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ABA LEADER CALLS FOR NEW TORTURE PROBE

Grey Says Independent Commission Investigation is Necessary

BY MOLLY McDONOUGH

ABA President Robert J. Grey Jr. is calling on lawmakers to assemble a bipartisan commission to investigate circumstances that led to the torture and abuse of prisoners by U.S. soldiers in Iraq and Afghanistan.

What's at stake, Grey says, is the "moral high ground," which he feels is strategically the most important territory for the United States to occupy in the war on terror.

Grey, who delivered his remarks Wednesday night at a speech before the Commonwealth Club in San Francisco, said he was emboldened to push for an investigation after the ABA House of Delegates approved a resolution at its annual meeting earlier this month in Atlanta.

The resolution condemns the "cruel, inhuman or degrading" treatment of prisoners by U.S. soldiers and contractors. It urges President Bush and Congress to establish an independent commission to investigate the alleged abuses and to make recommendations about how to best mesh interrogation practices with the U.S. Constitution and international treaties.

¹ Of specific concern to Grey are allegations that the government sanctioned harsh questioning techniques at the Guantanamo Bay naval base where designated enemy combatants are held. He also repeated allegations that at least one prisoner was hidden from the International Red Cross and he expressed concern over the existence of memos prepared by senior administration lawyers that appear to create a framework for interrogation conduct that violates international rules.

Grey said, "The difficult question is this: Have the benefits derived from these practices been worth the moral ambiguity and seemingly hypocritical stance in the eyes of ourselves and the world?"

In his remarks, Grey put the United States on the side of liberty, freedom and tolerance and said terrorists, specifically the Sept. 11, 2001, attackers, represent forces of intolerance, tyranny and oppression.

"That the United States maintain this moral high ground is not only important to our own sense of decency and national ethic, but is also a vital element, on a very practical level, to our success in the war on terror," said Grey, of Richmond, Va.

Retired Rear Adm. John Jenkins, of Alexandria, Va., agrees with many of Grey's arguments against torture, but opposes the ABA's call for an independent commission while other investigations are under way.

This week, a Defense Department-appointed commission led by former Defense Secretary James R. Schlesinger issued a 92-page report critical of guards caught inflicting the abuse, and went on up through the chain of command, with criticism aimed at high-ranking military leaders for lack of supervision. There are numerous other investigations also under way or completed, including an Army investigation released Wednesday, which placed blame for the abuse on the shoulders of military intelligence.

"There are plenty of investigations going on," says Jenkins, who previously spoke against the resolution on behalf of the Judge Advocates Association, an ABA-affiliated organization. He points specifically to a congressional investigation by the Senate Armed Services Committee, led by Sens. John Warner, R-Va., and Carl Levin, D-Mich. "We should trust John Warner and Sen. Levin. These

are the guys who got elected to do this."

Washington, D.C., lawyer David B. Rivkin, who served as a legal adviser to Presidents Reagan and George H. W. Bush, says an independent investigation that could be expensive and time-consuming isn't necessary. "You don't do independent commissions every time something bad happens," Rivkin says. "This is just grandstanding."

Grey begs to differ. There is enough ambiguity in the interpretation of conventions and treaties that a broad investigation is warranted, Grey said in an interview Thursday.

"We need to get this straight sooner rather than later," he says. "While there may be other investigations going on, there is not one comprehensive investigation looking at systemic issues from a macro level where all agencies are subject to investigation. That is important for the continuity of our mission."

Grey also said the 9/11 Commission shows how a thoughtful, independent bipartisan group can effect change, as evidenced by the report's acceptance by the Bush administration and the public.

"We continue to believe that it's important for us to get this right," Grey said. "And by getting it right, it allows us to maintain the high moral ground in resolving these issues."

Despite his criticism, Jenkins did leave the door open for an ABA call for an independent investigation.

"If at the completion we're not satisfied, then I'll be the first guy on my feet in the House [of Delegates] to support an investigation," Jenkins says.

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