

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
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Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On "Improving Detainee Policy: Handling Terrorism Detainees within the American Justice System"  
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For more than six years this administration has made a mess of detainee policies by rejecting our courts, twisting our laws, and squandering our reputation. A conservative Supreme Court has been the only check on the administration as it has repeatedly overruled the administration's legal theories.

Detainees have languished for years at Guantanamo, without access to meaningful judicial review. To date not one accused terrorist has been tried, convicted and punished by the dysfunctional military commissions that the administration has established; but prosecutors and judges are being replaced in ways that leave the impression that the proceedings are being engineered to guarantee a result rather than ensure fairness. Now we hear that the administration is intent on proceeding with high profile trials in the weeks leading up to the November election in what appears to be another partisan effort.

As we near the end of this administration, it is time to look ahead. The next President and Congress will have to craft a new policy that is consistent with our values as a nation and our respect for the rule of law. A starting point is to examine the premise on which this administration based its policy, its conclusion that our criminal justice system is incapable of handling terrorism cases.

I am not so quick to dismiss systems of civilian and military justice that have served us so well for so long. One of the saddest legacies of this administration is its distrust of our constitutional system of justice. We cannot accept without examination the view that terrorism cases are too hard for our courts. So today we begin the process of looking more carefully at what needs to be done with those suspected of being terrorists, and what our courts - civilian and military - are capable of doing.

One excellent contribution to this discussion is the report that Human Rights First released last week, titled "In Pursuit of Justice." This report is the result of an in-depth look at the capabilities of our criminal justice system. It concludes that the system is sufficiently flexible and well-equipped to handle international terrorism cases. We are fortunate to have one of the report's authors, James Benjamin, with us today.

We also welcome Judge John Coughenour. He is a respected judge who has significant experience with terrorism cases, having presided over the trial of the so-called "millennium bomber" Ahmed Ressam. He speaks with authority on the capacity of our constitutional system to handle new challenges. Judge Coughenour's written testimony includes a quote from Justice Jackson, a former Attorney General of the United States and our chief prosecutor at the Nuremberg trials after World War II, who said "the strength and vitality of the Constitution stem from the fact that its principles are adaptable to changing events." I agree. It is a critical point to remember in this discussion. Is handling terrorism under the current system really not possible? Or is it just hard and will adapting our procedures require some work? I have the faith, which this administration apparently lacks, that our Constitution and our courts can adapt and meet the challenge.

Most experts reject the decisions of this administration, including its effort to establish a system of detention, interrogation and prosecution outside the law. Some propose instead to create "preventive detention" regimes and what they call "national security courts." Those making these proposals see them as more legitimate alternatives to

the current extra-legal system. Their underlying assumption, though, is the same as this administration's - that our existing criminal and military justice systems are not capable of handling terrorism cases.

Before we create some new, separate mechanism designed to handle those accused of terrorism, we need to consider the serious impact this could have on our constitutional system of justice, our reputation, and on the fight against international terrorists. Would such a change create more problems than it solves? Would the current problems simply be replicated in a new, untested system? The current treatment of terrorism detainees has had a devastating impact on our national reputation, something the next President will need to restore. Would creating a separate court for terrorist suspects help us set that right? I look forward to hearing from Tom Malinowski of Human Rights Watch and the other witnesses on these and other issues.

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