

FRANK GAFFNEY'S RESPONSES TO QUESTIONS FOR THE RECORD BY SEN. KLOBUCHAR

1) Do you believe the United States currently has a clear policy for handling foreign terror detainees?

The only really clear aspect of U.S. policy towards foreign terror detainees seems to be that we will not permit them to be brought to Guantanamo Bay. This is deplorable insofar as it has several undesirable repercussions:

Its practical effect is to incentivize our armed forces and intelligence personnel to kill, rather than capture, jihadists. Of course, doing so precludes the opportunity to debrief or interrogate them, foreclosing a source of potentially decisive information about the enemy's capabilities and intentions.

Under existing U.S. policy, if, for whatever reason, such terrorists *are* captured, we face two unsavory prospects: a) confining them in foreign detention centers over which we may have little or no control – and from which they may well be released, with or without the host country's assent; or b) bringing them into the United States, where they may benefit from constitutional rights and judicial proceedings that could severely restrict or actually preclude interrogation, and may result in their being freed, possibly inside the United States.

2) What key elements would you focus on in crafting detainee policy for foreign terror suspects?

I would respectfully suggest that we need a clear policy towards foreign terror detainees that places a premium, where practicable, on capturing – rather than killing – them and incarcerating them in a place with the following characteristics. It must be: secure and totally within U.S. control; sited and operated in such a way as to minimize risk to our service personnel and American communities; and located so as to minimize the possibility that federal judges will become involved in the disposition and treatment of such detainees, and be tempted improperly to apply a law enforcement paradigm with regard to such questions.

Of course, Guantanamo Bay has all of these attributes. I am unaware of another facility anywhere in the world of which that can be said.