

Statement of

The Honorable Richard J. Durbin

United States Senator
Illinois
December 11, 2007

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Hearing on "The Legal Rights of Guantánamo Detainees: What Are They, Should They Be Changed, and Is an End in Sight?"

Senate Judiciary Committee
Subcommittee on Terrorism, Technology and Homeland Security
December 11, 2007

Thank you, Chairman Feinstein, for holding this hearing. It is hard to overstate the damage done to our national interest by this Administration's interrogation and detention policies. These policies are not true to American values. They have hurt our efforts to fight terrorism and they have put our brave men and women in uniform at even greater risk.

Despite the exemplary service of our troops, Guantánamo has become a divisive, negative symbol of America. Some of our closest allies have called on us to close Guantánamo. Our country's image and reputation has suffered greatly around the world.

As Colin Powell has said: "We have shaken the belief the world had in America's justice system by keeping a place like Guantánamo open and creating things like the military commission. We don't need it and it is causing us far more damage than any good we get for it."

I hope this hearing will help us find a path away from Guantánamo and back towards restoring our values and the rule of law.

The Administration's policy for detaining, interrogating and trying terrorist suspects held in Guantánamo has been a strategic and legal failure. Look at the dismal track record. Over six years after 9/11, the Administration has only one conviction, obtained through a plea bargain and resulting in a nine-month sentence for low-level operative David Hicks, to show for its efforts. None of the planners of the 9/11 attacks have been brought to justice.

The Supreme Court has ruled against the Administration both times it has examined the rights of Guantánamo detainees. The Supreme Court is currently considering yet another challenge to the Administration's Guantánamo policies.

The Administration claims that its Combatant Status Review Tribunals, or CSRTs, are an adequate and effective substitute for habeas. However, CSRTs rely on evidence a detainee cannot see, prohibit the assistance of counsel, permit statements obtained by torture and other forms of coercion, and often refuse the requests of detainees to call witnesses or present exculpatory evidence. These CSRTs are neither independent nor neutral.

Lieutenant Colonel Stephen Abraham, who worked on the CSRTs, has stated that the panels frequently made decisions based on generic and outdated information that didn't even relate to the specific detainees in question. He also said that what were supposed to be "specific statements of fact lacked even the most fundamental earmarks of

objectively credible evidence." Lieutenant Colonel Abraham found that the panels were pressured to find that detainees were enemy combatants and to conduct "do-overs" on those rare occasions where the panels found the detainees were not enemy combatants.

Three retired Judge Advocates General, including Admiral Hutson, who will testify on the second panel, filed an amicus brief in the Guantánamo case currently before the Supreme Court. They stated that the "CSRTs depart significantly from standards followed by the military for decades" and that the CSRTs "were irretrievably infected with the pernicious effects of command influence."

Like Senator Feinstein, I was one of 34 Senators to vote against the Military Commissions Act, or MCA, which was rushed through the Republican-controlled Congress after the Supreme Court rejected the Administration's military commissions and, of course, before last year's elections. The MCA violates longstanding rules of criminal procedure and evidence by allowing evidence obtained through coercion and hearsay evidence, permitting the conviction of individuals for acts that were not illegal when they were committed, and greatly limiting the possibility for judicial review.

We must close Guantánamo. We must signal to the world that, despite the threat of terrorism, we will still follow the rule of law. We must keep America safe, but protect our values in the process. I hope today's hearing will begin the process of putting behind us the failed Guantánamo experiment and establishing policies for detaining and prosecuting suspects that protect us while adhering to the fundamental human rights and rule of law principles that define us.