



SPEAKING OUT

A Cry for Justice

BY LARRY W. ROEDER JR.

The story of Abu Ghraib had just hit the news, complete with its crisp, ugly photographs, evidence of a system gone wrong. A lawyer who works in the field of human rights and who knew I had been in the military asked me if such behavior was illegal in the Army. Somewhat stunned by the question, I said of course it was. I went on to raise the conditions of the prisoners being held at Guantanamo Bay, and argued that they needed lawyers and access to the Red Cross and other human rights observers in order to avoid similar mistreatment, as well as to protect our reputation. My colleague replied that those prisoners have no rights, since “they are pirates.”

If an attorney that works on human rights issues doesn't know the proper answers to those basic questions, then small wonder West Virginia reservists were confused when aberrant intelligence officers claimed that the rules of war changed after 9/11 and therefore their “high-value” prisoners had no rights. Of course, unknown to both of us was a memo from Justice which contends that the president isn't bound by laws prohibiting torture and that government agents who might torture prisoners at his direction can't be prosecuted for doing so. The memo reportedly even says that the president, as commander-in-chief, can approve torture as a method of interrogation. Clearly my colleague was therefore justified in asking the question; but there can

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only be one comment on this policy. Hooey! For a beacon such as our nation to appear to be an advocate for torture is to seriously undermine our credibility as an advocate for human rights. It also weakens our ability to convince rogue nations to join the civilized world.

Such ignorance of what is appropriate — that America can't be above the law or even appear to trying — demonstrates the need for a long-overdue national discussion on the importance of civil rights in the war on terror. Many Americans are probably also confused. This dialogue could perhaps be conducted via a televised discussion by a panel of legal experts who would take questions from ordinary citizens in the audience.

This is not an attack on the current administration. It is an honor to serve

in the government. The trouble is that what happened at Abu Ghraib is not unique. Many administrations have held positions that went over the line. But the events of today offer bold proof that the system itself has broken. For example, evidence has now come to light that many alleged terrorists have died while in U.S. military custody. In one particularly notorious case, U.S. interrogators may have strangled an Iraqi general during questioning. If true, that was murder, no matter how valuable the prisoner. As a result, we need a change in attitude; our failure to maintain a system of full civil rights for prisoners and detainees only encourages terrorism (though evil never needs encouragement) and weakens our alliances.

Let me be clear: I am not calling for a debate on the appropriateness of the war on terrorism, which I support, or the Iraq conflict itself — both important topics upon which good, fair-minded people can disagree. Nor should this be an election-year fight. Rather, speaking as a professional civil servant, I am advocating the importance of managing our involvement in such wars in the proper way, and urging a recognition that even noble ends do not justify unethical means — certainly not those alleged to have been proposed in the Justice Department memo.

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activities before 2001. What about the takeover of the U.S. embassy in Tehran in 1979, the slaughter of Israeli athletes at the 1972 Munich Olympics, or the activities of the Bader Meinhof, Red Army and Shining Path, to name just a few groups? The response to such savage people and events was, and must remain, to bolster our democratic, constitutional principles during war, not to take away rights. Each time our citizens lose rights in the struggle against terrorism or in any conflict, the terrorists win. But when we stand on the side of justice, even when attacked, we make a mockery of the evil that is al-Qaida and Saddam Hussein.

One Pentagon adviser recently called the Geneva Conventions " quaint," and went on to challenge the whole concept of observing basic human rights in wartime. It is hard to imagine an attitude more short-sighted and destructive to our nation's image than dismissing the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as irrelevant. Both treaties provide that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment — period, no exceptions. You don't have to be a lawyer to understand that. It has been said that the Defense Department tried another tack to defuse criticism by refusing to use the word "torture," saying that term doesn't apply to what went on in Abu Ghraib. Yet the Convention against Torture says:

"'Torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating

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*In times of war, even
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or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” These acts are equally illegal in Iraq, Cuba or back in the U.S., whether in war or in peace.

Every religious system and code of morality teaches that such conduct is immoral — i.e., kidnapping unproven suspects and taking them across the border for “rough treatment” — and experience shows that it is also ineffective or at least counterproductive. Yet now we are told that because of a few madmen, we must abandon the presumption of innocence when dealing with possible terrorists. Some may object that if a prisoner knows something crucial that might save the lives of many innocent people, then it is worth violating his rights to obtain that information by any means necessary, including torture — the so-called “ticking bomb” justification. Under the same reasoning, hundreds of “enemy combatants” have been sent to brigades in Cuba, Afghanistan and Iraq, and even right here in the United States, for years at a time without any trial to determine guilt. We are also told that prisoners may be held for years without trial — with no opportunity to defend themselves.

