

Testimony before House Committee on Oversight and Government Reform

Presented by J. Alan Liotta

Tuesday, 24 May 2016

Chairman DeSantis, Ranking Member Lynch, and fellow members of the Committee, I would like to thank you for the opportunity to speak with you today. I believe it extremely important to present the facts about the US military detention center at the Department of Defense Naval Base at Guantanamo Bay, Cuba. More importantly, I look forward to dispelling many of the myths and misperceptions that continue to cloud discussions about our military operations at GTMO.

I welcome the opportunity to speak frankly with the members of your committee. From February 2004 until January 2015, when I retired after more than 32 years of government service, I served as the ranking career civilian officer overseeing the Office of Detainee Affairs in the Office of the Secretary of Defense. I was there when Secretary Rumsfeld created the office in the aftermath of the Abu Gharib prison scandal. I am proud to say that over the subsequent eleven years I helped play an instrumental role working with seven different Deputy Assistant Secretaries of Defense during both the Bush and Obama Administrations to create a sound, credible, and transparent detention policy that now many countries across the globe seek to emulate.

During my time at DOD, I was a frequent voice on the Hill. I regularly briefed the Department's committees of jurisdiction—HASC and SASC—as well HPSCI, SSCI, the respective Foreign Affairs committees, and many others. Guantanamo has always been an issue of keen interest on the Hill—often times resulting in legislation—and I have never turned away an opportunity to present the facts to our nation's lawmakers.

With this in mind, today I would like to focus my brief comments to the committee on why DOD continues to review the threat those in detention still pose and whether we should continue to negotiate the transfer of those whose potential threat can be mitigated safely by other countries.

At the outset, however, I would like to emphasize that military detention is not a precursor for putting a detainee on trial. Since the first detainees arrived at GTMO in January 2002, more than 780 individuals, representing more than 40 different countries, have been held at GTMO. None of them were captured by police units working with prosecutors seeking to try the individuals for crimes. ALL were captured as part of military operations, either by American forces acting on their own or in concert with allied forces. Put simply, our forces often were engaged in fierce firefights and had no time to think about, or collect, evidence preserved with appropriate chains of custody to be used in subsequent judicial proceedings. They were there with one mission, to fight and win the war.

The Authorization to Use Military Force (AUMF) passed by the Congress in September 2001, provides the foundation for the Department's authority to capture and detain those we are fighting against. There are two key reasons why:

--First, if our forces are engaged in combat without an ability to capture and detain, they then must either kill their enemy—even when capture is an option—or not target them, even if they pose a direct threat to American or allied forces. To kill when you have the ability to capture is a direct violation of the Laws of War, and thus could subject our military personnel to prosecution for war crimes. And to freely allow the enemy to target and kill American and allied military personnel when our soldiers have the option to neutralize the threat through capture, needlessly risks the deaths of much larger numbers of our military and our allies.

--Second, as in any conflict, if you can capture, or kill, enough of the enemy so that they can no longer fight, you can bring the conflict to a much quicker end. Put simply, detention is the more humane option, both for those fighting and for those innocents who potentially could get caught up in a conflict zone.

So why does DOD continue to Review the Threat of Those Still Detained?

Secretary Rumsfeld made it clear during his tenure that while we would detain those who sought to harm our national interests, we were not, nor should we be, the world's jailor. During his stewardship of the Department, and that of every subsequent Secretary of Defense, we sought to ensure a process to review the continuing level of threat posed by a detainee. During the Bush Administration,

DoD relied on the Administrative Review Board process, chaired by the Deputy Secretary of Defense, to review all of the available information available to DOD on each detainee to assess their level of threat. If a detainee was determined to no longer be a threat, he was released. And during the first ARB process, 14 detainees were approved for released with no restrictions against them.

More often, the Deputy Secretary used the ARB process to approve the transfer of individuals who were believed to continue to represent some level of threat, but one that could be constrained through negotiated security assurances with the receiving country. These assurances included the restriction of movement from within or outside the country, a continued monitoring of the individual, and where applicable, prosecution under local laws. 214 detainees were transferred with such restrictions during the ARB process.

