HOST: Ralph Begleiter

GUESTS: Karen Greenberg, Center on Law and Security at New York University's School of Law and the editor of The Torture Papers: The Road to Abu Ghraib
Aryeh Neier, president of the Open Society Institute and the founding director of Human Rights Watch

>> Begleiter: Since the outset of the U.S.-led war on terrorism in 2001, the Bush administration has aggressively detained and interrogated suspected terrorists and so-called enemy combatants from Iraq, Afghanistan, and elsewhere. While the U.S. has called such tactics necessary in an ongoing struggle against terrorism, critics say the U.S. is violating international law. Are such measures necessary to prevent another 9/11, or do recent tactics violate human rights, aid enemy recruitment, and damage U.S. credibility? Human Rights in the Age of Terrorism, coming up next on Great Decisions 2006.

>> Female announcer: Join us as Great Decisions Television celebrates 20 years of inspiring Americans to learn more about the world. Great Decisions is produced by the Foreign Policy Association. Funding for Great Decisions is provided by The Starr Foundation, The Morse Family Foundation, The William and Karen Tell Foundation and U.S. Trust. And now from our studio at New York University, here is Ralph Begleiter.

>> Begleiter: When evidence of brutality at the U.S.-controlled military prison Abu Ghraib in Iraq was first made public in April 2004, the world responded with outrage and moral condemnation. The scandal was compounded by charges of serious mistreatment at Guantanamo Bay, a U.S. military base in Cuba. Last year, the Pentagon admitted several instances of abuse of Islam's holy Koran as an interrogation tactic. While the U.S. government has publicly denounced the abuse, others contend that policy shifts since 9/11 have tacitly endorsed such tactics. For instance, a new program known as "extraordinary rendition," which extradites suspected terrorists to foreign states for interrogation has broadly been interpreted as a means of subjecting detainees to torture and persecution illegal in the U.S. The Geneva Convention, which the U.S. invoked for its prisoners of war in Iraq, clearly bans cruel, inhuman, and degrading treatment of prisoners, which some say puts the U.S. government in breach of minimum standards of international law in the war on terrorism, but in his confirmation hearings, U.S. Attorney General Alberto Gonzales argued that international regulations intended for prisoners of
war do not apply to terrorist suspects who fall under a new U.S. classification: illegal enemy combatants. The Bush administration applies those rules to its own citizens too. A federal appeals court has ruled that Americans designated as enemy combatants may also be detained in military custody without hearings if they're deemed threats to national security. Where does the balance lie between protection of fundamental freedoms and legitimate concerns of national security? Is a new international framework needed for counterterrorism? And what about the effects overseas? Is the U.S. in danger of damaging its own credibility as a champion of human rights and radicalizing generations of future terrorists? Joining us to discuss these complicated issues today are Karen Greenberg, executive director of the Center on Law and Security at New York University's School of Law and the editor of The Torture Papers: The Road to Abu Ghraib; and Aryeh Neier, president of the Open Society Institute and the founding director of Human Rights Watch. Welcome to you both.

>> Thank you.

>> Begleiter: The U.S. publishes a human rights assessment every year about virtually every country on earth, and a lot of countries have resented that for many years that the U.S. kind of wags its finger at them every year. That was started during the Cold War, when it was much easier, I think, to wag your finger at someone on the other side, the bad guys. Has there been a shift after the Cold War in whether the U.S. has the credibility to do that?

>> Well, I think there has been a shift. Those reports were published starting in 1977, and that was about the time of a shift in the Cold War. Up to that point, the Cold War had often been portrayed as a struggle between different economic systems, between communism as an economic system and free enterprise. But starting in the mid or late 1970s, the principal way in which we thought about the differences between the two sides was that one side represented freedom or human rights, and the other side represented a totalitarian system. And I think it was the identification with freedom and human rights that played a very important part in the West's triumph in the Cold War. And I think that today, as the United States, and, to some extent, other Western countries are losing their identification with human rights, we may suffer from the same things which were to our great advantage in the last dozen years or so of the Cold War.

>> Begleiter: Karen, do you think there's been a shift?

>> There's been a shift, and the shift goes from having had an enemy that we could identify with--our enemy that also denied human rights to its citizens and to other citizens in the world-- to a situation where we're fighting for democracy, ostensibly, around the world and particularly in the Middle East. But we say that the tactics we need to fight for this democracy are tactics which are not dependent on the protection of human rights. So it's been a shift which confuses human rights' ends and means and a shift which is no longer simple and identified with one enemy but is amorphous and diffuse.
Begleiter: The Bush administration would argue, though, that the enemy is clear. The people who attacked the United States on 9/11 are the enemy, so I'm not sure I understand the distinction you're making.

