

## Is America being fair to Guantanamo detainees?

FRANK P. HARVEY

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"Critics of the Guantanamo tribunals have expressed serious reservations about the overwhelming power imbalance in favour of the prosecution in military-commission cases," security expert Frank P. Harvey argued Saturday in his Globe essay *A silver lining for Guantanamo detainees*

"The trials, skeptics maintain, are so predetermined as to be shams masquerading as military justice.

"Yet the U.S. government has been on the losing side of an increasing collection of judicial rulings, successful defence motions, appeals and precedent-setting Supreme Court decisions. "A silver lining seems to be emerging from the Guantanamo cloud . . .

"As 'unlawful enemy combatants,' detainees at Guantanamo are denied some of the most basic rights and privileges afforded other defendants under U.S. civilian or military criminal law.

"Most of them have spent years in detention without access to legal counsel; many are still unaware of the charges against them; very few have been given an opportunity to face their accusers or see (let alone challenge) the government's evidence; none of them were protected from supplying self-incriminating evidence; most experienced coercive interrogation; and several suffered cruel, inhuman and degrading treatment (the defining traits of torture). Involuntary confessions make up a substantial portion of the evidence against them . . .

But Prof. Harvey, who has been an observer at some of these hearings, notes that there have been several very important victories recently for the detainees.

"On Thursday, the U.S. Supreme Court ruled that the Constitution does apply to detainees at Guantanamo. They now have the right to challenge their detention in regular U.S. courts. "The writ of habeas corpus is a mandate to bring prisoners to trial quickly, to establish a justification for their imprisonment. The Military Commissions Act suspended habeas corpus, but the Supreme Court has re-established it for Guantanamo detainees.

"The decision has important implications for the entire military commission process and may be the most significant victory for defence teams so far. Habeas corpus applications in the ordinary courts may do more to reorient the military-commission process — or possibly short-circuit it altogether."

Whether you agree or not, it's a provocative thesis, so we are pleased that Prof. Harvey will be online today (Tuesday) from 1-2 p.m. ET to take your questions on his essay and on the overall situation for Guantanamo detainees.

Frank Harvey, international relations professor at Dalhousie University, is the author of the forthcoming book *The Homeland Security Dilemma: Fear, Failure and the Future of American Insecurity*.

His other books include *Smoke and Mirrors: Globalized Terrorism and the Illusion of Multilateral Security* (University of Toronto Press, 2004), which was shortlisted for the 2004/2005 Donner Book Prize; *Millennial Reflections on International Studies* (co-edited with Michael Brecher, University of Michigan Press, 2002), *Using Force to Prevent Ethnic Violence: An Evaluation of*

*Theory and Evidence* (with David Carment, Praeger, 2001), *The International Politics of Quebec Secession: State Making and State Breaking in North America* (co-edited with John Stack and David Carment, Greenwood Press, 2000), *Information Warfare and Security Policy* (co-edited with Ann Griffiths, 1999), *Conflict in World Politics: Advances in the Study of Crisis, War and Peace* (with Ben Mor, Macmillan Press, 1998), and *The Future's Back: Nuclear Rivalry, Deterrence Theory and Crisis Stability after The Cold War* (McGill-Queen's, 1997).