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ENSURING LEGAL REDRESS FOR AMERICAN VICTIMS OF STATE-SPONSORED TERRORISM

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BEFORE THE

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HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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ENSURING LEGAL REDRESS FOR AMERICAN VICTIMS OF STATE-SPONSORED TERRORISM

TUESDAY, JUNE 17, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:06 p.m., in room 2141, Rayburn House Office Building, the Honorable Steve Cohen presiding.

Present: Representatives Scott, Cohen, Lungren, Issa, King and Gohmert.

Staff Present: Diana Oo, Majority Counsel; and Paul B. Taylor, Minority Counsel.

Mr. COHEN. I call the Committee to order. Good morning. As Chairman Conyers is unable to be here, he has asked me to Chair this hearing in his stead.

We are here today to consider how to ensure fair redress to the American POWs and civilians who were brutalized at the hands of the Iraqi Government during the Gulf War. The soldiers were starved, denied sleep, exposed to extreme temperatures, then severely beaten, threatened with castration and dismemberment and subjected to mock executions. As a result, they have sustained lasting physical and emotional injuries.

The civilians, Americans who had the misfortune to be in Iraq at the time it invaded Kuwait, were taken captive and held as human shields, put directly in harm's way in an attempt to make it harder for the United States and its allies to use military force against Iraq. The long-standing efforts of these Americans to hold Iraq responsible in U.S. courts for this ordeal has unfortunately, thus far, not been appropriately supported by our own government. Some of us are hoping that that is now about to change.

When Congress passed the 1996 amendment to the Foreign Sovereign Immunities Act, it intended to create a Federal statutory cause of action that would allow American victims of terrorism to hold foreign states to that commitment or provide material support for terrorist acts accountable in U.S. courts. Repeated efforts by this Administration to persuade the courts to disregard congressional intent compelled Congress to add section 1083 to the fiscal year 2008 National Defense Authorization Act. That provision reaffirms the right of an American victim to sue a foreign state sponsoring terrorism in a U.S. court for, quote, "personal injury or death that was caused by an act of torture, extrajudicial killing or hostage taking," unquote.

President Bush, however, vetoed that bill, based solely on that provision, asserting that Iraq must be shielded from liability in order to protect Iraqi reconstruction efforts; shielded, that is, from liability to the American soldiers who were brutally tortured as POWs and shielded from liability to the innocent civilians who were used as defensive pawns.

Congress was forced to repass the defense reauthorization bill with a provision permitting the President to waive the new provision as to Iraq. The President exercised that waiver within months of signing the bill into law.

Under well settled international law, a successor regime remains liable to the bad acts of its predecessor. Furthermore, under the Geneva Convention, no nation may absolve another from liability for torturing POWs.

The President has not satisfactorily explained why these fundamental principles should be disregarded here. Nor has he satisfactorily explained why all of Iraq's assets must be shielded, even while it is reaping billions upon billions of dollars from its oil fields and it is readily paying off prewar commercial debts to foreign corporations totaling $5.4 billion.

It would have been helpful to hear from someone in the Administration today, but the Departments of State, Justice and Treasury all declined the Committee's invitation to testify on this matter. Nonetheless, I look forward to having an insightful discussion, which I hope will illuminate the reasons we must help these innocent Americans obtain justice.

Coupled with the new waiver authority we gave the President, we also expressed the sense of the Congress that he should work with Iraq to get fair compensation to these victims. That provision is nonbinding, but we maintain hope that the President will take up our invitation, and perhaps today we will discuss possible ways to further encourage him in that direction.

I should caveat that my remarks are those also of Chairman Conyers.

Now we have two Members. But before we recognize them, I want to recognize the Ranking minority Member, the Honorable Dan Lungren of California, for an opening statement.

Mr. LUNGREN. I thank the Chairman, and I appreciate being the Ranking Member today. So thank you very much, Mr. Chairman.

In 1996, as you said, Congress amended the Foreign Sovereign Immunities Act to allow U.S. victims of terrorism to sue designated state sponsors of terrorism for their terrorist acts. The courts have handed down large judgments against the terrorist state defendants generally in default, and successive Administrations have intervened to block the judicial attachment of frozen assets to satisfy judgments.

In 2001, Congress directed President Bush to submit no later than the time he submitted the proposed budget for fiscal year 2003 a legislative proposal to establish a comprehensive program to ensure fair, equitable and prompt compensation for all United States victims of international terrorism or relatives of deceased United States victims of international terrorism that occurred or occurs on or after November 1, 1979. As explained in the conference report for that legislation, and I quote, "Objections from all

quarters have been repeatedly raised against the current ad hoc approach to compensation for victims of international terrorism. It is imperative that the Secretary of State in coordination with the Departments of Justice and Treasury and the other relevant agencies develop a legislative proposal that will provide fair and prompt compensation to all U.S. victims of international terrorism." However, as has been stated, no such plan was put forward.

In this Congress, a rider to the National Defense Authorization Act for fiscal year 2008 provided a Federal cause of action against terrorist states and to facilitate enforcement of judgments. After the President vetoed the bill based on the possible impact the measure would have on Iraq, Congress passed this new version, H.R. 4986, authorizing the President to waive its provisions with respect to Iraq. Again, the President signed the bill into law and promptly issued a waiver with respect to Iraq.

The exercise of the waiver with respect to Iraq will likely prevent POWs from the first Gulf War from reopening their claims. On the day the President signed the waiver, he issued a statement justifying the exercise of the waiver authority, stating that without a waiver, the provisions would have a potentially devastating impact on Iraq's ability to use Iraqi funds to expand and equip the Iraqi security forces, which would have serious implications for U.S. troops in the field, acting as part of the Multinational Force-Iraq and would harm antiterrorism and counterinsurgency efforts.

The President also stated that if applied to Iraq, the provision would redirect financial resources from the continued reconstruction of Iraq and would harm Iraq's stability contrary to the interest of the United States.

In light of the waiver's likely effects on pending cases, Congress included the following sense of Congress in the provisions creating a private cause of action, quote, "The President acting through the Secretary of State should work with the Government of Iraq on a state-to-state basis to ensure compensation for any meritorious claims based on terrorist acts committed by the Saddam Hussein regime against individuals who were United States nationals or members of the United States Armed Forces at the time of those terrorist acts." And those claims cannot be addressed in the United States due to the exercise of the waiver authority.

So I look forward to this hearing about the progress of those efforts and support efforts to help provide redress for victims of torture by foreign states in the past. But I remain mindful of executive branch concerns regarding how similar proposals might unduly restrict the ability of the President to negotiate and exercise leverage over foreign states to achieve redress outside the courts.

These are difficult issues; especially difficult are proposals that contemplate using U.S. taxpayer dollars to pay for damages caused by terrorists. As the Congressional Research Services pointed out, the use of U.S. funds to pay portions of some judgments has drawn criticism. Calls for more effective and fair means to compensate victims of terrorism have not yielded an alternative mechanism.

It is our hope that this hearing and consideration of the various bills before this Committee might reach some conclusion to this problem. So I hope this hearing today will come closer to finding

such, a fair and effective means of compensation, and I thank the Chairman for the time.

Mr. COHEN. Thank you.

Does anyone else want to make an opening statement? If not, without objection, other Members' opening statements will be included in the record.

This hearing will consist of two panels. First, we will hear from two of our house colleagues, Bruce Braley of Iowa and Joe Sestak of Pennsylvania.

Bruce Braley was elected to Congress in 2006. Previously he worked as an attorney, holding corporations accountable to their employees and consumers. He serves on the Committee on Transportation and Infrastructure and on Oversight and Government Reform. As the son of a World War II veteran who fought at Iwo Jima, he has been a passionate advocate of the POWs.

Joe Sestak was also elected to Congress in 2006, a rather splendid year. He spent 31 years serving our Nation in the U.S. Navy, rising to the rank of three-star admiral. Congressman Sestak serves on the Armed Services, Education and Labor and Small Business Committees.

Mr. Braley, please begin.

TESTIMONY OF THE HONORABLE BRUCE L. BRALEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BRALEY. Thank you, Mr. Chairman, Ranking Member Lungren. It is my honor to be here today with my good friend, Joe Sestak, who certainly brings a lot more professional expertise to this issue than I do.

I was at home with my family on Christmas Eve when I heard the surprising news that the President had vetoed the Defense Authorization bill of 2008. I was then shocked to learn that the reason he vetoed that bill was because it did provide a mechanism to allow tortured POWs from the first Gulf War to receive compensation that had long been denied them.

I was outraged, and I immediately contacted my staff because I wanted to do something about it. And my reason goes to a much deeper level than just my interest in this as a Member of Congress.

Iowa has a long history of hostages and prisoners of war who have been held captive, including Kathryn Koob, who is a constituent of mine, who teaches at Wartburg College in Waverly, Iowa, held 444 days as a hostage in Iran; Terry Anderson, the longest-held captive in Lebanon, spent 7 years there, a graduate of Iowa State University, my alma mater; Thomas Sutherland, who was Dean of the Agricultural School at American University in Beruit, the second-longest-held hostage in that crisis; Talib Sube, who was a resident of LeClaire, Iowa, who was captured in Kuwait and used as a human shield. And that is why this is a very personal issue for me, in addition to one that concerns me as a Member of Congress.

I would like to put this in perspective by reading from a book, The Gulf Between Us, Love and Terror in Desert Storm, by Colonel Cliff Acree, United States Marine Corps, and his wife, Cynthia, who unfortunately were unable to be with us today. But I think this tells us what we are talking about.

This is from page 88 in a chapter titled The Trip to Hell; it is located at the Iraqi interrogation center in Baghdad in January 1991, and I am quoting from Colonel Acree.

"Before I blacked out, the interrogators had started hitting me with a club like a nightstick, thick and rubberized with a solid top and a spring at the bottom. The blow accelerated just before it hit.

"After a couple of hours, I got to the point where I quit flinching. My captors had broken my nose several times and hard lumps were accumulating on my head, but I was not going to tell them any plans for the amphibious landing in Kuwait. Ninety-four thousand Marines deployed in the Gulf area, including 18,000 aboard amphibious assault ships, counted on me not to jeopardize their lives.

"I had been knocked out many times. When I saw flashes of stars, I recognized relief coming. I would lose consciousness until they'd rouse me again. I drifted into the welcomed darkness of unconsciousness many times. Each time they roused me, I wished for that natural escape again. The body somehow adapts to release you from pain and you fall quicker into that blessed peace.

"After that last blow, I must have been unconscious a long time. Before they would wake me quickly with a slap in the face or a kick in the ribs. 'Stand up,' they would yell. Shaking and gasping I would come back to life hearing the same voice and remembering the last blow, but this time my tormentors poked and prodded me as if wondering, 'Did we kill him?' I was alive but with a shattered nose and a fractured skull."

That is one of many examples from Gulf War POWs who were tortured under the brutal regime of Saddam Hussein. When they were released as prisoners of war, they were welcomed home by their government, including Secretary of Defense Cheney, who welcomed them with these words, quote, "Welcome home. Your country is opening its arms to greet you."

And that is exactly the spirit in which they were welcomed back, as people who had gone through a tremendous ordeal and needed to be taken care of. And yet this country has consistently failed to live up to its obligations under the Foreign Sovereign Immunities Act to provide these tortured POWs and human shields with the compensation that they deserve.

One of the rationales offered for the President's veto was that it would expose Iraq to billions of dollars of liability and harm reconstruction efforts, which is clearly a ridiculous claim when you look at what has happened as these POWs and human shields and their attorneys have attempted to negotiate, first with the Government of Iraq and then with the Administration.

This is also evidenced by the fact that the Government of Iraq has entered into compensation dispute resolution with the Governments of Korea and Japan on behalf of companies like Hyundai and Mitsubishi, settling billions of dollars of commercial claims while people who suffered torture like I just described have gone without compensation.

The fact that Iraq is predicted to make $100 billion in oil revenues in 2008 and the fact that the Administration is currently working with Iraq to resolve its commercial debt shows why it is important to stand up for these victims of torture. That is why I introduced H.R. 5167, the Justice for Victims of Torture and Ter-

rorism Act, in January to eliminate the waiver that was granted and then revised in the fiscal year 2008 DOD bill.

At that same time, I have also been working closely with the victims' attorney on an alternative proposal that would give the Government of Iraq 90 days to resolve the claims of American victims of torture and terrorism before that waiver that was put into the last DOD bill would be terminated. The alternative that I am proposing would eliminate any fears of a flood of expensive lawsuits because it specifies the plaintiffs against Iraq and specifically offers relatively modest amounts in spite of a judgment that already is on the books for the POW torture victims.

The total amount that Iraq would have to pay under this compromise agreement would be approximately $415 million. To put that into perspective, we spend $338 million a day in Iraq right now and about $2.4 billion every week. Since there would be no threat of future claims, since Iraq is no longer designated as a state sponsor of terrorism, it would effectively cap any liability claims against the Government of Iraq. So it is the type of proposal that should have broad, bipartisan support. It will eliminate the claims as a concern of the Iraqi Government, and it will finally—finally provide compensation to these victims of torture and terrorism who have been putting up with this ordeal for far too long.

Under the proposal that we are speaking about, POWs and family members would be waiving approximately 77 percent of the entire judgment forgoing all punitive damages awarded by the court, which is almost $306 million, and two-thirds of all compensatory damages awarded over $435 million. And it would be the type of result that I think would make everyone walk away from this terrible tragedy with a very positive feeling about their country and how it stood up for these victims of torture and terrorism.

And I would just like to close with a poem that Colonel Acree wrote, his own ballad to freedom. He called it What Freedom Means to Me.

To walk without being blindfolded,.
To raise my arms without handcuffs,.
To see the sky and feel the warmth of the sun,.
To speak my own thoughts,.
To sleep without fear,.
To know I will eat today, a day without terror and pain,
To stand in defense of freedom and win.

On behalf of Colonel Acree, Captain Slade, who is here today, and all the victims of torture and terrorism, it is time that we put this matter to rest and give them the compensation that they deserve.

Thank you.

Mr. COHEN. Thank you.

[The prepared statement of Mr. Braley follows:]

PREPARED STATEMENT OF THE HONORABLE BRUCE L. BRALEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Thank you, Chairman Conyers, Ranking Member Smith, and Members of the Committee for holding this important hearing on ensuring legal redress for American victims of state-sponsored terrorism. And thank you for inviting me to testify on this issue which is very important to me and, I believe, to our country.

I know that many members of Congress shared my shock and disappointment when they learned in December of last year that President Bush was vetoing H.R. 1585, the *Fiscal Year 2008 National Defense Authorization Act*—with no prior warning, and while Congress was not in session—in order to deny Americans tortured under Saddam Hussein's regime from pursing justice in U.S. courts. In fact, several members of this Committee, including Chairman Conyers, are co-sponsors of the *Justice for Victims of Torture and Terrorism Act*, which I introduced this January in response to President Bush's veto and the waiver that was subsequently granted to Iraq.

I believe that the Bush Administration's willingness to allow torture of American citizens—including 17 prisoners of war who were beaten and starved by Hussein's regime, and hundreds of victims who were used by Iraq as "human shields"—is outrageous. Preventing these victims from seeking justice is also a direct violation of our obligations under Article 131 of the Third Geneva Convention relative to the Treatment of Prisoners of War, which prohibits the United States, as a party to that treaty, from absolving the Government of Iraq of any liability incurred due to the torture of prisoners of war.

The President's rationale for the veto—that the bill would expose Iraq to billions of dollars of liability and harm reconstruction efforts—is clearly a ridiculous claim, as there are a very limited number of plaintiffs with claims against Iraq. The argument that Iraq cannot afford to pay its debts to torture victims is also ridiculous when you consider that Iraq is expected to make around $100 billion in oil revenues for 2007–2008.

I believe that Iraq's threat to withdraw billions of dollars out of U.S. financial institutions if H.R. 1585 was signed into law is offensive, considering the incalculable sacrifices that American troops have made for Iraq and the staggering amount of money that the United States has poured into Iraq. It is also hypocritical of Iraq to refuse to compensate American victims of Iraqi torture and terrorism while simultaneously working to resolve its debt to foreign corporations like Mitsubishi of Japan and Hyundai of Korea. This clearly sends the message that it is more important to Iraq and to the Administration to settle Iraq's debt with corporations than with tortured American prisoners of war and hostage victims.

Despite working with Iraq to resolve its commercial debt, and despite language that was put into the revised Department of Defense bill urging the President to ensure compensation for claims which cannot be resolved in U.S. courts because of the waiver, the Bush Administration has *still* not worked to resolve the claims of the American victims of Saddam Hussein's regime. That is why I believe it is essential that Congress acts soon to ensure that these victims are compensated for the torture and terrorism that they were subjected to by Iraq.

H.R. 5167, the *Justice for Victims of Torture and Terrorism Act*, the bill which I introduced in January, would eliminate the waiver for Iraq that was put into the revised 2008 Defense Bill. Since introducing that bill, I have also been working closely with the victims' attorneys on an alternative proposal which would give the Government of Iraq 90 days to resolve the claims of American victims before the waiver would be terminated.

This alternative proposal should quell any alleged fears of a flood of expensive lawsuits against Iraq because it specifies plaintiffs against Iraq and specifies relatively modest amounts which would constitute adequate settlements for these claimants. There is also no threat of future claims, since Iraq is no longer designated as a state sponsor of terrorism.

In fact, Iraq would be getting a good deal with this proposal. For example, the overall judgment against Iraq in the POWs' case, *Acree v. Republic of Iraq*, was $959 million. However, as a concession to Iraq, under the formula in my proposal, the POWs are waiving approximately 77 percent of their entire judgment. The POWs and their family members are forgoing all punitive damages awarded to them, and two-thirds of all compensatory damages awarded to them by the court. Additionally, as a concession to Iraq, the American victims who were held as human shields have also been willing to establish a cap on their settlements. Previous judgments paid in a similar case before the beginning of Operation Iraqi Freedom had no such cap.

I believe that passing legislation allowing these American victims to be compensated for torture and terrorism is essential to upholding the rule of international law and to upholding our international treaty obligations. I also believe that it is critical to upholding the intent of Congress, which passed unanimous resolutions during the Gulf War stating an intention to hold Iraq accountable for the torture of American POWs. Giving victims of torture and terrorism access to U.S. courts also provides another important tool for deterring terrorism and holding perpetrators of torture and terrorism accountable.

