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Guantanamo on trial

Experts weigh in on medical, legal rights of detainees at SPH conference

By Tim Stoddard

The detention by the United States of more than 600 enemy combatants and suspected terrorists at the Guantanamo Bay naval base in Cuba has drawn sharp criticism from human rights groups in the past two years. With the Supreme Court scheduled this month to hear arguments on whether the detainees may ask American courts to review their cases, a panel of physicians and lawyers convened last week on the Medical Campus to examine the purported health and human rights violations at Guantanamo.



Michael Grodin, an SPH professor of health law, bioethics, and human rights (from left), Leonard Rubenstein, executive director of Physicians for Human Rights, Allen Keller, director of New York University's Bellevue program for survivors of torture, and Daryl Matthews, director of the forensic psychiatry program at the University of Hawaii, Manoa, discussed the legal and ethical rights of detainees at the Guantanamo Bay naval base. *Photo by Vivian Borek*

The conference, hosted by the School of Public Health's department of health law, bioethics, and human rights, focused on the impact of interrogation and confinement on the mental health of Guantanamo prisoners and on the illegality of holding detainees incommunicado indefinitely. It was inspired, in part, by Heidi Kummer (SPH'04), a German anesthesiologist and master's candidate in health law, whose final paper in an SPH course on health and human rights this past fall focused on the legal violations of holding juveniles at Guantanamo. With her help, George Annas and Michael Grodin, both SPH professors of health law, bioethics, and human rights, organized the public conference to address the broader topics of health and human rights at the naval base. Guest speakers included Daryl Matthews, a psychiatry professor and director of the forensic psychiatry program at

the University of Hawaii, Manoa, Allen Keller, director of New York University's Bellvue program for survivors of torture, and Leonard Rubenstein, executive director of Physicians for Human Rights. "This conference is a powerful example of how the School of Public Health is involved in not just scholarly work and thinking about these issues and articulating them," Grodin says, "but actually moving from scholarship to advocacy to action, which is good for our students and faculty, and also for society."

Rights to mental health

Matthews, who taught at SPH in the late 1970s, was asked by the Army in 2003 to review and report on the mental health care provided to detainees, and is one of the few civilians to have visited the Guantanamo camps. "There's no question that there are people down there with psychiatric problems," he says. "Some of them had these problems back home, at the various places where they came from. But these folks were also subjected to a lot of bad and strange treatment on their way to Guantanamo."

Matthews was not at liberty to describe details of the mental health care provided to the prisoners, but noted that many are routinely given antidepressants such as Prozac. "The detainees are, by and large, totally unfamiliar with Western mental health care," he says. "Just being medicated is often in and of itself a stressful experience for them. These are not cultures where the idea of taking a pill to solve your mental health problems has a lot of currency. It's not what they're accustomed to, and neither is talk psychotherapy."

"In addition to these routine stresses of confinement," he adds, "the detainees had a number of other stresses that were quite powerful. One of them is the tremendous uncertainty they face about their future. The detainees do not know whether or not they will be charged. They don't know if they're going to be given legal counsel, if they're going to be charged with capital offenses, or what the nature of their ongoing confinement will be. It's quite possible some of these people could be acquitted but kept at Guantanamo, and the detainees are certainly aware of that."

A question of sovereignty

The situation of the Guantanamo detainees could change dramatically by this summer, Annas says, if the Supreme Court decides they have the right to representation in the American justice system. "The question in front of the Supreme Court," he says, "is whether or not a detainee has access to the U.S. courts to raise due process questions, such as access to lawyers, charges against them, public trial. That question turns on whether or not they are in a U.S. territory where the U.S. is sovereign."

The United States has leased the naval base at Guantanamo Bay from the Cuban government since 1903, originally paying \$2,000 a year in gold (since 1934, the lease has been \$4,085 a year). The United States says the conditions of the lease give it control over the base but do not constitute sovereignty, which means that the government does not have to follow the legal standards imposed on American territories and states. “The Bush administration told the Ninth Circuit Court in California that not only did they believe that U.S. law does not apply in Guantanamo, but that even if the claims were that the U.S. was engaged in torture or was summarily executing the detainees, the U.S. courts couldn't do anything about it,” Annas says.

In his remarks at the conference, Grodin indicted the U.S. military on a number of counts. “From what I've read from the detainees who have spoken, and from reports from people who have been down to Guantanamo,” he says, “there have been violations of international humanitarian laws, international human rights laws, and the uniform code of military justice, and violations of medical ethics.” Citing one of the fundamental guarantees of the Geneva Convention, Grodin explained how the United States has violated the terms of treatment for armed combatants. “The prisoners have not been told what they've been charged with. They have not been given access to attorneys or to any due process or a forum in which to defend themselves.”

Regardless of the outcome of the Supreme Court case, Grodin says, it's time for more transparency at Guantanamo. “At the minimum,” he says, “we need to have an independent group go down there and really see what is going on. I don't think there need to be new laws — we need to enforce the laws that we have. If the U.S. won't do it, then why should anybody else do it? If we treat our prisoners this way, what message does that give the rest of the world in terms of how they treat our soldiers if they're held?”

Annas supports a more radical intervention in Cuba: shutting down the naval base once and for all. “It's just too much of a temptation for the United States to use Guantanamo in all kinds of ways that we would never think of doing here in the United States. It's not just the Bush administration — the Clinton administration did it too. I think it should be closed. We can't have a place that we think is beyond U.S. law, where we can do what we want to do. It's just too tempting for us to use Guantanamo in lawless ways. It darkens America's soul.”

The conference was sponsored by SPH, Global Lawyers and Physicians, Amnesty International, the François-Xavier Bagnoud Center for Health and Human Rights, and Physicians for Human Rights.