

Toward a North Carolina Commission of Inquiry on Torture



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Prepared for: NC Stop Torture Now

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Executive Summary

Introduction¹

Since the attacks of September 11, 2001, the US has been fighting a global “War on Terror.” The military action is not a “war” in the traditional sense; its general objective is to eradicate the Al Qaeda terrorist network and secure Afghanistan and Iraq. One way the US has handled national security concerns brought on by the global War on Terror is through extraordinary rendition. Extraordinary rendition is “the practice of sending a foreign criminal or terrorist suspect covertly to be interrogated in a country with less rigorous regulations for the humane treatment of prisoners.” The CIA contracts with a number of civilian corporations to transport detainees. Aero Contractors, a Delaware corporation with its principal office in Smithfield, North Carolina, has provided logistical support for the CIA. Aero Contractors is an aviation company that operated two planes—tail numbers N313P and N379P—that a number of authors allege carried detainees to CIA detention facilities abroad, including Guantánamo Bay, Cuba, and Kabul, Afghanistan. Many flights began and ended in either Smithfield or Kinston, NC. A number of detainees, including Binyam Mohamed, Bisher Al-Rawi, Abou El-Kassim Britel, and Khaled El-Masri, have claimed they were flown by Aero Contractors and subsequently tortured.

NC Stop Torture Now is a grassroots coalition of individuals interested in investigating the role of North Carolina businesses in the War on Terror. State and national efforts to provide accountability for torture have been ineffective, and detainees have been unsuccessful in bringing lawsuits against Aero Contractors and other defendants. NC Stop Torture Now wants to create a Commission of Inquiry to investigate concerns that Aero Contractors violated international prohibitions against torture and extraordinary rendition. This Masters Project evaluates models for a Commission of Inquiry.

Options and Criteria

To begin my analysis, I gathered publicly available information about flight records for planes N313P and N379P as well as information about US handling of detainees in the War on Terror. Next, I

¹ This student paper was prepared in 2011 in partial completion of the requirements for PPS 308, a course in the Masters of Public Policy Program at the Sanford School of Public Policy at Duke University. The research, analysis, policy alternatives and recommendations contained in this paper are the work of the student who authored the document, and do not represent the official or unofficial views of the Sanford School of Public Policy or of Duke University. Without the specific permission of its authors, this paper may not be used or cited for any purpose other than to inform the client organization about the subject matter. The author relied in many instances on data provided to them by the client and related organizations and makes no independent representations as to the accuracy of the data.

analyzed this information in the context of North Carolina. I considered three models for a commission of inquiry: 1) an Executive Option, a commission created by executive order by Governor Bev. Purdue; 2) a Legislative Option, a commission created by the North Carolina General Assembly, and 3) a Community Option, a commission created by grassroots organizers. I analyzed these policy options against four criteria:

- Solves the problem: a policy option will meet this criterion if its ultimate findings convince government bodies to change policy and new policy changes are implemented.
- Obtains information: a policy option will meet this criterion if it allows the investigator to collect information pertinent to the investigation.
- Receives public support: a policy option will meet this criterion if it raises public awareness about the role of North Carolina in extraordinary rendition and encourages public participation in the investigation process.
- Is politically feasible: a policy option will meet this criterion if it is a viable political option in North Carolina.

Analysis

Each policy option received a score of excellent, good, acceptable or poor. The executive option scored “good” on solving the problem and obtaining information. If Governor Perdue authorized a Commission, she would likely accept a number of the Commission’s recommendations. Furthermore, she could direct agency heads to submit information to the Commission about anything related the duties of his or her office, which may enable the Commission to obtain much information. The executive option would not provide much opportunity for public participation in the commission’s work, although an executive mandate would raise awareness about the policy issue. However, the executive option is probably not politically feasible in North Carolina.

Like the executive option, the legislative option would provide a good opportunity to solve the problem because the General Assembly could pass legislation to adopt the recommendations of the commission. This option would also provide a good opportunity to obtain information. The NC legislature could compel some information about the role of Aero Contractors in extraordinary rendition, but it could not compel information from the US Government. The commission could be designed to allow for public participation, making it a good option for receiving public support. However, the legislative option is also probably not politically feasible in North Carolina.

Recommendation 1: Use the community option for the North Carolina Commission of Inquiry on Torture.

The community option is the best model for the North Carolina Commission of Inquiry on Torture. This option should allow the Commission to obtain a lot of information about Aero Contractors and allow them to build coalitions with community partners. While the Commission will likely see modest to moderate results for solving the problem, the community option is the model that is most politically feasible in North Carolina. In light of this analysis, I make the following further recommendations:

Recommendation 2: Invite Community Groups to nominate a member to the Selection Panel.

This process was critical in helping the Greensboro Truth and Reconciliation Commission build credibility in the community because gave all segments of the community a voice in the process. This same process could be used with the Torture Commission. If member of “opposition” groups—such as Aero Contractors or Global Transpark—agree to nominate a member to the Selection Panel, they will help enrich the diversity of opinions provided in the Commission. If they choose not to participate, it is less likely that the Commission could be criticized for failing to include these parties.

Recommendation 3: Design an aggressive public affairs campaign.

Since the Commission will be community-oriented, it will be important for the Commission to promote itself as best as possible. This promotion will help increase the diversity of information provided to the Commission and give the public more information about its work.

Recommendation 4: Follow up with Flight Service Stations about flight documentation.

The Commission will be more successful if they can acquire official documentation of Aero flights connected to extraordinary rendition. I was informed by the Federal Aviation Administration that flight records are kept at various Flight Service Stations operated by Lockheed Martin. NC Stop Torture Now should follow up with Lockheed Martin to try to get this information.

Chapter 1: Policy Question

How can NC Stop Torture Now best design a commission of inquiry to investigate allegations that a North Carolina business has participated in extraordinary rendition and has been complicit in torture of detainees in the War on Terror?

Policy Context

NC Stop Torture Now is a grassroots coalition of individuals interested in investigating the role of North Carolina businesses in the War on Terror. After seeing a number of reports alleging that North Carolina's Aero Contractors contracted with the CIA to fly terrorism suspects to and from detention facilities—where these suspects later claimed they were tortured—the advocacy group became interested in examining these allegations and working to prohibit such businesses from operating in the state. NC Stop Torture Now wants to create a Commission of Inquiry to investigate concerns that Aero Contractors violated international prohibitions against torture and extraordinary rendition.

Commissions of inquiry have been used in many post-conflict settings to understand the contribution of different parties to a conflict. NC Stop Torture Now believes that a commission of inquiry is the best approach for achieving their goals. The advocacy group has been involved in legislative efforts to provide accountability for torture at both the federal and state level, but these efforts have been unsuccessful. NC Stop Torture Now also believes that the judicial system does not provide a forum to address these concerns because such efforts have also been unsuccessful. Relying on the State Secrets Doctrine, US federal courts have dismissed lawsuits filed by detainees against Aero Contractors and other defendants. In light of these roadblocks, NC Stop Torture Now sees a commission of inquiry as an innovative approach that might better address the policy problem.

In my analysis, I used a best practices methodology to examine how other jurisdictions have addressed civil rights abuse allegations through a commission of inquiry. The best practices approach was appealing because I could collect information about the political hurdles that a commission faced as well as information on how well the commission addressed the problem. In light of NC Stop Torture Now's primary interest in a commission of inquiry, this Masters Project will not address collateral issues, such as new legislative options or the Federal Supremacy Doctrine.

Chapter 2: Problem Statement

Since the attacks of September 11, 2001, the US has been fighting a global “War on Terror.” The military action is not a “war” in the traditional sense; its general objective is to eradicate the Al Qaeda terrorist network and secure Afghanistan and Iraq. The Bush and Obama Administrations have contended that military action is necessary to prevent future terrorist attacks against the US. However, the action has been criticized for lacking a well-defined enemy and for allowing the US to pursue other goals. The Central Intelligence Agency has been involved in covert operations to capture and detain high value suspects that pose a risk to the United States.² However, the harsh treatment of some detainees has caused significant public debate about how the US should conduct interrogation.

One way the US has handled national security concerns is through extraordinary rendition. Extraordinary rendition is “the practice of sending a foreign criminal or terrorist suspect covertly to be interrogated in a country with less rigorous regulations for the humane treatment of prisoners.”³ Extraordinary rendition differs from extradition, the legal process of transferring an accused between jurisdictions. Extradition is the process of “hand[ing] over (a person accused or convicted of a crime) to the jurisdiction of the foreign state in which the crime was committed.”⁴ News reports indicate that the CIA apprehended terrorism suspects and transferred them to detention facilities abroad, without the necessary process required for extradition.⁵ Several suspects allege they were exposed to harsh interrogation conditions and torture.⁶ Many allege they were held for several years and never charged with a crime or given access to lawyers or consular officials.⁷ The Bush and Obama Administrations argued that extraordinary rendition was necessary to protect US national security interests.⁸ On the other hand, some military leaders claimed that extraordinary rendition violates international law.⁹

² See Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, by Stephen G. Bradbury, 5 (May 30, 2005) [hereinafter Bradbury Memo].

³ *Extraordinary Rendition*, NEW OXFORD ENGLISH DICTIONARY (Nov. 5, 2010), <http://www.oed.com/>.

⁴ *Extradite*, NEW OXFORD ENGLISH DICTIONARY (Nov. 5, 2010), <http://www.oed.com/>.

⁵ See Interview by Scott Pelley with Michael Scheuer, former CIA official, *60 Minutes: CIA Flying Suspects to Torture?* (CBS television broadcast Mar. 6, 2005).

⁶ See *Mohamed v. Jeppesen Dataplan, Inc.*, 2010 U.S. App. LEXIS 18746 (9th Cir. Cal. Sept. 8, 2010); *El-Masri v. United States*, 479 F.3d 296 (4th Cir. 2007).

⁷ See *Id.*

⁸ See, e.g., David Johnston, *U.S. Says Rendition to Continue, but With More Oversight*, N.Y. TIMES, Aug. 24, 2009, available at <http://www.nytimes.com/2009/08/25/us/politics/25rendition.html>.

⁹ See, e.g., Letter from David H. Petraeus, General, United States Army, to Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen serving in Multi-National Force-Iraq (May 10, 2007), available at http://www.washingtonpost.com/wp-srv/nation/documents/petraeus_values_051007.pdf; Interview by Washington Media Associates with Major General Thomas

Several authors have described the logistics of extraordinary rendition.¹⁰ The CIA contracts with a number of civilian corporations to transport detainees.¹¹ Aero Contractors, a Delaware corporation with its principal office in Smithfield, North Carolina, has provided logistical support for the CIA.¹² Aero Contractors is an aviation company that operated two planes—tail numbers N313P and N379P—that a number of authors allege carried detainees to CIA detention facilities abroad, including Guantánamo Bay, Cuba, and Kabul, Afghanistan.¹³ Many flights began and ended in either Smithfield or Kinston, NC, although they did not pick up detainees until later destinations.¹⁴ Detainees who claimed they were flown by Aero Contractors and subsequently tortured include:

- Binyam Mohamed, detained in Kabul, Afghanistan, and Guantánamo Bay in 2002;¹⁵
- Bisher Al-Rawi, an Iraqi citizen and UK resident, detained at Guantánamo in 2002;¹⁶
- Abou El-Kassim Britel, an Italian citizen detained in Pakistan in 2002;¹⁷ and
- Khaled El-Masri, a German citizen detained in Kabul, Afghanistan in 2004.¹⁸

NC Stop Torture Now would like to create a commission of inquiry to investigate allegations that Aero Contractors contracted with the CIA for assistance with extraordinary rendition. Ultimately, NC Stop Torture Now would like to prohibit such contracting practices in the future.

Romig, Judge Advocate General, US Army (Nov. 19. 2007),
http://www.gwu.edu/~nsarchiv/torturingdemocracy/interviews/thomas_romig.html.

¹⁰ See TREVOR PAGLEN & A.C. THOMPSON, *TORTURE TAXI* (Melville House 2006); STEPHEN GREY, *GHOST PLANE: THE TRUE STORY OF THE CIA TORTURE PROGRAM* (St. Martin's Press 2006).

¹¹ See Paglen and Thompson, *supra* note 10, at p. 79.

¹² *Id.*

¹³ See *Id.* at 79-90; Grey, *supra* note 10.

¹⁴ See Appendices 3-6, *infra*. p. 24.

¹⁵ *In re* Binyam Mohamed, Declaration of Clive Stafford-Smith (2010).

¹⁶ *In re* Bisher Al-Rawi, Declaration of Bisher Al-Rawi (2010).

¹⁷ *In re* Abou Elkassim Britel, Declaration of Abou Elkassim Britel (2010).

¹⁸ *In re* Khaled El-Masri, Declaration of Khaled El-Masri (2010).

