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Fabricated Justice: A Missive From Guantanamo Bay

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Beirut -- I have reached Guantanamo Bay naval base, but I am as cut off from the men imprisoned here as if I were still in Washington. The Pentagon has allowed Human Rights Watch to observe military commission proceedings, but we can't talk to any detainees, nor can the media or anyone else who might report publicly what they say.

Four years ago the first detainees stumbled, blindfolded, in their orange jumpsuits from the aircraft that brought them from Afghanistan to Cuba. They didn't know what awaited them; nor did we.

In the beginning, the Bush administration claimed the detainees were the "the worst of the worst." But we still don't know who they all are. A few hundred have been released because they either never fought the U.S. troops, or, if they had picked up a rifle to defend Afghanistan from a U.S. invasion, did not present an ongoing threat.

Today, around 500 detainees remain at the base. There is no way of knowing how many are the "enemy combatants" described by President W. Bush. The administrative proceedings the Pentagon concocted to justify their detention don't inspire confidence. Cases were reviewed with the presumption that the detainees were enemy combatants, and none were given the lawyers or the means to prove otherwise.

The Pentagon insists the laws of war give it the right to hold everyone at Guantanamo until the end of the "war against terrorism" - which will be never. That leaves out men picked up for fighting in an international conflict in Afghanistan that is now over, who should be freed; and those captured far from any battlefield who should be brought before the criminal courts if suspected of crimes.

Four years ago, Defense Secretary Donald Rumsfeld told the world: "The detainees will not be subjected to physical or mental abuse or cruel treatment." Now we know that the culture of abuse photographed at Abu Ghraib "migrated" from Guantanamo. We know from released detainees and FBI personnel, from military memoranda and orders issued, that the Bush administration, having cast aside the Geneva Conventions, also dismissed the Convention against Torture, the U.S. Army interrogation manual and the longstanding U.S. military tradition against using torture or cruel, inhuman and degrading treatment against its prisoners.

With a green light from Rumsfeld, interrogators at Guantanamo bombarded their captives with excruciatingly loud music; forced them into contorted positions for long periods; denied them sleep for days; made them howl like dogs and wear women's underwear on their heads; left them curled up on the floor with their hair pulled out in despair.

The Bush administration jettisoned any notion of justice just as quickly. Two months after the September 11, 2001 attacks, Bush authorized military commissions to provide summary justice, unburdened by the protections of the court-martial system.

The military commissions might look like genuine legal proceedings. But their rules are Kafkaesque, made up as the Pentagon went along, despite the efforts of military lawyers who take seriously their responsibility to the rule of law. Military prosecutors have no obligation to disclose exculpatory information and can introduce evidence obtained by torture. They can shut

the accused out of the hearings when sensitive material is presented and defense lawyers can't reveal that material, even when their clients' lives are at stake.

When the U.S. Supreme Court last year acknowledged the jurisdiction of federal courts over the detainees, no longer was Guantanamo a lawless land subject only to the president's will. But Congress dimmed that light: the Graham-Levin-Kyl amendment passed last month so restricts the detainees' access to federal courts as to be almost meaningless.

There is still time for the administration to do the right thing at Guantanamo. It should release detainees it has no legal authority to hold; it should provide courts-martial or criminal trials to detainees believed to have committed crimes; and it should allow the detainees to speak to outsiders who could tell their stories to the world.

Sitting here at Guantanamo, it seems a long time since Donald Rumsfeld said the detentions were responsible, humane and legal. Today we can only wonder how anyone ever believed him.

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