TORTURE AND THE CRUEL, INHUMAN AND DEGRADING TREATMENT OF DETAINEES: THE EFFECTIVENESS AND CONSEQUENCES OF 'ENHANCED' INTERROGATION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

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TORTURE AND THE CRUEL, INHUMAN AND DEGRADING TREATMENT OF DETAINEES: THE EFFECTIVENESS AND CONSEQUENCES OF 'ENHANCED' INTERROGATION

THURSDAY, NOVEMBER 8, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:12 a.m., in Room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Delahunt, Davis, Wasserman Schultz, Pence, and Franks.

Staff present: Heather Sawyer, Majority Counsel; Perry Applebaum, Majority Staff Director and Chief Counsel; and Joseph Gibson, Minority Chief Counsel.

Mr. NADLER. Good morning. This hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order.

Today the Subcommittee will conduct an oversight hearing on torture and the cruel, inhuman and degrading treatment of detainees— the effectiveness and consequences of enhanced interrogation. The Chair recognizes himself for 5 minutes for an opening statement.

Since news of the mistreatment and possible torture of detainees in U.S. custody first surfaced, Congress has debated and legislated on the subject of the legal and moral limits on interrogation tactics. We have been told, one, it is not torture, it is only enhanced interrogation; two, none of our business; three, it is legal; four, even if it is not legal, the President can still order it and make it legal; five, we have to do it to save American lives.

Today I hope that we can begin to get to the bottom of these difficult and important issues. A great deal of what has gone on—despite this Administration's penchant for secrecy—has become public. Methods of interrogation so appalling they sound like—and in some cases are—techniques pioneered by the Spanish Inquisition.

This conduct is unworthy of the United States and its people. It is unworthy of the United States government. It places every American, especially every American in uniform around the world, at great risk.

Does betraying our values make us safer? Do we need to do these terrible things in order to survive in this dangerous world? That has been the message we have gotten subtly and not so subtly.

I have been accused on more than one occasion of trying to make possible another 9/11 attack, an especially terrible slur given that thousands of my neighbors died in the World Trade Center on that day in my district.

People in nations do terrible things in war, but civilized nations recognized long ago that there must be limits on their conduct even during military conflicts. The United States historically has been a leader in the effort to establish and enforce the laws of war and conventions against torture.

Indeed, the United States Army Field Manual is an outstanding example of a modern military dedicated to observing international norms of conduct. It is a credit to our men and women in uniform that they continue to abide by these rules.

It is unforgivable that some civilians here in Washington seem to think that they know better, and that they need to be more brutal than our military and professional interrogators are, and that they have permission to break our laws and to break treaties that we have signed, and to try to keep it secret, because the American people and the Congress cannot be trusted with knowing what these people know and cannot be trusted with judging what these people have done in our name.

Today we will try to get at some of the facts and look behind some of the more outlandish and extravagant claims. We have a very distinguished panel with us, and I look forward to their testimony.

I yield back the balance my time.

I would now recognize our distinguished ranking minority Member, the gentleman from Arizona, Mr. Franks, for his opening statement.

Mr. FRANKS. Well, I thank you, Mr. Chairman.

Mr. Chairman, we are here today because of an article that appeared in the *New York Times,* but nowhere in that entire *New York Times* article does it state that the confidential legal advice in question authorizes torture. The article simply describes a memo that allows what the headline characterizes as severe interrogations.

On the American side of the ledger, let me be very clear, Mr. Chairman: Torture is illegal. Torture is banned by various provisions of law, including the Uniform Code of Military Justice in 19 U.S.C. 893 and the 2005 Senate amendment prohibiting the cruel, inhuman or degrading treatment of anyone in U.S. custody.

In fact, the terrorist detainees at Guantanamo Bay are treated so well in their confinement that they have gained an average of 15 pounds. They have been given the best medical and dental care and the utmost in religious accommodation, including Korans and the ability to pray 5 times a day, undisturbed, in the direction of Mecca.

However, Mr. Chairman, terrorists make no such reciprocal accommodations, either for American warfighters or innocent American civilians. To state the obvious, terrorist acts can have severe consequences, as we saw when 3,000 American lives were sud-

denly, brutally, and violently taken on September 11. Clearly, severe interrogations in some circumstances may be necessary to prevent severe consequences that involve the violent death of thousands of innocent Americans.

In fact, aggressive but legal controlled interrogations have worked well in the past and are working now to save thousands of innocent American lives. Khalid Sheikh Mohammed, the driving force behind the 9/11 attacks, stayed quiet for months after his capture.

The interrogators eventually reportedly used some version of what is called waterboarding on him for just 90 seconds, at which point he began to reveal information that helped authorities arrest at least six major terrorists, including some who were in the process of plotting the bringing down of the Brooklyn Bridge, bombing a hotel, blowing up U.S. gas stations, poisoning American water reservoirs, detonating a radioactive dirty bomb, incinerating residential high-rise buildings by igniting apartments filled with natural gas, and carrying out large-scale anthrax attacks.

Yet, the *New York Times* article seems to fault the Justice Department for "preserving the broadest possible legal latitude for harsh tactics."

Mr. Chairman, if there was ever a time for harsh tactics, it should be when we are using them to defend against attacks by bloodthirsty terrorists who are trying to kill and maim thousands of innocent Americans, including our families and children.

The *New York Times* article even concedes that the tactics it characterizes as severe interrogation simply include "interrogation methods used long in training our own American servicemen to withstand capture." We use these processes to train our own troops.

Furthermore, these methods are used infrequently. As the Administration has made clear, of the fewer than 100 terrorists who have gone through the interrogation program, fewer than a third required any special method of questioning.

The 2005 Senate amendment prohibits persons in the custody or control of the United States from being "subjected to cruel, inhuman or degrading treatment or punishment," which it defines as covering those acts prohibited under the fifth amendment, the eighth amendment and the 14th amendment to the Constitution.

The *New York Times* article itself points out that "relying on the Supreme Court finding that only the conduct that shocks the conscience was unconstitutional, a Justice Department legal opinion found that, in some circumstances, not even waterboarding was necessarily cruel, inhuman or degrading. If, for example, a suspect was believed to possess crucial intelligence about a planned terrorist attack."

Now, we do not know whether or not the Department of Justice legal opinion actually used the example of waterboarding, but the general principle expressed by the Justice Department alluded to in the article is that the Supreme Court has found that—in some circumstances—certain interrogation methods are not necessarily cruel, inhuman or degrading, if, for example, a suspect was believed to possess crucial intelligence about a planned terrorist at-

tack. In such circumstances, harsh interrogation techniques would not unconstitutionally shock the conscience.

The conclusions of the legal memoranda of the Department of Justice, as reported by the *New York Times*, were supported by none other than Senator Charles Schumer, Judge Michael Mukasey's Democratic sponsor in the Senate.

A Senate Judiciary Committee hearing on terror policy in June 8, 2004, is where Mr. Schumer of New York said the following at a Senate Judiciary Committee hearing. He said the following:

[Beginning of audio clip.]

> Mr. SCHUMER. We ought to be reasonable about this. I think there are probably very few people in this room or in America who would say that torture should never, ever be used, particularly if thousands of lives are at stake.
>
> Take the hypothetical, if we knew that there was a nuclear bomb hidden in an American city and we believe that some kind of torture—fairly severe, maybe—would give us a chance of finding that bomb before it went off, my guess is most Americans and most senators, maybe all, would say, "Do what you have to do."
>
> So it is easy to sit back in the armchair and say that torture can never be used, but when you are in the foxhole, it is a very different deal. And I respect—I think we all respect—the fact that the President is in the foxhole every day.

[End of audio clip.]

Mr. FRANKS. Mr. Chairman, if Mr. Schumer's comments were true then, then they are true now. All that has changed is the politics of the day.

Now, let me re-emphasize: Torture is illegal. The Congressional Research Service has also supported the conclusions of the Justice Department in a report that stated the following.

Mr. Chairman, could I ask indulgence for 1½ more minutes?

"The types of acts that fall within cruel, inhuman or degrading treatment or punishment may change over time. It may not always be clear. Courts have recognized that circumstances often determine whether conduct shocks the conscience and violates a person's due process right."

Mr. Chairman, it seems that the Administration, the senior Democrat from New York, and the Congressional Research Service all agreed on the relevant principles, and yet some on this Subcommittee are insisting that the Justice Department hand over its internal strategy discussions to Al Qaeda.

The *Wall Street Journal* pointed out in a recent editorial, "The reason to keep these internal strategy discussions secret is so enemy combatants cannot use them as a resistance manual. If they know what is coming, they can psychologically prepare for it. We know al-Qaeda training often involves its own forms of resistance training, and publicly describing the rules offers our enemies a roadmap to resistance."

I look forward to hearing from our witnesses today, but I must say at the outset that I believe those who would challenge aspects of the current practices and procedures governing interrogation of terrorists have an obligation to state explicitly exactly what sorts of interrogation techniques they would allow. If they cannot do

that, they will have done a disservice to those who toil daily on the front lines of freedom and have to face exceedingly difficult decisions regarding how to best protect this country.

Thank you, Mr. Chairman.

Mr. NADLER. Thank you.

And I now recognize the distinguished Chairman of the full Committee, the gentleman from Michigan.

Mr. CONYERS. Thank you, Chairman Nadler.

This is an incredibly important hearing. I commend the Chairman for bringing us together and the witnesses that are here.

And I want to point out how easy it is to slip off onto both sides of this issue, as illustrated by my friend from Arizona, Trent Franks. He points out the unquestionable illegality of it, and then cites the distinguished Senior Senator from New York, Mr. Chuck Schumer, who was a Member of this Committee before, as if his rationale makes it possible for us to have it both ways.

And that is what this hearing is about, Mr. Chairman. Now, it is going to be critical for us to figure out whether this is illegal and violates treaties, laws, we repeated it or not. And if it is illegal, it is impermissible.

Now, it is a wonderful notion for us to sit here and speculate, by using waterboarding, we will get somebody to tell the truth. That is precisely what has already been established, is that making a person think that they are facing imminent death is going to make them tell the truth. It means that you don't have much military experience when you really believe that is the case, because the military experts have already refuted that repeatedly.

And it also sounds a little bit like the posturing of the nominated position for the attorney generalship, Michael Mukasey, himself, who isn't even sure what waterboarding is. He says he knows it when he sees it, but he has to do it on a case-by-case basis. That is what makes the discussion here in this Constitution Subcommittee absolutely critical.

I ask unanimous consent, Mr. Chairman, to add into the record articles from *The Nation* magazine, Mother Jones for the record that deal with the debate around this important subject.

Mr. NADLER. Without objection.

[The information referred to follows:]

The Nation.

'Never Before!' Our Amnesiac Torture Debate

lookout

by **NAOMI KLEIN**

December 8, 2005

This article appeared in the December 26, 2005 edition of The Nation.

It was the "Mission Accomplished" of George W. Bush's second term, and an announcement of that magnitude called for a suitably dramatic location. But what was the right backdrop for the infamous "We do not torture" declaration? With characteristic audacity, the Bush team settled on downtown Panama City.

It was certainly bold. An hour and a half's drive from where Bush stood, the US military ran the notorious School of the Americas from 1946 to 1984, a sinister educational institution that, if it had a motto, might have been "We do torture." It is here in Panama and, later, at the school's new location in Fort Benning, Georgia, where the roots of the current torture scandals can be found. According to declassified training manuals, SOA students--military and police officers from across the hemisphere--were instructed in many of the same "coercive interrogation" techniques that have since migrated to Guantánamo and Abu Ghraib: early morning capture to maximize shock, immediate hooding and blindfolding, forced nudity, sensory deprivation, sensory overload, sleep and food "manipulation," humiliation, extreme temperatures, isolation, stress positions--and worse. In 1996 President Clinton's Intelligence Oversight Board admitted that US-produced training materials condoned "execution of guerrillas, extortion, physical abuse, coercion and false imprisonment."

Some of the Panama school's graduates returned to their countries to commit the continent's greatest war crimes of the past half-century: the murders of Archbishop Oscar Romero and six Jesuit priests in El Salvador, the systematic theft of babies from Argentina's "disappeared" prisoners, the massacre of 900 civilians in El Mozote in El Salvador and military coups too numerous to list here. Suffice it to say that choosing Panama to declare "We do not torture" is a little like dropping by a slaughterhouse to pronounce the United States a nation of vegetarians.

And yet when covering the Bush announcement, not a single mainstream news outlet mentioned the sordid history of its location. How could they? To do so would require something totally absent from the current debate: an admission that the embrace of torture by US officials long predates the Bush Administration and has in fact been integral to US foreign policy since the Vietnam War.

It's a history that has been exhaustively documented in an avalanche of books, declassified documents, CIA training manuals, court records and truth commissions. In his upcoming book *A Question of Torture*, Alfred McCoy synthesizes this unwieldy cache of evidence, producing an indispensable and riveting account of how monstrous CIA-funded experiments on psychiatric patients and prisoners in the 1950s turned into a template for what he calls "no-touch torture," based on sensory deprivation and self-inflicted pain. McCoy traces how these methods were field-tested by CIA agents in Vietnam as part of the Phoenix program and then imported to Latin America and Asia under the guise of police training programs.

It's not only apologists for torture who ignore this history when they blame abuses on "a few bad apples"--so too do many of torture's most prominent opponents. Apparently forgetting everything they once knew about US cold war misadventures, a startling number have begun to subscribe to an antihistorical narrative in which the idea of torturing prisoners first occurred to US officials on September 11, 2001, at which point the interrogation methods used in Guantánamo apparently emerged, fully formed, from the sadistic recesses of Dick Cheney's and Donald Rumsfeld's brains. Up until that moment, we are told, America fought its enemies while keeping its humanity intact.

The principal propagator of this narrative (what Garry Wills termed "original sinlessness") is Senator John McCain. Writing recently in Newsweek on the need for a ban on torture, McCain says that when he was a prisoner of war in Hanoi, he held fast to the knowledge "that we were different from our enemies...that we, if the roles were reversed, would not disgrace ourselves by committing or approving such mistreatment of them." It is a stunning historical distortion. By the time McCain was taken captive, the CIA had already launched the Phoenix program and, as McCoy writes, "its agents were operating forty interrogation centers in South Vietnam that killed more than twenty thousand suspects and tortured thousands more," a claim he backs up with pages of quotes from press reports as well as Congressional and Senate probes.

Does it somehow lessen the horrors of today to admit that this is not the first time the US government has used torture to wipe out its political opponents--that it has operated secret prisons before, that it has actively supported regimes that tried to erase the left by dropping students out of airplanes? That, at home, photographs of lynchings were traded and sold as trophies and warnings? Many seem to think so. On November 8 Democratic Congressman Jim McDermott made the astonishing claim to the House of Representatives that "America has never had a question about its moral integrity, until now." Molly Ivins, expressing her shock that

the United States is running a prison gulag, wrote that "it's just this one administration...and even at that, it seems to be mostly Vice President Dick Cheney." And in the November issue of *Harper's*, William Pfaff argues that what truly sets the Bush Administration apart from its predecessors is "its installation of torture as integral to American military and clandestine operations." Pfaff acknowledges that long before Abu Ghraib, there were those who claimed that the School of the Americas was a "torture school," but he says that he was "inclined to doubt that it was really so." Perhaps it's time for Pfaff to have a look at the SOA textbooks coaching illegal torture techniques, all readily available in both Spanish and English, as well as the hair-raising list of SOA grads.

Other cultures deal with a legacy of torture by declaring "Never again!" Why do so many Americans insist on dealing with the current torture crisis by crying "Never Before"? I suspect it has to do with a sincere desire to convey the seriousness of this Administration's crimes. And the Bush Administration's open embrace of torture is indeed unprecedented--but let's be clear about what is unprecedented about it: not the torture but the openness. Past administrations tactfully kept their "black ops" secret; the crimes were sanctioned but they were practiced in the shadows, officially denied and condemned. The Bush Administration has broken this deal: Post-9/11, it demanded the right to torture without shame, legitimized by new definitions and new laws.

Despite all the talk of outsourced torture, the Bush Administration's real innovation has been its in-sourcing, with prisoners being abused by US citizens in US-run prisons and transported to third countries in US planes. It is this departure from clandestine etiquette, more than the actual crimes, that has so much of the military and intelligence community up in arms: By daring to torture unapologetically and out in the open, Bush has robbed everyone of plausible deniability.

For those nervously wondering if it is time to start using alarmist words like totalitarianism, this shift is of huge significance. When torture is covertly practiced but officially and legally repudiated, there is still the hope that if atrocities are exposed, justice could prevail. When torture is pseudo-legal and when those responsible merely deny that it is torture, what dies is what Hannah Arendt called "the juridical person in man"; soon enough, victims no longer bother to search for justice, so sure are they of the futility (and danger) of that quest. This impunity is a mass version of what happens inside the torture chamber, when prisoners are told they can scream all they want because no one can hear them and no one is going to save them.

In Latin America the revelations of US torture in Iraq have not been met with shock and disbelief but with powerful déjà vu and reawakened fears. Hector Mondragon, a Colombian activist who was tortured in the 1970s by an officer trained at the School of the Americas, wrote: "It was hard to see the photos of the torture in Iraq because I too was tortured. I saw myself naked with my feet fastened together and my hands tied behind my back. I saw my own head covered with a cloth bag. I remembered my feelings--the humiliation, pain." Dianna Ortiz, an American nun who was brutally tortured in a Guatemalan jail, said, "I could not even stand to look at those photographs...so many of the things in the photographs had also been done to me. I was tortured with a frightening dog and also rats. And they were always filming."

Ortiz has testified that the men who raped her and burned her with cigarettes more than 100 times deferred to a man who spoke Spanish with an American accent whom they called "Boss." It is one of many stories told by prisoners in Latin America of mysterious English-speaking men walking in and out of their torture cells, proposing questions, offering tips. Several of these cases are documented in Jennifer Harbury's powerful new book, *Truth, Torture, and the American Way*.

Some of the countries that were mauled by US-sponsored torture regimes have tried to repair their social fabric through truth commissions and war crimes trials. In most cases, justice has been elusive, but past abuses have been entered into the official record and entire societies have asked themselves questions not only about individual responsibility but collective complicity. The United States, though an active participant in these "dirty wars," has gone through no parallel process of national soul-searching.