Chapter 3: Background

The War on Terrorism and Controversy over Detainees

On the Sunday following September 11, 2001, former Vice-President Dick Cheney was interviewed by Tim Russert on *Meet the Press*. In the wake of the tragedy, he provided insight into the upcoming US response. When asked about a possible action against Al Qaeda, Cheney explained that the US would use a variety of tactics:

“We also have to work, though, sort of the dark side, if you will. We’ve got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we’re going to be successful. That’s the world these folks operate in, and so it’s going to be vital for us to use any means at our disposal, basically, to achieve our objective.”¹⁹

Information released in the years following September 11, 2001 sheds light on the methods alluded to by Cheney. In a memo to Attorney General Alberto Gonzales on acceptable interrogation techniques, Assistant Attorney General Jay Bybee wrote in 2002 that “severe pain” must rise to a level “that would ordinarily be associated with a sufficiently serious physical condition or injury such as death, organ failure or serious impairment of body functions—in order to constitute torture.”²⁰ In 2004, the US Army came under fire when American soldiers at Abu Ghraib prison in Iraq tortured prisoners.²¹ These revelations led to a public outcry.²²

Bush Administration officials argued that Enhanced Interrogation Techniques (EITs) were necessary to maximize intelligence gathered from detainees. Proponents of EITs noted that the CIA’s official policy was to use these techniques only on “High Value Detainees,” senior members of terrorist networks with direct knowledge of imminent threats against the US or its allies.²³ The Department of Justice argued that “intelligence acquired from these interrogations has been a key reason why al-Qa’ida

¹⁹ Interview by Tim Russert with Dick Cheney, Vice President of the United States, *Meet the Press* (MSNBC television broadcast Sept. 16, 2001).

²⁰ Memorandum for Alberto R. Gonzales Counsel to the President from Assistant Attorney General Jay Bybee, 6 (Aug. 1, 2002) (available at <http://www.tomjoad.org/bybeememo.htm>) (hereinafter “Bybee Memo”).

²¹ See, e.g., *The Abu Ghraib Files*, SALON, Mar. 14, 2006, http://www.salon.com/news/abu_ghraib/2006/03/14/introduction.

²² The Department of Justice revised its guidelines for interrogation in 2004. See Daniel Levin, LEGAL STANDARDS APPLICABLE UNDER 18 U.S.C. §§ 2340-2340A (Dec. 30, 2004) (available at <http://www.justice.gov/olc/18usc23402340a2.htm>).

²³ Bradbury Memo, *supra* note 2, at p. 5.

has failed to launch a spectacular attack in the West since 11 September 2001.”²⁴ Former Vice-President Dick Cheney continues to defend the Administration’s decisions, stating that the policies saved lives.²⁵ But many see the means of interrogation as having the opposite effect for US goals. Some argue that harsh interrogation tactics put our military at greater risk by mobilizing the enemy and subjecting the troops to similar harsh treatment.²⁶ Others argue normatively that harsh interrogation techniques should never be employed, regardless of the objective.²⁷ Still others argue that these techniques are forbidden by international law, including the Geneva Conventions and the Convention Against Torture, and thus should not be used.²⁸

Critical analysis of these arguments is difficult because the information is not equally available to support both sides. Due to the sensitive nature of intelligence, little is publicly known about the true value of information possessed by detainees. This Masters Project will evaluate known information and make policy recommendations.

Flight Network

The CIA needs airplanes to shuttle its agents between the United States and operations abroad. In the mid-20th century, the CIA had an in-house air services provider, Air America.²⁹ Air America was closed in the 1970s, and the CIA began using contractors for air support.³⁰ Air America pilot Jim Rhyne formed Aero Contractors—an aviation company based in Smithfield, NC—in 1979 for the nearly-exclusive purpose of providing flight support for the CIA.³¹

Despite little official information about detainees, civilians have learned much about their transport from flight records. Aviation companies must file flight plans with the Federal Aviation Administration.³² But suspicion about specific planes first arose when airport employees and amateur “plane spotters” noticed

²⁴ *Id.* at pp. 8-9. See also Marc A. Thiessen, The CIA’s Questioning Worked, THE WASHINGTON POST, Apr. 21, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/20/AR2009042002818.html>.

²⁵ See, e.g., Dick Cheney, former Vice President of the United States, Address at the National Press Club (June 1, 2009). See also *Meet the Press*, *supra* note 19.

²⁶ See, e.g., The Origins of Aggressive Interrogation Techniques: Hearing Before the S. Armed Services Comm., 110th Cong. (2008) (opening statement of Senator Carl Levin, Chairman of the S. Armed Services Comm.).

²⁷ See, e.g., Letter from David H. Petraeus, *supra* note 9; Interview with Major General Thomas Romig, *supra* note 9.

²⁸ See, e.g., Memorandum for the Inspector General, Department of the Navy from Alberto J. Mora (Jul. 7, 2004).

²⁹ Paglen & Thompson, *supra* note 10, at p. 87.

³⁰ *Id.* at 87-88.

³¹ *Id.* at 88.

³² VFR flight plan: Information required, 14 C.F.R. § 91.153 (2010); IFR flight plan: Information required, 14 C.F.R. § 91.169 (2010); ATC clearance and flight plan required, 14 C.F.R. § 91.173 (2010); ADIZ flight plan requirements, 14 C.F.R. § 99.11 (2010).

unusual patterns for certain planes. For example, the *Chicago Tribune* reported about atypical landings at the Mazury-Szczytno International Airport in Poland in 2002 and 2003.³³ According to Mariola Przewlocka, the airport's manager, a number of planes would land and park at the end of the runway, where they were met by government officials.³⁴ These planes would take off one or two hours later to destinations like Uzbekistan, Morocco, and Guantánamo Bay, Cuba.³⁵ "Everything was unusual, from beginning to end," Przewlocka said, "I was told to accept these flights even when the airport was closed."³⁶ Two of the planes in question had tail numbers N313P and N379P.³⁷ However, as of the *Chicago Tribune* article's publication in 2007, the author had no formal evidence linking these flights to the CIA.³⁸

Aero Contractors, Ltd. is incorporated in Delaware with its principal office at the Johnston County Airport in Smithfield, NC.³⁹ After September 11, 2001, Aero Contractors expanded its operations to an airstrip in Kinston, NC, as well. Aero operated two planes intimately connected with the transfer of detainees: a 737 Boeing business jet with tail number N313P, and a Gulfstream Jet with tail number N379P.⁴⁰ These planes are owned by a separate corporation, Premier Executive Transport Services, Inc.,⁴¹ which is incorporated in Massachusetts.⁴²

While Aero provided mostly non-descript, logistical support to the CIA,⁴³ many suspect it transported suspects detained during the War on Terror.⁴⁴ Several detainees subsequently sued Aero Contractors, alleging that Aero transported them to facilities where they were tortured.⁴⁵ These detainees were never present in the United States, let alone North Carolina. A 60 Minutes exposé in 2005 described a typical flight circuit: Aero pilots would generally leave Smithfield or Kinston and fly to Dulles International Airport in Washington, DC, where they would pick up teams of CIA agents.⁴⁶ Next, the pilots would fly to a location abroad to pick up the detainee, who would be transferred to another location

³³ Tom Hundley, *Remote Polish airstrip holds clues to secret CIA flights*, THE CHICAGO TRIBUNE, Feb. 6, 2007, http://articles.chicagotribune.com/2007-02-06/news/0702060187_1_cia-flights-poland-and-romania-detention-centers.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ N.C. DEPT. OF THE SEC. OF STATE, BUSINESS CORPORATION INFORMATION: AERO CONTRACTORS LTD. (2010) <http://www.secretary.state.nc.us/corporations/Corp.aspx?PitemId=4621307>.

⁴⁰ Paglen & Thompson, *supra* note 10 at 80-81.

⁴¹ 60 Minutes, *supra* note 5.

⁴² THE COMMONWEALTH OF MA, PREMIER AVIATION INC. SUMMARY SCREEN (2010) <http://corp.sec.state.ma.us/corp/corpsearch/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=521857292>.

⁴³ Grey, *supra* note 10.

⁴⁴ Paglen & Thompson, *supra* note 10 at 81.

⁴⁵ See Mohamed, *supra* note 6; El-Masri, *supra* note 6.

⁴⁶ 60 Minutes, *supra* note 5.

abroad, such as Guantánamo Bay, Cuba, or Kabul, Afghanistan.⁴⁷ The plane would then return to Dulles and, finally, to North Carolina.⁴⁸

Binyam Mohamed claimed to be transported by Aero Contractors. Mohamed is an Ethiopian citizen and a resident of the United Kingdom.⁴⁹ On April 10, 2002, Mohamed claimed he was arrested at the airport in Karachi, Pakistan attempting to fly back to London with a fake passport.⁵⁰ Mohamed contended that he had borrowed a friend's passport and come to Pakistan to kick a drug habit, but the CIA suspected he was providing support to Al Qaeda.⁵¹ Mohamed averred that he was held and interrogated in Pakistan until July 21, 2002, when he was flown to Rabat, Morocco on plane N379P, operated by Aero Contractors.⁵²

Flight records collected by the Council of Europe corroborate Mohamed's testimony; these records show that plane N379P flew from Islamabad, Pakistan to Rabat, Morocco, on July 21, 2002.⁵³ Flight records collected by investigative journalist Stephen Grey indicate that plane N379P left Johnston County Airport on July 17, 2002 and made several flights, including a flight from Islamabad, Pakistan to Rabat, Morocco, before returning to Johnston County on July 23, 2002.⁵⁴ These records are included in Appendix C.

Mohamed subsequently filed a lawsuit in US Federal Court alleging that he was dressed in a diaper, shackled, and blindfolded during his flight to Morocco.⁵⁵ On January 22, 2004, Mohamed alleged

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Mohamed, *supra* note 6, at 1074.

⁵⁰ *Id.*

⁵¹ Paglen & Thompson, *supra* note 10, at 21.

⁵² *In re Binyam Mohamed*, *supra* note 15, at ¶6.

⁵³ The Council of Europe's flight records are available as an addendum to a 2006 report from Swiss Parliamentarian Dick Marty. Marty did not have subpoena power while collecting information on this report. This report does not specifically indicate the data's source. Committee on Legal Affairs and Human Rights, Rapporteur Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, Doc. 10957 Addendum, June 14, 2006, available at <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957add.htm> [hereinafter Marty Report].

⁵⁴ Stephen Grey, Flight Log | Ghost Plane, www.ghostplane.net/flightlog (last visited Oct. 28, 2010) [hereinafter Grey Flight Log]. Grey notes, "Although I have tried to make this information as accurate as possible, it may contain errors and you should not rely on it without further checks. It is published as an aid to further research, in particular to allow others to continue to establish the whereabouts of a great number of prisoners who have gone missing." Stephen Grey, Important Explanation, <http://ghostplane.net/note> (last visited Oct. 28, 2010).

⁵⁵ In Morocco, Mohamed claims he was subject to

"severe physical and psychological torture,' including routinely beating him and breaking his bones. He says they cut him with a scalpel all over his body, including on his penis, and poured 'hot stinging liquid' into the open wounds. He was blindfolded and handcuffed while being made "to listen to extremely loud music day and night." Mohamed, *supra* note 6, at 1074.

that he was transferred from Rabat, Morocco, to Kabul, Afghanistan, on Aero-operated plane N313P.⁵⁶ Mohamed “claims he was detained there in a CIA ‘dark prison’ where he was kept in ‘near permanent darkness’ and subjected to loud noise, such as the recorded screams of women and children, 24 hours a day.”⁵⁷ The Ninth Circuit Court of Appeals dismissed Mohamed’s lawsuit on September 8, 2010, not for lack of merit, but because the litigation would ultimately reveal “state secrets” if allowed to proceed.⁵⁸

Bisher Al-Rawi also claimed to be transported by Aero Contractors. He is a citizen of Iraq and a permanent resident of the UK.⁵⁹ In the mid-1990s, Al-Rawi worked as a translator for the British intelligence agency, MI5.⁶⁰ As part of his duties, Al-Rawi conveyed questions to Abu Qatada, a Muslim cleric and reported Al Qaeda advisor, and gave his answers to MI5.⁶¹

On November 1, 2002, Al-Rawi was arrested at London’s Gatwick Airport for possessing a “suspect electronic device.”⁶² Al-Rawi was attempting to board a plane to the Gambia.⁶³ Al-Rawi was later allowed to board a flight to Banjul, Gambia, but was arrested upon landing.⁶⁴ He averred that he was detained for several weeks and was then transferred by Aero Contractors on plane N379P to Kabul, Afghanistan.⁶⁵ Al-Rawi was also a party to Mohamed’s federal lawsuit, which has been dismissed. Flight records collected by the Council of Europe corroborate Al-Rawi’s testimony; these records show that plane N379P flew from Banjul, Gambia, to Cairo, Egypt, on December 8, 2002, and from Cairo to Kabul, Afghanistan, on December 9, 2002.⁶⁶ Flight records collected by Stephen Grey indicate that plane N379P left Johnston County Airport on December 8, 2002 and made several flights, including flights from Banjul to Cairo and Cairo to Kabul, before returning to Johnston County on December 17, 2002.⁶⁷ These records are included in Appendix D.

⁵⁶ *In re Binyam Mohamed*, *supra* note 15, at ¶6.

⁵⁷ Mohamed, *supra* note 6, at 1074.

⁵⁸ *Id.* at 1093.

⁵⁹ *In re Bisher Al-Rawi*, *supra* note 16, at ¶1.

⁶⁰ *Id.* at ¶4.

⁶¹ *Id.*

⁶² *Id.* at ¶8.

⁶³ *Id.* at ¶¶7-8.

⁶⁴ *Id.* at ¶15.