When President Obama assumed office in 2009, he ordered the Justice Department to spearhead an executive review of all information available on each detainee. This review assessed all of the information available to the ARBs, as well as a considerable amount of highly classified intelligence that had not been part of the ARB review. As a result, the Executive Task Force determined that 126 detainees were approved for transfer subject to appropriate security assurances; 44 detainees were referred for prosecution; 30 Yemeni detainees were approved for “conditional” detention, meaning that they may be transferred if the security situation in Yemen improves, or an appropriate rehabilitation or third-country resettlement option becomes available; and 48 detainees were approved for continued detention.

Following the Task Force’s review, there began an aggressive move to transfer the 126 detainees recommended for transfer. Between 2010 and 2013, I worked successfully with Ambassador Dan Fried from the State Department to transfer 87 detainees to 29 countries and the U.S. for federal prosecution*. Although we continued to explore efforts made during the Bush Administration to provide a safer security environment in Yemen, the attempt by a terrorist to bring down airplane bound for Detroit, resulted in President Obama’s announcement of a moratorium on any transfers to Yemen.

* (Afghanistan, Albania, Algeria, Belgium, Bermuda, Bulgaria, Canada, Cabo Verde, Chad, El Salvador, France, Georgia, Germany, Hungary, Iraq, Ireland, Italy, Kuwait, Latvia, Palau, Portugal, Saudi Arabia, Slovakia, Somaliland (Somalia), Spain, Sudan, Switzerland, UK, and Yemen + U.S. for Article III prosecution.)

In October 2013, in an effort to accelerate transfers, President Obama instructed the Defense and State Departments to appoint Special Envoys exclusively dedicated to the mission of transferring detainees. Since both the DOD and State Envoys have been in place, 84 detainees have been transferred with security assurances to 20 countries.*

By this time, however, it was clear that the information used by the Task Force in 2009 to assess the potential threat of a detainee eligible for transfer was increasingly stale. So in November 2013, the Defense Department conducted the first Periodic Review Board hearing to determine whether a detainee previously determined as not eligible for transfer was still a significant threat against the United States and its allies. Like the Executive Order Task Force, the PRB consists of six voting members—one each from DOD, the Joint Chiefs of Staff, the Departments of State, Homeland Security, Justice, and from the office of the Director for National Intelligence.

Although the PRBs are a military administrative procedure—and not a judicial or penal process—the detainees can opt to be represented by both my military representatives and legal counsel. In addition, the detainee is afforded the opportunity to address the board and directly answer their questions, which makes the process more like a Parole Board review in the American penal system. Since the first PRB, there have been 43 hearings for 39 detainees. Of these 43 hearings, 11 detainees were determined to remain in Continued Detention, 21 had their status changed to transfer, and 11 decisions are pending. Of those whose status was changed to transfer, 9 have since been transferred with security assurances and the remaining 12 are still at GTMO.

Having helped construct the PRBs, and having chaired or participated in the first 10 hearings from November 2013 until my retirement, I believe the Boards are a fair and transparent mechanism for detainees to demonstrate that they no longer represent a significant threat to the United States. Board members take considerable time to prepare, conduct meaningful interactions with the detainees

*(Afghanistan, Algeria, Bosnia, Estonia, Georgia, Ghana, Kazakhstan, Kuwait, Mauritania, Montenegro, Morocco, Oman, Qatar, Saudi Arabia, Senegal, Slovakia, Sudan, UAE, UK, and Uruguay).

and their representatives, and have become extremely adept at determining when a detainee has lost the will to carry on his terrorist activities and which ones seek to game the system as a means to get out of GTMO, most likely to rejoin the fight. Interestingly, defense attorneys who represent detainees in the PRB proceedings have almost unanimously welcomed the proceedings and encouraged their detainee clients to participate in a meaningful way. I continue to believe that the PRBs can play a constructive role in aiding the transfer of detainees, so long as they are not rushed or become so rote in execution that Board Members can no longer make meaningful distinctions between detainees and their potential threats.

Finally, allow me to address the issue of detainees who have returned to the fight since their transfer from GTMO. The Intelligence Community assessed in its most recent unclassified report that 204 of the 676 former GTMO detainees are suspected or confirmed to have returned to the fight. That represents about 30% of the detainees transferred. Moreover, the Intelligence Community notes that transfers to countries with ongoing conflicts and internal stability, as well as recruitment by insurgent and terrorist organizations, could pose problems.

