

Five are free – but no remorse from Bush

By Trevor Royle

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Guantanamo Bay and its inmates at Camp Delta have produced the great unspoken topic of this year's US presidential campaign: it is the problem that dare not speak its name. The remaining inmates await trial by special military tribunal, the building for the hearings has been completed, a chief prosecutor and defence counsels have been appointed and the judicial procedures have been worked out. Military lawyers have been appointed to defend five of the detainees in the first tribunals of this kind to be held since the second world war. But the Pentagon still refuses to say when it will give the green light to begin the process.

The release of the five British prisoners is unlikely to have any effect on the American position. President Bush continues to insist that the detainees are "bad people" who represent the "worst of the worst". He also clings to the premise that the prison at Guantanamo Bay is outside the jurisdiction of the US courts, or at least until the Supreme Court decides later this year if the detainees can be held indefinitely without lawyers and hearings. Citing the rules of war, albeit selectively, his officials argue that they are simply holding suspected combatants until the end of hostilities in the war against terrorism in order to complete intelligence-gathering. Furthermore, because the men are suspected terrorists fighting for an illegal organisation, al-Qaeda, the US will not be bound by the terms of the 1949 Geneva Convention, which lays down legal guidelines for the proper treatment and protection of prisoners of war.

Administration lawyers claim that the laws of war allow this kind of detention for the duration of hostilities, or for as long as the administration decides. However, Kenneth Roth, director of the internationally respected Human Rights Watch points out the US can no longer hide behind that excuse: "Guantanamo represents a dangerous pattern of US conduct. When the administration doesn't like the outcome of complying with normal law enforcement rules, it switches to war rules. And even then, it only applies war rules it finds convenient.

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“Errors, common enough in ordinary criminal investigations, are all the more likely when the government relies on the murky intelligence that drives many terror investigations. The secrecy only compounds the problem. If law enforcement rules are used, a mistaken arrest can be rectified at a public trial. But if war rules apply a suspect could be detained for life or even killed without the government being obliged to prove his guilt.”

Roth and other human rights campaigners are not alone in voicing their concern. There is growing frustration with a legal position which allows detainees to be held without trial and where little attempt has been made to establish guilt. Guantanamo Bay detainees still face indefinite confinement, they have no access to legal representation, and they face the prospect of trial in front of a military tribunal which has shaky legal foundations and the capacity to hand down the death sentence.

Last week the Pentagon refused to allow outside organisations such as Amnesty International to be present at the trials while only permitting limited media coverage of the proceedings. The reason given was that the tribunals would take place in buildings with “limited courtroom seating and other logistical reasons”. For Alex Arriaga, director of government relations at Amnesty International, this flies in the face of the principles upheld in public by the Bush administration. “The US State Department Country Reports on Human Rights annually criticise other governments for failing to accommodate trial monitors,” he said. “Allowing media coverage while pleading insufficient space for human rights groups smacks of fear of informed criticism and will only fuel the perception that the tribunals will be show trials.”

Lawyers working for Human Rights Watch and other concerned organisations have described Guantanamo Bay as “a legal black hole”. The detainees are probably being held illegally, and there is no right of appeal to an independent body. The Pentagon can remove judges or counsel without explanation and hearsay evidence will be admissible. Those absences do not fit in well with a country which not only upholds democracy but is willing to go to war with countries that deny their people the same privilege.

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