The result is that the memory of US complicity in far-away crimes remains fragile, living on in old newspaper articles, out-of-print books and tenacious grassroots initiatives like the annual protests outside the School of the Americas (which has been renamed but remains largely unchanged). The terrible irony of the anti-historicism of the current torture debate is that in the name of eradicating future abuses, these past crimes are being erased from the record. Every time Americans repeat the fairy tale about their pre-Cheney innocence, these already hazy memories fade even further. The hard evidence still exists, of course, carefully archived in the tens of thousands of declassified documents available from the National Security Archive. But inside US collective memory, the disappeared are being disappeared all over again.

This casual amnesia does a profound disservice not only to the victims of these crimes but also to the cause of trying to remove torture from the US policy arsenal once and for all. Already there are signs that the Administration will deal with the current torture uproar by returning to the cold war model of plausible deniability. The McCain amendment protects every "individual in the custody or under the physical control of the United States Government"; it says nothing about torture training or buying information from the exploding industry of for-profit interrogators. And in Iraq the dirty work is already being handed over to Iraqi death squads, trained by US commanders like Jim Steele, who prepared for the job by setting up similarly lawless units in El Salvador. The US role in training and supervising Iraq's Interior Ministry was forgotten, moreover, when 173 prisoners were recently discovered in a Ministry dungeon, some tortured so badly that their skin was falling off. "Look, it's a sovereign country. The Iraqi government exists," Rumsfeld said. He sounded just like the CIA's William Colby, who when asked in a 1971 Congressional probe about the thousands killed under Phoenix--a program he helped launch--replied that it was now "entirely a South Vietnamese program."

And that's the problem with pretending that the Bush Administration invented torture. "If you don't understand the history and the

depths of the institutional and public complicity," says McCoy, "then you can't begin to undertake meaningful reforms." Lawmakers will respond to pressure by eliminating one small piece of the torture apparatus--closing a prison, shutting down a program, even demanding the resignation of a really bad apple like Rumsfeld. But, McCoy says, "they will preserve the prerogative to torture."

The Center for American Progress has just launched an advertising campaign called "Torture is not US." The hard truth is that for at least five decades it has been. But it doesn't have to be.

About Naomi Klein

Naomi Klein is an award-winning journalist and syndicated columnist and the author of the international and *New York Times* bestseller *The Shock Doctrine: The Rise of Disaster Capitalism* (September 2007); an earlier international best-seller, *No Logo: Taking Aim at the Brand Bullies*; and the collection *Fences and Windows: Dispatches from the Front Lines of the Globalization Debate* (2002). **more...**

Mr. CONYERS. And I yield back the remainder of the time.

Mr. NADLER. I thank the gentleman.

In the interest of proceeding to our witnesses and mindful of our busy schedules, I would ask other Members to submit their statements for the record.

I would also like to note the presence here of Mr. Delahunt of Massachusetts, who is a Member of the full Committee, but not the Subcommittee, but who is the Chairman of a Subcommittee on the Foreign Affairs Committee that has been dealing with this Subcommittee, along with this Subcommittee, and who, along with me, will be introducing later today a bill on the subject of torture.

Without objection, all Members will have 5 legislative days to submit opening statements for inclusion in the record.

Without objection, the Chair will be authorized to declare a recess of the hearing at any point.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

The use of torture for any purpose is a violation of the most fundamental notions of human rights and an affront to human dignity. Waterboarding, physical assault, sexual abuse, extended sleep deprivation, hooding, and binding prisoners in awkward positions constitute torture from any civilized society's perspective. Additionally, it is well-established that torture is an ineffective means of obtaining information, as those being tortured will often say whatever their interrogators want to hear just to stop the torture. Nonetheless, the Bush administration insists that none of these techniques of "enhanced interrogation" constitute torture and that they are necessary to obtain information in the war on terrorism. Moreover, the Administration, through secret legal memoranda sanctioning these and other harsh techniques, continues to attempt to thwart Congress's clearly stated directive that the United States not engage in torture of detainees. It is for these reasons that I am a cosponsor of the Anti-Torture Act, which expands the McCain Amendment's requirement that Defense Department interrogators adhere to the interrogation methods of the Army Field Manual to include interrogations of all persons under U.S. custody or control.

Mr. NADLER. We will now turn to our witnesses. As we ask questions of our witnesses, the Chair will recognize Members in the order of their seniority on the Subcommittee, alternating between majority and minority, provided the Member is present when his or her turn arrives. Members who are not present when their turn begins will be recognized after the other Members have had the opportunity to ask their questions.

The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time.

Our first witness is Malcolm Nance. Mr. Nance is the founder and CEO of the International Anti-Terrorism Center of Excellence. He is a combat veteran who has served as a collections operator, analyst and interrogation in naval intelligence and a specialist in anti-terrorism and survival, evasion, resistance and escape, or SERE.

Our second witness is Steve Kleinman. Mr. Kleinman has served in the U.S. Air Force on both active duty and in the Reserve. He has served as a human intelligence officer. He was an interrogator and case officer during Operation Just Cause, as the chief of a joint combined interrogation team during Operation Desert Storm, and served as a senior adviser on interrogation to the commander of a

special operations task force during Operation Iraqi Freedom. He currently holds the rank of colonel, as the reserve senior intelligence officer at the Air Force Special Operations Command.

Our third witness is Amrit Singh. Ms. Singh is a staff attorney at the ACLU's Immigrants Rights Project, which has litigated cases relating to the torture and abuse of prisoners held in U.S. custody abroad, the Government's use of diplomatic assurances to return individuals to countries known to employ torture, and the indefinite and mandatory detention of noncitizens.

She is counsel in the case of *ACLU v. Department of Defense,* litigation under the Freedom of Information Act, for records concerning the treatment and detention of prisoners in Afghanistan, Iraq, Guantanamo Bay, and other locations abroad. She is a graduate of Cambridge University, Oxford University, and Yale Law School. The Subcommittee is grateful to her for agreeing to appear here today on very short notice.

We also have an empty chair on the panel, and I want to explain for the record why the chair is empty. The Subcommittee had invited Stuart Couch, lieutenant colonel in the U.S. Marine Corps and an appellate judge of the Navy-Marine Corps Court of Criminal Appeals. A Marine Corps pilot and veteran prosecutor, he has special knowledge and expertise on the matters we are discussing here today.

Colonel Couch was awarded the Defense Meritorious Service Medal for his work on Guantanamo prosecution. The citation, awarded by Secretary of Defense Donald Rumsfeld, described him as "steady in faith, possessed by moral courage and relentless in the pursuit of excellence."

He was assigned to prosecute, and let me just say that he had agreed to come today, and we were expecting his presence. But more on that in a moment.

Colonel Couch was assigned to prosecute Mohamedou Ould Slahi, an alleged senior al-Qaeda operative who was charged with helping to assemble the Hamburg cell, which included the hijacker who piloted United Flight 175 into the South Tower of the World Trade Center. It was a case of personal importance to Colonel Couch. His old Marine buddy, Michael "Rocks" Horrocks, had been the pilot or the co-pilot on Flight 175.

Nine months later, Colonel Couch made what he calls the toughest decision of his military career when he refused to proceed with the Slahi prosecution because he concluded that Mr. Slahi's incriminating statements, the core of the Government's case, had been taken through torture and were, therefore, inadmissible under U.S. and international law.

Mr. Slahi was subjected to threats, mock executions, and beatings. On one occasion, he was shackled and blindfolded and taken for a boat ride in the waters off Guantanamo. He assumed he was going to be killed.

His interrogators fabricated an official memorandum that purported to show that his mother was being transferred to Guantanamo and that officials had concerns about her safety, as the only woman amid hundreds of male prisoners. These facts and more are recounted in an article that appeared in the *Wall Street Journal* on March 31 of this year.

So where is this distinguished Marine hero? A Department of Defense—and I ask unanimous consent that it appear in the record at this point, without objection.

[The information referred to follows:]

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MY ONLINE JOURNAL

PAGE ONE

The Conscience of the Colonel

Lt. Col. Stuart Couch volunteered to prosecute terrorists. Then he decided one had been tortured

By JESS BRAVIN
March 31, 2007

Washington

When the Pentagon needed someone to prosecute a Guantanamo Bay prisoner linked to 9/11, it turned to Lt. Col. V. Stuart Couch. A Marine Corps pilot and veteran prosecutor, Col. Couch brought a personal connection to the job: His old Marine buddy, Michael "Rocks" Horrocks, was co-pilot on United 175, the second plane to strike the World Trade Center on Sept. 11, 2001.

The prisoner in question, Mohamedou Ould Slahi, had already been suspected of terrorist activity. After the attacks, he was fingered by a senior al Qaeda operative for helping assemble the so-called Hamburg cell, which included the hijacker who piloted United 175 into the South Tower. To Col. Couch, Mr. Slahi seemed a likely candidate for the death penalty.

"Of the cases I had seen, he was the one with the most blood on his hands," Col. Couch says.

But, nine months later, in what he calls the toughest decision of his military career, Col. Couch refused to proceed with the Slahi prosecution. The reason: He concluded that Mr. Slahi's incriminating statements -- the core of the government's case -- had been taken through torture, rendering them inadmissible under U.S. and international law.

The Slahi case marks a rare instance of a military prosecutor refusing to bring charges because he thought evidence was tainted by torture. For Col. Couch, it also represented a wrenching personal challenge. Laid out starkly before him was a collision between the government's objectives and his moral compass.

These kinds of concerns will likely become more prevalent as other high-level al Qaeda detainees come before military commissions set up by the Bush administration. Guantanamo prosecutors estimate that at least 90% of cases depend on statements taken from prisoners, making the credibility of such evidence critical to any convictions. In Mr. Slahi's case, Col. Couch would uncover evidence the prisoner had been beaten and exposed to psychological torture, including death threats and intimations that his mother would be raped in custody unless he cooperated.

ON THE TRAIL OF SLAHI

Mohamedou Ould Slahi attracted the attention of U.S. intelligence as early as 1998, years before he would be suspected of indirectly helping to round up future hijackers for the 9/11 attacks. Read more.

KEY DOCUMENTS

Read a transcript of Mr. Slahi's hearing before a Combatant Status Review Tribunal at Guantanamo Bay, Cuba.

* * *

Read the unclassified summary of the spring 2005 Schmidt-Furlow report presenting the results of a Pentagon investigation into detainee abuse at Guantanamo. The section detailing Mr. Slahi's treatment is headed "second special interrogation plan," on page 21.

* * *

Read a transcript of Mr. Slahi's Administrative Review Board hearing at Guantanamo Bay in December 2005.

* * *

See the Defense Meritorious Service Medal and citation awarded to Col. Couch by Defense Secretary Donald Rumsfeld in September 2006.

* * *

Read a letter Mr. Slahi sent to his attorneys, Nancy Hollander and Sylvia Royce, from Guantanamo Bay on Nov. 9, 2006.

Raised in Asheboro, N.C., Col. Couch, now 41 years old, was an Eagle Scout, a graduate of Duke and commander of his Naval ROTC battalion. An Anglican, Col. Couch says he counts among his heroes two men known for making a public commitment to their faith: C.S. Lewis, the academic and book author, and Dietrich Bonhoeffer, the Lutheran pastor hanged by the Nazis in 1945.

In 1987, Col. Couch joined the Marines to be a pilot before an assignment on the squadron's legal desk inspired him to enroll in law school. After graduating from Campbell University, Buies Creek, N.C., he was assigned to the team prosecuting a flight crew for a 1998 incident in Aviano, Italy, where a Marine Prowler clipped a ski gondola cable, killing 20. He still keeps in touch with relatives of the accident's victims.

Col. Couch left active duty but found private practice boring. After 9/11, he asked to return to the military. When President Bush

issued his Nov. 13, 2001 order creating the first iteration of military commissions, he volunteered.

"I did that to get a crack at the guys who attacked the United States," he says. "I wanted to do what I could do with the skill set that I had."

Col. Couch began his assignment at the Office of Military Commissions in August 2003. Soon after arriving at the commissions' offices in Crystal City, Arlington, Va., he was handed files on several Guantanamo prisoners. The Slahi file stood out as the one directly connected to 9/11.

Mr. Slahi, now 37, is the eighth of 12 children born to a Mauritanian camel herder, according to his lawyers. He studied electrical engineering in Germany and later ran an Internet cafe. Before 9/11, U.S. authorities tried unsuccessfully to link him to the so-called Millennium Plot to blow up Los Angeles International Airport. Mauritanian authorities picked him up after Sept. 11, and shipped him to Jordan, according to testimony he gave to a Guantanamo detention board.

The U.S. got a break one year later, when Ramzi Binalshibh, a top al Qaeda operative, was captured in Pakistan. He told the CIA that in 1999, Mr. Slahi sent him and three future 9/11 hijackers -- Mohammed Atta, Ziad Jarrah and Marwan al-Shehhi -- from Germany to Pakistan, and then to al Qaeda headquarters in Afghanistan. There, according to the 9/11 Commission, h assigned them to the 9/11 operation.

But beyond Mr. Binalshibh's uncorroborated statements, Col. Couch had little additional evidence.

In Crystal City, morale was sinking. Several junior officers complained that, in its rush to win convictions, the office with shaky cases, overlooking allegations of abuse and failing to protect exculpatory evidence. Allegations of torture Abu Ghraib had not yet surfaced, but some officers were starting to express their unease in private. A handful of pros quit rather than take part in trials they considered rigged.

Subsequent internal reviews found no criminal wrongdoing, but prompted a shake-up in which the then-chief military prosecutor was ousted.

Col. Couch had his own misgivings. On his first visit to Guantanamo in October 2003, he recalls preparing to watch a detainee when he was distracted by heavy-metal music. Accompanied by an escort, he saw a prisoner shackled to a back and forth, mumbling as strobe lights flashed. Two men in civilian dress shut the cell door and told Col. Couch t

"Did you see that?" he asked his escort. The escort replied: "Yeah, it's approved," Col. Couch says. The treatment res he had been trained to resist if captured; he never expected Americans would be the ones employing it.

The incident "started keeping me up at night," he says. "I couldn't stop thinking about it."

Col. Couch contacted a senior Marine lawyer who had been an informal mentor. The officer said: "I know there's a l and that's why we need people like yourself in this situation," Col. Couch recalls. "You're shirking your responsibility issues and you're not willing to do something about it."

"He was looking for a sanity check, asking: 'Am I crazy or does this smell bad to you?' " the Marine lawyer, now a re general recalls. "My response was, 'yeah, this is a problem and you need to work this problem.' "

Col Couch's wife, Kim, a nurse, says her husband began to rue each coming week. "I called it the Sunday Night Blue worse and worse."

Under the Pentagon structure, Col. Couch had no direct contact with his potential defendants, but received instead su statements. In late 2003, Mr. Slahi suddenly started corroborating the Binalshibh allegations.

"After a while, I just couldn't keep up with him because things were coming out every day," Col. Couch says. "He wa "Who's Who" of al Qaeda in Germany and all of Europe."

The sanitized reports reaching Col. Couch made no mention of what spurred this cooperation. Intelligence agencies r the information they had on the prisoner.

A colleague let on that Mr. Slahi had begun the "varsity program" -- an informal name for the Special Interrogation P then-Defense Secretary Donald Rumsfeld for the most recalcitrant Guantanamo prisoners.

Col. Couch says he and his case investigator, an agent detailed from the Naval Criminal Investigative Service, began table" effort to find out what made Mr. Slahi break. Col. Couch says he was suspicious about the sudden change, and know all the circumstances before bringing the case to trial.

"It was like Hansel and Gretel, following bread crumbs," Col. Couch says. The agent spoke to intelligence officers an direct knowledge, pursued documents with details of the interrogations, and passed his findings on to the prosecutor.

What emerged, Col. Couch believed, was torture.

Initially, Mr. Slahi said he was pleased to be taken to Guantanamo. "I thought, this is America, not Jordan, and they a

beat you," he told his detention hearing. But after Mr. Binalshibh named him as a top al Qaeda member, "my life...ch dramatically," Mr. Slahi said.

The account of Mr. Slahi's treatment has been pieced together from interviews with government officials, official rep as well as Mr. Slahi's attorneys and Col. Couch. Col. Couch wouldn't discuss classified information, including aspect interrogation involving the CIA.

Initially, Mr. Slahi denied having al Qaeda connections, frustrating his interrogators. On May 22, 2003, a Federal Bu Investigation interrogator said, "this was our last session; he told me that I was not going to enjoy the time to come."

In the following weeks, Mr. Slahi said, he was placed in isolation, subjected to extreme temperatures, beaten and sex The detention-board transcript states that at this point, "the recording equipment began to malfunction." It summarize missing testimony as discussing "how he was tortured while here at GTMO by several individuals."

Mr. Slahi was put under more intense interrogation. On July 17, 2003, a masked interrogator told Mr. Slahi he had dr detainees dig a grave, according to a 2005 Pentagon report into detainee abuse at Guantanamo, headed by Air Force l Schmidt and Army Brig. Gen. John Furlow. (Gen. Furlow later testified that Mr. Slahi was "the highest value detaine "the key orchestrator of the al Qaeda cell in Europe.")

The interrogator said he saw "a plain, pine casket with [Mr. Slahi's] identification number painted in orange lowered Three days later, the interrogator told Mr. Slahi "that his family was 'incarcerated,'" the report said.

On Aug. 2, an interrogation chief visited the prisoner posing as a White House representative named "Navy Capt. Co said. He gave the prisoner a forged memorandum indicating that Mr. Slahi's mother was being shipped to Guantanam had concerns about her safety as the only woman amid hundreds of male prisoners, according a person familiar with

"Capt. Collins" told Mr. Slahi "that if he wanted to help his family he should tell them everything they wanted to kno continued.

The same day, an interrogator made a "death threat" to Mr. Slahi, Gen. Schmidt said in testimony to the Senate Arme Committee. According to records cited by the report, the interrogator advised Mr. Slahi "to use his imagination to thi possible scenario he could end up in."

In his detention-board testimony, Mr. Slahi provided further details, as did other people familiar with the matter. Tw shackled, blindfolded Mr. Slahi to a boat for a journey into the waters of Guantanamo Bay. The hour-long trip appare to think he was to be killed and, in fear, he urinated in his pants.

After making land, "two Arab guys" took him away, beat him and turned him over to a "doctor who was not a regula of the team," Mr. Slahi said. The doctor "was cursing me and telling me very bad things. He gave me a lot of medicat sleep," Mr. Slahi said. After two or three weeks, Mr. Slahi said, he broke, "because they said to me, either I am going continue to do this."

