



NEW YORK  
CITY BAR

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May 8, 2018

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Chuck Schumer  
Minority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510-3202

The Honorable Richard Burr  
Chairman, Select Committee on Intelligence  
United States Senate  
217 Russell Senate Office Building  
Washington, DC 20510-3308

The Honorable Mark Warner  
Vice Chairman, Select Committee on Intelligence  
United States Senate  
703 Hart Senate Office Building  
Washington, DC 20510

**Re: Nomination of Gina Haspel for Director of the Central Intelligence Agency**

Dear Majority Leader McConnell, Minority Leader Schumer, Chairman Burr, and Vice Chairman Warner:

We submit this letter on behalf of the New York City Bar Association (“City Bar”), a voluntary bar association with over 24,000 members, to offer comments regarding the nomination of Gina Haspel for Director of the Central Intelligence Agency. Since its founding in 1870, the City Bar has worked to advance and defend the rule of law. As part of this mission, since the heinous attacks on September 11, 2001 the City Bar has generated several carefully researched and reasoned reports and letters concerning so-called enhanced interrogation programs and related activities, with the aim of promoting America’s long-term security in part through respect for lawful and humane policies.<sup>1</sup>

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<sup>1</sup> See New York City Bar Committee on International Human Rights and Center for Human Rights and Global Justice of the New York University School of Law, “Torture By Proxy: International And Domestic Law Applicable To ‘Extraordinary Renditions,’ ” Oct. 2004, [http://www.nycbar.org/pdf/report/Torture%20by%20Proxy%20-%20Final%20\(PDF\).pdf](http://www.nycbar.org/pdf/report/Torture%20by%20Proxy%20-%20Final%20(PDF).pdf); see also New York City Bar Committee on International Human Rights, “Human Rights Standards Applicable to the United States’ Interrogation of Detainees,” Apr. 2004, [http://www.nycbar.org/pdf/report/Human\\_Rights.pdf](http://www.nycbar.org/pdf/report/Human_Rights.pdf) and its 2006 “Supplement,” [http://www.nycbar.org/pdf/report/Interrogation\\_of\\_Detainees\\_Supplement.pdf](http://www.nycbar.org/pdf/report/Interrogation_of_Detainees_Supplement.pdf); and “Reaffirming the U.S. Commitment to Common Article 3 of the Geneva Conventions: An Examination of the Adverse Impact of the

The City Bar's extensive engagement in this important area prompts this letter regarding Ms. Haspel's nomination. While the City Bar regularly reviews and provides public assessments of the qualification of candidates to become judges in New York City federal, state and local courts, the New York Court of Appeals and the United States Supreme Court, the City Bar traditionally does not communicate public evaluations of whether nominees for other political appointments are qualified for that position. We acknowledge that the Senate should afford the President substantial deference in the selection of high-ranking appointees when exercising its Constitutional function of advice and consent. We nevertheless believe it is appropriate, without taking a formal position on Ms. Haspel's candidacy, to identify questions we submit members of the Select Committee should pose to Ms. Haspel in evaluating her candidacy and consider in their deliberations over her confirmation.

These questions should be directed to the important purpose of testing and confirming Ms. Haspel's commitment to adhering to and rigorously enforcing U.S. laws and treaties prohibiting and criminalizing torture, and to permitting appropriate oversight of the CIA by Congress and United States courts. The City Bar believes, and expects the Select Committee's members equally believe, that wholehearted commitment to adhering to and enforcing these values is an essential component of a candidate's qualification to serve as Director of the Central Intelligence Agency. These questions should also be directed to the important purpose of identifying and understanding Ms. Haspel's past actions to the fullest extent possible and evaluating how those actions may impact the Select Committee's assessment of whether she should be confirmed to serve in this important role.

