IS IT TORTURE YET?

FIELD HEARING

BEFORE THE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

DECEMBER 10, 2007

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WELCOMING REMARKS

WITNESSES

APPENDICES

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COMMISSION ON SECURITY AND COOPERATION IN EUROPE

COLLEGE PARK, MD

The hearing was held at 10:12 a.m. in University of Maryland-College Park, Stamp Student Union, College Park, MD, Hon. Benjamin L. Cardin, Co-Chairman, Commission on Security and Cooperation in Europe, presiding.

Commissioners present: Hon. Alcee L. Hastings, Chairman, Commission on Security and Cooperation in Europe; and Hon. Benjamin L. Cardin, Co-Chairman, Commission on Security and Cooperation in Europe.

Witnesses present: C.D. "Dan" Mote, Jr., President, University of Maryland-College Park; Devon Chaffee, Associate Attorney, Human Rights First; Thomas C. Hilde, School of Public Policy, University of Maryland-College Park; Christian Davenport, Professor of Political Science, University of Maryland-College Park; and Malcolm Nance, Director, Special Readiness Services, and International Director, International Anti-Terrorism Center for Excellence.

C.D. "DAN" MOTE, JR., PRESIDENT, UNIVERSITY OF MARYLAND-COLLEGE PARK

Dr. MOTE. Thank you all for coming. I would just say there are many seats in the front, and it would help the Commission if we could fill in some of the seats in the front, for those of you who are looking for seats. It makes it easier to have the dialogue between the people at the podium and the audience.

I really welcome you all to this hearing on torture and other forms of banned treatment being called by the U.S. Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission.

I'd like to thank Congressman Hastings, the Chairman of the Commission, and Senator Cardin, the Co-Chairman, for calling this hearing and coming to Maryland.

And I thank all of the witnesses for providing their expertise to these proceedings.

The university is extremely honored to be hosting this hearing today. We are engaged in many initiatives on human rights parallel to the aims of the U.S. Helsinki Commission.

Over the last 6 years, the issues of torture and banned treatment have understandably provoked intense national debate. Hearings like this one afford free and open discussions of this deeply trou-

bling and potentially culture changing matter. I applaud the Commission for its relentless attention to these issues.

I particularly want to offer my personal welcome to Senator Cardin, who has always been a staunch supporter of the university.

Thank you very much, Senator.

Senator Cardin has served on the U.S. Helsinki Commission since 1993. Most recently, he has been outspoken about the impact of the U.S. Guantanamo Bay prison on U.S. human rights leadership internationally, as well as at home.

Congressman Alcee L. Hastings has served on the Commission since 2001. A senior Democratic Whip from Florida, Congressman Hastings is a specialist on international affairs and has been active in election monitoring in Eastern Europe.

I thank you both for your leadership efforts on behalf of the Helsinki Commission and on human rights and democratic values.

HON. ALCEE L. HASTINGS, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. HASTINGS. Dr. Mote, thank you very much, Mr. President, for being with us this morning. And I also understand an active schedule with 40,000-plus students and finals week, that you doubtless have other responsibilities, so when you take your leave, it's with deep appreciation that we are grateful for you to be here.

I'm going to gavel the hearing into session at this time and turn immediately to my colleague, Co-Chairman Cardin, for any opening remarks. And with your permission, Senator, I'd like for you then to go forward and conduct the hearing. I do have an opening statement, if you would permit, after yours.

HON. BENJAMIN L. CARDIN, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. CARDIN. First, Dr. Mote, thank you very much for allowing us to use the University of Maryland-College Park, which I think is the right venue for this hearing. And we thank you very much. We're very proud of our University of Maryland-College Park and what you do here. This campus has been in the forefront of leadership nationally on education issues.

This Congress will be known for several things, but one, of course, is the passing of the most significant increase in college assistance in Federal Government student aid since the G.I. Bill. So it's a pleasure to be back here on campus. It's always nice to be here, and it's always nice to see the students and just the activity that occurs on campus. Congratulations.

And to Chairman Hastings, I want to thank him very much for convening this hearing in College Park on torture. Chairman Hastings has had a long and distinguished career in the U.S. Congress.

And let me just pause for one moment, if I might, and talk a little bit about the Helsinki Commission.

In 1975, the countries of Europe, the United States, and Canada in Helsinki entered into certain fundamental, basic principles on which they agreed to adhere to on human rights, on security, on economic and environmental issues. And by entering into that agreement, it was legitimate for any country that was part of the

Helsinki process to challenge the practices of any other state if they don't meet those commitments.

The U.S. Congress passed a law establishing the Helsinki Commission in 1976 as the United States was an original signatory to the Helsinki final Act. The Organization for Security and Cooperation in Europe, serves as the umbrella for monitoring and carrying out the commitments entered into in Helsinki.

The Commission consists of nine Members of the U.S. Senate, nine Members of the U.S. House of Representatives, and certain appointments by the executive branch. We rotate the chairmanship every 2 years between the Senate and the House. Alcee Hastings, the Congressman from Florida who has joined us here today, is the current Chairman of the Commission. The Senate has the Co-Chairmanship, and Harry Reid appointed me as the Co-Chairman of the Helsinki Commission.

But Chairman Hastings has done a lot more than just the Helsinki Commission. We also have what's known as the Parliamentary Assembly, which is where parliamentarians from the participating States—now totaling 56—meet and carry out our responsibility as parliamentarians. And Alcee Hastings, I think, really established history for us in the United States by becoming President of that Parliamentary Assembly—the first American to chair it—and really did carry out an incredibly active schedule as the President of the OSCE Parliamentary Assembly.

So this Commission tries to establish priorities for our involvement in the OSCE. We challenge what other states do in the OSCE. We've been very actively involved with the former Soviet Union in dealing with the emigration of its population. We dealt with problems in Chechnya. We've dealt with problems with the Kurdish minority in Turkey and in Europe. We have brought forward many different issues—most recently, the trafficking of human beings, as well as anti-Semitism and all forms of discrimination.

But as it is right for us to challenge what other countries are doing, our Commission also has a responsibility to look at whether our Nation is carrying out the commitments that we agreed to within the Helsinki framework. And today's hearing is to take a look at that.

This is not our first hearing on this topic. Under Chairman Hastings we've had a hearing on Guantanamo Bay as to whether the United States is complying with international standards and our own commitments as they relate to the treatment of detainees held at Guantanamo Bay.

But today's hearing is to take a look at torture. It's interesting that we are convening this hearing on this day, which is International Human Rights Day, a day which commemorates the adoption of the Universal Declarations of Human Rights nearly 60 years ago. It stated in that historic document, "No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment."

Now, since then, the United States has adopted many international commitments that relate to humane treatment: in 1949, the Geneva Convention; in 1956, the International Covenant on

Civil and Political Rights; and, of course, the 1984 Convention against Torture—all of which we have agreed to.

Through the Helsinki process we have entered into numerous commitments as they relate to torture, and we've made related materials available at the desk.

Let me just refer to one, if I might: the Vienna Concluding Document of 1989, where we agreed to assure that all individuals in detention or incarceration would be treated with humanity and with respect for inherent dignity of the human person. There are no exceptions or no loopholes in this standard, which it is the obligation of the United States to uphold.

So I think it's pretty clear what our international commitments are and what our domestic laws are. I think we regret that six decades after the adoption of international human rights commitments on this, it is necessary to have a hearing on torture. And more to the point, I regret that the United States own policies and practices must be the focus of our consideration.

Since we scheduled this hearing, there of course has now been the revelation of the destruction of tapes by the CIA, which I think raises additional questions as to the U.S. commitment in carrying out its responsibilities. As a member of the Helsinki Commission, I have long been concerned about the persistence of torture and other forms of abuse in the OSCE region.

For example, I was troubled by the pattern of torture in Uzbekistan, a country to which the United States has extradited terror suspects. In November alone, Radio Free Europe reported that two individuals died. We now have learned that a third individual has died in Uzbekistan, and when we have looked at their bodies, we found many marks of torture.

Unfortunately, U.S. leadership in the effort to combat torture and other forms of ill treatment has been undermined by the revelations of abuse at Abu Ghraib and elsewhere. As horrific as Abu Ghraib revelations were, in a certain respect the government's legal memos on torture may even be more damaging, since they appear to reflect a policy to condone torture and immunize those who have committed torture.

Back when Secretary of State Rice met with leading human rights activists in Moscow in October, they told her that allegations of abuse at the U.S.-run Abu Ghraib prison in Iraq have hurt Washington's authority on human rights.

Torture remains a serious problem in a number of OSCE countries, particularly in the Chechnya region of Russia, but if the United States is to address those issues credibly, we must get our own house in order.

In this regard, I was deeply disappointed by the unwillingness of Attorney General Mukasey to state clearly and unequivocally that waterboarding is torture. As a member of the Senate Judiciary Committee, I chaired part of the Attorney General's confirmation hearing. I found the responses to the questions relating to torture woefully inadequate.

As it happens, on November 14, I also participated in another Judiciary Committee hearing at which an El Salvadoran torture survivor testified. This medical doctor, who can no longer practice surgery because of the torture inflicted upon him, wanted to make

one thing very clear: as someone who had been the victim of what his torturers called "the bucket treatment," he said, waterboarding is torture.

Earlier this year, former Bush administration counselor Phillip Zelikow argued that, whether legal or not, the interrogation policies developed in 2002 were just flat out "immoral." He goes on to talk about how it is just inconceivable that we allow these types of practises offering no judgment on their legality. Well, we have a lot of authority as to U.S. morals on torture.

He added, "Sliding into habits of growing non-cooperation and alienation is not just a problem of world opinion. It will eventually interfere—and interfere very concretely—with the conduct of worldwide operations."

Well, at today's hearing we're going to hear from many witnesses who will comment about the different practices of the United States and the impact that it's having on our own country's ability to affect international policy.

I really do thank our witnesses for being here. I know they're going to add greatly to our record, which is the responsibility we have not just to the other Members of the U.S. Congress, but to the American people. And I'm sure that this hearing will play a very important part in the development of that record for our Commission and our country.

It's now my pleasure to introduce again Congressman Hastings for his opening comments.

Mr. HASTINGS. Thank you very much, Senator Cardin. I deeply appreciate your convening this field hearing. It's our first field hearing, and I also would like to express my appreciation to President Mote and to Rae Grad and the tremendous interaction of staff, both those at the University of Maryland and the campus police and security for expediting matters for us. It's deeply appreciated.

We consider it fully professional, and we have space issues at the Capitol, and we were wondering, President Mote, if we could hold more hearings here. It would certainly be helpful to us.

But I'd like to compliment our staff as well, for working out the arrangements for today's hearing. Likewise my deep appreciation to those media representatives that are here, as well as those of you who are students and professors and visitors here on the campus.

Particularly those of you that are students, I attended a forum once a hundred years ago when I was in college, and it was during finals week. Fortunately for me, I had completed my finals, and I hope all of you either are complete, or assured—let me put it that way. But we are grateful for your being here.

This hearing, as the Senator points out, comes just a few days after the revelation about the destruction of videotapes by the CIA of their interrogations of two terror suspects.

As the Senator has said—and I wish to amplify—the destruction of these tapes is disturbing on many levels, but especially when one considers that the 9/11 Commission—and many of the persons on that Commission are people that Senator Cardin and I served in Congress with and/or know through our professional relationships, and I don't think that anyone has questioned this Commission's

credibility and integrity—specifically and formally sought these types of recordings and were not given them.

And I cannot imagine why, when the 9/11 Commission was investigating one of the worst attacks on American soil in the history of our country, why the CIA did not fully cooperate with that investigation.

Like you, Senator Cardin, I am profoundly frustrated by the damage that has been done to America's good name and credibility by the documented instances of abuse that have occurred in the context of our country's effort to combat terrorism and by the erosion of the legal principles which make torture and other forms of ill-treatment a crime.

I was speaking earlier with one of our professors that is going to testify—Dr. Hilde, who is here at the university—and a part of his portfolio is in philosophy. I cited to him a friend of mine that teaches philosophy at another university, but I didn't say to him something that I did, and that is I co-taught a class on "The Trial" by Kafka. And it always comes to mind to me when I think of Guantanamo, for example, of holding people, not telling them what they're charged with, not allowing them access to lawyers, and in some instances threatening them with potential execution without knowing what it's all about—I just don't think that's America, and I think it's wrong.

Many people have said it, but it seems to me to deserve repeating—and I put this in the context as someone who has visited more intelligence stations than probably any other current Member of Congress—torture does not, in my opinion, make us any safer, and torture, in my opinion, does not produce good intelligence.

In fact, there have been several notorious instances of detainees providing testimony under duress that has subsequently been shown to be false. And some of the evidence, for example, relied upon by Secretary Powell in his 2003 speech to the United Nations making the case for war in Iraq came from a detainee who later recanted that testimony and stated that he made his claims as a result of coercive interrogation.

I'm going to skip large portions of my written statement, because you'd be more interested in the witnesses, but I would be remiss if I didn't point to, as we examine this subject today and hear our witnesses, I'd also hope that the administration would begin to devote some serious attention and resources to study better ways to gain intelligence.

Too often intelligence gathering and respect for human rights are presented as a zero-sum game, where more of one means less of another. I think that is a false paradigm. There is more we can be doing to improve our intelligence gathering that does not have to come at the expense of human rights.

