

STATEMENT OF COMMON CAUSE
IN SUPPORT OF THE ESTABLISHMENT OF A
NON PARTISAN COMMISSION OF INQUIRY
For the Hearing Before the U.S. Senate Judiciary Committee
March 4, 2009

Common Cause strongly supports the creation of a Commission of Inquiry to publicly and thoroughly investigate all allegations of unconstitutional and illegal abuses of power by our government. We believe that such a Commission should not be limited in its inquiry to any one area of illegal or unconstitutional conduct, such as policies adopted to fight terrorism. The conduct to be investigated, no matter how heinous, is symptomatic of a larger problem, a grave crisis in our constitutional system that goes to the very core of our values and respect for the rule of law. That crisis, which continues today, is the result of a philosophy of governance grounded in a profoundly anti-constitution animus which has had, and will continue to have, ramifications in foreign and domestic policy beyond the nation's policies regarding fighting terrorism. The Commission of Inquiry, which must be both non-partisan and independent, should be authorized to investigate the various ways in which this anti-constitutional philosophy, which places absolute power in the Executive, has manifested itself, in both foreign and domestic affairs.

It is essential that there be a thorough fact-finding investigation into the full range of alleged violations of human rights and abuses of power by the prior Administration in both domestic and foreign activities, as well as Congress' failure to contain such conduct. We believe that such a broad inquiry is required in order to restore the nation's understanding of and reverence for the U.S. Constitution, the rule of law, a free and open society, human rights, and our American system of checks and balances.

To move forward, we must know the truth regarding past conduct. To do so is not looking back, but rather looking to the future. Continued secrecy and indifference to prior conduct will do lasting damage to the fabric of our democracy, weakening faith in our ability to live up to the promise of governance by laws, not men, enshrined in our founding documents. Arguments that some of the questioned past conduct is simply partisan policy that people can disagree about countered by accusations of criminal conduct can only be resolved by a thorough examination and a vigorous public dialogue as to the meaning and requirements of our constitutional system of checks and balances.

Common Cause is a nonpartisan, nonprofit organization founded by John Gardner in 1970, during the turmoil of the Vietnam War and growing abuses of power by the Nixon Administration, to "build a true 'citizens' lobby – a lobby concerned not with the advancement of special interests but with the well-being of the nation." At its outset, Common Cause sought a timetable for ending the war, a reordering

of national priorities, and revitalization of politics and government. Our call today for a broadly empowered Commission of Inquiry is rooted firmly within the spirit of our founding.

This is the greatest challenge to government accountability of our time and we cannot shrink from it because inquiry may be uncomfortable, difficult or potentially embarrassing to some. The times demand of our leaders the courage to fully investigate allegations that our government abused its power and violated the law and the Constitution by:

- Legitimizing torture
- Pursuing policies which were designed to undermine the Constitution and Bill of Rights
- Allowing corruption and special interest abuses to flourish unchecked in numerous agencies and departments
- Politicizing the very administration of justice
- Engaging in warrantless spying and other affronts to personal liberty domestically and abroad

In order to “preserve, protect, and defend the Constitution of the United States,” as all federal office holders swear to do, these questions must be answered. A decent respect for the opinions of mankind requires no less. Some in low level positions have already been held accountable. It is unconscionable in our American system of justice to prosecute low-level soldiers and functionaries while ignoring the conduct of their superiors.

If crimes and abuses did occur, and we do not know – much less understand – their extent, then the likelihood that such misconduct will be repeated, but next time on an even larger scale, is virtually guaranteed.

To date, much of the discussion regarding the establishment of an independent commission has focused on the need to address abuses such as government authorized torture and rendition and warrantless spying on Americans domestically. It is easy to understand why. The conduct alleged is, in some cases, heinous, but in all cases threatens the very definition of what it means to be an American and the values our nation stands for. However, Common Cause believes that the Commission of Inquiry’s investigation should include, but not be limited to, what one of your witnesses today, Fritz Schwarz of The Brennan Center, has called “national counter-terrorism policies.”

The willingness to authorize torture and rendition, to craft legal arguments supporting such policies in countering terrorism, flows from a willingness to abandon the rule of law and our Constitution that remains unexamined and unchecked. It is that willingness which creates the constitutional crisis which Common Cause seeks to address. This abandonment of the rule of law manifests itself in other policies, including domestic policies unrelated to fighting terrorism. Policies such as substituting politically motivated prosecutions of officials for statutorily mandated enforcement of civil rights such as minorities’ access to the ballot, no-bid contracting that fosters war profiteering, and pervasive use of signing statements to signal an unwillingness to enforce laws as passed, appear to flow from the same anti-constitutional fount.

An inquiry which focuses only on conduct relating to national anti-terrorism policies and not the willingness to abandon our Constitution and the rule of law that allows such conduct will have the salutary effect of preventing future torture and rendition and may lead to holding those responsible

accountable. But it will not prevent future egregious actions, now unimaginable as torture has been in the past, that flow from a willingness to abandon the rule of law and our Constitution in times of national challenge.

We do not minimize the challenge of setting up a Commission of Inquiry so that its non-partisanship and independence are assured. There are those who will attack any such Commission, no matter how well-thought out and properly impaneled, as partisan. The only way to satisfy those voices is to continue turning a blind eye to the abandonment of the rule of law and resulting abuses of the Constitution, human rights, and international law which have taken place and which may reoccur in the future. Such a result is unacceptable. We believe that the bill introduced by Representative Conyers, H.R.104, provides a useful framework for setting up such a Commission, although we do not, clearly, agree with the jurisdictional limitations on the scope of the Commission which the bill would establish.

Common Cause commends Chairman Leahy and the Committee for addressing this important topic and the fundamental issues it raises which others have shrunk from. We look forward to working with the members of this Committee to craft and pass the necessary legislation establishing a Commission of Inquiry with an appropriate mandate and resources.