



INTERNATIONAL POLICY REPORT

\$2.50

May 2005

Guantanamo: Our Own Devil's Island?

By Tiana S. Gierke

Background

This report follows a conference hosted by the Center for International Policy on April 11, 2005 about the U.S. abuse of prisoners at Guantanamo Bay. Speaking at the conference were Wayne S. Smith (Center for International Policy), Robert L. Muse (Muse & Associates), Michael Ratner (Center for Constitutional Rights), and Wendy Patten (Human Rights Watch).

Previously, Smith and the Center for International Policy hosted a conference marking the one hundred year anniversary of the U.S. occupation of Guantanamo. That conference, held on March 5, 2003, traced Guantanamo from a coaling station to a penal colony. An expert in international law, Robert Muse, participated in that conference and there, as in the April conference, he questioned the legality of continued U.S. occupation of the base. Human Rights Watch and the Center for Constitutional Rights have been monitoring the treatment of detainees at Guantanamo for quite some time. Wendy Patten has been a leading critic of the military commissions and other procedures established for detainees at Guantanamo and has published widely on the subject. Michael Ratner represented the Haitian refugees held in an HIV camp at Guantanamo from 1989-1992. He has also represented

Guantanamo detainees in the U.S. war on terror and recently won a Supreme Court case on their behalf. He just published a book entitled *Guantanamo, What the World Should Know* in which he and co-author Ellen Ray outline the abuses taking place on the base.

Summary

In 2004, the world was horrified by the photographs depicting U.S. soldiers torturing prisoners at Abu Ghraib. The graphic images provided unquestionable evidence of



Conference panelists Robert Muse, Wendy Patten, and Wayne Smith.

2 the abuses. While many NGOs had been skeptical of reports of questionable interrogation techniques in U.S. detention centers since the onset of the war on terror, the photos' release marked the beginning of an intense focus on the abuse scandals at Abu Ghraib, Guantanamo, and other U.S prisons around the world.

The April conference was held to bring out the truth about Guantanamo. The Bush administration continues to claim its senior officials are not responsible for the actions taken by low-ranking soldiers, but clear and mounting evidence indicates that approval for the interrogation techniques came from the top. In his opening remarks, Wayne Smith stated that it has become clear that these are not isolated cases; rather, the abuse has been so widespread and the pattern so consistent that it is obviously

systemic in nature. As more detainees are released from Guantanamo, testimonies of torture abound. Smith noted that abuses at Guantanamo, moreover, take on a special connotation because they are carried out on territory the United States occupies under a treaty – a treaty which it is violating by using the base as a detention center.

The Bush administration seems to view Guantanamo as a “lawless zone,” a place where the United States can be free of all international obligations. For this reason, it chose to hold “enemy combatants” there. In an effort to justify its actions and to avoid legal consequences for them, the administration continuously redefines Guantanamo and its relationship to the United States. The administration’s legal positions, often contradicting one another, show a disregard for international law.

The abuses at Guantanamo violate the 1903 base agreement, the Geneva Conventions, international human rights law, and the Constitution of the United States. Both recently released detainees and former U.S. interrogation

officials have described interrogation techniques including long periods of isolation, the use of dogs, the denial of food or medical treatment, the use of stress positions, prolonged exposure to extremes of heat, cold and noise, and sexual behavior that is especially offensive to the Muslim religion. These prisoners are held indefinitely without the right to a trial, counsel, or an opportunity to view the evidence held against them.

None of the military procedures in place provide adequate due process for the detainees. President Bush’s 2001 military order authorized the indefinite detention of non-citizens allegedly involved in international terrorism. Shortly after that order, in January of 2002, the first detainees were sent



In transport to Guantanamo, 2003.

to Guantanamo which was to be used as a detention center. That order also outlined the use of military commissions to prosecute detainees. However, there was no legal process for determining each detainee’s status. The military commissions were slow to start and were shut down by the federal courts in 2004 because they were found to be in violation of the Geneva Conventions and other key requirements of due process. That case is now on appeal.