Ensuring redress for these victims is also crucial to protecting our current and future troops from torture by holding all state sponsors of terrorism accountable and by allowing all American victims of terrorism and torture recourse in the U.S. court system. We can already see that allowing one country to torture and terrorize Americans with immunity is a slippery slope: Libya is currently seeking a similar waiver based on the waiver that was put into the *Fiscal Year 2008 Defense Authorization Act*, and the State Department is actively negotiating with Libya to grant this waiver.

I am strongly committed to securing justice for these American victims, and I believe that all of you will share my commitment after hearing the compelling testimony of the witnesses today. I hope that the Judiciary Committee will act quickly to move my legislation to the House floor for a vote. Enacting legislation allowing these victims to be compensated will send a strong signal to the world that the United States will not allow perpetrators of terrorism and torture to operate with immunity, and that we will *never* put the interests of any foreign state over the interests of American victims of torture.

Thank you again for holding this important hearing. I am happy to answer any questions that you may have.

Mr. COHEN. Mr. Sestak from Pennsylvania.

TESTIMONY OF THE HONORABLE JOE SESTAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. SESTAK. Thanks, Mr. Chairman, Ranking Member Lungren. I am very honored to speak today to the Committee.

I did, as you mentioned, Mr. Chairman, spent 30-odd years in the U.S. military, the best years of my life. And so I think I want to speak initially on behalf of those whom I served with at this Congress and Presidents have sent into harm's way. But I want to speak about it in terms of the rule of law.

After World War II, as was initiated among us, particularly those who led our sons and daughters of this Nation into harm's way, in 1949, the United States agreed to the third great Geneva Convention, that on prisoners of war, that we would never absolve any state of its liability for what is illegal torture.

It did not make death illegal, killed on the battlefields—we knew we would go out there, ready for the ultimate sacrifice—it made torture illegal after the horrific evidences of it in World War II.

But I also come today speaking because I have been part of another institution, before I came to Congress—having served at the White House and having seen a commander in chief that was the President, but also had responsibility under the rule of law to the presidency and a legacy by how well he adhered to national and international law, the legacy he would leave behind in the presidency.

Now, as a Member of Congress, I am very conscious that we are Congress people, but more, we are an institution. Congress. It actually does make the laws. Under the Constitution, the rules and regulations of our military, we are the ones that send them to war. We are the ones, as an institution, that declare war.

I bring this out because, having been to 80-odd countries over these many years, I saw how much we were respected for the power of our military and the power of our economy, but how much we were admired by the values of our ideals, the power of our ideals, which ultimately rest not on a man or a woman, but on the rule of law.

In 1991, we had 17 prisoners of war tortured, illegal under the rule of law of this globe we live on, that the United States said was

illegal. You train us because you provide for the rules and regulations never to stain our Nation by doing torture to others and holding our Nation liable to other countries. We expected the same contract with this institution if we were to be tortured.

After they were tortured, they waited until 2002 before they sued under the rule of law, international law, not just national. Whatever the real reason was that the commander in chief decided to veto that defense authorization bill in December of this past year, if it did have to do with the threat allegedly of pulling $25 million out of our private markets, as has been reported, that the Iraqi Government said it would do, I have little understanding of how that could even compare with what we asked these men to do.

Under law, we asked them to go and under law we promised them, if tortured, that that country would be held liable. The cost of what they are asking for is about a fourth of a day of the cost in Iraq.

But I don't think that is the major issue here. I come back that this is an institution that I believe, on the day we voted to give this President a waiver, those who served us so well, when we asked—"here am I, send me"—that under a contract with them, of the rule of law, not to torture, and if you were, we would hold that country liable, that now we say—or said in January, but we can waiver it—there is no higher power that we have than the power of our ideals.

So I ask this institution to remember that we are Congress people, but more, this is an institution that I am proud to serve in, just as I was in the institution of our armed services or at the White House. Under that rule of law, that principle, we need to remember, yes, to support our troops whom we send out under the rule of law. That's what our Nation's bedrock is based upon.

Thank you.

[The prepared statement of Mr. Sestak follows:]

PREPARED STATEMENT OF THE HONORABLE JOE SESTAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman and members of the Committee, thank you for taking the time today to address an issue that is very personal to me, having served for 31 years in the United States Navy.

As a Veteran, I believe I can speak for many who served abroad in harms way, who believe there is no place for torture in Iraq or anywhere else in the world.

America is respected in the world for the might of its economy and strength of its military, but we are admired for the power of our ideals. And that is why we must respect human rights, and why we must oppose the use of torture in the face of terror and tyranny.

In 1991, American prisoners of war (POWs) serving during the first Persian Gulf War were tortured in Iraq under the regime of the former President Saddam Hussein.

In April 2002, 17 American POWs and 37 of their family members filed a law suit against the Republic of Iraq, Saddam Hussein, and the Iraqi Intelligence Service seeking compensatory damages for the torture they sustained. And, on July 7, 2003, Judge Richard Roberts ruled that Iraq, Saddam Hussein, and the Iraqi Intelligence Service are liable for $653 million in compensatory damages and $306 million in punitive damages for the torture of the POWs and for the lingering injuries suffered by them and certain close family members.

The judge found that: No one would subject himself for any price to the terror, torment, and pain experienced by these American POWs," and that "there must be a premium on protecting POWs [because] POWs are uniquely disadvantaged and deterring torture of POWs should be of the highest priority."

While July 7, 2003, marked a great triumph toward bringing justice for American POWs, it was only the beginning of a long journey for them to receive their awarded claims.

I am here testifying today in front of the House Judiciary Committee today to help my brothers and sisters who have worn the cloth of our nation as well as others who were used as human shields during the Persian Gulf War.

I became involved in this issue after President Bush vetoed the National Defense Authorization Bill (H.R. 1585), in late December 2007. The widely supported legislation would have provided a scheduled 3.5% military pay raise and bonuses, critical veterans' health care initiatives, and necessary funding for our troops abroad. I was deeply concerned with President Bush's action to veto the legislation, not only because it overwhelmingly passed both the House and Senate, but it also jeopardized the safety of our troops abroad.

As I am sure you know, the President vetoed the Defense Authorization bill over a provision that would remove some immunity from the Iraqi government regarding the payment of Court awards to service members that had been tortured during the First Gulf War.

The President apparently objected to this provision, because it was claimed that it could allow plaintiffs to freeze Iraqi government assets in the United States as part of litigation over actions committed during the rule of former dictator Saddam Hussein, and that the provision would disrupt the Iraqi reconstruction efforts.

During that time, the Iraqi Government reportedly placed intense pressure on President Bush, through its lawyers, by saying it would withdraw $25 billion worth of assets from the U.S. capital markets unless the President vetoed the bill.

I strongly disagreed with the President's position to veto the Defense Authorization Bill and to demand a waiver that would allow for a Court's judgment to be overruled, thereby shutting out service members from attaining their already won monetary judgment for torture they sustained during the first Persian Gulf War.

Under international law, even when a government changes, the new government is responsible for the actions of the government it superceded.

Each month we spend almost $12 billion for the War in Iraq, and because Iraq has now threatened to pull its $25 billion invested in the U.S. market—the cost of two months of the war—the President refused to support the men and women who wore the cloth of this nation, who were tortured during a war, and who had already won a judgment against the Iraqi government.

I also believe the Congressional action taken on January 16, 2008 was wrong. We should have voted to override the President's veto, supporting not just the men and women who are serving today by such items in the bill as the 3.5 percent pay raise, but also for those who served previously and have legitimately brought a claim against the Iraqi government because of torture.

In May 2008, my efforts to introduce an amendment to the National Defense Authorization Act to repeal the President's waiver to allow Iraq to maintain immunity unless the Government of Iraq settles these outstanding claims with American POWs tortured in Iraq within 90 days were ruled not germane to that bill.

I am here today in conjunction with my colleague Congressman Bruce Braley, a champion of this issue, to bring a much needed resolution to claims filed by both American POWs and those who suffered as Human Shields.

I believe that any effort to absolve Iraq of liability for this torture would violate the POW Convention obligations of both the United States and Iraq and would put at enhanced risk of torture American service men and women held as POWs in the future.

Nor is it appropriate to ask American POWs tortured in Iraq or Human Shield claimants to personally pay for the reconstruction of the country which tortured them.

Settlement of this debt of honor would also serve as a model encouraging settlement of other claims against Iraq. Moreover, Iraq's recognition of its legal obligations would be a concrete sign of Iraq's commitment to the rule of law and would be greeted warmly by the American people.

This provision also serves the interests of the reconstruction of Iraq by forgiving as much as 77% of the judgments awarded against Iraq, including forgiving all punitive damages and two-thirds of compensatory damages awarded against Iraq in federal court.

The bottom-line—and what America stands for—is doing what is right—particularly with regard to those who defend our nation. Without any question, what is right is to ensure that these individuals receive their settlements which were adjudicated by impartial courts under the rule of law in the U.S.

Thank you again for providing me this opportunity to testify before you regarding this issue of utmost importance to American service members, Veterans, and POW/MIA community.

Mr. COHEN. I want to thank each of you for your testimony and for taking time out of your day to share with us your unique perspectives on this issue, a very important subject.

And we will excuse you with our thanks and impanel our next group to come forward and be seated. Thank you, Mr. Sestak, Mr. Braley.

Mr. ISSA. I would ask unanimous consent to have my opening statement placed in the record.

Mr. COHEN. If done so, it will be granted. Thank you.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. COHEN. Is it tunc pro, whatever—without objection. You know, always trust, but verify.

[The prepared statement of Mr. Issa follows:]

PREPARED STATEMENT OF THE HONORABLE DARRELL ISSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Opening Statement – Congressman Darrell Issa

Judiciary Committee Hearing on Ensuring Legal Redress for American Victims of State-Sponsored Terrorism
June 17, 2008

Thank you, Mr. Chairman, for holding this hearing today. I have long taken an interest in this issue, and I look forward to the testimony of our witnesses.

In the past many people saw terrorism as an occurrence supported and orchestrated by loosely grouped individuals, not supported by foreign states. All Americans saw this was not the case in the September 11th attacks. Al Qaeda, supported primarily by the government of Afghanistan, was anything but a loosely grouped band of individuals.

The question we must confront is whether or not Americans harmed by state-sponsored terrorism should be able to seek compensation from the state sponsors. Additionally, Congress needs to decide whether foreign nationals working for or otherwise assisting the United States should also be able to seek such compensation.

Today's hearing will primarily focus on whether or not Iraq should be held accountable for terrorist act supported by the Saddam Hussein regime in years past. I look forward to hearing the views of the witnesses on all of these issues.

Mr. COHEN. Our first witness on the panel is Ambassador John Norton Moore, co-counsel in *Acree v. Republic of Iraq*. He is a Professor of Law at the University of Virginia and directs the Center for National Security Law and Oceans Law on policy. He has previously served as the Counselor on International Law to the Department of State and as Ambassador and Deputy Special Representative of the President for the Law of the Sea.

His representation of the POWs is solely in his personal capacity.

Our next witness will be Captain Lawrence Randolph Slade, a plaintiff in the Acree case. Captain Slade's F-14 aircraft was hit by missile during the Gulf War, which prompted him to eject into Iraq.

During his captivity as a POW, he endured violent interrogations during which he was blindfolded, handcuffed, beaten with wooden bats and subjected to four mock executions. As a result, Captain Slade suffered very serious injuries, including broken vertebra, abnormal liver functions and extreme pain caused by scar tissue resulting from repeated trauma to his abdomen.

Thank you for your service.

Next we have Dan Wolf, counsel in *Vine v. Republic of Iraq* and *Hill v. Republic of Iraq*. He has, for more than two decades, garnered experience litigating human rights in sovereign immunity issues both as an attorney in the office of legal advisor and in private practice. He has played a leading role in numerous cases involving the interpretation of the Foreign Sovereign Immunities Act.

Our final witness today will be George Charchalis, a plaintiff in the Vine case. As a young man, Mr. Charchalis served in the Third Infantry Division and saw combat in the Korean War.

In 1989, he was recruited by Kuwait's Institute of Scientific Research to manage an ambitious plan to install parks, gardens and freeway landscaping throughout the country. A year later, Mr. Charchalis was taken hostage by the Iraqi regime and held in captivity for more than 4 months as a human shield.

We welcome each of you. Without objection, your written statements will be made a part of the record in their entirety.

We would ask each of you to summarize your testimony in 5 minutes or less. There will be a red light that goes on and becomes yellow and gives you a warning. When 1 minute remains, the light will switch to yellow and then to red when the 5 minutes are up.

We thank you all for being with us.

Ambassador Moore, please begin.

TESTIMONY OF AMBASSADOR JOHN NORTON MOORE, CO-COUNSEL, *ACREE V. REPUBLIC OF IRAQ*

Mr. MOORE. Chairman Cohen, Ranking Member Lungren and Members of the Committee, it is an honor to appear——

Mr. COHEN. There is a button there that gives you amplification.

Mr. MOORE. It is an honor to appear before the Judiciary Committee today as co-counsel representing 17 American former prisoners of war tortured by Iraq during the 1991 Gulf War, and 37 of their close family members, in support of the Braley-Sestak proposal. With your permission, I will place in the record not only my written testimony, but also the decision of the district court holding Iraq accountable for their torture.

It is also an honor to appear on a panel with one of the lead POWs in the Acree case, Captain Larry Slade. I have been privileged to work with Captain Slade for the past 6 years in his historical effort to hold his torturers accountable, and I am very aware of his extraordinary courage under brutal torture.

Captain Slade is quite simply one of the finest Americans it has been my privilege to know. But I would like to share with the panel something else I just learned yesterday about Captain Slade, which I think this Committee might want to know. It is that Captain Larry Randolph Slade is a direct descendent of Thomas Jefferson and Larry's mother is buried at Monticello.

Justice for American POWs and taking effective action to implement the word of the Congress, the President and the Nation to ensure that future American POWs held by the enemy will not be tortured is, of course, not a partisan matter. There is no party, only country when it comes to the protection of American POWs.

As the representative of these courageous American POWs, tortured by Iraq, let me share with you the compelling story for recognizing their rights and national security interests in protecting POWs from torture. That story simply reflects bedrock American values.

First, America keeps its word. This House, as well as the Senate of the United States, repeatedly warned Iraq that it would be held accountable for the torture of our American POWs in three unanimously adopted resolutions. In addition to that, we have already discussed the provision in the POW Convention that says that no state may absolve a torturing state of any liability, a pledge of the nation itself.

The word of the Congress and the Nation is clear, those who torture Americans will be held accountable. There is no if, and or but attached to those pledges.

Second, America supports its POWs. The POWs tortured by Iraq during the Gulf War were welcomed home by a grateful American people. But if the record of a courageous action of tortured American POWs to enforce the rule of law is erased because of silence now, future generations of American POWs, held by the enemy, will receive even more enthusiastic torture.

Third, America is fair. Americans do not believe that POWs tortured by Iraq should personally pay for the reconstruction of the country which tortured them. Clearly, any such expense of reconstruction is a public purpose to be borne by the Nation as a whole. Indeed, to ask our POWs and family members to pay with their legal rights for the reconstruction of the country which tortured them is morally repugnant.

Similarly, Americans do not believe that it is right for Iraq to resolve a minimum of 20 to 30 billion in commercial claims of foreign corporations while ignoring the valid claims of American POWs and American civilian hostages. Surely, the debt owed to American POWs is a debt of honor which should come before commercial claims and certainly should not be ignored while commercial claims are paid.

Fourth, America defends its honor. After the POWs had brought their action against Iraq, 20 distinguished former high-level national security officials wrote to the President about the historic op-

portunity in this case. In discussions concerning this letter, I have never forgotten the wise summary of this matter volunteered by Anthony Lake, a former Assistant to the President for National Security Affairs. He noted that supporting our POWs was simply a matter of national honor. Surely he is correct and perhaps this profound statement captures it all.

Mr. Chairman and Ranking Member Lungren, these courageous POWs and their family members and the Nation owe a debt of gratitude have struggled now for 6 years in their efforts to hold their torturers accountable. Surely, 6 years in their efforts to support the rule of law again as volunteers for their country is enough. From my heart, I urge you to support these wonderful Americans.

Thank you for the opportunity to appear before you and testify on this matter of national honor.

Mr. COHEN. Thank you, Ambassador Moore.

[The prepared statement of Mr. Moore follows:]

PREPARED STATEMENT OF JOHN NORTON MOORE

Statement of
John Norton Moore*

Before the
Committee on the Judiciary
House of Representatives

Concerning
"Ensuring Legal Redress for American Victims of State-Sponsored Terrorism"

"To no man will we . . . deny or delay right or justice."
Magna Carta 1215

Chairman Conyers, Chair Cohen, Ranking Member Smith, and members of the Committee:

It is an honor to appear before the Judiciary Committee today as co-counsel representing seventeen American former prisoners of war (POWs) tortured by Iraq during the 1991 Gulf War and thirty-seven of their close family members. These courageous Americans, determined that future American POWs should not have to endure the horror they endured, joined together to enforce the rule of law against the torture of POWs. On July 7, 2003, they won a substantial judgment against Iraq for their torture during the Gulf War; a judgment which if enforced will clearly add deterrence against the future torture of American POWs. Because of the complications of the ongoing 2003 Iraq War, however, their federal court judgment has, as yet, gone unsatisfied.[1]

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* John Norton Moore is the Walter L. Brown Professor of Law at the University of Virginia and Director of the Center for National Security Law at Virginia. Formerly he served as the Counselor on International Law to the Department of State, as a United States Ambassador and Deputy Special Representative of the President and Chairman of the National Security Council Task Force on Law of the Sea and, under President Ronald Reagan as the first Chairman of the Board of the United States Institute of Peace, among seven Presidential appointments. He is also a four term Chairman of the American Bar Association Standing Committee on National Security Law and an adjunct professor at Georgetown Law Center. His testimony today is solely in his capacity as co-counsel for the POWs and family members in *Acree v. Republic of Iraq*, 271 F.Supp.2d 179 (D.D.C. 2003), and he is not speaking for the University of Virginia, Georgetown, or any other organization of which he is or has been a member.

I count it among the greatest honors of my life to represent these 54 wonderful Americans in their struggle to enforce the rule of law against the torture of POWs. And I would like to thank the countless members of Congress, and their staffs, who have understood the importance and justice of the POWs' non-partisan struggle, including Speaker Nancy Pelosi, House Majority Leader Steny H. Hoyer, Chairman John Conyers, Jr., Chairman Ike Skelton, Congressmen Bruce Braley, James P. Moran and Joseph A. Sestak, Jr., Senate Majority Leader Harry Reid, Chairman Joseph R. Biden, Jr., Chairman Robert C. Byrd, Chairman Edward M. Kennedy, Chairman Patrick J. Leahy, Chairman Carl Levin and Senators Susan M. Collins, Richard G. Lugar, Jeff Sessions and Arlen Specter.

