

were produced. This was not something that was done by some soldiers just trying to do something to pass the time of day; the people who were in the officers corps instructed these men and women that they were to take these pictures and what they were to be used for in the future. I know some of these nonofficers did things that were wrong, and I am so grateful there were people in the military who came forward and said enough is enough. That is the reason we know about it now. But let's not have a few of the nonofficers be the scapegoats for what went on.

We are a mighty nation. We have to respond accordingly. We cannot allow a few underlings to take the fall for what obviously was a concerted action that officers were involved in. It is just a question of how high up in the officers corps the problem went.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS CONSENT
AGREEMENT—S. RES. 356

Mr. FRIST. Madam President, I ask unanimous consent that at 4:30 p.m. today, the Senate proceed to a resolution which is now at the desk regarding Iraqi prisoners. I further ask unanimous consent that the time until 5:30 p.m. be equally divided between the two leaders or their designees; provided further that no amendments be in order, and at 5:30 p.m., the Senate proceed to a vote on the adoption of the resolution, with no intervening action or debate. Finally, I ask unanimous consent that immediately following the vote, the preamble be agreed to.

Mr. REID. Madam President, I would ask the leader to modify his agreement to allow Senator DURBIN to use 15 minutes of our time during the debate time the Democrats have under this proposed unanimous consent request.

Mr. FRIST. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

IRAQ PRISONER ABUSE AND
WILLIAM HAYNES NOMINATION

Mr. DURBIN. Madam President, I come to the Senate floor with a heavy heart. As so many other Americans, I am horrified at the graphic images of American soldiers abusing Iraqi soldiers and prisoners. We are in a situation today where our troops in the field in Iraq and Afghanistan have performed millions of acts of kindness and good will and bravery which, sadly, have been overshadowed by the recently disclosed photographs. That is a reality.

The war in Iraq is more dangerous today because of the scandal at the Abu Ghraib prison, and our standing in the world is being challenged. A nation which believes in the rule of law and democracy must demonstrate that in its own conduct. Our conduct is being called into question.

I am very concerned that we have reached this point. I am concerned that statements from the Bush administration, sadly, over the last 2 years have sent a message that we were prepared to bend some of the time-honored rules and standards when it came to the treatment of prisoners of war. Over 2000 years ago, the Roman orator Cicero said: Laws are silent in time of war.

In modern times, we have rejected this proposition. Some voices are now calling on us to turn back the clock, but we can't do that. That is not America. That is not what we are all about. Our great country was founded by people fleeing governmental repression. Our founders wanted to ensure that the United States would not oppress its citizens even during time of war, and that is why they included a prohibition on cruel and unusual punishment in the Bill of Rights of the Constitution.

After World War II, the United States and our allies, horrified by the genocidal practices of Nazi Germany, created a new international legal order based on respect for human rights. One of the fundamental tenets was a universal prohibition on torture and ill treatment. Each year Amnesty International and even our State Department issue report cards on countries around the world as to whether they are living up to that standard. Imagine what that report will look like the next time it is issued by our own Department of State.

In light of the horrific abuses that have come to light in recent weeks, we ought to take a moment to review the legal order that was created after World War II. International law absolutely prohibits torture as well as "cruel, inhuman or degrading treatment." The Universal Declaration of Human Rights states unequivocally:

No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment.

The United States, with a majority of countries in the world, is a party to two treaties that contain absolute bans on torture, cruel and inhuman degrading treatment: The International Covenant on Civil and Political Rights and the Convention against Torture.

The Geneva Conventions govern the status and treatment of those in a war-time detainee situation. The U.S. Government has long held that as a party to the conventions, we are legally bound by its terms. The Geneva Conventions make clear that there are no exceptions to this prohibition against torture and such treatment during armed conflict.

Article 13 of the Geneva Conventions says: Prisoners of war must at all times be humanely treated. Prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.

Article 14 of the Conventions states: Prisoners of war are entitled in all cir-

cumstances to respect for their persons and their honor.

Article 17 states: No physical or mental torture, nor any form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatsoever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

The United States of America is a signatory to this international agreement. Army regulations implementing those provisions repeat these standards and make it clear that they apply to the men and women in uniform.

International law, U.S. law, and Army regulations speak clearly. Nonetheless, as we have learned in recent weeks, abuses took place at Abu Ghraib prison that clearly violate these standards. To quote army MG Antonio Taguba's report:

Between October and December 2003, at the Abu Ghraib Confinement Facility, numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted upon several detainees. This systemic and illegal abuse of detainees was intentionally perpetrated.

