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The Honorable John McCain
United States Senate
241 Russell Senate Office Building
Washington, DC 20510-0303

Dear Senator McCain,

The draft legislation for the "Military Commissions Act of 2006" transmitted by President Bush to the Senate, despite its good intentions, in my opinion would undermine justice and security in the United States.

President Bush vehemently asserts in his speech of September 6 that U.S. military and intelligence officials in their capture and questioning of the detainees were acting in their official capacity and in a "thorough and professional way," and therefore should not be subject to prosecution.

Unfortunately, it could have been asserted at Nueremburg that many of the Hitler personnel were "doing their jobs in a thorough and professional way." I think it likely that some of the captors or interrogators committed war crimes in the treatment of the detainees, and there may have been war crimes committed by their superiors. We do not know. And we should.

If President Bush wishes to take responsibility for these actions, which he authorized, then he should take immediate measures to bring them to light so that he can, if he so wishes when the facts are clearly before us all, pardon those individuals and officials. This is something that he can do only while he is in office. Furthermore, instead of waiting until his last day in office, as has been common practice, he should do this as soon as the facts are available, if that is his intent in any case.

THAT would be real assumption of responsibility.

In his interview with Tim Russert on "Meet the Press," September 10, 2006, Vice President Cheney said of his former aide I. Lewis Libby, "... he's a good man. He's a friend of mine. He's entitled to the presumption of innocence." But it is the basis of the American system of justice that every individual is entitled to the presumption of innocence, even those who have been dubbed "terrorist."

At 86 pages the draft Bill is too voluminous to see clearly what Congress has decided to do or even for Congress to make a valid decision about the program. And the idea of replacing the general strictures of Common Article Three of the Geneva Conventions by a

strict list of acts that are forbidden to our personnel is, to my mind, precisely wrong. Our laws against murder do not detail the specific modes of murder that are forbidden; it would be too easy to choose a mode not yet listed.

The enumeration does seem to have some benefit looking toward the future, since it appears (p. 80, ll. 6-17) to include as torture "an act specifically intended to inflict severe physical or mental pain or suffering... upon another person for the purpose of obtaining information or a confession... 'Severe mental pain or suffering' has the meaning provided in 18 U.S.C., para 2340(2)."

"prolonged mental harm caused by or resulting from (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. 18 U.S.C. Sec. 2340(2)."

There is no doubt that much of the behavior that has come to light over the last several years was indeed torture as thus defined. Such behavior that leaves no outward trace can still cause severe and permanent mental harm to a detainee.

Again, that is a fit subject of a presidential pardon, but it is not a cause to ignore, conceal, or condone the behavior that would seem to constitute a war crime even under the White House draft Bill.

Senator McCain, as you have recognized by your consistent leadership, this is a matter of utmost concern for America's future.

I intend this to be an open letter.

Sincerely yours,

/R.L. Garwin/

Richard L. Garwin

cc:

Sen. Lindsay Graham.
Sen. Carl Levin.
Sen. John Warner.

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