

TESTIMONY BY HUMAN RIGHTS FIRST  
OVERSIGHT HEARING ON THE REAUTHORIZATION OF THE PATRIOT ACT  
BEFORE THE JUDICIARY COMMITTEE, U.S. HOUSE OF REPRESENTATIVES

Statement of Deborah Pearlstein, Director, U.S. Law and Security Program  
Washington D.C.  
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Thank you for inviting Human Rights First to share our views on the reauthorization of the PATRIOT Act. My name is Deborah Pearlstein, and I am the Director of the U.S. Law & Security Program at Human Rights First. We are grateful for the opportunity to speak, and welcome your review today of the PATRIOT Act as part of much needed congressional oversight of U.S. counterterrorism laws and policies.

I would like to focus in these remarks on the profound need for greater oversight in this area – particularly, the critical importance of moving beyond the narrow focus of the PATRIOT Act and establishing a bipartisan, independent commission to look comprehensively at U.S. detention and interrogation operations in the “war on terror.” We believe such a commission is not only critical to restoring America’s commitment to protecting basic human rights, but also is an increasingly urgent requirement to promote U.S. national security.

Since September 11, 2001, the scope of U.S. detention and intelligence collection operations worldwide has grown dramatically. Far from diminishing in importance as U.S. missions in Afghanistan and Iraq have matured, detention operations are picking up permanence and pace – with the number of individuals in U.S. custody worldwide close

to 12,000 today. Despite the sustained nature of these operations, a startling number of questions about the U.S. global detention system remain shrouded in secrecy: what is the legal basis of detaining those held, and what are the plans for their future? Does the International Red Cross now have access to all held in U.S. custody, or do we continue to hold “ghost detainees” beyond the reach of humanitarian aid or law? And critically, what methods of interrogation and conditions of detention do U.S.-held detainees face, and are we now in compliance worldwide with basic constitutional and treaty prohibitions on torture, as well as cruel, inhuman and degrading treatment of any kind?

One need not be an expert in U.S. and international human rights law to recognize the urgency of these questions. According to the Pentagon’s own figures, more than 100 people have died in U.S. custody since 2002; this includes 28 cases already classified as homicides, and at least half of those were people who were literally tortured to death. To be clear, this is not a problem about a handful of actors from Abu Ghraib. *Only 1* of the criminal homicides occurred at Abu Ghraib; the rest occurred at others of the two-dozen some detention facilities the United States maintains. Well beyond the few young soldiers facing courts martial from Abu Ghraib, 137 U.S. soldiers so far have been punished for acts of torture or abuse. Perhaps worst, the problem appears to be ongoing. At least 45 detainees have died in U.S. custody since Secretary Rumsfeld was informed of the torture at Abu Ghraib on January 16, 2004. This is not a problem first and foremost about our brave troops; this is a command responsibility.

Our concern for the scope and nature of this problem as Americans and human rights lawyers has been matched, indeed exceeded, by our friends and colleagues in the military and intelligence communities who believe current policies have been devastating both to the safety of our troops and the security interests of our nation. As a distinguished coalition of retired admirals and generals wrote last fall: “Understanding what has gone wrong and what can be done to avoid systemic failure in the future is essential . . . to ensure that the effectiveness of the U.S. military and intelligence operations is not compromised by an atmosphere of permissiveness, ambiguity, or confusion.” Even more starkly, as one U.S. Army interrogator returning from Afghanistan noted: “The more a prisoner hates America, the harder he will be to break. The more a population hates America, the less likely its citizens will be to lead us to a suspect.” Our detention practices have inflamed our enemies and alienated potential allies, and they continue to run contrary to the security imperatives this body sits to protect.

Finally, there can be no question that the investigations to date have been inadequate. As Human Rights First detailed at length in our recent report, *Getting to Ground Truth*, government investigations so far have suffered from a lack of independence; failures to investigate all relevant agencies and personnel; cumulative reporting (increasing the risk that errors and omissions are perpetuated in successive reports); contradictory conclusions; questionable use of security classification to withhold information; failures to address senior military and civilian command responsibility; and an absence of any comprehensive game plan for corrective action.

Those who the Pentagon's own reports have identified as responsible for derelictions of duty not only have not been disciplined, they have been promoted. To pick a few examples, General Dan K. McNeill – who oversaw operations in Afghanistan during the time that detainees were tortured to death at the Bagram Air Force Base and claimed there were no indications of abuse contributing to the deaths despite autopsy reports finding severe trauma to the detainees' bodies, received a fourth star and was promoted to Commanding General U.S. Army Forces Command. The month after the Abu Ghraib photos became public, Maj. Gen. Geoffrey Miller – formerly in charge of interrogations at Guantanamo and credited with instituting the use of dogs at Abu Ghraib – was made senior commander in charge of detention operations in Iraq. Maj. Gen. Barbara Fast – the highest-ranking intelligence officer so far tied to the Abu Ghraib scandal – recently took charge of the Army's main interrogation training facility at Fort Huachuca, Arizona. Maj. Gen. Walter Wojdakowski – who oversaw military police and intelligence units responsible for operations at Abu Ghraib, and who was criticized in army investigations for weak and ineffectual leadership that led to the abuses – is now the acting deputy commander of Army forces in Europe. And of course Secretary Donald Rumsfeld – who once asserted full responsibility for the torture that occurred – remains in place as Secretary of Defense. This is not a way to set an example. Or to win a war.

Human Rights First's past four years of active engagement on these issues has persuaded us that a 9/11-style commission – independent, bipartisan, and of unassailable credibility – is critical to understand finally what has gone wrong in U.S. detention and interrogation operations, and to chart a way forward to accountability and correction. Today's hearing

can be a valuable first step in taking seriously the cause of liberty and safety, and we  
thank you for your work and your consideration.