

## Background Information

# The US experience: exceeding legal boundaries in countering terrorism

## **Introduction**

Following the 9/11 attacks the US established a so called enhanced interrogation program approved by the highest levels of the Bush Administration, which led to US officials committing torture in a number of overseas detention facilities. Although President Obama ended the program, no prosecutions or any form of accountability for the crimes was undertaken in the US. With President-elect Donald Trump about to take office in the White House there is now a real danger that we will see a return of torture.

In France, the European Center for Constitutional and Human Rights (ECCHR) and the Center for Constitutional Rights (CCR) from New York are working on the ongoing investigation into the torture of French citizens in Guantanamo Bay Detention Center. Last year a summons was issued against former Guantanamo Commander Geoffrey Miller for March 2016, the first move of its kind anywhere in the world. Further investigative steps have now been applied for by William Bourdon, the lawyer acting in this case.

ECCHR and CCR, together with the FIDH, are now bringing some of the most high-profile and outspoken critics of the US torture program to Paris for a number of expert talks and a public event.

## **The Case**

French Court (Cour d'Appel de Paris - Tribunal de Grande Instance de Paris)  
investigation of US Torture

In November 2002, ECCHR cooperating lawyer William Bourdon together with the families of two former Guantánamo detainees Nizar Sassi and Mourad Benchellali lodged a criminal complaint based on claims of torture, abuse and arbitrary detention. Since then, French authorities have been investigating the US torture program.

In February 2014, CCR and ECCHR submitted an expert report in the case, detailing former Guantánamo Commander Geoffrey Miller's individual criminal responsibility for prisoner abuse at the detention facility amounting to torture under international law. The parties requested that Miller be questioned as a suspect in the investigation proceedings. ECCHR and the CCR also submitted documents explaining Miller's role, while commander of Guantánamo, in the overall command structure within the United States government. The organizations added background information on the torture program and the implementation of interrogation techniques at Guantánamo that violate international law, based on the findings of the 2008 Senate Armed Services Committee report on detainee torture and abuse. On 1 March 2016, Miller was a no-show in a French court. He had been summoned to answer

questions stemming from accusations that he oversaw the torture of three French nationals at Guantánamo prison.

On 12 October 2016, ECCHR and CCR requested to subpoena William “Jim” Haynes, the former General Counsel for the U.S. Department of Defense (DOD) during the George W. Bush administration. Haynes was DOD’s General Counsel from 2001-2008 and worked closely with former Secretary of Defense Donald Rumsfeld during his tenure. The parties request that Investigative Judge of the High Court of Paris (Cour d’Appel de Paris - Tribunal de Grande Instance de Paris) question Haynes on his role in the torture and other serious mistreatment of the former detainees. The CCR and ECCHR detail Haynes’ responsibility for torture and war crimes related to detainee treatment in a 26-page expert report.

*See below for links to relevant information.*

## **Participants**

GUANTÁNAMO SURVIVORS

### **Mourad Benchellali**

Mourad Benchellali is a French citizen who was detained for two and a half years at Guantánamo Bay between 2002 and 2004. His accounts of the torture he was subjected to there were [published in the New York Times](#) and in his book [Voyage vers l'enfer](#). He now regularly meets with young audiences in France, Belgium, Switzerland and further afield to speak of the dangers of radicalization. He is one of the petitioners in the criminal proceedings currently before French courts seeking accountability for US torture.

### **Nizar Sassi**

Nizar Sassi is a French citizen who was detained for two and a half years at Guantánamo Bay between 2002 and 2004. His accounts of the torture he was subjected to there were published in his book [Prisonnier 325, camp Delta](#). He is one of the petitioners in the criminal proceedings currently before French courts seeking accountability for US torture.

## EXPERTS

### **Lawrence Wilkerson**

Lawrence Wilkerson served as Chief of Staff to Secretary of State Colin Powell from 2002 to 2005. In high level meetings at the State Department Wilkerson learnt about the chaotic handling of Guantánamo as it became clear that most of the hundreds of detainees held there had no links whatsoever to al-Qaeda. When the photos of detainee abuse at Abu Ghraib were published, Powell asked Wilkerson to investigate. Wilkerson found that the abuse was part of a much broader, White House approved program of detainee torture and abuse involving the military and the CIA. Since leaving office Wilkerson has been an outspoken critic of the roles played by Secretary of Defense Donald Rumsfeld and Vice President Dick Cheney in this torture program.

See e.g. Vice News, [The Bush Administration Whistleblower Who Says the US Has Not Closed the Door on Torture](#), January 30, 2015.

