

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee
On "The Legal Rights of Guantanamo Detainees"
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Today we consider our treatment of detainees at Guantanamo Bay and how best to secure our nation while holding on to those rights and values that make us American. I thank Senator Feinstein for holding this important hearing.

As today's testimony potently reminds us, the attack on America on September 11, 2001 was a devastating and tragic blow, and we must take all possible steps to prevent such a tragedy from happening again. But as so much of our history has shown, and as the events of the last six years have again made clear, disregarding the rule of law does not make us safer; it undermines our safety and our place in the world.

Over the last few years, Guantanamo has become for much of the world a symbol of injustice and boundless exercise of power. As General Colin Powell said, "Essentially, we have shaken the belief that the world had in America's justice system by keeping a place like Guantanamo open."

The Washington Post detailed last week the story of a man whom United States and European intelligence services concluded was innocent, but who is nonetheless still languishing years later in a cell at Guantanamo. The flawed review process there found him to be dangerous, contrary to the clear findings of the intelligence community. These stories are too common. The administration likes to call the detainees at Guantanamo the worst of the worst, but military and government officials have told The New York Times and others that many of the detainees appear to be people who were in the wrong place at the wrong time, and do not pose a threat.

Senator Specter and I have fought hard, and will continue fighting, to restore the great writ of habeas corpus, the legal doctrine that allows someone detained by the government to at least go to a court to say he or she is being held in error. The last Republican Congress and this administration took away that right for any non-citizen held under mere suspicion of being an enemy combatant, or merely "awaiting determination" as to whether that status applied. This is a change in the law that puts every one of the millions of legal, permanent residents in this country at risk, and Guantanamo is the ultimate illustration of the fate they risk sharing. How many more people could end up sitting in cells, unable even to challenge the basis for their detention, forever?

This government has stumbled forward in its handling of the Guantanamo detainees, apparently without rhyme or reason. Some detainees may have been released without a sufficient assurance that they are not dangerous. Others repeatedly found not to be dangerous remain at Guantanamo with no end in sight. The cursory process meant to review whether the detainees are being held properly has been revealed again and again to be hopelessly flawed. We must start over with a fair system based in our law - the kind of system I proposed setting up soon after September 11 and the kind that Senators Specter and Durbin likewise proposed.

Nothing has done more, though, to damage America's image and our place in the world as a beacon of human rights than the revelations that we have used cruel interrogation techniques and perhaps even torture. We have just learned that the Central Intelligence Agency destroyed videotapes of harsh interrogations, including the use of waterboarding. One of the CIA employees who participated in interrogating one of the detainees apparently appeared in the

videotapes, said that waterboarding was used, that it is torture, and that "Americans are better than that." I agree. Senator Specter and I sent a letter yesterday to Attorney General Mukasey asking a series of questions about the Justice Department's knowledge of and involvement in the CIA's possession and subsequent destruction of these videotapes. We requested a complete account of the Justice Department's own knowledge of and involvement with these matters.

America has always been a country that does not torture and one that stands against torture. This administration has abandoned our historic commitment to human rights by repeatedly stretching the law and the bounds of executive power to authorize torture and cruel treatment. All the while, it has tried to keep its policies and actions secret, knowing that they could not withstand scrutiny in the light of day. That is the real message coming out of the recent revelation of the CIA tapes being destroyed, that their practices could not stand up to scrutiny. That matter is not one in which to scapegoat lower level officers but one that raised fundamental questions about what this administration has allowed despite our laws and treaties against torture and cruel and degrading treatment. Until this administration finally comes clean with Congress and the American people about its policy on torture and cruel interrogation techniques, we cannot restore America's standing as the world leader in protecting and preserving human rights, and only by doing so can we truly safeguard our national security.

Closing the facility at Guantanamo Bay and restoring justice to the way we treat detainees and the legal process we give them would be a good start toward reaffirming the values for which America has always stood.

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