[1] One of those complications was that the $1.7 billion in blocked Iraqi assets from the 1991 Gulf War, which had been earmarked by Congress to pay judgments such as those of the POWs, was seized on March 20, 2003, to fund the current Iraq War. Should members of the Committee be interested I would be pleased to describe the complex judicial track of the *Acree* case, including its current status before the Federal District Court.

The Braley/Sestak Bill before this Committee has the support of the affected POWs and family members, despite embodying a dramatic reduction in their court ordered judgment, including the effective waiver of all punitive damages and almost two-thirds of compensatory damages awarded them by the Federal District Court. It is understood that this Bill is carefully crafted both to ensure that America will live up to its word in ensuring accountability for the torture of American POWs and the kidnapping of American civilian hostages and that the War effort may be served by substantially compromising the overall claims against the new Government of Iraq. As such, this Bill achieves a balance of right against right. As Senator Susan M. Collins wrote in 2004: "[t]he protection of American POWs is a vital national security interest and the goal of rebuilding Iraq should not be viewed as inconsistent with the goal of protecting future American POWs from torture and abuse. We can and should meet both of these important goals."[2] The Braley/Sestak Bill does meet both goals.

Justice for American POWs, and taking effective action to implement the word of the Congress, the President and the Nation to ensure that future American POWs held by the enemy will not be tortured, is, of course, not a partisan matter. The POWs and their family members thank the members of this Committee and of the Congress of both parties and both Houses for that understanding.

Background of the Braley/Sestak Bill

The background of this Bill is instructive as to why it deserves the unanimous bi-partisan support of the Congress. In the 2008 Defense Authorization Act the Congress requested the Administration to resolve these claims with Iraq, as one of the conditions for providing Iraq a waiver from operation of the rule of law in American courts as embodied in that Act. Subsequently, in response to this request from the Congress, the Justice Department hosted a special interagency meeting with representatives of the POWs and their family members and then, on April 22, 2008, it hosted a second interagency meeting for representatives of all the claimant groups which subsequently have been included in the Braley/Sestak Bill with the POWs. At this Justice Department meeting representatives of the claimants indicated that in the interest of promptly resolving this matter they were prepared to deeply compromise their outstanding judgment awards and claims. Specifically, for the POWs an "illustrative settlement" indicated a waiver of all punitive damages (a court-awarded sum of $306 million) and a waiver of two-thirds of compensatory damages awarded by the court against Iraq (a waiver of a sum of over $435 million). The representatives of the POWs also pointed out at this Justice Department meeting that Iraq, with knowledge of the Administration, had already resolved a minimum of $20-32 billion in commercial claims of foreign corporations and was continuing to pay Gulf War damages to Kuwait and Saudi Arabia while it had not yet resolved the debt of honor owed tortured American POWs. They asked why the commercial claims of foreign corporations such as Mitsubishi of Japan and Hyundai of Korea were coming before the debt of honor owed to tortured American

[2] Letter of February 27, 2004, from Senators Collins & Allen to Attorney General Ashcroft in support of the POWs.

POWs and family members.[3] Representatives of the claimants were subsequently informed by an Administration spokesperson that while the Administration viewed these claims as valid, and believed that Iraq should pay, the Executive was not in a position to resolve these claims. The representatives of the claimants have interpreted this as an invitation by the Administration for Congress to directly resolve this matter, thus removing these valid claims as an additional complication for the Executive in negotiating a Status of Forces Agreement (SOFA), and a "Strategic Framework" Agreement with Iraq.[4]

Finally, with respect to the background of this Bill, let me emphasize that this Bill is not designed to remove the existing Presidential waiver put into place during Presidential consideration of the 2008 Defense Authorization Bill. Rather, it presents Iraq with a unique opportunity to once and for all dispose of these important valid claims of Americans against Iraq for deeply discounted amounts; amounts which are simply *de minimus* in relation to Iraqi assets. Payment of all of these claims as deeply discounted in the Braley/Sestak Bill, for example, will amount to considerably less even than 1% interest for a single year on Iraq's $50 billion in funds held in the United States, not even considering the $70 billion or more windfall to Iraq from the recent tripling of the price of oil, or that Iraq has at minimum the third largest oil reserves in the world.[5] It will thus be a simple matter for Iraq promptly to resolve these claims for the deeply discounted amounts as specified in the Braley/Sestak Bill and to keep fully in place the waiver authority it sought at the time of the 2008 Defense Authorization Act.

The Braley/Sestak Bill Supports the War Effort

The American POW and family member claimants are mindful that there is a new Government in Iraq and that America is fighting a new War there. The Braley/Sestak Bill, however, is strongly in the interest of Iraq and the War effort for many reasons. First, as has been discussed, it will dramatically reduce the outstanding debts against Iraq, resolving claims with strong legal and political backing on terms closely paralleling those

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[3] *See Business Week* (Online Edition 7:00 p.m. ET Jan. 12, 2006), and "Bonds and Bombs," *Barron's* (March 20, 2006), at 53.

[4] My understanding is that the Administration, including both State and Justice Representatives, have declined to offer testimony at this hearing, a development which I would interpret, as a former Counselor on International Law to the Department of State, as an indication that the Administration will remain neutral on prompt Congressional resolution of these valid claims as deeply discounted in the Braley/Sestak Bill. For if the Administration opposed this Bill, or if the President were contemplating a veto, surely they would have taken the occasion of an invitation to testify to that effect.

[5] According to the *Washington Post* in April of this year, "the special U.S. auditor for Iraq released data showing that the government [of Iraq] could reap as much as $70 billion this year because of soaring oil prices. Oil prices neared a record $120 per barrel this week." International Briefing, Iraq, Oil Exports Increased in March, *Washington Post* at D5, col. 4, April 25, 2008 (note that most recently the price of oil was over $135 per barrel rather than the $120 figure reported by the *Post* as the basis for reaching the $70 billion windfall figure). Iraq is also estimated to have oil reserves of at least 110-120 billion barrels, triple those of the United States. Further, it has been reported that as Iraq's oil wealth is properly explored and developed under a government committed to the rule of law that Iraq could have proven reserves as high as 300 billion barrels, placing it ahead even of Saudi Arabia, with its proven reserves of 250 billion barrels. Certainly, unlike the early days of the War, today Iraq has far more in bank funds than it can spend on "reconstruction," not to mention its recent issuance of long-term bonds against future oil revenue.

which Iraq is using to settle its sovereign debts and its commercial debts with foreign corporations. Second, it would in one place decisively deal with recognized claims of Americans against Iraq,[6] thus freeing Iraq and our Executive from having to deal with these valid claims of injured Americans in what are otherwise difficult negotiations for the Status of Forces (SOFA) and "Strategic Framework" agreements, as well as freeing the Congress of any need for further consideration of this matter. Third, payment by Iraq of this debt of honor owed to Americans it tortured or took hostage during the 1991 Gulf War would, we believe, be greeted warmly by the American people. In contrast, we note that members of Congress who have written or spoken about this on a bi-partisan basis, and we are sure also the American people, are appalled when they hear that Iraq has settled approximately $20-32 billion in commercial claims of foreign corporations while not resolving this debt of honor to tortured Americans.[7] Fourth, resolution of this debt of honor with Iraq on terms approximating that used for its settlement of commercial debts could provide a powerful argument for Iraq to use in settling still outstanding sovereign and commercial claims on favorable terms. Finally, with Americans dying for the rule of law in Iraq we have an interest in encouraging Iraq to live up to its legal obligations. A wink and a nod to Iraq that its legal obligations, both in treaty form and in United States courts, can simply be ignored is not consistent with a core effort of the United States in Iraq, to assist in a broad rule-of-law transformation. Given these powerful reasons why the Braley/Sestak Bill also supports the interests of Iraq and the War effort I would urge Iraq, even acting purely in its own interest, to take the lead and resolve the claims included in this Bill as specified, even before this Bill enters into law.

The Braley/Sestak Bill Provides Justice for Tortured American POWs

On April 4, 2002, seventeen American Gulf War POWs who had been brutally tortured by Iraq during the 1991 Gulf War, and thirty seven of their family members, filed a suit in federal district court in the District of Columbia to hold their torturers accountable. The suit was brought under the 1996 amendments to the Foreign Sovereign Immunities Act (FSIA) which for the first time, as mandated by Congress, permitted suit against certain states which torture Americans abroad. At the time there was $1.7 billion

[6] The Braley/Sestak Bill before this Committee includes all claims against Iraq represented at an interagency meeting on April 22d chaired by the Department of Justice to vet claims against Iraq in response to the Congressional directive in the 2008 Defense Authorization Act that these claims be resolved. The claimant groups invited to this meeting were selected by the Department of Justice itself in hosting this meeting and to my knowledge all these claimant groups are recognized as holding valid claims against Iraq.

[7] The POWs and family members were most appreciative of the letter written on their behalf by the Ranking Member of the Senate Foreign Relations Committee, the Honorable Richard G. Lugar, to Stephen J. Hadley, the Assistant to the President for National Security Affairs, in which the Senator stated: "As the provisions in the 2008 Defense Authorization bill for these Gulf War victims demonstrate, these claims have strong Congressional support, consistent with numerous unanimous resolutions of the Senate and the House of Representatives that Iraq should be held accountable for their torture. It is particularly troubling to many in Congress . . . [that Iraq is seen to be settling] commercial claims of foreign corporations while . . . [not settling] the claims of the American POWs from the Gulf War." Letter from the Honorable Richard G. Lugar to the Honorable Stephen J. Hadley, Assistant to the President for National Security Affairs, March 4, 2008.

in blocked Iraqi assets in the United States that Congress subsequently earmarked as available to pay judgments of Americans against Iraq. Acting at the request of the district court the Department of State served process on Iraq and the principal witness for the American POWs was the then top law of war expert in the United States Army JAG Corps. The very day the complaint was filed it was couriered to the Vice President, the Deputy Secretary of Defense, and the Legal Advisers of the State and Defense Departments. Counsel in the case were Monroe Leigh, a former Legal Adviser to the Department of State and partner in the law firm of Steptoe & Johnson (his law firm has continued representation after Monroe's death), and John Norton Moore, a former United States Ambassador and Counselor on International Law to the Department of State. As required by the 1996 FSIA amendments, the case was brought only after Iraq refused to submit the claim to international arbitration. Liability of Iraq was then determined after a full review of the law and the facts by a federal judge, precisely as the law provides for claims brought against the United States itself. Because of complications from the ongoing Iraq War, however, for almost five years the POWs' federal court judgment has, as yet, gone unsatisfied. The Braley/Sestak Bill will promptly and decisively resolve this matter in a compromise, which while deeply favorable to Iraq, is supported by the POWs and their family members as a way of honorably resolving this matter.[8]

As the representative of these courageous *American* POWs tortured by Iraq, let me share with you the compelling story for recognizing their rights and the national security interest in protecting POWs from torture. That story simply reflects bedrock American values; America keeps its word; America supports the rule of law; America supports its troops; America is fair; America leads; and America defends its national honor. These core values are directly at stake in consideration of the Braley/Sestak Bill and suggest that this Bill, like the earlier pledges of the Congress to hold Iraq accountable for its torture of American POWs, should be adopted by both Houses of Congress unanimously.

America Keeps its Word

This House, as well as the Senate of the United States, repeatedly warned Iraq that it would be held accountable for the torture of American POWs. In three unanimously adopted Resolutions passed while our POWs were held by Iraq the House and the Senate condemned Iraq for its torture of American POWs in violation of the Third Geneva Convention (the POW Convention).[9] Over a decade later, on February 7, 2002, President George W. Bush issued an Executive Order directing that: "The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law." And, the Nation itself, by treaty obligation in the Third Geneva Convention of 1949 (the POW Convention) solemnly pledged, as a core deterrent mechanism built into that

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[8] If this matter is not promptly resolved along the lines of the Braley/Sestak Bill the 54 POWs and close family members of the *Acree* case reserve all their legal rights against Iraq, including proceeding against Iraq for the full judgment of $959 million as awarded by the District Court in *Acree v. Republic of Iraq*, 271 F.Supp.2d 179 (D.D.C. 2003).

[9] *See* H.R. Con. Res. 48, 102d Cong. H663 (Jan. 23, 1991); S.Con. Res. 5, 102d Cong. S1146 (Jan. 24, 1991); S.Con. Res. 8, 102d Cong. S1453 (Jan. 31, 1991).

Convention for the protection of POWs, that it would never "absolve" a torturing state of "any liability" for the torture of POWs.[10] President Bush, during the current Iraq War, has reiterated to the American people that America will adhere fully to its obligations under this POW Convention.

The word of the Congress, of the President, and of the Nation is clear. Those who torture American POWs will be held accountable. There is no if, and, or but attached to these pledges. And, as a critical corollary of the importance of keeping the national word, were we not to do so, it would undermine the credibility of future Congressional Resolutions, Presidential Directives, and even the solemn treaty word of the Nation.

America Supports the Rule of Law

America as a Nation is built on the rule of law. Further, both Democratic and Republican Presidents have strongly incorporated the rule of law in our foreign policy. Internationally, the United States and Iraq, as well as every other nation in the World, are bound never to "absolve" a torturing state of "any liability" for the torture of POWs. America will not turn its back on this international treaty obligation; an obligation so crucial for the protection of American POWs held by the enemy. And domestically Congress will not enable suits in United States courts to deter the torture and hostage taking of Americans and then, once those suits are successful, permit the state held liable simply to completely waive the rule of law in our courts. Further, if a core objective of the United States in the current War in Iraq is to support a democratic rule-of-law government surely it does not serve that goal to remain silent while Iraq ignores its treaty obligation "never" to absolve a torturing state of "any liability" for the torture of POWs, or its obligations under U.S. law to both POWs and civilian hostages.

America Supports Its Troops

The POWs tortured by Iraq during the 1991 Gulf War were welcomed home by a grateful American people. Then Secretary of Defense Cheney said as he greeted them on their arrival at Andrews Air Force Base: "Welcome Home; your country is opening its arms to greet you." America will not countenance turning its back on these wonderful Americans and their family members, or silently siding with their torturers to effectively absolve them of liability. America will do all in its power to support these wonderful Americans and will take every opportunity to add deterrence against the future torture of American POWs held by the enemy. Those who go in harms way deserve no less. The need to keep the faith with our troops in seeking to deter future torture of American POWs held by the enemy is summarized well in a letter from Colonel, USMC (Ret.) Cliff

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[10] This obligation is contained in Article 131 of the POW Convention. That is, Article 131 of The Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949. Article 131 provides in full: "No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article." Article 130, "the preceding Article," identifies "grave breaches" of the Convention and specifically lists "torture or inhuman treatment," and "willfully causing great suffering or serious injury to body or health" as among such "grave breaches" then referred to in Article 131 as "non-absolvable." Article 131 is one of the principal deterrent mechanisms built into the Convention for the protection of POWs; that is non-absolvable state liability.

M. Acree, and Cynthia B. Acree, the lead POW and his wife in the POWs' historic action. Colonel Acree and Cynthia write on January 25 of this year:

> We are privileged to be part of this historic effort to seriously deter the torture of Prisoners of War. As our experience in the 1991 Gulf War confirmed, American POWs continue to be brutally tortured by the enemy in war after war.
>
> It is past time for our Nation and all others to create serious incentives for full adherence to the Third Geneva Convention of 1949 (the POW Convention) which unequivocally bans all torture against POWs. One of the core deterrent mechanisms in that Convention is a provision in Article 131 that no nation may "absolve" a torturing state of "any liability" for the torture of POWs. Since the POW Convention is now in force for every nation in the world, it is past time the United States, and Iraq as well, take a leadership role in honoring this bedrock international law obligation. Our landmark judgment holding Iraq accountable for its torture must be honored and not erased. It serves the very purpose for which the Geneva Conventions were conceived—to shine the brightest light of accountability on torture to end this deplorable practice.
>
> While held captive, Cliff refused, under torture, to criticize his then Commander-in-Chief, George H. W. Bush, nor have any of the POWs in this unprecedented case sought to criticize the Commander-in-Chief. As former officers and enlisted personnel in the United States military, and their family members, we and our colleagues have the greatest respect for our Nation and its unparalleled military and veterans. It is our respect and concern for the United States military and its servicemen and women that morally obligates us to spotlight Iraq's cruel torture of POWs, and to underscore the importance of deterring future torture of our POWs and citizens held by the enemy. Our 2003 federal court judgment holds our torturers accountable and serves that purposes. To cavalierly set it aside greatly disserves this important national interest.[11]

If the record of a courageous action of tortured American POWs to enforce the rule of law against their torture, as expounded by Cliff and Cynthia Acree above, is erased because their own government now remains silent, future generations of American POWs held by the enemy will receive even more enthusiastic torture. And our POWs will be told by their puffed up torturers that America does not care and that Congressional Resolutions and Executive Orders are but meaningless paper. Perhaps

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[11] Letter from Cliff M. Acree & Cynthia B. Acree of January 25, 2008. Cliff & Cynthia have written an inspiring memoir about the terrible torture Cliff endured, his struggle for recovery through repeated painful operations, and the hardship for his wife Cynthia. *See* CYNTHIA B. ACREE WITH COLONEL CLIFF ACREE, THE GULF BETWEEN US (2001). George and Barbara Bush wrote of this book: "This book is written in two voices and we are delighted to add our two voices to praise Cliff's devotion to duty and Cindy's quiet courage." General Walter E. Boomer, USMC (Ret.), the Commander of United States Marine Forces in the Gulf War, has added to this statement of former President and First Lady Bush: "Cliff Acree's story is one that needs to be told. He is one of the few real heroes of the Gulf War."

their torturers will even show our POWs the final judgment won by the American Gulf War POWs and point out the silence as that judgment was ignored. Perhaps also their torturers will ignore new warnings from the House and the Senate as American POWs again are tortured. With passage of the Braley/Sestak Bill this debacle will not happen.

America is Fair

Americans do not believe that POWs tortured by Iraq should personally pay for the "reconstruction" of the country which tortured them. Clearly any such expense of "reconstruction" is a public purpose to be borne by the Nation as a whole. Indeed, to ask our POWs and family members to pay with their legal rights for the "reconstruction" of the country which tortured them is morally repugnant. Similarly, Americans do not believe that it is right for Iraq to resolve a minimum of $20-32 billion in commercial claims of foreign corporations and continue to pay billions in Gulf War reparations to Kuwait and Saudi Arabia, while ignoring the valid claims of American POWs and American civilian hostages. Surely the debt owed to American POWs is a "debt of honor" which should come before commercial claims; and certainly should not be ignored while commercial claims are paid.

