



PRESENTS A DISCUSSION OF

***GUANTÁNAMO AND THE ABUSE OF
PRESIDENTIAL POWER***

WELCOME:

Virginia Sloan

The Constitution Project, President and Founder

INTRODUCTIONS:

Sharon Bradford Franklin,

The Constitution Project, Senior Counsel

SPEAKERS:

Joseph Margulies,

Guantánamo and the Abuse of Presidential Power; Author
University of Chicago Law School, Clinical Faculty Member
MacArthur Justice Center, Trial Attorney

Lawrence B. Wilkerson, Colonel. U.S. Army (Retired)

College of William and Mary, Visiting Pamela C. Harriman Professor of Government
The George Washington University, Professional Lecturer, Honors Program
Constitution Project's Liberty and Security Initiative, Member

Wednesday, November 29, 2006

12:00 – 2:00 PM

The National Press Club

Washington, D.C.

*Transcript by:
Federal News Service
Washington, D.C.*

VIRGINIA SLOAN: (In progress) – of the Constitution Project, and I want to welcome you to what I think is going to be a really fascinating event, and I can't wait to hear our speakers.

As many of you know, the Constitution Project's mission is to safeguard the Constitution. And what we do is we bring together what we call unlikely allies; Democrats and Republicans, liberals and conservatives, and everybody in between, who share our mission, which is to protect the rights and the liberties that the Constitution provides all of us.

And we do that in the context of a number of different issues, the constitutional power to declare war, the death penalty, the right to counsel in criminal cases, the process for amending the Constitution, judicial independence. So we address a wide variety of constitutional issues. But the issues today that we're particularly going to focus on are our work on checks and balances and liberty and security in the aftermath of September 11th.

And so, I want to say thank you again for joining us, and turn the microphone over to my colleague and our senior counsel, Sharon Bradford Franklin, who will give you some more details about today.

SHARON BRADFORD FRANKLIN: I want to join Ginny in welcoming you here today. And we're just thrilled to have the opportunity to get the word out about Joe Margulies' wonderful book, "Guantanamo and the Abuse of Presidential Power," and to have the opportunity to help focus more attention on the issue surrounding the administration's detention policies.

I won't speak other than to introduce both of our speakers and then I'll turn the program over to them. And I also just wanted to let you know that we are planning to move to questions from the audience, and then wrap things up by 1:30 to allow people an opportunity to purchase books and have Joe sign them for those who are interested in taking advantage of that. Oh, I'm also supposed to announce that there are a few more sandwiches coming for those of you who didn't get a chance. (Laughter).

We will first hear from Colonel Lawrence Wilkerson, who is retired from the Army, and is currently both a visiting professor of government at the College of William and Mary and a professorial lecturer at The George Washington University. He also, importantly for us, is a member of the Liberty and Security Initiative of the Constitution Project. After a distinguished 31-year career in the U.S. Army, Colonel Wilkerson retired from active service in 1997, and then went on to serve as a civilian, his most recent government position being as chief of staff to Secretary of State, Colin Powell.

Joe Margulies, the author of the book that is the focus of today's discussion, is also a member of the clinical faculty at the University of Chicago Law School and a trial attorney with the MacArthur Justice Center. He has been heavily involved in much of the

litigation challenging the administration's detentions policies, and has previously served for the Texas Capital Resource Center and in private practice. Most importantly for the detentions litigation, he was lead counsel in *Rasul v. Bush*, in which the United States Supreme Court decided that prisoners at Guantanamo are entitled to judicial review.

And I did, by way also of introducing Joe Margulies, just want to read to you one paragraph from the introduction of his book, which struck me:

“I have been a lawyer for nearly 20 years. In that time I have represented men and women on death row. I have defended people accused of the most serious crimes. I have represented people mistreated or beaten by police officers and prison staff. This meandering career has taken me to courtrooms, prisons, and jails all over the country. But the river that connects the past to the present has been an unwavering belief that in matters of personal liberty, the most important question is not whether the government has the power to incarcerate a person – almost invariably it does. The proper question is whether that power has been exercised lawfully.”

And with that, I would like to turn this program over to Colonel Lawrence Wilkerson.

COLONEL LAWRENCE WILKERSON: Thanks, Sharon and Ginny, for having me here today. You just stole part of my talk. (Laughter.) That's all right. Having been a speechwriter for Colin Powell for four years as chairman of the Joint Chiefs of Staff, I'm used to that. (Laughter.) He used to sit at the podium and scratch out things and look at the other speakers. Ah, you stole my fire.

I'm really, really pleased to be here today. I normally speak without a script. I spoke to the World Affairs Council in Richmond two weeks ago and my wife said, get a script. (Laughter.) I ramble too much so I put together a little script for today because I don't want to miss anything, except that very moving passage from the lawyer's book. I say the lawyer's book because I'm not a lawyer; I'm a soldier, sometimes statesman.

Several months ago, when my little fame was at its apex for speaking candidly about secret cabals, powerful vice presidents, and an administration that practiced, openly, torture, I was approached by several organizations asking if I would join their ranks, as well as several literary agents and publishers, asking me if I would publish my revelations under their banner. I declined because I didn't want any American citizen to think that I was trying to make personal gain out of the epiphanies that I offered some insight into.

I've continued to decline, but when the Constitution Project asked me to become a member of its Liberty and Security Initiative, I examined, on the Internet of course, closely what they were all about and I said, I think I'll join. I was impressed by the project's early call for an independent commission to look into the possible abuses at Guantanamo and also at Abu Ghraib prison in Iraq, by its report on the post-9/11 detentions in general, and by its op-eds and other public efforts to bring to the attention of

the American people these issues and some light on these issues that they otherwise wouldn't get, particularly with regard to terrorists with a global reach. You will notice I did not say global war on terror.

I was equally impressed when the project filed amicus briefs in parts of the *Padilla* case, as I recall, and also, I believe in the *Hamdan* case as it approached, or was before the Supreme Court. I therefore feel at home here as a member of the Liberty and Security Initiative talking about the best effort I have so far encountered, spoken or written, in the huge challenge of speaking truth into the face of this administration, which seems to have an incredible knack, not only for ineptitude and falsehood, but for things so un-American, that they sometime stagger the mind. And that's what "Guantanamo and the Abuse of Presidential Power" does; it speaks the truth.

Let me give you, briefly, a little history on how I first came to encounter this truth. It was April of 2004 and the Secretary of State walked through the door that adjoined our offices, as he often did, and I knew the look on his face immediately. It was kind of like the look on his face when he handed me a 48-page transcript prepared in the office of the vice president and said, go to Langley, and put my presentation to the U.N. Security Council together. It was the forlorn look. (Laughter.)

And he said to me, I've already given these instructions to Will Taft, who, you may know, was his legal advisor at State, former Deputy Secretary of Defense – William H. Taft IV, a name steeped in American history. He'd already given Will instructions to look at what was coming out or going to come out shortly thereafter – the photos from Abu Ghraib, the revelations about Abu Ghraib. He'd already given Will instructions to look at it from a legal perspective and he therefore gave me instructions to look at it from damage control, a political perspective. And he said, I want everything. I want to know the track record; I want to know the paper trail; I want to know how we got here.