For example, we could stop kicking people out of the military who have critically needed foreign language skills just because they're gay. We can provide more training for critical languages. We can study non-coercive interrogation methods—something we haven't done since World War II. None of those things involve or require torture.

Finally, Senator Cardin, I would like to express my immense disappointment—to say the least—to hear that President Bush is pre-

pared to veto the 2008 fiscal year intelligence authorization bill because it would require the Central Intelligence Agency to follow the same interrogation norms that apply to military personnel.

As it now stands, the 2006 Detainee Treatment Act prohibits military personnel from engaging in torture or cruel, inhuman or degrading treatment, or punishment of detainees.

Last February, Jeffrey Smith, the former General Counsel to the CIA, argued strongly in the pages of the Washington Post that armed services and the CIA should not have different standards for the treatment and interrogation of detainees—and I think he's right.

So I truly hope that the intelligence authorization bill will be passed, including its provision regarding CIA interrogation norms, and I hope that the President will expeditiously sign it into law.

Senator, thank you again for your thoughtful and long-standing leadership on this issue. I had the distinct pleasure of serving with Senator Cardin in the House of Representatives and working with him and the organizations that he described over a period of time, and I personally I am proud— and I know you as Marylanders are—of the extraordinary work that he has done not only in this area, but on behalf of this university as well as this State that he proudly represents.

I'm proud to be with you today at your State's flagship university—I hope all of us get better football teams next year—to explore these issues, both right here at home and across the globe. Thank you, Senator.

Mr. CARDIN. Thank you, Chairman Hastings.

I want the record to reflect that we are in College Park, MD, and need to acknowledge the extraordinary help our mentor, Steny Hoyer, on the Helsinki Commission and in the OSCE. He, of course, was the former Chair, and I think really brought the Commission's work to the forefront in the U.S. Congress. He's a good friend of both of ours and a real Terp supporter. There's no stronger cheerleader for the Terps than Congressman Hoyer.

With that, we're going to turn to our witnesses. Our first will be Ms. Devon Chaffee, who's an attorney with Human Rights First and was a contributing author of the publication jointly issued with Physicians for Human Rights, "Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality." At the invitation of the Department of Defense, Ms. Chaffee has also served as Human Rights First's official observer at the military commission sessions held at the United States naval base at Guantanamo Bay, Cuba.

Ms. Chaffee?

DEVON CHAFFEE, ASSOCIATE ATTORNEY, HUMAN RIGHTS FIRST

Ms. CHAFFEE. Thank you, Mr. Chairman. I appreciate the opportunity to be here today, and I applaud the Commission for holding this hearing.

This morning I hope to help bring clarity to an area where administration officials have fabricated ambiguity in U.S. law prohibiting torture and other cruel treatments.

The administration has repeatedly refused to take off the table interrogation techniques that are obviously and inherently cruel. It has established a dangerous, bifurcated approach to detainee treatment standards, creating an obstruction for the CIA to engage in interrogation methods that the military has repeatedly found to be unlawful.

In July the President issued an Executive order that lays out an interpretation of Common Article 3 of the Geneva Conventions for the CIA that is different from the standards used by the military. Common Article 3 lays out the minimum standard for treatment for enemy prisoners.

Shortly after the issuance of the Executive order, the Director of National Intelligence, Admiral Michael McConnell, and former Attorney General Alberto Gonzales publicly refused to state whether the Executive order prohibited specific acts of cruelty for use by the intelligence community.

The Judge Advocates General of the U.S. Army, Navy, Air Force, and Marine Corps, on the other hand, had no trouble answering unequivocally in August 2006 that the use of waterboarding, stress positions, the use of dogs, and removal of clothing in interrogation would not only be inhumane, but would violate U.S. law and the law of war.

The administration's official position of ambiguity on CIA interrogation standards became a central issue during the recent confirmation of Attorney General Michael Mukasey. Then Judge Mukasey refused to answer questions on whether waterboarding was illegal, claiming that it depended on a complex legal analysis upon which he was unable to speculate.

But as four retired generals and admirals said in a letter to Senator Leahy, the relevant rule—the law—has long been clear: Waterboarding detainees amounts to illegal torture in all circumstances. To suggest otherwise, or to even give credence to such a suggestion, represents both an affront to the law and to the core values of our Nation.

Yet some Senators legitimize Judge Mukasey's equivocation by calling on Congress to outlaw waterboarding.

Co-Chairman Cardin, you pointed out the absurdity of suggesting that Congress had somehow forgotten to outlaw waterboarding when you asked whether that meant you would have to pass a statute that specifically outlaws the use of racks or thumbscrews.

What Attorney General Mukasey and the administration have obscured is the fact that Congress has already outlawed torture and other acts of cruelty. The McCain amendment, the Anti-Torture Act, the War Crimes Act, and Common Article 3 of the Geneva Conventions established clear standards for the treatment of all prisoners in U.S. custody.

Under these laws an act specifically intended to inflict severe physical or mental pain or suffering is torture. An act intended to inflict severe or serious physical or mental pain or suffering is a felony war crime of cruel or inhumane treatment.

The Detainee Treatment Act requires that no person in custody or physical control of the United States shall be subjected to torture or cruel inhumane or degrading treatment or punishment pro-

hibited by the 5th, 8th, and 14 amendments. Common Article 3 additionally prohibits outrages upon human dignity.

Existing statutory language under a reasonable interpretation prohibits the use of so-called enhanced interrogation techniques that have reportedly been authorized for use by the CIA.

The most detailed public account of the enhanced interrogation techniques was published in a November 8, 2005, ABC News report. The report, which has been widely cited as credible, describes the authorization of violent shaking, striking prisoners, stress positions, use of extreme cold, sleep deprivation, and waterboarding.

In June 2007, Human Rights First and Physicians for Human Rights published the first comprehensive evaluation of the nature and extent of harm likely to result from enhanced interrogation techniques and the legal risks faced by interrogators who employ them. As a principal co-author of the report titled "Leave No Marks," I can tell you our findings were clear.

The recent revelation of the CIA's destruction of videotapes of interrogations in which some of these methods were inflicted on prisoners indicates that at least someone in the administration understood what we know—that these techniques are unlawful, because they cause serious physical and psychological harm to the individuals against which they are used.

We know that the United States has condemned the use of such cruel methods by brutal regimes in the past. The techniques are illegal and should clearly be taken off the table for all U.S. interrogators.

I want to share a sample of the report's findings on the three of the reportedly authorized so-called enhanced techniques: long time standing, sleep deprivation and waterboarding.

"Long time standing" is a painful, life-threatening stress position that has long been considered a form of torture. It is known to cause blood clots, which can travel to the lungs as potentially fatal pulmonary embolisms. If continued long enough, it can lead to nerve damage.

The State Department has criticized some of the world's most repressive states, including Burma, Iran, and Libya, for employing long time standing in interrogations. The United Kingdom and Israel abandoned as illegal similar stress positions, such as wall standing and forcing a prisoner to stand on the tips of his toes.

After World War II, U.S. military commissions prosecuted Japanese troops for employing such stress positions on American prisoners. The U.S. Supreme Court has condemned the obvious cruelty of leaving a prisoner in the sun in a standing stress position, calling it degrading, dangerous, and antithetical to human dignity.

Sleep deprivation is also a classic form of torture. It is one of the most efficient means of inflicting mental pain, and medical studies have established a relationship between sleep deprivation and psychiatric disorders such as major depression.

Six decades ago the U.S. Supreme Court cited with approval an American Bar Association report that made the following observation: "It has been known since 1500 at least that the deprivation of sleep is the most effective torture and certain to produce any confession desired." In recent years the U.S. State Department has condemned Indonesia, Iran, Jordan, Libya, Saudi Arabia, and Tur-

key for using sleep deprivation as a form of torture or cruel inhumane or degrading treatment.

Finally, waterboarding creates a sense that a person is drowning and is facing imminent death by strapping the individual down and pouring water over the face. Medical complications from the asphyxiation caused by waterboarding include acute or chronic respiratory problems, chronic pain in the back and head, panic attacks, reflexive systems, and prolonged post-traumatic stress disorder.

Waterboarding was used extensively during the Spanish Inquisition and has been used by the most brutal regimes in the world, including the Khmer Rouge and the military junta in Argentina, and was prosecuted repeatedly after World War II as a war crime.

Congress must act now to ensure that the CIA does not engage in these types of cruel techniques that clearly violate U.S. law by passing a provision that would hold the intelligence community to the same standards we hold the military to.

Currently, detainees in the custody of the Department of Defense may only be subjected to interrogation techniques approved in the Army Field Manual. Military interrogators with over 20 years of field experience have testified that the Army Field Manual allows for nuance and sophisticated interrogations that elicit the necessary information.

General Petraeus specifically stated in a letter to the troops in May that military experience shows that the techniques in the manual work effectively and humanely in eliciting information from detainees. It is the military that faces real ticking bombs every day in the form of improvised explosive devices. It is also the military that relies upon Common Article 3 when its personnel are taken into enemy custody.

The Intelligence Authorization Act reported out of conference last week included the provision that would prohibit the use of any interrogation techniques not approved in the Army Field Manual against detainees in the custody of the intelligence community.

The conference report stated that the provision reflects the conferees' considered judgment that the CIA's program is not the most effective method of obtaining the reliable intelligence we need to protect the United States from attack and that the conferees concluded that the damage to the international perception of the United States by the existence of classified interrogation procedures that apply only to the CIA program outweighs the intelligence benefits.

The report also recognized that as the primary beneficiaries of the protections of the Geneva Conventions, the U.S. military should play an important role in ensuring that U.S. interrogation policies comply with those international protections.

It is past time to resolve the ambiguity created by the CIA's secret interrogation programs. Congress should swiftly pass this provision and legislate one standard of humane treatment for all U.S. interrogations.

The world no longer knows what the United States means when it says we do not torture and that we treat prisoners humanely. That is a dangerous situation for our troops, and it has a dev-

astating impact on U.S. morale, moral authority, and standing in the world.

We look to you and your colleagues, Mr. Chairman, to put that right. Thank you.

Mr. CARDIN. Thank you for your testimony.

Without objection, all of your testimonies of all the witnesses will be made part of our record, and we'll hold the questioning until we've completed all the witnesses on the panel.

Dr. Thomas Hilde is a professor at the School of Public Policy here at the University of Maryland. He is the editor of a forthcoming book on torture. It's a pleasure to have you with us today.

THOMAS C. HILDE, SCHOOL OF PUBLIC POLICY, UNIVERSITY OF MARYLAND-COLLEGE PARK

Dr. HILDE. Thank you. And thank you for the opportunity to speak here in front of the Helsinki Commission.

As mentioned, I'm an ethicist and social and political philosopher soon to publish a book on torture, and I've been asked to speak about some of the moral ramifications of torture.

Historically, physical and psychological torture has been used to suppress dissent, force the renunciation of beliefs, extract confessions, punish, force denunciation of others, intimidate a population, humiliate people, and gather information. All torturers have claimed a state of necessity.

Recently, some have advanced the claim of significant information once again to justify torture. They argue that the information gained from torture is of greater moral significance than the torture of individual human beings.

As with most ethical issues, how the problem is articulated is of crucial importance. Today torture is commonly justified by a state of necessity emblematic in the proverbial ticking time bomb, which frames the issue wrongly from the outset and grounds it in a state of fear. A better understanding of what is entailed in seeking morally significant information through torture lies in justification.

Torture works in that torture victims speak, although the information is notoriously unreliable, as noted since the time of Aristotle. Accounts of torture from the Inquisitions exhibit the most delirious and fantastic tales from the victims. This information served to confirm the prior beliefs of the torturers.

Bad weather, for instance, was thought to be caused by airborne demons in consort with human witches. Torture victims confirmed these beliefs, providing the names of other witches, who would reconfirm both the preposterous prior beliefs and the inquisitors' authority.

If information must be of great moral significance to justify torture, how would we know if it was of such significance?

First, torturing for information requires the institutionalization of torture. There must be trained torturers and thus also trainers, a legal and administrative apparatus, a cadre of doctors and lawyers and data handlers, and so on—all of whom would be required to suspend their moral decency.

Second, since raw information from an individual torture victim is unreliable, morally significant information is unlikely to be gained from an individual victim alone. Torture must be used

broadly. On occasion, the torturers might have prior expectations that the prisoner indeed possesses important information, but this may obviate any perceived need to torture.

The justification of morally significant information demands prior knowledge that the torture victim possesses this information. More likely than the time bomb case of torturing one bad person is the case of torturing many innocent people in search of what might justify the act of torture.

How does one know when one has true information? What one does when one seeks to justify torture by gaining important information is presuppose that such information exists, which will only be discovered through a morally heinous practice. The information must then be previously unknown in order to justify using torture, yet its moral significance must also be previously known in order to justify the act.

It's not meaningful information until one has tortured, gained information and then verified it. This is where information may become meaningful, but it's not necessarily true, as noted in the accounts of the Inquisition. The victim's guilt need never be resolved.

One incentive raised by the argument for torture as a means of gathering information is to seek patterns of information rather than attempt to verify or falsify individual bits of data. Comprehensive sets of data points yield more complex patterns. The more extensive the institution, the more successful torture will be.

If one tortures indiscriminately and broadly, one thus obtains more complex patterns and a better understanding of what is meaningful in the information. Patterns of information by themselves are meaningless, but they serve to corroborate and verify bits of information and infer other patterns. A descriptive narrative may be interpreted and assembled from the resulting patterns and regularities.

