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(b)(2),(b)(3):10 USC §130c,(b)(6)

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From: (b)(6) DoD OGC
Sent: Friday, November 18, 2005 3:19 PM
To: (b)(6)

Subject: GTMO Bird - Multiple articles on Clive; ex-detainees claims of abuse, etc; al-Dossari; John Gibbons editorial on GTMO; Amnesty Int'l & Reprieve gathering of ex-detainees; UN visit off; Hicks denied UK citizenship

All:

Today's GTMO Bird below.

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Office of General Counsel (Legal Counsel)
(b)(2) (fax)

Interview with Guantanamo Bay Lawyer Clive Stafford Smith

Asharq Alawsat Webiste
18/11/2005
By Mohammed Al Shafey
London Asharq Al-Awsat- As part of its war on terror, the United States currently detains some 500 "enemy combatants" at Camp Delta, in Guantanamo Bay, without charge or trial amid accusations widespread torture and ill-treatment.
Asharq al Awsat visited Clive Stafford Smith, the British born lawyer representing more than 40 detainees at his office in Central London to discuss the state of prisoners in the camp, some of whom have been held for over three years, and whether their release was likely in the near future.
So far, nine of his clients have been charged with war crimes and will be tried in a US military tribunal. One of them, Omar Khodr, a Canadian national of Egyptian origin, was caught in Afghanistan aged 15. Now 18, he has lost his sight and suffered injury to his chest during his detention. He is accused of hurling a hand grenade at an American solider in the military corps after the house in which he lived in Khost, a town on the border with Pakistan, was bombed in July 2002.
Stafford Smith indicated terrible human rights abuses were taking place in Camp Delta and accused the current US administration of keeping the detention facility open to trick public opinion into believing it was on the right track to win the so-called war on terror.
Guantanamo Bay is one of the most isolated and secretive places on earth. Only a handful of lawyers and journalists have been allowed to visit and expose the abuse of prisoners from eighteen different nationalities, mostly Arabs caught in Afghanistan, some even sold for a mere $5000 dollars.

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On Friday, the United Nations rejected a US invitation to visit the prison camp, blaming restrictions imposed by Washington, which would not allow UN human rights experts to speak to detainees in private.

In his eight visits to Guantanamo Bay, Stafford Smith said he met with his clients in private for 3 hours a day, including Sami Muhieddin al Hajj, a Sudanese cameraman working for Al Jazeera in Afghanistan during the US invasion. He also met the Saudi Shakir Abdul Rahim, married to a British national, the Palestinian Jamil al Banna, the Iraqi Bisher al Rawi, the Libyan, Omar al Deghayes and others from Mauritania, China, Tunisia, Egypt, Syria, Kuwait and Sudan. However, he admitted that the US prison authorities were probably spying on his sessions with his clients.

The British-born lawyer revealed the presence of a secret detention facility to punish troublesome prisoners unknown to the media, which has mentioned Camp 4, a medium security facility and Camp 5, known for its harsh security procedures and solitary confinement.

Asked by Asharq al Awsat to describe the prison, Stafford Smith said, "I don't know whether to laugh or cry."

International law was no longer sufficient to put an end to the tragedy, he added, which was why he was counting on the media to enforce pressure on the US administration to close the detention facility.

"We live in a new world where we lack a sense of history. When the United States caught the spies of the Cold War at the height of the conflict between the Eastern camp and the Western camp, it did not incarcerate them in Guantanamo but detained them in normal jails," he said.

Accusing the current administration of violating human rights agreements, he expressed his apologies on behalf of the people of the US for their government's practices.

While US Defense Secretary Donald Rumsfeld had designated the prisoners as enemy combatants caught in battle, Stafford Smith said two of his clients were arrested while on a business trip to the Gambia in 2002 to establish a factory to produce Soya oil.

Jamil al Banna and the Iraqi Bisher al Rawi were detained at Banjul airport, because of their links to Abu Qatada, or Omar Mahmoud Othman, the extremist Palestinian figure currently in jail for endangering national security as the alleged spiritual leader of al Qaeda in Europe.

The British Foreign Office declined to represent al Rawi because he not a British national, despite having lived in the country for many years. His family fear for their son who sought asylum in Britain in 1985 and who might be forced to return to Iraq when freed.

Other British residents are currently held in Camp Delta. They include Bisher al Rawi, the Ugandan Jamal Abdullah, who came to the United Kingdom with his mother, the Saudi Shakir Abdul Rahim, who arrived in 1996 and married a British woman with whom he has 4 kids.

Confirming reports published by the Washington Post on secret US detention facilities in Eastern Europe where al Qaeda members are jailed, Stafford- Smith indicated that he believed one such center exists in Poland. He suspected al Qaeda officials, such as Khalid Sheikh Mohammad, Abu Zubaidah, Abu Faraj al Libbi and Ramzi ibn al Shibah, were held there.

Refusing to be pessimistic, Stafford- Smith promised all his clients would be released if the necessary pressure were exerted. He recalled how one British prisoner in Guantanamo Bay was freed after political and media pressure, pointing out that all twenty European prisoners have been freed.

Shakir Abdul Rahim, a Saudi prisoner represented by Stafford- Smith, had lost half his weight and is now a mere 130 pounds, because of his ongoing hunger strike in protest against ill-treatment by prison guards in Camp Delta. His stance had earned him the nickname "leader of the strikers," the lawyer indicated.

The British-born lawyer frowned when the discussion turned to the alleged human rights abuses against his clients, such as the Libyan Omar al Degahyes, who has lost sight in his right eye and was visited by officers from the Libyan intelligence services on 8th September 2004 who threatened he would be flown back to Libya.

According to Stafford Smith, al Deghayes fears the Libyan authorities more than the US prison guards as he had sought asylum in Britain with his family in 1986 after the Gaddafi regime murdered his father.

Refusing to refer to any of his clients as terrorists, Stafford Smith said, "If these are terrorists then my grandmother is a terrorist too!"

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"I spent twenty years defending inmates on death row in the United States and I can assure you that the ill-treatment I saw in Guantanamo is much worse," he added.
Disputing Rumsfeld's remarks that Camp Delta was established to stop terrorism, the British-born lawyer pointed out, "The danger today on the United States and Europe is greater than before. The depth of hatred because of Guantanamo is bigger and more dangerous. We claim to fight terrorism worldwide to establish peace but the first thing we do is detain people and bring them to Guantanamo and take away their freedom."
Commenting on the treatment he has received at the hands of US prison guards at Camp Delta, the lawyer said, "These soldiers have been brainwashed which is why they consider me an enemy. I thank the US authorities for allowing me to meet the prisoners on eight separate visits."
His Ethiopian client, 28-year old Binyam Mohammad was transferred to Morocco for 28 months where he was severely tortured and forced to confess to having dinner, on 3 April 2002, with Khaled Sheikh Mohammad, Al Qaeda's number three and Ramzi ibn al Shaibah, thought to be behind the September 11 attacks.
The same story of abuse and mistreatment is repeated with Sami Muhyi al Din al Hajj, a Sudanese national who was arrested in 2001 while working for Al Jazeera in Afghanistan and detained in Guantanamo. According to Stafford Smith, his client has yet to be charged by the US authorities. "He has been tortured so much that I would describe his treatment as sadism."
Al Hajj had first alerted the British born lawyer to instances where the Quran had been desecrated by prison guards. He testified to Stafford Smith, "I was a witness when they threw the holy Quran. Hamza from Tunisia was also present."
"In protest against this sullying, Sami went on hunger strike. A soldier dragged him shaved his hair off and then threw him to the floor. He was hurt in his right cheek," Stafford Smith recounted.
"As punishment for his refusal to cooperate with the American guards, he was moved to the maximum security Camp 5 where he was held in solitary confinement for eight months," he added. Al Hajj continues to be regarded as a Category A prisoner.
http://aawsat.com/english/news.asp?section=3&id=2723

Inside Guantanamo: Lawyer Clive Stafford Smith regularly visits clients in the prison camp he calls America's "law--free zone". This is his chilling report on life behind the wire

New Statesman
November 21, 2005

BYLINE: Clive Stafford Smith

The 12--seater Air Sunshine plane sets down at the Guantanamo Bay Naval Base just as the sun descends behind the hangar. I am met by a military escort.We josh about the threat that the legal profession poses to national security: lawyers are required to stay the night on the leeward side, safe across the bay from the main base and the prison. He drops me off at the motel, the Combined Bachelors' Quarters or CBQ, where a sign boasts that it is "the pearl of the Antilles".
Here, for $12 a night, a bachelor can share a room with three other soldiers. Even in this age when "Don't ask, don't tell" is the official line on homosexuality in the US forces, the notion of combined bachelors strikes me as incongruous.
They give me a room with four beds to myself. After eight visits I am an old hand here and I have my favourite room with a view of the placid Caribbean.
The motel sign also trumpets the base's motto, "Honour Bound to Defend Freedom", but freedom is a relative term here. Iguanas are free enough, and if my escort accidentally runs one over it's a $10,000 fine, as US environmental laws apply in Guantanamo. On the other hand, if you feel the need to hit one of the 500 prisoners who are now four years into their captivity it is called "mild non--injurious contact" and there are no consequences. Two years ago in the Supreme Court, we argued that it would be a huge step for mankind if the judges gave our clients the same rights as the animals.

OGC AMNESTY/CCR 3

At the motel, television is the only diversion. I am unsure whether the CIA organised this to spook me, but on each of my recent visits to the base I have had the option of watching Groundhog Day, with Bill Murray waking up over and over again to the same morning. As his clock radio clicks over to 6am, Sonny and Cher are inevitably moaning, "I got you, babe." Guantanamo Bay is Groundhog Day. It's reveille at 5.30am for breakfast. The cook nonchalantly crushes a scorpion that has wandered into the chow hall and greets me with the same cheese omelette as yesterday. I am pinioned to my table by television monitors shouting the American Forces channel at me.

I walk a mile down the road to meet the 7am ferry. A bus always passes me at the same place and, as usual, I wave to the driver. The tarmac steams as the sun rises over the Cuban hills, stillness and beauty clashing with the rusted barbed wire. I wonder whether the ten--foot snake that was outside my motel door this morning lives in one of the wooden Second World War bunkers that adjoin the road.

Cresting the hill, I see the ferry coming across the bay. As it approaches the landing, tinny music can be heard above the drone of the engine. Each morning for a week it has been Jimmy Buffett belting out "Margaritaville". I have a fantasy that one day we will progress a track or two on that Buffett album to a song called "Why Don't We Get Drunk (and Screw)". But it never happens.

Most of the lawyers complain about staying on the leeward side, but I enjoy the morning cruise. High in the hills, as the pilot steers us in to the windward dock, four wind turbines slowly rotate. They are majestic, an unlikely sign of environmental sensitivity in such an otherwise harsh world.

The escort meets us at the dock and calls his code in to our un--seen monitor. We stop off at Starbucks and then drive down to McDonald's. A soldier smartly salutes his superior, "Honour Bound, sir!" The officer salutes his reply, "To Defend Freedom, soldier!" The first time I saw this I chuckled, thinking they were joking. It's mandatory. It's the motto.

"Recreation Road" runs alongside Guantanamo Golf Course, grass sparse, leading to the prison camp. I cannot write about the layout of the camp, because that would violate the security rules.

The various camps have been given names steeped in irony. "Papa" is where the prisoners on hunger strike are force-- fed. "Romeo" is where the military sexually humiliated prisoners by forcing them to wear only shorts. Forty Muslim men, forsworn from alcohol, live in "Whiskey". I can't decide whether the irony is inadvertent, as is generally the case with irony on this side of the Atlantic, or deliberate and cruel.

Meetings between client and lawyer are held in Camp Echo. Before June 2004, when the Supreme Court ordered that the prisoners be allowed lawyers, this used to be the harshest camp, where prisoners were held in total isolation. Each cell is hermetically sealed from the others and divided down the middle -- the prisoner lives on one side and is brought into the other half only for interrogation sessions or, lately, lawyer visits. I am going to stay there all day, until 5pm. I am glad that we arrived in plenty of time. At 8am the warning siren will sound on the Tannoy, followed by the national anthem.

Everything will come to a stop and the soldiers stand rigid, saluting the nearest flag until it is over.

I go into the camp and must wait for the clients to be prepared. We sit at the "picnic table" by the cells. The guards live a monotonous life and most are friendly. One tells me he saw me recently on CNN, where I said that most of the military were decent people consigned to a terrible task. He smiles as he asks whether he is one of the decent folk or one of the bastards.

Another confides in me that he has been told to keep his distance from the lawyers. I am curious about the minefield that apparently still separates the naval base from the perfidious Cuban communists. "Every now and then you hear an explosion at night," says the soldier. "Those are Cubans trying to escape to freedom." I laugh because I assume he is kidding me, but he is serious. I suggest that any mine that goes off is probably taking out an errant iguana. He is clearly unhappy. I am a cynic, and he does not talk to me again for several days.

A guard takes his hat off and puts it on the table. To remind him of his mission, he has writ--ten inside the rim: "Al-- Qaeda are pussies."

OGC AMNESTY/CCR 4

Many of the guards are from quiet American backwaters and Guantanamo represents their first foray abroad. They have been subjected to the most extraordinary propaganda. One of my clients is only a little over five feet tall, very mild--mannered and cultured. Some months ago he told me about the times before the cameras were installed, when a soldier sat outside his Camp Echo cell 24 hours a day, watching him. He noticed a female guard shaking on her chair and asked her what the matter was. Eventually she asked him whether he truly was a serial assassin -- she had been told that he was another Hannibal Lecter and might bite her through the bars. When he finished laughing he devoted many therapeutic hours to calming her down. The US military got its intelligence thoroughly wrong on him, and his guards grew to disbelieve the stories. A number gave him their e--mail addresses for when he got out.

Finally, the time comes to see my first client. There is a cooler full of "Freedom Springs" water bottles, the name printed over an American flag. One soldier suggests that I strip the flag off before passing a bottle to the prisoners, because they might desecrate Old Glory. I recall how surprised some Americans were at the Muslim outrage when Newsweek reported how the Koran had been thrown into the toilet. The parallels seem obvious: insults to their flag reduce many Americans to apoplexy.

Talking to my clients is draining. Even gaining their trust is not easy. After the right to counsel was won, the military tried to outflank us by sending interrogators in pretending to be lawyers. Given that all the real lawyers have to be American citizens, what is to distinguish us in the eyes of our clients from the deception that went before?

We talk about torture. I now have a checklist of the abuses used by the US military and those who do their dirtier work for them. Every now and then I get a flash of perspective: when I went to law school in 1984, did I ever think such a checklist would be necessary? Did I believe that an American tribunal would admit a confession exacted at the point of a razor blade? The soldiers seem to accept the Guanta--namo reality without blinking. A minority of the government prosecutors are horrified; the majority go with the flow.

In addition to being devoid of law, Guantanamo sometimes seems like a truth--free zone. I am scheduled to see my client Mohammed el--Gharani. The military says he is 26 and denies that there are any juveniles on the base. Let us assume the camp authorities really believe this: what does it say about the quality of Guantanamo intelligence if they cannot even work out his age after four years of interrogation? Mohammed was not quite 15 when he was seized, and is still a teenager. I got the birth certificate from Saudi Arabia to prove it, but they still won't believe me. "He sure does look young," says one of the guards.

The prisoners are depressed. There were 32 suicide attempts in the first six months. This was bad PR for the military; something had to be done. Six months later we were told that suicide attempts had zeroed out. Was this true? No.

Attempting suicide had merely been renamed "self--injurious behaviour" and another 42 prisoners had become SIBs.

In similar semantic vein one soldier says that he cannot say the word "prisoner", as he has been ordered to refer to my clients as detainees. It is deemed defensible to "detain" a person, where "imprisoning" him without trial is not.

Sami al--Laithi knows all about this. An Egyptian, he was minding his own business in Pakistan when the Americans seized him, and he was then badly abused in Guantanamo. He'll certainly never play football again, as he is confined to a wheelchair with two fractured vertebrae after being ERF'd (that's a recent addition to the Guantanamo lexicon, describing the habits of the Emergency Reaction Force guards, who dress up in Darth Vader outfits and rough up recalcitrant prisoners).

Because Sami complained repeatedly they held him in solitary confinement at Camp V. Three years into this ordeal, Sami's tribunal found him "innocent" -- as he had said all along, he never was an enemy combatant. So what did he get for it? The guards came into his cell and offered him a white uniform instead of an orange one. Sami got angry. It took them another five months to set him free.

It is a long day. I have to speak my questionable French to some prisoners, my even more dubious Italian to others.

We laugh a good deal, but goodness only knows what they understand of their rights. At 5pm I have to leave.

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En route back to the ferry landing we stop at the NEX, the Navy Exchange. Posters advertise an impending visit by Miss Teen USA, a reminder that the overwhelming majority of the 9,000 soldiers are male. I am surprised that the US military does not treat them better. They cannot bring their families to the base, and are often cut off from their children for six months at a time.

Outside the NEX, stalls sell Guantanamo Golf Course T--shirts, and others that say "Behaviour Modification Instructor". I cannot resist a Lilliputian version for my seven--year--old nephew that says "Future Behaviour Modification Instructor". Will I be liable if he beats my brother up?

The ferry has stopped for the day, so in the evening I take a faster boat back across the bay. Waiting for it to leave, I check out the plaque 50 yards away. This is where Christopher Columbus beached on his second trip, on 30 April 1494.

He found nothing of interest in Guantanamo and left the next morning.

The trip across the bay takes no more than ten minutes. As I walk back up the hill to the CBQ, the sun is setting and the Tannoy crackles to life again. It's time for the bugle to blare retreat, the rather defeatist end to every military day.

I stop at the Clipper Club, perhaps the most boring bar in the Caribbean. The management's "standards of appearance"

sign prohibits "clothing with bizarre, drug--promoting, obscene and offensive insignia". Patrons are warned that "shirts must cover excessive body hair on the chest, abdomen, and under arms". I pass the test and it's good to have a drink.

"Al--qaeda" supposedly means "the base" in Arabic. Guantanamo means "the naval base" here, and one of the military defence lawyers has developed his own response when any soldier confronts him with, "Honour Bound, sir!" He returns the salute sardonically, "To defend the US constitution!" Guantanamo should consider a change of motto.

Clive Stafford Smith is legal director of Reprieve, a UK charity fighting for people facing the death penalty and other human rights abuses. He has represented 40 of the prisoners at Guantanamo Bay. For more information go to

(www.reprieve.org.uk)

The books they ban

It is said that when Jeremy Paxman was told that the British prisoner Moazzam Begg's bookshelf contained only two books -- the Koran and Paxman's own The English -- a Newsnight colleague remarked: "So it's true they torture people in Guantanamo." Begg's problem with reading material, of course, was censorship, which is as sweeping as it is perverse.

Banned magazines have included National Geographic, Scientific American and Runner's World. John Pilger's Hidden Agendas was returned, stamped "Denied". An anthology of First World War poetry was also excluded, as was Robert Hughes's history of Australian colonisation, The Fatal Shore, and, even more curiously, The New Dinkum Aussie Dictionary.

In the case of Scott Turow's legal thriller Presumed Innocent the title alone may have been the problem, but perhaps the strangest cases were the four books returned with the note: "These Items were not Cleared for Delivery to the Detainee(s)." They were Puss in Boots, Cinderella, Jack and the Beanstalk and Beauty and the Beast.

The torture trail

Binyam Mohammed, originally from Ethiopia, lived in north Kensington, London, for several years, seeking asylum, and in 2001 went to Afghanistan. After the invasion he fled to Pakistan, where he was seized for using a passport that was not his own and turned over to the US. He surfaced late last year in Guantanamo.

What happened in the intervening three years? Binyam describes how, in Pakistan, an FBI agent said, "If you don't talk to me, you're going to Jordan. We can't do what we want here; the Pakistanis can't do exactly what we want them to.

The Arabs will deal with you." When he asked for a lawyer, the FBI told him he did not have the right to one.

In July 2002, Binyam was flown by CIA plane from a military airport in Islamabad to a prison, not in Jordan but in Morocco. There, a guard told him: "America's really pissed off at what happened, and they've said to the world: either you're with us or you're against us. We Moroccans say: 'We're with you.' So we'll do whatever they want."

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A man who called himself Marwan served as Binyam's main interrogator. "Give me the whole story all over again,"
Marwan would say. Each time, Binyam did what he could. Marwan would give the order: "Idrabo", which means "beat him" in Arabic. The guards would say: "There's worse to come"; and Binyam could hear people screaming across the hall.
Once, Marwan brought in three thugs who cut off his clothes with a scalpel and then, as Binyam screamed, used the scalpel to make a cut in his chest. Next, he says, one of the thugs took his penis in his hand and began to make cuts. The pain was appalling. He says he also suffered torture worse than this, but cannot bring himself to discuss it.
He was in Morocco for 18 months. He asked a guard: "What's the point of this? I've got nothing I can say to them."
The guard replied: "It's just to degrade you. So when you leave here, you'll have these scars and you'll never forget. So you'll always fear doing anything but what the US wants."
In January 2004, Binyam was taken to Kabul, where he endured five more months of torture, mainly psychological at this point. He says that he signed whatever statements were put in front of him. He apparently confessed to dining in April 2002 with five high--ranking Qaeda operatives -- a dinner at which they discussed a plot to plant a radioactive "dirty bomb" in New York. He denies that this is true.
Binyam is now charged in a military commission where evidence based on torture is admissible.
The British men still there
Shaker Aamer, 40, is the Saudi father of four British children who live in Battersea, south London. He was subjected to severe torture at the "Dark Prison" in Kabul and at Bagram air force base. Since being sent to Guantanamo, he has been elected to the six--man "prisoners' council" and has been punished with solitary confinement for co--ordinating a hunger strike.
Bisher al--Rawi and Jamil al--Banna were both in the Gambia setting up a peanut oil plant when they were seized, turned over to the United States and sent to Guantanamo. Britain had recognised Jamil as a refugee from Jordan four years previously; Bisher and his family had fled Saddam Hussein 20 years earlier. Jamil's wife and five children live in London, not far from Bisher's mother and sister.
Omar Deghayes is a refugee who escaped from Libya to Britain with his family as a teenager, after his father was murdered by Colonel Gaddafi. Omar studied law. He was seized in Pakistan, tortured and sent to Guantanamo. The main evidence against him is a videotape of a Chechen rebel, brandishing a Kalashnikov, who is now known to be a man called Abu Walid but was mistakenly identified by Spanish authorities as Omar. The British government has suggested that Omar should apply to Libya for "consular assistance" and he has received visits from Libyan officials who, rather than offering him help, threatened to kill him should he return to Libya.
Ahmad Errachidi, who worked as a cook in London for almost 18 years, was arrested in Pakistan by bounty hunters, sold to the US military and transferred to Bagram, where the sign on the interrogation room door read "Hell" in Arabic. In Guantanamo, he was accused of being an extremist leader and dubbed "The General". Ahmad has been held in punitive isolation for more than two years, the longest period served in isolation by any Guantanamo prisoner.
Jamal Kiyemba, originally from Uganda, lived in Britain from the age of 14. "Ask any MP military police personnel in Gitmo Guantanamo : where's this guy from? Answer: they will say Britain! Check my incoming mail and you will find that it's from Britain. My GP, my local mosque, my teens, my education, employment, friends, taxes, home and, above all else, my family -- it is in Britain. I may not be British according to some piece of paper, but in reality I am a Brit and always will be." Because Britain will not have him, the US recently gave notice that he would be sent to Uganda.
And there may be more: Abdulnour Sameur is an Algerian refugee who lived in south Harrow, London, and Ahmed Ben Bacha is an Algerian who lived in Bournemouth. Neither has yet seen a lawyer and little is known about them.

Guantanamo ex-prisoners claim abuse, Koran desecration

Agence France Presse -- English

OGC AMNESTY/CCR 7

November 17, 2005 Thursday 7:19 PM GMT

DATELINE: MANAMA Nov 17

Three Bahrainis released from the US military prison at Guantanamo Bay earlier this month accused their captors Thursday of torturing them and regularly desecrating copies of the Koran.
Adel Kamel Haji, Abdullah al-Nuaimi and Salman bin Ibrahim al-Khalifa, a member of the ruling royal family, told a press conference that they intend to sue the US government for holding them for four years without charge or trial.
"They detained us in Pakistan and we were exposed to psychological and physical torture," said Haji, 41.
"We are going to sue them for that and we are going to sue them for dishonouring our religion." The trio had returned to Manama on November 6.
His comrade Nuaimi said they and other detainees were "regularly beaten up, chained and left out in the cold."
"My Koran was always stepped on by soldiers," he added.
Haji said that they had gone to Afghanistan through Iran at the start of the US-led military campaign against the Taliban regime in late 2001 to "take part in humanitarian relief for areas affected by the bombing."
After the fall of the Taliban they went to Pakistan and gave themselves up to the army so that they can be handed over to the Bahraini embassy there but were instead given to the Americans, said Haji.
He said they were briefly held at a detention facility in Kandahar in Afghanistan where they were "tortured with electric cables" before being transferred to the notorious US facility in Guantanamo, Cuba.
"The desecration of the Koran is intentional, deliberate. That didn't happen just once or twice or three times, but several times in front of me and other colleagues," Haji earlier told Radio France Internationale and the RMC-MO station in an interview.
"The Koran was continually insulted by the management of the prison and the soldiers. The aim was to provoke us religiously and to psychologically abuse us to make us pliant," he said.
Three other Bahrainis remain at the camp, including one, Jumah al-Dossari, who reportedly tried to commit suicide during a visit from his lawyer last month.
The allegations of torture and mistreatment of the Koran are not new.
In May, the US magazine Newsweek reported that the Islamic holy book was flushed down a toilet, sparking violent anti-US protests in several Muslim countries. That story was subsequently retracted.
Last month, a released Egyptian man, Sami al-Leithy, told television in his home country that he was confined to a wheelchair because of the "torture" he suffered at Guantanamo.
Several of 17 Pakistanis freed in June said they had seen their captors desecrating the Koran.
"There were various incidents. Once I saw them throw the Koran in a bucket full of urine and faeces," said one of the men, Haifz Ehsan Saeed.
Another, Muhammad Hanif, said he was tortured and his beard was forcibly shaved off.
"The Americans removed our beards and have been spitting over the holy book," he said.
About 500 people are being held at the Guantanamo detention center without charges, most of them captured in 2001 in Afghanistan.

Detainee's Conditions Upheld
Suicidal Prisoner Being Treated Humanely, U.S. Lawyers Say By Josh WhiteWashington Post Staff Writer Friday, November 18, 2005; Page A10 Government lawyers contend that Jumah Dossari, a suicidal detainee held at Guantanamo Bay, Cuba, has been receiving appropriate mental health care and has "adequate" amounts of human interaction, exercise and intellectual stimulation, according to papers filed in federal court this week.
The lawyers and officials at the U.S. military prison said that Dossari is not in isolation or solitary confinement, though he is held in a cell with solid walls and can communicate

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verbally with other detainees only through the narrow food tray slot in his door when it is left open. They also said that Dossari has established "a cordial relationship with members of his interrogation team" and has eaten pizza, watched movies and played checkers with them during 29 interrogation sessions over the past two years.

Dossari, 32, a Bahraini national, is under close medical supervision at the U.S. Naval Hospital at the Guantanamo Bay base after a suicide attempt. He tried to hang himself with a makeshift noose and slashed his right arm in a bathroom during a visit from his attorney on Oct. 15.

Dossari tried to kill himself again on Monday by ripping the stitches out of his arm wound, according to an affidavit filed Wednesday by Capt. John S. Edmondson, the hospital's commander.

Edmondson wrote that it was the ninth time Dossari has attempted suicide since March 2003, something his attorney says is an obvious sign of desperation.

"It is both a message and a decision on his part that he would rather die than be there," said Joshua Colangelo-Bryan, a New York lawyer with Dorsey & Whitney. He also said that the government is not doing enough to protect Dossari and that by keeping him "in the most isolating unit in the entire camp," it is doing irreparable mental harm.

Justice Department lawyers filed papers this week saying that the conditions at Guantanamo Bay are legal and humane. They said that Dossari's requests for more access to other detainees, additional reading materials, increased contact with his family and access for his lawyers to his medical records "would impose undue burdens" on the government.

The lawyers also said that officials have been working to help Dossari but that he does not take his medication and refused 72 of 97 exercise sessions they offered. Dossari also is allowed a 15-minute daily hygiene break.

"He has not been kept in isolation," Col. Michael I. Bumgarner, commander of the Joint Detention Group at Guantanamo Bay, wrote in an affidavit. "The cells within Camp 5 have solid walls, but allow communication with other detainees on the block in addition to daily interactions with guards, medical staff, library personnel and mail delivery personnel."

The filing was an unusual glimpse into daily life of a detainee at the facility, and included the first release of specific details on Dossari's conditions. Officials typically decline to discuss individual detainees.

Listed as "Inmate 261" in the court papers, Dossari is described as being friendly with his interrogators. The alleged enemy combatant has been allowed to watch the graphically violent film "Gladiator" with interrogators, and when he enjoyed that "motif" was allowed to watch the film "Troy" with them, Bumgarner wrote.

Colangelo-Bryan said the government's filing suggests that Dossari is no longer of intelligence interest to the U.S. government because he has been interrogated only 29 times over the past two years. He also disputed the idea that conversations with interrogators -- whom Dossari has accused of seriously abusing him -- amount to meaningful human contact.

"The idea of pizza parties and checkers makes me think I should try to find some interrogators for myself," Colangelo-Bryan said. "It sounds like a slumber party."

He said that Dossari appeared despondent during his visit last weekend and that Dossari's suicide attempt came one day after his lawyers were not allowed to return to speak to him. Colangelo-Bryan said he saw Dossari shackled to a wheelchair in the hospital, wearing a neck brace.

The court papers confirmed that Dossari is one of several Guantanamo Bay detainees on a hunger strike.

http://www.washingtonpost.com/wp-dyn/content/article/2005/11/17/AR2005111701754.html

Guantanamo inmate tries suicide again

Thursday, November 17, 2005 · Last updated 3:33 p.m. PT Seattlepi.com Website By BEN FOX ASSOCIATED PRESS WRITER SAN JUAN, Puerto Rico -- A Bahraini man being held at the U.S. prison for terrorism suspects at Guantanamo Bay attempted suicide this week for the ninth time and has begun a hunger strike, according to newly released court documents.

Juma'a Mohammed al-Dossary tried to kill himself Monday by pulling out sutures on an arm wound he inflicted on himself a month earlier, the chief medical officer at Guantanamo, Dr. John Edmondson, said in an affidavit filed in federal court in Washington.

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Al-Dossary, who has been held since February 2002, also began a hunger strike in the first week of November to protest not being included in a group of Bahrainis released from the jail at the U.S. Navy station in eastern Cuba, Edmondson, a Navy captain, said.
It was the fourth suicide attempt in 20 months at Guantanamo, where the U.S. military holds about 500 terrorism suspects, said Lt. Col. Jeremy Martin, a detention center spokesman. No detainees have died at the prison since it opened, officials say.
The doctor's affidavit, filed late Wednesday, came in response to a request from al-Dossary's lawyers that a judge order conditions be eased for the 32-year-old detainee.
"He's living under conditions that he finds unbearable and he's been told that he'll live that way for the rest of his life," said Joshua Colangelo-Bryan, one of the attorneys.

<http://servedby.advertising.com/click/site=0000709145/mnum=0000302011/optn=64?trg=http://ad.doubleclick.net/jump/N3671.ad.com/B1573110.18;abr=!ie4;abr=!ie5;sz=300x250;ord=2532317841?>
The lawyers contend al-Dossary has been kept in isolation for about two years and denied sufficient time to exercise and adequate reading material. They also say lights are kept on in his cell all night and he is not allowed regular access to other detainees.
Col. Michael Bumgarner, who manages the jail, said in an affidavit that al-Dossary has not been kept in isolation and that for the past six months he has been housed in an area where detainees are offered two hours of exercise per day, can freely talk to each other and have access to a library. Lights are dimmed at night, he said.
http://seattlepi.nwsource.com/national/1102AP_Guantanamo_Suicide_Attempt.html
Guantanamo a story of wrongs, not rights

ajc.com website
By JOHN G. GIBBONS
Published on: 11/18/05
For more than two years, the Bush administration maintained a legal black hole at Guantanamo Bay, imprisoning 700 men without charges, access to counsel or contact with the outside world. The administration repeatedly assured us that this harsh imprisonment was necessary because the dangerous individuals detained in Guantanamo, a naval base and detainment camp for prisoners of war collected from both Afghanistan and Iraq, were the worst of the worst al-Qaida terrorists.
But that's not true in all cases.
Brig. Gen. Jay Hood, Guantanamo's current commander, admits: "Sometimes, we just didn't get the right folks." The military only acknowledged such errors after the Supreme Court granted the right of habeas corpus to detainees in a 2004 decision.
Guantanamo is one of the few examples of imprisonment beyond the law in our country's history, and it exceeds in scope any past example. It is precisely this threat of unlawful detention and unfettered executive branch power that our federal courts have in the past kept in check through the ages-old writ of habeas corpus.
The writ of habeas corpus meant that the king of England could not throw paupers in a prison for their rest of their lives on a whim. It prevents our president from seizing an innocent civilian in Bosnia and throwing him into indefinite detention. Recognizing this injustice, the U.S. Supreme Court declared last year in Rasul v. Bush that Guantanamo detainees had a right to judicial review of their imprisonment.
Last week, the Senate passed an amendment offered by Sen. Lindsey Graham (R-S.C.) that stripped the U.S. courts of habeas corpus jurisdiction for detainees in Guantanamo Bay. Not since the Civil War has the right of habeas corpus been suspended. Yet the Senate took this action without a full and public debate about the consequences of the amendment.
Fortunately, the outrage from religious, military, legal, and human rights groups decrying the Senate's cavalier decision to suspend the writ forced Graham to reconsider. He did not, however, choose to withdraw the amendment to allow for a reasoned and thoughtful consideration of the issues raised by eliminating habeas protections. Nor did he propose hearings, at the very least, by the Senate Judiciary Committee, as its chairman, Sen. Arlen Specter (R-Pa.), requested during debate on the amendment.
Instead, he and Sen. Carl Levin (D-Mich.) cobbled together another amendment that provides only for appellate review of the military hearings at Guantanamo. This revised amendment

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passed the Senate by an 84-14 vote, and the senators have been congratulating themselves on remedying the very problem they created.
Yet, the writ of habeas corpus has not been restored. Under the Graham-Levine Amendment, Guantanamo will remain a prison beyond the law.
The language of their amendment leaves much in question. Most importantly, it is still unclear whether an individual imprisoned at Guantanamo has any assurance of a fair hearing. The procedures the military has established do not weed out the guilty from the innocent. They do not give detainees a right to counsel and rely frequently on secret evidence withheld from the detainee. Detainees cannot gather evidence to prove their innocence. Most often, the hearings merely rubber stamp decisions the military already made, on the basis of unknown evidence.
Appellate review of a determination that is based solely on evidence presented by one side is meaningless.
The Senate should give pause before disregarding the crucial role of the judiciary in the administration of justice. Reasoned and thoughtful debate about this issue, not rhetoric, is what we should require from the Senate.
• John J. Gibbons is the former chief judge of the U.S. Court of Appeals for the Third Circuit and a partner at Gibbons, Del Deo, Dolan, Griffinger & Vecchione in New Jersey. He successfully argued Rasul v. Bush before the U.S. Supreme Court.
http://www.ajc.com/opinion/content/opinion/1105/18edjudge.html
Largest-ever gathering of former Guantánamo prisoners and prisoners' families: US government must give independent UN experts full access to Guantánamo Press release, 18/11/2005 Joint Statement by Amnesty International and Reprieve

Amnesty International and Reprieve today called on the US government to stop blocking meaningful United Nations access to its Guantánamo detention centre and agree to access to all prisoners. The organizations were responding to the passing of a midnight deadline for the US government to agree to terms for a visit to Guantánamo by five independent experts of the United Nations Commission on Human Rights.

Amnesty International and Reprieve made the call as they announced the largest ever gathering of former "war on terror" prisoners and their families to highlight an increasingly globalized network of torture and ill-treatment. The three-day conference in London, this Saturday through Monday, also brings together international legal and medical experts and leading human rights campaigners to inform and encourage action against torture and the practices that lead to it, such as secret detentions and renditions.

Amnesty International's Secretary General Irene Khan said:

"Denying meaningful access to those held in Guantánamo Bay is totally unacceptable. Guantánamo is just the visible tip of an iceberg of abuse, the most notorious link in a chain of detention camps including Bagram Air Base in Afghanistan, prisons in Iraq and secret facilities elsewhere. Through the courageous testimonies of former prisoners and prisoners' families, our conference this weekend will highlight how Guantánamo has become the epicentre of a shadow justice system supported by the subversive use of prolonged detentions and the handing over of prisoners to countries known to practice torture."

Reprieve's Legal Director, Clive Stafford Smith, who is acting on behalf of some 40 Guantánamo Bay detainees, said:

"The conference begins on the 100th day of the prisoners' hunger strike. I recently returned from Guantánamo and have just received an unclassified statement from Shaker Aamer, the British resident and father of four British children, where he writes that he has been so abused and humiliated that he wants the US military to stop force feeding prisoners and allow him to chart his own destiny and die. The British government should be ashamed of itself, refusing to lift a hand to help the ten British residents still being held there. At the

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conference, we will see the collateral damage of the Guantánamo experiment - the torture, the fatherless children, and the abdication of the rule of law."

Amnesty International and Reprieve recognize that protecting civilians is a government's duty, but fighting terror with terror has been a catastrophe. Respect for universal human rights is the most potent weapon in the "war on terror". Fair trials and an absolute ban on torture are the only way to properly underpin our security.
For further information about the weekend conference:
http://news.amnesty.org/pages/conference-press-eng
http://news.amnesty.org/index/ENGPOL300342005
U.N. rejects U.S. terms for Guantanamo visit Rights experts say restrictions won't allow for fair evaluation
Updated: 5:01 a.m. ET Nov. 18, 2005
U.N. rights experts said Friday they refused to accept an U.S. invitation to visit the military prison for terror suspects at Guantanamo Bay because U.S. restrictions would make it impossible to make a fair assessment of detainee conditions.
The experts, invited by the United States to visit Guantanamo Bay Naval Base in Cuba, said they had to turn down the offer because U.S. officials refused to grant them the right to talk in private to the detainees.
"We deeply regret that the United States government did not accept the standard terms of reference for a credible, objective and fair assessment of the situation of the detainees at the Guantanamo Bay detention facility," said the experts, who independently check on rights around the world.
"These terms include the ability to conduct private interviews with detainees," said a statement by five experts, whose mandates cover torture, freedom of religion, health, independent judiciary and arbitrary detention.
They said they found it "particularly disappointing that the United States government, which has consistently declared its commitment to the principles of independence and objectivity of the fact-finding mechanisms, was not in a position to accept these terms."
"Under the circumstances, we will not be traveling to Guantanamo Bay Naval Station, as doing so would undermine the principles" under which they seek to provide neutral, independent assessments of respect for human rights.
http://msnbc.msn.com/id/10093218/

UK: Britain denies Hicks' citizenship
AAP NEWSFEED
November 18, 2005, Friday 7:45 AM Eastern Time

BYLINE: By Chris Lines

DATELINE: LONDON, Nov 18

Australian Guantanamo inmate David Hicks' application for British citizenship has been denied by the British Home Office, but the ruling will be challenged in court.
A lawyer for Hicks today confirmed the Home Office's ruling on the application.
The application was denied on the basis that Hicks had allegedly performed "an act prejudicial to the interests of the United Kingdom in attending training camps in Afghanistan and Pakistan", the lawyer's office said.
An application for judicial review of the citizenship bid has already been lodged and is set down to be heard next Wednesday.
The 30-year-old's application was based on the British citizenship of his mother, who was born and lived as a child in England.
The British government had acted to remove all nine of its citizens from US military custody held at its Guantanamo Bay prison in Cuba, and it was hoped the government would do the same if Hicks became British.
Hicks has been held at Guantanamo since January 2002 after he was picked up by US forces while allegedly fighting alongside the Taliban in Afghanistan, He faces charges of conspiracy

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to commit war crimes, attempted murder by an underprivileged belligerent and aiding the enemy. He denies all of the charges.
Hicks was today due to be the first of nine Guantanamo inmates to face military commission trial at the heavily fortified prison.
But US District Court judge Colleen Kollar-Kotelly this week granted a stay in the trial until at least mid-2006 while the US Supreme Court considers a challenge to the legitimacy of military commission hearing process.
If the commission hearings' legitimacy is upheld, Hicks' trial is likely to proceed in July or soon after.
But if the court finds the process is illegitimate, it is unlikely he'll face a military commission.

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From: (b)(6) DoD OGC
Sent: Wednesday, November 30, 2005 2:26 PM
To: (b)(6)

Subject: GTMO Bird

All:

Below is today's GTMO Bird.

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(b)(6)
DOD Office of General Counsel (Legal Counsel)
(b)(2) (fax)

Lawyers fight for detainees; Ga. firm assails Guantanamo

The Atlanta Journal--Constitution

November 30, 2005 Wednesday

BYLINE: BILL RANKIN

When John Chandler first set foot on Guantanamo Bay, Cuba, this summer, it reminded him of the military bases he patrolled as a U.S. soldier almost 40 years ago.

But that feeling quickly evaporated when Chandler arrived at the U.S. military complex that holds more than 500 terror detainees. "I felt an overwhelming feeling of shame and anger," Chandler said.

Chandler, who normally litigates business disputes, is one of six lawyers from the Atlanta firm Sutherland, Asbill & Brennan who have volunteered to represent detainees held at the Guantanamo Bay Naval Station. One of the six lawyers is Chandler's wife, Beth Tanis, a fellow partner in the firm.

The six lawyers represent five Yemeni detainees and, Chandler said, they have grown increasingly perplexed and frustrated that none of the men has been charged.

"I'm sure there are some bad dudes down at Guantanamo," Chandler, 61, said during an interview at the firm's Midtown offices. "But I haven't met them. Our clients have been down

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there now for four years. What could they know now? The government should not be able to hold them indefinitely and never charge them."

In February, the Sutherland, Asbill lawyers began pursuing claims on behalf of the detainees through a petition for writ of habeas corpus, a civil lawsuit filed in U.S. District Court in Washington. The suit named President Bush, Defense Secretary Donald Rumsfeld and two military commanders at Guantanamo as defendants. It contended that the Yemenis were being unconstitutionally held without basis, without charge, without access to counsel and without being afforded fair process to challenge their detention.

Filing the initial lawsuit was unlike anything he had done before, said Greg Smith, a former federal defender in Atlanta who works at the firm's Washington office. Because names of the detainees had not been disclosed by the U.S. government, Smith said, he filed suit spelling the Yemeni's names as best he could with the help of translators. Only after the lawsuit was filed did the government verify that the Yemenis were being held captive at Guantanamo.

"It was the craziest thing in the world ------ filing a lawsuit before you were allowed to see your own clients," Smith said.

The five Yemenis were taken into custody by U.S. troops dispatched to Afghanistan to fight the Taliban regime that had harbored the al--Qaida terrorists responsible for the Sept. 11, 2001, attacks, the administration said. In court filings, Justice Department lawyers say the five men are enemy combatants, a classification that allows the administration to hold someone captive until the end of the conflict to prevent that person from returning to the battlefield. The designation provides fewer legal protections than prisoner of war status.

Since February, the Sutherland, Asbill lawyers ------ three from the firm's Atlanta office and three inWashington ------ have obtained security clearances, traveled twice to Guantanamo and flown to the Middle East to visit their clients' relatives.

Four of the lawyers and two translators returned to Guantanamo on Monday. During their most recent visit in late September, the lawyers learned that client Muhammad Al--Abdullah Bawazir was waging a hunger strike.

Bawazir initially worked at an Afghani orphanage, teaching the Quran to children. He then worked as a clerk for a charity group that ministered to refugees, said Tanis, Chandler's wife and volunteer attorney. After his capture in Afghanistan, Bawazir told his attorneys, he was brutally beaten by anti--Taliban native soldiers of the Northern Alliance shortly after being interrogated by U.S. soldiers. Bawazir said the two scars on his scalp were caused by the beatings and led him to sign a false confession, Tanis said.

"He has said he would have signed anything at that point," said Tanis, who specializes in complex litigation involving accounting firms.

Bawazir is accused of using counterfeit travel documents, attending a weapons training camp in Afghanistan, fighting with the Taliban and firing at U.S. or coalition forces.

During a tribunal hearing, Bawazir denied all allegations, according to a transcript.

"Why would I fight the United States of America?" Bawazir asked. "I have nothing against them . . . I wasn't a fighter."

When Sutherland, Asbill lawyers first met Bawazir in June, he weighed about 135 pounds. When the attorneys returned in late September, Bawazir had lost 20 pounds because of the hunger strike he began Aug. 8. He was so emaciated the lawyers hardly recognized him, Chandler said. Bawazir sat in a wheelchair with a feeding tube dangling from his nose.

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The lawyers cut short their visit because Bawazir was exhausted from the effort of sitting up.

"He said he intends to die in Cuba," Chandler said. "He said he would never eat another bite or drink another drop of water. It is his intention to die there because there is no hope of anything else."

Bawazir asked his lawyers to try to get the military to stop force--feeding him. "I told him I just could not do that at that point," Chandler said.

The lawyers have found litigating the Guantanamo claims challenging because of the classified nature of the cases. It often takes weeks for a letter to reach their clients. Once the lawyers finish interviewing a detainee, they must turn over their notes to military personnel. The notes are returned two to three weeks later; with some sections having been redacted for security purposes.

Also difficult was gaining the trust of their clients, an important hurdle because if a detainee has not signed a retainer agreement by the end of a second visit, the lawyers are no longer allowed to visit with the detainee.

For this reason, some of the volunteer lawyers traveled to Yemen this summer to visit with their clients' relatives and made videotapes of the meetings. The legal team then filed a court motion to allow them to show the videos to their clients.

The U.S. government initially opposed it, but after a court hearing, the military consented to allowing the detainees to see the videos.

During a recent debate in the Senate, which voted to restrict habeas litigation by Guantanamo detainees, legislators made light of court motions that sought to air the "family videos."

That angered Chandler. "That really understates what was going on there," he said. "The first time we met them down there they didn't know who we were or whether we were part of another military trick to get them to talk. It was something we did to try and establish the credibility of the lawyers."

Chandler said not all attorneys at Sutherland, Asbill & Brennan have embraced the idea of the firm's lawyers representing Guantanamo detainees. But he said the firm has been highly supportive of the pro bono work.

Other Atlanta lawyers representing Guantanamo detainees include members of the Bondurant, Mixson & Elmore firm and Howard Manchel, a criminal defense attorney .

Chandler, who helped found the Atlanta Volunteer Lawyers Association some 25 years ago, said he became involved in the Guantanamo litigation after the New York--based Center for Constitutional Rights said it was seeking volunteers on behalf of relatives of Guantanamo detainees. So far, he said, it has been a fascinating experience.

"It's also been a horrible experience," Chandler said. "I love this country and served it in the Army. How can my country do something for which we condemned Communist countries and for which we are now condemned by the world?"

The growing power of the jamaats

The Guardian (London)

November 30, 2005

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The bodies of the dead of Nalchik will not be returned to their relatives. Russian anti-terrorist laws forbid it, but critics say the move is designed to thwart the Muslim imperative to bury the dead within 24 hours.

Raya's son Vyacheslav had wanted to be a policeman when he left the elite Russian special forces. "He tried to join, but I did not have the money to pay the bribe needed to get a job there," she says. "Nobody needs people like him, who don't smoke, drink or pay bribes. All he wanted to do was live cleanly and honestly." She says her son joined a local "jamaat", or council, a strict Islamic group which claims to offer an alternative system of justice to the corruption of the local authorities.

Raya's membership of the jamaat and regular attendance at a mosque attracted the attention of the local police, says his mother. He was arrested twice, she says, once as he left prayer. "They beat him, once on the kidneys so badly that he could not work (as a builder) for a week. After you go through that, you are ready to do anything."

Tales of police abuse are echoed by others. Fatima Mamayeva's husband, Timur, is now on a police wanted list for suspected involvement in the uprising; earlier this year, he was arrested and heavily beaten four times. "They put a plastic bag over his head to partially suffocate him." She says police recently joked to her that she will have to take revenge as a "shakhidka", or female suicide bomber.