### **Mark Fallon**

Mark Fallon served for almost 30 years as a special agent with the Naval Criminal Investigative Service (NCIS) where he worked on several high-profile counterterrorism investigations, including as commander of the investigation into the bombing of the USS Cole. In 2002 he was appointed Deputy Commander of the Criminal Investigation Task Force (CITF), a new Department of Defense task force created after 9/11 to prepare criminal cases against suspected terrorists. He travelled frequently to Guantánamo to oversee the Task Force's operations, and learned of the abusive "enhanced interrogation techniques" that were starting to be used by military interrogators there. He and his agents had access to the interrogation logs kept by the military at Guantánamo, which revealed for instance how one detainee, Mohammad al Qahtani, had been subjected to various forms of humiliation and abuse, and had almost died of hypothermia. Fallon also learned about the process by which these techniques had been secretly approved, and the close involvement of senior White House officials. When he tried to oppose the use of abusive interrogation techniques, warning Guantánamo Commander Geoffrey Miller that they were illegal, he and his team were excluded from the decision making process. You can read his account of that time here: [http://www.columbia.edu/cu/libraries/inside/ccoh\\_assets/ccoh\\_10143337\\_transcript.pdf](http://www.columbia.edu/cu/libraries/inside/ccoh_assets/ccoh_10143337_transcript.pdf). His experiences at Guantánamo are also described in his book [Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US Government Conspired to Torture](#), due to be published in spring 2017.

## **Janis Karpinski**

Janis Karpinski was Commander of the 800th Military Brigade, in charge of all detention centers in southern and central Iraq, including Abu Ghraib, from 2003-2005. She was demoted in early 2005 in the wake of the Abu Ghraib abuse scandal – while those further up the chain of command avoided punishment. In 2003 Guantánamo General Geoffrey Miller visited her in Iraq after being sent by the Pentagon to “Gitmoize” operations in Iraq by introducing the abusive interrogation techniques in use at Guantánamo, including by directing interrogators in Iraq to treat detainees like dogs. Karpinski has provided testimony for a 2006 criminal complaint against Donald Rumsfeld filed in Germany in 2006, detailing how Rumsfeld had approved and urged the use of “enhanced” interrogation techniques and gave orders to hide some detainees from the International Red Cross, in breach of international law.

Read more: her [testimony](#) (in German) presented to German prosecutors, based on [an interview with Democracy Now](#).

## LAWYERS

### **Wolfgang Kaleck**

[Wolfgang Kaleck](#) is General Secretary and founder of the European Center for Constitutional and Human Rights (ECCHR) in Berlin. Since 2004 he pursues criminal proceedings against members of the US military, including former Secretary of Defense Donald Rumsfeld, in Germany, France, Switzerland and Spain. This followed his work as a criminal defense lawyer in Germany and his involvement with the Coalition against Impunity fighting to hold Argentinian military officials accountable for crimes committed during the Argentinian dictatorship. He is currently part of the legal team representing Edward Snowden in Europe. His book [Double Standards: International Criminal Law and the West](#) was published in 2015. In 2014 he was awarded the Hermann Kersten prize by the German PEN Centre for his “tenacious and intrepid commitment for the victims of state and non-state violence”.

### **Katherine Gallagher**

[Katherine Gallagher](#) is a Senior Staff Attorney at the Center for Constitutional Rights. She works on universal jurisdiction and international criminal law cases involving U.S. and foreign officials and torture and other war crimes, and cases involving private military corporations and torture at Abu Ghraib. She has been a Vice-President on the International Board of the International Federation for Human Rights (FIDH) from 2010 to 2016, is a member of the Editorial Committee of the Journal for International Criminal Justice, and is an adjunct professor of law at the City University of New York (CUNY) School of Law. In addition to her court admissions in the United States,

Katherine Gallagher is admitted to the list of counsel at the International Criminal Court.

### **William Bourdon**

[William Bourdon](#) is a founding partner of the Paris law firm [Bourdon & Forestier](#). He practices primarily in the area of criminal law, including economic criminal law, as well as communications law, especially press and publishing laws. He is also involved in high-profile civil and commercial litigation, often with an international dimension, as well as in inheritance matters. He has also pleaded before the International Criminal Court and International Criminal Tribunal for the former Yugoslavia. He is President and Founder of Sherpa, an organisation set up in 2001 to protect and defend victims of economic crimes. He is also part of the legal team representing Edward Snowden in Europe. He represents Guantanamo survivors Nizar Sassi and Mourad Benchellali in the French proceedings concerning U.S. torture.

