

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
March 4, 2009

Getting to the Truth Through a Nonpartisan Commission of Inquiry
Hearing before the Senate Judiciary Committee
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Mr. Chairman, I commend you for having this hearing and for your proposal to establish an independent commission of inquiry.

Long before the election, it was clear to me that one of the most important tasks for the new President was going to be restoring the rule of law in this country. I chaired a hearing in September on this topic. Nearly forty law professors, historians, advocates, and experts testified or submitted testimony. The record of that hearing is the most detailed collection of analysis and recommendations on what needs to be done to reverse the most damaging decisions and actions of the last Administration.

The Obama Administration has already taken several enormously important steps in the right direction, among them ordering the closing of the Guantanamo Bay detention center in a year, requiring adherence to the Army Field Manual's guidance on interrogation techniques, reinstating the presumption in favor of disclosure under the Freedom of Information Act, ending the very possibly illegal detention of Ali al Marri by indicting him in a criminal court, and, just this week, releasing nine Office of Legal Counsel memos that the Bush Administration had insisted in withholding from Congress and the American people. I am pleased and gratified that President Obama and his advisors recognized the need to take these actions, and take them quickly. It gives me great hope for the future.

A crucial part of restoring the rule of law, in addition, is a detailed accounting of exactly what happened in the last eight years and how the outgoing administration came to reject or ignore so many of the principles on which this nation was founded. I regularly hear from my constituents back home about this, and they are absolutely right. There can be no doubt that that we must fully understand the mistakes of the past in order to learn from them, address them, and prevent them from recurring.

At the same time, there should not be a focus on retribution or pay-back, and such an effort should not be used for partisan purposes. That is why your proposal, Mr. Chairman, is so important. Your proposal is aimed at finding the truth, not settling scores.

On the question of immunity, I think we should tread carefully. There are cases that may require prosecution, and I wouldn't want a commission of inquiry to preclude that. Those who clearly

violated the law and can be prosecuted should be prosecuted. On the other hand, the country will really benefit from having as complete a telling of this story as possible, so the ability of the commission to seek immunity for lower level participants certainly needs to be considered. How to do this is one of the complex questions that I hope can be explored in this hearing.

I do support the idea of an independent fact-finding commission, as opposed to relying solely on our regular committee structure. I'm on two of the relevant committees, and the members of Congress who serve on them are very hard working. There is much important investigative work that can be done in committee, but there are also significant time, staffing and jurisdictional constraints. I think a truth commission is the best way to get the comprehensive story out to the American people and the world.

One final point: while a commission of inquiry is the best way to get the facts out, Congress, the Justice Department, and the public should decide what to do with those facts. So I would be reluctant to task the commission with coming up with detailed recommendations for action. If we focus the commission on gathering the facts, there may be less wrangling about who is going to be on it, which could move the process forward a lot more quickly. I would rather see investigative professionals on this commission than policymakers and partisans.

I am looking forward to the testimony of the witnesses today on how exactly this endeavor should proceed. And again, I thank you, Mr. Chairman, for putting this issue squarely before the Congress and the public. It is extremely important.