Another suspect is Rasul Kudayev, a former wrestling champion whom the Russian authorities cite as proof of the international connection to the militants. Kudayev was arrested in Afghanistan by US troops in 2001 and held in Guantanamo Bay. In May 2004, he returned home to Nalchik, telling his family he had been given mysterious coloured pills and subjected to extreme temperatures, irritant gels and stress positions. He told them that local police continued to harass him for months and then accused him of attacking a police checkpoint on October 13. They arrested him 10 days later. His lawyer, Irina Komissarova, says that when she saw him on October 26 he had to be carried into the room and had clearly been beaten.

One woman, Ira, had two sons who died in the arrests, Rustam, 25, and Ansur, 21. She says they were both graduates with no history of arrest. "If they are guilty, then they are guilty, but how can they be terrorists? They attacked government buildings and police."

The mobile phone film of the morgue is circulating, and fuelling their anger. "What do you think is going to happen next if we can't get the bodies?" says Rustam, hinting at further insurrection. "What would you want to do?"

Sidestepping Courts In The War On Terrorism

U.S. seeks leverage by moving detainees or changing their status before scheduled hearings. Critics call it legal dodge ball.

Los Angeles Times
November 30, 2005

By Richard B. Schmitt, Times Staff Writer

WASHINGTON – The timing of the government's indictment last week of terror suspect Jose Padilla, after holding him more than three years without charges, seemed hardly coincidental.

The Supreme Court was being asked to review the Padilla matter, which has sparked a national debate over the treatment of terrorism suspects who are U.S. citizens. By filing criminal charges against him, the Justice Department was reducing the chance that the high court would rule against the government in his case.

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It's an increasingly common strategy in the Bush administration's legal war on terrorism: avoiding review by the federal courts whenever possible.

As the government has tried to maximize its power to track down, question and incarcerate suspects here and abroad, it has come to view the courts as a sort of new domestic threat that often affords prisoners more rights than officials feel they legally deserve. Barely a year ago, the Supreme Court gave terrorism suspects broad rights to challenge the government in court.

In the wake of that and other rulings, authorities have moved repeatedly to avoid judicial review by changing the status of prisoners, shipping them overseas or making adjustments in the conditions of their confinement – sometimes days before suspects were to appear in court.

The administration is also considered likely to support legislation, already passed by the Senate, that would greatly limit the rights of detainees and undo much of the 2004 high court ruling for future cases.

Critics say that these and other tactics amount to a kind of legal dodge ball with the Constitution.

"It is really about holding the reins, " said William Banks, a national security expert at Syracuse University Law School. "They simply don't want the courts to push them around."

"Every time a court has been on the verge of granting a detainee a fair shake, the government has taken the ball and gone home," said Joshua Dratel, a lawyer who has represented a number of defendants in terrorism cases – including some held at the military prison at Guantanamo Bay, Cuba. "This is part of a pernicious pattern. They have been trying to subvert the process."

Administration officials deny there is any strategy to dodge the courts. But they also say they have a duty to protect the country and that they are taking all necessary steps to fulfill that pledge in what is largely uncharted legal territory.

Given the high stakes, the government would be wrong not to consider all its options, some observers said.

"I don't think there is anything wrong with that. That is just being responsible," said Andrew McCarthy, a former federal prosecutor who was involved in a number of terrorism cases.

Bryan Sierra, a spokesman for the Justice Department, said officials were limited in what they could say about pending cases – including Padilla's – but added that the paramount consideration has always been the nation's security. "At every point in Mr. Padilla's detention, the tools used have been subject to some form of judicial review," Sierra said.

But defense lawyers, human-rights groups and some legal experts say such a system also allows the government to play a kind of war game with the rights of defendants and the legal process.

The plight of Ali Saleh Kahlah Al-Marri is a case in point, they say. Officials have said they believe that Al-Marri, a native of Qatar who entered the country on Sept. 10, 2001, was a "sleeper cell operative" working to settle foreign terrorists in the U.S.

Two years ago, the Justice Department was moving against him in federal court in Illinois on charges of fraud and making false statements to authorities. Then the government decided he was too dangerous to be handled by the civilian courts, and he was moved to a military brig in South Carolina and designated an enemy combatant by President Bush.

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The abrupt transfer deprived Al-Marri of the protections of the U.S. judicial system.

His lawyers have said they believe that government officials took the action concerned that they were going to lose the criminal case. The move occurred on the eve of a hearing to suppress crucial evidence against him that his lawyers argued had been illegally obtained.

The administration also has fought hard against providing basic legal protections to detainees on the premise that they are being held outside the normal justice system. But officials have made concessions when it appeared their actions were about to be challenged in court. Defense lawyers say the government's goal is to avoid adverse rulings.

Officials afforded another enemy combatant, Yaser Esam Hamdi, access to a lawyer only after the Supreme Court was asked to take up his case. The court ultimately held last year that Hamdi was owed a hearing to make a case about his detention. He never got it. The administration instead deported him to Saudi Arabia, where his family lives, even though he once had been deemed a major threat who was captured on an Afghanistan battlefield.

Elsewhere, the government appears to have released detainees to avoid possible hearings that could air evidence of alleged unsavory tactics by captors. Earlier this year, the U.S. agreed to free an Australian man, Mamdouh Habib, who had been detained at Guantanamo Bay since 2002 on suspicion of being an Al Qaeda agent.

Some U.S. officials reportedly have said that Habib was released to ensure that a court would not closely examine evidence that he had been tortured in Egypt during interrogations.

The congressional effort to trim the rights of detainees could exacerbate such problems, some legal experts said. A smaller role for the courts, they said, could open up the possibility of additional abuses, such as prolonged detentions and coercive interrogations.

"When the government illustrates, over and over again, this contempt for the judiciary, it breeds its own lawlessness," said Joseph Margulies, an attorney with the nonprofit MacArthur Justice Center at the University of Chicago Law School. Margulies has represented several detainees and helped win the Supreme Court ruling last year establishing their rights to a hearing. "The government should not be afraid to take cases to court." he said.

Padilla's journey through the justice system began when he was picked up by the FBI at Chicago's O'Hare International Airport in May 2002 and held on a material witness warrant. A month later, he was removed from the court system when Bush designated him an enemy combatant. He was placed in solitary confinement in a Navy brig in South Carolina, identified by top administration officials as a would-be "dirty bomber" plotting to plant an explosive device that would spread radioactive material. But he was never charged.

In September, a federal appeals court upheld his detention. Padilla's lawyers filed a request with the Supreme Court to review the case, demanding that he be charged or set free. A deadline had been set for this week for the government to respond to Padilla's petition.

Officials at the Justice Department said that because they have decided to pursue criminal charges against Padilla, the Supreme Court should have no reason to get involved at this juncture. "We believe that the petition is moot," U.S. Atty. Gen. Alberto R. Gonzales said last week in announcing the indictment.

The terror-related charges against Padilla bear little resemblance to the government's original accusations against him.

Justice officials offered no assurances that Padilla would not be thrown back into military custody if the criminal case did not go well. Padilla's lawyers plan to press the high court to take the case.

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"There is no guarantee that the government won't do this again," said Jennifer Martinez, a Stanford law professor who is assisting Padilla's defense.

http://www.latimes.com/news/nationworld/nation/la-na-terror30nov30,0,3733656.story?coll=la-home-nation <http://www.latimes.com/news/nationworld/nation/la-na-terror30nov30,0,3733656.story?coll=la-home-nation>

American Forces Press Service<http://www.defenselink.mil/graphics/presserv.gif>

Officials Decry Use of Outdated Images to Portray Gitmo

By Kathleen T. Rhem
American Forces Press Service

U. S. NAVAL STATION GUANTANAMO BAY, Cuba, Nov. 29, 2005 - Leaders at the U. S. detention facility for enemy combatants here wonder why media outlets continue to use outdated images of defunct facilities to accompany news reports about the base.

Click photo for screen-resolution image
<http://www.defenselink.mil/news/Nov2005/screen_20051129155356_4xray3-20051129.jpg>
Camp X-Ray as it looks today. The facility has not been used since early 2002, and recent heavy rains at Guantanamo Bay have brought about heavy growth. Photo by Kathleen T. Rhem
(Click photo for screen-resolution image);high-resolution image
<http://www.defenselink.mil/news/Nov2005/20051129155356_4xray3-20051129.jpg> available.
Media stories about the detention facility or the men held here routinely are accompanied by photographs or video footage shot at Camp X-Ray, a temporary facility hastily erected to deal with enemy combatants captured in the first days of operations in Afghanistan. Images of orange-suited detainees blindfolded and handcuffed and kneeling in a line inside a chain-link enclosure have become iconic.

The problem is that Camp X-Ray closed in early 2002 and hasn't been used since. Since then, detainees have been housed in more modern, comfortable facilities, and improvements continue.

"I'd like to think it's for convenience" that media outlets still use footage that is more than three years old to portray the camp "rather than an attempt to try to portray the camp other than how it is today," Army Brig. Gen. John Gong, deputy commander of Joint Task Force Guantanamo, said in an interview.

"More recent footage better depicts what it's like here today," he added.

Camp X-Ray's concrete slabs and open-air chain-link enclosures had been compared to dog runs. But officials stress Camp X-Ray was a hastily built structure to deal with a rapidly changing situation in the war on terrorism. "It's important to note that Camp X-Ray was thrown up in a matter of weeks," Army Lt. Col. John Lonergan, commander of 1st Battalion, 18th Cavalry Regiment, said. Lonergan's unit provides security at Guantanamo Bay.

The facilities there were never meant to be used for long-term detention, he said. Engineers began construction on Camp Delta, which replaced Camp X-Ray in April 2002, shortly after detainees began arriving here.

OGC AMNESTY/CCR 20

Today the formerly occupied Camp X-Ray looks like a ghost town. Weeds and brush have overgrown the enclosures. Heavy rains spawned by three hurricanes at the island base this year have spurred growth of lush greenery throughout the defunct camp. Now the camp looks like it's been swallowed by a jungle.

Detainees in Camp 4, a part of Camp Delta and the least restrictive of the base's detention facilities, live in communal 10-man bays and have nearly full-time access to exercise yards. Gong said officials with the American Correctional Association have looked at Camp Delta and say the facility is in accordance with the standard for modern prisons in the United States.

Camp 5, the newest facility, is designed after state-of-the-art correctional institutions in the United States. Camp 6, to be completed in summer 2006, will be even more modern. When Camp 6 is completed, it and Camp 5 will house 95 percent of the roughly 500 detainees held here now, Gong said.

Media outlets have ample opportunity to update their imagery, Gong said. Since June, more than 40 media agencies have visited the base. "We welcome people to come in," he said.

Related Sites:
U. S. Naval Station Guantanamo Bay, Cuba <http://www.nsgtmo.navy.mil/nsgtmohome.htm>
Joint Task Force Guantanamo <http://www.jtfgtmo.southcom.mil/>

Click photo for screen-resolution image
<http://www.defenselink.mil/news/Nov2005/screen_20051129155516_4xray1-20051129.jpg> Camp X-Ray as it looks today. The facility has not been used since early 2002, and recent heavy rains at Guantanamo Bay have brought about heavy growth. Photo by Kathleen T. Rhem
Download screen-resolution
<http://www.defenselink.mil/news/Nov2005/screen_20051129155516_4xray1-20051129.jpg>
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Click photo for screen-resolution image
<http://www.defenselink.mil/news/Nov2005/screen_20051129155453_4camp5-20051129.jpg> This view shows an unoccupied wing in the state-of-the-art Camp 5, a $16 million facility completed in May 2004. File photo by Kathleen T. Rhem
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<http://www.defenselink.mil/news/Nov2005/screen_20051129155418_4camp4-20051129.jpg>
Detainees walk in an exercise yard in Camp 4, where they live in 10-man bays with nearly all-day access to the yard and other recreational privileges. File photo by Kathleen T. Rhem
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News Archive <http://www.defenselink.mil/news/archive.html> News Archive
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NOTE: View the original version <http://www.defenselink.mil/news/Nov2005/20051129_3476.html> of this web page on DefenseLINK <http://www.defenselink.mil> , the official website of the U. S. Department of Defense.

Distorting Guantanamo Bay

OGC AMNESTY/CCR 21

November 30, 2005: The prison camps at Guantanamo Bay have been the subject of controversy for over three years. The latest flap involves photos used by the media when reporting on the detainee camps. This has become the latest bone of contention between the military and the media. The images most commonly used are of Camp X-Ray, a temporary camp that was replaced by Camp Delta in April, 2002. The newer camps are going to be on the level of the latest correctional institutions anywhere in the world.

This has not been the first time this sort of media deception has been used. Earlier in 2005, there were questions raised about the treatment of the detainees. In July, Senator Richard Durbin compared the treatment of the detainees to Nazi concentration camps. This is despite the fact that out of over 24,000 interrogations, incidents of abuse were rare (32 involving interrogations - 6 of which were corrected on the spot, with the rest dealt with through normal channels). Of the 10,000 troops at Guantanamo Bay, only ten have been disciplined for not meeting standards - and in many of those cases, the disciplined soldiers had been provoked by the detainees.

One of the other bones of contention was the release of an interrogation diary involving a high-value detainee. The methods used during the detainee's interrogations were portrayed as routine. They were not - the techniques had been authorized as part of a special protocol. Naturally, human rights groups have been complaining about this, and their concerns are amplified by sympathetic news reports - which generates heat from politicians, who will rush to impose new rules.

That said, there is more than one way to distort things. Slanting facts, as has been done in the case of Mohammed al-Khatani, is one way. Another, more effective, means of distortion is to omit facts altogether. At least a dozen detainees that have been released have gone back to fighting with al-Qaeda. What also is not revealed is the intelligence gained. In many cases, this intelligence has given the United States information on how al-Qaeda is organized, where some al-Qaeda cells are, and on future operations. The media has also neglected to point out that al-Qaeda manuals instruct members to make false claims of being tortured if they are captured.

This latest incident is going to make relations between the military and media even worse than they already are. Already reporters are perceived as not telling the full story with regards to Iraq (a justified perception). Now, the use of outdated photos of Guantanamo Bay will only add to the perception that the media is undermining their efforts to defeat al-Qaeda. - Harold C. Hutchison (hchutch@ix.netcom.com)

http://www.strategypage.com/htmw/htiw/articles/20051130.aspx

Guantanamo inmate wins right to live in Germany
30 Nov 2005 12:53:32 GMT

Source: Reuters

BERLIN, Nov 30 (Reuters) - A Turkish man held since 2002 in the U.S. prison camp at Guantanamo Bay can keep his German residency status despite being out of the country for longer than six months, a German court ruled on Wednesday.

German authorities had attempted to revoke the residence permit of Murat Kurnaz, 23, because he had exceeded the six-month limit and had not applied for an extension.

However, his lawyer, Bernhard Docke, said the court ruled this was not justified because Kurnaz was being held abroad against his will.

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Docke told Reuters the court decision was a proof that "the spirit of Guantanamo has not been imported into German law".

Kurnaz, who was born in Germany to Turkish parents but is a Turkish national, was in the process of becoming a German citizen when he was arrested in Pakistan in late 2001. Persons born in Germany do not automatically get German citizenship.

Branded an "unlawful combatant", he has been in the U.S. military prison in Cuba since the beginning of 2002 on suspicion that he supported Afghanistan's radical Islamist Taliban and possibly al Qaeda.

Kurnaz, dubbed by the media the "Bremen Taliban" after the north Germany city where he lived, alleges he has suffered abuse and interrogation techniques including sexual humiliation, underwater suffocation and the desecration of Islam.

http://www.alertnet.org/thenews/newsdesk/L30650860.htm

OGC AMNESTY/CCR 23

(b)(6)

From: (b)(6) DoD OGC
Sent: Thursday, December 01, 2005 2:42 PM
To: (b)(6)

Subject: GTMO Bird - Deghayes; Ex-detainee conference; Alito's impact on detainees' rights; CIA leaks (Deghayes); Sen Kyl statement on detainees; Hunger strike press statement

All:

Below is today's GTMO Bird.

(b)(6)

(b)(6)
DOD Office of General Counsel (Legal Counsel)
(b)(2) (fax)

The need for a modern free market in torture; Before long there'll be league tables so customers can decide which torturer to attend

The Independent (London)

December 1, 2005

BYLINE: MARK STEEL

However unlucky you are to get taken hostage, some hostages are unluckier than others. Omar Deghayes, a resident of Brighton, has been held for more than three years and has received hardly any publicity at all. Maybe he needs a better agent.

Or could it be that instead of being held in Iraq, he is being held in Guantanamo Bay?

He was arrested in Lahore while with his wife and daughter, and after some warm-up torture in Pakistan, was moved to Guantanamo Bay. He was never charged, and it was two years before his captors announced the reason for his detention. It seems they'd seen a training video for Chechen rebels, and believed he was on it, though everyone who's seen it since agrees there's no one on it who looks anything like him. The American military will probably argue this displays the shortcomings of video evidence " it shows the people who are there but leaves out the people who aren't there.

And this allows suspects to escape justice. If he was in an al-Qa'ida video they could have released him and kept track of him, but instead, if they let him go he'd be free not to be in another guerilla training film, and then they'd have no idea where he was.

OGC AMNESTY/CCR 24

But apart from not being in the film, is it likely that someone running around training with Chechen rebels would take their wife and daughter along? Do they say to their wives, 'I've got to spend a week up an Afghan mountain waving a kalashnikov and shouting 'Death to infidels', but I get the evenings off so I thought you and the kids could come with me and we'll make a mini-break out of it'? Maybe you can get a special weekend deal with a Family Taliban card.

In any case, Omar was then tortured, and his accounts have now been related to his lawyer. There were the run-of-the-mill electrodes, but also a variety of more imaginative methods, including being left in a cage with poisonous snakes. Most spectacularly, after one attack he was permanently blinded in one eye. Now, the authorities will probably say: 'We can hardly accept his testimony as credible. After all he's blind in one eye.' (More details of Omar's case are available on www.save-omar.org.uk <http://www.defenselink.mil/news/www.save-omar.org.uk>)

The British Foreign Office, you may imagine, would be dealing with this case, but they're not. This is because Omar fled here from Libya as a young man, after his father was executed for organising opposition to Colonel Gaddafi. He was granted asylum, but as a British resident, not a citizen. So the US and Britain agreed, for representation he would have to apply to the Libyan government for 'consular intervention'. In effect, this gives him the option of remaining in a cage run by people who blinded him, or being handed over to those who shot his father. Perhaps this is a modern free market strategy towards torture, offering victims a choice of who's going to attack them.

Before long there'll be league tables published, so customers can decide which torturer to attend, and middle-class victims will move into a better catchment area so they're eligible for the electrodes that have shown the better results.

Eventually, torture will be privatised for maximum efficiency, as the numbers enjoying this service are growing to levels it was never intended for. And it's only fair that prisoners such as Omar will be charged a supplement for 'exotic' methods, such as poisonous snakes.

To complete the irony, the authorities at Guantanamo Bay have allowed the Libyan authorities into the camp to interrogate him. Because Libya and America are friends now. Choosing who's on which side in the war on terror is like picking teams at school. Each day it's different according to the whim of the boy doing the picking.

A while ago America would say, 'Saddam, you're on our side. I'm not having Libya, you're crap', and now it's the other way round. So Omar is unable to defend himself against the accusation of terrorism, because he's not considered a citizen as he had to flee a regime the Americans used to call a cesspit of terrorism, until they changed their minds. Let's hope he sees the funny side.

Or at least that he learns the rules of torture. That we deplore it to the extent we'll occupy a country for practising it, then if necessary, in order to ensure the defeat of the torturing regime, we'll torture people. Then we'll enlist dictators in this struggle, ignoring their record of torture, and, to make plain our unyielding opposition to torture, we'll torture our own residents, even inviting torturers from nations we'd previously occupied for their record on torture.

And to make sure our troops are tough enough to administer this stern rejection of torture, we'll let them hold initiation ceremonies in which they torture each other. And if you're not with us, you're against us.

Guantanamo is just an aside

OGC AMNESTY/CCR 25

A conference on torture and ill-treatment of detainees highlighted the human cost of the war on terror.

Tamam Ahmed Jama reports from London

The largest group of former detainees of the "war on terror" came together for a London conference on torture and other ill-treatment of detainees. The conference ran from 19-21 November and was organised by Amnesty International and Reprieve, another UK-based human rights organisation. Over the course of the three-day gathering, former detainees, including many previously held at Guantanamo Bay, talked about their experiences of ill- treatment while in detention.

Secretary-General of Amnesty International Irene Khan was amongst the speakers present. Commenting on the accounts of former detainees Khan said, "their stories are just one tiny element of the terrible human suffering that the war on terror is creating." She warned that "Guantanamo is only the tip of the iceberg. Torture and ill-treatment are increasingly legitimised by the war on terror."

It has recently been revealed that the US has detained more than 83,000 people since the launching of its "war on terror" four years ago. Up to 14,500 of those remain in detention and 108 people are known to have died in US custody.

There are allegations that the American authorities are holding thousands of people in secret locations around the world, including Eastern Europe.

The aim of the conference -- which heard testimonies from former detainees and family members from around the world, along with representatives of human rights organisations, lawyers and UN experts -- was to highlight the human cost of the war on terror. Moazzam Begg, a British national who spent three years in Guantanamo Bay, was among the former detainees who participated in the conference. Begg was captured by Pakistani and US agents in Islamabad in early 2002. He was held at different detention centres in Kandahar and Bagram in Afghanistan before being transferred to Guantanamo Bay. He was released -- without charge -- and repatriated to Britain earlier this year.

"People always ask me how I cope with the difficulties of readjusting to normal life," Begg said. "And I answer life is no longer normal."

Along with Begg, eight other British former Guantanamo Bay detainees have been repatriated and released without charge. Their release came following extensive diplomatic negotiations between Washington and London. Ten UK residents who are not British citizens remain in Guantanamo Bay. This raises the question of just how many innocent men are languishing in the notorious naval base in legal limbo -- not because there is convincing evidence of their culpability, but because their countries have not lobbied for -- or not in a position -- to demand their repatriation and trial at home, if need be.

Begg said he felt especially guilty during his encounters with the wives and children of the UK residents he left behind.

"What do I say to their children when they ask: did you see my father?" he asked. "What can I say to them when they ask me: what had my father done? And what I can say to them when they say: why are you back and my father is not? What does the United States of America say to them? There is nothing to say except that it is unequivocally wrong."

The Pentagon says 505 people are currently held at Guantanamo Bay. Many of these have been there for four years, without being charged, let alone tried or convicted of a crime. Most of the detainees were captured in Afghanistan following the October 2001 US invasion.

OGC AMNESTY/CCR 26

Though the American authorities have persistently denied any ill-treatment of detainees, former inmates say that they were tortured and saw others being tortured.

Two hundred detainees at Guantanamo Bay have been on a hunger strike since 11 August in protest against the conditions at the detention centre.

"Donald Rumsfeld said that prisoners who were on hunger strike were going on a diet," said Clive Stafford Smith, a British human rights lawyer and the legal director of Reprieve. "It is reprehensible for a political figure to make a comment like that."

Smith represents 40 Guantanamo Bay detainees, to whom he had not been allowed access. Nevertheless, he has obtained written statements from some of his clients. In one such statement, Shaker Aamer, a UK resident Saudi national, said: "I am dying here everyday mentally and physically, this is happening to all of us. We have been ignored, locked up in the middle of the ocean for four years. Rather than humiliate myself, having to beg for water at Camp Echo, I would rather hurry up a process that is going to happen anyway. It is a matter of personal dignity."

Smith pointed out that the detainees who are on hunger strike do not want to die, but simply want the US to respect their humanity and live up to the principles that it has long espoused -- the principles of decency, democracy and the rule of law.

There are reports that some of the detainees have lost half their bodyweight as a result of the hunger strike and are in rapid decline. To avoid any political scandal that may ensue, the detainees are not being allowed to die and are being force fed by prison guards. Some are reportedly being kept alive through intravenous feeding and scores have been hospitalised since the start of the hunger strike. There are also reports that medical staff have helped devise coercive interrogation methods, including sleep deprivation.

In light of the alarming reports of systematic human rights abuses at Guantanamo Bay, UN special rapporteurs on human rights have repeatedly asked for access to the detention centre, but so far to no avail.

"I am very anxious to visit because of the persistent and credible reports of alleged serious violations of the right to health of detainees," said Paul Hunt, the UN Special Rapporteur on the Right of Detainees to Health. "According to reports, there has been an alarming deterioration in the mental health of many of the detainees."

A team of UN experts was due to visit Guantanamo Bay on 5 December, but their trip has been suspended following the imposition of restrictions which UN experts say will make the whole exercise meaningless. The UN officials say they need unfettered access to the entire facility and private interviews with the detainees for a thorough investigation of the situation at the base. The US authorities are refusing to grant this.

Calling them "illegal combatants", the American authorities have refused to apply the Geneva Conventions on the Prisoners of War to the people held at the base. This has led to an international outcry.

"The writ of international human rights does not stop at the gates of Guantanamo Bay," Hunt said. "It is imperative for the integrity of the UN and its human rights mechanisms that Guantanamo Bay and similar facilities elsewhere do not escape international accountability. To those who argue that the detainees are 'bad people', I reply whether they are good or bad, the rule of law extends to them because they are human beings. That is what distinguishes a system of government based on the rule of law from one that is based on the arbitrary exercise of power."

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What is at stake here is the selective application of the law. The US, the self-professed defender of democracy and human rights around the world, is accused of being disdainful of international law, invoking it where it suits its interests and discarding it where it does not. The US has come under increasing international condemnation for showing disregard for human rights in the fight against international terrorism.

"If my human rights are going to be sacrificed for your greater security, that is not the way that we are going to be secure as a society," Khan said. "This approach is creating greater division, more suspicion, hatred and xenophobia. Fighting terror with terror will make us all much less secure. Terrorism can only be defeated through respect for human rights and human dignity."

http://weekly.ahram.org.eg/2005/771/in6.htm

'86 Alito Memo Argues Against Foreigners' Rights

Work for Justice Dept. Points to Views That May Affect Anti-Terrorism Rulings on High Court

By Jo Becker and Amy Goldstein

Washington Post
Tuesday, November 29, 2005

As a senior lawyer in the Reagan Justice Department, Samuel A. Alito Jr. argued that immigrants who enter the United States illegally and foreigners living outside their countries are not entitled to the constitutional rights afforded to Americans.

In an opinion that offers insight into the Supreme Court nominee's view of an area of law that has gained new significance with the Bush administration's policies to combat terrorism, Alito gave his approval to an FBI effort in the 1980s to collect from Canadian authorities fingerprint cards of Iranian and Afghan refugees living in that country.

The program to collect background information was constitutional, Alito wrote in a January 1986 memo to the FBI director. And because the refugees were nonresident immigrants of a third country, he reasoned, the FBI could disregard court decisions that prohibited it from spreading "stigmatizing" information about citizens.

With the Supreme Court scheduled to hear a major case this term involving the Bush administration's policy of trying "enemy combatants" in military tribunals, Alito's views of the FBI's old anti-terrorism fingerprint program have resonance today, reflecting what legal experts said is a broad and aggressive view of the law.

The memo on the rights of immigrants was among 120 documents from Alito's 16-month tenure as a deputy assistant attorney general in the Office of Legal Counsel that the Justice Department released yesterday in response to a Freedom of Information Act request by The Washington Post and other news organizations. The agency withheld 70 other documents, asserting that they were exempt from disclosure on grounds of privacy, attorney-client privilege or rules relating to classified information. Names and other details were blacked-out on some documents that were released.

Still, the memos, letters and other papers, most of them written by Alito himself, provide the most vivid picture available to date of the future nominee's role and views from December 1985 to March 1987, when he worked on legal matters as a high-ranking political appointee during President Ronald Reagan's second term. He would go on to become U.S. attorney for New Jersey and, later, an appeals court judge.

OGC AMNESTY/CCR 28

His writings show Alito in sync with the philosophy of the Republican administration of which he was a part, staking out strong stances on aggressive law enforcement and on states' rights. The views he expresses also could be construed as paralleling those of the Bush administration as it has pursued its campaign against terrorists, legal experts said.

The current administration has contended, for instance, that al Qaeda and Taliban detainees held at the U.S. naval base in Guantanamo Bay, Cuba, had no right to have their case heard by a U.S. judge. That is in part because, like the Afghan and Iranian refugees in Canada about whom Alito wrote, the recent detainees were not on U.S. soil. That view was rejected last year by a divided Supreme Court.

In his 1986 memo, Alito cites a 1950 Supreme Court case to support the contention that nonresident immigrants of other countries have "no due process rights" under the Constitution and a 1970 case that he said suggests illegal immigrants in the United States have limited constitutional rights.

Martin Redish, a constitutional law professor at Northwestern University Law School, said that view could also be used to justify a current administration policy under which the CIA is interrogating suspected terrorists in a covert prison system in Eastern Europe and elsewhere.

Conservative constitutional analyst Bruce Fein, who served in the Reagan administration with Alito, said that by the time Alito wrote the memo the Supreme Court had ruled that school-age illegal immigrants had a right to a public education.

"He seems to be saying that there is no constitutional constraints placed on U.S. officials in their treatment of nonresident aliens or illegal aliens. Could you shoot them? Could you torture them?" Fein asked. "It's a very aggressive reading of cases that addressed much narrower issues."

On other law enforcement issues, Alito also took a pro-government approach. In a January 1986 memo, Alito expressed several concerns about ethics guidelines for prosecutors that had been proposed by the D.C. Bar Association, saying they would impose "unworkable burdens" on lawyers responsible for bringing criminals to justice.

In another memo a few months later, Alito cited a loophole he said would allow IRS attorneys investigating taxpayers to get around an American Bar Association rule that prohibited lawyers from secretly recording conversations.

In late 1986, Alito also suggested that he favored allowing law enforcement agencies to use "message-switching" technology banned by Congress, in which they intercepted computer messages, stored them and relayed them to the unsuspecting intended recipient. He said that it was unconstitutional to allow legislative committees to approve of this technique but went on to say: "We would be happy to assist you in drafting proposed legislation that would authorize message switching."

Alito displayed his concern for states' rights in a memo the following year to John R. Bolton, at the time an assistant attorney general and now U.S. ambassador to the United Nations. In the 1987 memo, Alito cautioned about aspects of an agreement on universal children's rights that the State Department was negotiating with the U.N. Commission on Human Rights.

Alito said that provisions in the U.N. document "will undertake to provide broad protections for children," such as free care of disabled children and free primary education, that are not guaranteed by the federal government. "Unless the federal government actually intends to undertake these responsibilities on a national level (and we would vigorously oppose such an undertaking on federalism grounds) we believe that the Department of State should make clear

OGC AMNESTY/CCR 29

in negotiations that it is unlikely" the United States would agree to such terms and "their fulfillment will be at the discretion of the states." And he said the U.N. document would conflict with laws in some states by forbidding death sentences for criminals younger than 18 -- a practice recently outlawed by the Supreme Court.

At other points, the writings show Alito protecting the political interests of the Reagan White House. In a March 1987 memo, he disagreed with an earlier opinion from the Office of Legal Counsel, which had concluded that it was improper for people who did work at the White House without a government salary to be paid by national political organizations. Because many White House workers already have an "acknowledged and accepted partisan political bent," he wrote, "it strikes us as counterintuitive to suggest that an objectionable conflict of interest" would arise if they were paid by a political group.

http://www.washingtonpost.com/wp-dyn/content/article/2005/11/28/AR2005112801849.html
<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/28/AR2005112801849.html>

Leaking At All Costs

Nov. 30, 2005

The CIA's war against the Bush administration is one of the great untold stories of the past three years. It is, perhaps, the agency's most successful covert action of recent times.

The CIA has used its budget to fund criticism of the administration <http://powerlineblog.com/archives/007741.php/1007741> by former Democratic officeholders. The agency allowed an employee, Michael Scheuer <http://powerlineblog.com/archives/008601.php/1008601> , to publish and promote a book containing classified information, as long as, in Scheuer's words, "the book was being used to bash the president."

However, the agency's preferred weapon has been the leak. In one leak after another, generally to the New York Times or the Washington Post, CIA officials have sought to undermine America's foreign policy. Usually this is done by leaking reports or memos critical of administration policies or skeptical of their prospects. Through it all, our principal news outlets, which share the agency's agenda and profit from its torrent of leaks, have maintained a discreet silence about what should be a major scandal.

Recent events indicate that the CIA might even be willing to compromise the effectiveness of its own covert operations, if by doing so it can damage the Bush administration. The story began last May, when the New York Times outed an undercover CIA operation by identifying private companies that operated airlines for the agency. The Times fingered Aero Contractors Ltd., Pegasus Technologies, and Tepper Aviation as CIA-controlled entities. It described their aircraft and charted the routes they fly. Most significantly, the Times revealed one of the most secret uses to which these airlines were put:

> When the Central Intelligence Agency wants to grab a suspected member of al Qaeda overseas and deliver him to interrogators in another country, an Aero Contractors plane often does the job.

The Times went on to trace specific flights by the airlines it unmasked, which corresponded to the capture of key al Qaeda leaders:

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Flight logs show a C.I.A. plane left Dulles within 48 hours of the capture of several al Qaeda leaders, flying to airports near the place of arrest. They included Abu Zubaida, a close aide to Osama bin Laden, captured on March 28, 2002; Ramzi bin al-Shibh, who helped plan 9/11 from Hamburg, Germany, on Sept. 10, 2002; Abd al-Rahim al-Nashri, the Qaeda operational chief in the Persian Gulf region, on Nov. 8, 2002; and Khalid Shaikh Mohammed, the architect of 9/11, on March 1, 2003.

A jet also arrived in Riyadh, Saudi Arabia, from Dulles on May 31, 2003, after the killing in Saudi Arabia of Yusuf Bin-Salih al-Ayiri, a propagandist and former close associate of Mr. bin Laden, and the capture of Mr. Ayiri's deputy, Abdullah al-Shabrani.

Flight records sometimes lend support to otherwise unsubstantiated reports. Omar Deghayes, a Libyan-born prisoner in the American detention center at Guantánamo Bay, Cuba, has said through his lawyer that four Libyan intelligence service officers appeared in September in an interrogation cell.

Aviation records cannot corroborate his claim that the men questioned him and threatened his life. But they do show that a Gulfstream V registered to one of the C.I.A. shell companies flew from Tripoli, Libya, to Guantánamo on Sept. 8, the day before Mr. Deghayes reported first meeting the Libyan agents. The plane stopped in Jamaica and at Dulles before returning to the Johnston County Airport, flight records show.

The Times reported that its sources included "interviews with former C.I.A. officers and pilots." It seems difficult to believe that the information conveyed in those interviews was unclassified. But if the agency made any objection to the Times's disclosure, it has not been publicly recorded. And the agency's flood of leaks to the Times continued.

The other shoe dropped on November 2, when the Washington Post revealed, in a front-page story, the destinations to which many terrorists were transported by the CIA's formerly-secret airlines – a covert network of detention centers in Europe and Thailand:

The CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe, according to U.S. and foreign officials familiar with the arrangement.

The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small center at the Guantanamo Bay prison in Cuba, according to current and former intelligence officials and diplomats from three continents.

The Post's story caused a sensation, as the "current and former intelligence officials" who leaked the classified information to the newspaper must have expected it would. The leakers evidently included officials from the highest levels of the CIA; the Post noted that the facilities' existence and location "are known to only a handful of officials in the United States and, usually, only to the president and a few top intelligence officers in each host country." Further, the paper said that it "is not publishing the names of the Eastern European countries involved in the covert program, at the request of senior U.S. officials." So this top-secret leak was apparently not a rogue operation. On the contrary, it appears to have been consistent with the agency's longstanding campaign against the Bush administration, which plainly has been sanctioned (if not perpetrated) by officials at the agency's highest levels.

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Both the Post and the leaking officials knew that publication of the secret-prisons leak would damage American interests:

[T]he CIA has not even acknowledged the existence of its black sites. To do so, say officials familiar with the program, could open the U.S. government to legal challenges, particularly in foreign courts, and increase the risk of political condemnation at home and abroad.

The damage foreseen by CIA leakers quickly came to pass. Anti-American elements in a number of European countries demanded investigations into the use of their countries' airports and air space by civilian airlines that are known or suspected CIA fronts. In Spain <http://news.yahoo.com/s/nm/20051124/ts_nm/security_spain_cia_dc;_ylt=Asu1cmNG5u.28tKZa5J5DYqGOrgF;_ylu=X3oDMTA4b3FrcXQ0BHNlYwMxNjkz> , the foreign minister testified before a parliamentary committee that no laws were broken in what allegedly were CIA-linked civilian landings in Majorca. But that site will be closed to the agency in the future:

[H]e said the government would immediately step up checks on civilian aircraft that flew over or stopped in Spanish territory to make sure they were civilian flights. If necessary, the government would implement more exhaustive checks inside aircraft, he said.

Similar outcries and investigations occurred in the Canary Islands, Portugal <http://www.alertnet.org/thenews/newsdesk/L23748423.htm> , Norway, and Sweden <http://news.monstersandcritics.com/europe/article_1062565.php/Norway_and_Sweden_investigate_alleged_secret_CIA_flights> .

The twin leaks to the Times and the Post have severely impaired the agency's ability to carry out renditions, transport prisoners, and maintain secret detention facilities. It is striking that top-level CIA officials are evidently willing to do serious damage to their own agency's capabilities and operations for the sake of harming the Bush administration and impeding administration policies with which they disagree.

The CIA is an agency in crisis. Perhaps, though, there is a ray of hope: the agency has referred <http://www.nationalreview.com/york/york20511081832.asp> the secret-prison leak to the Post to the Justice Department for investigation and possible criminal prosecution. It is a bitter irony that until now, the only one out of dozens of CIA-related leaks known to have resulted in a criminal investigation was the Valerie Plame disclosure, which was trivial in security terms, but unique in that it helped, rather than hurt, the Bush administration.

http://www.cbsnews.com/stories/2005/11/30/opinion/main1086900.shtml
<http://www.cbsnews.com/stories/2005/11/30/opinion/main1086900.shtml>

Should Foreign Terrorists Have the Right to Sue U.S. Troops?

Jon Kyl, November 28, 2005

The U.S. Supreme Court recently decided that even prisoners in the war against terrorism have a legal right to contest their "status" - even those who would kill us in an instant if given half a chance. They can do that by suing their captors under a statute that is available to criminal defendants in U.S. Courts. But this procedure (called a writ of habeas corpus) is not a Constitutional right for non-U.S. citizens. Neither prisoners of war nor terrorist detainees have ever had such a right in previous wars.

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The detainees at Guantanamo Bay, Cuba, have been called the worst of the worst. These terrorist trainers, bomb makers, recruiters, financiers and bodyguards of Osama bin Laden have indiscriminately targeted civilians. For a variety of reasons, they do not qualify for the protections of the Geneva Conventions. Nonetheless, official U.S. policy is to apply Geneva standards, including access to lawyers, Red Cross visits, and so forth. A Combatant Status Review Tribunal (CSRT) system allows every detainee to challenge his designation as an enemy combatant, and the status of each is assessed annually by an Administrative Review Board. Each detainee is assigned a military officer as a personal representative, to assists in hearing preparation. Detainees have the right to testify before the tribunal, call witnesses, and introduce any other evidence. The question has been their rights to challenge the CSRT decisions in federal court.

An amendment I recently co-sponsored with Senator Lindsey Graham (R-SC) and Carl Levin (D-MI) codified the traditional assumption (overturned by the recent Supreme Court decision) that federal law does not grant enemy combatants detained outside the United States the unfettered right to file suit in U.S. federal courts. The amendment would allow a one-time federal court review of military court decisions at Guantanamo, but it would be limited to the question of whether proper procedures and standards were followed.

The amendment was adopted by a vote of 84-14 and included in the Senate Defense Authorization bill, which is now being merged with the House of Representatives' version.

It's important to make clear that this amendment does not affect the cherished and historic habeas corpus rights of American citizens. It's simply a necessary clarification for detainees since, for the first time in our history, foreign terrorists in large numbers have begun to claim the same benefits as citizens under the Constitution and our laws. More than 160 habeas cases have been brought in the DC Circuit Court on behalf of approximately 300 Guantanamo detainees. Without clarification of the law, all 500 detainees at the facility, and many more in the future, could demand federal court hearings not only on whether the government correctly classified them as enemy combatants, but on any other subject as well. Some have already sued over matters such as the kinds of reading material that are made available to them.

International law allows any nation the right to detain enemy combatants for the duration of a conflict. We certainly never "tried" captured Nazis or Japanese POWs in World War II (with the exception of a few leaders charged with war crimes), although many were held for years. The primary reason we detain members of al Qaeda is to prevent them from killing more Americans, and, secondarily, to gather useful intelligence.

Allowing terrorist detainees to file multiple lawsuits against their captors doesn't just make a mockery of our justice system, it impedes that critical intelligence function. Michael Ratner, a lawyer for numerous Guantanamo detainees, boasted to Mother Jones magazine in March that:

"The litigation is brutal for [the Untied States]. It's huge. We have over one hundred lawyers now from big and small firms working to represent these detainees. Every time an attorney goes down there, it makes it that much harder [for the U.S. military]. You can't run an interrogation...with attorneys."

My colleague Sen. Lindsey Graham of South Carolina recently responded on the Senate floor: "The detainees at Guantanamo are not American citizens facing criminal trial, [but] terrorists who have taken up arms against the United States. There has never been a time in our military history where an enemy combatant or prisoner of war has been allowed access to federal court to bring lawsuits against the people they are fighting."

In other words, foreign terrorists have never had the right to sue U.S. troops. And now is certainly not the time to give it to them.

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Senator Jon Kyl, a Republican, represents Arizona in the U.S. Senate. He serves on the Senate Judiciary Committee, the Finance Committee, and the Energy and Natural Resources Committee.

http://www.truthnews.net/world/2005110035.htm <http://www.truthnews.net/world/2005110035.htm>

American Forces Press Service<http://www.defenselink.mil/graphics/presserv.gif>

Guantanamo Tube Feedings Humane, Within Medical Care Standards

By Kathleen T. Rhem
American Forces Press Service

U. S. NAVAL STATION GUANTANAMO BAY, Cuba, Dec. 1, 2005 – The small number of involuntary feedings conducted at the U. S. detention facility here are done humanely and are well within common standards of medical care, officials said in an effort to counter allegations made by attorneys for some detainees here.

Thirty to 33 enemy combatant detainees here are currently on a hunger strike -- which officials here call "voluntary fasting" -- to protest their continued detention. Of those, 22 are receiving liquid nutrition through a tube inserted through the nose and into the stomach.

"We have an ultimate responsibility that every detainee on our watch is taken care of," Joint Task Force Guantanamo Deputy Commander Brig. Gen. John Gong said in an interview. "We have a great desire to ensure they are healthy. "

Gong and other officials said widely reported allegations that the tubes are the width of a finger, are forcefully inserted without anesthesia or lubricant, and are reused on different detainees are patently false.

Navy Capt. (Dr.) John Edmonson, the senior medical officer at Guantanamo Bay, said the "enteral" feeding -- meaning directly into the stomach -- is done with a nasogastric "Dobhoff" tube. The tube is flexible and 4 millimeters in diameter, Edmonson said.

He stressed that only doctors and nurses insert the tubes and always use lubricant. They also always offer anesthetics and suggest stronger pain medication if a detainee appears to be uncomfortable. He described the Dobhoff tube as "very soft and non-irritating. "

Medical staff members never reuse the tubes, Edmonson said.

"I can assure you that the doctors are doing everything within the character of the standard of their profession," Gong said.

For the most part, the feedings are not involuntary. Both men said the vast majority of detainees voluntarily participate in the feedings. In fact, Edmonson noted, some even insert their own feeding tubes. "They are generally cooperative with the medical staff in that effort," he said.

Detainees are considered to be on a hunger strike after they miss nine consecutive meals, and medical specialists begin monitoring their health status. Body mass index, weight loss and

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physical condition are monitored. Edmonson said a patient can survive for about three weeks without eating as long as he is drinking water, which the detainees are.

When a detainee's weight drops too much and his health begins to deteriorate, doctors speak to the individual and offer supplemental nutrition, first intravenously and then through a nasogastric tube. Detainees receive Ensure, a commercial nutritional supplement, through the tube. Most agree to the procedure, Gong said.

He explained that as long as detainees maintain a certain level of health, they get to choose how much liquid nutrition to take. "The doctors try to be respectful of what the detainees want to do," he said.

Most take 1,500 calories a day. In contrast, most U. S. dietary recommendations are based on a 2,000-calorie diet.

In rare cases, detainees have received tube feedings involuntarily. "Some, because of their character and temperament, they would be less than cooperative and would need to be restrained," Gong said. Officials said restraints are always applied with the least amount of force possible. Both he and Edmonson said this is the rare exception and only used when a detainee's health is seriously in jeopardy.

The number of hunger-striking detainees peaked at 131 around the most recent anniversary of the Sept. 11 attacks, Gong said. Since then the number has steadily declined and has remained around the current number for the past several weeks.

"One has to really kind of scratch their head and ask why would they pick the anniversary of 9/11 (to protest their detention)," Gong said.

"It's their little contribution to their cause," Army Lt. Col. John Lonergan, commander of 1st Battalion, 18th Cavalry Regiment, said. Lonergan's unit provides security at the detention facility.

Edmonson, who has been at Guantanamo for two and a half years, said it's important to note that no detainees have died at Guantanamo Bay, while several of these men probably would have died if they weren't here. Task force doctors have treated cancer, battle wounds and other serious injuries and illnesses in a population that generally has limited access to medical care.

http://www.defenselink.mil/news/Dec2005/20051201_3504.html

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(b)(6)

From: (b)(6) DoD OGC
Sent: Friday, December 09, 2005 1:55 PM
To: (b)(6)

Subject: GTMO Bird - al-Dossari's lawyer; Russian ex-detainee Kudayev; British ex-detainee Begg pleads for release of hostage; Abdullah Khadr interview on family involvement w/Al Qaeda; march on GTMO; ex-detainees return to violence; fed judges oppose Graham leg.

All:

Below is today's GTMO Bird. Have a good weekend.

(b)(6)

(b)(6)
DOD Office of General Counsel (Legal Counsel)
(b)(2) (fax)

Detainees 'are being ill-treated'
By KANWAL HAMEED
MANAMA
December 9, 2005
LAWYERS have countered US claims that detainees on hunger strike at Guantanamo Bay are receiving humane treatment.
Attorney Joshua Colangelo-Bryan, whose team is representing the three remaining Bahraini prisoners, described the claims as nothing but a "cheap" exercise in public relations.
He said they are contradicted by credible reports from government personnel, professional associations and detainees themselves.
Mr Colangelo-Bryan was responding to an article published by the American Forces Press Service that appeared on the website of the US Defence Department.
The article quotes senior officials claiming that hunger strikers at Guantanamo Bay are tube fed "humanely" and "well within common standards of medical care".
Of the three Bahrainis still being held at Guantanamo Bay, two are thought to be on hunger strike.
The article reports that hunger strikers at the prison are fed through a tube inserted through their nose, but it is not done involuntarily.
It quotes Guantanamo Bay Naval Hospital commander Dr John Edmonson and deputy commander Brigadier General John Gong as saying the majority of detainees voluntarily participate in the feedings.
Dr Edmonson said there were "rare exceptions" when some do not co-operate and have to be restrained and force fed.