America Leads

The United States historically has led the world in efforts to protect prisoners of war from torture. America was one of the leaders in the development of the 1949 Geneva Conventions, including the Third Geneva Convention for the protection of POWs. Further, America, on a bi-partisan basis under both Democratic and Republican Presidents, has taken the lead in promotion of human rights generally. How can the United States credibly take the lead in the future in these important endeavors if we are willing to ignore a core deterrent mechanism against torture; that a torturing state will be accountable under law? Is ignoring the courageous and historic action of America's tortured Gulf War POWs to enforce the rule of law consistent with traditional American leadership against such torture? More broadly, is ignoring the courageous action of America's tortured Gulf War POWs consistent with traditional American leadership for human rights?

America Defends Its Honor

After the POWs had brought their action against Iraq twenty distinguished former high-level national security officials of this Nation wrote to the President about the historic opportunity provided by this case; an opportunity to add serious deterrence against future torture of American POWs. They wrote in support of the POWs' initiative that: "[n]ever before has . . . [America] had such an opportunity to strike a blow against the torture of our POWs. This is truly a unique opportunity to send a signal to all future tyrants that America values the rule of law and that we will hold nations that torture American POWs accountable." This letter was signed on a non-partisan basis by, among others, Admiral Thomas H. Moorer, a former Chairman of the Joint Chiefs of Staff; John Lehman, a member of the 9/11 Commission & former Secretary of the Navy; Governor Bill Richardson, a former Ambassador of the United States to the United Nations; Anthony Lake, a former Assistant to the President for National Security Affairs; Davis R. Robinson and Abraham D. Sofaer, two former Legal Advisers to the Department of State;

Ambassador Richard Schifter, a former Assistant Secretary of State for Human Rights and Humanitarian Affairs; Ambassador Max M. Kampelman, Chairman Emeritus of the American Academy of Diplomacy and, as the former CSCE and START negotiator for the United States, one of the premier United States diplomats; Vice-Admiral James H. Doyle, Jr., a former Deputy Chief of Naval Operations; and Rear Admiral Horace B. Robertson, Jr., a former Judge Advocate General of the Navy.

In discussions concerning this letter I have never forgotten the wise summary of this matter volunteered by Anthony Lake. He noted that supporting our POWs was simply "*A Matter of National Honor*." Surely he is correct, and perhaps this profound statement captures it all.

Thank you for the opportunity to appear before you and testify on this matter of national honor.

Mr. COHEN. Captain Slade.

TESTIMONY OF CAPTAIN LARRY SLADE, USN (RET.), PLAINTIFF IN *ACREE V. REPUBLIC OF IRAQ*

Captain SLADE. Good afternoon, Chairman, Ranking Member Lungren and Members of the Committee. It is an honor to appear before the Judiciary Committee today on behalf of myself and 16 other American former prisoners of war, tortured by Iraq during the 1991 Gulf War and 37 of our close family members.

For my colleagues for whom I appear, the issue at stake in this hearing is clear: Will the Congress, the President and the Nation adhere to their word to hold accountable those who torture American prisoners of war? Failure to do so, will dramatically raise the risk that Americans held as POWs by the enemy will continue to be tortured.

The Braley-Sestak proposal now before this Committee will honor that national commitment and reduce the risk that future American POWs will be tortured as we were. We strongly support its prompt passage.

On April 4, 2002, I joined with 16 of my fellow Gulf War POWs who had been brutally tortured by Iraq during that war and 37 of our family members in filing a historic suit in Federal court. We brought this suit to add deterrents against the torture of American POWs through enforcing the rule of law and holding accountable the torturing state.

On July 7, 2003, Judge Richard Roberts of the Federal District Court for the District of Columbia, after a careful review of the facts and the law, awarded substantial judgments to each of the 54 affected American POWs and close family members. He found that, quote, "No one would subject themselves for any price to the terror, torment and pain experienced by these American POWs," unquote; and that, quote, "There must be a premium on protecting POWs because POWs are uniquely disadvantaged, and deterring torture of POWs should be of the highest priority." Despite these judgments for us, however, to date, we have been unable to obtain closure on this matter.

My fellow POWs and I, who brought this historic case, were tortured by Iraq through brutal beatings, starvation, electric shock, whipping, burning, mock executions, threatened dismemberment, threats to our families, subjection to bombing and breaking of bones and eardrums. For our spouses and other family members in the United States, Iraq's refusal to permit notification of capture, its public statements about using us as human shields and its coerced propaganda tapes of beaten POWs produced severe mental anguish. The horrifying specifics for each of us and our family members are set out in detail in the opinion of the Federal district court in *Acree v. The Republic of Iraq*.

On January 23, 1991, during our period of captivity, the House adopted Concurrent Resolution 48 by a vote of 418 to 0 condemning, quote, "the abuse by the Government of Iraq of captured United States and allied service members, including the apparent use of physical and mental coercion, Iraq's stated intention to disperse prisoners of war to potential military targets, and Iraq's flagrant and deliberate violations of the Third Geneva Convention."

The Senate followed with Concurrent Resolutions 5 and 8 by unanimous vote declaring, quote, "The United States condemns the Government of Iraq for brutal mistreatment of American and other prisoners of war for deliberately placing their lives in danger and for other violations of the Third Geneva Convention."

These were powerful and important statements that Iraq would be held accountable, statements for which we are grateful to the Congress. But these statements will ring hollow for the future unless backed with action now.

My fellow POWs also appreciate that on February 7, 2002, President George W. Bush issued an executive order in which he stated, quote, "The United States will hold states, organizations and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law," unquote.

Our Nation has also pledged its word in this matter, as has Iraq, for Article 131 of the Third Geneva Convention creates a binding treaty obligation never to absolve a torturing state of any liability for the torture of POWs. This treaty is enforced for every nation in the world, including Iraq and the United States. It embodies one of the core deterrent mechanisms built into the treaty against the torture of POWs, that of nonabsolvable liability.

In turn, President George W. Bush has pledged to the Nation that America will abide fully by the Geneva Conventions. The record is clear, Congress, the President and, by solemn treaty obligation, America and Iraq have pledged that those who were tortured—who torture American POWs will be held accountable. This treaty obligation, as it binds both Iraq and America, is nonabsolvable.

Mr. Chairman, we are also mindful that our historic effort to deter torture of American POWs is rooted in the rule of law. With the support of this Committee, which is dedicated to the rule of law, we are hopeful that future generations of American POWs will not have to endure our ordeal.

The rule of law is a key bulwark against tyranny and evil. At a not inconsiderable risk to ourselves, have sought to ensure that the rule of law can make a difference in the struggle against torture of American POWs held by the enemy. With the help of this Committee, it can and it will.

I would like to thank this Committee on behalf of all the POWs and family members for your steadfast support and for the opportunity to appear before you and testify on this matter of national honor. Thank you.

Mr. COHEN. Thank you, Captain Slade.

[The prepared statement of Captain Slade follows:]

PREPARED STATEMENT OF LAWRENCE RANDOLPH SLADE

Statement of
Captain (Ret.) Lawrence Randolph Slade*

Before the
Committee on the Judiciary
House of Representatives

Concerning
"Ensuring Legal Redress for American
Victims of State-Sponsored Terrorism"

Chairman Conyers, Chair Cohen, Ranking Member Smith, and members of the Committee:

It is an honor to appear before the Judiciary Committee today on behalf of myself and sixteen other American former prisoners of war (POWs) tortured by Iraq during the 1991 Gulf War and thirty-seven of our close family members. For my colleagues for whom I appear, the issue at stake in this hearing is clear; will the Congress, the President and the Nation adhere to their word to hold accountable those who torture American prisoners of war. Failure to do so will dramatically raise the risk that Americans held as POWs by the enemy will continue to be tortured. The Braley/Sestak Bill now before this Committee will honor that national commitment and reduce the risk that future American POWs will be tortured as we were. We strongly support its prompt passage.

On April 4, 2002, I joined with sixteen of my fellow Gulf War POWs who had been brutally tortured by Iraq during that War, and thirty-seven of our family members in filing an historic suit in federal court. We brought this suit to add deterrence against the torture of American POWs through enforcing the rule of law and holding accountable the torturing state. On July 7, 2003, Judge Richard Roberts of the Federal District Court for the District of Columbia, after a careful review of the facts and the law, awarded substantial judgments to each of the 54 affected American POWs and close family members. He found that: "No one would subject himself for any price to the terror, torment, and pain experienced by these American POWs," and that "there must be a premium on protecting POWs [because] POWs are uniquely disadvantaged and deterring torture of POWs should be of the highest priority." Despite these judgments for us, however, to date we have been unable to obtain closure of this matter.

My fellow POWs and I, who brought this historic case, were tortured by Iraq through brutal beatings, starvation, electric shock, whipping, burning, mock executions, threatened dismemberment, threats to our families, subjection to bombing, breaking of bones and eardrums, and horrifying genital inspections aimed at discrimination against

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* Captain (Ret.) Lawrence Randolph Slade's F-14 aircraft was hit by a surface-to-air missile during the 1991 Gulf War with Iraq. While held as a POW by Iraq he was brutally tortured. He lost 45 pounds during his period of captivity and torture and suffered serious injury at the hands of his captors. His testimony today is solely on behalf of the POWs and family members in *Acree v. Republic of Iraq*, 271 F.Supp.2d 179 (D.D.C. 2003), and he is not speaking for any other organization of which he is or has been a member.

Jews. For our spouses and other family members in the United States, Iraq's refusal to permit notification of capture, its public statements about using us as human shields, and its coerced propaganda tapes of beaten POWs produced severe mental anguish.

To provide but two brief examples of the torture, I was beaten with wooden bats or blackjacks all over my body so severely that when I was able to see my body days later it was as though I had been dipped in indigo ink. I was also subjected to horrifying mock executions and to beatings of my face and head, breaking my nose and eardrums. I lost 45 pounds during my captivity and torture. Marine Colonel Cliff Acree, for whom our case takes its name, endured a perfect hell of torture requiring him to endure one painful operation after another on his return because of his courageous refusal to criticize President George H.W. Bush to his Iraqi captors. The horrifying specifics for each of us, and our family members, are set out in detail in the opinion of the federal district court in *Acree v. Republic of Iraq,* 271 F.Supp.2d 179 (D.D.C. 2003).

On January 23, 1991, during our period of captivity, the House adopted Concurrent Resolution 48 by a vote of 418-0, condemning "the abuse by the Government of Iraq of captured United States and allied service members, including the apparent use of physical and mental coercion . . . , Iraq's stated intention to disperse prisoners of war to potential military targets, . . . [and Iraq's] flagrant and deliberate violations . . . of the Third Geneva Convention." (the POW Convention) (H.R. Con. Res. 48, 102d Cong. H663, January 23, 1991). The very next day, the Senate adopted Concurrent Resolution 5 by a vote of 99-0, condemning Iraq's failure "to treat prisoners of war in strict conformity with the Third Geneva Convention" (S. Con. Res. 5, 102d Cong. S1146, January 24, 1991). A week later the Senate adopted Concurrent Resolution 8 by unanimous voice vote declaring: "The United States condemns the Government of Iraq for brutal mistreatment of American and other prisoners of war, for deliberately placing their lives in danger, and for other violations of the Third Geneva Convention" (S. Con. Res. 8, 102d Cong., January 31, 1991). These were powerful and important statements that Iraq would be held accountable; statements for which we are grateful to the Congress. But these statements will ring hollow for the future unless backed with action now.

My fellow POWs also appreciate that on February 7, 2002, President George W. Bush issued an Executive Order in which he stated: "The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law." And we appreciate that in apparent understanding of the brutality of the torture we faced the President's Press Secretary issued a statement on November 6, 2003, concerning our torture, that "there is simply no amount of money that can truly compensate these brave men and women for the suffering that they went through at the hands of Saddam Hussein's brutal regime."

Our Nation has also pledged its word in this matter, as has Iraq. For Article 131 of the Third Geneva Convention (the POW Convention) creates a binding treaty obligation never to "absolve" a torturing state of "any liability" for the torture of POWs. This Treaty is in force for every nation in the world, including Iraq and the United States.

It embodies one of the core deterrent mechanisms built into the Treaty against the torture of POWs, that of non-absolvable liability. In turn, President George W. Bush has pledged to the Nation that America will abide fully by the Geneva Conventions.

The record is clear; Congress, the President, and – by solemn treaty obligation -- America and Iraq, have pledged that those who torture American POWs will be held accountable. This Treaty obligation, as it binds both Iraq and America, is non-absolvable.

We are mindful, of course, that there is a new Government in Iraq and that America is fighting a new war there. This, however, is another reason to support the Braley/Sestak Bill. For that Bill will assist the War effort and normalization of relations with Iraq by dramatically reducing the outstanding debts against Iraq. Thus, it will resolve valid American claims with strong legal and political backing on terms closely paralleling the deep cuts which Iraq is using to settle its sovereign and commercial debts. In our case, for example, the Braley/Sestak Bill would effectively waive all punitive damages ($306 million) and almost two-thirds of the compensatory damages awarded to us by the Court. While supporting this dramatic reduction in our court-awarded judgments as a voluntary compromise to resolve this matter, we emphatically reject any view that the cost of "reconstruction of Iraq," a public purpose, should be borne by asking American POWs tortured by Iraq personally to pay for the "reconstruction" of the state which tortured us. We also emphatically reject any effort to turn our national back on the rule of law and ignore the treaty obligations which are so crucial for the protection of American POWs held by the enemy.

Mr Chairman, we are also mindful that our historic effort to deter torture of American POWs is rooted in the rule of law. With the support of this Committee, which is dedicated to the rule of law, we are hopeful that future generations of American POWs will not have to endure our ordeal. The rule of law is a key bulwark against tyranny and evil. At a not inconsiderable risk to ourselves we have sought to ensure that the rule of law can make a difference in the struggle against torture of American POWs held by the enemy.[1] With the help of this Committee it can and it will.

Chairman Conyers, on behalf of all the POWs and family members, I would like especially to extend heartfelt thanks to you and your staff. You have been steadfast in this matter of national honor. Your determination to support the rule of law most assuredly will greatly assist any Americans held as POWs by the enemy in the future. And we greatly appreciate your support in our quest for Justice. We also greatly appreciate the clarity, vigor and commitment with which Congressman Bruce Braley has championed this matter of national honor. And we are deeply honored that Congressman Joseph A. Sestak, a former Vice Admiral and high ranking official in the National

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[1] When we originally filed this action, which was while Saddam Hussein was still in power, we were required on the complaint to be served against him to list our home addresses even though we had resisted giving this information under torture. It has now been over six years since our case was filed and almost five years since we were awarded a substantial judgment against Iraq. We hope that Congress will agree that this is more than enough delay of obvious justice.

Security Council, and the highest ranking member of the military ever elected to the Congress, has been willing to again provide national leadership on a matter of such significance for us, as well as for all American service personnel who will serve our great Nation in the future. I would like to extend our greatest thanks also to the many other members of the House and the Senate who have championed our cause, including Speaker Pelosi, Senate Majority Leader Reid, and the Ranking Member of the Senate Foreign Relations Committee, Senator Richard G. Lugar.

The United States has an imperative national interest in deterring torture of American prisoners of war held by the enemy and the taking of American citizens as hostages. The Braley/Sestak Bill will strongly serve that national interest.

Thank you for this opportunity to appear before you and testify on this matter of national honor.

Mr. COHEN. And now the Chair recognizes Mr. Wolf.

TESTIMONY OF DANIEL WOLF, COUNSEL,
VINE V. REPUBLIC OF IRAQ

Mr. WOLF. Mr. Chairman, Members of the Committee, thank you for affording me the opportunity to present my views regarding this important matter of justice for American victims of terrorism.

I represent George Charchalis, who is sitting here with me today, and as lead counsel in two lawsuits brought by 400 other American victims of Iraqi terrorism known as *Hill and Vine v. Iraq*. These suits arose out of the decision in 1990 by Saddam Hussein to detain all American citizens in Iraqi occupied territory——

Mr. KING. Mr. Chairman, would you ask the witness to turn on the mic, please?

Mr. WOLF [continuing]. To detain all American citizens in Iraqi-occupied territory for the avowed purpose of deterring U.S., the United States, and its coalition allies, from taking military action to liberate Kuwait.

Like Mr. Charchalis, many of these Americans were rounded up, relocated to strategic sites where they were detained for up to 130 days as human shields in deplorable conditions, and subjected to cruel and degrading treatment. The others remained in hiding or were trapped inside diplomatic properties.

All of the hostages lived each day in fear for their lives. Many witnessed unimaginable atrocities. Some were beaten, raped, tortured and subjected to mock executions. After Congress made it possible to do so, 180 of those former hostages filed the Hill case against Iraq. And a couple of years later, 240 more filed the Vine case. By mid-2002, all 180 of the plaintiffs in the Hill case had obtained judgments in their favor, totaling $94 million in the aggregate.

In March 2003, literally on the eve of Operation Iraqi Freedom, President Bush issued an order directing that all of the Hill judgments be paid in full from blocked Iraqi assets. At the same time, however, the Administration confiscated all of Iraq's remaining blocked assets, transferred them to the Coalition Authority in Iraq where they were mostly squandered. Acknowledging that these actions left the 240 Vine plaintiffs out in the cold, the Bush administration gave public assurances their rights would be protected, promising, quote, "to make sure that people who secured judgments find some satisfactions," assurances that came from as high up as Secretary State Powell. For the next 4 years, however, the Bush administration and State Department did nothing to honor that promise.

Finally, in December of 2007, Congress amended the law in a matter that would have given the American victims of Saddam's brutality the right to obtain compensation for monies that Iraq had deposited in U.S. banks, but that was not to be. Acting at the behest of the State Department, President Bush vetoed that bill. The State Department has tried to justify that veto on the specious argument that the new FSIA amendments would put billions of dollars of Iraqi money at risk, imperiling the reconstruction efforts.

On the basis of that gross exaggeration, the Bush administration managed to convince Congress to enact a compromise bill under

which the President was given the authority to exempt Iraq from the reach of the new law in exchange for the Administration's promise to use its best efforts to resolve the claims of American victims of Iraqi terrorism. Last month, the State Department showed just how much that promise was worth.

