



AMERICAN  
CONSTITUTION  
SOCIETY FOR  
LAW AND POLICY

Prepared Remarks Delivered by Senator Carl Levin on 1/19/2008  
at the Second Annual Dinner Meeting of ACS' Michigan Chapter

Thank you Tom and the Michigan Chapter of the American Constitution Society for the invitation to speak with you today.

I'm delighted you are honoring my friend John Conyers. A number of the legal issues I am going to touch on tonight are part of John's oversight agenda as Chairman of the House Judiciary Committee. We know much more about the inner workings of the Justice Department and the Bush administration, and we have been able to rein in some of their activities thanks to John's unyielding, persistent focus on justice and fairness.

I was hopeful that we would turn to a new page with the departure of Attorney General Gonzalez and the appointment of a new Attorney General. But at his confirmation hearing, I asked Judge Mukasey, for the record, what I thought was a straightforward question: "Would you consider it inhumane to secure a detainee onto a flat surface and slowly pour water directly onto the detainee's face or onto a towel covering the detainee's face in a manner that induced a perception by the detainee that he was drowning?"

That question to Judge Mukasey should have prompted a simple answer of "yes." But the Judge answered that, while the tactic is "repugnant" to him, he could not say it was inhumane without evaluating the "facts and circumstances." Judge Mukasey's response is more than deeply troubling, it sent a message – from the man nominated to head the Department of Justice – that abuses of detainees in U.S. custody might be justified by "circumstances."

But these abuses are not just wrong – they are illegal. And the consequences of the detainee treatment abuses and the Administration's detainee policies go to the core of our principles of justice.

America's security requires that we use our full strength as a nation, not just our military might. We are seeing in Iraq that there are limits to what even the very best military can accomplish.

Tonight I'd like to share with you some non-military sources of our power – the power of our ideals and values, the loss to our security when we violate those ideals and values, and the power for good which would be unleashed if we act to regain our standing in the

world. I specifically want to focus on the abusive treatment of detainees under American control and how it undermines our security in a way no military might can make up for.

The greatest threat to our security – at least since the Cold War ended – is the terrorist threat. We need allies to defeat the threat from religious fanatics who despise modernity and diversity, who use terror as their weapon, and who attack innocent life based on a religious imperative.

The struggle against terrorism has been undermined by how America is viewed by the world. The unilateral policies of this Administration, the cockiness of some of its rhetoric, and the dramatic and vivid reports of our abusing prisoners, have been contributing factors in the decline of America's standing in the world since the world embraced us after 9/11. Last year, a BBC poll, only 29 percent of people around the world said the United States is a generally positive influence in the world.

That number should be setting off alarm bells in Washington because we need the goodwill of the world for our own security. That's not some mushy-headed intellectual musing. It is hard-headed pragmatism. Even our Intelligence Community confirms that we need the goodwill of people around the world to deal with the greatest threat we face. Why? Because information is the key to preventing terrorist attacks. The threat of his own destruction doesn't deter a terrorist – he views his destruction as an early ticket to eternal life. But one person halfway around the world overhearing a terrorist plotting an attack against us could prevent the mass murder of our citizens if he will report it. Security-wise, his doing so could be worth an U.S. Army division. But that citizen in some foreign land is less likely to report the threat against us if he views us as an arrogant bully.

The loss of support of people around the world is partly the result of the decision to go to war with Iraq as unilaterally as we did and the way it has been conducted. But the problem goes much deeper. As Steven Kull, the director of the Program on International Policy Attitudes, stated: "The thing that comes up repeatedly is not just anger about Iraq. The common theme is hypocrisy. The reaction tends to be – You were a champion of a certain set of rules. Now you are breaking your own rules."

America at its best is a beacon for human rights and human liberty, and that's how we like to see ourselves. But much of the world sees us in a very different way when we fail to live up to the standards we profess. To much of the world, the symbol of American values is no longer the Statue of Liberty; it is that horrific photograph of a hooded prisoner at Abu Ghraib, standing on a box, strung up with wires.

Some Congressional staff went to Saudi Arabia towards the end of 2007. One of the staff members told how in two meetings with senior Saudi government officials, they raised concerns about the case of the Saudi rape victim who was sentenced first to ninety lashes and then had her sentence doubled to six months in prison and two-hundred lashes because she spoke out publicly. In both instances, the Saudi officials responded by

simply saying, “Guantanamo” and “Abu Ghraib”. As if to say, “Who are you to lecture us about due process and human rights?”

The source of the abuses of detainees wasn't the spontaneous activities of lower-level enlisted personnel, some of whom have been disciplined. In 2002, the Administration decided to permit the use of so-called aggressive interrogation techniques that had previously been considered inconsistent with our laws, our international commitments, and American values. The Department of Justice issued at that time what's now known as the “torture memo,” which laid down a new definition of torture which effectively authorized the use of aggressive interrogation tactics on detainees.

