

NATSECDEF 2017

**George Washington University Law School
Washington, D.C.
September 15, 2017**

Building National Security on Inalienable Rights

Alberto Mora

Many thanks, Alka, for the introduction and for the invitation to participate in this important conference. The topic – “Building National Security on Inalienable Rights” – is as timely today as it was when our nation was founded. And its implied message – that our national security rests on protecting and observing inalienable rights, others’ and ours – is an important truth today and will continue to be so for as long as freedom matters.

My thanks, too, to the sponsors of the conference: the Military Commissions Defense Organization, the National Coalition for the Protection of Civil Freedoms, and Witness Against Torture. And a special thanks, too, to the George Washington University Law School for graciously serving as our host. It is a great pleasure to be here at the Law School again and to be with each of you.

Before I start, let me acknowledge the work of the Defense Organization, because it’s relevant to what I will say. For the few who don’t know what that is, it’s the legal team that is very ably providing a legal defense to some of the individuals accused of being the architects of 9/11 or of having helped carry out the attacks. Some fellow citizens may question why these accused should be provided any defense. But no one in this room questions that at all, nor do I. By defending the

accused, you on the defense team are defending the beating moral heart of our nation – the concept that every single person matters, without exception, and that consequently the dignity of every single individual is to be protected through the agency of justice under law. As Professor Lou Henkin wrote: “Every man and woman between birth and death counts, and has a claim to an irreducible core of integrity and dignity.”¹ By defending that claim to dignity that everyone possesses, including those detained at Guantanamo, you help protect us all.

I.

On January 21, 1961 – Inauguration Day – John F. Kennedy stood on the Capitol steps less than two miles from here and gave one of the greatest speeches in American history, great because it constituted one of the purest expressions of American character, purpose, and idealism. In paragraph two of his address, almost his first words, he set his theme by associating himself and his new presidency with the guiding belief of the American Revolution, that “the rights of man come not from the generosity of the state, but from the hand of God.” Note that he did not refer to the rights of only “citizens”. In the very next paragraph, he spoke about how a torch had passed to a new generation of Americans “tempered by war, disciplined by a hard and bitter peace, proud of our ancient heritage....” And those Americans, he then confidently pledged, are “unwilling to witness or permit the slow undoing of those human rights to which this nation has always been committed, and to which we are committed today at home and around the world.”

¹ Louis Henkin, *The Age of Rights (1990)*, at 193.

Let's dwell on this for a moment: "unwilling to witness or permit / the slow undoing / of those human rights to which this nation has always been committed, / and to which we are committed today / at home and around the world."

Today, fifty-six years later, we are led by an unapologetic, pro-torture president who does not subscribe to a single word of this sentence. Indeed, it would not be unfair or an exaggeration to say that by words and acts he has already put in place policies to distance our nation from our historic commitment to human rights at home and abroad and to do so not slowly, but rapidly. Acting in conformity with presidential guidance, the secretary of state has already declared that the United States is abandoning our human rights leadership, reducing our advocacy efforts, and is stripping the department of much of its capability in the area. In all of this, the president and his cabinet are supported by millions of Americans and acts with as yet scant opposition or dissent from Congress.

Which president has the better grasp of the real national interest, John Kennedy or Donald Trump? And what happened between Kennedy and Trump to have brought us to this state of events, this sea change in our national purpose? My vote is with JFK, but to attempt to answer these questions, let's turn back the clock a few years.

Four days ago our nation remembered and reflected on the anniversary of 9/11. It seems incredible that it has been 16 years since that day. For me – as I suspect is the case with most of us here – 9/11 could have occurred yesterday. I was in my Navy office in the Pentagon that day, and I remember vividly the momentary shudder that went through the building at 9:37 a.m. when American

Airlines flight 77 struck it. Of course, I did not know at first that this is what had occurred; it felt as if a large, heavy safe had been dropped on the floor above me. But in the impact that had caused that shudder, as we would all learn later, 64 passengers and crew died, as did 125 other Americans who were working in the Pentagon that day.

