



Statement of Senator Dianne Feinstein on  
Detention of Enemy Combatants at Guantanamo Bay  
June 15, 2005

*Washington, DC – At a hearing of the Senate Judiciary Committee, U.S. Senator Dianne Feinstein (D-Calif.) today said that she is concerned that America’s policy on the detention and interrogation of enemy combatants at Guantanamo Bay, Cuba is failing. The following is the text of her statement:*

“I want to begin by thanking Chairman Specter and Ranking Member Leahy – today’s hearing is, in my view, timely and extremely consequential.

I am increasingly concerned that our nation’s policy concerning the detention and interrogation of prisoners taken in Iraq and elsewhere in the course of the ‘War on Terrorism’ is deeply flawed in both conception and implementation.

First, let me make clear my view that in this modern world of asymmetric warfare, non-state actors, and unconventional threat, there is an absolute necessity to have a program to securely hold prisoners, effectively interrogate them, and where appropriate, prosecute them under our civil or military laws.

But I also believe that any such program needs to meet three basic tests: (1) is it legal; (2) is it right; and (3) does it work. I fear that our current course of action fails all three tests.

To address these tests, and gather the facts necessary to understand the current situation, last week I wrote to the Secretary of Defense and the Director of National Intelligence, asking twelve important questions, which I believe are a starting point for our inquiry. Last night, I received an interim response to four of my 12 questions – and these had been previously disseminated and only focused on Guantanamo. I look forward to receiving answers to my remaining questions. I ask unanimous consent that the letter be introduced into the record.

The first test is a legal test, and I believe our witnesses can speak to this test today. It is whether the entire program, including the conditions of incarceration, the techniques of interrogation, and the procedures for determining guilt and innocence, meet standards of American law, and our obligations under binding international treaties. This includes questions such as:

Are we adhering to our obligations under the Geneva Conventions and the Convention Against Torture? Are we adhering to U.S. law prohibiting torture? Do the procedures in place meet legal and constitutional due process standards?

In my view this is a relatively simple, objective test, and amenable to a lawyerly inquiry. There should be no ambiguity – if it is against the law, or violates our nation’s obligations under treaties, we do not do it.

The second test is one of policy. It my strong view that it is not enough to know what we can do under law; we have an obligation to examine what we should do in light of our nation’s ethical and moral history. Our soldiers (as well as our Intelligence Agencies) have a long and honorable tradition of ethical behavior. For more than two hundred years we have prided ourselves on being different – different from the Nazis; different from the Soviets; different from al Qaeda. Simply put, there are some things that Americans do not do, not because it is illegal, or some lawyer says we cannot, but because it is wrong.

I am increasingly concerned that we are failing this second test. Our “policy on torture” has become obscure, complicated and ever-changing. I sit on two committees with jurisdiction, and have sat through hours and hours of hearing and briefings – I do not think I have a very good idea of what, if anything, our policy consists of. Frankly, the Administration’s repeated statements about “wherever possible adhering to law” are unhelpful. The rules of engagement for our armed forces and intelligence agencies should be clear and simple, and in accord with our basic values. An infantryman should not need to be a graduate of a law school to know what to do with a prisoner.

The third test is a practical one – does what we are doing work? Put aside the legal and moral issues which lie at the heart of the first two tests. For argument’s sake, put aside what the law is, or what is right or wrong, and focus only on whether U.S. interests are being furthered by our policy. My question is this: Does the value of the intelligence gathered from interrogations outweigh the self-evident harm being done to the perception of America in the rest of the world? In other words, are we creating more terrorists and insurgents than we are stopping?

From Abu Ghraib to Guantanamo, to allegations that there is a constellation of other prisons being run by America around the world, we are being watched, and watched closely. There are literally millions of young men throughout the Muslim world who are deciding as we speak whether to take up arms against us, or work towards peaceful resolution of complex issues.

The bottom line: I am increasingly concerned that we are failing on all three tests. The legality of our procedures is suspect. The ethics and morality of our methods is in question. And, perhaps worst of all, it simply may not be helping us win the war on terrorism.

I hope that today’s hearing marks the beginning of a new approach to this issue. I hope that the Congress will refocus and intensify its involvement in this issue. I hope the Administration will be more forthcoming and engaged in this effort. I hope that we can work together to ensure that American can fight, and win, a 21<sup>st</sup> Century war, with out damaging the core values forged in wars of the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Centuries.

It must be remembered – American soldiers beat the forces of Nazism and Fascism; and beat the forces of Communist totalitarianism, without giving up what makes us Americans. We can and must do the same today. Usama bin Ladin and his ilk are dangerous and powerful. But they are not, fundamentally, different from other evils which America has fought against, and defeated.”

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