And over the next several months, I did that until we departed the State Department. I wrestle with my conscience about whether or not to speak out. I spoke at the nation's war colleges, its academies, West Point, Naval Academy. But I didn't speak out until October 2005 to the public. It had become too much for me to keep my counsel, as most soldiers want to do.

In his book, "Guantanamo and the Abuse of Presidential Power", Counselor Margulies has referred to almost every paper, every document, classified and unclassified, and touched on most of the significant details of the deliberations that occurred that I was or that I became privy to in the course of my research.

He has used most, if not all, of the open-source material that I consulted from that of Tim Golden at *The New York Times*, who acquainted me very early on that there were murders in Afghanistan, to that of Jane Mayer at *The New Yorker*, who would tell me things about interrogations and interrogators that I would not otherwise probably have ever known.

He said these things in ways that I have said them but with far more eloquence and force. For example, quoting from the book, “It is a testament to the honor and professionalism of the U.S. military that at least some of its members resisted the developments at Guantanamo Bay.” And I would add, at Bagram Air Field, at Abu Ghraib Prison, and at other places where we have detained other human beings, and I’m proud of my Armed Forces for that. Lieutenants, captains, sergeants and others fought this policy and didn’t comply with this policy. And they did that because they come from families, from American families, that would not tolerate this sort of practice. Some of them, unfortunately, will pay for their recalcitrance.

And he also wrote this: “We adhere to the rule of law not to coddle those who would do us harm but to reassure those who would wish us well.” Amen. And if you’re a soldier such as I am, to fiercely protect the concept of reciprocity, or as we privates used to put it – and I was a private – I will do unto you as I expect you to do unto me, and if you don’t, my country will have the high ground from which to assail you during and after the conflict, and perhaps even during my confinement, and in the course of events keep my honor clean.

Or as an Israeli Supreme Court landmark decision in 1999 put it, and I’m quoting, “Democracies may fight with one hand tied behind their backs but they fight with the upper hand.” But most of all, the counselor emphasized again and again these points: the lack of actionable intelligence. That’s military speak for we didn’t get anything much out of these people. The innocents, the thousands of innocent people that we incarcerated, some of whom I know and others I suspect went through this sort of treatment even though they were totally innocent.

And what our practices have done to our reputation around the world – a friend of mine in Istanbul called me the other day and he said, your reputation – he’s 70-years-old – is at its low point in my lifetime. I would submit to you it’s probably at our low point in our short history as a nation. And what these practices have done to our strategic leverage and our power. I was a strategist in the military. Our strategic power and leverage in the Middle East right now is rock bottom. Rock bottom. That is to say, we have none except when we point an artillery piece at someone. And what they have done to us as a nation, deep within our national soul, it may take a generation to recover from that.

And lastly, I love his footnote defeat, for that’s what I call it – it’s in the footnotes – of the Pentagon sycophants, who say that, as he notes in his footnotes, quote “Any abuse of detainees that has occurred is the function of human failure rather than flawed policy.” He could have quoted that from the Church Committee report.

Perhaps in one sense this is true. It is a function of human failure, human failure at the very highest levels, the president, the vice president, the secretary of defense and their advisers, from John Yoo to David Addington, from OSD General Counsel Haynes to Attorney General Gonzales, human failure that makes the policy that led to the abuse. You understand immediately why he put Thomas Jefferson on the frontis piece, where

Jefferson said, “In questions of power then, let there be nothing more said of confidence in man. But bind him down from mischief with the chains of the Constitution.” That’s why.

There’s one thing more I’d like to highlight that he has done. We often in this country deride lawyers. We make jokes; we lambaste them as individuals and as a group, as a profession. In this instance, ladies and gentlemen, I believe lawyers like Joseph Margulies are in the trenches of combat, a combat for the soul of our nation. And as a soldier whose principal oath was to support and defend the Constitution of the United States, I applaud these heroes of the rule of law.

I’ve spoken long enough. He put it all together in a way that I sincerely believed would take years to do. And I say, buy the book, read it; read it and weep. Like me, I believe you will find that from John Adams’ Alien and Sedition Acts to F.D.R’s imprisonment of Japanese Americans, to the excesses of Joseph MacCarthy and his anti-Communist tirades – and we’re in the Edward R. Murrow room, isn’t that appropriate – (laughter) – that there has been no lower point in our history than that point we are at right now.

Counselor?

(Applause.)

JOSEPH MARGULIES: That was remarkable. I cannot improve upon that. (Laughter.) If I had any sense at all I would sit down and just start taking questions. (Laughter.) You have a future as a lawyer in case you want to sink so low. (Laughter.) You belong in front of jury. You may not think so, but I’m very thankful for Colonel Wilkerson for his remarks. I’m very thankful for the Constitution Project for inviting me out here to talk.

I am especially happy that I have the opportunity to make these remarks at the National Press Club because, as I point out in my – and the colonel says that I disclose some stuff that’s classified. In case anybody’s listening, in case the cameras are on, I should point out that there is nothing in there that’s disclosed that hadn’t been disclosed before. I would have been in custody if I had done something like that. But some of it was classified, and it only came out because of the diligence and perseverance of some members of the press.

It is customary, nowadays, on the political left and right, to blast the press for its perceived failings. And in many respects, there are times when they richly deserve that criticism. But on this issue, on the issue surrounding the administration’s detention policy, there are a number of reporters whom I don’t even know – I know them only by – I have spoken with them some on the phone. Dana Priest could be in this room right now, from the *Washington Post*, and I wouldn’t know her, but I am convinced that – and I talk about this in my book – that one of my clients is home today, back with his family, after about three-and-half years at Guantanamo and Bagram Air Base, released ultimately

with no charges, back reunited with his children and wife because of a well-timed article by Ms. Priest.

I want to talk a little bit about the administration's detention policy and try to explain it and try to unpack some the assumptions that seem to inform what the administration tried to do. It is especially important, though, before I launch into that, to recognize the points that Colonel Wilkerson makes, which is there is a sort of accepted wisdom that during times of perceived crisis, the crisis itself sucks all the oxygen out the room, and the capacity for thoughtful criticism, the capacity to question the policies itself evaporates because you lose the ability to question the train that is moving towards what seems to be an inexorable end.

And that's sort of the conventional wisdom that scholars have, that a kind of hysteria grips us and we lose the capacity to question the judgments that are being made, especially when you're really at the eye of the hurricane. And those closest to the decision makers, particularly within the executive branch, just lack the ability to see what they are doing.

And to one measure or another, I make that criticism in the book, and it is important. And if I don't give enough credit to it – Colonel Wilkerson read one passage where I recognize that it was not universal – it should be stated very clearly: There were and there continue to be people on the inside, people whose names we may never know, people who placed their careers in jeopardy, people who have lost their careers, ended their careers for their willingness to stand up and say, this is a remarkably bad idea.

Some of them come to light. Some of them, people like Alberto Mora, who was the former civilian general counsel for the Department of the Navy, his heroism has come to light, as have some of the other people, all of whom, as soon as they come to light and as soon as they lose their position, they get a phone call from Ginny Sloan of the Constitution Project – (laughter) – who says, what you really need to do is join us in our efforts.

