

# Torture of the Bahá'ís in Iran

TESTIMONY BY FIRUZ KAZEMZADEH

**M**Y NAME is Firuz Kazemzadeh. I am professor of history, chairman of the Committee on Middle Eastern Studies at Yale University, and vice-chairman of the National Spiritual Assembly of the Bahá'ís of the United States.

Twice in the last two years American Bahá'ís have presented to the Sub-Committee on Human Rights and International Organizations of the House Committee on Foreign Affairs amply documented testimony on the persecution of the Bahá'ís in Iran. The material is available to the government and the public. However, today I shall confine myself to a narrower and sadder subject—torture.

Over the last four years the authorities of the Islamic Republic of Iran have used torture as an instrument of policy. Among the victims of torture, members of the Bahá'í community have occupied a special place. They have committed no crimes, participated in no antigovernment activities, presented no danger to the regime, yet they have been made an object of unrestrained hatred on the part of the clerical rulers and their supporters.

I shall present to the Committee evidence of torture, names of its victims, and even of one or two of its official practitioners. I shall also point out the changes in the pattern of application of torture.

However, because so many find the persecution of the peaceful Bahá'í community in Iran utterly incomprehensible, I shall take the liberty of sketching briefly the background of relations between the Shiite establishment and the Bahá'í Faith.

The Bahá'í Faith, a monotheistic world religion, originated in the middle of the nine-

teenth century in Iran. From its inception it became the target of hostility on the part of the Muslim Shiite clergy which believed that the eternal dialogue between God and man had ended with the Prophet Muhammad, that Islam was the final revelation, and that any post-Islamic religion must necessarily be a heresy whose followers deserved death.

The Shiite clergy which wielded enormous power in nineteenth-century Iran, incited the secular authorities to a campaign that took the lives of some twenty thousand men, women, and children but failed to eradicate the new faith.

The introduction into Iran of modern nationalism and secularism alleviated the situation of the Bahá'í community in the twentieth century but did not mitigate the hatred of the Shiite clerical establishment. However, the vocabulary of invective changed. If earlier the Bahá'ís had been denounced as heretics, now they were accused of being agents of foreign movements and powers—Russia, Britain, Israel, the United States—depending on current political fashion. Periodically, the mullahs gained the government's cooperation in attacking the Bahá'ís, killing a few, confiscating literature, closing down Bahá'í centers, dismissing Bahá'ís from government jobs, and otherwise harassing them.

The Iranian revolution of 1978-79 was made by a broad coalition in which the Muslim Shiite clergy played a predominant role. Within a few months of the collapse of the old regime the mullahs emerged as rulers more despotic and less restrained than the monarchy they had overthrown had ever been. In the process of consolidating their power the mullahs unleashed a reign of terror against

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all whom they saw as their political opponents, ideological rivals, or spiritual competitors.

The Bahá'ís had not taken part in the revolutionary upheaval. As a matter of religious principle they strictly abstained from all political activity and would not engage in violence which is strictly forbidden in the writings of their faith. Partly because of that they are now accused of having supported the old regime. However, the Islamic authorities did not need added justification for attacking the Bahá'ís. The President of the Revolutionary Court of Shiraz, Hujjatu'l-Islam Qazai, clearly revealed the underlying religious motivation of such attacks when he publicly stated early in 1983 that "the Muslim nation of Iran . . . will, God willing, fulfil the prayer of Noah (mentioned in the Koran):

"And Noah said, Lord, leave not a single family of Infidels on the Earth:

"For if thou leave them, they will beguile thy servants and will beget only sinners, infidels."

The Iranian nation [the judge continued] has determined to establish the Government of God on earth. Therefore, it cannot tolerate the perverted Bahá'ís who are instruments of Satan and followers of the devil and of the superpowers and their agents. . . . It is absolutely certain that in the Islamic Republic of Iran there is no place for Bahá'ís and Baháism. . . . I take this opportunity to advise all fair-minded and intelligent Bahá'ís to return to the bosom of highly esteemed Islam. . . . Before it is too late the Bahá'ís should recant Baháism, which is condemned by reason and logic. Otherwise, the day will soon come when the Islamic nation will deal with them in accordance with its religious obligations, as it has dealt with other hypocrites. . . ."

