

**STATEMENT FOR THE RECORD OF
IAN FISHBACK, FORMER MAJOR, US ARMY
BEFORE THE
SENATE JUDICIARY COMMITTEE
JANUARY 10, 2017**

THE IMPERATIVE TO PREVENT DETAINEE TORTURE

Chairman Grassley, Ranking Member Feinstein, Members of the Committee, thank you for the opportunity to share my views with you.

I am writing regarding Senator Sessions' record on torture and other detainee abuse and mistreatment.

I am a graduate of the United States Military Academy at West Point. From 2001-2010 I served as an officer in the paratroopers and Special Forces. From 2012-2015 I served as an instructor at West Point and I am currently completing a PhD in Political Science at the University of Michigan.

In September 2005, while serving as a Captain in the U.S. Army Infantry, I sent a letter to Senator John McCain, asking him to provide our men and women in uniform with clear standards for the lawful and humane treatment of detainees captured in what was then being called the "Global War on Terror." I only wrote to the Senator after I had spent 17 months seeking clarification of these standards through my chain of command and had come up short.

As I mentioned in my letter, during my time serving in Iraq and Afghanistan, I and troops under my command witnessed numerous instances of prisoner abuse including death threats, beatings, interrogators breaking detainees' bones, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation, degrading treatment, and even murder.

This treatment ran contrary to the training I received at West Point, which made it clear that such practices are clearly prohibited by the Geneva Conventions. The lack of clear standards for our troops in the field on the proper treatment of detainees in U.S. control had left the door open for these violations to occur and even more worryingly, to continue.

I am extremely grateful to Senator McCain for responding to my appeal for specific guidelines for detainee treatment by sponsoring the 2005 Detainee Treatment Act. This measure explicitly barred cruel, inhuman and degrading treatment of prisoners in U.S. custody and required all military interrogations to follow the protocols of the Army Field Manual. It was passed by this chamber in an unprecedented show of bipartisan support, with a vote of 90-9.

When I fought in Iraq and Afghanistan, I fought for a country that has deeply rooted values and ideals that have shaped this nation and positioned it as a global leader on human rights and the rule of law. These values and ideals, which are enshrined in the Declaration of Independence and the Constitution, are ones that this nation should steadfastly abide by and wield as our most powerful weapon in the fight against terrorists.

Statement for the Record

Senate Judiciary Committee Nomination Hearing – January 10, 2017

I have heard it said that given ISIS does terrible things to the people it captures, the United States should similarly be permitted to mistreat detainees in our custody. The same things were said of al Qaeda over a decade ago and my response to these claims remains the same: When did ISIS and al Qaeda become any type of standard by which we measure the morality of the United States?

To say that the United States should be held to a higher standard than ISIS and al Qaeda is undeniable. We ought to hold ourselves to a higher standard with pride.

The thought that Senator Sessions might once again sanction the un-American, immoral, and illegal treatment of detainees if he were to become Attorney General, shakes me to my core.

Senator Sessions was one of the nine senators who voted against the Detainee Treatment Act. He has also publicly defended waterboarding, saying in 2008 that it would be “unwise” to “say [waterboarding] would never be done again.”

In 2015 Senator Sessions was one of only 21 senators to vote against the McCain-Feinstein anti-torture amendment to the National Defense Authorization Act for the fiscal year 2016. This legislation extended the reach of Senator McCain’s 2005 Detainee Treatment Act by requiring all U.S. government departments and agencies to comply with the interrogation guidelines in the Army Field Manual.

Senator Sessions’ record on the issue of humane treatment of detainees in U.S. custody and his consistent opposition to efforts to stem abuse are deeply concerning.

In closing, I wish to repeat something I said in my letter to Senator McCain in 2005: If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession. I would rather die fighting than give up even the smallest part of the idea that is “America.”

I still hold true to those words.

Thank you for the opportunity to share my views with you.

Enclosure: Copy of letter to Senator John McCain dated September 16, 2005

Dear Senator McCain:

I am a graduate of West Point currently serving as a Captain in the U.S. Army Infantry. I have served two combat tours with the 82nd Airborne Division, one each in Afghanistan and Iraq. While I served in the Global War on Terror, the actions and statements of my leadership led me to believe that United States policy did not require application of the Geneva Conventions in Afghanistan or Iraq. On 7 May 2004, Secretary of Defense Rumsfeld's testimony that the United States followed the Geneva Conventions in Iraq and the "spirit" of the Geneva Conventions in Afghanistan prompted me to begin an approach for clarification. For 17 months, I tried to determine what specific standards governed the treatment of detainees by consulting my chain of command through battalion commander, multiple JAG lawyers, multiple Democrat and Republican Congressmen and their aides, the Ft. Bragg Inspector General's office, multiple government reports, the Secretary of the Army and multiple general officers, a professional interrogator at Guantanamo Bay, the deputy head of the department at West Point responsible for teaching Just War Theory and Law of Land Warfare, and numerous peers who I regard as honorable and intelligent men.

Instead of resolving my concerns, the approach for clarification process leaves me deeply troubled. Despite my efforts, I have been unable to get clear, consistent answers from my leadership about what constitutes lawful and humane treatment of detainees. I am certain that this confusion contributed to a wide range of abuses including death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation and degrading treatment. I and troops under my command witnessed some of these abuses in both Afghanistan and Iraq.

This is a tragedy. I can remember, as a cadet at West Point, resolving to ensure that my men would never commit a dishonorable act; that I would protect them from that type of burden. It absolutely breaks my heart that I have failed some of them in this regard.

That is in the past and there is nothing we can do about it now. But, we can learn from our mistakes and ensure that this does not happen again. Take a major step in that direction; eliminate the confusion. My approach for clarification provides clear evidence that confusion over standards was a major contributor to the prisoner abuse. We owe our soldiers better than this. Give them a clear standard that is in accordance with the bedrock principles of our nation.

Some do not see the need for this work. Some argue that since our actions are not as horrifying as Al Qaeda's, we should not be concerned. When did Al Qaeda become any type of standard by which we measure the morality of the United States? We are America, and our actions should be held to a higher standard, the ideals expressed in documents such as the Declaration of Independence and the Constitution.

Others argue that clear standards will limit the President's ability to wage the War on Terror. Since clear standards only limit interrogation techniques, it is reasonable for me to assume that supporters of this argument desire to use coercion to acquire information from detainees. This is morally inconsistent with the Constitution and justice in war. It is unacceptable.

Both of these arguments stem from the larger question, the most important question that this generation will answer. Do we sacrifice our ideals in order to preserve security? Terrorism inspires fear and suppresses ideals like freedom and individual rights. Overcoming the fear posed by terrorist threats is a tremendous test of our courage. Will we confront danger and adversity in order to preserve our ideals, or will our courage and commitment to individual rights wither at the prospect of sacrifice? My response is simple. If we abandon our ideals in the face of adversity and aggression, then those ideals were never really in our possession. I would rather die fighting than give up even the smallest part of the idea that is "America."

Once again, I strongly urge you to do justice to your men and women in uniform. Give them clear standards of conduct that reflect the ideals they risk their lives for.

With the Utmost Respect,

-- Capt. Ian Fishback

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