Though many details about Ms. Haspel's professional record remain classified, what is known raises sufficiently important questions to warrant the Select Committee's acquisition of the most comprehensive record possible and searching evaluation of her past actions.<sup>2</sup> In particular, it seems essential for the Select Committee, in evaluating her fitness to serve as Director, develop the fullest possible understanding regarding her involvement in running a CIA black site in Thailand where two detainees were reportedly tortured, and regarding her advocacy for and assistance in facilitating the destruction of videotaped recordings of those interrogation sessions.

### **Publicly Available Facts**

Because the US government continues to classify information about the CIA Rendition Detention and Interrogation (RDI) program, the City Bar's factual understanding is limited to what can be gleaned about Ms. Haspel's role from media reports, memoirs of former CIA officials, and the few public documents containing information about her role. The Select

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Military Commissions Act and Executive Order Governing CIA Interrogations," June 2008, [http://www.nycbar.org/pdf/report/GC\\_Report0702\\_all.pdf](http://www.nycbar.org/pdf/report/GC_Report0702_all.pdf). Additional reports listed in the Appendix. All City Bar reports are posted at [www.nycbar.org](http://www.nycbar.org).

<sup>2</sup> The recent release of additional internal documents may offer some important further information, but the Select Committee may consider it appropriate to view them with some caution given Ms. Haspel's role, as Acting Director, in determining what to release. Katie Bo Williams, "CIA delivers classified documents to Congress on Haspel" *The Hill*, May 7, 2018, <http://thehill.com/policy/national-security/386538-cia-delivers-classified-materials-to-congress-on-haspel> (all websites last visited May 8, 2018).

Committee need not and should not be similarly constrained, particularly given the apparent facts reported by those sources.

John Rizzo, former CIA General Counsel, has described Ms. Haspel in his book as having “run the [CIA] interrogation program.”<sup>3</sup> Glenn Carle, a former undercover CIA operative who was involved in interrogating a suspected al Qaeda detainee, described her as “one of the architects, designers, implementers and one of the top two managers of the [CIA interrogation program].”<sup>4</sup> These statements appear to warrant searching inquiry into her role in components of this program that reportedly involved acts amounting to torture in violation of Common Article 3 of the Geneva Convention, the Torture Convention, the U.S. Torture statutes and settled norms and principles of international law.

Ms. Haspel reportedly ran a CIA “black site” in Thailand from late October to late December 2002 where at least two detainees, Abu Zubaydah and Abd al-Rahim al-Nashiri, were held.<sup>5</sup> According to the Select Committee’s 2012 and 2014 reports, Ms. Haspel appears to have arrived at the Thai site toward the end of the period of Mr. Zubaydah’s most intense interrogation. This included being stripped naked, hit, slammed into walls, shackled in extremely painful stress positions, subjected to extreme cold, and waterboarded 83 times—on at least one occasion to the point of near death. In mid-November 2002 Ms. Haspel supervised the interrogation of Mr. al-Nashiri, who arrived at the site earlier that month. Interrogators used many of the same unlawful techniques on Mr. al-Nashiri that they had employed on Mr. Zubaydah, including waterboarding.<sup>6</sup>

The Select Committee might readily conclude, upon learning the precise facts about what conduct took place at the Thailand site, that this activity plainly constituted torture. It might also conclude that regardless of whatever apparent authorization was provided for enhanced interrogation, torture was illegal at the time and remains illegal today, and any senior person’s involvement in overseeing, directing, permitting or even tolerating the conduct that has been reported could raise questions about that person’s fitness to serve as the head of our country’s agency in charge of protecting national security through clandestine activities.

At the end of December 2002, Ms. Haspel reportedly returned to the CIA Counterterrorism Center outside Washington as an operations officer.<sup>7</sup> Very little public

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<sup>3</sup> John Rizzo, *A COMPANY MAN*, Scribner: New York 2014, p. 14.

<sup>4</sup> Natasha Bertrand, “A Controversial Record of Torture, but Maybe Not a Deal-Breaker for Democrats,” *The Atlantic*, March 13, 2008, <https://www.theatlantic.com/politics/archive/2018/03/democrats-may-look-past-a-cia-nominees-record-on-torture/555554/>.