On Sept. 8, 2003, according to the Pentagon report, Mr. Slahi asked to see "Capt. Collins." Mr. Slahi corroborated th Binalshibh and provided an extensive list of other al Qaeda names.

In later testimony to the Army Inspector General, Gen. Schmidt said he concluded that the interrogation chief "was a "zealot" who "essentially was having a ball." A Pentagon spokesman says the interrogation chief, who invoked his ri self-incrimination and didn't testify, was not court-martialed. The spokesman declines to say what discipline he recei

Military and law-enforcement officials started warning the Bush administration in 2002 that its unorthodox interroga which the president has called "tough" and "necessary," were hurting the ability of prosecutors to bring cases to cour the concern to arise in particular with 14 "high-value" al Qaeda suspects transferred to Guantanamo in September afi CIA interrogation. They include Khalid Sheikh Mohammed, the man who claimed responsibility for planning 9/11. S including Mr. Mohammed, have alleged they were tortured. Pentagon reviews documented cruel and degrading treati declining to classify such abuse as torture.

"There's a serious question of whether they will ever be able to legitimately prosecute these individuals," if necessary produced through torture, says retired Maj. Gen. Thomas Romig, who served as the Army's top uniformed lawyer, th general, from 2001 to 2005.

Gen. Romig, recently appointed dean at Washburn University law school, Topeka, Kan., says within the government that we have got to get intelligence out of these guys, and we don't care we if we prosecute them or not."

The military commissions trying the cases of foreign terrorists don't hew to the rules that govern civilian courts or co 2006 Military Commissions Act permits use of evidence obtained before Dec. 30, 2005, through "cruel, inhuman or d methods, although it bars any obtained by torture.

Top U.S. government officials won't specify which practices cross the line beyond stating that prisoners should be tre Such ambiguity has forced decision-making down the chain of command. Even Guantanamo's chief prosecutor, Air F Davis, says he's still not sure how the United Nations Convention Against Torture and Other Cruel, Inhuman or Degr Punishment applies to military commissions.

A report into abuses at Guantanamo concluded that the "threats" made to Mr. Slahi "do not rise to the level of torture U.S. law" but did violate the Uniform Code of Military Justice, which governs the conduct of the armed forces. The I how the report reached that conclusion.

By May 2004, Col. Couch had most of the picture relating to Mr. Slahi's treatment, and faced a painful dilemma: Co conviction based on statements he thought were taken through torture, as permitted by President Bush's November 2 commission order citing a "state of emergency?" Or was he nonetheless bound by the Torture Convention, which bar taken "as a result of torture...as evidence in any proceedings."

The convention says "no exceptional circumstances whatsoever" can be cited to justify torture, which it defines broa federal statute implementing the treaty contains additional definitions, including the "threat of imminent death" or "s or suffering," as well as the actual or threatened use of "mind-altering substances or other procedures calculated to di the senses or the personality."

Col. Couch was uneasy over interfering with plans to try Mr. Slahi, given the detainee's history. He turned to others including Marine lawyers he knew and his wife's two brothers -- one a Protestant theologian, the other a retired Mari Because of the classified nature of the information, Col. Couch didn't give them specifics about the case, and spoke o Their advice conflicted.

"He wanted to be a good solider and yet on the other hand felt his duty to his God to be the greatest duty that he had," Wilder, director of educational ministries at the Center for Christian Study, Charlottesville, Va. "He said more than o human beings are created in the image of God and as a result we owe them a certain amount of dignity."

Mr. Wilder says he agreed with Col. Couch's concerns. "Stuart, you need to pray about this," Mr. Wilder says he adv

Briant Wilder, the other brother and a former Marine lieutenant, urged Col. Couch to instead consider the context of terrorism, where obtaining intelligence could be crucial to protecting innocent lives.

"I have to also say that I don't agree with everybody's definition of torture," Mr. Wilder says. "If some of the things t torture were torture, then I was tortured at Officer Candidate School at Quantico. And so was he."

In May 2004, attending a baptism at Virginia's Falls Church, Col. Couch joined the congregation in reciting the litur concluded, as is typical, with the priest asking if congregants will "respect the dignity of every human being."

"When I heard that, I knew I gotta get off the fence," Col. Couch says. "Here was somebody I felt was connected to to get information, we had compromised our ability to prosecute him." He says, in retrospect, the tipping point came letter about Mr. Slahi's mother. "For me, that was just, enough is enough. I had seen enough, I had heard enough, I h said: 'That's it.'"

In May 2004, at a meeting with the then-chief prosecutor, Army Col. Bob Swann, Col. Couch dropped his bombshell Swann that in addition to legal reasons, he was "morally opposed" to the interrogation techniques "and for that reaso participate in [the Slahi] prosecution in any manner."

Col. Swann was indignant, Col. Couch says, replying: "What makes you think you're so much better than the rest of

Col. Couch says he slammed his hand on Col. Swann's desk and replied: "That's not the issue at all, that's not the poi

An impassioned debate followed, the prosecutor recalls. Col. Swann said the Torture Convention didn't apply to mil Col. Couch asked his superior to cite legal precedent that would allow the president to disregard a treaty. The meetin Swann asked the prosecutor to turn over the Slahi files so the case could be reassigned, Col. Couch recalls.

Through a spokesman, Col. Swann declined to comment for this article. Col. Swann retired from the Army in 2005. I civilian employee, to serve as deputy chief prosecutor, playing a major role in commission operations.

Other trial prosecutors in the office say they respected Col. Couch's decision. "I thought his conduct was perfectly ap agreed with his approach," says retired Navy Cmdr. Scott Lang, now a state prosecutor in Virginia.

A week later, Col. Couch put his position in writing and asked that his concerns be raised with the Pentagon's genera J. Haynes II. The legal adviser to the military commissions office, Air Force Brig. Gen. Thomas Hemingway, says: " not informed of the issues raised by Lt. Col. Couch nor did he expect to be told about all internal operations within t Military Commissions."

Gen. Hemingway says Col. Swann "was aware the interrogation techniques used were under investigation at the time expressed misgivings about the information he had received. Col. Swann removed Lt. Col. Couch from the case to as concerns."

In a written statement, the Defense Department says it "cannot comment on Mohamedou Ould Slahi because he is un would be inappropriate for us to discuss ongoing cases that are pending prosecution."

In March 2005, Col. Couch considered quitting, frustrated by how the office was run. Lt. Col. Daniel Daugherty, one best friends, urged him in an email to reconsider. "Personally I would rather be fired than quit," Col. Daugherty wro your ethics is (in my view) better than walking away."

With the Slahi prosecution on ice, Col. Couch continued work on other cases -- including another "varsity program" Mohammed al-Qahtani, who, according to army report overseen by Gens. Schmidt and Furlow, had been made to w underwear, leashed, forced to perform dog tricks and berated as a homosexual. Col. Couch refused to use statements these interrogations. But he determined the prosecution could continue based on a separate source of evidence compi before Mr. Qahtani's Guantanamo interrogation.

He was also one of the prosecutors who worked on the case of Salim Hamdan, Mr. bin Laden's former driver. Mr. Hamdan's case would eventually go to the Supreme Court, which used the case to strike down the administration's first attempt to create a military commissions system.

Col. Davis, the Guantanamo chief prosecutor, says Mr. Slahi remains among the 75 or so prisoners potentially eligible for trial. He says no one is assigned to the case and that it's unclear when Mr. Slahi will be charged, due to Col. Couch's concerns and a staff shortage.

Today, Mr. Slahi is detained in private quarters at Guantanamo Bay, with a television, a computer and a tomato patch to tend, according to people familiar with the matter. "Since 2004, I really have no complaints," Mr. Slahi told a military detention board.

He has asked to be resettled in the U.S., an option Pentagon officials have not ruled out. Col. Davis declines to comment on plea negotiations. A lawyer representing Mr. Slahi, Nancy Hollander, says that if charged with a crime, Mr. Slahi would plead not guilty.

In a September 2006 letter to his attorneys, Mr. Slahi joked about their request that he detail his discussions with interrogators.

"Are you out of your mind! How can I render uninterrupted interrogation that has been lasting the last 7 years. That's like asking Charlie Sheen how many women he dated," Mr. Slahi writes. He divided his time into pre- and post-torture eras. In the latter, he wrote, "I yessed every accusation my interrogators made."

Col. Couch had been assigned to the prosecutor's office for a three year stint. When it came to an end, Col. Couch decided not to renew his assignment. He says there was no attempt to remove him from office.

After he left, Defense Secretary Rumsfeld awarded Col. Couch the Defense Meritorious Service Medal for his work on Guantanamo prosecutions as is typical when officers move on to new assignments. The citation describes him as "steady in faith, possessed by moral courage and relentless in the pursuit of excellence."

In August 2006, he took on a new assignment as a judge on the Navy-Marine Corps Court of Criminal Appeals.

Col. Couch says he's still frustrated that the actions of the U.S. government helped ruin the case against Mr. Slahi. "I'm hoping there's some non-tainted evidence out there that can put the guy in the hole," he says.

Write to Jess Bravin at jess.bravin@wsj.com

Mr. NADLER. So where is this distinguished Marine hero? The Department of Defense ordered him, that is ordered in the military sense, not to testify at this hearing today.

Although we have asked the Department of Defense numerous times to confirm this order and the reasons for it, we have yet to receive the courtesy of a written confirmation. The only confirmation the Committee has received is a letter yesterday from Colonel Couch at 6:15 p.m.

The letter reads as follows: "I regret to inform you that I have been advised by the Department of the Navy Office of Legislative Affairs that the Department of Defense has decided I cannot testify before the Subcommittee on the Constitution, Civil Rights and Civil Liberties oversight hearing scheduled for tomorrow. I have been advised that this decision was made by the Assistant Secretary of Defense for Legislative Affairs after consultation with the Department of Defense general counsel."

"The directive not to testify was communicated to the Department of the Navy chief of legislative affairs, who advised me of it through official channels. Please be advised that I am willing to testify before the Subcommittee in the event I am allowed to do so by the Department of Defense."

I ask unanimous consent that Colonel Couch's letter appear in the record at this point, without objection.

[The information referred to follows:]

DEPARTMENT OF THE NAVY
NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
1014 N Street SE Suite 11E-100
Washington, DC 20374

IN REPLY REFER TO

November 7, 2007

VIA FACSIMILE 202-225-4299

The Honorable John Conyers, Jr.
Chairman, House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Chairman Conyers,

I regret to inform you that I have been advised by the Department of the Navy Office of Legislative Affairs that the Department of Defense has decided I cannot testify before the Subcommittee on the Constitution, Civil Rights and Civil Liberties oversight hearing scheduled for tomorrow.

I have been advised that this decision was made by the Assistant Secretary of Defense for Legislative Affairs, after consultation with the Department of Defense General Counsel. The directive not to testify was communicated to the Department of the Navy Chief of Legislative Affairs, who advised me of it through official channels.

Please be advised that I am willing to testify before the subcommittee in the event I am allowed to do so by the Department of Defense.

Very respectfully,

V. Stuart Couch

V. STUART COUCH
Lieutenant Colonel, U.S. Marine Corps

Mr. NADLER. So Colonel Couch's chair remains empty today. I find it outrageous that the Administration has again chosen to stonewall an investigation into some very serious charges and the outlandish claim that torture—or whatever you want to call it—is legitimate and in our national interests.

Colonel Couch was invited to appear in his personal capacity and to discuss matters that he has already discussed at public speeches and that have already appeared in the *Wall Street Journal*. These are not state secrets.

I am very tired of the secrecy and stonewalling by this Administration. It is disgraceful that the Administration would allow Colonel Couch to make after-dinner speeches about the subject matter, to talk at length to the press about the subject matter, but prohibited from testifying before a duly constituted Committee of the Congress.

It is disgraceful that the Congress and the American people must rely on leaks, lawsuits and Freedom of Information Act requests to find out what our own Government is doing.

The issues before this Subcommittee today could not be more serious. And, once again, when important questions need to be answered, we are told that no one has the right to question the Administration.

I can assure everyone that we will continue our work, that Colonel Couch will eventually be able to take a seat at the witness table. Indeed, it may very well be that we will invite the people or subpoena the people who ordered him not to testify to come here and explain why they did so.

I regret that this honorable American who has served his Nation with such distinction has been treated so disgracefully by this Administration.

And now I want to turn to the witnesses who are with us today. Your written statements will be made part of the record in its entirety. I would ask that each of you now summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow and then red when the 5 minutes are up.

Mr. FRANKS. Mr. Chairman?

Mr. NADLER. Before we begin, it is customary for the Committee to swear in its witnesses.

If you could please stand and raise your right hand to take the oath.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct, to the best of your knowledge, information and belief?

Thank you. You may be seated.

Let the record reflect that the witnesses answered in the affirmative.

You may be seated.

I recognize the distinguished Ranking Member at his request.

Mr. FRANKS. Mr. Chairman, I could have done this in my question time, and I apologize, but I just wanted to ask unanimous consent to place the *Wall Street Journal* article explaining why Colonel Couch is not here today.

He was advised by William J. Haynes at the Pentagon that he is determined that, as a sitting judge and former prosecutor, it is improper for him to testify about matters still pending in the military court system, and that he was not to appear before the Committee today because he is a prosecutor in ongoing cases. And if that happened in civilian life, the same situation would occur.

Mr. NADLER. Without objection, the article will be part of the record, although I will point out that it is interesting that that objection is made to his testimony here, but that objection is not made to his talking about the same matters to the *Wall Street Journal* or to after-dinner speeches and that a colonel, who was a senior prosecutor, should be judged completely able to know what he is allowed to say and what he is not allowed to say.

[The information referred to follows:]

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November 8, 2007

Pentagon Forbids Marine to Testify

By JESS BRAVIN

November 8, 2007; Page A9

WASHINGTON -- The Bush administration blocked a Marine Corps lawyer from testifying before Congress today that severe techniques employed by U.S. interrogators derailed his prosecution of a suspected al Qaeda terrorist.

The move comes as the administration seeks to tamp down concerns about detainee policies that flared up after attorney general-designate Michael Mukasey declined to tell senators whether he believes that waterboarding, or simulated drowning of prisoners, constitutes torture. The debate has focused on whether severe interrogation practices, some of which critics consider to be torture, are legal, moral or effective.

FROM THE ARCHIVE

• Page One: The Conscience of the Colonel[1] 03/31/07

In a House Judiciary subcommittee hearing today, Lt. Col. V. Stuart Couch, a former Guantanamo Bay prosecutor, was set to testify regarding another concern that has long troubled uniformed lawyers: Regardless of their accuracy, statements obtained under torture or certain other forms of duress are inadmissible in legal proceedings. Because most evidence against Guantanamo prisoners comes from detainee statements, convictions hinge on whether they can be used in court.

Asked last week to appear before the panel, Col. Couch says he informed his superiors and that none had any objection.

Yesterday, however, he was advised by email that the Pentagon general counsel, William J. Haynes II, "has determined that as a sitting judge and former prosecutor, it is improper for you to testify about matters still pending in the military court system, and you are not to appear before the Committee to testify tomorrow." Mr. Haynes is a Bush appointee who has overseen the legal aspects of the Pentagon's detention and interrogation policies since Sept. 11, 2001. The email was reviewed by The Wall Street Journal.

Pentagon spokesman Bryan Whitman said it was Defense Department policy not to let prosecutors speak about pending cases.

House Judiciary Committee Chairman John Conyers Jr. (D., Mich.) said he was "outraged that the Defense Department is refusing to allow Lt. Col. Couch to testify before this committee, in his personal capacity and not on


Stuart Couch

behalf of the government, concerning what he saw and heard relating to interrogation practices at Guantanamo." The subcommittee chairman, Rep. Jerrold Nadler (D., N.Y.), said he would consider seeking a subpoena for Col. Couch if the Pentagon doesn't allow him to testify.

As reported in a page-one article in The Wall Street Journal, Col. Couch refused to bring charges against Mohamedou Ould Slahi after determining the detainee's incriminating statements had been obtained through what Col. Couch considered to be torture. Mr. Slahi, who is alleged to have helped recruit several of the Sept. 11 hijackers, is one of two high-value Guantanamo prisoners who were authorized to undergo "special" interrogation methods. In addition to allegedly suffering physical beatings and death threats, Mr. Slahi was led to believe that the U.S. had taken his mother hostage and might ship her to Guantanamo Bay, where she would be the sole female amid hundreds of male prisoners.

Col. Couch, now a military judge, said he reluctantly concluded it would be impossible to prosecute Mr. Slahi without relying on tainted evidence. The decision was particularly difficult, Col. Couch said, because a Marine buddy, Mike Horrocks, had been the co-pilot on the hijacked United 175, which struck the World Trade Center -- and because Col. Couch believed Mr. Slahi indeed had taken part in the Sept. 11 conspiracy. After Col. Couch advised superiors that the tainted evidence made it impossible to proceed against Mr. Slahi, the prosecution was shelved. A Pentagon investigation concluded the abuses didn't meet the legal definition of torture.

Write to Jess Bravin at jess.bravin@wsj.com[2]

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Mr. NADLER. The first witness is Mr. Nance.

TESTIMONY OF MALCOLM W. NANCE, ANTI-TERRORISM/ COUNTER-TERRORISM INTELLIGENCE SPECIALIST, FORMER SERE INSTRUCTOR

Mr. NANCE. Mr. Chairman and Members of the Committee, it is an honor to be here before you today. My name is Malcolm Wrighton Nance. I am a former member of the U.S. military intelligence community, a retired U.S. Navy senior chief cryptologic technician, Arabic interpreter. I have served honorably for 20 years.

While serving my Nation, I had the honor to be accepted for duty as an instructor at the U.S. Navy Survival, Evasion, Resistance and Escape School, SERE School, in North Island Naval Air Station California. I served in the capacity as an instructor and master training specialist in wartime prisoner of war, peacetime hostile government detainee, and terrorist hostage survival programs.

At SERE, one of my most serious responsibilities was to employ, supervise or witness dramatic and highly kinetic coercive interrogation methods through hands-on, live demonstrations and a simulated captive environment, which inoculated our students to the experience of a high-intensity stress and duress.

Some of these coercive physical techniques have been identified in the media as enhanced interrogation techniques. The most severe of those employed by SERE was waterboarding.

