

## **Statement of Debra Burlingame**

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**Before the United States Senate Judiciary Committee  
Subcommittee on Terrorism, Technology and Homeland Security**

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Madam Chairwoman and Members of the Committee:

### **Introduction**

Thank you for the opportunity to be here today to offer my testimony on this subject of vital importance to the American people. The issues surrounding the question of the legal rights of Guantanamo detainees are both novel and complicated. Even the United States Supreme Court, which was prepared last spring to let Congress and a lower court have the last word on the matter, has decided to weigh in once more. No matter which side of the debate one finds most persuasive, clearly, all can agree that these issues and their consequences resonate far beyond the factual circumstances of the 300 or so individuals still detained at Guantanamo Bay.

As we sit here today, 192,000 American men and women in uniform are deployed in some of the most dangerous places in the world. They and our coalition partners continue to take enemy fire, to sustain casualties, to risk their lives in order to attain and preserve the kind of battlefield intelligence that may yield vital, life-saving information in the war on terror. Conferring full habeas corpus rights on alien enemy combatants during wartime is something no English or American court has granted in the 800-year history of Anglo-American jurisprudence. Today, it is our troops who bear the heaviest burden in carrying out the will of Congress. Congress owes it to them and to the American people to consider the full consequences of granting this level of extraordinary relief to the kind of people who detonate IEDs, who use suicide vests to target tourists and commuters, and who crash commercial airliners filled with innocent men, women and children into buildings.

As a former attorney, I have an appreciation for some of the issues that the high court and Congress must take into consideration as they sort through this difficult problem. I know that the Senate has held numerous hearings on the legal issues surrounding Guantanamo detainees. I am not here as a Constitutional expert or a legal scholar. I am here to discuss an issue about which I believe this committee should be aware, and which may be one of the reasons the legal rights of detainees at Guantanamo Bay is on the table today. I believe it goes to the heart of the practical debate, not over the issue of whether a reasonable interpretation of the Constitution does or does not give enemy combatants full access to our federal courts, but whether, in fact, it should. John Adams wrote in 1776

that “we are a nation of laws, not men,” but I would ask, who writes the laws and to what end?

There is no reason why we must be rendered helpless by our own refusal to find creative ways of adapting our laws to reflect the changing circumstances of our times. Americans fundamentally understand and accept that we are a nation of laws, but they do not accept that this means they must surrender their security to terrorists, individuals who would exploit and hide behind our enlightened laws in order to use weapons of mass destruction to kill thousands of people in a single act. Our laws should not leave us defenseless. I simply refuse to believe that “rule of law” means that we must rigidly adhere to a particular line of reasoning when interpreting legal cases—cases which were decided long before modern warfare-by-suicide against civilians became a terrorist tactic—and reach the astounding conclusion that unlawful enemy combatants are entitled to the same due process rights as American citizens and U.S. residents. The terrorists know what kind of impact extending civilian due process rights to groups like Al Qaeda would have. When Khalid Sheikh Mohammed was captured and handed over to the United States, he reportedly initially told his interrogators, “I’ll talk to you guys when you take me to New York and I can see my lawyer.”

Extending litigation rights to people like KSM would deny us valuable information about terrorist organizations, and could cause the deaths, not just of hundreds of people, but of whole populations. Surely being “better than our enemies” doesn’t mean that we are so morally vain that we are willing to sacrifice our children and grandchildren to prove it.

### **Just Shut It Down**

Back when the Detainee Treatment Act of 2005 was being publicly debated, New York Times columnist Thomas Friedman published a blunt column about Guantanamo entitled, “Just Shut It Down.” Referring to it as a “P.O.W. camp,” he said that it has become so embarrassing to America’s standing abroad that we should just “shut it down and then plow it under.” Friedman’s sentiments have been widely echoed in the national media and on Capitol Hill. Guantanamo, according to these voices, has become a national disgrace that is seriously harming our reputation as a beacon of freedom and justice throughout the world, particularly in the Muslim world. Whether one sincerely believes that failing to confer Constitutional rights on unlawful enemy combatants will destroy America’s moral fiber or whether one believes that Guantanamo is now so irrevocably associated with allegations of “prisoner abuse” that keeping it open and rehabilitating its reputation is no longer an option, the reality is that radical Islamists have won another important propaganda war, the first being the highly damaging and deeply heartbreaking Abu Ghraib.

