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THE NEW NAME OF

LAWYERS COMMITTEE FOR HUMAN RIGHTS

July 2, 2004

Brigadier General Thomas L. Hemingway  
Legal Advisor to the Appointing Authority  
Office of Military Commissions  
Department of Defense  
Office of General Counsel  
1600 Defense Pentagon  
Washington, D.C. 20301-1600

Dear General Hemingway:

I write to follow up on our previous correspondence regarding Human Rights First's request for access to observe proposed military commission trials at the U.S. Naval Base at Guantanamo Bay.

We welcomed the Defense Department's recent announcements that it would open the trials to the press and some representatives of the public (including, as we now understand, members of the international human rights community); we look forward to an opportunity to be present at the trials as observers. In light of the substantial, global interest that commission proceedings will attract, however, we remain concerned that the limited availability of seats and the remoteness of commission proceedings leave the trials generally inaccessible to the public.

Accordingly, we urge you to reconsider allowing television broadcasts of the trials (currently prohibited by Military Commission Order No. 1). Permitting television broadcasts would enhance the perceived legitimacy of the military commission proceedings, and could do so without jeopardizing the valid security interests either of trial participants or of the nation.

Authorizing the attendance by human rights groups and other members of civil society at the commission trials is an important step in the Administration's effort to reassure the American people and the international community that the military commissions will be "full and fair." We believe that allowing the trials to be broadcast would be a further demonstration of the Administration's confidence in the proceedings. Because Guantanamo is largely inaccessible, it will be extremely difficult for interested U.S. citizens to attend. Representatives from the public in foreign nations with an important interest in the outcome of the trials will likely have no access at all. A television feed would provide a surrogate form of public access. Moreover, because the Defense

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Department has already announced that there will be a camera in the courtroom for the purpose of closed-circuit transmission, allowing the proceedings to be broadcast would require no additional physical intrusions in the courtroom.

Experience has taught that broadcasts help to create a more complete and accurate picture of the proceedings than can be achieved through written reports from journalists and other observers alone. The report of the New York State Committee on Audio-Visual Coverage of Court Proceedings in May 1994 found that “reporting on court proceedings, both by newspaper and broadcast reporters, frequently is more accurate and comprehensive when cameras are present.” All 50 states have now authorized some form of TV coverage in their courts – a testament to the public interest cameras can serve without threatening the integrity of judicial proceedings. History has shown the enormous educational value of radio or television broadcast of landmark criminal trials of international significance, such as the Nuremberg trials of 1946-47, and the trial of Adolf Eichmann in 1961, the first use of television for such purpose. This wise practice continues today with live audio and web-based video coverage of important proceedings in the International Criminal Tribunal for the Former Yugoslavia (ICTY), of which the U.S. is a principal supporter.

As you may know, just yesterday, the *Wall Street Journal* published an editorial making many of these same points. Noting the important contribution of the “invaluable historical record” from the Nuremberg and Eichmann trials in “rendering Holocaust denial a disreputable practice to this day,” the *Journal* strongly urged “that any forthcoming military commissions be televised, both to educate the public about the dangers of al Qaeda and demonstrate to the world that the process is indeed fair.” (A copy of the *Wall Street Journal* editorial is attached.)

Human Rights First takes seriously the legitimate national security interests in protecting sensitive information that may be involved in military commission trials. We believe these interests can be accommodated while still allowing television broadcast. First, the security of all participants in the trial, including commission members, lawyers, witnesses, and defendants, is of utmost importance. Accordingly, if the identities of witnesses need to be protected, their faces could be obscured and their speech altered to make identification impossible. (The ICTY uses this method in its trials.) A related concern is of course the physical security of the courtroom facility itself. Judge Brinkema noted this concern in her ruling prohibiting cameras in the trial of Zacarias Moussaoui. In the case of the Guantanamo trials, however, the danger of a possible attack on the courtroom seems remote given the security provided by the presence of 2000 servicemembers posted to the Joint Task Force.

Finally, the secrecy of classified information must be preserved. We believe that whatever steps may need to be taken to account for the presence of journalists and other non-governmental observers in the courtroom will likewise ensure appropriate secrecy with respect to television broadcasts. For example, the presence of representatives of the public may already require some limited portions of the trials to be closed in the event that there is no other alternative for protecting national security interests. But broadcasting the proceedings on television will not materially alter the risk that sensitive national security information may be exposed. The slight risk that sensitive information might be inadvertently or unexpectedly revealed could be addressed by a slight time delay in the transmission.

We welcome the commitment of the Department to provide the media and human rights organizations access to the military commission proceedings. Beyond this, however, we believe that permitting television

broadcasts would further advance the goal expressed in Military Commission Order No.1 of opening the proceedings “to the maximum extent practicable,” and would enhance the legitimacy of the proceedings in the eyes of the nation and of the world.

Human Rights First appreciates your consideration of this important issue. We look forward to hearing your response to this request at your earliest convenience.

Sincerely,

Elisa Massimino  
Washington Director

Cc: William Haynes  
Major General John D. Altenburg, Jr.  
Lt. Colonel John Hall