

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Getting To The Truth Through A Nonpartisan Commission Of Inquiry"
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In the wake of the tragic attacks on September 11, 2001, we came together as Americans. We need to do so, again, in these difficult economic times. Regrettably, too many seem mesmerized by the siren call of talk radio personalities and extreme special interest groups. Far from grasping the bipartisan hand that President Obama has extended, congressional Republicans are, with few exceptions, following the play book laid out by conservative pundits to "obstruct and delay."

Nothing has done more to damage America's place in the world than the revelation that this Nation stretched the law and the bounds of executive power to authorize torture and cruel treatment. The Bush administration chose this course, but tried to keep its policies and actions secret, knowing that they could not withstand scrutiny in the light of day. How many times did President Bush go before the world and say that we did not torture and that we acted in accordance with law?

There are some who resist any effort to look back at all, while others are fixated on prosecution, even if it takes all of the next eight years, or more, and further divides this country. Over the last month, I have suggested a middle ground to get to the truth of what went on during the last several years, in a way that invites cooperation. I believe that that might best be accomplished though a nonpartisan commission of inquiry. I would like to see this done in a manner removed from partisan politics. Such a commission of inquiry would shed light on what mistakes were made so that we can learn from these errors and not repeat them.

Today's hearing is to explore that possibility. I am encouraged that many have already embraced this idea, including several of the distinguished witnesses I welcome today. These are witnesses who speak from experience about the need to uncover the truth and shed light on our policies for the good of our Nation, to ensure that we have strong national security policies and to ensure that we do not make repeat mistakes. I look forward to their discussion.

As Justice Kennedy said in the recent Supreme Court decision restoring the great writ of habeas corpus, the Constitution is not something an administration is able "to switch ... on and off at will." We must not be afraid to look at what we have done, to hold ourselves accountable as we do other nations who make mistakes. We must understand that national security means protecting our country by advancing our laws and values, not discarding them.

This idea for a commission of inquiry is not something to be imposed. Its potential is lost if we do not join together. Today is another opportunity for Republicans to come forward to find the facts and join in developing a process to reach a mutual understanding of what went wrong and learn from it. If they remain absent or resistant, this opportunity can be lost, and calls for accountability through more traditional means will become more insistent and compelling.

I held early hearings exploring how our detention policies and practices, from Guantanamo to Abu Ghraib, have seriously eroded fundamental American principles of the rule of law. I think that we are less safe as a result of the mistakes of the last administration's national security policies. I also believe that, in order to restore our moral leadership, we must acknowledge what was done in our name. We cannot turn the page until we have read the page.

President Obama, Attorney General Holder and others in the new administration are already hard at work on detainee and interrogation policies to determine the best way to form effective and lawful national security policies. A commission of inquiry would address the rest of the picture, to understand the full extent of what our country did and why it happened. With a targeted mandate, it could focus on the issues of national security and executive power in the government's counterterrorism efforts, including the issues of cruel interrogation, extraordinary rendition, and executive override of laws. We have had successful oversight in some areas, but on these issues, we have remained too much in the dark.

People with first-hand knowledge would be invited to come forward and share their experiences and insight, not for purposes of constructing criminal indictments, but to assemble the facts. If needed, such a process could involve subpoena powers, and even authority to obtain immunity to secure information, in order to get to the whole truth. Of course, this avenue would be pursued in consultation with the Justice Department and would not rule out prosecution for perjury.

Vice President Dick Cheney and others from the Bush administration continue to assert that their tactics, including torture, were appropriate and effective. We must not let only one side define history on such important questions. It is important for an independent body to hear these assertions, but also from others, if we are going to make an objective and independent judgment about what happened, and whether it made our nation safer or less safe.

Just this week, the Department of Justice released more alarming documents from the Office of Legal Counsel demonstrating the Bush administration's pinched view of constitutionally protected rights. These memos disregarded the Fourth and First Amendments, justifying warrantless searches, the suppression of free speech, surveillance without warrants, and transferring people to countries known to conduct interrogations that violate human rights. How can anyone suggest that such policies do not deserve a thorough, objective review?

I am encouraged that the Obama administration is moving forward. But how did we get to a point where we were holding a legal U.S. resident for more than five years in a military brig without ever bringing charges against him? How did we get to a point where Abu Ghraib happened? How did we get to a point where the United States Government tried to make Guantanamo Bay a law-free zone, in order to try to deny accountability for our actions? How did we get to a point where our premier intelligence agency, the CIA, destroyed nearly 100

videotapes with evidence of how detainees were being interrogated? How do we make sure it never happens, again?

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