At no point has meaningful information risen to the level of morally significant information that could justify torture in the time bomb scenario. We end up with a swelling institution in search of its moral justification, causing increasing damage to innocents and ourselves, all in search of the supreme moral justification—the time bomb—only to find that in the end it's we that have become the morally equivalent of the time bomb.

Every ethical and religious tradition views torture as abhorrent. Since the proposed moral justification for torture as information gathering is itself morally unjustifiable and since the other purposes of torture are plainly unacceptable, we're better off treating the prohibition of torture as morally absolute.

Mr. CARDIN. Thank you very much, Dr. Hilde, for your testimony.

We now turn to Dr. Christian Davenport, who is a professor of political science at the University of Maryland and a Senior Fellow and Director of Research at the Center for International Development and Conflict Management. His research includes the relationship between democracy and human rights.

Dr. Davenport, it's a pleasure to have you.

CHRISTIAN DAVENPORT, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF MARYLAND-COLLEGE PARK

Dr. DAVENPORT. Thank you, sir. Chairman and distinguished members of the Commission, I thank you for the invitation to testify about my research on the impact of democracy on torture specifically and human rights violations in general.

I also wish to recognize the exemplary efforts of the Commission members in drawing attention to the criminal act of torture in the United States, as well as the Commission's continuing effort to investigate this issue worldwide.

I applaud you for the work you've done to date and will continue to do and am both flattered as well as pleased to be able to offer some small assistance in this important endeavor here today.

My testimony draws primarily on research that I've undertaken with Professor Will Moore at Florida State University and David Armstrong at Oxford University. I will also rely on research projects conducted by myself and others on team and the work of the broader community of scholars interested in the violation of human rights generally and the use of torture specifically.

Several international treaties, such as the International Covenant on Civil and Political Rights in the Convention against Torture, made torture illegal, and while the Helsinki Final Act did not explicitly mention torture, both committed state signatories to respect human rights broadly construed in respect to international obligations under other treaties.

Further, and just as important, the U.S. Constitution and, of course, U.S. Federal law prohibit the use of torture by its officials and employees.

Those international treaties and similar domestic laws in other nations prohibit the use of torture elsewhere throughout the world, yet contrary to popular understanding, use of torture remains widespread.

Existing data that's provided in the testimony I submitted to the Commission roughly show that 80 percent of the countries of the world tortured at least one individual under the government's control in any given year over the period between 1981 and 1999, the focus of our research. Indeed, the prohibition against torture is the most widely violated of the human rights of the personal integrity of the person.

With that background, the shocked reaction to the revelation of the acts of inhuman and degrading treatment and torture of inmates at Abu Ghraib prison led me and my colleagues to undertake a scientific inquiry to determine whether the institutions that support liberal democracy—that is, properly franchise diverse accountability mechanisms and freedom of expression—reduced the likelihood of torture by governments during the late 20th century.

The institutions that support liberal democracy are strongly associated throughout the globe with human rights protections. There has been little investigation, however, of the extent to which these institutions in particular reduce the use of torture. In fact, there's only one that we've identified. Our research attempted to fill this gap.

I wish to share three points with you today. First, torture is distressingly common. Second, while countries with institutions that

support liberal democracy do engage in torture with a considerably lower likelihood than countries that lack such institutions, this difference only holds when no groups engage in acts of violence, challenging the government or its policies.

When at least one group commits at least one act of violence, countries with institutions that support liberal democracy are effectively just as likely to use torture as countries that do not have such institutions.

Finally, I wish to briefly describe the extent to which each type of institution influences the likelihood of torture. I'll briefly relate each point in turn and then close with some observations about what this research implies to those of us like this honorable Commission who wish to stand vigil in defense of human rights and press governments who skew the use of torture.

It's an unpleasant truth to the human condition that torture is ordinary. Your invitation of December 3, 2007, asked me to address the aberration of torture in a democracy. While I do not wish to quarrel with the Chairman and the members of this distinguished panel, I do wish to observe that between '81 and '99, 80 percent of the world committed at least one act every year, and only 20 percent committed zero acts of reported torture.

It is important to be clear about the definition on which these statistics are based. We refer to torture as the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials.

Torture includes the use of physical or other force by police and prison guards that is cruel, inhuman or degrading. Torture can be anything from simple beatings to other practices such as rape or administering shock or electrocution as a means of getting information or a forced confession.

Seen from its historical perspective, torture is less common today than it has been in centuries past, and democracies are less likely to use torture as a regular interrogation practice, yet this long historical trend aside, the use of torture is common and widespread across countries of all types of institutions.

Yet recent research has documented that countries with liberal democratic institutions are notably different in the type of torture they employ. More specifically, as international and national monitoring of the treatment of prisoners has increased over the past century, democracies have responded by innovating clean methods of torture that do not leave permanent marks or other evidence of pain or physical trauma.

Now, research demonstrates that a percentage of countries which use torture in a given year jumps from 80 to 98 percent when at least one group engages in one act of violence against the government in that year. Differently, during the final two decades of the 20th century, nearly every country that was faced with a violent challenge to its rule engaged in torturous activity.

Social science is less precise than we would like, of course, yet a figure like 98 percent jumps out at anyone, especially when one considers that governments seek to hide torture. The data we have is certainly an undercount of actual torturous activity. Thus, it is quite likely that this figure is something of an underestimate.

My own research, as well as those of others, has demonstrated that liberal democratic institutions, such as the popular franchise, checks and balances, and freedom of expression, reduce violations of human rights, especially physical integrity of the person. Yet historical research of government repression of dissidents reveals that governments and countries with democratic institutions tend to shift from overt to covert tactics to repress dissident groups.

Put more directly, while democratic institutions are strongly associated with greater observance of physical integrity rights on average, their impact is seriously eroded when groups in those countries resort to violence to challenge the government and its policies.

What works in decreasing torture? We show that elections themselves have no impact on the likelihood that a government uses torture when dissident groups engage in a violent activity. We do find that a combination of both higher voter turnout and close legislative electoral outcomes are associated with a reduced likelihood of torture given violent dissent, but only when the country has not been using torture previously.

The combination of an independent judiciary and a legislature with high levels of opposition party representation reduces the likelihood of the use of torture in the presence of violent dissent, but only when there has been no torture in the preceding year.

Finally, while protection of the right to freedom of press strongly reduces the likelihood that a government uses torture in the absence of violent dissent, that effect disappears when dissident groups undertake violent activity.

Champions of democracy and human rights will find little cheer in the findings I discussed. Research shows that not only torture is depressingly common to democracies that led a global shift to clean techniques that make torture harder to detect, but that institutions that define liberal democracy have little effect on the use of torture when they are most needed, when groups that oppose the government and its policies turn to violent means to press their political views on society.

Government rightly has the responsibility to protect the body politic from predation from those who attempt to try to tear it asunder. Protecting citizens' right to pursue life, liberty and happiness falls within that charge, yet it is government more than any other institution that deprecates the physical integrity rights of human beings, and torture is the most common offense of governments in this domain.

Contemporary research exposes this fictional notion that the institutions that are justly celebrated as the foundation of liberal democracy have largely and almost completely failed to deter governments from engaging in torture when the government is challenged by violent dissent. To be sure, these institutions considerably reduce the likelihood of torture in the absence of a violent challenge to government, but that important constraint more or less evaporates in the face of violent dissident activity.

Our preliminary work suggested that it is civil society, not government institutions, that can stop torture once it has begun. Civil society tends to thrive in the absence of liberal democratic institutions, but the existence of democratic institutions alone is not sufficient.

In this context, we urge the Commission to continue to reach out to nongovernmental organizations—they are the primary vehicle for strengthening civil society, especially in the area of human rights. To the extent the legislators can work with activists and other citizens interested in holding government to its highest ideals, we can find cause for hope to continue down this long road we are traveling to rid the world of torture.

Finally, I would like to urge the Commission to continue to reach out to the academic community in particular that's engaged in work directly relavant to the Commission's mandate. There are a great many individuals involved in research that could be useful for understanding and improving human rights conditions. Unfortunately, their efforts are frequently left within academic journals and conferences hidden behind inaccessible jargon. In short, we don't get out much, and we certainly need to. [Laughter.]

If, as a member of this community, we can assist you in any way, please feel free to contact any of us in the future. I thank you very much for your attention and interest.

Mr. CARDIN. Thank you very much for your testimony.

Our next witness will be Mr. Malcolm Wrightson Nance, who is Director of Special Readiness Services International, and Director of International Anti-Terrorism Center for Excellence. Mr. Nance is a 20-year veteran with U.S. intelligence communities combating terrorism programs. It's a pleasure to have you with us today.

MALCOLM NANCE, DIRECTOR, SPECIAL READINESS SERVICES, AND INTERNATIONAL DIRECTOR, INTERNATIONAL ANTI-TERRORISM CENTER FOR EXCELLENCE

Mr. Nance. Thank you. Mr. Chairman, Mr. Co-Chairman, I'm honored to be here to speak to you today on an issue of great importance. My name is Malcolm Nance. I'm a 20-year veteran of the intelligence community, where I served as a cryptologist, Arabic interpreter, field interrogator, and instructor at the U.S. Navy Survival, Evasion, Resistance, and Escape School, known as SERE.

In my civilian capacity, I continue to serve as an adviser, educator, and scholar in counterterrorism and counterinsurgency intelligence. I come today as an intelligence professional with a dire warning.

As I've testified before a similar hearing in the House, while at SERE one of my most serious responsibilities was to employ, supervise, and witness dramatic and highly kinetic coercive interrogation methods, including a wide range of activities now referred to as enhanced interrogation techniques.

This included hands-on, short duration, high-intensity brutality such as face slapping, painful stress positions, simulated sexual assault, mock executions, and the most severe, waterboarding. I've testified that waterboarding, of which I was subjected to the maximum limit allowable, is a professional process when done in the hands of a competent team. It is also an inhumane, cruel, degrading torture that was applied regularly by the most evil enemies fought by this Nation's armed forces, including the Nazis and the North Vietnamese.

Let us put the techniques aside. We face a crisis because of the belief in a myth. The myth that torture is effective and can gain

the truth from a subject has been created and endorsed by many of our highest citizens. In light of public opposition to torture, some members of the American intelligentsia have called for a third way regarding torture and would support it under certain conditions.

Recently, no less august personality than the Felix Frankfurter Professor of Law at Harvard University, Alan M. Dershowitz, advocated torture. He recently and publicly stated that torture should be one of the legal tools to fight terrorism in the ticking time bomb scenario. He called for the creation of a torture warrant whereby torture would legally be authorized to extract information critical to stopping an imminent attack.

This medieval, arcane, and ignorant misimpression of what he labeled extreme measures would authorize the President to use torture and provide legal grounds to conduct brutality. In my view it is a license to return to the Middle Ages and provide a judicial basis for a 21st century Inquisition. It will create an ironclad international standard through which past and future torturers can claim innocence.

By Dershowitz's hypothesis Nazi SS Officer Klaus Barbie's interrogations and tortures of French resistance members was acceptable to stop their form of terrorism. By this reading all of Pol Pot's torture orders were justifiable.

There is clearly a particular madness that the image and the lure of brutalizing one's enemies afflicts those who are furthest away from the bloodshed—and believe me, I am very close to the bloodshed. These advocates of murder and brutality must be reminded in the strongest terms that the honored service of the American armed forces and intelligence community is not their play toy.

Unlike the present illegal coercion and torture activities which the administration has embraced in defiance of U.S. and international law, the activities of the SERE program were honorable demonstrations in a simulated captive environment, which inoculated our students to the experience of high intensity stress and duress.

We now learn that this historic body of torture knowledge wrought from the pain and graves of tens of thousands of American prisoners of war from the Revolution to Iraq and Afghanistan was the template for Department of Defense and CIA processing of Al Qaida prisoners. The thought that we decided to use our enemies' torture playbook is too disgusting to imagine.

Torture must be banned by this Nation, and we must strive to regain the moral high ground. We must call for a new Geneva Convention where the laws regarding the activities of enemy combatants and their handling of them on and off the battlefield can be reset the lowered bar of justice.

America's honor must be restored. To do that we must embrace our cherished values as fair and decent people and hold to account those who have ordered and conducted illegal activities in our name.

Thank you.

Mr. CARDIN. Well, thank you very much for your testimony.

I just want to make a quick comment. I think most of us in Congress thought we had already outlawed torture and that not only

did we make it illegal, but we thought that the values of America were so ingrained in our institutions that you would never see any systematic effort by our government to push an envelope as far as they think they could in order to use enhanced interrogation techniques in a way that, if used against us, would clearly be categorized as torture.

So I think this is all very troubling that we now need to figure out a new law. And then there's a question under the President's interpretation of his constitutional power as to whether that would restrict the President anyway. Now, of course, in the Attorney General's hearing I think it became clear that the statutes need to be enforced, including the President.

Ms. Chaffee, you mentioned the letter from the four retired generals who worked for the military. I'm going to put that letter into the record, but let me just quote one paragraph from that, because I think it is somewhat fundamental to the question we have here.

It says, "The Rule of Law is fundamental to our existence as a civilized nation. The Rule of Law is not a goal which we merely aspire to achieve; it is a floor below which we must not sink. For the Rule of Law to function effectively, however, it must provide actual rules that can be followed. In this instance the relative rule—the law—has long been clear: waterboarding detainees amounts to illegal torture in all circumstances. To suggest otherwise or even give credence to such a suggestion represents both an affront to the law and the core values of our nation."