Congress is in the process of debating where these detainees should go if Guantanamo is shut down. It is remarkable how easy it is for members of Congress to recommend sending these dangerous men who are the subject of so much controversy here and so much propaganda in the Muslim world, to the states of other members of Congress. They, in turn, aren’t terribly happy at the prospect. 97 Senators voted in favor of a

resolution that the detainees should not be brought to the United States. The resolution is not binding. Let's ask the American people whether they would like to have these men and their angry supporters brought to their communities. There is talk of sending them to Bagram air base in Afghanistan, where other detainees are being kept and where U.S. jurisdiction is not a problem. But that is what was said about Guantanamo. Today, the Center for Constitutional Rights (CCR), which filed the original detainee cases in February of 2002, has already filed habeas corpus petitions on behalf of 25 detainees in Bagram.

They will not relent until every jihadi in U.S. custody is either released or brought into the federal system. They have set their sights on the so-called "secret prisons" in which they believe the U.S. or its allies have detained jihadis elsewhere in unknown places in the world. They have filed frivolous lawsuits in other countries contending that terrorists who have been captured and detained aimed merely at creating political pressure on America's allies in the war on terror. They maintain that the capture and detention of suspected terrorists is not a response to an international global threat of violent fundamentalist Islam, but an effort by the Bush administration to exploit the anger and fear generated by the September 11 attacks in order to create a "Unitary Executive." That is what they tell college students and law students in talks all across the United States.

If Mr. Friedman of the New York Times believes that shutting down Guantanamo will plow under all the problematic public relations that Guantanamo has caused for this country, he has not been paying attention. Mr. Friedman has said, and I believe he is sincere, that he wants the President of the United States to just shut Guantanamo down because he believes that keeping it open is causing and will cause more Americans to die. He wants Guantanamo shut down because, he says, he wants to win the war on terror. But even as some of these detainees are rendered back to their home countries and admit, even boast, that they went to Afghanistan to join the global jihad, even as dozens have returned to the battlefield to kill again—the lawyers for detainees continue to argue that these men are innocent victims. Perhaps Mr. Friedman and this committee should consider that it is the propaganda being fed to the world press that is giving this country a black eye, and if that is so, what makes him, and this Congress, actually believe that the bad press will stop if detainees are moved from one geographical location to another?

As Congress considers the type and degree of legal rights enemy combatants should be granted, it is vital that it consider how those rights will operate in the new multimedia world in which we live. Today, nearly every corner of the world is plugged-in to radio, the internet, and satellite television. Al Manar television, run by Hezbollah out of Beirut, reaches between ten and fifteen million Muslim viewers all over the world *every day*, encouraging Muslim youths to engage in violent jihad and suicide operations against the United States and its allies. Lies, distortions, and strategic propaganda are the mainstay of Al Manar. Al Jazeera at least has dissenting views, but will air sensational stories and pictures of un-rebutted propaganda, sending it around the world in mere minutes.

Once an inflammatory image hits the internet there is no reeling it back in. A photo-shopped or out-of-context photograph can set back our diplomatic and national security

efforts in immeasurable ways. The media is lazy or affirmatively complicit in the sensationalism. Today, the images of newly-arrived, hooded, and shackled Guantanamo detainees at Camp X-ray wearing orange jumpsuits accompanies countless stories about torture and detainees' rights. They no longer bother with the word "alleged." But Camp X-ray was shut down years ago, and detainees don't wear orange jumpsuits. Detainees who do not engage in violence or break the rules move freely about in recreational areas. But the hoods and the jumpsuits are just better copy, better TV. When Newsweek magazine ran a false story about Guantanamo interrogators desecrating a Koran, riots broke out in Jalalabad, Afghanistan and elsewhere in the Muslim world, resulting in the deaths of 15 people. It is almost quaint to talk about the professional responsibility of the working press. Today, anyone with a video cell phone or an internet connection can call him or herself a reporter.