They informed us that the Administration fully agreed that the former hostages had valid claims, but they said that now is not the right time to raise it with Iraq as the United States did not have sufficient leverage. The Department has no intention of ever doing anything to vindicate the rights of Iraq's American victims as has recently become apparent from news reports. According to those reports, the U.S. has told Iraq that it will continue to protect Iraqi assets from these and other claims only if Iraq agrees to a strategic alliance with the United States giving the United States long-term basing rights in Iraq and affording U.S. Servicemen and contractors immunity from Iraqi judicial process.

The irony could not be greater. Having once had their physical selves held hostage by the Iraqi Government to extract concessions from the United States, Iraq's former American victims are now having their claims held hostage by their own government so that it can extract the concessions from Iraq.

At this point, I would ask the Committee to consider the moral implications of what the State Department is doing. One of the primary duties of the Department is to defend and protect the rights of America's citizens to be free from abuse by foreign governments. Yet, instead of lifting so much as a finger to protect those rights, the Department is offering to trade them away in exchange for bases and other concessions in Iraq.

Why does the State Department need to use the rights of these American victims as leverage? Aren't we buying enough leverage with the blood of American soldiers dying every day in Iraq? Isn't the expenditure of hundreds of billions of dollars enough to purchase leverage with the Iraqi Government? Or is it just that the Department is tired of being bothered by these claims and is looking for a convenient opportunity to end them forever?

The only way that the Bush administration's promise to the former hostages will ever be fulfilled is if Congress fills the void. The Braley-Sestak proposal will do just that.

Thank you for the opportunity to testify in this matter.

Mr. COHEN. Thank you, Mr. Wolf.

[The prepared statement of Mr. Wolf follows:]

PREPARED STATEMENT OF DANIEL WOLF

Mr. Chairman and members of the committee:

Thank you for affording me the opportunity to present my views regarding this important matter of justice for American victims of Iraqi terrorism. Those views have been shaped by more than two decades of experience litigating cases against foreign states under the Foreign Sovereign Immunities Act (the "FSIA"), both as an attorney in the Office of the Legal Adviser of the Department of State and in private practice.

Since 1999, I have been serving as lead counsel on behalf of George Charchalis and more than 400 other American victims in two lawsuits that have become known as *Hill v. Republic of Iraq* and *Vine v. Republic of Iraq*. As you have heard from Mr. Charchalis, these suits arose out of a decision Saddam Hussein made in August 1990 to detain all American citizens in Iraqi occupied territory for the avowed purpose of deterring the US and its coalition allies from taking military action to liberate Kuwait.

Like Mr. Charchalis, many of those Americans were rounded up and forcibly relocated to strategic sites, where they were detained for up to 130 days as "human shields" in inhumane conditions and subjected to cruel and degrading treatment. The others remained in hiding or were trapped inside diplomatic properties. All of the hostages lived each day in fear for their lives; many witnessed unimaginable atrocities; some were beaten, raped, tortured and/or subjected to mock executions.

For the first five years after their release, the former hostages had no means of obtaining justice because American law afforded terrorist countries like Iraq immunity from suit even when they tortured, kidnapped and otherwise terrorized American citizens. This, however, all changed in 1996 when Congress amended the FSIA to allow American victims of terrorism to seek redress against rogue nations.

Following the enactment of this amendment, more than 400 American victims of Saddam's "human shield" policy filed suit against Iraq. The claims of the 180 victims who filed earliest were all consolidated in the *Hill* case and the claims of the 240 victims who filed later were consolidated in the *Vine* case.

By mid-2002, all 180 of the plaintiffs in the *Hill* case had obtained judgments in their favor. The amount of these judgments totaled just over $94 million or about $500,000 per plaintiff on average, ranging from a high of $1.75 million to a low of $50,000.

In March 2003—literally on the eve of Operation Iraqi Freedom—President Bush issued an order directing that all of these judgments be paid in full from blocked Iraqi funds. At the same time it was authorizing payments to the *Hill* plaintiffs, however, the Bush Administration confiscated all of Iraq's remaining blocked assets-converting them to US assets and, thereby, placing them out of reach of any collection efforts. And, despite the *Vine* plaintiffs' request that the President reserve sufficient funds to satisfy any judgments they might obtain, the assets were subsequently transferred to the Coalition Authority in Iraq, where they were mostly squandered.

Acknowledging that its actions unfairly left the 240 *Vine* plaintiffs out in the cold, the Bush Administration gave numerous public assurances that their rights would be protected, promising, for example, to "make sure that people who secure judgments find some satisfaction." These assurance came from as high up as Secretary of State Colin Powell, who came to Capitol Hill to testify about the State Department's commitment to setting up a "victims of terrorism fund" to accomplish that goal.

For the next four years, however, the Bush Administration and its State Department did nothing to honor its promise to the victims—refusing even to meet with them or their representatives. Finally, in December 2007, Congress amended the FSIA to strip current and former terrorist states, including Libya and Iraq, of the immunities that protect their assets from attachment and execution. These amendments, which were passed as part of the National Defense Authorization Act, would have enabled the American victims of Saddam's brutality to obtain compensation from monies Iraq has deposited in US banks.

But that was not to be. Acting at the State Department's behest, President Bush vetoed the defense bill just before the New Year. The State Department tried to justify that veto on the specious argument that the new FSIA amendments would put "billions" of Iraqi dollars at risk—imperiling its reconstruction effort.

On the basis of that gross exaggeration, the Bush administration managed to convince Congress to enact a compromise bill. Under that compromise, the President was given the authority to exempt Iraq from the newly enacted amendments to the FSIA in exchange for an Administration promise to use its best efforts to resolve the claims of American victims of Iraqi terrorism. Congress codified this compromise in a "sense of Congress" resolution in which it expressed its expectation that the Administration would act swiftly to fulfill its promise to the victims through state-to-state negotiations.

In reality, it took four more months before the Administration agreed to meet with the victims or their representatives. At that meeting, Administration officials made clear that they had come only to listen—not to make any proposals of their own. Ten days later, the State Department delivered us the Administration's response. They said that the Administration fully agreed that the former hostages all had valid claims for which Iraq was duty-bound to compensate them. As much as they would like to be helpful, however, they said that they would not raise the matter with Iraq because the present state of the bilateral relationship between the two countries made it pointless to do so.

In other words, they claimed that, despite the expenditure of hundreds of billions of dollars and the deaths of more than 3,000 American servicemen, the US does not have leverage with the Iraqi government at this time. Asked why this was not the right time and what would have to change before they felt they would be in a posi-

tion to exert such leverage, the State Department simply said that there may never be a right time to raise this matter.

That the State Department has no intention of ever doing anything to vindicate the rights of Iraq's American victims has recently become apparent from news reports, which reveal a cynical effort by the Department to use their claims as a bargaining chip to extract unrelated concessions the Administration is seeking from Iraq. According to those reports, the US has told Iraq that it will continue to protect Iraqi assets from these and other claims only if Iraq agrees to enter into an "alliance" agreement, giving the U.S. long term basing rights in Iraq and affording U.S. servicemen and contractors immunity from Iraqi judicial process. The irony could not be greater. Having once had their physical selves held hostage by the Iraqi government to extract concessions from the United States, Iraq's former American victims are now having their claims held hostage by their own government so that it can extort concessions from the Iraqis.

The State Department's callous refusal to raise the victims' claims on the ground that, 18 years after their ordeal, the time is "not right" is unconscionable. It is the latest, and perhaps final, chapter in the story of the Department's abdication of its responsibility to American citizens who were abused, terrorized and tortured by Saddam Hussein during the First Iraq War.

As you have just heard from Mr. Charchalis, this story began when the Department advised those Americans that the Iraqi troop buildup along the Kuwait border was of no concern—thus sealing his fate and that of hundreds of others who ended up stranded in the middle of a war zone. Following their release, the Department had the opportunity to hold the Iraqi regime accountable by compensating the former hostages from frozen Iraqi funds on deposit in US banks. But it refused to do so. Then, when the victims tried to obtain justice by pursuing their claims in U.S. courts, the Department took every opportunity to obstruct them. Indeed, showing no shame, the Department and their allies within the Administration have gone so far as to impugn the patriotism of these American heroes by publicly stating that they were "jeopardizing our troops in the field" and handing "a propaganda victory" to our enemies in Iraq.

The only way the Bush administration's promise to the former hostages will ever be fulfilled is if Congress steps into the void. The Braley-Sestak proposal would do that by ensuring that they are afforded the same rights to pursue their claims in American courts as are all other victims of state-sponsored terrorism and without further interference by the State Department. At the same time, it gives Iraq the ability to limit its liability by settling the claims of the *Vine* plaintiffs for reasonable amounts based on a simplified version of the formula used to compensate the *Hill* plaintiffs, but under which the award for any single individual would be capped at no more than $900,000. As the claims of the *Vine* plaintiffs are identical to those of their fellow hostages who participated in the *Hill* case, there is no justification for the failure to treat them in similar fashion. Enactment of the Braley-Sestak will bring them the justice that they seek and that is so long overdue.

We who have been representing these American heroes in their quest for justice thank you and the Committee for its interest in this matter and look forward to working with you to enactment a statute that assures that these claims are paid, at reasonable amounts, by the party that is responsible and liable under international law.

Mr. COHEN. Mr. Charchalis—and I hope I pronounced it correctly; if not, correct me—you're recognized.

Mr. CHARCHALIS. It's Charchalis.

Mr. COHEN. I was close. Thank you.

Mr. CHARCHALIS. Can you hear me clearly?

Mr. COHEN. I can hear you.

Mr. King, can you hear him? You're my hear test.

Mr. KING. Yes, I can.

Mr. COHEN. Thank you, sir.

TESTIMONY OF GEORGE CHARCHALIS, PLAINTIFF IN *VINE V. REPUBLIC OF IRAQ*

Mr. CHARCHALIS. First of all, let me—Mr. Chairman, Members of the Committee—let me thank you for the opportunity to come in and offer testimony today. I am an American citizen, a lifelong resi-

dent of Nevada and a veteran of the Korean War where I served in combat with the Third Infantry Division.

I would like to say that I believe this hearing to be a single event in the effort to resolve the question of compensation for prisoners of war and human shields. Following my discharge from the Army, I completed my studies at Utah State and then embarked on a career in city planning and management, ultimately established my own consulting business.

In 1989, I was recruited by the Kuwait Institute for Scientific Research. They hired me to manage an ambitious plan to install parks, gardens, fountains and freeway landscapes throughout the country. It was to be a long-term effort.

After selling my business, I moved to Kuwait with my wife and commenced what turned out to be the most rewarding work of my life. That work, however, came to abrupt end when the Iraqi Army invaded Kuwait on the morning of August 2, 1990. Within hours, troops were forming all over the neighborhood; and in the next few days, we began to hear horrifying reports of atrocity, including rape, torture and summary executions.

The Iraqi Army soon set up a command post directly across from our apartment building. Very quickly, the fighting came very close to our building. Several of the windows in our flat were shot out by machine gun fire. Scared to death, my wife and I huddled in the basement, piling mattresses around us for protection.

In August, Saddam Hussein issued an edict that allowed security forces to round up American citizens so they could be used as human shields to deter a bombing. We moved into the basement on a permanent basis and then to a safe house. We lived in a state of constant anxiety and fear knowing that the Iraqi soldiers could storm the door any minute.

We struggled to keep up our spirits. The stress and tedium wreaked havoc with us. Worst of all was a feeling of utter hopelessness that I could do nothing to protect my wife and comfort my daughters at home. Fortunately, in September, Saddam was shamed into allowing the release of women and children. Saying goodbye to my wife, knowing I might never see her again, was a heartbreaking experience for me.

Two days later, what I had feared most came to pass. The Iraqi soldiers kicked down the door and struck me in the face with a rifle butt, knocking me down to the ground and kicking me in the stomach. One of those kicks broke an abdominal hernia that had been repaired prior to my departure for Kuwait. I sustained a dislocated denture, a bleeding gash over my eye that left a nasty scar; I had a bruised tailbone, and I had a disintegrated disc that has given me pain ever since.

I was taken to an underground car park, convinced I was going to be shot. There was an argument about my passport. An Iraqi officer looked at it and said something in Arabic and they put me back in the car. I was taken to a Kuwaiti police station and put in jail with my hands tied behind my back. I could hear horrifying screams all night long.

The next morning I was taken to a hotel and then handed onto a bus with a number of hostages and then taken to Baghdad. We were driven north to a chemical complex near Samarra. To locate

that for you in your mind, it is where the Golden Dome Mosque that was blown up several years ago is located.

Where we were held was a rat infested—roach, desert flies. And apart from an hour each day, when we were allowed to walk, we were confined in these awful huts almost around the clock. The kitchen was disgusting and unsanitary. We developed all kinds of skin sores, suffered from chronic diarrhea that became so debilitating I had to be taken to a hospital. The stress was almost unbearable.

We were surrounded by armed guards and had the creepy sense of being watched every minute, which made me feel like a caged animal. We lived in constant knowledge that any moment we could be executed or we could be killed by a bombing raid.

If necessary, we were prepared to die for our country; and the Iraqis tried to pressure us to go on television and denounce my President and country. I told them to go to hell. I began to succumb to anxiety, developed chronic hand tremors, lost my ability to concentrate. I could barely read a page. Suffering from insomnia, I felt a state of perpetual fatigue.

As the war went on, I was totally distraught, feeling that my captivity would last forever and I would never be able to maintain my grip on reality.

Finally, on December 2nd, the nightmare came to an end when a list of hostages to be evacuated with Mohammed Ali's peace mission when he came to Iraq.

Upon returning to the States, I was hospitalized for several days, received treatment for my hernia and internal bleeding.

In the following months, I was plagued by intense anxiety attacks, flashbacks, was unable to recover my appetite, suffered from recurring bouts of depression that plagued me. My difficulty concentrating forced me to retire at what would have been the height of my career.

I have an ex—I live with an exaggerated state of response to loud noise, I have been diagnosed with post traumatic stress disorder and am still haunted by personal memories.

I would like to recommend and urge the Committee to help us to do that by adopting the Braley-Sestak proposal. And on behalf of my wife and myself and all of our fellow hostages, I would like to thank you for taking the time to listen to us and consider our plea. Thank you.

Mr. COHEN. Thank you, Mr. Charchalis.

[The prepared statement of Mr. Charchalis follows:]

PREPARED STATEMENT OF GEORGE CHARCHALIS

Mr. Chairman and members of the committee:

My name is George Charchalis. I am an American citizen, a lifelong resident of Nevada, and a veteran of the Korean War, where I saw combat with the Third Infantry Division.

Following my discharge in 1953, I completed my studies at the Utah State University, then embarked on a career in city planning and management, and ultimately established my own consulting business. In 1989, I was recruited by Kuwait's Institute of Scientific Research, which hired me to manage an ambitious plan to install parks, gardens, fountains and freeway landscaping throughout that country. After selling my consulting business, I moved to Kuwait with my wife and commenced what turned out to be the most rewarding work I had ever done.

That work, however, came to an abrupt end when the Iraqi army invaded Kuwait on the morning of August 2, 1990. Within hours, Iraqi troops were swarming all over our neighborhood and, over the next few days, we began hearing horrifying reports of Iraqi atrocities, including rape, torture and summary executions.

The Iraqi army soon set up an operational headquarters on the beach just across from our apartment complex and, with each passing day, the fighting got closer to us. Explosions and bombing became a terrifying concern. Several of the windows in our flat were shot out by machinegun fire. Scared to death, my wife and I huddled together in the basement, piling mattresses around us for protection as we struggled to sleep at night.

In mid-August, we learned that Saddam Hussein had issued an edict to his security forces to round up all American citizens in Kuwait, so that he could use them as "human shields" to deter the United States from bombing Iraqi strategic sites. Worried that they would come to get us, we moved to the basement of a Kuwaiti friend and then to a safe-house where another American citizen was already hiding out.

We lived in a state of constant anxiety and fear, knowing that the Iraqi soldiers could storm through the door at any moment. We struggled to keep our spirits up, but the stress, tedium, confinement and uncertainty played havoc with our emotions. Worst of all was my feeling of utter helplessness that I could do nothing to protect my wife or comfort our daughters at home who I knew would be worrying themselves sick.

Fortunately, in early September, Saddam was shamed into allowing the release of women and children. Saying good-bye to my wife, knowing that I might never see her again, was the most heartbreaking thing I have ever done.

Two days later, the moment I had feared most finally came. Iraqi soldiers kicked down the door of the flat where I was hiding. They struck me in the face with a rifle butt, knocked me down on to the ground, and kicked me mercilessly in the stomach. One of those kicks broke an abdominal hernia that had been repaired prior to my departure for Kuwait. In addition, I sustained a dislocated denture, a bleeding gash over my eye that left me with a nasty scar, a bruised tailbone that has led to a disintegrated disc and given me pain ever since, and the loss of hearing in my ear. I was in terrible pain and feared for my life.

I was taken to an underground car park, where I was made to stand against a wall. I was convinced that I was about to be shot, but after arguing about my passport, my Iraqi captors loaded me back into their car and took me to a Kuwaiti police station.

I was held overnight in a hot, fetid cell with my hands tied behind my back. Throughout the night, I could hear the terrifying screams of my fellow prisoners and wondered when my turn would come. The next morning, I was taken to a hotel and then herded onto a bus with a number of other hostages. After being taken to Baghdad, we were put on another bus and driven northward for most of the night until we arrived at a huge chemical complex near Samarra.

The next three months were almost like a living hell. We were housed in dilapidated huts that had long ago served as the living quarters for the workers who had constructed the facility. They were infested with rats, roaches and desert biting flies. Apart from an hour or so each day when we would be allowed to walk outside for exercise, we were confined to these awful huts almost around the clock.

The kitchen was disgustingly unsanitary, the water was foul, and what meager food we were given was totally unappetizing. We all developed skin sores and I suffered from chronic diarrhea, which became so debilitating that I had to be hospitalized. I was afflicted by numerous other physical ailments as well, including a very bad skin rash, and continued to struggle with pain from my ruptured hernia. By the time of my release, I had lost more than 20 pounds and was just a shell of my former self.

The stress was almost unbearable. We were surrounded by armed guards and the creepy sense of being watched every minute made me feel like a caged animal. We lived with the constant knowledge that at any moment we could be executed or killed in a bombing raid. If necessary, however, we were prepared to die for our country and, when the Iraqis tried to pressure me to go on television to denounce my president and my country, I told them to "go to hell."