<sup>5</sup> Adam Goldman, “Gina Haspel, Trump’s Choice for C.I.A., Played Role in Torture Program,” *New York Times*, March 13, 2018, <https://www.nytimes.com/2018/03/13/us/politics/gina-haspel-cia-director-nominee-trump-torture-waterboarding.html>.

<sup>6</sup> US Senate, Select Committee on Intelligence, Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, December 13, 2012, updated April 3, 2014, released Dec. 2, 2014, [https://www.feinstein.senate.gov/public/\\_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf](https://www.feinstein.senate.gov/public/_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf), p. 67 (hereinafter “Senate Summary”).

<sup>7</sup> Adam Goldman, “Gina Haspel, Trump’s Choice for C.I.A., Played a Role in Torture,” *New York Times*, March 13, 2018, <https://www.nytimes.com/2018/03/13/us/politics/gina-haspel-cia-director-nominee-trump-torture-waterboarding.html>.

information exists about her role between then and 2005. At some point she became chief of staff to Jose Rodriguez, who headed the CIA's National Clandestine Service from 2004 or 2005 until 2007. During this period the RDI program continued. The CIA apprehended scores of men from around the world, held them in secret incommunicado detention, and either mistreated them in US custody or rendered them to the custody of other governments where many were tortured.<sup>8</sup> The available public record provides no clear information regarding the extent (if any) of Ms. Haspel's involvement in the RDI program during this period, but it appears appropriate for the Select Committee to satisfy itself on this important issue as well.

The record appears clear that in 2005, Ms. Haspel played a role in the destruction of 96 videotapes of CIA interrogations, mostly of Mr. Zubaydah but also including a small number of tapes of Mr. al-Nashiri's interrogations.<sup>9</sup> Ms. Haspel reportedly drafted the order to destroy the tapes, while Mr. Rodriguez signed it despite having no authority to do so. Mr. Rizzo has described Mr. Rodriguez and Ms. Haspel as the two "staunchest advocates" for destruction of the tapes, who would raise the subject "almost every week."<sup>10</sup> Mr. Rizzo has said that both had knowledge that the Director of National Intelligence and successive White House counsels, among others in the administration, strongly opposed destroying the tapes.<sup>11</sup> At the time there was concern at the agency and within the administration that a Freedom of Information Act Request by the American Civil Liberties Union, and a federal criminal case implicating the CIA program, might compel production of the tapes.<sup>12</sup>

An internal review by then-Deputy Director of the CIA of the tape destruction incident cleared Ms. Haspel of wrongdoing because she assertedly believed Rodriguez had obtained permission to destroy the tapes from Porter Goss, Director at the time.<sup>13</sup> Even if Mr. Rodriguez had obtained such approval, it could not have substituted for the requisite sign off from the White House or Director of National Intelligence. The Deputy Director's internal review found that Mr. Rodriguez did not have authority to destroy the tapes, and a letter of reprimand was placed in his file.

The internal review's conclusion clearing Ms. Haspel of wrongdoing does not appear to eliminate the appropriateness of searching inquiry by the Select Committee into the facts and

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<sup>8</sup> Open Society Justice Initiative (OSJI), "Globalizing Torture: CIA Secret Detention and Extraordinary Rendition," February 2013, <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Human Rights Watch, *No More Excuses: A Roadmap to Justice for CIA Torture*, Dec. 1, 2015, [https://www.hrw.org/sites/default/files/report\\_pdf/us1215web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us1215web.pdf).

