

By Congressman David Price at the Parr Center for Ethics Symposium

Let me first thank Jan Boxhill and the Parr Center for Ethics, as well as the co-sponsoring departments and organizations, for organizing this excellent symposium and for inviting me to join you here today.

I am honored to join this cast of experts in discussing a topic that is of urgent and far-reaching interest for our nation.

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.

The Challenge of the Next Administration

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 in the context of the current presidential campaign.

The two candidates, Barack Obama and John McCain, have distinctly different approaches to the question. These differences say a great deal about their approach to other foreign policy questions, such as their positions on U.S. leadership in the world, respect for human rights, and the rule of law. In this political season, it is no secret where my sympathies lie. But let me try to present an unbiased account of where each candidate stands.

Senator Obama has been fairly clear about the changes he would undertake if elected President. First, he has stated that he would "reject torture – without exception or equivocation."

Second, he would close the detention facility at Guantanamo Bay and reform the Administration's flawed military tribunal system. In fact, he voted against the Military Commissions Act establishing that system.

Third, he would end other unjust policies toward detainees, including "the practice of shipping away prisoners in the dead of night to be tortured in far-off countries, of detaining thousands without charge or trial, of maintaining a network of secret prisons to jail people beyond the reach of the law." (Are these Obama's words in quotes?)

The one uncertainty of Senator Obama's administration would be how he handles a high-pressure, time-intensive investigation with U.S. national security on the line – the so-called "ticking bomb" scenario. He has left his options open, saying, "I will do whatever it takes to keep America safe . . . [W]hat we cannot do is have the President of the United States state, as a matter of policy, that there is a loophole or an exception where we would sanction torture."

There are some points of commonality and some clear differences in the policies Senator McCain espouses. Senator McCain also has said he would close Guantanamo Bay, but he helped create the Administration's military tribunal system and has expressed his full support for it. He recently called the Supreme Court's *Boumediene vs. Bush* decision restoring habeas corpus rights for detainees "one of the worst decisions in the history of this country."

Like Senator Obama, McCain has spoken out against torture, but his public statements and his voting record are somewhat at odds. After initially voicing harsh criticism of Bush Administration proposals for both the Detainee Treatment Act and the Military Commissions Act – the two key legislative planks in the Administration's detainee policies – McCain quietly endorsed so-called "compromise" agreements which allowed the White House to continue policies authorizing torture of detainees. Most recently, Senator McCain actually voted against an Intelligence Authorization Act presumably because it contained provisions enacting restraints on torture by CIA interrogators – at least that was the reason for President Bush's veto, which he supported.

No matter who wins the election, it is clear that there will be some change to the Bush Administration's policies. But the exact nature of the changes will vary greatly according to which candidate wins. Furthermore, beyond the broad questions at issue in the public debate, the next President will have a significant task in determining whether and how to reshape the contours of our approach to bringing terrorists to justice.

In my view, there are three major challenges the next president will have to address. One: What is the best system to prosecute suspected terrorists quickly and effectively? Two: How can we improve human intelligence collection, a task that includes sorting out the policies that have allowed the torture of detainees? Three: What will be the nature of our detention regime, including where, under what authority, with what rights, and for how long suspects may be detained? All of these questions will require fresh thinking and creative solutions.

The Ethics of Torture

I want to tell you about legislation I plan to introduce in the House in the next two weeks that will offer some of this fresh thinking and – I hope – provoke even more – about the tools of national power we bring to bear against terrorism.

Before I move to that discussion, however, let me turn to one of the fundamental questions addressed in my proposal, and raised by this symposium; namely, what are the limits of professional interrogation?

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.

In weighing this question, there are two main approaches that deserve our attention: moral-ethical and pragmatic.

The first approach is a moral analysis of the question of torture. Ethicists of different stripes have ventured through numerous twists and turns of moral logic to arrive at different conclusions about the morality of torture. The argument, however, can be boiled down into a debate between utilitarianism and deontology.

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.

This is ultimately the argument the Bush Administration has made. 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."

The deontological argument, on the other hand, rests on a fixed set of values or principles, according to which an action is judged regardless of the action's context. Many critics of the Bush Administration's interrogation policies have argued that human rights are not contextual, and that torture violates principles we as a society have determined to be sacred, including rights to liberty and life.

There are two major problems with the utilitarian argument. First, it assumes to be true that torture does indeed yield information likely to stop future attacks more effectively than traditional interrogation methods. That assumption, as we will see in a moment, is unproven and likely false.

Secondly, while the utilitarians often present the case as a 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 is stronger when torture is a unique exception applied in a singular and critically urgent circumstance – the "ticking bomb" scenario. The case begins to fall apart, however, when torture becomes a standard operating procedure.

In my view, the deontological argument ultimately wins the day because of its consistency with our constitution. The constitution explicitly sets forth principles relevant to this debate that are not at all contextual or utilitarian in nature. It firmly 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. Torturing an individual inflicts cruel and unusual punishment upon an individual without granting him or her due process of law.

A long tradition of laws and treaties confirms these values. Note that I am not making a legal argument here – legal scholars may, and do, disagree about the scope or jurisdiction of many relevant laws – but a moral one. The tradition represented in our constitution, laws, and treaties reflects the moral values that we hold dear as a society. This tradition, in my view, includes a deontological case against impinging upon individual liberties through torture or abuse.

The second approach is an ethic of pragmatism. This argument leads to the same conclusion, and is at least as convincing in its evidence. The pragmatic approach suggests that we examine whether the means – in this case, torture – effectively accomplishes the desired end, obtaining valuable and timely information relating to our national security interests.

If the means successfully accomplish the desired end, the pragmatic approach suggests we accept the means. If they fail to do so, we must reject the means.

Several current and former practitioners of interrogation have persuasively argued that so-called "enhanced interrogation" practices – or torture – do not pass the pragmatism test. 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.

Col. Caddell has usefully reviewed these arguments and the supporting evidence, so I will not dwell on them. 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."

Thus, the moral-ethical and the pragmatic approaches lead to the same conclusion: the use of torture and cruel or inhuman practices is the wrong way forward.

Detention Policies

Beyond torture, there is a long litany of policies undertaken by the Bush Administration in the service of its war on terrorism that are morally questionable: indefinite detention, habeas corpus exceptions, special military tribunals, and so on.

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 brilliant legal scholars have engaged in fascinating debates about 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, all the moral debates notwithstanding: 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.

A New Approach

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 and its Republican allies deserve much of the blame. In debates over anti-torture provisions, FISA, military commissions, and the like, they have generally resorted to scare tactics and partisanship and questions about their critics' patriotism.

But my own party must take some responsibility as well. Instead of truly wrestling with the very real challenges of developing smart detention and interrogation policies, it has too often found itself in a posture of simply opposing the Bush Administration. 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.

I am hopeful that, as the nation reexamines its leadership and policy priorities, Democrats will take up the challenge of developing responsible, effective policies for interrogation and detention. To this end, I have been working for some time to write a bill that would set out what, in my view, would constitute such an approach.

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.

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.

I will offer my legislation, not with the belief that I have all the answers, but with the belief that we must have a far broader national conversation about the questions.

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.

Let me stop there and take your questions. Again, I thank the Parr Center and the other organizations involved in organizing this symposium, and I look forward to our discussion.