But you cannot overstate how important it is to recognize that this is not simply a matter of civil rights lawyers lobbing potshots from the outside; these are people on the inside working quietly and with deep conviction to change the policies that they perceive to be bad.

All right, with that in mind, let me talk a little bit about what I perceive the administration's detention policy to be about. To understand the detention policy, you have to understand two things. Fundamentally, first, the administration perceives 9/11 to be an intelligence failure. It is an intelligence failure. What it signaled to us, what it signaled to them, more than anything else, is that the dark and impenetrable thing called al Qaeda, the phenomenon of transnational terror, we lacked information, reliable information about it.

And so on September 12th, the most important thing was not, to them, resolving responsibility for what was undeniably a monstrous crime, but instead, penetrating and frustrating what they feared would be the next 9/11.

The fundamental approach of the administration to 9/11 and the difference between the administration's approach and the Clinton administration's approach is the difference between – is a difference in vision. It is a difference between forward-looking, that is, to penetrate and to secure intelligence in order to frustrate future events; and backward looking, that is, to fix responsibility and to prosecute for conduct that occurred in the past.

And so the fundamental representation of that is the prosecutions in the Southern District of New York for the embassy bombings in Daresalam and Nairobi, Kenya, in 1998. That is the quintessential demonstration of the Clinton administration's response to the threat of transnational terror. It is fundamentally a crime, which will be met with the weaponry of a criminal prosecution. And the Bush administration takes the position that, no, 9/11 is an act of war, which will be met with the forward-thinking challenge of gathering additional intelligence and mobilizing the commander in chief power to respond to it as an act of war. That is the mindset.

So the question is, from their perspective, starting very, very early, how do you marshal a military response to an intelligence challenge? They knew very early on, right. The ground war starts in Afghanistan in October 2001. They knew very early on that they were going to capture a certain amount of prisoners that they thought were – and they believe this, I think, in good faith, that they believe in good faith were going to be people who had the capacity if only we could extract the information that they had, had the capacity to reveal to us the intelligence that we had previously been lacking.

And so intelligence became the coin of the realm. It was all about, in their estimation – and virtually every post-9/11 major initiative that they've developed has been to further this effort, to create what I call information imbalances. The idea is we need to know everything about them; we need to make sure they know nothing about us. And whether you gather that information through interrogations of prisoners or through wiretapping, or through eavesdropping of e-mails or phone calls, it is about gathering information and disclosing as little information as you can in order to create information imbalances so that we have the upper hand in the intelligence arena. That was the challenge.

So with respect to interrogations, the immediate question was, how do you go about creating this interrogation, this intelligence balance? How, as a military matter, do you gather this information from the people that they know they're going to have? And they know they are going to bring them to Guantanamo; they made that decision very early on.

And that's where they made their first mistake, and I believe they made this mistake in good faith. They came to the decision that the model for gathering

intelligence that had been refined by the premier interrogators in the United States, the most sophisticated, well-trained interrogators in the United States, which was the FBI, and the community of FBI agents who had been involved in the prosecution of prior al Qaeda cases, who had developed the expertise, who knew the actors, who knew the language, who literally spoke the language, who had the background, who had the cultural background and the technical expertise to conduct these interrogations effectively, and whose interrogations had been effective, that model, since it represented an artifact of the law enforcement model, would be cast aside and we would approach these interrogations as military interrogations.

But they changed that. The refined that because they believed that the interrogations that were available to them in their interpretation of the Geneva Conventions would not allow them to create the environment that they believed was necessary to penetrate what they thought was a measure of resistance that prisoners would have to conventional interrogation techniques.

So in a series of haphazard – it's wrong to think of it as sort of a linear process but a haphazard back and forth – in late 2001, early 2002 between the Department of Defense and the CIA, they developed an interrogation model of creating an environment that they believed would allow them to extract this information that they thought was necessary to keep us safe from the next 9/11.

And so what did that environment look like? If you understand this environment, if you understand this phenomenon, you will understand everything that has happened at Guantanamo, and at Bagram, and at Kandahar, and to a certain measure, at Abu Ghraib Prison. They wanted to create an environment of isolation, despair, disorientation, dread, fear, anxiety, hopelessness, helplessness.

Let me just give you one for instance, one seemingly banal for instance. When prisoners first arrived to the base in January of 2002 – I'm sure people are aware of this; you may have seen the pictures – they were in orange uniforms. Well, orange uniforms in many Muslim and Arab countries are worn by condemned prisoners. Prisoners who have been condemned to die get orange uniforms.

And many of the prisoners who were brought to Cuba – and they were at sort of clearing houses, clearing bases at Bagram first and then they were shipped from Bagram here – they thought they were brought here to be executed. They didn't know where they were; they didn't know that they were in Cuba. They just knew that they were somewhere else. They knew that they were guarded by U.S. soldiers. They knew it was hot but they thought they had been brought there to be killed. And they were terrified.

You saw the first pictures of them kneeling on the ground but wearing the blackout goggles and the soundproof muffs and shackled. Well, that's all about creating a sense of disorientation. That's what, at another era, that's what hooding does. Hooding is to create – the purpose of hooding is to create a sense of disorientation. It was all very

deliberate. There's nothing deceptive about this; they knew exactly what they were doing. Their purpose was to create a sense of debility and disorientation and fear.

And so the question very early on was put to them – because interrogators very quickly learned that the guys all thought they were going to be executed; they thought they were going to be taken out at any moment and shot.

And so there was a memo that surfaced in 2003 and that David Rose wrote about in his book on Guantanamo that came out shortly after the Supreme Court decision in 2004. And the memo said, the prisoners think they're going to be shot, they're going to be killed. Should we tell them the truth? Which of course, the truth being that they were not going to be shot.

And during any other time in our history, you would never even think of having to ask the question. You would never – that is a measure of the difference between the pre-9/11 and the post-9/11 paradigm. You would never even think of having to answer that question or even pose it, let alone what the answer was, which is, no, don't tell them. Wait until we conduct the first couple rounds of interrogations. And it was very deliberate to create a particular environment.

And everything that we have seen, the stress and duress positions – well that's just standing or sitting in an awkward position, a painfully awkward position for hours and hours at a time. It becomes exhausting, it becomes painful, it becomes excruciating after a period of time. The only purpose of that is to induce a sense of debility. It's to exhaust people.

Well, physical exhaustion, coupled with sleep deprivation, and disrupting sleep cycles, and then disrupting food cycles becomes, after a time, simply unbearable. You don't need – this was an extraordinary discovery, the one discovery in interrogation models in the post-World War II era was the recognition that you don't need to use grotesque forms of physical abuse in order to overcome a person's resistance; you just need to exhaust them, make them physically uncomfortable, disorient them, create an extraordinary sense of stress and anxiety internal in their life, and that will breakdown all but the absolutely most resistant person.

That resistance, by the way, has nothing to do with particular training; it just seems to be some people have it, some people don't. And for those people, you just create a sense of ominous fear. And it eventually wears down anyone by creating this sense of horror in their own life. That was the world that they wanted to create.