Of all those deaths in the Pentagon, the one that stays with me most was that of LCDR Otis Tolbert, a Navy intelligence officer. Before 9/11, LCDR Tolbert would leave the Pentagon and go home to his wife and three infant children. One of his children was a daughter, Brittany, who was severely afflicted with cerebral palsy. As a victim of that disease she did not have the strength to hold her head up, but Otis would help her with that when he would care and play with her after he came home from the day's duty. That Brittany would lose her father – whom she would never really come to know – and that he did not come home that day, or any other day ever after, to help her hold her head up has always struck me as one of the most tragic and cruel events of a day filled with tragedy and cruelty.

II.

That is where it started. Otis, the murdered Navy father, is representative of the almost 3,000 deaths that day and Brittany, his disabled daughter, is one of the tens of thousands who directly experienced loss and grief as a result. Having been attacked and wounded, our nation went to war. We did so out of fury – to avenge the dead – and out of fear, to protect the living. Sixteen years later, the fear and fury are still coursing through the national bloodstream. These emotions partially help explain the emergence of Trump. And they largely explain, I think, why our nation –

mistakenly and I hope temporarily – seems prepared at this point to permit the unwinding of those human rights at home and abroad to which we have been committed our entire history. The fear has distorted our judgment and our values.

III.

We are now sixteen years after 9/11, and we are still at war – the longest in American history. More precisely, we are engaged in various wars: the incursion into Afghanistan to destroy Al-Qaeda and the Taliban, its host and protector, segued into the invasion of Iraq, what military historian Thomas Ricks correctly has called one of the “most profligate actions in the history of American foreign policy.”² And these, in turn, led to military or paramilitary engagements in scores of other countries, all under the badly conceived and ill-defined rubric of the “War on Terror.” What started and should have remained as a tightly focused political and military effort against Al-Qaeda and its direct supporters metastasized into something quite different, diffuse, undisciplined, and vague. At the moment that we called out our enemy to be “terror”, which is a tactic, not a tangible entity like Al-Qaeda, we lost the clear understanding of who the enemy is, a cardinal sin in any military undertaking. As a consequence, we inevitably lost our strategic objective, grasp, and direction for, as the saying goes, “If you don’t know where you’re going, any road will take you there”.³ These mistakes were compounded by a series of other interrelated mistakes: forgetting that all military action should be guided by and subordinated to overarching, clearly defined political objectives; over-

² Thomas Ricks, *Fiasco* (2006).

³ George Harrison, *Any Road* (2002), almost certainly inspired by a comment by Cheshire Cat in Lewis Carroll’s *Alice in Wonderland*.

militarizing our efforts in the fight against terrorism; and losing sight in the advantages of coalition warfare in this type of conflict as we fell prey to the temptation to go-it-alone militarily. And all of this was in part fueled, we can now recognize, by what was at the time a toxic dose of military hubris created by the collapse of the Soviet Union, the absence of a peer military competitor, the easy victory over Iraq in Gulf War I, the success of the all-volunteer military, and the so-called Revolution in Military Affairs brought about by precision guided munitions.

Given this matchless military power, perhaps it is understandable that our nation's real military objective after the initial invasion of Afghanistan, although one never openly articulated to the American public by the Bush administration, came to be not primarily to crush Al-Qaeda – an organization, as has been noted somewhere, whose membership in 2001 would not have filled a good-sized basketball gym in an average small town – but to figuratively “drain the swamp” of the Middle East and transform the region politically, a much more ambitious but, it was felt, a worthier and attainable objective given the perceived invincibility of American power. This breathtaking logic was a major contributor to the decision to invade Iraq, which has proven to be an exercise in strategic overreach of staggering dimensions with disastrous human, economic, foreign policy, and military consequences.

IV.

