

By Congressman David Price -

Mr. Speaker, during the presidency of George W. Bush, many of us have watched with horror as the Administration has pursued policies – supposedly to help fight an ill-defined war against terrorism – that shock the conscience and undermine the values fundamental to our understanding of what it means to be an American: torture; disappearance; indefinite detention.

Historians will view the excesses of this era with the same scorn as the Alien and Sedition Acts and the reign of McCarthyism. Even in hindsight, however, it will be difficult to understand how these policies could have gained even tacit approval from so many.

Many of us have resisted these policies, questioned them, opposed them, and condemned them. We have, in the last two years, begun the monumental task of dismantling them.

We also have begun a second, equally daunting effort: to identify policies that will address our very real security challenges without compromising our fundamental values and our standing in the world. Simply put, global terrorism presents a serious and evolving threat, and it demands new thinking about the tools we must use to confront this threat.

On September 24, along with nine original co-sponsors, I introduced legislation aimed at generating more robust debate about the nature of the threat of terrorism and the tools we must apply to address it. My legislation focuses specifically upon the Bush Administration's most disgraceful and disturbing legacy: its architecture of law and practice in the realm of detention, interrogation, and prosecution of terrorism suspects.

My legislation recognizes, however, that a progressive response to the Administration's regressive policies cannot be limited to "don't do that" – don't torture, don't hold detainees indefinitely, and so on – but must offer a new vision that is responsive to the challenges and opportunities of the current context. I hope my proposals will spark new ideas that will lead to a new, more ethical, and more effective approach to battling global terrorism.

The question of how best to organize and mobilize the instruments of our national power in fighting global terrorism, especially with regard to interrogation and detention of terrorist suspects, is particularly pertinent we prepare to determine the direction and leadership of our country for the next four years.

In my view, there are three major challenges the next president will have to address. One: How can we most effectively approach human intelligence collection, a task that includes determining the most effective and most ethical ways to conduct interrogations? Two: What is the best system to prosecute suspected terrorists quickly and effectively? Three: What will be the nature of our detention regime? Where, under what authority, with what rights, and for how long may suspects be detained? All of these questions will require fresh thinking and creative solutions.

Debate surrounding the first question has largely focused on whether or not the United States should engage in so-called "enhanced interrogation" practices, which often amount to torture. The Bush Administration has adopted policies authorizing aggressive interrogation practices that many of us would interpret to constitute torture or inhuman treatment, placing our nation in clear violation of the constitution, U.S. law, and international treaty obligations. The question these practices have posed is whether, and when, such practices are justified in the name of national security.

Most basically, the use of torture violates notions of human rights and dignity that in the American political and legal tradition have been regarded as inalienable and have preempted other considerations. The constitution explicitly prohibits "cruel and unusual punishment" and requires that no individual "be deprived of life, liberty, or property, without due process of law." The constitution does not limit the application of these protections to American citizens or to cases that do not involve potential terrorism or other dangers. Torturing an individual inflicts cruel and unusual punishment upon an individual without granting him or her due process of law.

The Bush Administration, by contrast, has taken a utilitarian moral approach in justifying the use of torture. Utilitarian approaches judge an action according to its ability to achieve the greatest good for the greatest number of people. Should torturing a single individual prove to save the lives of hundreds or thousands of others, the action of torturing could be deemed justifiable. When vetoing an Intelligence Authorization bill including prohibitions against torture, for example, President Bush argued, "if we were to shut down this program and restrict the CIA...we could lose vital information from senior al Qaeda terrorists, and that could cost American lives."

At least two of the factual premises of the utilitarian argument are highly problematic. While advocates often present the case in terms of a dramatic choice to torture one in order to save many, the truth is that torture and abuse have been applied far more widely than to a few unique individuals. The argument might be stronger if torture were a unique exception applied in a singular and critically urgent circumstance – the "ticking bomb" scenario. The case begins to fall apart, however, when torture is officially sanctioned policy, available at the discretion of interrogators.