What we have seen is a failure to question the assumptions that inform that world, precisely because there was a, at least within the articulation of the administration's detention policy, a refusal to check on those assumptions, to question those assumptions. What you saw is an unblinking acceptance of that which went into this kind of world, and that's what I want to talk about some. I want to talk about what the assumptions were in creating something like this.

The first assumption, obviously, is that you need to create this environment, that you can only get this information – that you can only get this information if you create this environment of despair and debility and anxiety and dread. And to that extent, it is at least interesting to note, it is at least useful to note, that every actor with relevant expertise, that is, all the people who knew about interrogations, both military interrogations and law enforcement interrogations, and every actor who knew about the international repercussions and legal consequences of creating a world like that, advised the administration against it.

So for instance, General Tommy Franks, when the war started, when the ground war started in October 2001, one of the first orders he gave to his troops was that you will comply with the Geneva Conventions in the conduct of and treatment of captured prisoners. Even though of course he recognized that it was this asymmetric warfare, of course he recognized, as the military has longed recognized, they are no longer apt to get into conflicts with conventional armies, a raid against – opposite each other in fixed fields of battle. That is no longer the norm of American military engagements.

But of course he recognized that the people that he was going to be capturing did not wear fixed insignias; they didn't follow the laws of war. And of course he recognized that the right thing to do was to comply with the Geneva Conventions. It would not at all, he concluded, hamper our ability to get reliable, actionable intelligence. And that was the view echoed by General Powell. Of course, as we have since learned, at the urging of people within his office like William Taft, the legal advisor; like Colonel Wilkerson; like other people within his staff, who understood, both as a military matter and as a diplomatic matter, the consequences of the world that they were creating.

It was also recommended to them by the chairman of the Joint Chiefs, the senior military planners, the Pentagon, every judge advocate general, the leading legal officer for every branch of the service. It was also recommended to them by the FBI who had this experience, who said this is preposterous; of course you don't need to create this environment.

The first assumption is that you needed to create this environment, and that's the assumption that is flawed at its inception. It appears that, from the best that we can reconstruct – and we don't have all the internal documents yet. I wish we had them. I've collected everything that I can find.

But it appears that the architects of the administration's detention policy are drawn from a small cadre of young lawyers and policymakers at the office of the vice president, the office of the White House counsel, and the Justice Department. As best as I can tell, none of them have any law enforcement experience. None of them have ever actually conducted an interrogation. None of them have ever actually been in the military. The arrogance of rejecting the advice given to them from every relevant actor proved – unfortunate. (Laughter.)

The second assumption is that if you assume, if you grant them that it is necessary to create this environment, that you need to create this environment in order to get this information, it seems to me absolutely evident that you have to limit this environment to those who actually have the information, all right.

There is no moral or policy justification to impose an environment like this on people who have no such intelligence. If they don't have the intelligence, you don't subject them to these sorts of conditions. And in that respect, it is at least interesting that they knew within weeks of the creation of Guantanamo Bay – the first prisoners arrived in January 2002 – January 11, 2002. Within weeks, they understood that they were filling the prison to capacity. At time, the capacity was about 800 people. They were quickly filling it to capacity with people who had no intelligence value.

Interrogators told the analysts at Guantanamo that right away, in fact, so quickly that the head of interrogations at the time, a Major General Michael Dunleavy flew to Afghanistan where all these prisoners were being sent from; he flew to Bagram in the Spring of 2002 complaining that the prison was filling up with what he described as Mickey Mouse prisoners. Why are you sending me all these Mickey Mouse prisoners? And at that point, the answer was because General, we don't have anywhere else to put them.

In fact, what it appears to be is that there was such a fear that the guy that they had who looked to all the world as simply a disengaged civilian and who analysts in Afghanistan and interrogators in Afghanistan concluded over and over again should be released because he really was a farmer, a peasant, a laborer, a taxi driver – perhaps, in fact, we are mistaken, and if only we apply those more vigorous techniques, those more aggressive methods, we will discover that he is not really a taxi driver and a laborer and a farmer; he may be someone that we think he isn't. And that mindset overrode all the analysis and all the information that they were getting, which told them you got nobody here. You've got a lot of nobodies.

And certain policies they created made it worse. And one of them that you may be familiar with, that you may know about, is the Bounty Program that they created. The United States had bounties for – you have to understand only five, five percent of the prisoners at Guantanamo were captured by the U.S. military. Ninety-five percent were brought to them by people like the Northern Alliance or warlords or drug lords. Afghanistan is extraordinarily factionalized, riven with internecine conflicts of generations-old – people brought to them and represented to them to be members of the Taliban or sympathizers with al Qaeda.

And one thing encouraged that representation, and that was the bounty system that was used. And the U.S. bounties were \$5,000 for every person who was a member of the Taliban, and \$25,000 for every person who was a member of al Qaeda. And that, of course, produced predictable results. (Laughter.) It don't require a great deal of elaboration. The guy trussed up and tossed in the back of the pickup truck was not Achmed (ph) the tailor; he was Achmed the Taliban. (Laughter.)

And the administration now acknowledges and fully accepts that a substantial number, although they have never disclosed how many, were brought to them represented to be members of the Taliban simply based on – and the overwhelming number of the people at the base are – their only allegation is that they are alleged to be members of the Taliban – not even members but just associated with the Taliban.

I should point out, by the Pentagon's data, that 5 percent number that I said, that's the Pentagon's data; that's not our data. According to the Pentagon, only 5 percent were captured by the U.S. military. According the Pentagon, only 8 percent were fighters for al Qaeda.

So the combination of the lack of useful and reliable intelligence on the ground with the bounty system, our unfamiliarity with the environment that we were entering into produced this situation where literally dozens and dozens of prisoners were brought to the base who had no business being there.

And some of them were – we look back now and we are just struck by the inanity of it. Some of them were quite young. You may know the youngest person brought to Guantanamo was – again, everything I'm telling you here was according to the Pentagon – was 10-years-old when he was brought to the base. He was held for a year-and-a-half. The second youngest was 12, and after that there was 13-year-old.

According to a reporter who has gone through the data that has been released – he called me about it – his estimates were, and this was few months ago, that there were still 25 prisoners at the base who were juveniles when they got there. There are no juveniles there anymore because everyone has come of age in the prison.

When the news hit that there were children at the base – it came to me this way. It was really – again, it was only because of a journalist. There was an Australian journalist who called me one day and said, Joe, do you know that there are children at the base? And I did not – I said that's – you got to be kidding me? He says, no. I just came from a meeting with the head of the base and I asked him and he told me. And I said, why did he just – he said, it was very interesting. I didn't say to him, are there children here, by the way, at the base? I said to him, by the way, how many kids are there at the base? (Laughter.) And he said, I don't know, five – half dozen. (Laughter.) Let me get back to you on that.

And of course, after that news hit, they built a separate facility for the children. They called it Camp Iguana. (Laughter.) And by all accounts, Camp Iguana was much better than the other, right. But every juvenile who's there now, that is, who was a juvenile when – was not in Camp Iguana. They were in the rest of the facility.