In a landmark June 2004 decision, the Supreme Court ruled that anyone detained by the United States at Guantanamo had the right to contest their detention by means of a writ of *habeas corpus* in federal court. After the Supreme Court first agreed to hear the case but before it reached a decision, the Pentagon announced plans for annual military reviews to determine whether or not an “enemy combatant” should continue to be detained. The implementation of these

annual reviews was an attempt to demonstrate to the Supreme Court that due process was being provided. However, the annual reviews are flawed and fail to provide judicial protection for the detainees.

In the wake of the Supreme Court's decisions, a third procedure was created: Combatant Status Review Tribunals. Unfortunately they do not fulfill the Supreme Court mandates and are seen by many as "courts of conviction." All three procedures utilized in the Guantanamo cases put detainees at a huge disadvantage and thus fail to comply with due process requirements.

The administration has begun to transfer some detainees into the custody of their native countries. Such transfers are problematic in cases where torture could be used against the prisoners once they are home. While, the administration promises to transfer detainees only after they receive diplomatic assurances that torture will not be used, the administration admits there is not much they can do after detainees have been transferred. In fact, the United States has transferred several detainees to countries where torture is known to be used.

The abuses at Guantanamo have attracted much international attention. In the midst of the war on terror, the United States is being accused of abusing the human rights of its prisoners and violating international laws. Evidence set forth at the April 11th conference made clear that these abuses are systemic in nature and that the responsibility goes all the way to the top.

History of U.S. Occupation of Guantanamo

Given the present relations, or lack thereof, between the United States and Cuba, it is surprising that the United States has a naval base on Cuban soil. "Under what authority does the U.S. occupy Guantanamo Bay, Cuba and build permanent prisons there?" To answer this question, international law attorney Robert L. Muse examined the historical and legal context of the U.S. occupation of Guantanamo.

The United States has occupied Guantanamo Bay since 1898 when it was used as a campsite for U.S. Marines during the Spanish-American War. After Spain surrendered, the United States was determined to exercise total control over Cuban territory. However, Cuba was eager to enjoy its new independence and wanted to avoid total U.S. domination. Muse explained that it was in exchange for relative freedom that Cuba made numerous concessions to the United States; these included an agreement allowing for the formal U.S. occupation of Guantanamo.

The Platt Amendment, embedded within Cuba's ³ first post-independence constitution, laid the groundwork for the U.S. base. It stated: "to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States land necessary for coaling of naval stations."¹ The leasing terms were further defined in 1903 when Cuba and the United States signed a Treaty of Relations formalizing the lease of Guantanamo Bay (45 square miles) to the United States for use as a naval station. The land was leased for some \$4,000 per year and the agreement can only be terminated with the consent of both countries. However, the Cuban government wants to terminate the lease, and has refused to accept any payment since 1959.

Soon after the lease was signed, Guantanamo became a winter training camp for the U.S. Atlantic Fleet and served as a base for U.S. troops to "preserve order" in Cuba under the terms of the Platt Amendment.² While in 1933 Franklin D. Roosevelt cancelled both the 1903 Treaty of Relations and the Platt Amendment, a new agreement signed in 1934 provided for the continuation of the Guantanamo Bay lease as it was originally written.

The base was closed as a "coaling station" in 1938 when the last of the coal was removed. However, 1940 marked the beginning of the "great expansion" of Guantanamo in its capacity as a "naval base". Even when U.S.-Cuba diplomatic relations ended in 1961, the base continued to increase its housing, schools, and other facilities. The U.S. government asserted the diplomatic split would have "no effect on the status of our naval station at Guantanamo."³

Muse explained that the first "systemic violations of the lease agreement limiting the base to use only as a naval station" were seen during the Clinton administration, when Guantanamo was used as detention center for Haitian and Cuban refugees who had been captured at sea. Another panelist, Michael Ratner, who represented the Haitian refugees during that time, explained that even then, the government argued that Guantanamo was outside the jurisdiction of U.S. courts.