In this high-speed-communications world, the Bush administration's attempts to cast preventative detention and status review protocols at Guantanamo as a necessary and adequate substitute for judicial review in the federal courts have been drowned out by an effective public relations campaign waged on behalf of enemies of this country, paid for by a government that purports to be our ally, and enabled by the lawyers who have perpetrated a fraud on the public while casting themselves as patriotic heroes and champions of the Constitution. The story of these lawyers and their representation of 12 Guantanamo detainees is a tame preview of what future detainee cases might look like if they are moved into the federal system and handled in a manner similar to the kind of adversarial litigation associated with ordinary criminal cases.

### **An Army of Lawyers**

In January of this year, a controversy arose over the fact that hundreds of Guantanamo lawyers, dozens of whom work for prestigious "blue chip" firms, were criticized for volunteering their considerable legal skills on behalf of Guantanamo detainees. An official working for the Department of Defense Office of Detainee Affairs suggested that corporations who retain these high-priced firms as outside counsel might be shocked to learn that their own fees are subsidizing pro bono work on behalf of terrorists. "I think, quite honestly," said the official in an interview, "when corporate CEOs see that those firms are representing the very terrorists who hit their bottom line back in 2001, those CEOs are going to make those law firms choose between representing terrorists or representing reputable firms."

The reaction to these comments was swift and explosive. Members of the "Guantanamo Bar"—which was said to number between 400 and 500 hundred—expressed their outrage in op-ed pieces, on internet sites, and in press releases all across the nation. Major newspapers such as the New York Times and the Washington Post editorialized on the subject, denouncing the comments and calling for the DOD official to be disciplined or fired. National and state bar associations presidents, legal ethics experts, and law journals weighed in to defend the legal bar's noble tradition of defending "unpopular clients" pro bono—without charge.

Some even called for the DOD official, a former prosecutor, to be disbarred on charges that he was trying to exert pressure on corporate law firms to drop their pro bono detainee clients.

Some of the corporate clients came forward to defend their private law firms and their comments were published in an article in the LegalTimes Online on January 22, 2007.

“Pro bono service and the rule of law are great traditions in the American legal profession, and we at GE have no intention of—and strongly disagree with the suggestion of in any way—discriminating against law firms that represent us on the basis of the pro bono, charitable, or public service that the lawyers in those firms choose to engage in,” said Brackett Denniston, senior vice president and general counsel at General Electric, in a statement. Two of GE’s outside counsel, Jenner & Block and Covington Burling, were representing detainees.

“I intend to continue to use the firms that regularly represent us. The fact that they engage in pro bono work or work for other clients that I don’t necessarily agree with doesn’t affect my decision,” said William Barr, general counsel of Verizon Communications and former attorney general under President George H. W. Bush. Two of Verizon’s outside firms, Debevoise & Plimpton and WilmerHale were representing detainees. Verizon’s support was particularly noteworthy, as the company had lost three employees on September 11, one at the Pentagon, two at the World Trade Center.

“The Bush administration wants a ‘no law zone,’” quipped one of the Gitmo bar attorneys from a New Jersey firm, “now they want a ‘no lawyer zone.’”

But the Bush administration, the Department of Defense, and Attorney General Alberto Gonzales did not defend the official’s comments, whose immediate apology was later followed by his resignation.

As a result of this controversy, there was curiosity about what some considered to be an over-the-top reaction on the part of these attorneys. Why were they so riled up by an interview given by an obscure DOD official on Federal News (FN) Radio, a small AM station that caters to the interests of federal employees and can only be heard inside the District of Columbia?

I decided to look into it and published the results of what I found in an article in the Wall Street Journal last March. First, I learned that the widely-held belief that all of the Guantanamo attorneys are working pro bono is simply not true. The FN Radio interview raised the issue of lawyer fees, and who might be paying them. The DOD official answered, “It’s not clear, is it? Some will maintain that they are doing it out of the goodness of their heart, that they’re doing it pro bono, and I suspect they are; others are receiving moneys from who knows where, and I’d be curious to have them explain that.”