⁶⁵ *Id.* at ¶26. Al-Rawi describes his experience in Kabul as follows:

“I was kicked and dragged along the floor, deprived of access to a toilet, shower, or clean clothes, held in a squalid cell, and forced to undergo prolonged periods of isolation and sleep deprivation. I was threatened with death or with transfer to another country to be tortured. I was frequently interrogated about Abu Qatada[.]” *Id.* at ¶35.

⁶⁶ Marty Report, *supra* note 53.

⁶⁷ Grey Flight Log, *supra* note 54.

Abou Elkassim Britel also claimed he was transported by Aero Contractors. Britel is an Italian citizen of Moroccan descent.⁶⁸ In 2000, he and his wife started a company that translated books from Arabic into Italian. In the summer of 2001, Britel travelled to Iran and Pakistan, purportedly to seek further support for his research.⁶⁹ Britel was arrested and detained in Pakistan for several months under suspicion of being a “terrorist fighter.”⁷⁰ On May 24, 2002, Britel was transported from Pakistan to Rabat, Morocco, on board plane N379P, operated by Aero Contractors.⁷¹ Britel has been incarcerated in Morocco since this time.⁷² He was also a party to Mohamed’s lawsuit, was recently dismissed.⁷³

The Council of Europe does not have flight records to corroborate the Britel’s testimony. However, flight records collected by Stephen Grey indicate that plane N379P left Johnston County Airport on May 22, 2002 and made several flights, including a flight from Islamabad, Pakistan to Rabat, Morocco, on May 24, 2002.⁷⁴ These records are included in Appendix E.

A fourth alleged transportee was Khaled El-Masri. El-Masri is a German citizen of Lebanese descent.⁷⁵ He was detained in Macedonia while on vacation on December 31, 2003.⁷⁶ El-Masri claimed he was detained in Macedonia for about a month.⁷⁷ On January 23, 2004, he was transported to Kabul, Afghanistan, on plane N313P, operated by Aero Contractors.⁷⁸ El-Masri filed a federal lawsuit against

⁶⁸ *In re* Abou Elkassim Britel, *supra* note 17, at ¶1.

⁶⁹ *Id.* at ¶3.

⁷⁰ *Id.* at ¶5.

⁷¹ *Id.* at ¶12. He describes the transfer as follows:

“I was grabbed around the neck from behind so tightly I thought I would suffocate. I was forced into what seemed to me to be a small bathroom where my clothes were sliced off me. My blindfold was then removed and I saw four or five men dressed in black from head to toe, with only their eyes showing. I was photographed, had a diaper put on me, and was dressed in a torn t-shirt.

“During the flight my captors instructed me not to move; when I did and they hit or kicked me. My back began to hurt during the flight and I asked for permission to change positions. My request was refused and instead I had my mouth taped shut. I was also denied use of the bathroom for the duration of the nine hour flight.” *Id.*

⁷² *Id.* at ¶30.

⁷³ Mohamed, *supra* note 6.

⁷⁴ Grey Flight Log, *supra* note 54.

⁷⁵ *In re* Khaled El-Masri, *supra* note 18, at ¶1.

⁷⁶ *Id.* at ¶8.

⁷⁷ *See Id.* at ¶¶21-22.

⁷⁸ *Id.* at ¶27. El-Masri described his transfer as follows:

“My assailants pulled my arms back and I felt a boot in the small of my back. I then felt a stick or some other hard object being forced in my anus. I realized I was being sodomized. Of all the acts these men perpetrated against me, this was the most degrading and shameful. I was then pulled to my feet and pushed into the corner of a room.” *Id.* at ¶24.

“The men holding me pulled me along so fast that the pain at my joints was getting worse, as the iron of my shackles chafed against my ankles. When I tried to slow down they almost dislocated my shoulder. In the airplane, I was thrown down onto the floor and my arms and legs were spread-eagled and secured to the sides of the plane.” *Id.* at ¶28.

George Tenet, Premier Executive Transport Services, and Aero Contractors, but this lawsuit was also dismissed based on the state secrets privilege.⁷⁹

Flight records collected by the Council of Europe corroborate El-Masri's testimony; these records show that plane N313P flew from Palma de Mallorca, Spain, to Skopje, Macedonia, on January 23, 2004, from Skopje to Baghdad, Iraq on January 24, 2004, and from Baghdad to Kabul, Afghanistan on January 24, 2004.⁸⁰ I do not have flight records corroborating the allegation that this flight originated or ended in Smithfield or Kinston, NC. Flight records collected by Stephen Grey indicate that plane N313P flew from Columbia, SC, to Kinston, NC, on October 19, 2004, several months after the alleged rendition. These records are included in Appendix F.

⁷⁹ El-Masri, *supra* note 6.

⁸⁰ Marty Report, *supra* note 53.

Chapter 4: Criteria

Since alleged victims of torture have been unsuccessful in bringing federal lawsuits, NC Stop Torture Now is interested in addressing claims of torture in other ways. In evaluating the policy options I will use the following criteria:

Solves the problem. A policy option will meet this criterion if its ultimate findings convince government bodies to change policy, and new policy changes are implemented. These policy changes may provide reparations for past harms or prevent such harms from being repeated in the future. Currently, a business operating in North Carolina has participated in the alleged extraordinary rendition of detainees, some of whom later claimed they were tortured in US detention facilities. A policy option will score higher on this criterion if the commission can work with NC government to reveal the extent of Aero Contractors' connection to the War on Terror and prevent similar business activities in North Carolina in the future.

Obtains information. A policy option will meet this criterion if it allows the investigator to collect information pertinent to the investigation. Sources of pertinent information may include documents or testimony. The investigator may collect documents by means of subpoena power, or by using statutes designed to provide information to the public, like the Freedom of Information Act, 5 U.S.C. 551 *et seq*, or North Carolina's public records statute, N.C.G.S. §132-1. The investigator may hear testimony from laypersons or experts, either at public hearings or in private. A policy option will score higher on this criterion if the investigator has access to confidential, classified, or otherwise sensitive information.

Receives public support. A policy option will meet this criterion if it raises public awareness about the role of a North Carolina business in extraordinary rendition and encourages public participation in the investigation process. A commission will raise public awareness if its work is cited in a variety of media, including local and national newspapers, and if the Commission itself takes an active role in disseminating information. A commission will encourage public participation if it provides an avenue for interested parties to collaborate with the commission. Interested parties may collaborate with the commission by assisting in selecting the commissioners, by providing expert testimony, or by providing feedback on the commission's work.

Is politically feasible. A policy option will meet this criterion if it is a viable political option in North Carolina. An option will be politically viable if NC Stop Torture Now can pursue that option without

interference or pushback from North Carolina government or a third party. In other words, the Commission will be acceptable to the Governor's Office and/or the North Carolina General Assembly, or to any other party with the power to discontinue the commission's work.

Chapter 5: Policy Options

My analysis considers three policy options—an executive option, a legislative option, and a community option—each with a different mandate. I chose cases based on their mandates because I believe the type of mandate would affect the commission’s performance on each of the criteria described above.

Executive Option. This option is a commission of inquiry created by an executive order from Beverly Purdue, Governor of North Carolina. The Governor has the authority to create commissions by executive order,⁸¹ and Governor Purdue has already appointed commissions to advise the State on issues such as emergency preparedness,⁸² education,⁸³ and volunteerism.⁸⁴ Through executive order, the Governor can appoint commissioners, define the commission’s duties, and designate which agency will staff the commission.⁸⁵ NC statute provides that a commission created by executive order will expire two years after the effective date of the order, unless the Governor specifies otherwise.⁸⁶

My case study for the executive option is the Iraq Intelligence Commission, created by President Bush in 2004 to investigate how the intelligence community erred in gathering information about Weapons of Mass Destruction in Iraq. President Bush charged the commission to determine whether the US Intelligence Community was sufficiently organized and equipped to address concerns about Weapons of Mass Destruction. I chose this commission because it was established by executive order, it was related to national security, and because its results are widely known to the public.

Legislative Option. This option is a commission created by statute by the North Carolina General Assembly. The General Assembly has established commissions to study a variety of issues, including families,⁸⁷ aquatic life,⁸⁸ and the environment.⁸⁹ The Senate President Pro Tempore and the Speaker of

⁸¹ N.C. CONST. art III, § 5(10).

⁸² Exec. Order No. 37, North Carolina Emergency Preparedness Commission, *available at* <http://www.governor.state.nc.us/NewsItems/ExecutiveOrderDetail.aspx?newsItemID=844>.

⁸³ Exec. Order No. 65, Governor’s Education Transformation Commission, *available at* <http://www.governor.state.nc.us/NewsItems/ExecutiveOrderDetail.aspx?newsItemID=1447>.

⁸⁴ Exec. Order No. 41, Reestablishing the North Carolina Commission on Volunteerism and Community Service, *available at* <http://www.governor.state.nc.us/NewsItems/ExecutiveOrderDetail.aspx?newsItemID=848>.

⁸⁵ See Executive Order No. 37, *supra* note 82.

⁸⁶ N.C.G.S. § 147-16.2 (2011).

⁸⁷ N.C.G.S. § 120-70.70 (2011).

⁸⁸ N.C.G.S. § 120-70.60 (2011).

⁸⁹ N.C.G.S. § 120-70.41 (2011).

the House usually have the authority to appoint legislators to serve as representatives. The Legislative Services Commission can allocate funding for a commission.

My case study for the legislative option is the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. The Canadian Parliament established this commission in 2004 to investigate the detention of Maher Arar, who was arrested as a suspected Al Qaeda supporter. The Commission conducted a factual inquiry into the role of Canadian officials in the deportation and detention of Maher Arar, a Canadian citizen. I chose this commission because it was established by statute and its subject matter is closely related to my client's policy problem. I am particularly interested in studying this commission because NC Stop Torture Now brought it to my attention.

Community Option. This option is a commission of inquiry created by grassroots organizing, without an express mandate from North Carolina state government. Since this type of commission would take place outside of government, it could be organized however the interested parties saw fit. The organizers could set the commission's agenda and develop a process for choosing commissioners.

My case study for a community option is the Greensboro Truth and Reconciliation Commission. This commission was established in 2004 by a group of community members and investigated race riots in Greensboro, NC in 1979. Specifically, the Commission's goal was to learn how individuals and groups became involved in a shooting between the KKK and American Nazis, on one side, and African-American labor organizers, on the other. The Commission also assessed the impact of the shooting on the community and made recommendations for community healing. I chose this commission because it operated recently in North Carolina and because it was created by a group of grassroots organizers.

Chapter 6: Policy Analysis

I scored each of the policy options—executive option, legislative option, and community option—on each criterion: solving the problem, obtaining information, receiving public support, and being politically feasible. Each policy option received a score of excellent, good, average or poor, based on the following descriptions:

- Excellent: the policy option provided the best opportunity to meet the criterion
- Good: the policy option largely met the criterion, with a few drawbacks
- Acceptable: the policy option met some aspects of the criterion, albeit with major drawbacks
- Poor: the policy option did not meet the criterion

Executive Option

The executive option scored “good” on the first criterion, solving the problem. An executive commission would be able to investigate Aero Contractors’ involvement in the War on Terror and may recommend that similar business activities be prohibited in North Carolina in the future. If the Governor’s office were to request a commission, the Governor would likely adopt most of the recommendations of that commission. President Bush, for example, adopted 69 of the 74 recommendations offered by the Iraq Intelligence Commission,⁹⁰ a commission he created by Executive Order. However, the Iraq Intelligence Commission was successful in part because the President had the capacity to implement all of its recommendations. The Governor’s capacity to adopt recommendations would depend on the Commission’s findings; the Governor could implement some changes at the state level, but probably would not be able to prohibit similar business activity from occurring in the future without action by the General Assembly. Much of the NC commission’s work would involve the US response to the War on Terror, which is beyond the Governor’s or the State’s control. Since the Governor does not have control over all aspects of the problem, the executive option would likely succeed on some, but not all, angles of solving the problem. Nevertheless, the executive option could lead to a number of state-level policy reforms and may put pressure on Aero Contractors to cease their activities in North Carolina.

The executive option scored “good” on the second criterion, obtaining information. If the Governor authorized a commission to investigate Aero Contractors, she could direct agency heads to submit information about anything related the duties of his or her office.⁹¹ This power may be useful, since a

⁹⁰ For more information about the Iraq Intelligence Commission, see Appendix B.

⁹¹ N.C. CONST. art. III, § 5(9).

number of NC administrative agencies, such as the NC Secretary of State or the NC Department of Transportation, may have information regarding Aero Contractors' business activities. To illustrate the potency of this power, President Bush used a comparable power in authorizing the Iraq Intelligence Commission. In his Executive Order, President Bush declared that the "Commission shall have full and complete access to information relevant to its mission."⁹² The order also directed agency heads to promptly furnish the requested information, and directed the Attorney General and Director of Central Intelligence to grant the Commissioners' security clearances quickly so they could begin work.⁹³

However, this example calls attention to the limitations of the Governor's power. Unlike the President of the United States, the Governor could not grant a North Carolina commission access to classified information held by the US Government.⁹⁴ It's unlikely that NC state agencies would have information linking Aero Contractors to extraordinary rendition. Furthermore, the Governor does not have the authority to grant subpoena power to an executive commission.⁹⁵ Accordingly, the Governor could not authorize the commission to compel records held privately by Aero Contractors. Despite these limitations, an executive commission could likely obtain much information about Aero Contractors that is unclassified and held by NC administrative agencies.