<sup>9</sup> The exact number of tapes destroyed varies by source. In his book, "A Company Man, former CIA General Counsel John Rizzo, who has a first-hand account of the episode, says there were 100 hours of recordings on 96 tapes. See Rizzo, *A COMPANY MAN*, p. 7. Many media reports say 92 tapes were destroyed. See, e.g. Adam Goldman and Matt Apuzzo, "Lawyers Left Off Memo to Destroy CIA Terror Tapes," Associated Press, July 26, 2010 [http://www.nbcnews.com/id/38416094/ns/us\\_news-security/t/lawyers-left-memo-destroy-cia-terror-tapes/](http://www.nbcnews.com/id/38416094/ns/us_news-security/t/lawyers-left-memo-destroy-cia-terror-tapes/).

<sup>10</sup> Rizzo, *A COMPANY MAN*, p. 15.

<sup>11</sup> *Ibid.*, p. 16.

<sup>12</sup> *Ibid.*, p. 15.

<sup>13</sup> Memorandum for CIA Director from Deputy Director of CIA, "15 September 2011 D/CIA Memorandum "Disciplinary Review," Dec. 20, 2011, <https://drive.google.com/file/d/0ByVu4fDHYJgVX0dkSINhVGJ1U0FjT3d3b185T2RJWGZNBdGw/view>.

implications underlying her advocacy for destruction of the tapes and her role in accomplishing their destruction, as they bear on her willingness to permit appropriate oversight of the CIA.

### **Questions for Further Inquiry**

While the conduct at issue is more than a decade in the past and implicates issues that appropriate authorities at least partly elected to leave unresolved in favor of forward-looking rules and sensibilities regarding future conduct, Ms. Haspel's nomination for a position involving hugely sensitive and important judgments outside the public view appears to warrant the Select Committee's satisfying itself on multiple points presented by the incomplete public record that potentially bear on her suitability for this important position. Those points include:

- what role Ms. Haspel played and what knowledge she had regarding the interrogations, the RDI program and the destruction of tapes;
- what conduct took place in the interrogations and the RDI program;
- whether Ms. Haspel believed that such conduct was legal and if so what was the basis for that belief (and how reasonable that basis appears to have been);
- what reasons Ms. Haspel had for advocating for destruction of tapes; and
- whether Ms. Haspel believes today that any of the past conduct at issue was unlawful or inappropriate, and how committed she is today to ensuring that (1) no torture or other violations of the Geneva Convention, the Torture Convention, U.S. law or international law will occur under her leadership of the CIA, and (2) she will not impede proper oversight of CIA activities.

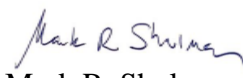
Obtaining full answers to these questions seems essential to the Select Committee's determination whether Ms. Haspel's record and answers inspire the confidence the Committee should require to consent to her appointment. An absence of searching inquiry on these subjects would itself convey a significant negative message about the degree of primacy the Select Committee attaches to the rule of law.

Thank you for your attention to this important matter.

Respectfully,



John S. Kiernan  
President of the Association



Mark R. Shulman  
Chair, Task Force on National Security and  
the Rule of Law

Cc: Members of the US Senate Select Committee on Intelligence:

The Honorable James Risch  
The Honorable Marco Rubio  
The Honorable Susan Collins  
The Honorable Roy Blunt  
The Honorable James Lankford  
The Honorable Tom Cotton  
The Honorable John Cornyn  
The Honorable Diane Feinstein  
The Honorable Ron Wyden  
The Honorable Martin Heinrich  
The Honorable Angus King  
The Honorable Joe Manchin  
The Honorable Kamala Harris  
The Honorable John McCain, *Ex Officio*  
The Honorable Jack Reed, *Ex Officio*

## APPENDIX

December 2001 Report, *Inter Arma Silent Leges: In Times of Armed Conflict, Should the Laws be Silent? A Report on The President's Military Order of November 13, 2001 Regarding "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," available at [http://www.nycbar.org/pdf/report/should\\_the\\_laws.pdf](http://www.nycbar.org/pdf/report/should_the_laws.pdf).*

