

April 26, 2007

The Honorable Allen Weinstein
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue N.W.
Washington, D.C. 20408

Via facsimile

Dear Dr. Weinstein,

It has come to our attention that the “Amended Protective Order And Procedures For Counsel Access To Detainees At The United States Naval Base In Guantanamo Bay, Cuba,” In re Guantanamo Detainee Cases, Nos. 02-CV-0299, et al., Slip op. at ¶ 45 (D.D.C. Nov. 8, 2004), permits counsel for the government to retain one complete set of “materials that were presented in any form to the Court.” The Protective Order also states that “[i]n any subsequent or collateral proceeding, a party may seek discovery of such materials from the government, without prejudice to the government’s right to oppose such discovery or its ability to dispose of the materials pursuant to its general document retention policies.” Id. Yet, the Protective Order only states that, “counsel for the government may retain one complete set of any such materials” Id. (emphasis added)

We are concerned that the Court’s order could be interpreted to authorize or direct destruction of government records that should be permanently preserved, such as the Combatant Status Review Tribunal record and the interview notes. The court’s order is permissive, allowing the government to retain a set; as you know, federal statutory records retention requirements mandate retention by the government of a set of the records. Further, the government and the public would be best served by the permanent retention of the materials.

Accordingly, we are writing to urge you to ensure that one complete set is retained by the government. Further, given the secretive nature of the process for counsel access to and the tribunals on detainees, we urge you to work with the Attorney General to ensure that any such record sets are preserved permanently.

Additionally, we are requesting information from the National Archives on the following concerns:

- How these kinds of records sets are handled by the Department of Justice and the National Archives?
- What are the records schedules for such records as sets?
- When would such materials come to NARA for permanent preservation?
- What the process and timeframes would be for the declassification of the classified materials and disclosure of “protected information” that is not classified?

In regard to the court records, we request information on the following concerns:

- What record schedule would govern those records?

- Would the Justice Dept. set be identical to the court record? If not, how would they differ?
- Is there any difference in public access to court v. executive branch records with respect to declassification?

We will appreciate your earliest response. Please contact Patrice McDermott, Director of OpenTheGovernment.org (202-332-6736), or Meredith Fuchs, General Counsel to the National Security Archive (202-994-7059) if you have any questions.

Thank you.

Sincerely,

Mary Alice Baish, Associate Washington
Affairs Representative
American Association of Law Libraries

Christopher Finan, President
**American Booksellers Foundation for
Free Expression**

Arnita Jones, Executive Director
American Historical Association

Gilbert Bailon, President
American Society of Newspaper Editors

Richard Karpel, Executive Director
Association of Alternative Newsweeklies

Ronald A. Bosco, President
The Association for Documentary Editing

Nancy Talanian, Director
Bill of Rights Defense Committee

Elisa Massimino, Washington Director
Human Rights First

Keith Robinson, Interim President
Indiana Coalition for Open Government

Joan E. Bertin, Esq., Executive Director
National Coalition Against Censorship

Lee White, Executive Director
National Coalition for History

Meredith Fuchs, General Counsel
National Security Archive

Sibel Edmonds, Executive Director
**National Security Whistleblowers
Coalition**

Carol Wickersham, Coordinator
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Morton H. Halperin, Executive Director
Open Society Policy Center

Patrice McDermott, Director
OpenTheGovernment.org

Rev. Katherine Hancock Ragsdale,
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Lucy Dalglish, Executive Director
**Reporters Committee for Freedom of the
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Christine Tatum, President
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Edward Hammond, Director
The Sunshine Project

Kenneth J. Hirsh, President.
**Southeastern Chapter of the American
Association of Law Libraries, Inc
(SEAALL)**

Paul Magno
**Torture Abolition and Survivors
Support Coalition International**