

## Three Prosecutors Reassigned After Protesting Rigged Guantanamo Trials

By Hans Sherrer

At least three military prosecutors have been relieved as prosecutors of Guantanamo Bay detainees after they expressed concerns to superiors that the trial process was rigged to ensure convictions.

The revelations are in emails turned over in late July 2005 to defense lawyers for detainees by a whistleblower, Air Force Colonel Will Gunn. Gunn had access to the emails because he was the retiring head of the Defense Department's office that provides legal counsel to individuals charged under the military commission (tribunal) system authorized by President Bush in 2001. The Defense Department has confirmed the authenticity of the emails.

One of the prosecutors, Air Force Major Robert Preston, who was nominated for the Air Forces' outstanding judge advocate award in 2004, wrote to his superior:

"I consider the insistence on pressing ahead with cases that would be mar-

ginal even if properly prepared to be a severe threat to the reputation of the military justice system and even a fraud on the American people."<sup>1</sup>

He also wrote, "Surely they don't expect that this fairly half-assed effort is all that we have been able to put together after all this time." In relaying to his superior that he found it intolerable to work in a situation that he found professionally, ethically and morally reprehensible, Maj. Preston wrote, "I lie awake worrying about this every night. I find it almost impossible to focus on my part of the mission. After all, writing a motion saying that the process will be full and fair when you don't really believe it is kind of hard, particularly when you want to call yourself an officer and lawyer."<sup>2</sup>

Less than a month after writing the March 15, 2004, email, Maj. Preston was transferred, and he is currently an instructor at the Air Force Judge Advocate General's School at Maxwell Air Force Base in Montgomery, Alabama.

A second prosecutor, Air Force Captain John Carr, wrote to his superior:

"When I volunteered to assist with this process and was assigned to this of-

**Guantanamo cont. on page 37**

## In Time of War: Hitler's Terrorism Attack on America

By Pierce O'Donnell

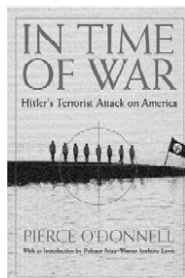
The New Press, 2005, 449 pgs (hardcover)

Review by Hans Sherrer

Books are worth reading for various reasons. Some because they are humorous, others because they are gripping dramas, still others because they have useful self-help information.

*In Time of War* is worth reading because it is important: It puts the extra-legal treatment of people captured and designated by the United States as "enemy combatants" since 2001 in historical perspective, by casting light on the similar proceedings used in 1942 to railroad the conviction of eight alleged German saboteurs.

In mid-June 1942 eight men, six German citizens and two U.S. citizens of German descent, were transported to the U.S. in a German U-boat. They were all arrested



within two weeks after their leader informed the FBI they were allegedly planning acts of sabotage in the United States.

Five days after the last man's arrest on June 27, President Roosevelt issued Proclamation 2561: "Denying Certain

Enemies Access to the Courts of the United States." O'Donnell writes:

"Under the decree, the Germans "shall be subject to the law of war and to the jurisdiction of military tribunals" and would not be "privileged" to seek relief from confinement in any court by means of a writ of habeas corpus or any other judicial remedy."

"[U.S. Attorney General Frances] Biddle had recommended that the president close the civil courts to enemy saboteurs as a class rather than naming the specific [eight] defendants. Curiously, he advised the president that this phrasing of his proclamation would have the effect of denying these Germans access to the courts *without suspending habeas corpus*." (p. 129)

**In Time continued on page 29**

## Ex-Guantanamo Prisoner Acquitted of Terrorism Charges

By JD Staff

Nasser al-Mutairi was imprisoned for three years without charges by the United States military at Guantanamo Bay, Cuba. The U.S. claimed al-Mutairi, a Kuwaiti citizen, was an alleged terrorist who worked with the Taliban "as a kind of mediator." Al-Mutairi denied the accusation.

After being in U.S. custody since his capture in Afghanistan in late 2001, al-Mutairi was released from Gitmo and sent to Kuwait in January 2005. He was arrested upon his arrival in Kuwait and charged with terrorism related crimes. After being in custody for three months, Al-Mutairi was released on bail by Kuwait's Criminal Court released on April 14, 2005. His trial began shortly thereafter.