No one wants to see a detainee who is transferred return to the fight. The Congress has sought through varying degrees of legislation to try to prevent detainees from re-engaging once transferred, but the reality is the only way to prevent a detainee's return to the fight is to never transfer them from GTMO. But as the PRBs continue to show, that simply is not a feasible option for many of the detainees who indeed no longer wish to pursue terrorist objectives. And as Secretary Rumsfeld once warned, it would turn us into the world's jailor.

Rather, I believe it far more important to continue to negotiate meaningful and robust security assurances with other countries who have the capacity, capability, and willingness to monitor former detainees and mitigate their attempts to re-engage. We've seen this model work successfully in many countries and we should continue to rely on it. We should not rush to just any country that will say "yes" we'll take detainees from GTMO, but rather to continue to critically assess their ability to work with the detainee for their successful reintegration into society so that they do not return to their former support of terrorism. If a country cannot deliver on these measures, then we shouldn't send detainees there (and we haven't in the past). If they can, then we should transfer those eligible detainees who are best suited for success in that country.

Thank you for your time and attention.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name:

Jay Alan Lott

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2012. Include the source and amount of each grant or contract.

NONE

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

I am testifying for myself. I am an unpaid consultant to the Office of Detainee Affairs for DoD.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2012, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

I certify that the above information is true and correct.

Signature:

Jay Alan Lott

Date:

15 May 2016

J. ALAN LIOTTA

Mr. Liotta retired from government service in January 2015 after serving more than 32 years at the Department of Defense and Central Intelligence Agency. Immediately before retirement, he had served as the Principal Director for the Office of Detainee Affairs, where he developed and oversaw the execution of DoD policies governing conditions of detention at U.S. military facilities. To ensure the United States held only those whose threat could not otherwise be mitigated, he successfully negotiated with numerous countries to enable the transfer or resettlement of more than 350 detainees from Guantanamo Bay. Named to the post in July 2004 after the Office was created in response to the Abu Ghraib Prison scandal, immediately following President Obama's inauguration, he served as the Department's principal official for developing and coordinating policies to implement the President's four Executive Orders regarding detainees. In October 2009, President Obama awarded him the Distinguished Executive Presidential Rank, the highest honorary award for executives, for his exemplary leadership, sustained accomplishments, and dedication to public service.



As the Deputy Director of the Defense Prisoner of War/Missing Personnel Office (1995-2004), he oversaw the national effort to recover American service personnel unaccounted for from the Vietnam War, the Korean War, and World War II. In 1996, he led the first Defense Department delegation to North Korea since 1953 to secure historic agreements that initiated joint recovery operations and repatriation of U.S. servicemen lost during the Korean War. He subsequently led numerous delegations to expand these operations and to gain access to North Korean war records. President George W. Bush awarded him the Meritorious Executive Presidential Rank in October 2001 for his "strong negotiating skills and creative problem-solving abilities (which were) crucial to reaching the historical accord with North Korea in 1996 resulting in the first successful joint recovery operation." In January 2015, Secretary of Defense Chuck Hagel awarded him the Department of Defense Medal for Distinguished Civilian Service, citing his "legacy" of "his leadership in creating a principled, credible, and sustainable set of policies to govern United States detention operations." His previous awards include the Secretary of Defense Medal for Meritorious Civilian Service and Secretary of Defense Medal for Exceptional Civilian Service Award.

Mr. Liotta entered government service in May 1983. He began his career as an intelligence analyst with the CIA, specializing on China, Southeast Asia and East Asia. A native of New York State, Mr. Liotta earned a Bachelor of Arts in Political Science and East Asian Studies from Wittenberg University in 1982. During the summer of 1981, he studied at the University of Beijing under the auspices of the Council for International Educational Exchange. In 1984, Mr. Liotta received a Master of Arts from the George Washington University School of Public and International Affairs. He studied the Chinese language (Mandarin) while earning his undergraduate and graduate degrees.

Mr. Liotta is married to the former Kathryn Avery, who teaches in a Fairfax County Public school. They have two adult sons. A United States Soccer Federation referee, Mr. Liotta served as the State Youth Referee Administrator for Virginia from 2005-2008. A coach of competitive soccer for more than 25 years, he took several teams to Europe and was named Virginia Boys Coach of the Year in 2005.