What of the claim that violating human rights and liberties might serve some greater good? Even if one accepts such moral reasoning, it is based on false assumptions. Several current and former practitioners of interrogation have persuasively argued that so-called "enhanced interrogation" practices – or torture – simply do not work. Such practices are no more likely to yield actionable intelligence than traditional methods and, in fact, in many cases, are more likely to yield false information.

As Rear Admiral John Hutson, a former Navy JAG, has explained, "torture doesn't work. All the literature and experts say that if we really want usable information, we should go exactly the opposite way and try to gain the trust and confidence of the prisoners. Torture will get you information, but it's not reliable. Eventually, if you don't accidentally kill them first, torture victims will tell you something just to make you stop."

Even the Army Field Manual on Interrogation states that "the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear."

Both moral and practical arguments thus lead to the same conclusion: the use of torture and cruel or inhuman practices is the wrong way forward.

But the question of torture is only the beginning of the debate, not the end. For far too long, public debate focused our attention only on the abuses of "enhanced interrogation," ignoring – to our peril and to the detriment of our counterterrorism efforts – the equally important questions regarding our ability to effectively detain and prosecute individuals involved in terrorism. A long litany of policies undertaken by the Bush Administration in the service of its war on terrorism – indefinite detention, habeas corpus exceptions, special military tribunals, and so on – are as

morally questionable as the practice of torture.

Yet, too often, we have engaged in passionate ideological debate about whether these policies are morally justified, when we might first ask the simple question: do they work?

While Supreme Court justices and legal scholars have debated the legality and morality of the Bush Administration's justice system for terrorist suspects, reaching an array of different conclusions about the theoretical validity of Guantanamo Bay, the military commissions system, and the like, few would attempt to argue that this legal regime actually works.

To wit: the Administration's controversial military tribunal system has yielded exactly two convictions in the seven years since 9-11, including one off a guilty plea. In the same time span, the civilian justice system that the tribunal system supposedly improves upon has delivered over 145 convictions. If our objective is a speedy, effective instrument for bringing terrorists to justice, the tribunal system fails miserably to deliver.

The denial of habeas corpus rights meets a similar fate when examined from a practical standpoint. This denial has led to numerous lawsuits bogging down the judicial process and has undermined the moral high ground on which U.S. anti-terrorism efforts previously stood. In short, the denial of such rights simply does not work to benefit our efforts in combating terrorism.

And practices such as the detention of high-value prisoners at secret, so-called "black site" prisons, the extraordinary rendition of detainees to countries known to torture suspects, and the broad round-ups of thousands of detainees with limited evidence of links to terrorism similarly have proven to be bankrupt as policies. There is no evidence to suggest that they have improved our human intelligence collection capabilities, they have not advanced our efforts to bring terrorists to justice, and in every case they have had severe dilatory effects on the credibility of our leadership in the global fight against terrorism. In short, they have hurt us far more than they have helped.

Looking at real-world results may help us debunk some of the Bush Administration's misguided assertions, but it is not sufficient to help us formulate the right approach. Rather, it is essential that we inform our policymaking by a deep examination and national debate about the

relationship between our long-held values – as enshrined in the constitution and law and expressed in our religious and ethical traditions – and our security prerogatives.

Examining our detention and interrogation policies through this lens is far more difficult, because legitimate differences do exist about what direction is most just, fair, and ethical, as well as what is most effective.

Nevertheless, it is critical that our country have this debate, and that we reach beyond the relatively basic question of whether or not to engage in "torture." Our approach to this area of policy will be most effective when it is well informed by all three branches of government, by politicians and the public, and by the lessons of our experience.

Unfortunately, this national conversation has not occurred and, what's worse, has been precluded by shrill fear-mongering and divisive rhetoric. The Bush Administration deserves much of the blame. In debates over anti-torture provisions, FISA, military commissions, and the like, it has generally resorted to scare tactics, sharp partisanship, and questions about its critics' patriotism. Such tactics do not promote a productive national debate that will make our nation safer from terrorism; they have only served to deflect attention from the enormous flaws of the Administration's policies.