I soon began succumbing to anxiety attacks, developed chronic hand tremors and lost my ability to concentrate to the point that I could barely read a page. I suffered from insomnia that left me in a state of perpetual fatigue. When I did manage to sleep, I would often awake to terrible nightmares of being hunted down and tortured. As the weeks wore on, I became totally distraught, feeling as if my captivity would last forever and wondering how much longer I would be able to maintain my grip on reality.

Finally, on December 2, my nightmare came to an end when I was placed on a list of hostages to be evacuated with Muhammad Ali, who had come to Iraq on a humanitarian mission. Upon returning to the States, I was hospitalized for several days, while I received treatment for my hernia and internal bleeding.

In the months following my release, I was plagued by intense anxiety attacks and had flashbacks of being captured and beaten. I was unable to recover my appetite and suffered from recurring bouts of depression, which plague me to this day. I had great difficulty concentrating and was forced to retire at what should have been the height of my career. I have an exaggerated startle response to loud noises and grind my teeth so hard when I sleep that I am forced to wear a mouthpiece. I have been diagnosed with post-traumatic stress disorder and am still haunted by painful memories of my ordeal in captivity.

Today, 18 years after that ordeal, I am deeply saddened and bitterly disappointed at the treatment I have received from my own government and, in particular, the Department of State. I believe that the Department bears at least some of the responsibility for my plight, having assured me and many other Americans who had contacted the U.S. Embassy that the Iraqi buildup along the Kuwaiti border was just "saber rattling" and that there was nothing for us to be concerned about. Subsequently, after the invasion, Embassy officials refused my pleas to allow my wife and I to seek refuge within the Embassy compound at the same time they were granting safe haven to American diplomatic and military personnel. And, finally, ever since my release, the Department has done everything in its power to derail the lawsuit that my wife and I, along with more than 200 other former hostages, have brought against Iraq in an effort to obtain some measure of justice for the injuries we have suffered.

In March 2003, about 180 of our fellow hostages who had filed an identical lawsuit managed to obtain such justice when President Bush ordered that their judgments be paid from blocked Iraqi bank accounts. I am very pleased that these victims were able to get the justice they so greatly deserved. At the same time, however, I find it grossly unfair that a second group of victims who were held captive at the same time and under the same conditions have received not one dime. I cannot understand how the State Department can believe this situation is acceptable. I know that I never will and, unless and until something is done to right this wrong, I know that my wife and I will never be able to close the door on this horrific chapter in our lives.

I urge this Committee and this Congress to help us do that by the Braley-Sestak proposal. On behalf of my wife, myself and all of our fellow hostages, I thank you for taking the time to listen and to consider our plea.

Mr. COHEN. We will now have a round of questions for our witnesses, and the Chair will proceed first.

First, I would like to ask Ambassador Moore and Mr. Wolf, had section 1083 of the 2008 defense bill passed in its original form, how would it have helped your cases?

Ambassador?

Mr. MOORE. Thank you, Mr. Chairman.

The POWs in working with the Congress on that bill sought to do nothing but restore the original intent of the Congress and provisions of law that had been badly distorted.

For example, one provision dealing with cause of action in a case, a technical legal issue, as you know, Mr. Chairman. And this is one in which the Committee itself had stated in its report that the provision was intended to create a Federal statutory cause of action. That was later held by a court as something that—cause of action that created a problem for the POWs in the case.

So it would have simply returned—restored the original intent of the Congress. So that is all the POWs sought. They did not, by the way, seek anything to go against the funds of Iraq in United States banks. They sought no such provisions whatsoever.

What they would have done—indeed, we had it prepared already—was to file a motion back in the Federal district court pursuant to the provisions of the defense authorization bill that simply

would have quickly restored our judgment instead of leaving it there, as it is currently under a motion in the Federal district court, a technical legal motion under section 60(b) of the Federal Rules of Civil Procedure.

So, actually, what it would have done, it would not have taken a penny at that point from Iraq. It simply would have restored the original judgment which is still pending before the Federal district court at present.

Thank you, Mr. Chairman.

Mr. COHEN. Mr. Wolf, do you have anything to add?

Mr. WOLF. Yeah, I guess.

Quite simply, I believe if the bill had been enacted, we would have moved to judgment in the case. We would have proceeded no doubt against Iraqi money in U.S. banks, and we would have obtained—enforced those judgments, I believe, in modest amounts and in amounts that were far less than the billions of dollars that the Administration said that were at risk here. It would have been probably about $120 million or so.

Mr. COHEN. Thank you.

Ambassador Moore, can you explain how our obligation under the Geneva Convention never to absolve the torturing state of any liability with regard to POWs makes this a particularly unique case?

Mr. MOORE. Yes, Mr. Chairman, this is one of the few, if not the only, settings in the world in which there is a treaty obligation binding on every nation in the world. The POW Convention is one of very few conventions accepted by every nation in the word, not simply customary international law. And one of the core deterrent mechanisms in that to prevent torture of POWs is the provision that not only the torturing state, but no other state to reflect either a victor in a war or a loser in a war, no one, can absolve a torturing state for any liability for torture.

So we have a fundamental principle here indicating that the judgment that had been won by the POWs—determined, by the way, after a full hearing on the facts in the law by a judge who was a former assistant attorney general of the United States of America, and, by the way, in a procedure in which—even when the other side doesn't show up, you have to have a full hearing and go through it in any event.

So—and in a setting, as well, in which they have had to turn down international arbitration, which they did about the case for us initially.

So this is an absolutely unique setting for the POWs in which there is a clear obligation that their liability cannot be absolved.

I might add, it is also very, very clear in the sense that you already have had a Federal judgment indicating in every single case what the damages should be after reviewing careful damages in all of the other cases. We also have a Presidential statement in 2002 that has pledged that the United States of America will hold torturing states accountable; they will be held accountable for mistreating Americans.

So you have a whole series of provisions, including three unanimous resolutions of the Senate and the House, all basically indicating that there should be liability in this case.

I might add, Mr. Chairman, that we understand that there is a new government in Iraq and a war still going on. Since you have asked a narrow question on this other one, a very important one, I would like to just hold that one for a moment; and we will come back to it, if that is all right.

But I would like to talk to some of the points that I think Mr. Lungren has appropriately raised.

In relation also the interest of this and serving the war effort, because we believe very strongly that this bill, this proposal does serve the war effort as well.

Mr. COHEN. Would you like to proceed in that matter.

Mr. MOORE. Yes, actually I would. Thank you very much, Mr. Chairman. I appreciate it.

Mr. COHEN. Permission granted.

Mr. MOORE. Thank you, sir. The POWs and family members that I served were all volunteers. They went in harms way, and many of their colleagues and friends still are going in harms way. They would not support anything that they believe would harm the war effort in any way, shape or form. And I would not be here testifying on their behalf if I believed that. When the President of the United States vetoed the defense authorization bill, it was because at that time I do not believe the Administration had a sense or Iraq had a sense of what the liabilities might be in relation to provisions in that bill which had not been sought were not put in by the POWs. But I think realistically, they didn't know at that time what those liabilities were.

Thanks to the action of the Congress in putting in a provision indicating this should be something that the Administration tries to resolve, the Justice Department held a meeting on April 22nd for all of the claimant groups that are now reflected in the Braley-Sestak matter, because we believe these were the claims that were looked at and thought to be valid claims of victims of terror, all under the provisions that were then in court. These were the critical ones that had been addressed in the 2008 defense bill at that point.

In that setting, all of the claimants made a very substantial presentation, putting on the table in the case of the POWs an illustrative settlement offer that is largely reflected in the Braley-Sestak bill that would waive all punitive damages, $306 million in punitives, that would waive two-thirds of all of the compensatory damages. Over $400 million waived of compensatory damages. These damages are not awarded by an out-of-control jury, for example, in some case a jury that doesn't like Iraq. These damages are awarded by a Federal District Judge in the same setting for trials against the United States of America looking at the law and the facts very carefully. That was a rather extraordinary effort to basically waive, in the interest of trying to resolve this matter, over $700 million in the judgments.

Now, why do I believe that this bill, Braley-Sestak, and I believe this from the bottom of my heart, is something that should be strongly supported on a bipartisan basis and serves the war effort as well as serving justice for these POWs. The first point is that this would dramatically get rid of and reduce the most important and politically supported claims against the Government of Iraq

today. And it would do so on terms that are very close to the commercial debt arrangements that Iraq is basically working out.

Iraq is largely settling those commercial debts which it has been doing for about $0.20 on the dollar, though some have held out for more, and Iraq is doing the same thing roughly for sovereign debts under what are called Paris Club terms for approximately $0.20 on the dollar. That is roughly what has been put on the table here for debts of honor, something that we think are far more important to this country and to these POWs and what their entitled to, than are commercial debts; such as those of Mitsubishi of Japan and Hyundai of Korea that have already been settled with approximately 20-30 billion being settled.

So this would remove at one fell swoop the remaining core principal claims that have a strong constituency in the Congress of the United States; claims that will have to be resolved appropriately at some point.

The second reason why this is in the war effort, Mr. Chairman, is that this will simplify the work of the Administration in trying to conduct two important negotiations at this point with Iraq. The first of those is the status of forces negotiation. I served as a former counselor on international law in the State Department, and I know about the SOFA negotiations and they are also engaged in doing sort of a strategic overview agreement as well in which they are negotiating with Iraq. These are difficult negotiations. It will absolutely unequivocally serve those negotiations to remove these issues in a way that are very favorable to Iraq and provide fair justice and are honorable to POWs. That is exactly what the Braley-Sestak proposal would do.

Thirdly, Mr. Chairman, in relation to this serving the war effort, I believe that this is potentially an enormously important issue with the American people. I think some anonymous advisors are giving Iraq very bad advice. The issue of fair treatment of American POWs resonates with the American people. This issue needs to be resolved in the interest of support for the new government of Iraq. And I think that government is now getting terribly mistaken advice.

If I were they, I would immediately resolve this and not even wait for the Congress to pass this bill. This is a very good deal for Iraq in terms of what is in here.

And finally Mr. Chairman, the last point as to why this serves the war effort is that one of the objectives of the United States of America in this war is to promote a democratic rule of law government in Iraq. It does not serve that objective for the United States to simply avert our eyes primly while Iraq seeks to basically violate a fundamental treaty obligation. Nor do I think it is fair to American honor to have a setting in which Iraq is being told by these anonymous advisors to go out and settle the debts, $20 billion to $30 billion in debts with foreign corporations of other countries, while they are basically ignoring the debt of honor owed to these American POWs. Thank you for that opportunity, Mr. Chairman.

Mr. COHEN. You are welcome, Ambassador and thank you. I would now like to recognize the Ranking Member, Mr. Lungren.

Mr. LUNGREN. Thank you very much, Mr. Chairman, and thank all four of you for your presentations. You know when you first look

at this or when you just look at it it appears to be an easy decision. I mean, when you hear the testimony of Captain Slade and the testimony that we received from Mr. Charchalis, how can you dispute the experiences the two of you went through, and how can you dispute that it violates every idea of international law and civil conduct. And so you wonder why do Administrations not just immediately allow these lawsuits to go forward and these assets that basically have been frozen to be exposed to these kinds of judgments.

And so I mean, I think, you have made compelling testimony here, Ambassador and Mr. Wolf. So let me just ask you if you would respond, because this is not just a position that this Administration has taken in this circumstance. And maybe Mr. Wolf, what you are talking about is the State Department. We could really argue about that. But let me just articulate or quote from a statement that a previous Administration had used with respect to another country involved in the same situation. And they said, first blocking the assets of terrorist states is one of the most significant economic sanction tools available to the President.

The proposed legislation, this again was a previous Administration, but the proposed legislation would undermine the President's ability to combat international terrorism and other threats to national security by permitting, in this case, they talked about the wholesale attachment of blocked property, thereby depleting the pool of blocked assets and depriving the U.S. of a source of leverage in ongoing and official sanctions programs such as was used to gain release of our citizens held hostage in Iran in 1981 or gaining information about POWs and MIAs as part of the normalization process with Vietnam. In other words it seems that they are establishing a principle that they are concerned about, not only in terms of current conditions, but future conditions. And I could argue with that, but I wish the two of you would address that.

Mr. WOLF. Congressman Lungren, the most immediate response to that is that this country doesn't negotiate with terrorists. And what we are talking about here are countries that are engaged in brutal acts of terrorism. Their assets are then attached. And the question is are we going to use those assets in some future negotiation 20 years, 10 years, 5 years down the line as some type of negotiation, while those countries have absolutely no respect for our assets or the rights of our citizens. Or are we going to use those assets at least in part to provide some redress for the victims who suffered so terribly.

Now, the State Department and the successive Administrations have had every opportunity to resolve these claims on a state-by-state level providing reasonable amounts of compensation. They have the power to do that under international law to espouse claims. But the problem is that in general—and I do direct most of my criticism of this to the State Department because I know that it is essentially a bureaucratic problem.

Essentially what the State Department is doing is they look at sort of international relations or their mandate is one essentially of keeping things calm between the United States and other countries. And they have that sort of mind set, which sometimes is, of course, appropriate. But they also have a mandate to protect the rights of American citizens.

And when you are talking about reasonable amounts of compensation from someone like Saddam Hussein or from the Iranian regime, there is just no reason, there is no basis to keep assets tied up for 10, 15, 20 years on the basis of some future speculation that you might be able to use those negotiations and stuff, those assets and stuff for some sort of leverage. I think that the true fact is that the Department thinks of those assets as kind of theirs, as their sort of bailiwick to do what they want with. And for that reason, they view this sort of more as a turf issue than anything else, and I think that is why they are so opposed to it.

And I would note that in the case of the Hill plaintiffs, for example, you have a situation here where you had reasonable judgments. We didn't go in there looking for the stars and the moon. We were looking for reasonable amounts of compensation, $500,000 per claim on average, some of them were higher, some of them were lower. And ultimately, the Bush Administration did make the decision to license blocked Iraqi assets to pay for those claims of those 120 victims. And yet here we are sitting here today with Mr. George Charchalis and 200 other Americans detained under the same conditions at the same time in the same circumstances, and the Department somehow feels that it is appropriate that these individuals should not get a single dime. They are making no effort.

We have talked about, Congressman Lungren, about the kind of proposal that the State Department could have put forward or was asked to put forward years ago. We have gone to the Department time and time again asking them to put forward a proposal. We have proposed alternatives to them. We have proposed various means of addressing these claims and other claims. And every time we are met with one response, and that response is deafening silence. And so the time is now here that Congress has to act. If they do not, nothing will happen and no one is going to get compensated, and that is the truth of the matter.

Mr. LUNGREN. Thank you. Ambassador.

Mr. MOORE. Yes, sir. Thank you, Congressman. I think the points you have raised, I would say as a former counselor on international law, has, in a variety of settings, some very important credence, and it is certainly something that we have always looked at in the Department of State. I think in this particular case, however, it does not apply for some very good reasons. Indeed, I think it is actually for the converse in this case.

The first thing I would note on that is in this case the $1.7 billion in blocked Iraqi assets which were there when we began this case on behalf of the POWs before the war were earmarked by the Congress of the United States itself to pay these judgments. And so the Congress itself had taken action in this case to say where those funds went. Indeed, when the funds were seized by the President, $100 million of that was used to play the first tranche of the hostage plaintiffs.

So the hostage plaintiffs, the first group, at least, received $100 million with the approval of the Administration from the blocked assets. POWs have received absolutely nothing. The second point, and this is the one why I think, Mr. Chairman, it is really the converse in this particular case. And that is that right now the Administration is in a very difficult set of negotiations with Iraq. I really

think this is an extremely important set of negotiations and very important for the war effort.

They are the SOFA negotiations and the strategic relationship negotiation. I believe that these are settings in which Iraq actually is in a position to use this because it knows that the President cannot come home without having something probably trying to deal with this. Iraq can use this, the government against the President of the United States and against the executive branch in relation to leverage the other way. I think it is very significant that the Administration chose not to testify at this hearing. If the Administration were clearly in opposition or the President thought that this was a bill that he was worried about or needed to veto, they would have opposed.

Again, going back to my experience in the State Department, we would never permit a hearing with something of this sort that we felt would compromise our interest and not come up and testify on behalf of the executive branch. I think what this is signaling, and this is exactly what all of us as the counsel after the April 22 Justice Department meeting felt, is that the executive branch of the United States, now that it knows there is a very limited amount, a settlement that has been put on the table that is very favorable to Iraq as well as honorable to the hostages and our people, that is a good deal, it is easier to have Congress deal with it and, in my judgment, they are standing aside for the Congress of the United States to deal with this.

Mr. LUNGREN. So you view the April meeting or consultation as a positive step?

Mr. MOORE. Absolutely. Indeed, let me say I appreciate very much the fact that we had this interagency meeting, Mr. Lungren. I think the Administration was very good in putting on that meeting, was responsive to the question that the Congress had asked them to look at this. I am sorry, they then didn't choose to actually resolve the whole thing. But I think frankly the reason they didn't is because they felt they would have better leverage in the other issue if Congress resolved this issue and they stepped aside.

Mr. LUNGREN. Would you say that the consultation helped to narrow the issue or the parameters or the size of the potential recovery or the size of the challenge to the Congress and the Administration?

Mr. MOORE. Yes, sir, I think it did.

Mr. LUNGREN. Thank you.

Mr. MOORE. I think the Administration saw very clearly that what we were faced with now was a very discrete amount. In fact, let me put it in context. At the time of the presidential veto, they were concerned about the possibility of risk to $20 to $50 billion in Iraqi assets in American banks. The entire amount in the Braley-Sestak approach, which is basically all of the valid claims, again and how we know that, this is the group vetted, selected by the Justice Department itself for these meetings, and in that setting, what does it amount to? It is $415 million for the total amount, including something in the mid two hundreds for the POWs, but that total amount is considerably less than 1 percent interest for 1 year on Iraq's funds in United States banks today,

which are about $50 billion, ignoring altogether the additional oil windfall of the doubling and tripling of the price of oil.

We are all seeing the prices at the pump today, that are going into Iraqi coffers. Iraq itself is saying over and over today we have the money to do what we want to do. They can't possibly spend the money they have now on reconstruction. So we are talking about for an issue of national honor in fairness to these people something that is considerably less than 1 percent of 1 year's interest on Iraq's bank accounts only in the United States.

Mr. COHEN. Thank you, Mr. Lungren. Mr. Scott from Virginia has joined us. Do you have any questions.

Mr. SCOTT. Could I defer at this time and be called on later?