While such threats were being uttered by cabinet ministers, high-ranking judges, and other officials, a well-organized campaign of persecution was being conducted throughout the country. Its principal elements were:

1. The extermination of Bahá'í leader-

ship through the imprisonment and in many cases the execution of prominent Bahá'ís, particularly of members of Spiritual Assemblies—the elected governing bodies of the Bahá'í community.

2. The confiscation of all community property such as national and local centers, meeting halls, cemeteries, hospitals, historical buildings, monuments and shrines, libraries, archives, membership records, and administrative files.

3. Economic strangulation through dismissal of Bahá'ís from all government jobs, which in Iran include the National Oil Company, the airlines, the railways, much of industry, and all of education; boycott of Bahá'í-owned businesses, refusal to pay pensions to retired employees, and even the destruction of agricultural crops and trees owned by Bahá'ís.

4. The dismissal of Bahá'í children and youth from universities, high schools, and even from primary schools.

5. The outlawing of Bahá'í organizations—a particularly serious blow for a faith that has no clergy and in which elected Spiritual Assemblies perform all the functions normally entrusted to ministers or priests.

6. The psychological pressure inflicted on individuals through threats, insults, various forms of intimidation, and constant reiteration that they are members of a despised, subversive, and accursed group.

7. The application of torture as a means of compelling recantation of one's faith and conversion to Islam, or compelling confession of crimes that had never been committed. It is on the last item in the above catalogue of horrors that I intend to dwell in the time remaining to me this morning.

Individual cruelty, unauthorized maltreatment of prisoners, and random beatings inflicted by angry guards on inmates, even when they are common criminals convicted in fair trial, are intolerable occurrences for which the authorities must bear responsibility whether or not they knew or encouraged such behavior. The systematic application of torture by

the state is a far more grievous evil.

The ultimate stage of barbarity is reached when torture is used for purely ideological or religious purposes, when blood is shed, bodies are broken, nails and teeth pulled, ribs crushed, to make a prisoner give up a belief and adopt the views and values of his tormentors. When whips, hot irons, rods, knives, sticks, and chains are made the tools of persuasion in matters of thought and spirit, we witness the most revolting perversion, a betrayal of all humanity. When such instruments are used in the service of religion, the essence of that religion is dishonored by its own fanatical votaries.

THE AUTHORITIES of the Islamic Republic of Iran have used and are currently using torture against the Bahá'ís, systematically and relentlessly, for two purposes: 1. To force recantation of faith and conversion to Islam, 2. To extract false confessions of spying and other illegal activities allegedly performed by the Bahá'ís in the service of Zionism, imperialism, and the superpowers.

Though hundreds of Bahá'í have been subjected to physical and mental abuse by Revolutionary Guards, jailers, and even judges, I will speak of only a few cases which have been carefully verified.

One of the earliest instances of torture was reported from the city of Hamadan where, on June 14, 1981, bodies of seven executed members of the local Spiritual Assembly were released to their families for burial. Each body bore unmistakable signs of heavy torture. The victims were:

Dr. Firuz Naimi  
 Dr. Naser Vafai  
 Mr. Tarazollah Khozeyn  
 Mr. Hoseyn Motlaq  
 Mr. Soheyl Habibi  
 Mr. Sohrab Habibi  
 Mr. Hoseyn Khandel

Each had been given the opportunity to recant the Bahá'í Faith and to embrace Islam; each had refused, had been tortured, and had been put to death. The funeral of the heroes was attended by thousands of Bahá'ís and

Muslims wishing openly to express their grief for the innocent and highly respected men who had been so cruelly destroyed.

