

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
June 9, 2009

Statement Senator Patrick Leahy (D-Vt.),
Chairman, Committee On The Judiciary,
Hearing On "The Legal, Moral, and National Security
Consequences Of 'Prolonged Detention'"
Subcommittee On The Constitution
June 9, 2009

In his May 21, 2009, speech on national security issues, President Obama spoke of the challenges faced by his administration in prosecuting individuals held at the detention facility at Guantanamo Bay, Cuba.

Some are believed to have committed crimes of terrorism against the United States and will be prosecuted in U.S. federal courts for their crimes.

There are a number of detainees for whom prosecution will be difficult because their cases are tainted by the coercive techniques used against them during the Bush-Cheney administration. Evidence obtained through coercion is inadmissible in a court of law.

The President also described cases in which individual Guantanamo detainees may still pose a threat to the United States. Such cases are uniquely challenging where the administration believes that criminal prosecution is simply not feasible. We now face the vexing problem of how to handle cases in which the government believes the individual must be detained to prevent harm. To address such cases, the President described a system of "prolonged detention," with periodic judicial review.

None of us envy the President, who now has the task of taking up these cases. He is striving to solve a problem that is not of his making. I appreciate how daunting this task is. Even so, I have some questions about the system the President outlined in his speech.

The President did not offer a great deal of specificity as to how a system of prolonged detention would operate. I need to understand the scope of the judicial review contemplated under this proposal before determining for myself whether it meets our standards of fair treatment under law. I need to trust that a system established by this administration is grounded by constitutional protections so that it cannot not be exploited by future administrations.

Today's hearing will help us to understand various proposals for preventive detention that have been debated in recent months by experts and academics. I hope that the witnesses will parse out

the President's description of prolonged detention and articulate what they see as the constitutional implications of pursuing such a model.

I appreciate the President's commitment to work with the Congress to ensure that his proposal is consistent with our values and our Constitution. As Justice Kennedy said in a Supreme Court decision restoring the great writ of habeas corpus, the Constitution is not something an administration is able "to switch ... on and off at will." I believe strongly that we can ensure our safety and security, and bring terrorists to justice, in ways that are consistent with our laws and values. I am committed to working with the President to ensure we accomplish that goal.

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