Mr. COHEN. Yes, sir. Are there questions from Mr. King of Iowa.

Mr. KING. Thank you, Mr. Chairman. I also want to thank the witnesses. And this has been a hearing that has been informative to me. I have a series of questions that accumulated as I listened to the testimony. And I think I might try to work backwards through this in this fashion. I don't understand the reluctance on the part of Iraq. As I listen to your numbers in the way you describe it, it does appear to be a prudent business decision on their part to resolve this.

And so the question I would have for you, Ambassador, would be is there a chance that the Iraqis are looking at this could potentially set a precedent that might open up more liabilities in their country to perhaps nationals from other countries that have been tortured in Iraq under different circumstances?

Mr. MOORE. Congressman, that is an excellent question. Before I start, let me just extend my condolences for the terrible flood for the people of Iowa. I am terribly saddened, and I know this whole country is.

Mr. KING. Thank you very much. We all appreciate that.

Mr. MOORE. The precedent actually works in favor of settlement. Because to be able to settle what is the debt of honor that is something that is far more important than any commercial debt, and they have to know that, for terms that are basically the settlement terms for commercial debts, would give them enormous leverage in relation to removing the rest of the sovereign debts that they have. I believe that there are some anonymous advisors for Iraq. I don't know who they are, I don't know where it is coming from, and I don't know the reason, Congressman. I think they are receiving terribly bad advice in their own interest and in the interest of the war effort.

Mr. KING. And I thank you. So another component of this, and I would think that probably everybody on the panel knows this, but I will stick with you Ambassador, and then is there a precedent for American POWs who were tortured receiving compensation from the Nation? I am thinking particularly, of course, John McCain who might be an expert on this and probably has an opinion.

Mr. MOORE. There is precedent, Congressman, but unfortunately it has been for what I say are kind of the equivalent of a used car. And I think that is absolutely the wrong precedent. And if that is what the United States does and how it responds every country in the world is simply going to continue to torture Americans in war after war as they have been doing.

Mr. KING. So how might I understand whether there have been Americans compensated who were tortured in previous wars? Has that ever happened?

Mr. MOORE. Yes, some of them have been. Small amounts in World War II. I do not believe anyone from Vietnam was. By the way, I might add that one of the reasons this case was brought to get serious about deterring torture of POWs and one of the most effective ways to do it was to implement that provision in the POW Convention. I brought this case with a former legal advisor of the Department of State. We gave a heads up to the Government of the United States before we filed this case. The principal witness for the POWs was the top Army expert on protection of POWs and understanding of the laws of war who testified for them in the court. We courier'd copies of the complaint the day it was filed to the Vice President of the United States and the Deputy Secretary of Defense. This case was fully known by the Administration at the time we filed with them and they supported it.

Mr. KING. Let me ask this question. This is the one that actually troubles me. And that is when I am looking at a Braley amendment, it is actually number 65, and the language here is, or an unqualified and unconditional guarantee made by a United States depository institution to pay within 30 days, and then it lists the claims individually. I expect you are familiar with this language. Is there any precedent for a nation who was at war to take on a liability in place of a nation who was committing the torture?

I mean, this language binds the United States taxpayer, and I think that is an entirely different question. Could you tell me if there is a precedent in that regard?

Mr. MOORE. Congressman, with due respect, I know the intent of the Braley-Sestak bill is not to, in any way, shape or form, have any liability or obligation for the United States taxpayer. So I believe that option in the bill is actually a provision that lets Iraq either pay immediately from its funds or Iraq, not the United States, to get a bank obligation at that point. And if that is an issue we certainly have no issue or problem at all in changing that.

We seek and have always sought to hold Iraq accountable. We want the torturers to be held accountable, and we have to start somewhere. Frankly, if we could have started with our Vietnam POWs we probably would have done so.

Mr. KING. Well, I appreciate your position, Ambassador, and I share that position that I think it would be an unfortunate precedent to hold the U.S. taxpayers accountable for a liability that is likely created by a foreign government, enemy government, a terrorist nation. And that is an important point. And I can't support it if it is going to bind American taxpayers and what is, according to the Braley amendment says, an unqualified and unconditional guarantee made by a United States depository institution, unless, of course, that refers to a bond that might be posted with U.S. currency, and that is a possibility. I see Mr. Wolf leaning forward.

Mr. WOLF. I think the intention there is at the direction of the Iraqi Government, the bank would release funds to pay the judgments. It is not a mandate that a bank holding U.S. taxpayer funds would pay them money.

Mr. KING. Under that description and understanding, I appreciate that. And then could you then, just a final question, Mr. Chair, if you will indulge me here under the protocol we have been using, the precedence, could you list, again, Ambassador, could you list some of the precedents historically that have, and I am thinking of war reparations, that have been levied against perhaps Germany post World War I, and then just going from memory, when a liability that was incurred by, let me say an evil empire, a terrorist nation, that was transferred then to the peaceful and good people of the legitimate government that was the successor and the result of successful liberation of Iraqi people, are there precedents historically aside from that one I just mentioned?

Mr. MOORE. Congressman, I can give you some examples, but indeed, I will talk about one in a second. But let me just say that that is not what we are about, that is not, to my knowledge, what this bill is about. I couldn't agree more with you. What we are about here is holding Iraq accountable. We want Iraq, the torturing state, to be held accountable. And if there is any question about the language at all that needs to be, as I have understood it all along, to be something that is only either Iraq either pays within the 90 days or Iraq has a bank pledged to pay, Iraq does, but not the United States.

Mr. KING. I think, Ambassador, my point wasn't clearly stated. But when you have a nation that was a terrorist nation that committed acts of atrocity against the individuals sitting here on this panel included, then that nation is liberated as they were with the help of individuals on this panel and ultimately the successors in that government now are representing the people of Iraq who were not culpable in the actions that were ordered by Saddam Hussein. And so the transfer then of the liability that goes from the evil empire over to the peaceful moderate Islamic nation that I hope and believe today is an ally of ours, shifts a liability on to them. What are the historical precedents for something like that?

Mr. MOORE. Thanks for clarifying it. I misinterpreted your statement, Congressman, and I don't know any examples of that. But let me tell you why it is right in this case. It is right in this particular case, one, because the United States Government has always held, and it is standard international law, that debts go with states not with governments. And if we change that rule, it would basically harm financial markets enormously. The second reason that it is right in this particular case is this is a unique setting in which there is an obligation that you can never absolve the torturing state of liability. That treaty obligation from Article 131 of the POW Convention would trump anything else. And the third, if you simply looked at this in fairness terms, Mr. Chairman, and you said you know the people of Iraq had nothing to do with this, we now have a very fine new government in Iraq, then what you are dealing with is the innocent people of Iraq versus the innocent American POWs who were innocent and injured. That is a standard setting in tort law, frankly, in which you go with the innocent and injured.

Mr. KING. Let me say, Ambassador, I do not disagree with your response at all, and I appreciate it. It was succinct, and I believe

it was correct and I will follow up with a written question. And I yield back and thank the Chairman.

Mr. WOLF. I just want to give you a couple of examples. Because as I understand it, after World War II, American POWs, some of our POWs tortured by Japan were paid out of blocked Japanese assets. Obviously, the Nazi government in Germany paid a lot of foreign nationals for years to come after the Holocaust, and there are, in fact, a series of other examples. I think that the problem that we have here, and I do totally agree with Professor Moore's statement, as you do as well, I understand, that the successor government is liable or responsible for the acts of the prior government.

But the problem that we really have here is that with our current institutions, our State Department making these decisions on an ad hoc basis, concerned as they are with the foreign policy exigencies of the moment as they perceive them, the justice that is delivered is hardly uniform. And the problem here is that the decision of our government is just simply to ignore these claims for 18 years.

Mr. KING. I would submit also it is very difficult to sort out the reality of the history post World War II. There were orders that the court issued that were not followed. The American public believes one thing, reality is another. So it is hard to track that. But I think your point is well made and well taken. I appreciate all the witnesses' testimony. I thank Mr. Chairman and I yield back.

Mr. COHEN. Thank you, Mr. King. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I want to follow through on the idea of what precedents we are setting that the gentleman from Iowa started. But first Ambassador Moore let me get just background. These judgments that you obtained were against the Republic of Iraq?

Mr. MOORE. Yes, Congressman Scott, they were against the State of Iraq, they were against the Iraqi intelligence service and they were against Saddam Hussein initially. They were also joint and several. So actually the survivor of all that, of course, today is the State of Iraq, so they are all against the State of Iraq.

Mr. SCOTT. The money that is being held is money owned by the Republic of Iraq?

Mr. MOORE. Yes, sir.

Mr. SCOTT. And just following through on some of the comments made. We are over in Iraq presumably right now trying to help Iraq, and they are refusing to settle for what is a, as you have indicated, fairly modest portion of what is being held in Iraq—I mean, held here in the United States. Just what rationale are they giving for failing to settle?

Mr. MOORE. Sadly, Congressman, they are giving none. They have not talked to us and we have not heard any discussion. The only official statement we have heard from our own government, and we do appreciate that statement, was one read at a White House presidential press conference in which the press secretary said on behalf of the President of the United States, "there is no amount of money that can adequately compensate these brave Americans for the terrible torture that they went through."

Mr. SCOTT. In terms of precedents, we have had examples of prior lawsuits, but it seemed to me that we are talking about those

that are lost in a war. Are these kinds of judgments recognized internationally?

Mr. MOORE. Congressman, yes we believe so. That this is a setting in which it is virtually impossible to find a clearer provision of international law than we have in this case. That is you don't torture POWs. By the way, this is a very clear question of POWs, very, very narrowly limited, torture of POWs. Every single nation in the world is a member of that convention, and therefore every nation in the world follows that obligation. And they not only have the obligation, but an obligation in Article 131 never to, "absolve" a torturing state of, "any liability" for the torture of POWs.

Mr. SCOTT. Well, if you have a precedence it could work both ways. In this case, the judgments were obtained in the United States?

Mr. MOORE. Yes, sir.

Mr. SCOTT. If another country were to find say the United States had tortured someone, would the same principle apply?

Mr. MOORE. Congressman, it applies only in a setting, of course, in our case, as a precedent when you are actually dealing with a prisoner of war, recognized prisoner of war under the Convention. I am aware that there is a detainee issue that we have had and discussed in the United States. I do not believe that that is a comparable one to the setting we have because here it is a matter of clearly state-directed torture of clear prisoners of war. And in that case any such setting, if we did that, yes, there would be liability and there should be.

Mr. SCOTT. Well, and that would be a determination of fact in the appropriate tribunal?

Mr. MOORE. That is correct.

Mr. SCOTT. And if in another country they so found, what would our reaction be to their lawsuit?

Mr. MOORE. Well, I think the question here again is one of a particular—finding of a particular court and what the court is and how it worked. If what we are talking about is a sham trial in some country that is a terrorist country, I think we would properly say this not the rule of law. If what we are talking about is a serious review of the issues—for example, there has been another setting in which the government of the United Kingdom in relation to a finding that certain of its individuals had gotten involved in certain of these things, said it volunteered, that it owed compensation in that setting.

And I might add that when the Secretary of Defense of the United States testified before the Congress in relation to the Abu Ghraib setting, he said the United States owed appropriate compensation to those. So what we find is it is rather strange to have the——

Mr. SCOTT. But in that case, if they were to actually have a lawsuit in Iraq and come up with a judgment amount, would we recognize it?

Mr. MOORE. Congressman, the United States, to my knowledge, has not had a setting in which we are engaged in command directed torture against prisoners of war.

Mr. SCOTT. Well, that is a finding, that would be a matter of finding of fact.

Mr. MOORE. Yes, but the findings of fact are essential and critical in terms of the rule of law as to what it is.

Mr. SCOTT. And the finding of fact would be a determination of the tribunal where it is?

Mr. MOORE. Yes, but it would have to be a fair setting in a fair tribunal in terms of what the setting is.

Mr. SCOTT. And if both sides have the opportunity to present evidence and the tribunal decided against us, would we recognize or not recognize it, depending on whether we agreed with their determination?

Mr. MOORE. I think that would be an issue for, as it always is, for looking at individual settings in individual cases, Congressman. But let me just say that I realize we can talk a variety of hypotheticals. But this is a very real case we have here in which we have an absolutely clear, absolutely fair determination with a Federal Judge, former Assistant Attorney General for Human Rights in the United States Department of Justice finding absolutely clearly with a fair hearing on the law and the facts in a court, I think, all of us would agree is completely fair, and perhaps the clearest of all obligations that we see that are agreed among nations around the world of a setting of torture, command directed torture of clear prisoners of war.

Mr. SCOTT. Do you think we would have similar exposure in Guantanamo Bay or in Abu Ghraib?

Mr. MOORE. Congressman, I don't think it is my place to speculate about those settings at this point. Let me just say that in this case we have a very clear setting, and at least, our obligation here is to fundamentally adhere to the rule of law in this particular case.

Mr. SCOTT. Well, I agree with you. My question was what precedence might we be setting that could be used both ways?

Mr. WOLF. Congressman, could I just speak to that first for a moment?

Mr. SCOTT. My time is expired, so you have the last word.

Mr. WOLF. Okay, thank you. These arguments allowing American victims of terrorism to hold foreign states accountable in American courts would lead to the American government being hailed into court abroad have been made by the State Department and various Administrations since the 1990's when these proposals were first made years ago. And Congress has passed a series of pieces of legislation having heard those arguments and rejected them. So that bridge in a way had already been crossed. And the issue that we are dealing here today with is whether we are going to make a single exception for one terrorist state that terrorized American victims and we are going to treat that state differently than we are treating other state sponsors of terrorism, and there is simply no justification for that. The policy decision has been made by Congress. They would have to—Congress would have to undo the entire decision before there could possibly be justification for exempting one terrorist state.

Mr. SCOTT. Well, where are the other examples where terrorist states have been sued by people in another country using their courts, getting judgments in the local courts and those judgments have been actually enforced?

Mr. WOLF. Well, I mean——

Mr. SCOTT. You say this is the exception. Where are the others?

Mr. WOLF. What I am saying Congressman is that, for instance, there have been judgments against the Iranian government in our courts, judgments against the Libyan government, judgments against the Sudanese government, all terrorist states, one by the way a former terrorist state Libya. And the question here today is are we going to exempt.

Mr. SCOTT. And those judgments were enforced?

Mr. WOLF. They were enforced, absolutely. Pan Am 103. Judgments on behalf of Terry Anderson and various others. And just to be complete on the answer, it is true that there have been some cases brought in the Islamic Republic of Iran against the United States. And I think that basically our government does with those judgments, or treats those judgments with the dignity that they deserve. We just ignore them because we don't have any real faith in the Iranian judicial system. But our foreign policy I don't believe has been compromised by those judgments.

Mr. MOORE. May I add to that Congressman, if you would. This is a setting also in terms of the question as to the rule of law. We have a number of different ways to engage with countries around the world. We have to protect ourselves with military force. We have to—we have economic sanctions to some extent. One of the most powerful tools we have that we must use that is enormously effective in the fight against terror, we are the 2,000 pound gorilla when it comes to the rule of law and when it comes to financial institutions around the world, is the rule of law.

It is in our interest to have fair trials, terror states will not. It is in our interest working with our allies to promote the rule of law in this area. By the way we are talking here also about national law. All of these actions were brought under laws that were authorized by the Congress of the United States in the 1996 anti terror amendments. None of the actions that we brought, while they are fully consistent with international law, none of these actions were brought under international law. They were filed under national law as authorized by the Congress of the United States. And this is another one of the issues for us in the rule of law.

Because we think it is very important when we file these actions that Congress has made available for a series of wonderful Americans, it is very important that Congress stand by its word in relation to moving forward on these, not just simply the word also of the unanimous resolution saying we are going to hold accountable those who torture American POWs. So this is really American law that we are talking about in American court. And it is most broadly, you are absolutely right in asking this question of how does it work in terms of what comes around goes around, et cetera. The answer is that is in our interest, unequivocally in our interest.

And I would like to join my colleague, Mr. Wolf, in saying one of the sad things here is the Department of State has been caught in old thinking for too many years in relation to that broad issue. This is not just important for us in this case, this is important, for example, in actions against Iran in relation to the war on terror. It is one of the most effective tools that we have.

Mr. COHEN. Thank you. Let me ask a question of Mr. Wolf and Ambassador. Are there any other groups of victims who you know of with pending lawsuits against the Iraqi Government.

Mr. WOLF. There are two cases, or actually one pending case of which I am aware. It involves a continuation of what was known as the Dalaberti case involving two American citizens or three American citizens who had strayed too close to the Iraqi border or strayed close to the Iraqi border and they were taken, imprisoned, held in horrible conditions and really held hostage. And these are suits by the children. Those suits were—the initial suits were successfully resolved. The continuation are suits by the children. And that is the only pending suit right now that I am aware of.

Mr. COHEN. Are there analogous cases with the Libyan government where American service men might have been injured.

Mr. WOLF. I am glad you asked the question concerning the Libyan government. There are cases concerning the Libyan government. I don't know whether any of those cases involve American service men, but therecertainly are cases against the Libyan government involving American citizens. And it is interesting, especially in light of Congressman King's comment about former governments and whether, former terrorist governments and whether the United States has ever held those accountable. Apparently, the United States Government today is involved in state-to-state negotiations with Libya in an effort to try and obtain compensation for some of the American victims that were killed or families that were killed and otherwise abused, tortured, by the Libyan government. So we are doing that with respect to Libya, but with respect to Iraq it seems like our government wants to let them off the hook.

Mr. COHEN. Let me ask you one last question, and I will recognize Mr. Gohmert. As I understand it, we have got a goodly number of amount of assets of Iraq on hold here in America, right.

Mr. WOLF. That is correct. More than $50 billion.

Mr. COHEN. And these were assets of the previous government, the Saddam Hussein government, right?

Mr. WOLF. I believe that some of them may be residue of the Saddam Hussein government, but I am not 100 percent sure of that fact. I think some of the money has to do with proceeds from oil sales that have been made since then, but yes, I believe some of that money is from the former government. It was transferred to accounts in New York.

Mr. COHEN. And to some extent, the issue is whether or not those assets that were of the previous terrorist government should be used to satisfy the claims against the government or held for the successor government?

Mr. WOLF. In a sense, although we would argue, and I believe correctly, that the successor government is liable.