A year later, in June 1982, Mr. A.A.A., a bank employee, was arrested with five [sic] other Bahá'ís. An eyewitness has written that upon arrival in the infamous Evin prison the five Bahá'ís were brought before an interrogator, the notorious torturer Mesbah Tölui, who accused them of Zionism. An eyewitness writes:

A.A.A. objected. "I am not a Zionist," he said, "I am a Bahá'í"; upon which the interrogator slapped him in the face and struck him with hand and fist. . . . Then with two pointed rods, perhaps two pencils, the interrogator poked through the blindfold at A.A.A.'s eyes.

A few days later Mr. A.A.A. was again questioned:

. . . the interrogator demanded that A.A.A. recant the Bahá'í Faith and name the members of certain administrative bodies in the Bahá'í community. . . . When the interrogator met with resistance on the part of A.A.A., he took him to another room, accompanied by several guards, who proceeded to hurl him down against the hard surface of a bench, causing his forehead and jaws to be severely injured and to bleed. . . . Then with something like a wire his feet were tied. . . . his arms were pulled forward and tied. . . . He was now lying on his abdomen with hands and feet tied and the soles of his feet turned upward. Tölui ordered the guards to start lashing and to continue until A.A.A. recanted and gave the names of committee members or died. . . . The blows were aimed at the five toes of each foot so that each toe received its share of the total number of three hundred blows.

The next fully verified episode of torture occurred in March 1983 in Shiraz. Its victims were Mr. Yadollah Mahmudnezhad and Mrs. Tuba Zaerpur, who were arrested because of their prominence in the Shiraz Bahá'í community.

Mrs. Zaerpur, after fifty-five days in soli-

tary confinement, was returned to the general prison in early March. Before her execution on March 12, 1983, Mrs. Zaerpur told a fellow prisoner, who survived to tell the story, of her interrogation and trial.

As a result of repeated lashing Mrs. Zaerpur was painfully injured and had sore spots all over her body. . . . On the first day she was given fifty strokes of the whip, on the second day one-hundred strokes, and on the third day seventy-four strokes with a cable whip, some on her shoulders and some on her back. . . . The sore spots on her body were so painful that she could not sleep for many nights. Her toes were bleeding and the toenails fell off as a result of injuries. In spite of all the suffering, Mrs. Zaerpur never complained. She prayed all the time. She was the embodiment of spiritual strength and resignation to the will of God and a source of comfort to all of us.

In June 1983 five Bahá'ís were put to death in Shiraz after extensive torture. They were:

Dr. Bahram Afnan  
Mr. Jamshid Siavushi  
Mrs. Tahereh Siavūshi  
Mrs. Nosrat Yaldai  
Mr. Soheyl Hushmand

In each case the torturers tried to force recantation and conversion to Islam. Having failed in their purpose, they executed their victims.

In January 1984 Mr. Rahmatollah Hakimian died in jail in Kerman under suspicious circumstances. In March 1984 in Baft, province of Kerman, Mr. Nosratollah Ziai and in Tehran, Mr. Moshen Razavi died under equally suspicious circumstances. Evidence suggests strongly that all three had been tortured. The refusal of the authorities to release bodies for decent burial and interment in undisclosed graves almost always indicate that the victims had been tortured.

More recently the actions of Iranian authorities took an even more sinister turn. Whereas earlier the main purpose of torture was to compel conversion to Islam, during the past few weeks torture has been used pri-

marily to extract false confessions of serious crimes, primarily spying. Presumably, these confessions to trumped up charges would implicate other Bahá'ís and provide a plausible pretext for further executions of the members of Bahá'í leadership in Iran. The victims executed after torture on April 9, 1984, in Tehran were:

Mr. Rahim Rahimian  
Professor Kamran Lotfi  
Mr. Yadollah Saberian  
Mr. Ali-Mohammad Zamani

Reliable information indicates that of the 703 Bahá'ís known to be languishing in prisons, at least 11, 3 of them women, have suffered torture inflicted upon them in an attempt to force them to confess to crimes they had not committed. A few have broken down and confessed to false charges. Some of the confessions were videotaped for possible use on Iranian television. Presumably the spectacle of Bahá'ís confessing their crimes on camera would lend verisimilitude to the accusations for which the government has no evidence whatsoever. It should be noted that the Islamic authorities have confiscated and now hold all the records of the Bahá'í community comprising literally tens of thousands of documents. Not having found a single incriminating item, Iran's Islamic prosecutors and judges resorted to torture as a means of convicting Bahá'ís out of their own mouths. It would not be the first time the rulers of the Islamic Republic offered confessions extracted by torture as the only proof of guilt.