I think that's somewhat fundamental to what we are dealing with, and when the President issues these Executive orders that raise a question, it really causes us to be diminished as far as our basic respect for rule of law, as well as the core values of our country.

You mentioned the fact that the DOD—the Department of Defense—and the intelligence community now have two separate roles. We have the Army Field Manual, the military manual that is binding on our military, but the intelligence community has a different set of rules. I would like to just get your view as to how workable that is—that you could have two different types of standards, one for our military and one for civilians.

Ms. CHAFFEE. Well, I think that what we have observed to this point, Mr. Chairman, is that it's not workable, that it has created significant problems and continues to create significant problems.

The acting Judge Advocates General of the Armed Forces, shortly after the issuance of the Executive order, expressed concerns that this separate standard for Common Article 3 was going to make it more difficult for them to enforce humane treatment standards within the military. They also expressed concerns that this could potentially put our soldiers at greater risk, if they are taken into enemy custody.

So I think that there are several problems with having this double standard. It sends a confused message as to what the United States means when it says that we're upholding our international obligations to treat prisoners humanely.

Luckily, Congress at this particular moment in time has the opportunity to do away with that dual standard and to make sure that all U.S. interrogators use one humane standard under the

Army Field Manual, a standard that has proved effective in interrogations and a standard that requires humane treatment.

Mr. CARDIN. I guess what I'm concerned about is the power of the President versus the laws passed by Congress. It seems to me that when Congress passes a pretty clear law, that needs to be administered by the President.

In 2002 the so-called Bybee Memo—which has been subsequently disavowed by the Justice Department, but it was the opinion for a 2-year period—basically said that our definition of torture would only include those types of activities that were life threatening, and that wouldn't lead to—let me use the quote—"physical pain amounting to torture must be equivalent in intensity to pain accompanying serious physical injury such as organ failure, impairment of bodily function, or even death."

Now, obviously, to all of us, I think, that's a pretty extreme view and would permit many forms of interrogation techniques that are clearly in our common understanding of torture. I guess my concern is the conflict between the power of the President to go beyond anything that Congress does versus the effectiveness of congressional statutes.

Ms. CHAFFEE. I certainly share your view that the interpretation of the anti-torture statute that was contained in the Bybee Memo was a pretty disingenuous interpretation of the standard of what is prohibited as torture.

I think that, but I do, however, believe that it would be possible for Congress to further legislate to ensure that such disingenuous interpretations of statute such as the anti-torture statute or of the McCain amendment, of which we are afraid there is a similar memo in that the New York Times has reported there is a similar memo that is not an honest or a very straightforward interpretation of what the McCain amendment means.

But I do believe that during the confirmation process, now Attorney General Mukasey stated that if Congress passed legislation that made the Army Field Manual the sole single standard for U.S. interrogations, that he would enforce it.

And that gives me hope that, should Congress act and pass this law and should this act not be vetoed by the President or Congress is able to overcome the veto, that the Justice Department would take the position that this law, which would limit what type of interrogation techniques interrogators can use, is constitutional and would enforce it.

Mr. CARDIN. He clearly did say that during the confirmation process, but then left room for interpretation of any technique based upon the potential power of the President to exercise his authority. So I am comforted by some of his statements, but overall on torture did not feel comfortable with the commitment really to have an absolute standard as set by Congress.

Let me turn, if I might, to the justification used by many to say why we have to use torture, and that is the ticking bomb. Several of you talked about the ticking bomb scenario, where you're confronted by a desperate situation where information is vital in order to protect the safety of the people of our community, and you have someone in custody who perhaps has that information and you don't have the time to go through the niceties, so why not just use

methods that can solicit at least some information in a timely fashion.

Why not, while under extreme circumstances as determined by whether it's the torture warrant, I think you suggested—perhaps the court makes that judgment, perhaps the President—why not permit torture under those circumstances? Can you answer me?

Mr. Nance. Well, it's quite simple. As Professor Dershowitz recommended a torture warrant, it's laughable on its face in the sense that in counterterrorism you are constantly facing the ticking time bomb. You're talking about an asymmetric threat of people who are in a constant state of planning readiness and going through an operational cycle to deploy weapons systems or terrorist systems or activities which you would consider imminent at all times.

If that were the case, there would have been large-scale and widespread torture more than there was in Northern Ireland with the British throughout the 1970s and 1980s, because they were under constant IRA bombing threat, which means that every individual that you would get into your custody would be a potential imminent ticking time bomb candidate for a torture warrant.

Mr. CARDIN. I agree. I think by definition you wouldn't have the people under interrogation unless there was some information that was critically important for us to have in order to avoid a disaster. We never know exactly when bombs are going to go off, so I guess they're always ticking.

Dr. Hilde, did you want to comment further on this?

Dr. HILDE. Well, the International Red Cross did mention at one point that they considered 90 percent of the prisoners at Abu Ghraib prison to be innocent. So if we're involved in seeking ticking time bomb moral justification to torture individual human beings and we're all of a sudden discovering that 90 percent of the people in custody are actually innocent, I think we're faced with only finding ex post facto justifications morally speaking, which should come prior to the actual torture.

And that may never be the actual dramatic version of the ticking time bomb, but rather something along the lines of where is the weapons cache? Where is an IED? Do we wish to allow torture to be institutionalized in order to find this sort of daily information?

There is definitely a tragic decision to be made there, but the ticking time bomb example takes it all out of proportion. It's usually torturing one versus saving the city of New York. And that's a terribly poor basis for a moral argument.

Mr. CARDIN. Clearly, and of course the ticking time bomb definition is subject to a great deal of abuse, as Mr. Nance has pointed out. Let me just put in the record a quote from the Pentagon working group memo 2003: "Army interrogation experts view the use of force as an inferior technique that yields information of questionable quality."

So if you really are confronted with a very time sensitive episode, you may very well find that by using torture you're going to waste the valuable time that you do have by tracking down information that's not reliable in the first place. So there's a question of reliability as well as one of definition in addition to the moral issues and the legal issues that many of you have raised.

Dr. Davenport, do you want to comment on this?

Dr. DAVENPORT. Well, in part, just trying to step away from the ticking time bomb for a second and thinking more of mundane aspects of torture for a moment. For example, there's an organization called Relatives for Justice in West Belfast that documents kind of everyday experience of people of Northern Ireland.

Within this conflict, there were certain periods where there was a seemingly constant threat, but then this did not explain the kind of broad net that was cast across much of the Catholic community when no such threat was apparent. Here, torture was used for a different effect. You weren't trying to elicit information in that context; here, you were trying to intimidate people.

So I think we kind of forget this sometimes. And I think also the law enforcement applications we also tend to forget as well, because we focus on the military context. We forget that a lot of mundane aspects of law enforcement involve torture. I'm from New York City, so I readily think of the case of Amadou Dialo who was tortured by several members of NYPD. Unfortunately, I think there are many instances of torture that have taken place with regard to diverse law enforcement scenarios that tend to be forgotten because of this highly politicized situation of dealing with terrorist organizations and/or civil war context. We just have kind of everyday life as well.

Mr. CARDIN. Dr. Davenport, your numbers are very, very troubling as to the number of countries that have condoned the use of torture, particularly those that share common values that we have been trying to provide international leadership.

We talk about our Western values. We talk about our American values. We talk about countries that share those values, and many of our policies—international policies, foreign policy, our foreign aid budget—so much of it is based upon trying to be a leader on Western values. And yet your statistics indicate that many of our countries would condone the use of torture.

And then we take a look at some of the public opinion polls, and it's mixed. It's not as strong as many of us would like to see in condemning the use of torture.

Could you just give me a little bit more information about how you conducted that research? As you say, when torture is used, countries don't issue press releases. How did you do your research?

Dr. DAVENPORT. Interestingly enough, the particular project—the paper that I reported here—was from State Department country reports, Amnesty International, and other sources that basically try to catalogue this as best they can from human rights organizations on the ground. So yes, there's no press release, but the victims are occasionally tapped by human rights organizations more than any other source.

The results from this work are generally consistent with a book that I just had come out with called "State of Repression and the Domestic Democratic Peace," which also says something very similar in the sense that not all aspects of democracy are equally important for reducing human rights violations. So to that extent, the way we've broadly cast our conception of what we think of as democratizing or the most important institutions in bringing about that reduction in human rights abuses is not as consistent as we would like.

There are certain aspects of it and only certain aspects that are relevant. The electoral participation dimension is not as important as the development of civil society. It's not as important as electoral competition and diversified parties as well.

Mr. CARDIN. I'm going to turn to Chairman Hastings, and I will return with a few other questions.

Mr. HASTINGS. Thank you very much, Senator.

I have perhaps more questions than answers, but I would offer all of us can be created with the scenarios, I'm sure. And on the ticking time bomb, I'm in thorough agreement with Mr. Nance.

In an earlier conversation he and I had, he said that there may be circumstances where the individuals who would use extraordinary measures to try to exact information might very well put themselves in the position of saying, "Fine, I have to do this. I'm going to break the law and suffer the consequences."

The likelihood is that a lot of enlightened people would do that, and in the comfort of this fine room here at the University of Maryland, we might easily underscore that.

Mr. Nance and I are meeting personally for the first time today, but I would like to point to his book, because he has experience, I think, that many of us do not have, and his book is "The Terrorists of Iraq," and in his opening line he cites the fact that this came at the expense of six colleagues of his that died, giving rise to his writing this.

He also—and I didn't say this to him earlier—has remained professional and obscure until certain things set him off, and he remains professional, but decided to begin putting forth some information, based on his experience.

Now, what if we got a call and one of the aides came up to Senator Cardin and said they just caught a guy at the Hyattsville County Courthouse that says that he planted a dirty bomb at the student union at the University of Maryland, and that bomb is scheduled to go off in 30 minutes, and they had him in custody.

The question would be could you do anything to get information out of him or what price would we be willing to pay in order to get that information out of him?

I don't think there is an answer to it, but I just throw it out there, because I can see the situation in the light of those of you that are young people, with the really clear and present dangers that are etched out in the world today, that the likelihood is that they will occur somewhere in the world where someone will have information about the potential destruction of a city. And it will be interesting to see.

We can sit up here and theorize and carry on about different scenarios until we are blue in the face, but when you're on the ground and have to discharge this function, it takes on a different characteristic.

Let me carry forth further the notion of something that is disturbing to me. I was in the conference, as I said to Ms. Chaffee, when Senator Feinstein last week, Senator Cardin, offered the measure that would bring the Central Intelligence Agency under the norm of military interrogation. And it passed out of the conference. The conference occurs when the two committees get together and conform a measure.

This was the Intelligence Authorization Act—we have not had an authorization act in the last 3 years—really 5—and this particular one has now passed, awaiting final passage of the conference report itself.

And then the President has indicated that he will veto that measure largely—and maybe other measures that he and his functionaries are dissatisfied with—but one of the reasons highlighted is that it would bring this norm to our operatives in the military and in the CIA or the intelligence community, which makes an awful lot of sense to me.

Now, then, the President has said that alternative interrogation techniques—and we presume that this includes waterboarding—has produced good intelligence. The question that I would put to the President is: did it also produce bad intelligence?

And you can isolate and cherry pick, but the thing that would be interesting to me is the man seated here—Mr. Nance—has spent 20 years in this field. He has, if I'm not mistaken—and you correct me, Mr. Nance—testified here that in his personal training he was waterboarded.

In addition to the fact, I believe he, based on recent reports, in a forum on the News Hour, commented about this particular technique and others. And perhaps it would have been wise for President Bush or Vice President Cheney or Director Hayden or anybody to ask somebody that did it or had it done to them what it's like. But I guarantee you they didn't think to telephone up.

We did. Our staff picked the telephone up and called the gentleman, and he's seated here. And he's just one. I imagine there are others that have had this experience.

So Mr. Nance, what do you think about extracting actionable intelligence? And tell us so as now at least this audience will know what waterboarding is and how it's performed.

And toward that end, what would be your comment on the President's assertion that good intelligence has been achieved by alternative interrogation techniques?

I apologize for going on, Senator, but I wanted to get my anti-Bush digs in. [Laughter.]

Mr. Nance. I'm not here to get anti-Bush digs in. I'm here to hopefully represent the intelligence professionals out there who want to do this job right.

You presented an interesting scenario, and as you were presenting that scenario about the potential attack on the student union, my mind went through a whole series of data points. My first thought was it would be domestic terrorists, because no one who was international would attack such a small target. He would bring a dirty bomb, and then he would brag about the dirty bomb, because he's part of the plot which perhaps doesn't even have the system.

An entire intelligence process goes through the mind—not just of myself, but of everyone in my community—and a fusion of resources would be brought to bear to determine whether that plot is true or not. Now, I haven't hit anybody yet, and I didn't have to, to get to a baseline of information to determine the viability of that attack.

Forensically, we don't operate in such a way that allows us to bring all of the resources of the intelligence community to bear. I personally believe that the intelligence community is operating on stereotype and mythology. The new operatives that are coming into the field or operators that are coming into the field are viewing TV shows like "24" as a documentary.

This is not the way we do business. The true professionals in this field want to get actionable intelligence through a wide historical basis of knowledge which comes from scholarly works, which comes from the lessons learned first over two centuries of intelligence collection in our allies. We do not have to descend to the level of our enemies.