So the second assumption is that you have the right people. In addition to the children, there were a number of prisoners brought there who were quite old. In fact, Major Dunleavy, after he retired, said his principal concern – what he was most afraid of

is that one of these guys was going to die at the base of old age and that he was going to bring them back to Pakistan in a box. And how are you going to explain Daddy made it through, you know, 92 years living in Pakistan and the Americans bring him home in a box. That was his principal concern.

One guy who was released after he had been there for 10 months, was described – his nickname among interrogators was “al Qaeda Claus.” There was one guy who was tracked down by an intrepid *New York Times* reporter in Pakistan after he had been released, and he was babbling incoherently. He could barely answer questions put to him. He said, that he was 105-years-old. Another guy said that he was in his 90s.

One guy that they actually had there had been – they had recommended that he not be sent to the base, he was sent anyway. He had suffered a combat wound in Afghanistan, but prior to this conflict – probably in conflict with the Russians. And he had had a head wound that – they described it – interrogators described it as a combat lobotomy. He could do very little to communicate other than his name. But he was an Arab in Afghanistan, and an Arab in Afghanistan was two of the metrics for automatic suspicion. All right, so why is an Arab in Afghanistan except to fight for the Taliban?

So he was shipped to Guantanamo, and interrogators there called him Half-Head Bob. The best estimates – and he was there 10 months before they released him. The best estimates are, by all internal assessments that have been disclosed, is that there are probably two or three dozen of the 450 people at Guantanamo – are the sort of folks – and that includes the 14 who have just been brought there, the sort of folks for which the prison was intended. The conditions, however, which are maximum-security facility for the overwhelming majority of them, apply to everyone there.

There is a third assumption, but before I get to that, I want to pick up on one thing that Colonel Wilkerson talked about. And I want to ask this question, and I don’t really mean this even rhetorically. I want to ask why this matters? There are, after all, only 450 or so people at Guantanamo. It pales in comparison with the number of Americans who have been in Iraq. It pales in comparison with the number of civilians – innocent civilians who have been killed and injured in Iraq. Is it important? And I do not mean that as a trivial question or at all rhetorical.

There is something about what is going on at Guantanamo that produces extraordinarily strong feelings. And I want to share with you an e-mail that I got or that I get periodically, and I got this just a couple of weeks ago when my name appeared in connection with an op-ed that I wrote about the interrogation techniques that appeared in the *Washington Post*:

“I am sure that the Third Reich would have loved an ‘American’” – that is in quotes – “an American like you during World War II. If your philosophy and temperament had been the rule of the day then, as now, we would have lost that war thanks to people like you. You should be ashamed. You are a thin-skinned coward,

traitor and I hope you get your just desserts.” This one, unlike most of the ones you get like this, was signed; he actually identified himself.

People get very vexed about this. When we filed in February of 2002, one of my colleagues – one of my co-counsels, who was based in New Orleans at the time, received a death threat in his home in the middle of the night. His wife picked up the phone to a death threat.

But as strong as some people feel about what is going on at Guantanamo, the feelings are much, much stronger overseas. You cannot possibly conceive how Guantanamo has become a symbol in the Arab and Muslim world. If you spend any time, and I encourage it, on radical Islamist websites, you will see that Guantanamo itself has become a rallying cry that is linked in the rhetoric with Abu Ghraib. And so you will see things like this – say: You who shirk Jihad, how can you rest while your brothers are tortured at Guantanamo? How can you rest while your sisters are raped at Abu Ghraib?

There are many things in the world that contribute to the anti-American feelings, a chronicle of which would take considerably too long, but there are very few that have the effect of focusing that diffuse hatred and burning it into a laser the way Guantanamo does.

And what matters, therefore, is no longer, or rather not simply, the 450 people who are there, men and children, men and boys whose lives are forever altered by the detention that they endure; what matters is what Guantanamo has become, what it has come to represent and what it continues to represent. It is a fact that every European national – Guantanamo originally held prisoners from 43 different countries, including a number from European countries. Every European national – that is, every citizen of a European state has been released. The only people left are one Russian and Muslim and Arabs. Those are the only people left.

And that, combined with the evidence that has emerged about the use of Islam as an interrogation technique – so for instance, there was one FBI agent who came into an interrogation room and saw a prisoner shackled to the floor in a room where the music was turned up as loud as it could and the air conditioning was turned down as low as it could, and he was lying in a fetal position on the ground draped in an Israeli flag – does anybody think that that doesn't have predictable consequence in the Arab world? It can only have one meaning. It is to humiliate him based on his culture and his religion; that's the only thing it could possibly signify.

And when a prisoner – when an interrogator pretends to smear fake menstrual blood on a prisoner and then send him back to his cell where the water has been turned off so that he can't wash himself, so he will be unclean for purpose of which he can't pray to his God because, why – you want to create a sense of isolation and despair – that can only have one effect – only produce one outcome. It doesn't produce actionable intelligence; what it produces is rage. Inevitably, of course, that information gets out and

it produces rage, and justifiably so, perhaps not in this country but in the rest of the world.

And some people will say, and I think it is fair to say, that we do not alter our policies based on radical Islamist websites, that you do not cotton to radicals and extremists; you don't appease extremists. And I am with you on that; I agree with that. But those are not the people whose judgments you're concerned with. The issue is not those people; the issue is the hundreds of thousands and millions of Muslims around the world, moderates by temperament, not inclined – by upbringing and temperament, not inclined to be hostile to the interest of the United States.

The concern you have is for secular Muslims in places like Turkey who would otherwise be our staunchest allies, and when they read about what goes on at Guantanamo and they see what is happening at Guantanamo, and they know this information, those people who are poised on the knife edge between moderation and extremism, those are the people for whom Guantanamo's endurance creates an impetus to push them to extremism. Those are the people who fuel the next 9/11 and the hatred that inspires so much anti-American animosity around the world. Those are the people for whom Guantanamo matters most.

So what is the third assumption? The third assumption, and it seems to me absolutely true, is that if you assume that you need to create these conditions to get this information, and you assume that you've got the right people – both assumptions are themselves dubious, but you assume you've got the right people and you assume that you only can get this information by creating these conditions, at the least you've got to grant me, it seems to me – just as a moral matter, you've got to grant me that once you're no longer interrogating them, that is, once you have gotten from them whatever information you are looking for, you will no longer subject them to these conditions.

If the conditions are in order to create to gather information and you're no longer interrogating them because you say that they no longer have information then you won't keep them in these conditions. And that is why I looked, with some interest, last year, last June, 15 months ago, when the administration announced that it was going to release 70 percent of the prisoners at the base because they were no longer of intelligence value. They were no longer a threat to the United States and they were no longer of intelligence value and so we were going to send them home.

And they were going to create a new prison. They were going to create a new facility there called Camp Six to symbolize that it was the sixth facility built there. And Camp Six was going to be medium-security facility that was more or less consonant with the requirements of the Geneva Conventions. And only a small fraction of the prisoners that were there, just a very few, would continue to be held in severe conditions. And the overwhelming majority would either be released or they would be put in conditions of communal living, communal dining. It would be a long-term detention center, more or less consistent with what Geneva Conventions require.

