the Church, was tortured to death, first by being flogged, and then by a slow form of capital punishment. Thus we join countless patriots in saying; "This is not America." But deeper down we know, too: "This is not Christian."

The last two years have been marked by a movement from contradictory

official denials as torture photos surfaced, to definitions of interrogation that are themselves tortured, and in some cases to the promotion and appointment to higher rank and office of those who authorized torture and had authority over places where it was and may still be practiced. Several low-ranking soldiers have been disciplined; one general retired; and another choosing retirement rather than the public review required for promotion. The number of reported deaths of prisoners in U.S. custody in Iraq and Afghanistan stands at 108 (http://www.cbsnews.com/stories/2005/03/16/terror/main680658.shtml?CMP=ILC-SearchStories). The U.S. military has acknowledged numerous suicide attempts and hunger strikes in Guantanamo Bay, where in early February of 2005 thirty prisoners were being kept alive by feeding tubes (*New York Times,* February 9, 2006). Other governments have protested U.S. policy and have extracted their nationals from U.S. prisons. The Red Cross and UN agencies have sought unfettered access to these detention centers, often without success (www.boston.com/news/world/europe/articles/2005/11/03/red_cross_seeks). In point of fact, the Red Cross repeatedly sought to alert the U.S. military command in Iraq and the Department of Defense to credible reports of torture at Guantanamo Bay and Abu Ghraib, reports that were ignored or suppressed.

As late as December 2005, Vice President Richard Cheney and Defense Secretary Donald Rumsfeld sought to permit continuance of torture in interrogations of terror suspects by CIA operatives and to exempt those interrogators and related military personnel from potential prosecution for war crimes or violations of U.S. military codes of conduct. A few public figures have defended the use of extreme physical pressures to obtain vital information, with some contrasting our practices with the beheadings, targeted assassinations, and suicide bombings of others. While the not-so-random cruelty of fanatics and use of missiles and mortars in civilian areas may be more vicious and violent than the abuse of individuals in U.S.-controlled prisons, such justifications for torture set the bar of civilized behavior quite low and expose our own captured service personnel to similar mistreatment. America has lost much of both its honor and its credibility. Efforts to exempt U.S. citizens and military personnel from jurisdiction of the International Criminal Court, and to weaken that court itself, only underline the indefensible nature of U.S. policy. These matters also remain important because the U.S. government maintains prisons around the world, with 14,767 in prison in Iraq alone as of February 15, 2006 (*The New York Times,* 2/15/06).

The church stands by its moral and theological arguments, applicable abroad as at home:

> ... While the Christian Faith in itself cannot provide the details of a good justice system, it can and should speak about the fundamental motives and final goals of a criminal justice system... and some criteria for evaluating actual practices...(*Minutes,* PCUS 1978, Part I, pp. 194-95)

> We reaffirm the actions that previous General Assemblies have identified as necessary to bring justice and compassion into the fabric of the prison system. (*Minutes,* 1988, Part I, p. 1028)

There is the pragmatic argument that evidence provided by extreme methods is generally much less reliable than that of standard U.S. police procedure. Alleged evidence for Saddam Hussein's Weapons of Mass Destruction programs, for example, came in part from one individual, Ibn Al-Shaykh Al-Libi, put through extreme measures (*New York Times,* Douglas Jehl, 12/9/05; also *Newsweek* and *The New Yorker*). In other countries, as past human rights updates have described, the purpose of torture is not actually to extract intelligence but to break the sense of self; it is a form of intimate, humiliating terror, a crime against the human spirit and God's image in us. Neither does such torture prevent terrorism, as the Israeli Government of Ehud Barak determined when it formally ended the practices of extreme interrogations on Palestinians and Lebanese.

