

VICE ADMIRAL LEE F. GUNN, USN (RET.)
REAR ADMIRAL JOHN D. HUTSON, USN (RET.)
BRIGADIER GENERAL JAMES P. CULLEN, USA (RET.)

May 14, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

During your campaign you eloquently defended the American justice system as a tool for helping us regain the moral high ground in the fight against terrorism and you called for the use of our civilian courts or military courts martial to try terrorist suspects. We are concerned by recent reports that the administration may now be considering steps to resume the military commissions at Guantánamo and to continue prolonged detention without trial.

We strongly agree with Attorney General Eric Holder's statement on May 1st that the guilty plea of Ali Saleh Kahlal al-Marri "reflects what we can achieve when we have faith in our criminal justice system and are unwavering in our commitment to the values upon which the nation was founded and the rule of law." Attempts to resume military commission trials or to establish a system of indefinite detention without trial would have the opposite effect, perpetuating the harmful symbolism of Guantánamo, undermining our counterterrorism efforts and squandering an opportunity to demonstrate the strength of the American system of justice.

The military commissions system, even with added procedural safeguards, cannot provide the "swift and sure justice" that you recognized during your campaign is essential to "better protect the American people and our values." In seven years, fewer than thirty Guantánamo prisoners were criminally charged in the commissions, and only two cases proceeded to trial. The commission system lacks domestic and international credibility and has shown itself vulnerable to unlawful command influence, manipulation and political pressure. Reinventing commissions so deeply associated with Guantánamo Bay will merely add to the erosion of international confidence in American justice, provide more fodder for America's enemies, and lead to prolonged challenges and years of continued litigation.

If significant procedural differences exist between new military commissions and the civilian system, public attention at any trial will inevitably focus on those differences. The world will continue to be preoccupied not with the crimes of the terrorists but with the deficiencies of our system. If, on the other hand, the procedural differences are

minor, then it is hard to see the benefit of creating again a new system of justice that will be subject to challenge and delay.

Instead of reinstating the military commissions, the administration should permanently reject past trial and detention policies that have unwittingly reinforced al Qaeda's efforts to elevate its followers as warriors. Focus should turn to prosecutions in civilian courts, which serve to delegitimize terrorists as criminals undeserving of combatant status. Our message to these men should be the one Judge William Young delivered to Richard Reid, the convicted al Qaeda terrorist known as the "shoe bomber," when he sentenced him to life plus 110 years in prison:

You are not an enemy combatant. You are a terrorist. You are not a soldier in any war. You are a terrorist. To give you that reference, to call you a soldier gives you far too much stature...

Our federal criminal justice system has capably handled hundreds of complex terrorism cases like the Reid case, rendering decisions that are widely respected as legitimate. U.S. federal courts have repeatedly demonstrated the flexibility and competence needed to tackle classified information, court room and prison security, and other challenges that arise in terrorism trials.

Of course most Guantánamo detainees have never been charged with any crime before any tribunal. Indefinite detention without trial is Guantánamo's fundamental characteristic, and should not be preserved.

It has long been accepted that in an international armed conflict, fighters can be detained to prevent them from returning to the battlefield. But this is a conflict in which the distinction between combatants and civilians is often impossible to make. Indeed, we have come to learn that many of the Guantánamo detainees were captured far from any battlefield and under circumstances that have traditionally been the provenance of civilian justice. It is inconsistent with humanitarian law and fundamental principles of justice to expand the scope of war, as the Bush administration did, to justify the detention of anyone the President deems dangerous.

The Guantánamo detentions have shown that assessments of dangerousness based not on overt acts, as in a criminal trial, but on association are unreliable and will inevitably lead to costly mistakes. This is precisely why national security preventive detention schemes have proven a dismal failure in other countries. The potential gains from such schemes are simply not great enough to warrant departure from hundreds of years of western criminal justice traditions.

We recognize that the Bush administration's legacy of failed detention policies requires your administration to make difficult decisions in a tight timeframe. But the policies you adopt must address the problem not only of the approximately 245 detainees in Guantánamo but of the tens of thousand of similarly situated people around the world.

How can the U.S. government most effectively reduce the number of people intent on inflicting grave harm against the United States? According the Army's 2006 Counterinsurgency Manual, we must demonstrate an unequivocal commitment to upholding the rule of law and basic principles of human rights. We urge you not to make a costly step in the opposite direction by reinstating military commissions at Guantánamo or embracing a policy of prolonged detention without trial.

Sincerely,

Vice Admiral Lee F. Gunn, USN (Ret.)

Rear Admiral John D. Hutson, USN (Ret.)

Brigadier General James P. Cullen, USA (Ret.)

BIOGRAPHICAL INFORMATION

Vice Admiral Lee F. Gunn, USN (Ret.)

Vice Admiral Gunn served as the Inspector General of the Department of the Navy from 1997 until retirement in August 2000. Admiral Gunn's sea duty included: command of the frigate USS Barbey; command of Destroyer Squadron 31, the Navy's tactical and technical development anti-submarine warfare squadron; and command of Amphibious Group Three, supporting the First Marine Expeditionary Force in Southwest Asia and East Africa. Gunn is from Bakersfield, California and is a graduate of UCLA, having received his commission from the Naval ROTC program at UCLA in June 1965.

Rear Admiral John D. Hutson, USN (Ret.)

Rear Admiral John D. Hutson served in the U. S. Navy from 1973 to 2000. He was the Navy's Judge Advocate General from 1997 to 2000. Admiral Hutson now serves as President and Dean of the Franklin Pierce Law Center in Concord, New Hampshire. He also joined Human Rights First's Board of Directors in 2005.

Brigadier General James P. Cullen, USA (Ret.)

Mr. Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General's Corps and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.