The enemy is clear, but the enemy is not identifiable with a country, with a nation, with a state, and it is that loophole that the Bush administration and others have used to say that they're not protected under certain Geneva Conventions and other international law.

Begleiter: In Afghanistan and Iraq, the U.S. has now been accused several times, really, in several incidents--I'm thinking of the killing of a Canadian--bunch of Canadian troops in Afghanistan; a wedding party there; the Abu Ghraib incident we mentioned a moment ago; and, of course, Guantanamo Bay--has been attacked by other countries, not those who were the victims of those attacks but other countries observing the U.S. That's an unusual situation for the U.S. to be in, to be attacked by friends, even, on the substance of human rights.

Well, the United States has been criticized by its friends, but it has really been criticized all over the war. We've gotten to a point where Abu Ghraib and some of the images from Abu Ghraib and Guantanamo have become symbols of the United States internationally. If you think of that famous photo of the hooded person standing on the box with electric wires attached to them at Abu Ghraib.

Begleiter: An Iraqi prisoner.

An Iraqi prisoner. And that image, in some way--and this is a terrible thing to say--became a kind of substitute for the Statue of Liberty as an instant visual representation of the United States, and that's a terrible thing for our country.

Begleiter: I think many Americans would say, you know, those images were awful. We've taken care of the problem. We've punished those responsible, a few bad apples. It's over. In issues of human rights in the rest of the world, does it get over quickly?

I don't think it gets over. And it only gets over if one roots out the problem, both by seeing to it that those with the highest level of responsibility are held to account for the abuses that took place, and if one adopts the kinds of clear policies that make certain that those things don't happen again, but if you punish a handful of low-level persons who happened to get their photographs taken, I don't think that's very persuasive to anyone.

Begleiter: Let me pick up on your comment about a handful, and, Karen, I'd like you to comment on this. I think some people might argue that in these cases, in all the ones most of us have mentioned here, it's been a problem of a handful of people or a small number of people who've been victims of these problems. When the U.S. complains about human rights in other countries, though, it complains about broader kinds of human rights violations: in China against religious groups, for example; in Russia, against--the
Soviet Union, against religious groups and civil rights groups and that sort of thing. Isn't there a distinction to be made between those two kinds of human rights violations?

>> It depends on if you accept the notion that this was a few bad apples that needed to be found and punished. If you really look at what happened at Bagram, at Guantanamo, and Abu Ghraib, this is a systematic use of torture and of prisoner abuse, and, of course, of interrogation. And until that story is understood and told, we can't begin to make comparisons with other countries, because we have to get this story straight, and so far, we do not have it straight.

>> Begleiter: The U.S. has invoked the Geneva Convention and other international law in support of its own prisoners of war when they were held in Iraq, for example, at Nassiriyah and in Afghanistan as well. Does the U.S. lose its ability to invoke international law under these circumstances?

>> Well, I think the U.S. does damage itself in this way. Many military officers are concerned about the treatment of prisoners, because they want the Geneva Conventions as a strong form of protection for American soldiers when they are captured, and it's not surprising that someone like Senator John McCain has been a particularly outspoken critic of the way in which detainees have been treated by the U.S., because he was a prisoner of war in Vietnam for many years, and he knows firsthand what it means to call for the protection of the Geneva Conventions.

>> Begleiter: I think maybe lying at the base of that, of Senator McCain's comments, though, is also the idea that for so many years, for so many decades, people around the world, and including Americans, never imagined that the United States would treat prisoners the way he was treated, he and others in Vietnam.

>> Well, and the United States had a long history of respecting the rights of detainees. Well before the Geneva Conventions, even during the Civil War period, the United States had a code for treating prisoners who were captured during the conflict and for treating combatants who were on the other side. And for the United States, after so long a period, to become the antagonist of the Geneva Conventions or the force trying to limit the application of the Geneva Conventions is really a very sad development.

>> Begleiter: Karen.

>> I think, it's not just a sad development. It's a dangerous development, and the reason is that one of the outcomes of torture or coercive interrogation and abuse is that it can alienate information sources that you would like to have on your side. And one of the things that General Eisenhower said in reflecting on the Second World War was that, in his opinion, there were many, many Nazis who turned themselves over to American custody because American military officials did not have a reputation for abusing prisoners. In his estimation, this ended the war well ahead of time. In the particular circumstance of the war on terror, the abuse of prisoners and the reputation for the abuse of detainees alienates crucial informants. Our informants in these kinds of situations have
always been from within communities. We need to befriend the Muslim community, not to chase it away. And when you start to lock people up as you have at Guantanamo to the tune of 800 people who have brothers and sisters and relatives-- many of whom are not guilty or are likely not guilty-- you run the risk of alienating innumerable amounts of informants and access to information that is what the war on terror depends on.