Patriotic Americans may wonder at how such a major ethical problem could develop so quickly in so many areas. Some believe that legal opinions such as that of August 1, 2002, developed by now-Attorney General Alberto Gonzales and others, which narrowly defined torture as pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death" had immediate effect, ratcheting up the amount of brutality that would not be considered torture. Others see the refusal of judicial process or visitation by the Red Cross or UN monitors allowing abuses to grow unchecked, especially in secret locations. While the removal of legal controls or accountability may have helped create a climate of impunity for U.S. and private security interrogators so lax that digital photography was widespread (more so than has been made public), two government reports and the testimony of survivors indicate that the practices of torture were widespread and routine. (See *"Making Torture Legal,"* Anthony Lewis, *New York Review,* 7/15/04 and *"Abu Graib: The Hidden Story,"* Mark Danner, *New York Review,* 10/7/04)

One of the panels, headed by James Schlesinger, whose members were chosen by Defense Secretary Rumsfeld, determined that "CIA's detention and interrogation practices contributed to a loss of accountability at Abu Ghraib," though it did not have the authority to investigate the CIA itself. The other panel, also reporting in July of 2004, was headed by Major General George Fay and interviewed at least twenty-five military intelligence officers and private contractors. That report, as summarized by Catholic Church human rights researchers James Hodge and Linda Cooper:

> ...details some forty-four incidents, including the stripping, hooding and sodomizing of detainees; subjecting them to temperature extremes; leading them around naked on leashes; and attaching electrical wires to their genitals. In one case, two naked youths were terrorized by snarling, unmuzzled military dogs held by military personnel who competed to try to make the teenagers defecate." In the Fay report's own words, "what started as nakedness and humiliation, stress and physical training, carried over into sexual and physical assaults."
>
> *Human Rights Watch* confirms that U.S. forces in Iraq, Afghanistan and Guantanamo Bay have "used interrogation techniques including hooding, stripping detainees naked, subjecting them to extremes of heat, cold, noise and light, and depriving them of sleep-in violation of the *Geneva Conventions* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* This apparently routine infliction of pain, discomfort and humiliation has expanded in all too many cases into vicious beatings, sexual degradation, sodomy, near drowning and near asphyxiation ("water-boarding"-ed.). Detainees have died under questionable circumstances..."
>
> Writing in the *New England Journal of Medicine* (July 2004), Robert J. Lifton writes of mounting evidence that "U.S. doctors, nurses and medics have been complicit in torture and other illegal procedures in Iraq, Afghanistan and Guantanamo Bay... [They have]... turned over prisoners' medical records to interrogators who could use them to exploit the prisoners' weaknesses and vulnerabilities," including physical and psychological conditions.

Hodge and Cooper build on the work of Alfred McCoy, author of *Closer Than Brothers,* a book on the influence of CIA torture methods in the Philippine military, to outline the development and spread these techniques.

> The basic techniques-the use of stress positions, sensory deprivation and sexual humiliation-are aimed at making victims feel responsible for their own pain and suffering...while it appears less abusive than physical torture, the psychological torture paradigm causes deep psychological damage to both victims and their interrogators, who can become capable of unspeakable physical cruelties.

> The results of the CIA torture experiments (drawn from research funded in the 1950s in university psychology departments) were codified in 1963 in a secret manual known as *"KUBARK Counter-intelligence Interrogation"* (used widely in Vietnam in the Phoenix Program)...In 1983, the KUBARK manual provided a model for the CIA's *"Human Resource Exploitation Training Manual,"* whose methods were used by the ...U.S.-trained Honduran Battalion 3-16 during the tenure of then-U.S. ambassador to Honduras John Negroponte, now ambassador to Iraq.
>
> About the same time, the CIA compiled the *'Psychological Operations in Guerrilla Warfare'* for the Nicaraguan contra commandos....Six manuals, also linked to a CIA program, were used at the U.S. Army's School of the Americas and distributed across Latin America by Army Mobile Training Teams in the 1980's. They advocated everything from executions of guerrillas to extortion, coercion and false imprisonment..." (*National Catholic Reporter,* Nov. 5, 2004, p. 12).