Mr. COHEN. Would you argue that the assets that are existent that were there because of the previous government, the terrorist government, really aren't the terrorist government's assets in that they committed tortious acts, terror, murder, whatever, and that because of those tortious acts, that money is really the money of the plaintiffs and never should have been considered the money of the previous government, since they had a liability that they incurred and that that liability that they incurred even prior to judg-

ment was a liability toward these plaintiffs, that the monies really were not the monies of the previous government and should go to the successor government, but should go to the people they harmed in their tortious conduct, and accordingly would be a windfall to the new government to get the assets and not to have the liabilities also accrued to them? Would that be an accurate statement?

Mr. WOLF. I like that argument, and I think it would be correct.

Mr. COHEN. I thought you might. The gentleman from Texas is recognized.

Mr. GOHMERT. Thank you. It is interesting to hear discussion about the rule of law when we can't even follow proper procedure here in our Committee. We are in the second round, and now I am getting my first round. So I appreciate finally being recognized. I have a number of questions. And really I agree with you, Ambassador, that it is important to hold people accountable. It is also important to hold the right people accountable. I agree that using a tort system can be an effective means of holding people accountable. I don't agree that it would be more effective than the criminal law enforcement and the punishment of war crimes where you actually get into individual culpability. I think that is the greatest tool we have, is to hold individuals accountable. Because if we go in and we take money from people who had no complicity in a war crime, and, in fact, they were victims as well being in a country and being made to suffer under ruthless leadership and then we take their money somehow, they don't get the idea of how this fair system we are trying to introduce them to really works.

But I was intrigued, a statement was made basically, as I understood it, that we had always recognized the subsequent country as being responsible for debts. And I was under the impression that Washington didn't buy that, otherwise the United States would have been broke. And I was not aware that Germany actually paid. I was under the impression that that is why we came so much out-of-pocket with the Marshall Plan to rebuild Europe. What exactly did Germany pay toward these types of claims?

Mr. WOLF. They clearly paid for years, and are still paying, the compensation on behalf of those who were victims of the Nazi Holocaust.

Mr. GOHMERT. And who is paying that?

Mr. WOLF. The German government.

Mr. GOHMERT. The German government is paying that to whom?

Mr. WOLF. To the direct victims of the Holocaust. And that happened for years and years after.

Mr. GOHMERT. How do you get to become a part of that class?

Mr. WOLF. There wasn't a lawsuit. It was just a system of compensation that was, I suspect, enacted by the German legislature.

Mr. GOHMERT. Do you know how you would get to be a part of those who were appropriated?

Mr. WOLF. Well, certainly if you were a former internee at a Nazi concentration camp.

Mr. GOHMERT. Well, that would qualify you, but it wouldn't necessarily get you compensated.

Mr. WOLF. I suspect they had some sort of administrative claim process. I really can't answer that.

Mr. GOHMERT. Well, see, you all are testifying here under basically penalties of perjury. And one of the things that troubles me as a former judge is people come in and make these statements so broadly which really is supposed to be truth basically with culpability for false statements. Anyway, I get troubled with broad——

Mr. WOLF. I know that is a fact. I am not speculating. I just don't know the system, that is why I am giving you the answer I don't know. I don't think I am perjuring myself.

Mr. MOORE. Congressman, could I respond to part of that question that you have asked?

Mr. GOHMERT. Yes. Because you are using "always," and I would have thought somebody in your position would, especially an attorney, would advise clients don't ever say "always."

Mr. MOORE. I think, Congressman, we are talking about a number of different things. One issue is sort of reparations and whether there are war reparations, et cetera.

Mr. GOHMERT. Well, I called you on the fact that you said that we have always recognized the subsequent country's obligation to pay the prior country's debts, and I am not sure that is the case.

Mr. MOORE. I stand by the point that as a matter of international law, it is, to my knowledge, consistently and always has been the view of the United States Government that a change of government does not change liability. And let me just note on that point that all of the commercial claims that are being paid, the $20 billion to $30 billion, or whatever this figure is, we don't know the precise figure, that is being paid to these commercial foreign corporations instead of anything to the POWs are prewar commercial debts of Iraq.

Mr. GOHMERT. I agree with you, the victims should be compensated even before corporations are. I would agree with that. I have handled cases as a plaintiff's attorney, as a defense attorney and had them come before me. What is the going rate for a contingency on a case of this type?

Mr. MOORE. I think as a judge, you would have a pretty good idea of contingency fees.

Mr. GOHMERT. We had them go from 10 to 45 percent.

Mr. MOORE. They tend to raise from I suppose 20 to 45 or whatever. We are under a privacy agreement in relation to the clients in this case. And let me also say, sir, that there is nothing that I have ever done in my entire career as an attorney that has made me feel more honored in relation to what we are doing.

Mr. GOHMERT. I am not casting aspersions. I am one of those conservative Republicans that believe that contingency fees have allowed for people to have legal assistance that couldn't otherwise get it.

Mr. MOORE. Whatever the form of fees I think they have been very helpful in this case for the clients though.

Mr. GOHMERT. And one final matter with regard to Abu Ghraib. If those individuals who were imprisoned there who were unfairly abused, being required to disrobe, some of them had undergarments put on their heads, do you know of any system that has ever been set up to set off what kind of damages would be available to someone in that circumstance as compared to the persons they may

have blown their inner guts out, how those kind of claims might offset each other if they do?

Mr. MOORE. Congressman I have not studied the legal questions that you have raised so I don't know the answer. But I would like to just add a point in relation to, I think, the issue you are asking that is a very significant one of what are some of the better remedies here to try to deal with this problem, the criminal side, for example, or civil liability.

Mr. GOHMERT. I think you can have both. I am not saying either one should be mutually exclusive.

Mr. MOORE. I appreciate that very much. And one of the problems here is we have never pursued the criminal liability. Typically, you don't have the people involved. Let me just say that——

Mr. GOHMERT. I think Saddam Hussein has paid a pretty significant price through the criminal system.

Mr. MOORE. Sadly Congressman, to my knowledge——

Mr. GOHMERT. Oh, is he still alive?

Mr. MOORE. Saddam Hussein was never charged with any of the actions concerning the torture of American POWs. So he was charged with a variety of things. And, of course, we know that Saddam Hussein died.

Mr. GOHMERT. That is my understanding.

Mr. MOORE. If you are looking at the question of the criminal system being applied, to my knowledge it was not applied in this case. And, by the way, I think it is rather interesting as tyo why among all the various charges against Saddam Hussein there was no charge for the torture of American POWs. And one of the reasons that you have, the double provisions in the POW Convention for accountability for torture, is because they know it is very rare to actually apply any of the criminal justice provisions and to get the individuals and apply it. So the state liability is a critically important issue.

Mr. GOHMERT. Well, I would submit to you that when you have the death penalty that is being applied because of one charge, it is not really necessary to try thousands of other charges. That is what I have observed. My time has expired. Thank you.

Mr. COHEN. Are there further questions of the panel? Let me ask one. Does anybody know if there is a CBO score on the Braley-Sestak proposal.

Mr. MOORE. Yes, sir, I know the answer to that.

Mr. COHEN. You are recognized.

Mr. MOORE. I am delighted to say I know the answer to that, Mr. Chairman. This issue has been put to the CBO and to the Budget Committee. And I am informed that they have ruled that there are no United States monies at stake whatsoever in the Braley-Sestak proposal.

Mr. COHEN. Thank you, sir. Mr. Charchalis, let me ask you one question. Were you or any of the other people in Kuwait to the best of your knowledge given any notice by the State Department of the impending jeopardy in which you were placed when the Iraqis invaded Kuwait.

Mr. CHARCHALIS. No, sir, and that is an interesting question. We had Kuwaiti television and, to some extent, we got Iraqi news, and we knew that there were troops massing on the border. A figure

that was given about 125. And I called the embassy. And you know, I was concerned about it. And they said there isn't any problem, don't worry about it. I went to the Director General of the Institute and told him I would like to take my wife to Bahrain. And he said no, the Crown Prince is meeting in Taif and there is no problem. And we found out that there was a problem. That the Iraqis invaded on August 2nd.

We tried to contact the embassy and the phone, nobody answered the phone. It was busy. We finally got through late and they said don't bother us we are too busy to talk to you. So there was really nothing that we got from the embassy and/or the Kuwaiti government that gave us any kind of indication that we were in jeopardy. I will tell you this, that we found out later on, that the road from Kuwait to Saudi Arabia was open for 3 days, because we were told it was closed. We could have got in, my wife could have got in our car and driven there and been out of harms way. We would have had to leave everything, but that is a lot better than jeopardizing your life.

Mr. COHEN. Thank you, sir. Captain Slade, do you know from your own personal recollection or from any hearsay any effect that the failure of the United States to honor and to help with these claims, any effect it has had on the morale of soldiers, our military?

Captain SLADE. Mr. Chairman, I don't have data on that, although anecdotally I have had obviously many, many peers over the years who have looked to us and wondered why this hasn't moved and where it has gone and why it appears to have dissolved at the behest of government.

So there is a lot of confusion, and those are people who have returned to theater. In fact, I returned to theater in 1998 for another deployment in Iraq, as have many of the former POWs from the first Gulf War.

Mr. COHEN. Thank you. If there are no other questions, I would like to thank each of the panelists for their service to this Committee, to their service for our country and to the scholarly works and to the bar which they have exhibited here and for your testimony.

Without objection, Members will have 5 legislative days to submit any additional written questions for you, which we will forward and ask that you answer as promptly as you can. They will be made a part of the record. And without objection, the record will remain open for 5 legislative days for the submission of any other additional materials.

This hearing has helped illuminate the many twists and turns in the POWs' and human shields' quest for justice. The Chairman and I look forward to working with our colleagues in the Committee and in the Congress to find a way to get a fair measure of justice to these victims for all that they have endured. I believe that we should be able to do so in a way that does not unduly burden the present Government of Iraq. The Committee will consider the next appropriate steps accordingly.

And with that, the hearing is adjourned.

[Whereupon, at 4:04 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

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COMMITTEE ON JUDICIARY

HEARING ON "ENSURING LEGAL REDRESS FOR AMERICAN VICTIMS OF STATE-SPONSORED TERRORISM"

JUNE 17, 2008

Mr. Chairman, thank you for convening today's very important hearing on ensuring legal redress for American victims of state-sponsored terrorism. This hearing will examine the nature of the harm suffered by U.S. nationals under the government of Iraq during the 1991 Gulf War; their efforts to hold Iraq, then a designated foreign state sponsor of terrorism, liable for their injuries; and how a new proposal by Rep. Bruce Braley and Rep. Joe Sestak would facilitate the settlement of these claims.

On Tuesday, June 17, 2008 at 2:00 p.m., in Room 2141 Rayburn House Office Building, the Committee on the Judiciary will hold a hearing titled, "Ensuring Legal Redress for American Victims of State-Sponsored Terrorism."

This hearing will examine the nature of the harm suffered by U.S. nationals under the government of Iraq during the 1991 Gulf War; their efforts to hold Iraq, then a designated foreign state sponsor of terrorism, liable for their injuries; and how a new proposal by Rep. Bruce Braley and Rep. Joe Sestak would facilitate the settlement of these claims.

The hearing will focus on two groups of American victims.

The first is a group of 17 prisoners of war (POWs) who were part of the international coalition led by the U.S. which initiated military action against Iraq on January 16, 1991 after Iraq attacked and occupied Kuwait. Most of the POWs were in aircrafts that were downed over Iraq or Kuwait. Many were brutally tortured by the Iraqi government during their captivity. Because the Iraqi government believed pilots had more sensitive information, the pilot POWs were tortured more severely than the other POWs. They were beaten, threatened with castration and dismemberment, subjected to mock executions, and shocked with electrical devices. They were also starved, denied sleep, and exposed to extreme temperatures. Because medical care was denied, their injuries were intentionally aggravated. They suffered serious physical injuries, including broken bones, perforated eardrums, nerve damages, infections, nausea, and severe weight loss. The POWs and 37 of their immediate family members are plaintiffs in *Acree v. Republic of Iraq*.

The second group is comprised of 237 civilians who were working in Iraq and Kuwait during the period leading up to the Gulf War. Shortly after Iraqi armed forces invaded Kuwait on August 2, 1990, Saddam Hussein issued a directive prohibiting all foreign nationals from

leaving the region. On August 19, 1990, President George H.W. Bush declared that all U.S. citizens in Kuwait and Iraq were "hostages" who were being held as "human shields" because they were being used by Hussein as leverage to prevent the U.S. and its allies from attacking Iraq and liberating Kuwait. These human shields were held in "harsh, cruel, degrading, and often terrorizing" conditions. They "lived in constant fear for their lives and suffered from fatigue, depression, severe anxiety and stress, and the loss of the companionship of their loved ones." They were eventually released by Hussein in December, 1990. The human shields are plaintiffs in *Vine v. Republic of Iraq* and *Hill v. Republic of Iraq*.

Under international law, sovereign nations have generally been immune from liability in the courts of other nations in recognition of the independence of each nation. As the level of international commercial activity has increased, the principle of absolute sovereign immunity has been gradually modified.

The Foreign Sovereign Immunities Act of 1978 ("FSIA"), P.L. 94-538, provides that a foreign state is immune from the jurisdiction of U.S. courts, but sets forth several exception. When the FSIA was first enacted, foreign states were immune from civil liability in U.S. courts for injuries caused by acts of terrorism carried out by their agents and proxies. However, Congress amended the FSIA in 1996 through the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), to allow U.S. victims of terrorism to bring civil suits against a foreign state responsible for terrorist acts such as torture, extrajudicial killing, and hostage taking if it is designated as a state sponsor of terrorism by the State Department at the time the act occurred or is later so designated because of such act. While foreign states are not liable for punitive damages under the FSIA, such damages may be awarded against their agencies and instrumentalities.

In 1998, after a court found that the waiver of sovereign immunity did not in and of itself create a private right of action, Congress passed the "Flatow Amendment" to clarify that a cause of action existed against the officials, employees, and agents of foreign states who commit the terrorist act "while acting within the scope of" their employment if a U.S. government official would be liable for similar actions.

Courts initially interpreted the Flatow Amendment as creating a cause of action against foreign states as well as their agencies and instrumentalities, despite the fact that the statute referred only to officials, employees, and agents of foreign states. However, in 2004, the D.C. Circuit Court of Appeals held that neither the terrorism exception to the FSIA nor the Flatow Amendment created a private right of action against the foreign state, including its agencies and instrumentalities. As a result, plaintiffs asserted causes of action under domestic state laws. They have obtained judgments totaling almost $18 billion in damages, most of which have been assessed against Iran.

Plaintiffs have had difficulty enforcing these judgments, however, due to the scarcity of assets within U.S. jurisdiction belonging to foreign state defendants subject to economic sanctions and the reach of the immunity from attachment afforded to assets frozen by sanctions regulations.

While Congress has traditionally upheld plaintiffs' right to relief and their efforts to enforce judgments, the Executive Branch has been less supportive. Both the Clinton and Bush Administrations have opposed allowing the use of frozen assets of foreign states to satisfy judgments because of treaty obligations to protect foreign diplomatic and consular properties, a

desire to maintain the blocked assets for diplomatic leverage, and the fear that allowing the attachment of blocked assets would subject U.S. assets in foreign states to similar treatment.

On March 20, 2003, after the beginning of the Gulf War, President Bush issued an executive order requiring the confiscation and vesting of Iraq's frozen assets in the U.S. Government -- totaling approximately $1.73 billion -- and placing them in the Development Fund for Iraq for use in the post-war reconstruction of Iraq. However, Iraq's diplomatic and consular property, as well as assets that had, prior to that date, been ordered attached in satisfaction of judgments against Iraq, were excluded from confiscation. The executive order, therefore, made Iraq's frozen assets unavailable to plaintiffs who, after March 20, 2003, obtained terrorism-related judgments against Iraq.

In the Emergency Wartime Supplemental Appropriations Act for FY2003 ("EWSAA"), Congress authorized the President to make inapplicable with respect to Iraq any law that applies to countries that have supported terrorism.[1] President Bush exercised this authority on May 7, 2003 by declaring several provisions involving terrorist states inapplicable to Iraq. Then, on May 22, 2003, President Bush issued another executive order prohibiting the attachment of any blocked assets in the Development Fund of Iraq.[2]

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[1] P.L. 108-11, §1503 (April 16, 2003).

[2] E.O. 13303, 68 Fed. Reg. 31, 931 (May 28, 2003).

Section 1083 of the FY2008 National Defense Authorization Act ("FY08 NDAA"), P.L. 110-181, an amendment to the Foreign Sovereign Immunities Act of 1978, enables plaintiffs whose claims were dismissed for lack of a federal cause of action to re-file their claims under new 28 U.S. C. §1605A, a new FSIA terrorism exception and explicit cause of action against terrorist states.

Section 1083 also facilitates plaintiffs' efforts to enforce judgments and attach defendant state's assets in satisfaction of judgments.

In addition, subsection (c)(4) of section 1083 states that section 1503 of the Emergency Wartime Supplemental Appropriations Act (EWSAA)(P.L. 108-11) "has never authorized, directly or indirectly, the making inapplicable of any provision of chapter 97 of title 28, United States Code, or the removal of the jurisdiction of any court of the United States."

Congress passed this provision to ensure that no court construes section 1503 of EWSAA to restore Iraq's sovereign immunity with respect to actions involving terrorist acts that occurred while Iraq was designated a state sponsor of terrorism.

President Bush, asserting that Section 1083 would jeopardize Iraq's economic development and security, vetoed the first version of the FY08 NDAA. Congress subsequently passed a new version of the FY08 NDAA that authorizes the President to waive any provision of Section 1083 with respect to Iraq if he determines that a waiver serves the United States' national security interest, promotes U.S.- Iraq relations, and facilitates reconstruction and political development in Iraq, and that Iraq continues to be a reliable ally and partner in combating terrorism. The waiver applies retroactively regardless of its effect on pending cases.

The President exercised his waiver authority on January 28, 2008, the very day the FY2008 NDAA was signed into law.

The 2008 waiver effectively bars the refiling of the *Acree* lawsuit and, therefore, any relief for the POWs and their families. Furthermore, other pending suits against Iraq are likely to be dismissed as a result of the waiver.

Anticipating the detrimental impact a waiver would have on pending suits, Congress inserted a provision in Section 1083 expressing its sense that the President should work with the Iraqi government to help American victims of Iraqi terrorism obtain relief for the emotional and physical injuries they sustained during the Gulf War. Rep. Bruce Braley and Rep. Joe Sestak have been considering proposals to implement this provision.

Mr. Chairman, thank you for holding this hearing. I look forward to hearing from today's witnesses. I yield the balance of my time.