But these were not the only mistakes of American post-9/11 statecraft and military strategy. Perhaps an even greater mistake was this: We failed to give proper weight to our values and ideals and to recognize the role that law and human rights should play and must play in the defense of our nation and in the projection of

our military strength. We knew all too well what we were against – that would be Al-Qaeda and everything, however nebulous, having to do with “terror” – but we started forgetting what we stood for. Outraged by Al-Qaeda’s suicidal savagery, fearful of its declared intent to kill again if given the chance, and uncertain of its residual capability to do so, the Bush administration adopted a basket of measures that Mark Danner has termed a “state of exception”.⁴ They may have been adopted mainly out of the sincere belief that they were required by military and security necessities, but they departed from our legal order. These measures included the use of Guantanamo as a detention center exempt from judicial oversight and jurisdiction; the establishment of military commissions lacking fundamental due process protections; the implementation of indefinite detention; the disregard of the Geneva Conventions as governing laws of war; the extensive use of domestic wiretap and communications intercepts in violation of clear legal restraints; the adoption of torture as a weapon of war; the outsourcing of torture through use of extraordinary rendition; and the exclusion of the public and even Congress from meaningful participation in the adoption and oversight of many of these measures. Each of these measures violated our values, existing law, the structure and principles of the rule of law, and the norms of democratic governance. At the time, however, the Bush administration chose to regard the legal constraints that applied as inconvenient barriers to be brushed aside and gave little or no attention to the broader domestic or international policy consequences of adopting these measures. Our blood was up, and the gloves were off.

⁴ Mark Danner, *Spiral* (2016).

Almost all of the former senior members of the administration continue to defend the security measures. Referring to President Obama's opposition to the Bush-era torture policies, Vice President Dick Cheney, the most energetic apostle of the administration's security policies, said in 2009 that to abandon "enhanced interrogation" (as he puckishly insists in calling torture) would be "recklessness cloaked in righteousness, and would make the American people less safe". If asked today, he would probably extend that statement to any opposition to the other policies as well.

Was he right?

No, demonstrably not. If there is "recklessness cloaked in righteousness" (a wonderfully crafted phrase, by the way), the original recklessness was on the part of the Bush administration in first departing from the law and our values, not on the part of its critics in calling them out and demanding that our nation revert to what the law required. The Bush administration not only was wrong in adopting these measures, it was wrong in misleading the nation in its description of them, in making false claims of their necessity, legality, and effectiveness, and by failing to disclose or even examine their adverse policy consequences.

V.

Let's take the example of the use of torture or, to use the administration's euphemism, "enhanced interrogation"; it helps illustrate the larger issues.

During their tenures, the principal architects of the enhanced interrogation program – President Bush, Vice President Cheney, Attorneys General Ashcroft and Gonzalez, Defense Secretary Rumsfeld, and CIA Director Tenet – emphatically and

frequently denied that the program had resulted in torture. And, in an eloquent and passionate speech in 2009, Vice President Cheney went further: he charged that those who dared asserted that the U.S. had tortured were casting libel.⁵

Today, the facts prove otherwise. We now know, from the Senate Intelligence Committee's Torture Report⁶ and many other sources that the administration's claim that "enhanced interrogation" was grounded on some sort of scientific basis and constituted a uniquely effective method of gaining access to terrorist confessions was completely bogus. We know that there was no scientific basis at all behind the techniques; we know that the only thing "enhanced" about them was their level of brutality; and we know that their effectiveness in yielding actual intelligence, to judge from the CIA's own internal records on their 20 principal claims of success, was close to nil.

Even more importantly, we now also know that the administration's vehement claims of legal innocence – i.e., that the level of brutality never crossed the legal threshold of "severe physical and mental pain or suffering", the legal definition of torture – are verifiably false and constitute no more than empty posturing. Such claims were always suspect because they would have required something that doesn't exist, which is a method to precisely calculate the level of pain and suffering inflicted. Now we don't have to guess or accept the administration's self-serving representations as accurate. Even a cursory read of the accounts of detainee

⁵ Richard Cheney, speech at the American Enterprise Institute (5/21/2009), accessed at <http://www.politico.com/story/2009/05/full-transcript-dick-cheney-speech-022823?o=2>.