Al-Mutairi's lawyer, Mubarak al-Shimmiri, made a pretrial challenge to the jurisdiction of a Kuwaiti court to try al-Mutairi for what he was accused of: Joining foreign military forces without permission; harming Kuwait by serving the interest of a "foreign country;" and undergoing illegal weapons training. Al-Shimmiri unsuccessfully argued that the charges should be dismissed because none of al-Mutairi's alleged acts occurred in Kuwait, and they weren't considered crimes in Afghanistan when they were allegedly committed.

Al-Mutairi is a devout Muslim, and at trial his defense was he went to Afghanistan in 2000 for humanitarian work – long before the United States' invasion of that country in the fall of 2001. He also claimed that he did not work with or aid any of the forces fighting in Afghanistan. Al-Mutairi asserted that the U.S. military manufactured alleged "interrogation records" that he admitted working on the front line of fighting in Afghanistan. Prior to al-Mutairi's release into Kuwaiti custody for prosecution, that interrogation "evidence" was used by military prosecutors before a military panel to justify al-Mutairi's continued indefinite imprisonment.

The charges against al-Mutairi were based on the U.S. military's interrogation records. However, there was no independent corroboration of his alleged incriminating admissions. Most particularly, there were no witnesses who confirmed his alleged involvement with fighting in Afghanistan.

On June 29, 2005, al-Mutairi was acquitted of all the charges. His lawyer, al-Shimmiri, said

**Ex-Gitmo cont. on page 30**

## In Time cont. from page 29

rorism (66 Fed. Reg. 57,833). Just as the purpose of Roosevelt's proclamation was to circumvent fundamental due process principles of American and military law to ensure that defendants prosecuted under it would be convicted, substantial evidence has come to light since O'Donnell's book was published in June 2005, that Bush's order is intended to serve the same purpose. (See, Guantanamo Trials Rigged – Claim Three Prosecutors, on page 14 of this issue of *Justice:Denied*.) Quite frankly, the only reason to deny a person the ability to effectively defend him or herself is to ensure the person's conviction.

In 1942, defense attorney Royall considered the entire military tribunal process to be "an undeclared war on the rule of law." (p. 149) O'Donnell thinks we are experiencing the same thing today. However he is hopeful the eventual result will be different, and "that the federal judiciary will eventually force the total dismantling of President Bush's "black hole" at Guantanamo Bay. In its place the United States should resort to the highly regarded Uniform Code of Military Justice. Then – and only then will America be able to begin to reclaim its leadership role as a champion of human rights and the rule of law." (p. 365)

*In Time of War* is a very readable book written to be clearly understandable by lay people interested in history and current events, as well as readers curious about the legal cases it discusses. Befitting O'Donnell's status as a distinguished lawyer, the book is replete with many hundreds of footnotes for people wanting to verify his sources or who want to do further research.

*In Time of War* is available for purchase from *Justice:Denied's* Innocents Bookshop at <http://justicedenied.org/books.htm>.

### Endnotes:

1. *Saboteurs: The Nazi Raid on America*, Michael Dobbs (Vintage 2004). *Saboteurs* focuses on the details of the events surrounding the eight men prior to and after their entry into the U.S., and what happened to the two who weren't executed.)

2. *Id.*

3. *Id.* at 264-265.



## Ex-Gitmo cont. from page 14

after his trial, "He was acquitted because nothing could be proven against him."

As of the summer of 2005, eleven Kuwaitis remain imprisoned indefinitely without charges at Guantanamo Bay.

Source: Ex-Gitmo Inmate Acquitted of All Charges, Diana Elias, *Associated Press*, June 29, 2005. Ex-Guantanamo prisoner didn't know of 9/11, *China Daily*, April 15, 2004.



## Wenatchee cont. From page 12

and extensive "sex-ring." Perez was provided critical aid by the Washington Department of Human Services — which duly removed the children of accused and convicted parents from their home. Local prosecutors also aided Perez by uncritically examining the evidence of alleged child abuse by dozens of people prior to pursuing criminal charges against those people.