And I took that consistent with the announcement that, at that time last June, three-quarters of the prisoners were no longer being interrogated. Nobody was being interrogated. The purpose that Guantanamo was created for had been served; it was time to change it substantially. That was June 2005.

Since that time, none of those seven – only a handful of those 70 percent have been released. More have been added. The approximate population of Guantanamo has remained exactly the same. The Camp Six has been retooled after the suicides in June of this year, to be a maximum-security facility. In fact, it is super-max security facility.

Prisoners we believe are being transferred there or will be transferred there shortly – you can still, apparently, see the communal areas from the isolation cells but no one can go to them. No interrogations have started up so far as I am aware. Only a handful of prisoners are being interrogated. The best evidence of that – the best proof of that is that they wouldn't have brought the 14 high-value suspects there, whom they brought in September, if any of them were still being interrogated. They no longer use Guantanamo as an interrogation chamber. It's – *raison d'être*. That thing it was created to be has long past served its purpose, if it ever served any purpose. Yet, all of these prisoners remain in these maximum-security facility prisons.

I was criticized in my book for not having a happy ending. (Laughter.) One of my colleagues in the litigation sent me an e-mail that said, love your book, Joe; needs a new ending. Get another agent. (Laughter.) So I said, okay I'll work on that for the paperback. (Laughter.)

I am not despairing. There's no question in my mind that we will, and the country will, and the Bill of Rights will recover from Guantanamo. That just seems to me self-evident.

In November of 2004, after the decision had come out a few months ago, I went to an event commemorating the 60th anniversary of the Supreme Court decision in *Korematsu*, involving Fred Korematsu and upholding internment. And Fred Korematsu spoke. At that time Fred was confined to a wheelchair, infirm. He died several months later, but he still spoke with a richness in his voice, and he reminded us by his life and by his words that the future is not in doubt; it is the present that we have to be concerned about. Thank you very much.

(Applause.)

MS. FRANKLIN: All right. We would like to open this up now for questions from the audience, which I'm assuming there are. We have a standing microphone over here. We are attempting to do an audio recording of this program so if people who do have questions would please do us the favor of coming to the standing microphone, that would help us to try and record your questions as well as the answers.

Q: Yes. Michael Hager, Education for Employment Foundation.

As one who travels very frequently, about every month, to the Middle East, I can only agree with what our guest speaker said about the rage in those countries, in those Arab countries. And I'm wondering – my question is why no rage in the United States? Why no rage when we saw those photographs? Why no rage a few months ago when the Military Commissions Act was being debated and later passed? Why did 24 Democratic members of Congress sign onto that bill?

MS. FRANKLIN: If you both want to sit and share the microphone, it might be –

MR. MARGULIES: Sure

MS. FRANKLIN: – easier.

MR. MARGULIES: In fact, Colonel I'd be interested in your thoughts on this as well. You want to go first?

COLONEL WILKERSON: No, have at it.

MR. MARGULIES: I mean, there are simple answers. One answer is every body at Guantanamo is a foreign national and that produces predictable consequences. But I think that is an incomplete answer.

I think that, notwithstanding this audience, which is very gratifying, most people really just don't care. If you go back and look at – what I describe it as is this, you know, there is a cultural narrative – a dominant cultural narrative about 9/11 and its sequel and its aftermath that includes Guantanamo, and that most people just don't care about what may be happening, which is the best explanation for apathy because the dominant cultural narrative is one of indifference. We will do what it needs to take, what needs to be done.

That's consistent with during internment. There was really very little human cry about the internment of the Japanese, very little, even though everyone knew that a substantial number of them – a substantial number of the Japanese interned were innocent. And everyone understood that, well this is just, you know, war is an accumulation of hardships, which is what Justice Black said in *Korematsu*. War is an accumulation of hardships; get over it.

The dominant cultural narrative then was one of indifference. The dominant cultural narrative now about internment is this was a dark chapter and a disaster and an embarrassment. It will take time for that to become the dominant cultural narrative about Guantanamo and Bagram. We will; I don't have any doubt that we will, just the question is how long it takes to get there. And that was part of the motive behind the book, is to communicate information in order to accelerate the change in the narrative, to make people care.

COL. WILKERSON: Let me take – I don't disagree with that, but I have recently been in Boone, North Carolina; Gettysburg, Pennsylvania; Los Angeles, California, the Naval Academy; the Military Academy at West Point, and a host of other places talking about these issues. And I would add that some of the apathy is there because people don't know; they simply do not know. And that's one reason I applaud this book and other efforts like it because when I speak to audiences – I spoke to about 1500 students and faculty at Appalachian State University in Boone, North Carolina, which you would think would be sort of like, you know, the heartland of conservatism in America. And first thing I found was that it wasn't, and the second thing I found out was people didn't know.

In one gymnasium with about 1200 students and faculty, I stayed for four-and-a-half-hours, and they stayed, they didn't leave, asking me questions. How could this happen? How could we have this set of circumstances? How could we have national security decision-making so flawed as you've described it? You saw it up close and personal; how was it that it got so bad? Do we have a naïve president and a Machiavellian vice president? I mean, I got every kind of question in the world, but it was clear to me that these people were yearning for some knowledge about what makes this administration tick, and particularly, why we have failed so dramatically in Iraq.

MS. FRANKLIN: I also ask people asking questions to please do identify yourself as our first questioner did.

Q: Hi, I'm Sue Gunawardena-Vaughn with Amnesty International.

As someone who routinely gets hate mail, I just wanted to say – and as a naturalized American citizen, that you two are heroes to many of us. So it's just truly inspiring that you do the work that you do in this book, and that there are people like you, Colonel Wilkerson, in the military.

My question is the recent Khalid al Masri case, where there's this whole balance between national security and the rights of individuals, can you just speak to that and some of the implications of that on our constitutional rights?

MR. MARGULIES: Well, of course, al Masri, the case she's talking about, is a rendition case; it's a case where a person was of mistaken identity, who was abducted by the CIA in Macedonia. He's German and he was on vacation in Macedonia and he was taken to Afghanistan and, by his account, tortured during aggressive interrogations. They thought he was somebody else. They eventually discovered that they had made a mistake and he was released.

Actually, the way he was released was that he was flown backed to Albania. Macedonia said, no, no, no you're not coming back here; you already messed it up once. So he was flown to Albania and taken off a plane and driven to a remote area and – can you imagine this? This is sort of like out of a movie. They told him to turn around, start

walking away, and don't look back. You know, and then they drove away. And then he has to make his way back to Albania to Germany.

And they later filed suit on his behalf – his counsel, the ACLU. In fact, there was an argument in the Fourth Circuit by ACLU counsel, the argument being whether he can recover damages for what is admittedly now a wrongful rendition. I mean, his family didn't even know where he was. His family thought he had died and his wife and children had moved from Germany back to their home in Lebanon when he made it back to Germany. He tracked down his family through neighbors, but they're now back living in Germany.

The government there invoked something called the state secrets privilege. What I was talking about the information imbalance – the use of the State secrets Privilege is very interesting. In fact, we have an expert here. What they are – it's the flip side of the position that you will – that they want to learn everything that they can. Everything about intelligence means you gather whatever information you can but for that intelligence to remain fresh, you disclose as little as you can.