Soon after September 11, 2001, the current Bush administration began detaining "enemy combatants" from the war on terror at Guantanamo. As Muse put it, "The reasons the United States wishes to hold prisoners at Guantanamo are fairly obvious." They think of Guantanamo as a zone beyond the law in which they have unchecked power to detain and interrogate prisoners.

4 U.S. in Violation of Guantanamo Lease Agreements

Muse concluded that the United States no longer has any legal authority to occupy Guantanamo Bay or to build permanent prisons there. As treaties, the lease agreements are subject to international law. He explained that the United States is in breach of the lease agreements because “it is using Guantanamo Bay for purposes other than as ‘a coaling or naval station’ and it allows commercial enterprises to operate on the base” (which was strictly prohibited in the lease agreements). Rather than the coaling or naval station it was intended to be, Guantanamo has become a detention center.

According to international law, the violation of a treaty by one party is grounds to terminate the treaty entirely. Muse noted that the Cubans would be within their rights if they took the whole issue to the UN General Assembly, calling for a resolution stating that the United States was occupying the base illegally and demanding action by the International Court of Justice (ICJ). Muse acknowledged that the Bush administration was not likely to pay attention to an ICJ ruling that found the U.S. occupation of Guantanamo illegal, but explained that such a ruling could spark “a national discussion of the propriety of that occupation.”

The Administration’s Contradictory Legal Positions

The past two administrations have tried to use Guantanamo as if it were a “law free zone”. Thus, the Bush administration saw Guantanamo as the ideal place to detain prisoners from the U.S. war on terror. Michael Ratner explained that the Bush administration has been forced to come up with legal arguments to fit any contingency in an effort to protect Guantanamo’s position outside the law.

The government’s legal arguments often contradict one another. As Ratner pointed out, when the administration first decided to take prisoners in the war on terror to Guantanamo, it claimed that because Guantanamo was *outside* the United States, that the courts had no jurisdiction to hear cases on behalf of non-citizen detainees at the base and that no constitutional rights protected such detainees.

However, U.S. agencies such as the CIA wanted worldwide protection for their agents in cases where they

might be involved with torture. So the administration crafted a new legal argument. U.S. law states that it is illegal to torture outside the United States. So when forced to address the issue of torture, the Bush administration released memos stating that Guantanamo is *inside* the United States and therefore anyone who commits torture at Guantanamo cannot be prosecuted under U.S. law.⁴

Next, the Bush administration was forced to justify detention of prisoners without a fair trial. Once again, they claimed Guantanamo was *outside* the United States and therefore that the Constitution and its *habeas corpus* protections do not apply to prisoners there.⁵

To justify the detention of prisoners, the administration points to the laws of war, which say prisoners of war can be held without trial until the end of the “relevant conflict”. In this case, Ratner noted, the administration defines the relevant conflict as the global war on terrorism, which it claims “could take as many as 50 years.” In other words, the administration claims the right to hold prisoners for a boundless period of time. The

paradox is that the United States uses the laws of war to justify the detentions, yet they refuse to grant detainees the prisoner of war (POW) status and the protections provided by the very same laws of war.

The Geneva Conventions posed a tricky problem for the administration because they should apply both inside and outside U.S. territory. But the Bush administration dealt with that problem simply by claiming that they did not apply at all, whether Guantanamo is inside or outside the United States. The administration calls its prisoners (largely members of the Taliban or Al-Qaida) “enemy combatants,” but claims that they cannot be granted POW status because as a group they fail to meet the requirements of the Third Geneva Convention and therefore cannot be protected by the Geneva Conventions. That assertion ignores the fact that the Taliban soldiers, as the regular armed forces of the then-government of Afghanistan, should have been granted POW status. It also ignores the U.S. obligation to make individualized determinations of POW status for all detainees under both the Third Geneva Convention and U.S. military regulations.

“The United States no longer has any legal authority to occupy Guantanamo Bay or to build permanent prisons there.”