In 1998 the *Seattle Post-Intelligencer* published a week-long series of 12 articles about the cases titled "The Power to Harm." The articles documented that the abuse that occurred in Wenatchee wasn't by the accused parents against their own and other children - but by the city of Wenatchee and Chelan and Douglas counties in prosecuting the people for fictitious crimes, with the support of the Washington DHS. The articles had titles that included, "With every step, rights were trampled," "Lies, lies and more lies," says jailed man," "Lives ruined because lessons ignored." "The Power to Harm" series can be read on the *Post-Intelligencer's* website at, <http://seattlepi.com>.

Throughout the years from the first arrests through the appeals of convictions, city, county and state authorities defended their actions as appropriate, even as the insubstantial legal basis for the prosecutions was publicly laid bare.

Five of the defendants served the full-term of their sentence, several were released after their convictions were vacated, and several others who didn't want to sit in prison for the years that their appeal might last, agreed to plead guilty to a lesser charge in exchange for their immediate release. The last "sex-ring" defendant was released in December 2000 after his conviction was reversed. He had been wrongly imprisoned for six years.

In 1998 members of three families that had either been acquitted or had "sex-ring" charges dismissed, filed a \$20 million lawsuit in state court seeking compensation related to having been falsely accused of being serial child abusers and rapists. Two of the acquitted defendants who sued were Reverend Robert Roberson and his wife Connie. The Roberson's were targeted for their wrongful prosecution after they publicly questioned the truthfulness of the charges filed against the alleged "sex-ring" members, many of whom attended their East Wenatchee church.

In addition to the city of Wenatchee and Chelan County, the suit named Wenatchee Det. Bob Perez and police Chief Ken Badgley as defendants. Prior to the trial held in

Seattle in 1998, the judge ordered the removal of Perez and Badgley as defendants, and Wenatchee didn't provide the plaintiffs with Perez's employment records. The plaintiffs lost at trial and appealed on multiple grounds, including that the judge erred by removing Perez and Badgley as defendants, and that Wenatchee had improperly withheld Perez's employment records.

In November 2002 Spokane County Superior Court Judge Michael Donohue ruled that Perez and Badgley had been improperly removed as defendants, and that Wenatchee had deliberately withheld Perez's employment records from the plaintiffs and the trial court. The judge also ruled that since those records were key evidence that Wenatchee knew could have changed the trial's outcome, he ordered the city to pay a fine of \$718,000.

It is now known why Wenatchee didn't want to disclose Perez's employment records: "they show he was suffering from a serious mental disability at the time he conducted the investigations." <sup>1</sup> Perez's employment file also documents that at the time he was involved in the "sex-ring" investigations, "police officials expressed concerns about Perez's fitness for duty." <sup>2</sup>

In August 2005 the state Court of Appeals upheld Judge Donohue's decision, and in September 2005 the Washington Supreme Court declined to review the decision.

After the Supreme Court announced it was letting the lower court decision stand, Tyler Firkins, one of the plaintiff's attorneys said, "They are really excited about the possibility to get some justice." <sup>3</sup>

Wenatchee's lawyer, Patrick McMahan, said, "We're exploring what our options are." <sup>4</sup>

The case will now be scheduled for a retrial with Perez and Badgley as defendants, and Perez's employment records as evidence. Unless a settlement can be agreed to, the case will be retried with the jury's exposure to Perez's unfavorable employment records, and intense questioning of Perez and Badgley about presently undisclosed details about how and why the "sex-ring" investigations spun out of control instead of being shelved before the first person was prosecuted.

### Endnotes and sources:

1. High Court Declines To Consider Judgment Against The City of Wenatchee, AP, *Seattle Post-Intelligencer*, September 10, 2005.

2. *Id.*

3. Sex-ring ruling may cost Wenatchee \$1 million, Mike Barber, *Seattle Post-Intelligencer*, September 10, 2005, p. B1, B4.

4. *Id.*