Michael Ratner, head of the Center for Constitutional Rights (CCR), subsequently told the New York Times that none of the 500 lawyers associated with Guantanamo detainee

representation are being paid. The article reported that Tom Wilner, from the Washington D.C. firm of Shearman & Sterling and the lead attorney who joined the CCR in filing the first Guantanamo case in 2002, *Rasul v. Bush*, said that his firm received money from the families of the 12 Kuwaiti detainees but all of it was donated to charities related to the September 11 attacks. This is lawyerly wording. Perhaps Shearman did “receive money from detainee families,” but the government of Kuwait has acknowledged that they are paying all of the detainees’ and their families’ legal fees, which were reported to run in the millions of dollars. According to one news report in 2004, the fees had reached at least two million dollars. This raises several questions. Why would Shearman hide that information? Which, if any “9/11 charities” received donations and how much were they? Mr. Wilner isn’t saying. He gave an interview in which he dodged questions about Shearman’s pro bono billable hours.

In addition to its legal services, the firm registered as an agent of a foreign principal under the Foreign Agents Registration Act of 1938 (FARA) as well as the Lobbying Disclosure Act of 1995 (LDA) to press the Kuwaiti detainees’ cause on Capitol Hill. Shearman reported \$749,980 in lobbying fees under FARA for one six-month period in 2005 and another \$200,000 under the LDA over a one-year period between 2005 and 2006. Those are the precise time periods when Congress was engaged in intense debates over the Detainee Treatment Act and the Military Commissions Act, legislation that the government of Kuwait and Shearman & Sterling hoped would pave the way for shutting down Guantanamo permanently and setting their clients free.

After my Wall Street Journal piece ran, Shearman reported another \$300,000 dollars in lobbying fees under FARA. In response to my article, the firm’s managing partner, Rohan S. Weerasinghe, denied in a letter to the editor that his firm was lobbying on behalf of the government of Kuwait. I suppose this means that while the nominal clients are the detainees and their families, the interests and motives of the entity footing the millions of dollars in legal and lobbying bills don’t count. This raises more questions. These aren’t ordinary criminal cases. These are cases in which individuals committed to martyring themselves in pursuit of the deaths of thousands of American civilians and U.S. soldiers are agitating through their attorneys for access to the federal courts, as well as for access to classified information. Shearman & Sterling’s reluctance to publicly acknowledge the entity financing this litigation may be nothing more than a high-profile firm being embarrassed that it is making millions of dollars in fees in furtherance of acquiring the release of committed jihadis from U.S. custody while men and women of the U.S. armed services are under fire in Iraq and Afghanistan. I submit that the ordinary rules of confidentiality which pertain to the matter of legal fees are a great problem in these cases. It is not too hard to imagine Al Qaeda’s sympathizers and the terrorist fund-raisers whom the U.S. Treasury Department is trying to apprehend might subsidize these cases in the federal courts and generate more bad press for American and anti-U.S. propaganda while they do it.

To be fair, Shearman & Sterling isn’t the only law firm cashing in. Arnold & Porter, another D.C. firm, also reported \$380,000 in lobbying fees on behalf of the “International Counsel Bureau”—which is nothing more than a P.O. Box in Safat, Kuwait—and “the

Kuwaiti Detainees Committee.” Their FARA registration indicates that they “contacted members of Congress, congressional staffers, and media representatives, in an effort to obtain due process for the Kuwaiti detainees in U.S. custody at Guantanamo Bay.” These lobbying efforts appear to be having a tremendous effect.

Finally, after the first Supreme Court victory in *Rasul*, Shearman said that its representation of detainees had come to a close. The firm of Pillsbury Winthrop Shaw Pittman has picked up where Shearman left off, taking up the cause of the only remaining four Kuwaiti enemy combatants still in custody of the original 12. Pillsbury Winthrop hasn’t registered as lobbyists, but the matter of their fees and who is paying them remains unknown. I suppose they could be working pro bono, but it would be interesting to put the question to them in light of the fees their predecessors earned.

