

Testimony of

# Philippe Sands

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INTRODUCTORY STATEMENT of

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BARRISTER, MATRIX CHAMBERS

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

Hearing on: Coercive Interrogation Techniques: Do They Work,  
Are they Reliable, And What Did the FBI Know About Them

JUNE 10, 2008, 10 a.m.

Chairman, Honourable Members of the Committee, it is my privilege and honour to appear before this Committee. As Professor of Law at the University of London, and as a practising member of the English Bar, it may be said that I appear before you as something of an outsider. I hope you will bear in mind that I am from a country that is friend and ally, that shares this country's abiding respect for the rule of law, and that has had its own long, painful experiences dealing with the real threat of terror. I have come to know America well over more than two decades, since I was a visiting scholar at Harvard Law School, then teaching at Boston College Law School and New York University Law School. I am married to an American. I am proud of the fact that my three children share American and British nationality.

A few weeks ago I published an article in Vanity Fair, *The Green Light* (attached) and my new book *Torture Team: the Rumsfeld Memo and the Betrayal of American Values*. These tell an unhappy story: the circumstances in which the US military was allowed to abandon President Lincoln's famous disposition of 1863, that "military necessity does not admit of cruelty". This Committee will be familiar with those events: it was a focus of the judicial confirmation hearings for William J Haynes II in July 2006. You will recall that on December 2nd, 2002, on the recommendation of Mr Haynes, Secretary Rumsfeld authorised the use of new, aggressive techniques of interrogation on Guantanamo Detainee 063. It is now a famous memo, the one in which he wrote: "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

My book tells the story of that memo. The circumstances in which it came to be written, relied on and rescinded, and how the techniques migrated. It is a snapshot of the subject of this hearing. To write the book I journeyed around America, meeting with many of the people who were directly involved. I met a great number, and was treated with a respect and hospitality for which I remain very grateful. Over hundreds of hours I conversed or debated with, amongst others, the combatant commander and his lawyer at Guantanamo (Major General Dunlavey and Lieutenant Colonel Beaver); the Commander of US Southern Command (General Hill); the Chairman of the Joint Chiefs of Staff (General Myers); the Undersecretary of Defense (Mr Feith); the General Counsel of the Navy (Mr Mora); and the Deputy Assistant Attorney General at DoJ (Mr Yoo). I met twice with Mr Haynes who, along with the Vice President's Counsel, Mr Addington, took a central role on the key decisions. I also met twice with Spike Bowman, an FBI Deputy General Counsel who received complaints from Guantanamo and took them to the DoD. From these and many other exchanges I pieced together what I believe to be a truer account than that which has been presented by the Administration. In particular, I learnt that in the case on which I focused - a snapshot - the aggressive techniques of interrogation selected for use on Detainee 063 came from the top down, not from the bottom up; that they did not produce reliable information, or indeed any meaningful intelligence; and that they were opposed by the FBI.

My account is that of the Report recently published by the Inspector General at the DOJ, although I go further on some points of detail. I learnt that the concerns of FBI personnel at Guantanamo were communicated directly to Mr Haynes' office, in telephone conversations in November and December 2002 between Mr Bowman and, first, Mr Bob Dietz; second, Mr Dan Dell'Orto (who was then Mr Haynes' Deputy and is now his Acting successor); and third, Mr Haynes himself. Mr Bowman told me it was "a very short conversation, he did not want to talk about it all, he just stiff-armed me". You can find a full account at pages 136-146 of the British edition of my book (pp. 112-121 of the US edition, attached). My conclusion, taking into account my conversations with Mr Haynes, is that he was able to adopt that approach because by then - contrary to the impression he sought to create when he appeared before this Committee - he had knowledge of the contents of the DOJ legal memos written by Jay Bybee and John Yoo on 1 August 2002.

On the basis of these conversations I believe that the Administration has spun a false narrative. It claims that the impetus for the new interrogation techniques came from the bottom-up. That is not true: the abuse was a result of pressures driven from the highest levels of government. It claims the so-called Torture Memo of 1 August 2002 had no connection with policies adopted by the Administration: that too is false, as the memo provided cover for Mr Haynes. It claims that in its actions it simply followed the law. To the contrary, the Administration consciously sought legal advice to set aside international constraints on detainee interrogations, without apparently turning its mind to the consequences of its actions. In this regard, the position adopted by the Pentagon's head of policy at the time, Mr Feith, appears most striking.

As result, Common Article 3 of the Geneva Conventions was violated, along with provisions of the 1984 Convention prohibiting Torture. The spectre of war crimes was raised by US Supreme Court Justice Anthony Kennedy, in the 2006 judgment in *Hamdan v Rumsfeld*. That judgment corrected the illegality of President Bush's determination that none of the detainees at Guantanamo had any rights under Geneva.

Chairman, Honourable Members of the Committee, this is an unhappy story. It points to the early and direct involvement of those at the highest levels of government, often through their lawyers. When he appeared before this Committee in July 2006, Mr Haynes did not share with you that his involvement (and that of Secretary Rumsfeld) began well before that stated in the official version. He did not tell you that in September 2002 he had visited Guantanamo, together with Mr Gonzales and Mr Addington, and discussed interrogations. This is a story not only of abuse and crime opposed by the FBI, but also of cover-up.

Chairman, for what purpose was this done? The Administration claims that coercive interrogation of Detainee 063 produced meaningful information. That is not what I was told by those I interviewed. The coercive interrogations were illegal, did not work, have undermined moral authority, have migrated, have served as a recruiting tool for those who seek to do harm to the US, and have made it more difficult for allies to transfer detainees and cooperate in other ways. They have resulted in the very opposite of what was intended, contributing to an extension of the conflict and endangering the national security they were meant to protect. On May 14 last the Pentagon announced charges against Detainee 063 were dropped. He is, apparently, unprosecutable.

These unhappy consequences mirror Britain's experience in using similar techniques against the IRA in the early 1970's, widely believed to have extended the conflict. The five techniques were soon abandoned, but not before great damage was done. They have never been picked up again. Across the political spectrum in Britain there exists a unanimous belief that such techniques are wrong and can never be justified. Coercive interrogation, aggression and torture must never be institutionalised: once the door is open it is difficult to close. That is why, with the greatest respect, we have turned our back firmly against the institutionalisation of coercive interrogation that appears to have been recommended by Professor Heymann in his 2004 Report. It is why we are so strongly opposed to the related idea of torture warrants, as floated by Professor Dershowitz, an idea which, as I describe in my book, directly undermined the efforts of those who opposed the abuse at Guantanamo.

In conclusion, I can put it no better than George Kennan, the great American diplomat. In 1947 he wrote a telex that issued this warning in relation to a perceived Soviet threat: "[W]e must have courage and self-confidence to cling to our own methods and conceptions of human society. [T]he greatest danger that can befall us ... is that we shall allow ourselves to become like those with whom we are coping." Chairman, Honourable Members of the Committee, no country has done more to promote the international rule of law than the United States. Uncovering the truth is a first

step in restoring this country's necessary leadership role; in undoing the damage caused; and in providing a secure, sustainable and effective basis for responding to what is a real threat of terrorism.

I thank you for allowing me the opportunity to make this introductory statement.

#### ATTACHMENTS

[1]

THE GREEN LIGHT, by Philippe Sands  
VANITY FAIR, MAY 2008

[2]

TORTURE TEAM: RUMSFELD'S MEMO AND THE  
BETRAYAL OF AMERICAN VALUES [2008, PALGRAVE MACMILLAN]  
Frontispiece and pages 112-121