⁶ Senate Select Committee on Intelligence, *Study of the CIA's Detention and Interrogation Program – Foreword, Findings, and Conclusions, and Executive Summary* (released Dec. 10, 2014).

treatment in the Senate Torture Report demonstrates that each of the 39 individuals subjected to the CIA's "enhanced interrogation" program were tortured over extensive periods of time. And, although the Report did not cover CIA rendition, it would now be naïve to presume anything other than that many and perhaps all of the estimated 136 individuals rendered by the CIA⁷ to third countries were also tortured. No wonder that a unanimous European Court of Human Rights in the two cases in which it considered the treatment of detainees in European CIA black sites held in 2014 that the abuse amounted to torture.⁸ And no wonder why President Obama acknowledged on August 1, 2014, that our treatment of some detainees constituted torture.

The plain fact, simply stated, is that the U.S. tortured and that we did so despite and in violation of our laws, values, and traditions, with specific intent, and as a desired result of express state policy. That question is now settled and is no longer a matter of reasonable debate, dispute, or opinion. Our nation is responsible for the torture of certainly dozens and more likely hundreds of individuals at CIA black sites around the world; at Abu Ghraib, Guantanamo, and dozens of other military locations; and at multiple foreign government locations where prisoners were subjected to outsourced brutality as a result of the CIA's extraordinary rendition program. And, lest we forget, many more victims were subjected to lesser forms of brutality that constituted cruel, inhuman, and degrading treatment that could be as destructive of human dignity as torture.

⁷ See Open Society Foundations, *Globalizing Torture*, at 6 (2013).

⁸ *Al Nashiri v. Poland*, case no. 28761/11 (judgment of July 24, 2014), and *Husayn (Abu Zubaydah) v. Poland*, case no. 7511/13 (judgment of July 24, 2014). Other cases regarding allegations of CIA torture are pending.

But we also know more than this.

We know that the damage from the torture extended well beyond that inflicted on the individual victims – there was damage to our country as well. Torture damaged and the legacy of torture continues to cause damage in three principal areas: domestically, to our values, societal norms, laws and legal system, and to our governmental integrity; internationally, to our standing abroad, to the architecture of international law and human rights, to many bilateral relationships, to the support for U.S. goals and policies in the fight against terrorism, and to the coherency of our foreign policy and our ability to achieve our foreign policy objectives; and lastly, to our national security, by weakening our alliance structure, disrupting and reducing military and intelligence cooperation, producing adverse military impacts at the tactical, operational, and strategic levels, degrading U.S. military integrity and ethos, enhancing enemy propaganda, recruiting, and combat effectiveness, and contributing to U.S. combat deaths.

Let's look into each of these three areas of damage in a bit more detail.

First, at home, the damage was massive. As Sen. John McCain has said, "In the end, torture's failure to serve its intended purpose isn't the main reason to oppose its use.... [T]his question isn't about our enemies; it's about us. It's about who we were, who we are and who we aspire to be."⁹ The norm against torture has been shattered, causing major damage to the foundational belief that cruelty is incompatible with the American ideal. Now, almost half of all Americans are of the

⁹ Senator John McCain, "Floor Statement on Senate Intelligence Committee Report on CIA Interrogation Methods," (Dec. 9, 2014).

view that the use of torture is permissible under “some circumstances”¹⁰; almost all of the Republican candidates for president in the last election cycle, most notably Donald Trump, pledged to restore “enhanced interrogations” if elected; the corrupt Bush-era Office of Legal Counsel memoranda on torture will continue to plague legal discourse and judicial deliberations for years to come; and we have chosen to disregard a critical requirement for any legal system, which is accountability for crimes. The net result, among others, is that the zone of individual protection from cruelty has shrunk, personal rights and liberty have been diminished, and the United States has established the strongest and most formidable precedent among democratic nations for the proposition that immunity from accountability from torture is acceptable and that impunity for crimes committed in the pursuit of security is a viable option. The damage to fundamental values, individual liberty, and the rule of law is severe.