### **Turning the Guantanamo Tide**

Another serious concern that this committee and Congress should consider as it debates the proper forum for the disposition of enemy combatants’ legal rights is the litigation tools that the attorneys will bring to the legal battlefield. In the case of the Kuwaiti detainees, Shearman & Sterling immediately realized that the detainee cases posed a tremendous PR challenge in the wake of September 11. Accordingly, attorney Wilner brought in high-stakes media guru Richard Levick, the head of Levick Strategic Communications to change public perception about the Kuwaiti 12. Mr. Levick, a former attorney whose Washington, D.C.-based “crisis PR” firm has carved out a niche in litigation-related issues, has represented clients as varied as Rosie O’Donnell, Napster, and the Roman Catholic Church. I reported in my Wall Street Journal article that Mr. Levick’s firm is also registered under FARA as an agent of a foreign principal for the “Kuwaiti Detainees Committee,” reporting \$774,000 in fees in a one year period. After publication of my piece, Levick Communications reported an additional \$174,000 as of April, totaling \$846,000 as of April 2006.

After the U.S Supreme Court heard the first consolidated enemy combatant case, the PR campaign went into high gear, Mr. Levick wrote, to “turn the Guantanamo tide.”

In numerous published articles and interviews, Mr. Levick has laid out the essence of the entire Kuwaiti PR campaign. The strategy sought to accomplish two things: put a sympathetic “human face” on the detainees and convince the public that it had a stake in their plight. In other words, the militant Islamists who traveled to Afghanistan to become a part of al Qaeda’s jihad on America had to be reinvented as innocent charity workers swept up in the war after 9/11. The PR firm described one detainee’s membership in the Tablighs as peaceful missionaries comparable to the Mormon missionaries or Peace Corps volunteers. In fact, the Tablighs are fundamentalist missionaries who are known to recruit young Muslim men and deliver them to Al Qaeda or Taliban training camps. Levick’s firm transformed a committed Islamist who admitted firing an AK-47 in a Taliban training camp to a “teacher on vacation” who went to Afghanistan in 2001 “to help refugees.” The member of an Islamist street gang who opened three al-Wafa offices with Suliman Abu Ghaith (Osama Bin Laden’s chief spokesman) to raise al Qaeda funds

became a charity worker whose eight children were left destitute in his absence. All 12 Kuwaitis became the innocent victims of “bounty hunters.”

A Montreal-based marketing firm was hired to create the families’ full-service web site which fed propaganda—unsourced, un rebutted and uninvestigated by the media—aimed at the media all over the world. The website was “optimized,” a term internet marketers use, meaning that the company paid search engines to direct researchers to their site. Put in the words “Guantanamo detainees” or “Kuwaiti detainees” and their website will pop up on the first page, if not at the top of the list. Creating what Mr. Levick calls a “war of pictures,” the site is replete with images meant to appeal to Americans: smiling Kuwaiti families wearing T-shirts and baseball caps, cute children passing out yellow ribbons. They held a so-called public demonstration in London which even the tightly-framed photos can’t hide was nothing more than a handful of family members, staged for the PR campaign and the gullible American press.

After the *Rasul* decision, the PR momentum picked up speed and the Supreme Court became, in Mr. Levick’s words, their “main weapon,” a “cudgel” that forced more attention in what he calls the traditional “liberal” press. Dozens of op-eds by Mr. Wilner and the family group leader (described as a U.S.-trained former Kuwaiti Air Force pilot who cherishes the memory of drinking Coca Cola) were aimed at the public and Congress.

Mr. Levick maintains that a year and a half after they began the campaign, their PR outreach produced literally thousands of news placements and that, eventually, a majority of the top 100 newspapers were editorializing on the detainees’ behalf. Convinced that judges can be influenced by aggressive PR campaigns, Mr. Levick points to rulings in the detainee cases which openly cite news stories that resulted from his team’s media outreach.

As I wrote in the Wall Street Journal, the Kuwaiti 12 case is a primer on the anatomy of a guerilla PR offensive, packaged and sold to the public as a fight for the “rule of law” and “America’s core principles.” Begin with flimsy information, generate stories that are spun from uncorroborated double or triple hearsay uttered by interested parties that are hard to confirm from halfway around the world. Feed the phoned-up stories to friendly media who write credulous reports and emotional human interest features, post them on a Web site where they will then be read and used as sources by other lazy (or busy) media from all over the world. In short, create one giant echo chamber.