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But he claimed some even insert their own feeding tubes, while others are given anaesthetic to remove any discomfort and lubricant is used.
However, Mr Colangelo-Bryan told the GDN that he thinks the statements lack credibility.
"The falsity of those statements is made perfectly clear by FBI agents at Guantanamo who have described in their own words torture and abuse," he said.
"Considering that, any official statement made by the military regarding the treatment of detainees seriously lacks credibility.
"With respect to medical care, a number of physician's associations in the United States have expressed concern about the medical care at Guantanamo and many of our clients have described instances in which they were given no care or utterly inappropriate care.
"Official talk is very cheap when it is contradicted by government personnel, professional associations and detainees.
"Lawyers for some Saudi detainees have submitted documents to court detailing medical treatment, which at the very least is grossly negligent with respect to those on hunger strike."
Mr Colangelo-Bryan criticised the US government for whitewashing the "reality" of life at the prison.
In the American Forces Press Service article, a hunger strike is described by the US military as "voluntary fasting".
"The military would call the suicide attempt by Juma Al Dossary, that I witnessed, 'manipulative self-injurious behaviour'," Mr Colangelo-Bryan said.
"That underscores the fact that the euphemisms used at Guantanamo Bay have nothing to do with reality, but everything to do with public relations."
More than 30 detainees are said to be on hunger strike, to protest their continued detention, the statement said.
Bahrainis Juma Al Dossary and Essa Al Murbati are both said to be among them.
Dr Edmonson said on November 18 that Mr Al Dossary had been on hunger strike for almost three weeks to protest his continued detention after the other three Bahrainis were released on November 5, in a document filed at the US District Court of Columbia.
According to Mr Colangelo-Bryan, Mr Al Dossary was not seen being tube-fed during the lawyers' last visit on November 12, although he appeared to be extremely dehydrated.
A nurse was unable to insert a needle into Mr Al Dossary's arm to provide him with fluids intravenously after six attempts because his skin was too rubbery, Mr Colangelo-Bryan said.
Essa Al Murbati, 40, is believed to be still in the hospital as the result of a hunger strike that he is said to have begun more than three months ago. Lawyers were unable to meet with him on their most recent visit to the prison.
Criticised
Meanwhile, Mr Colangelo-Bryan criticised official attempts to link the detainees' hunger strike with the terrorist attacks of September 11, 2001.
"The number of hunger-striking detainees peaked at 131 around the most recent anniversary of the September 11 attacks," said Brig Gen Gong in the article.
It also quotes US Army 18th Cavalry Regiment first battalion commander Lieutenant Colonel John Lonergan as saying: "It's their little contribution to their cause."
Lt Col Lonergan's unit provides security at Guantanamo Bay.
"Considering that not even the military argues that not all detainees are associated with Al Qaeda, or are terrorists of any sort, the attempt to link the hunger strike to the terrorist attacks (of September 11, 2001) seems particularly feeble," Mr Colangelo-Bryan said.
http://www.gulf-daily-news.com/Story.asp?Article=129345&Sn=BNEW&IssueID=28264

Russia: Nalchik suspect's lawyer says "no proof" in investigation

BBC Monitoring Trans Caucasus Unit
December 9, 2005 Friday

The lawyer defending Rasul Kudayev, the former Guantanamo prisoner and chief suspect in the attack on Nalchik on 13 October, is convinced of her client's innocence, saying there is no proof in the investigation. Speaking in an interview on a Russian web site, Aleksandra

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Zernova said that because of their failure to find the real culprits, the authorities have put on a show trial and tried to pin the blame on Kudayev. International organizations, including Amnesty International, have now taken an interest in the case, as a result of which an appeal has been made to the Russian ambassador in London and the British foreign secretary. The following is the text of the report by Aleksandr Grigoryev entitled "International organizations have taken an interest in the fate of Rasul Kudayev who was arrested in Nalchik", published on the Kavkazskiy Uzel web site on 7 December; Subheadings have been inserted editorially:

"I was in a state of complete shock when I saw the photographs of Rasul Kudayev and other detainees from the Nalchik detention centre," a Kavkazskiy Uzel correspondent was told on the telephone from London by the lawyer Aleksandra Zernova, who is conducting the cases of the former Russian inmates of Guantanamo, including Kudayev. "I saw Rasul at the beginning of October and he was smiling and chatting quietly with me."

Suspect is a "sick man" - lawyer

"Rasul Kudayev has twice in his life been subjected to unfair imprisonment, although these were separate cases, both involving the use of torture and brutal treatment - at the American military base at Guantanamo and here, in Nalchik. On both occasions, the defence believes, this was completely unjustified. In any event, there have been no official charges in either case," Zernova says. "Meanwhile, he is a sick man and he still has an American bullet inside him."

According to Zernova, "because of Guantanamo Rasul has been branded a terrorist and he has even been given the nickname Taliban or Talib and whenever something happens they go to him first". "If they want to pin anything on anyone there is always the Number One terrorist in the whole of the Russian Federation - Kudayev. And when the events of 13 October occurred, we knew perfectly well how he would be threatened," Zernova recalls. "I used to chat with him about ten times a day, and I know that other representatives of the media were in constant touch with him at that time. So we are certain he was always at home and did not go anywhere. What is more, apart from the bullet, he has a number of other complications which he sustained by force. So he has been at home and has not got up from his bed. We just did not expect that they would so brazenly come and arrest him and be so certain of his guilt without any evidence."

"No proof" in investigation

In the lawyer's opinion, apart from the "evidence against Kudayev beaten out of other prisoners, the investigation has no proof". "There were people whom they released and they testify that they were told to lump it [the blame] on Kudayev, Kudayev is an international terrorist," Zernova says. "It is of great advantage now to the authorities and to the Kabarda-Balkarian Interior Ministry to make a show of a trial, that they have resolved the case and to pin it on innocent people. They have not found the militants themselves, so they have found 'international terrorism' in Nalchik."

According to Zernova, her task now is to draw the attention of as wide a circle of the public as possible to the fate of Kudayev and other prisoners.

"The first thing is to inform the public about what is really happening. The second - as far as I am aware, Kudayev's mother has filed an appeal to the European Court of Human Rights and attached three photographs to her appeal.

The third is that we are planning to write an open letter with a large number of signatories to the president of Kabarda-Balkaria demanding an independent investigation into what is happening in the prisons of Nalchik," Zernova says. "This is a violation of the international convention against torture which Russia has ratified. There are also other ways which I will not mention now as I do not want to reveal all my cards."

Amnesty International takes up case

Zernova said that two organizations have now taken an interest in Kudayev's case - Amnesty International, which has made an official request to the Russian authorities, and former prisoners of Guantanamo. Their web site is continually being supplied with information about Rasul Kudayev's fate. It was this organization which started to collect money for the operation to remove the bullet from Kudayev, but he was arrested. "These two organizations have asked people to write and to send requests to the Russian ambassador to Great Britain

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and to the British foreign secretary on Kudayev's fate. An appeal has been submitted but so far we have received no official reply," the lawyer said with regret.
Asked by Kavkazskiy Uzel if she was not afraid that because of such close attention to Kudayev he would simply disappear from the Nalchik detention centre without trace, Zernova replied: "We would hope that, due to the huge attention of the media and public organizations all over the world that they will not dare to do this. But if they do, we shall strive to ensure that all those responsible for committing these crimes are punished according to international laws."

Dark Days in Prisons at Home and Abroad; Suspected militant from Caucasus suffered at Guantanamo and now back home, family says.

Los Angeles Times
December 9, 2005 Friday
BYLINE: Kim Murphy, Times Staff Writer

When Fatima Tekayeva heard that her son was about to be returned to Russia from the U.S. detention facility at Guantanamo Bay, Cuba, she felt an aching fear.
Don't do it, she begged anyone who would listen. It's bad there, yes. It's worse here. Please don't send my son home.
All the same, the scenario unfolded like a scripted nightmare. Rasul Kudayev was put on a plane back to Russia. Soon he was released. He came home to the Caucasus region nothing like the broad-shouldered wrestling champion who had gone off to study Islam with the Taliban in Afghanistan.
He could barely walk unaided. His eyes were yellow from hepatitis, his heart fluttered, his head throbbed, family members said. Kudayev would sit up in the kitchen all night, telling his brother how guards at Guantanamo forced him to take medicine that made him sick and left him alternately to freeze and suffocate by opening and closing the ventilation system in a cramped isolation cell. By morning, his stories spent, he would fall asleep.
It ended as Tekayeva feared it would.
On Oct. 23, a truckload of soldiers showed up outside the family's small house and seized Kudayev, accusing him of having participated in an attack by Islamic militants on police and government targets in Nalchik 10 days earlier. Tekayeva threw her body in front of her son's thin frame.
"Handcuffs, what handcuffs?" she wailed. "He's already had enough handcuffs for a lifetime!"
But he disappeared into the feared Department 6 organized crime unit of the Kabardino-Balkaria police.
Kudayev, 27, is a veteran of an increasingly borderless campaign against terrorism, in which suspects may be ferried among prisons around the globe without facing trial. He survived a hellish uprising at an Afghan prison, followed by two years at Guantanamo, only to find himself in the hands of Russian police.
Several days after local police arrested Kudayev, his lawyer was brought in to witness his confession.
"He looked awful," attorney Irina Komissarova said. "He couldn't sit or stand straight because of the pain he experienced. He dragged one of his feet and couldn't step down on it. His face was covered with cuts and scabs."
Komissarova filed a complaint. Russian authorities responded last month by dismissing her from the case, saying that the complaint made her a witness. But Komissarova has continued to follow developments. Last week, after she alleged that Kudayev had been beaten again, this time so severely that his leg was broken, authorities opened a criminal investigation against her for allegedly revealing investigative secrets.
As a boy, Kudayev was not particularly religious, said his brother, Arsen Mokayev. When he was named wrestling champion of the republic of Kabardino-Balkaria in 1996, "my mother would say, 'I wish he were pious. But that's not his way.' "

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That changed as the North Caucasus felt the effects of unemployment, ethnic resentment and corruption, as well as Islamic militancy and harsh police tactics spilling over from nearby Chechnya.

Kudayev left to study Islam in Saudi Arabia. From there, he made his way to Afghanistan. How, when and why he went there is unclear. Many young Muslims said later they had idealized the Islamic state established by the Taliban.

Mokayev said his brother was attempting to flee Afghanistan with men from Tajikistan, Uzbekistan and elsewhere in Central Asia when they were captured by the U.S.-backed Northern Alliance and imprisoned in the ancient Qala-i-Jangy fortress at Mazar-i-Sharif.

A three-day uprising at the prison in November 2001 was crushed by Northern Alliance fighters and U.S. airstrikes. Only about 60 of the more than 500 prisoners survived.

Kudayev and many other non-Afghans were handed over to U.S. forces for eventual transfer to Guantanamo. Many of his letters from the prison there had large sections blacked out by censors, Mokayev said. But he told Tekayeva that he was being fed well and allowed to perform religious rituals.

When U.S. authorities sent Kudayev and six others from Guantanamo back to Russia in March 2004, they said they still considered the men a threat and that Russia had pledged to detain and investigate them. Russia filed charges but released the men in late June of that year.

Kudayev's mother said she barely recognized him when he arrived at her two-room house outside Nalchik. Several other former prisoners came with him and stayed until their families could pick them up.

"When I saw them at first, they were white, and you could look through them. You could blow on them and they would fall," she said.

Kudayev rarely left the house. He walked with difficulty. A bullet had been lodged in his thigh since Afghanistan that needed to be surgically removed, his family said. For unexplained reasons, the Americans never operated, and Kudayev could not get the surgery in Russia because authorities refused to return his passport, a prerequisite for free access to the healthcare system.

His liver was swollen from the hepatitis he and several other Russian prisoners said they contracted at Guantanamo. Heart and blood-pressure problems sometimes left him unable to rise off the couch. He had frequent headaches. All of it, his family said, dated to Guantanamo, although he had also been beaten by Russian security forces shortly after his return to his homeland.

Family members said Kudayev was haunted by his treatment at the U.S. naval base prison.

"There was constant psychological pressure on him," Mokayev said. "Imagine a man sitting in a cage for days on end, being constantly watched by another person who keeps writing down everything that the caged man does and ignoring him even when he speaks to him. Never turning off the lights. Just imagine that."

Mokayev said his brother told him of being forced to kneel with his hands cuffed to his ankles, being sprayed with a gel that caused a painful rash, then carried out, still shackled, and hosed down with a stream of water. Kudayev and several other prisoners said Guantanamo guards would turn up the air conditioning to the freezing point, then turn it off until breathing became difficult.

He was forced to take unidentified pills that gave him chest pains and made his muscles feel like stone.

"They beat them if they didn't want to take these pills, and they would administer them by force to them," Tekayeva said. "Afterward, he would just hunch into a fetal position."

The U.S. has denied forcing medication or any other abuse at Guantanamo but as a matter of policy does not comment on individual cases.

"All detainees in custody at Guantanamo, without exception, are treated humanely and are provided excellent medical care by dedicated medical professionals," said Lt. Col. Jeremy M. Martin, director of public affairs for the U.S. military in Guantanamo Bay.

At home, Mokayev would stay with his brother most days while Tekayeva worked at a clinic. At night, they reversed and Mokayev went out to work at odd jobs. They seldom left Kudayev alone. Police had been watching their house constantly since his return, and on several occasions had brought him in for brief questioning.

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On Oct. 13, as many as 200 militants attacked police and government targets in Nalchik, and more than 135 militants, police and civilians died in a day of fierce fighting. Family members insist that Kudayev was home. They say they left him alone only for about 15 minutes, when Mokayev took their mother to work.
Prosecutors say Kudayev headed a group of eight people assigned to attack a police rest house and the residence of the president of the republic. The assault was halted in a battle with traffic police on the outskirts of Khasanya, the small suburb where Kudayev lives, in which one officer was killed, Russian Deputy Prosecutor General Nikolai Shepel told the Los Angeles Times in responses to written questions.
"Kudayev admits [in his confession] that he had a semiautomatic rifle and had been assigned to lead a group of armed people," Shepel said. "At the same time, the arrested members of Kudayev's group are giving testimony about his participation in the armed battle with police officials, and about his heading the group."
On Nov. 22, 12 days after his lawyer was dismissed, Kudayev was charged with terrorism, banditry, attempted murder of a police officer, homicide and illegal trade in weapons, ammunition and explosives.
Komissarova, the lawyer, said Kudayev was so weak when she saw him that he had to be dragged into the room by two police officers.
"He told me that since being delivered to this place, he'd constantly been beaten and tortured -- that was his word, 'tortured' -- and he said electric shock had been used," she said.
Another man arrested at the same time, a member of the town council and the pro-government United Russia party, said he could hear the sound of beatings as he entered the prison area.
"All you could hear around you were thuds of blows, bangs and kicks behind cell walls, and screams and moans of the people who were being beaten up there," Ramazan Tembotov told The Times. "They were howling like injured animals."
One family was told that their son had committed suicide by throwing himself from a second-story window.
"I heard police officials talking about how ... they're trying to get information out of people, and how people are thrown out a window, taken back and thrown out again," said Larissa Dorogova, a lawyer for another suspect who also has been removed from her case. "And that way, they're forced to talk."
Russian media reports say 2,000 Nalchik-area residents have been detained for questioning since the Oct. 13 events. Few families acknowledge their sons went to war against the police. Most insist they were somewhere else at the time. Kudayev's family dismisses the idea that he went to Afghanistan to fight with the Taliban or be trained as a terrorist.
"If this were the case, do you think the Pentagon would have let him go?" Mokayev asked.
To Komissarova, Kudayev has the right to go to trial unmolested and represented by the lawyer of his choice, regardless of whether he was at home on the couch or in a gunfight.
"Neither I nor a single other lawyer will ever say that these are nice, wonderful guys. The only issue we're drawing attention to is the protection of their rights -- as detainees, as suspects, as defendants," she said.
"We hear so many law enforcement officials tell us, 'Oh, there you go, defending them,' " she said. "But the institution of defense has not been annulled in our country, has it?"

Ex-Guantanamo detainees plead for Iraq hostages' release

Agence France Presse -- English
December 8, 2005 Thursday 11:56 PM GMT

DATELINE: LONDON Dec 8

British former detainees at the American military base Guantanamo Bay appealed Thursday for the release of four Western peace campaigners held hostage and facing execution in Iraq. Moazzam Begg, a Briton detained for nearly three years at the Guantanamo base in Cuba, said images of the hostages in orange jumpsuits reminded him of their time in detention.

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The plea came after Britain issued a renewed appeal for the kidnappers to make contact.
Begg said in a statement on BBC television: "We came home to find that there were people who opposed their government in their brutal war waged against Afghanistan and Iraq and stood on the side of justice. And they were not Muslims."
Begg was one of the last four Britons to be repatriated from Guantanamo in January.
"It is our sincerest belief that Norman Kember, the 74-year-old Briton, and those with him are amongst those people, the many people, who opposed this war from the beginning and were only in Iraq to promote human rights for the oppressed."
"Just like Sheikh Abu Qatada, we also hope that our words may encourage you to show mercy to these men and let them free," Begg said.
In an exceptional gesture, the British Foreign Office authorised Qatada, an Islamist with reputed Al-Qaeda connections who is detained in Britain on security grounds, to record Wednesday an appeal for the hostages' release.
The kidnappers of Kember, Canadians James Loney, 41, and Harmeet Singh Sooden, 32, and US national Tom Fox, 54, extended by 48 hours to Saturday their deadline to kill them.
The four members of the Christian Peacemaker Teams (CPT) organisation were abducted in Baghdad on November 26 by a group calling itself the Brigades of the Swords of Right.
It has threatened to kill them unless all detainees in US and Iraqi prisons are freed.
Begg told the BBC: "When I saw them in orange suits it brought back some terrible memories.
"I felt that perhaps we might have some effect by making an appeal for the release of those people held in Iraq.
"I think... that they feel they are getting some sort of retribution against the West by dressing people in orange and executing them."
Britain's Foreign Secretary Jack Straw earlier appealed to the abductors to make contact.
"As I have said before, if the kidnappers want to get in touch with us, we want to hear what they have to say. We have people in Iraq and the region and they are ready to hear from the kidnappers," Straw said.
Straw's appeal did not include an explicit offer to open negotiations.
"Norman Kember and his colleagues are campaigners for peace, dedicated to help others. We ask for their release," he said.
An extremist Sunni group, the Islamic Army in Iraq, claimed on the Internet earlier Thursday that it had executed an American hostage, contractor Ronald Schulz.
In its statement, the group claimed that Schulz -- "the American pig, the advisor to the ministry of housing" -- had been "killed" after the expiration of a 48-hour deadline set Tuesday.
The authenticity of its claim could not be independently verified, but the group ominously pledged: "We will show the images (of his execution) shortly."
A French engineer, Bernard Planche, 52, has apparently also been abducted in a separate attack, taken at gunpoint in Baghdad on Monday.
Around 40 foreigners remain missing or reported kidnapped in Iraq since a spate of kidnappings began in April 2004, a year after a US and British invasion toppled Saddam Hussein's dictatorship.
The revised date for the threatened execution of the four CPT activists was reported Thursday by the Arabic satellite news channel Al-Jazeera, which also broadcast images of two presumed hostages whose faces were not revealed.

'I was more interested in cars'

The Toronto Star
December 9, 2005 Friday
BYLINE: michelle shephard

For the past 14 months, Abdullah Khadr says he has done nothing but talk.
In Pakistan, the spies, cops and consular officials were asking the questions and recording his answers. Since his return to Toronto last Friday, it's been the lawyers.

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Yesterday, Khadr came to his Toronto lawyer's office in borrowed clothes and with his mother at his side, to talk to reporters.
In the course of the interview, he revealed details about the torture he says he endured in Pakistan, the visits he had while incarcerated from several Canadian security officials and how they tried to pump him for information on others, including Maher Arar.
His story may not be simple but his message is: He's not a terrorist and it's the Canadian government that should be answering questions about his detention and alleged torture, not him.
"I just want everybody to know I have nothing to do with anything," the 24-year-old said.
He denies his family is or was ever involved with Al Qaeda. He admits he attended the notorious Khaldan training camp in Afghanistan, but it was when he was 13, and it didn't have ties to terrorism.
He dismisses the claim of Western intelligence agencies that he later led the camp in the Khost Mountains along the Afghanistan-Pakistan border, and instructed terrorist recruits.
"Instructed? Instruction is you have to be very, very, very, very, very inside this stuff and we didn't have that reputation in Afghanistan," he said. "I wasn't interested in that stuff. I was more interested in cars."
Abdullah Khadr's interview yesterday follows a Toronto Star story this week that revealed Khadr had been detained in Pakistan since October 2004, and returned to Toronto a free man. His whereabouts until then had been unknown. It's still unclear why he was released last week and none of the federal agencies involved in the case will comment. An official with Pakistan's Ministry of Interior said he would look into the case.
Khadr said he has no plans to launch any lawsuits and hopes to slip quietly into a typical Canadian life.
"I have no problem with anybody, why should anybody have a problem with me?" he asked.
He said he had been held since Oct. 12, 2004, when Pakistani intelligence officers picked him up in an unmarked car in Islamabad as he walked with Yousef, a friend of his father. Khadr believes Yousef was the target, and his identity was discovered only later.
Khadr alleges that during the first 48 hours of his detention he was tortured. "I was hooded. They wouldn't let us sit or sleep. Stripped, beaten. You can say sexually harassed."
He said he was threatened with sexual assault with a stick, and was beaten in the head hard enough to make his ears bleed for two weeks.
During his 14-month detention, Khadr was visited at various times by two CSIS officers from Canada, who told him their names were Mike and Bob, and another CSIS officer stationed in Pakistan. RCMP Sergeant Konrad Shourie also questioned him in Islamabad earlier this year.
It's clear from court documents that the RCMP is investigating Khadr and his sister Zaynab, under terrorism legislation introduced in 2001.
If Khadr is eventually charged, his lawyer said he would argue that any information provided during these sessions would be inadmissible. "He was never brought before a court, he was never told why he was there, he was never given a lawyer ... The whole thing is such an egregious violation of human rights that it just can't be relied on in this country, we don't think," Nate Whitling said yesterday.
This issue has yet to be tested by Canadian law, but Britain's highest court ruled yesterday that information obtained under torture is inadmissible in court.
Khadr says he was questioned about various Canadians, including Maher Arar, the 35-year-old Ottawa engineer who was detained by the U.S. and then sent to Syria, where he was tortured and held for a year without charges. A federal inquiry is probing the role Canadian officials played in the case of Arar, who left Damascus in October 2003 and returned to Canada.
"To suggest Canadian authorities are still continuing to try to find evidence on Maher Arar by questioning people abroad is deeply disturbing," Arar's lawyer Lorne Waldman said yesterday. "It seems to me that interrogating (Khadr) in circumstances where he doesn't have the right to counsel or anyone else, means the Canadian government haven't learned any lessons from the Arar experience."
Abdullah Khadr is the eldest son of Egyptian-born Canadian Ahmed Said Khadr, an accused Al Qaeda financier who was killed in a battle with Pakistani forces in 2003.
Abdurahman Khadr, the second eldest son and self-proclaimed black sheep of the family, admitted in a CBC Television documentary that he was raised in an "Al Qaeda family," growing

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up with Osama bin Laden. He also admitted telling the Americans his brother Abdullah was a leader of the Khaldan camp, a reputed training ground in the late 1990s for Al Qaeda's most notorious members. But Abdurahman Khadr later recanted the claim, saying he only wanted to impress the Americans.

There are two other brothers in the Khadr family. Omar Khadr, 19, is Canada's only detainee at the U.S. camp in Guantanamo Bay, Cuba, and will appear before a military commission next month on charges of murder and attempted murder for allegedly throwing a grenade that killed a U.S. army medic. The youngest son is Karim, now 16. He also lives in Toronto but is paralyzed after being shot in the battle that killed his father.

The plight of Khadr family members typically evokes little sympathy in Canada but their claims raise important questions about how the Canadian government handles security post-9/11 and the scope of our relationship with the U.S.

Lawyers for Omar Khadr have long complained that while countries such as the U.K. and Australia have publicly fought for the rights of their citizens at Guantanamo, the Canadian government has done little. It took a federal court injunction to prohibit Canadian intelligence officials from interrogating Omar while in U.S. custody.

Another court challenge, this one launched by civil rights lawyer Clay Ruby and involving Abdurahman, argues that the federal government unconstitutionally denied the 22-year-old Khadr his passport. Although the legislation dealing with passports has since been amended, at the time Khadr applied, security was not listed as grounds to refuse a passport. A federal court justice has reserved his decision.

American activists reach halfway point on march to U.S. base at Guantanamo

BYLINE: By ANITA SNOW, Associated Press Writer Associated Press Worldstream December 9, 2005

American activists reached the halfway point in a march toward the U.S. naval base at Guantanamo Bay to protest treatment of terror suspects, but it appeared unlikely the communist government would let them enter a Cuban military zone to reach the U.S. outpost.

Marchers from the largely Christian group, Witness Against Torture, said by cellular telephone on Thursday that they had completed about half of the 80-kilometer (50-mile) trek from the eastern city of Santiago by Thursday evening.

The 25 marchers hope to arrive at or at least near the naval base by Saturday, which is International Human Rights Day. The march was organized by the Catholic Worker movement, an anti-war and social justice alliance.

"We don't know how far we can get, so every step forward is an amazing thing," said Shelia Stumph, a 28-year-old marcher from Raleigh, North Carolina. She said marchers were engaged in "a constant dialogue" with both Cuban and U.S. officials.

Marchers initially hoped to reach the gate of the U.S. base and demand to meet with terror suspects on hunger strike. If denied entry, they have said they will fast and pray for the abolition of torture by all nations.

The U.S. government says the roughly 500 foreign terror suspects at Guantanamo Bay are enemy combatants, not prisoners of war, and are not entitled to the same rights afforded under the Geneva Convention. Critics say that leaves the door open to the use of torture.

Cuban officials, speaking on condition of anonymity, said it was unlikely that the island's Revolutionary Armed Forces would allow marchers to traverse the kilometers-wide military zone wrapping around the American base since shortly after the 1959 triumph of the Cuban revolution.

Cuba's elite Frontier Brigade considers its military zone facing the American base to be among the communist-run island's most highly secure areas and its front line of defense against the United States, which it accuses of trying to undermine its government for more than four decades.

The Cuban zone is still peppered with mines dating back to the Cold War and camouflaged soldiers toting automatic weapons patrol the perimeter. Permission to enter the area is rarely granted to civilians especially foreigners and even then only after months of deliberations.

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Even if they cannot reach the U.S. gate, the marchers consider their protest symbolically important.
Most of the marchers flew Monday evening from the Dominican Republic to Santiago, southwest of Guantanamo. Among them was Frida Berrigan, daughter of the late Phil Berrigan, a former Roman Catholic priest whose fight against the Vietnam War and nuclear weapons helped ignite a generation of anti-war dissent.

Ex-Guantanamo detainees return to violence By DEROY MURDOCK Scripps Howard News Service 08-DEC-05
Now that President Bush finally has returned the unrelenting fire of his critics on Iraq, he should use hard-hitting speeches and White House white papers to address liberal bellyaching about Guantánamo.
Beyond reminding his opponents that the Gitmo boys are there for brutality they committed before they arrived, the president should explain to friends and foes at home and abroad that detainees released from Guantanamo do not always go quietly into the night.
The Pentagon knows of roughly a dozen former Gitmo detainees who did not return to the peaceful Koranic reflection from which their leftist defenders seem to believe they were sidelined. At least for some ex-Guantanamites, U.S. military custody was a mere vacation from their violence.
In late 2001, U.S. troops in Afghanistan caught Rasul Kudayev, an associate of the al Qaeda-tied Islamic Movement of Uzbekistan, and sent him to Guantanamo. On Feb. 28, 2004, Kudayev and six other Russian detainees were handed to the Kremlin, which freed them that June.
Kudayev made headlines last month when Russian Deputy Prosecutor General Nikolai Shepel accused him of supporting an attack in Nalchik, capitol of the North Caucasus' Kabardino-Balkariya region.
"First of all, there is his own confession and the testimony of five witnesses, who said he led the military group that assaulted the Interior Ministry's health facility and the presidential cottage," Shepel told Novosti news.
Kudayev claims innocence in the Oct. 13 attack, which killed at least 91 Islamic terrorists along with 35 law-enforcement officers and 12 innocent civilians.
Abdullah Mehsud returned to Pakistan in March 2004 after about two years at Guantanamo. Officials believe he leads an al Qaeda-linked group that kidnapped two Chinese engineers in October 2004. Terrorists strapped explosives to the chests of these hostages who were building a dam in disorderly South Waziristan. Pakistani commandoes freed Wang Ende, although Wang Peng died in the crossfire, along with all five abductors.
Maulvi Abdul Ghaffar was a top Taliban commander who was caught after Afghanistan's liberation. According to Interior Minister Ali Jalali, Ghaffar spent about eight months at Guantanamo before his release and repatriation to Afghanistan in the summer of 2002. After learning that he planned to attack police, Afghan forces killed Ghaffar and two of his terrorist colleagues in Uruzgan province on Sept. 25, 2004. According to its governor, Jan Mohammad Khan, Ghaffar also attacked U.S. Special Forces troops and a Helmand district chief, killing three Afghan soldiers.
"The process of assessing detainees is difficult and involves a certain degree of risk," says Pentagon spokesman Commander Flex Plexico. "Many detainees later identified as having returned to their terrorist activities falsely claimed to be farmers, truck drivers, cooks, small-scale merchants, or low-level combatants."
The Pentagon says that after leaving Guantanamo, former enemy combatants killed an Afghan judge as he departed a mosque. Others have shot at U.S. soldiers in Afghanistan, while even more have been killed in action there.
Some former Gitmoites have not fired their weapons again, but sound eager to do so.
"If I get a chance to fight jihad again, I will definitely go," Khalil-ur Rahman told the Associated Press. "I will not miss it." Rahman was sent from Guantanamo to Pakistan in fall 2004 and completely freed last June.
On the Danish government's request, Slimane Hadj Abderrahmane was released from Guantanamo in February 2004, two years after arriving from a Pakistani terror camp. Since then, this not-so-great Dane has dismissed as "toilet paper" the no-more-terrorism contract he signed with Gitmo officials before departure.

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As Henrik Bering reported in the Oct. 18, 2004, Weekly Standard, Abderrahmane said: "I identify myself as a Muslim, and I will shoot anybody who fights against the cause of Allah on the battlefield."
To be fair, 180 detainees have been released from Guantanamo, and 76 more have been transferred to foreign countries. Most seem to have avoided trouble. Whether they have foresworn terrorism or simply evaded scrutiny is anybody's guess. But Bushophobes should understand that America remains at war, and the boys of Guantanamo fought in this conflict. Releasing them before victory makes as much sense as freeing captured Nazis in 1944. Nobody knows how much destruction one, five, 12, or more terrorists can commit once unsupervised.
http://www.shns.com/shns/g_index2.cfm?action=detail&pk=MURDOCK-12-08-05

Retired Federal Judges Urge Congress Not to Pass 'Court-Stripping' Measure that Would Deny Rights in War on Terror

U.S. Newswire
December 8, 2005
A group of retired federal judges urged lawmakers not to strip federal courts of the power to hear habeas corpus pleas from prisoners detained at the Guantanamo Naval Base. In a letter sent to Congress yesterday, they warned that this proposal would undermine the rule of law and constitutional tradition. The Brennan Center for Justice at NYU School of Law helped coordinate the judges' efforts.
Passed with little debate and after no hearings in November, the provision, known as the Graham-Levin-Kyl Amendment, jeopardizes ongoing court review over individuals imprisoned for years without charges and over pending war crimes trials. As the judges note, the congressional action was especially troubling given that the Supreme Court had already accepted for review a case challenging those trials. The measure also threatens to overturn an existing Supreme Court decision from last year that decisively rejected the government's attempt to make Guantanamo a prison beyond the law. If there are frivolous pleas by the detainees, judges are well equipped to throw them out, the jurists note.
The judges write, "In cases of executive detention, district court review of habeas petition is central to fulfilling the Great Writ's historic purpose: to ensure that individuals are not unlawfully detained. Eliminating that critical district court function would jeopardize the Judiciary's ability to ensure that detention decisions by the federal executive are not grounded on torture or cruel, inhuman or degrading treatment."
The letter was signed by retired Judges John J. Gibbons, Shirley M. Hufstedler, Nathaniel R. Jones, Timothy K. Lewis, John S. Martin, Jr., Abner J. Mikva, William A. Norris, Layn R. Phillips, George C. Pratt, H. Lee Sarokin, Abraham D. Sofaer, and Patricia M. Wald.

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(b)(6)

From: (b)(6) DoD OGC
Sent: Monday, December 19, 2005 2:23 PM
To: (b)(6)

Subject: GTMO Bird - German Min. says "Close GTMO"; Graham/Levin legislation; al-Dossari; al-Rawi and el-Banna; Pakistani detainees; Muhammad Saad Iqbal; Abdullah Khadr charged by US; Commissions for Binyam Muhammad and al Sharbi; Hicks

All:

Below is today's GTMO Bird.

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DOD Office of General Counsel (Legal Counsel)
(b)(2) (fax)

German Interior Minister: Close Guantanamo

UPI
December 19, 2005 Monday 9:22 AM EST

DATELINE: BERLIN, Dec. 19
Germany's Interior Minister, Wolfgang Schaeuble, has said Washington should close its detention center at Guantanamo Bay, Cuba.
"It would be better if that facility were relocated within the U.S. judicial system," Schaeuble said in an interview with Sunday's Frankfurter Allgemeine Zeitung.
"I told my U.S. partners time and again: What hurts the reputation of the United States most is that they detain terrorism suspects in camps outside the U.S. judicial system."
Schaeuble added he remained confident the U.S. democracy was "strong enough to rethink" such a practice and "correct its position."
The German opposition meanwhile has said Schaeuble should act according to his statements and press Washington to inform Berlin of each "enemy combatant" the CIA has transported or will transport via Germany to the prison in Cuba.
Schaeuble himself has come under fire recently for wanting to use information obtained by German intelligence while interrogating Murat Kurnaz, a Turkish inmate in Guantanamo. The inmate had lived most of his life in the northern German city of Bremen.

Big changes loom for captives' rights
House and Senate negotiators agreed on a new legal system for Guantánamo that will block courts from hearing complaints from detainees, including those of torture.

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By FRANK DAVIES
fdavies@herald.com
WASHINGTON - Congress this weekend is expected to overhaul the legal system at Guantánamo Bay, Cuba, eliminating almost all access by detainees to federal courts and, according to its Senate sponsor, wiping out petitions filed by about 300 of the 500-plus captives in the prison camp.
Sen. Lindsey Graham, R-S.C., prime author of the new system, emphasized Friday that it will give each detainee one chance to contest his status with the U.S. Court of Appeals in Washington, and for the first time get Congress involved in the oversight of Guantánamo.
''They will still have rights, but I don't think anybody intended in wartime that people who are trying to kill us have the right to sue us,'' Graham said.
But human rights groups and lawyers for detainees criticized the changes, which are part of a defense policy bill. House and Senate negotiators agreed on all provisions of the bill Friday, including Sen. John McCain's ban on ''cruel, inhuman and degrading'' treatment of detainees, clearing the way for a final vote.
CONFUSION
Key elements of the new system are causing confusion or are in dispute, including whether dozens of habeas corpus petitions filed so far will be wiped away. That would include a challenge to a military trial at Guantánamo now before the Supreme Court.
Graham said he believes all lawsuits filed so far -- some almost 4 years old -- ''will be dismissed'' when the new law goes into effect and is replaced by the one-shot appellate review.
But Sen. Carl Levin, D-Mich., a sponsor of Graham's amendment, had the opposite interpretation.
''The revised amendment that we were able to work out with Sen. Graham does not apply to or alter any habeas case pending in the courts at the time of enactment,'' Levin said in a statement late Friday.
Tom Wilner, an attorney who represents six Kuwaitis held in Guantánamo, said he is prepared to argue to the judges handling his cases that the new law would not be retroactive.
Rights groups have focused their criticism on two provisions quietly added to the defense bill in the last few days.
Instead of barring the use of information ''obtained by undue coercion,'' the military tribunals that review each detainee's case are directed to assess whether such information has ``value.''
''That would just undermine the McCain amendment,'' said Tom Malinowski, Washington advocacy director of Human Rights Watch. ``For the first time, Congress would be telling the courts it's OK to use information gained through torture.''
DIFFERENT VIEW
Graham's interpretation was very different. He said the new language means the appellate court will look closely at the tribunal hearings and whether they improperly relied on information from torture.
''The court will be looking over the shoulder of the tribunals and their standard of evidence,'' Graham said.
The other new provision bars not just habeas corpus petitions from detainees but any legal action, such as a lawsuit alleging torture, by a detainee who the courts agree was properly held as an enemy combatant.
''If they're held properly, they can't sue,'' said Graham. He added that could accelerate the release of some Guantánamo detainees ''who may not belong there,'' but whose release has been held up because of fears they would sue U.S. personnel.
Graham said that provision is designed to bar lawsuits over treatment at Guantánamo, where several detainees have alleged abuse, but not elsewhere. A detainee who claims he was mistreated in Afghanistan, Iraq or a country like Egypt, if he was shipped there by U.S. authorities, would still have grounds to sue, Graham said.
Wilner said the impact of the new law ''would be to make Guantánamo a no-law zone'' and insulate U.S. authorities from any legal challenge over mistreatment of prisoners. He predicted judges will be skeptical of its ''extreme efforts'' to strip the courts of jurisdiction.

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REPORTS REQUIRED
The new law also requires the Defense Department to give Congress periodic reports on detention procedures and makes the top civilian official overseeing detention issues -- currently Deputy Defense Secretary Gordon England -- accountable to the Senate.
The law marks the first time that Congress is getting directly involved in the four-year battle over the legal system at Guantánamo. The open-ended detention of more than 500 prisoners has caused an international uproar and led to a Supreme Court ruling last year that the detainees had access to federal courts.
http://www.miami.com/mld/miamiherald/13429379.htm

Lawmakers Back Use of Evidence Coerced From Detainees

The New York Times
December 17, 2005 Saturday
BYLINE: By ERIC SCHMITT and TIM GOLDEN

House and Senate negotiators agreed Friday to a measure that would enable the government to keep prisoners at Guantanamo Bay indefinitely on the basis of evidence obtained by coercive interrogations.

The provision, which has been a subject of extensive bargaining with the Bush administration, could allow evidence that would not be permitted in civilian courts to be admissable in deciding whether to hold detainees at the American military prison in Guantanamo Bay, Cuba. In recent days, the Congressional negotiators quietly eliminated an explicit ban on the use of such material in an earlier version of the legislation.
The measure is contained in the same military policy bill that includes Senator John McCain's provision to ban the cruel, inhuman and degrading treatment of detainees in American custody worldwide. Mr. Bush reluctantly embraced Mr. McCain's ban on Thursday. The full House is expected to approve the compromise bill soon, with the Senate to follow in the next few days, Congressional officials said.

The juxtaposition of the seemingly contradictory measures immediately led lawyers for Guantanamo prisoners to assert that Congressional Republicans were helping to preserve the utility of coercive interrogations that senior White House officials have argued are vital to the fight against war against terror.

While the measure would allow the Guantanamo prisoners to challenge in federal court their status as enemy combatants and to appeal automatically any convictions and sentences handed down by military tribunals in excess of 10 years, it would still prevent the detainees from asking civilian courts to intervene with the administration over harsh treatment or prison conditions.

Thomas B. Wilner, a lawyer who represents a group of Kuwaiti detainees at Guantanamo Bay, said in an interview that the new language would render the McCain restrictions unenforceable at the Cuban prison. ''If McCain is one small step forward, enactment of this language would be two giant steps backwards,'' Mr. Wilner said.

Two of the main Senate sponsors of the measure, Lindsey Graham, Republican of South Carolina, and Carl Levin, Democrat of Michigan, defended the changes made to the language that the Senate passed last month, 84 to 14.

Mr. Graham acknowledged the measure's intention to make it possible to use information obtained by coercive interrogation techniques in military panels that evaluate whether detainees at Guantanamo are being rightfully held as ''enemy combatants.'' He argued that the techniques were not abusive.

He also said that under his measure, the panels would weigh the value of the intelligence gained from an interrogation against a judgment on whether the statement was coerced. He said in a telephone interview with reporters that the amendment would promote ''a balanced approach.'' A similar rule now applies in the military commissions that have been established to prosecute terror suspects at Guantanamo.

Human rights advocates criticized Mr. Levin, the chief Senate Democratic negotiator, for agreeing to restrict further the legal rights of Guantanamo detainees. Mr. Levin suggested that he had settled for the less damaging of two bad outcomes, saying he had deflected more

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onerous provisions that House Republicans wanted, including a demand that interrogators who abused prisoners be granted immunity from prosecution. Mr. Levin added in a telephone interview, ''I don't think courts will allow coerced evidence in any proceeding.''

The Bush administration has repeatedly considered -- and rejected -- explicitly prohibiting the use of evidence obtained by torture in the military commissions. Most recently, the issue was a major part of a lengthy internal debate over new rules for the tribunals that were promulgated on Aug. 31 in response to longstanding criticism in the United States and overseas that the tribunals are unfair.

Several officials familiar with the internal discussions said State Department officials and some senior Defense Department aides had strongly advocated an explicit ban on the use of evidence obtained by torture in a series of interagency discussions that began last December.

At one point in that process, the Pentagon official in charge of the tribunals, Maj. Gen. John D. Altenburg Jr., who is now retired, proposed barring any ''confession or admission that was procured from the accused by torture,'' according to parts of a draft document read to a reporter. The rule defined torture as any act ''specifically intended to inflict severe physical or mental pain and suffering.''

The ban was also championed by the counselor of the State Department, Philip D. Zelikow, two officials said. The deputy defense secretary, Gordon R. England, also supported the ban in meetings on the revised commission rules, as did some senior military officers, said a spokesman for Mr. England, Capt. Kevin Wensing.

But such a prohibition was opposed by other officials involved in the debate, including David S. Addington, who was then Vice President Dick Cheney's counsel and is now his chief of staff. A spokesman for the vice president said Mr. Addington would have no comment on his reported role in the policy debates.

Since the drafting of the presidential order that established the commissions on Nov. 13, 2001, White House officials have sought to give the commissions wide latitude to consider evidence that would be inadmissible in civilian courts.

Mr. Addington, who was a primary architect of the presidential order, argued in the debates earlier this year that by explicitly prohibiting evidence obtained by torture, the administration would raise an unnecessary red flag. suggesting at least implicitly that prisoners in American custody were, in fact, being tortured, officials said.

Justice Department officials involved in the debates contended that such a prohibition was not necessary because the matter was already covered by the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, a treaty adopted by the United Nations more than two decades ago and ratified by the United States in 1994.

Gitmo Detainee Attempts Suicide Again
12.17.2005, 04:59 PM

A detainee at the U.S. prison for terror suspects at Guantanamo Bay pulled stitches out of his arm this week in what was at least his tenth suicide attempt, the Justice Department said.

Juma'a Mohammed al-Dossary, a 32-year-old prisoner from Bahrain, was hospitalized Monday after pulling out his stitches for at least the second time, the Justice Department said in a letter released by al-Dossary's attorney Saturday.

Al-Dossary also cut his bicep, the letter said, without specifying how.

"The Guantanamo staff immediately intervened," Justice Department lawyer Edward H. White wrote. "He has been treated and is currently in stable condition."

Al-Dossary's attorney, Joshua Colangelo-Bryan, has asked for a court order easing conditions for his client, who has been held at Guantanamo since February 2002.

Al-Dossary said in a meeting with Colangelo-Bryan before Monday's suicide attempt that, "he wanted to kill himself so that he could send a message to the world that conditions at

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Guantanamo are intolerable," according to declassified notes from their conversation, which the lawyer also released on Saturday.

Defense lawyers allege that al-Dossary, who has not been charged, has been in isolation for much of the last two years. The military has said he has regular contact with other prisoners.

Officials at Guantanamo, where the U.S. holds some 500 men described as terror suspects, did not immediately respond Saturday to an e-mail request for an update on the al-Dossary's condition. No one answered the phones at the base's press office.

Al-Dossary had attempted suicide at least nine times before this week, according to medical officials at the detention center on the U.S. Navy base in eastern Cuba.

The chief medical official at Guantanamo, Dr. John Edmondson, said in an affidavit filed last month in federal court in Washington said al-Dossary has undisclosed "mental health issues" and often has refused to take medicine or cooperate with therapists.

In October, Al-Dossary slashed his arm and tried to commit suicide by hanging himself in an empty cell during a break in a meeting with his lawyer. He attempted to kill himself again by pulling out the stitches in November, the government has said.
http://www.forbes.com/business/feeds/ap/2005/12/17/ap2399477.html

Suicidal Guantanamo Inmate Moved Out of Isolation
Bahraini Detainee Who Complained of 'Intolerable' Conditions Is Shifted Before Court Hearing
By Josh WhiteWashington Post Staff Writer
Saturday, December 17, 2005; Page A11
Military officials at the U.S. detention facility at Guantanamo Bay, Cuba, have moved a suicidal detainee out of his isolation cell after he said he was trying to kill himself because of the "intolerable" conditions of his incarceration.
Jumah Dossari, 32, a Bahraini detainee who attempted to kill himself during a visit from his attorney in October, was moved from a segregation cell at the prison's Camp Five to a steel-mesh cell in Camp One, where he can interact with other detainees, government lawyers said. They informed Dossari's attorneys of the move on Thursday afternoon, a day before a hearing in U.S. District Court in Washington that was scheduled to address Dossari's case.
Dossari's attorneys have been asking the court to order Guantanamo Bay officials to improve his living conditions, which they argue have led him to attempt suicide at least nine times. In a letter to the lawyers Thursday, Edward H. White, a Justice Department lawyer, described what appeared to be a 10th suicide attempt Monday, when Dossari tried to open an existing gash on his right arm.
Joshua Colangelo-Bryan, one of Dossari's attorneys, said in court yesterday that his client is in imminent danger because of the extreme stress caused by captivity in a tiny isolation cell.
"The purpose of Guantanamo is to create a sense of hopelessness in detainees," Colangelo-Bryan said. "That appears to have worked on Mr. al-Dossari."
In declassified notes from a meeting with the lawyer last month, Dossari said that he "wanted to kill himself so that he could send a message to the world that the conditions at Guantanamo are intolerable" and said he tried to do it in a public way "so that the military could not cover it up and his death would not be anonymous."
Dossari slashed his arm and tried to hang himself during a bathroom break while he was meeting with Colangelo-Bryan, who found him. The suicide attempt left him with a fractured spine and 14 stitches in his arm.
Dossari reported that he felt on the "brink of collapse" and "destroyed" and said all he wanted was to interact with other detainees.
White said Dossari has been diagnosed with four different psychological disorders, including depression, and has been receiving regular treatment from a psychiatrist and a psychologist.

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He said it is unclear whether Dossari arrived at Guantanamo Bay with the psychological problems.
"Despite the fact that petitioner has repeatedly attempted suicide, he is getting extensive medical treatment," White said, adding that the move to Camp One allows Dossari adequate human interaction. "If anything they're being very diligent about monitoring the petitioner and treating him."
Camp One is a group of cell blocks that hold approximately 150 -- about 30 percent -- of the detainees at Guantanamo. Detainees live in their own cells, which are constructed of steel mesh, and can see and speak to others on the block. They also share an exercise yard.
By moving Dossari out of Camp Five -- the equivalent of a U.S. maximum-security prison -- the government effectively sought to remedy the problem before a federal judge stepped in. Judge Reggie B. Walton is still considering an order that would force the prison to put fewer restrictions on Dossari.
But Walton said yesterday that if judges begin issuing such orders, "we become the warden."
Human rights groups and lawyers are watching a proposal under discussion on Capitol Hill that would strip detainees of the ability to file habeas corpus claims and other cases with U.S. federal courts.
The proposed legislation, sponsored by Sens. Lindsey O. Graham (R-S.C.) and Carl M. Levin (D-Mich.), would instead direct a federal appeals court in Washington to review the decisions of Guantanamo Bay military panels that determine whether a detainee is "an enemy combatant." The measure would, however, allow those panels to use evidence against enemy combatants that was obtained by coercion.
Detainees also could appeal the verdicts of Guantanamo Bay military trials in the same court. No detainee has yet been tried before those "military commissions," whose authority is being challenged in a case that has gone to the Supreme Court.
"We're not going to turn the war on terror over to the judges," Graham said in a conference call with reporters yesterday. He has advocated, instead, for congressional oversight.
The legislation would effectively dismiss pending federal habeas cases on behalf of more than 300 Guantanamo Bay detainees.
http://www.washingtonpost.com/wp-dyn/content/article/2005/12/16/AR2005121601784.html
Mullin speaks out for Guantanamo pair
The government has a moral obligation to assist two British residents being held in Guantanamo Bay, a former minister has said.
British agents helped the Americans seize the two men and incarcerate them in Guantanamo Bay where they are still detained, Chris Mullin claims.
The former minister for Africa told the Guardian that Britain is therefore morally obliged to help them.
Bisher al-Rawi and Jamil el-Banna were seized in Gambia in 2002 while on a business trip.
They were held by British security and intelligence officers for three days before being released but the officers then tipped off the Americans about their whereabouts, Mullin said.
And he says the British government should take responsibility for the men's fate.
"It may not have a legal obligation but it has a moral obligation given that we played a part in putting them into Guantanamo Bay. They will rot there until someone pulls their finger out."
The two businessmen have always maintained that British agents were complicit in their abduction in the Gambian capital Banjul.
Mullin, who was sacked from his post as foreign minister after the general election in May, is now backing up the claim.
The two men say they were flying to Gambia to help set up a peanut processing plant.
They are among five British residents held in Cuba who the government says it cannot help because they are not actually British citizens
http://www.epolitix.com/EN/News/200512/91eccf63-a7a3-45b1-8579-28bb8feb3623.htm
Report: MI5 colluded with CIA on rendition
LONDON, Dec. 17 (UPI) -- Lawyers in London have accused the government of colluding with the CIA to send a British man to a series of prisons where he was abused.
The lawyers represent Bisher al-Rawi, described as a former student at a top British school currently being held at a detainee center at Guantanamo, Cuba. The allegation raises fresh

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questions about British involvement in the U.S. practice of "extraordinary rendition," the Sunday Times of London reported.
Under rendition, prisoners are secretly taken to countries where they may face torture during interrogation.
The British government has come under increasing criticism from human rights groups and political rivals since it was disclosed that CIA-operated planes had landed at British airports dozens of times.
Al-Rawi, 37, is an Iraqi who has lived in England since 1985. He was detained in Gambia three years ago with Jamil al-Banna, a Jordanian who was granted refugee status in England in 2000 -- and both were flown by the CIA to Afghanistan and then to Cuba in March 2003, the newspaper reported.
The two are accused of being associated with al-Qaida and a radical Muslim cleric who has been described as Osama bin Laden's European ambassador, said the Times.
http://www.sciencedaily.com/upi/?feed=TopNews&article=UPI-1-20051217-21553400-bc-britain-rendition.xml

Pakistan seeks Guantanamo releases
From correspondents in Islamabad
20dec05

PAKISTAN is seeking the release of seven Pakistani prisoners who are still detained at the US Guantanamo Bay detention centre.