The report describes "the intentional abuse of detainees by military police personnel," including "punching, slapping, and kicking detainees," "using military working dogs, without muzzles, to intimidate and frighten detainees, and in at least one case biting and severely injuring a detainee," "breaking chemical lights and pouring the phosphoric liquid on detainees," "threatening detainees with a charged 9m pistol," "beating detainees with a broom handle and a chair," and "sodomizing a detainee with a chemical light."

Importantly, the Taguba report concludes that the military police were not trained or put on notice in other ways that these kinds of abuses were impermissible and would not be tolerated.

Let me say, before I read on, that you would know by human instinct that the things I have just read were wrong. You should know at the moment such an order is given that it is an unlawful order. But the fact is, when General Taguba looked into the background and training of these soldiers, little or nothing was done to prepare them for their assignment.

I will read further from the Taguba report:

Neither the camp rules nor the provisions of the Geneva Conventions are posted in English or in the language of the detainees at any of the detention facilities . . . There is a general lack of knowledge, implementation, and emphasis of basic legal, regulatory, doctrinal, and command requirements . . . I find that the 800th MP Brigade was not adequately trained for a mission that included operating a prison or penal institution at Abu Ghraib Prison Complex.

Unfortunately, the abuses in Iraq are, in some ways, the logical byproduct of the administrations' policies. In the aftermath of 9/11, the Bush administration made it clear that they believed that international legal order,

which served us so well during the cold war, was not good enough for the war on terrorism.

The administration has created a secret detention system, outside the strictures of domestic and international law, that stretches from Norfolk, VA, and Charleston, SC, where American citizens Jose Padilla and Yasser Hamdi are detained as enemy combatants, to Guantanamo Bay, where hundreds have been detained since the commencement of hostilities in Afghanistan. The administration denies public access to these detainees and asserts that the Geneva Conventions do not apply to the war on terrorism.

A Washington Post editorial entitled "System of Abuse" alleges:

Similar mistreatment of prisoners held by U.S. military or intelligence forces abroad has been reported since the beginning of the war on terrorism. A pattern of arrogant disregard for the protections of the Geneva Conventions or any other legal procedure has been set from the top, by Mr. Rumsfeld and senior U.S. commanders.

Some of the most flagrant legal violations have taken place at Guantanamo Bay. The administration claims that the detainees are not entitled to the protections of the Geneva Conventions, though they may be treated in accordance with some provisions of the conventions "to the extent appropriate and consistent with military necessity."

There is no room for hairsplitting when it comes to the law. This kind of policy sends a signal to lower ranking officials that the law is an obstacle to be overcome, not a bright line that cannot be crossed.

Contrary to this position, the Geneva Conventions protect all captured combatants and civilians. The official commentary on the conventions explains: "There is no intermediate status; nobody in enemy hands can fall outside the law."

The Geneva Conventions do not allow the hairsplitting which this administration has engaged in at Guantanamo and other places where there are detainees in this war on terrorism.

Administration officials claim that none of the Guantanamo detainees qualify as POWs. However, under article 5 of the 3rd Geneva Convention, captured combatants are presumed to be POWs, and must be treated as such, unless and until determined otherwise by a competent tribunal in an individualized proceeding. The U.S. Government has long abided by this principle, e.g., the U.S. convened more than 1,000 such proceedings during the gulf war. Military regulations state, "When doubt exists as to whether captured enemy personnel warrant POW status, Art. 5 Tribunals must be convened."

The Red Cross, which typically refrains from public comment on its visits to wartime detainees, has taken the unusual step of criticizing the Guantanamo Bay detentions. They said:

The [Red Cross's] main concern today is that the U.S. authorities have placed the in-

ternees in Guantanamo beyond the law. This means that, after more than eighteen months of captivity, the internees still have no idea about their fate, and no means of recourse through any legal mechanism.

Since 9/11, there have been persistent reports that U.S. interrogators have used interrogation tactics that may rise to the level of torture or cruel, inhuman and degrading treatment.

For example, a December 5, 2002, story in The Washington Post reported on the widespread allegations that the United States was using so-called "stress and duress" techniques, including sleep, food, water, or sensory deprivation, and forcing detainees into uncomfortable or painful physical positions.

According to The Post, an unnamed administration official said, "If you don't violate someone's human rights some of the time, you probably aren't doing your job. I don't think we want to be promoting a view of zero tolerance on this."

The use of these techniques, which are also known as "torture lite," violates prohibitions on torture and cruel, inhuman, and degrading treatment. The State Department has repeatedly characterized the use of such tactics by other countries as torture, plain and simple.

Our own State Department has accused other countries that have tried to rationalize this treatment as being engaged in torture.

