

Thomas M. Susman  
Director  
Governmental Affairs Office

AMERICAN BAR ASSOCIATION  
740 Fifteenth Street, NW  
Washington, DC 20005-1022  
(202) 662-1760  
FAX: (202) 662-1762  
SusmanT@staff.abanet.org

June 23, 2009

The Honorable Patrick J. Leahy  
Chair  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Carl M. Levin  
Chair  
Committee on the Armed Services  
United States Senate  
Washington, DC 20510

The Honorable Jefferson B. Sessions III  
Ranking Member  
Committee on Judiciary  
United States Senate  
Washington, DC 20510

The Honorable John S. McCain III  
Ranking Member  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Re: Request for Hearings on Proposals to Revise the Military Commissions Act or  
Authorize New Detention Authority or Procedures

Dear Chairman Leahy, Senator Sessions, Chairman Levin and Senator McCain:

I understand that you may soon consider legislative proposals to revise the Military Commissions Act of 2006 and create new detention authority for current and future detainees. On behalf of the American Bar Association, I urge you to hold hearings on any such proposals before markup.

Prior to enactment of the Military Commissions Act of 2006 (“the Act”), a number of hearings related to the legislation were held. The hearings provided Congress and the American people the opportunity to better understand the issues being considered and to discuss alternative ways to protect national security while also upholding American values. Three years later, as changes to the Act are considered, it is equally as important that hearings are held. Congress must engage in a thoughtful, deliberative process to examine the Act’s implementation and to make certain that the military commission system is revised to ensure that it adheres to established principles of due process.

Since February 2002, the ABA has urged the President and Congress to ensure that any military commissions comply with the rules of the Uniform Code of Military Justice, to provide detainees the rights afforded in courts-martial, and to comply fully with our international treaty obligations. Most recently, in February 2009, the ABA adopted

policy that “urges the U.S. Government to ensure that all individuals who have been or are expected to be charged with violations of criminal law should be prosecuted in Article III federal courts, unless the Attorney General certifies, in cases involving recognized war crimes, that prosecution cannot take place before such courts and can be held in other regularly constituted courts in a manner that comports with fundamental notions of due process, traditional principles of the laws of war, the Geneva Conventions and the Uniform Code of Military Justice.” Copies of the February 2002 and February 2009 policies are attached for your review.

Thank you for considering the ABA’s views on these matters. The Association looks forward to working with you and your colleagues on this important issue and would welcome the opportunity to testify at such time as congressional hearings might be scheduled.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman  
Director

cc: Senate Judiciary Committee Members  
Senate Armed Services Committee Members

Enclosures: ABA February 2002 and February 2009 policies