"The latest estimates are that we have around six or seven (Pakistani) prisoners in Guantanamo Bay," foreign ministry spokeswoman Tasnim Aslam said.
"This is a talking point we have with the governments of both United States and Afghanistan and our efforts will continue for their early release," Ms Aslam said.
She did not give an updated figure for Pakistani prisoners in Afghanistan, saying that number kept changing.
Hundreds of Pakistanis were arrested in Afghanistan after the collapse of Taliban regime and nearly 600 have returned home since 2003.
The US Government has also released the bulk of some 60 Pakistanis who were kept as "enemy combatants" at the Guantanamo Bay detention centre in Cuba after the 2001 invasion of Afghanistan by US-led forces.
http://www.heraldsun.news.com.au/common/story_page/0,5478,17618652%255E1702,00.html

Terror Suspect's Ordeal in U.S. Custody

The New York Times
December 18, 2005 Sunday

BYLINE: By RAYMOND BONNER; Donald Greenlees contributed reporting from Jakarta for this article, Salman Masood from Islamabad and Lahore, Pakistan, and Muhammad Rusmadi from Lampung, Indonesia.

When Muhammad Saad Iqbal finally got a chance to plead his case to a panel of military officers at the American prison at Guantanamo Bay, Cuba, he insisted that he had nothing to hide.
''If I have committed any crime, I am ready for the punishment,'' Mr. Iqbal told the officers a year ago, according to a transcript of the hearing. ''But I know that I am innocent. That is why I am here.''
When he finished his tale of having fallen in with Muslim radicals during a brief visit to Indonesia in late 2001, and having bragged to them about exploding chewing gum, shoe bombs and Osama bin Laden, one member of the tribunal praised him for being ''very cooperative, very truthful.'' Another member told Mr. Iqbal he seemed to have ''a very big ego.''

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United States officials who dealt with his case in Indonesia said they thought that Mr. Iqbal could well be a braggart rather than a terrorist. He had not trained in a camp run by Al Qaeda in Afghanistan, they said.

But nearly four years after he was picked up here in the dead of night and flown to Egypt, Mr. Iqbal remains in American custody at Guantanamo. According to his own testimony and that of former detainees, he has become so desperate during his imprisonment that he has tried at least once to commit suicide.

''He's gone crazy,'' said Sher Ali Khan, a friend of Mr. Iqbal's in Pakistan who said he was told this by an envoy from the International Committee of the Red Cross after the representatives visited Mr. Iqbal at Guantanamo Bay.

Mr. Iqbal told the military tribunal that he tried to commit suicide on his 191st day at Guantanamo. This followed 92 days of detention in Egypt and a year at the American detention center at Bagram Air Base in Afghanistan, he said.

Mr. Iqbal's experiences shed some light on the plight of terrorism suspects who are arrested and thrown into the shadowy world of secret prisons and no legal rights and held there -- even those who, like Mr. Iqbal, are not considered serious threats.

Born in Pakistan in 1977 and considered by friends and relatives to be a moderate Muslim, Mr. Iqbal was one of the first suspects to be seized by the Central Intelligence Agency overseas after Sept. 11, 2001 and transferred to another country for questioning -- a process known as ''rendition'' that human rights groups say has led to the use of coercion and torture against detainees. According to the transcript and American officials, he was seized in Jakarta in January 2002 and subsequently transferred to Egypt, where he underwent interrogation.

Mr. Iqbal's story, from honored Koran reader to terrorism suspect, was pieced together from the transcript of his hearing, interviews in Pakistan and Indonesia and the accounts of four American officials who worked on the Iqbal case and agreed to talk about it only on condition of anonymity, because information in the case is classified.

The Pentagon declined to answer any questions about Mr. Iqbal, in line with its policy on detainees.

The basis for Mr. Iqbal's continued detention remains largely secret. United States officials would say only that as with 520 of 558 prisoners that passed through the so-called Combatant Status Review Tribunals at Guantanamo, his designation as an ''enemy combatant'' had been upheld. And Mr. Iqbal, like countless others here, remains in a legal netherworld that lawyers and human rights advocates say is increasingly leading to suicide attempts and hunger strikes among inmates.

Military officials contend that the detainees are treated humanely and that hunger strikes and suicide attempts are largely theatrical events staged to draw attention to their complaints. The officials discount the idea that the inmates are reacting to the harsh conditions or the open-ended nature of the men's detention.

In January, for example, after 23 Guantanamo detainees tried to hang or strangle themselves, the Pentagon said that only two were ''suicide attempts.'' It called the others ''self-injurious behavior incidents.'' Military officials said there were only four suicide attempts this year, though they did not say how many ''self-injurious'' incidents had occurred.

But lawyers for some of the detainees say their clients are driven to suicide and hunger strikes by the very conditions the prison has sought to create to force them to talk.

''It's an environment that subjects the prisoner to overwhelming levels of psychological anxiety, isolation, abandonment, terror, despair,'' said Joseph Margulies, a lawyer who has represented several Guantanamo detainees, but not Mr. Iqbal, who has no lawyer. ''That sense of gnawing uncertainty, either it drives the prisoner mad, or it robs him of the most precious commodity, and that is hope.''

[On Saturday, The Washington Post quoted government lawyers as saying that the military had moved a prisoner out of his isolation cell at Guantanamo after he said he was trying to kill himself because of ''intolerable'' conditions. A lawyer for the prisoner, Jumah Dossari, 32, of Bahrain, said Mr. Dossari had tried to kill himself nine times, including an incident in October in which he deeply slashed his arm and tried to hang himself.]

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Friends and family members describe Mr. Iqbal as a friendly, somewhat insecure man who had little interest in politics and a habit of making up stories. ''He had a childish habit of trying to portray himself as important,'' said an uncle in Lahore, Pakistan, Muhammad Farooq Said. American intelligence officers who interviewed Mr. Iqbal in Indonesia after his detention concluded that he was a ''blowhard,'' as one senior American official put it. Another said, ''He wanted us to believe he was more important than he was.''

The oldest son of an Islamic scholar who was an adherent of the severe, ultraconservative Wahhabi branch of Islam, Mr. Iqbal spent his earliest years in Saudi Arabia where his father studied and taught. The family moved to Indonesia where, by the age of 7, one of his boyhood friends said, Mr. Iqbal had memorized the entire Koran.

As a teenager back in Pakistan, he won many awards for reciting the Koran. But he regularly went to Western movies, wore blue jeans and other Western clothes and did not think women should have to cover themselves, said Mr. Khan, who was one of Mr. Iqbal's closest friends. Mr. Khan said his friend condemned the Sept. 11 attacks. ''He said that the prophet would not approve,'' Mr. Khan said.

More than a year before the Sept. 11 attacks, Mr. Iqbal began planning to go to Indonesia, Mr. Farooq said. After his father's death in Pakistan, he wanted to travel to Jakarta to inform his stepmother in person that her husband had died. Mr. Farooq gave him $1,000 and a return ticket.

What happened next is known from United States officials who dealt with Mr. Iqbal and from his own statements to the tribunal at Guantanamo.

In Jakarta, he fell in with ''some people who were not good,'' Mr. Iqbal told the tribunal. ''Maybe I can say they were terrorists.'' They were members of the Islamic Defender Front, he said, and he gave the tribunal their names, including that of the organization's president.

He said the men talked about plans to blow up the American Embassy and other terrorist acts. The organization is not banned in Indonesia, nor is it connected to any terrorist attacks. What got Mr. Iqbal into trouble, American officials said, was that he told the Indonesian radicals that bombs could be hidden in shoes. His comments were picked up by Indonesian intelligence, which shared them with the Central Intelligence Agency here.

At first, the C.I.A. did not take Mr. Iqbal's comments seriously enough to ask the Indonesians to pick him up. Then, on Dec. 22, 2001, Richard C. Reid tried to blow up a jetliner with a bomb hidden in his shoes. With that, American officials concluded, ''Maybe we ought to talk to this guy,'' as one of them put it in an interview. It would still be three weeks before he was picked up.

After questioning Mr. Iqbal, the intelligence officers were still not convinced he posed a threat. They thought he would be held for a few days, ''then booted out of jail,'' said an American official. The official said they did not even think it would be necessary to deport him. But the Indonesians did not want him, the official said, so he was sent to Egypt.

At Guantanamo, Mr. Iqbal appears to have been unusually isolated. Other inmates distrusted him because he had not trained in Afghanistan, said Mamdouh Habib, a fellow inmate. Mr. Habib said that at Guantanamo, Mr. Iqbal pleaded, '' 'Talk to me, please talk to me.' ''

'' 'I feel depressed,' '' Mr. Habib, who was in Egypt with Mr. Iqbal, said he recalled him saying. '' 'I want to talk to somebody. Nobody trusts me.' ''

''He was fully crazy,'' Mr. Habib said. ''He doesn't know where he is anymore.''

Alleged Al Qaeda Suspect Is Arrested
Ties to N.E. unclear; extradition possible
Boston Globe
December 19, 2005
By Raja Mishra, Globe Staff

Canadian national Abdullah Khadr allegedly armed Al Qaeda with bullets, rocket-propelled grenades, mortars, and explosive chemicals that were used against US troops fighting in Afghanistan, according to a criminal complaint filed by Boston-based federal prosecutors. The US attorney's office in Boston yesterday announced that the Royal Canadian Mounted Police had arrested Khadr, 24, Saturday in Toronto, at the request of the US government.

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Prosecutors refused to disclose what connection, if any, Khadr had to the New England area. Typically, criminal charges are linked in some fashion to the jurisdictions where they are filed.

''It was a proper filing," said Samantha Martin, a spokeswoman for Michael J. Sullivan, the US attorney in Boston. ''That's all I can say."

The US attorney's office will request that Canadian authorities extradite Khadr to Boston to face trial in US District Court here, Martin said.

The charges add to a lengthy and complex string of investigations, charges, and incidents linking Khadr's family to Islamic terrorism.

His father -- Ahmed Khadr, a suspected Al Qaeda financier -- was killed in a shoot-out with Pakistani authorities in 2003. His brother Omar, 19, is being held prisoner at the US naval base in Guantanamo Bay, Cuba, because US authorities say he killed a US soldier in Afghanistan. Canadian authorities are investigating his mother, Maha, and older sister Zaynab, on suspicion that they worked as Al Qaeda couriers.

Khadr himself had recently returned to Toronto from Pakistan, where US and Pakistani authorites had held and questioned him for more than a year. Upon his return earlier this month, he told Canadian reporters that he had been tortured in Pakistan. He also denied any connection to Al Qaeda.

His Canadian attorney, Dennis Edney, said yesterday that Khadr's arrest was unwarranted. ''US authorities, having participated in the detention and abuse of Mr. Khadr for the past 18 months in a Pakistani prison and having failed to persuade him to assist the US in giving evidence against persons of interest to the US, people whom he didn't know, now wish to extradite him," Edney said.

Though Khadr has publicly maintained his innocence, the charges filed by the federal prosecutors in Boston appear based in significant part on his confessions.

According to an affidavit filed in US District Court, during a six-month period in 2003, Khadr allegedly purchased $20,000 worth of AK-47 ammunition, rounds for Russian-made machine guns, rocket-propelled grenades, and 82-millimeter and 120-millimeter mortar rounds. The complaint states that Khadr told FBI Joint Terrorism Task Force agents that he was ordered to buy the weapons by his father, who was working with fugitive Al Qaeda leader Osama bin Laden. Khadr told the FBI agents that he took the weapons to a high-level Al Qaeda operative, according to prosecutors. Khadr estimated that half the equipment was used for training, the rest to fight US forces in Afghanistan.

The complaint also alleges that Khadr handed over two shipments of hydrogen peroxide, a chemical used in land mines, to the same Al Qaeda operative. Khadr allegedly told FBI agents that the mines would be deployed against US troops in the Burmil region of Afghanistan.

Khadr is charged with possessing a destructive device in furtherance of a crime of violence and conspiracy to possess a destructive device in furtherance of a crime of violence. Each charge carries a sentence of up to life in prison and a $250,000 fine upon conviction.

Khadr has been front-page news in Canadian papers in recent weeks. On Dec. 8, he gave a press conference accusing US, Canadian, and Pakistani authorities of torturing him while he was held in Pakistan.

''I was never in Al Qaeda. And I do not support some of their doings," he told Canadian reporters. ''I support that they want a Muslim country . . . I do not agree with their way of killing civilians."

And he proclaimed his patriotism, saying: ''I would defend Canada probably more than most Canadians would themselves. It is my country."

But, the complaint filed against Khadr said, he had been primed for violence by Al Qaeda beginning in his teenage years.

During four months in the mid-1990s, prosecutors say, he underwent specialized explosives training at an Al Qaeda training camp in Afghanistan. And in 2000, he sought to procure AK-47s, C-4 explosives, surface-to-air missles, and antitank missles for use against the Northern Alliance, the Afghan rebel group then fighting the Taliban regime in Afghanistan.

U.S. moves to trial of 2 more detainees

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(b)(6)

From: (b)(6) DoD OGC
Sent: Tuesday, April 11, 2006 6:38 PM
To: (b)(6)

Subject: GTMO Bird - Errachidi; Trial of Kuwaiti ex-detainees; Hicks moved; Khadr move; VT lawyers represent GTMO detainees; DOD letter to ACLU on Abu G photos; Bahraini detainees; al Dossari; Commissions; Cully Stimson, DASD-DA; al-Marri

All:

Below is today's GTMO Bird.

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(b)(6)
DoD Office of General Counsel (Legal Counsel)
(b)(2) (fax)

London chef in Guantanamo hunger strike

Evening Standard (London)
April 10, 2006 Monday

BYLINE: LEE GLENDINNING

A LONDON chef being held at Guantanamo Bay is on hunger strike in protest at his detention. Ahmed Errachidi - who is accused of being an al Qaeda militant by the US authorities - claims he is being tortured by being force-fed.
The 38-year-old has begun starving himself in protest at his treatment and the British Government's refusal to intervene on his behalf.
In a statement through his lawyer he says: "Four years ago, the British came to see me in Bagram (Afghanistan) and promised they would investigate my situation and I would be free within weeks. I co-operated with them fully.
"Now, four years later, I am being tortured in Guantanamo.
The Americans say I was in Afghanistan in July 2001 - when I was cooking eggs at the Westbury Hotel.
"'Enough is enough. I have the right to protest, peacefully. I am not harming them [the Americans]. I must be allowed to demonstrate peacefully. I do not want to die. I want to live and I am not living here."

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Errachidi was born in Morocco but had been living in London for 18 years. He is accused of attending al Qaeda training courses at the Al Farouq camp near Kandahar.
It was at this camp that four of the 9/11 hijackers are alleged to have trained. Employment records show Errachidi was working in Mayfair as a chef at the time.
Of his decision to go on a hunger strike, he writes: "I will not die, I will only strike until I can no longer stand under my own strength. But I will do it for 40, 50, 60, perhaps 70 days.
"I forbid the US military from forced 'torture feeding' on me. I urge them to leave me alone until I can no longer stand."
He describes the indignities and ordeal of being force-fed and adds: "Will the US military, and the world, allow me to protest peacefully, or will I be subjected to torture feeding?
"All I ask is for justice. This is a hunger strike to protect life, a struggle for the truth."

Former Kuwaiti Gitmo detainees on trial

UPI
April 11, 2006 Tuesday 8:54 AM EST

DATELINE: KUWAIT CITY, April 11

Lawyers for five former Guantanamo defendants propose that transcripts of their interrogations should not be admissible evidence in a trial underway in Kuwait.
Defense lawyer Ayedh al-Azemi told the court, "The transcripts do not bear signatures of the U.S. officers nor the defendants and thus should not be admissible as legal evidence by the court."
The five men stand accused of fighting against U.S. forces in Afghanistan for the former Taliban regime.
If convicted, the quintet faces a minimum of three years in jail.
The Arab Times reported Monday that defense lawyers argued that the men had not committed or been convicted of any crime in Kuwait and had not transgressed laws.
Azemi told journalists that the interrogation transcripts underpinning the Kuwaiti case were "not a proper investigation," but rather, "simple reports that included neither questions nor answers" against Abdulaziz al-Shimmari, Adel al-Zamel, Mohammad al-Deehani, Saad al-Azemi and Abdullah al-Ajmi.
Kuwaiti Judge Hmoud al-Mutawa abstained from ruling during the April 9 session and observers believe that he will make his opinions public only when delivering his verdict.
The five men were repatriated to Kuwait Nov. 4 after nearly four years in the U.S. holding facility in Camp Delta in Guantanamo Bay, Cuba.

Hicks in solitary 'to break his will'

By PHILLIP COOREY
12apr06
DAVID Hicks has been thrown back into solitary confinement in what his lawyer says is an attempt by his captors to break his will.

Major Michael Mori said the move was aimed at pressuring Hicks to end his resistance to being tried by the controversial U.S. military commission process.
"It's not a disciplinary thing," he said. "There's no logical reason other than to break him."
Attorney-General Philip Ruddock became aware of the claims yesterday and his spokeswoman said an "urgent cable" had been sent to Washington seeking confirmation and an explanation.
Major Mori, who is in Adelaide with Hicks's U.S. civilian lawyer, Joshua Dratel, said he only learned of the development two days ago.

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Hicks, who has been transferred to an enclosed cell, is allowed out for just 30 minutes at night every 24 hours, and has no access to sunlight.
The terrorist suspect is fighting his impending trial by military commission through the U.S. civilian courts.
His trial has been put on hold pending a U.S. Supreme Court decision due in June. But it is likely the delay could last until 2007.
Hicks is also waiting for the outcome of a British Government appeal against a UK court decision to grant him British citizenship.
If successful, Hicks hopes the British Government would secure his release from Guantanamo Bay, as it did other British inmates.
Captured in Afghanistan in late 2001 and sent to Guantanamo Bay, Hicks spent 16 months during 2003 and 2004 in solitary confinement. During this period, he spent eight months with no access to sunlight.
Major Mori said the first stint in solitary confinement reduced Hicks to "a broken man".
Hicks's father, Terry, shared Major Mori's suspicions and called the tactic disgusting.
"Maybe the Americans are under a bit of pressure with what the defence team is doing with the process, so they're taking it out on David," Mr Hicks said.
The Pentagon could not be contacted yesterday.
http://www.theadvertiser.news.com.au/common/story_page/0,5936,18791529%255E911,00.html

Attorneys satisfied with teen's new accommodations at Guantanamo
BY CAROL ROSENBERG
Knight Ridder Newspapers
GUANTANAMO BAY NAVY BASE, Cuba - In an about-face, defense attorneys on Friday withdrew a request to have a war-court judge examine prison-camp conditions of an alleged teenage terrorist from Toronto.
Omar Khadr, 19, had complained in his Military Commission that he was punitively moved to isolation from a barracks-style communal prison camp.
By Friday, the youth sat smiling as his civilian and military defense attorneys told Marine Col. Robert Chester that the issue was resolved through private talks.
``We are satisfied with his accommodations now,'' Marine Lt. Col. Colby Vokey said after the hearing. ``We are going to closely monitor how Omar is being treated.''
Chester's willingness, as presiding officer, to hear evidence on the Canadian teen's conditions raised the possibility of a first-ever war-court exploration of operations at the Pentagon's detention center - located up the road, on a bluff overlooking the Caribbean.
Instead, it led the prison camp to declare that Khadr's move to a single-occupancy cell was routine procedure. Unclear Friday was whether or when the teen would rejoin the less restrictive prison facilities.
Khadr allegedly threw a grenade during a July 2002 firefight in Afghanistan that fatally wounded a Special Forces medic.
Separately Friday, a Yemeni captive who allegedly made propaganda films for Osama bin Laden once again boycotted his pretrial hearings, during which an Army major made a plea to let the man represent himself.
Even ``Slobodan Milosevic, may he rest in peace, had the right of self-representation,'' Army Maj. Tom Fleener argued at Ali Hamza Bahlul's Military Commission.
Milosevic, the former Serbian strongman, died last month of a heart attack at The Hague while awaiting his international war-crimes trial but not before he lost the right to act as his own attorney for health reasons.
Bahlul, 37, is the first of several captives seeking to serve as his own attorney at the first U.S. war-crimes tribunals since World War II. They are arguing, essentially, that it's unfair to expect a U.S. officer to assist an enemy with a free, full and fair trial.
Pentagon rules so far prohibit self-representation, but Bahlul's presiding officer, Army Col. Peter Brownback, agreed to consider a plea on behalf of the man who has already admitted that he is a member of al-Qaida.
In a new twist at the evolving war-crimes court, some private attorneys in Wyoming and a civilian group called the National Institute of Military Justice filed briefs in Bahlul's

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behalf, arguing that so-called prose representation is a bedrock U.S. constitutional right and also fundamental to international law.
It was the first filing of so-called amicus briefs at the war court President Bush ordered created in late 2002.
``Don't let this place become Star Chamber-esque,'' said Fleener, who was mobilized from a federal public defender's office in Wyoming.
Brownback will rule later.
At issue is whether and how the Pentagon can compel a captive at Guantanamo to accept a U.S. military defense lawyer, whose role will be required as the government is shielding some evidence from the accused.
Fleener said at his hearing Thursday morning that another captive - Saudi Ghassan al-Sharbi, in his 20s - is also refusing the services of his defense counsel. Sharbi, a 2000 graduate of Embry-Riddle Aeronautical University, makes his war-court debut later this month.
On Thursday, Ethiopian exile Binyam Muhammad, who lived in London for seven years, insisted that he is competent to run his own defense - with military and civilian lawyers guiding him. He claims through a British-American civilian lawyer that the United States sent him to Morocco for interrogation on his way to Guantanamo, where interrogators got him to confess to anything they asked because they cut his genitals with a scalpel.
``I have the answers,'' the 27-year-old declared dramatically at his court hearing, pointing to his Pentagon-approved defense team. "You can't get the answers about me from them ... even if you take them to Morocco and razor-blade them.''
http://www.grandforks.com/mld/grandforks/news/world/14292930.htm
Vt. lawyers represent Guantanamo detainees
April 10, 2006
BURLINGTON, Vt. --Bob Rachlin first heard from Djamel Ameziane when he got a postcard in early 2005. The note from the 38-year-old Algerian was in French, which Rachlin speaks. Ameziane said he wanted a lawyer.
Ameziane is one of 490 people deemed enemy combatants whom the U.S. government is holding in a military prison at Guantanamo Bay, Cuba.
Rachlin, 69, senior director at Vermont's largest law firm, has spent much of his career representing business clients. His firm's offices in downtown Burlington have spectacular views of Lake Champlain.
Rachlin and two St. Johnsbury lawyers -- David Sleigh and Robert Gensburg -- joined a national group of lawyers who have volunteered to represent people the Bush administration has labeled "the worst of the worst."
"This is not a question of whether they deserve a lawyer," he said. "This is a question of whether the system should be allowed to function." By protecting the integrity of the justice system, "We're protecting our fellow citizens, as well as these people."
Court papers filed by the government say Ameziane stayed with Taliban fighters in Kabul, Afghanistan and illegally traveled with them into Pakistan. But he has not been formally charged with any crime.
Rachlin has replied in his own court filings that his client does not belong to al-Qaida or the Taliban, and was swept up as he tried to leave a country torn by war.
The U.S. Supreme Court ruled in 2004 that the Guantanamo detainees are entitled to legal representation and can challenge their detention.
The New York-based Center for Constitutional Rights began recruiting volunteer lawyers.
Rachlin said he got an e-mail about the effort in late 2004 and agreed to participate.
Sleigh said he joined the effort because of what he saw as an affront to the due process guaranteed under the U.S. Constitution.
"It's fundamentally contrary to what we aspire to be as a country," Sleigh said. "This is one of the reasons I'm a lawyer."
Rachlin said he had been to Guantanamo four times and expects to return this month. He had to have an extensive FBI background check before being allowed on the base. When he wants to view his client's file, he has to travel to a secure government site near Washington.
During visits with his lawyer at Guantanamo, Ameziane's hands were free but his legs were chained to the floor, Rachlin said.

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"He would describe incidents of maltreatment he had received," Rachlin said. "Incidents of beatings. He's talked about having the Quran thrown around, or being kept in cold conditions or with lights on so he couldn't sleep, or being punished for meeting with his lawyer -- me." http://www.boston.com/news/local/vermont/articles/2006/04/10/vt_lawyers_represent_guantanamo_detainees/

ACLU: US authenticates Abu Ghraib images
RAW STORY <http://rawstory.com>
Published: Tuesday April 11, 2006
The American Civil Liberties Union and the New York Civil Liberties Union today released the first official U.S. government authentication of images of detainee abuse by U.S. forces at Abu Ghraib prison in Iraq. The Department of Defense was forced to turn over the information as well as one additional image as a result of a Freedom of Information Act lawsuit filed by the ACLU in 2004.
From their release to RAW STORY <http://rawstory.com> .
Significantly, in agreeing to the release and authentication of the notorious images, the Department of Defense did not contest a district court ruling that the release of these images is crucial to understanding the command failures that led to the abuse. The ACLU said that this ruling would therefore apply to other images of detainee abuse withheld on the same legal grounds as the Abu Ghraib images.
"This is a moral victory in every sense, but the battle is not over until the top-ranking officials who are truly responsible for these abuses are held accountable," said Anthony D. Romero, Executive Director of the ACLU. "These images convey on a visceral level the impact of the government's policies. Now that the government has released these images, it should focus on the real issue, which is how and why these abuses were allowed to happen in the first place."
The government also informed the court today that it is withholding an additional 29 photos and two videos relating to detainee treatment and that it will file declarations in support of its withholding of these images by April 25, 2006. Details regarding the specific content of these additional images are unknown.
The authentication released today identifies 73 photographs and three videotapes depicting detainee abuse, provided by Sergeant Joseph Darby to the Army's Criminal Investigation Command. Seventy-three of the images are available from the online magazine Salon.com. One additional image from the Darby trove, with individually identifying details deleted, was also released. It depicts two men in orange jumpsuits standing side by side.
"Instead of continuing to shield wrongdoers from public scrutiny, the government now must also disclose other detainee abuse images and policy documents in its possession," said Amrit Singh, an attorney with the ACLU. "The public has an undeniable right to examine these documents especially because they shed light on who is ultimately responsible for the widespread abuse of detainees."
Attorneys for the government had argued that turning over visual evidence of abuse would violate the United States' obligations under the Geneva Conventions, but the ACLU, supported by experts in international law, said that obscuring the faces and identifiable features of the detainees would address any potential privacy concerns.
In ordering the release of the images, Judge Alvin K. Hellerstein held that "Publication of the photographs is central to the purposes of FOIA because they initiate debate, not only about the improper and unlawful conduct of American soldiers, 'rogue' soldiers, as they have been characterized, but also about other important questions as well -- for example, the command structure whose failures in exercising supervision may make them culpable along with the soldiers who were court-martialed for perpetrating the wrongs."
The images released by the Department of Defense come in response to a lawsuit filed by the ACLU to force government compliance with a Freedom of Information Act request filed by the ACLU, the Center for Constitutional Rights, Physicians for Human Rights, Veterans for Common Sense and Veterans for Peace. The New York Civil Liberties Union is co-counsel in the case.
Additional documents continue to be turned over by the government in adherence to a court order entered by Judge Hellerstein of the U.S. District Court for the Southern District of New York. Portions of the documents are redacted and the ACLU continues to aggressively push

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for the release of much of the withheld information, including documents from the Central Intelligence Agency, which to date has steadfastly refused to disclose even the existence of certain documents.
To date, more than 100,000 pages of government documents have been released in response to the ACLU's FOIA lawsuit. The ACLU has been posting these documents online at www.aclu.org/torturefoia. The documents reveal that harsh interrogation techniques were used indiscriminately in Iraq, Afghanistan and Guantánamo Bay, and ultimately led to cases of abuse and torture.
In March 2005, the ACLU and Human Rights First filed a lawsuit charging Defense Secretary Donald Rumsfeld and other top officials with direct responsibility for the torture and abuse of detainees. Many of the claims in the Rumsfeld lawsuit were based on information disclosed through the ACLU's FOIA litigation. Further information about the case, Ali v. Rumsfeld, is online at www.aclu.org/rumsfeld
The government's letter authenticating the Abu Ghraib images posted on Salon.com is at: www.aclu.org/safefree/torture/24980lgl20060411.html.
The text of the proposed order relating to the 29 photos and two videos to be signed by Judge Hellerstein is available at: www.aclu.org/safefree/torture/24981lgl20060411.html.
The additional image not currently at Salon.com is available at: www.aclu.org/safefree/torture/24982res20060411.html.
http://www.rawstory.com/news/2006/ACLU_US_authenticates_Abu_Ghraib_images_0411.html

Government Authenticates Photos From Abu Ghraib
By Josh White <http://projects.washingtonpost.com/staff/email/josh+white/> Washington Post Staff Writer
Tuesday, April 11, 2006; Page A16
Nearly two years after graphic photographs of detainee abuse at the Abu Ghraib prison in Iraq were published worldwide, the U.S. government yesterday for the first time authenticated 74 of the images as being part of the original compact disc that was turned over to Army investigators in January 2004.
Responding to a federal court order as part of a Freedom of Information Act lawsuit filed by the American Civil Liberties Union in New York, Justice Department lawyers wrote in court papers that the previously published images "are identical" to those that investigators have used to look into abuse at the prison. Included among the images are such photos as Pvt. Lynndie R. England holding a leash attached to a naked detainee's neck, a detainee with female underwear placed on his head, detainees shackled to cell doors and beds in painful positions, and others piled in a naked pyramid. The iconic photograph of a detainee standing on a cardboard box, cloaked and hooded with wires coming from his hands, is also among the pictures.
The government, however, did not authenticate numerous photographs of soldiers using dogs to intimidate detainees, though military prosecutors have used such images in open court while pursuing cases against the soldiers.
Many of the photos, or representative samples of them, have been published in The Washington Post and on washingtonpost.com over the past two years. Salon.com, an Internet magazine, recently published the photographs on its Web site after obtaining what appeared to be the Army's compilation of abuse photos used to prosecute low-ranking soldiers. The government also authenticated three short video clips. The original disc was given to Army investigators by a soldier concerned by the abuse that he saw in photos.
Avoiding an actual government release of the images, Justice Department lawyers instead authenticated photographs that were already up on the Salon Web site, using court papers to refer to the images by number. ACLU lawyers were also provided with one additional photograph -- which appears to be two detainees with their arms around each other and their faces edited out of the image -- and the government declined to provide an additional 29 photographs that ACLU lawyers said they are going to fight to see.
None of the photographs the government authenticated indicates any unknown instances of abuse. Hundreds of other photos -- seized from soldiers' computers in Iraq -- appear to show abuse but have not been authenticated by U.S. officials.

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"Our aim was to get this information into the public domain, and the government's attempts at withholding this information have proved futile," said Amrit Singh, an ACLU lawyer pursuing the lawsuit. "This is a victory for us because information to which the public is entitled has been released into the public domain. The government has fought this tooth and nail." Defense Department officials, including top generals, have opposed releasing the images, arguing that they could set off major unrest in Muslim nations. The images a federal judge in New York ordered the government to release, it turns out, largely were the same images that already have been published.
http://www.washingtonpost.com/wp-dyn/content/article/2006/04/10/AR2006041001392.html

Bahrainis still being tortured in Guantanamo
From Hemu Gorde (Our correspondent)

11 April 2006

MANAMA – The three Bahraini detainees at Guantanamo Bay are still being tortured, and with the fate and the date of the verdict on the Detainee Treatment Act is not clear and since the legal battle may take years considering the slow legal process in the US, diplomatic dialogue would be the best possible way for a comparatively early release, lawyers representing the detainees said here yesterday.

In November 2005, the US authorities released only three Bahraini detainees – Shaikh Sulman bin Ibrahim Al Khalifa, Adel Kamel Haji and Abdulla Majid Al Nuaimi – as free men after a series of negotiations by the kingdom's government with the concerned US authorities, while holding the other three Bahrainis at Bay prison in Cuba.

Addressing a Press conference organised by the Amnesty International (Bahrain) in the presence of its representative Nabeel Rajab, the US lawyers also noted that the remaining three Bahraini detainees – Juma Mohammed Al Dossary, Isa Al Murbati and Salah Abdulrasool Al Balooshi – are undergoing extreme mental and physical torture, so much so that Al Dossary has attempted suicide attempts several times while Isa had been forced to end his hunger strike to avoid further unbearable physical torture.

The three lawyers – Joshua Colangelo-Bryan, Mark Sullivan and Christopher G. Karagheuzoff – from the New York-based Dorsey and Whitney law firm, who are fighting the cases of the three Bahraini detainees said that the US government is putting strong obstacles in the process of the release of their clients while the military is continuing with its torture of the prisoners there.

They said that the "recent changes in the law prevent the detainees from fighting their cases in the court of law in the US, and that they would only be tried by the military.

However, none of the detainees has ever been tried and the charges against them are not released by the military.

At this point, the lawyers are left only with fighting to establish whether the changes are legal or not. And it will probably take a long time."
http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/middleeast/2006/April/middleeast_April280.xml&section=middleeast&col=

Bay three face long struggle
By Kanwal Tariq Hameed
MANAMA
THE only way for Bahraini detainees at Guanatanmo Bay to be freed soon is by diplomatic measures, the closing down of the camp or mass releases of prisoners, their lawyers said yesterday. It would take years to secure their rights and argue their cases at US federal courts, said New York-based Dorsey and Whitney lawyers Mark Sullivan, Joshua Colangelo-Bryan and Christopher Karagheuzoff.
They were speaking at a Press conference organised by Amnesty International Bahrain, held at the Bahrain Bar Society in Adliya yesterday.
The lawyers said Bahrain's government, which secured the release of three detainees, should call for the closure of the camp to ensure the remaining three do not have to wait longer.

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Bahrainis Salah Abdulrasool Al Blooshi, 24, Isa Abdulla Al Murbati, 41, and Juma Mohammed Al Dossary, 32, are approaching their fifth year of incarceration without trial at the infamous prison camp in Cuba.
They spent seven hours trying to convince Mr Al Dossary not to make another suicide attempt as a result of indefinite detention and his confinement conditions during their last visit to the prison, said Mr Colangelo-Bryan.
Legal proceedings in the US are tied up in court battles over "whether Guantanamo detainees have rights", including their right to a trial in US federal courts.
The potential outcome in US courts looks favourable for detainees, but the wait for court proceedings could be a matter of years - which is "intolerable," said Mr Sullivan.
They are hoping the Bahrain government will echo the call of other close US allies for the ultimate closure of the prison camp.
The lawyers will be meeting with Interior, Justice and Foreign Affairs ministry officials as well as the families of those still detained and released detainees.
"The reason for our visit is to impart to the Bahraini people a sense of urgency for the release of the remaining three detainees at Guantanamo Bay," said legal team head Mr Colangelo-Bryan.
"We know the government of Bahrain knows how serious the issue is," he said.
The lawyers hope to convey a greater sense of urgency by sharing with government information about their visits with the Bahraini detainees.
"While we might (eventually) prevail in the courts, it is a high price for Juma, Salah and Isa to pay, waiting for the courts," said Mr Sullivan.
The Supreme Court decision regarding whether detainees can have their cases heard in US district courts is expected to be made in June this year, said Mr Sullivan.
Even if the US Supreme Court rules in favour of the detainees' right to have their cases tried in US federal district courts, "it's a very long road", Mr Karagheuzoff added.
After four years of court battles, the question of detainees' right is still pending, said Mr Colangelo-Bryan.
"Realistically, it could be years before the courts decide whether the human beings at Guantanamo have any rights at all," he said.
The most promising avenues for the release of remaining detainees at Guantanamo Bay are through diplomatic measures, the closing down of the camp or mass releases of prisoners, said Mr Colangelo-Bryan.
"Certainly all of the lawyers for Guantanamo detainees would hope that it closes and those detainees would be released to their home countries.
"We would hope that the government of Bahrain and any other country closely allied to the US would continue to call for the closure of Guantanamo.
"It is politically untenable to maintain Guantanamo and (for other countries) to have good relations with the US," he added.
The lawyers wrote a letter to the Bahrain Foreign Affairs Ministry informing them of Mr Al Dossary's suicide attempts and feelings of hopelessness, and were assured that it was intent on securing the detainees release, Mr Colangelo-Bryan said.
"We are grateful for the work it did on behalf of our three clients that are at home and hope for a similar agreement between the two very close allies."
Mr Al Dossary has tried to kill himself 12 times, according to the US military and is thought to have attempted to slit his own throat as recently as last month.
Mr Al Murbati has come off his hunger strike after he was strapped to a restraint chair and force-fed a nutritional mixture including a laxative twice a day for four days earlier this year, said Mr Karagheuzoff.
Mr Al Blooshi, "a gentle soccer fan who wants to be a teacher", should have been the first person to leave for Bahrain, said Mr Sullivan.
"He is a classic case of an innocent person being in the wrong place at the wrong time."
The three Bahrainis released from Guantanamo Bay on November 5 last year are Shaikh Salman bin Ebrahim Al Khalifa, 27, Abdulla Majid Al Nuaimi, 24, and Adel Kamel Hajee,41.
http://www.gulf-daily-news.com/Story.asp?Article=140539&Sn=BNEW&IssueID=29022

Suicidal Detainee's Condition A Mystery

OGC AMNESTY/CCR 64

By Josh White <http://projects.washingtonpost.com/staff/email/josh+white/> Washington Post Staff Writer
Saturday, April 8, 2006; Page A15

Lawyers for a suicidal detainee held at Guantanamo Bay, Cuba, believe that their client tried to kill himself again by slashing his throat sometime over the past few weeks but say U.S. government officials have refused to answer any questions about his condition.

Jumah al-Dossari, a Bahraini national captured in 2001, has tried to take his own life at least 10 times in his four years at the U.S. detention facility, according to military officials. One of the attempts came during a visit by an attorney, who found him hanging from a noose in a bathroom with a deep gash in his arm.

Dossari and his attorneys have said the attempts are a statement that the conditions and indefinite detention have left him desperate.

The attorneys say other lawyers visiting clients at Guantanamo Bay in late March heard that Dossari had slit his throat and nearly died. Declassified notes obtained by Dossari attorney Joshua Colangelo-Bryan also record the suicide attempt.

Despite weeks of trying to determine Dossari's condition, Colangelo-Bryan said yesterday, he has not heard from the Justice Department, which represents the Pentagon in detainee matters. A Justice spokesman referred questions to the Defense Department.

"I'd like to know if he's alive," Colangelo-Bryan said. "I think it underscores the fact that the government does not believe that it has to play by any rules at all."

Navy Cmdr. Robert Durand, a spokesman for Joint Task Force Guantanamo, said yesterday that there has been one suicide attempt at the facility so far this year -- on March 11 -- and that the detainee is "clinically stable." But Durand would not identify him.

Apparently referring to Dossari, Durand noted that a single detainee accounts for 12 of the 39 suicide attempts at Guantanamo Bay since it opened in 2002. No detainee has died in custody there.

Lawyers blame the Detainee Treatment Act, enacted a few months ago, for their lack of information about clients. The government has argued that the law severely limits access to federal courts for Guantanamo detainees, and hundreds of habeas corpus cases in U.S. courts have been held up while federal judges weigh the law's impact.

Dossari, who speaks some English, has long claimed he is innocent and is being held improperly, though a military tribunal -- relying on classified evidence -- has determined he is an enemy combatant. According to recently released documents from Guantanamo Bay, government officials believe he was helping al-Qaeda and the Taliban in Afghanistan in late 2001, shortly before he was arrested at the Pakistani border.

Before his trip to Afghanistan, Dossari lived in the United States on a visa and was an imam at a mosque in Bloomington, Ind., according to military records. Federal agents allege that Dossari was recruiting for al-Qaeda and left shortly after the Sept. 11 terrorist attacks. The only charges levied by the military relate to his allegedly being a cook for enemy forces at Tora Bora in Afghanistan, where U.S. troops fought a fierce battle with al-Qaeda and the Taliban in 2001. Dossari denies being there or being an al-Qaeda member.

http://www.washingtonpost.com/wp-dyn/content/article/2006/04/07/AR2006040701723.html

Miami Herald
April 11, 2006
Reporter's Notebook

War-Crimes Proceedings Open With Lawyer's 'Sorry'

A prosecutor apologized to a Supreme Court justice, military judges differed on culturally appropriate attire and artists' sketches had a few surprises.

By Carol Rosenberg

GUANTANAMO BAY NAVY BASE, Cuba -- Oops. The Pentagon's chief prosecutor opened the latest installment of the military commissions for alleged war criminals here by misquoting a U.S. Supreme Court justice -- and used the closing news conference to issue an apology.

On April 4, Air Force Col. Moe Davis built his remarks around the statement ''this is not a war, at least not an ordinary war'' and five times pointedly attributed the quote to Justice Steven G. Breyer during Supreme Court arguments on March 28.

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The Pentagon's prosecutor went so far as to chastise the Clinton appointee with this: ``When al Qaeda attacked on Sept. 11 and murdered 3,000 of our fellow citizens on our soil, that was an act of war.''
In fact, Breyer was characterizing a challenge brought by detainee lawyers -- who argue that the format for the first U.S. war-crimes tribunals since World War II skirted both Congress and international treaty obligations.
What Breyer said was this:
'I take their argument as saying, `Look, you want to try a war crime. You want to say this is a war-crimes tribunal. One, this is not a war, at least not an ordinary war. Two, it's not a war crime, because that doesn't fall under international law. . .' ''
By April 7, Davis used another news conference to apologize to the justice.
''I didn't intend it as an insult to Mr. Breyer,'' he said, then blamed the news media.
Davis said he ''didn't rate'' a seat at the Supreme Court arguments, so he read a news agency account -- not the rush transcript issued soon after the 90-minute session on March 28.
Count Dracula
The Guantánamo captive named Binyam Muhammad reads news reports, too.
Muhammad, who allegedly discussed dirty bombs with José Padilla, a one-time Broward County resident, in Pakistan, argued he is a victim of mistaken identity.
''Call me Count Dracula,'' the 27-year-old British-educated Ethiopian exile suggested to the Marine colonel presiding at his case, who addressed him as ``Mr. Muhammad.''
In February, Davis likened Guantánamo captives and their attorneys to vampires hiding from the harsh glare of Pentagon justice.
''Remember if you dragged Dracula out into the sunlight he melted?'' the chief prosecutor told reporters. ``Well, that's kind of the way it is trying to drag a detainee into the courtroom.''
Muhammad's lawyers said they included commission news articles in his case reading material.
Fashion flap
The latest commissions also illustrated how one captive's clothing may be culturally appropriate -- and another's an insult.
Marine Col. Ralph Kohlmann, the presiding officer, cautioned Muhammad's lawyers that commissions, or quasi-jurors, may be prejudiced by Ethiopian attire:
The man who alleges he was brutalized with a scalpel during interrogation in Morocco walked into his hearing last week in a traditional Pakistani Muslim tunic -- dyed fluorescent orange, like captive jumpsuits.
Commission rules require ``business casual attire or, if an accused desires, culturally equivalent attire.''
Lawyers for Muhammad said he considers his clothing ``culturally appropriate.''
On Jan. 11, however, another presiding officer, Marine Col. Robert Chester, told lawyers for a Canadian captive to lose the T-shirt. Omar Khadr, 19, turned up at his war court debut in a trademark red, gray and blue Canadian ''Roots'' jersey for the early stages of what the Pentagon intends to be a conspiracy-murder trial in the Afghanistan firefight death of a U.S. Army medic.
Veil of secrecy
The issue of anonymity and pseudonymity came up several times during the hearings.
For starters, prosecutors are still shielding their names from publication, a discretion given them under Pentagon ground rules.
But when Associated Press sketch artist Janet Hamlin showed up for the hearings, several prosecutors agreed to have their features included.
An earlier sketch artist was required to show both captives and prosecutors as ghostly faceless people.
Now, the Muhammad case prosecutor has announced plans for more secrecy.
The Navy lieutenant, whose name cannot be published here, put the presiding officer and defense on notice that all U.S. government and agency witnesses will be ``be testifying under pseudonyms.''
The Marine colonel, Kohlmann, told the Navy lieutenant to file a motion.

Gitmo Detainee Wants to Represent Self

OGC AMNESTY/CCR 66

Friday April 7, 2006 9:16 PM
AP Photo XBL102
By ANDREW SELSKY
Associated Press Writer
GUANTANAMO BAY NAVAL BASE, Cuba (AP) - An alleged bodyguard of Osama bin Laden, who says his U.S. military counsel is the enemy, should be allowed to represent himself at his trial here, the lawyer argued Friday.
The judge has said commission rules require defendants to have a military lawyer. But Army Maj. Tom Fleener said the judge has the power to grant Ali Hamza Ahmad Sulayman al-Bahlul the authority to represent himself because it is a fundamental right.
Pretrial hearings this week for al-Bahlul and three other Guantanamo Bay detainees captured in the Bush administration's war on terror have been encumbered by procedural ambiguities, foreshadowing lengthy trials when they finally get under way.
Al-Bahlul was absent from the courtroom during the exchange.
Only 10 of the nearly 500 prisoners at Guantanamo Bay have been charged with crimes under President Bush's Nov. 13, 2001, order calling for military commissions to try suspected members of al-Qaida or other international terrorist groups.
Al-Bahlul, a Yemeni, has refused to attend the hearings, saying he didn't want a U.S. military lawyer representing him because he regards Americans as enemies. For Friday's session, he was brought to a side room, military officials said, but was not present in the courtroom in the yellow cinderblock building, perched on a hilltop overlooking the Caribbean on this isolated military base.
All defendants get a civilian lawyer in addition to a military lawyer. Last month, al-Bahlul asked for a Yemeni lawyer, but the judge said rules require that detainees must have a military lawyer and can be assisted by a civilian who is a U.S. citizen with a license to practice law in the United States.
Fleener cited numerous cases in which judges have determined self-representation to be a fundamental right.
``It's clear to everybody that the right of self-representation must be recognized,'' the major said, standing alone at the defense table. The presiding officer, Col. Peter E. Brownback, took the motion under advisement.
Al-Bahlul is charged with conspiring with bin Laden and other al-Qaida leaders to attack civilians and commit other crimes. The charge sheet says al-Bahlul created instructional and motivational videos for al-Qaida, including one glorifying the attack on the destroyer USS Cole in a Yemeni harbor in 2000.
In a separate hearing, a military defense attorney for a Canadian teenager accused of killing a U.S. soldier in Afghanistan withdrew a motion he filed Wednesday complaining his client had been put in solitary confinement.
The defense attorney, Marine Lt. Col. Colby Vokey, had complained about treatment of his client, Omar Khadr, but Navy Cmdr. Robert Durand issued a statement saying no detainees at Guantanamo Bay are put in solitary confinement. Durand said detainees are separated from the general population before their hearings begin but that Khadr could still see and talk to other inmates.
``We determined the move was not for punishment and will not affect defense access to the client,'' Vokey told the judge, Marine Col. Robert S. Chester.
Khadr has been charged with murder and other crimes for allegedly throwing a grenade that killed a U.S. Special Forces soldier while Khadr was fighting with the Taliban in Afghanistan and for planting mines targeted at American convoys.
The next round of military commission sessions will be held at Guantanamo Bay from April 24-28, the military said.
http://www.guardian.co.uk/worldlatest/story/0,,-5741191,00.html

Lawyer says Rumsfeld 'messed up' Guantanamo trials
07 Apr 2006 17:23:45 GMT
Source: Reuters

OGC AMNESTY/CCR 67

By Jane Sutton
GUANTANAMO BAY U.S. NAVAL BASE, Cuba, April 7 (Reuters) - Defense Secretary Donald Rumsfeld and his appointees set rules that violate President George W. Bush's order to hold fair trials for prisoners charged with terrorism in the Guantanamo tribunals, a military defense lawyer said on Friday.
"We can't help it that the secretary of defense and his delegees (sic) have messed this thing up, but they have," military lawyer Army Maj. Tom Fleener told the presiding officer at one of the hearings.
"If the rules don't provide for a full and fair trial, then they violate the president's order."
Fleener was trying to persuade the presiding officer, Col. Peter Brownback, to let a Yemeni defendant act as his own attorney on charges of conspiring to attack civilians and destroy property.
Tribunal rules set by the Pentagon require the defendants to have U.S. military lawyers who are authorized to see secret evidence that the accused may not be allowed to view. Pentagon officials have refused defense requests to allow self-representation, which Fleener called a fundamental right in nearly every court on Earth.
Fleener was appointed to defend Ali Hamza al Bahlul, an acknowledged al Qaeda member charged with conspiring to commit terrorism by acting as Osama bin Laden's bodyguard and making al Qaeda recruiting videos.
Bahlul has refused to cooperate with any lawyer appointed by the U.S. military. He asked to act as his own attorney or to have a Yemeni lawyer, and declared a boycott when the request was denied during a March hearing. He did not attend his hearing on Friday at the U.S. naval base in Guantanamo Bay, Cuba.
Fleener said Bahlul cannot get a fair trial unless the rules change. "As the world looks at this system, it's going to have no legitimacy whatsoever," he said.
Bush created them to try foreign terrorist suspects after the Sept. 11 attacks, and directed Rumsfeld and his appointees to draft rules that ensure full and fair trials while protecting national security.
RULES QUESTIONED
Defense lawyers have questioned whether another rule violated Bush's order by changing the role of the presiding officer. The president's order said tribunal members would all serve as triers of law and fact, giving each of the four to seven panel members a dual role as judge and juror.
Subsequent Pentagon rules gave only the presiding officer the authority to decide legal issues, making him essentially the judge. The presiding officers have conducted three rounds of pretrial hearings at Guantanamo since January without the other tribunal members present. Defense lawyers questioned whether that constituted a proper hearing.
The Guantanamo tribunals are the first war crimes trials held by the U.S. military since World War Two.
Military defense lawyers and human rights groups have called the tribunals fundamentally unfair and stacked to ensure convictions. The U.S. Supreme Court heard a challenge to their legitimacy last month and is expected to rule by the end of June on whether the trials can proceed.
Ten of the 490 Guantanamo detainees have been charged with conspiring to commit terrorism and four had pretrial hearings this week at the base. The defendants would face life in prison if convicted.

http://www.alertnet.org/thenews/newsdesk/N07271476.htm

Tribunal Lawyers Trade Shots
Guantanamo Commissions Are Plagued by Legal Infighting
By JESS BRAVIN
April 10, 2006; Page A6

OGC AMNESTY/CCR 68

GUANTANAMO BAY, Cuba -- In the weeks after the Sept. 11, 2001, terror attacks, President Bush conceived of military commissions as a way to provide swift and severe punishment to foreign terrorists.

