

Truth, Accountability, Reform and Reconciliation: The Road to Security and the Restoration of American Values

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The terrorist attacks of September 11 were an unspeakable crime against humanity. As such, they should have triggered an international effort to apprehend the perpetrators of this crime lawfully—and to apply to them the full force of the law. Unfortunately, what these attacks unleashed instead was the full scale military invasion and occupation of a severely impoverished country followed by the worldwide implementation of a set of policies and practices of detention that, according to credible information, have led to an immeasurable amount of suffering for the individuals detained and to a profound betrayal of the values on which our nation was built. They have also undermined the security of our nation. Both at home and abroad.

Indeed, according to credible information, the practices and policies enacted since 9/11 have involved international alliances with criminal armed groups; human trafficking; civilian arrests without warrants; denial of the writ of *habeas corpus*; secret detention; life-threatening, open-air, holding pens; medical neglect; interference of interrogation on medical treatment; fatal, disabling, and disfiguring beatings; hanging by the wrists; threats of death or bodily harm; mauling by military dogs; torture by proxy (extraordinary rendition); controlled drowning (waterboarding); sensory deprivation; sensory assault; forced nudity; temperature and dietary manipulation; sleep deprivation; disorientation in space and time; positional torture (stress positions and prolonged standing); binding torture (tight shackling or cuffing); solitary confinement; indefinite detention; severe humiliation; sexual assaults; assaults with *excreta*; forced feeding; interference with religious practices; verbal abuse, and the exploitation of cultural idiosyncracies and personal phobias.

These policies and practices are outrages upon human dignity, and are subject to criminal prosecution under both national and international law. Widely taken to be accurate descriptions of fact, they have furthermore diminished our standing around the world and have fanned the flames of anti-American terrorism worldwide, thus making us *less* secure rather than more. Both at home and abroad. In this respect, these practices have become self-defeating, as they were intended to make us more secure rather than less. The time has therefore come to denounce these policies, embrace the values on which our nation was built, and begin to counter terrorism with police methods that are tried, true, and legal.

The Obama Administration should be commended for beginning to tread—albeit haltingly—along this path. Unfortunately, the undecisive steps taken by the current administration will not suffice to repair our international image and to curb anti-American terrorism. What is called for is a four-step process that involves *truth, accountability, reform, and reconciliation*. First, we must discover the

truth about the policies and practices of detention enacted since 9/11. Second, if it were found that crimes were in fact committed, then the perpetrators of these crimes must be charged and tried for them in an unpeachable legal proceedings and, if found guilty, they must be held to account. *Even if their crimes were committed with the laudable goal of protecting our country.* Accountability is what justice demands of truth; crime should not be rewarded with impunity. Third, we must develop and implement reforms that will prevent any crimes that took place in the past from recurring in the future. Fourth, we must seek reconciliation with the victims of any crimes committed. As well as with their communities, their nations, and their regions. *It is through this four-step process, and only through this four-step process, that we will restore the values we profess as a nation, repair our image abroad, and curb terrorism at home.*

Achieving reconciliation will not be easy, as it will in turn demand four things of us as a nation. They are *acknowledgement, apology, remembrance, and reparation.* Yet, it will demand nothing of the victims. Reconciliation is something the victims are free to agree to or to refuse. Yet, reconciliation is not something that is optional for us. For it is after reconciliation has been reached, *and only after reconciliation has been reached,* that we may hope to repair our image abroad and curb terrorism at home.

Truth, accountability, reform, and reconciliation are thus milestones in the road to security. And they are milestones that must be reached in that order. For truth is the foundation of all else. Without it, accountability is abusive, reform is blind, and reconciliation is hollow. And accountability and reform are preconditions for reconciliation as well. For, without them, the victims have no reason to believe that the crimes will not be revisited, upon them or upon others, in the future. Consequently, they will continue to be on guard. Worse yet, they may feel that the period of abuse has not really ended, and they will not be delivered from the temptation to retaliate.