One Kuwaiti’s profile, Nijer Naser al-Mutairi, is the most brazen example of Mr. Levick’s confidence that the media can be easily manipulated. The Web site describes him as a member of an apolitical and peaceful sect of missionaries, and that he went to Afghanistan in October of 2000 to “minister in the small mosques and schools” in the country’s poorer regions. In fact, Mr. al-Mutairi participated in the Qala-I-Janga fortress uprising in Afghanistan where 32-year-old CIA paramilitary commando Johnny “Mike” Spann was shot execution style. That is the same uprising in which U.S. and Northern Alliance troops conducted a four-day siege against 536 armed foreign and Taliban



fighters. These were hard-core jihadis who employed a fake-surrender ruse, secreting grenades under their clothes, hanging in their genital area by shoe strings tied around their waist. They allowed themselves to be locked up at the fortress where they knew of a secret Taliban weapons cache. At the end of the siege, Al-Mutairi and the 85 other jihadis still alive were finally smoked out of the basement where they had retreated and where they murdered a Red Cross worker who went in to check on their status. This is the same uprising where Johnny Walker Lindh was captured, the “American Taliban” who is now serving in a federal prison.

Everything Mr. Levick did was in partnership with Tom Wilner and the law firm of Sherman & Sterling. It was their joint litigation-PR plan, with the Guantanamo lawsuits helping the PR messaging and the PR messaging helping the lawsuits. All of this may be legal, but it is hardly ethical.

Shearman & Sterling lawyers aren't hucksters crassly promoting a cheap product; they are sworn officers of the court volunteering to represent alien enemy combatants in a time of war, interjecting themselves in cases that affect how American soldiers on the battlefield do their job. It is one thing to take these cases in order to achieve the proper balance between due process concerns and unprecedented national security issues. It is another to hire PR and marketing consultants to create image makeovers for Al Qaeda financiers, foot soldiers, weapons trainers and bomb makers, all of which is financed by millions of dollars from a foreign country enmeshed in the anti-American, anti-Israel elements of Middle East politics.

As many of you know, but much of the American public does not know, the country of Kuwait is struggling with some of the same political and ideological issues as its neighbor Saudi Arabia. In the 1950s, Kuwait was a center of Palestinian political activism. This is where Yassir Arafat worked after he left university in Egypt to become an engineer, and it is where the Palestinian Liberation Organization had its offices. One area of Kuwait City was known as the West Bank. This is where Khalid Sheikh Mohammed grew up. This is where Suleman Abu Gaith, Osama Bin Laden's chief spokesman and fund raiser is from, and where Al Qaeda today has a strong presence. Kuwait University, where Khalid Sheikh Mohammed's older brothers attended and were members of the Muslim Brotherhood, was the home of the Islamic Association of Palestinian Students. Several of its members became leaders of Hamas.

The Kuwaiti royal family is struggling to tamp down the fundamentalist movement. Similarly to other places in the Middle East, 65% of its population is under 30, with 40% under 16. Osama Bin Laden is an adored, nearly mythical folk hero to these young, under- or unemployed men, many who come from well-to-do or even extremely wealthy Kuwaiti families – or from among the 55% of the Kuwaiti population that is non-Kuwaiti and that has never been fully accepted by the native population. In the media that I read, Kuwaitis expressed surprised that there were only 12 Kuwaitis at Guantanamo. Considering the vast numbers that leave home to join in the jihad, they thought it would have been much higher. Kuwait has a problem.

Indeed, in October of 2001, 20-year-old Marine Lance Cpl. Antonio Sledd was killed and another Marine injured one month after September 11, 2001, when two young Kuwaitis attacked a group of Marines at a US military camp in Kuwait. They attacked a second group of Marines and were shot dead. One of the attacker's brothers told Al Jazeera television that his brother was a committed Islamist.