Human rights organizations have copies of these manuals, but additional documentation was discovered by the *New York Times* (in particular in a 1988 interview with Florencio Caballero, a former torturer), the *Baltimore Sun* (via a lawsuit in 1995), and by Representative Joseph Kennedy in his five-year effort to close the "School of the Americas." Space does not permit further descriptions of techniques of "debility, dependence, and dread," or the phenomenon of "ghost detainees," some killed during interrogation, whose identities and locations are never released but whose existence was confirmed in the Fay and Schlesinger reports. (Note: Hodge and Cooper's book, *Disturbing the Peace: The Story of Father Roy Bourgeois and the Movement to Close the School of the Americas,* Maryknoll: Orbis, 2004, contains much additional information.) Descriptions of the process of "extraordinary rendition" only magnify the concerns about due process and humane treatment, as in those cases suspects are spirited from one country for interrogation in another country usually known for human rights abuses. (See *"Outsourcing Terror,"* Jane Meyer, *The New Yorker,* 2/14-21/05)

B. The Fate of the Guantanamo Bay Prisoners

It has been more than four years since about four hundred of the five hundred plus current prisoners were put in prison without trial. Some of the alleged Al Qaeda or Taliban members were captured on the battlefield; some were obtained by offering rewards or bounties to warlords, as was the first prisoner to be tried before a military tribunal in Hamdan v. Rumsfeld. Readers may remember the treatment of John Walker Lindh, "the American Taliban," who was initially kept naked and without food or medical attention, but then due to his citizenship, was given a legal hearing and negotiated sentence. After lengthy diplomatic protest, several British, Australian, and other nationals were also released; over time other prisoners have been sent back to prison or freedom in less influential countries of origin.

The U.S. Government has classified the prisoners on Guantanamo as "illegal enemy combatants" outside the jurisdiction of the Geneva Conventions concerning prisoners of war and, as Guantanamo Bay is on Cuban territory, outside the jurisdiction of the Bill of Rights and U.S. Constitutional law. Thus the Bush Administration has taken upon itself to develop a number of unique legal categories and proceedings, justified by its own definitions of the requirements of the "war on terror." After a Supreme Court ruling that some kind of hearings be held (under the ancient right of habeas corpus, requiring some public justification for imprisonment), President Bush issued a three-page Presidential Order establishing tribunals of between three and seven military officers selected by the Administration to judge the captives (November 13, 2001). Two-thirds majorities are required for sentences of up to life imprisonment; unanimous votes are required for the death penalty (*New York Times,* January 8, 2006, *Magazine,* p. 51).

The conduct of these tribunals-if allowed by the Supreme Court-is important to us as Christians because of our equal standing as creatures before God, and Jesus' clear urging that we "love our enemies," whether or not they are brought to repentance. Doubts about the Administration's capacity or intent to provide impartial justice would not only reflect on the reputation of the United States as a nation of laws, but on the responsibility of Christians who participate in proceedings that appear to deny captives their rights. Christians in other countries may suffer for our perceived sins; on a larger scale, the attractiveness of the democratic project of America will be further diminished, particularly in the Muslim world.

Eight features of the trials raise questions about the growth of Executive power and even "privilege" (a phrase not found in the Constitution):

1. The U.S. Congress, constitutionally authorized to declare war and convene military tribunals, had no role in the creation of the Guantanamo tribunals, their definition of war crimes, rules for evidence gathered by coercive means, etc.

2. Because evidence might be classified intelligence obtained by secret means, detainees may not know the full nature of accusations against them and their potential jeopardy.

3. The U.S. judiciary would have no role: appeals would go before three military judges chosen by the secretary of defense.

4. The likely charge of conspiracy, without evidentiary safeguards, may tend to serve as a "catch-all" equalizing the seriousness of offenses of all accused, despite widely varying levels of culpability. Thus international law and recent (1996 and 1997) congressional definitions of war crimes did not include, "conspiracy."

5. Unlike genocide, for example, terrorism itself is not a settled part of international law.

6. The long delays in providing limited legal access for a limited number of prisoners have created a climate of deepened anti-Americanism and fatalism among many in the prison camp. Their doubt concerning American justice breeds distrust of their lawyers, thereby weakening their cases. As of December 30, 2005, more than thirty detainees were being force-fed to prevent their hunger strikes from leading to further suicides.

7. While a single appeal of the legality of the tribunals goes forward, the U.S. Senate voted on that same December 30 to deny all Guantanamo prisoners the right of habeas corpus. This amendment by Senator Lindsay Graham to a defense bill, now called the Detainee Treatment Act of 2005, provides congressional support for depriving the prisoners of due process.

8. On the U.S. military side, slow or no due process creates a legal limbo without an exit strategy, for not only is "justice delayed, justice denied," but Islamist hatred of U.S. "domination" puts our troops constantly at risk.