>> Begleiter: What do you make of the distinction that the administration has made between a prisoner of war and an enemy combatant?

>> There is a distinction. A prisoner of war is somebody who engages in open combat, and there are people who are not entitled to prisoner of war status, but once you say that, it doesn't mean that they are not entitled to any protection of rights. The Geneva Conventions don't leave anybody out. That is, people who are not prisoners of war also have certain rights, and as a question of law, we have various other international agreements that provide protection. We have the international covenant on civil and political rights, which the United States ratified. We have the U.N. convention against torture, which also prohibits cruel, degrading, and inhuman treatment. The United States also ratified the U.N. convention against torture, so no one is left out. Even if you're not entitled to prisoner of war status, you are still supposedly protected by international law against mistreatment by those who detain you.

>> Begleiter: One of the arguments the United States has made for many years now against the U.S. participating in the establishment of an international criminal court is that the U.S. doesn't want to see its own soldiers, its own civilian personnel, secretaries of state, defense, and so on, prosecuted by an international panel of judges and juries. Isn't that really sort of the same argument the U.S. is making here: somehow separate U.S. personnel from those of other nations, even though the U.S. was delighted to see Slobodan Milosevic tried before that kind of court?

>> Well, there has been a tradition of what is referred to as American exceptionalism, that the United States should not be bound by the same rules that apply to everyone else, but I'm afraid that that is one of the causes of anti-Americanism today, this constant assertion that the U.S. is really a law unto itself and shouldn't have to abide by the rules that apply to others. And I don't think it serves the United States well. I think the United States would be much better off internationally, would inspire much less anti-Americanism if the United States agreed that the rules that it wants to apply to others also have to apply to the United States.

>> Begleiter: Now you've touched on something Karen was mentioning earlier I'd like to come back to. You talked about the implications for the future. We need "the sources," I think you were talking about. We need the information from these people. You've, Aryeh, have now just talked about international condemnation.

>> And I think that's important for a number of reasons, but one of the reasons is that when you think of the people who engage in terrorism; on the one hand, it's a small number of people, and we're not going to win friends among those people. I don't really
believe that if we can mitigate anti-Americanism we can prevent them from doing the things that they want to do, but those people operate within larger societies, and whether that society is tolerant of them or supportive of them or whether that society is hostile to them makes a great deal of difference as to whether they can actually engage in terrorism. It's always been the case that those who want to engage in such acts depend on a certain amount of silent cooperation from a lot of other people in order to be able to do terrible things.

>> Begleiter: Let me turn to the domestic application of all this now too. There are--there are some who are arguing that--you might be among them--that the way the administration has treated American citizens accused of engaging in conspiracies to commit terrorism or even just going to Pakistan or visiting Pakistan at a certain time or visiting Afghanistan at a certain time are in some way entitled to a different kind of treatment in the judicial system in the U.S. That's different from the way you would treat foreign citizens, for example. What's your feeling about that?

>> Well, first, I want to put it in context, because this is a story--one way to tell this story is that after 9/11, immediately after 9/11, the U.S. government took it upon itself to say, "Look, we have a paradigm shift. We don't know what rules apply and what rules don't apply, but we're going to do everything we can to protect ourselves and our citizens." What happens is that that—

>> Begleiter: There's a lot of sympathy for that, by that way, both in and out the United States.

>> Correct, that's why I'm mentioning it. What happened is that much has happened or, as you might say, not happened since September 11th, and our policy has not changed. We have continued to be on a course which says we are in an entirely different world, and we will treat our citizens and those who are not our citizens in an entirely different way. And while some may have sympathy for an initial overreaction or a reaction that made sense in terms of heightened fear and insecurity, this many years later, it doesn't look like it's being done for the purpose of national security. So I think it's important to just mention the context, that this debate over, "Can we just pick people up because they fought in Afghanistan or because they trained in Afghanistan or because they visited Afghanistan?" So that's one issue. The other issue is whether we charge them. We take these people. We put them in prison, maybe in Guantanamo, maybe someplace else, and we are not charging them. For the most part, these people have not had charges brought against them. Many of them have not seen a lawyer. They are not entitled to any kind of--according to the U.S. government--procedural protections, and that is another story: whether or not the United States abides by the rule of law for those prisoners that it holds in Guantanamo and elsewhere.

>> Begleiter: This is occurring against the backdrop of the United States assisting other nations, including Iraq, I think, in the Middle East, in developing their own judicial systems in a democratic manner. What do other people think of us when they say, "You're trying to teach us how to set up a judicial system here in Iraq or in Afghanistan..."
or in Russia or in Eastern Europe at the same time we're seeing these types of
developments take place in the United States?" How does that look?