August 2002 Report, *The Legality and Constitutionality of the Presidential Authority to Initiate an Invasion of Iraq, available at <http://www.nycbar.org/pdf/report/uploads/2002640-ReportonLegalityandConstitutionalityofthePresidentsAuthoritytoInitiateanInvasiononIraq.pdf>*

April 1, 2004 Report, *Human Rights Standards Applicable to the United States' Interrogation of Detainees, available at [http://www.nycbar.org/pdf/report/Human\\_Rights.pdf](http://www.nycbar.org/pdf/report/Human_Rights.pdf).*

September 15, 2006 letter from City Bar President Barry M. Kamins to Senate Majority and Minority Leaders Frist and Reid opposing the Administration's proposed Military Commissions Act of 2006 (the "Act"), *available at <http://www.nycbar.org/pdf/report/CommissionsActLetterSenatorsSept15.pdf>.*

November 24, 2008 letter from City Bar President Patricia M. Hynes to President-Elect Barack Obama calling on the new Administration to close the detention facility at Guantanamo and to prosecute criminal wrongdoers in U.S. federal courts; to disclose and ensure transparency of the policies and procedures governing any U.S. detention operations abroad; and to comply with international law with respect to the treatment of detainees abroad, *available at [http://www.nycbar.org/pdf/report/TransitionLetter\\_President\\_Obama.pdf](http://www.nycbar.org/pdf/report/TransitionLetter_President_Obama.pdf).*

December 15, 2010 letter from City Bar President Samuel W. Seymour to Senate Majority and Minority Leaders Reid and McConnell opposing legislation which would terminate funding to transfer a non-citizen to the U.S. for any purpose and establishing that the federal criminal justice system is well-equipped to prosecute terrorism, *available at <http://www.nycbar.org/pdf/report/uploads/20072024-LettertoUSSenateresection1116reTransferofNon-CitizenstoUS.pdf>.*

October 11, 2011 letter from City Bar President Samuel W. Seymour to Attorney General Eric H. Holder calling on the Administration to provide information and clarification on the position of the U.S. Government on the law governing targeted killings, *available at [http://www2.nycbar.org/pdf/report/uploads/8\\_200721892011-10-09TaskForceletterreLawofTargettedKillings.pdf](http://www2.nycbar.org/pdf/report/uploads/8_200721892011-10-09TaskForceletterreLawofTargettedKillings.pdf).*

December 19, 2012 letter from City Bar President Carey R. Dunne to President Barack Obama calling on the Administration to close the detention facility at Guantanamo and to prosecute in U.S. courts those that have engaged in criminal conduct; applauding the January 2009 Executive Order banning enhanced interrogation techniques; and urging greater transparency regarding the use of drones and targeted killings, *available at <http://www2.nycbar.org/pdf/report/uploads/LettertoPresidentre.NationalSecurity12.19.12.pdf>.*

May 3, 2013 letter from City Bar President Carey R. Dunne to President Barack Obama urging that the Administration take immediate steps to release or transfer the 86 Guantanamo detainees who were cleared for release, *available at* <http://www2.nycbar.org/pdf/report/uploads/20072476-LettertoPresidentObamaonReleaseofGuantanamoPrisoners.pdf>.

July 24, 2013 Statement of the Association of the Bar of the City of New York to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights regarding Closing Guantanamo: The National Security, Fiscal and Human Rights Implications, *available at* <http://www2.nycbar.org/pdf/report/uploads/20072550-ClosingGuantanamo--TheNationalSecurityFiscalHumanRightsImplications.pdf>.

January 2017 Recommendations Respectfully Submitted to the Trump Administration Regarding National Security Policies, *available at* [http://s3.amazonaws.com/documents.nycbar.org/files/20073228\\_NatlSecurityTrumpTransition\\_FINAL\\_1.30.17.pdf](http://s3.amazonaws.com/documents.nycbar.org/files/20073228_NatlSecurityTrumpTransition_FINAL_1.30.17.pdf).