

# FEINGOLD'S OPPOSITION TO INDEFINITE DETENTION

Man, I love Russ Feingold. Here's the letter he sent Obama to lay out his opposition to the notion of indefinite detention. (h/t dday)

He perfectly explains why indefinite would be a dangerous precedent.

My primary concern, however, relates to your reference to the possibility of indefinite detention without trial for certain detainees. While I appreciate your good faith desire to at least enact a statutory basis for such a regime, any system that permits the government to indefinitely detain individuals without charge or without a meaningful opportunity to have accusations against them adjudicated by an impartial arbiter violates basic American values and is likely unconstitutional. While I recognize that your administration inherited detainees who, because of torture, other forms of coercive interrogations, or other problems related to their detention or the evidence against them, pose considerable challenges to prosecution, holding them indefinitely without trial is inconsistent with the respect for the rule of law that the rest of your speech so eloquently invoked. Indeed, such detention is a hallmark of abusive systems that we have historically criticized around the world. It is hard to imagine that our country would regard as acceptable a system in another country where an individual other than a prisoner of war is held indefinitely without charge or trial.

You have discussed this possibility only

in the context of the current detainees at Guantanamo Bay, yet we must be aware of the precedent that such a system would establish. While the handling of these detainees by the Bush Administration was particularly egregious, from a legal as well as human rights perspective, these are unlikely to be the last suspected terrorists captured by the United States. Once a system of indefinite detention without trial is established, the temptation to use it in the future would be powerful. And, while your administration may resist such a temptation, future administrations may not. There is a real risk, then, of establishing policies and legal precedents that rather than ridding our country of the burden of the detention facility at Guantanamo Bay, merely set the stage for future Guantanamos, whether on our shores or elsewhere, with disastrous consequences for our national security. Worse, those policies and legal precedents would be effectively enshrined as acceptable in our system of justice, having been established not by one, largely discredited administration, but by successive administrations of both parties with greatly contrasting positions on legal and constitutional issues.

He leaves out just one thing here—the possibility that our own government will start rounding up Americans as terrorists and indefinitely detaining them. If animal rights activists can face prison for exercising their free speech under the Animal Enterprise Terrorist Act, after all, then it's not a stretch to envision PETA members indefinitely detained.

Feingold also issues a clever warning when discussing his opposition to Obama's suggested

use of military commissions to try detainees:  
full transparency on the government's files.

Like you, I voted against the Military Commissions Act of 2006. I agree with you with regard to that statute's many flaws, but it is not clear to me that those flaws can be fixed, or that the other options in the current federal criminal justice and courts martial systems for bringing the detainees to justice are insufficient or unworkable. **If Congress is to fully consider your proposal for military commissions, therefore, it will need access to the same information your administration is currently reviewing, including detailed, classified information on individual detainees and the extent to which other options are available.** [my emphasis]

I suggested yesterday that Obama's consideration of indefinite detention (and I'd say the same about military commissions) is an attempt to bury evidence of our own crimes. I'm guessing maybe Feingold agrees. He seems to be suggesting that Congress can only legislate new military commissions if the Administration shares the evidence—all the evidence—with all of Congress.

Ain't gonna happen.