So one thing they have done in the civil litigation associated with detentions, is that fight whether there is even jurisdiction. They say you can't even go to court and that was their position in the Guantanamo litigation. That is their position in other litigation. You can't even get to the courtroom.

There are some cases where they can't fight that a person can get to court, and so what they do there is they assert the state secrets privilege, which says, even the litigation of this, even acknowledging anything about what is happening will lead to the disclosure of state secrets and therefore the case has to be dismissed at the pleading stage without getting into any – they've used the state secrets not just in al Masri but in another rendition case, a guy named Arar who was sent to Syria, as well as the ACLU case is challenging the NSA wiretapping. Their position is that's a – even to acknowledge that the programs exist is to disclose a state secret.

Well, of course, everybody knows it exists. I mean, the only secrets you're protecting is in the courtroom. You could read in *The New York Times* and everybody knows it exists, but it's all about creating this information imbalance. We're just completely out of whack now and we'll eventually get back in whack; it's just how much damage we do in the meantime.

Q: Richard Wetzell from the German Historical Institute. I want to thank you both for your presentations, and, more importantly, also for the work you've done and for speaking out, and everything you've done to let people know about these things.

My question is about the most recent congressional legislation regarding the military commissions. Many of us, when the Supreme Court struck down the Bush military commissions as unconstitutional and in violation of the Geneva Convention, were hopeful that when the matter was turned over to Congress, Congress would fix it.

Well, as we all know, that didn't really happen. The Congress made enormous concessions abrogated habeas corpus while they were at it. I'm wondering what is your take on the congressional legislation on the military commissions, and what is your view of what are the chances and how soon this be either overturned in the courts or will Congress perhaps revisit it? What's your outlook on that?

MR. MARGULIES: Right. Right. (Audio break, tape change) – in fact asserted when there wasn't congressional legislation. The suspension of habeas has already been challenged in court. There is litigation going on right now. And some of my colleagues here, who I should identify – Kristine Huskey is here now with American University. Kristine was part of the legal team at Shearman & Sterling, which was the companion team with *Rasul*. We litigated with each other – not with – we litigated together and marched the cases up to the Supreme Court together as partners from the very beginning, and I'm indebted to the work that Shearman has done.

Carol Elder Bruce is here from Venable, a wonderful lawyer who represents a couple of Egyptians. Doug Spaulding from Reed Smith is here – several of my colleagues in this litigation. And we have already challenged the suspension of habeas. I think whatever happens, whatever the – its challenges pending in the D.C. Circuit, whatever the D.C. Circuit does is just written in sand and the tides are coming in. The Supreme Court will take it, I suspect. Whether that will be this term or next term remains to be seen. If the Court remains as presently constituted, I think that we will win. I think that it's an unlawful suspension of the writ.

The other parts of the Military Commission Act having to do with the military commissions themselves, there are a couple of people here who have – Dan Mori is over in the corner. He has counseled for military commission counsel for David Hicks. And I represent a guy in the military commissions as well.

It is probably going to take longer for those to – for that challenge to percolate up because it will probably have to wait for an actual commission proceeding to take place, or at least the meat of it. And that commission proceeding is probably not likely to start any time soon. I think that, again, if the court as currently constituted had the case, it would strike down the Military Commissions Act.

Legislatively, what is going on? Well, Senator Dodd from Connecticut has already introduced legislation to repeal parts of the Military Commissions Act. Senator Leahy from Vermont has said that he might. I frankly think that those are unlikely to go anywhere because they couldn't survive a veto. First of all, I don't really think the Democrats are – I mean, this is a very moderate group of Democrats by and large, and I don't think they are likely to be particularly far out there, and that is how this would be perceived. But also, they couldn't override a veto, so why subject themselves to the political hit.

So I think what is more likely is you'll get finally congressional oversight, and that is something that has been sorely missing, Congress playing its role in policing the war power, and that we might see. And that could lead to – what we have learned is that the one thing that this administration, when it comes to detention policy, is most concerned about is scrutiny. Prisoners go home only if their case becomes a subject of scrutiny. That is why my client is home – from the work that Dana Priest did.

And congressional oversight can prove very effective just by asking the questions, literally. I mean, if you say to them, I want a listing; I want an accounting. That is, the United States of America, we do not have “disappeared.” This is not Argentina. Tell me who is in custody. That list does not exist. That would be a good thing to know.

MS. FRANKLIN: Colonel Wilkerson, do you want to address this question as well?

COL. WILERSON: No, no, that is fine. I don't like to be – (off mike).
(Laughter.)

Q: I am Ed Spannaus from Executive Intelligence Review.

Joe, it seems to me you were giving the architects of the policy somewhat the benefit of the doubt in assuming – I don't know if you really believe this, but assuming good faith on their part that they really believe this was the way to get information and so forth, when, as you yourself pointed out, everybody who knew anything about interrogations told them, and they didn't just keep it to themselves; they told them that this stuff doesn't work.

I mean, if you consider it, it seems to me more likely that the purpose of this was not to get intelligence, per se; the purpose was to – due to the Islamic world, basically, what you're describing you want to do to the prisoners – create a sense of fear, hopelessness; we are so big and bad that if you mess with us, this is what is going to happen to you.

And that the point was more – the idea that the United States should be a power because we're the biggest and baddest guys, and we can be more evil than you, not that the United States is a Republic, a beacon of hope, the city on the Hill, and so forth, and that that is their – I mean, take people like the worst of the worst, Cheney and Addington, I mean – (laughter) – the architects of the policy. These are not naïve young kids. They have been at this a long time, and it goes back to Iran Contra, and so forth. They have had this outlook.

And the outlook is that the United States should rule. This is a Hobbesian world, you know, the war of all against all, and we are going to be the biggest and baddest guys, and that is how we are going to rule the world, not on the principles by which this country was founded. So I mean, that is my question to you – question, I mean, more deeply the good faith of these guys.

MR. MARGULIES: Actually, I'm very interested in Colonel Wilkerson's thoughts on this as well because you were an insider in this. I will simply say this.

COL. WILKERSON: So am I.

MR. MARGULIES: I have not seen anything – and really a fair amount has come out about internal deliberations. I have not seen anything to say that that was on the table, that that articulation, even in what were believed to be internal discussions was a motivation. Now, do some people think that? I don't know. But what I know is that the available evidence is that they were told it was a bad idea but came to the conclusion. And, again, it's wrong to think this is just sort of an off-on switch. That is not how it went.

What actually happened in the course of early 2002 is that they weren't getting information and they thought they should have been. And so over a course of time – and during this time, the CIA picked up people like Abu Zubaydah, and they started to use aggressive methods on Zubaydah, and they were getting information. Now, that doesn't prove the usefulness of it because, A, it doesn't prove the information is reliable, and B it doesn't prove that you couldn't get it by other means.

So during this time in spring, fall – spring and summer of 2002, they are saying, well, if the CIA can do it, and you are telling me I have got bad people at Guantanamo too, how come I can't do it? So it's a dynamic organic process that I think is – that isn't its motive nefarious. And I haven't seen anything to support the conclusion that you're describing. If it were there, I would call it out, but I haven't seen it. Now, you were in on deliberations. Did you see anything like that?