Within the four SERE schools and the Joint Personnel Recovery community, the waterboard was rightly used as a demonstration tool that revealed to our students the techniques of brutal authoritarian enemies. SERE trained tens of thousands of servicemembers of its historical use by the Nazis, the Japanese, the North Koreans, Iraq, the Soviet Union, the Khmer Rouge, and the North Vietnamese.

SERE emphasized that the enemies of democracy and rule of law often ignored human rights, defied the Geneva Conventions, and have subjected our men and women to grievous physical and psychological harm. We stressed that enduring these calumnies will allow our soldiers to return home with honor.

The SERE community was designed over 50 years ago to show that, as a torture instrument, waterboarding is a terrifying, painful and humiliating tool that leaves no physical scars and which can be repeatedly used as an intimidation tool. Waterboarding has the ability to make the subject answer any question with a truth, a half-truth, or outright lie in order to stop the procedure. Subjects usually resort to all three, often in rapid sequence.

Most media representations or recreations of the waterboarding are inaccurate, amateurish, and dangerous improvisations which do not capture the true intensity of the act. Contrary to popular opinion, it is not a simulation of drowning. It is drowning.

In my case, the technique was so fast and professional that I didn't know what was happening until the water entered my nose and throat. It then pushes down into the trachea and starts to process a respiratory degradation. It is an overwhelming experience that induces horror, triggers a frantic survival instinct. As the

event unfolded, I was fully conscious of what was happening: I was being tortured.

Proponents claim that American waterboarding is acceptable because it is done rarely, professionally and only on truly deserving terrorists, like 9/11 planner Khalid Sheikh Mohammed. Media reporting revealed that tough interrogations were designed to show we had taken the gloves off and may also have led directly to prisoner abuse and murder in both Iraq and Afghanistan.

The debate surrounding waterboarding has been lessons to a question of "he said, she said" politics, but I believe that some of it view it as now acceptable, and that is symptomatic of a greater problem. We must ask ourselves, has America unwittingly relinquished its place as guardian of human rights and the beacon of justice?

Do we now agree that our unique form of justice, based on the concepts of fairness, honor, and the unwavering conviction that America is better than its enemies should no longer govern our intelligence agencies? This has now been clearly called into question.

On the morning of September 11, at the green field next to the burning Pentagon, I was a witness to one of the greatest displays of heroism in our history. American men and women, both military and civilian, repeatedly and selflessly risked their lives to save those around them. At the same time, hundreds of American citizens gave their lives to save thousands in both Washington, D.C., and New York City. It was a painful day for all of us.

But does the ultimate goal of protecting America require us to adopt policies that shift our mindset from righteous self-defense to covert cruelty? Does protecting America at all costs mean sacrificing the Constitution, our laws, and the Bill of Rights in order to save it? I do not believe that.

The attacks of September 11 were horrific, but they did not give us the right to destroy our moral fabric as a Nation or to reverse a course that for 200 years led the world toward democracy, prosperity and guaranteed the rights of billions to live in peace.

We must return to using our moral compass in the fight against al-Qaeda. Had we done so initially, we would have greater success to stamp out terrorist activity and perhaps would have captured Osama bin Laden long ago.

And the rest of my statement is in the record.

[The prepared statement of Mr. Nance follows:]

PREPARED STATEMENT OF MALCOM W. NANCE

Chairman Conyers and members of the committee.

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While serving my nation, I had the honor to be accepted for duty as an instructor at the US Navy Survival, Evasion, Resistance and Escape (SERE) school in North Island Naval Air Station, California. I served in the capacity as an instructor and Master Training Specialist in the Wartime Prisoner-of-War, Peacetime Hostile Government Detainee and Terrorist Hostage survival programs.

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Some of these coercive physical techniques have been identified in the media as Enhanced Interrogation Techniques. The most severe of those employed by SERE was waterboarding.

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The SERE community was designed over 50 years ago to show that, as a torture instrument, waterboarding is a terrifying, painful and humiliating tool that leaves no physical scars and which can be repeatedly used as an intimidation tool.

Waterboarding has the ability to make the subject answer any question with the truth, a half-truth or outright lie in order to stop the procedure. Subject usually resort to all three, often in rapid sequence. Most media representations or recreations of the waterboarding are inaccurate, amateurish and dangerous improvisations, which do not capture the true intensity of the act. Contrary to popular opinion, it is not a simulation of drowning—it is drowning.

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It also may have led directly to prisoner abuse and murder in both Iraq and Afghanistan.

The debate surrounding waterboarding has been lessened to a question of he-said, she-said politics. But, I believe that as some view it as now acceptable, that it is symptomatic of a greater problem.

We must ask ourselves, has America unwittingly relinquished its place as the guardian of human rights and the beacon of justice? Do we now agree that our unique form of justice, based on the concepts of fairness, honor, and the unwavering conviction that America is better than its enemies, should no longer govern our intelligence agencies?

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Does protecting America 'at all costs' mean sacrificing the Constitution, our laws and the Bill of Rights in order to save it? I do not believe that.

The attacks of September 11 were horrific, but they did not give us the right to destroy our moral fabric as a nation or to reverse a course that for two hundred years led the world towards democracy, prosperity and guaranteed the rights of billions to live in peace.

We must return to using our moral compass in the fight against Al Qaeda. Had we done so initially we would have had greater success to stanch out terrorist activity and perhaps would have captured Osama bin Laden long ago. Shocking the world by bragging about how professional our brutality was counter-productive to the fight. There are ways to get the information we need. Perhaps less-kenetic interrogation and indoctrination techniques could have brought more Al Qaeda members and active supporters to our side. That edge may be lost forever.

More importantly, our citizens once believed in the justness of our cause. Now, we are divided. Many have abandoned their belief in the fight because they question the commitment to our own core values. Allied countries, critical to the war against Al Qaeda, may not supply us with the assistance we need to bring terrorists to jus-

tice. I believe that we must reject the use of the waterboard for prisoners and captives and cleanse this stain from our national honor.

ATTACHMENT A

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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 tor-

turers 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 hundreds 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 remember, 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.

Mr. NADLER. I thank the witness.

Colonel Kleinman, you are recognized for 5 minutes.

TESTIMONY OF STEVEN KLEINMAN, COLONEL, USAFR, INTELLIGENCE AND NATIONAL SECURITY SPECIALIST, SENIOR INTELLIGENCE OFFICER/MILITARY INTERROGATOR

Mr. KLEINMAN. Mr. Chairman, Members of the Committee, I would like to begin by expressing my thanks for this unique opportunity and privilege to testify before you.

American policy on the interrogation of detainees is an exceptionally complex issue that cannot be adequately addressed absent a clear understanding of the vital elements involved.

The challenge before us and the panel is then to respectfully offer for your consideration the sum total of our insights, concerns and recommendations that are informed by our collective professional experience. And at the end of the day, if we can advance a more thoughtful and objective examination of this matter, then our time shall have been worth it.

It has been most unfortunate that the public debate about interrogation in general, and torture in specifics, has too often reflected emotion and unfounded presuppositions, rather than experience and rigorous study. Perhaps the most notable example of this has been the so-called ticking bomb scenario.

As the parties argue the legal and moral implications of using coercive methods to extract information that, according to this scenario, would save thousands of lives, there has been erroneous presupposition that both sides seem far too willing to accept, and that is that coercive is ultimately an effective means of obtaining reliable intelligence information. This conclusion is, in my professional opinion, unequivocally false.

Many Americans understandably are angry and seek revenge after the vicious attacks on 9/11, and they have therefore fallen prey to the presupposition that excessive physical, emotional, and psychological pressures are necessary to compel terrorists or insurgents to answer an interrogator's question.

Further, this form of interrogation has been viewed as an appropriate form of punishment that the detainees deserve for their malicious acts. Such beliefs are equally untrue.

I believe it might be useful if I were to present a brief summation of what over 20 years of operational experience has taught me about the arcane discipline of interrogation.

Interrogation is the systematic questioning of a detained individual who is thought to possess information of intelligence value. In instances where that individual resists questioning, the interrogator will seek to shape the nature of the relationship through the use of various principles of persuasion, many of which are little more than those highly adapted forms of those that we see in advertising campaigns on a daily basis.

By carefully managing the competitive exchange of information in the often contentious relationship with a source, the interrogator seeks to obtain an operational constructive level of cooperation or accord, which often manifests itself and primarily manifests itself in the form of the source's willingness to answer useful questions.

While most interrogations bear absolutely no resemblance to that depicted on TV or in the movies, interrogation does, in fact, have many of the same qualities of virtual reality. Within this self-contained scenario, the interrogator plays a multifaceted role informed by fluency and interpersonal communications, human behavior, culture, linguistics, history, politics, negotiation theory and technology.

And by skillfully blending this broad-based knowledge into a viable strategy, the interrogator seeks to gain access to the source's accurate and comprehensive memory of personality, places, plans

and pursuit. Just as signals intelligence seeks to capture electronic emanations or imagery intelligence tries to capture photographic evidence, interrogation seeks to virtually capture the accurate and reliable memory a source might have on specific facts.

So a key challenge that is often overlooked in interrogation is the fragility of human memory. The literature on eyewitness testimony testifies to that fact.

My colleagues in behavioral sciences have cautioned me that a number of factors, including the excessive stress, insufficient sleep, and other environmental influences can result in substantial memory deficits. These are manifested not just in memory gaps, but in unattended fabrication.

But this suggests that, after exposure to psychological, emotional, and physical stress, the source is more likely to report a combination of real and imagined facts, believing sincerely that both are true, but ultimately being sincerely wrong on many counts. From an intelligence perspective, this is exceptionally problematic.

As an interrogator, I am also acutely interested in the efficacy of any strategy employed to secure a detainee's cooperation, for obtaining the cooperation is key to exploring the full range of their knowledge ability. I cannot force a source to tell me what he knows, but I can foster a relationship where that source, to various degrees, is ready and willing to do so.

I do so through a decision—or perhaps more accurately a series of decisions—that his interests will be best served by providing accurate and comprehensive answers to my questions. I have not broken him; that is an ill-defined and illusory term that does not at all describe what happens when an interrogator gains a source's cooperation.

Rather than effective interrogation unfolding as a string, rather, an interrogation does unfold as a string of breakthroughs through negotiations, and an understanding of conflicting perspectives and ultimately by earning their trust. And it may surprise many of the Members to find that trust, along with technical competence and enlightened cultural finesse, has proven to be the most effective means of getting reliable information.

Coercion, in contrast, has been decidedly ineffective. It has been used as a result of our exposure to the communist interrogation model that unfolded after World War II and essentially scared the intelligence community. We performed diligent studies to understand how that model works, which was then transformed into a program of training with fear, but unfortunately that migrated into the repertoire of our terrorists.

I have the rest of my testimony as submitted as written form. Thank you.

[The prepared statement of Mr. Kleinman follows:]

PREPARED STATEMENT OF STEVEN M. KLEINMAN

STATEMENT BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES

HEARING ON *TORTURE AND THE CRUEL, INHUMAN, AND DEGRADING TREATMENT OF DETAINEES: THE EFFECTIVENESS AND CONSEQUENCES OF "ENHANCED" INTERROGATION*

NOVEMBER 8TH, 2007

SUBMITTED BY:
STEVEN M. KLEINMAN

Mr. Chairman, members of the Committee, I would like to begin by expressing my thanks for the privilege to testify before you on this critical subject.

American policy on the interrogation of detainees is an exceptionally complex issue, one that cannot be adequately addressed nor satisfactorily resolved absent a clear understanding of the vital elements involved. The challenge before the three of us then is to respectfully offer for your consideration the insights, concerns, and recommendations informed by our collective professional experience. At the end of the day, if we can advance a more thoughtful and objective examination of U.S. policy in this matter, then our time shall have been worth it.

I am confident my colleagues seated next to me would readily agree that the debate in both the public and private sector over the nature of U.S. policy on the interrogation of detainees has, unfortunately, too often reflected emotion and unfounded presumption rather than experience and rigorous study. A notable example of this emerges during discussions surrounding the so-called "Ticking Bomb" scenario. As the parties argue the legal and moral implications of using coercive methods to extract information that, according to the scenario, would save thousands of lives, there is an erroneous pre-supposition both sides seem too willing to accept: *that coercion is ultimately an effective means of obtaining reliable intelligence information.*

This conclusion is, in my professional opinion, unequivocally false. Nonetheless, many Americans, understandably angry and seeking some manner of revenge after the vicious attacks of 9/11, have fallen prey to the proposition that excessive physical, psychological, and emotional pressures are necessary to compel terrorists or insurgents to answer an interrogator's questions. Further, this form of interrogation is too often viewed as an inevitable and appropriate means of

punishment the detainees deserve for their malicious acts. Such beliefs are equally untrue.

Before addressing the concept of what has been described as "enhanced" interrogation methods, I believe it might be useful to present a brief summation of what over twenty years of operational experience has taught me about interrogation, both what it is and, perhaps more importantly, what it is not.

Interrogation is essentially the systematic questioning of a detained individual who is thought to possess information of intelligence value. In instances where that individual resists questioning, the interrogator will seek to shape the nature of the relationship through the use of various principles of persuasion, many of which are little more than highly adapted forms of those creatively incorporated into the ubiquitous advertising campaigns that have become a staple of modern life.

By carefully managing both the competitive exchange of information and the often contentious relationship with the source, the interrogator seeks to attain an operationally constructive level of cooperation or accord from the source. Within the context of interrogation, that cooperation manifests itself in the form of a source's provision of useful answers to pertinent questions.

While most interrogations bear absolutely no resemblance to that depicted on television or in motion pictures, interrogation does, in fact, have many of the qualities of virtual reality. Within this self-contained scenario, the interrogator plays a multifaceted role wherein he or she must be able to call upon their knowledge of communication, behavior, culture, linguistics, history, politics, negotiation theory, technology, and, depending on the nature of the engagement, a host of other disciplines.

By skillfully blending this broad-based knowledge into a viable strategy, the interrogator seeks to gain access to the source's accurate and comprehensive memory of personalities, places, plans, and pursuits. Just as signals intelligence seeks to capture electronic emanations from the ether and imagery intelligence seeks to capture photographic or computer-generated images from overhead platforms, interrogation seeks to virtually capture the contents of a source's memory of selected facts.

One challenge that has been overlooked in the design of interrogation methods is the natural fragility of memory. One need only review the literature on eyewitness testimony to grasp the potential shortfalls that are likely to be encountered when asking an individual to fully and accurately recall specific information. My colleagues in the behavioral sciences have cautioned me that a

number of factors may significantly undermine an individual's recall ability. Excessive stress, insufficient sleep, poor nutrition, and other environmental influences can result in substantial memory deficits. This is manifested not only as gaps in memory—that is, difficulty in recalling specific events—but also in unintended fabrication. What this suggests is that after exposure to the various environmental stressors, the source will be more likely to report some combination of real and imagined facts, believing sincerely that both are true, but ultimately being sincerely wrong on many counts. From an intelligence collection perspective, this is exceptionally problematic.

With a sense for how coercive forms of interrogation—extensive isolation, forced nudity, stress positions—may substantially diminish a detainee's ability to provide accurate and complete answers, my next concern focuses on the role of coercion in obtaining a constructive level of cooperation.

Experience has taught me that to explore the full scope of individual's knowledgeability, that individual must take an active role. I cannot force a source to tell me all he knows; I can, however, foster a relationship wherein the source is, to various degrees, ready and willing to do so. I can learn as much as possible about the individual's interests, his constituencies, and his sources of power and construct a maneuver strategy that aligns his desired outcomes with my own. In many important ways, my approach to winning cooperation is not unlike a recruitment.

Cooperation means that I, as an interrogator, have successfully established a relationship with a source wherein that source has made the decision—or, more correctly, a series of decisions—that his interests will likely be best served by providing accurate and comprehensive answers to my questions. I have not *broken* him. That ill-defined and illusory term does not at all describe what occurs when an interrogator gains the source's cooperation. Rather, an effective interrogation unfolds as a string of *breakthroughs* involving new levels of insight and understanding, the resolution of conflicting perspectives through a manner of negotiation, and, ultimately the establishment of a degree of trust. I am quite certain it will surprise many when I state that in addition to technical competence and enlightened cultural finesse, trust has proven to be one of the most effective means of building an operationally useful relationship with a wide array of sources.

Toward that same end, coercion is decidedly ineffective. Coercive interrogation methods are wholly counterproductive in winning the hearts and minds of detainees and, I might add, the populations from which they emerge. Instead, coercive methods are almost certain to create what is perhaps the most callous form of degradation one human can inflict upon another: humiliation.

STATEMENT BEFORE THE
HOUSE JUDICIARY COMMITTEE
NOVEMBER 8TH, 2007

S.M. KLEINMAN

Humiliation is an inevitable product of any form of torture. The intractable link between the two has been explored in a number of excellent books published since 9/11, including *What Terrorists Want* by Dean Louise Richardson of the Radcliffe Institute for Advanced Study and *The Looming Tower* by the journalist Lawrence Wright. Humiliation's insidious effects invariably cascade well beyond the scope of a single event. It first promotes forced compliance rather than cooperation inside the interrogation booth then generates animosity rather than respect on a global scale.

I would like to focus for a moment on the overriding objective of any intelligence interrogation: to solicit *cooperation*…not force *compliance*. It is essential that we understand the profound legal, moral, and operational difference between these two qualities. Cooperation as a desired end state has informed my personal interrogation strategy and it was a foundational teaching point I highlighted for the American and foreign intelligence officers I taught when I served as the director of the Air Force Combat Interrogation Course.

In contrast, compliance is the objective of those who wish to control the thoughts and behavior of the person under interrogation. A prime example of compliance is the production of propaganda. Gaining compliance, vice cooperation, was the driving force behind what the U.S. Intelligence Community once described as the Communist Interrogation Model.

During the conflicts in Korea and Vietnam, our adversaries routinely employed this model in an effort to force American prisoners-of-war to make statements against not only their own interests—admitting, for example, to using nerve gas against civilian populations—but also against the national security interests of the U.S. These alleged *confessions*, however, were largely false. The statements made by these POWs on the world stage contained little more than misinformation. And misinformation is the antithesis of what an interrogator should be pursuing: information of intelligence value.