When we as a nation adopted and implemented our torture program in 2002, we simultaneously and necessarily discarded the belief that every individual is vested with the inalienable right to be free from cruelty. When we tortured Abu Zubaydah and Mohammed Al-Qahtani and Khalid Sheik Mohammed (and many others) the way we did, it was only because they didn’t have the right to be free from cruelty. And, if that’s true, then neither you nor I have that right, either, because we took the right to be free from torture out of the basket of protected and inviolable personal rights – where it had previously been under American laws and

¹⁰ Pew Research Center, “2016 Pew Research Center’s American Trends Panel, Wave 22 October, Final Topline” (poll taken Oct. 25 – Nov. 8, 2016). In this poll, 48% responded that torture may be used and 49% responded that it may never be used.

values and international law – and put it into the realm of state discretion. Thus, no longer would our decision or any state’s decision to use cruelty be constrained by the victim’s assertion of his or her judicially cognizable individual rights; now it would be left to the discretion of state policy. The United States might be more restrained in its use of cruelty, but if Syria, North Korea, or Cuba decided to be completely unconstrained, who could object? The answer is, of course, no one.

The second category of the harm from torture is to our foreign policy interests. By torturing, the United States acted contrary to our long-term and overarching strategic foreign policy interests, including many of the principal institutions, alliances, and rules that we have nurtured and fought for over the past sixty years.

Let’s look at three examples, out of thousands, of these foreign policy achievements:

- **The Geneva Conventions**, as do most of the major human rights treaties adopted and ratified by our country during the last century, forbid the application of cruel, inhuman, and degrading treatment to all captives. Thousands of American soldiers have benefited from these conventions;
- **The Nuremberg Trials**, a triumph of American justice and statesmanship that launched the modern era of human rights and international criminal law, treated prisoner abuse as an indictable crime, helped cement the principle of command responsibility, and started the process whereby national sovereignty no longer served as a potential shield to protect the perpetrator of crimes against humanity from the long arm of justice; and

- **The German Basic Law**, which is the name for the German constitution, has helped transform a country that was instrumental in launching two of the most destructive wars in history into the responsible society it is today. Article one, Section one, states: “The dignity of man is inviolable. To respect and protect it is the duty of all state authority.” That this should be an element of the German Basic Law today reflects credit only on the German nation and its citizens. However, that it should have been adopted by Germany in 1949, the year the constitution was first ratified, also reflects credit on an American foreign policy that had integrated our national focus on human dignity as an operational objective.

Each of these three achievements has returned massive dividends to our nation. We are all the better for them. However imperfectly these precedents, rules, or laws may be observed or enforced, they have helped shape public opinion world wide, created global standards of conduct, and influenced the conduct of foreign individuals, groups, and nations in ways that are overwhelmingly supportive of our national interest and objectives. And yet, when we adopted our policy of cruelty we sabotaged these policies and achievements. When we tortured, we rendered incoherent a core element of our foreign policy: the protection of human dignity through the rule of law; we violated the letter and spirit of the Geneva Conventions; we weakened the Nuremberg principle of command responsibility; we damaged the very fabric of human rights and international law and fostered a spirit of non-compliance with both; we fostered the incidence of prisoner abuse around the world; we created a deep legal and political fissure between ourselves and our

traditional allies; and we fueled public disrespect for and opposition to our country around the world, thus hampering the achievement of our foreign policy objectives and compromising our ability to provide human rights leadership.

Let me now turn to the third category of harm, that to our national security. Simply stated, the use of torture is a quintessential example of allowing tactical considerations to override vastly more important strategic objectives. Our nation's defenses were materially and demonstrably weakened, not strengthened, by the practice of torture. Not only did it blunt our moral authority, it sabotaged our ability to build and to maintain the broad alliances needed to prosecute the war effectively, it diminished our military's operational effectiveness, it had adverse consequences on the battlefield, and it presented our enemies with a strategic gift.

