

PANEL 1: ARE ADEQUATE LEGAL FRAMEWORKS IN PLACE AT THE DOMESTIC LEVEL?

Introductory Remarks and Presentation of Panelists

*Remarks of Richard Wilson**

GOOD MORNING, EVERYONE. It's wonderful to look out and see so many friends, so many people who have labored with issues of human rights around the world, particularly with the issue of torture. My name is Rick Wilson. I am director of the International Human Rights Law Clinic here at the law school and also teach international law subjects. For the past five years, I and students who have worked with me in clinic, have represented detainees at Guantánamo Bay. Guantánamo has become an icon in the United States, a symbol with regard to abuse and torture. Our first panel this morning addresses a question I hope is not rhetorical, which is as follows: "Are adequate legal frameworks in place at the domestic level?"

Having labored in this field myself for many years, I'm somewhat skeptical, at least as far as the answers that law has offered to the detainees at Guantánamo Bay. First, a mention of statistics. Of the 790 men detained at Guantánamo Bay over time, there have been three trials before military commissions, one guilty plea, with the two other convicted men having been released after going back to their home countries. Of the men who use the process of habeas corpus to address their detention, only 23 have been ordered released, including a large group of Uyghurs from China. And you may have seen last week that the DC Court of Appeals overturned the order for their release, holding that only the Executive had the power to order such release. One wonders, if this is true, what the role of courts is under the separation of powers.

In my view, the Guantánamo battle in the courts has been the triumph of process over substance; the triumph of the abuse of the process by government lawyers who have thrown everything they can into the path of those of us who have attempted to bring the stories of detainee mistreatment and prolonged detention, itself a form of mistreatment, into court. The legal process has not hindered, however, the efforts of lawyers to tell those stories to the public. And many of those stories told in the media about Guantánamo Bay come from the lawyers themselves, who have taken their clients' pain from Guantánamo and told about it in the world. And many of those detainees have been released and many of them have told their stories that document the abuses of Guantánamo and other places around the world.



Courtesy of Rick Reinhard

Felice Gaer and Viviana Krsicevic

But I'm left with a sense of frustration, as these are probably the hardest cases that I've ever been involved in. I'm mindful of the writings of an American legal historian who once said, "[t]he better the society, the less law there will be. In heaven there will be no law and the lion will lie down with the lamb. In hell, there will be nothing but law and due process will be meticulously observed." So, with that framework, I will introduce our speakers in the order in which they will speak. Once I have introduced them, we'll just go through the panel in order.

First, I am not going to go through the long bios that are in your materials for this morning. If I did, it would take the rest of the day, given our speakers' experience.

Our first speaker will be Manfred Nowak. Since 1992, he has been director of the Ludwig Boltzmann Institute for Human Rights in Vienna, and since 2004 UN Special Rapporteur on Torture. Since January 2007, he has been a professor of international human rights protection at the University of Vienna, and since 2008, visiting professor, Swiss chair on human rights, at the Graduate Institute of Geneva. He is the author of more than 400 publications (I say that with awe as an academic myself) in the fields of constitutional, administrative, and international law, with a focus on fundamental human rights.

* Richard Wilson is a professor at American University Washington College of Law and the founding Director of the International Human Rights Law Clinic.

Diane Orentlicher is professor of international law and Co-director, with me, of the Center for Human Rights and Humanitarian Law here at the Washington College of Law. From 1995 to 2004, she served as faculty director of the law school's War Crimes Research Office, which has provided legal assistance to international criminal tribunals since 1995. She is one of the leading authorities on war crimes tribunals and has lectured and written extensively on the scope of state obligations to address mass atrocities. In September 2004, Professor Orentlicher was appointed by the United Nations Secretary General as independent expert to prepare an updated set of principles for the protection and promotion of human rights through action to combat impunity.

Ambassador Luis Gallegos is a member of the United Nations Committee Against Torture and Other Cruel Inhuman and Degrading Treatment and Punishment since 2007 and was reelected until 2011. He is a career member of the foreign service of Ecuador, having served in Spain, Bulgaria, El Salvador, and Australia. He has also been permanent representative of Ecuador to the United Nations in Geneva and New York and at present he is Ambassador of Ecuador to the United States.

Claudio Grossman is our Dean here at the American University Washington College of Law. Dean Grossman is Chair of the United Nations Committee Against Torture and a member of the Commission for the Control of Interpol's files. He was a member of the Inter-American Commission of Human Rights from 1993–2001 where he served in numerous capacities including as President twice and as Special Rapporteur on the Rights of Women and as Special Rapporteur on the Rights of Indigenous Populations. Dean Grossman is also the author of numerous publications regarding international law and human rights. He will be sharing the time with Ambassador Gallegos. And in the spirit of long-time friendship and knowledge of our dean, I would remind you that this means you have half the time to make your presentation.

Matt Pollard is Legal Advisor to Amnesty International's Counter-Terror With Justice campaign. He has served as legal advisor to the Association for the Prevention of Torture and was formerly a constitutional litigator in Canada. He is currently completing a Ph.D at the University of Essex where he has also contributed to the forthcoming edition of Nigel Rodley's *Treatment of Prisoners Under International Law*. We look forward to that.

Thank you to each of you and we'll proceed with Professor Nowak. *HRB*