Although a few mistakes were made when some of the Guantanamo detainees were taken into custody in the fog of war, others were indisputably captured with AK-47s still smoking in their hands. Any one of those who have been properly classified in Combat Status Review Tribunals as an unlawful enemy combatant could be the next Mohamed Atta or Hani Hanjour, who, if captured in the summer of 2001, would have been described by these lawyers as a quiet engineering student from Hamburg and a nice Saudi kid who dreams of learning to fly.

How we deal with alien enemy combatants goes to the essence of the debate between those who see terrorism as a series of criminal acts that should be litigated in the justice system, one attack at a time, and those who see it as a global war where the "criminal paradigm" is no more effective against militant Islamists whose chief tactic is mass murder than indictments would have been in stopping Hitler's march across Europe. Michael Ratner and the lawyers in the Gitmo bar have expressly stated that the habeas corpus lawsuits are a tactic to prevent the U.S. military from doing its job. He has bragged that "The litigation is brutal [for the United States] . . . You can't run an interrogation . . . with attorneys." Of course, that is the objective of the CCR, to stop the interrogations altogether, something they boast that they have achieved.

I do not think Mr. Ratner and his colleagues appreciate the importance of these interrogations. After listening to month after month of testimony in the 9/11 Commission hearings from a long list of members in the US intelligence community, it became patently clear that Al Qaeda and other terrorist organizations are terribly difficult to infiltrate – covert operations take years of patient cultivation. One of the only effective ways to get the kind of quick information necessary to stop terrorist operations today is to capture the enemy and drain him of information. Critics of Guantanamo talk of "lowly foot soldiers," but lowly foot soldiers carry cell phones full of numbers. Lowly foot soldiers take orders from others. They know locations. They can confirm faces and identities. They carry Kalashnikov rifles, RPGs, and are taught how to make bombs.

We may never know how many of the hundreds of repatriated detainees are back in action, fighting the U.S. or our allies thanks to the efforts of the Guantanamo Bay Bar. Approximately 30 former detainees have been confirmed as having returned to the battlefield, 12 of them killed by U.S. forces. Of the eight detainees who were rendered back to Kuwait for review of their cases, all were acquitted in criminal proceedings, including Nijer Naser al-Mutairi, who has given press interviews admitting that he was shot in the November 2001 uprising at Qala-I-Jangi. In their response to my article in the Wall Street Journal, Shearman & Sterling stated that they did not know why this particular client was released and that the government did not tell them. That is a peculiar remark from a firm that has earned millions of dollars trying to acquire their client's

freedom.

Only one released Kuwaiti, Adel al-Zamel, was sent to prison for crimes committed before his work with al-Wafa in Afghanistan. A member of an Islamist gang that stalked, videotaped and savagely beat “adulterers,” he was sentenced to a year in prison in 2000 for attacking a coed sitting in her car. These are some of the men Tom Wilner was talking about when he went on MSNBC and said with a straight face, “My guys . . . loved the United States.”

### **Will Shutting It Down Stop the Bad Press?**

Despite the thousands of media and VIP tours at Gitmo, despite the fact that vast improvements have been made since the detention center opened in January of 2002, the media continues to depict the hooded, goggled, orange jump-suited detainees shackled to the floor with their hands behind their backs. That is the enduring image of Gitmo. Despite the fact that Muslims themselves tell us that Islam forbids suicide, and that only a committed Islamist would take his own life, the tales of suicide due to despair (as opposed to strategic aims) continue to be broadcast. What makes Congress think that the suicide attempts and the hunger strikes will end if these men are transferred elsewhere? Why should we believe that the slick, well-financed PR campaigns against the US will stop once Guantanamo is shut down?

The Guantanamo lawyers have expressly stated that Guantanamo is a “smokescreen,” a diversion from the real action: Bagram and the secret prisons. That is their next fight, Madam Chairwoman, and that is where the media campaign will go next. The lawyers will continue giving interviews in the Arab press, telling Muslims that the U.S government is “warehousing these men until they die,” that detainees, the “ghost prisoners” continue to be tortured, abused and humiliated. One released Saudi detainee told a reporter that he’d been shot three times while at Guantanamo. What makes Congress think that if the detainees are transferred elsewhere, this kind of anti-American propagandizing will stop?