This is why in 2005 General Stanley McChrystal, when he was commanding US troops in Iraq, turned down an offer by President Bush to confer upon him authority to use "Enhanced Interrogation Techniques" in theater. By then, General McChrystal had seen data indicating that units that did not use brutality obtained better intelligence and had better relations with the local communities, and thus as a rule had better combat records. And this is why on November 20, 2008, the Senate Committee on the Armed Services concluded in a report entitled "Inquiry into the Treatment of Detainees in U.S. Custody," which was issued without dissent, that brutal interrogation techniques "damaged our ability to collect accurate intelligence that could save lives, strengthened the hand of our enemy, and compromised our moral authority."¹¹

¹¹ Report at xii.

When our nation adopted our policy of cruelty we compromised our ability to accomplish critical national security objectives in the fight against terror. Here are a few examples:

- Because the cruel treatment of prisoners constitutes a criminal act in every European jurisdiction, European cooperation with the United States across the spectrum of activity -- including military, intelligence, and law enforcement -- diminished once this practice became apparent;

- Almost every European politician who sought to fully ally his country with the U.S. effort in the fight on terror incurred a political penalty as a consequence, as the political difficulties of Prime Ministers Tony Blair and Jose Maria Aznar demonstrated;

- Our abuses at Abu Ghraib, Guantanamo, and elsewhere perversely generated sympathy for the terrorists and eroded the international good will and political support that we had enjoyed after September 11; and

- We lost the ability to draw the sharpest possible distinction between our adversaries and ourselves and to contrast our two antithetical ideals. By doing so, we compromised our ability to prosecute this aspect of the war -- the war of ideas -- from the position of full moral authority.

All of these factors contributed to the difficulties our nation has experienced in forging the strongest possible coalition in the fight on terror. But the damage to our national security also occurred not only at the strategic, but also at the operational and tactical military levels. Consider these following five points:

- Senior US officers have stated that the first and second identifiable

causes of U.S. combat deaths in Iraq were, respectively, Abu Ghraib and Guantanamo, because of the effectiveness of these symbols in helping attract and field insurgent fighters into combat;

- Some allied nations – including New Zealand -- refused to participate in combat operations with us out of fear that, in the process, they enemy combatants captured by their forces but transferred to U.S. custody and abused by the U.S. could create war crime liability for New Zealand;

- The UK limited intelligence sharing with the U.S. in instances when it was feared that the intelligence could prompt or be used in U.S. torture of detainees, thus potentially creating accomplice liability for the UK in the commission of war crimes;

- Some allied nations (reportedly Australia) refused to train with us in joint detainee capture and handling operations, also because of concerns about U.S. detainee policies; and

- Lastly, our policy of treating detainees harshly could have stiffened our adversaries' resolve on the battlefield by inducing them to fight harder rather than surrender, and this too could have led to loss of American lives.

VI.

Looking back at our nation's adoption of the use of torture as a weapon of war, we can now see the Bush administration made five fundamental errors in attempting to fight terrorism without conforming to human rights values.

The first error consisted in failing to recognize that torture and other human rights violations were inimical to our national character, identity, and purpose, as John Kennedy and John McCain warned.

The second error lay in failing to adequately define what the core national interest was in the defense of our nation after 9/11. Throughout its tenure, the Bush administration identified that core national interest as that of “saving lives”, with the prevention of further terrorist attacks being accorded the highest priority. This was not wrong, of course, and the administration cannot be faulted for this; the protection of lives is always a core responsibility of our state and all states. The mistake lay in not recognizing that the United States has two core national interests in the defense of the nation, not just one: We protect lives and we protect those values and individual rights that define our nation and ensure individual human dignity. These two objectives are of equal weight and importance and are pursued simultaneously. In practical terms, what this means is that the nation is prepared to risk lives, if need be, to protect our liberties. This is not new or novel. It has always been thus, as the War of Independence, the Civil War, World War II, and the Cold War demonstrate. What Vice President Cheney and his colleagues failed to recognize when they authorized torture and other illegalities is that they were damaging our nation in a fundamental way. American courage is meant to be deployed not only in protecting lives, but also in protecting our liberties.