(These points are drawn from numerous reports on the tribunals and legal status of Guantanamo detainees, including: *Time* 6/20/05 and *New York Times* 12/19/05)

C. Increased Surveillance of U.S. Citizens Without Court Warrants

In late December of 2005, the *New York Times* published information it had held for many months concerning the Bush Administration's practice of spying on U.S. citizens and groups without warrants. In addition to secret wiretaps and spying on approximately 150 anti-war and other activist groups, the president signed a directive to circumvent the secret court already set up to grant permission for large scale electronic surveillance, typically done on a smaller scale in past administrations. The admissions and defenses of these practices appear to contradict the president's earlier assurances that the *USA Patriot Act* would not permit spying on U.S. citizens without court warrant. For these reasons and others, Congress has limited the renewal of the *Patriot Act's* manifold expansion of Federal Bureau of Investigation (FBI) and CIA powers for six months from mid-December.

Starting soon after September 11, 2001, the president authorized the National Security Agency (NSA), itself begun in absolute secrecy under President Truman in 1952, to monitor the personal communications of U.S. citizens without going to the special court set up to provide warrants. Operating out of Yakima, Washington, and Sugar Grove, West Virginia, the NSA routinely intercepts all international communications (*The New York Times, "The Agency that could be Big Brother,"* by James Bamford, December 25, 2005, 4:1). What the Bush Administration has done is to extend a practice called "data mining" to cover "hundreds, perhaps thousands" of people whose communications may fit into a pattern or otherwise reveal connections to terrorist groups.

In 1978, following the abuses of the Nixon Administration and the investigations of foreign and domestic intelligence gathering by the Senate (headed by Senator Frank Church), Congress established a Foreign Intelligence Surveillance Court (or FISA) to which government agencies would need to show "probable cause" to receive authorization to conduct wiretaps and other surveillance. In twenty-seven years, approximately 19,000 warrants have been granted; only five were denied, and of these only one appealed to the Foreign Intelligence Court of Review. Thus there seems to be little cause for circumventing a body that has been very willing to authorize government surveillance already. The FISA court is also ready to act on emergency requests, making it hard to justify years of surveillance as "emergency measures" occasioned by the "war on terror."

Despite the apparent curtailment of similar Defense Department operations of this kind in 2002 (the Total Intelligence Awareness program run by Ret. Admiral John Poindexter) in 2004 the General Accounting Office identified fifty-two agencies and departments using or planning "data mining" techniques, with the Department of Defense reporting the largest number. "These departments and agencies reported 199 data-mining efforts, of which 68 are planned and 131 are operational" (*New York Times,* December 25, 2005, 4:4). While one can assume that some of these efforts are essentially computer searches of mounds of unclassified data, the classified searches may not fall under any judicial or legislative review as to their scope and justification.

The Senate Judiciary Committee is currently investigating how the president's spying directive affects the Fourth Amendment against "illegal searches and seizures." In addition to requesting information from senators or representatives, concerned Presbyterians may look at the government oversight section of the website of the Electronic Privacy Information Center, or the American Civil Liberties Union. In addition to expanded electronic surveillance at home, the Department of Homeland Security and more local police bodies have been conducting more surveillance of anti-war and other protest groups, from the Catholic Worker to PETA, or People for the Ethical Treatment of Animals, to bicycle demonstrations in New York City (*New York Times,* 12/25/05, 4:4).

D. Human Rights and the Criminal Justice System Of The United States

Here we briefly set the civil liberties concerns above in the context of ongoing concerns within the U. S. criminal justice system, concerns that predate responses and reactions to terrorism.

As noted in previous human rights updates, there are widely varying standards for legal assistance, sentencing guidelines, and prison conditions among the states in the United States. Financial ability affects the quality of legal representation, as one would expect; the overall U.S. criminal justice system favors punitive rather than restorative or rehabilitative responses. Hence the United States has the highest percentage of its citizens in prison of any nation on earth, vastly different than other developed nations, though U.S. rates of crime and gun violence are higher as well. Former felons are also in many cases deprived of their right to vote after their debt

to society has been paid. The percentage of Black, Hispanic, and Native American convicts is also much higher than their proportion of the overall population. The U.S. is also unique among developed nations in using the death penalty, a practice opposed since 1959 and 1966 respectively in the former United Presbyterian and Presbyterian Church in the United States, and in 1977 and 1985.

