

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

July 16, 2008

Statement Of Chairman Patrick Leahy,

Senate Judiciary Committee,

Hearing On "How the Administration's Failed Detainee Policies Have Hurt the Fight Against Terrorism: Putting the Fight Against Terrorism on a Sound Legal Foundation"

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In the wake of the tragic attacks on September 11, 2001, and toward the end of President Bush's first year in office, this country had an opportunity to show that we could fight terrorism, secure our nation, and bring the perpetrators of those heinous acts to justice, all in a way that was consistent with our history and our most deeply valued principles. A number of us reached out to the White House in an effort to craft a thoughtful, effective bipartisan way forward. The White House, supported by the Republican leadership in Congress, chose another path. They diverted our focus from al Qaeda and capturing Osama bin Laden to war and occupation in Iraq. They chose to enhance the power of the President and to turn the Office of Legal Counsel at the Department of Justice into an apologist for White House orders--from the warrantless wiretapping of Americans to torture. In my view, that approach has made our country less safe.

We are all too familiar now with the litany of disastrous actions by this administration: rejecting the Geneva Conventions - which the President's Counsel referred to as "quaint" - against the advice of the Secretary of State; establishing a system of detention at Guantanamo Bay in an effort to circumvent the law and accountability; attempting to eliminate the Great Writ of habeas corpus for anyone designated by the President as an enemy combatant; setting up a flawed military commission process that, after six years, has not brought even a single one of these dangerous terrorists to trial; and permitting cruel interrogation practices that in the worst cases amount to officially sanctioned torture.

In her new book *The Dark Side*, journalist Jane Mayer has offered a major contribution to reporting these matters. In addition to providing previously unknown details of U.S. treatment of detainees, Ms. Mayer writes of a 2007 report from the International Committee of the Red Cross (ICRC), which

concluded that interrogation techniques used by the United States constituted torture. The ICRC, like retired Major General Taguba, who investigated detainee abuses for the Army, suggested that the conduct of Bush administration officials could amount to war crimes.

Another deeply troubling revelation in Ms. Mayer's book is that one-third to one-half of the detainees at Guantanamo have been known, almost since the beginning, to have no connection to terrorism at all. But the White House refused to allow any new review of their status because, according to the Vice President's chief of staff, David Addington, "The president has determined that they are ALL enemy combatants." That was the end of the inquiry.

Throughout all of this, the administration has been assisted by lawyers willing to give whatever answer the White House wanted, and by a compliant Congress. The only real check on the administration, in fact, has been a 5-4 majority of the conservative United States Supreme Court. The Supreme Court has rightly rejected, time after time, backdoor efforts by the Bush administration and its congressional enablers' to re-write our Constitution in the name of the "war on terror."

From 2004 to 2008, the Supreme Court has rejected the Bush administration's attempts to deprive citizens and non-citizens of their right to challenge their indefinite detention in Federal court. The Court has sought through the power of judicial review to provide a check and balance. Last month, in the Boumediene case, the Court reinforced our Constitution and our core American values in holding that the habeas-stripping provision in the Military Commissions Act is unconstitutional. The Boumediene case brings the administration's record to 0 for 4. Four times the Supreme Court has repudiated the administration's disastrous detainee policy.

The detainee policy is not only illegal and immoral. It has also been harmful in the fight against terrorism. We cannot defeat terrorism by abandoning our basic American principles and values. With the pictures from Abu Ghraib and tales of unjustified detentions and torture, we have provided our enemies with a recruiting field day

I am not alone in saying that our policies have made us less safe. Former Secretary of State Colin Powell said last summer that "Guantanamo has become a major, major problem for . . . the way the world perceives America. And if it was up to me, I would close Guantanamo not tomorrow, but this afternoon." Secretary Powell said that Guantanamo had "shaken the belief the world had in America's justice system." When asked whether it is a problem for detainees to have habeas corpus rights he said "[s]o what? Let them. Isn't that what our system's all about?" Even former Secretary of Defense Donald Rumsfeld questioned in a memo whether our tactics and policies are creating more terrorists than we are killing and capturing. This will continue until we return to policies that reflect our values and uphold the rule of law. That is ultimately our greatest strength and what has distinguished America from other powers for more than 200 years.

Adopting a detainee policy that reflects our values would mean closing Guantanamo, giving detainees due process and releasing those who should never have been there in a timely and responsible manner. Detainees that pose a danger to this country and the world should swiftly be brought to justice within our existing military and civilian justice systems. These systems are strong, flexible, and up to the job.

Cleaning up this mess and getting back to the right policy will not be easy. We will need to join together in the months ahead to rethink the misconceived legal framework that has been devised and carried out by this administration. I look forward to hearing from our witnesses on how, mindful of the terrible mistakes of the past seven years, we can start over and put our detainee policy on a firm legal footing.

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Closing Statement Of Chairman Patrick Leahy,

Senate Judiciary Committee,

Hearing On "How the Administration's Failed Detainee Policies Have Hurt the Fight Against Terrorism: Putting the Fight Against Terrorism on a Sound Legal Foundation"

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Yesterday, the Senators who will be nominated to succeed the President spoke about the current challenges we face in restoring America's leadership and making America safer in a dangerous world.

As part of America's new strategy, we need to restore a sound legal footing and respect for the rule of law in how we deal with detainees. If the United States is to reclaim its leadership in the world, we must return to the America whose ideals and practices were the beacon of hope and human rights for the world. That great strength has been sacrificed to a great extent during the last seven years and needs to be rebuilt.

This Committee, with our newly-created Subcommittee on Human Rights and the Law, our Subcommittees on Terrorism, Courts, Crime and the Constitution, is well positioned to be helpful in that important effort. This hearing, along with the hearings we held last month on improving detainee policy and coercive interrogation techniques, add to the work we have been doing over the last two years to prepare for those changes. We thank today's witnesses and all those who have provided written

testimony. Our job is not done, but this has been another step toward reforming the ineffective systems that this administration has relied upon to our detriment.