

Testimony of
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TESTIMONY OF
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HEARING ON
"GETTING TO THE TRUTH THROUGH A NONPARTISAN COMMISSION OF
INQUIRY"
BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
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Introduction

Chairman Leahy, Ranking Member Specter, and members of the committee, it is my pleasure to appear before you today, and I thank you for inviting me to share my views on the establishment of a nonpartisan commission of inquiry.

My name is Vice Admiral Lee Gunn, and I am the President of the Institute for Public Research at CNA in Alexandria, Virginia. I also am privileged to serve as President of the American Security Project, a bi-partisan, non-profit enterprise dedicated to engaging the American people in a broader and deeper conversation about the complex nature of national security policy. Before taking on these roles, I served in the United States Navy for 35 years. I commanded a Frigate, a Destroyer Squadron, and the Third Fleet Amphibious Force. I was a line officer, and for the last three years of my Navy career, I was the Inspector General of the Department of the Navy.

For the past several years, I have been an active member of a coalition of retired generals and admirals who speak out against torture. Our group, now numbering 49 members, joined together in 2004 with the assistance of Human Rights First to urge the United States government to put a stop to abusive interrogation practices. Though we are members of both major parties and independents, and we represent a wide variety of military backgrounds, I can safely say that we are unanimous in our view that the Bush Administration's decisions to sanction the use of torture and other cruel techniques came at an enormous cost to our nation--to our values, our laws, and our security.

During the 2008 presidential campaign, we made it our mission to talk to presidential candidates and the public about our views on torture, secret prisons and extraordinary renditions. Our group traveled to New Hampshire and Iowa for the presidential primaries, where we had the privilege of meeting individually with eight presidential candidates, from both parties, including then-Senator Barack Obama. We attended receptions hosted by Human Rights First at both the

Democratic and Republican National Conventions where we talked with members of Congress and others about our views on detainee treatment. And we stood behind President Barack Obama on January 22, 2009--a historic day--when he issued a series of executive orders, closing secret CIA prisons, directing the closure of Guantanamo and prohibiting the use of torture in pursuit of intelligence.

You have asked me to focus today on the establishment of a non-partisan commission to examine U.S. counterterrorism efforts since September 11, 2001. I believe that such a commission is critical both to restoring the moral authority of the United States as a leader for human rights and to devising a more effective counterterrorism strategy for the future that adheres to United States and international law.

Uncovering Lessons Learned

President Obama's executive orders on interrogation represent an enormous victory in the struggle to enforce a single standard of humane treatment. But they are just a first step. Ending abusive detention and interrogation policies not only requires dismantling the legal framework that sanctions torture and cruel treatment; it also requires building a more sustainable national security policy going forward. We cannot improve our national security policy unless we understand and learn from our past mistakes.

In the future, we will continue to send our soldiers, sailors, airmen and Marines into battle, subject them to extraordinarily stressful situations, and put them in harm's way. The Commander in Chief owes men and women in uniform the clearest possible guidance on detainee treatment. From the point of capture through the entire process of detainee care, movement, confinement, and interrogation, dealing with detainees is stressful and demanding for our military men and women. The orders of the Commander in Chief must be unambiguous and serve as the solid foundation for the behavior of Americans, wherever they serve on behalf of the Country, when their duties include the treatment and interrogation of detainees. It is the responsibility of the Commander in Chief and of the Congress, in my view, to ensure and demand that the behavior of Americans toward those who are in our custody complies with the Geneva Conventions and with the highest standards dictated by international conventions on detainee treatment.

Preparing to protect our service members demands a thorough, comprehensive and sober examination of the policies and practices that led us astray in the first place. Such an examination would help inoculate our country against committing future abuses; the examination also would go a long way toward enabling us to demonstrate to the world that the United States is committed again to the humane treatment of prisoners in its care.

Our military leaders' coalition is not of one mind when it comes to criminal accountability. I think some support criminal prosecutions; others do not. But we all believe that we cannot move forward without looking back and examining how our country got so far off track.

I believe this "look back" could be accomplished through the establishment of a nonpartisan commission of inquiry. A number of different models for such a commission have been proposed. But whatever model is ultimately employed, I believe a commission should have three principle areas of focus: (1) an in-depth study of the CIA's detention and interrogation program; (2) a thorough examination of the legal justifications used to rationalize policies and practices of

abuse; and (3) most importantly, a cost/benefit analysis of the use of abusive techniques. The commission should be instructed to conduct its proceedings as publicly as possible consistent with legitimate national security interests. Ultimately, it should be tasked with compiling a public report that uncovers lessons learned and makes recommendations for avoiding future abuse.

Areas of Focus

Through extensive revelations of documents and multiple hearings, Congress has already shed some light on the extent of the abuse of detainees in U.S. custody. But there is much the American people still do not know about the parameters of the CIA's detention and interrogation program and how torture and abuse came to be approved at the highest levels of government. A commission of inquiry should undertake an in-depth study of the CIA's program, how it was structured, who was held in secret CIA custody overseas, the reasons behind each detention, and the dates and circumstances of all releases, transfers or deaths.