The executive option scored "acceptable" on receiving public support. Over the past decade, the public has supported some form of investigation of and accountability for US treatment of detainees in the War on Terror. However, an executive option would likely provide little opportunity for public participation. For example, there was no opportunity for the public to participate in the Iraq Intelligence Commission's work. To be fair, there was probably very little that the average citizen could have contributed to that Commission's work because the average citizen probably does not have accurate insight into the process of intelligence gathering. In fact, public participation would probably not have been appropriate given that the Commission's work involved much classified information.

Likewise, past commissions created by Executive Order in North Carolina have not provided a mechanism for public participation.⁹⁶ If NC Stop Torture Now pursues the executive option, it may be giving up the opportunity for the public to collaborate on the project. Nevertheless, the executive option

⁹² Exec. Order No. 13,328, 3 C.F.R. 139 (2005), § 5(a).

⁹³ *Id.*

⁹⁴ See Exec. Order No. 13,526, 3 C.F.R. 298 (2009) (creating "a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism.").

⁹⁵ See N.C. CONST. art. III (enumerating the governor's powers, which do not include subpoena power). A search of the North Carolina General Statutes did not return any provisions conferring subpoena power to the Governor. See NCGA, *NC General Statutes*, <http://www.ncleg.net/gascritps/statutes/statutes.asp> (search "subpoena" AND "governor"; then follow hyperlinks of matched sections).

⁹⁶ See, e.g., Exec. Order No. 37, *supra* note 82; Exec. Order No. 65, *supra* note 83; Exec. Order No. 41, *supra* note 84.

would likely generate much public discussion about the issues of extraordinary rendition and torture. As a result, an executive commission may generate greater familiarization with the issue among the public.

The executive option scored “poor” on the fourth criterion, political feasibility. It’s unlikely that the Governor would act on this issue without political pressure to do so, and such pressure is currently lacking in North Carolina. For example, the Iraq Intelligence Commission’s formation was catalyzed by a very public event, the departure of David Kay as head of the Iraq Study Group.⁹⁷ In late January 2004, Kay publicly announced that he would step down as the head of ISG, stating that he thought it was unlikely that the group would find evidence of large reserves of Weapons of Mass Destruction in Iraq.⁹⁸ Kay clarified that he did not think this revelation meant that Iraq was not a threat to the United States,⁹⁹ but the public still expressed grave concerns about the state of US intelligence. As a result, Bush called for a Commission to investigate US intelligence failures.

David Kay had credibility to make allegations about the lack of WMD in Iraq because he had first hand experience with the investigation. To date, NC Stop Torture Now does not have primary source documentation of Aero Contractors’ alleged participation in extraordinary rendition. As a result, the allegations about Aero Contractors’ connection to torture have not catalyzed the same sort of public outrage. NC Stop Torture Now and other advocacy groups have staged events to raise awareness about the alleged connection between Aero Contractors, the Central Intelligence Agency, and torture of detainees in detention facilities abroad. NC Stop Torture Now presented Aero Contractors with a “peoples’ indictment” in 2005, which was covered by *The News & Observer*.¹⁰⁰ The group has also held monthly vigils at various locations, including the Governor’s Mansion, since December 2005.¹⁰¹

NC Stop Torture Now met with Franklin Freeman, Chief of Staff to Governor Easley, but Mr. Freeman informed the group that the Governor’s Office could not proceed without hard evidence.¹⁰² Without official flight documentation regarding Aero Contractors, these efforts have failed—and will likely continue to fail—to catalyze an official government response. Until NC Stop Torture Now has some official documentation, it’s unlikely that the Governor’s Office would be comfortable assisting with a commission.

⁹⁷ Kay: *No Evidence Iraq Stockpiled WMD*, CNN, Jan. 26, 2004, http://articles.cnn.com/2004-01-25/world/sprj.nirq.kay_1_top-weapons-inspector-david-kay-large-stockpiles?_s=PM:WORLD (last visited Feb 27, 2011).

⁹⁸ *Id.*

⁹⁹ Bush, Former WMD Search Leader Kay Meet at White House, <http://www.globalsecurity.org/wmd/library/news/iraq/2004/02/iraq-040202-usia01.htm>

¹⁰⁰ NCSTN, *NCSTN Chronology: An Incomplete Digest of Noteworthy Efforts and Events*, (Nov. 26, 2010) <http://www.ncstoptorturenw.net/resources/chronology.html> (last visited Feb. 25, 2011).

¹⁰¹ *Id.*

¹⁰² *Id.*

	Solves the Problem	Obtains Information	Receives Public Support	Is Politically Feasible
Executive Option	Good	Good	Acceptable	Poor

Legislative Option

The legislative option scored “good” on the first criterion, solving the problem. A legislative commission would be able to investigate Aero Contractors’ involvement in the War on Terror and may recommend that similar business activities be prohibited in North Carolina in the future. The NC legislature could conduct a factual inquiry like that of the Arar Commission. Similarly to the Arar Commission,¹⁰³ the NC legislature would have broad authority to implement a commission’s recommendations and issue an apology to those negatively affect by Aero’s business practices. In the Arar Commission, the Factual Inquiry—which investigated the circumstances surrounding Maher Arar’s detention—corroborated Arar’s story and concluded that he had in fact been tortured in Syria.¹⁰⁴ To compensate him for his detention and harsh treatment, the Government of Canada offered Arar a settlement of \$10.5 million as well as \$1 million for legal fees.¹⁰⁵ Prime Minister Stephen Harper publicly apologized to Arar for “any role Canadian officials may have played in the terrible ordeal that all of you experienced in 2002 and 2003.”¹⁰⁶ Harper sent a formal protest letter to Secretary of State Condoleezza Rice, requesting the US to “come clean with its version of events, to acknowledge . . . the deficiencies and inappropriate conduct that occurred in this case, particularly vis-à-vis its relationship with the Canadian government.”¹⁰⁷ Like the Canadian Parliament in the Arar Commission, the NC legislature could conduct a factual inquiry into Aero Contractors’ activity and provide some remedies to detainees or other parties who have been harmed. Moreover, the NC legislature could make requests for the US federal government to make policy changes, but could not compel such changes.

While the legislative option could investigate the role of Aero Contractors in the War on Terror, it’s worth considering whether such a public investigation would have negative effects on interested parties like

¹⁰³ For more information on the Arar Commission, see Appendix B.

¹⁰⁴ *Id.*

¹⁰⁵ *Harper’s apology ‘means the world’: Arar*, CBC NEWS, Jan. 26, 2007, <http://www.cbc.ca/canada/story/2007/01/26/harper-apology.html>.

¹⁰⁶ *Prime Minister releases letter of apology to Maher Arar and his family and announces completion of mediation process*, OFFICE OF THE PRIME MINISTER OF CANADA, Jan. 26, 2007, <http://pm.gc.ca/eng/media.asp?id=1509>.

¹⁰⁷ *‘Come clean’ on Arar, Harper asks U.S.*, CBC NEWS, Oct. 6, 2006, <http://www.cbc.ca/canada/story/2006/10/06/harper-bush.html>.

the detainees. For example, there is some concern that the Arar Commission itself contributed to the deterioration of Arar's mental health. According to the Factfinder, Professor Stephen J. Toope,

[Maher Arar's] fear and distrust have actually been compounded by his experience of the Commission of Inquiry. He was particularly disturbed by certain "leaks" from sources allegedly inside the Canadian Government that cast him in a negative light. These events compounded his sense of injustice dating from his detention and torture in Syria. All his advisers that I interviewed emphasised that Mr. Arar was "devastated" by these leaks. Some described him as "hysterical". He simply could not control his emotions, and it took many hours of constant conversation to calm him down each time new information surfaced in the press that he thought to be misleading and unfair.¹⁰⁸

While the Government of Canada took a number of important steps toward addressing the torture of Maher Arar, some of the actions actually exacerbated the mental health problems associated with his detention and torture. Given the similarity of the Arar Commission's subject matter to the proposed NC commission, such a Commission may have similar negative effects on the detainees' mental health. While the negative effects of publicity may occur in a commission with any mandate—executive, legislative, or community—a legislative commission with high visibility may exacerbate these effects.

The legislative option scored "good" on the second criterion, obtaining information. Like the Arar Commission, the NC legislature would have the ability to compel information.¹⁰⁹ However, the legislative option could compel information within a lesser scope than the Arar Commission. Federal law and regulations prohibit the General Assembly from accessing classified information held by the US government.¹¹⁰ The General Assembly could not compel records, whether classified or unclassified, held by the US government. The federal Supremacy Clause would bar any attempt by the General Assembly to assert its authority over the US government.¹¹¹ Although a lengthy discussion of the Supremacy Clause is beyond the scope of this analysis, it is important to note that the Supreme Court has consistently held that

¹⁰⁸ COMMISSION OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR, REPORT OF PROFESSOR STEPHEN J. TOOPE, FACTFINDER 20 (2005), available at http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/17.htm (hereinafter TOOPE).

¹⁰⁹ See, e.g., Inquiries by the Commission, N.C.G.S. § § 138A-12(r) (2010) (providing that a legislatively-created commission "may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter.").

¹¹⁰ See Exec. Order No. 13,526, *supra* note 94.

¹¹¹ U.S. CONST. art. VI, ¶ 2 ("This Constitution, and the Laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.").

when the federal government has acted in a particular field, a state statute on the same subject is void.¹¹² Likewise, the Supreme Court has interpreted the federal preemption doctrine to support federal law when federal and state law conflict.¹¹³ Given the breadth of case law on both the Supremacy Clause and the federal preemption doctrine, it is unlikely that the NC General Assembly could mount a valid legal argument to assert their authority over this information.

The Arar Commission was so successful in obtaining information because it did have access to records from the Canadian federal government. The Arar Commission Rules of Procedure required all parties and intervenors to produce for the Factfinder all documents bearing on the factual inquiry.¹¹⁴ The Rules also permitted the Factfinder, Professor Stephen J. Toope, to interview any party who had information bearing on the investigation.¹¹⁵ If a witness was concerned about disclosure of his identity, that party could apply to the commission for “Personal Confidentiality.”¹¹⁶ If this application is granted, the party has the right to be interviewed *in camera* and to be identified only by initials in any subsequent report.¹¹⁷ Only information that was subject to National Security Confidentiality was not available to the Commission.¹¹⁸ Given the scope of these procedural rules, the Commission gathered much information that would likely be unavailable to the NC legislature.

The legislative option scored “good” on the third criterion, receiving public support. Since the legislative option would be mandated by the NC legislature and would have subpoena power, it would be less important for the commission to reach out to and receive buy-in from the general public. However, the legislative option could provide a number of opportunities for the public to participate. For example, the Arar Commission provided an opportunity for persons or groups to join the Commission, either as a party or an intervenor. Persons who could demonstrate a “substantial and direct interest in the subject-matter of the Factual Inquiry” could apply to the Commission for “party standing.”¹¹⁹ Similarly, persons who could demonstrate “a genuine concern about issues raised by the Factual Inquiry mandate and have a particular

¹¹² *Edgar v. Mite Corporation*, 457 U.S. 624 (1982) (“A state statute is void to the extent that it actually conflicts with a valid Federal statute.”); see also *Cooper v. Aaron*, 358 U.S. 1 (1958) (holding that a state does not have the authority to nullify a Supreme Court decision).

¹¹³ *Altria Group v. Good*, 555 U.S. 70 (2008); *Maryland v. Louisiana*, 451 U. S. 725, 746 (1981).

¹¹⁴ COMMISSION OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR, RULES OF PROCEDURE AND PRACTICE art. 23 (2005), available at http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/Rule%20of%20Procedure%20-%20June%2015%202004.pdf (hereinafter ARAR RULES).

¹¹⁵ *Id.* at art. 27.

¹¹⁶ Arar Rules, *supra* note 114, art. 57.

¹¹⁷ *Id.* at art. 57.

¹¹⁸ See *Id.* at Part D(f).

¹¹⁹ Arar Rules, *supra* note 114, art. 13.

perspective or expertise” could apply to the Commission for “intervenor standing.”¹²⁰ Public interest groups, including the Canadian Islamic Congress, the Law Union of Ontario, and Amnesty International, were named as intervenors in this case.¹²¹ The NC legislature could create a similar process for public groups to participate in the commission’s work. In addition to the opportunity to participate in the process, a legislative option would likely generate significant public discussion about the role of a North Carolina business in extraordinary rendition. Given the possibility for the public to participate in the Commission’s work, and the likely publicity, I scored the legislative option as “good” for receiving public support.

The legislative option scored “poor” on the fourth criterion, political feasibility. While there was some momentum within the NC General Assembly to investigate Aero Contractors several years ago, the political environment has changed, making it more difficult for an advocacy group to build a coalition around this issue. In 2006, twelve members of the NC General Assembly asked the State Bureau of Investigation to investigate Aero Contractors for its alleged role in extraordinary rendition and complicity in torture.¹²² SBI director Robin Pendergraft responded that the SBI could not investigate Aero Contractors because she did not believe the agency had jurisdiction, and that she referred the matter to the Federal Bureau of Investigation.¹²³ A group of nineteen Representatives and four Senators wrote to Attorney General Roy Cooper, providing an alternative interpretation of the SBI’s jurisdiction and requesting that he direct the SBI to investigate Aero Contractors.¹²⁴ Cooper responded that the matter had been referred to the FBI, and that the Attorney General’s Office would cooperate with the FBI if they conducted an investigation.¹²⁵ All of the politicians who supported the effort for SBI to investigate Aero Contractors were Democrats.