**-Robert L. Muse,
International Law Attorney**

Torture and Indefinite Detention

At present, there are about 520 prisoners detained at Guantanamo.⁶ The Bush administration has claimed they are the “worst of the worst” and need to be detained for security and intelligence purposes. However, former Army Sgt. Erik Saar, who worked at Guantanamo during the first half of 2003, believes “‘only a few dozen’ of the 600 detainees [then] at the camp were terrorists and that little information was obtained from them.”⁷ The government admits some interrogation techniques “legally constitute cruel, inhumane and degrading treatment.”⁸ Conference panelists stressed that the techniques fit the legal definition of torture as well as cruel, inhuman and degrading treatment. Both categories are illegal.

Recently released detainees claim the detainees were subjected to interrogation techniques including “prolonged periods of painful ‘stress’ positions, exposure to extreme cold and loud music, and threats of torture and death.”⁹ Michael Ratner’s clients described being stripped naked and chained to a ring on the floor for fourteen hours a day. Forced grooming (the shaving of a detainee’s head and beard), sleep deprivation, and the exploitation of Muslim sensitivities (to dogs) are frequently cited in ex-detainees’ testimonies. Medical care and meals are withheld if a detainee refuses to cooperate. What is more, some of the recently released prisoners have said they were interrogated as many as two hundred times [while at Guantanamo], with all kinds of different techniques.”¹⁰ These techniques were approved by Secretary of Defense Donald Rumsfeld and used at least from December 2, 2002 to January 15th, 2003.¹¹ They may have been employed a lot longer.

The government maintains that interrogation leads to information vital to our national security, but in fact

torture leads to false testimony. The scientific ⁵ community has proven time and again that human beings will say anything when placed under bad enough conditions. “After being held in isolation for two years, people will say anything, particularly if their next meal or the avoidance of coercive techniques depends on it,”¹² said Ratner. Evidence obtained in this manner is simply unreliable.

Recent reports indicate that interrogations were staged for visiting delegations in order to prove their efficacy in the war on terror and to illustrate their compliance with international law. Sgt. Erik Saar, testified that “they would find a detainee that they knew to have been cooperative. They would ask the interrogator to go back over the same information.” He called the mock interrogations “‘a fictitious world’ created for the visitors.”¹³

Furthermore, at least some of the prisoners were wrongfully detained. In Afghanistan, “The United States was dropping leaflets all over the country offering rewards of anywhere from \$50 to \$5,000 for members of al-Qaeda and high-level Taliban officials. . . [people] started turning over their enemies or anyone they didn’t like, or finally, anyone they could pick up. Among those who have been released are taxi drivers and even a shepherd in his nineties.”¹⁴



Detainees in transport to Guantanamo, 2003.

6 Judicial Review and Due Process

The administration has set up three distinct procedures for detainees: military commissions, annual military review boards, and Combatant Status Review Tribunals. Each process is flawed and is in violation of international human rights law.

On November 13, 2001, shortly after the attacks of September 11th, President Bush issued Military Order No. 1 setting up the indefinite detentions and stipulating that “non-U.S. citizens accused of involvement in terrorism can be tried by *ad hoc* military commissions instead of by the federal courts or the well-developed U.S. court martial system (which may try prisoners of war for war crimes).”¹⁵ Subsequent instructions issued by the Department of Defense further defined the military commissions; however, they did not begin until August of 2004. (The flaws of the military commissions are outlined below.)

In the meantime, Ratner of the Center for Constitutional Rights brought his clients’ writs of *habeas corpus* to the District of Columbia Court and the U.S. Court of Appeals. After defeat at both levels, the Supreme Court agreed to hear his case. The administration was shocked at the prospect of judicial review of its actions and hurried to develop procedures in an attempt to demonstrate compliance with the law. Thus, in the spring of 2004 the Pentagon announced plans for annual military reviews to determine whether or not a detainee continued to pose a threat to international security or was of any intelligence value that warranted continued detention. These Administrative Review Boards began in late 2004.