COL. WILKERSON: What I would have to say that I think would be comprehensive and not trying to go after anecdotal stuff is they didn't listen to the people about North Korea. They didn't listen to the people about North Korea. They didn't listen to the people about Iran. They didn't listen to the people about Iraq and what it would be like after we went to Baghdad. They didn't listen to anybody who had a dissenting opinion. Whether we construe that as their having some sort of ideology and some sort of ruthless vision that they were all networked to implement or not is not within my kin.

I like to chalk it more up to ineptitude than I do to foresight or fore-plan, or whatever you want to call it. I have been around Addington and Cheney since '89. One very good friend of mine who used to be in the Congress who is out now said he had known Dick Cheney longer than that. This was after the Brian Scowcroft piece had come out in *The New Yorker*, where Brian essentially said, I no longer recognize Dick Cheney. This former congressman who had worked with Dick Cheney closely in the Congress said, I do. (Laughter.) He doesn't have any adult supervision anymore. (Laughter.)

You know, that is a little flip, but there might be something to that. I teach my students that personalities and character, as David Rothkopf points out in his book, “Running the World,” top the list of influences on national security decision-making. And I’m still laboring with the pachyderms who were in the room – (scattered laughter) – and how they could allow some of the failures that have occurred with this administration, including my own boss, how we could be where we are now with the assemblage of experience and talent that looked on paper like what we had. It’s still a difficult thing for me to do in seminar, is to deal with this with my students, and how personalities and character play in influencing decision-making.

But I don’t discount what you just said as being an underlying theme with people who did have visions, who did have ideologies, who were ruthlessly implementing those visions, and those ideologies, and I could name those people for you. And when you have a structure like we have right now, which incidentally I think our structure is broken, badly broken, and you have people who can get into the interstices of power, if you will, and manipulate the bureaucracy the way this bureaucracy was manipulated at times, and achieve things that they want to achieve because the pachyderms, if you will, aren’t listening; it’s disturbing; it’s disturbing.

And there is no question in my mind that ideological impulses had some influence on some of the decision-making that went on, ideological impulses that I would say I think completely I believe have no relevance to the center of America; that is to say, where most Americans are, 60 to 70 percent of most Americans.

Bill Lind has an interesting book out. It’s called “The American Way of Strategy.” And in this book, he says that we have had a strategy essentially of the Western Hemisphere for our entire history. As John Adams said early on, we had to sail in the wake of the British man-o-war. But essentially, we said, hands-off the Western Hemisphere; we’ll handle it. And when we had a problem in Europe or a problem in Asia, we formed a concert of powers, and we dealt with it.

Bill’s point is that in 1990 – and he attributes this to George H.W. Bush, and Clinton, and then George W. Bush who took all of the camouflage of multilateralism off of it, we made strategic decision that we would be the hegemon of the world. We were going to bankrupt ourselves morally, and we’re going to bankrupt ourselves physically if we try that is Bill’s point in his book. I argue with Bill a lot. You’ll see my blurb on the jacket where I say it’s a provocative theory, but I was there. I didn’t hear Colin Powell, or Dick Cheney, or George H.W. Bush make this strategic decision. I watched Paul Wolfowitz talk about it and write about it, but I never heard George Herbert Walker Bush make that decision.

Now, if you made it in a closet somewhere, and, you know, if Dick and George W. have made it in a closet somewhere, I am unaware of it, and I submit to you the American people are unaware of it. But it looks a lot like, if you read closely the national security strategy, that we are right there, right there getting close to saying that. We want to be the world’s number-one power come hell or high water. We’re willing to pay the

price in blood and treasure to do that, and that is where I agree with Bill; we're going to bankrupt ourselves.

MS. FRANKLIN: I think this is going to be our last question.

Q: My name is Chito Pepler. I work for DOD. Professor, you mentioned that – I believe you mentioned that 5 percent of detainees were captured by U.S. forces. I would like to know where you get that information from.

MR. MARGULIES: There is a – the Department of Defense disclosed the results of combatant status review tribunals, which were records of hearings held down there after Guantanamo. All of them were reviewed and compiled by professors at Seton Hall that produced a report. And based on the Pentagon's information, that was what – it was contained with the CSRT results. So if you go to Seton Hall's website, and you just do a search – Seton Hall law school, and you do a search for Guantanamo, you'll come up with – there is two reports now and this is the first one. It's contained in there. To my knowledge, it's never been challenged by the Pentagon.

Q: Can I make a comment?

MR. MARGULIES: Oh, yeah.

Q: We don't agree with that report. For one thing, I can tell you that that information was based on just 300 and I think 15 CSRT unclassified summaries, and as you know, we did 558 of them. So I think if you do the math, it's about 56 percent of the records that were for it, that is actually in public. So you're looking at 56 percent of the information of that unclassified.

MR. MARGULIES: Is it your position that if we – well, two things. One, is DOD willing to release the other CSRTs? And two, is it your position if we look at those CSRTs, the numbers will be different? I mean, just tell us what the numbers are. I mean, if the numbers are 12 percent or 18 percent, just tell us what they are. We just want to know what it is.

Q: It is not my position to comment on that. I can tell you that of that 315 that was released, it was based on the FOIA that AP had requested, that specific FOIA, so we released what was required by the judge.

MR. MARGULIES: I understand that. All I'm asking – you have got the other CSRTs. If you release them, we'll amend the data. It was based on all of the information that was in the public record. That is all that we can do. We can't base our – look, no one, including an informed electorate can base its information on anything other than what is out there. Tell us what it is, and we'll base our information on it.

And if you're telling me that all of the 200 that weren't happened to be released by DOD were captured by the U.S. military, that is fine; then the numbers are different.

All we would ask then is that you put up your data just the way we did. I'm not – all I'm asking you know is what is the right number.

Q: I don't have that information. I don't think it's anything pertinent (?) but I think that, you know, when you sourced that information, I think there is value in clarifying where you get that information from.

MR. MARGULIES: Okay, you're absolutely right; you're absolutely right. And of course in the book, I do footnote it, and I footnote the report. And the report is based on all of the available evidence that was out there, which remains all of the available evidence that is out there, and no one has ever provided contrary information.

COL. WILKERSON: Let me just make one comment. It's related. I recently found out that the circumstances surrounding one of these interrogations that provided information that swayed the secretary of State on a major, major issue with regard to the 5 February presentation at the U.N. Security Council that the source was not even in interrogated in the United States, was not even interrogated with U.S. personnel, FBI, Army, DIA, CIA, or otherwise present, and that this information was then provided to the secretary at a dramatic moment to convince him that that very salient piece of information, which was totally false, got inserted, and stayed in his presentation at the U.N. Security Council. So we do a lot of things on other people's word.

MS. FRANKLIN: On that note, I would like to thank both of our speakers very much and welcome you all to come up. Joe has graciously agreed to sign books of those of you who are purchasing them. But if you could join me in giving a round of applause for our speakers.

(Applause.)

(END)

[Pending review by speakers.]