Another area of focus should be the secret legal opinions used to justify abuse. The Bush Administration apparently employed an array of constitutional and legal justifications to rationalize its policies of official cruelty, renditions to torture, and secret detentions and to mask the extent to which those policies violated fundamental human rights norms and the rule of law. A full accounting of past abuses will require that these relevant legal opinions be made public. Additionally, the public and Congress must have a complete understanding of the reasoning used to circumvent humane treatment standards so that these standards can be fortified in the future. Arriving at such an understanding will require a comprehensive study of the legal opinions, memoranda and documents which authorized or provided legal clearance for secret detention, torture and other abusive techniques.

And finally the Commission should assess the strategic gains and losses of employing abusive detention and interrogation techniques. Senior Bush administration officials, including former Vice President Dick Cheney, continue to insist that the use of "enhanced" interrogation techniques such as waterboarding saved American lives. But those assertions are never accompanied by hard evidence or actual facts. By contrast, many experienced interrogators have shown that abusive interrogation practices actually impede efforts to elicit actionable intelligence, and that non-coercive, rapport-building techniques have yielded some of the most accurate and complete information. Importantly, information obtained through non-coercive techniques is admissible in U.S. courts of law where cases could be proven and killers and thugs brought to justice.

An independent commission could undertake the task of examining the facts and, in so doing, weigh the true effectiveness of the Bush administration's torture tactics. Did torture actually uncover actionable intelligence? Did it interrupt plans? And did it actually save lives? If so, what were the countervailing costs to our national security?

Did the use of torture spark terrorist recruitment, increase danger to our troops, and damage U.S. leadership and prestige? And did these costs outweigh the benefits? Might actionable intelligence have also been obtained by the non-coercive methods experienced intelligence interrogators experts recommend and employ? What strategic security gains could be reaped from shifting to a policy of complete, consistent and transparent compliance with human rights norms?

A Military Tradition of Inquiry

Should you decide to undertake the inquiry you are discussing, I'm sure that you will spend substantial time considering the form it will take. My sense is that your decisions on format, immunity, and subpoenas will be driven, to a degree, by where you think the inquiry will lead and what you want to do with the information you develop. Among the many options available, let me offer two approaches used by the military for you to consider as examples of how factual inquiries, distinct from criminal investigations, work to prevent the repetition of past mistakes. One approach to consider is what the services variously call After Action Reviews (AARs) or Hot Wash-ups which are intended solely to answer the question "What happened?" Commanders in the field and at sea use these reviews to understand the outcomes of operations and exercises, to see what worked well and what didn't, and how reinforcing things that (and people who) worked well and improving those that didn't can make the fighting force better. Obviously, AARs are not intended to uncover malfeasance or criminal behavior. The focus is on understanding and improvement only.

My personal recommendation is that understanding and improvement be the main theme in anything you do, whether or not criminal investigations for bad behavior are pursued. The second model I want to offer is that of the aviation safety inquiries that each of our services conducts on the occasion of a major aviation accident or incident. As I know you are aware, the Services conduct investigations under the Uniform Code of Military Justice (UCMJ) that are for the purpose of assessing blame and determining culpability. I directed some of those as the Department of the Navy Inspector General. The aviation safety inquiries, on the other hand, are perhaps the purist form of proceedings intended only to answer the "what happened" question.

Briefly, here's how they work. A board is established to examine evidence and take testimony. The board can compel testimony and demand access to all evidence. The proceedings are fire-walled off from whatever UCMJ investigation may also be conducted. Everyone involved in the investigation, including witnesses, is expected to do everything possible to help; it's well understood that lives depend on it. The overriding concern of the safety board is to understand what happened: where training, or personnel performance, or leadership, or procedures, or support equipment, or maintenance, or aircraft design or performance broke down, and get corrective measures underway quickly.

I believe that these investigations get at the facts. Decades of candor, critical selfexamination, and substantive, rapid changes by the services' aviation communities have created the finest and safest record of complex military aviation operations the world has ever seen. The effectiveness of such inquiries demonstrates how an objective, comprehensive, independent examination of the facts can serve to inform improved policies going forward. It is my opinion that a similar inquiry into the authorization of torture and other cruelty over the past seven years will help fortify our nation's new commitment to a single standard of humane treatment for all prisoners in U.S. custody.

Conclusion

The Bush Administration's misguided embrace of torture, secret prisons and renditions to torture came at an enormous cost to our American values, our laws, and our

counterterrorism efforts. Repairing our reputation as a nation committed to human rights and building a more sustainable framework for national security policy going forward requires a comprehensive examination of the policies and practices that sanctioned torture and abuse.

This Congress and the new Administration have a window of opportunity to conduct an examination that signals to the American people and to the world that the policies of the last seven years were an aberration and that the United States is invested in creating an effective, long-term strategy for counterterrorism and intelligence gathering which adheres to American principles and values and to United States and international law.

The stakes are incredibly high. In the balance hangs the ability of the United States to maintain the integrity of our counterterrorism policy; improve intelligence cooperation with allies; support the human intelligence community in employing proven, effective methods for gathering actionable information; and re-establish the moral authority necessary to restore the United States as a world leader in upholding human rights.

Thank you for your attention to these important matters.