The new ground rules stated that for physical pain to amount to torture it “must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”

That in turn led to Secretary of Defense Rumsfeld, over the objections of top uniformed military lawyers, to authorize military interrogators to keep detainees naked, place them in so called “stress positions,” and exploit their fears with the use of dogs. The President himself has acknowledged that the United States maintained secret prisons outside the purview of required international monitoring, and he has made public reference to “an alternative set of procedures” approved for the CIA when interrogating prisoners in the secret program, which he characterized as “tough.”

In the last Congress, still controlled by the Republicans, the Administration successfully persuaded a majority of my colleagues to authorize the Administration to unilaterally redefine its obligations under the Geneva Conventions.

One of the purposes was to insulate senior administration officials from accountability for detainee abuses and to bar detainees from ever bringing any legal action challenging any aspect of their detention even if found it was found that there were no grounds for the detention.

When the President of the United States says we are not bound by the Geneva Conventions, it is not just our standing in the world which is diminished, it is our security.

For America's standing and strength to be restored we must adopt policies and procedures that reflect our values and our ideals. Under current policy a person can be detained for life as an enemy combatant without ever having had a lawyer or knowing what the evidence was against him, since that evidence can be completely classified.

So we must provide a fair process for detainees. We must also insist on some accountability for abuses that have occurred, as a way both of restoring confidence and deterring a recurrence. That means establishing responsibility for what went wrong at Abu Ghraib, Guantanamo and elsewhere. The investigations to date of detainee abuse

have left huge gaps including an absence of accountability for the green light given by senior officials, both military and civilian, to abusive interrogation and detention techniques.

As incoming Chairman of the Senate Armed Services Committees last year, one of my first actions was to create a new investigative staff, and that staff is in the process of filling in some of the missing pieces of the detainee abuse story.

As part of the Committee's oversight on detainee issues, I traveled last year to Guantanamo with Senator Lindsey Graham to observe the proceeding determining the status of Khalid Sheikh Muhammad (known as "KSM") – to determine, in other words, if KSM is a so-called enemy combatant. We viewed the proceeding on closed circuit television from an adjoining room.

In the course of the hearing, the representative for KSM – not a lawyer – read a statement on KSM's behalf, acknowledging, indeed proclaiming, his leadership in planning the 9/11 attacks and many other terrorist activities. KSM was asked by the tribunal president if that statement was accurate, and he replied in English that it was. KSM actually wanted to record for history his part in a war of terror he has unabashedly waged.

KSM also presented at the hearing a written statement alleging he was tortured during his captivity by the CIA in the years prior to his arrival at Guantanamo. This statement was immediately classified.

It's hard for the public to care about due process for someone like KSM. But, as Senator Graham has said, it's not about him. It's about us.

There are many reasons not to tolerate torture – it violates our basic values, it's morally wrong, it produces unreliable information, it leads to many prisoners resisting cooperation who might cooperate if dealt with humanely, it violates domestic and international law, and it jeopardizes our own troops if they are captured. But there's also this: people are less likely to believe that a confession was freely given if there have been abuses of detainees. Even with an admitted terrorist like Khalid Sheikh Mohammad who confessed to masterminding 9/11, I'm afraid the world will focus more on how we treated him, rather than on what, by his own words, he did to us. It is essential for our security that we and the world focus on understanding what KSM did, what he would do if released, what produces and motivates the KSMs of the world, and what methods and capabilities they have and use. That focus gets blurred when serious allegations of torture get thrown into the mix.

Consider what happened a little less than a year ago when British sailors confessed to trespassing into Iranian waters. We didn't believe those statements because of the country that claimed to have obtained the so-called confessions. We surely don't want confessions we obtain to be viewed in the same way.

I try to regularly visit with our veterans at VA hospitals in Michigan. Last year, I had a conversation with a veteran lying in his bed at the Ann Arbor VA hospital. I asked him: What can we do to help you? And do you know what he said? “Win back the respect of people around the world for America.” That veteran understands that the erosion of support for America weakens us in a way that military force can not remedy.

A Captain in the 82<sup>nd</sup> Airborne Division wrote to Senator John McCain about his struggle to obtain clear guidance on how his men should treat detainees, and he described the abusive treatment of detainees he had witnessed. He then posed what he called “the most important question that this generation will answer. Do we sacrifice our ideals in order to preserve security?” And he continued: “Terrorism inspires fear and suppresses ideals like freedom and individual rights. Overcoming the fear posed by terrorist threats is a tremendous test of our courage. Will we confront adversity in order to preserve our ideals, or will our courage and commitment to individual rights wither at the prospect of sacrifice?”

“My response is simple,” he said. “If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession.” He concluded, “I would rather die fighting than give up even the smallest part of the idea that is ‘America.’”

America can be – and must always strive to be – a beacon. But the gleam is gone in the eyes of much of the world. By understanding the strength that comes when we live up to our ideals, we can regain that glow. When we act – as that veteran in the VA hospital urged me – to “win back the respect of people around the world for America,” we will make our children’s and grandchildren’s lives safer and our beloved nation more secure.

Thank you.