The disparity among racial ethnic groups extends to Death Row. In 1976, thirty-eight states began to reinstitute the death penalty, which had been judged "cruel and unusual" punishment. Since then, more than one thousand executions have taken place. From data on the first 983 of those executed (www.deathpenaltyinfo.org/factsheet) can be gathered the following statistics and information:

- The twelve states without a reinstated death penalty are Alaska, Maine, Minnesota, Vermont, Hawaii, Massachusetts, North Dakota, West Virginia, Iowa, Michigan, Rhode Island, and Wisconsin. The District of Columbia also has no death penalty.

- In 96 percent of the states where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both (Prof. David Baldus report to the American Bar Association (ABA), 1998).

- 98 percent of the chief district attorneys in death penalty states are white; only 1 percent are black (Professor Jeffrey Pokorak, *Cornell Law Review,* 1998).

- A sophisticated statistical study in Philadelphia found that for similar crimes committed by similar defendants, blacks received the death penalty at a 38 percent higher rate than all others (*The Death Penalty in Black and White*—Death Penalty Information Center, 1998).

- A comprehensive study on the death penalty in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white (Professor Jack Boger and Dr. Isaac Unah, University of North Carolina, 2001).

A summary of the Presbyterian Church (U.S.A.)'s position on the death penalty may be found in a recent statement by the Stated Clerk issued on December 2, 2005, that reaffirmed the Presbyterian Church (U.S.A.)'s strong witness on human rights concerns related to the criminal justice system. In his statement, he reaffirmed this branch of the body of Christ's policy positions against capital punishment. In addition, he "call[ed] on all the leaders of state governments to cease the practice of capital punishment in the United States of America." (For the full text of the Stated Clerk's statement go to www.pcusa.org/oga/newsstories/cappunishment.htm.)

There has been some progress at least in the administration of the death penalty. DNA evidence is being used to overturn convictions of innocent people. The Supreme Court has raised the age at which one can be executed to eighteen, and mentally-retarded perpetrators may appeal their convictions on that ground, assuming the provision of competent legal assistance.

Related to the treatment of prisoners, the 215th General Assembly approved a Resolution Calling for the Abolition of For-Profit Private Prisons (go to www.pcusa.org/oga/publications/private-prisons.pdf). That assembly stated:

> In a humane society, in a democratic society, there are some things that can never be for sale, even and especially when they involve "one of the least of these followers of mine." Even if for profit private prisons could achieve significant cost savings to the tax-payer, which in fact they have not been able to do, they would still be morally unacceptable. Private prisons are not an economic but a deep religious and ethical issue, a cornerstone of our collective work to put justice back into the so-called "criminal justice system." The moral concern and authority of the faith community make it critical that our voices be heard and our weight be felt. (*Minutes,* 2003, Part I, p. 439)

The 217th General Assembly (2006), like its predecessors, calls for fair and humane criminal justice policies. This assembly urges the members of the Presbyterian Church (U.S.A.) to continue to work to ensure that the rights of all people are equally protected (victims and offenders). To do otherwise would go against our Reformed tradition's teaching The church of Christ is called to be Christ's faithful evangelist "... engaging in the struggle to free people from sin, fear, oppression, hunger, and injustice" (*Book of Order,* G-3.0300c(3)(c)).

APPENDIX A

Selected Human Rights Organizations

The following organizations provide action strategies and/or research information on human rights violations. This list highlights only a few of the best-known organizations. Survey the members of your study group or congregation. You will probably discover that some of them are already affiliated with human rights organizations in your region or community. We encourage you to learn more about all those groups and consider which ones may be most helpful to you as you carry on your concerns of human rights.