As knowledge of the dynamics behind the Communist Model of Interrogation emerged, the U.S. Government began to work diligently to develop a body of counter-strategies to aid American servicemen and women who might be subjected to this model while detained by a foreign power. The SERE community (Survival, Evasion, Resistance, and Escape), comprised of some of the most dedicated and focused professionals I've ever had the honor of working with, mastered the nuances of this coercive form of interrogation, enabling U.S. military personnel to gain realistic practical experience in effectively resisting such measures in the course of controlled exercises. Stress positions, isolation,

exposure to the elements, and even the waterboard were necessary elements of SERE training.

Tragically, many of these same tactics have migrated into the repertoire of interrogators seeking intelligence information. Their place in SERE training is indisputable; their role in interrogation in untenable. As American interrogators, we seek cooperation that leads to intelligence, not compliance that too often leads to misinformation.

In summary, I offer this fundamental construct of intelligence interrogation, one comprised of two overriding tasks:

First, an interrogator must maneuver in a manner that will gain the cooperation of a source so that a full exploration of their knowledgeability can be effected.

Secondly, this task must be achieved in a manner than does not undermine the source's ability to accurately and comprehensively recall information of intelligence value.

My studies of the many of the most effective interrogators in contemporary history—from the legendary *Luftwaffe* interrogator Hanns Scharff and the unsung American heroes of the U.S. strategic interrogation program conducted at nearby Fort Hunt, VA, during World War II to the CIA's Orrin DeForest and Army Colonel Stuart Harrington during the Vietnam War to the exceptionally effective interrogators I've had the honor of serving with in OPERATIONS JUST CAUSE, DESERT STORM and IRAQI FREEDOM—have convinced me that coercion fails miserably on both counts.

Mr. NADLER. Thank you.
Ms. Singh, you are recognized for 5 minutes.

TESTIMONY OF AMRIT SINGH, STAFF ATTORNEY, ACLU

Ms. SINGH. Mr. Chairman and Members of the Subcommittee, it is an honor to be here today.

My name is Amrit Singh. I am a staff attorney at the ACLU, the American Civil Liberties Union, and I am counsel to plaintiffs in the lawsuit *ACLU v. Department of Defense,* a Freedom of Information Act lawsuit challenging the withholding of documents by the Federal Government relating to the torture and abuse of prisoners held in United States custody abroad.

While we continue to litigate the improper withholding of information, the FOIA lawsuit has forced the Government to publicly disclose more than 100,000 pages of its documents relating to the treatment of prisoners held in United States custody abroad, and I have personally reviewed all of these documents.

Some of the key documents obtained through that litigation are collected in a book, "Administration of Torture," which is available to the Committee.

Three key sets of facts emerge from the FOIA documents that are collected and described in the book, "Administration of Torture." First, Government documents demonstrate that an official interrogation policy that deviates from longstanding legal prohibitions on torture and cruel, inhuman and degrading treatment opens the door to widespread abuse and torture.

This fact is evident from a comparison of the Abu Ghraib photographs leaked to the press in April of 2004 and the interrogation directives issued by Secretary Rumsfeld for use in Guantanamo Bay in December 2002. When the photographs were published, senior Administration officials insisted that the conduct depicted therein was that of rogue soldiers and that the abuse of prisoners was not a matter of policy.

However, many of the Abu Ghraib photographs show the same kind of abusive methods—such as stress positions, the removal of clothing, and the exploitation of individual phobias, such as the fear of dogs—that Defense Secretary Donald Rumsfeld had earlier authorized for use on prisoners at Guantanamo Bay.

Several other Abu Ghraib photographs depicted prisoners wearing women's underwear on their head and being dragged across the floor on a leash. Those were the same methods that interrogators had applied on Guantanamo prisoner Mohamed al-Kahtani in the fall of 2002.

Government documents similarly show that techniques such as stress positions, prolonged isolation, sleep and light deprivation, forced nudity, and intimidation with military dogs, all of which were authorized for use at Guantanamo Bay by Secretary Rumsfeld—also came to be used by interrogators in Afghanistan.

While much of the widespread abuse described in Government documents reflect direct applications of authorized interrogation methods, some of this abuse is also attributable to force drift, a phenomenon described by former Navy General Counsel Alberto Mora, as a tendency for the escalation of force used to extract infor-

mation once an initial barrier against the use of improper force has been breached.

By issuing directives that violated laws requiring humane prisoner treatment and declaring that the gloves were off, senior officials in the chain of command in effect gave interrogators license to apply still more abusive variations of authorized enhanced interrogation methods.

And autopsy reports received through the FOIA litigation confirm that force drift, in fact, did take place. The autopsy reports show that prisoners held in United States custody abroad in Iraq and Afghanistan were suffocated and beaten to death and subjected to torture under any definition of that term.

Second, clinical descriptions of enhanced interrogation methods conceal the severity of the mental and physical damage caused by these methods. For example, in one Government document, an FBI agent describes the devastating consequences of interrogations in which military personnel employed "environmental manipulation" techniques. Environmental manipulation refers to exposure to extreme temperatures.

And the FBI agent observes, "On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they had urinated and defecated on themselves and had been left there for 18 to 24 hours or more. On one occasion, the air conditioning had been turned so far down and the temperature was so cold in the room that the barefooted detainee was shaking with cold. On another occasion, the air conditioning had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair lying next to him. He had apparently literally been pulling his own hair out throughout the night."

Lawyers for Majid Khan, a Guantanamo detainee, have been barred from discussing the enhanced interrogation techniques applied on him and the torture that was he subjected to. At a minimum, Congress should seek a classified briefing with those lawyers to find out precisely what those enhanced interrogation methods entailed.

And finally, seasoned FBI officials documented the position that enhanced interrogation methods are not only illegal, but they are also ineffective. In fact, FBI officials repeatedly told Defense Department officials that rapport-building methods were far more effective at producing reliable intelligence.

In sum, the dangers associated with employing such methods are plainly evident from the Government's own documents. I therefore urge you to ensure that all Federal agencies and their personnel comply with longstanding legal prohibitions on torture and cruel, inhuman and degrading treatment, and to enact legislation that would extend the application of the United States Army Field Manual to agencies other than the Defense Department, including the CIA.

Thank you.

[The prepared statement of Ms. Singh follows:]

PREPARED STATEMENT OF AMRIT SINGH

LEGAL DEPARTMENT
IMMIGRANTS'
RIGHTS PROJECT

Testimony of Amrit Singh
Staff Attorney at the Immigrants' Rights Project of the American Civil Liberties Foundation

Before
The House Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Oversight Hearing on Torture and the Cruel, Inhuman, and Degrading Treatment of Detainees: The Effectiveness and Consequences of "Enhanced" Interrogation

November 8, 2007

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Thank you for inviting me to testify before the Subcommittee. On behalf of the American Civil Liberties Union (ACLU), its hundreds of thousands of members and activists, and fifty-three affiliates nationwide, I urge you to ensure that all federal agencies and their personnel comply with longstanding legal prohibitions on torture and cruel inhuman and degrading treatment, and to enact legislation that would extend the application of the United States Army Field Manual to agencies other than the Defense Department, including the Central Intelligence Agency.[1]

My name is Amrit Singh. I am a staff attorney at the Immigrants' Rights Project at the ACLU. Over the last four years, I have litigated several cases relating to the rights of non-citizens generally, and more specifically to the torture and abuse of prisoners held in United States custody abroad. I am counsel to plaintiffs in *Ali v. Rumsfeld*, a lawsuit brought against Defense Secretary Donald Rumsfeld and other high-ranking officials by Iraqi and Afghan

[1] *See* Dep't of Army, FM 2-22.3, Human Intelligence Collector Operations (September 2006), *available at* http://www.fas.org/irp/doddir/army/fm2-22-3.pdf; Dep't of the Army, Field Manual 34-52: Intelligence Interrogation (1992), available at http://www.fas.org/irp/doddir/army/fm34-52.pdf, Ch. 8 (entitled "Approach Techniques and Termination Strategies") and Ch. 9 (entitled "Questioning").

former prisoners for the torture they suffered in U.S. military custody. Since 2003, I have been counsel to plaintiffs in *ACLU v. Dep't of Defense*, a lawsuit brought against the Defense Department, Central Intelligence Agency (CIA), Office of Legal Counsel (OLC) and other federal agencies, challenging their withholding under the Freedom of Information of Act (FOIA) of numerous documents relating to the treatment of prisoners held in United States custody abroad. Defendant agencies in that lawsuit continue to withhold numerous critical documents which remain the subject of ongoing litigation, including an August 2002 OLC memorandum that reportedly advised the CIA about the lawfulness of waterboarding and other harsh interrogation methods. In addition, OLC confirmed in court papers filed just this week that it is withholding three May 2005 memoranda that relate to CIA "enhanced" interrogation methods, which according to news reports include methods such as waterboarding, head slapping, and exposure to frigid temperatures.[2]

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While we continue to litigate the improper withholding of information, the FOIA lawsuit has forced the government to publicly disclose more than 100,000 pages of its documents relating to the treatment of prisoners held in U.S. custody overseas, all of which I have personally reviewed. Some of the key documents we've obtained through the FOIA are collected in a new book, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond*, (Jameel Jaffer and Amrit Singh, Columbia University Press, 2007), which provides a detailed account of what took place in overseas U.S. detention centers and why. In reliance on government documents—including interrogation directives, FBI e-mails, autopsy reports, and investigative files—we show in the book that abuse of prisoners was not limited to Abu Ghraib but was pervasive in U.S. detention facilities in Iraq and Afghanistan and at Guantánamo Bay.

The government documents collected in the book also show that senior officials directly and indirectly caused the widespread and systemic abuse and torture of prisoners held in United States custody abroad, in large part by violating long established legal prohibitions against torture and cruel, inhuman and degrading treatment; that clinical descriptions of "enhanced" interrogation methods conceal the severity of the mental and physical damage caused by these methods; and that "enhanced" interrogation methods are not only illegal, they are also ineffective. In sum, the dangers associated with employing such methods are plainly evident from the government's own documents.

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[2] Scott Shane, David Johnston & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2005

I. Government Documents Demonstrate That Policies That Violate Longstanding Legal Prohibitions on Torture And Cruel Inhuman And Degrading Treatment Are Likely To Result In The Widespread Abuse And Torture Of Prisoners

Few principles are as well settled in domestic and international law as those that prohibit the torture and cruel inhuman or degrading treatment of prisoners. *See* Detainee Treatment Act of 2005 Pub. L No. 108-148, 119 Stat. 2680, §1003 (Dec. 30, 2005) ("No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment."); 18 U.S.C. § 2340A (prohibiting acts outside the United States that are specifically intended to cause "severe physical or mental pain or suffering"); 18 U.S.C. § 2441 (making it a criminal offense for U.S. military personnel and U.S. nationals to commit grave breaches of Common Article 3 of the Geneva Convention); 18 U.S.C. § 113 (prohibiting assaults committed "within the special maritime and territorial jurisdiction of the United States"); Uniform Code of Military Justice, ("UCMJ"), 10 U.S.C. § 801 et seq. (2000 ed. and Supp. III) (prohibiting U.S armed forces from engaging in cruelty, oppression or maltreatment of prisoners (art. 93), or assaulting prisoners (art. 128)); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51(1984), *entered into force* June 26, 1987 (treaty ratified by the United States in 1994, prohibiting torture and cruel, inhuman or degrading treatment or punishment); Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, art. 3 (mandating the "humane treatment" of prisoners of war and prohibiting "violence to life and person," including "cruel treatment and torture," and "outrages upon personal dignity, in particular, humiliating and degrading treatment"); Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 3 (requiring the same for civilian detainees). The prohibition against torture is considered to be a *jus cogens* norm, meaning that no derogation is permitted from it under any circumstances. [3]

Government documents demonstrate that an official policy that permits deviations from these longstanding prohibitions on torture and cruel inhuman and degrading treatment opens the door to widespread prisoner abuse and

[3] Restatement (Third) of the Foreign Relations Law of the United States § 331 cmt. e & § 702(d) cmt. n (1987).

torture. This fact is evident from a comparison of the Abu Ghraib photographs leaked to the press in April of 2004 and the interrogation directives issued by Secretary Rumsfeld for use in Guantánamo Bay. Several of these images showed naked and hooded prisoners stacked on top of one another; shackled in obviously painful positions to railings, doors, and metal racks; and cowering before unmuzzled military dogs. When the photographs were published, senior administration officials insisted that the conduct depicted therein was that of "rogue" soldiers, and that the abuse of prisoners was not a matter of policy. However, many of the Abu Ghraib photographs reflected the same kinds of abusive methods—such as "stress positions," the "removal of clothing," and the exploitation of "individual phobias" such as the "fear of dogs"—that Defense Secretary Donald Rumsfeld had earlier authorized for use on prisoners at Guantánamo Bay. *See* Administration of Torture at 18, 8, A-83, A-96. Several other Abu Ghraib photographs depicted prisoners wearing women's underwear on their heads and being dragged across the floor on a leash. Those were the same methods that interrogators had employed against Guantánamo prisoner Mohammed al Qahtani, in the fall of 2002. *See id.* at 18, 8-9, A-116, 117. Government documents similarly show that techniques such as stress positions, prolonged isolation, sleep and light deprivation, forced nudity, and intimidation with military dogs--all of which were authorized for use at Guantánamo by Secretary Rumsfeld in December 2002--also came to be used by interrogators in Afghanistan. *See id.* at 19.

While much of the widespread abuse described in government documents reflects direct applications of authorized interrogation methods, some of this abuse is also attributable to "force drift," a phenomenon described by former Navy General Counsel Alberto Mora as the tendency for the "escalation" of force used to extract information "once [an] initial barrier against the use of improper force [has] been breached." *See id.* at 30-31. By issuing directives that violated laws requiring humane prisoner treatment and declaring that the "gloves were off," the chain of command in effect gave interrogators license to apply still more abusive variations of authorized interrogation methods. *See id.* at 31.

Thus, in November 2003, interrogators in Iraq killed Abed Hamed Mowhoush, a fifty-six-year-old Iraqi general, during an interrogation in which they put him into a sleeping bag and tied him up with electrical cord. An Army officer reprimanded for Mowhoush's death asserted that the "sleeping bag technique" was a "stress position" that he considered to have been authorized by a "September 10 2003 CJTF-7 order," and that "[i]n SERE, this position is called close confinement and can be very effective." *See id.* at 33, A-246-47. Numerous autopsy reports attribute the homicide deaths of prisoners in U.S.

custody to "strangulation," "asphyxia," and "blunt force injuries." *See id.* at 29-30. One such autopsy report records the homicide death of a 47-year old Iraqi male who was shackled to the top of a doorframe with a gag in his mouth at the time he lost consciousness and became pulseless and died. *See id.* at 30. Other autopsy reports confirm that in December 2002, U.S. interrogators at Bagram Collection Point in Afghanistan killed two prisoners by subjecting them to "blunt force injuries." *See id.* at 19, 20, A-185-86, 187.

II. Clinical Descriptions Of Enhanced Interrogation Methods Conceal The Severity Of The Mental And Physical Harm Inflicted By These Methods

Documents obtained through the FOIA litigation further demonstrate that clinical descriptions of so-called "enhanced" interrogation methods are deceptive, and that these innocuous sounding methods in fact are likely to cause severe mental and physical damage, especially when employed in combination with other methods.

This is evident from an FBI agent's description of the devastating effects of interrogations in which military personnel employed "environmental manipulation"—i.e. exposure to extreme temperatures—in combination with other techniques:

> On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated and defecated on themselves, and had been left there for 18–24 hours or more[.] On one occa[s]ion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold[.] When I asked the MP's what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved[.] On another occasion, the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees[.] The detainee was almost unconscious on the floor, with a pile of hair next to him[.] He had apparently been literally pulling his own hair out throughout the night[.]

See id. at 16.

Similarly, FBI agents who observed Guantánamo prisoner al-Qahtani after he had been subjected to "intense isolation for over three months . . . in a cell that was always flooded with light" documented the fact that he "was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end)." *See id.* at 7-8.

In explaining his objection to coercive interrogation methods such as "deprivation of light and auditory stimuli" and "using detainees' individual phobias to induce stress" authorized in December 2002 by Secretary Rumsfeld for use at Guantánamo, former Navy General Counsel Alberto Mora wrote:

> What did "deprivation of light and auditory stimuli" mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer? What precisely did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in? Not only could individual techniques applied singly constitute torture, I said, but also the application of combinations of them must surely be recognized as potentially capable of reaching the level of torture.

See id. at 13. In this context, news reports of secret OLC memoranda authorizing the CIA to use combinations of enhanced interrogation methods are particularly troubling.[4]

III. Government Documents Demonstrate That "Enhanced" Interrogation Methods Are Not Only Illegal, They Are Also Ineffective.

Government documents procured through the FOIA litigation confirm that so called "enhanced" interrogation methods are not only illegal, they are also ineffective at producing reliable intelligence. Seasoned law enforcement officials have documented their position that aggressive interrogation methods—including so called "SERE" (Survival, Evasion, Resistance, Escape) methods employed by the Defense Department at Guantánamo Bay—"were not effective or producing intel that was reliable." *See Administration of Torture* at 10, A-130, 131.

[4] Scott Shane, David Johnston & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2005

One FBI document—a memorandum written by the FBI's Behavioral Analysis Unit (BAU)—states that, between late October and mid-December 2002, FBI personnel stationed at Guantánamo Bay concluded that interrogators with the Defense Intelligence Agency's Defense Human Intelligence Services (DHS) "were being encouraged at times to use aggressive interrogation tactics in [Guantánamo] which are of questionable effectiveness and subject to uncertain interpretation based on law and regulation." The BAU memorandum continues:

> Not only are these tactics at odds with legally permissible interviewing techniques used by U.S. law enforcement agencies in the United States, but they are being employed by personnel in GTMO who have little, if any, experience eliciting information for judicial purposes. The continued use of these techniques has the potential of negatively impacting future interviews by FBI agents as they attempt to gather intelligence and prepare cases for prosecution.

See Administration of Torture at 11, A-133.

In another document that appears to have been forwarded to Guantánamo Commander Major General Geoffrey Miller in late 2002, the FBI also complained about aggressive interrogation methods proposed by the Defense Intelligence Agency's Defense Human Intelligence Services (DHS). The document states: "Many of DHS's methods are considered coercive by Federal Law Enforcement and [Uniform Code of Military Justice] standards." The same document continues: "[R]eports from those knowledgeable about the use of these coercive techniques are highly skeptical as to their effectiveness and reliability." *See Administration of Torture* at 11, A-140.