But last week's proceedings here, four years after the first prisoners arrived, showed the commissions mired in legal infighting. At the same time, defense attorneys have waged a concerted assault on the system's legitimacy, ranging from the heavily secured hearing room here to the Supreme Court.

"You don't have to go to London to attend a theatrical production. We had that right here," chief prosecutor, Air Force Col. Moe Davis, said about defense tactics.

Col. Davis said critics of the process made "ethical allegations the way Saddam Hussein lobbed Scud missiles" -- an apparent reference to, among other things, claims by Clive Stafford Smith, a British attorney for defendant Binyam Mohamed, that Col. Davis improperly read privileged correspondence between him and his client. "If you can't beat the facts, you can't defeat the process, you attack the participants," Col. Davis said.

He then listed anti-American comments, pulled from Web sites, that he said were made by Mr. Stafford Smith, who obtained U.S. citizenship "because that was the only way he could keep his wife from being deported."

Mr. Stafford Smith, who was educated in the U.S. and spent decades there fighting the death penalty, called Col. Davis's comments "pathetic." "When people at Guantanamo say that we are the enemy, they really don't understand what America is all about," Mr. Stafford Smith said.

Ten Guantanamo detainees captured after the U.S. invasion to topple the Taliban stand accused of conspiracy to commit terrorism and, in some cases, of attacking civilians or soldiers. They are represented by both U.S. military attorneys and lawyers from universities, left-leaning activist groups and some major law firms.

Federal courts have enjoined commission proceedings against some defendants, and the legality of the system is under review by the Supreme Court, which is expected to rule in June. In pretrial hearings last week, attorneys for three defendants disputed Mr. Bush's Nov. 13, 2001, military order stating that commission defendants had no rights other than those he gave them and denying the prisoners access to state, federal, foreign or international courts.

Conflicting visions of the law came into focus at Wednesday's hearing for Omar Khadr, a Canadian teenager accused of throwing a grenade that killed a U.S. soldier. A defense lawyer argued that the commission should follow traditional legal practice, and a military prosecutor responded by trying to introduce a video he said showed the defendant taking part in a firefight, rendering him a military combatant for whom such conventional rules didn't apply.

Muneer Ahmad, an American University law professor helping to represent Mr. Khadr, invoked familiar legal doctrines to argue that regardless of President Bush's order, the government was bound to afford his client the protections of the Fifth Amendment's Due Process clause. In parallel litigation involving Mr. Khadr's detention as an "enemy combatant" -- although not the specific war-crimes charges before the commission -- U.S. District Judge Joyce Hens Green found that a 2004 Supreme Court opinion extended the Due Process clause to Guantanamo. Mr. Ahmad said under normal legal practice, when a higher court has decided an issue involving the same parties and facts, the loser may not reargue the matter. Thus, he contended, the military commission was bound to grant those protections to Mr. Khadr.

The trial prosecutor, a Marine major whose name can't be disclosed under Pentagon rules, hadn't cited Judge Green's opinion in his brief. The prosecutor said he ignored the ruling because he considered it wrong and expected it to be overruled in the government's pending appeal.

"Alien enemy combatants have no rights under the Constitution," the prosecutor said, and tried to get the presiding officer, Marine Col. Robert Chester, to watch a video described as showing Mr. Khadr committing "law of war violations." Col. Chester declined to watch the video, saying it was irrelevant to the legal question at hand. He put off a ruling.

On Friday, Army Maj. Thomas Fleener, appointed to represent accused al Qaeda propagandist Ali Hamza Ahmed Suleiman al-Bahlul, invoked federal and international court decisions to attack a rule of the military commissions: that defendants must have a military lawyer, whether they

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want one or not. Defense Secretary Donald Rumsfeld and his aides, who approved the requirement, "messed this thing up," Maj. Fleener said.
Mr. Bahlul, a Yemeni, has said he is a member of al Qaeda and demanded the right to represent himself or employ a Yemeni attorney rather than a U.S. military officer, whom he considers an enemy. Maj. Fleener cited the Supreme Court's 1975 ruling that defendants had a right to decline counsel and said the late Slobodan Milosevic, facing genocide and other charges, was allowed to represent himself before the United Nations war-crimes tribunal.
Maj. Fleener said the military prosecutors agreed with his position. But the head of the commission system, retired Army Maj. Gen. John Altenburg, has denied such requests, he said. In 2005, Gen. Altenburg found self-representation "impracticable," because Guantanamo prisoners lack security clearances needed to review evidence, rarely have legal training and may not have a good command of English.
http://online.wsj.com/public/article/SB114462942761421404-nfGyJIQebGC4CZl_GdncGCFhIPo_20060509.html?mod=tff_main_tff_top

Los Angeles Times
April 7, 2006
Terror Suspect's Lawyer Risks Contempt Citation
The attorney's tactics seem designed to test the authority of the Guantanamo tribunals.
By Carol J. Williams, Times Staff Writer
GUANTANAMO BAY NAVAL BASE, Cuba — In a courtroom drama that reflected grave doubts even from within the U.S. armed forces about the legitimacy of military tribunals, a lawyer fought Thursday to the brink of a contempt citation to protect her client's rights.
Maj. Yvonne Bradley, an Air Force defense lawyer for a 27-year-old Ethiopian terrorism suspect, three times invoked her right to avoid self-incrimination on the grounds she would be breaching legal ethics by continuing to represent her client. Defense lawyers said his right to attorney-counsel privilege has been repeatedly violated because their communications can be monitored by the government and overheard by lawyers for other defendants.
Bradley's face-off with Marine Col. Ralph Kohlmann, the military commission's presiding officer, elicited admonitions about her "unprofessional attitude," "inappropriate grinning" and failure to observe the customary courtesy of appending "sir" to all answers.
Like defense lawyers who have appeared in the handful of pre-trial proceedings, she appeared to be testing the tribunal's vaguely defined authority with tactics that would be out of order in civilian courts or military courts-martial.
Bradley's client, Binyam Ahmed Muhammad, has told his lawyers of harrowing torture at the hands of U.S. and Moroccan security forces, which he alleges occurred over the two years after his April 2002 arrest in Pakistan. He said the torture compelled him to confess to scenarios suggested by his interrogators, including collaborating with "dirty bomb" suspect Jose Padilla and plotting to blow up U.S. high-rises by booby-trapping their power systems.
Muhammad's civilian lawyer, Clive Stafford Smith, has said his client told interrogators whatever they wanted after Moroccan agents used razor blades on his genitals to compel the confessions, including meetings with other terrorism suspects already in custody when the purported contacts occurred.
The presiding officer rejected the appeal by Bradley and Stafford Smith that he conduct a hearing on the conflict-of-interest claim made by Bradley. Kohlmann also refused to allow Bradley to seek the advice of a private lawyer when it became clear she was courting a contempt citation and an indefinite term in the Navy base brig.
Kohlmann called a recess and later returned with requests for Bradley, Stafford Smith and University of Chicago law professor Joseph Margulies to submit briefs outlining their numerous concerns about what they see as fundamental flaws in the proceedings.
One of the most contentious issues has been whether defendants may represent themselves, as Muhammad has insisted on doing.
The presiding officer warned that the conflict-of-interest issues would have to be resolved or the lawyers would have to remove themselves from the case, warning that "we're not just going to be stuck in Never-Never Land."
Before calling for legal briefs, Kohlmann had attempted to advance the proceedings by entering a "not guilty" plea on Muhammad's behalf. When Muhammad's lawyers declined to

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question Kohlmann on his fitness to preside over the trial, Kohlmann pronounced himself competent. Muhammad observed in a droll voice: "I don't think so."
From the first minutes of his tribunal debut, Muhammad mocked the military commission, the irony of being assigned a defense lawyer who is an American soldier under orders to consider him an enemy and the efficacy of a process that after four years didn't even get his name right. He says his name should be spelled Mohamed, not Muhammad.
"How can you get this wrong, man? Four years of – what do you call it, 'enhanced-technique torture'? – and you have the wrong person," he said, shaking his head as if disappointed. "I'm innocent. I'm not supposed to be here."
Muhammad, who hasn't made clear whether he is arguing a case of mistaken identity or simply that his surname of Mohamed was misspelled, came to court in an orange Pakistani tunic his lawyer bought on a street in London and had dyed the same color of prison jumpsuits.
He had also asked, and been denied, the right to be brought in fully shackled, claiming that is how prisoners are kept in the detention camps, and to walk unhindered into the proceedings would be "dishonest."
When Kohlmann politely observed that he didn't know what to call him so he would stick with "Mr. Muhammad," the defendant stated dryly: "You can call me Count Dracula."
Although Muhammad seemed respectful of lawyer Bradley, a 43-year-old reservist from the Philadelphia area, he asked Kohlmann why he was supposed to trust her.
"If you were arrested in Saudi Arabia and Osama bin Laden said, 'I'm going to force you to have a military lawyer,' and gave you some bearded, turbaned person, I don't think you would agree with that."
Muhammad is charged with conspiracy and accused of meeting with various alleged Al Qaeda kingpins to train in the use of weapons, prepare attacks on Americans and learn how to make a dirty bomb.
He is among 10 Guantanamo detainees – of the 490 being held – facing war crimes charges.

National Journal
April 8, 2006
Issues & Ideas
The Pentagon's Prisoner JAG
By Corine Hegland
Charles (Cully) Stimson doesn't seem the type to cut class. A wiry judge advocate general in the Naval Reserve and, until recently, an assistant U.S. attorney for the District of Columbia, he has a litigator's fondness for precision and an officer's penchant for rigor: He brings a law journal article to an interview for an exact reference, and he gently asks a reporter to ensure that his name is spelled correctly.
Nevertheless, in early December 2005, Stimson, 42, cut the final day of class at the Naval Justice School, where he was teaching Effective Courtroom Communications. He did, however, have a good excuse: a job interview with Defense Secretary Donald Rumsfeld. He got the job, and on January 23, Stimson became the Pentagon's new point man for detainee policy as the deputy assistant secretary for detainee affairs.
It's an odd position, established in the summer of 2004 in the wake of the Abu Ghraib scandal, and it's subject to tugs from every direction. The Army is nominally in charge of the military's prisoners from the war on terrorism, but the mammoth operation, which has involved more than 90,000 detainees since 9/11, reverberates throughout the Defense Department and beyond, touching the combatant commands; public and legislative affairs; the Joint Chiefs of Staff; the general counsel; intelligence; the individual services, especially the Army; and other parts of the executive branch, including Justice, State, and the White House. "I can't think of many aspects of the department that don't have some connection with detainees," Stimson said, in his first public interview since taking the job.
Stimson, who grew up in rural Maryland and graduated from Kenyon College before getting his J.D. from George Mason, is accustomed to tug-of-war. He's a prosecutor with a passion for domestic-violence cases, but his best-known prosecution is one in which he recommended leniency for a quadriplegic, Jonathan Magbie, who subsequently died while in the custody of the District of Columbia after a judge ignored Stimson's prescient warning about the city jail's inability to handle Magbie's medical needs. Stimson is still an adjunct law professor

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at George Mason; as a reserve commander, he teaches at the Naval Justice School in Rhode Island; and he serves on the executive committee of a family business based in Seattle. On top of all that, he has a wife and two children. "Family first," he said of trying to balance it all. But that priority is easier stated than achieved. His goal was to treat his first 100 days at the Pentagon like deployment on a ship, and then return to a more normal schedule.

Home port, however, might be harder to reach than he'd like. Two major policy documents on detainees are immersed in high-level interagency debates. They're scheduled for release this spring, and advocates -- and Congress -- are impatient.

Stimson's predecessor, Matthew Waxman, decamped to the State Department in December amid battles over one of the documents, Directive 2310, which governs the Pentagon's overall care and custody of detainees. Waxman fought to insert language drawn from the Geneva Conventions barring cruel, humiliating, and degrading treatment. He ran into overwhelming opposition from the Pentagon's general counsel, the undersecretary for intelligence, and the White House, according to The New Yorker's account of the fight. After Waxman's departure, though, President Bush reluctantly signed the McCain amendment into law, forbidding U.S. personnel from inflicting "cruel, inhuman, or degrading treatment or punishment."

The second policy document, the Army field manual, spells out the specific tactics that military interrogators can and can't use. It's been revised to incorporate lessons learned from the past few years and the requirements of the McCain amendment, but nobody outside the government knows yet exactly what the revision will allow and forbid.

The two documents are important, explained Elisa Massimino, the Washington director for Human Rights First, because together they provide the new baseline for detainee treatment. None of the dozen-odd formal investigations that the military has conducted into detainee abuse has found that Pentagon policy condones it. But they haven't exactly found the policy that prevents it, either: Instead, they reported widespread confusion over the rules.

The problem is that for most of the past century, detainees were simply prisoners of war and policy was, by and large, the Geneva Conventions, which undergirded the Pentagon'slabyrinthine system of directives, training, and manuals. Article 3 of the Third Geneva Convention explicitly barred cruel treatment, torture, and "outrages upon personal dignity," including "humiliating and degrading treatment," and that was virtually all of the policy guidance needed.

But when President Bush issued a February 2002 order declaring that prisoners from the Afghanistan conflict were not entitled to the Geneva Conventions, he replaced the conventions' well-established baseline, barring humiliating and degrading treatment, with a more vague and qualified one. The new standard declared that the U.S. would treat detainees "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." Later, prisoners in Iraq were declared to be entitled to Geneva protections, but communications about what that meant, exactly, weren't clear. Tactics devised under the "humane" standard used for detainees at Guantanamo migrated to Iraq, where there was less oversight, and the resulting photographs of prisoner treatment at Abu Ghraib angered the world in April 2004.

The broadest investigation into the abuses, led by former Defense Secretary James Schlesinger, called on the government to better define policy on the status, care, and treatment of detainees "in a way consistent with U.S. jurisprudence and military doctrine and with U.S. interpretation of the Geneva Conventions."

Stimson declined to comment on the pending documents. He did, however, say he perceived an enormous gap between the diligence with which the Pentagon has sought to improve its detainee operations and the media portrayal of those operations, which often looks "as if we're not really giving it a lot of thought." As the head of the detainee affairs office, Stimson handles the department's communications with the International Committee of the Red Cross -- the only group allowed frequent and unfettered contact with detainees -- and he co-chairs a department-wide joint committee that meets quarterly to review the implementation of more than 400 recommendations that have come out of the detainee investigations.

"When we say umpteen investigations and umpteen recommendations, I don't think people grasp the millions of personnel hours that have gone into investigating, recommending, holding accountable, correcting, and moving forward to make the appropriate changes where necessary,"

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he said. There's a "schism, disharmony, almost Alice-in-Wonderland" break between the work and the outside perception of that work.
But outside observers say that piecemeal fixes alone can't do it, and they're waiting for a more coherent policy to prevent abuses. In late February, Human Rights First released a damning report, based largely on Pentagon papers obtained through Freedom of Information Act requests, documenting the deaths of 98 detainees while in U.S. custody, including 34 officially suspected or confirmed homicides and eight to 12 men who were tortured to death. "One such incident would be an isolated transgression; two would be a serious problem; a dozen of them is policy," retired Rear Adm. John Hutson, the Navy's former top lawyer and currently dean of Franklin Pierce Law Center in New Hampshire, wrote in the report's introduction.
"I wish Cully every good wish and hope that he's effective and gets it straightened out," Hutson said, but "I'm not wildly enthusiastic about the job that's being done." The fundamental problem, according to Hutson, is a failure of congressional oversight, without which the Pentagon has little incentive to fix itself. Senate Armed Services Committee Chairman John Warner, R-Va., declared in 2004 that Defense was leaving no stone unturned in its investigation. But "there are lots of stones, and they're still sunny-side up," Hutson said. "They're afraid of what's going to crawl out if they turn them over."
Stimson "seems very competent and very aggressive," said a State Department official who's worked with him, but "he's still getting his arm around some of these issues. There's a lot going on, and he's got some big shoes to fill," he said, referring to Waxman's pitched battles on behalf of a clear-cut standard on detainee treatment.
On the other hand, Stimson has some leverage that Waxman lacked. He's a military JAG himself, and the combination of the McCain amendment, signed at the end of December, and the ongoing Abu Ghraib trials, in which the former commander of military intelligence recently admitted that he should have established "some definitive rules and put out clear guidance," gives the newcomer a stronger platform. "If he's inclined to see this as an opportunity to get the Pentagon's interrogation policies back on track, he has the tools," Massimino said.
Meet the New Padilla

Slate Magazine
April 10, 2006 Monday

BYLINE: Emily Bazelon

Now that Zacarias Moussaoui is eligible for the death penalty and the Supreme Court has made it clear that Jose Padilla will face regular old federal charges, it's time to start following a new 9/11 case. Ali Saleh Kalah al-Marri is the only person whom the Bush administration has accused of being an enemy combatant who is still being held in the United States. Last week, his case took a turn that demonstrates what's gained from trying accused terrorists in federal court, rather than before a military tribunal.
Al-Marri, a Qatari national, came to the United States on Sept. 10, 2001, with his wife and children and enrolled in a master's program at Bradley University in Peoria, Ill. In December 2001, he was arrested as a material witness in the 9/11 investigation. In January and February 2002, he was charged with several counts of counterfeiting and making false statements to banks and to the FBI. His trial was scheduled for July 2003.
A month before that trial date, President Bush designated al-Marri as an enemy combatant and directed that he be turned over to the Department of Defense, which dumped him in the naval brig in Charleston, S.C. Which almost makes al-Marri Padilla's legal mirror image: Both men were arrested in the United States rather than captured anywhere near the battlefield in Afghanistan, as most of the Guantanamo detainees supposedly were. (Padilla is a U.S. citizen; al-Marri is not.) But while Padilla has been downgraded from enemy combatant to humdrum accused criminal, al-Marri has been upgraded from counterfeiter to al-Qaida sleeper agent. Why?
Until last week, it was awfully hard to tell. The government's enemy-combatant allegations against al-Marri are contained in the Rapp Declarations, documents signed by Jeffrey Rapp, director of the Pentagon's Joint Intelligence Task for Combating Terrorism. The declarations

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repeat almost verbatim the charges in the 2002 indictmentsthey accuse al-Marri of setting up fake bank accounts and fake e-mail accounts; of stealing credit cards; and of keeping on his computer programs used by hackers, speeches by Osama Bin Laden, and photographs of the World Trade Center. Prosecutors said they'd amassed additional evidence tying al-Marri more directly to the 9/11 plot. But that part of the Rapp Declarations was classified, so al-Marri wasn't allowed to see it.

Al-Marri's lawyers protested. The Rapp Declarations are "triple hearsay," they argued, law-speak for whisper down the lane. Rapp wasn't testifying against al-Marri. He was testifying to what other agents had told him that unnamed other witnesses had testified to. And to withhold much of the substance of these thirdhand allegations from al-Marri violated his constitutional rights, his lawyers claimed in the legal papers they filed. How was he supposed to dispute the evidence if he didn't know what it amounted to?

Legally speaking, this is an easy argument to win. The Supreme Court has long held that defendants have the right to hear the factual basis for the allegations against them. Magistrate Judge Robert C. Carr, appointed in 1975 during the Ford administration, called the government's bluff. "You need to make your choice, because this deals with a man's freedom," he told prosecutors at a teleconference with lawyers from both sides, held at the end of February. The judge's skepticism had swift effect. Prosecutors took another look at the classified parts of the Rapp Declarations and decided to make most of them public after all. When they declassified "substantial portions" last Thursday, they cited "the public interest"otherwise known as, "the judge said we had to."

The declassified allegations aren't revelatory. Most of them have already been made in relation to Padilla's case. They link al-Marri to the 9/11 plotters via Khalid Sheikh Mohammed, an al-Qaida member whom the CIA is holding in a secret prison. And while the government still refuses in the Rapp Declarations to "identify the specific sources" of the allegations, it seems clear that they're relying at least in part on KSM himself. Al-Marri's transfer from federal prison to brig is probably the result of what KSM told interrogators after al-Marri's 2002 indictment.

Which would mean it's also a safe bet that evidence against al-Marri was obtained through torture. A 2004 review by the CIA's inspector general found that Mohammed has been subjected to near-drowning while in custody (the term of art is "waterboarding"). As I discussed here, in a New York Times article last November, an unnamed government official explained that such interrogation methods were causing problems in the case against Padilla. Khalid Sheikh Mohammed and Abu Zubaydah, another al-Qaida man interrogated by the CIA, "could almost certainly not be used as witnesses, because that could expose classified information and could open up charges from defense lawyers that their earlier statements were a result of torture," the official said.

Nonetheless, the government is plowing ahead with its case against al-Marri, arguing that because he's a noncitizen, he doesn't have the right to the procedural protections that are normally available in federal court. Maybe prosecutors have other "specific sources" of evidence against him. But if not, should the basis for al-Marri's detention and eventual sentence be torture testimony, long shunned because it is notoriously unreliable?

This question seems to be at the heart of al-Marri's case. It is also central to the cases of the hundreds of foreign detainees who have been held for more than four years at Guantanamo Bay. It's a question that the federal courtsnot a military tribunal specially constituted by the Bush administrationneed to resolve. The courts should also address whether the government can designate a foreign detainee an enemy combatant, with the loss of rights that entails, if he has been arrested on U.S. soil rather than on or near a battlefield.

The government has taken lots of hits for bungling other 9/11 cases. And it's true that these cases sometimes raise tricky questions about how to handle evidence that, if disclosed, could pose a threat to national security. No wonder the Bush administration prefers to do its work before the few-rights-for-all military tribunals it has established. But federal courts have perfectly adequate procedures for dealing with sensitive and classified material. Judge Carr's strong words to al-Marri's prosecutors, and the release of evidence to which they led, exemplify why independent judges should make these calls. They need to keep doing so.

OGC AMNESTY/CCR 74

(b)(6)

From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Monday, October 30, 2006 2:56 PM
To: (b)(6)

Subject: GTMO Bird: MCA; GTMO Compliant; Detainee Rights; Violation of Treaties; Cheney Remark; Return of Detainees

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

Kellenberger's recent statements and speech regarding MCA of 2006, IHL CA3 and other things

http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/kellenberger-interview-191006?opendocument
<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/kellenberger-interview-191006?opendocument>

and

http://www.icrc.org/web/eng/siteeng0.nsf/html/kellenberger-statement-191006
<http://www.icrc.org/web/eng/siteeng0.nsf/html/kellenberger-statement-191006>

OGC AMNESTY/CCR 75

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Another View: New statute gives detainees fair review

By Rep. Dan Lungren -

Published 12:00 am PST Sunday, October 29, 2006
Story appeared in FORUM section, Page E3

As one who worked on the Military Commissions Act of 2006, it is necessary to comment on some of the misinformation surrounding this legislation that is so critical to our nation's security. As a result of the decision of the U.S. Supreme Court in Hamdan v. Rumsfeld, Congress was required to codify language relating to military commissions before Khalid Sheikh Mohammed, the principal architect of the 9/11 attacks, and other terrorists associated with al-Qaida and the Taliban can be prosecuted. Although The Bee acknowledged that the new law may be a "vital tool" against terrorists, I do not share the editor's skepticism concerning its constitutionality.

Much has been made of the restrictions on federal habeas petitions in the Military Commissions Act. Such confusion stems from a failure to distinguish the "Great Writ" of habeas corpus found in the U.S. Constitution and the habeas corpus procedures adopted by Congress as a statute. The latter provisions found in the U.S. Code are what were changed by the Military Commissions Act. The argument that a constitutional issue is raised because Congress has sought to revise a statute which it enacted in the first place is puzzling to say the least. Congress has the constitutional authority to alter procedures that it created and has done so on different occasions.

The habeas language in the Military Commissions Act became necessary because in Rasul v. Bush, the Supreme Court interpreted the federal habeas corpus statutory scheme to allow those detained at Guantánamo Bay, Cuba, to file habeas petitions for relief in the federal courts. The language in the new law was merely a clarification of the rule recognized by our nation's highest court for more than 50 years in Johnson v. Eisenstrager, that "there is no instance where a court, in this or any other country where the writ is known ... issued it on behalf of an alien enemy."

It is also important to note that the new statute retains the existing protections of the Detainee Treatment Act, to ensure that detainees will receive a full and fair consideration of their claims before the United States Court of Appeals for the D.C. Circuit. Detainees in Guantánamo Bay can also file a writ of certiorari with the Supreme Court.

Finally, in regard to the specific issue of detention, it should be observed that in Hamdi v. Rumsfeld, Justice Sandra Day O'Connor dispelled the notion that the detention of unlawful combatants for the duration of the conflict would give rise to a constitutional claim. Nevertheless, under the procedures adopted relating to the Guantánamo Bay military commissions, every detainee will be entitled to a hearing before a Combatant Status Review Tribunal.

Thus, although the new law does not contain the full panoply of "Miranda-like" rights accorded to American citizens, it certainly provides detainees with a full and fair review of their cases.

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Miami Herald

OGC AMNESTY/CCR 76

October 29, 2006

Southcom Chief: Prison Is Compliant

The Southern Command chief checked out the U.S. detention center at Guantánamo Bay, Cuba, and declared conditions and treatment of captives 'appropriate' to Geneva Convention standards.

By Carol Rosenberg

Just days into the job, the Pentagon's new Southern Command chief made an overnight weekend visit to the U.S. Navy base at Guantánamo Bay -- and declared captive conditions compatible with the Geneva Conventions.

Navy Adm. James Stavridis said Saturday that he met with about 300 U.S. military personnel and saw about 50 of the 435 captives held at the base, including the so-called high-value terrorist suspects who had recently been moved there from secret CIA custody.

''I went and saw their facility,'' the admiral told The Miami Herald in a telephone interview after a visit to the remote Navy base in southeast Cuba.

He declined to give specifics on where the latest arrivals are being kept and under what circumstances. But he declared them ``in appropriate conditions commensurate with Common Article 3 of the Geneva Conventions. I laid eyes on it; they're in good shape in that regard.''

After being stung by a U.S. Supreme Court decision this year, the Bush administration reversed course and declared that -- although enemy combatants, not prisoners of war -- alleged al Qaeda and Taliban captives were entitled to the protections.

They were just this month granted their first visits with the International Committee of the Red Cross, after up to four years in secret U.S. captivity and so-called CIA black sites.

In the course of the site inspection, the admiral said, he saw detainees in a range of locations -- being interrogated, playing soccer and exercising individually -- and found them ``a hearty bunch.''

Interrogations, he said, struck him as ``amicable conversations between two people.''

Referring to the 14 high-value detainees in particular, he said they were in ``very good shape.''

Mastermind jailed

President Bush ordered the men sent to the detention camps for possible trial around Labor Day. Among those in custody is suspected Sept. 11 mastermind Khalid Sheik Mohammed -- who published reports allege was subjected to ''water-boarding,'' a rough interrogation technique that simulates drowning, and at one point purportedly confessed to wielding the knife that beheaded Wall Street Journal correspondent Daniel Pearl, in January 2002 in Pakistan.

Stavridis, the first Navy admiral to oversee military operations in Latin America and the Caribbean, also met with about 300 sailors and soldiers at the base -- from senior commanders to camp guards -- and declared himself impressed with their professionalism in what he called ``a stressful environment down there.''

U.S. forces at Guantánamo, he said, are ''interacting daily with very, very dangerous terrorists'' in typical one-year tours that he described as ''hardship duty'' that separates them from their families.

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Improvements sought

He said his Miami-based staff would propose improvements in housing and other activities for them.

As he took the job Oct. 19, Stavridis said he would visit the controversial camps first, and then follow up later with trips to Colombia and Central America, where U.S. forces work with those host countries. Cuba has virtually no engagement with the U.S. military under 4-decade-old U.S. policy.

Stavridis said he met senior detention camp staff, ``looked every one of them in the eye and said we're going to run this camp in a transparent and legal fashion.''

Separately, he said, he also toured the portion of the base where the U.S. military might house migrants found at sea during a rafter crisis similar to the huge numbers of Haitians and Cubans who were interdicted by the United States in the mid-1990s.

He declared the base suitable for ''very bare bones'' humanitarian relief and would develop contingency plans -- although he said he didn't foresee any crisis.

During the 1990s, the U.S. Navy base threw up tent camps around the 45-square-mile base to house a migrant population that swelled at one point to about 40,000.

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Washington Times
October 30, 2006
Pg. 19

Eroding Detainees Rights

Administration shows disregard for prisoners' attorneys

By Nat Hentoff, The Washington Times

Because of the determined dedication to the highest standards of our rule of law by a military lawyer, Lt. Cmdr. Charles Swift, the case of Hamdan v. Rumsfeld reached, and was decided by, the Supreme Court in June -- instructing the president to remedy the illegality of his military commissions, and the conditions of detainee confinement, at Guantanamo. That military lawyer, two weeks after his victory in this case, was forced by the Pentagon to retire.

Lt. Cmdr. Swift had been assigned to the case of Salim Hamdan, a former driver for Osama bin Laden, in May 2003. This year, in May, speaking at the libertarian, free-market (including of ideas) Cato Institute in Washington, Lt. Cmdr. Swift said he had been commanded by Pentagon superiors to negotiate a guilty plea by Hamdan in 2003. If that failed, his client would no longer be available to Lt. Cmdr. Swift.

Hamdan's unsurprised reaction was: "The guards say there is no law here." And looking at his assigned defender, Hamdan asked: 'What are you even doing here?'" Lt. Cmdr. Swift replied: "I think there is Law. We're going to have to go to the Supreme Court of the United States," adding that even if he were to be forbidden to see his client again, Lt. Cmdr. Swift would still file on his behalf. He did keep seeing his client.

OGC AMNESTY/CCR 78

"I had a client," Lt. Cmdr. Swift told National Public Radio on Oct. 12, "who was sitting in solitary confinement, going slowly insane, and every request I had made for relief (from his despair) had fallen on deaf ears."

Lt. Cmdr. Swift and Hamdan's civilian lawyer, constitutional law professor Neal Katyal of Georgetown University, did prove there is law in America, but their victory has been largely skewered by Congress' passage of the Military Commissions Act of 2006 -- signed by the president on Oct. 17 -- which essentially overrules significant sections of the Supreme Court's Hamdan v. Rumsfeld June decision. Lt. Cmdr. Swift told the Los Angeles Times (Oct. 15) that this legislation, giving the president most of what he wanted -- and more -- prevents defendants from getting a fair trial before the military commissions.

Hamdan, still in a Guantanamo cell as an "enemy combatant," will have to wait and see if the Supreme Court agrees to hear appeals to the Military Commissions Act of 2006. If the Court does, Lt. Cmdr. Swift told me, he will again defend Hamdan -- as a civilian lawyer. (Failing to be promoted to commander, Lt. Cmdr. Swift under the Pentagon's up-or-out policy, had to resign.)

"Swift was a no-brainer for promotion," says Eugene Fidell, president of the National Institute of Military Justice. "He brought real credit to the Navy. It's too bad," Mr. Fidell told the Miami Herald (Oct. 8), "that it's unrequited love."

Former Navy General Counsel Alberto Mora told Nina Totenberg of National Public Radio: "You hate to see a guy like this go; it sends a mixed message."

The message seems clear to me -- all the more so when the Los Angeles Times reported on Oct. 15 that "The U.S. Marine Corps had threatened to punish two members of the military legal team representing a terrorism suspect being held at Guantanamo Bay if they continued to speak publicly about reported prisoner abuse ...The order has heightened fears among the military defense lawyers at Guantanamo that their careers will suffer for exposing flaws and injustices in the system ? [They] point to the Navy's failure to promote [Lt. Cmdr.] Charles Swift after he successfully challenged the legitimacy of the Pentagon's war-crimes commissions."

To further highlight Defense Secretary Donald Rumsfeld's devotion to due process in dealing with detainees -- as twice defined by the Supreme Court (Rasul v. Bush and Hamdan v. Rumsfeld) -- the Los Angeles Times adds that "at least three other military defense lawyers for... 10 charged terrorism suspects have also been passed over for promotion in what some consider a subtle reprimand of their vigorous defense of their clients."

Subtle? That's not Mr. Rumsfeld's way. Said Lt. Cmdr. Swift about the Military Commissions Act of 2006 -- celebrated by the president three weeks before the midterm elections -- "A zealous defense is essential to any process that works. What has given the commissions any integrity so far is the ability of defense counsel to raise the case and concerns in all federal forums ... and, when necessary, the media."

But now, since the new Military Commissions Act shuts off habeas-corpus petitions in our federal courts by lawyers for detainees on their conditions of confinement -- where coerced interrogations (that could include torture, but we'll never know) are permitted -- Hamdan was right: There is no law for these detainees.

As for those military lawyers who, like Lt. Cmdr. Swift, feel impelled by the Constitution to go to the media if necessary, they would be wise to write out their resignations as military lawyers before talking to reporters.

OGC AMNESTY/CCR 79

President Bush alone cannot be blamed for this desecration of what used to be American values. A majority of Congress, fearful of appearing soft on terrorism, also betrayed the Constitution in the Military Commissions Act of 2006.

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UN expert: New U.S. terror law violates international treaties

www.chinaview.cn 2006-10-28 06:17:29

GENEVA, Oct. 27 (Xinhua) -- The new anti-terrorism law approved by the United States earlier this month contains provisions that violate international treaties and GENEVA, Oct. 27 (Xinhua) -- The new anti-terrorism law approved by the United States earlier this month contains provisions that violate international treaties and contradict the principles of fair trial, a key UN human rights expert said Friday.

The Military Commissions Act signed into law on Oct. 17 by President George W. Bush "contains a number of provisions that are incompatible with the international obligations of the United States under human rights law and humanitarian law," said Martin Scheinin, the UN's expert on protecting human rights in combating terrorism, in a statement.

A number of provisions of the law appear to contradict the universal and fundamental principles of fair trial standards and due process enshrined in the Geneva Conventions, said Scheinin, a legal expert from Finland.

He said one of the most serious aspects of the legislation "is the power of the president to declare anyone, including U.S. citizens, without charge as an "unlawful enemy combatant" - a term unknown in international humanitarian law."

As a result, he said, those detainees are subject to the jurisdiction of a military commission composed of commissioned military officers - rather than a court of law.

Several national and international non-governmental organizations have been critical of many aspects of the legislation, Scheinin noted.

"I believe it is important in my capacity to publicly express my concerns on this law as the United States has taken a lead role on countering terrorism," he said.

The expert added that there was an added concern about the law,given the fact that some governments "may view certain aspects of this legislation as an example that could be followed in respect of their national counter-terrorism legislation."

Scheinin also indicated that in July he formally requested a visit to the U.S. in order to assess counter terrorism measures taken in the country and how they were related to human rights.

He urged the U.S. government to extend to him an invitation in the very near future.

http://news.xinhuanet.com

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US MILITARY COURTS BREACH INTERNATIONAL OBLIGATIONS, UN RIGHTS EXPERT WARNS

New York, Oct 27 2006 10:00AM

OGC AMNESTY/CCR 80

The Military Commissions Act (MCA) signed into law by President George Bush earlier this month violates the international obligations of the United States under human rights laws in several areas, including the right to challenge detention and to see exculpatory evidence, a United Nations expert on terrorism <"http://www.unhchr.ch/huricane/huricane.nsf/view01/13A2242628618D12C12572140030A8D9?opendocument">said <http://www.unhchr.ch/huricane/huricane.nsf/view01/13A2242628618D12C12572140030A8D9?opendocument> today.

"A number of provisions of the MCA appear to contradict the universal and fundamental principles of fair trial standards and due process enshrined in Common Article 3 of the Geneva Conventions," the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, said in a statement issued in Geneva.

Special Rapporteurs are unpaid and serve in a personal capacity, reporting to the <"http://www.un.org/apps/news/infocusRel.asp?infocusID=114&Body=human%20rights%20council&Body1=">UN <http://www.un.org/apps/news/infocusRel.asp?infocusID=114%26Body=human%20rights%20council%26Body1=> Human Rights Council. Mr. Scheinin requested that the US Government invite him for a visit "in the very near future" to discuss his concerns.

"One of the most serious aspects of this legislation is the power of the President to declare anyone, including US citizens, without charge as an 'unlawful enemy combatant' - a term unknown in international humanitarian law - resulting in these detainees being subject to the jurisdiction of a military commission composed of commissioned military officers," he said.

At the same time, the material scope of crimes to be tried by these commissions is much broader than war crimes in the meaning of the Geneva Conventions, he noted.

"Further, in manifest contradiction with article 9, paragraph 4 of the International Covenant on Civil and Political Rights, the MCA denies non US citizens (including legal permanent residents) in US custody the right to challenge the legality of their detention by filing a writ of habeas corpus, with retroactive effect," he added.

"Another concern is the denial of the right to see exculpatory evidence if it is deemed classified information which severely impedes the right to a fair trial."

An added concern is that some Governments may view certain aspects of this legislation as an example to be followed in respect of their national counter-terrorism legislation, since the US has taken a lead role on countering terrorism since the 11 September 2001 terrorist attacks on New York and Washington, he stressed.

Mr. Scheinin said that during a visit he would also like to discuss other rights concerns such as the Patriot Act, immigration laws and policies, secret detention centres, rendition flights (to countries where detainees might face torture), breaches of non-refoulement (deportation) and the Government's denial of extra-territorial human rights obligations.

Last month, five other UN human rights rapporteurs rejected US denials that people were tortured at the Guantánamo detention centre and reiterated calls that it be closed down.
2006-10-27 00:00:00.000

For more details go to UN News Centre at http://www.un.org/news <http://www.un.org/news>

To listen to news and in-depth programmes from UN Radio go to: http://radio.un.org/ <http://radio.un.org/>

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Cheney Defends 'Dunk In The Water' Remark

Addressing Alarm Over the Comment, Vice President Says He Was Not Referring to Waterboarding

By Dan Eggen, Washington Post Staff Writer

Vice President Cheney said yesterday that he was not referring to an interrogation technique known as "waterboarding" when he told an interviewer this week that dunking terrorism suspects in water was a "no-brainer."

Cheney told reporters aboard Air Force Two last night that he did not talk about any specific interrogation technique during his interview Tuesday with a conservative radio host.

"I didn't say anything about waterboarding. . . . He didn't even use that phrase," Cheney said on a flight to Washington from South Carolina.

Earlier in the day, White House press secretary Tony Snow told reporters that the vice president was talking literally about "a dunk in the water," though neither Snow nor Cheney explained what that meant or whether such a tactic had been used against U.S. detainees.

"A dunk in the water is a dunk in the water," Snow said.

The comments were aimed at calming a growing furor over Cheney's comments, which were taken by many human rights advocates and legal experts as an endorsement of waterboarding as a method of questioning.

Coming shortly before the midterm elections, the remarks prompted a wide range of political figures -- from Sen. John F. Kerry (D-Mass.) to Cheney's wife, Lynne -- to weigh in on the issue, providing another unexpected controversy for Republicans as they fight to keep control of Congress. Reporters peppered Snow with questions about the interview during Snow's two daily news briefings.

Waterboarding, in which a prisoner is secured with his feet above his head and has water poured on a cloth over his face, is one of several methods of simulating drowning that date at least to the Spanish Inquisition. It has been specifically prohibited by the U.S. Army and widely condemned as torture by human rights groups and international courts.

"Would you agree a dunk in water is a no-brainer if it can save lives?" Scott Hennen of WDAY in Fargo, N.D., asked Cheney on Tuesday. "Well, it's a no-brainer for me," Cheney responded.

Cheney also said he agreed with Hennen that the debate over interrogation techniques was "a little silly," and he praised the information obtained from U.S. terrorism suspects during questioning.

Hennen said in an interview yesterday that he did not know precisely which technique Cheney was referring to and was only passing along a question he had heard from a listener.

"It's impossible for me to say 'Did the listener mean waterboarding?' and 'Is waterboarding torture?' and that sort of thing," Hennen said. "I can't get in the vice president's head, and I can't get in the listener's head."

Many legal experts said it was reasonable to conclude that Cheney was referring to waterboarding, since it has been a widely debated U.S. interrogation technique that uses water to subject a suspect to the fear of drowning.

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U.S. interrogation methods have been the focus of fierce debate since revelations of detainee abuse in Iraq and Afghanistan and the disclosure that the CIA ran a network of secret prisons outside the United States. Numerous sources have confirmed that the CIA used waterboarding in its interrogation of alleged Sept. 11 mastermind Khalid Sheik Mohammed and other "high-value" prisoners.

Some lawmakers have said that they believe waterboarding is illegal under detainee legislation approved last month, but the Bush administration has declined to say what techniques it considers off-limits.

Asked yesterday about Cheney's Tuesday remarks, President Bush did not specifically address them. But he said: "This country doesn't torture. We're not going to torture. We will interrogate people we pick up off the battlefield to determine whether or not they've got information that will be helpful to protect the country."

Human rights and legal experts said yesterday that even if Snow's version of Cheney's remarks is correct, Cheney's comments are troubling because dunking a terrorism suspect in water as part of an interrogation would actually be more physically dangerous than waterboarding. The tactic also would be illegal under U.S. and international laws, they said.

Tom Malinowski, Washington advocacy director for Human Rights Watch, noted that in the 1980s, Chadian forces led by military ruler Hissene Habre allegedly hung people upside down and dunked them in water during questioning. Habre was indicted by a Belgian court for torture and crimes against humanity and faces prosecution in Senegal.

Former CIA general counsel Jeffrey H. Smith said Cheney's comments were "irresponsible" and send a signal to U.S. interrogators that "the people at the top want you to get rough."

"It's clear that the vice president didn't mean a friendly swim at the country club," Smith said. "It would be designed to somehow frighten a prisoner and elicit information from them. Whatever it means, a dunk in the water is not harmless or innocent."

Kerry, the 2004 Democratic presidential nominee, issued a statement saying the comments provided another reason that voters should "change course" by voting for Democrats. "This administration's determination to assert the right to torture has undermined our moral authority, put our troops at greater risk and made our country less safe," Kerry said.

Snow and other Republicans pushed back strongly, arguing that Cheney's remarks had been misinterpreted and that the vice president had been talking about the value of interrogations in preventing terrorist attacks.

"That is a mighty house you are building on top of that molehill," Lynne Cheney said during an appearance on CNN's "The Situation Room." "A mighty mountain. This is complete distortion. He didn't say anything of the kind."

The ambiguities in the waterboarding debate were most evident during two contentious news briefings yesterday as Snow was repeatedly questioned by reporters who did not accept his explanations of Cheney's remarks. Snow repeatedly insisted that Cheney was not referring to waterboarding or any other technique, although he was at a loss to explain how being dunked in water would not also qualify as a method of interrogation.

Snow joked at several points about needing to avoid water-related metaphors in his comments, as when he accused reporters of "fishing" for answers. He declined to say what Cheney meant by dunking terrorism suspects in water but said he would get back to reporters with a fuller explanation, which did not materialize yesterday.

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At one point during the first briefing, a frustrated reporter asked: "So the detainees go swimming?"

"I don't know," Snow responded. "We'll have to find out."

Staff writer Peter Baker and staff researcher Julie Tate contributed to this report.

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The Journal News

Piermont lawyer represents Guantanamo detainees

By STEVE LIEBERMAN <MAILTO:SLIEBERM@LOHUD.COM>
THE JOURNAL NEWS

PIERMONT - Marjorie Smith doesn't expect one of her clients to ever see the inside of a courtroom or have a judge hear evidence against him.

The Piermont lawyer's client, Fawaz Hamoud, is being held by the U.S. government at U.S. Naval Base Guantanamo Bay, Cuba, on unspecified charges after being detained several years ago in Afghanistan.

Hamoud is one of several hundred foreign nationals designated as enemy combatants being held at the military prison at Guantanamo Bay. The recent arrivals include 12 accused of being high-ranking terrorists.

Court battles in the U.S. continue to be fought concerning what legal rights the detainees have. The Bush administration argues they are not U.S. citizens and are not subject to the country's legal protections, a position the courts have partially overruled.

Hamoud is the second detainee represented by Smith, 61, a volunteer with the Center for Constitutional Rights in New York City.

Lawyers from the center and elsewhere successfully argued before the U.S. Supreme Court in 2004 that the detainees could not be held indefinitely without hearings, at which the government would have to show a legal basis for holding them.

An appeals court in Washington has yet to decide the level of rights the detainees do have. That issue may become moot.

This month, the Military Commissions Act adopted by Congress and signed by President Bush stripped military prisoners of the right to challenge their imprisonment in federal courts. The process, called "habeas corpus," Latin for "you have the body," is a proceeding at which the prisoner must be produced in court.

The new law voids the U.S. Supreme Court decision, and also establishes military tribunals for those held. Its constitutionality is being challenged.

Until the courts rule on various legal issues, people such as Hamoud remain in limbo at Guantanamo Bay, held without formal charges or the ability to review evidence against them.

"I have no basis to believe he will ever get a habeas hearing," Smith said.

Even so, she said she didn't think Hamoud would spend the rest of his life there. What's more likely, she said, is that he at some point will be released by the government, having never had a court hearing.

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Records at Guantanamo, Smith said, accuse the 25-year-old Yemenite of fighting with the Taliban against the Northern Alliance in Afghanistan. He apparently surrendered, she said.

"He was taken into U.S. custody," she said. "We don't know the full details of what happened."

That's an issue that frustrates lawyers representing the designated enemy combatants held at Guantanamo: the lack of information, access to evidence and formal charges against their clients.

At one point more than 700 people were being held at Guantanamo.

More than 200 detainees have been released to their home nations in Europe, where they are subject to legal proceedings, jailed or released. The Center for Constitutional Rights claims the government already has cleared 140 men for release.

Smith's first client, Khaled Ben Mustapha, 25, was transferred last year back to his adopted homeland of France, where he was the subject of a hearing. Smith said she didn't know the outcome. Mustapha, who is married with two small children, had been captured in Afghanistan.

"The exact circumstances of how and why he was picked up has not been determined," she said.

Smith sees her role as preserving her clients' constitutional rights, even though some challenge the notion that non-Americans being held in places like Guantanamo have such rights.

