

Posted 4/28/13

A FEARFUL NATION

Is extremism in the defense of liberty a virtue?

By Julius (Jay) Wachtel. On the morning after Boston, with the nation reeling from the violent deaths of three innocent persons and the grievous wounding of scores of others, a prestigious nonpartisan committee (its co-chairs were former Congressmen - one a Democrat, the other Republican) issued a thick [report](#) documenting the torture and mistreatment of terrorism suspects, and attributing ultimate responsibility to “the nation’s most senior officials.” Meaning, of course, two Presidents.

It was a lousy time for a human rights lesson. As grisly images of blood and severed limbs shocked the nation, members of Congress were already demanding that the surviving bomber, Dzhokhar Tsarnaev, a naturalized American citizen arrested on American soil, be turned over to the military as an enemy combatant. Although that didn’t happen, the FBI used the public safety exception to justify questioning Tsarnaev for hours without advising him of his rights or providing a lawyer. Then, when a magistrate finally arrived, our elected guardians of the Constitution bitterly criticized Federal agents for obligingly stepping out of the way.

True enough, delaying *Miranda* is not per se illegal. Not reading someone their rights doesn’t invalidate an arrest - it merely makes anything they say inadmissible in court. In any event, Tsarnaev is no longer cooperating. Once the judge advised him that he was entitled to an attorney and didn’t have to talk the accused terrorist went mum. As one might expect, that instantly drove pundits to accuse the Feds of bumbling the case.

Fears of terrorism have spurred a host of unpalatable practices. Remember Guantanamo? A hunger strike at America’s infamous penal colony has spread to more than half the facility’s 166 prisoners, none yet adjudicated. Authorities are responding with a brutal force-feeding campaign. (We say “brutal” because that seems the most accurate way to describe the shoving of tubes up nostrils without consent. It’s led [critics to demand](#) that participating physicians be stripped of their State licenses.)

It seems inevitable that the “War on Terror” will diminish the craft of policing. Consider the [FBI stings](#) that, in an insidious mimicry of legitimate undercover work, have lured oddballs, wannabes and big talkers into accepting bombs from strangers. Although the Supremes have yet to weigh in, lower courts have held that the investigative techniques, however deplorable, didn’t amount to illegal entrapment. But in most of these cases it seems questionable that, absent the FBI’s involvement, any crimes would have really been committed.

Horrific episodes such as 9/11, Oklahoma City and now, the Boston bombing make it difficult to discourage the government from seeking shortcuts. So if appeals to conscience don’t work, the only thing left is to point out that neither do extralegal measures. Does torture generate useful leads? No, concluded the committee that investigated our treatment of terrorism suspects. All the abuse accomplished was to diminish us in the eyes of the world, and probably our own.

Most cops want to do the right thing. Indeed, by all accounts the FBI and local police did a splendid job collecting evidence in Boston. Unfortunately, their efforts stand to be tarnished by Tsarnaev's protracted interview outside *Miranda*, which went on far longer than the few moments allowed by the Supreme Court in *Quarles*. And what was gained by this? Nothing. Dzhokhar Tsarnaev reportedly told the FBI that no one besides himself and his late brother Tamerlan were involved.

In the end, whether or not he was being truthful won't be resolved through beatings or torture. A lot of good police work will be needed to figure out if the brothers had help. Turning to extralegal measures can only taint the findings. It's a lesson that some cops and politicians apparently have yet to learn.