AMERICAN Bahá'ís are deeply concerned about the fate of over seven hundred of their coreligionists in Iran's prisons. We are particularly anxious about those who have been or will be tortured. Though we have the names of at least eleven Bahá'ís in Tehran and elsewhere who have been tortured, we cannot make them public for fear of retaliation against these prisoners and other innocent Bahá'ís though we are prepared to submit the information to the Committee in confidence.

The National Spiritual Assembly of the Bahá'ís of the United States does not wish to make specific recommendations to the Committee at present. However, we strongly condemn torture as one of the most heinous crimes against humanity. It can never be justified, no matter what the circumstances. That torture is used at all and that its practice is spreading testifies to the fragility of civilization and to the ease with which humanity reverts to barbarism. Alas, the twentieth century provides only too many examples of such atavistic behavior.

We, American Bahá'ís, feel that the United States cannot ignore torture no matter where or by whom it is practiced, for torture is a threat to our dearest convictions and an affront to our most deep-seated feelings. Acquiescence to torture is a compromise with evil unworthy of this nation.

We hope that the government of the United States together with the governments of all nations that profess love of humanity will seek, through the United Nations and through all other legitimate means, the total eradication of torture from the earth.



## BAHÁ'ÍS TORTURED IN IRAN

### BAHÁ'ÍS EXECUTED AFTER BEING TORTURED:

Mrs. Tuba Zaerpur	Shiraz	March 12, 1983
Mr. Yadollah Mahmudnezhad	Shiraz	March 12, 1983
Dr. Bahram Afnan	Shiraz	June 16, 1983
Mr. Jamshid Siavushi	Shiraz	June 16, 1983
Mrs. Tahereh Siavushi	Shiraz	June 18, 1983
Mrs. Nosrat Yaldai	Shiraz	June 18, 1983
Mr. Soheyl Hushmand	Shiraz	June 28, 1983
Mr. Rahim Rahimian	Gowhardasht/Evin	April 9, 1984
Mr. Kamran Lotfi	Gowhardasht/Evin	April 9, 1984
Mr. Yadollah Saberian	Gowhardasht/Evin	April 9, 1984
Mr. Ali-Mohammad Zamani	Gowhardasht/Evin	May 15, 1984
Mr. Jahangir Hedayati	Gowhardasht/Evin	May 15, 1984

### BAHÁ'ÍS WHO DIED IN PRISON UNDER SUSPICIOUS CIRCUMSTANCES:

Mr. Rahmatollah Hakiman	Kerman	January 1984
Mr. Mohsen Razavi	Tehran	March 13, 1984
Mr. Nosratollah Ziai	Baft, Kerman	March 1984

### EXECUTED BAHÁ'ÍS WHOSE BODIES BORE EVIDENCE OF HEAVY TORTURE:

Dr. Firuz Naimi	Hamadan	June 14, 1981
Dr. Naser Vafai	Hamadan	June 14, 1981
Mr. Tarazollah Khozeyn	Hamadan	June 14, 1981
Mr. Hoseyn Motlaq	Hamadan	June 14, 1981
Mr. Soheyl Habibi	Hamadan	June 14, 1981
Mr. Sohrab Habibi	Hamadan	June 14, 1981
Mr. Hoseyn Khandel	Hamadan	June 14, 1981

(Many executed Bahá'ís whose names are not included here were buried by the authorities without notification to relatives or friends. It is presumed the reason was to cover evidence of torture.)

Mr. Serakhs  
(Tortured to such an extent that he lost his eyesight.)