The North Carolina General Assembly can pass session laws to authorize new commissions. In 2010, The Democratic Party lost its majority in both the NC House and Senate. During the 2009-2010 session there were 68 Democrats in the NC House and 31 Democrats in the NC Senate. However, Republican candidates took control of 67 house and 31 senate seats in the 2010 election. Given this

¹²⁰ *Id.* at art. 14.

¹²¹ *Parties and Intervenors* (Dec. 12, 2006), http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/11d.htm (last visited Feb. 25, 2011).

¹²² Letter from Adams et al to SBI Director Robin Pendergraft, Oct. 2, 2006, *available at* <http://www.ncstoptorturenw.net/resourceschronology.html>.

¹²³ Letter from SBI Director Robin Pendergraft to Representative Paul Leubke, Oct. 17, 2006, *available at* <http://www.ncstoptorturenw.net/resourceschronology.html>.

¹²⁴ Letter from Adams et al to Attorney General Roy Cooper, Jan. 18, 2007, *available at* <http://www.ncstoptorturenw.net/resourceschronology.html>.

¹²⁵ Letter from Attorney General Roy Cooper to Representative Paul Leubke, Mar. 20, 2007, *available at* <http://www.ncstoptorturenw.net/resourceschronology.html>.

development, it is less likely that an advocacy group like NC Stop Torture Now could establish a coalition with the political capital to create a Commission.

However, the vast majority of legislators who signed the letters to Ms. Pendergraft and Attorney General Cooper are still members of the legislature, and it's possible that they would be willing to cooperate with NC Stop Torture Now in some capacity. Appendix G presents information about these individuals.

To conclude, the legislative option could be quite successful in collecting information and providing reparations to detainees with regard to their detention and torture. It could provide an opportunity for public interest groups to participate in the investigation as intervenors and made their findings available to the public upon completion. However, it is unlikely that this model would work in North Carolina given the current political environment. But given past interest in this issue by members of the NC legislature, it's possible that some representatives and senators would be interested in collaborating with NC Stop Torture Now.

	Solves the Problem	Obtains Information	Receives Public Support	Is Politically Feasible
Legislative Option	Good	Good	Good	Poor

Community Option

The community option scored “acceptable” on the first criterion, solving the problem. The community option would probably have success similar to that of the Greensboro Truth and Reconciliation Commission.¹²⁶ GTRC’s first recommendation was acknowledgement; that the city should recognize the tragic events of Nov. 3, 1979 and those responsible should apologize for their actions.¹²⁷ Following the release of the report, the City Council passed a statement of regret for the actions occurring on Nov. 3, 1979.¹²⁸ The community option may encounter the most difficulty implementing a similar recommendation. Assuming that information about Aero Contractors’ connection to extraordinary rendition remains classified, and thus unavailable to the public, it’s unlikely that a government body would or could acknowledge this connection. Therefore, the community option is likely to have better success along this recommendation if the information is subsequently declassified.

¹²⁶ For more information about the Greensboro Truth and Reconciliation Commission, see Appendix B.

¹²⁷ *Moving Forward: Recommendations*, GREENSBORO TRUTH & RECONCILIATION COMMISSION REPORT 200, May 25, 2006, <http://www.greensborotrc.org/index.php> [hereinafter GTRC Recommendations].

¹²⁸ Greensboro City Council, *Statement of Regret about 1979 Shootings at Morningside Homes*, Jun. 16, 2009, available at <http://www.greensboro-nc.gov/NR/rdonlyres/63E3FCAF-C67F-4A13-AF79-1E62FFC408C5/0/StatementOfRegret.pdf>.

The second recommendation was for institutional reform. The Greensboro Commission recommended that all city employees should be paid a living wage.¹²⁹ The Commission also recommended the establishment of a citizen's police review panel to oversee the activities of the Greensboro Police Department.¹³⁰ While these recommendations have not been implemented, Greensboro residents are continuing to lobby for these reforms. The community option could make similar recommendations for institutional reform, such as the establishment of a consumer panel to monitor the practices of North Carolina businesses as they relate to human rights. Although such reforms may not be implemented immediately, they present an opportunity for community members to continue working on these issues.

A third recommendation concerned criminal and civil remedies, calling for a review of corruption within the Greensboro Police Department. The community option would not have the legal authority to file criminal charges and may not have standing to file a civil lawsuit against Aero Contractors. However, a commission's recommendation to use such remedies may help influence state or federal government officials to conduct a criminal investigation, or may encourage injured parties to file civil claims.

A fourth recommendation was for community engagement. The Commission's final report has been integrated into the course curriculum at some of the local Greensboro colleges and universities, giving students an opportunity to learn more about the history of race relations in Greensboro. Similarly, the community option presents an opportunity to encourage North Carolina residents to learn about human rights. The commission could partner with local schools and universities to design curricula in this subject area.

The community option scored "good" on the second criterion, obtaining information. I was impressed with the amount of information the Greensboro Commission obtained, and a commission modeled on the community option could be similarly successful by following the same model. GTRC was able to acquire a lot of official documents from law enforcement agencies and take testimony from over 200 individuals.¹³¹ GTRC secured information from the Greensboro Police Department by filing a public records request. North Carolina statute states that "public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people," and that any person can obtain public records at minimal or no cost.¹³² While records of criminal investigations are not generally

¹²⁹ GTRC Recommendations, *supra* note 127, at 202.

¹³⁰ GTRC Recommendations, *supra* note 127, at 203.

¹³¹ Interview with Jill Williams, Executive Director, Greensboro Truth & Reconciliation Commission, Chapel Hill, NC (Jan. 18, 2011).

¹³² Public Records, N.C.G.S. §132-1 (2011).

considered public records,¹³³ the statute creates an exception for some information related to criminal investigations, including the identity of the person charged and the contents of any 911 communications.¹³⁴ Using this procedure, the Commission was able to collect a lot of information about the criminal investigations and subsequent trials of the shooters. Similarly, the community option could request information from government agencies regarding Aero Contractors.

The Greensboro Commission sought information from federal law enforcement by filing a Freedom of Information Act request.¹³⁵ It was less successful in obtaining information this way because FOIA requests take a long time to process. According to Executive Director Jill Williams, the Commission probably would have been able to get more information through FOIA if they had been operating over a longer period of time.¹³⁶ However, a FOIA request would be more difficult to seek information about Aero Contractors. Classified information is generally exempt from release under FOIA.¹³⁷ Since much of the information pertaining to Aero is likely to be classified, much of the request may be denied. Alternatively, the agency may require many months or years to determine what information is appropriate for release. In either case, the community option will likely face obstacles in obtaining information using FOIA.

GTRC also provided opportunities for individuals to make a statement. It held four public hearings, where members of the public could tell their story and express how they were impacted by Nov. 3, 1979.¹³⁸ The Commission also allowed individuals to speak privately, as some people expressed fear about speaking in public. All individuals who spoke to the Commission signed a statement indicating that they did not provide any false information. The community option could follow the same procedure to collect information from individuals.

In reflecting on the quality of information gathered, Jill Williams told me that the Commission felt pretty good about the breadth and depth of information.¹³⁹ While it would have been helpful in some instances for the Commission to have subpoena power, Williams noted that everyone who testified did so voluntarily, which may lend more credibility to some testimony than if it had been compelled.¹⁴⁰ Because so much time had elapsed since the shooting, some of the court records were unavailable because they

¹³³ Criminal investigations; intelligence information records; Innocence Inquiry Commission records, N.C.G.S. § 132-1.4(a) (2011).

¹³⁴ N.C.G.S. § 134-1.4(c) (2011).

¹³⁵ The Freedom of Information Act is codified at 5 U.S.C. § 552.

¹³⁶ Interview with Jill Williams, *supra* note 131.

¹³⁷ 5 U.S.C. § 552(b)(1) (2010).

¹³⁸ What is a hearing?, GREENSBORO TRUTH & RECONCILIATION COMMISSION, http://www.greensborotrc.org/what_is_a_hearing.php (last visited Feb. 27, 2011).

¹³⁹ Interview with Jill Williams, *supra* note 131.

¹⁴⁰ *Id.*

had been destroyed. Nevertheless, the Greensboro Commission gathered a lot of information about the Nov. 3, 1979 shootings that lends credibility to its findings.

Following similar procedures, the NC Commission of Inquiry on Torture could also gather a substantial amount of information. The Commission will likely have trouble obtaining primary source information from government agencies, especially classified information. However, the Commission should be able to use public records statutes and the Freedom of Information Act to access unclassified public information. The Commission will be able to collect information from secondary sources and take individual statements about the activities of Aero Contractors. Accordingly, the Commission can likely access as much information as anyone in the general public.

The community option scored “good” on the third criterion, receiving public support. NC Stop Torture Now could follow the model provided by GTRC to build strong relationships in the community. GTRC worked hard to include as many community groups as possible and to provide public information about its process. In forming the Commission, GTRC invited a number of community groups to appoint a representative to the Selection Panel for choosing the Commissioners.¹⁴¹ Most community groups chose to participate.¹⁴² The Commission employed a Communications Director who provided public information about GTRC’s activities. GTRC published a weekly newsletter about the Commission’s work.¹⁴³ Additionally, the Commission had a weekly talk show, TRC Talk, produced in conjunction with NC A&T University, which aired on Greensboro Community Television.¹⁴⁴ Finally, the Commission canvassed certain neighborhoods to provide information about its activities.¹⁴⁵

Despite the wide public support, I was surprised at the level of community criticism toward GTRC, given that it operated independently of any government body. At the outset, the Commission approached the Greensboro City Counsel to ask them to endorse the Truth and Reconciliation process.¹⁴⁶ The City Counsel not only decided not to endorse the process, but also voted—with the three black members

¹⁴¹ See THE SELECTION PROCESS 1, http://www.greensborotrc.org/selection_process.php (last visited Feb. 27, 2011).

¹⁴² Notable exceptions included the Greensboro Police Department and the Sons and Daughters of the Confederacy. GPD was hesitant to participate because they were the subject of the investigation. The Sons and Daughters of the Confederacy chose not to participate because of infighting between the two groups; the Sons of the Confederacy and Daughters of the Confederacy apparently do not get along and could not agree on a mutual representative. Interview with Jill Williams, *supra* note 131.

¹⁴³ See Ubuntu Weekly, GREENSBORO TRUTH & RECONCILIATION COMMISSION, http://www.greensborotrc.org/ubuntu_weekly.php (last visited Feb. 27, 2011).

¹⁴⁴ TRC Talk, GREENSBORO TRUTH & RECONCILIATION COMMISSION, http://www.greensborotrc.org/trc_talk.php (last visited Feb. 27, 2011).

¹⁴⁵ Interview with Jill Williams, *supra* note 131.

¹⁴⁶ *Executive Summary*, GREENSBORO TRUTH & RECONCILIATION COMMISSION REPORT 25, May 25, 2006, <http://www.greensborotrc.org/index.php> [hereinafter GTRC Executive Summary].

dissenting—to oppose truth and reconciliation.¹⁴⁷ Despite its status as an independent, nongovernmental entity, the Greensboro Commission also faced some safety concerns. For example, the GTRC offices were ransacked at one point, and the executive director’s phone was wiretapped.¹⁴⁸ One staff member also reported an intruder banging on their home door in the middle of the night after that person had given public testimony to the City Counsel.

The North Carolina Commission of Inquiry on Torture could face similar safety concerns or criticism. The allegations against Aero Contractors are wider reaching and no less scandalizing than those examined by GTRC. The Greensboro Commission examined events that occurred on one day in one community, while the NC commission proposes to study events allegedly occurring over several years and in multiple countries. As a result, there are arguably more stakeholders interested in the allegations against Aero Contractors than in the Greensboro massacre. With a larger number of stakeholders, there is a greater opportunity for any one stakeholder to criticize the project.

The community option scored “excellent” on political feasibility. The Commission could be modeled after GTRC, which was organized by interested community members. These community members reached out to local organizations, by encouraging them to nominate a representative to the commissioner Selection Committee. Through this process, GTRC persuaded these groups to buy in to its process. GTRC engaged the public outside of any government channels, so it was not fettered by the political environment in state or local government. GTRC was able to take a lot of public statements from involved and interested individuals and make recommendations to help Greensboro better serve its citizens. Although the commission was conducted outside of government, GTRC was able to convince the Greensboro City Council to issue a statement of regret about the massacre.

GTRC could provide a politically feasible model for a North Carolina Commission of Inquiry on Torture. Since the creation of this type of commission is under the control of NC Stop Torture Now, this advocacy group can control the shape of the Commission and build relationships with community organizations. This option can bring pressure on the Governor and General Assembly, not only to minimize opposition to the Truth and Reconciliation process, but also to engender support.

	Solves the Problem	Obtains Information	Receives Public Support	Is Politically Feasible
Community Option	Acceptable	Good	Good	Excellent

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

Conclusion and Recommendations

The three policy options compare as follows:

	Solves the Problem	Obtains Information	Receives Public Support	Is Politically Feasible
Executive Option	Good	Good	Acceptable	Poor
Legislative Option	Good	Good	Good	Poor
Community Option	Acceptable	Good	Good	Excellent

Recommendation 1: Use the community option for the North Carolina Commission of Inquiry on Torture.

