

Statement of the Association of the Bar of the City of New York
With Respect to Release or Transfer of Detainees at
Guantanamo Bay Naval Station

January 14, 2005

The Association of the Bar of the City of New York takes note of press reports suggesting that the United States intends to "release or transfer hundreds of prisoners" from facilities now maintained at Guantanamo Bay Naval Station, Cuba. To the extent the United States proposes to release or transfer prisoners into the hands of other sovereign nations, the Association notes that such action is subject to applicable United States law and policy, and in particular to the limitations contained in article 3 of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and the statement of policy in the Foreign Affairs Reform and Restructuring Act of 1998.¹

Detainees should not be released or transferred to other sovereigns without affording detainees an opportunity to challenge any rendition to a power which has a reputation for torture and as to which the detainee can credibly assert the fear that he will be subject to torture. Association President Bettina Plevan stated "Press accounts over the past two years detail a remarkable number of cases in which U.S. Government agents appear to have turned detainees over to Governments with a reputation for torture in circumvention of the laws which limit or preclude this practice. While the U.S. Government has the right to modify its logistical arrangements on Guantanamo and to move detainees to other locations in its custody, its right to render these detainees to other nations is subject to the limitations of U.S. and international law governing renditions."

For a fuller expression of the basis for its concerns, the Association refers to its report, "Torture by Proxy: International and Domestic Law Applicable to 'Extraordinary Renditions'" which may be found on the Association's website, www.abcnny.org.

¹ "It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States." Pub. L. No. 105-277, sec. 2242(a).