A recent report by Human Rights Watch warned, “These review boards will not provide detainees the basic safeguards afforded criminal defendants under human rights law nor will they meet the requirements of the laws of war for security detainees.”¹⁶ The review panels include three military officers who can only make suggestions as to whether a detainee should be released. However, a designated civilian official (DCO), who is appointed by the president, has the final say and can override any decision made by the panel. Therefore, even if the review panel recommends otherwise, detainees can remain in detention if the DCO finds any reason to keep

them there. Both the panel and the DCO are working for the Department of Defense and are able to use evidence gained from coerced statements.

In a press release dated May 19, 2004, the Center for Constitutional Rights said the Administrative Review Boards do “nothing to bring the unlawful and arbitrary detention of foreign nationals at Guantanamo Bay into compliance with international law and the U.S. Constitution.”¹⁷

In June 2004, the Supreme Court handed down rulings in the Rasul and Yasser Hamdi cases stating that the U.S. courts are open to detainee *habeas corpus* claims, and that anyone detained by the United States must be provided with a meaningful opportunity to contest this detention before a neutral decision maker. In the wake of these decisions, the Combatant Status Review Tribunals were created. All tribunals are now completed, and it was decided that 38 detainees were not enemy combatants and should be released.

The Combatant Status Review Tribunals have many flaws. Patten explained that the tribunals are stacked against detainees. They do not allow any witnesses outside Guantanamo, they do not allow detainees to be represented

by a counsel, and they do not allow detainees to see all the evidence against them. Human Rights Watch reported the tribunals have “no basis in U.S. or international law” and that they appear to have been “designed to deprive detainees of their right to have their case reviewed by a neutral decision maker” (as was set forth by the Supreme Court ruling).¹⁸

“By any objective standard, military commissions have been a failure.”

**-Wendy Patten,
Human Rights Attorney**

Flaws of the Military Commissions

The military commissions got off to a slow start. Only four out of about 540 detainees were charged before the commissions were shut down in November by a federal court ruling that they failed to meet the requirements of the Geneva Conventions and to meet certain key due process requirements.

Current reports suggest the Pentagon may make some changes in the military commissions, including drafting a new manual with new rules; however, the significance of such changes is unclear at the present time. Wendy Patten and Michael Ratner welcomed any sign of change but agreed

that the commissions had a long way to go to adequately provide due process. In his recently released book, Ratner described the military commissions as both “unchecked rule by the executive branch”¹⁹ and “courts of conviction”²⁰ rather than justice.

Patten explained that “by any objective standard, military commissions have been a failure.” The military commissions fail to meet international fair trial standards. They are an attempt to turn the clock back to World War II - era notions of military justice, which predate the development of international human rights law (starting with the Universal Declaration on Human Rights in 1948), the Geneva Conventions (1949) and the U.S. Uniform Code of Military Justice (1950).

The flaws of the military commissions are numerous. They provide the executive branch with the unchecked power to prosecute any potential terrorist according to rules that it alone sets. First of all, the military commissions do not grant independent appeals. Appeals lie within the jurisdiction of a military review board instead of civilian courts, with ultimate appeal to the secretary of defense and possibly the president. In this system, the president acts as judge, jury, and prosecutor. Detainees have appointed military counsel and theoretically have the right to a civilian lawyer of their choosing, but they have to cover all legal expenses for the civilian lawyer, which is impossible in most cases. Furthermore, the defendant is not permitted to view classified or “protected” evidence, which prevents him from confronting the evidence used against him. Finally, evidence gained through torture can be used against the defendant. This violates the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

While press reports suggesting that the government is moving towards a Uniform Code of Military Justice (UCMJ)-based system do offer some hope, both Patten and Ratner voiced concern that the revised military commissions would



Welcome to Guantanamo, (2003).

fall short of the UCMJ model. Ratner claimed that “federal criminal trials or court martials would be the only legal way to try people.” Likewise, Patten said, “The United States government should be using the same system it uses to try its own people to try non-citizens in Guantanamo.” The best way to assure justice would be to use a full UCMJ system, including a right of independent appeal to a civilian court, or criminal trials before U.S. federal courts. Patten said that “true accountability requires fair trials and that’s what’s missing from the Pentagon’s policies”.