"I got involved because it is wrong to hold people and not allow them an attorney or the opportunity to challenge being held before a neutral party, a judge," Smith said. "I tell people if one of their family members was being held, would they like them to be treated this way?"

Smith, a 1971 Columbia Law School graduate, worked for years with Legal Aid in New York City. She also worked with the Second Chance Project, which represented inmates believed to have been improperly or falsely convicted of crimes.

She traveled Guantanamo to meet with Hamoud. Smith got clearance from the FBI first.

Cuba lies 90 miles off Florida, but the trip took more than three hours by private plane. The plane flies to the southern side of the island nation to land at the base, which the U.S. operates under a long-term lease signed with the pre-Fidel Castro government.

"They can't fly over Cuban airspace, so they have to fly around Cuba," she said.

At Guantanamo, the lawyers don't go to the military prison. The detainees are brought, shackled, to a holding area, she said. The legal process in Guantanamo doesn't permit the accused to bring witnesses to counter government accusations.

"It's a complete misnomer to refer to what goes on there as a court process," Smith said.

Smith said she believed the U.S. government eventually would release most of the people being held at Guantanamo.

"The U.S. doesn't want to keep these people forever," she said. "It's become somewhat of a complicated situation. They don't want to be seen as being forced to release them."

http://www.thejournalnews.com <http://www.thejournalnews.com>

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Allies at odds over release of detainees

Guantanamo suspects might join terrorist groups if freed, U.S. fears

By Carol J. Williams, Rich Connell and Robert J. Lopez

Originally published October 29, 2006

Guantanamo Bay, Cuba // U.S. officials, apparently caught off guard by the Saudi government's recent release of more than two dozen former Guantanamo Bay prisoners, are voicing fears that the men will join the camp of violent extremist groups.

The Saudis released the 29 men so they could take part in the Islamic observance of Ramadan, with instructions to return to jail by the end of this month.

Saudi officials said that although the men were still under investigation for possible ties to terrorism, they were not considered a serious threat. "Throwing people in jail and letting them rot is not the answer," said Nail Al-Jubier, a spokesman for the Saudi Embassy in Washington.

But Guantanamo's commander expressed skepticism.

"I'm interested in if they go back to the fight," said Rear Adm. Harry B. Harris, noting U.S. estimates that about 50 of 300 men released since the detention facility opened in 2002 have resumed plotting against U.S. interests.

The temporary release of the Saudis illustrates the limits of U.S. influence as the Bush administration seeks to shrink the population of Guantanamo by transferring prisoners to other nations. And it underscores how differently the United States and other countries perceive the danger posed by former detainees.

Of the 437 captives at the U.S. base in Cuba, 110 have been cleared for release to their home countries, and more are being added to the list. Officials have said that fewer than 100 prisoners will face military tribunals, leaving 300 or more to be repatriated.

Guantanamo has come under increasing international criticism and continues to be dogged by allegations of abuse. Administration officials say the ultimate goal is to shut it down.

Some nations have refused to accept Guantanamo detainees, either denying responsibility for them or balking at U.S. demands for elaborate security measures.

Critics say the problem has been worsened by U.S. failure to make plans earlier for releasing prisoners. Lawrence B. Wilkerson, who was chief of staff to then-Secretary of State Colin L. Powell, recalled high-level meetings in which State Department officials pressed the Pentagon to explain its plans for releasing captives.

Wilkerson, who has become a critic of Bush administration policy, said Defense Secretary Donald H. Rumsfeld and Vice President Dick Cheney "refused to deal with it. For these guys, there was never any idea of final disposition."

In the cases of several British citizens, Wilkerson said, Rumsfeld wanted extensive security measures that the British government refused to accept. The British citizens were transferred anyway, and all were released.

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Spokesmen for Rumsfeld and Cheney say the Bush administration has worked steadily, in cooperation with U.S. allies, to release or repatriate detainees while trying to ensure that they are treated humanely and won't become future threats.

"The U.S. government has no desire to hold detainees any longer than necessary," a Defense Department spokesman said.

More recently, the United States and Britain have clashed over nine men at Guantanamo who had lived in Britain but were not citizens. This year, according to British court records, U.S. and British officials began discussing the possible release of the men. British officials said the United States expected assurances of extensive, open-ended surveillance before they would consider returning the men.

Even if British officials conducted surveillance, used covert agents and intercepted phone conversations, the measures would not have satisfied U.S. officials, according to William Nye, head of Britain's counterterrorism and intelligence directorate.

"None of these techniques, individually or collectively, would have been able to provide the sort of guarantees sought by the U.S.," Nye said.

The nine men, Nye told the court, were not considered enough of a danger to warrant diverting intelligence resources "from those who pose a greater threat to national security."

An appeals court in London backed the British government, which also argued that it could not advocate on behalf of the nine detainees because they are not British citizens. The men remain at Guantanamo.

Critics say the ruling served the interests of U.S. and British officials by creating the appearance that the countries have tried to hammer out a transfer agreement but were thwarted by legal and security constraints.

"This represents a convenient cover for both parties," said Brent Mickum, a Washington lawyer who represents two of the men.

In another case, that of Murat Kurnaz, a Turkish-born German resident, officials in Berlin initially balked at taking him back after U.S. officials approved his transfer in 2002. His case languished until this year when the new German chancellor, Angela Merkel, raised the issue with President Bush.

But the transfer was delayed for months, in part because of U.S. demands for surveillance and other security measures to keep tabs on Kurnaz.

The measures were rejected by German authorities because they would have created "a collision with German law," said Bernhard Docke, the attorney handling Kurnaz's case in Germany.

Kurnaz finally returned to his hometown of Bremen in August and was briefly placed under investigation for possible ties to Islamic extremists. The Germans dropped the case and released him last week.

Detainees from Saudi Arabia make up one of the largest groups at Guantanamo. Saudi prisoners have come under particular scrutiny, in part because of the nation's fundamentalist strain of Islam and that most of the 19 men who hijacked airliners in the Sept. 11 attacks were Saudi nationals.

So, it was not surprising that the mass release for Ramadan raised eyebrows among U.S. officials.

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"We're certainly hoping they don't come back and haunt us," said a senior State Department official, who requested anonymity.

http://www.baltimoresun.com <http://www.baltimoresun.com>

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Guantanamo may be final home for many detainees

By Kristin Roberts
Reuters
Sunday, October 29, 2006; 7:41 AM

GUANTANAMO BAY, Cuba <http://www.washingtonpost.com/wp-srv/world/countries/cuba.html?nav=el> (Reuters) - Many of the 435 suspected terrorists held in concrete and metal prisons on a U.S. military base in Cuba might never go home.

Detained but not charged in one of five camps along the cactus and palm tree-lined shore, they were captured in the U.S. war on terrorism -- a conflict with few borders, hard-to-identify enemies and no foreseeable end.

The U.S. military has freed hundreds of men, mostly captured in Afghanistan <http://www.washingtonpost.com/wp-srv/world/countries/afghanistan.html?nav=el> . Of those still here, the Pentagon decided some 120, and perhaps more, could be sent home, although that process has been slowed by reluctance from receiving nations.

But more than 300 others, including 14 transferred in September to Guantanamo from secret overseas prisons, could remain in U.S. military detention until they die.

"Yes, they could be held for the duration of their lives," said Cully Stimson, the Defense Department's assistant secretary of defense for detainee affairs, on one of his regular trips to the base last week.

Some, including Stimson, say that as far as detention goes, life inside Guantanamo isn't so bad.

"If U.S. prisoners saw the detention regime these people are in, they'd be knocking down the door to get into Gitmo," he said, using the nickname for the U.S. naval base on land leased from Communist Cuba.

After criticism for early detention practices, Guantanamo has been praised this year by some European officials as a facility comparable to the best European prisons. Many also still say the prison should close, and Britain's <http://www.washingtonpost.com/wp-srv/world/countries/greatbritain.html?nav=el> foreign secretary recently called it ineffective and damaging.

Guantanamo has changed dramatically from the early days of the infamous "Camp X-Ray" -- exposed, chain-link-fenced cells where detainees were kept when the Pentagon first began shipping prisoners from Afghanistan in 2002. Camp X-Ray is closed, overtaken by tall grasses, snakes and spider webs.

SEGREGATED BY COMPLIANCE

Gitmo's detention buildings hide behind multiple rows of 12-foot chain-link fences covered in green tarpaulins and topped with tight spirals of barbed wire. Old wooden and newer steel watchtowers dot the perimeter.

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Detainees are segregated by their level of "compliance," and most are considered not fully compliant.

That label determines what color uniform they wear -- from white for fully compliant to tan and orange for different levels of noncompliance. It determines whether a man lives alone or with nine others, as well as what kind of toothbrush he gets and whether the mat on top of his concrete or metal bed is 1-inch thick or four.

One of the few things not affected by compliance level is the daily "voluntary" interrogation.

A detainee last week sat on a blue couch, his forearms on his knees, staring at the rug on the floor. He spoke little to his interrogator and civilian translator.

Others, according to a lead interrogator, are more talkative. Some sit in reclining chairs. Interrogators frequently offer cooperative detainees coffee or fast food as an incentive to open up.

But even those who cooperate and are compliant are chained to the floor by at least one ankle shackle.

Guards always wear protective vests and remove their names from their uniforms. They say they have grown accustomed to receiving insults and having urine and feces thrown at them.

Many live by a simple rule of thumb. "There are no medium-security terrorists."

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Friday, October 27, 2006 · Last updated 3:04 p.m. PT

Judge sets schedule on detainee lawsuits

THE ASSOCIATED PRESS

WASHINGTON -- A federal judge Friday set the stage for the next push by the Bush administration to get all the lawsuits by detainees at Guantanamo Bay thrown out of U.S. courts.

U.S. District Judge James Robertson laid out a five-week schedule for the Justice Department and lawyers for Salim Ahmed Hamdan to file written arguments in the detainee's challenge to his confinement.

Hundreds of other detainees also are challenging their detentions in lawsuits.

It was a challenge by lawyers for Hamdan, Osama bin-Laden's former driver, that led to the Supreme Court ruling in June striking down the Bush administration's plan for military commission trials.

The new Military Commissions Act, which President Bush signed on Oct. 17, strips U.S. courts of jurisdiction to hear the detainees' challenges to their indefinite detentions. Hamdan's lawyers say the new provision is "of doubtful constitutionality."

Ten days ago, the Justice Department filed a copy of the new law with the court in Hamdan's case. Robertson said in a one-page order the Justice Department filing "is deemed to be a motion to dismiss" Hamdan's case.

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Patrick Leahy, the ranking Democrat on the Senate Judiciary Committee, has said the provision to strip detainees of access to U.S. courts would "take our civilized society back some 900 years to King John at Runnymede which led to the adoption of the Magna Carta."

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Australia bars ex-Gitmo prisoner

CANBERRA, Australia, Oct. 30 (UPI) -- A British national once held, but not charged, at the U.S. terrorist detention facility at Guantanamo Bay has been denied entry to Australia.

Ruhal Ahmed, who wanted to promote a docu-drama about his experiences, was forbidden from coming to Australia based on an assessment by the Australian Intelligence Security Organization, The Australian newspaper on Monday quoted a spokesman for Attorney General Philip Ruddock as saying.

Additional details, however, were not immediately available.

Ahmed, then 19, was captured by Northern Alliance forces in Afghanistan in 2001 during the campaign to oust the al-Qaida connected Taliban government.

According to the report, Ahmed had said he and two friends went to Afghanistan following a wedding in Pakistan to help people.

He was detained at Guantanamo, in Cuba, for more than two years after Northern Alliance forces handed him over to U.S. authorities.

Ahmed has promoted the British-made docu-drama in at least a dozen countries, the report said.

http://www.upi.com <http://www.upi.com>

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Guantanamo interrogators try soft touch with detainees
Web posted at: 10/29/2006 2:52:38
Source ::: AFP

GUANTANAMO BAY * Except for the manacles, the scene could have been mistaken for a visit to a therapist.

The young bearded man hunched forward in a plush blue easy chair, apparently rapt in thought as he watched his toes curl and uncurl in his flip-flops.

Two other sets of feet, these clad in shoes, were visible on the edge of the television monitor - the man's interrogator and a linguist. For several long minutes, the prisoner sat without any sign of words being exchanged between them.

Observing the interaction earlier this week on a muted television monitor in another room was a small group of journalists and analysts on a tour of the US Guantanamo Bay, Cuba detention center that holds some 454 "war on terror" detainees. "This has not been staged. This is an actual interrogation that was scheduled today," said the officer in charge of the interrogation center, a complex of cells called the Interrogation Control Element, or ICE.

US military officials here appeared eager to show that whatever one may have heard about Guantanamo - and there have been a stream of allegations of abuse of detainees - the interrogations are closely supervised, hands-off affairs that follow plans that have been

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approved up the chain of command. The guiding standard is the Geneva Conventions, said Brigadier General Ed Leacock. "We follow it to the letter." Abuse scandals at US detention centers in Iraq, Afghanistan and Guantanamo have prompted new laws adopting Geneva Convention bans on "cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment."

The laws leave an out for Central Intelligence Agency interrogations, which can be conducted under an undisclosed set of rules that allow harsher tactics. But the military and anyone else questioning detainees at military-run facilities must now abide by a set of army rules designed to comply with the Geneva Conventions.

It follows a swing of the pendulum from late 2002 when US Defense Secretary Donald Rumsfeld authorised harsh procedures not in the army manual to be used on Mohammad Al Qahtani, the so-called twentieth September 11, 2001 hijacker.

The interrogations spawned practices - nudity, sleep deprivation, the use of growling dogs to intimidate, and sexual humiliation - that surfaced in similar form at the Abu Ghraib prison in Iraq in the wake of the US-led invasion. Officials at Guantanamo now emphasise slowly developing rapport between interrogator and detainee, helped along with rewards rather than punishment. Whether that approach will be applied to 14 top Al-Qaeda captives transferred to Guantanamo from secret CIA prisons September 5, including Khalid Sheikh Mohammed, the reputed mastermind of the September 11 attacks, is still unclear.

"That's being determined now by high levels of the Department of Defense," said Leacock. "They're such special detainees we're still working through the modalities."

"We've just had them over a month. We're going through all the procedures of what we want to do and not do," he said. But other detainees can opt out of interrogations altogether, said the military official in charge of the interrogation center. "If they don't want to see an interrogator, they don't have to."

The interrogation cells themselves have been given the homey look of a den or a small living room to foster rapport. The detainee is shown to the deeply cushioned easy chair while the interrogator and translator sit across a coffee table from him in two simpler seats. A television set, a coffee maker and a small refrigerator complete the welcoming image. Not all traces of prison life have been erased. Padding covers portions of the cell wall to absorb sound, and a steel ring is set in the floor in front of the detainees' seat to which he is always cuffed.

http://www.thepeninsulaqatar.com <http://www.thepeninsulaqatar.com>

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Amnesty chief calls for Hicks' return

THE international head of Amnesty International has pleaded for the federal Government to bring home terror suspect David Hicks in an open letter to the Prime Minister.

Amnesty Secretary-General Irene Khan urged the Government to return Hicks to Australia and try him under Australian law.

She described the US detention facility at Guantanamo Bay in Cuba where he is held as a prison camp and a legal black hole.

"Prime Minister, as a leader of the democratic world that is challenged with addressing the threat of terrorism while also upholding the rule of law and respect for human rights, you

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have a duty to end this travesty of justice," Ms Khan said in her letter published in the Adelaide Advertiser.

"Bring Hicks home. Try him here, in Australia.

"If the Australian justice system, based on the rule of law and international human rights principles, can find no ground or evidence on the basis of which to prosecute him, then David Hicks must be released.

"It is that simple."

Adelaide-born Hicks, 31, has been detained by the US since his capture among Taliban forces in Afghanistan in December 2001.

He had previously pleaded not guilty to charges of attempted murder, aiding the enemy and conspiracy, and was earmarked to appear before a US military commission.

His case was put on hold when the US Supreme Court in June ruled it was unlawful for the commission to try Hicks and other Guantanamo Bay detainees.

But US President George W Bush has since signed controversial new legislation into law allowing revamped military commissions to proceed.

http://www.news.com.au/adelaidenow <http://www.news.com.au/adelaidenow>

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Sept. 11 Plotter Asks Court for Lawyer, Trial

Case Embodies Debate Over Habeas Rights

By Carol D. Leonnig and Julie Tate
<http://projects.washingtonpost.com/staff/email/carol+d.+leonnig++and+julie+tate/>

Washington Post Staff Writers
Thursday, October 26, 2006; Page A03

Ramzi Binalshibh, an admitted al-Qaeda planner of the Sept. 11 attacks, tried four times to join the terrorist hijackers who flew planes into the World Trade Center and the Pentagon in 2001 and has acknowledged his goal of killing as many Americans as possible.

Now the Yemeni man is seeking the help of the U.S. court system to address his complaint that he has been wrongfully imprisoned and treated unfairly by the U.S. government. He filed a legal challenge in federal court in Washington on Oct. 10, asserting his rights to contest his detention and requesting that a court-appointed lawyer represent him free of charge.

In so doing, Binalshibh brought to life the two arguments at the heart of the recent, furious debate over stripping such habeas corpus rights from so-called enemy combatants: the administration's position that alleged terrorists like him do not deserve access to U.S. courts, and his opponents' assertion that the American justice system is a model for the world precisely because it accords such basic rights to all.

One of the most bitterly fought provisions of the legislation President Bush signed Oct. 17 to establish a system of military trials, or "commissions," for accused enemy combatants eliminated those rights for the captives at the U.S. prison in Guantanamo Bay, Cuba. Suspending habeas rights is a step that has been taken only four times previously in U.S. history, and its legality this time will almost certainly be decided by the Supreme Court.

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Because of Binalshibh's alleged admission that he was a key player in the Hamburg cell that carried out the attacks, his legal suit may provide the starkest test yet of America's justice system, legal experts said.

"It is how our system treats the worst of the worst, the most reviled of the reviled, that shows how true we are to our principles, " said David H. Remes, who has represented 17 detainees, mostly from Yemen, and coordinated defense arguments to the Supreme Court in the successful Hamdan case.

Binalshibh may never get the hearing he is seeking. His is one of hundreds of cases the government asked the courts to dismiss immediately after Bush signed the new law. For his part, Binalshibh did little more than assert his habeas rights and ask for a lawyer.

Binalshibh is part of a select group of detainees that even defense lawyers acknowledge may be guilty -- 14 suspected terrorists the government deemed "high-value detainees," some of whom have allegedly admitted high-level roles in the al-Qaeda attacks. President Bush cited the 14 men, selected from more than 100 terrorist suspects who had been held for years in secret CIA-run prisons, when he successfully lobbied for the military commission law.

Bush sought Congress's approval after the Supreme Court ruled in Hamdan v. Rumsfeld in June that the administration lacked the authority to establish the military trials on its own. He pressed for the legislation as the government transferred the 14 men to a unit of the military prison in Guantanamo Bay and singled out Binalshibh -- along with Sept. 11 mastermind Khalid Sheik Mohammed.

Binalshibh's family's decision to seek help in a U.S. court also highlights a growing tension within the defense bar about the ethical and practical dilemmas of representing detainees who likely played a role in slaughtering thousands of Americans.

Binalshibh's brother filed a petition on his behalf and asked the federal court to appoint a public defender to represent him. The Center for Constitutional Rights, a civil liberties group that sued last year to represent the remaining detainees in Guantanamo Bay who lack representation, is not currently representing him. A group official said he could not comment on the reason because of potential attorney-client privilege.

Tina Foster, a civil liberties lawyer who previously helped coordinate the work of dozens of law firms representing hundreds of Guantanamo detainees, said it would be a "challenge" to find a pro bono lawyer for Binalshibh because he has been virtually convicted in media reports as a Sept. 11 plotter. Remes said there is an "understandable reluctance" among large commercial law firms to champion Binalshibh's cause.

"You wouldn't be rushing to file a habeas claim for Ramzi Binalshibh," Foster said. "Most of the folks down there are "no-value" detainees -- they shouldn't even be there -- and those are the ones you'd want to push in the court."

Binalshibh was captured by the United States in Pakistan in 2002 and taken to secret detention facilities. According to the Sept. 11 commission, he told interrogators that he was supposed to pilot another hijacked airliner on the day of the attacks but was repeatedly refused a visa to enter the United States.

His transformation to a terrorist began in 1997 when he became friends with future hijackers Mohamed Atta, Marwan al-Shehhi and Ziad Jarrah while living in Germany on a student visa. He later pledged allegiance to Osama bin Laden while training with his friends in Afghanistan in 1999.

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Instead of participating in the attack, Binalshibh relayed messages between the hijackers and Mohammed, met with Atta for briefings on attack planning and allegedly helped transfer money to the hijackers.

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Gun-run trio face Guantanamo

By Ian McPhedran

October 30, 2006 12:00

THREE Australian terror suspects face possible extradition to the American military prison at Guantanamo Bay in Cuba after being arrested in Yemen.

The three, who are aged in their 20s and from NSW, were picked up two weeks ago during a CIA-led operation as they crossed back into Yemen from Somalia following a weapons smuggling run.

They were part of an eight-man group of al-Qaeda-linked gun runners that included a Briton, a Dane, a German and a Somali.

Two of the Australians were born in Australia and one in Poland. He became an Australian citizen in the 1980s.

Foreign Minister Alexander Downer said his department was in close contact with their next of kin in Australia and Yemen.

"We don't have any confirmation of the official charges but we understand the men were detained on terrorist charges including attempting to smuggle arms to Somalia.

"These are very serious charges and the government, of course, would be deeply concerned if they turned out to be true.''

American intelligence agencies provide blanket coverage of the border region between Yemen and Somalia which is a well-known stronghold of al-Qaeda and its affiliates.

US spy satellites and unmanned spy planes conduct round-the-clock surveillance of the area.

Australian officials, including agents from ASIO and the foreign spy service ASIS, will travel from Riyadh to the Yemeni capital Sanaa to visit the detained men once access in granted.

Foreign Affairs will provide consular assistance, including legal support, through the British embassy in Sanaa.

The British intelligence service MI6 works closely with the CIA and other foreign intelligence agencies in the volatile Horn of Africa region.

According to security sources the three Australians converted to Islam earlier this year and travelled to Yemen for religious and Arabic language study.

A number of al-Qaeda suspects have been flown out of Yemen to interrogation facilities in other countries including Egypt and Pakistan or to Cuba.

The three Australians will be dealt with under Yemeni law and will almost certainly be handed over to the Americans.

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http://www.news.com.au/dailytelegraph <http://www.news.com.au/dailytelegraph>

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FORBES

Man's Transfer to Iraq Death Row Delayed
Associated Press 10.27.06, 6:58 PM ET

A federal appeals court said Friday that the military may not turn an American citizen over to Iraqi officials to face the death penalty until the Supreme Court can hear his case.

The Supreme Court's decision in the case will help decide what rights American citizens have when detained by U.S. military forces overseas.

Mohammad Munaf was convicted and sentenced to death by an Iraqi judge this month on charges he helped in the 2005 kidnapping of three Romanian journalists in Baghdad.

Munaf, who was born in Iraq and became an American citizen in 2000, asked a U.S. judge not to let the military transfer him. He claimed his trial was flawed and his confession was coerced.

Those would normally be grounds for American citizens to challenge their imprisonment. But U.S. District Judge Royce Lamberth said this month that he had no authority to intervene because Munaf was being held by coalition military forces, not by the U.S. military alone.

The U.S. Appeals Court for the District of Columbia Circuit also declined to step in but said Friday that the military must give Munaf 10 days to appeal to the Supreme Court and wait for the court to rule before transferring him.

http://www.forbes.com <http://www.forbes.com>

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The Jurist

Saturday October 28, 2006
Appeals court blocks US handover of American to Iraqis before high court ruling
Ryan Olden <http://jurist.law.pitt.edu/jurist_search.php?q=Ryan%20Olden> at 3:14 PM ET

[JURIST] The US DC Circuit Court of Appeals <http://www.cadc.uscourts.gov/internet/internet.nsf> [official website] ruled Friday that Iraqi-American Mohammed Munaf had to be given ten days to appeal his case to the US Supreme Court and then the high court had to be accorded time to rule on that before the US military can legally transfer him to Iraqi custody and likely execution. In early October, an Iraqi judge sentenced Munaf to death for his alleged role <http://jurist.law.pitt.edu/paperchase/2005/05/romania-charges-translator-businessman.php> [JURIST report] in the kidnapping of three Romanian journalists in 2005. Munaf, who is married to a Romanian woman, was born in Iraq but became a US citizen in 2000.

On October 13 lawyers for Munaf filed an emergency motion <http://natseclaw.typepad.com/natseclaw/files/Munaf.v.Harvey.Emergency.Motion.pdf> [PDF text; declaration <http://natseclaw.typepad.com/natseclaw/files/Munaf.v.Harvey.Emergency.Declaration.pdf> , PDF] in federal court to prevent the military from transferring him <http://jurist.law.pitt.edu/paperchase/2006/10/us-citizen-facing-iraqi-death-penalty.php> [JURIST report] to Iraqi authorities. Munaf claims his confession was coerced, authorities

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did not confront him with the evidence brought against him, and he was not allowed to present his own exculpatory evidence. Ordinarily, these allegations, if proven, would be sufficient for American courts to intervene on Munaf's behalf. US District Judge Royce Lamberth <http://www.dcd.uscourts.gov/lamberth-bio.html> [official profile] ruled October 19 that the federal courts had no power to intervene <http://www.dcd.uscourts.gov/opinions/2006/Lamberth/2006-CV-1455~10:57:31~10-19-2006-b.pdf> [opinion] in the case because Munaf was in Coalition, not American, custody. Jonathan Hafertz, counsel for Munaf, told <http://jurist.law.pitt.edu/hotline/2006/10/habeas-denial-creates-blank-check-for.php> JURIST Hotline afterwards that:

The decision is unprecedented and unjustified, flouting more than a half-century of Supreme Court precedent establishing that US citizens detained overseas have a constitutional right to challenge their detention by the United States as well as their transfer to a foreign sovereign....More is at stake than the life of an American citizen. The decision threatens to create a blank check for executive imprisonment wherever the United States claims it is holding an American citizen under the guise of a multinational operation

http://jurist.law.pitt.edu

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Can '20th hijacker' ever stand trial? MSNBC.com October 26, 2006 Thursday

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October 26, 2006 Thursday 9:34 PM GMT

Mohammed al-Qahtani, detainee No. 063, was forced to wear a bra. He had a thong placed on his head. He was massaged by a female interrogator who straddled him like a lap dancer. He was told that his mother and sisters were whores. He was told that other detainees knew he was gay. He was forced to dance with a male interrogator. He was strip-searched in front of women. He was led on a leash and forced to perform dog tricks. He was doused with water. He was prevented from praying. He was forced to watch as an interrogator squatted over his Koran.

That much is known. These details were among the findings of the U.S. Army's investigation of al-Qahtani's aggressive interrogation at Guantanamo Bay, Cuba.

But only now is a picture emerging of how the interrogation policy developed, and the battle that law enforcement agents waged, inside Guantanamo and in the offices of the Pentagon, against harsh treatment of al-Qahtani and other detainees by military intelligence interrogators.

In interviews with MSNBC.com - the first time they have spoken publicly - former senior law enforcement agents described their attempts to stop the abusive interrogations. The agents of the Pentagon's Criminal Investigation Task Force, working to build legal cases against suspected terrorists, said they objected to coercive tactics used by a separate team of intelligence interrogators soon after Guantanamo's prison camp opened in early 2002. They ultimately carried their battle up to the office of Secretary of Defense Donald H. Rumsfeld, who approved the more aggressive techniques to be used on al-Qahtani and others.

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Although they believed the abusive techniques were probably illegal, the Pentagon cops said their objection was practical. They argued that abusive interrogations were not likely to produce truthful information, either for preventing more al-Qaida attacks or prosecuting terrorists.

And they described their disappointment when military prosecutors told them not to worry about making a criminal case against al-Qahtani, the suspected "20th hijacker" of Sept. 11, because what had been done to him would prevent him from ever being put on trial.

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When Gen. Geoffrey D. Miller, the U.S. Army general in charge of detainees at Guantanamo Bay, flew to Iraq on Aug. 31, 2003, to advise on operation of a little-known prison called Abu Ghraib, his plane also carried something of a stowaway.

An agent of the Pentagon's Criminal Investigation Task Force went along to warn U.S. prison officials in Iraq that Gen. Miller's aggressive interrogation techniques were not the only way, that there were legal and effective ways of building rapport with detainees to get them to talk.

The task force's top cop, Mark Fallon, had sent the agent. Fallon said he feared that the Guantanamo techniques would spread.

"I wanted to tackle the general, anything to stop him from getting on that plane," Fallon said. "The best I could do was to send along a chaperone."

Gen. Miller resisted the agent, Blaine Thomas, joining his team, according to Fallon and his commander, Col. Brittain P. Mallow. He eventually relented, they said, but in Iraq he told the agent three times that he wasn't needed in meetings. So the agent made the best of his time in Iraq, meeting with the FBI.

The general, now retired, says the cops have it backward. "I'm the one who asked their guy to come" on the Abu Ghraib trip, Gen. Miller said, "and when they sent him, he was the one who decided to work with the FBI and other agencies instead of coming to the briefings. He had free and open access like everyone else."

In early April 2004, Gen. Miller left Guantanamo for a new role, running all U.S. prisons in Iraq, a few weeks before the name Abu Ghraib became well known. An Army investigation found later that Miller on his first visit had urged that military police with dogs "set the conditions" for interrogations, and that interrogators adopt "emerging strategic interrogation strategies and techniques" being used at Guantanamo.

"When the Abu Ghraib photos were released," Fallon said, "I felt a great disappointment."

"I wasn't there for the meetings with General Miller. I do not know what he told those folks over there, what techniques to employ. ... But I felt a great sense of disappointment that I was not able to effectively influence behaviors that could have contributed to Abu Ghraib."

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At Orlando International Airport on Aug. 4, 2001, a Saudi traveler caught the eye of a Customs agent.

The young man had no return ticket, $2,800 in cash, and wouldn't identify the friend he said would pick him up at the airport. The Customs agent decided this was a potential illegal immigrant. Before being sent on a flight back to the Middle East, Mohammed al-Qahtani turned to the agent and said, "I'll be back."

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The Pentagon has said that his friend at the airport was the Sept. 11 ringleader, Mohammed Atta, and that al-Qahtani was apparently intended to be the fifth hijacker on United Airlines Flight 93, which crashed in Pennsylvania when passengers were able to overpower the other four. Al-Qahtani, through his attorney, says he was not involved.

Al-Qahtani was captured in December 2001 on the Afghanistan-Pakistan border and shipped to the U.S. prison camp at Guantanamo Bay.

For awhile he cooperated with FBI interrogators, but by the fall of 2002, he had mostly stopped talking.

The pressure on interrogators to produce information was intense. Less than a year after the Sept. 11 attacks, al-Qaida attacks were continuing: the firebombing of a synagogue in Tunisia in April, a bomb outside the U.S. Consulate in Karachi in June.

In early September 2002, the FBI suggested another option for obtaining information from al-Qahtani, according to the leaders of the law enforcement task force, who shared an office at Guantanamo with the FBI. The plan, they said, was to send al-Qahtani temporarily or permanently to another country, such as Egypt or Jordan, where he could be interrogated with techniques that the FBI could not legally use.

The commander of the law enforcement task force, Col. Britt Mallow, and his chief investigator, Mark Fallon, say they learned of the plan from the Pentagon's Office of General Counsel, which urged them to reach a consensus with the FBI and intelligence interrogators on how to handle al-Qahtani. The cops opposed the plan, which was scrapped. A later FBI legal analysis warned that even discussing such a plan, known as "rendition," could be a crime, conspiracy to commit torture.

The FBI and Justice Department will not comment on any plan for rendition of al-Qahtani. A Pentagon spokesman, Cmdr. Jeffrey D. Gordon, said only, "There is continuous dialogue among interagency staffs about a wide variety of topics of national importance, although we do not typically discuss those talks."

If al-Qahtani wasn't going to talk with the law enforcement agents, then the military intelligence interrogators wanted their shot. By September 2002, they were developing their own interrogation plans for al-Qahtani.

By this time, law enforcement interrogators said, they had seen signs of coercive or abusive techniques being tried by the young, mostly inexperienced, military intelligence personnel: a cinder block left in the interrogation box, apparently used to hold a detainee in a stress position, called short shackling; a detainee wrapped from head to toe in duct tape. These techniques were not in the interrogation bible, the Army Field Manual.

The al-Qahtani plan went much further. The law enforcement agents began to hear a new term, SERE, an acronym for Survival, Evasion, Resistance and Escape. SERE training is provided to U.S. Special Forces and other military personnel to prepare them to withstand torture if they become prisoners of war. It includes mocking of their religious beliefs, sexual taunting, and a technique called water-boarding, which induces water through the nose to make a prisoner feel like he's drowning.

Intelligence interrogators had the idea to "reverse-engineer" SERE, to use its techniques to pry information out of the suspected al-Qaida and Taliban terrorists. Pentagon e-mails seen by MSNBC.com show that at least a half dozen military intelligence personnel from Guantanamo, including at least one medical adviser, went to Fort Bragg, N.C., on Sept. 16-20, 2002, for SERE training. It was an experiment, apparently not unlike what the CIA had been trying on the few high-value detainees kept at secret locations.

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The law enforcement agents, who were collecting intelligence information but primarily focused on developing cases for Pentagon prosecutors, say they questioned whether SERE tactics would produce useful information.

"It was the latest gimmick," said Michael Gelles, the chief psychologist for the Naval Criminal Investigative Service and an adviser to the law enforcement agents at Guantanamo. "The problem was these techniques were taught to harden you against interrogation."

Gelles said he called Col. Morgan Banks, the director of the Psychological Applications Directorate at Fort Bragg. "I said it was nuts," Gelles recalls, "and told him we were concerned about this. He said it was used to train for resistance, and would not work as an interrogation approach. But they still teach it." That September of 2002, Col. Mallow and Fallon ordered their agents in writing not to engage in coercive interrogations, particularly using SERE techniques.

They also said they and their agents raised these concerns several times with the commander at Guantanamo, Gen. Michael E. Dunlavey, and his staff, but he "wouldn't listen at all," Col. Mallow said.

Gen. Dunlavey, a lawyer and reserve officer, now a state judge in Erie, Pa., says the law enforcement agents "are absolutely wrong."Â They didn't speak up to him about any coercive interrogations, he said. Any use of the SERE techniques must have begun after he left. "Whatever happened after Gen. Miller took over, I can't tell you."

Dunlavey said he always believed that "torture is wrong," and that his views were right in line with the law enforcement views. He said couldn't comment further because he is a defendant in two lawsuits brought by detainees.

Back in the states, Col. Mallow and Fallon said, they raised the issue almost weekly in August and September 2002 with lawyers from the office of the Pentagon general counsel, William J. Haynes III, as well as senior Army officials. Mallow said he recalls clearly that one meeting was on Sept. 11, the anniversary of the attacks, because his father died that night.

The cops argued that the al-Qahtani plan not only was illegal and unreliable, but also unnecessary. Mohammed al-Qahtani was not alleged to be a leader of the Sept. 11 plot. He was not trained as a pilot. If he was involved, he was one of the "muscle" hijackers. Everything known about al-Qaida, they said, suggests that information is compartmentalized.

Mallow said the senior Pentagon lawyers were sympathetic, but had limited influence on policy areas handled by the office of the secretary of defense.

A VIP tour

Into the interrogation debate flew a group of legal VIPs from the White House, the Justice Department and the Pentagon.

Defense Department e-mails seen by MSNBC.com show that a delegation visiting Guantanamo on Sept. 25, 2002, included Alberto R. Gonzales, then the White House counsel and now attorney general; David S. Addington, legal counsel to Vice President Dick Cheney, now his chief of staff; Timothy E. Flanigan, the deputy White House counsel; William Haynes III, the Pentagon general counsel; Larry Thompson, then deputy attorney general; Christopher A. Wray, the principal associate deputy attorney general, now head of Criminal Division at the Justice Department; and John Yoo, a lawyer in the Justice Department's Office of Legal Counsel, who reportedly had just helped write an Aug. 1, 2002, "torture memo" to Gonzales, defining torture narrowly as causing pain equivalent to organ failure or death.

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The visiting VIPs met with Gen. Dunlavey and his staff, but not with any of the law enforcement investigators who opposed the aggressive interrogations. The White House and the Pentagon will not comment on the visit, other than to say that delegations frequently visited Guantanamo to discuss detainee matters.

Yoo has expressed the administration's position on the balance between anti-terrorist operations and law enforcement in the war on terror.

"You know, the point of the war is not to collect evidence and solve crimes; it's to fight and defeat the enemy," Yoo, now a law professor at the University of California, said in an NPR interview this month. "So I think this sort of flexible process reflects the demands and the nature of warfare."

The Pentagon's law enforcement investigators bristle at the idea that defeating al-Qaida was solely the mission of the intelligence interrogators.

"It was our job to prevent the next attack," Fallon said. "Anyone in the United States government's job, particularly someone who is a federal agent, law enforcement officer, is to prevent the next attack against the United States. ... The question we raised, rather vigorously: Will you really accomplish that objective by using aggressive technique?"

A menu of tactics

On Oct. 11, 2002, Gen. Dunlavey sent a formal plan for al-Qahtani's interrogation up the chain of command. He sought approval for a menu of 19 "counter-resistance techniques" not in the Army Field Manual:

*

Category 1: Yelling, deception, use of multiple interrogators, misrepresenting identity of the interrogator (as from a country with a reputation for harsh treatment of prisoners).

*

Category 2: Stress positions (such as standing for up to four hours), use of falsified documents or reports, isolation for 30 days or longer, interrogation in places other than the interrogation booth, deprivation of light and sound, hooding, interrogation for up to 20 hours straight, removal of all comfort items (including religious items), switching from hot food to military meals ready to eat, removal of clothing, forced grooming and shaving of facial hair, use of phobias (such as fear of dogs) to induce stress.

*

Category 3: Use of scenarios to persuade the detainee that death or pain is imminent for him or his family, exposure to cold or water, use of mild non-injurious physical contact, use of a wet towel or water-boarding to simulate drowning or suffocation.

When preliminary approval of these techniques came from the Army's Southern Command in Miami in early November, the law enforcement agents at Guantanamo offered an alternative plan to the intelligence side. In writing, they described successes they had seen with rapport-building, and criticized the proposed aggressive techniques asÂ "possibly illegal" and

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harmful to law enforcement efforts. They also said that agents of the Defense Humint Service, the Defense Department's human intelligence spy agency, "blatantly misled" Pentagon officials by claiming that the FBI endorsed these coercive methods.

The next day, Nov. 23, the military interrogators began using their techniques on al-Qahtani, according to the Army investigation, although written approval had not yet been received. While some aggressive treatment of al-Qahtani had begun months earlier - on Oct. 1, 2002, a military police dog was used to scare the Saudi, an Army investigation found - now it began in earnest.

He was interrogated for 18 to 20 hours per day, for 48 of the next 54 days, according to an Army investigative report. On Dec. 7, 2002, he had to be revived at the detainee hospital when his heart rate fell to 35 beats per minute, according to a log of the interrogation published by Time magazine. Then the interrogation continued.

FBI agents at Guantanamo joined the opposition. A Nov. 27 FBI "legal analysis," since reported by Newsweek, labeled several parts of the plan as "coercive interrogation techniques which are not permitted by the U.S. Constitution." It also warned that several of the proposed tactics could constitute torture, depending on how a judge viewed the intent of the interrogator.

Justice Department spokeswoman Kathleen Blomquist declined to say last week whether the department communicated the FBI objections to the Pentagon or the White House.

'Why is standing limited to 4 hours?'

On Dec. 2, Secretary of Defense Donald H. Rumsfeld signed off, approving most of the tactics for use on al-Qahtani and others, including all of categories 1 and 2, but only one item in category 3: mild, non-injurious physical contact. Mock assassinations and water-boarding were out.

Rumsfeld added an asterisk, a note scrawled on the bottom of the approval memo, asking why stress positions were limited. "I stand for 8-10 hours a day," the secretary of defense wrote. "Why is standing limited to 4 hours?"

The approval wasn't announced, not even to the law enforcement investigators at Guantanamo. "We continued to push the issue," said Fallon, the chief investigator. "Basically the responses started to come back, 'We're authorized to do this.'"

The Qahtani interrogation was a success, the Pentagon has said. Al-Qahtani admitted he had been sent to the United States by Sept. 11 plotter Khalid Sheik Mohamed, that he had met Osama bin Laden several times, that he had been trained at two al-Qaida camps, that he knew the shoe bomber Richard Reid, and that 30 other detainees he identified had been bodyguards for bin Laden.

The law enforcement investigators, however, say the interrogation produced little new. "I will just say that most of what we knew, we knew before," Col. Mallow said. "A lot of the intelligence 'successes' that have been touted were a result of much earlier disclosures made by detainees to our agents."

Al-Qahtani's lawyer says her client repudiates his statements. "He adamantly denies all of that," said Gitanjali S. Gutierrez, of the Center for Constitutional Rights.

She said al-Qahtani, now in his late 20s, is physically and psychologically broken. In addition to the degrading treatment, she said, al-Qahtani was subjected to a "fake rendition," in which he was tranquilized, flown off the island of Cuba, revived, flown back to Cuba, and told he was in a country that allows torture.

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"The government," she said, "has never come forward with any evidence that wasn't obtained by torture."

Remembering Nuremberg

Soon other detainees were in line for SERE techniques, under the new leader at Guantanamo. Maj. Gen. Miller, a former artillery officer, had replaced Dunlavey in November. On Dec. 14, according to the law enforcement agents and Pentagon e-mails, the general gave them a proposed "standard operating procedure" for use of SERE techniques.

Here the law enforcement agents had their only internal disagreement. Col. Mallow, the commander, initially took the position that they could watch the intelligence interrogations, to collect information, and perhaps to deter abuses. After all, the secretary of defense had authorized these tactics. Fallon, his deputy and chief investigator, said he would resign from the law enforcement task force - and the Navy if necessary.

"You're talking illegal acts here," Fallon said. "The secretary of defense can't change the law. One of the things that we told all our personnel was the fact that during Nuremberg, Nazi war criminals were actually tried for acts that were perpetrated by them under orders of their superiors."

Col. Mallow said Fallon quickly persuaded him and, on Dec. 16, the colonel ordered his agents to disengage from any inhumane interrogation, to document what they saw, and to report it.

Gen. Miller was displeased, Col. Mallow recalls, saying, "You either are with us or you and your guys are out."

The general does not deny saying this. He said he inherited a situation where the two teams of interrogators "weren't even speaking to one another, and it was unproductive," with two teams duplicating each other.

Still the investigators were unwilling to observe the aggressive interrogations. David L. Brant, the boss of Fallon and Gelles as the director of the Naval Criminal Investigative Service, said he told the Army, "if there's anything that's beyond the boards, we'll just pull our people out." Air Force cops on the task force, from the Office of Special Investigations, said they would go along with a Navy walkout. Finally everyone agreed that the law enforcement investigators would not be forced to watch the intelligence interrogations.

Although they had built a wall separating themselves from the intelligence side, the law enforcement agents knew they had failed to persuade the Pentagon that rapport-building would be more effective than abusive interrogations.

'Put on the same uniform'

They turned back to the Navy for help. On Dec. 17, director Brant from the Naval Criminal Investigative service took the concerns to Alberto J. Mora, the chief lawyer for the Navy.

Mora, whose family had escaped Cuba under Castro, says the interrogation tactics shocked him, reminding him of the internment of Japanese citizens during World War II. While he worked on Pentagon lawyers, he recommended that the investigators take one more shot at persuading the leadership at Guantanamo.

So Fallon, the cop, and Gelles, the psychologist, flew down to see Gen. Miller. They took along a Secret Service expert on threat assessment. In Miller's office, the three cops described the rapport-building approach, how it had worked in terrorism cases, the USS Cole

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bombing, the embassy bombings in East Africa, even in preventing assassination attempts. The general was unmoved.

"If you want to be on the team," Fallon and Gelles said Gen. Miller told them, "you've got to put on the same uniform." The general says that's a fair description of his reply.

Back in Washington, Mora, the Navy lawyer, resorted to an ultimatum. On Jan. 15, 2003, he prepared a draft memorandum opposing the techniques as clearly illegal, addressed to his boss, general counsel Haynes, as well as to the legal adviser to the Joint Chiefs of Staff. Mora said he would be signing the memo at the end of the day. Before he could sign,Â Haynes told him that Rumsfeld would stop the aggressive interrogations.

It was true, to a point. Rumsfeld rescinded his blanket approval of the harshest techniques. Rumsfeld then asked a group of lawyers at Justice and the Pentagon to come up with new limits. According to Mora, this group relied heavily on a Justice Department memo, later withdrawn, justifying cruel, inhuman and degrading treatment. In March 2003, Rumsfeld secretly re-authorized 24 techniques, mostly confined to those in the Army Field Manual but also allowing isolation, "environmental manipulation," "sleep adjustment," and threats to send the detainee to a country allowing torture. The new policy required "humane treatment," but did not define it.

'Unanswered questions'

Mora, now the vice president and general counsel for international operations for Wal-Mart, found out about Rumsfeld's reauthorization a year later, watching a congressional hearing on C-SPAN about Abu Ghraib.

"We may have stopped some abuse on the Department of Defense side," Mora said, "but it's clear we had no effect on the national policy, meaning the White House policy, to inflict cruelty on some individuals."

Although the Pentagon has looked at specific allegations made by FBI agents of abusive interrogations, no investigation has untangled how the policy of aggressive interrogation was set, or who influenced it.

"The unanswered questions," Mora said, "are, how much of this was actually applied, what the level of abuse was, who the victims were, and who is responsible for the application of abuse, the cruel treatment? I think the historical record will indicate shifting responsibility for these abuses. ... You've got some abuse that was inflicted as a result of authorizations by the command authority, some from a lack of leadership, suggesting that unlawful combatants could be treated more harshly than POWs, and some from rogue soldiers who have sadistic streaks."

The Bush administration has said that there was no policy to abuse detainees, although some detainees were abused in individual cases, and that those responsible have been held accountable.

"What took place at Guantanamo," Rumsfeld said in January, "is a matter of public record today, and the investigations turned up nothing that suggested that there was any policy in the department other than humane treatment. And it is also clear, by the very fact that some 250 people have been punished in one way or another, that there was behavior that was inappropriate."

'An honest mistake'

The Army's internal Furlow-Schmidt investigation of FBI allegations of detainee mistreatment found in April 2005 that Gen. Miller failed to monitor the interrogation of al-Qahtani, whose

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interrogation "resulted in degrading and abusive treatment but did not rise to the level of being inhumane treatment."

The general told Army investigators that he was unaware of the extent of the techniques used on al-Qahtani, but they found that statement "inconsistent" with a letter he sent to his superiors on Jan. 21, 2003, saying that he approved the interrogation plan and that it was followed "relentlessly." "It is clear," the Army found, that the al-Qahtani intelligence interrogation team "believed they were acting within existing guidance."

In that letter, later unclassified in part, Miller wrote that the new techniques approved by Rumsfeld "are within the spirit and intent of humane detention. ... These techniques are not intended to cause gratuitous, severe physical pain or suffering or prolonged mental harm, but are instead intended to induce cooperation over a period of time by weakening the detainee's mental and physical ability to resist."

Beyond al-Qahtani, the investigators found that intelligence interrogators at Guantanamo had impersonated FBI agents and State Department investigators; played loud music with strobe lights (Metallica, Britney Spears and rap were often used); moved the detainees every few hours to disrupt sleep (called the "frequent flyer program"); wrapped a detainee's head in duct tape to stop him from chanting passages from the Koran; and a female interrogator rubbed red ink on a detainee, and said, "By the way, I am menstruating." ("The detainee threw himself on the floor and started banging his head.")

Gen. Miller was recommended for administrative "admonishment" for failing to supervise the al-Qahtani investigation, but the Pentagon declined to impose the penalty. He was allowed to retire. As a condition of that retirement, he agreed to testify before the Senate Armed Services Committee, which is investigating the interrogations, but he has not yet been called.

"There were mistakes made," Miller told MSNBC.com. "I'll be honest with you."

He said that many of the odd tactics tried on al-Qahtani were "authorized within the guidance" from Rumsfeld of Dec. 2, "but not within the plan" of specifics laid out by his staff at Guantanamo. In other words, individual interrogators were using techniques that he had not anticipated.

"One young, very young interrogator who put ladies' panties on al-Qahtani's head, that wasn't authorized," Gen. Miller said. "We relieved that kid the next morning. It was a youngster who made an honest mistake."