The FBI's concerns about aggressive interrogation techniques were shared by some military personnel, including the Defense Department's Criminal Investigation Task Force ("CITF"), a component responsible for investigating crimes committed by detainees before their capture. There were two occasions when CITF personnel met with Major General Miller to object to interrogation methods on the grounds that these methods would not help in prosecuting detainees. *See id.* at 12. On December 2nd, 2002, Colonel Brittain Mallow, CITF's commander at Guantánamo, prohibited CITF agents from "participat[ing] in the use of any questionable techniques" and ordered them to report "all discussions of interrogation strategies" to CITF leadership. *Id.* at 12, A-145. Two weeks later, a CITF Special Agent in Charge wrote a memorandum

questioning a December 10th Defense Department document titled "SERE interrogation Standard Operating Procedure." The memo suggests that CITF personnel shared the FBI's concern that information obtained through SERE techniques would be unreliable and also unusable in court proceedings. "Both the military and [law enforcement agencies] share the identical mission of obtaining intelligence in order to prevent future attacks on Americans," the memo states. "However, [law enforcement agencies] ha[ve] the additional responsibility of seeking reliable information/evidence from detainees to be used in subsequent legal proceedings." *Id.* at 12-13, A-18.

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CONCLUSION

For all of the foregoing reasons, I urge you to ensure that all federal agencies and their personnel comply with longstanding legal prohibitions on torture and cruel inhuman and degrading treatment, and to enact legislation that would extend the application of the United States Army Field Manual to agencies other than the Defense Department, including the Central Intelligence Agency.

Mr. NADLER. Thank you very much, Ms. Singh.

Now, since Colonel Couch could not be with us, in lieu of his direct testimony, I will read into the record paraphrases of his testimony that he told the *Wall Street Journal.* And I will limit it to the customary 5 minutes for his testimony.

"When the Pentagon needed someone to prosecute a Guantanamo Bay prisoner linked to 9/11, it turned to Lieutenant Colonel V. Stuart Couch. A Marine Corps pilot and veteran prosecutor, Colonel Couch brought a personal connection to the job: His old Marine buddy was a co-pilot on United 175, the second plane to strike the World Trade Center on September 11, 2001."

"But, 9 months later, in what he calls the toughest decision of his military career, Colonel Couch refused to proceed with the prosecution of Mr. Slahi. The reason: He concluded that Mr. Slahi's incriminating statements, the core of the Government's case, had been taken through torture, rendering them inadmissible under U.S. and international law.

"Colonel Couch had his own misgivings. On his first visit to Guantanamo in October 2003, he recalls preparing to watch an interrogation of a detainee when he was distracted by heavy metal music. Accompanied by an escort, he saw a prisoner shackled to a cell floor, rocking back and forth, mumbling as strobe lights flashed. Two men in civilian dress shut the cell door and told Colonel Couch to move along.

"'Did you see that?' he asked his escort. The escort replied, 'Yeah, it's approved.' Col. Couch says the treatment resembled the abuse he had been trained to resist if captured; he never expected Americans would be the ones employing it.

"The incident started keeping me up at night. I couldn't stop thinking about it.

"Colonel Couch says he and his case investigator, an agent detailed from the Naval Criminal Investigative Service, began an 'under the table' effort to find out what made Mr. Slahi 'break' after he'd suddenly begun to testify to all kinds of things after an extended period of not speaking. Colonel Couch says he was suspicious about the sudden change and felt he needed to know all the circumstances before bringing the case to trial.

"'It was like Hansel and Gretel, following bread crumbs, Colonel Couch says. The agent spoke to intelligence officers and others with more direct knowledge, pursued documents with details of the interrogations, and passed his findings on to the prosecutor. What emerged, Col. Couch believed, was torture.

"Initially, Mr. Slahi said he was pleased to be taken to Guantanamo. 'I thought, this is America, not Jordan, and they are not going to beat you,' he told his detention hearing. But after Mr. Binalshibh named him as a top al-Qaeda member, 'my life changed dramatically,' Mr. Slahi said.

"Initially, Mr. Slahi denied having al-Qaeda connections, frustrating his interrogators. On May 22, 2003, an FBI interrogator said, 'This was our last session; he told me that I was not going to enjoy the time to come.'

"In the following weeks, Mr. Slahi said, he was placed in isolation, subjected to extreme temperatures, beaten and sexually humiliated. The detention board transcript states that at this point,

'the recording equipment began to malfunction.' It summarizes Mr. Slahi's missing testimony as discussing 'how he was tortured while here at Gitmo by several individuals.'

"Mr. Slahi was put under more intense interrogation. On July 17, 2003, a masked interrogator told Mr. Slahi he had dreamed of watching detainees dig a grave, according to a 2005 Pentagon report into detainee abuse at Guantanamo. The interrogator said he saw 'a plain, pine casket with Mr. Slahi's identification number painted in orange lowered into the ground.' Three days later, the interrogator told Mr. Slahi 'that his family was incarcerated,' the report said.

"On Aug. 2, an interrogation chief visited the prisoner posing as a White House representative named 'Navy Captain Collins,' the report said. He gave the prisoner a forged memorandum indicating that Mr. Slahi's mother was being shipped to Guantanamo and that officials had concerns about her safety, as the only woman amid hundreds of male prisoners, according a person familiar with the matter.

"In his detention-board testimony, Mr. Slahi provided further details, as did other people familiar with the matter. Two men took a shackled, blindfolded Mr. Slahi to a boat for a journey into the waters of Guantanamo Bay. The hour-long trip apparently led Mr. Slahi to think he was going to be killed and, in fear, he urinated in his pants.

"After making land, 'two Arab guys' took him away, beat him, and turned him over to a doctor who was not a regular doctor but part of the team,' Mr. Slahi said. The doctor 'was cursing me and telling me very bad things. He gave me a lot of medication to make me sleep,' Mr. Slahi said. After two or 3 weeks, Mr. Slahi said, he broke, 'because they said to me, either I am going to talk or they will continue to do this.'"

And that is some of what Colonel Couch would have testified to, but unfortunately he couldn't be here now.

We have a vote on. And before we begin, I think it is a good time to recess the hearing now so the Members can go vote.

We will do the first 5 minutes of questioning. We can still do that and get in the vote.

And I will recognize, at his request, the Ranking Member, Mr. Franks, for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman. I do appreciate the courtesy.

Mr. Chairman, I guess the first thing that I want to try to say here is to remind everyone that torture, under the laws of the United States, is illegal and should be illegal. And even Mr. Schumer's comments, when the word torture was used, those were his words, not mine.

I do not support, nor will I ever support, torture by the United States. I think it is very important that we define those terms, and I commend the Chairman for the efforts here to define those terms specifically and in practice, because it is important that we know that.

The reason that I have made statements supporting severe interrogations is because I truly seek only to protect the innocent in this country from being tortured, from being killed. And it is too bad

that we live in a world with the kind of evil that kneels someone down before a television camera and cuts their head off with a hacksaw while the victims scream for mercy.

It is a tragedy that beggars description, and I wish it did not exist. Unfortunately, it does. And sometimes we have to take measures to protect the innocent that we do not like, and I find myself in that untenable position.

I would ask the Committee here for a little bit of diplomatic immunity, because I have to deal with a subject here that is rather difficult for me to bring up, but I find it unfortunate that sometimes the tenor of this Committee hearing, in this particular situation, is to somehow couch the Administration and Republicans, in general, as being for torture and the other side being, somehow that they are trying to protect us, constitutionally and otherwise.

And yet, Mr. Chairman, this is the Constitution Committee. This is the Committee dedicated to protecting the constitutional rights of Americans. And not once during this term have we even considered the personhood and protection of unborn children.

And yet last Congress, we had a bill before the Congress that said that, if torturous techniques were used to abort a child, that the mother would be offered anesthetic for the child. And most of the Members of this Committee that voted on that voted against it, against allowing anesthetic for procedures that, if done to an animal, would be illegal.

So in the context of this Committee hearing and this particular subject, it is kind of outrageous to me to see that somehow Republicans have suggested that we are for torture, because we are not. I wish the evil of jihadist terrorism did not exist in the world, and I would do anything to change that.

But, unfortunately, we face a reality where it is an evil ideology dedicated to the destruction of the innocent and our way of life. And sometimes we have to do what is necessary within the bounds of human conduct to do what is necessary to stop them from torturing our citizens.

Mr. CONYERS. Would the gentleman yield?

Mr. FRANKS. Yes, sir, I would.

Mr. CONYERS. You just compromised your statement just then by saying, first, you are unequivocally against torture and then sometimes you have to do what you have to do.

Mr. FRANKS. I said within the bounds of human conscience, which I believe excludes torture, Mr. Chairman. And reclaim the time.

So the bottom line here is that I am sorry that sometimes we have deal with such difficult subjects, and I am going to go ahead and refer to one of my questions here. I think I have said what I needed to say.

Colonel Kleinman, do you agree or disagree with this statement, that in the event we were ever confronted with having to interrogate a detainee with knowledge of an imminent threat to millions of Americans then the decision to depart from standard international practices must be made by the President? Do you agree or disagree with that, sir?

Mr. KLEINMAN. If I were to be an adviser on how that question would be most effectively answered, as an operational adviser, I

would say it would be unnecessary to conduct our affairs in a way that is outside the boundaries.

From a purely operational perspective, the sum total of my experience strongly suggests—I would submit even proves—that the legal and moral concerns are almost immaterial, because what we need to do operationally to be effective is well within the boundaries.

Mr. FRANKS. I appreciate the perspective. I just wanted to point out to the Committee, Mr. Chairman, that that was the statement made by Hillary Clinton to say how she would handle it if she were President.

And I am just suggesting here that the situation, to draw lines between one party being for torture and another being against it, are unfair distinctions. We are all trying desperately to protect the innocent in this country, I hope, and to protect the hope of human freedom in the world. And, unfortunately, stopping jihadist terrorism must be part of it, and severe interrogations may be part of doing that.

And we need to reject torture and do what is necessary within the bounds of human conscience to stop jihadist terrorism from torturing our citizens.

And I yield.

Mr. NADLER. I thank the gentleman. I would simply point out before we recess that nobody has said anything about the Republican Party with respect to torture. We have raised questions about some of the practices of the current Administration.

It doesn't mean that every Republican would do the same thing that some of the people in this Administration have done, but we are duty-bound to examine the practices of whoever the current Administration is, because that is our job as an oversight Committee.

Mr. DAVIS. Will the Chair yield for one question or one brief comment?

Mr. NADLER. Yes.

Mr. DAVIS. Is Senator McCain a Republican?

Mr. NADLER. I believe Senator McCain is a Republican, and he has certainly taken some interesting positions.

We will now recess. We have 4 minutes and 28 seconds left on the vote. That should be enough to get us there. The Committee will recess, pending the vote.

I urge the Members to return as soon as the vote is over so we can complete the questioning. Thank you. The Committee is in recess.

[Recess.]

Mr. NADLER. The hearing will be called back to order, and I thank the witnesses for indulging our having to go vote.

The Chair will recognize himself for 5 minutes of questioning first.

Mr. Nance, waterboarding has often been described in this debate as simulated drowning, which makes it sounds like it isn't particularly severe and doesn't have long-term effects. In your testimony, you said it is actual drowning.

Do you agree with the characterization? I mean, how would you characterize waterboarding, as actual drowning, as simulated

drowning, as very severe, as torture, in the grey area? Talk about it.

Mr. NANCE. Well, I characterize it—waterboarding is misnamed. It should not be called waterboarding. That is just the device that we use, and that torturers have used throughout history. It should be called the drowning torture and has been called the drowning torture in the past.

Waterboarding is a process in which we introduce quantities of water into the sinul passage, into the throat, down into the esophagus, past the trachea, and then, with enough response by you choking, we will overcome your gag reflex and water over very large quantities.

If I could just say, I heard that earlier that Khalid Sheikh Mohammed was waterboarded for 90 seconds. I estimate, by our standards, which is very rigid—we have very rigid control standards about how it is done. I won't get into that, because it is classified. That is approximately nine cups or 79 ounces of water, 1.2 gallons.

Mr. NADLER. And how much of that would go into him, as opposed to splashing off his face?

Mr. NANCE. Thirty percent to forty percent, but that depends on whether they give him an opportunity to ask any questions. And I would think on Khalid Sheikh Mohammed they probably wouldn't.

That is going into the system, and it is degrading his respiratory system. And that is why we have very strict controls and medical controls to ensure that the person doesn't go into respiratory arrest.

Mr. NADLER. When you say you have very strict controls, are you talking about when you are training or when they are actually doing this to somebody?

Mr. NANCE. I am sorry, I can only speak to the training.

Mr. NADLER. Okay.

Mr. NANCE. I understand, but I don't have it for fact, because it is probably a classified special access program. And at some future point, I am sure you will learn. But I understand that the controls that are being used are our controls from the SERE community, which means they are very rigid, which means a medical team and a medical doctor who is watching, who is actually controlling the rate of the process.

Mr. NADLER. But this is actual water going into the person's lungs?

Mr. NANCE. Oh, yes. Oh, yes, sir.

Mr. NADLER. And, now, if this is done for, let us say, 90 seconds, the example used by my colleague, Mr. Franks, and I think you mentioned for Khalid Sheikh Mohammed, is that severe? Is that torture? Is that 90 seconds isn't much? I mean, how bad is 90 seconds?

Mr. NANCE. Well, I think I have to couch that with the concept that, when we do it in simulated training, it is what we call stress inoculation. And the person knows that this is a training environment and they are being exposed to what a totalitarian nation would do.

When Khalid Sheikh Mohammed or some unwitting individual, whether it be an innocent person or an extremely guilty person, or whatever you have, that person has no idea what is about to happen to them.

Mr. NADLER. So it is worse?

Mr. NANCE. Oh, it is far worse.

Mr. NADLER. Thank you.

Now, let me ask you another question. We have been told repeatedly, and the Administration has said repeatedly, it cannot—what we do isn't torture, but we can't tell you what we do because that is classified, and it is classified because we cannot tell the enemy, al-Qaeda, et cetera, what interrogation techniques they will be exposed to, because they might train their people, and so exactly what interrogation techniques we will use must remain classified.

Now, we have released hundreds of people that have been previously detained or imprisoned. Do you believe, is there any reason to believe, that they haven't already shared the exact details of how they were interrogated or treated? In other words, is there any reason to believe that this isn't already known, what we do, that what we do isn't already known to al-Qaeda because of the people who have been released and have gone through this?

Mr. NANCE. That is an excellent question, because I live between the United States and in the United Arab Emirates. I speak Arabic, and I watch local programming. Al Jazeera Arabic, and Al Arabiya, and other programs that come from the Middle East, including our own Al Hurra TV out of Iraq, have constantly playing interviews, recreations of prisoner who have been released from Guantanamo Bay, who have been released from Camp Bucca, released from Abu Ghraib.

Mr. NADLER. So they are saying, "This is what the Americans do"?

Mr. NANCE. In great detail. As a matter of fact, I learned a few details that were, I thought at that time, classified from our procedures from SERE by watching Al Jazeera program on a prisoner talk about the exact techniques he was subjected to.

Mr. NADLER. So you believe that when the Administration says they cannot tell us in open testimony or they cannot discuss the techniques that we use, lest it be known to al-Qaeda, that it is already known to al-Qaeda?

Mr. NANCE. I believe it is known to al-Qaeda, but I believe also——

Mr. NADLER. Did you say known or unknown?

Mr. NANCE. I believe it is known to al-Qaeda, but I also believe that there is no need in having to completely confirm everything. I believe there is a little validity to that, but right now the only people that appear to be in the dark is the American people.

Mr. NADLER. Thank you.

Colonel Kleinman, I am sure you are familiar with the Army Field Manual.

Mr. KLEINMAN. Yes, sir, I am very much so.

Mr. NADLER. Okay, let me ask you a question, and I need you to set aside for a minute any moral or legal concerns and also any other limits that might be imposed by the Army Field Manual.

If you were in a position where you knew with absolute certainty that no one would ever know what you had done, and you knew that the intelligence you needed to get was of urgent value, is there anything that you would, could or should do that would go beyond what is permitted in the Army Field Manual?

Mr. KLEINMAN. Absolutely not, sir. Absolutely not. The wonderful point we are in—and I would like to try to expand on that, if I may—moral, legal and operational confluence all ends in one very narrow circle. And that is, what we need to do to adhere to legal concerns, what we need to do as a Nation that would be morally correct, and what I would need to do as an operator all falls in that same circle.

There is not an approach, there is not a strategy, there is not a treatment that would even come close to violating Geneva Convention guidelines, or the Constitution of the United States, and certainly not the field manual on interrogation. We talk about rapport, but rapport is a very inexact term. There is a lot more to it.

But, fundamentally, to answer your question directly, I would not need to do anything that would be prohibited by the field manual and still be very, very effective.

Mr. NADLER. So would you support extending the Army Field Manual standards on interrogations, which the law now limits the Defense Department to—the law now says that the Defense Department cannot do anything in interrogations beyond the Army Field Manual. Would you think it a good idea, would you support extending this to all Government agencies, including the CIA?

Mr. KLEINMAN. I believe, sir, that that would be a good first step, but only a first step.

Mr. NADLER. Why would it not be adequate? What further should be done?

Mr. KLEINMAN. The Army Field Manual reflects a lack of science when it comes to interrogation. It doesn't reflect cutting-edge understanding of human behavior. It doesn't understand the unique cultural nuance of interrogation. It is really a very simplified form.

What we understand and what we are capable of doing, in terms of interrogation effectively—that, again, would be well within the spirit and the letter of any overriding regulation—far exceeds what is in the field manual. Having looked at the archives, really, the field manual is a summation of after-action reports put together of tactical interrogations in World War II, with no further embellishment, no advancement in the last 60 years.

So when I say first step, it would be excellent because it sets a standard that we can all abide by and still be operationally effective, but the second step is to direct that the intelligence community, writ large, take further steps to professionalize this discipline, to identify what it is that we don't know, what works well. We don't even have a standard for what is effective.

Mr. NADLER. Okay. I thank you.

I will now recognize the distinguished Chairman of the full Committee, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you very much.

I would like to ask each of you—who have made, by the way, excellent explanations of the phenomenon that we are dealing with—can we get on the record, is there anything that could be construed

as effective in waterboarding or coercive interrogation or torture, in trying to elicit intelligence information? What kind of reliability does your experience and the record show in that regard?

Mr. NANCE. I can only, again, speak to the types of training environments that we have. Anything else I discussed would be of a classified nature.