My recommendation is that the community option is the best model for the North Carolina Commission of Inquiry on Torture. This option should allow the Commission to obtain a lot of information about Aero Contractors and allow them to build coalitions with community partners. While the Commission will likely see modest to moderate results for solving the problem, the community option is the model that is most politically feasible in North Carolina. This option will allow the Commission to investigate the role of NC state and local governments in the support of extraordinary rendition. Since NC Stop Torture Now has written a declaration of intent signaling that it will use this model for the Commission, the following further recommendations are aimed at improving the planning process.

In light of this recommendation, I make the following further recommendations:

Recommendation 2: Invite Community Groups to nominate a member to the Selection Panel.

Jill Williams indicated that this process was critical in helping GTRC building credibility in the community because gave all segments of the community a voice in the process. This same process could be used with the Torture Commission. This way, the Commission could invite members of “opposition” groups, like Aero Contractors, Global Transpark, and the North Carolina Military Community to participate in the Commission. If the groups agree to nominate a member to the Selection Panel, they will help enrich

the diversity of opinions provided in the Commission. If they choose not to participate, it is less likely that the Commission could be criticized for failing to include these parties.

Recommendation 3: Design an aggressive public affairs campaign.

Since the Commission will be community-oriented, it will be important for the Commission to promote itself as best as possible. This promotion will help increase the diversity of information provided to the Commission and give the public more information about its work. GTRC had a staff person dedicated to public affairs; GTRC published a weekly newsletter and produced a weekly TV show about their activities. NC Stop Torture Now may consider a similar approach.

Recommendation 4: Follow up with Flight Service Stations about flight documentation.

The Commission will be more successful if they can acquire official documentation of Aero flights connected to extraordinary rendition. In November I filed a Freedom of Information Act request with the Federal Aviation Administration, requesting flight records for airplanes with tail numbers N313P and N379P flying out of Smithfield, and Kinston, NC. I was informed that the FAA does not keep these records, but that they are kept at various Flight Service Stations operated by Lockheed Martin. NC Stop Torture Now should follow up with Lockheed Martin to try to get this information.

Appendices

Appendix A: Methodology

Given that the policy problem involves non-public information, my first step was to verify that the flights in question actually took place. I filed a Freedom of Information Act request with the Federal Aviation Administration to get flight plans for airplanes N313P and N379P filed between November 1, 2001 and July 1, 2004. I requested FAA forms 7233-1 and 7233-4, which include aircraft identifiers as well as departure and arrival airport information. A copy of this FOIA request is included in Appendix B.

I recently learned from the FAA's FOIA coordinator that the FAA does not keep records of flight plans. Instead, flight plans are kept at various Flight Service Stations, operated by Lockheed Martin. I am looking into whether I could use FOIA to access records held by a government contractor, or whether I could get the information another way.

I have located two other sources of unofficial flight data. Stephen Grey, an investigative journalist and author of "Ghost Plane," compiled the first source. Grey maintains a database of over 3,500 CIA flights, which is available online at <http://ghostplane.net/flightlog>. Each flight record includes the airplane's tail number, departure and arrival airports, and date of flight. Grey does not identify where he got this information and acknowledges that the database may contain inaccuracies.

The second source is available from the Council of Europe. In 2006, the COE published "Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states," a report authored by Swiss Parliamentarian Dick Marty. The addendum to this report contains records of some flights made by N313P and N379P between December 2001 and January 2004. Each flight record contains the airplane's tail number, departure and arrival airports, registered operator, and date of flight.

Since I have not yet obtained official flight plan data, I compared the Council of Europe records against Stephen Grey's database. In Appendices C-F, I have compiled records related to the rendition of Mohamed, Al-Rawi, Britel, and El-Masri, including aircraft tail number, departure and arrival airports, registered operator, and date of flight. I have indicated which sources support these records. If I can access official flight plans, I will corroborate this information. If not, I will rely on these unofficial sources under the assumption that they are as accurate as any information publicly available.

After analyzing the chosen cases, I considered the applicability of the commission to the North Carolina context. I have researched the political and legal process for creating a legislative or executive

mandate for a commission in North Carolina. I had access to the required information through the Westlaw and LexisNexis. I interviewed people who worked for the Greensboro Truth and Reconciliation Commission to learn about the viability of a commission based on grassroots organizing. I would have interviewed individuals who work in the Governor's office and the North Carolina General Assembly, but NC Stop Torture Now is concerned about release too many details about this project before they have collected more information. Finally, I made a policy recommendation to NC Stop Torture Now based on this research.

9 Waltham Place
Chapel Hill, NC 27517

November 1, 2010

Ms. JoAnn Noonan, FOIA Coordinator
Federal Aviation Administration
National Freedom of Information Act Staff, ARC-40
800 Independence Avenue, SW
Washington, DC 20591

Dear Ms. Noonan:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552.

I am seeking copies of flight plans filed with the Federal Aviation Administration for the flights between November 1, 2001 and July 1, 2004 for airplanes with tail numbers N313P, N4476S, N379P, and N8068V. This request includes, but is not limited to, FAA forms 7233-1 and 7233-4.

I also request any information required under the following regulations:

- 14 CFR § 91.153;
- 14 CFR § 91.169;
- 14 CFR § 91.173; and
- 14 CFR § 99.11;

if this information is not entirely included in the documents requested above. I request this information for flights between November 1, 2001 and July 1, 2004 for airplanes with tail numbers N313P, N4476S, N379P, and N8068V.

For the purpose of determining my fee status, I inform you that I am a Master of Public Policy student affiliated with Duke University, an educational institution, and this information is for the purpose of scholarly or scientific research.

Thank you for your assistance. I am willing to pay \$50 in addition to the 100 pages provided at no cost. My contact information is listed below.

Address: 9 Waltham Place
Chapel Hill, NC 27517
Phone: 919-818-3285
Email: allison.whiteman@duke.edu

Sincerely,

Allison Whiteman

Appendix B: Case Studies

Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

On February 6, 2004, President George W. Bush issued Executive Order 13328 calling for the establishment of a Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction.¹⁴⁹ President Bush issued the Executive Order in the wake of the resignation of David Kay, the head of the Iraq Study Group. The Iraq Study Group, organized by the Department of Defense and CIA, was a fact-finding mission whose task was to uncover information about the alleged Weapons of Mass Destruction program in Iraq. The Bush Administration cited Iraq's possession of WMD as a main justification for the war. After several months in the field, Kay testified before the Senate Armed Services Committee that he did not believe the ISG would find a WMD cache in Iraq.¹⁵⁰

President Bush charged the commission to determine whether the US Intelligence Community is sufficiently organized and equipped to address concerns about Weapons of Mass Destruction.¹⁵¹ Specifically, the Commission was to consider the Intelligence Community's information about WMD before the invasion and compare it with the ISG findings after the invasion.¹⁵² This Commission was also to look at the state of WMDs in Libya and Afghanistan.¹⁵³

President Bush named nine Commission members. Laurence Silberman, a retired US Court of Appeals Judge, and Charles Robb, a former Democratic Senator from Virginia, served as co-chairs.¹⁵⁴ The other Commission members included public servants, academics, and business people.¹⁵⁵ The Executive Order gave the Commission members access to any information related to its mission.¹⁵⁶

The Commission issued its report on March 31, 2005. It revealed that the Intelligence Community had long had trouble gathering information about Iraq's weapons programs.¹⁵⁷ The Gulf War demonstrated

¹⁴⁹ Exec. Order No. 13,328, 3 C.F.R. 139 (2005).

¹⁵⁰ *Transcript: David Kay at Senate Hearing*, CNN, Jan. 28, 2004, <http://www.cnn.com/2004/US/01/28/kay.transcript/> (last visited Feb. 27, 2011).

¹⁵¹ Exec. Order No. 13,328, *supra* note 149, § 2(a).

¹⁵² *Id.* at § 2(b).

¹⁵³ *Id.* at § 2(c)(2).

¹⁵⁴ See The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President of the United States*, Mar. 31, 2005, 595, available at <http://www.gpoaccess.gov/wmd/index.html> [hereinafter Iraq Intelligence Commission Report].

¹⁵⁵ See Iraq Intelligence Commission Report, *supra* note 154, at 595.

¹⁵⁶ Exec. Order No. 13,328, *supra* note 81, § 5.

¹⁵⁷ Iraq Intelligence Commission Report, *supra* note 154, at 9.

that US intelligence services had underestimated Iraq's nuclear and chemical weapons capabilities.¹⁵⁸ Determined not to make the same mistake a second time, the Intelligence Community assumed that Hussein had continued building these programs throughout the 1990s and into the new millennium.¹⁵⁹ The report concluded, *inter alia*, that the Intelligence Community did not critically examine its own assumptions before drawing conclusions about the Iraqi weapons program.¹⁶⁰

The Commission made 74 recommendations.¹⁶¹ These recommendations related to leadership and management, intelligence collection, analysis, and information sharing.¹⁶² President Bush adopted 69 of the recommendations in a public issued June 29, 2005.

Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar

The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar commenced its activities on February 5, 2004 at the recommendation of the Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness.¹⁶³ The Commission was authorized by Part I of the *Inquiries Act*, which states that “[t]he Governor in Council may . . . cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.”¹⁶⁴ The Commission was to conduct a factual inquiry into the role of Canadian officials in the deportation and detention of Maher Arar, a Canadian citizen.¹⁶⁵ Additionally, the Commission was to make policy recommendations for “an independent arm’s length review mechanism” for the Royal Canadian Mounted Police (RCMP).¹⁶⁶ I will focus my discussion on the Factual Inquiry because it is most closely related to the goals of the proposed North Carolina commission.

Maher Arar, a Canadian citizen and Muslim, was arrested in New York in September 2002 on suspicion of being a terrorist.¹⁶⁷ US officials transported Mr. Arar to Syria,¹⁶⁸ where he was detained for over a year. Arar’s parents had told him stories about abuse in Syrian prisons in the 1980s, and he was

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 12.

¹⁶¹ *Id.* at Cover Letter

¹⁶² *See Id.* at 18 *et. seq.*

¹⁶³ Arar Commission, *About the Inquiry*, (2006) http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/index.htm.

¹⁶⁴ *Id.* *See Inquiries Act*, R.S.C. ch. I-11 § 2(2011) (Can.).

¹⁶⁵ Arar Rules, *supra* note 114, at 1.

¹⁶⁶ *Id.* at 2.

¹⁶⁷ Toope, *supra* note 108, at 13.

¹⁶⁸ *Id.*

“terribly frightened, and assumed that he would face torture.”¹⁶⁹ Arar resolved to tell interrogators anything they wanted to hear in order to avoid torture.¹⁷⁰ During his detention, Arar lived in horribly unsanitary conditions and was only allowed to use the bathroom three times a day, and only for two to three minutes at a time.¹⁷¹ Arar was interrogated frequently and was subject to beatings and other forms of physical punishment when he did not respond as the guards requested.¹⁷² Arar was returned to Canada on October 5, 2003.

Justice Dennis O’Connor, the Commissioner of Inquiry, appointed Professor Stephen J. Toope as the Fact Finder for the Commission.¹⁷³ Toope’s role was narrowly construed; he was only to investigate the events that happened to Maher Arar in Syria. Professor Toope began his inquiry by reading publicly available reports of the human rights situation in Syria, as well as reports and testimony made before the Arar Commission.¹⁷⁴ Professor Toope also conducted a number of interviews, including several interviews with Maher Arar, his doctors, and other men who were detained in Syria’s Far Falestin prison at roughly the same time.¹⁷⁵ Finally, Professor Toope reviewed some testimony that had been conducted *in camera* to preserve individuals’ confidentiality.¹⁷⁶

Professor Toope began his analysis by reviewing written materials, with close attention paid to any references to Syrian detention facilities.¹⁷⁷ He interviewed a number of people, including Arar and his family, doctors that had treated him, and other detainees who claimed they had been held in Far Falestin prison.¹⁷⁸ Toope paid particular attention to assessing the witness’ credibility, ultimately concluding that they were telling the truth.¹⁷⁹

Greensboro Truth and Reconciliation Commission

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 14.

¹⁷¹ *Id.* at 15.

¹⁷² *Id.*

¹⁷³ *Id.* at 1.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 2.

¹⁷⁶ *Id.*

¹⁷⁷ Toope, *supra* note 108, at 1.

¹⁷⁸ *Id.* at Appx. B.

¹⁷⁹ *Id.* at 5.