Guantanamo’s Future

Based on the U.S. government’s recent actions, it appears that the number of prisoners held at the Guantanamo naval base will continue to decrease gradually. On April 19, 2005, 18 detainees were released.²¹ It is likely that Guantanamo’s prisoners will diminish to a given number, who will be held in a long-term, high security permanent facility – quite possibly without ever being charged or convicted of any crime. This will put pressure on the military commissions and the process of prosecuting those held at Guantanamo. At the same time, the government will likely hold detainees in other facilities outside of the United States in an attempt to escape judicial and public scrutiny.

8 Recent media attention has made the practice of “renditions” public knowledge. In some cases, the United States sends detainees to the custody of their native countries asking for diplomatic assurances that torture will not be used. The government asks for a formal promise, either oral or written, that no prisoner being sent to either his home or a third country will be tortured. Wendy Patten called assurances from governments with well-known records of torture “empty promises.” On the basis of these unenforceable assurances, which offer no safeguard against torture, the United States government sends prisoners to countries that often violate their legal obligation not to engage in torture. Even Attorney General Alberto Gonzales admits that once people are transferred to another country, the United States cannot do much to protect them. Thus, the United States is sending prisoners into situations where they are at risk of torture.

Bills pending in the House and Senate insist that the administration not send prisoners to countries where they may be subjected to torture. Lawyers have become involved in issues pertaining to the relocation of Guantanamo prisoners, and have persuaded courts to grant injunctions to prevent movement to places where they may be subjected to torture.

International Criticism

All conference participants agreed that the human rights abuses committed at Guantanamo and other U.S.-administered prisons abroad have undermined U.S. standing in the world and have tainted the reputation of the United States.

Michael Ratner explained that the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) ruled that “every human was entitled to some status under international law.” The 2002 ruling called for immediate hearings to determine the status of each detainee at Guantanamo. Of course, the Bush administration has ignored the ruling.

The U.S. government has been accused of serious violations of human rights by the Foreign Affairs Committee of the British Parliament. The European Parliament has called for an investigation into the situation at Guantanamo and the Council of Europe, a human rights body more than a half century old, denounced the United States for using torture and asked European nations not to aid the interrogation efforts.²² And for the first time, the United States has been excluded from the Inter-American Commission for Human Rights. The International Red Cross, a body that avoids political stances, has spoken out about the psychological

abuses stemming from indefinite detention. Physicians for Human Rights released a report saying that “‘since at least 2002, the United States has been engaged in systematic psychological torture’ of Guantanamo detainees.”²³ Most recently, Amnesty International urged the United States to close the prison, calling it “the gulag of our time.”

Cuba has also spoken out against the abuses. On January 19, 2005, Cuba issued a formal protest note to the United States

condemning human rights violations at Guantanamo.²⁴ Recently, Cuba introduced a resolution in the United Nations calling for an independent investigation of interrogation practices at Guantanamo. The resolution was defeated by a large margin; however, its introduction reflects the Cuban position that the United States is not in a position to lecture anyone about human rights abuses.

Who is Responsible?

The abuses cannot be justified. The administration has claimed the detainees are among the “worst of the worst” in the war on terror. Yet the Pentagon has already released 167 from Guantanamo, including two who had been designated for trial before military commissions. What is more, the detentions are indefinite and no vehicle exists for them to be challenged. Detainees are subjected to interrogation methods that constitute torture, even though coercion is known to produce erroneous testimony. Thus

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**-Wayne S. Smith
Center for International Policy**

the information obtained from the interrogations is not reliable and does not aid the war on terror.