However, with that experience, it is clear that, in a coercive environment, the purpose of a resistor—and we have trained thousands of them—the purpose of a resistor is to stop the coercion, is to stop the pain of the interrogation.

That person will do anything once pushed past their limit to resist, and that means, when pain is applied, they will open their mouths. What comes out, we have always trained is completely and totally unreliable. You have to have a very large data set to cross-correlate all of that information. It may be a truth, a half-truth, or a complete lie and, again, or a combination of all of the above.

Mr. CONYERS. Ms. Singh, do you have an impression about a response for my question?

Ms. SINGH. Certainly. The documents the ACLU has received under the Freedom of Information Act demonstrate that FBI officials who were stationed at Guantanamo Bay, who were closely involved in observing the use of "SERE" methods and other harsh interrogation methods as offensive techniques, these FBI officials were of the opinion that those methods were not producing reliable intelligence.

And that appears again and again in the documents. In fact, the FBI was so concerned about the harsh methods that the Defense Department was employing on Guantanamo prisoners that it decided to record its objections on paper.

There is a May 2003 electronic communication that the FBI specifically put on the record in order to demonstrate that it specifically objected to Defense Department methods, not only because they were illegal, but also because they were ineffective.

Mr. CONYERS. Thank you so much.

Colonel Kleinman, how do you weigh in on this question?

Mr. KLEINMAN. It is an excellent question, sir, and let me characterize it this way. There is two objectives that one can achieve in an interrogation. One is to win compliance; the other is to win cooperation.

Compliance is forcing somebody do something that they would not normally want to do and, in some cases, it means against their own interests—the North Koreans, the North Vietnamese, for instance, having a POW admit to dropping chemical weapons on civilian populations, which we knew were not true, but through torture was forced to do that.

That is misinformation. That is the antithesis of what we seek as intelligence officers. We want information of intelligence value.

The second objective is winning their cooperation to various degrees, where they are able to provide reliable information, where I am able to explore the full range of their knowledgeability, not just exploring areas that I suspect they know about, but my experience has often found that a source knows far more than we could have possibly suspected and, without his cooperation, I can't come close to getting there.

Mr. CONYERS. Do we have any information, witnesses, that we outsource torture to private contractors? Here we are in Iraq with more private military, more private people working with the army of occupation than there is Army. And so I am trying to find out, to what extent is that condoned by these private contractors?

Mr. KLEINMAN. Well, sir, I think that addresses the larger issue about interrogation. Interrogation has been kind of, so to speak, the bastard stepchild of human intelligence. Having been a human intelligence officer for years doing the full spectrum, we often didn't look, as interrogators, as truly HUMINTers. I had a colonel——

Mr. CONYERS. What did you call—what was the term that you used?

Mr. KLEINMAN. I am sorry, human intelligence, HUMINTer, a human intelligence officer.

Mr. CONYERS. Okay.

Mr. KLEINMAN. Forgive me for the vernacular there.

Mr. CONYERS. All right.

Mr. KLEINMAN. I had a colonel when I was on active duty, and I was still a captain, who once told me that interrogation would be irrelevant in the 21st century because we would be able to satisfy our intelligence needs through technology or the nature of combat would be so violent there would be nobody to interrogate.

We know now that not to be true, but we still have 18-, 19-, 20-year-olds talking to people who have advanced degrees, who are comfortable moving through multiple cultures, speak various languages, and understand American culture far better than we understand them. I am 50 years old. I have studied interrogation for over 25 years, and there is still more I could learn about it.

Mr. CONYERS. Just let me close with this, Mr. Chairman, if I can, because Naomi Klein in The Nation has raised the question that the admission that the embrace of torture by U.S. officials long predates the Bush administration and has, in fact, been integral to U.S. foreign policy since the Vietnam War.

Do you have any opinion on that, Ms. Singh?

Ms. SINGH. I am not in a position to comment on the basis of the documentary record that the ACLU has obtained through the FOIA on that particular issue.

Mr. CONYERS. Well, these are publications—I have got a bit of literature here that shows—you know, we go back to water torture in the early—it goes back thousands and thousands of years, but nobody talks about what was being done with it, for example, just since World War II, in all the military excursions and expeditions we have been on.

What do you think, Colonel and Mr. Nance?

Mr. KLEINMAN. Here is the heart of the problem we have with interrogation, is our lack of progress, our lack of bringing up—I call it the acme of skill within human intelligence. That means we need to—it is one of the most important, most difficult activities that an operations officer can undertake, to leave it to people with limited life experience, to leave it to contractors, to dumb it down, so to speak—is going to be wholly ineffective.

Mr. CONYERS. Mr. Nance, did you want to comment before the Chairman closes this down?

Mr. NANCE. Yes. I think that, as a whole, I believe that until recently we have seen an only what I would call uncontrolled field expedient interrogations, which may have been done in Latin America and other environments.

Mr. NADLER. Meaning that someone local decided to do something that wasn't approved or ordered from higher up?

Mr. NANCE. Yes, sir. And I am sure the colonel can speak more to the experiences of the human intelligence field as it is done at the company, battalion and division level.

However, we can't say that it wasn't done, as we saw in the Washington Post article, which showed that field expedient interrogation being carried out in Vietnam. These are things that require discipline within the ranks, which require very experienced and honorable NCO corps and officer corps, which listens to their NCO corps.

Those things will happen on the battlefield. However, what we are seeing now is a systematic process. And I don't believe that that is the way that the system is supposed to work.

Mr. CONYERS. Thank you so much.

Mr. DELAHUNT. Would the gentleman yield, Mr. Conyers?

Mr. CONYERS. Of course. Absolutely.

Mr. DELAHUNT. And in response to your question about the use of outsourcing torture, I am forgetful as to whether you were present at the hearing that we conducted together, both myself and Mr. Nadler, as joint Committees.

Mr. CONYERS. I was only there for part of it.

Mr. DELAHUNT. Well, I think I am not misstating to say that, in the case of Maher Arar, a Canadian, he was detained and sent by our Government, over his objections and without informing Canadian authorities, to Syria, with a noted record of torture, particularly in areas of interrogation.

Mr. NADLER. The gentleman's time is expired. We are going to have to recess the Committee to take a vote. I ask the Members of the Committee to come back as soon as this one vote is completed.

I thank the witnesses for their indulgence.

The hearing is in recess.

[Recess.]

Mr. NADLER. I, again, thank the witnesses for indulging our voting. The hearing will resume.

And the Chair recognizes the gentleman from Georgia for 5 minutes.

Mr. DAVIS. The gentleman from Alabama will respond to the inquiry.

Mr. NADLER. Alabama, I am sorry. Please do that.

Mr. DAVIS. I will wait for Mr. Nance to get off the phone, because I had a question for Mr. Nance. He is trying to worry about his flight, so that doesn't come out of my time.

Let me, because we do have a series of votes going on, and the Chair wants to make sure that all of us who are here to get a chance to ask questions, let me briefly begin, Mr. Nance, with you and just tick off a few factual points.

You testified in some detail about the graphic nature of what is called waterboarding and about the very invasive nature of it in a

controlled setting. If waterboarding is done the wrong way, could it kill somebody?

Mr. NANCE. Yes, sir. It could quite easily kill someone.

Mr. DAVIS. If waterboarding was done the wrong way—meaning, if it were misadministered—could it cause someone to have a seizure?

Mr. NANCE. That is possible, sir. It could force them to go into respiratory arrest. That could——

Mr. DAVIS. Also cause brain damage, if it is done the wrong way?

Mr. NANCE. Yes, sir, of course.

Mr. DAVIS. And I make that point because, obviously, if waterboarding happens in the adrenaline-pumped setting of a real interrogation, if waterboarding happened in the context of an environment where there really was an effort to extract information, as opposed to a simulated practice technique, it strikes me that there is a significant, quantifiable risk that it could cause a loss of human life, which, frankly, does distinguish it from a variety of other coercive techniques. That point needs to be made.

I want to make another observation and get the panel's response to it. In my experience—and I have spent some time as a Federal prosecutor—I have spent some time as a criminal defense lawyer. And while I certainly have not dealt with these kinds of legal standards around interrogation in the context of terrorist events, I certainly have dealt with the constitutional standards that exist with respect to the fourth amendment, fifth amendment, sixth amendment, eighth amendment.

Earlier, the Ranking Member was making some observations and the Chair was making observations about the importance of having a codified legal standard that defines what torture is. Let me talk about why it is significant to have that and why I think the Administration made a major error in resisting it.

In my experience, wherever the legal standard sits, day in, day out, conduct by law enforcement officers often falls short of that. If you have a pristine legal standard, there are day in, day out abuses. So it stands to reason, if you lower the legal standard or make the legal standard more imprecise, that you will also have a lowering of the bar of conduct.

Ms. Singh, you are nodding your head. I take it you agree with that?

Ms. SINGH. Absolutely. Documents that we reference in our book and the FOIA documents confirm that Navy General Counsel Alberto Mora referred to this phenomenon as force drift. And once there is no longer a bright line rule, that gives personnel the impression that they have a license to do anything.

And, in fact, we have one document that is also included, mentioned in my written testimony. It describes the homicide death of an Iraqi general in Iraq. The Iraqi general was asphyxiated to death. The autopsy report classifies the death as a homicide death, and the military interrogator who was reprimanded for the death defended the use of asphyxiation as a SERE method, as a close confinement method, and said it can be very effective.

And this is a perfect example of how, once you deviate from long-established prohibitions on torture and cruel, inhuman and degrading treatment, it can open the door to extreme versions of torture.

Mr. DAVIS. So an Administration that is resistant to defining torture is implicitly encouraging some level of abuse, isn't it?

Ms. SINGH. Certainly.

Mr. DAVIS. The last observation I want to make, given the time constraint—this is a point that needs to be made, also—I certainly understand the observation I suspect Mr. Frank might make that al-Qaida doesn't play by any sort of rules anyway, so having a rule standard that applies to them may be inapplicable.

But I suspect that someday, somewhere America, or more likely one of our allies, such as Israel, will find itself in competition with a conventional military, whether it is the Iranian Revolutionary Guard or—in Israel's case—perhaps the Syrian military or some paramilitary entity like Hezbollah.

So I want the panel to comment on this last proposition. If the United States has set a pattern of torture-like conduct or conduct that is clearly, obviously torture, does it not create an incentive for an Iranian Revolutionary Guard or some other military around the world to engage in the same kind of conduct with respect to an American soldier or an Israeli soldier?

Mr. NANCE. I would like to address that. I don't think that it creates an incentive, sir. I think it creates a guarantee. I believe that we have given them and will give them a legal standard to employ enhanced interrogation techniques, not torture, to American servicemembers, should they be captured in the future.

You can only do so much preparation of members of the Armed Forces, but they have to believe that there is something out there which is going to protect them. And I think it would be quite devastating if they were to find that our own definitions would be applied to them in captivity by other nations.

Mr. DAVIS. Mr. Kleinman, do you and Ms. Singh agree with that, briefly?

Mr. KLEINMAN. Yes, sir, I concur with Mr. Nance's observation. I think I would characterize it this way, that if we lower the standard and the manner in which we handle, we treat detainees, then we create circumstances where others can do that to our servicemen and women with impunity.

Mr. DAVIS. Or to our allies' servicemen and women.

Mr. KLEINMAN. Or to our allies, yes, sir. That is an important distinction, as well.

Mr. DAVIS. Ms. Singh, do you concur?

Ms. SINGH. I would concur.

Mr. NADLER. The gentleman's time is expired.

The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Nance, does anybody in the world outside of the United States think that waterboarding is not torture?

Mr. NANCE. Not as far as I know, sir.

Mr. SCOTT. Now, the definition of torture as it is said in press conference with this Administration is somewhat circular. We do not torture. If we did it, therefore what we did was not torture.

How does what you understand the Administration definition to be differ from the definition in the Geneva Convention?

Mr. NANCE. I can't speak to the definition of torture in the Geneva Convention. Geneva Convention Article 17 states that a prisoner

can only be asked certain questions and cannot be done in a coercive environment.

Mr. SCOTT. Colonel Kleinman, can you answer the question, how the articulated definition of torture differs from what the Geneva Convention directs?

Mr. KLEINMAN. Yes, sir. I believe I can. Let me answer that from an operator's perspective. It doesn't enjoy the distance or the legal nuance.

The question of determining what is torture, some people think that is the application of severe pain, as opposed to moderate or light pain, is an exceedingly imprecise calculation that is beyond the ability of any interrogator. So I have defaulted to the idea that the application of any force, whether it be psychological, physical or emotional, is beyond the standard of the Geneva Convention.

Mr. SCOTT. Is a detectable physical injury a necessary element of torture?

Mr. KLEINMAN. Absolutely not.

Mr. SCOTT. Now, advocates have suggested there is a possibility that someday we might have a situation where torture might get information that would save some lives. Are you aware of any situation where that is actually occurred, Colonel?

Mr. KLEINMAN. No, sir, I am not.

Mr. SCOTT. The gentleman from Alabama mentioned the effect that being known as a Nation that tortures would have on our own troops. If we are known as a Nation that tortures people, would that increase or decrease the chance that we would be a target of terrorism?

Mr. KLEINMAN. I believe that would increase our status or the size of the target, writ large, on this Nation.

Mr. SCOTT. Torture is a crime. Who is subject to the criminal penalties in torture? Is it just the person that does the torture? Or can the officers that order it also be subject to criminal prosecution?

Mr. KLEINMAN. The answer to that—the correct answer is that the officers in the chain of command who ordered that are the primary responsible party, but anybody who is party to it, condones it, supports it, enables it, or affects it is also guilty.

Mr. SCOTT. How far up the chain of command can you go?

Mr. KLEINMAN. That would be a legal nuance that I think I would rather defer to somebody better prepared to answer that. But I know, as a colonel of the United States Air Force, I would take responsibility for anybody under my command that conducted themselves in that manner.

Mr. SCOTT. Ms. Singh, is there anything that happened at Abu Ghraib prison that would be considered torture by this Administration's definition?

Ms. SINGH. I would say that, under definitions enacted in the Detainee Treatment Act and the Military Commissions Act, what happened at Abu Ghraib amounted to torture. It amounted to the application of combinations of enhanced interrogation methods, such as stress positions, intimidation with military working dogs, prolonged isolation, removal of clothing.

And Navy General Counsel Alberto Mora has specifically commented on how not only the combination of these techniques, but also these individual techniques themselves can amount to torture.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. NADLER. I now recognize the gentleman from North Carolina for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I don't think I will take 5 minutes. I just actually have one question.

Is the term "torture," is there some worldwide definition of it? I noticed Mr. Nance said that the Geneva Convention doesn't really define it. I am trying to figure out whether there is somewhere I can go and look at an articulated, written definition of torture or whether, as the Administration would have us believe—and perhaps Mr. Frank, based on what I was hearing him say—is kind of like pornography. You can't define it, but you know it when you see it, and therefore it is in the eye of the beholder.

I guess that is what I am trying to get my arms around. Can the three of you kind of respond to that? And that is really the only question I have, because as long as it is not defined, it is subject to the perception of the beholder, I don't know how we get beyond the point that we are at now with the Administration.

Ms. SINGH. Well, as to the first part of your question, the Convention Against Torture, which was signed and ratified by the United States and then implemented into domestic legislation, was defined—the implementing legislation defines torture as severe mental or physical pain or suffering.

So it does not—the statute that implements the Convention Against Torture does not specifically list particular acts that amount to torture, but I believe that that standard certainly is instructive for informing the Committee as to what kinds of methods could cause severe physical or mental pain and suffering.

And as to whether torture is identified as torture in the eye of the beholder, I think there may be some truth to that, but certainly the logical implication would be that you must then have the information that the beholder has, at a minimum, in addition to the information that the person who is being tortured has about what it feels like to be tortured. And I believe that the Committee has heard testimony to that effect.

Mr. KLEINMAN. I think, sir, let me put it this way. Having seen coercive techniques being used, having stopped them, having been present, I am quite sure—and I think Mr. Nance would agree with me—if a law were enacted that required 5 members of the executive branch and 5 members of the legislative branch, appointed or elected, to be present during any time we use torture or severe interrogation or enhanced interrogation, what term you want to use, and they had to watch that, be present and experience it, even vicariously, I think any discussion about the use of those methods would cease immediately.

Mr. NANCE. I would like to make one comment which——

Mr. WATT. That, I take it, would be kind of a collective "you know it if you see it."

Mr. KLEINMAN. Yes, sir, absolutely.

Mr. WATT. Okay, that is fine.

Mr. NANCE. I can't speak to the definition with the level of preciseness that you might have asked the question. However, knowing who I am and knowing what we as members of the Armed Forces and the people who serve this country know, I believe that we do have a pretty precise moral compass within us.

And I believe that simple things—and we are not talking about the proverbial withholding of Twinkies or your coffee in the morning. We are talking about acts and calumnies and things which are inflicted upon a human being which, even if they are our enemy, would overcome our sense of righteousness or justice and would force us to look away for that moment. I believe, once you get to that point, you are at torture.

I have seen it. I have lived in the Middle East, operated in the Middle East my whole life, and served this Nation well in that regard. And I have met people who have been tortured, and I know it when I see it. And my moral compass is quite straight on that point.

Mr. WATT. Thank you, Mr. Chairman.

Mr. NADLER. Thank you.

And we have with us the gentleman from Massachusetts, who is a Member of the full Committee, not of the Subcommittee, who cochaired a hearing with this Subcommittee and was asked for the courtesy of asking questions. And without objection——

Mr. FRANKS. Mr. Chairman, I am afraid I have to—at the request of the Ranking Member, I respectfully object to the participation of a non-Subcommittee Member. House rules provide for the participation in hearings only by Members of that Committee or Subcommittee.

Mr. NADLER. He is a Member of the Committee.

Mr. FRANKS. He is not a Member of the Subcommittee, Mr. Chairman. House Rule 11 states that each Committee shall apply the 5-minute rule during the questioning of witnesses in a hearing until such time as each Member of the Committee who desires has had an opportunity to question each witness.

Mr. NADLER. Very well. The Committee will now go into its second round of questioning. And if Mr. Delahunt will tell me, I will ask the questions for him.

The Chair recognizes himself for 5 minutes.

Mr. DELAHUNT. I would ask the Chair of the Committee—and I understand the predicament that the Ranking Member finds himself in. And I know him to be a man of integrity and a fair man. I think that the practice by the minority in this case is not conducive to healthy discourse on this and other issues.

