

Statement of
The Honorable Benjamin L. Cardin

United States Senator
Maryland
July 28, 2009

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

CHAIRMAN, TERRORISM AND HOMELAND SECURITY SUBCOMMITTEE

OF THE SENATE JUDICIARY COMMITTEE

HEARING: "PROSECUTING TERRORISTS:
CIVILIAN AND MILITARY TRIALS FOR GTMO AND BEYOND"

TUESDAY, JULY 28, 2009

The subcommittee will come to order.

Shortly after taking office, President Obama ordered the closure of the Guantanamo Bay detention facility within one year. I commended President Obama at the time for ordering the closure of the detention center. President Obama is sending a clear message to the world that we are reestablishing the rule of law in the United States, and that we, as a nation, will abide by our international obligations.

As the Chairman of the U.S. Helsinki Commission, no other concern has been raised with the United States delegation by our colleagues in Europe as often - and in earnest - as the situation in Guantanamo. As a member of the House of Representatives in 2006, I voted against the Military Commissions Act. At the time, I stated that I believed it was not sound legislation, and I thought it was susceptible to challenge in the courts. The legislation set up the flawed system of tribunals in Guantanamo Bay that was ultimately rejected by the Supreme Court.

Let me be clear. I want the U.S. Government to bring terrorist suspects to justice quickly and effectively. We must remain vigilant after the terrorist attacks on our nation of September 11, 2001. But the system we use must meet fundamental and basic rule of law standards. Americans have a right to expect this under the Constitution, and our federal courts will demand it when reviewing a conviction. We would of course expect other nations to use a system that provides no less protection for Americans that are accused of committing crimes abroad and are called before foreign courts.

This May, President Obama classified the remaining Guantanamo detainees into five categories. Today's hearing will focus on the first two categories: first, detainees who have violated

American criminal laws and can be tried in federal courts; and second, detainees who violate the laws of war and can be tried through military commissions.

I understand that the Detention Policy Task Force, under the guidance of the Departments of Justice and Defense, has extended its work for an additional six months in order to issue a comprehensive final report and recommendations.

Last week, the Task Force issued a preliminary report, along with a protocol for the determination of Guantanamo cases referred for prosecution. This protocol lays out factors that the Departments of Justice and Defense will consider in deciding whether to try a case in an Article III court or in a reformed military commission. The protocol states that "there is a presumption that, where feasible, referred cases will be prosecuted in an Article III court, in keeping with the traditions principles of federal prosecution. Nonetheless, where other compelling factors make it more appropriate to prosecute a case in a reformed military commission, it may be prosecuted there."

We have two distinguished panels of witnesses to testify at today's hearing from both the government and private sector. I look forward to hearing their testimony today.

I will now recognize Senator Kyl, the Ranking Member of our Subcommittee, for any remarks that he would care to make at this time.