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This violates the very meaning of the American Revolution.

Yes, some, perhaps many, of these detainees may be “pirates,” as my colleague believes. But they are still human beings with rights we must respect. Toward that end, while we must protect secrets, trials should be public, wherever possible. The victims of tyranny in Iraq, Afghanistan and elsewhere deserve this, to say nothing of the citizens of this country, who must be convinced that American justice is open, fair and swift. For when our justice is secret, we are set up for abuses by the few and can’t deflect lies.

The Meaning of Justice

This is also why the way Saddam Hussein’s sons were killed was repugnant. The two were savages — no

doubt — but tanks and cannon are not police tools. Rather than put out the word “dead or alive,” we should have tried to bring them in alive, to be put on trial in The Hague for crimes against humanity, so the world and Iraq would know the meaning of American and international justice — a justice superior to the savagery of Saddam’s Iraq.

Every year, as we have done for decades now, the State Department publishes a comprehensive set of country human rights reports evaluating how every government around the world treats, or mistreats, its citizens. But when American officials engage in some of the very practices we rightly denounce elsewhere, as happened in Iraq and may have happened in Afghanistan and Cuba, those reports lose credibility. And that gap between

our words and our deeds only weakens our ability to speak out on behalf of victims of oppression and police-state brutality around the world — even here at home. A moral approach to justice isn’t always easy; but unethical shortcuts, though they may have quick positive returns, will in the end destroy us.

The Supreme Court has, I am relieved to note, now ruled that the prisoners at Guantanamo Bay and other “enemy combatants” are entitled to at least some of the basic due-process rights required by the U.S. Constitution. That set of decisions is not popular in many quarters, but it marks a welcome return to our country’s most fundamental values.

Our Founding Fathers launched a revolution that inspired the world, proclaiming that all humans are creat-



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ed equal, and are endowed with rights that no government can take away from them, no matter where they live or what they believe. We have not fully lived up to that idea, but it has guided our nation for more than two centuries. My own great-grandfather, Ernest Winter, like the ancestors of many *Journal* readers, fought tyranny in his homeland at great risk to himself before coming to this country. He was a national labor politician who escaped the Kaiser's secret police by crossing the German border in a hay wagon under the threat of death. He was smuggled to England and then traveled to America, where he spent the rest of his life working for the downtrodden, alongside Samuel Gompers and other activists.

In times of war, even democratic governments often pass laws they

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become ashamed of once the crisis has passed. In 1798, the United

States almost went to war with France as xenophobia swept our country, leading to passage of the Enemy Alien Act and Alien and Sedition Acts permitting the president to arrest, imprison and deport "dangerous" immigrants on mere suspicion of "treasonable or secret machinations against the government." If such a deportee returned, he could be imprisoned for as long as the president thought "the public safety may require." Sounds like how we treat so-called "enemy combatants," doesn't it? And in an unsettling parallel with today's Patriot Act, the Sedition Act made it unlawful to write, print, publish or speak "false, scandalous and malicious" words about Congress or the executive branch — in direct violation of the First Amendment guarantee of freedom of expression.

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Though the Alien and Sedition Acts (but not the Enemy Alien Act, it is worth noting) were ultimately repealed, their spirit has resurfaced more than once during wartime. Abraham Lincoln suspended the right of habeas corpus during the Civil War, and thousands of Japanese-Americans were interned for years during World War II despite a complete lack of any evidence that they were disloyal or had harmed the United States in any way. Rights were abrogated in World War I as well, and internment camps from that conflict were used again in World War II. But those decisions were soon correctly seen as aberrations, not as precedents.

We must return to our American revolutionary roots, resisting the temptation to weaken our system of rights when under stress, and instead

***The Supreme Court
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setting an example for all to follow. Give the prisoners lawyers. Give them rights and a speedy, open, fair trial. No more deaths or torture during interrogation. Such behavior demeans us and sets American soldiers and civilians up for torture in the future.

As the Hindu poet Manu wrote in 1200 BC: "Justice, being destroyed, will destroy; being preserved, will preserve; it must never, therefore, be violated. Beware, O Judge! Lest justice, being overturned, overturn both us and thyself." ■

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