In Israel, a country that has grappled with terrorism for decades, the Supreme Court held that "stress and duress" techniques interrogation techniques violate international law and are absolutely prohibited. As the Court explained:

These prohibitions are "absolute." There are no exceptions to them and there is no room for balancing. Indeed violence directed at a suspect's body or spirit does not constitute a reasonable investigation practice.

Guantanamo interrogators have reportedly used these tactics. There is a disturbing link between Guantanamo and the abuses in Iraq. MG. Geoffrey Miller was the commander of the Guantanamo Bay detention facility. In late 2002, Miller reportedly asked the Pentagon to approve the use of some "stress and duress" techniques. In April 2003, the Pentagon approved the use of these techniques.

The Defense Department's general counsel was involved in creating guidelines. That is an important element for us to consider regarding the nomination before us today.

In August 2003, Miller, the Guantanamo commander, visited Abu Ghraib prison to examine interrogation practices there. According to the Taguba report, Miller recommended that military police, who were serving as prison guards, become "actively engaged in setting the conditions for successful exploitation of internees." The Taguba report criticized Miller's recommendation which the report said would violate Army regulations and "clearly run

counter to the smooth operation of a detention facility."

There is another key player who Congress need to question closely, William Haynes, who is the Defense Department's general counsel. As the top lawyer at the Pentagon, Haynes was intimately involved in crafting the legal standards for the war on terrorism and the war in Iraq, including the guidance regarding "torture lite."

Last year, President Bush nominated Mr. Haynes to be a judge on the 4th Circuit Court of Appeals, the second highest court in the land.

When Haynes was nominated, I and many of my colleagues on the Judiciary Committee were already very concerned about the Defense Department's legal policies related to the war on terrorism and the war on Iraq. So, we questioned Haynes closely.

Following his hearing, I sent Haynes a number of written questions. He failed to respond to some of my questions and many of the answers he did provide were not responsive. He answered several questions by citing government briefs. He refused to respond to other questions because he "may or may not have been called to provide advice" on the subject in his official capacity.

I sent a followup letter to Mr. Haynes, expressing concern about his nonresponsiveness and giving him another opportunity to respond to my questions related to torture of detainees and internees, and POWs.

His second set of answers was not much better than the first and he still failed to respond to many of the questions I asked. Let me offer a couple of examples.

I asked Mr. Haynes about views he expressed in a speech to the Federalist Society. Speaking about the detention of enemy combatants, he said: "Congress specifically authorized the President not only to use deadly force, but also an lesser force needed to capture and detain enemy combatants to prevent them from engaging in continued hostilities against the United States." I asked him:

Do you believe that the Executive could use deadly force against an American citizen enemy combatant in the United States instead of apprehending him or her? If yes, please explain. If no, how do you explain your statement quoted above?

In his first set of answers, Mr. Haynes responded by simply citing to a government brief, "The Government's position concerning the statutory authorization of September 18, 2001 has been most recently articulated in its brief filed in opposition to petition for the writ of certiorari in Hamdi v. Rumsfeld."

I asked Haynes for a more responsive answer.

Keep in mind he is the general counsel for the Department of Defense responsible for establishing the legal standards under the Geneva Conventions and American law and military regulations on the treatment of prisoners and detainees.

I am asking him specifically to tell me the standards he used. These questions were sent to Mr. Haynes months before the scandal at Abu Ghraib prison. He continued to be evasive. He again cited a Government brief instead of explaining his views. He carefully avoided answering directly any of the questions which I asked him.

I asked Mr. Haynes about the failure to provide article 5 tribunals to detainees at Guantanamo Bay. The U.S. Government has long abided by this practice and U.S. military regulations provide detailed procedures for article 5 tribunals.

I asked Mr. Haynes:

Have the detainees been provided with the process outlined in [U.S. military] regulations?

He responded by asserting the screening process for detainees "goes well beyond what article 5 requires." But he did not respond to my question:

Have the detainees been provided with the process outlined in U.S. military regulations?

He failed to respond. That, unfortunately, is the pattern we have seen with Mr. Haynes and this nomination.

These questions sent by Members of the Senate to nominees are more than an academic exercise. We want to establish for the record exactly the role Mr. Haynes and others played, if any, in establishing the interrogation tactics and techniques which have now been dramatized so negatively to the world.

Mr. Haynes cannot expect the vote of this Senate to the second highest court of the land by being evasive on this critical issue at this important moment in our history.

Torture and cruel, inhuman, and degrading treatment are wrong, illegal, un-American, and totally counterproductive in the field of intelligence.

As the Israeli Supreme Court reminded us:

Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognition of an individual's liberty constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and its strength and allow it to overcome its difficulties.

