

November 9, 2005

Senator Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter,

As Dean of a law school and as former Judge Advocate General of the Navy, I am writing in strong opposition to the amendment which I understand Senator Graham intends to offer to S. 1042, the Defense Department Authorization Bill. Among other things, the proposed Graham Amendment would strip U. S. courts of jurisdiction to hear habeas corpus petitions from aliens who are detained by the United States or any other action which would challenge any aspect of their detention.

This amendment, however well-intentioned, is the wrong law at the wrong time. It appears aimed at fixing a problem that doesn't exist, and creates a raft of new problems of its own.

For generations, the United States has stood firm for the rule of law. It is not the rule of law if you only apply it when it is convenient and toss it over the side when it is not. The Great Writ of Habeas Corpus has been at the heart of U.S. law since the first drafts of the Constitution. Indeed, it has been part of Western culture for 1000 years, since the Magna Carta. Creating broad exceptions that would categorically deny the writ to thousands of those subject to the full detention power of the U.S. Government should be done, if at all, only with the utmost care, serious debate and consideration, and attention to the practical effects of such a limit. The restriction on habeas contemplated by the Graham Amendment would be a momentous change. It is certainly not a change in the landscape if U.S. jurisprudence we should tack on to the Defense Department Authorization Bill at the last minute.

In any case, the practical effects of such a bill would be sweeping and negative. America's great strength isn't our economy or natural resources or the essentially island nature of our geography. It is our mission, and what we stand for. That's why other nations look to us for leadership and follow our lead. Every step we take that dims that bright, shining light undermines our role as a world leader. As we limit the rights of human beings, even those of the enemy, we become more like the enemy. That makes us weaker and imperils our valiant troops. I am proud to be an American. This Amendment, well intentioned as it may be, will diminish us.

Page Two
November 9, 2005

More immediately, the Graham Amendment would be viewed by our allies and enemies alike as just another example of the United States taking a step down the slippery slope from the high road to the low road. It would increase the likelihood that our own troops, who daily face the risk of capture by any number of our enemies abroad, will be subject to ad hoc justice at the hands of those who would seize upon any excuse. I believe it is the duty of those who would put our troops in harm's way to deny our enemies any such an excuse.

I urge you to insist at the least upon full and forthright consideration of this Amendment by the Judiciary Committee. And I urge you to advocate vigorously for its defeat.

Sincerely,

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