>> Well, there have been many responses to the United States when the United States is
critical of other governments on human rights grounds, and there have also been cases in
which the United States has refrained from criticizing other governments, because
Washington is aware that it wouldn't go over very well given our own record since 2001.
So we have a different situation for the United States than has existed previously, and I
don't think it does us any good internationally. I think it hurts us, and it endangers us.

>> Begleiter: And I guess I wasn't speaking so much about criticism of others as I was
setting up, you know, we engage in a whole lot of missions to educate others on how to
establish a democratic-style judiciary.

>> The most effective education is setting an example, and, unfortunately, this is not an
example that we want to set. And others are very quick to seize upon the example. So
there are many cases in other countries where governments have enacted laws against
terrorism which they say are modeled on those in the United States and have engaged in
practices which they say are modeled on those of the United States, and many abuses
have resulted in all parts of the world as a consequence, so we are leading by example,
but unfortunately not by a good example.

>> Begleiter: May I ask you about extraordinary rendition for just a moment?

>> Yes.

>> Begleiter: This is a topic that's received worldwide attention. The U.S. has engineered
the moving of certain prisoners that it has detained to other countries where they don't
have the same standards the U.S. at least claims to have with regard to torture and other
kinds of ways of extracting confessions and so on. You know, what does that do to the
U.S. ability to keep Americans out of that kind of situation should Americans be captured
or taken prisoner?

>> It doesn't protect our own citizens or soldiers very well, but it also destabilizes the
rules of the world. In other words, if we are going to send people abroad, we're doing it
for torture. We're doing it saying that we're not doing it. This is in the context of the Bush
administration and President Bush and others saying, "We do not support torture. We will
not perform torture." And then using rendition or extraordinary rendition as the way of
having torture by proxy, as it's been called. So it weakens us, but it also destabilizes a
world in which we're in. We have operatives all over the world, whether they're
intelligence operatives or embassy operative--or embassy officials who are in a situation
where the rules have become somewhat shaky. And what we've learned at Abu Ghraib
and Guantanamo is that the--the instability of the rules causes chaos, damage, and
destruction. So we are destabilizing the world, and I think that's the larger issue.
>> Begleiter: Are you limiting your comments to U.S. government operatives abroad? What about U.S. business people who operate in countries, Americans who operate elsewhere in other countries? Wouldn't they be subject to the same kind of—

>> Instability.

>> Begleiter: Instability?

>> Yeah, it's not a-- it's not a plan for success, and it's not a plan for law and order. And to the extent that people know it's going on but can't exactly document it going on, it leaves a credibility gap that is increasing day by day.

>> Begleiter: But let's be fair about this. I think, internationally, everyone has commented on and recognized a kind of distinction between other wars, other kinds of war, and the war on terrorism. It's a diffuse war, as one of you said that earlier. Isn't there some distinction to be made on the human rights front between the way you treat people and handle judicial situations in the war on terrorism versus--for lack of a better phrase--your run-of-the-mill war?

>> I don't think so. If you think of the--the other wars that we have faced, the Cold War, which became a shooting war in places like Korea and Vietnam, or World War II, they actually inflicted far greater damage on the United States than the war on terror. A great many more Americans died in those other wars than have died in the war against terror. And so, in each generation, there comes a moment when one says, "This is the most urgent situation we have ever faced." But it isn't. We faced urgent situations previously, and sometimes we have faltered in our respect for human rights during those urgent situations, and then later on, we have regretted it when we have faltered, so we had to apologize to the Japanese Americans for their internment during World War II. We have now a popular movie out about the conflict between Edward R. Murrow and Senator Joseph McCarthy in which McCarthy is the villain, but there was a time when the practices of McCarthy were justified, because it was the war against communism, and that was a particularly urgent war. I think these wars are different from each other, but I don't think one justifies abuses of human rights more than the other justifies abuses of human rights. And abuses of human rights only take place when there is some rationale for them, when people feel some urgency in dealing with a problem, and that's precisely when one needs the protection of human rights. One needs to say, "Even in these circumstances, there is a certain minimum threshold, and we will not go below that minimum threshold. We believe in human dignity. We believe in human rights. We believe in human rights for its own sake, and we also recognize that it serves us well as a country to maintain our respect for human rights. This has been our great protector internationally over an extended period, and we're not going to abandon the respect for human rights because of the urgencies of the moment."

>> Begleiter: Karen Greenberg, executive director of the Center on Law and Security at New York University and editor of The Torture Papers: The Road to Abu Ghraib; and
Aryeh Neier, the founder of Human Rights Watch and president of The Open Society Institute, thank you for being with us.

>> Thank you.

>> Thank you.

>> Begleiter: And thank you as well for joining us on Great Decisions 2006. I'm Ralph Begleiter.

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