Amnesty International. U.S.A.-National Office
http://www.amnestyusa.org and http://www.amnesty.org/
5 Penn Plaza, New York, NY 10001
(212) 807-8400

Center for Human Rights
http://www.un.org/rights/dpi1774e.htm
New York Liaison Office, Room S-2914
United Nations, New York, NY 10017
(212) 963-5931

Church Folks for a Better America
http://www.cfba.info & Coalition for Peace Action
(A project of the Peace Action Education Fund)
40 Witherspoon Street, Princeton, NJ 08542
(609) 924-5022 fax: (609) 924-3052

Department of State
Country Reports on Human Rights Practices
http://www.state.gov/g/drl/hr
Superintendent of Documents
P.O. Box 371954. Pittsburgh, PA 15250
(202) 512-1800

The U.S. Department of State submits an annual report on human rights practices around the world to the U.S. Senate Committee on Foreign Relations and the U.S. House of Representatives Committee on Foreign Affairs. The report is usually available at the end of January of the year following the year about which the report is made.

Human Rights Watch
http://www.hrw.org
485-5th Ave., New York, NY 10017
(212) 972-8400

Human Rights First
http://www.humanrightsfirst.org
330-7th Ave., 10th Floor, New York, NY 10001
(212) 629-6170

National Security Archive
http://www.gwu.edu/~nsarchiv
Suite 701, Gelman Library
The George Washington University
2130 H Street, NW, Washington, D.C., 20037
Phone: 202/994-7000 • Fax: 202/994-7005

International Committee Against Torture
http://incat.org/index.php

The Coalition of International NGOs Against Torture (CINAT)
http://www.apt.ch/cinat.htm.

This coalition includes the following members:

- **Amnesty International** (AI): amnestyis@amnesty.org
- **The Association for the Prevention of Torture** (APT): apt@apt.ch
- **International Commission of Jurists**: info@icj.org
- **The International Federation of Action by Christians for the Abolition of Torture** (Fi.ACAT) fi.acat@wanadoo.fr
- **The International Rehabilitation Council for Torture Victims** (IRCT): irct@irct.org
- **The World Organisation against Torture** (OMCT): omct@omct.org
- **The Redress Trust** (REDRESS) redresstrust@gn.apc.org

PRESBYTERIAN CHURCH (U.S.A.) GROUPS

Presbyterian United Nations Office
http://www.pcusa.org/peacemaking/un/index.htm
Joel Hamick, Director
777 United Nations Plaza, 12th Floor, New York, NY 10017
212-697-4568 • 212-986-3002 (fax)

Presbyterian Washington Office
http://www.pcusa.org/washington/
Elenora Giddings Ivory, Director
110 Maryland Avenue N.E., Suite 410, Washington, DC 20002
202-543-1126 • 202-543-7755 • eivory@ctr.pcusa.org

Office of the General Assembly
Vernon Broyles, Volunteer Representative for Public Witness
Presbyterian Church (U.S.A.)
100 Witherspoon Street • Louisville, KY 40202-1396
1-800-728-7228, ext. 5812 • 502-569-8116 (fax)

Advisory Committee on Social Witness Policy
Belinda Curry, Associate
Presbyterian Church (U.S.A.)
100 Witherspoon Street. Louisville, KY 40202-1396
1-800-728-7228, ext. 5813 • 502-569-8041 (fax)
bcurry@ctr.pcusa.org

Worldwide Ministries Division
Presbyterian Church (U.S.A.)
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Africa: Doug Welch, ext. 5353
dwelch@ctr.pcusa.org

Europe/Ecumenical Councils/Advocacy: Jon Chapman, ext. 5352
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South America/Caribbean: Maria Arroyo, ext. 5315
marroyo@ctr.pcusa.org

Middle East/Asia Minor & Jinishian Memorial:
Victor Makari, ext. 5314
vmakari@ctr.pcusa.org

Asia/Pacific: Insik Kim, ext. 5354
ikim@ctr.pcusa.org

Central America/Mexico: Stanley DeVoogd, ext. 5835
sdevoogd@ctr.pcusa.org

Human Rights Updates
Copies of the 1989-2002 updates may be accessed via the *Minutes of the General Assembly* or may be purchased from the Presbyterian Distribution Center (PDS) by calling 1-800-524-2612)

Human Rights Update 2002-2003 (*Minutes, 2003,* Part I, pp. 39, 613) www.pcusa.org/publications/human_rights02-03.pdf

Human Rights Update 2003-2004 (*Minutes, 2004,* Part I, pp. 91, 918-62) www.pcusa.org/publications/human_rights2003-04.pdf