Instead of such cynical partisanship, we must truly wrestle with the very real challenges of developing smart detention and interrogation policies. Such wrestling must go beyond simply opposing the Administration's flawed policies. Opposing torture, opposing the denial of habeas rights, opposing extraordinary rendition – these stances are all good and appropriate, but the rejection of bad policy alone cannot make good policy. Instead, we must seek ways to affirmatively improve our human intelligence collection, strengthen the capacity of our courts to prosecute terrorists, and better understand the nature and vulnerabilities of the terrorist threat.

In the interest of encouraging such a debate, the bill I have introduced offers a number of proposals for how we might effectively approach human intelligence collection, detention, and prosecution in terrorism cases.

My bill combines the imperative of rolling back the Administration's worst abuses with what I hope is forward thinking about improving our ability to collect human intelligence and bring

terrorists to justice.

It would repeal the Military Commissions Act and direct prosecution of terrorism cases to the time-tested civilian and military justice systems, which have proven far more effective at bringing terrorists to justice;

It would close the Guantanamo Bay detention facility.

It would establish a new, cross-government, uniform set of standards for interrogation practices, enacting a clear prohibition against torture and building in a regular Congressional review. Rather than imposing the Army's standards on everyone, it would establish a process for military and civilian intelligence agencies to work together to develop new standards.

It would prohibit the use of private contractors for the critically sensitive, inherently governmental business of conducting interrogations, a red line that I hope we can all agree on.

And it would require that all high-level interrogations be videotaped, as proposed by our colleague, Rep. Rush Holt.

These much-needed reforms are founded upon both moral and practical analyses of the current system's flaws. Such correctives are needed to return our nation to a solid footing. But they must be paired with steps to ensure that our nation's capacity for human intelligence collection is equal to the challenge of global terrorism.

To that end, my bill proposes a number of new initiatives designed to make our human intelligence collection better, smarter, and more penetrating.

It would establish a new interagency center of excellence to train intelligence collectors, review U.S. policies, and carry out sustained research on the best practices of interrogation and intelligence collection.

It would seek to enhance U.S. intelligence cooperation with key allies – like Britain, Spain, and Israel – that have significant experience in dealing with human intelligence collection and anti-terrorism efforts. We need to learn from their successes and mistakes as well as our own.

It would require the military to further develop intelligence collection career paths so that, instead of rotating officers in and out of the intelligence specialty, we retain the best and brightest in the field and benefit from the expertise they develop over the course of their careers.

And it would require the formulation of a strategy to prevent the radicalization of inmates held in both domestic and overseas detention facilities

I offer my legislation with the belief that we must have a far broader national conversation about the questions and the hope that my bill will point to some new and creative answers.

The American public must undertake this conversation with a deep reassessment of an even more fundamental question: what makes our nation truly secure? Is our nation more secure when we use aggressive measures that, even if they make some terrorist suspects talk, fuel the radicalization of a new generation of terrorists? Is our nation more secure if we detain hundreds of terrorist suspects extralegally, but then face legal obstacles that prevent us from convicting them? Is our nation more secure if we take measures designed to increase our security against attacks that undermine values we hold sacred?

Our national conversation must be oriented toward helping us develop a set of policies that makes far more effective use of the instruments of our national power to defeat terrorism on the battlefield, while capitalizing on the moral authority of our free and open society to defeat terrorism in the battle of ideas.

Against those who would do us harm, we must be vigilant and ready to mount an effective defense. But the number of such adversaries, the support they gain, and the threat they pose will depend not only on the defense we mount, at home or abroad, but on the values we project and the role our nation plays in the world.

The legislation I offer today will restore our grounding in the values of justice and respect for human rights that have guided our nation through two hundred thirty-two years of history. It will help us lead again through the power of our example. And it will help us mount that vigilant defense against global terrorists by enhancing the effectiveness of our efforts. I urge my colleagues to support this legislation.