In saying that, I will describe a little bit of what happens when you descend to the level of your enemies. The information that you get from waterboarding—let's take waterboarding, because there are far worse tortures—you're going to get information. I can make anyone talk. It's as simple as that.

The process—you cannot resist it. You cannot not say something, because your lungs are filling with water, and you feel every drop as they enter. The pressure, the way that the technique is performed—and you might have seen some of that a little in video or telephone on the Internet—that is not the real waterboarding. That is what we call the field expedient amateur hour.

Real waterboarding is exceptionally professional. It is done so fast that you don't know it's happening until you've already been hit with the water and you've already got a quantity of water going into your system. And it gives you a dilemma.

And the dilemma that occurs to you as you're trying to spit up, gag and choke on the water and get it out of your system, which is already pushing through into your lungs—the dilemma is am I going to listen to this man's question and answer it? Just because you've already gone past your gag reflex, and you know that you're drowning—there's nothing simulated about it; it's just controlled drowning—you will answer the question.

What comes out of your mouth can be a lie. It can be a truth. It can be a half-truth. We won't know until we evaluate that. However, you're going to say something. Usually, we give you an opportunity to comply non-verbally by kicking your shoes together, because you can't move anything else. And after we allow you to go through a period of hysterics, where you fully understand exactly what's happening to you, only then do we give you an opportunity to answer a question—often yes or no question, because we don't want to interrupt the process.

So this is the same procedure that our government intelligence agencies are using, because it came from the military survival, evasion, resistance, and escape world, and that came from our enemies.

So you will talk. What you will say will be considered completely and totally unreliable until the entire $50 billion per year has been applied against whatever has come out of your mouth.

Now, a good resistor, or someone who has learned that you want very specific things and you want to push them away from that area, will give you something—something that will stop the process and will allow you to maybe take a week or two to determine that

it's worthless—maybe something that you know they already know about, because you read it in the newspapers.

I think the case of Zarqawi Sheikh Muhammad discussing cutting the cables on the Brooklyn Bridge plot—this is a very brilliant man. I know his operational methodology on the field. I understand his mindset. He's very intelligent. He went to the University of North Carolina, I believe. He would have just gotten someone from the Al Qaida maintenance garage with a blowtorch and would have carried out an experiment to see how long it would take to cut the cable.

But knowing that it was a ridiculous plan from the outset, even though people were deployed to collect intelligence under torture, a good resistor, someone who has gone through the process several times, would have thrown that out. And it would have stopped the process for several months, if not for some time, until they figured out that it was a worthless piece of intelligence. But he gave them something.

And what we've done is we possibly have created an operative who now knows how to work the waterboard or whatever technique that we're using against him. We've created a hardcore resistor.

Now, throughout everything that he's given us, we may never have heard some of the more ridiculous ideas that were presented at the Al Qaida military council's meetings, and he can throw out every ridiculous, rejected plan that was given to him between 1993 and 2002, and we would think it's gold, when in fact to him it is pure trash, and it keeps him away from discussing real plans which may actually be in effect.

Mr. HASTINGS. That's a very good analysis.

Senator, I'd like to put one other thing on the record. And maybe, Ms. Chaffee, you would respond. While we're in agreement—or I am of the mind—that it is important that there be norms applied by all agencies seeking to extract information, do you perceive that if we use rendition and carry individuals to other countries where the likelihood is that they will be tortured, that we are doing nothing more than what would amount to an artifice to get around law, assuming the President would even sign this into law?

And then I find abhorrent that we have black sites, and here again there's a situation where just by its name—if you name it a black site, you don't want someone to know where it is. I'm going to start naming some of these things white sites, but I'll try not to do that. But all things considered, it's something bad.

So what's your reaction to the circumvention of the law, or do you perceive that that is circumvention of the law? And I invite anybody else to comment, if they all saw fit.

And thank you, Senator.

Ms. CHAFFEE. Thank you, Mr. Chairman. Yes, I think that as an organization, Human Rights First, and as an attorney there, I am very concerned with the practices that you mentioned, the practice of extraordinary rendition, which we know has occurred.

This is the practice of rendering individuals to countries for the purpose of interrogation. And we know that the United States, that the CIA has rendered individuals to countries that we know do engage in abuse, that they engage in torture, that the U.S. State Department has reported engage in torture.

Under the U.N. Convention Against Torture, we have an obligation not to return individuals to countries where there is a likely chance that they will be tortured. And in rendering individuals to countries where they are likely to be tortured, we are violating our obligations under that convention.

And we know that there have been individuals—Maher Arar, who testified before the House, I believe, a couple of weeks ago, was in fact rendered by the CIA to Syria, where he was—in fact, we know now—abused and tortured. This is certainly a concerning practice and one that should cease.

We know that the types of diplomatic assurances that are given by countries that engage in torture—a country simply saying yes, agreeing that they will not torture in this instance—is not a reliable mechanism to make sure that our treaty obligations under the Convention Against Torture are enforced.

You also mentioned the practice of secret detention, that there have in the past and are potentially now black sites where the CIA is detaining individuals.

Secret detention, the practice of holding people incommunicado, has historically created an environment that leads to abuses such as torture, because there's no transparency. The International Committee of the Red Cross is denied access to these sites, so there's no way that individuals held in these sites are not being abused.

And this is particularly problematic and concerning and a practice that we certainly think should no longer be engaged in.

Mr. CARDIN. As I listen to your responses—and, Mr. Nance, as you were describing waterboarding—it raises the question, I think, that Ms. Chaffee also acknowledged, and that is if Congress tries to be specific in defining what torture is, that you can always find a different way to do that particular procedure and claim that it is no longer under the definition of torture as passed by Congress and required by the circumstances to use that type of technique.

I do think we all understand what torture is. The Supreme Court tried to deal with it with the definition "shocks the conscience." I think Congress is pretty clear that it wanted to prohibit all these related practices.

I have just a general question, if I might, and that is this country—America—has had a proud record in promoting human rights and democracy. After World War II we were involved in making sure those who committed war crimes were held accountable. This was the first time ever that we tried to do this internationally to say that there are certain crimes against humanity in which people can be held—including government officials acting under the authority of government—accountable for their activities internationally.

Then during the Cold War we established the way in which the international community understood that what was happening in other countries in the failure of free elections and not allowing people the right to speak out, that we were going to stand up for basic human rights. And we spent a lot of time in international leadership to make it clear that if a country wanted to become a democratic country, there were certain responsibilities in accomplishing that.

And then we exercised tremendous leadership to bring down the apartheid government of South Africa—one of the proudest moments, I think, of the United States when we figured out a way to bring that to the forefront. And then more recently, in the form of Yugoslavia, we were the ones who spoke up and said yes, it is legitimate for us to intervene to protect against ethnic cleansing and to protect human rights.

And just recently in the work in our Commission in dealing with trafficking, in dealing with all forms of discrimination, the United States has exercised tremendous leadership. These are our values.

So where do we go? How did this come about? How could a democratic country—how could democratic countries—say that torture can be done by us, but not by our enemies, because our values are consistent with the use of torture? How could that happen? Where are our vulnerabilities? In order to try to correct this thing, how did this come about?

Mr. Nance. I can speak from the—as I like to say—deck plates. First, I was at the Pentagon. I actually was outside the Pentagon on the morning of September 11th. I saw the aircraft hit the building. I drove right to the site and assisted in the rescue.

I know what the stakes are in this operation. I knew exactly who had done it, how it was done and the entire corporate history behind Al Qaida for wanting to do it. For some strange reason, the morning of September 11th seemed to, in some hands, create an ideological doorjamb, so to speak, to where those fantasies that I talk about, what people think the intelligence community should be doing and could do, which I call—we actually refer amongst ourselves as—Tom Clancy combat procedures, OK?—CPT. [Laughter.]

These are not the way the community truly works. And somebody also this as an opportunity to go back before the Church Commission and restore the intelligence community into its do what you want with impunity above the law standard. Now, I view it a different way. I've been called a boy scout in this respect, and I guess I am.

We did not fight evil in World War II in order to become the greatest human rights abuser since the Communists or since the Cambodians and the greatest torture nation and contractor of torture. September 11 didn't allow us to destroy our values or the Constitution. And there are many within the community that believe this.

However, when you literally write out an Executive order or a rule that allows you to do whatever it takes, there are many people within the system who will do whatever it takes and be rewarded for doing that. And it's as simple as that. It's as simple as having permission to essentially descend down to the level of a torture state. We're no—to a certain extent—better than the Argentineans during the dirty war.

Dr. DAVENPORT. I have a somewhat different response to your question. It seems as if historically democracy has been very good at eliminating the most egregious and the most obvious forms of state abuse toward its citizens. And with increased accountability, comes increased desire to hide your abuses, which would lead directly to greater torture.

So, in a sense, it's a different correlation than we'd like, but through promoting democracy we've kind of shifted the plane. We haven't necessarily eliminated the problem of order. We've shifted the way in which most states will engage in it, and we kind of prompt individuals to engage in the more hidden forms of repressive activities that are harder to detect and are perhaps the most persistent historically in many respects, and so I think that kind of speaks to the paradox you rose.

Mr. HASTINGS. Can I ask a question, Senator?

Dr. Hilde, you commented in your take on the theory that the sole conceivable rationales of torture in liberal ideology is, I believe you say, information gathering to prevent a catastrophe. This is certainly a prominent element of public debate and one that underpins what we have constantly acknowledged.

Today we talked about the ticking time bomb scenario, but at the same time there have been some government officials—for example, former Attorney General Gonzales in '04 expressed the view that we should not reveal to our enemies what our interrogation techniques are and how far we are willing to go.

What do you make of that concern? And what does that say about what the impetus for harsh interrogation has been?

Dr. HILDE. Well, first of all, there's no good moral argument for torture. The only one that does exist is this hypothetical, which I think is outrageous anyway—extremely rare, probably nonexistent, and nonetheless outrageous. And in that scenario, yes, perhaps one is faced with a moral tragedy, but it ought to be illegal, so if one does torture in order to gain the ticking time bomb, they ought to be held under the law regardless. And Mr. Nance and I have discussed this earlier. I think we're in agreement on this.

And as for the statement that our enemies ought not to know what we're capable of—that's a difficult question. Yes, I would suppose that if the enemies knew precisely what the interrogation practices are, they could much more easily train themselves to avoid giving true information during those interrogation practices. And perhaps the threat of extreme forms of torture is enough to frighten some prisoners into providing information without torture even having to be applied.

Yet the incentive is going to be that at least in some cases an organization which is based upon this idea is going to have to show examples to people that these practices are engaged in. And that would be the only effective way to pre-create this disincentive.

Mr. HASTINGS. I understand.

Dr. Davenport, under circumstances that lead democracies to redress with respect to torture—especially with respect to what you called violent dissent—I would ask that you would elaborate just a little bit on what you mean when you talk about violent dissent insofar as your research demonstrated.

Can you elaborate on what effect those same circumstances have on other human rights, and that is, do you see an effect of violent dissent on, say, free speech or democratic speech or free elections?

Dr. DAVENPORT. By violent dissent, we're generally focusing on civil war and insurgency, certain acts of political violence that involves destruction of property and individuals. We're in the process

now of going through and trying to assess which rights and which personal integrity violations are most threatened by this.

In my book, I identify that the predominant influences of democracy are most effective at eliminating or reducing physical integrity violations—mass killing, imprisonment, torture, disappearances—and less effective with regard to speech, association and so forth. So those are the most vulnerable within the context of domestic threats.

You have what I refer to as the "domestic democratic peace." The ability of different institutions of democracy to reduce human rights violations is least effective at trying to counter political violence and complex situations for the less violent ones, the more sensitized ones in a sense. So speech and association are the ones most vulnerable when we're fighting violent dissident activities. When the state is fighting violent dissident activities, those are the things that are most threatened.

Mr. HASTINGS. In a sense you and your colleagues did your research and now are published at least in academia. Has that brought further attention worldwide to the empirical data gathering information that you're doing?

Dr. DAVENPORT. In my opinion, no. Part of the difficulty is, I think, the community has been distracted by discussions about civil war and terrorism and the ramifications of human rights, and the effectiveness of democracy in improving the situation, have not been as thoroughly investigated as we would like.

Mr. HASTINGS. In your data compilation did you eventually come to conclusions at this point in the 80 percent, for example, of the countries as I recall you said that permitted torture at least once during a specified period if time? Did you come to a determination as to numerically which were the worst offenders and which were the least offenders?

Dr. DAVENPORT. One could with our analysis do that. It's just one of those kind of cultural things. In academia where the naming and shaming element of exactly what we do is kind of antithetical in many respects to what people would like to know, but——

Mr. HASTINGS. We all need a good dose of politics.

Dr. DAVENPORT. Exactly, but very easily we could identify the ranking of who are the worst and who are the best violators. We'd also like to try to expand it to try to think of not just that torture takes place, but also how many people in a population are targeted and get a general sense of exactly how many perpetrators are implicated.

Mr. HASTINGS. Thank you, sir.

Mr. CARDIN. Of course, the U.S. State Department does make certain lists. These lists are available. I don't believe they include the United States.

Mr. HASTINGS. That's just what I said. They do.