APPENDIX B

Primary Documents and Other Resources

Constitution for the United States of America
http://www.constitution.org/constit_.htm

The Bill of Rights (First Ten Amendments of the Unites States Constitution)
http://usinfo.state.gov/usa/infousa/facts/funddocs/billeng.htm

Universal Declaration of Human Rights
http://www.un.org/Overview/rights.html

Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief
http://www.unhchr.ch/html/menu3/b/d_intole.htm

International Covenant on Civil and Political Rights
http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

OTHER RESOURCES:

Chart: Four Geneva Conventions and Protocols
(available at www.pcusa.org/acswp)

Chart: International Instruments on Human Rights
(available at www.pcusa.org/acswp)

PETITIONS AGAINST TORTURE

Overture from the Presbytery of San Francisco
to the 217th General Assembly (2006)

Petitions Against Torture

The 217th General Assembly (2006) approved the following overture from the Presbytery of San Francisco (*Minutes*, 2006, Part I, pp.50, 51; 783–784)

The Presbytery of San Francisco overtures the 217th General Assembly (2006) of the Presbyterian Church (U.S.A.) to approve the following petitions to the Attorney General and to the Congress of the United States and instruction to the Stated Clerk:

1. The Presbyterian Church (U.S.A.) petitions the Congress of the United States to convene an investigative body with the independence, stature, and broad investigative powers of the September 11th Commission to inquire into whether any official or officer of the United States government bears direct or command responsibility for having ordered or participated in violations of law in the mistreatment of persons detained by the government of the United States at Guantanamo Bay, Abu Ghraib Prison, or elsewhere or in transporting persons into detention in nations with known records of brutality and torture; to publish its findings and, if appropriate, to recommend the appointment of a special prosecutor if one has not been previously appointed.

2. The Presbyterian Church (U.S.A.) petitions the Attorney General of the United States to obtain the appointment of a special counsel with full authority to investigate and prosecute any official or officer of the United States government who bears direct or command responsibility for having ordered or participated in violations of law in the mistreatment of persons detained by the government of the United States at Guantanamo Bay, Abu Ghraib Prison, or elsewhere, or in transporting persons into detention in nations that have known records of brutality and torture.

3. The 217th General Assembly (2006) of the Presbyterian Church (U.S.A.) directs the Stated Clerk to petition the Congress and the Attorney General of the United States to undertake the remedial actions described in this overture; to inform the congregations of this church of the approval of this overture, and to coordinate the efforts of our congregations in furtherance of the overture; to cooperate with other denominations and groups as appropriate to realize the goals advanced by this overture; to make its contents public, and to persist in urging the Congress and Attorney General of the United States to respond to its call for action.

RATIONALE

As members of the Presbyterian Church (U.S.A.), we declare that the following acts shock the Christian conscience and are a cause for Christian repentance:

1. Torture and related violations of law by military and civilian agents of the government of the United States in the maltreatment of persons detained at Guantanamo Bay, Abu Ghraib Prison, and elsewhere;

2. Forcible transportation of persons into the custody of nations with known records of brutality and torture. (See *Minutes, 2004,* Part I, pp. 902, 903.)

As citizens of the United States, members of the Presbyterian Church (U.S.A.), we openly admit our shame at allegations and disclosures of these acts and condemn such acts as a repudiation of the high standards of decency and morality to which our nation has historically held itself, its officials, officers, and armed forces.

Justice, fidelity to the rule of law, affirmation of the moral authority and honor of the United States and of its armed forces, and the preservation of an open democratic society demand the following:

1. That an independent inquiry be conducted into whether any official or officer of the United States government bears direct or command responsibility for having ordered or participated in violations of law in the mistreatment of persons detained by the government of the United States at Guantanamo Bay, Abu Ghraib Prison, or elsewhere, or in transporting persons into detention in nations with known records of brutality and torture, and that the findings of such inquiry be entered into the public record.

2. That violations of law in the mistreatment of persons detained by the government of the United States or transported by it for detention in nations with known records of brutality and torture cease, and be prosecuted and punished regardless of the rank or station of the offender.

CONCURRENCES

Concurrences from the Presbyteries of Carlisle, Detroit, Milwaukee, Seattle, and The Redwoods.

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