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:

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

wartime 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 circumstances 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:

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:

Unfortunately, the abuses in Iraq are, in some ways, the logical

byproduct of the administration’s 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:

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:

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:

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 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:

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:

He responded by asserting the screening process for detainees ``goes

well beyond what article 5 requires.'' But he did not respond to my

question:

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:

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:

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:

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.

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.