Some of the lawyers who are spearheading this effort held a Guantanamo “teach in” at Seton Hall Law School in October of 2006 that was broadcast via the internet to 100 law schools around the country. Professor Mark Denbeaux hosted the event which, he said, was ultimately about redemption. *Our redemption!* As you know, he is the author of a flawed anecdotal study about detainees’ histories that is based on information that any high-school kid can find on the internet, as opposed to classified intelligence.

At the end of the conference, an attorney from Chicago read a selection of poems written by detainees which were later actually published by a university press. One poem, which was characterized as a “love poem to his lawyer,” was written by a Kuwaiti detainee (now released) and was entitled, “To My Captive Lawyer, Miranda.” This is an enemy combatant making a fool out of his attorney, even mocking the legal rights that the lawyer is working to extend to the detainee. The poem describes getting out of

Guantanamo and taking his lawyer captive in the night. “I pledge that if I ever see you outside this prison, I will capture you.”

Another poem, called “Death Poem,” was written by a Bahraini detainee named Juma Al Dossari. The law students at Seton Hall were not told that Al Dossari was the subject of a PBS documentary about the Lackawanna Six. Juma Al Dossari was dubbed “The Closer” because he was a jihadi recruiter who was very good at getting young Muslims to leave their homes and join the fight. The peaceful elder Muslims in Lackawanna, New York are deeply angry with Al Dossari because they invited him into their homes and welcomed him as a visiting imam, after which he persuaded six of their sons to go to terrorist training camps in Afghanistan. The six are now serving time in federal prison. Al Dossari, who is actually Saudi but whose passport was revoked by the Saudi government, was released from Guantanamo, to the dismay of the Muslim community in Lackawanna.

In 2005 I sat in the courtroom listening to a court-appointed federal defender make his closing argument in the Zacarias Moussaoui case. Moussaoui had pled guilty to six counts of conspiracy and was facing sentencing. The jury had just sat through two weeks of victim impact testimony and evidence. They listened to the cockpit voice recorder on United Airlines flight 93, in which a flight attendant, pushed into the cockpit when the hijackers took over the plane, and after witnessing the horrific murder of the cockpit crew, can be heard begging, pleading for her life. The jury was shown videotape of desperate people jumping from the Trade Center and hitting the ground below.

The defense attorney then had the audacity to tell these jurors that this trial wasn’t really about Moussaoui at all. It was about them. *Redemption*. They actually projected a giant photograph on an overhead screen in the courtroom of Martin Luther King.

Mr. Denbeaux closed the Guantanamo teach-in by saying, “Five years after the fury and the fear first started, we are now back.” This is deeply disturbing. The only fury and fear is that which came from determined, death-worshiping religious fanatics who believe that their ticket to paradise can be bought through the blood of innocent men, women, and children, and who wreaked havoc on a country that had welcomed them.

In closing, allow me to remind this committee of who is being hurt by the propaganda campaign that is being mounted by the lawyers and the PR firms on behalf of the Guantanamo detainees. What is significant about this episode cannot be found in Kuwaitee-funded PR campaigns, at law-school teach ins, in defense lawyers’ arguments – and especially not in detainee poetry. Rather, it is found in letters like one that I received from a Chicago lawyer after my column ran in the Wall Street Journal. Here is what this letter said:

Dear Ms. Burlingame:

Bless you for putting the considerable time and effort to dig out the real story behind so many of the detainee “victims” . . .

My personal interest in your article is that I have a son in the US Navy who serves at Guantanamo. Though not stated explicitly, I can hear in his voice and infer through his written words how hurtful and harmful these media creations are to those who serve.

If this Congress votes to shut down Guantanamo, it will not shut down this problem. The government of Kuwait and others funding the campaign against Guantanamo are not interested in where the detainees are held. They want them released, regardless of how guilty they are or how likely they are to return to combat against the United States. Transferring detainees to the United States will not stop this campaign. Indeed, by extending further legal rights to the detainees, such a transfer would only give the lawyers more access to their clients and more tools with which to wage this legal and PR offensive against the United States. And it is our own nation's security and our own soldiers in the field who will suffer as a result.