“If the United States is condemning the human rights violations of other nations and promoting democracy in the Middle East, it needs to uphold such principles in its own conduct. One leads best by example. The example we are setting by allowing the abuse of prisoners is, obviously, exactly the wrong one,” noted Wayne Smith. The treatment of the prisoners at Guantanamo, and elsewhere, should be a concern to us all as it affects the honor of our country. Wayne Smith concluded by noting that a full investigation by the Senate Intelligence Committee would be in order. Its chairman, Senator Pat Roberts of Kansas, has resisted such an investigation, saying that he is tired of people questioning the conduct of American soldiers. Smith said he would see it in exactly the opposite way. Until now, the senior levels of government have simply passed the buck, saying the abuses were simply the acts of a few rogue soldiers. Only the common soldier is blamed. But it is clear that the Justice Department memos to Alberto Gonzales, the interrogation instructions cleared by Secretary of Defense Rumsfeld, and the statements made by senior generals, all of which are matters of record, set the stage for these abuses. It is time to hold the senior levels of government accountable, time, in effect, to put the blame where it belongs.

Addendum

Subsequent to the discussions reported above, *Newsweek* published a report on May 9 stating that during the interrogation of a prisoner at Guantanamo, a guard had flushed a Koran down the toilet. This led to widespread riots in the Arab world resulting in several deaths.

On May 13 a statement issued by the Joint Chiefs of Staff found no evidence that this desecration had taken place. *Newsweek* editors, conducting their own investigation, came to the same conclusion with respect to that particular incident, and on May 16 issued an apology.

That same day, the White House stated that an apology was not enough, that *Newsweek* should retract the story. Later that afternoon, *Newsweek* did retract. Still unsatisfied, the White House on May 17 said *Newsweek* should take the lead in repairing the damage it had caused.

A statement issued on May 18 by attorneys at the Center for Constitutional Rights made it clear, however, that *Newsweek* alone had not caused the damage. “The United

States government,” the statement read, “has failed to adequately investigate consistent reports of the use of religious humiliation as an integral component of the systematic abuse of prisoners during interrogations at Guantanamo and elsewhere. A substantial number of these reports, made by former prisoners as well as by current prisoners and their legal counsel, have subsequently been confirmed by government documents. The government has repeatedly responded to this mounting evidence of prisoner abuse with outright denials that the misconduct occurred or was part of a strategic method of interrogation. There have been at best, belated and limited inquiries lacking the necessary transparency and accountability.”

““The true outrage underlying *Newsweek*’s retraction is that the White House has never aggressively denounced the religious humiliation or physical and psychological abuse of devout Muslims imprisoned at Guantanamo with anything close to the same vigor that it has criticized *Newsweek*, even when such abuses have later been confirmed by the government’s own documents,” observed CCR Deputy Legal Directory Barbara Olshansky.”

For the full statement issued by the Center for Constitutional Rights, visit their website: www.ccr-ny.org.

Participant Biographies

Robert Muse is an attorney (District of Columbia Bar) whose practice is devoted exclusively to public and private international law. He has testified on international law issues before the Foreign Committee of the United States Senate; the Foreign Affairs and International Trade Standing Committee of the Canadian House of Commons; the Trade Subcommittee of the Ways and Means Committee of the U.S. House of Representatives and the External Economic Relations Committee of the European Parliament (Brussels) as well as the Parliament’s interparty group on Cuba (Strasbourg). Mr. Muse is a member of the American Society of International Law and the American branch of the International Law Association. Before beginning legal studies and practice in Washington, DC, he qualified as a barrister (Middle Temple) in England in 1984.