Mr. CARDIN. They do make these lists, but they do quantitate in different areas, and Congress has passed statutes to require certain types of reports to be made available just for the purpose that you said, and that is to put a spotlight on these countries. We're lobbied frequently by other countries to get off those lists. We tell them how they can do it. So it serves a very useful purpose, and I think your information would be very helpful to all of us.

I want to thank all the witnesses for your testimony. I found it extremely helpful. We have a challenge. We have a challenge. Yes, it is possible that Congress will have to clarify the laws. But we also need leadership to make it clear that our values are to be complied with. We're not looking for ways to get around the statutes, but the way to make our commitment against torture meaningful for other countries to follow. And we don't have that today.

In order to accomplish that, we do need better public understanding. I don't think the public truly understands the depth of the issues concerning the techniques of interrogation and torture and how it's used. And to that end, I think each of you have really added to the national discussion and debate.

And I think each of you in your own way, not only by being here, but by your roles and the publications that you're issuing, the responsibility you've taken in visiting the various places—and, Mr. Nance, with your experience and being willing to help in the public discussion here—I found extremely helpful.

At the end of the day, if we have—as I think we should—a zero tolerance on torture, it should be not only the law of this country, but the principles of our country. We're going to be a safer country. We're going to be a safer country as far as public safety, and we're going to be a safer country as far as civil liberties are concerned. And that's really what the values of America should be directed toward.

So I thank you again today for your testimony today. I thank the Chairman for allowing us to have this field hearing in College Park.

Once again, Dr. Mote, thank you for making the arrangements.

And this hearing will stand adjourned.

[Whereupon, at 11:52 a.m., the hearing was adjourned.]

APPENDICES

PREPARED STATEMENT OF HON. ALCEE L. HASTINGS, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Senator Cardin, I want to thank you for your leadership in convening this field hearing and I'd also like to express my appreciation to President Mote and the University of Maryland for their hospitality today.

This hearing comes just days after the revelation that two videotapes made in 2002, showing the CIA's interrogation of two terror suspects, were destroyed by the Central Intelligence Agency in 2005. One can only wonder what those videos showed.

The destruction of these tapes is disturbing on many levels, but especially when one considers that the 9/11 Commission specifically and formally sought these sorts of recordings and were not given them. I cannot imagine why, when the 9/11 Commission was investigating one of the worst attacks on American soil in the history of our country, why the CIA did not fully cooperate with that investigation.

Like you, Senator Cardin, I am profoundly frustrated by the damage that has been done to America's good name and credibility by the documented instances of abuse that have occurred in the context of our country's effort to combat terrorism, and by the erosion of the legal principles which make torture and other forms of ill-treatment a crime.

Many people have said it, but it seems to me to deserve repeating, and I put this in the context as someone who has visited more intelligence stations than probably any other current Member of Congress: Torture does not make us any safer. Torture does not produce good intelligence.

In fact, there have been several notorious instances of detainees providing testimony under duress that has subsequently been shown to be false. Some of the evidence relied upon by Secretary Powell, in his 2003 speech to the UN making the case for the war in Iraq, came from a detainee who later recanted that testimony and stated that he made his claims as a result of coercive interrogation. Three British detainees at Guantanamo confessed to being at an Al Qaeda training camp, but British authorities later confirmed that all three of the men were in the United Kingdom at the time they told their American interrogators they were meeting with Osama bin Laden. Those men have all been released now.

As we examine the subject of torture today, I look forward to hearing our witnesses discuss various aspect of this issue. But I also hope that the administration will begin to devote some serious attention and resources to study better ways to gain intelligence. Too often intelligence gathering and respect for human rights are presented as a zero-sum game, where more of one means less of another. I think that is a false paradigm. There is more we can be doing to improve our intelligence gathering that does not have to come at the expense of human rights—for example, we could stop kicking people out of the military who have critically needed for-

eign language skills just because they're gay. We can provide more training for critical languages. We can study non-coercive interrogation methods—something we haven't done since World War II. None of those things involve or require torture.

Finally, Senator Cardin, I would like to express my immense disappointment—to say the least—to hear that President Bush is prepared to veto the 2008 Fiscal Year intelligence authorization bill because it would require the Central Intelligence Agency to follow the same interrogation norms that apply to military personnel. As it now stands, the 2006 Detainee Treatment Act prohibits military personnel from engaging in torture or cruel, inhuman or degrading treatment or punishment of detainees.

Last February, Jeffrey H. Smith, the former General Counsel to the CIA, argued strongly in the pages of the Washington Post that armed services and the CIA should not have different standards for the treatment and interrogation of detainees—and I think he's right. So I truly hope that the intelligence authorization bill will be passed, including its provision regarding CIA interrogations norms, and I hope that the President will expeditiously sign it into law.

Senator, thank you again for your thoughtful and long-standing leadership on this issue. I am proud to be with you today at your state's flagship university to explore how this issue impacts the United States—both right here at home and across the globe. Thank you.

PREPARED STATEMENT OF THOMAS C. HILDE, SCHOOL OF PUBLIC POLICY, UNIVERSITY OF MARYLAND-COLLEGE PARK

Thank you, Mr. Chairman, for the opportunity to speak to the Helsinki Commission. My name is Thomas C. Hilde, Research Professor in the School of Public Policy at the University of Maryland. I specialize in ethics and social and political philosophy, and am publishing a book this spring on the subject of torture entitled, simply, On Torture.

Historically, physical and psychological torture has been used to suppress dissent, force renunciation of beliefs, extract confessions, punish, force denunciation of others, intimidate a population, humiliate, and gather information. All torturers claim a state of necessity. Recently, some have advanced the claim of significant information once again to justify torture. They argue that the information gained from torture is of greater moral significance than the torture of human beings. Torture, they say, is a necessary evil in the battle against a greater evil. The entire claim is based on the premise that there exists information of great moral significance, that it is discoverable only through torture, and that this legitimizes the use of torture.

As with most ethical issues, how the problem is articulated is of crucial importance. Today, torture is commonly justified by appeal to a state of necessity emblematic in the proverbial ticking time-bomb hypothesis. This frames the issue wrongly from the outset, however, and grounds it in a state of fear. The ticking time bomb example, so corrosive of our moral imagination in the public discourse, provides a crude utilitarian justification for the use of torture: torturing one bad man versus saving many innocent people. This may serve to trump the basic claims of the absolute prohibitionist. But why stop with the one bad man, on this view? If the potential information is of great moral significance, why not torture the one man's children or everyone in his village? To assume this normative framework appears to allow for the most extensive abuses committed in the name of uncovering the morally significant information presumed a priori.

A better understanding of what is entailed in seeking morally significant information through torture thoroughly belies the information-gathering justification on both efficacy grounds and moral grounds.

Torture "works" in that torture victims speak. The information gained is notoriously unreliable, however, as noted since the time of Aristotle. Accounts of torture from the Inquisitions exhibit how the most delirious tales were elicited from the victims. This information served to confirm the prior beliefs of the torturers. Bad weather, for instance, was thought at the time to be caused by airborne demons in consort with human "witches." In the delirium of torture, torture victims—those accused of being witches—confirmed these beliefs while providing the names of other "witches" who would reconfirm both the preposterous prior beliefs and the inquisitors' authority. The information was, of course, not true. Yet, it was meaningful information in that it fit extant prior beliefs in a historical context framed as a medieval version of the state of necessity.

If information, today, must be of great moral significance to justify torture, how would we know it was of such moral significance?

First, torturing for information requires the institutionalization of torture. Many commentators have noted this. There must be trained torturers and thus also trainers, a legal and administrative apparatus, a cadre of doctors and lawyers and data analysts, and so on. Non-torturous intelligence-gathering and interrogation activities already require similar institutionalization. The conspicuous difference is that the latter does not demand by its nature that each human link in the apparatus suspend its moral decency. Moreover, many intelligence professionals and interrogators state that there are much better methods of gaining actionable intelligence than through torture, even when conducted under time constraints.

Second, since raw information from an individual torture victim is unreliable, information that rises to the level of morally significant information is highly unlikely ever to be gained from an individual victim alone. Torture must be used broadly. On occasion, the torturers might have prior expectations that the prisoner indeed possesses important information. The justification of morally significant information demands prior knowledge that the torture victim possesses this information. It also demands that the information be actionable such that a serious, imminent threat is actually prevented. It is exceedingly difficult, however, if not impossible, to judge the information gained from torture to be morally significant until that greater evil is indeed prevented. This combined knowledge prior to the act of torture might very well obviate any perceived need to torture. More likely than the time bomb case of torturing one bad person is the case of torturing many innocent people in search of what might hypothetically justify the act of torture.

How does one know when one has true information? When one seeks to justify torture by gaining important information one presupposes that such information exists, and will be discovered only through a morally heinous practice. The information must thus be previously unknown in order to justify using torture. Yet, its moral significance must also be previously known in order to justify the act. It is not meaningful information until one has tortured, gained information, and then verified it. This is where information may become meaningful. Meaningful information may then fit with prior beliefs, assumptions, and modes of interpretation (and in the present case, recall, the context is a state of necessity). But it is not necessarily true information, as illustrated briefly in the example from the Inquisition. Furthermore, the victim's guilt need never be resolved.

The logic of acquiring true information as opposed to merely meaningful information suggests a more extensive practice. Drew Sullivan, an investigative journalist currently based in Bosnia, recently recounted to me his time spent on the Thai border with Burmese journalists and refugees. Each of the journalists had been tortured by the Myanmar government. In discussions with Mr. Sullivan and others about their torture, the victims explained that during their ordeals they were often confronted by the torturers with information—true and false—derived from the previous tortures of other victims, often relatives or friends who had been tortured many months earlier. It became clear that the military regime of Myanmar maintains a database comprised of information

gained through torture. Of course, information from individual torture victims must be correlated with information from other victims and verified or falsified in order to be serviceable. The Myanmar government tortured many people in order to evaluate various individual bits of information and compare them with other bits of information in order to build a coherent account of actual information. All data from the individual torture victims—whether "good" or "bad" information—are logged into the database. The database then serves to uncover patterns in the mass of information and misinformation.

A principal incentive raised by the argument for torture as a means of gathering information is precisely what the Myanmar example suggests. It is ultimately to seek patterns of information rather than attempt to verify or falsify individual bits of data, especially under time and resource constraints. Comprehensive sets of data-points yield more complex patterns. The more extensive the practice and institution, the more successful torture will be. If torture is used indiscriminately and broadly, more complex patterns and a better understanding of what is meaningful in the information will be obtained. Patterns of information by themselves are meaningless, but they serve to corroborate and verify partial bits of information and infer other patterns. They also serve to eliminate or falsify outlying bits of information, the information gained from those innocent of any perceived wrongdoing. A descriptive narrative may be interpreted and assembled from the resulting patterns and regularities.

This is now a far cry, however, from an argument based on the moral tradeoff between torturing the one in order to save the many. At no point has meaningful information risen to the level of morally significant information that justifies torture. In the numbers game of the information-gathering justification (symbolized by the time-bomb), as the number of torture victims grows, the moral justification diminishes, although this element is not included by proponents of the argument. The use of torture as an instrument for gaining morally significant information thus contains its own absurdity. We end up with a swelling institution in search of its moral justification, causing increasing damage to innocents and ourselves, all in search of the supreme moral justification—the time bomb—only to find that, in the end, it is we who have become the moral equivalent of the time bomb.

I have limited this statement to discussion of the justification of torture as an information-gathering instrument because its current proponents state that the information is of greater moral significance than the torture of human beings. Every ethical and religious tradition, however, views torture as abhorrent. The other purposes of torture listed at the beginning of this statement are plainly beyond the bounds of all morality, although the slippery slope of torture often leads to such purposes, as exhibited in the photographs from Abu Ghraib. Since the currently proposed moral justification for torture as information-gathering is itself morally unjustifiable, we are better off treating the prohibition of torture as morally absolute.

The laws of a liberal democracy must clearly and firmly reflect these moral considerations, even if a scenario as portrayed in the

time-bomb example should ever arise in actuality. In such a highly implausible case, in which all the conditions of prior knowledge of the victim's guilt are equally in place, those who choose to torture must nonetheless face the consequences of severe legal sanction. Later judges of the torturers may decide to consider mitigation in their case, but mitigation cannot be determined in advance by a presumed state of necessity. Since liberal democracy—indeed the entire liberal political tradition—is grounded on universal principles of individual autonomy and dignity, to institutionalize their violation is to attack the very foundations of liberal democracy.

PREPARED STATEMENT OF DR. CHRISTIAN DAVENPORT, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF MARYLAND-COLLEGE PARK

Chairman and distinguished members of this Commission, thank you for this invitation to testify about my research on the impact of democratic institutions on preventing the use of torture. I wish to recognize the exemplary efforts of the individual members of this commission to draw attention to the criminal act of torture in the United States, as well as the Commission's continuing effort to investigate this important issue. I applaud the work you have done to date and will continue to do, and am both flattered and pleased to be able to offer some small assistance in this important endeavor.

My testimony draws primarily on research that I have undertaken with Professor Will H. Moore of Florida State University and David Armstrong of Oxford University, though I will also rely on other research projects conducted by myself, other members of this team, and work in the broader community of scholars interested in the violation of human rights generally and the use of torture in particular. Several international treaties such as the International Covenant on Civil and Political Rights and the Convention Against Torture make torture illegal, and while the Helsinki Final Act does not explicitly mention torture, it both commits state signatories to respect human rights broadly construed and respect their international obligations under other treaties. Further, and just as important, the US Constitution and, of course, US federal law, prohibit the use of torture by US officials and their employees. Those international treaties and similar domestic laws in other nations prohibit the use of torture elsewhere throughout the world. Yet, contrary to popular understanding, the use of torture remains widespread: existing data show that roughly 80% of the countries in the world tortured at least one person in the government's control in any given year over the period from 1981–1999. Indeed, the prohibition against torture is the most widely violated of the human rights to the physical integrity of the person.