'Unprosecutable'

Will Mohammed al-Qahtani, the suspected 20th hijacker, ever face trial?

The cops who directed the investigation, Col. Mallow and Fallon, said they were told several times by prosecutors in the Pentagon's Office of Military Commissions, as the military trials are known, not to keep bringing forward a case against al-Qahtani, that there would be no case.

"The techniques made some detainees unprosecutable," Fallon said. "It would provide the defense counsel a tremendous advantage at trial to sway the presiding officer and members, as well as it would have disclosed those techniques to the public."

A Pentagon spokesman last week dismissed this as "speculation," but wouldn't say whether al-Qahtani would face a military trial, known as a commission. "The detainee you reference," Cmdr. Gordon said, "is not among those 10 already referred to military commissions." (See sidebar, In limbo: Cases are few against Gitmo detainees.)

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Under the Military Commissions Act signed last week by President Bush, statements made under torture would not be admissible in a military trial.

But the law says a military judge could accept statements made under coercion. A court may have to decide which category, torture or coercion, encompasses such techniques as a fake trip to Egypt, sleep deprivation, and being forced to do dog tricks. The new law also extends legal protection from prosecution for war crimes to any U.S. personnel who used coercive tactics, if they believed in good faith that what they were doing was lawful.

Al-Qahtani's lawyer says she believes he'll never face trial, that eventually the government will have to transfer him back to Saudi Arabia.

"They can't just leave him in Guantanamo to rot and die," Gutierrez said.

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In February 2004, just before the Abu Ghraib photos were released, Mark Fallon saw Gen. Geoff Miller one last time, on the tarmac at the Guantanamo airfield. Miller would soon go to Iraq full time, and Fallon was returning to the Naval Criminal Investigative service, where he directs the training academy.

"I frankly was rather surprised because General Miller gave me a hug," Fallon said. "It was the first hug that I received from General Miller.

"And he actually had told me that we were right."

That's true, Miller says.

"To be frank with you," the general says, "I got down there and saw that the rapport-building was more effective. We made significant progress as we moved along. I found the law enforcement techniques to be an effective way to go about doing business.

"But not the only way."

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(b)(6)

From: (b)(6) DoD OGC
Sent: Monday, November 27, 2006 4:54 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 106

Cc: (b)(2),(b)(6) [redacted]

Subject: RE: RE GTMO Bird: Paracha recent decision and background; Military commissions chief resigns; Detainees released to Albania; Compound built for GTMO; Hicks; Sailor gets axe; Detainee denied witnesses

All:

Here is today's GTMO Bird.

Thanks,
(b)(6) [redacted]

Legal Affairs
Tapes Provide First Glimpse of Secret Gitmo Panels
[you can listen to a copy of the tapes at
http://www.npr.org/templates/story/story.php?storyId=6514923]
November 21, 2006 · Audio recordings obtained by NPR provide the outside world with its first window into the secret world of military tribunals at the U.S. prison camp for terrorism suspects at Guantanamo Bay, Cuba.
The recordings, made by the U.S. military, are of tribunals held in the fall of 2004 to review the "enemy combatant" status of six detainees who were arrested in Bosnia in late 2001. Lawyers for the men obtained the tapes under the Freedom of Information Act and provided NPR with copies of the recordings.
The Combatant Status Review Tribunals are held in small, low-ceiling trailers at Guantanamo Bay. The Pentagon describes the proceedings as an administrative process, so the detainees are not allowed lawyers. There's a court reporter, a translator and a panel of three military officers to whom detainees tell their story, ask why they are being held, and appeal for release.
The audio recordings of the Combatant Status Review Tribunals are scratchy, of poor quality and don't pick up much of what's happening in the small room: You can't sense facial expressions or body language, or that the detainee's arms and legs are shackled.
However, you can hear the tribunal president inquire after the health and comfort of Mustafa Ait Idir, one of several men whose tribunal tapes were reviewed for this story.

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"Are those on too tight?" the panel president asks, referring to the shackles on Ait Idir's hands and feet.
"He says, 'I've had them on for a very long time,'" a translator responds for the detainee.
No Set Pattern for Proceedings
Testimony at the tribunals doesn't appear to follow any set pattern. Some start with questioning from the military officers. At others, the detainee will launch into a speech about how they were arrested and sent to Guantanamo, and how they're being treated at the detention camp. Ait Idir speaks through a translator for almost an hour before the tribunal president interrupts him to inquire further about an incident of alleged abuse.
"Are you saying a soldier in Guantanamo Bay, Cuba, broke your fingers?" the tribunal president asks.
"Soldiers took me and they placed me on the ground in the rocks outside. They bound my hands and my feet," Ait Idir responds through a translator. He goes on to describe brutal treatment allegedly at the hands of U.S. soldiers.
Ait Idir is one of six Algerians who lived in Bosnia for about a decade before being arrested shortly after the terrorist attacks of Sept. 11, 2001, on suspicion of plotting to bomb the American and British embassies in Sarajevo.
The men were held for three months, until Bosnia's Supreme Court acquitted all of them. Ait Idir and the others tell the tribunal that when they walked out of the police station as free men, they were quickly arrested again by Bosnian and U.S. officials, put on a plane and sent to Guantanamo.
Learning of the Accusations Against Them
Hadj Boudella, one of the other detainees, tells the military panel at his tribunal that this is the first time he's heard some of the accusations against him.
"I've been here for three years, and these accusations were just told to me," Boudella says. "Nobody or any interrogator ever mentioned any of these accusations you are talking to me about now."
What's striking is that, despite not knowing fully why they're being held, enduring open-ended detentions and sometimes harsh interrogations, the detainees on these audio tapes express faith that truth will prevail. Boudella tells the panel that his lawyers -- at the Boston firm Wilmerhale -- sent him a letter telling him not to participate in the tribunal for fear of incriminating himself.
"I want to show you that I am really innocent, and I want you to see I can defend myself," Boudella says on the recording. "If you're innocent, no matter how people try to cover your innocence, it will come out."
Unclassified Evidence Is Slim
The detainees question the panel about the evidence against them and ask for proof, rather than just allegations. The audio recordings and transcripts show that the unclassified evidence is slim; for example, just a rundown of allegations, petitions for habeus corpus, which challenges the prisoners' detention, and affidavits attached to those petitions; one has a letter from Ait Idir's wife. At one point, Ait Idir expresses disbelief over the lack of proof and tells the panel he hoped it had more evidence it could give him.
"If I was in your place, but if a supervisor came to me and showed me accusations like these, I would take these accusations and I would hit him in the face with them," he tells the panel, apologizing for being so blunt.
Ait Idir, Boudella and the others on the recordings all ask that they be allowed to provide the tribunal with additional evidence, such as a copy of the decision by Bosnia's Supreme Court, showing their acquittal.
One detainee asked that his supervisor at the Red Crescent Society in Bosnia testify at the proceeding. He is told that a request was made twice to the U.S. State Department, which handles the matter; each time, the date of the tribunal was emphasized. The tribunal president says there was no response from the State Department to either request.
In some cases, the detainees' representatives don't know what efforts have or are being made to locate requested evidence. The only witnesses available to Ait Idir and Boudella are the other men they were arrested with. Boudella asks one witness the most pertinent question: "Do you know if I belong to any terrorist organization or if I am a terrorist?"

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In a simple, almost naïve answer, the witness tells the tribunal that Boudella is not a terrorist. "All I know about this person is that he is a very nice and very good person. He takes good care of his family," the other detainee says.

Critics Call Process Deeply Flawed

The military panel asks the detainees many questions during each tribunal: Where they grew up, where they worked, if they'd ever been to Afghanistan, if they belonged to any terrorist organizations. Then, the panel wraps up the unclassified session of the tribunal.

"Mustafa, you shall be notified of the tribunal decision upon completion of the review of these proceedings by the convening authority in Washington, D.C.," the tribunal president tells Ait Idir.

That was two years ago. Ait Idir and Boudella were both found to be enemy combatants and remain at Guantanamo Bay. In January, they will have spent five years in the prison camp. They have yet to be charged with any crimes.

Critics have always said that the Guantanamo tribunals are deeply flawed. Among other things, they point to the fact that detainees are only allowed to sit in for the unclassified session of the tribunal. They are banned from seeing or hearing the classified information against them.

Lawyers at Seton Hall University recently evaluated the records and transcripts for nearly 400 similar military hearings at Guantanamo. In most cases, they found, the government did not produce any witnesses at the tribunals, and detainees were only allowed to use other detainees at witnesses.

"Ninety-six percent of the time, [the government] produced no evidence of any sort," Seton Hall law professor Mark Denbeaux told NPR's Robert Siegel. Denbeaux represents two detainees and co-authored the report.

"They relied instead on secret evidence that was classified," Denbeaux says. "And the government's procedure was, anything in that secret evidence was presumed to be valuable and valid. And then the detainee was given the opportunity to rebut the secret evidence. But he was never told what the secret evidence was."

The Pentagon dismisses such criticisms, arguing that the tribunals are fair, and that the detainees are allowed to state their case, and produce witnesses and evidence of their own.

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NPR

November 21, 2006 · Since 2004, the U.S. military has been holding tribunals to determine whether the suspected terrorists held at the U.S. prison camp in Guantanamo Bay, Cuba, are enemy combatants. The hearings are closed to the public and have been widely criticized as flawed and unfair.

NPR has obtained audio recordings of some of the tribunals from lawyers for six of the detainees. Some of the detainees' voices were heard earlier in a story on Morning Edition. Now, we listen in on the hearing for another detainee, Mohamed Nechla.

Nechla's hearing took place on the afternoon of Oct. 19, 2004. An Algerian by birth, Nechla had been held at the military detention camp for almost three years. He had been interrogated but never charged. The tribunal was his opportunity to hear and address some of the accusations against him.

In the recordings, Nechla is heard telling the military panel that in the fall of 2001, he and five other Algerians were arrested in Bosnia on suspicion of plotting to blow up the U.S. and British embassies in Sarajevo. The six men had lived in Bosnia for about a decade, were married and had children. Nechla says the men spent three months in prison, until Bosnia's Supreme Court acquitted them and ordered their release from jail.

"When we came out of prison, we were surprised that we were handed over to the American forces that are present in Bosnia," Nechla said. "We were bound by our hands and our feet, and we were treated the worst treatment. For 36 hours without food, sleep, water or anything."

At his tribunal, Nechla heard the accusations against him: that he is a suspected terrorist with ties to an Algerian armed Islamic group, and that he is suspected of having links to al-Qaida. Other allegations against Nechla include having an alias.

Nechla asks for four witnesses to appear at his hearing. Three are other Guantanamo detainees with whom he was arrested. The fourth is his supervisor at the Red Crescent Society in

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Bosnia. The tribunal president says there's been a problem locating the supervisor in Sarajevo.
The military panel questions Nechla about his schooling, his friends, work and the organizations he belonged to. The panel asks him if he was associated with al-Qaida or had ever traveled to Afghanistan. Nechla professes his innocence regularly to the military officers, and he challenges them on the tribunal process. Only a small fraction of the detainees who went before the tribunal have been found not to be enemy combatants.
"So I just want to ask, have you found anyone innocent yet?'" Nechla asks through a translator. "And if you haven't, there's no need for these tribunals. Just say everyone is an enemy combatant."
http://www.npr.org
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The Washington Times
ASSOCIATED PRESS

The U.S. military is not required to send a Guantanamo Bay detainee to a civilian hospital for medical treatment, a federal judge said yesterday, leaving the prisoner to choose between having a heart procedure performed at the military base or not at all.

Saifullah A. Paracha, a 59-year-old multimillionaire Pakistani businessman and television producer, argued that the procedure was too risky to be handled anywhere but in a cardiac unit. He asked to be transferred to a hospital in the United States or Pakistan.

The procedure, called cardiac catheterization, is used to detect heart problems such as blockages. A doctor inserts a plastic tube into a vein and slides it into the heart or nearby coronary arteries to measure blood pressure or oxygen levels.

If something goes wrong, Mr. Paracha's attorney said, doctors could need to perform emergency heart surgery.

Doctors successfully completed an identical procedure in 2003 at Guantanamo Bay, Cuba, the Justice Department said. Special medical equipment and personnel were available, attorneys said, making transferring Mr. Paracha an unnecessary security risk.

U.S. District Judge Paul L. Friedman agreed, noting that the government regularly decides how best to treat civilian prisoners inside the United States and that judges rarely intervene.

Mr. Paracha twice met with Osama bin Laden, but his attorney said it was in hopes of landing a television interview. Mr. Paracha, who lived in the United States for 16 years, denies making investments for al Qaeda, translating statements for bin Laden, joining in explosives smuggling or recommending that nuclear weapons be used against U.S. troops.

Doctors will not perform the procedure without Mr. Paracha's consent. Attorney Gaillard Hunt said Mr. Paracha, who has a history of heart problems, may decide not to be treated if the procedure is done at the base.

"That's true of any prisoner anywhere," Judge Friedman replied. "There are lots of people who aren't detainees anywhere who choose not to have procedures done that their doctors believe should be done. If that's his choice, that's his choice."

Judge Friedman said he was troubled by Mr. Hunt's accusations that military officials shackled Mr. Paracha's hands and feet to his hospital bed during previous medical tests and did not release him even to eat.

In legal documents, Mr. Paracha's attorneys said there would be diplomatic consequences in Pakistan if he died.

"His death in U.S. captivity would be a blow to American prestige in that area, even under the best of circumstances," attorneys wrote. "If anything happened to him while he was being treated in an irregular or inadequate facility, the reaction would be unpredictable."

Paracha's attorneys can appeal Judge Friedman's ruling.

In July, his son, Uzair Paracha, was convicted of agreeing to help an al Qaeda operative sneak into the United States. A U.S. District Court judge in New York sentenced the son to 30 years in federal prison.
http://washingtontimes.com/national
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Sky Valley Journal
Gitmo prisoner says procedures botched

OGC AMNESTY/CCR 110

Staff and agencies
22 November, 2006

By ANDREW O. SELSKY, Associated Press
SAN JUAN, Puerto Rico - A detainee at Guantanamo Bay who needs a medical procedure on his heart said Tuesday he doesn't want it performed there because operations on other detainees have been botched – an accusation the base commander denied.
Hunt said in an e-mail to The Associated Press that Paracha made these allegations Tuesday in a phone call that was monitored by the military. It is rare for attorneys to be permitted to speak with Guantanamo Bay detainees by phone, but a U.S. Department of Justice attorney has said Paracha should be encouraged to undergo a cardiac catheterization.
"The medical staff is dedicated to saving the lives and improving the health of the detainees," Harris said.
Such a procedure would enable Guantanamo Bay medical personnel to determine the treatment regimen for the prisoner's coronary disease. But Paracha, 59, has insisted he be transferred to a hospital in the United States or Pakistan for the procedure, saying he didn't believe medical center at the U.S. Navy U.S. Navy base in southeast Cuba was capable.
But the prisoner on Tuesday rejected the procedure.
U.S. District Judge Paul L. Friedman ruled Monday in Washington that the U.S. military is not required to send Paracha to a civilian hospital. Friedman said the government regularly decides how best to treat civilian prisoners inside the United States and judges rarely intervene.
Paracha suffered his first heart attack in 1995 and had a second one in 2003 while in U.S. military custody at Bagram Air Base in Afghanistan .
Paracha has acknowledged meeting Osama bin Laden twice, but denied making investments for al-Qaida members, translating statements for bin Laden, joining in a plot to smuggle explosives into the United States or recommending that nuclear weapons be used against U.S. soldiers
http://www.localnewswatch.com
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The Seattle Times
8 former officials in Justice Dept. slam detainee law
By MATT APUZZO
The Associated Press
WASHINGTON – Former Attorney General Janet Reno and seven other former Justice Department officials filed court papers Monday arguing that the Bush administration is setting a dangerous precedent by trying a suspected terrorist outside the court system.
It was the first time Reno, attorney general in the Clinton administration, has spoken out against the administration's policies on terrorism detainees.
Suspected al-Qaida sleeper agent Ali Saleh Kahlah al-Marri is the only detainee being held in the United States. The former prosecutors challenged the Justice Department's right to bring al-Marri before a military commission.
Al-Marri, a citizen of Qatar, was arrested in 2001 while studying in the United States. He had faced criminal charges until authorities designated him an enemy combatant and ordered him held at a naval base in South Carolina.
The Justice Department said in court papers last week that a new anti-terrorism law strips detainees such as al-Marri of the right to challenge their imprisonment in court.
"The government is essentially asserting the right to hold putative enemy combatants arrested in the United States indefinitely whenever it decides not to prosecute those people criminally – perhaps because it would be too difficult to obtain a conviction, [or] perhaps because a motion to suppress evidence would raise embarrassing facts about the government's conduct," the former Justice Department officials said.
Some of the eight attorneys named in the document represent detainees at Guantánamo Bay, Cuba. Most served under President Clinton, though the list includes former U.S. Attorneys W. Thomas Dillard and Anton Valukas, who served under President Reagan.
http://seattletimes.nwsource.com
Reno, Former U.S. Officials Challenge Military Trials (Update1)
By Jeff St.Onge

OGC AMNESTY/CCR 111

Nov. 21 (Bloomberg) -- Former U.S. Attorney General Janet Reno and seven other former Justice Department officials challenged the Bush administration's bid to try suspected terrorist Ali Saleh Kahlah al-Marri, a foreign national living in the U.S. when he was arrested, before a military commission.

Reno and the others said the Bush administration is trying to set a dangerous precedent that would let the government indefinitely imprison any non-U.S. citizen considered an enemy. The former U.S. officials were joined by at least four human rights groups making similar arguments.

The administration is ``asserting the right to hold putative enemy combatants arrested in the United States indefinitely whenever it decides not to prosecute them criminally,'' Reno, six former U.S. attorneys and a former deputy solicitor general said in a ``friend-of-the-court'' brief.

Al-Marri, 41, was the first defendant removed from the U.S. criminal justice system and deemed an illegal enemy combatant. He was studying in the U.S. and living in Illinois when he was arrested in late 2001. The Justice Department unsealed the indictment in December 2002, and he was declared an enemy combatant about six months later. A citizen of Qatar, al-Marri has been held at a U.S. Navy Prison in South Carolina since June 2003.

The Justice Department said it stands by its decision to try al-Marri as a suspected terrorist outside the criminal court system.

Complex Issues

``These are complex and difficult legal issues,'' said Justice Department spokeswoman Kathleen Blomquist in an e-mailed statement today. ``While we respect the right of other legal minds to be heard on these issues, we believe we are on firm legal footing.''

The Justice Department said a new anti-terrorism law, the Military Commissions Act, gives terrorism suspects such as al- Marri no right to challenge their imprisonment.

Jonathan Hafetz, one of al-Marri's lawyers, said a hearing on the government's request to have al-Marri's challenge to his detention thrown out is scheduled for late January or early February in the 4th U.S. Circuit Court of Appeals in Richmond.

``This is an unprecedented, unlawful and un-American attempt to deprive an individual living in this country of basic constitutional rights,'' said Hafetz, from New York University's Brennan Center Justice, in a phone interview.

Reno was attorney general in President Bill Clinton's administration. The other officials who joined her on the legal brief served under Clinton and President Ronald Reagan, such as former U.S. Attorney Anton Valukas, who is now a partner at the Jenner & Block law firm in Chicago. Some represent detainees held at the U.S. military prison in Guantanamo Bay in Cuba, according to Hafetz.

The case is Al-Marri v. Wright, 06-7427 in the 4th U.S. Circuit Court of Appeals in Richmond, Virginia.

http://www.bloomberg.com

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Kuwait News Agency

Negotiations with Kuwaiti gov''t ongoing over Guantanamo detainees -- US

POL-KUWAIT-US-GUANTANAMO

Negotiations with Kuwaiti gov't ongoing over Guantanamo detainees -- US official By Eman Al-Awadhi

KUWAIT, Nov 20 (KUNA) -- Negotiations are ongoing with the Kuwaiti government over detainees in Guantanamo Naval Base and whether or not they would be transferred to the authority of their government, US Department of State Legal Advisor and expert on Guantanamo detainee issues John Bellinger said on Monday.

"We have worked with almost all the governments who have nationals in Guantanamo, including the Kuwaiti government," he told reporters at a digital video conference set up at the US Embassy.

He said discussions with these governments, which he did not name, focused on "the terms of possible transfers (of detainees) but there is not a specific time that any of these individuals would be released." Bellinger explained that the conditions of detainee transfer

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depended upon "whether we (the US) will try them for war crimes" and "whether we believe that if they were transferred or released they would continue to pose a threat or return to acts of terrorism." Two Kuwaiti detainees had been transferred to Kuwait in September of this year, and four others reportedly remain at Guantanamo out of 12 who had been there.

The advisor explained that the Military Commission Act (MCA) passed by the US Congress last month would allow for moving forward with military trials of detainees, who did not fall under the jurisdiction of US federal courts because they had been detained outside the US.

He added that during these trials, detainees would have the right to be present in the courtroom, the right to counsel, and the right to appeal to a special Military Commission Review Panel, then to a federal civil circuit court, and then the US Supreme Court.

Moreover, Bellinger said evidence extracted by torture would not be admitted into the military trial, adding that "if the accused alleges that a statement was derived from coercion, then it cannot be admitted into the trial unless the judge determines that it would be in the interest of justice and fairness to introduce that information." He underscored that torture was not exercised in Guantanamo.

On the basis of the MCA, the advisor said there were between 40 and 80 detainees lined up for a military trial.

Asked about the negative image of the US that Guantanamo reflected, he said, "President (George W.) Bush understands that Guantanamo is very bad for the image of the US, particularly in the Arab and Muslim world." Bellinger said that because of the images released of the abusive acts of US soldiers in Abu Ghraib, people suspected the same acts were taking place in Guantanamo.

He denied this, saying, "Guantanamo is really a maximum-security prison ... detainees have access to exercise facilities, excellent health care, good food, and are able to exercise their religion." Religions, he said, were respected.

Furthermore, he explained the dilemma the US faced with transferring detainees, saying it had been trying to relocate them for many years but many countries refused to take them back.

President Bush, he said, did not want the facility to be open longer than necessary.

There are over 400 detainees in Guantanamo from some 40 countries, according to the US Defense Department. Of these, about 110 of them have been "determined eligible" by the US Government for transfer or release through a comprehensive series of review processes.
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Washington Post
Top-Secret Torture
The Bush administration claims detainees can't disclose how they were treated.
Tuesday, November 21, 2006; Page A26
BURIED WITHIN a recent government brief in the case of Guantanamo Bay inmate Majid Khan is one of the more disturbing arguments the Bush administration has advanced in the legal struggles surrounding the war on terrorism. Mr. Khan was one of the al-Qaeda suspects who was detained in a secret prison of the CIA and subjected to "alternative" interrogation tactics -- the administration's chilling phrase for methods most people regard as torture. Now the government is arguing that by subjecting detainees to such treatment, the CIA gives them "top secret" classified information -- and the government can then take extraordinary measures to keep them quiet about it. If this argument carries the day, it will make virtually impossible any accountability for the administration's treatment of top al-Qaeda detainees. And it will also ensure that key parts of any military trials get litigated in secrecy.
Mr. Khan is one of 14 people transferred to Guantanamo earlier this year from the CIA's secret prison program. After his transfer, lawyers seeking to represent him asked for an

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order granting them access on the same terms as lawyers representing other detainees. The government objected on two main grounds. It contended that the court lacks jurisdiction because of two new laws that strip federal courts of authority over detainee matters. That may well be correct, and Judge Reggie B. Walton agreed last week that any consideration of counsel access should wait until the court of appeals rules on the jurisdictional question. But the government also argues that Mr. Khan is different from previous Guantanamo inmates; their lawyers are cleared to see information classified at the "secret" level. The CIA program, however, involves top-secret information, so lawyers for Mr. Khan would have to be cleared at a higher level -- and access would have to take place under more restrictive circumstances.

The trouble is that at least some of the secrets the government is trying to protect are the very techniques used against people such as Mr. Khan -- and its means of protecting them is to muzzle him about what the CIA did to him. CIA official Marilyn A. Dorn said in an affidavit that Mr. Khan might reveal "the conditions of detention and specific alternative interrogation procedures." In other words, grossly mistreating a detainee now justifies keeping him quiet.

The problem with this argument is not just its Kafkaesque sheen. If the courts accept it, it would have vast practical implications. The integrity of any military trials of the high-value detainees will depend on their excluding evidence obtained by unduly coercive means. By the logic of the government's argument, however, all of that litigation will have to take place in secret. Detainees are also supposed to be able to appeal their status as enemy combatants to the federal appeals court here in Washington. The government's logic would all but assure that the bulk of any such appeal would be secret as well. So accepting this theory would mean that no claim of torture could be resolved in a transparent and accountable fashion. Given the importance of open trials for the high-value detainees, it's hard to imagine a principle that would more thwart the effort to bring them credibly to justice.

http://www.washingtonpost.com

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FindLaw

Four Good Reasons Why Guantanamo Should Be Closed

The U.S. detention center at Guantanamo Bay, Cuba, should be closed. Its continued existence is unfair to the individuals held there, and of negative benefit to the United States.

Why exactly should it be closed? Here are four good reasons.

First, Guantanamo is a symbol of lawlessness. It was chosen as a detention site because it is located offshore, on foreign territory, and the Bush Administration therefore believed it was safely beyond the jurisdiction of any court. It was, as a British court pointed out in a 2002 decision, a "legal black hole."

Second, detainees at Guantanamo have been arbitrarily detained, physically abused, and even tortured. They have spent years without any fair legal process, held on the basis of secret evidence.

Third, Guantanamo has harmed the fight against terrorism. It has undermined international cooperation and alienated Muslim communities. And fourth, the moral authority of the United States has been severely compromised by Guantanamo's existence, with disastrous results for the U.S. government's ability to promote human rights abroad.

Four and a Half Years of Detention Without Charge

We'll start by briefly reviewing the facts. The first detainees were brought to Guantanamo on January 11, 2002, more than four and a half years ago. Since then, none of the roughly 775 detainees who have been held there has ever seen a judge. For the first two-and-a half years that detainees were held on Guantanamo, none of them were even allowed to see lawyers.

Because the Bush Administration has deemed them unlawful enemy combatants, it has claimed the right to hold them without charge until the "war on terror" ends.

From the information that is known, it appears that only a minority of the detainees were captured on the battlefield in Afghanistan. Many detainees were picked up in Pakistan, often being sold to American troops for a bounty; others were arrested in countries ranging from Bosnia to Indonesia to Egypt.

Since Guantanamo opened, 38 detainees have been declared "no longer enemy combatants" -- a status that's the official equivalent of "oops" -- and hundreds more have been returned home

OGC AMNESTY/CCR 114

because the U.S. had decided they were no longer a threat. The vast majority of these ex-detainees are now free, even though the U.S. has put pressure on many of their home countries to detain them.

A few detainees have sought a different way of escaping Guantanamo. Three detainees committed suicide this year; dozens more have tried to. Hunger strikes are common.

A Legal Black Hole

Even were one to believe that the Guantanamo detainees have been correctly deemed enemy combatants, there's no good reason to keep them in Cuba.

During World War II, the United States held hundreds of thousands of German and Italian POWs on U.S. territory -- in Texas, Arizona, and elsewhere. At present, we have more than two million prisoners in U.S. prisons and jails, including a number of convicted terrorists. It is obvious we could have easily incarcerated a few hundred more on U.S. soil.

So why the choice of Guantanamo? Guantanamo was attractive as a place of detention for one reason alone: it was thought to be a legal black hole. More specifically, because of a series of court rulings in the 1990s involving Haitian and Cuban refugees, Guantanamo was believed to be beyond the reach of the Constitution and the courts.

The Supreme Court's 2004 decision in Rasul v. Bush <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=466> , which held that the courts had habeas corpus jurisdiction over Guantanamo, changed this picture dramatically. Detainees got access to counsel, and information about Guantanamo began to reach the public.

The impact of Rasul has been put into question, however, by the jurisdiction-stripping provisions of the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930enr.txt.pdf> . Whether the courts will continue to monitor abuses at Guantanamo may hinge on a constitutional challenge.

Arbitrary Detention and Abuse

Detainees at Guantanamo have been subject to arbitrary detention. The combatant status review tribunals that are supposed to assess whether the detainees are enemy combatants base their decisions on secret evidence that the detainees have no opportunity to confront. The decision-making process is quick, efficient, and nearly worthless in terms of reaching a reliable result.

Moreover, the U.S. war with Afghanistan is long over, and thus the only legitimate justification for these men's detention is gone. As of June 19, 2002, when Hamid Karzai was elected to the presidency of Afghanistan, the international armed conflict in that country was at an end. Detainees from that conflict should either be tried for war crimes or other criminal offenses, if there's evidence against them, or they should be returned to Afghanistan.

With arbitrary detention, has come physical abuse. The President said in his February 7, 2002, Executive Order that the detainees at Guantanamo should be treated in accordance with the Geneva Conventions, "to the extent appropriate and consistent with military necessity." In adding this caveat to the rule of humane treatment, he opened the door to a whole series of abuses.

Ex-detainees have reported beatings and cruel treatment, but it may be that the worst abuses at Guantanamo were endured by a prisoner who remains detained. Muhammed al-Qahtani, a Saudi citizen who is alleged to have been implicated in the September 11 plot, was physically and mentally mistreated from mid-November 2002 to early January 2003. For six weeks, he was intentionally deprived of sleep, put into painful stress positions, forced to stand for long periods, and subject to sexual and other physical humiliation. He was refused trips to a latrine, so that he urinated on himself at least twice. He was also threatened with forced enemas, and on one occasion was subjected to one.

Human Rights Watch has obtained an unredacted copy of al-Qahtani's interrogation log, and believes that the techniques used during al-Qahtani's interrogation were so abusive that they amounted to torture.

Weakening the Counterterrorism Effort and Undermining U.S. Leadership on Human Rights

Another reason to close Guantanamo is that abuses committed in the name of counterterrorism have aggravated the terrorist threat. International counterterrorism cooperation has

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weakened, as courts in places as varied as Spain, France and Kuwait have condemned Guantanamo and refused to accept information obtained there. Worse, the use of torture and arbitrary detention against Muslim detainees has alienated Muslim communities whose good will and cooperation is needed, both in reporting suspicious activity and in bolstering shared norms against terrorism.

A final reason to oppose Guantanamo is that its existence has severely weakened the U.S. government's moral standing, and therefore its ability to press for human rights improvements abroad. Worse, abusive governments now claim that Guantanamo gives them license to engage in similar practices.

A $125 Million Mistake

The good news is that the detainee population at Guantanamo has been steadily shrinking since late 2004. There are currently 430 detainees at Guantanamo, and over 100 more are slated for release.

The bad news, however, is that Guantanamo shows little sign of readying for closure. Right now, in fact, it's expanding. The U.S. military announced last week that it plans to spend $125 million to build a new compound at Guantanamo, including a new high-security detention facility.

Congress, which will soon be debating legislative proposals to correct the worst aspects of the Military Commissions Act, should also consider ways of blocking this unnecessary new mistake.

http://writ.news.findlaw.com

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Pentagon terror trial plans are premature

McClatchy-Tribune News Service

(MCT)

The following editorial appeared in the Miami Herald on Friday, Nov. 24:

Building a massive compound for terror trials at Guantanamo Bay would be like erecting a house without a foundation. The Pentagon should have a court-approved legal foundation for trying terror suspects before Congress even considers authorizing a Guantanamo courthouse complex that could cost as much as $125 million.

Miami Herald reporter Carol Rosenberg discovered the Pentagon's construction plans last week. An obscure notice posted on the Internet for contractors called for building a courthouse and accommodations for up to 1,200 people. The plan includes residential, dining and work facilities as well as a high-security area for handling top-secret materials. The Pentagon wants to have the first two courtrooms ready by July; and possibly build two more courtrooms before 2008.

The estimated price tag runs $75 million to $125 million. The Pentagon has no money or permission for the courthouse project yet, but may ask for congressional authorization and funds before the end of the year. That would be foolhardy. Money shouldn't be approved, much less ground broken, unless court-approved procedures for military tribunals are established first - if, indeed, the Bush administration can craft a proposal that passes constitutional muster in the next two years.

The Supreme court struck down the Pentagon's original military-commission process for Guantanamo. Democrats, the majority in Congress come January, have signaled dissatisfaction with recent legislation setting new rules for the commissions. The Pentagon has yet to complete the new process, which surely will face lengthy court challenges.

Five years after the Guantanamo terror facility opened, hundreds of its 430 captives have pending habeas-corpus petitions in U.S. District Court in Washington that challenge the detentions. Lawyers also are challenging a review process that the Pentagon thinks justifies the indefinite detention of captives held without charges.

Given the legal uncertainties, the lame-duck Congress shouldn't bless the Pentagon's wishful courthouse plan. Indeed, next year's new Congress would do well to reexamine all current policies governing the treatment of ``enemy combatants.''

For years the U.S. government has tried to create a parallel legal universe for terrorism suspects - a place where the rules need not conform to the U.S. Constitution or international legal standards. U.S. moral authority has been eroded by the questionable interrogations,

OGC AMNESTY/CCR 116

detentions and judicial practices at Guantanamo Bay - and U.S. allies in the war on terror have been alienated. Yes, it is time to change course.

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Denver Post
Terror detainees still face legal limbo
Justice for the 9/11 victims requires that high-level detainees be charged and prosecuted. And, Congress should restore the right of habeas corpus.

A few months back, when President Bush was pushing Congress for the authority to try suspected terrorists before military commissions, he made a surprise announcement confirming the existence of secret overseas prisons.
Among those behind bars were 14 al-Qaeda terror suspects who were relocated to the military prison at Guantanamo Bay.
President Bush said then that the legislation was necessary to bring these people and others to justice. Among them was Khalid Shaikh Mohammed, considered the mastermind of the Sept. 11, 2001, terror attacks.
The president was asking Congress for powers the U.S. Supreme Court had ruled unconstitutional, and he cast it as a time-sensitive situation.
"As soon as Congress acts to authorize the military commissions I have proposed, the men our intelligence officials believe orchestrated the deaths of nearly 3,000 Americans on Sept. 11, 2001, can face justice," Bush said in September. "To start the process for bringing them to trial, we must bring them out into the open."
But what seemed so urgent at the time is now taking on a different tenor.
U.S. Attorney General Alberto Gonzales told The Denver Post editorial board Monday that the administration can hold Guantanamo Bay detainees indefinitely, without any judicial proceeding through the "period of hostilities." Which is to say, indefinitely.

The administration has categorized an untold number of detainees as "unlawful enemy combatants," saying they are members of a non-state terrorist group. It's a different class of detainee than POWs, typically uniformed combatants captured during battlefield-style warfare. The U.S. in previous wars has held enemy combatants. But the Military Commissions Act of 2006 broadened the definition of illegal enemy combatant to include those providing support to terrorists. As such, they have no right to a real day in court. "We have no obligation to bring people to justice," Gonzales said.
And even when military commission proceedings begin, Gonzales predicted slow going due to defendants' legal maneuverings.
"At every opportunity they're going to bring challenges," he said. But these opportunities have shrunk considerably.
In fact, Congress gave the president the authority to use military commissions in a bill that included one particularly controversial provision - denying the detainees a procedure known as habeas corpus, a right that obligates the government to justify imprisonment before a federal judge.
With the removal of habeas rights, the detainees have no way of challenging their status in federal court. That alone has spawned litigation that seems sure to make its way to the U.S. Supreme Court.
Meanwhile, the wheels of makeshift justice are grinding slowly. Government officials told The New York Times earlier this month that the first military commission trials at Gitmo could begin this summer, but those will not involve any of the 14 senior al-Qaeda members recently moved to the prison in Cuba. Along with Shaikh Mohammed, they include Ramzi Binalshibh, an alleged would-be Sept. 11 hijacker, and Abu Zubaydah, who is said to have served as a link between al-Qaeda leader Osama bin Laden and cells in his organization.
It could be well into 2008 before those high in the command structure of al-Qaeda would be tried, or never. We believe that egregious crimes should be prosecuted as quickly as practical, as the president suggested in his September remarks. Victims of Sept. 11 have already waited five years for justice.

OGC AMNESTY/CCR 117

As for those who are in detention at the military prison in Guantanamo Bay, the denial of habeas corpus is unnecessary and un-American. While the U.S. Supreme Court almost certainly will get a crack at this questionable law, members of Congress shouldn't wait. They should review the military commissions act as an early order of business in 2007 and at the very least restore the right of habeas corpus to those imprisoned at Guantanamo.
It is a step that will bring the U.S. back into line with our own traditions and rights.

http://www.denverpost.com

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The Crimson
Prof. Praises Guantanamo Case
Published On 11/21/2006 3:04:43 AM
By PARAS D. BHAYANI <http://www.thecrimson.com/writer.aspx?ID=1202272>
Crimson Staff Writer

The professor who litigated this summer's landmark U.S. Supreme Court case ruling that military commissions for Guantanamo Bay detainees violate Geneva Convention prohibitions lauded that decision at the Harvard Law Review's annual Supreme Court Forum yesterday.

Georgetown University law professor Neal K. Katyal, a former Justice Department official, said in his address yesterday that the central issue in the case was whether presidents must follow the laws that govern warfare.

"This case is not just on military commissions alone," Katyal said. "The central premise is that if Congress says, 'Mr. President, you can't do this,' he must try to get the law changed and can't just ignore that law in a series of secret memorandums."

Katyal added that while courts historically defer to the president during wartime, this deference exists for two reasons: the expertise of the military and diplomatic bureaucracy and the fact that the president is accountable to the electorate.

"The case for deference is weakened when bureaucratic expertise is ignored," Katyal said, noting that former U.S. Secretary of State Colin Powell and many military lawyers had been "cut out of the picture" during the creation of the military commissions.

Katyal thanked several Harvard Law School professors who helped him prepare for the case, including Loeb University Professor Laurence H. Tribe '62, who co-wrote an influential 2002 piece with Katyal questioning the legality of the commissions; Story Professor of Law Daniel J. Meltzer '72, who answered questions about federal jurisdiction; and Hauser Professor of Human Rights and Humanitarian Law Ryan Goodman, whose arguments on Common Article III of the Geneva Convention were ultimately adopted by the Court.

Katyal said that Tribe and Meltzer helped him practice before the actual oral arguments. After one session in which Tribe told him that his case was strong substantively but his performance a bit weak, Katyal hired a former "Cheers" actor for stage training.

"The guy came in and said, 'Practice your oral argument in front of me, but do it holding my hand,'" Katyal recalled to loud laughs. "I was like, 'Whatever.'"

"The key was to have a conversation with the justices instead of doing a formal, stiff presentation," he added.

Joining Katyal at yesterday's event was the Kennedy School's Stanton Professor of the First Amendment Frederick Schauer, who spoke about the judiciary's agenda relative to that of the public—the topic of the 60-page foreword he wrote for the current issue of the Law Review.

OGC AMNESTY/CCR 118

Noting that Medicare, Social Security, fuel costs, taxes, and the war in Iraq are among the most salient political issues today, Schauer said that these "are all issues on which the Supreme Court has been largely invisible."

He noted that at the time of Brown v. Board of Education, the nation was preoccupied with communism and that at the time of Roe v. Wade, the nation was preoccupied with Vietnam and the Watergate scandal.

"I am not claiming that the Supreme Court is not important," Schauer said, pointing out the difference between "salience" and "importance."

The annual event marked the publication of the Law Review's first issue of the year, which covers the Supreme Court's previous term.

The format of this year's forum—Schauer and Katyal spoke individually about separate topics—was different from last year's inaugural forum.

Then, Judge Richard A. Posner and two law professors openly debated the role of foreign court rulings in American law.

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MEPs To Hear From Former Guantanamo Prisoner About Torture Claims

European Union lawmakers on Wednesday are expected to hear from a German-born Turkish citizen who claims that German soldiers in Afghanistan mistreated him before he was transferred to the US military prison at Guantanamo Bay, Cuba.

Murat Kurnaz was held for more than four years at Guantanamo Bay, classified by Washington as an "enemy combatant". He was released last August.

Kurnaz was arrested in Pakistan two months after the September 11, 2001 terrorist attacks in the United States and handed over to US authorities who took him to Guantanamo Bay in January 2002.

The US suspected him of supporting Afghanistan's former Taliban rulers.

Kurnaz, 24, has claimed that after his arrest he was initially taken to a US military prison in Afghanistan, where two German soldiers mistreated him while he was interrogated.

The German Defence Ministry is investigating the claims, but has said it had no evidence that German soldiers had interrogated Kurnaz.

A German parliamentary committee is currently studying whether German security agencies breached any German rules while assisting post-2001 US anti-terrorism operations.

Members of the European Parliament (MEPs) earlier this year slammed the former German government for failing to "come clean" over its involvement in the Kurnaz case.

His lawyer claims that Germany refused an US offer to release Kurnaz in October 2002, saying that there was no case against him.

US authorities never issued an arrest warrant and there was no legal procedure against Kurnaz, the lawyer has said.

During his term in Guantanamo, Kurnaz claims he was repeatedly mistreated, psychologically tortured and kept undernourished.

OGC AMNESTY/CCR 119

A special European Parliament committee is investigating charges that the CIA ran secret camps on European territory and whether national governments were complicit. The probe started in January.
http://www.playfuls.com/

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Germany 'tried to paint me as a liar': Kurnaz
22 November 2006
Brussels (dpa) - A former Guantanamo prisoner on Wednesday accused German and Turkish authorities of failing to help him escape unjustified imprisonment and torture linked to his years-long term in the US military camp on Cuba.

Murat Kurnaz, a German resident with Turkish citizenship, was held for more than four years at Guantanamo Bay, where he was classified by Washington as an "enemy combatant." He was released last August.

Neither the German nor the Turkish authorities tried to release him from Guantanamo but instead shifted their responsibility on to the US government, Kurnaz told a special European Parliament committee investigating charges of illegal US secret service activities in Europe.

Kurnaz was arrested in Pakistan two months after the September 11, 2001 terrorist attacks in the United States. He was handed over to US authorities who took him to Guantanamo in January 2002, saying he was suspected of supporting Afghanistan's former Taliban rulers.

Kurnaz told MEPs that he went to Pakistan to "deepen his (Muslim) faith" but that he had never done anything illegal.

But Germany rejected a US offer to release Kurnaz from Guantanamo in October 2002, with Washington saying that there was no case against him, his lawyer told Euro MPs.

Back in Germany, however, authorities "tried to paint me as a liar though they had decided to leave me in Guantanamo," Kurnaz said.

The Turkish government also "didn't bother at all about me while I was imprisoned (on Guantanamo)," he said. "They thought I was a spy for Germany," Kurnaz added.

Turkish officials interrogating him in the camp had told him that it was up to the US to relase him, Kurnaz said. Other Guantanamo inmates with Turkish citizenship, however, were taken back to Turkey, he claimed.

Kurnaz also said that German soldiers in Afghanistan mistreated him before he was transferred to Guantanamo Bay.

US forces had handed him over to two members of the German Special Forces Command, KSK, who had pulled his head back, banged his head on the floor and one stamped on him, Kurnaz said.

"They asked me if I knew who they were and then they said 'We are the KSK'," he told Euro MPs, adding that the men had German flags on their uniforms and spoke German with him.

"I thought they would have some questions and that they could help me, but they told me I had chosen the wrong side," Kurnaz said.

The German Defence Ministry is currently investigating the claims. After saying that it had no evidence that German soldiers had interrogated Kurnaz, the authority last week admitted that KSK forces had been "in contact" with him, German media reported.

OGC AMNESTY/CCR 120

"It doesn't take much imagination (to believe) that the KSK soldiers were capable of doing that," Kurnaz said. "They were there to help the Americans, and we know from the Abu Ghraib case what US soldiers were doing there."

Kurnaz also told the European committee that officials from Denmark and Belgium had visited nationals imprisoned in the Guantanamo camp.

A German parliamentary committee is currently studying whether German security agencies breached any German rules while assisting post-2001 US anti-terrorism operations.

Euro MPs earlier this year slammed the former Social Democrat-Green German government for failing to "come clean" over its involvement in the Kurnaz case.

US authorities never issued an arrest warrant and there was no legal procedure against Kurnaz, his lawyer has said.

During his term in Guantanamo, Kurnaz claims he was repeatedly mistreated, psychologically tortured and kept undernourished.

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2 Pakistanis in Guantanamo Bay should be released, rights group says

ISLAMABAD, Pakistan: A local rights group on Thursday urged Pakistan's government to push for the release of two citizens being held at the U.S. detention facility in Guantanamo Bay.
Saifullah Paracha, 61, a multimillionaire Pakistani businessman, disappeared in July 2003 after he left on an overseas business trip. His family later learned he was in U.S. custody after being arrested at Bangkok's airport for allegedly helping finance al-Qaida.
Majid Khan, 26, a Pakistani whose family moved to the United States in 1996, was captured in Pakistan's southern city of Karachi in 2003 for alleged al-Qaida links. It was only in recent weeks that his wife received a letter from him, confirming his detention at Guantanamo Bay.
Paracha and Khan's families claim the men are innocent.
http://www.iht.com

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'State secrets privilege' blocks fired translator from suing FBI

By Catherine Rampell, USA TODAY

Sibel Edmonds, who formed the 100-plus member National Security whistle-blowers Coalition in 2002, began working as a linguist for the FBI the week after the Sept. 11, 2001, terrorist attack.
Several months into her contract, she discovered "shoddy" translations relevant to 9/11 created by translators who had "failed the proficiency exams," she says.
A report by the Justice Department's inspector general subsequently confirmed that at least one translator had failed the FBI's language proficiency exams. Edmonds says the translator was sent to Guantanamo Bay to translate "the most sensitive terrorist-related information" from interviews of detainees.
Edmonds also notified her superiors that a co-worker was responsible for translating wiretaps of a company the latter used to work for. The co-worker "was blocking the intelligence coming from her family members and friends," Edmonds says.
Edmonds took a polygraph test and was investigated for typing her allegations – which contained classified information – on her home computer, even though her supervisor had given permission for her to do so, the inspector general's report said.
The Middle Eastern language specialist was fired in March 2002. When Edmonds asked why, she received a letter saying her contract had been "terminated completely for the government's convenience," according to legal briefings her lawyers filed in the lawsuit contesting her firing.

OGC AMNESTY/CCR 121

In its final report, the inspector general concluded that "we believe that many of (Edmonds') allegations were supported, that the FBI did not take them seriously enough, and that her allegations were, in fact, the most significant factor in the FBI's decision to terminate her services."
The same month the report was released, Edmonds' lawsuit to contest her firing was dismissed. Legal briefs show the government had invoked the so-called state secrets privilege, arguing that the lawsuit would jeopardize national security.
The state secrets privilege – a series of U.S. legal precedents – has been cited by the federal government at least 18 times since 9/11 and at least 81 times since the privilege was first recognized in 1953, according to the Reporters Committee for Freedom of the Press.
"Instead of protecting and standing up for whistle-blowers, this is just giving the complete green light to retaliate," says Edmonds, who lost her appeal.
FBI spokesperson Bill Carter declined to comment, citing privacy concerns.
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(b)(6)
Office of the DoD General Counsel (Legal Counsel)
(b)(2) (DSN (b)( ))
(fax)
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From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Wednesday, November 29, 2006 4:50 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 123

Cc: (b)(2),(b)(6) [redacted]

Subject: GTMO Bird: Terrorist escape pul-i-charki; Saudi detainees claim abuse; Polland and Italy helped with secret detentions; GTMO courthouse; Congress redo on habeas; GTMO atty frustrated; GTMO detainee denied entry into Aus

All:

Here is today's GTMO Bird.

Thanks,

(b)(6) [redacted]
Office of the DoD General Counsel (Legal Counsel) (b)(2) [redacted]
(b)(2) [redacted] (DSN (b)( ))
(fax)
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AFP: Officials Say Three 'Terrorists' Escape Afghanistan's Main Prison
JPP20061123067005 Hong Kong AFP in English 0940 GMT 23 Nov 06 KABUL, Nov 23, 2006 (AFP) - Three men held at Afghanistan's main prison on terrorism charges walked out of the high-security facility by pretending to be visitors, while another inmate was found dead, officials said Thursday.

The men who escaped from Pul-i-Charki prison on the outskirts of Kabul on Wednesday were facing sentences ranging from death to 15 years in jail after being convicted of terror offences, officials said on condition of anonymity.

They did not say if the three were linked to the Al-Qaeda or Taliban extremist groups active in Afghanistan or give details of the charges.

The interior ministry refused to comment, saying it was trying to collect details.

The escape echoed one in January in which seven low- to mid-ranking Taliban militants fled the jail by pretending to be visitors. Inside help was alleged in that incident.

