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LETTER TO THE EDITOR: GUANTANAMO

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Letter to the Editor: Guantanamo

In the following letter, Joan Neuhaus Schaan, the Baker Institute's fellow in homeland security and terrorism, weighs in on the debate over closing the Guantanamo Bay detention facility. This letter to the editor originally was published in the Jan. 23, 2009, edition of The Houston Chronicle.

To the Editor –

Here is a scenario. A terrorist trained and based overseas has been approved for a mission to attack U.S. persons in the United States. After raiding a safe house overseas, his training manuals and a few contacts have been discovered. Also found was his martyr video to be shown after the mission's completion. The information is highly classified. With hard work, the identity and location of the individual is discovered by the intelligence community, and his intentions are further verified. The target is New York or Houston. The weapons are a combination of explosives and chemicals. Again the information and the sources and methods used are highly classified.

Now what should be done? First, the person must be apprehended and detained. Next, he should be tried for his crime.

How do you pursue due process when all the information is highly classified? Given our current legal systems, the only means to have all the evidence presented is in a military tribunal, whereby classified information can remain in the classified realm. To have the trial in a civilian criminal courtroom forces the prosecutors to limit the evidence to only those items that the government is willing to declassify.

The detention facility at Guantanamo Bay has come to symbolize many things, many of which are not viewed positively. Nonetheless, the ability to pursue due process in a classified courtroom in which all available evidence can be heard and weighed is a unique characteristic of its function. Military tribunals have been able to function while the concept of "enemy combatant" is debated. As the new administration ponders closing the facility, an alternate strategy for trying suspected terrorists must be established, or the detainees' status as "enemy

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combatants” must be affirmed for trial in a military tribunal on U.S. soil, such as Fort Leavenworth.

The detainees are not all innocent victims. According to a Pentagon source, of those released to date, 18 are confirmed to have returned to the fight, and another 43 are suspected of having returned to the fight. Many of those confirmed to have rejoined the fight have been recaptured or killed in the course of their continued efforts to harm U.S. persons and/or allied forces.

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