### **Clémence Bectarte**

Clémence Bectarte was called to the Paris bar in 2005. She is specialized in criminal law, international human rights law and international humanitarian law. After three years in a law firm with a focus on criminal law, she joined FIDH where she was responsible for the monitoring office for the protection of human rights defenders. Since 2008 she coordinates – together with Patrick Baudoin – FIDH's legal action team, a network of judges, lawyers, attorney and professors of law from FIDH's member organizations. The legal action team's mandate is to assist victims of international crimes (genocide, crimes against humanity, war crimes, torture, enforced disappearances) in their legal proceedings at national and international courts seeking justice, truth and reparations.

### **Yves Prigent**

Yves Prigent is responsible for the program on the responsibility of states and companies at Amnesty International France (AIF). This program oversees AIF's activities in the organization's work against torture.

## **Organizers**

### **CCR**

The Center for Constitutional Rights (CCR) is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a New York based non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR employs litigation, education, and advocacy to advance the law in a positive direction, to empower poor communities and communities of color, to guarantee the rights of those with the fewest protections and least access to legal resources, to train the next generation of constitutional and human rights attorneys, and to strengthen the broader movement for social justice.

[www.ccrjustice.org/](http://www.ccrjustice.org/)

CCR on Twitter: [@theCCR](https://twitter.com/theCCR)

### **ECCHR**

The European Center for Constitutional and Human Rights (ECCHR) is an independent, non-profit legal and educational organization dedicated to protecting civil and human rights worldwide. It was founded in Berlin in 2007 by a small group of human rights lawyers, in order to protect and enforce human rights by legal means. ECCHR pursues strategic litigation, using European, international, and national law to enforce human rights and to hold state and non-state actors accountable for egregious abuses.

[www.ecchr.eu/en](http://www.ecchr.eu/en)

ECCHR on Twitter: [@ECCHRBerlin](https://twitter.com/ECCHRBerlin)

### **FIDH**

FIDH is an international human rights NGO federating 184 organizations (including CCR and LDH) from 112 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. FIDH is one of the only international human rights organisations with a broad mandate to accompany the victims of international crimes (genocide, crimes against humanity, war crimes, torture,

enforced disappearances) in their legal proceedings. FIDH's involvement in these proceedings, in a leading or support role, varies according to the case.

[www.fidh.org/en](http://www.fidh.org/en)

FIDH on Twitter: [@fidh\\_en](https://twitter.com/fidh_en)

## LDH

The Ligue des droits de l'Homme (LDH) is an association to observe, defend and promulgate human rights within France in all spheres of public life. The LDH is a member of FIDH and has 10.000 activists throughout France.

[www.ldh-france.org](http://www.ldh-france.org)

LDH on Twitter: [@LDH\\_Fr](https://twitter.com/LDH_Fr)

## Further Information

### French investigations into torture at Guantánamo Bay

CCR case information:

<http://ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-france>

See generally:

<http://ccrjustice.org/home/what-we-do/issues/torture-war-crimes-militarism>

ECCHR case information:

[https://www.ecchr.eu/en/our\\_work/international-crimes-and-accountability/u-s-accountability/france.html](https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/u-s-accountability/france.html)

See generally:

[https://www.ecchr.eu/en/our\\_work/international-crimes-and-accountability/u-s-accountability.html](https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/u-s-accountability.html)

### Dossiers submitted to French investigators on US officials' responsibility for torture

Dossier on retired U.S. Major General **Geoffrey Miller**, former Guantánamo commander: [https://www.ecchr.eu/en/our\\_work/international-crimes-and-accountability/u-s-accountability/france.html?file=tl\\_files/Dokumente/Universelle%20Justiz/MILLER-DOSSIER-en-20140226.pdf](https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/u-s-accountability/france.html?file=tl_files/Dokumente/Universelle%20Justiz/MILLER-DOSSIER-en-20140226.pdf)

Dossier on former U.S. Department of Defense General Counsel **William J. Haynes**: [https://www.ecchr.eu/en/our\\_work/international-crimes-and-accountability/u-s-accountability/france.html?file=tl\\_files/Dokumente/Universelle%20Justiz/Dossier%20W.J.%20Haynes%20FINAL\\_engl\\_public.pdf](https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/u-s-accountability/france.html?file=tl_files/Dokumente/Universelle%20Justiz/Dossier%20W.J.%20Haynes%20FINAL_engl_public.pdf)



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