Wendy Patten is the U.S. advocacy director at Human Rights Watch, where her work focuses on human rights in

¹⁰ the United States. She handles policy, legislative, and media advocacy on issues such as counter-terrorism and human rights, enemy combatant detentions, military commissions, and other criminal justice and immigrants' rights matters. Ms. Patten spent five years at the U.S. Department of Justice, serving as special counsel for trafficking in persons in the Civil Rights Division, chief of staff in the Violence Against Women Office, and senior counsel in the Office of Policy Development. From 1999 to 2001, she served as director of Multilateral and Humanitarian Affairs at the National Security Council at the White House, working on refugee and migration issues and human rights issues. She also spent several years as a legal aid attorney at Ayuda, where she handled domestic violence and immigration cases. Ms. Patten is a graduate of Princeton University and Harvard Law School.

Michael Ratner is president of the Center for Constitutional Rights. He served as co-counsel in *Rasul v. Bush*, the historic case of Guantanamo detainees before the U.S. Supreme Court. Under Ratner's leadership, the Center has aggressively challenged the constitutional and international law violations undertaken by the United States post-9/11, including the constitutionality of indefinite detention and the restrictions on civil liberties as defined by the unfolding terms of a permanent war. In the 1990s, Ratner acted as a principal counsel in the successful suit to close the camp for HIV-positive Haitian refugees on Guantanamo Bay. He has written and consulted extensively on Guantanamo, the Patriot Act, military tribunals, and civil liberties in the post-9/11 world. He has also been a lecturer of international human rights litigation at the Yale Law School and the Columbia School of Law, president of the National Lawyers Guild, special Counsel to Haitian President Jean-Bertrand Aristide to assist in the prosecution of human rights crimes, and radio co-host for the civil rights show *Law and Disorder*.

Wayne Smith is a senior fellow at the Center for International Policy in Washington, D.C., and an adjunct professor at the Johns Hopkins University in Baltimore, where he directs the Cuba Exchange Program. Smith is the former chief of the U.S. Interests Section in Havana (1979-82). At the time he left the Foreign Service in 1982, he was considered the State Department's leading expert on Cuba. He is the author of *The Closest of Enemies: A Personal and Diplomatic Account of the Castro Years*, and has edited and written various other books.

Photography

Photographs 1, 3 & 4 courtesy of Vancouver Indy Media (www.vancouver.indymedia.org/news/2003/03/39665_comment.php)

Photograph 2 courtesy of Emily Stivers, Center for International Policy.

Endnotes

¹ Platt Amendment, 1903.

² Muse explained that "Such interventions occurred, for example in 1912 and 1917 for the purpose of "protect[ing] U.S. nationals and their property."

³ Muse quoted a 1961 announcement made by the United States government.

⁴ Alberto Gonzales memos, 2002.

⁵ Alberto Gonzales testified that the 5th, 8th, and 14th amendments do not apply outside the United States and thus do not protect the detainees at Guantanamo.

⁶ Haven, Paul. "17 Afghans, Turk Home From Guantanamo Bay." Associated Press, 4/19/05. <http://abcnews.go.com/International/wireStory?id=684678&page=1>.

⁷ "Interrogations faked at Guantanamo, Witness Says." Reuters, 4/28/05. http://today.reuters.co.uk/news/NewsArticle.aspx?type=topNews&storyID=uri:2005-04-28T223624Z_01_HOL871296_RTRUKOC_0_SECURITY-GUANTANAMO.xml.

⁸ Ratner, Michael and Ellen Ray. *Guantanamo: What the World Should Know*, Chelsea Green Publishing, White River Junction, Vermont, 2004. (5)

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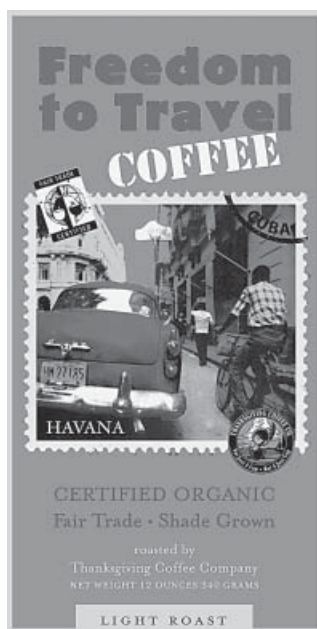
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