The Greensboro Truth and Reconciliation Commission was formed in 2003¹⁸⁰ to address the “context, causes, sequence, and consequences” of a tragic shooting in Greensboro, NC on November 3, 1979.¹⁸¹ Specifically, the Commission’s goal was to “learn how persons and groups came to be directly or indirectly involved” in the shooting, to assess the impact of the shooting on the community, and make recommendations for community healing.¹⁸²

On November 3, members of two white supremacist groups—the Ku Klux Klan (KKK) and the National Socialist Party of America (American Nazis) confronted protesters organizing a “Death to the Klan” demonstration in Greensboro’s predominantly black Morningside Homes neighborhood.¹⁸³ The demonstrators were members of the Communist Workers Party, also known as the Workers Viewpoint Organization (WVO),¹⁸⁴ a black pro-union group with a strong grassroots presence in North Carolina. Members of the WVO have stated that “their anti-Klan campaign sprung in part from the fact that the Klan was a threat to their trade union work because the Klan discouraged multiracial cooperation.”¹⁸⁵

As tensions escalated, Klan and Nazi members opened fire on the demonstrators, killing five, wounding at least ten others, and traumatizing residents and other witnesses.¹⁸⁶ The Commission concluded that the Greensboro Police Department was aware of the WVO demonstration and likely Nazi/Klan confrontation, in part because they were in contact with a Klansman who acted as a paid informant.¹⁸⁷ However, the Commission also concluded that “GPD showed a stunning lack of curiosity in planning for the safety of the event.”¹⁸⁸ The Klansmen shooters claimed self-defense at their criminal trials and were acquitted by all-white juries.¹⁸⁹ Members of the black community in Greensboro felt that there was still pain associated with these events and were instrumental in organizing the Commission.¹⁹⁰

The Greensboro Truth and Community Reconciliation Project (GTCRP) was the organizing force behind the Commission. According to Jill Williams, the GTRC Executive Director, GTCRP made two critical early contributions that were important for the Commission’s ultimate success: they drafted a clear mandate

¹⁸⁰ The Mandate and Guiding Principles, GREENSBORO TRUTH & RECONCILIATION COMMISSION, <http://www.greensborotrc.org/mandate.php> (last visited Feb. 27, 2011).

¹⁸¹ GTRC Executive Summary, *supra* note 146

¹⁸² MANDATE FOR THE GREENSBORO TRUTH & RECONCILIATION COMMISSION, pmb., *available at* <http://www.greensborotrc.org/mandate.php>.

¹⁸³ GTRC Executive Summary, *supra* note 146, 2.

¹⁸⁴ *Id.* at 2.

¹⁸⁵ *Labor Unions in North Carolina Textile Mills*, GREENSBORO TRUTH & RECONCILIATION COMMISSION REPORT 74, May 25, 2006, <http://www.greensborotrc.org/index.php>.

¹⁸⁶ GTRC Executive Summary, *supra* note 146, at 2.

¹⁸⁷ *Id.* at 8.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 2.

¹⁹⁰ *Id.* at 3.

for the Commission (included as Appendix 6) and created a democratic process for selecting Commissioners (included as Appendix 7).¹⁹¹

The GTRC mandate narrowly defined the Commission's purpose and methodology: the Commission would consist of seven Commissioners "of recognized integrity and principle, with a demonstrated commitment to the values of truth, reconciliation, equity, and justice."¹⁹² The Commissioners would review documents and invite people to come forward, either in public or in private, to give a statement about the events of Nov. 3, 1979. The mandate also explicitly limited the Commission in a number of ways. The Commission would have no authority to pursue civil or criminal claims, or to grant immunity from legal claims.¹⁹³ Furthermore, the Commission would be free from influence from any outside party, including GTCRP.¹⁹⁴ The framework gave the Commissioners guidance on how to begin their inquiry.

In our conversation, Jill Williams emphasized the importance of community support in making their project feasible. One of the first steps taken by GTCRP was to invite a number of community groups to participate in selecting Commissioners. The Selection Panel was the body tasked to choose the Commissioners. Upon appointment, the Selection Panel's job was to "consider nominations from the entire Greensboro community and choose from those nominations the seven Commissioners." The community groups represented included the six area Colleges and Universities, the Chamber of Commerce, the Guilford County Democratic and Republic Parties, and various religious organizations. GTCRP hoped that these groups "reflect[ed] the broad range of interested in this community."¹⁹⁵ A list of these groups is included in Appendix 7.

The Selection Panel chose seven Commissioners, including business leaders, community activists, and a university professor. The Commissioners reviewed documents collected from local and federal law enforcement.¹⁹⁶ They held focus groups to learn about what was happening in different segments of the community in the late 1970s.¹⁹⁷ They also received testimony—both at public hearings and private consultations—with individuals connected to the Nov. 3, 1979 shooting.

¹⁹¹ Interview with Jill Williams, *supra* note 131.

¹⁹² Mandate, *supra* note 180, at ¶ 2.

¹⁹³ *Id.* at ¶ 6.

¹⁹⁴ *Id.* at ¶ 8.

¹⁹⁵ THE SELECTION PROCESS 1, http://www.greensborotrc.org/selection_process.php (last visited Feb. 27, 2011).

¹⁹⁶ Interview with Jill Williams, *supra* note 131.

¹⁹⁷ *Id.*

The Commission concluded that the KKK and Nazis intended to use violence to disrupt the “Death to the Klan” rally.¹⁹⁸ The Commission also placed some responsibility with the WVO, finding that some members beat on the KKK/Nazi caravan cars as they passed.¹⁹⁹ However, the Commission finds that the primary responsibility lay with the KKK and Nazi groups, and that the WVO leaders were naïve about the threat posed by the confronters. Notably, however, the Commissioners found that the “single most important element that contributed to the violent outcome of the confrontation was the absence of police.”²⁰⁰ Finally, the Commission concluded that violent rhetoric and injustice in the justice system contributed to the outcome on Nov. 3, 1979.²⁰¹

¹⁹⁸ GTRC Executive Summary, *supra* note 146, at 6.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 7.

²⁰¹ *Id.* at 13-15.

Mandate for the Greensboro Truth and Reconciliation Commission

There comes a time in the life of every community when it must look humbly and seriously into its past in order to provide the best possible foundation for moving into a future based on healing and hope. Many residents of Greensboro believe that for this city, the time is now.

In light of the shooting death of 5 people and the wounding of 10 others in Greensboro, North Carolina on November 3, 1979, and

In light of the subsequent acquittal of defendants in both state and federal criminal trials, despite the fact that the shootings were videotaped and widely viewed, and

In light of the further investigations, passage of time and other factors which allowed a jury in a later civil trial to find certain parties liable for damages in the death of one of the victims, and

In light of the confusion, pain, and fear experienced by residents of the city and the damage to the fabric of relationships in the community caused by these incidents and their aftermath,

The Greensboro Truth and Community Reconciliation Project, including the signers of its Declaration, calls for the examination of the context, causes, sequence and consequence of the events of November 3, 1979.

We affirm that the intention of this examination shall be:

- a) Healing and reconciliation of the community through discovering and disseminating the truth of what happened and its consequences in the lives of individuals and institutions, both locally and beyond Greensboro.
- b) Clarifying the confusion and reconciling the fragmentation that has been caused by these events and their aftermath, in part by educating the public through its findings.
- c) Acknowledging and recognizing people's feelings, including feelings of loss, guilt, shame, anger and fear.
- d) Helping facilitate changes in social consciousness and in the institutions that were consciously or unconsciously complicit in these events, thus aiding in the prevention of similar events in the future.

This examination is not for the purpose of exacting revenge or recrimination. Indeed, the Commission will have no such power. Rather, the Commission will attempt to learn how persons and groups came to be directly or indirectly involved in these events; it will assess the impact of these events on the life and development of this community. It will seek all possibilities for healing transformation.

In addition to exploring questions of institutional and individual responsibility for what happened, as a necessary part of the truth-seeking process we urge the Commission to look deeply into the root causes and historical context of the events of November 3, 1979.

Members of this community, young and old, still find the events of November 3, 1979 nearly incomprehensible. We owe it to ourselves and to future generations to explain what happened and why. Many citizens and institutions of this city have acknowledged the wisdom of, and necessity for, such a process.

It is in this spirit that we affirm the South African Truth and Reconciliation Commission's motto: "Without Truth, no Healing; without Forgiveness, no Future."

Therefore, toward these ends,

1. The Greensboro Truth and Community Reconciliation Project (referred to here as “the Project”) hereby establishes a Greensboro Truth and Reconciliation Commission (GTRC), charged with the examination of the context, causes, sequence and consequence of the events of November 3, 1979.

2. The GTRC will consist of seven (7) Commissioners who shall be persons of recognized integrity and principle, with a demonstrated commitment to the values of truth, reconciliation, equity and justice.

The majority of the commissioners will be current residents of the Greensboro area; at least two commissioners will be from outside the Greensboro area. All will be selected in accordance with “The Selection Process for the Greensboro Truth and Reconciliation Commission” document, which is attached. The Commission will designate its chair(s).

Commissioners will serve on an honorary basis and in their personal capacity, but may be reimbursed for expenses incurred in the discharge of their responsibilities.

3. The Commissioners will carry out their mandate by reviewing documents, inviting people to come forward with information, consulting with experts and by any other means, public or private, they consider appropriate.

4. The Commission may decide to carry out some activities in private in order to protect, to the extent possible, the security and privacy of individuals and the integrity of its ongoing truth-seeking, but in general the Commission's activities will be carried out in a manner that is as public and transparent as possible.

5. The Commission will issue a report to the residents of Greensboro, to the City, to the Project, and to other public bodies, encompassing the items outlined in paragraph 1 and in keeping with the intentions and spirit of the mandate. The Commission will ensure that its findings are fair, based on the information compiled and reviewed, and adequately documented in its report. The Commission may take steps to protect the identity of individual sources, if requested. The Commission will also make specific, constructive recommendations to the City, to the residents of Greensboro, and to other entities as it deems appropriate, particularly to further the intentions set forth in the mandate.

6. The Commission will have no authority either to pursue criminal or civil claims or to grant immunity from such claims. Its focus is reconciliation through seeking, understanding and reporting the truth.

7. The Commission will convene a first meeting, as determined by the Commissioners, no later than 60 days from the date on which the Selection Panel confirms and announces the selection and acceptance of its members. From its first meeting, the Commission will have a period of 15 months to fulfill the terms of its mandate. This period includes initial planning and set-up, the determination of its internal procedures and selection and appointment of its key staff. The Commission may call upon the Project staff and other resources for administrative support during its initial planning and set-up phase. If absolutely necessary, the period of the Commission's mandate may be extended for up to 6 more months, with the permission of the Project.

8. The Commission will carry out its mandate while operating independently from any external influence, including the Project. It may reach cooperative agreements with organizations, institutions and individuals in order to strengthen its capacity and resources, in so far as such agreements do not compromise the Commission's independence. The Commission will have full authority to make decisions on its spending, within the limits of available funds, and may elect to have a fiscal sponsor through another institution so long as that relationship is consistent with the spirit of the mandate and the Commission's substantive independence.

9. At the completion of its work, all documents of the Commission, its notes, findings, exhibits and other collected materials, shall be permanently archived in Greensboro in an institution whose purpose and tradition is in keeping with the objectives and spirit of the Commission mandate. The identity of this institution and the structure of the archive will be determined by agreement between the Commission and the Project. If deemed appropriate, multiple institutions and locations may be used for archival purposes. Such an archive shall, to the extent feasible and

respectful of any recommendations by the Commission with regard to the continued confidentiality of records, be accessible to the public.

The passage of time alone cannot bring closure, nor resolve feelings of guilt and lingering trauma, for those impacted by the events of November 3, 1979. Nor can there be any genuine healing for the city of Greensboro unless the truth surrounding these events is honestly confronted, the suffering fully acknowledged, accountability established, and forgiveness and reconciliation facilitated.

Greensboro TRC Commissioner Selection Process

THE SELECTION PROCESS

Commissioners were selected by the following process:

1. Creation of Selection Panel

In order to make the selection of the Commissioners the most democratic process and community-wide initiative possible, the Greensboro Truth and Community Reconciliation Project (GTCRP) invited the following community groups to each appoint one person to the Selection Panel. This panel was formed three months after the public announcement of the Mandate for the Greensboro Truth and Reconciliation Commission. The Selection Panel was formed to consider nominations from the entire Greensboro community and to choose from those nominations the seven Commissioners.

The following groups were chosen because they reflect the broad range of interests in this community. It was hoped that all residents of Greensboro could feel represented by at least one of these groups.

- Chairs of the student bodies (Bennett College, Greensboro College, Greensboro Technical Community College, Guilford College, North Carolina Agricultural & Technical State University, and the University of North Carolina at Greensboro)
- Chamber of Commerce
- Chancellors and Presidents of the six major colleges and universities of Greensboro
- Council of Community Organizations
- Greensboro Police Officers Association
- Greensboro Truth and Community Reconciliation Project (GTCRP)
- Guilford County Democratic Party
- Guilford County Republican Party
- Mayor of Greensboro
- NAACP
- National Conference for Community and Justice (NCCJ)
- The Jewish community
- The Muslim community
- The Pulpit Forum / African American Churches
- The Sons of Confederate Veterans and the Daughters of the Confederacy
- Traditional Protestant, Catholic, and Independent churches
- Triad Central Labor Council

Of these groups, fourteen chose to appoint a member to the Selection Panel.

<u>Appointing Group/Individual</u>	<u>Selection Panel Representative</u>
Chairs of the Student Bodies	Dara Edelman
Chancellors and Presidents	Linda Brown
Greensboro Neighborhood Congress	Dorothy Brown
Greensboro Truth and Community Reconciliation Project	Edward Whitfield
Guilford County Democratic Party	George Hines
Guilford County Republican Party	Curtis Douglas
Jewish Community	Sylvia Berkelhammer

Mayor of Greensboro	Judge Lawrence McSwain
Muslim Community	Badi Ali
NAACP	Viola Fuller
NCCJ	Steve Simpson
Pulpit Forum	Rev. Eric Griffin
Triad Central Labor Council	Donny Brown
Community Representative	Bishop Woodrow Dawkins

As requested in the "Selection Process for the Greensboro Truth and Reconciliation Commission," written and approved by the Greensboro Truth and Community Reconciliation Project Local Task Force and the National Advisory Committee, and published in the Greensboro News & Record on May 6, 2003, the Selection Panel appointed its own Chairperson, Judge Lawrence McSwain, and worked independently and free of any outside influence.