But I would ask the Chair, if the Chair would pose to Mr. Nance, who indicated that he had observed——

Mr. NADLER. The Chair recognizes himself for 5 minutes.

My question is to Colonel Kleinman and Mr. Nance, two questions, one at a time. If intelligence professionals such as the two of you recognize that torture or enhanced interrogation techniques, whatever you want to call it, are ineffective, why are we doing it?

Why does the Administration want to—forgetting the question of whether it is torture or enhanced interrogation techniques, if these techniques, beyond the Army Field Manual, are not necessary and ineffective, why does the Administration want to do this?

Mr. KLEINMAN. Sir, the comments made earlier by Congressman Franks, his concern resonates with me, and I am sure with Mr. Nance. His concern for the safety and security of the American people is foremost on his mind.

But I would respectfully submit that the method to do it, the method to collect the information, the intelligence we need to protect the American people needs to be pursued in a completely different fashion. It is very unfortunate that individuals, even at the highest levels of this Government—about interrogation from a television show such as "24" or a detective series, or something they have seen on TV.

Mr. NADLER. So are you saying, basically, that people in the upper reaches of Government are simply overruling the intelligence professionals because they think—although they may be wrong, they think it is an effective way to do it? Is that what your testimony is?

Mr. KLEINMAN. Yes, sir. In my experience with talking to people who are experienced interrogators, with very, very few exceptions, they believe that heavy pressure, coercion, enhanced techniques, so forth, are ineffective.

Mr. NADLER. Well, and, again, my question is, that being the case, if the interrogators, professionals being that this is ineffective, why are we doing it? And your answer is basically that the people in high reaches of Government, who are not personally familiar with this, have a belief from other sources that it is effective and give instructions in accordance with that belief?

Mr. KLEINMAN. That would be my take on that, sir. Yes, sir.

Mr. NADLER. Thank you.

Mr. Nance?

Mr. NANCE. I agree with that assessment in its entirety, sir. What we have is we have senior decision-makers who are not looking at the body of evidence, who are not looking at the corporate memory and information that is held within, certainly on the colonel's side, the human intelligence side.

And technically they are doing a form of what we call joking amongst the chiefs "Tom Clancy procedures." They have chosen their procedures from popular media, and they have thought that it works in the book; therefore, it must work in real life.

Mr. NADLER. And issued instructions accordingly?

Mr. NANCE. Aye.

Mr. NADLER. Thank you.

And let me ask you one further question, both of you. The various techniques we have been talking about, the various techniques that you know to be used or that you have heard are being used—from waterboarding on down—what we are told is enhanced interrogation techniques. Are some of these techniques torture?

I think both of you have said that waterboarding is torture. Is that correct?

Mr. NANCE. Yes, sir. I think torture, again, in this instance, depending on the technique, it is a question of intent, duration and effect, once you have executed that procedure on that person.

If you take a cup of coffee and you accidentally spill it on yourself, it is an accident. If you take a cup of coffee and you pour it

into the eyes or nostrils or hand of a person who is your prisoner, that is torture.

So, therefore, something as simple as what we would call a stress position, which is a person posing in one way, once it makes that lactic acid buildup in your thigh muscles, you can make any man scream. Do that repeatedly and repeatedly and repeatedly, and you have taken a simple pose and turned it into a torture.

Mr. NADLER. And these are things that the United States at present does or has done in recent years and has been labeled not to be torture?

Mr. NANCE. I am not privy to whether those actual techniques are used in the special actions programs.

Mr. NADLER. Colonel Kleinman?

Mr. KLEINMAN. Sir, I would characterize torture as an activity that causes somebody to act against their interests based on physical, psychological or emotional pressure rather than a thoughtful decision making dynamic.

And have I seen what I would describe as torture? Yes, sir. Have I stopped it? Yes, sir.

We have the Zimbardo potential out there. Even in this room, you would be surprised. There is a small percentage of people who, given absolute power, will do the most horrific things. That is why we do need standards and why we do need legislation to codify it.

Mr. NADLER. Which leads to my final question. One of my colleagues asked about torture standards and concerns about torture or what is torture, being in the eyes of the beholder. But the Army Field Manual does prohibit specific acts. It prohibits waterboarding. It prohibits hypothermia and overheating. It prohibits mock executions, among other things.

So your testimony is that the Army Field Manual—well, we know the Army Field Manual makes certain standards clear. And it is your testimony, both you and Mr. Nance, that our standards ought to be clear and that torture is not in the eyes of the beholder, that we are to either use the Army Field Manual or some other, more strict—I think you said it should be an updated version?

Mr. KLEINMAN. Yes, sir. The reason it says that is because it is an intelligence manual. It is teaching interrogators how to collect reliable intelligence, not how to win compliance or force people to do things, such as make propaganda.

It doesn't wish to address anybody's moral compass or even an in-depth legal tome about it. It is just simply, operationally, is it effective or not? And torture is not an effective way of getting intelligence. That is why it is outlawed.

Mr. NADLER. Okay. Thank you. My time is expired. I am going to recognize the distinguished Ranking Member for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, we are dealing with a very difficult subject for all of us today, certainly for me.

And I want all of the panelists to know that I have the deepest respect for their motivations here. Regardless of any disagreement I have with you, I think that each Member of this panel has shown, at least in my mind, that their intent is sincere and they want to do the right thing.

Having said that, Colonel Kleinman, you had mentioned a moment ago—and I tried to make a note of it, and I failed, but you mentioned about the definition related to torture being physical, psychological, emotional. Can you say that again?

Mr. KLEINMAN. Yes, sir. I described torture as an activity that applies psychological, physical or emotional pressure to cause somebody to do something against their will.

Mr. FRANKS. Boy.

And, Mr. Nance, you defined it—you said it is depending on the intent, duration and effect of the activity?

Mr. NANCE. Yes, sir, using the techniques that we were discussing.

Mr. FRANKS. Okay, that is an important caveat, because, when a judge throws a journalist in jail to get them to, say, give a source, the intent is to get that person to talk. The duration may be a long time, and the effect may be that it gets him to talk. And you can't possibly say that that is torture. It may be unfriendly, but it is not torture.

And the physical, psychological and emotional pressure, these guys do that to me all the time? I have to sit here. That is physical. And the psychological pressure—the Chairman is pretty good to me most of the time, but there is emotional pressure on all of us.

And I think therein lies the challenge, to define torture. And I want to define it; I absolutely believe that our laws against torture are well-placed. I emphasize, again, that torture is illegal; that if one of our people tortures someone, that they are subject to felony; and that if that person dies as a result of that torture, that they are subject to the death penalty. I have supported those things.

And, ironically, the death penalty sometimes gets tangled up in this. We have the death penalty in this country not because we want to get revenge on bad guys, but because we want to keep them from doing it to other innocent people. And so I guess I am struggling here.

But I think that, Colonel Kleinman, you probably make the strongest case here, and I think it really goes to the heart of everything that we are doing here. And I think you are wrong, sir, but I am going to try to give you the benefit of the doubt related to—I still believe you are wrong in that, you know, that severe interrogations don't result, at times, in gaining critically important information.

I know all the time when we are having even friendly discussions with a prisoner that he lies to us at times. The interrogator has to take the information and analyze it and create references to other known pieces of information to ascertain whether or not that there is any reliability there, whether it is information that is received under severe interrogation or just a friendly cup of coffee, you know?

So I know that is difficult, but I will say to you that Khalid Sheikh Mohammed—I used the example—when the interrogators used severe interrogation, he began to reveal information after being quiet for months that helped authorities—and just to repeat myself—arrest at least six major terrorists, including some who were in the process of plotting to bringing down of the Brooklyn Bridge, bombing a hotel, blowing up U.S. gas stations, poisoning

American water reservoirs, detonating a radioactive dirty bomb, incinerating residential high-rise buildings by igniting apartments filled with natural gas, and carrying out large-scale anthrax attacks.

These were all in the process of being plotted and planned to carry out. And we were able to learn that from this information that we gained from this evil terrorist.

And if I were absolutely convinced that we could gain nothing to defend the innocents here, I would be on your side. But I am not convinced of that, and I don't think the evidence supports that.

So I am going to switch over here, what I have done earlier, instead of Senator Schumer, I am going to involve one of my heroes, Alan Dershowitz. Now, I say that, he is a fine man, but he certainly is confused in many cases, in my opinion. But he does have some questions that he asked.

He is with Harvard Law School, and he wrote these questions in the *Wall Street Journal* yesterday. And here is what he wrote about those who would oppose confirming Judge Mukasey because of his unwillingness to support an absolute prohibition on waterboarding.

He said, "Such people should be asked the direct question," and this is the question I ask you. And I hope each one of you—there are three of them. I hope you will kind of make a note and give us your response. "Would you authorize the use of waterboarding"—and these are his questions—"or other nonlethal forms of torture if you believed that it was the only possible way of saving the lives of hundreds of Americans in a situation?" That is one question.

He also asked, "Would you want your President to authorize extraordinary means of interrogation in such a situation? And if so, what means can we use?"

And finally, Professor Dershowitz asked, "If not, would you be prepared"—and this is a hard one for any of us, and I am not trying to trap you here, but if you are not—"would you be prepared to accept responsibility for the preventable deaths of hundreds of Americans?" And that is the challenge that I am having here.

So, Colonel Kleinman, I picked on you a lot here, so please go, sir.

Mr. KLEINMAN. No, sir, you are asking very penetrating questions, and I appreciate it. And if I can't answer them to your satisfaction, then I have made an error.

I think Mr. Dershowitz's questions have done nothing more than cloud the issue further, and it reflects his lack of understanding of the intelligence process behind it. Number one, there is a lot of "ifs," there is a lot of "whens."

Human intelligence, if you look back, for instance, in the Vietnam War, we had Vietcong who were alleged Vietcong. How were they alleged Vietcong? Because another rice farmer pointed them out, who happened to be a competitor in the rice market.

There are cases, if they knew where a nuclear device was or if we could get the information and save thousands of lives and so forth, interrogation, like intelligence writ large, is a very imprecise process.

Going back to Khalid Sheikh Mohammed, what is reported in the papers, the things that you have enumerated, but also allegedly that he personally killed, tragically, the journalist Daniel Pearl, which evidence suggests that he was nowhere near the area at the time.

So one as an intelligence officer has to ask, well, if he gave me these 5 bits of information, which are consistent with what we want to be true, and he has given us two or three that we can prove that are not true, again, as an intelligence officer, I have to wonder about the validity of the whole take. I can't cherry pick. That is the challenge we have.

Mr. FRANKS. Colonel, don't you have that situation all the time? When you have someone in a prison, say, and you just come in and say, "Here, have a cup of coffee, let's talk," he is still physically and psychologically and emotionally pressured, because he is in prison. It is not a fun place.

And he is having to be interviewed here. And if he has no fear of any danger to him, there is still all these elements. And you can't know whether he is telling you the truth then or not, either. You can't be sure that that is reliable. So do we do away with all interrogations completely?

Mr. KLEINMAN. No, sir, not at all. And my statement—the question about how we define torture literally in a sound bite, I am unable to address that to my satisfaction, let alone yours.

But in terms of using coercive methods—let us say the waterboarding. As an interrogator, part of what I am asked to do is ask questions. I am evaluating not just the answers I am getting, but how they are being asked. I am looking for a baseline of that individual, their behaviors.

If suddenly they exhibit these stereodipities, these grooming behaviors, when I asked about activities in one town, but yet the rest of the time they are sitting with their hands folded in front of me, that doesn't indicate that they are deceiving, but you look for these clusters, these groupings of behaviors.

That makes me happen to think, when I get this area, it is sensitive, and he feels stressed, and that stress is manifested, in his case, in certain ways. If his hands are tied, if he is shivering, I don't know if he is shivering because I am talking about something that is sensitive or because it is 45 degrees in his cell.

It takes away a lot of my tools, a lot of my strategies as an interrogator when I use those coercive means. And, plus, again, as an interrogator, I am an intelligence interrogator. I don't want to make them talk, because the question we have to keep asking ourselves, talk about what?

I want them to tell me not truth, in the sense of what I believe is true, but what is really true. What is causing the insurgency? Why did they attack on 9/11? What other attacks may be coming?

And a recruitment model, which really informs my approach, I have seen it is far more successful. I was sharing with my colleague on my left an example where I had an Iraqi general who, through developing a very profound rapport, answered all the questions I had in the areas that I thought he knew about.

As I put my papers together in the evening, he said—I asked, as a good interrogator, "Is there anything else that you know that I

haven't asked about?" And he asked, "Do you want know where the scud missiles are?" At that point, it was highly critical item, but we, based on his background, would never suspect that he would know it.

Had I used coercion, had I threatened him, he would see, "Oh, the session is finally over?" "Do you know anything more?" "Absolutely not." Instead, we had that, and I was able to go further.

Mr. FRANKS. I understand. I am almost yellow here, Mr. Chairman. I will just leave a closing thought here.

I recognize so much of what you are saying is absolutely true, Colonel. I just would suggest that sometimes, you know, in the case of Khalid Sheikh Mohammed, he was silent. And yet we were able to find information that probably saved an awfully large number of lives.

And I know there are circumstances where it may work and circumstances where it isn't, but I hate to tie the hands of those people who are doing the very best to protect the people on this Committee and the people out there that we love from having the tools necessary in a crisis situation, within the bounds of human conscience, to pursue.

And with that, I yield back.

Mr. NADLER. Thank you. The gentleman's time has long since expired.

I am going to ask—that is all right—I am going to ask two questions. And if he wishes, I will give the gentleman equal time again.

Following up on Khalid Sheikh Mohammed, during his detention, Khalid Sheikh Mohammed provided information on the September 11 attacks and on the structure and operations of al-Qaida. He also confessed to 31 other criminal plots, including involvement in killing *Wall Street Journal* reporter Daniel Pearl—and you observed that we have reason to believe he was nowhere near where that happened—and alleged plans to assassinate President Clinton, President Carter and Pope John Paul II.

Questions and concerns have been raised about the reliability of the majority of these claims. According to former CIA analyst Bruce Riedel, "It is difficult to give credence to any particular area of this larger charge sheet that he confessed to, considering the situation he found himself in. Khalid Sheikh Mohammed has no prospect of ever seen freedom again, so his only gratification in life is to portray himself as the James Bond of jihadism."

Could you comment on that? Would you believe, given what you know and what he has confessed to, that the information we received from Khalid Sheikh Mohammed is wholly reliable, partially reliable, or we just don't know?

Mr. NANCE. It is interesting. I have been doing an operational study of the organization of al-Qaida internally since November 2000. The book is still unwritten. And I have taken a look at some of the things that were said by Khalid Sheikh Mohammed.

And speaking from the perspective of SERE, what I would see is that I have a person who has learned how to resist. He went through the initial process, and it appears that he decided to use what information he had, or thought of, or heard about, or fantasized in his cell to lessen the intensity of the operation——

Mr. NADLER. And that makes his information reliable or unreliable or what?

Mr. NANCE. It makes—well, I am certain that some of the—I am not certain. I can't say with absolute certainty. I should caveat that.

Mr. NADLER. You assume.

Mr. NANCE. That some of the information that he has was time expiration. And he may have given up people who he felt that were absolutely of no use to him or the strategic objectives of the organization. Therefore, for the purposes of the interrogators, it would appear to be a gold mine. But for him and the al-Qaida organization, it was trash, which would allow them to carry out their future operations.

Mr. NADLER. So in other words, your conclusion, based on what you know, is that we probably didn't get much useful information from him?

Mr. NANCE. I don't know, sir. I don't have all the information. The true treasures may be classified at this point.

Mr. NADLER. Okay. One further question, Mr. Nance. You testified earlier that you observed numerous interviews of former prisoners who claimed that they were tortured by the United States, and you observed these interviews in Arabic on Middle Eastern television, on Al Jazeera, I think you said.

Mr. NANCE. Yes.

Mr. NADLER. Do you have any knowledge whether those broadcasts of former prisoners on Al Jazeera, talking about their experience being tortured by the United States, has that has a toll on public opinion of the United States in the region? Has it increased anti-American feelings? Has it increased—that it hurts not just our image, but more importantly the ability to recruit terrorists against us and so forth?

Mr. NANCE. It is an excellent question. I have worked in the Middle East off and on for 26 years, and I have never met the intensity of the hatred of the policies and actions that these people believe that we do out of pure malice. And I sit there and I try with my heart to convince them that we are a people of good people and that this is not what we do, this is not who we are.

Mr. NADLER. And the policies that they believe we are doing out of pure malice are what, the invasion of Iraq, torture? I mean, what are you referring to?

Mr. NANCE. The first thing that will always come up in Abu Ghraib.

Mr. NADLER. So torture.

Mr. NANCE. And then Guantanamo Bay, and invariably go on to the invasion of Iraq, and then they will shift over to the Israeli bombing of Qana in southern Lebanon. And then they will come up with their 9/11 conspiracy theory.

Mr. NADLER. But first it is Abu Ghraib, then it is torture, Guantanamo, then it is Iraq? And then——

Mr. NANCE. Yes, sir. We have wholly failed in our ability to influence them via information operations or through positive media portrayals of us, to the point where we are going to have decades of very hard work.

Mr. NADLER. And these are ordinary people? These are intellectual elites? I mean, what are you talking about, opinion leaders?

Mr. NANCE. Oh, you would be quite surprised the number of even emirates, our allies, who will not say this in public, but when you get them around the shisha pipe, and you have a small chat with them and their families, all of these questions that I would get on the streets of Iraq, or the streets of Cairo, or the streets of Jordan I get from some of our allies.

Mr. NADLER. And what do they—do they really think it is out of pure malice, we just like hurting people? I mean, why do they think we are doing these, from their point of view, terrible things?

Mr. NANCE. Well, I would have to start a history of the Middle East course here to answer that question.

Mr. NADLER. Okay, never mind.

Thank you very much.

I want to thank the witnesses. On behalf of the Subcommittee, I want to thank our witnesses for appearing here today and for your testimony on this very important question.

Without objection, all Members have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond to as promptly as you can, so that your answers may be made part of the record.

Without objection, all Members will have 5 legislative days to revise and extend their remarks and to submit any additional material for inclusion in the record.

And with that, and the thanks of the Chair, this hearing is adjourned.

[Whereupon, at 12:52 p.m., the Subcommittee was adjourned.]