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Senate

Statement of Senator Dianne Feinstein

“S.A. 1977, Treatment of Detainees”

Mrs. FEINSTEIN: Mr. President, I rise in support of Senate Amendment 1977, introduced by my colleague Senator McCain.

This amendment would bring much-needed clarity to the rules governing how Americans treat captured prisoners and detainees.

It will make clear that the Geneva Conventions apply to all people held in the custody of the Department of Defense.

It provides a workable definition of “cruel and inhumane,” based on the rules which govern how we treat criminals in the United States, and based firmly in the Constitutional prohibitions of cruel and unusual punishment.

Most importantly, it sets rules that are clear, simple and in accord with basic American values.

First, let me make clear my view that in this modern world of asymmetric warfare, non-state actors, and unconventional threat, there is an absolute necessity to have a program to securely hold prisoners and effectively interrogate them to provide timely intelligence.

But in my judgment, the current system is not working.

Over the course of the past four years, there has been a great deal of confusion over the policies and practices of the United States towards individuals the government has taken into custody.

This confusion has been evident at the highest levels of decision-making at the Pentagon, with memoranda authorizing this technique or that technique being issued and rescinded within weeks of one another.

The confusion has been noted here in the Senate. I sit on two committees with jurisdiction, and have sat through hours and hours of hearings and briefings – our nation’s policy with respect to detainees and prisoners of war is still unclear to me.

Frankly, the Administration’s repeated statements about “wherever possible adhering to law” are confusing and unhelpful.

And the confusion has filtered down to the front lines.

Seventeen months ago, enlisted members of the 82nd Airborne Infantry Division – honorable men risking their lives in Iraq – asked their commanding officer what the rules were for the treatment of prisoners.

For 17 months, their commander, Captain Ian Fishback, diligently searched for the answer up and down his chain of command. Here is what he has found, and I quote:

“We’ve got people with different views of what ‘humane’ means and there’s no Army statement that says ‘this is the standard for humane treatment for prisoners to Army officers.’ Army officers are left to come up with their own definition of humane treatment.”

Captain Fishback and his men have a right to clear guidance. Their sacrifices entitle them to be allowed to do their job. An infantryman should not need to be a graduate of a law school to know what to do with a prisoner.

Mr. President, what this amendment does is to provide clarity.

It is incumbent on Congress to provide this clarity. In fact, we have a Constitutional mandate to do it.

Article VII, Section 8 of the Constitution states that Congress shall have the power to “make Rules concerning Captures on Land and Water,” and also “To make Rules for the Government and Regulation of the land and naval Forces.”

Our men and women in combat badly need this legislation. But there is more at stake here than immediate military necessity.

Our soldiers and our nation have a long and honorable tradition of ethical behavior. For more than two hundred years we have prided ourselves on being different than our adversaries in war. Simply put, there are some things that Americans do not do, not because it is illegal, or some lawyer says we cannot, but because it is wrong.

The laws of war, codified in the Geneva Conventions, represent a bare minimum of acceptable behavior toward captives. The United States has consistently championed the

Geneva Conventions for over a century, knowing that our behavior is a beacon to the world, and that our adherence to principle – as well as projecting American values – saves American lives.

I am not naïve. I do not expect our current enemy to respect the Geneva Conventions. Our captured troops cannot expect humane treatment at the hands of Al-Qaida. But make no mistake – the eyes of the world are still on us, and our policies have real consequences.

Even now, millions of young Muslims around the world are evaluating the United States. They are deciding whether to take up arms against us, or whether to work with us towards a peaceful resolution with liberty and justice for all. We must show them, clearly, emphatically, that the rhetoric of democracy and freedom is not empty. We must show them that we are a government of laws, clearly written, openly promulgated and fairly enforced.

Captures and interrogations are part of war, and no less than other tools of war, must be wielded intelligently, humanely, and within a set of rules for warfare that govern all who serve in uniform – whether Privates or Generals, Seamen or Admirals.

Our men and women in uniform, serving in Afghanistan, Iraq and at Guantanamo Bay, have the right to clear, direct and lawful leadership.

This amendment is good policy, is just, and is long overdue.