



Truth Commission May Not Lead to Prosecutions

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by: *Matt Renner, t r u t h o u t | Report*

Washington, DC - The Senate Judiciary Committee held a hearing Wednesday to explore setting up a commission to investigate and report on potentially criminal policies of the Bush administration.

Critics of this approach charge that it could interfere with high-level criminal prosecutions, which are ready for immediate action by an independent or special prosecutor.

The Senate Judiciary Committee took testimony from expert witnesses on the pros and cons of organizing a special committee for the task of looking back at policies of the Bush administration, which may have led to warrantless surveillance, illegal detention and torture during the so-called "War on Terror."

"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," Senate Judiciary Committee Chairman Patrick Leahy (D-Vermont) said, later adding, "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."

Arlen Specter (R-Pennsylvania) the highest-ranking Republican on the Judiciary Committee, called the actions of the Bush administration "the greatest expansion of executive power in United States History." Specter went on to say that the actions of Bush administration lawyers who

provided legal justifications for potentially unlawful Bush administration policies may amount to "criminal conduct."

Spector stopped short of endorsing the idea of a commission, instead arguing that the Department of Justice (DOJ) should be tasked with prosecuting officials who may have committed crimes.

The hearing comes on the heels of the release of legal memorandums from the Bush administration's Office of Legal Counsel (OLC), the DOJ office tasked with providing legal interpretations for the president. The documents reveal the controversial legal arguments for an expansion of presidential power in the days after September 11, 2001. In the documents, OLC lawyers argue that, in wartime, the president has almost unlimited authority to use military force on US soil, to detain US citizens, to suspend constitutional protections of privacy, free speech and press freedoms, as long as the president thinks that these actions are needed to protect the country against terrorism.

Attorney General Eric Holder, who released the memos on Monday, said he will be releasing more of these memos, but did not set a date.

The first four witnesses stressed the importance of constructing a full account of what actually happened as a result of Bush administration policies and publicly exposing the misdeeds in order to restore the reputation of the United States on the world stage. The testimony of former Ambassador Thomas Pickering, Retired Vice Adm. Lee Gunn, Former New Jersey Attorney General John Farmer Jr. and former Church committee general counsel Frederick Schwarz can be read at the hearing web site along with the testimony of the opponents of the commission, Council on Foreign Relations member David Rivkin and George Mason University law professor Jeremy Rabkin.

Rivkin and Rabkin testified that any commission set up by Congress would not be independent enough to be useful and would end up engaging in retribution instead of fact-finding. Both men struggled for talking time because only two Republican senators attended the hearing, limiting the number of questions the opponents of the commission idea were asked.

Immunity

An issue central to the formation of a commission to examine possible

criminal wrongdoing is whether individuals who testify will be granted immunity. Previous examples of so-called "Truth and Reconciliation" commissions have come under criticism for allowing those who violated the law to avoid prison. Historically, these commissions have been used to document atrocities in lieu of formal prosecutions where official court cases could have been too destabilizing to a weak central government or too divisive to a society recovering from conflict.

Constitutional scholar Jonathan Turley argued against using such a commission to avoid dealing directly with crimes committed by Bush administration officials on his blog.

"We are not some new nation emerging from civil war or dictatorship. We are a nation of laws. Bush officials have already confirmed the acts of torture and we are obligated by treaty to prosecute such war crimes ... Otherwise, President Obama's repeated statements of 'no one being above the law' will appear a pretty cynical spin designed to give the appearance of actions while evading our collective international obligations."

During Wednesday's hearing, Sen. Russ Feingold (D-Wisconsin), chairman of the Senate Judiciary Subcommittee on the Constitution, argued in favor of a fact-finding commission, which would leave the door open to prosecution.

"On the question of immunity, I think we should tread carefully. There are cases that may require prosecution and I would not want a commission of inquiry to preclude that. Those who clearly violated the law should be prosecuted," Feingold said, adding, "while a commission of inquiry is the best way to get the facts out, Congress, the Justice Department, and the public should decide what to do with those facts."

Prosecutions

Michael Ratner, the president of the Center for Constitutional Rights and author of "The Trial of Donald Rumsfeld" has spent the past seven years documenting the abuse of prisoners held at the Guantanamo Bay detention center, the Abu Gharib prison in Iraq, the detention facility at Baghram Air Base in Afghanistan, and various secret CIA prisons. In his book, Ratner lays out the case for the criminal prosecution of former Secretary of Defense Donald Rumsfeld and various other military and civilian officials linked to the detention and interrogation policies of the Bush

administration.

In an interview with Truthout, Ratner recommended Attorney General Holder immediately appoint an independent prosecutor, who could quickly build a case against former Vice President Dick Cheney for his role in approving waterboarding, former Secretary of Defense Donald Rumsfeld for his direct role in the documented torture of Mohammad al-Qahtani and former CIA Director George Tenet for his agency's role in what Ratner calls the "torture conspiracy."

"To stop torture in the future you need to prosecute. That's the only way to make sure that people don't do it. That's what prosecution is about: deterrence. When I see a picture of president Obama signing an executive order purportedly outlawing torture it's a great picture. But of course that could be a different president four years from now reversing that order," Ratner said.

Senator Leahy has come out against using the commission for criminal prosecutions. His stance on immunity for those who participate with the commission is not yet clear.

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