With that background, the shocked reaction to the revelation of the acts of inhuman and degrading treatment and torture of inmates in the Abu Ghraib prison led me and my colleagues to undertake a scientific inquiry to determine whether the institutions that support liberal democracy—popular franchise (i.e., elections), checks and balances (i.e., accountability mechanisms), and freedom of expression (specifically of the press)—reduced the likely use of torture by governments during the late 20th Century. The institutions that support liberal democracy are strongly associated throughout the globe with freedom, good governance, and human rights—the last finding (concerning the reduced application of state repression is commonly referred to as "the domestic democratic peace", the title of my recent book with Cambridge University press). There has been little investigation, however, of the extent to which these institutions in particular reduce the use of torture. In fact, there is only one other that we have identified. Our research addresses this issue directly.

I wish to share three points with you today. First, torture is distressingly common. Second, while countries with institutions that

support liberal democracy do engage in torture with a considerably lower likelihood than countries that lack such institutions, this difference only holds when no groups engage in acts of violence to challenge the government or its policies. When at least one group commits at least one act of violence countries with institutions that support liberal democracy are effectively just as likely to use torture as countries that do not have such institutions. Finally, I wish to briefly describe the extent to which each type of institution influences the likely use of torture. I will briefly relate each point in turn, and will then close with some observations about what this research implies for those of us who—like this honorable commission—wish to stand vigil in defense of human rights and press governments to eschew the use of torture, regardless of the crimes those in the government's control are believed to have committed or planned.

THE COMMONALITY OF TORTURE

It is an unpleasant truth of the human condition that torture is ordinary. Your invitation of December 3, 2007 asks me to address "the aberration of torture in a democracy." While I do not wish to quarrel with the Chairman or members of this distinguished panel, I do wish to observe that between 1981 and 1999 80% of the countries of the world committed at least one act of torture in every year and only 20% committed zero acts of reported torture.

It is important to be clear about the definition of torture on which these statistics are based:

Torture refers to the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials. Torture includes the use of physical and other force by police and prison guards that is cruel, inhuman, or degrading. Torture can be anything from simple beatings, to other practices such as rape or administering shock or electrocution as a means of getting information, or a forced confession.

Seen in historical perspective, torture is less common today than it has been in centuries past, and democracies are less likely to use torture as a regular interrogation practice. Yet, this long historical trend aside, the use of torture is common and widespread across countries with all types of institutions. Yet, recent research has documented that countries with liberal democratic institutions are notably different in the type of torture they employ. More specifically, as international and national monitoring of the treatment of prisoners has increased over the past century, democracies have responded by innovating "clean" methods of torture that do not leave permanent marks or other evidence of pain or physical trauma. While the use of these "clean" methods has diffused to non-democratic countries, it is well documented that they were almost exclusively developed over the past 75 years in the military and police forces of the, France, Israel the United Kingdom, and United States. "Clean" torture produces physical and psychological pain without leaving evidence of the suffering. I urge the Commission to extend invitations to Professors James Ron and Darius Rejali to testify about the development and adoption of these "clean" techniques.

VIOLENT DISSENT IS AN EQUALIZER

Our research demonstrates that the percentage of countries which use torture at least once in a given year jumps from 80% to 98% when at least one group engages in at least one act of violence against the government in that year: in 566 of the 579 country-years in which there was at least one act of violent dissent exhibited at least one report of torture. Put differently, during the final two decades of the 20th Century nearly every country that was faced with a violent challenge to its rule utilized torture.

Social science is less precise than we would like, yet a figure like 98% jumps out at anyone, especially when one considers that governments seek to hide torture: the data we have is certainly an undercount of actual torturous activity. Thus, it is quite likely that this figure is something of an underestimate!

Finally, before turning to the relationship between democratic institutions and the likely use of torture, I wish to provide the Commission with one further statistic. If we consider whether a government used torture in the year preceding the year we are studying, we learn that once a country begins to use torture, it is alarmingly likely to continue to do so. During our period of study, 93% of the cases that used torture in the preceding year continued to use it in the following year. This figure increases to 99% when we examine only those cases where dissidents are engaged in violent activity: in only 7 of 557 cases where the government used torture in the preceding year and dissident forces engaged in violent protest did the government eschew torture.

With that background, I wish to turn our attention to the impact of liberal democratic institutions on the likelihood of using torture when the government is faced with a violent challenge.

VOICE, VETO & FREEDOM OF EXPRESSION: DO LIBERAL DEMOCRATIC INSTITUTIONS HELP REDUCE TORTURE?

My own research, as well as that of others, has demonstrated that liberal democratic institutions such as the popular franchise, checks and balances, and freedom of expression reduce violations of human rights, especially physical integrity of the person rights. Yet, historical research of government repression of dissidents reveals that governments in countries with democratic institutions tend to shift from overt to more covert tactics to repress dissident groups. Put more directly, while democratic institutions are strongly associated with greater observance of physical integrity rights on average, their impact is seriously eroded when groups in those countries resort to violence to challenge the government and its policies.

I now wish to review the findings my colleagues and I have found regarding the use of torture when dissident groups use violence. First, we show that elections themselves have no impact on the likelihood that a government uses torture when dissident groups engage in violence. This is rather different from my findings and those of others with respect to rights in general. The explanation for these differences are likely found in the objectives desired by those who use torture (e.g., information and/or intimidation) as well as the particular way in which torture is employed.

Interestingly, we do find that a combination of both high voter turnout and close legislative electoral outcomes are associated with a reduced likelihood of torture given violent dissent, but only when the country was not using torture in the preceding year.

Turning to checks and balances we explored the impact of legislatures, independent judiciaries, and combinations thereof. The results demonstrate that the combination of an independent judiciary and a legislature with high levels of opposition party representation reduces the likely use of torture in the presence of violent dissent, though only when there was no torture in the preceding year.

Third, we also examined the impact of freedom of expression. While protection of this right strongly reduces the likelihood that a government uses torture in the absence of violent dissent, that effect disappears when dissident groups undertake at least one act of violence.

To reiterate the context in which these findings stand, existing research by myself and others reports that democratic institutions have an impact on respect for human rights, though generally only when those institutions are well embedded in society. Those same institutions—when fully developed—also reduce the likely use of torture, but only when no dissidents are using violence to challenge government. The moment violent dissidents are on the scene, the effect of these institutions dissipates, and once the government resorts to torture the impact effectively disappears. While robust, the "domestic democratic peace" is not bulletproof.

In preliminary research my co-author on the torture research is investigating transitions away from periods of torture. I wish to stress that these findings are preliminary and subject to revision, but the work to date suggests that civil society—in the form of nongovernmental organizations—is the most important determinant for stopping torture once it gets started. In addition to a strong civil society, an independent judiciary and a legislature in which the opposition is well represented tends to increase the likelihood of stopping torture. Protection of freedom of expression also makes a shift away from torture more likely.

CONCLUDING REMARKS

Champions of democracy and human rights will find little cheer in our findings. Research shows not only that torture is depressingly common, and that democracies have led a global shift to "clean" techniques that make torture harder to detect, but that the institutions that define liberal democracy have little effect on the use of torture when they are most needed: when groups that oppose the government and its policies turn to violent means to press their political views on society.

In that great American document The Federalist Papers, Messrs. Hamilton, Jay and Madison produced a lasting legacy to human affairs by making a case for the importance of liberal democratic institutions as useful means for mitigating abuse of governmental power—thinking that extends back throughout history. Government rightly has the responsibility to protect the body politic from predation by those who would tear it asunder. Protecting citizens' right to pursue life, liberty, and happiness falls within that charge. Yet, it is government more than any other human institution that

deprecates the physical integrity rights of human beings, and torture is the most common offense of governments in this domain. Contemporary research exposes as fiction the notion that the institutions that are justly celebrated as the foundation of liberal democracy largely, and almost completely, fail to deter governments from engaging in torture when that government is challenged with violent dissent. To be sure, these institutions considerably reduce the likely use of torture in the absence of a violent challenge to government, but that important constrain more or less evaporates in the face of violent dissident activity.

Preliminary work suggests that it is civil society, not government institutions, that can stop torture once it is begun. Civil society tends not to thrive in the absence of liberal democratic institutions, but the existence of democratic institutions alone are not sufficient. I urge this Commission to continue to reach out to non-governmental organizations as they are the primary vehicle for strengthening civil society, especially in the area of human rights. To the extent that legislators can work with activists and other citizens interested in holding government to its highest ideals we can find cause for hope to continue down this long road we are traveling to rid the world of torture. Finally, I would urge this Commission to continue to reach out to the academic community that is engaged in work directly relevant to the Commission's mandate. There are a great many individuals involved in research that could be useful for understanding and improving human rights conditions. Unfortunately, these efforts are frequently left within academic journals and conferences, hidden behind inaccessible jargon. In short, we do not get out much but we most assuredly need to. If I as a member of this community can assist in any way, please feel free to contact me in the future. Thank you for your attention and interest.

MATERIAL SUBMITTED FOR THE RECORD BY HON. BENJAMIN L. CARDIN, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

November 2, 2007

The Honorable Patrick J. Leahy, Chairman
United States Senate
Washigton D.C. 20510

DEAR CHAIRMAN LEAHY: In the course of the Sente Judiciary Committee's consideration of President Bush's nominee for the post of Attorney General, there has been much discussion, but little clarity, about the legality of "waterboarding" under United States and international law. We write because this issue above all demands clarity: Waterboarding is inhumane, it is torture, and it is illegal.

In 2006 the Senate Judiciary Committee held hearings on the authority to prosecute terrorists under the war crimes provisions of Title 18 of the U.S. Code. In connection with those hearings the sitting Judge Advocates General of the military services were asked to submit written responses to a series of questions regarding "the use of a wet towel and dripping water to induce the misperception of drowning (i.e. waterboarding). . . ." Major General Scott Black, U.S. Army Judge Advocate General, Major General Jack Rives, U.S. Air Force Judge Advocate General, Rear Admiral Bruce MacDonald, U.S. Navy Judge Advocate General, and Brigadier Gen. Kevin Sandkuhler, Staff Judge Advocate to the Commandant of the U.S. Marine Corps unanimously and unambiguously agreed that such conduct is inhumane and illegal and would constitute a violation of international law to include Common Article 3 of the 1949 Geneva Conventions.

We agree with our active duty colleagues. This is a crtically important issue—but it is not, and never has been, a complex issue, and even to suggest otherwise does a terrble disservce to this nation. All U.S. Government agencies and personnel, and not just America's military forces, must abide by both the spirt and letter of the controlling provisions of international law. Cruelty and torture—no less than wanton kiling—is neither justified nor legal in any circumstance. It is essential to be clear, specific and unambiguous about this fact—as in fact we have been throughout America's history, at least until the last few years. Abu Ghraib and other notorious examples of detainee abuse have been the product, at least in part, of a self-serving and destructive disregard for the well-established legal priciples applicable to this issne. This must end.

The Rule of Law is fundamental to our existence as a civilized nation. The Rule of Law is not a goal which we merely aspire to achieve; it is the floor below which we must not sink. For the Rule of Law to function effectively, however, it must provide actual rules that can be followed.

In this instance, the relevant rule—the law—has long been clear: waterboarding detainees amounts to illegal torture in all circumstances. To suggest otherwse—or even to give credence to such a suggestion—represents both an affront to the law and to the core values of our nation.

We respectfuly urge you to consider these priciples in connection with the nomination of Judge Mukasey.

Sincerely,

REAR ADMIRAL DONALD J. OUTER,
United States Navy (Ret.), Judge Advocate General of the Navy, 2000–02.

REAR ADMIRAL JOHN D. HUTSON,
United States Navy (Ret.), Judge Advocate General of the Navy, 1997–2000.

MAJOR GENERAL JOHN L. FUGH,
United States Army (Ret.), Judge Advocate General of the Army, 1991–93.

BRIGADIER GENERAL DAVID M. BRAHMS,
United States Marine Corps (Ret.), Staff Judge Advocate to the Commandant 1985–88.

MATERIAL SUBMITTED FOR THE RECORD BY MALCOLM NANCE, DIRECTOR, SPECIAL READINESS SERVICES, AND INTERNATIONAL DIRECTOR, INTERNATIONAL ANTI-TERRORISM CENTER FOR EXCELLENCE

SMALL WARS JOURNAL

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WATERBOARDING IS TORTURE—PERIOD

I'd like to digress from my usual analysis of insurgent strategy and tactics to speak out on an issue of grave important to Small Wars Journal readers. We, as a nation, are having a crisis of honor.

Last week the Attorney General nominee Judge Michael Mukasey refused to define waterboarding terror suspects as torture. On the same day MSNBC television pundit and former Republican Congressman Joe Scarborough quickly spoke out in its favor. On his morning television broadcast, he asserted, without any basis in fact, that the efficacy of the waterboard a viable tool to be sued on Al Qaeda suspects.