The third Bush administration error consisted in not recognizing the truth in Albert Camus’s observation (to paraphrase) that when fighting a war it is important

not to employ weapons whose use would destroy what you're trying to protect.¹²

This error is closely related to the second, the distinction being in that one can profess to be attempting to defend one's values and still unwittingly adopt methods that will be destructive of the very values one is trying to protect. The specific example of the weapon that Camus warns us of is torture.

The fourth mistake made by the Bush administration was to fail to recognize that U.S. did not have the power to unilaterally abrogate the settled international architecture of human rights, regardless of any claim of necessity, and that any attempt to do so would yield adverse consequences. Thus, it was illusory in the international context for the administration's to pretend that torture wasn't torture, or that the use of torture could be justified this time under allegedly exigent circumstances, or that other nations would not look to their own laws, not U.S. legal interpretations, in governing their relationship with American torture practices, or that these same nations would not conclude that they were precluded, as a matter of law and policy, from aiding and abetting what were transparently American war crimes. Other nations did not follow American leadership into the swamp of torture because they could not and, more importantly, would not.

And the fifth mistake is in failing to recognize the fundamental truth that the our long-term national strategic interest lies in helping foster a world that is less cruel, not more cruel, and that shares our vision of the importance of human dignity and of individual rights protected by the rule of law. Needless to say, the use and

¹² Albert Camus, *Algerian Chronicles* (1958). In the book's preface, Camus states that while it is sometimes necessary to fight a war, the war must be justified in terms of values. "One must fight for one's truth while making sure not to kill that truth with the very arms employed to defend it...."

normalization of torture, a policy adopted by the Bush administration, would always be counterproductive from this standpoint.

VII.

The Trump administration, which stands on the shoulders of the Bush administration's security policies, is repeating the same mistakes, but in a more extensive, radical, and possibly damaging fashion. At home, the president threatens our liberties by attacking the freedom of the press, seeming to condone police brutality, disparaging our judges and judiciary, casting suspicion on refugees and immigrants, adopting policies that appear to target ethnic and religious minorities, and fostering a climate of fear, policies never countenanced by the Bush administration. These Trump actions and statements reveal, at best, a lack of understanding in the nature and value of our fundamental rights and for the law and, at worst, a dangerous lack of respect for them. They seem to have been motivated, in part, by the belief that they demonstrate toughness and help make us safer. In fact, they demonstrate a lack of understanding as to what makes America great, what we should protect when we defend our country, and how we go about doing that.

Abroad, in addition to other aberrant actions, the president has communicated his disdain for human rights and has signaled that the U.S. would no longer seek to lead in this area or conduct our foreign policy consonant with foreign policy interest. He is not torturing, but has exhibited his support for torture and has suggested that international law and the laws of war should not bind U.S. military operations. He has signaled his preference for autocrats, such as Vladimir Putin, and

a disdain for committed democrats, like Angela Merkel. He has disparaged NATO, the leading alliance of democratic states. He prioritizes a military approach to international problems while discounting diplomacy and, consistent with this tendency, is dismantling the State Department and AID. And he is pursuing a strategy he calls “America First”, but which has been described as “America Only” or “America Alone” and has fostered widespread distrust of U.S. intentions, values, objectives, reliability, and credibility.

These are not the correct policies, either domestically or internationally. They don’t represent who we are or who we wish to be. They will not make the U.S. a better country or the world a safer place. We should, instead, to heed the counsel of Senator McCain, who said: “We have made our way in this often dangerous and cruel world, not by just strictly pursuing our geopolitical interests, but by exemplifying our political values, and influencing other nations to embrace them.”¹³ And as to what those guiding values are, we can do not better than to turn to, again, President Kennedy, whose credo we should adopt as our own. He said: “I believe in human dignity as the source of national purpose, in human liberty as the source of national action, in the human heart as the source of national compassion....”¹⁴

Thank you all again for helping defend our country and our values.

¹³ McCain, *supra* at n. 9.

¹⁴ John F. Kennedy, Speech accepting the Liberal Party’s nomination for president (New York City, Sept. 14, 1960).