2. Nomination and Selection Process for Commissioners

Once the Mandate was released in May 2003, a call for commissioner nominations from all Greensboro residents was sent out. Any resident of Greensboro or the immediate area was free to nominate any person according to the criteria set out in the Mandate. Over the next three months, sixty seven nominations were collected. Each nomination was accompanied by a brief statement articulating who the nominee was and why he or she was nominated. The Selection Panel asked each nominee to complete an application to inform the panel's deliberations.

Acting independently, the Selection Panel created guidelines for processing the nominations and worked within the parameters of the Mandate to appoint seven commissioners to best serve the Commission. Racial, socio-economic, religious, and sexual diversity were given strong consideration in the selection of the commissioners.

Decisions within the panel were attempted by consensus, and failing that, by vote. There was a required two thirds majority of the panel membership for the selection of the commissioners after the interviewing of a short list of potential commissioners. The panel's deliberations were closed to the public and media, but the panel members were encouraged to record some general lessons learned and procedures followed in the selection process.

The panel made its final selections in May 2004, and the Greensboro Truth and Reconciliation Commission was sworn in on June 12, 2004, with over 500 supporters in attendance. Congressman Mel Watt, Judge Lawrence McSwain, and former Greensboro Mayor Carolyn Allen presided over the ceremonies.

The Commissioners selected their own chairpersons who are Cynthia Brown and Bob Peters.

Appendix C: Flights Related to the Transport of Binyam Mohamed, 2002

Date	Airport of Departure (ADEP)	ADEP Name	Airport of Destination (ADES)	ADES Name	Registration Identifier	Registered User or Operator	Source*
7/17/02	KJNX	JOHNSTON COUNTY NC	KIAD	DULLES WASHINGTON	N379P	PREMIER EXECUTIVE	Grey
7/18/02	KIAD	DULLES WASHINGTON	EDDF	FRANKFURT MAIN	N379P	PREMIER EXECUTIVE	COE, Grey
7/18/02	EDDF	FRANKFURT MAIN	LTAG	ADANA / INCIRLIK (MIL)	N379P	PREMIER EXECUTIVE	COE, Grey
7/18/02	LTAG	ADANA-INCIRLIK/MIL	EDDF	FRANKFURT MAIN	N379P	PREMIER EXECUTIVE	COE, Grey
7/19/02	EDDF	FRANKFURT MAIN	OJAI	AMMAN/QUEEN ALIA	N379P	PREMIER EXECUTIVE	COE, Grey
7/19/02	OJAI	AMMAN/QUEEN ALIA	OAKB	KABUL	N379P	PREMIER EXECUTIVE	COE, Grey
7/21/02	OAKB	KABUL	OPRN	ISLAMABAD	N379P	PREMIER EXECUTIVE	COE
7/21/02	OPRN	ISLAMABAD	GMME	RABAT/SALE	N379P	PREMIER EXECUTIVE	COE, Grey
7/22/02	GMME	RABAT-SALE	EINN	SHANNON	N379P	PREMIER EXECUTIVE	COE, Grey
7/23/02	EINN	SHANNON	KIAD	DULLES WASHINGTON	N379P	PREMIER EXECUTIVE	COE, Grey
7/23/02	KIAD	DULLES WASHINGTON	KJNX	JOHNSTON COUNTY NC	N379P	PREMIER EXECUTIVE	Grey

* COE: Committee on Legal Affairs and Human Rights, Rapporteur Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, Doc. 10957 Addendum, June 14, 2006.

* Grey: Stephen Grey, Flight Log | Ghost Plane, www.ghostplane.net/flightlog (last visited Oct. 28, 2010).

Appendix D: Flights Related to the Transport of Bisher Al-Rawi, 2002

Date	Airport of Departure (ADEP)	ADEP Name	Airport of Destination (ADES)	ADES Name	Registration Identifier	Registered User or Operator	Source*
12/8/02	KJNX	JOHNSTON COUNTY NC	KIAD	DULLES WASHINGTON	N379P	PREMIER EXECUTIVE	Grey
12/8/02	KIAD	DULLES WASHINGTON	GBYD	BANJUL	N379P	PREMIER EXECUTIVE	COE, Grey
12/8/02	GBYD	BANJUL	HECA	CAIRO	N379P	PREMIER EXECUTIVE	COE, Grey
12/9/02	HECA	CAIRO	OAKB	KABUL	N379P	PREMIER EXECUTIVE	COE, Grey
	OAKB	KABUL	UTTT	TASHKENT	N379P	PREMIER EXECUTIVE	COE
12/10/02	UTTT	TASHKENT	EDDF	FRANKFURT MAIN	N379P	PREMIER EXECUTIVE	COE, Grey
12/10/02	EDDF	FRANKFURT MAIN	GMME	RABAT SALE	N379P	PREMIER EXECUTIVE	COE, Grey
12/12/02	GMME	RABAT SALE	OAKB	KABUL	N379P	PREMIER EXECUTIVE	COE, Grey
12/15/02	PGSN	SAIPAN IS.	KHNL	HONOLULU	N379P	PREMIER EXECUTIVE	Grey
12/16/02	KHNL	HONOLULU	KIAD	DULLES WASHINGTON	N379P	PREMIER EXECUTIVE	Grey
12/17/02	KIAD	DULLES WASHINGTON	KJNX	JOHNSTON COUNTY NC	N379P	PREMIER EXECUTIVE	Grey

* COE: Committee on Legal Affairs and Human Rights, Rapporteur Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, Doc. 10957 Addendum, June 14, 2006.

* Grey: Stephen Grey, Flight Log | Ghost Plane, www.ghostplane.net/flightlog (last visited Oct. 28, 2010).

Appendix E: Flights Related to the Transport of Abou Elkassim Britel, 2002

Date	Airport of Departure (ADEP)	ADEP Name	Airport of Destination (ADES)	ADES Name	Registration Identifier	Registered User or Operator	Source*
5/22/02	KJNX	JOHNSTON COUNTY NC	KIAD	DULLES WASHINGTON	N379P	PREMIER EXECUTIVE	Grey
5/23/02	KIAD	DULLES WASHINGTON	EDDF	FRANKFURT MAIN	N379P	PREMIER EXECUTIVE	Grey
5/23/02	EDDF	FRANKFURT MAIN	KIAD	DUBAI INT	N379P	PREMIER EXECUTIVE	Grey
5/23/02	KIAD	DULLES WASHINGTON	OPRN	FRANKFURT MAIN	N379P	PREMIER EXECUTIVE	Grey
5/24/02	OPRN	ISLAMABAD	GMME	RABAT/SALE	N379P	PREMIER EXECUTIVE	Grey
5/25/02	GMME	RABAT-SALE	LPPR	PORTO	N379P	PREMIER EXECUTIVE	Grey
5/26/02	LPPR	PORTO	KIAD	DULLES WASHINGTON	N379P	PREMIER EXECUTIVE	Grey
6/5/02	KJNX	JOHNSTON COUNTY NC	KIAD	DULLES WASHINGTON	N379P	PREMIER EXECUTIVE	Grey

* COE: Committee on Legal Affairs and Human Rights, Rapporteur Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, Doc. 10957 Addendum, June 14, 2006.

* Grey: Stephen Grey, Flight Log | Ghost Plane, www.ghostplane.net/flightlog (last visited Oct. 28, 2010).

Appendix F: Flights Related to the Transport of Khaled El-Masri, 2004

Date	Airport of Departure (ADEP)	ADEP Name	Airport of Destination (ADES)	ADES Name	Registration Identifier	Registered User or Operator	Source*
1/16/04	KIAD	DULLES WASHINGTON	EINN	SHANNON	N313P	STEVENS EXPRESS	COE, Grey
1/17/04	EINN	SHANNON	LCLK	LARNACA	N313P	STEVENS EXPRESS	COE, Grey
1/21/01	LCLK	LARNACA	GMME	RABAT/SALE	N313P	STEVENS EXPRESS	COE, Grey
1/22/04	GMME	RABAT-SALE	OAKB	KABUL	N313P	STEVENS EXPRESS	COE, Grey
1/22/04	OAKB	KABUL	DAAG	ALGER/HOUARI BOUMEDIENNE H 3500M	N313P	STEVENS EXPRESS	COE, Grey
1/22/04	DAAG	ALGER/HOUARI BOUMEDIENNE H 3500M	LEPA	PALMA DE MALLORCA	N313P	STEVENS EXPRESS	COE, Grey
1/23/04	LEPA	PALMA DE MALLORCA	LWSK	SKOPJE EX LYSK	N313P	STEVENS EXPRESS	COE, Grey
1/24/04	LWSK	SKOPJE EX LYSK	ORBI	BAGHDAD INTL	N313P	STEVENS EXPRESS	COE, Grey
1/24/04	ORBI	BAGHDAD INTERNATIONAL	OAKB	KABUL	N313P	STEVENS EXPRESS	COE, Grey
1/25/04	OAKB	KABUL	LRBS	TIMISOARA / GIARMATA RWY 3500M	N313P	STEVENS EXPRESS	COE, Grey
1/26/04	LRBS	TIMISOARA / GIARMATA RWY 3500M	LEPA	PALMA DE MALLORCA	N313P	STEVENS EXPRESS	COE
1/28/04	LEPA	PALMA DE MALLORCA	KIAD	DULLES WASHINGTON	N313P	STEVENS EXPRESS	COE, Grey
[Additional flights]							
10/19/04	KCAE	COLUMBIA METRO	KISO	KINSTON, NC	N313P	STEVENS EXPRESS	Grey

* COE: Committee on Legal Affairs and Human Rights, Rapporteur Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, Doc. 10957 Addendum, June 14, 2006.

* Grey: Stephen Grey, Flight Log | Ghost Plane, www.ghostplane.net/flightlog (last visited Oct. 28, 2010).

Appendix G: Potential Supporters of the North Carolina Commission of Inquiry on Torture

Members of the North Carolina General Assembly Who Ever Supported an Effort by the State Bureau of Investigation to Investigate Aero Contractors

North Carolina House					
Name		Current Member	Signed SBI Letter	Signed AG Letter	Notes
Alma	Adams	yes	yes	yes	
Martha	Alexander	yes	yes	yes	
Alice	Bordsen	yes	no	yes	
Linda	Coleman	no	yes	no	Appointed director of the Office of State Personnel in 2009
Susan	Fisher	yes	no	yes	
Melanie	Goodwin	no	yes	yes	Decided not to seek a fourth term
Larry	Hall	yes	yes	yes	Minority Whip
Pricey	Harrison	yes	no	yes	
Verla	Insko	yes	yes	yes	
Maggie	Jeffus	yes	no	yes	
Earl	Jones	no	yes	yes	Defeated in Dem. Primary by Marcus Brandon, who ultimately won the election
Paul	Leubke	yes	yes	yes	
Marvin	Lucas	yes	no	yes	
Earline	Parmon	yes	no	yes	
Deborah	Ross	yes	yes	no	Minority Whip
William	Wainwright	yes	yes	yes	Deputy Minority Leader
Jennifer	Weiss	yes	yes	yes	
Winkie	Williams	yes	yes	yes	
Larry	Womble	yes	no	yes	
North Carolina Senate					
Name		Current Member	Signed SBI Letter	Signed AG Letter	Notes
Doug	Berger	yes	no	yes	
Janet	Cowell	no	no	yes	Elected NC State Treasurer in 2008
Eleanor	Kinniard	yes	no	yes	
Jeanne	Lucas	no	no	yes	Passed away in 2007
Vernon	Malone	no	no	yes	Passed away in 2009

Community Organizations in Johnston County and Lenoir County, NC

Group	Contact Person	Contact Info
Student Body Presidents at Johnston Community College and Lenoir Community College		
Presidents of Johnston Community College and Lenoir Community College	Dr. David Johnston, President of JCC Dr. Brantley Briley, President of LCC	dnjohnson@johnstoncc.edu
Kinston-Lenoir Chamber of Commerce	Laura Lee Sylvester, President	lsylvester@kinstonchamber.com
Greater Smithfield-Selma Chamber of Commerce	Chris Key, Chair of Board of Directors	chris.key@edwardjones.com
Council of Community Organizations		
Aero Contractors		
Global Transpark	Darlene Waddell	dwaddell@ncgtp.com
Johnston County Democratic Party	Sharon Castleberry, Chair	scastleberry@jcdp.org
Lenoir County Democratic Party	Conen Morgan, President	lenoircountymunicipalparty@hotmail.com
Johnston County Republican Party	Andrew Tyree, Chair	919.634.0015
Lenoir County Republican Party	Kathy Riggs, Chairman	kriggs@kathyriggs.com
Mayor of Smithfield	Daniel Evans	919-934-2116
Mayor of Kinston	BJ Murphy	252.939.3110
NAACP	William J. Barber, President of NAACP of NC	
Islamic Association of Raleigh	Jalees Afzal, Chairman	jaleesafzal@gmail.com
The Christian Community	NC Council of Churches	
The Jewish Community		
A labor group		

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