Mr. Tehran  
(Arrested in the hospital after surgery; mistreated on the way to the prison.)

### BAHÁ'ÍS NOW IMPRISONED WHO ARE KNOWN TO HAVE BEEN TORTURED:

Mr.	Qasr/Evin
Mr.	Gowhardasht/Evin
Mrs.	Gowhardasht/Evin
Mr.	Gowhardasht/Evin
Mr.	Gowhardasht/Evin
Mr.	Gowhardasht/Evin
Mr.	Gowhardasht/Evin
Mr.	Gowhardasht/Evin
Mr.	Esfahan
Mr.	Esfahan

# Torture: The United States Response

TESTIMONY BY MICHAEL H. POSNER

MR. CHAIRMAN, thank you for inviting me to testify. My name is Michael Posner. I am the Executive Director of the Lawyers Committee for International Human Rights. Since 1978 the Lawyers Committee has served as a public interest law center that works to develop international human rights and refugee law and legal procedures.

Mr. Chairman, we welcome your initiative in convening these hearings on the important and deeply troubling subject of torture. In the course of these hearings you have heard from several witnesses who have described practices of numerous governments throughout the world that use torture as a part of a broader effort to suppress dissent. While virtually every nation now condemns torture in principle, in practice at least one-third of the world's governments use, tolerate, or condone torture or extreme mistreatment of prisoners.

In its testimony before this committee today Amnesty International has presented a twelve-point program for the prevention of torture. Several aspects of this program provide a useful starting point for specific action that the United States government, and Congress in particular, can undertake to help deter future acts of torture.

One of Amnesty International's twelve points is that "those responsible for torture should be brought to justice." Amnesty proposes that this principle should apply wherever the torturer happens to be, regardless of the place of torture or the nationality of its victim. In short, Amnesty International urges that "there should be no 'safe haven' for tor-

turers." A separate but related component of Amnesty's program is that "victims of torture and their dependents should be entitled to obtain financial compensation."

These principles suggest two potential legislative initiatives which I believe warrant serious consideration. First, Congress should undertake legislative action to clarify the right of torture victims to seek redress in U.S. courts, regardless of their nationality or where or by whom they were tortured. Second, fully implementing the principle that there should be no "safe haven" for torturers, Congress should enact legislation that would exclude from entry into the U.S. any person who, acting under the color of state authority, is found to have been directly involved in the practice of torture.

### *The Filartiga Case: The Need for Legislation Clarifying the Right of All Torture Victims to Seek Redress in U.S. Courts*

THE FIRST initiative, affording effective legal redress for torture victims, can be accomplished simply by clarifying and extending the scope of an existing law, the Alien Tort Claims Act, which is codified at 28 U.S.C. § 1350. That law establishes federal court jurisdiction over suits brought by aliens for a tort "committed in violation of the law of nations or a treaty of the United States." Enacted in 1789, this law has been invoked in only a handful of cases in its almost two hundred year history.

In 1980 a federal court of appeals in New York interpreted this statute to allow aliens

to sue a foreign official for torture committed outside the United States. The landmark case—*Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980)—involved the brutal torture and murder of a young man, Joelito Filartiga, in Paraguay in 1976. Relying on section 1350, in 1979 the victim's family, represented by the Center for Constitutional Rights, brought a lawsuit against the Paraguayan security force officer who had tortured Mr. Filartiga to death. By chance, the torturer, Americo Norberto Pena-Irala, was visiting New York, where he was served with a summons and civil complaint in a tort action seeking monetary damage.

In the much-heralded *Filartiga* opinion, the Second Circuit Court of Appeals found that section 1350 enables U.S. courts to review a claim for damages by torture victims or their families, even if the act of torture took place outside the United States. In reaching this decision, the court found that "deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties. 630 F.2d at 878."

