

**STATEMENT FOR THE RECORD OF
MAJOR GENERAL MICHAEL R. LEHNERT, USMC (RET.)
BEFORE THE
HOUSE ARMED SERVICES COMMITTEE
MARCH 23, 2016**

THE NEED TO SHUTTER THE DETENTION FACILITY AT GUANTANAMO BAY, CUBA

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

The goal of terrorism is to change behavior and to make us live in fear. On 9/11 America changed.

In September 2001 I was a new brigadier general at Camp Lejeune, North Carolina commanding an 8,000 man force of Marines and Sailors. America made the decision to go to war in Afghanistan, and some of my troops were deployed early into the fight. And as we began to take captives, the question of what to do with them became more imperative. Many in the Administration believed that these individuals represented an intelligence treasure trove.

The decision to send me and my command to Guantanamo employed a strange logic. Guantanamo has been used for decades by Administrations from both parties as an extra-legal zone to buy time during crises. It had been the site for several Cuban and Haitian migrant camps and in fact I'd commanded the Guantanamo camps in 1995 during the Clinton era when we had 18,000 Cubans and Haitians there on the ground. Though the U.S. Army is doctrinally responsible for prisoner of war camps, the Marines ability to deploy rapidly coupled with my past experience probably drove the initial decision. That there is a vast difference between an economic migrant and a prisoner of war seemed lost on the policy makers in Washington.

So in early January 2002 I received a deployment order to form a Joint Task Force, get to Cuba and build the first 100 cells in 96 hours and be prepared to receive prisoners of war (that's what we called them then). That we created a detention facility in 87 hours said a great deal about the young troops I led but it also drove a series of unfortunate early decisions. Many of those Administration decisions involved the application of both U.S. and International law. I'm not a lawyer but it is very clear that when we decided to forgo generations of legal precedent and start all over, bad things happen.

As enemy prisoners of war began to arrive, even their titles began to change. They were not enemy combatants. I was told that I was to "be guided by but not required to follow the Geneva Conventions." When I asked my lawyers what that meant, I was told "pretty much whatever they want it to mean." Though we were told that these were "worst of the worst" many detainees appeared to have been sent based upon their need for medical or psychiatric attention. Some had poor excuses for being caught in a war zone and many were there because we were paying bounties for terrorists. We did not understand the Afghan tribal system. For a tribal leader what better way to enrich yourself while resolving old grudges than to finger a neighbor who was your enemy regardless of his support for either al Qaeda or the Taliban?

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It took time to recognize our early sorting process was flawed. Almost all who arrived said they were simply “studying in a madrassa.” Some were students. Others were truly enemy combatants. Our failure to apply Article V hearings at the point of capture as required by the Geneva Conventions was beginning to result in detainees being sent who shouldn’t have been sent.

I’d been sent down for 60 days with instructions to turn the command over to the Army once they were able to get down to GTMO. I was there nearly 100 days when I was finally relieved. By this time, it was becoming more apparent that GTMO was housing a number of prisoners who were either noncombatants or simply low level fighters.

Perhaps the best proof that we sent the wrong people to Guantanamo is that of the 780 who have ever been in Guantanamo, 647 were released back to their country of origin or resettled without action.

So why should we close Guantanamo?

First and foremost because Guantanamo’s continued existence hurts us in our prosecution of the fight against terrorists. It feeds into the narrative that the United States is not a nation of laws nor one that respects human rights. Military commissions create a façade of justice. There are currently only three detainees at Guantanamo who were convicted by military commissions though they have been in operation for over eight years. Four previous convictions by commissions were overturned by the U.S. Supreme Court. U.S. Federal Courts have been much more successful in getting convictions of terrorists, and those convictions have held up under appeal. Our reliance upon military commissions, the absence of precedent, and their inability to resolve these cases make a mockery of our claim that we are a nation of laws.

Secondly, Guantanamo’s extra-legal status is inconsistent with our values as Americans. When I was first commissioned and every subsequent promotion thereafter I took the oath of office to support and defend the Constitution of the United States. Unlike the enlisted oath, officers don’t swear allegiance to the President or to their chain of command. The authors of the officers’ oath knew exactly what they were doing. They recognized that the Constitution is the seminal document that governs who we are as a people and that commissioned officers must have the wisdom to align their actions to the Constitution. To have a place on earth where the Constitution does not apply is simply un-American. It also begs the question that if it means nothing in Guantanamo, does our Constitution and the requirement to live by it stop at the water’s edge? When we fail to live by that remarkable document it diminishes us as a people.

Thirdly, Guantanamo and all locations where so-called enhanced interrogation techniques were practiced are a blight on our honor and put our citizens at greater risk. It’s no accident that many captives executed by terrorists were filmed being killed wearing orange jump suits. We are feeding the terrorist narrative not creating our own. Torture and its euphemism “enhanced interrogation techniques” don’t make us safer. They don’t deliver useful intelligence, and these practices are beneath us. When Senator McCain stood on the floor of the Senate on December 9, 2014, and delivered his opposition to torture, it was his finest hour in a lifetime of service. Despite significant pushback from many in his own party, he is the one elected member of our government with absolute credibility on this topic. Torture is wrong. It is also ineffective. Guantanamo is a symbol of a flawed, ill-considered and shameful policy. It must be closed.

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Guantanamo was a mistake. History will reflect that. It was created in the early days as a consequence of fear, anger, and political expediency. It ignored centuries of rule of law and international agreements. It does not make us safer, and it sullies who we are as a nation. That in over a decade we have failed to acknowledge the mistake and change course is unforgivable and ignorant.

We can win the fight against terrorism and religious extremism, but only if we adhere to our American values. If we kill every terrorist on the planet but in the process abandon the Constitution and our values, then in their deaths they will have succeeded, and we will no longer be Americans and this country will no longer be the bastion of democracy, freedom, and liberty.

Terrorists want to make us live in fear. They want to change who we are as a people. By both standards as long as Guantanamo continues, they are winning, and we are playing into their hands.

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