Those inspiring words come from the Supreme Court of the Nation of Israel, a nation which battles terrorism every day. They have rejected the easy way out, torture "lite," stress and duress. They have decided that does not make them any safer as a nation, and it degrades their reputation in the world community. The United States can do no less.

Since the horrific terrorist attacks on 9/11, our commitment to this principle and values has been tested. As we withstand repeated warnings of possible terrorist attacks, we may be tempted by the notion that torture is somehow justified, but it is not. We must resist the temptation.

In his classic novel "The Brothers Karamazov," Dostoevsky posed the question eloquently:

Imagine that it is you yourself who are erecting the edifice of human destiny with the aim of making men happy in the end, of giving them peace and contentment at last, but that to do that it is absolutely necessary, and indeed quite inevitable, to torture to death only one tiny creature, the little girl who beat her breast with her little fist, and to found the edifice on her unavenged tears—would you consent to be the architect on those conditions?

No, America must not engage in torture and cruel, inhuman, and degrading treatment. Torture is wrong. We have said that unequivocally for 50 or 60 years. It is one of the values and principles that guides our Nation.

As Thomas Paine said:

He that would make his own liberty secure must guard even his enemy from oppression.

Torture is an ineffective counterterrorism tactic. It produces unreliable information. When our Government engages in these kinds of abuses, we project a negative image abroad, creating anti-American sentiment around the world that is virtually impossible for us to deal with. If we engage in this sort of activity, we run the risk of subjecting our men and women in uniform and other American citizens not only to a dangerous wartime situation but to torture themselves if they are ever detained or captured.

Our Nation has been a beacon for democratizing forces around the world as they challenge repression and human rights violations.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. We extend whatever time the Senator from Illinois needs.

Mr. DURBIN. I ask for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Madam President, our Nation has been a beacon for democratizing forces around the world as they challenge repression and human rights violations. The American exemplar inspired many to shed the yoke of communism and move toward democracy. In an era where we have emerged as a superpower, the world looks to us for leadership, inspiration, and our values. When we curtail individual rights, other nations follow suit and democracy and human rights suffer.

I have sent a letter to the chairman of the Senate Judiciary Committee, Senator ORRIN HATCH of Utah. I have asked Senator HATCH to reschedule a hearing for Mr. William Haynes whose nomination is currently on the calendar. Mr. Haynes, now more than ever, must answer these important questions about the role he played as general counsel at the Pentagon. If he had nothing to do with this policy, he can make that eminently clear, but if he did have something to do with it, I think we need the answers to these questions before we, in good conscience, are asked to vote to support his nomination to the second highest court in America.

I yield the floor.

CONDEMNING ABUSE OF IRAQI PRISONERS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the resolution, which the clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 356) condemning the abuse of Iraqi prisoners at Abu Ghraib prison, urging a full and complete investigation to ensure justice is served, and expressing support for all Americans serving nobly in Iraq.

The PRESIDING OFFICER. The majority has 32 minutes remaining. The minority has 10 minutes remaining.

The Senator from Wyoming.

Mr. THOMAS. Madam President, I am pleased we have this resolution before us. I think all of us share the same thoughts about this whole Iraqi prisoner abuse issue. We are all very disappointed and very troubled about the events in the prison. We need to move forward to resolve this issue. We need to do what needs to be done as a followup. We do not need to make it into a political operation for the next week because we have other things to do in Iraq. But we must take care of this issue because we, as Americans, hold ourselves to a higher standard.

These are appalling actions of those responsible for the treatment of the detainees in Iraq. It falls far short of any of those standards. Our credibility has been called into question in the eyes of those we are trying to help, as well as the rest of the world. These incidents of cruelty and mistreatment at the hands of American service men and women are inexcusable, and certainly it is a very small group of our service people. Unfortunately, the foolish actions of a few have cast a pall on thousands of our military. All of us know that is not the case, and all of us who have served in the military know these are not the kinds of activities we are ordered to do.

There have been mistakes, and we need to determine how those happened and see they do not happen again so our folks can continue at the very hard job they have.

These terrible events have dealt a blow to what we are seeking to do. I want to say again our task is to win in Iraq, and this is a deterrent from that, but we can overcome it and move on with the task.

This also makes it more important that we win at home. With the media and the emphasis that has been put on this issue, it detracts from our job. We cannot let that happen. If we are really as strong in our feeling about our service people overseas, we ought to make sure we support what they are doing and continue to give them that support.

We as a nation must deliberately correct the situation and ensure it does not happen again. All of us want to do that.

Democracies hold themselves accountable. That is our task. We can do