This ruling was hardly surprising. As the *Filartiga* court itself noted, "[t]here are few, if any, issues in international law today on which opinion seems to be so united as limitations on a state's power to torture persons held in custody." 630 F.2d at 881. Reinforcing this principle, a near-final draft Restatement of Foreign Relations Law prepared by the American Law Institute explicitly recognizes that torture as state policy is a violation of customary international law. American Law Institute, Restatement of the Foreign Relations Law of the United States (Revised), Tent. Draft No. 3, § 702, Reporters' Notes, No. 5 (Mar. 15, 1982).

In short, the *Filartiga* decision simply recognizes that, as a principle of international law, the right to be free from torture is now a matter of universal concern. Building on this principle, the court found that torture is an appropriate subject for U.S. courts to consider, regardless of where it took place. In the

court's words, "for purposes of civil liability the torturer has become—like the pirate and slave trader before him—*hostis humani generis*, an enemy of all mankind. 630 F.2d at 890."

This principle reflects more than a universal moral aversion to torturers. It acknowledges the fact that all nations must take responsibility to curb torture, since the victim is not likely to obtain redress in a country that officially sanctions torture.

In the period since *Filartiga* was decided, its practical wisdom and its legal soundness have been widely noted both in the United States and elsewhere. At the same time there has been a certain amount of confusion regarding the intended scope of section 1350, particularly with respect to cases of torture occurring outside the United States. In the recent case of *Tel-Oren v. Libyan Arab Republic*, \_\_\_ F.2d \_\_\_ (D.C. Cir. 1984), the District of Columbia Circuit dismissed an action brought under sections 1350 and 1331 against several defendants accused of an act of terrorism. In doing so, the three-judge panel announced three widely differing views of the Alien Tort Claims Act. While the *Tel-Oren* case raises a number of complex legal issues that we need not address today, the sharp differences among the three judges who considered the case make clear the need for congressional clarification of the law. Significantly, each of the judges specifically called for clarification, and one judge indicated that lack of congressional guidance was key to his reluctance to follow the *Filartiga* holding.

While *Tel-Oren* points up the need for general clarification of section 1350's application to torture cases, it also highlights one unambiguous anomaly in the law that Congress can and should rectify. 28 U.S.C. § 1350 enables aliens but not U.S. citizens to sue in federal courts in tort for violations of the law of nations, including torture. While it may be possible that citizens could sue under another more general jurisdictional statute—28 U.S.C. § 1331—neither the D.C. District Court nor its Court of Appeals was willing to say so.



It makes little sense for U.S. law to extend a significant protection against torture to aliens but not to our own citizens. Accordingly, Congress should consider amending 28 U.S.C. § 1350 to allow lawsuits brought by U.S. citizens as well as aliens. This can be done simply by deleting the words "by an alien" from section 1350.

In the course of making such an amendment, Congress should also make it clear that section 1350 authorizes civil actions based on torture, regardless of where the violation occurred. In this way it could help to resolve some of the legal issues posed by *Filaritiga* and *Tel-Oren* and encourage reliance on this provision in future cases.

To date, few lawsuits have been brought under section 1350. It is likely that even if the changes I propose were made, section 1350 would be invoked rarely. The reasons are obvious. Torturers do not often present themselves to their victims while visiting the United States and the chances of collecting a money judgment are slim. Nonetheless, the practical and symbolic impact of the *Filaritiga* decision cannot be understated. In that case we as a nation took a position that significantly enhances the rights of aliens who have been brutally tortured. Torturers who may wish to visit or live in the United States now understand that they also may be subject to civil action and may risk a judgment for money damages based on their violations of international human rights law. Hopefully other nations will take note of this development in our law and extend it to their own legal systems.

To help clarify and further institutionalize this process, what I am proposing is simply that Congress strengthen the Second Circuit's interpretation of U.S. law by endorsing it. At the same time Congress should extend the legal protection afforded by section 1350 to United States citizens. The Lawyers Committee is eager to work with this Committee and the Judiciary Committees in both Houses to help shape legislation that would address these concerns.