If truth is the first step on the road to security, the question then arises as to how to achieve it. In the Winter of 2009, a group of attorneys and human rights advocates and researchers gathered at the University of California at Davis in order to hammer out a set of recommendations for the achievement of truth with regards to the policies and practices of detention enacted since 9/11. This gathering of experts, known as *The Davis Group*, came up with the following recommendations.

1. Commission and Mandate. The President of the United States should appoint an Independent Commission of Inquiry into U.S. Detention Policies and Practices Since 9/11 (“the Commission on Detentions”) to provide a full accounting of the facts, circumstances and policies relating to the capture, detention, transfer, interrogation, and treatment of persons who have been detained by, or transferred for detention by others at the direction of, the United States since September 11, 2001. The mandate of the Commission on Detentions should also include, but not be limited to, assessing the legality of such policies and practices, making recommendations it deems appropriate, and identifying any lessons learned.

2. Composition. The Commission on Detentions should be nonpartisan rather than bipartisan in its composition. Its members should be men and women with a demonstrated commitment to truth and to our nation's founding principles. Commissioners should be individuals of irreproachable integrity, credibility, and independence. Retired military officers, judges, government officials, attorneys, intelligence officials, leading academics and human rights experts are examples of the types of members that should be sought. The Commission should be supported by adequate staff with appropriate expertise to carry out the mandate of the Commission.

3. Security Clearances. In a manner consistent with existing procedures and requirements, members and appropriate staff of the Commission on Detentions should be granted such security clearances as are necessary to perform the functions of the Commission.

4. Subpoena Powers. Congress should grant the Commission on Detentions the authority of compulsory process, including subpoena power, in furtherance of its mandate.

5. Testimonial Immunity. In order to secure full and truthful disclosures to the Commission on Detentions, and in recognition of the Constitutional right of witnesses against self-incrimination, the Commission should have the authority, at its discretion, to grant limited testimonial immunity to witnesses.

6. Other Remedial Efforts. The Commission on Detentions should not impede other avenues of accountability or related efforts to effect reforms, prosecutions, or reparations.

7. Foreign Testimony. In order to thoroughly investigate and evaluate U.S. detention practices, the Commission on Detentions should solicit testimony and reports from foreign nationals, including former detainees, other nations, and non-governmental and international organizations. Robust efforts to include overseas evidence will also buttress the credibility of the Commission's findings, thereby strengthening foreign relations with our allies and our national security. The Commissions on Detentions may hear such evidence in person, when practical, or through alternative means such as remote testimony or reports of investigative efforts.

8. Transparency. The Commission on Detentions should carry out its mandate as openly and transparently as considerations of privacy and national security will allow.

9. Reporting. The Commission on Detentions should convey its findings by issuing one report in two versions—one public, the other classified. This report should provide the full accounting of the facts, circumstances and policies called for in the Commission's mandate, as well as make recommendations, and identify lessons learned. The public version should contain as much information as may be publicly disclosed. The second version should be classified but only to the extent strictly necessary to protect any classified information contained

therein. Both versions should be released simultaneously.

10. Duration. The Commission on Detentions should issue its report no later than two years after it is convened.

11. Funding. The Commission on Detentions should be funded at levels that will enable it to carry out its mandate. These should be comparable to the levels of funding of the 9/11 Commission. The funds are to remain available until expended or until the Commission issues its reports.

What are the prospects that these recommendations will be heeded? At present, they are next to nil. Invoking pragmatism, President Obama has called on us to look forwards rather than back, thus failing to realize that we cannot look forwards without looking back. Restoring our values, repairing our image, and curbing terrorism are goals that we must achieve in the future. Yet, none of these goals may be reached if we do not face the past first and objectively assess what has been done in the name of the American people. As far as we can see, this can best be done through an independent, nonpartisan, transparent, and thorough investigation into the facts, circumstances, and policies employed in response to the September 11 attacks.

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