

October 26, 2005

Senator Arlen Specter
Chair, Senate Judiciary Committee
via fax, 202-228-1229
Washington, DC

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
via fax,, 202-228-0835
Washington, DC

Dear Senators Specter and Leahy:

On December 14, 2001, several hundred law professors joined together to send to the Senate a letter detailing our concerns about the President's proposal to turn to military commissions -- instead of to courts --- to try individuals whom the Executive unilaterally designates as suspects, alleged to be terrorists or violating the laws of war. We expressed our belief that the proposed Executive action "undermines the tradition of the Separation of Powers," "does not comport with either constitutional or international standards of due process," and "violate[s] the United States' binding treaty obligations." A copy of the letter is attached.

We write again to you today because 450 law professors have again joined together this week to call for lawmaking that insists on adherence to foundational principles of American constitutional law. This second statement urges the Supreme Court of the United States to examine a pending case, *Hamdan v. Rumsfeld*, that raises questions of whether the military commissions violate the Constitution and Geneva Conventions. We have taken this unusual step for a simple reason: *Hamdan* implicates several basic principles of the American legal system, and specifically, the D.C. Circuit ruling fails to insist on separation of powers, due process rights of individuals, and the independence of judges. These issues require and deserve the Court's immediate attention. The lower court decision permits the President to set up military commissions based on only very general statements from Congress and without specific authorization, and the decision strips individuals of Geneva Convention protections enforceable in federal court and strips the federal courts of authority to apply American constitutional law.

We initiated the circulation of this statement. We write to you because we believe that, in addition to action in the courts, Congress has a critical role to play in restoring the rule of law by insisting that the Executive respect the principles of separation of powers and the obligation to respect the independence of judicial decisionmaking, which should

occur in the regularly constituted courts of the United States. We write also in the hopes that the law professors' letter call might become a part of the Congressional Record and serve as an occasion for the Judiciary Committee to convene hearings on military commissions, Executive authority, and the powers of a single branch of government to assign decisionmakers, lawyers, and defendants to ad hoc tribunals outside the American court system.

Thank you for your consideration.

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