Scarborough said, "For those who don't know, waterboarding is what we did to Khalid Sheikh Mohammed, who is the Al Qaeda number two guy that planned 9/11. And he talked . . ." He then speculated that "If you ask Americans whether they think it's okay for us to waterboard in a controlled environment . . . 90% of Americans will say 'yes.'" Sensing that what he was saying sounded extreme, he then claimed he did not support torture but that waterboarding was debatable as a technique: "You know, that's the debate. Is waterboarding torture? . . . I don't want the United States to engage in the type of torture that [Senator] John McCain had to endure."

In fact, waterboarding is just the type of torture then Lt. Commander John McCain had to endure at the hands of the North Vietnamese. As a former Master Instructor and Chief of Training at the US Navy Survival, Evasion, Resistance and Escape School (SERE) in San Diego, California I know the waterboard personally and intimately. SERE staff were required undergo the waterboard at its fullest. I was no exception. I have personally led, witnessed and supervised waterboarding of hundreds of people. It has been reported that both the Army and Navy SERE school's interrogation manuals were used to form the interrogation techniques used by the US army and the CIA for its terror suspects. What was not mentioned in most articles was that SERE was designed to show how an evil totalitarian, enemy would use torture at the slightest whim. If this is the case, then waterboarding is unquestionably being used as torture technique.

The carnival-like he-said, she-said of the legality of Enhanced Interrogation Techniques has become a form of doublespeak worthy of Catch-22. Having been subjected to them all, I know these techniques, if in fact they are actually being used, are not dangerous when applied in training for short periods. However, when performed with even moderate intensity over an extended time on an

unsuspecting prisoner—it is torture, without doubt. Couple that with waterboarding and the entire medley not only "shock the conscience" as the statute forbids—it would terrify you. Most people can not stand to watch a high intensity kinetic interrogation. One has to overcome basic human decency to endure watching or causing the effects. The brutality would force you into a personal moral dilemma between humanity and hatred. It would leave you to question the meaning of what it is to be an American.

We live at a time where Americans, completely uninformed by an incurious media and enthralled by vengeance-based fantasy television shows like "24", are actually cheering and encouraging such torture as justifiable revenge for the September 11 attacks. Having been a rescuer in one of those incidents and personally affected by both attacks, I am bewildered at how casually we have thrown off the mantle of world-leader in justice and honor. Who we have become? Because at this juncture, after Abu Ghraieb and other undignified exposed incidents of murder and torture, we appear to have become no better than our opponents.

With regards to the waterboard, I want to set the record straight so the apologists can finally embrace the fact that they condone and encourage torture.

History's Lessons Ignored

Before arriving for my assignment at SERE, I traveled to Cambodia to visit the torture camps of the Khmer Rouge. The country had just opened for tourism and the effect of the genocide was still heavy in the air. I wanted to know how real torturers and terror camp guards would behave and learn how to resist them from survivors of such horrors. I had previously visited the Nazi death camps Dachau and Bergen-Belsen. I had met and interviewed survivors of Buchenwald, Auschwitz and Magdeburg when I visited Yad Vashem in Jerusalem. However, it was in the S–21 death camp known as Tuol Sleng, in downtown Phnom Penh, where I found a perfectly intact inclined waterboard. Next to it was the painting on how it was used. It was cruder than ours mainly because they used metal shackles to strap the victim down, and a tin flower pot sprinkler to regulate the water flow rate, but it was the same device I would be subjected to a few weeks later.

On a Mekong River trip, I met a 60-year-old man, happy to be alive and a cheerful travel companion, who survived the genocide and torture—he spoke openly about it and gave me a valuable lesson: "If you want to survive, you must learn that 'walking through a low door means you have to be able to bow.'" He told his interrogators everything they wanted to know including the truth. They rarely stopped. In torture, he confessed to being a hermaphrodite, a CIA spy, a Buddhist Monk, a Catholic Bishop and the son of the king of Cambodia. He was actually just a school teacher whose crime was that he once spoke French. He remembered "the Barrel" version of waterboarding quite well. Head first until the water filled the lungs, then you talk.

Once at SERE and tasked to rewrite the Navy SERE program for the first time since the Vietnam War, we incorporated interrogation and torture techniques from the Middle East, Latin America and South Asia into the curriculum. In the process, I studied hun-

dreds of classified written reports, dozens of personal memoirs of American captives from the French-Indian Wars and the American Revolution to the Argentinean 'Dirty War' and Bosnia. There were endless hours of videotaped debriefings from World War Two, Korea, Vietnam and Gulf War POWs and interrogators. I devoured the hundreds of pages of debriefs and video reports including those of then Commander John McCain, Colonel Nick Rowe, Lt. Dieter Dengler and Admiral James Stockdale, the former Senior Ranking Officer of the Hanoi Hilton. All of them had been tortured by the Vietnamese, Pathet Lao or Cambodians. The minutiae of North Vietnamese torture techniques was discussed with our staff advisor and former Hanoi Hilton POW Doug Hegdahl as well as discussions with Admiral Stockdale himself. The waterboard was clearly one of the tools dictators and totalitarian regimes preferred.

THERE IS NO DEBATE EXCEPT FOR TORTURE APOLOGISTS

1. Waterboarding is a torture technique. Period. There is no way to gloss over it or sugarcoat it. It has no justification outside of its limited role as a training demonstrator. Our service members have to learn that the will to survive requires them accept and understand that they may be subjected to torture, but that America is better than its enemies and it is one's duty to trust in your nation and God, endure the hardships and return home with honor.

2. Waterboarding is not a simulation. Unless you have been strapped down to the board, have endured the agonizing feeling of the water overpowering your gag reflex, and then feel your throat open and allow pint after pint of water to involuntarily fill your lungs, you will not know the meaning of the word.

Waterboarding is a controlled drowning that, in the American model, occurs under the watch of a doctor, a psychologist, an interrogator and a trained strap-in/strap-out team. It does not simulate drowning, as the lungs are actually filling with water. There is no way to simulate that. The victim is drowning. How much the victim is to drown depends on the desired result (in the form of answers to questions shouted into the victim's face) and the obstinacy of the subject. A team doctor watches the quantity of water that is ingested and for the physiological signs which show when the drowning effect goes from painful psychological experience, to horrific suffocating punishment to the final death spiral.

Waterboarding is slow motion suffocation with enough time to contemplate the inevitability of black out and expiration—usually the person goes into hysterics on the board. For the uninitiated, it is horrifying to watch and if it goes wrong, it can lead straight to terminal hypoxia. When done right it is controlled death. Its lack of physical scarring allows the victim to recover and be threaten with its use again and again.

Call it "Chinese Water Torture," "the Barrel," or "the Waterfall," it is all the same. Whether the victim is allowed to comply or not is usually left up to the interrogator. Many waterboard team members, even in training, enjoy the sadistic power of making the victim suffer and often ask questions as an after thought. These people are dangerous and predictable and when left unshackled, unsupervised or undetected they bring us the murderous abuses seen at Abu Ghraieb, Baghram and Guantanamo. No doubt, to avoid

human factors like fear and guilt someone has created a one-button version that probably looks like an MRI machine with high intensity waterjets.

3. If you support the use of waterboarding on enemy captives, you support the use of that torture on any future American captives. The Small Wars Council had a spirited discussions about this earlier in the year, especially when former Marine Generals Krulak and Hoare rejected all arguments for torture.

Evan Wallach wrote a brilliant history of the use of waterboarding as a war crime and the open acceptance of it by the administration in an article for Columbia Journal for Transnational Law. In it he describes how the ideological Justice Department lawyer, John Yoo validated the current dilemma we find ourselves in by asserting that the President had powers above and beyond the Constitution and the Congress:

"Congress doesn't have the power to tie the President's hands in regard to torture as an interrogation technique . . . It's the core of the Commander-in-Chief function. They can't prevent the President from ordering torture."

That is an astounding assertion. It reflects a basic disregard for the law of the United States, the Constitution and basic moral decency.

Another MSNBC commentator defended the administration and stated that waterboarding is "not a new phenomenon" and that it had "been pinned on President Bush—but this has been part of interrogation for years and years and years." He is correct, but only partially. The Washington Post reported in 2006 that it was mainly America's enemies that used it as a principal interrogation method. After World War 2, Japanese waterboard team members were tried for war crimes. In Vietnam, service members were placed under investigation when a photo of a field-expedient waterboarding became publicly known.

Torture in captivity simulation training reveals there are ways an enemy can inflict punishment which will render the subject wholly helpless and which will generally overcome his willpower. The torturer will trigger within the subject a survival instinct, in this case the ability to breathe, which makes the victim instantly pliable and ready to comply. It is purely and simply a tool by which to deprive a human being of his ability to resist through physical humiliation. The very concept of an American Torturer is an anathema to our values.

I concur strongly with the opinions of professional interrogators like Colonel Stewart Herrington, and victims of torture like Senator John McCain. If you want consistent, accurate and reliable intelligence, be inquisitive, analytical, patient but most of all professional, amiable and compassionate.

Who will complain about the new world-wide embrace of torture? America has justified it legally at the highest levels of government. Even worse, the administration has selectively leaked supposed successes of the water board such as the alleged Khalid Sheik Mohammed confessions. However, in the same breath the CIA sources for the Washington Post noted that in Mohammed's case they got information but "not all of it reliable." Of course, when you waterboard you get all the magic answers you want -because re-

member, the subject will talk. They all talk! Anyone strapped down will say anything, absolutely anything to get the torture to stop. Torture. Does. Not. Work.

According to the President, this is not a torture, so future torturers in other countries now have an American legal basis to perform the acts. Every hostile intelligence agency and terrorist in the world will consider it a viable tool, which can be used with impunity. It has been turned into perfectly acceptable behavior for information finding.

A torture victim can be made to say anything by an evil nation that does not abide by humanity, morality, treaties or rule of law. Today we are on the verge of becoming that nation. Is it possible that September 11 hurt us so much that we have decided to gladly adopt the tools of KGB, the Khmer Rouge, the Nazi Gestapo, the North Vietnamese, the North Koreans and the Burmese Junta?

What next if the waterboarding on a critical the captive doesn't work and you have a timetable to stop the "ticking bomb" scenario? Electric shock to the genitals? Taking a pregnant woman and electrocuting the fetus inside her? Executing a captive's children in front of him? Dropping live people from an airplane over the ocean? It has all been done by governments seeking information. All claimed the same need to stop the ticking bomb. It is not a far leap from torture to murder, especially if the subject is defiant. Are we willing to trade our nation's soul for tactical intelligence?

Is There a Place for the Waterboard?

Yes. The waterboard must go back to the realm of SERE training our operators, soldiers, sailors, airmen and Marines. We must now double our efforts to prepare for its inevitable and uncontrolled use of by our future enemies.

Until recently, only a few countries considered it effective. Now American use of the waterboard as an interrogation tool has assuredly guaranteed that our service members and agents who are captured or detained by future enemies will be subject to it as part of the most routine interrogations. Forget threats, poor food, the occasional face slap and sexual assaults. This was not a dignified 'taking off the gloves'; this was descending to the level of our opposition in an equally brutish and ugly way. Waterboarding will be one our future enemy's go-to techniques because we took the gloves off to brutal interrogation. Now our enemies will take the gloves off and thank us for it.

There may never again be a chance that Americans will benefit from the shield of outrage and public opinion when our future enemy uses of torture. Brutal interrogation, flash murder and extreme humiliation of American citizens, agents and members of the armed forces may now be guaranteed because we have mindlessly, but happily, broken the seal on the Pandora's box of indignity, cruelty and hatred in the name of protecting America. To defeat Bin Laden many in this administration have openly embraced the methods of by Hitler, Pinochet, Pol Pot, Galtieri and Saddam Hussein.

Not A Fair Trade for America's Honor

I have stated publicly and repeatedly that I would personally cut Bin Laden's heart out with a plastic MRE spoon if we per chance meet on the battlefield. Yet, once captive I believe that the better angels of our nature and our nation's core values would eventually convince any terrorist that they indeed have erred in their murderous ways. Once convicted in a fair, public tribunal, they would have the rest of their lives, however short the law makes it, to come to terms with their God and their acts.

This is not enough for our President. He apparently secretly ordered the core American values of fairness and justice to be thrown away in the name of security from terrorists. He somehow determined that the honor the military, the CIA and the nation itself was an acceptable trade for the superficial knowledge of the machinations of approximately 2,000 terrorists, most of whom are being decimated in Iraq or martyring themselves in Afghanistan. It is a short sighted and politically motivated trade that is simply disgraceful. There is no honor here.

It is outrageous that American officials, including the Attorney General and a legion of minions of lower rank have not only embraced this torture but have actually justified it, redefined it to a misdemeanor, brought it down to the level of a college prank and then bragged about it. The echo chamber that is the American media now views torture as a heroic and macho.

Torture advocates hide behind the argument that an open discussion about specific American interrogation techniques will aid the enemy. Yet, convicted Al Qaeda members and innocent captives who were released to their host nations have already debriefed the world through hundreds of interviews, movies and documentaries on exactly what methods they were subjected to and how they endured. In essence, our own missteps have created a cadre of highly experienced lecturers for Al Qaeda's own virtual SERE school for terrorists.

Congressional leaders from both sides of the aisle need to stand up for American values and clearly specify that coercive interrogation using the waterboard is torture and, except for limited examples of training our service members and intelligence officers, it should be stopped completely and finally—oh, and this time without a Presidential signing statement reinterpreting the law.

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