### *Legislation Barring Torturers from Entering the United States*

A SECOND area warranting congressional action involves the manner in which our immigration laws treat torturers who seek to enter our country. Since the 1880s we have had immigration laws that exclude aliens who are deemed undesirable. There are currently thirty-three exclusion categories, including some categories that many people find unwarranted and unduly restrictive.

In recent months, for example, there has been increasing criticism of the so-called "ideological exclusion" provisions of the Immigration and Nationality Act (Sections 212(a)(27), (28) and (29)). Several months ago Congressman Barney Frank introduced legislation that would substantially amend the most controversial aspects of these provisions. The Lawyers Committee, along with the American Civil Liberties Union and others, support these legislative efforts to eliminate laws that serve little purpose and have the undesirable effect of restricting free association and free expression of ideas.

While we believe that these and a number of the other exclusion provisions are overbroad, we find it troubling that there is no specific provision in current law that prevents torturers from entering our country. Current immigration laws do exclude persons convicted of crimes of moral turpitude (Section 212(a)(9)), as well as those who pose a threat to national security (Section 212(a)(29)) or whose entry would prejudice the national interest (Section 212(a)(27)). While it is possible that some torturers would be excluded under these provisions, many would not.

It is highly unlikely that persons engaged in systematic torture would be excludable on the basis that they were convicted by their government of a crime of moral turpitude. In most countries where torture is practiced systematically, those who carry out these policies act under the color of government authority. Additionally, while some torturers may be denied entry under the so-called ideological exclusion provisions (Sections 212(a)(27) and 212(a)(29)), these questionable statutes are

clearly not intended, nor have they in practice been used, to exclude torturers. In any case, they do not compel the exclusion of torturers.

To address this issue Congress should consider adopting an amendment to the Immigration and Nationality Act that would specifically exclude those who directly engage in systematic physical torture under the color of law. Such a law would serve the interests of United States citizens by keeping this undesirable class of persons out of our country. At the same time it would provide a signal to the rest of the world that the United States will no longer be a "safe haven" for torturers.

In making this proposal I am well aware of the potential for abuse in its application. The Lawyers Committee is routinely involved in the representation of aliens, particularly those seeking asylum in this country. Accordingly, we know that abuses of discretion can, and often do, occur in the current application of U.S. immigration laws. The Lawyers Committee has been and will continue to be critical of such abuses.

In order to protect against improper application of this law, we suggest that it should be carefully limited to those who personally carried out acts of physical torture. To minimize proof problems, in making a decision to exclude an alien on this basis, U.S. officials should rely heavily on reports by recognized human rights organizations such as Amnesty International and reports by intergovernmental organizations. Wherever possible, a decision to exclude an alien should not be based on a single accusation by an individual who claims that he or she was tortured. In other words the law should be written in a manner that will ensure that no one will be excluded on the basis of a personal vendetta.

A second restriction that should be incorporated into this provision is that the act of

torture must be carried out under the color of law. This would give U.S. officials the authority to exclude security force and military officers from other countries who carry out torture as part of a governmental policy and who therefore are not subject to criminal prosecution. Under this limitation those who carry out torture pursuant to higher orders would not be able to cite those orders as a defense.

Finally, we believe generally that decisions regarding the exclusion of aliens should be reviewable judicially. Recognizing that this raises a much broader series of issues that go beyond the scope of these hearings, I will not address those issues today. I note, however, that these issues have been the subject of a comprehensive report prepared in March 1984 by the Immigration and Nationality Law Committee of the Association of the Bar of the City of New York, entitled "Visa Denials on Ideological Grounds: An Update." Again the Lawyers Committee would welcome the opportunity to work with appropriate congressional committees to help conceptualize an exclusion category that would exclude torturers but at the same time protect the rights of those legitimately seeking entry to our country.

Mr. Chairman, the point of my testimony is that torture should not be viewed as an abstract problem that occurs elsewhere, upon which we can have little effect. In fact, there are several very practical measures that this committee and the Congress can undertake to respond to the horrendous practices of torture occurring in the world today. I believe that this country can and should become a model for other nations, both by extending practical remedies to all torture victims and by excluding torturers from our shores.