OGC AMNESTY/CCR 124

Officials identified the three men involved in the latest escape as: Abdul Bari who had been sentenced to death; Abdul Qadir given a 20-year term; and a man identified only as Naqibullah, sentenced to 15 years.

"The trio escaped the prison yesterday at visiting hours pretending to be visitors," an interior ministry official said.

Another police source confirmed the escape and said one prisoner had also been found dead in mysterious circumstances that may have been linked to the escape.

Pul-i-Charkhi holds criminals as well as captured low-ranking Taliban and Al-Qaeda members, including foreign fighters.

Most of the militants rounded up after the US-led invasion that toppled the Taliban regime in 2001 were transferred to the United States' Guantanamo Bay jail or one at a base in Bagram, north of Kabul.

A four-day revolt at the prison in February left around five prisoners dead. Officials said the revolt was instigated by about 300 Taliban and Al-Qaeda prisoners trying to create chaos so they could escape.

The massive and rundown jail is notorious for the detention and torture of thousands of people during the communist rule of the 1980s.

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Arab News
RIYADH, 29 November 2006 - A delegation of lawyers representing Saudi detainees held at Guantanamo Bay has informed Human Rights Watch (HRW) officials here that the detainees are still receiving brutal and inhumane treatment.

The lawyers noted that the detainees had written letters in which they tell of prisoners being shot at and gassed by guards. A letter read out to HRW officials by Abdul Aziz Al-Subayil, a Saudi lawyer who represents some of the detainees, revealed that the Holy Qur'an was also being desecrated by guards.

The letter said: "We saw horrible things going on... Detainees being shot at, the desecration of the Holy Qur'an, as well as guards using gas canisters on detainees. Some of the gases choke prisoners; others make them unconscious. One Afghan was shot 12 times because he wanted to protect the Holy Qur'an in his possession from being desecrated."

The detainee said he did not know when he would be able to write to his lawyer again since the guards were constantly confiscating pens and personal papers and would only give a short time for him to read the lawyer's response.

Nahis Al-Habadri - whose brother's body was returned to the Kingdom after US officials said he had committed suicide in Guantanamo - said that US authorities had not sent his lawyer the necessary papers they had requested. "We asked them for seven things, among which was the death certificate which mentioned the time of death as well as the video tapes from cameras which keep them under surveillance on a 24-hour basis. These have not been sent despite many appeals," he explained.

He said US authorities had sent a death certificate without mentioning the time of death. He also refused to accept that his brother had committed suicide. "When we received his body, we saw several bruises on his head. We all saw that his Adam's apple had been removed and there were indications on his arm that he had had several injections."

OGC AMNESTY/CCR 125

Umm Badr, one of the two mothers who attended the meeting with HRW officials, said she had not heard from her son since last April. "All his letters to us have stopped and we no longer know anything about him."

Kenneth Rose, executive director of HRW, said part of the delegation's mission here in the Kingdom was to receive information from the families of Saudi prisoners. He said the organization was pressuring the US government either to release the prisoners since no evidence against them exists - or to put them on trial.

Rose explained to the families of the Saudi detainees that HRW was not affiliated to any American or other government, and said: "We can criticize the US government."

He pointed out that their agenda in the Kingdom was to visit prisons and government institution as well as to talk to people who have been tried under the Kingdom's legal system. "Our success depends on the free access we are given," he said.

http://www.arabnews.com <http://www.arabnews.com>
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Poland and Italy colluded on CIA detentions Poland and Italy colluded in the illegal detention of suspected terrorists by American agents, according to a report by the European parliament.

The report concludes that at least 1,245 flights operated by the CIA flew through European airspace or landed at the continent's airports.

The report expresses "serious concern" over what it claims were 11 stopovers at Polish airports made by aircraft operated by the Central Intelligence Agency.

The report was prepared by a committee examining the CIA's clandestine programme of moving detainees between third countries known as extraordinary rendition.

The document focuses on activities at Szymany airport in the north of the country, rumoured to be close to a "black site" where detainees were held in secret.

A Boeing 737 known to be used by the CIA for renditions flew from Kabul to Szymany on September 22 2003 and thence to the US detention centre at Guantánamo Bay in Cuba, the report claims. No customs controls were carried out.

This was when a number of senior al-Qaeda "high value" detainees were seized during and after the US-led invasion of Afghanistan in 2001 and were transferred from US bases there.

During 2002 and 2003, six Gulfstream jets that were regarded as synonymous with the rendition programme landed at the Polish airport.

Border guards told airport staff not to approach the aircraft and that landing procedures should be handled only by military personnel, the report alleges, citing unnamed airport employees.

The registration numbers of the vehicles that greeted the aircraft are said to have matched those associated with the nearby intelligence training base at Stare Kiejkuty.

The report also claimed that Nicolò Pollari, director of the Italian security and intelligence services, "concealed the truth" when he denied to the committee that Italian agents had played an "active role" in the abduction of Abu Omar, an Egyptian cleric, in Milan on February 17 2003.

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"If the EU's aspirations to be a 'human rights community' have any meaning whatsoever, there must now be a forceful EU response to this strong evidence that the CIA abducted, illegally imprisoned and transported alleged terrorists in Europe," said Baroness Sarah Ludford, MEP for the British Liberal Democrats and vice-chair of the committee that wrote the report.

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Miami Herald.Com

Pentagon terror trial plans are premature OUR OPINION: GITMO COURTHOUSE COMPOUND NOT A GOOD IDEA Building a massive new compound for terror trials at Guantánamo Bay would be like erecting a house without a foundation. The Pentagon should have a court-approved legal foundation for trying terror suspects before Congress even considers authorizing a Guantánamo courthouse complex that could cost as much as $125 million.

Top-secret materials

Miami Herald reporter Carol Rosenberg discovered the Pentagon's construction plans last week. An obscure notice posted on the Internet for contractors called for building a courthouse and accommodations for up to 1,200 people. The plan includes residential, dining and work facilities as well as a high-security area for handling top-secret materials. The Pentagon wants to have the first two courtrooms ready by July; and possibly build two more courtrooms before 2008.

The estimated price tag runs $75 million to $125 million. The Pentagon has no money or permission for the courthouse project yet, but may ask for congressional authorization and funds before the end of the year. That would be foolhardy. Money shouldn't be approved, much less ground broken, unless court-approved procedures for military tribunals are established first -- if, indeed, the Bush administration can craft a proposal that passes constitutional muster in the next two years.

The Supreme court struck down the Pentagon's original military-commission process for Guantánamo. Democrats, the majority in Congress come January, have signaled dissatisfaction with recent legislation setting new rules for the commissions. The Pentagon has yet to complete the new process, which surely will face lengthy court challenges.

Five years after the Guantánamo terror facility opened, hundreds of its 430 captives have pending habeas-corpus petitions in U.S. District Court in Washington, D.C., that challenge the detentions. Lawyers also are challenging a review process that the Pentagon thinks justifies the indefinite detention of captives held without charges.

Reexamine all policies

Given the legal uncertainties, the lame-duck Congress shouldn't bless the Pentagon's wishful courthouse plan. Indeed, next year's new Congress would do well to reexamine all current policies governing the treatment of ``enemy combatants.''

For years the U.S. government has tried to create a parallel legal universe for terrorism suspects -- a place where the rules need not conform to the U.S. Constitution or international legal standards. U.S. moral authority has been eroded by the questionable interrogations, detentions and judicial practices at Guantánamo Bay -- and U.S. allies in the war on terror have been alienated. Yes, it is time to change course.

http://www.miami.com <http://www.miami.com>

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United Press International

Leahy aims at giving habeas corpus

WASHINGTON, Nov. 11 (UPI) -- A battle is shaping up between Democrats and the White House over the Military Commissions Act, signed into law last month by President George W. Bush.

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Sen. Patrick Leahy, D-Vt., is expected to take over as chairman of the Senate Judiciary Committee, and The (Calif.) Daily Journal reports that Leahy is drafting a bill to undo portions of the new law in an effort to give habeas corpus rights for enemy combatants.

A spokeswoman for Leahy told the newspaper the bill would be intended to repeal portions of the law that prevent some detainees from pursuing federal court challenges to the government's authority to hold them indefinitely.

Spokeswoman Tracy Schmaler told the newspaper the goal is to "try and do something to reverse the damage."
Scott L. Silliman, Director of the Center for Law, Ethics and National Security at Duke University School of Law, told the newspaper an attempt to amend the law could set up a partisan showdown in Congress, and possibly a presidential veto.

Civil rights attorneys filed a constitutional challenge to the act after Bush signed it Oct. 17, the Journal said.
http://www.upi.com <http://www.upi.com>
*****
Senate Dems plan overhaul of military tribunals bill By Roxana Tiron
<mailto:rtiron@thehill.com> Gearing up for a major clash with the Bush administration and Republicans in Congress, several key Senate Democrats are planning to overhaul the newly minted legislation governing military tribunals of detainees.

Even before it was signed into the law last month, Democrats were criticizing the military commission bill as unconstitutional and a magnet or endless legal challenges.

Defense lawyers working on behalf of military detainees at Guantanamo Bay quickly filed suits with the U.S. District Court challenging the constitutionality of the tribunal bill because it suspends the writ of habeas corpus, a court order that would allow detainees to have the legality of their detention reviewed in court to determine whether they should be released from custody.

Sen. Chris Dodd (D-Conn.), who is running for president and who, come January, will be the second ranking Democrat on the International Relations Committee, introduced legislation today that would amend the existing law.

Dodd said he's expecting the legislation to be taken up early next year.
"The bill goes back and undoes what was done," Dodd told The Hill. Dodd was one of the top critics of the military tribunal bill the GOP hashed out with the White House and was signed into law last month.

Dodd's bill, which currently has no co-sponsors, seeks to give habeas corpus protections to military detainees; bar information that was gained through coercion from being used in trials and empower military judges to exclude hearsay evidence they deem to be unreliable.

Dodd's bill also narrows the definition of "unlawful enemy combatant" to individuals who directly participate in hostilities against the United States who are not lawful combatants. The legislation would also authorize the U.S. Court of Appeals for the armed forces to review decisions made by the military commissions.

Moreover, Dodd seeks to have an expedited judicial review of the new law to determine the constitutionality of its provisions.

Dodd is the first Democrat to take aim at the controversial military tribunals bill. But Sen. Patrick Leahy (D-Vt.), the incoming Senate Judiciary Committee chairman, also said that he is in the process of drafting "major changes" to the legislation.

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Among the planned changes are instituting habeas corpus rights for detainees and looking into the current practice of extraordinary rendition.

Leahy is among several other Democrats, including incoming Senate Majority Whip Dick Durbin (D-Ill.), who are concerned about the practice of sending suspected terrorists to countries other than the United States for imprisonment and interrogation.

The incoming chairman of the Senate Armed Services Committee, Sen. Carl Levin (D-Mich.), said he is going to look into the rendition process.

"I'm not comfortable with the system," Levin said earlier this week. "I think that there's been some significant abuses which have not made us more secure, but have made us less secure and have also perhaps cost us some real allies, as well as not producing particularly useful information. So I think the system needs a thorough review, and as the military would say, a thorough scrubbing."

Another member of the Armed Services Committee, Sen. Jack Reed (D-R.I.), said he expects Levin to look into the detainee tribunal legislation.

"That is an issue that Sen. Levin not only will think about but bring into a discussion of what can be done," he said.
Congress rushed through the terror-detainee legislation before its election break in response to a Supreme Court's ruling earlier this year that Bush exceeded his authority by establishing military tribunals to try detainees without congressional authorization.

Compromise legislation between the White House and a warring faction of Republicans led by Sens. John McCain (R-Ariz.), Lindsey Graham (R-S.C.) and John Warner (R-Va.) passed the Senate by a vote of 65-34. Leahy, Dodd and Durbin voted against the bill.

http://www.hillnews.com <http://www.hillnews.com>
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Dodd favoring prisoner reform Connecticut Post (Bridgeport) November 26, 2006 Sunday

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November 26, 2006 Sunday

Nov. 26--WASHINGTON -- Fresh from their midterm election victories, Democrats in Congress have put President Bush on notice that they intend to change the way terrorists are brought to justice.

Sen. Chris Dodd, D-Conn., introduced legislation this month that would amend the controversial Military Commission Act of 2006 that Bush signed into law in October to prosecute unlawful enemy combatants.

"I take a back seat to no one when it comes to protecting this country from terrorists, but there is a right way to do this and a wrong way to do this," Dodd said. "It's clear the people who perpetrated these horrendous crimes against our country and our people have no moral compass and deserve to be prosecuted to the full extent of the law. "But in taking away their legal rights, the rights first codified in our country's Constitution, we're taking away our own moral compass as well."

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Following the Sept. 11 attacks, Bush authorized a system of military commissions to try foreign terrorists accused of war crimes. The Supreme Court, however, ruled that such commissions needed to be established explicitly by Congress.

Art Paulson, a professor of politics at Southern Connecticut State University, said that the president could have avoided the controversy if he had simply labeled unlawful enemy combatants as either criminal suspects, or prisoners of war.

"If they were POWs, then they would have rights under the Geneva Conventions. If they were criminal suspects, then they would be entitled to our court system," Paulson said. "His failure to do that created this whole controversy."

In signing the new Military Commissions Act into law as an answer to the Supreme Court challenge, Bush said they would provide "a fair trial, in which the accused are presumed innocent, have access to an attorney, and can hear all the evidence against them."

"These military commissions are lawful, they are fair, and they are necessary."

The bill also allows the Central Intelligence Agency to continue its program for questioning terrorist leaders and operatives.

Dodd voted against the bill, as did Rep. Rosa DeLauro, D-3. Sen. Joe Lieberman, D-Conn., meanwhile, supported it, as did Rep. Christopher Shays, R-4.

Lieberman said he would have supported a Democratic alternative, but voted for the bill because "the nation and our military need a process under law to deal with a new category of enemies -- the foreign terrorists who are determined to kill innocent Americans."

Lieberman said the bill "sets clear military tribunal guidelines to try terrorist enemies of the United States charged with violating the laws of war." He also did not believe it altered the nation's responsibilities under the Geneva Conventions.

The Justice Department argues that the new law has stripped the federal courts of all jurisdiction to hear any habeas challenge by any war-on-terrorism detainee, no matter where that captive was taken prisoner. Attorneys for detainees say the law is an unconstitutional suspension of the writ of habeas corpus, because the narrow judicial review it affords fails to provide an adequate substitute.

Dodd's proposal would restore habeas corpus protections to detainees, narrow the definition of unlawful enemy combatant, bar evidence gained through coercion, and limit presidential authority to interpret the Geneva Conventions.

Congress is not expected to consider the bill in the month remaining in the 109th session, but the issue will not die. The 110th Congress will open in January with Democrats taking control of the House and Senate. They will likely attempt to change the law, as Dodd wants, but don't have the numbers to override a likely veto.

That will likely lead to the Supreme Court weighing in on the constitutionality of the law. If it strikes it down, Bush may be compelled to accept what the Democrats offer.

In challenging Bush, Dodd could draw some kudos from core Democrats and possibly gain at least some goodwill as he tests the 2008 presidential waters, said Gary Rose, a professor of politics at Sacred Heart University in Fairfield, Conn.

But, Rose concedes that the issue is personal for Dodd.

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"This proposal is not purely political. Sen. Dodd is a great admirer of his father and an advocate of due process," Rose said. "Certainly, the proposal reflects his passion not only for prosecuting terrorists but doing it in a way that improves our image in the world."

Thomas Dodd was a prosecutor at the Nazi war crime trials in Nuremberg after World War II. At a time when some in Europe were clamoring for summary execution of Nazi leaders, the Nuremberg trials offered a different course.

In opposing the military commissions bill, Dodd explained that he could not support a proposal that would damage the rule of law or the image of the United States.

"It is not just my affection for my father; it is more the affection for what they did in a moment, against public opinion, to set the gold standard and set us apart," he said. "We have been known as the nation of Nuremberg. My fear is now we will be known as the nation of Guantanamo, and I worry about that."

The senior Dodd sent more than 400 letters home during his time in Nuremberg, the insights from those letters have been absorbed by his son.

Dodd shared some of them during a speech in October before the Council on Foreign Relations in New York City.

"We decided that, if the judgments rendered at Nuremberg were to truly reflect the Allies' commitment to defeating tyranny and lawlessness, those judgments would have to come following a trial. Not a trial in name, but a trial in fact," Dodd said. "A trial that gave defendants certain rights -- such as the right to be represented by counsel, to know the charges brought, to present a defense, and to be judged by impartial finders of fact."

Rose said that he expects Democrats will rally around the proposal to restore the writ of habeas corpus to detainees swept up in the wake of the Sept. 11 terrorist attacks.

Habeas corpus, which is guaranteed in the U.S. Constitution, is a process designed to prevent the government from arbitrarily imprisoning an individual. It can only be suspended in cases of rebellion or invasion such that public safety requires.

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The New Yorker
KILLING HABEAS CORPUS
http://www.newyorker.com/fact/content/articles/061204fa_fact
<http://www.newyorker.com/fact/content/articles/061204fa_fact>
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Journal Inquirer
Dodd asks Bush to delay implementing 'detainee' law signed last month By Don Michak, Journal Inquirer
11/29/2006
U.S. Sen. Christopher J. Dodd is urging President Bush to delay implementing a law that permits permanent detention and aggressive interrogation of suspected "enemy combatants" until a new defense secretary has been confirmed and given time to review it.

In letters sent Thursday to Bush and the current Pentagon chief, Donald Rumsfeld, the five-term Connecticut Democrat said the latter's successor should thoroughly review the Military Commissions Act in direct consultation with members of Congress and military lawyers.

"I strongly believe that terrorists who seek to destroy America must be punished for any wrongs they commit against this country," Dodd wrote. "But in my view, in order to sustain

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America's moral authority and win a lasting victory against our enemies, such punishment must be meted out only in accordance with the rule of law.

"It is my belief that the provisions of the Military Commissions Act run counter to these very aims, and may actually undermine the judicial system established by the Uniform Code of Military Justice," he added.

The law passed by the House and Senate in September and signed by Bush last month was drafted in response to a U.S. Supreme Court decision which held that military panels established to try detainees at Guantanamo Bay violated both the military code of justice and the Geneva conventions.

Critics charge that the law not only allows for torture but also the suspension of habeas corpus, a constitutional right to challenge detention.

Dodd, who says he is exploring a possible race for the White House in 2008, two weeks ago introduced the "Effective Terrorists Prosecution Act" to amend the military commissions measure and speed its review to determine its constitutionality.

The senator's bill would narrow the definition of enemy combatants and restore habeas corpus rights while making evidence obtained through coercion inadmissible.

Dodd wrote Bush that he remained convinced that the "hasty" implementation of the military commissions law "might leave U.S. servicemen and women unprotected by the safeguards of the Geneva Conventions and vulnerable to abuse overseas."

In his letter to Rumsfeld, Dodd said he believed a new defense secretary "has a good opportunity to make significant changes to our national security policy and renew our commitment to universally accepted principles of human rights."

"Prosecuting America's war on terrorism," he added, "in my view will require a fresh set of eyes to thoroughly vet the provisions of the Military Commissions Act."

The day after Democrats regained control of both the House and Senate, Bush announced that Rumsfeld was leaving the Pentagon and that he was nominating former CIA Director Robert Gates, now the president of Texas A&M, to replace him.

Meanwhile, the retired Army major general who since 2004 ran the Bush administration's effort to prosecute detainees at Guantanamo, John Altenburg, quit on Nov. 11.

No one has been named as the new "appointing authority," and the post could remain empty until Gates takes office, according to the Wall Street Journal.

http://www.journalinquirer.com <http://www.journalinquirer.com>
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Axcess News
Lawyers for a Guantanamo Detainee Vent Frustration over Being Denied Access to Their Client

By Staff
(AXcess News) Washington - Friday, a federal judge denied attorneys access to their client, Guantanamo detainee Majid Khan, who was recently transferred to detention in Guantanamo after three years imprisonment in secret CIA black sites.

According to Mr. Khan's attorneys from the Center for Constitutional Rights (CCR), the court ruled that it could not order the government to allow Mr. Khan's attorney to meet with him until the Court of Appeals for the District of Columbia decides whether federal courts still have jurisdiction over Guantanamo detainees' habeas cases after the passage of the Military

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Commission Act of 2006. This question is before the Court of Appeals in the consolidated cases Al Odah v. United States of America and Boumediene v. Bush, litigated by CCR along with co-counsel. The jurisdictional question will be fully briefed before the Court of Appeals on November 20, 2006.

In its Order in Mr. Kahn's case, the District Court urged the government to address Mr. Khan's medical and psychological state: "While awaiting the District of Columbia Circuit's decision, the Court encourages the respondents to medically evaluate Khan to assess his mental and physical health, if this has not already been done, and to file with this Court a report of his condition and whether he is in need of and is receiving treatment for any physical or mental conditions, so that this information can be made available to putative counsel and Khan's family." CCR attorneys demand that the government comply.

CCR attorney Gitanjali Gutierrez said, "Majid Khan has been held for more than three years in secret CIA black sites in which the prevalence of torture and abuse is well-documented. The government has not charged him with a crime nor afforded him any hearing whatsoever in these three years. His state of mental and physical health is in serious question. The longer his access to a lawyer is denied, the more damage it will cause to his ability to remember details and facts necessary to challenge his imprisonment and torture. At a minimum, the government must heed the Court's warning and maintain transparency on the question of Mr. Khan's condition for the sake of his family and his ability to enforce his legal rights."

http://www.axcessnews.com <http://www.axcessnews.com>

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EU Report Blasts U.S. Detainee Policy
Kenneth R. Timmerman
Wednesday, Nov. 29, 2006

A European Parliament commission issued a draft report in Brussels on Tuesday that vigorously condemned the United States for apprehending terrorists on European soil and transporting them to "secret prisons" around the world.

The report called for the closure of the U.S.-run interrogation and detention facility in Guantanamo Bay, Cuba, "and for European countries to accept the return of their citizens and residents who are being held illegally by U.S. authorities."

Members of the European investigating commission have been publicly critical of the United States, but never before in such harsh terms.

Their draft report, released on Tuesday in Brussels, was a bald condemnation of the U.S.-led war on terror and of the European governments and officials who have assisted it.

It called on the European parliament to issue a resolution that "condemns extraordinary rendition as an illegal and systematic instrument used by the United States in the fight against terrorism," while chastising European countries for "the acceptance and concealing of the practice."

In a throwback to the policies of the Clinton administration, the European report insisted that "terrorism must be fought by legal means," and insisted that the United States "rethink the relationship between the need for security and the rights of individuals."

The Europeans also gave a nod to congressional Democrats, by "[welcoming] the announcement by the incoming majority in the U.S. Senate" that it intended to hold hearings on rendition and CIA secret prisons.

The European Parliament Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners was established in January, and

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has sent delegations to Macedonia, the United States, Germany, Britain, Romania, Poland and Portugal to investigate CIA activities.

In a hearing earlier this year, the commission released detailed flight logs of hundreds of secret CIA flights, identifying the airplanes used for renditions and the CIA proprietaries that operated them.

Loose Lips
These are considered some of the Agency's most highly-valued secrets. Shell companies that own and operate aircraft "cost us a fortune to set up," a former CIA operations officer told NewsMax. "And now it is going to cost us a fortune to replace them."

The report revealed that since October 2001, the CIA has operated "at least 1,245 flights . . . into the European airspace," and chastised European governments for "relinquishing their control over their airspace and airports by admitting flights operated by the CIA."

The report called on all European countries that have not already done so to "initiate independent investigations into all stopovers made by civilian aircraft carried out by the CIA" since 2001, and called for a review of existing European anti-terrorism legislation "to avoid any repetition" of the CIA extraordinary renditions.

It revealed that 336 CIA aircraft were stopped in Germany, 170 in Britain, 147 in Ireland, 91 in Portugal, 68 in Spain, 64 in Greece, and 57 in Cyprus.

After the United States, the two countries singled out for the harshest treatment in the draft report - Poland and Romania -ironically had the fewest CIA stopovers, with just 21 in Romania and 11 in Poland.

The anti-American tone of the draft report was stunning, even to close observers of the European investigation.
Members of the investigating committee, headed by Italian parliamentarian Giovanni Claudio Fava, boasted that they had met "confidentially" with former CIA officers, who provided them with inside information.

"Not me," said former CIA Director R. James Woolsey, who met with the committee in Washington this May. "I refused to talk to them at all on these subjects," he told NewsMax on Tuesday. "I only talked on public intel issues."

"My whole meeting with them was in the presence of the press and on the record," he added. Woolsey is not mentioned in the European report, although the report heaps praise on reporters from the Washington Post and ABC News for helping to break the story.

The Europeans also lauded Human Rights Watch and Amnesty International for their role in the initial investigations into so-called "ghost detainees."

In addition to its harsh criticism of the Bush administration, the report also went after Bush allies in Europe, including former Italian prime minister Silvio Berlusconi and British Prime Minister Tony Blair.

Tight Lips
It singled out several European Union officials by name for stonewalling the investigation. Top EU official Javier Solana was guilty of "omissions and denials" in his declarations to the committee, the report said.

EU Counterterrorism coordinator Gijs de Vries was noteworthy for "the lack of credibility of his statements" to the commission, which suggested he be fired and his position be eliminated.

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EUROPOL director Max-Peter Ratzel also incurred the commission's ire for his refusal to testify, "especially since it appears that liaison officers, notably from the U.S. intelligence services, have been posted to his office."

Current and previous NATO secretaries general Jaap de Hoop Scheffer and Lord Robertson took it on the chin for slighting the commission.

Particularly galling to Fava and his fellow commissioners was NATO's refusal to provide the classified minutes of the Oct. 4, 2001 NATO decision to activate the mutual defense clause of the NATO treaty at the request of the United States, thus triggering European assistance in the war on terror.

Helping the European investigation was an organization known as the European Organization for the Safety of Air Navigation, Eurocontrol, which coordinates air traffic control standards and airport security. Eurocontrol provided the detailed flight logs for the clandestine CIA flights. The report thanked Eurocontrol for its "excellent cooperation and the very useful information" it shared with the commission.

CIA Under Scrutiny
Fava and his fellow commissioners called on public prosecutors and judges throughout Europe to follow the lead of the Italian court that has handed down an indictment against CIA clandestine officer Robert Seldon Lady and 26 others for allegedly kidnapping an Egyptian Islamist in Milan.

Nasr Osama Mustafa Hassan, alias Abu Omar, was abducted off the street in Milan on Feb. 17, 2003. According to an eyewitness cited in the indictment, "two men in Western clothing" checked his identity papers, then "forced him to get into a white van and drove off immediately at great speed."

They took Abu Omar to the U.S. military airbase in Aviano, and then flew him to Egypt where he was jailed and interrogated.

The Italian court identified Robert Lady and the 26 others through credit card receipts and hotel bills. "If nothing else, they were guilty of incredibly poor tradecraft," two former CIA officers who were aware of the case told NewsMax.

Robert Lady and the others have been charged with kidnapping, a felony which could lead to stiff prison sentences if they are convicted, as observers believe they will be.

The CIA refused to comment on the case, calling it "a legal matter."
http://www.newsmax.com <http://www.newsmax.com>
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ABC Newonline
Ex-Guantanamo inmate refused visa to promote film The Democrats have asked the Federal Government to explain why a British man has been banned from entering Australia.
Ruhal Ahmed is a former prisoner at Guantanamo Bay, but was released from the US facility without charge after pressure from the British Government.

A film has been made about his experience, but ASIO has refused to grant him a visa to travel to Australia to promote it.

Justice Minister Chris Ellison says he cannot discuss the reasons behind the ruling.
"Owing to the confidential nature of these security assessments, it would be inappropriate for me to comment on individual cases or specific information that underpins assessments," he said.

OGC AMNESTY/CCR 135

"Any person who believes ASIO has acted inappropriately may make a complaint to the office of the Inspector General of Intelligence and Security."

http://www.abc.net.au <http://www.abc.net.au>
*****
Islamic Republic News Agency
German MPs urge probe of US military's illegal transport of terror suspects Germany <http://www.irna.ir/en/news/menu-234/key-11037/> -US <http://www.irna.ir/en/news/menu-234/key-12199/> -Prisoners <http://www.irna.ir/en/news/menu-234/key-13374/>
German opposition lawmakers called for an inquiry into the role of the Germany-based US European military (EUCOM) headquarters in the illegal transport of terror suspects to the notorious American Guantanamo Bay prison camp, the daily Frankfurter Allgemeine Zeitung reported Wednesday.

The legal affairs spokesman of the radical leftist Linke Party, Wolfgang Neskovic announced he would raise the issue in the parliamentary control panel.

A senior legislator of the Green Party, Hans-Christian Stroebele said there have been 'strong indications' that EUCOM was involved in the transfer of alleged terrorists.

German television reported earlier that the EUCOM headquarters, located in the southern city of Stuttgart, played a major role in the in the 2002 transport of terror suspects.

Germany's ARD public television network said that the US European Command headquarter was used to organize the January 2002 transfer of six Algerian prisoners from Bosnia to the US air base in Incirlik, Turkey.

ARD quoted what it said was a secret EUCOM report.
German prosecutors announced Monday they were investigating a report that US officials used a military headquarter in Stuttgart to help coordinate the transfer of terror suspects.

The German government claimed earlier that it had 'no knowledge of such flights'.
Deputy government spokesman Thomas Steg stressed that since EUCOM is a 'facility of the US government', Berlin could not provide information about individual activities of EUCOM.

Last month, the German Federal Prosecutors Office had announced it was looking into allegations that the US army had illegally detained nd possibly tortured terror suspects at an American military base in the southwestern city of Mannheim.

A delegation of the European parliament visited Berlin last month to investigate the extent of the German government's complicity with illegal CIA activities in Europe.

Berlin has consistently denied any involvement in the CIA kidnappings of terror suspects.
http://www.irna.ir <http://www.irna.ir>

OGC AMNESTY/CCR 136

(b)(6)

From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Thursday, November 30, 2006 4:57 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 137

Cc: (b)(2),(b)(6) [redacted]

Subject: GTMO Bird: Abducted man seeks redress; Boeing is ravel agent for CIA; AP passed on terrorist propaganda;Padilla; GTMO justice;Begg speaks about time in GTMO

All:
Here is today's GTMO Bird.
Thanks,
(b)(6)
++++++++++++++++++++++++++++++
N.Y Times
Man Mistakenly Abducted by C.I.A. Seeks Redress RICHMOND, Va., Nov. 28 - A lawyer for a German man who was abducted while on vacation in Macedonia and said he was tortured while in C.I.A.
<http://topics.nytimes.com/top/reference/timestopics/organizations/c/central_intelligence_agency/index.html?inline=nyt-org> custody in Afghanistan urged a federal appeals court on Tuesday to reinstate his lawsuit against the agency, which had been dismissed for national security reasons.

In May, a federal trial judge threw out the suit brought by Khaled el-Masri, who said he was an innocent victim of the Central Intelligence Agency's program of transferring terrorism suspects secretly to other countries for detention and interrogation. Judge T. S. Ellis III of Federal District Court in Alexandria said that although it appeared a great injustice might have been done to Mr. Masri, he was persuaded by the government that there was no way to even begin a trial without impermissibly disclosing state secrets.

Benjamin Wizner, a lawyer with the American Civil Liberties Union <http://topics.nytimes.com/top/reference/timestopics/organizations/a/american_civil_liberties_union/index.html?inline=nyt-org> , told a three-judge appeals panel on Tuesday that the government's position was absurd because what happened to Mr. Masri had hardly remained secret. He noted that the German government was openly investigating whether its officials had played a role in Mr. Masri's ordeal, and numerous news accounts have quoted unidentified American officials as confirming what happened.

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Mr. Wizner said the government had not plausibly explained how national security interests might be harmed by a trial. He said President Bush acknowledged the C.I.A.'s program, known as extraordinary rendition, this summer, and it is widely known that other governments have been involved. A trial would not disclose state secrets but would merely involve "confirmation of a fact the entire world already knows," he said.

Gregory G. Katsas, a senior Justice Department lawyer, told the judges that courts must defer to the executive branch when it invokes the state secrets doctrine, which was first recognized by the Supreme Court in 1953.

Mr. Katsas said Porter J. Goss <http://topics.nytimes.com/top/reference/timestopics/people/g/porter_j_goss/index.html?inline=nyt-per> , who was the C.I.A. director when the suit was brought, filed a secret statement with the court outlining the agency's case against a trial. Mr. Katsas said the statement provided a detailed account of how seemingly innocuous disclosures "will have a cascading effect that will have devastating consequences" for national security.

Mr. Masri sat stolidly in the first row of the courtroom during the 50-minute argument. A large man with graying hair cinched in a ponytail, he said in an interview later that he was infuriated with Judge Ellis's view that there might be no remedy for the injustice apparently done to him.

Mr. Masri, who was born in Kuwait, was arrested in Macedonia on Dec. 31, 2003, and flown to a prison in Afghanistan, where he was held for five months. During his incarceration, he has said, he was shackled, beaten and injected with drugs.

On Tuesday, he said through an interpreter that he was kept in deplorable conditions "not fit for a human being at all." Upon arrival in Afghanistan, he said, he was told that he was in a place where he had no right to recourse for what happened to him.

"I would like an explanation for what happened," he told reporters. "I would like an apology."
Mr. Wizner, his lawyer, said that although he believed Mr. Masri was entitled to financial compensation, he was not necessarily seeking anything beyond some official expression of remorse.

United States officials have been quoted anonymously in news reports as saying that Mr. Masri's case was one of mistaken identity; intelligence authorities may have confused him with an operative for Al Qaeda <http://topics.nytimes.com/top/reference/timestopics/organizations/a/al_qaeda/index.html?inline=nyt-org> with a similar name.

The officials said Mr. Masri was released in May 2004 on the orders of Secretary of State Condoleezza Rice <http://topics.nytimes.com/top/reference/timestopics/people/r/condoleezza_rice/index.html?inline=nyt-per> , then the national security adviser, after she learned he had been mistakenly identified as a terrorism suspect. He was freed in Albania, where he was left to make his way home to Germany, which he likened to being treated "like a piece of luggage."

Mr. Masri, who had earlier been denied permission to come to the United States to attend the hearing, said he has not been able to find a job since his return to Germany. "Both my Arab and German friends keep their distance," he said.

On Wednesday, he is scheduled to meet with some Democrats <http://topics.nytimes.com/top/reference/timestopics/organizations/d/democratic_party/index.html?inline=nyt-org> on the Senate Judiciary Committee who are exploring the rendition

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program and the Bush administration's increasingly frequent invocation of the state secrets doctrine to block lawsuits.

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Seattle Weekly
Flog Is My Co-Pilot
Boeing is alleged to be a travel agent for torture.
By Rick Anderson <http://www.seattleweekly.com/authors/rickanderson/>
Since 2003, human-rights investigators and news media reports have described a Boeing Business Jet as one of the most-dreaded planes in the Central Intelligence Agency's clandestine air force. The modified 737-a model rolled out in Renton in 2001-was built for executive fun and comfort. But it is alleged to be the flagship of the CIA's "extreme rendition" squadron, ferrying suspected terrorists to secret agency prisons or countries where the U.S. is said to outsource torture.

The use of this jet, with a 6,000-mile flying range and plush customized cabin, has until now been Boeing's only connection to the prison airlifts. But a British author and an ex-prisoner's attorney say that records uncovered by Spanish investigators show Boeing has a more direct role-planning and organizing the flights through a unit of its Seattle commercial airplane division.

Boeing won't confirm or deny the claim. But the Spanish documents, and an investigation by Amnesty International and the Council of Europe, indicate Boeing was making arrangements for as many as 1,000 rendition flights through 14 countries by four CIA planes, including that notorious Boeing Business Jet.

"Travel agent for the CIA seems the right words," Stephen Grey says of Boeing's role. A British author, he has written about prisoner rendition and the CIA's global torture program in his new book, Ghost Plane, in which he has documented about 90 rendition flights. (Amnesty International estimates "hundreds of victims" wound up at CIA "black sites.")

The Bush administration has acknowledged transfers of Al Qaeda suspects to Guantánamo Bay but has denied the U.S. engages in torture-transfer flights. Secretary of State Condoleezza Rice said in 2005 that the United States "does not use the airspace or the airports of any county" for such purposes. Senate Democrats, who take control in January, are promising a full investigation.

According to Grey and others, a wholly owned Boeing subsidiary called Jeppesen Inc. cleared the airways and runways for the CIA, providing landing and navigation assistance, scheduling flight crews, and booking hotels for them. Jeppesen is a unit of Boeing's Seattle-based Commercial Aviation Division.

The cargo of prisoners includes many who say they were tortured and others who claim to have been mistakenly abducted and abused. One detainee, Khaled el-Masri, a German of Lebanese decent who is suing the CIA and aviation companies under the Alien Tort Statute for alleged Fifth Amendment (due process) violations, says he now plans to add Boeing to his lawsuit.

Masri "was injected with a drug and chained to the floor of the plane," says his attorney, Ben Wizner of the New York ACLU. "I don't think anybody would hold Boeing responsible for manufacturing the plane. However, the emergence of [Boeing's flight-assistance role] changes all that."

The prisoner flights, launched by the Clinton administration to transfer foreign suspects to trial in the United States, became a darker undertaking following 9/11. George W. Bush approved what critics say amounts to the kidnapping of foreign nationals, some flown to countries such as Morocco or Egypt, known for abusive interrogation techniques. Others were

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taken to a system of CIA prisons in Afghanistan and Europe, or the U.S. compound in Guantánamo, rights groups say.

In his book, Grey cites documents showing Boeing made travel arrangements for the CIA flights. He does not specifically name Boeing, but in a phone conversation last week with Seattle Weekly, Grey confirmed that Spanish government documents he obtained name Jeppesen's International Trip Planning unit as rendition flights planner.

Boeing bought the Denver-based company, then called Jeppesen Sanderson, in 2000 for $1.5 billion from the (Chicago) Tribune Co., whose mixed portfolio includes the Los Angeles Times and the Chicago Cubs. John Hayhurst, then a Boeing vice president here, hailed Jeppesen as "another enduring global brand" for Boeing's business roster. Boeing later bought two related companies and expanded the Jeppesen unit, offering electronic mapping and navigation services to airline, general aviation, and government customers along with flight and trip planning.

Spain's largest newspaper, El Pais, last year reported that Jeppesen was named the CIA's flight arranger in investigative documents compiled by Spanish police. More recently, The New Yorker magazine noted the connection, reporting "it is not widely known that the [CIA] has turned to a division of Boeing, the publicly traded blue-chip behemoth, to handle many of the logistical and navigational details for these [rendition] trips."

On its Web site, Boeing boasts: "From Aachen to Zhengzhou, King Airs to 747s, Jeppesen has done it all."
But what, exactly, has it done? How deep is Boeing's involvement in the rendition flights? The company won't specifically say. From Chicago headquarters, Boeing spokesperson Tim Neale points out that flight planning is done for "thousands and thousands of customers each year. It's done on a confidential basis, and unless a customer authorizes us to comment, we can't."

He adds: "Jeppesen's flight planning process is to provide the route that is going to be followed, how much fuel is needed on board, where they will stop, and how many people will be on board, for weight reasons.

"We don't necessarily know very much about the purpose of a flight because that information isn't necessary to create a flight plan. What somebody's going to do when they get off is not part of that plan."

It's not publicly known how much Boeing, the nation's No. 2 defense contractor, earned from the flights. The CIA, a stand-alone agency, does not reveal its contracts and agency work can be billed through other government departments, including the Pentagon. Jeppesen has done $7.7 million in defense contracting since Boeing bought it in 2000, based on a review of Pentagon records.

Grey says he plans to soon post on the Internet "assorted aviation documents including Jeppesen planning data" that confirm Boeing's role (Update: Grey posted the flight logs today at www.ghostplane.net <http://www.ghostplane.net> .). The documents include, he says, a 2004 Boeing-arranged flight on the Boeing jet from Morocco through Spain and on to Afghanistan, which coincides with the Masri case.

Masri was mistaken as an Al Qaeda suspect and arrested by Macedonia officials on New Year's Eve 2003. In a Virginia federal lawsuit filed against ex-CIA Director George Tenet and others, Masri says he was "forcibly abducted" in Macedonia and handed over to U.S. officials. He was beaten, drugged, and eventually flown to a CIA prison in Afghanistan, he says. Five months after his abduction, the suit notes, "Mr. El-Masri was deposited at night, without explanation, on a hill in Albania"-and that was two months after U.S. officials realized they made a mistake, the suit says.

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The lawsuit was thrown out earlier this year, not because it lacked merit but because it could lead to disclosure of state secrets, a federal judge ruled. Masri is appealing and Wizner, his attorney, was scheduled to make his arguments this week before a Virginia appeals court.

"Obviously," says Wizner, "before we can add Boeing to the suit, we have to get it reinstated. It's a real hurdle-the CIA is, in effect, claiming immunity, that they're never liable in such cases." He's buoyed by three federal court rulings in recent months that rejected similar government-secrets argument-all of them cases involving challenges to warrantless eavesdropping authorized by President Bush.

"If the el-Masri suit can continue, we would try to develop evidence that people within Jeppesen were aware that detainees were being subjected to human rights abuses on these flights," Wizner says. "If we can show that, Boeing should by all rights be a defendant."

http://www.seattleweekly.com <http://www.seattleweekly.com>
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AP Gets Caught Working For The Enemy
November 30, 2006: Two blogs, Gateway Pundit <http://gatewaypundit.blogspot.com/2006/11/ap-is-busted-uses-bogus-source-for.html> and Flopping Aces <http://floppingaces2.blogspot.com/>, have uncovered what appears to be a serious screw-up by the Associated Press in its coverage of Iraq. It appears that this American media outlet passed on terrorist propaganda, perhaps willingly. The mistake in question involves at least ten stories since April 27 in which a Captain Jemil Hussein was a source. Six of these stories involved alleged massacres of Sunni Arabs. Four others involved unknown victims. A second AP source in the Iraqi police, Lieutenant Maithem Abdul Rizzaq, is also proving to be nonexistent, according to Central Command and the Iraqi Ministry of the Interior. This is not the first time the media has been caught with bad stories and invented sources, but this is the most serious.

In 2005, media outlets ran with stories about the Koran being flushed by guards at Guantanamo Bay. These stories proved to be false - the flushing had been done by detainees. This had not come out until after a series of riots fanned by politicians across the Middle East led to several deaths. In another vein, claims of torture were made in public forums (most notably the floor of the United States Senate) and passed on. Later investigation not only failed to uncover such things, but discovered that in some of the very few cases where the line was crossed, there was provocation (such as spitting on a guard).

This also is bad when what the media omits is considered. For instance, the photos used by the media in various reports, as late as 2005, on the detainee camps, also took things out of context. The images used were of Camp X-Ray, a temporary camp that was replaced by Camp Delta in April, 2002. Camp Delta is on par with the latest correctional institutions in the United States. A detainee Time magazine profiled in 2005, was slated to be the 20th hijacker - the fifth person on Flight 93. Another detainee traveled to Pakistan in 1998 with an Iraqi intelligence officer to carry out an attack on the American and British embassies using chemical weapons. Nor has the media mentioned the fact that at least a dozen detainees that have been released have gone back to fighting with al Qaeda. The media has also neglected to point out that al Qaeda manuals instruct members to make false claims of being tortured if they are captured.

What makes this new AP case so bad is the fact that the phony source could have been easily exposed, had the AP bothered to contact Central Command. Central Command's public affairs office has its phone number listed - along with an e-mail address. An e-mail address for Multinational Forces Iraq is also available. Yet the AP failed to check for at least ten stories. Failing to check a source once might fall into the category of an understandable mistake, but failing to check up on sources more than ten times is an incredible stretch. Central Command has informed the AP of these phony sources, but the AP is standing by its

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stories, claiming that they are using "a wide range of sources". This apparently includes phony sources.

Western media have long allowed themselves to be manipulated by Iraqi Sunni Arabs, largely because these media outlets opposed the overthrow of Saddam Hussein, and the Sunni Arab dictatorship that Saddam ran. The Sunni Arab minority (about 20 percent of the population in 2003, closer to ten percent now) were not only running Iraq, but had long been the wealthiest and best educated segment of the population. Thus is was easy for pro-Sunni Arab Western and Arab journalists to find articulate (often English speaking) Iraqi Sunni Arabs to provide useful quotes and sound bites. With that experience, it was a short step to inventing Sunni Arab sources, which was more convenient. This is an old custom in journalism. For example, Time Magazine was long known for its invented sources, and some avid Time fans would keep track of the names of sources quoted in the magazine, until they found the latest invented one. This was easy to do, because the same name showed up in different parts of the country, or the world, and in very different situations.

The current use of phony sources by AP has led to multiple reports that not only paint what appears to be a distorted picture of what is going on inside Iraq, but also reflects poorly on Iraqi police and Army personnel who are fighting terrorists. These reports, based on phony sources, have also misled the American people. But then, many Americans already knew that, because troops in Iraq, usually reported a very different reality. The Associated Press is going to have some serious explaining to do. Those who want to get the straight scoop from Iraq should check out Central Command's newsroom website <http://www.centcom.mil/sites/uscentcom1/Shared%20Documents/newsroom.aspx> or the Department of Defense's website <http://www.defenselink.mil/> . - Harold C. Hutchison (haroldc.hutchison@gmail.com)

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Courtroom Showdown
Accused terrorist Jose Padilla wants to describe how he was treated in a military brig. The government is trying to keep him quiet.

http://www.msnbc.msn.com/id/15958572/site/newsweek/
<http://www.msnbc.msn.com/id/15958572/site/newsweek/>
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Washington Post
Gitmo Justice Is a Joke
By Andrew Cohen
Special to washingtonpost.com
Thursday, November 30, 2006; 12:00 AM
The same legal scholars who established beyond doubt earlier this year that the vast majority of Guantanamo Bay detainees are not threats to our national security after all are back with comprehensive new findings -- again from our own military's official records -- that obliterate the main premise of the White House's efforts to block judicial review for the terror suspects being held in Cuba.

The Bush Administration has argued for years that whatever due process rights to which the detainees are entitled have been and will be well satisfied by the rules set up by federal lawyers and military officials to evaluate and the try the men through military commissions. But a startling new report establishes that those procedures are a sham and inconsistent with the goal of vetting the detainees to accurately separate the truly bad guys from the poor Schmoes who happened to be in the wrong place at the wrong time when the war on terrorism began in 2001.

The first step in the legal process for the detainees is the Combatant Status Review Tribunal, which is supposed to act as a legal "triage" to determine which detainees merit which kind of treatment before the commissions. In February, Seton Hall University School of

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Law professor Mark Denbeaux and his detainee defense attorney son, Joshua Denbeaux, culled through declassified Status Review transcripts and determined that hundreds and hundreds of the detainees (most held for years) had been determined by military officials as neither Al Qaeda nor Taliban members (and most had never taken up arms against America or her interests).

Now, the pair has determined through a new set of declassified material that the Review Tribunals are precisely the sorts of kangaroo courts that the Administration's most cynical critics have long suspected to be in use behind a veil of military secrecy down on Cuba. In their report, "No-Hearing Hearings: An Analysis of the Proceedings of the Government's Combatant Status Review Tribunals at Guantanano," the Denbeauxs conclude based upon Defense Department documents that that "the Government did not produce any witnesses in any hearing and did not present any documentary evidence to the detainee in 96 percent of the cases."

The study found that "the government's classified evidence was always presumed to be reliable and valid" while each request by a detainee to "inspect" classified evidence was denied. And, even in those cases where the government relied upon unclassified evidence, such evidence was denied to the detainee. "The only documentary evidence that the detainees were allowed to produce was from family and friends," the analysts found, and in part because "detainees did not always participate in their hearings no evidence was presented on behalf of the detainee" an astounding 89 percent of the time. But when a detainee participated in his own hearing, and sought to introduce such documentary evidence, military officials denied the request 60 percent of the time.

Even more disturbing, the report determined, was that the government took "mulligans" against those few detainees who were actually found not to be an "enemy combatants." In each of the three (out of 102 documented cases) in which the Status Review Tribunals "found the detainee to be not/no longer an enemy combatant...the Defense Department ordered a new [proceeding] to be convened and the detainee was then found to be an enemy combatant." If at first you don't succeed, try, try again. And in one case, the Defense Department had to try three times -- three different tribunal proceedings -- before it got the "enemy combatant" classification it was seeking.

There is more in the Seton Hall report that ought to leave flushed and breathless every single Senator (Republican and Democrat alike) who just voted for the White House's "Military Commissions Act of 2006." If the actual trials of the detainees are as empty and shallow and pre-ordained as were the Status Review Tribunals there is every reason to be mortified at the prospect -- made real by the legislation -- that the federal courts will be frozen out of vital oversight functions. If a regular trial court proceeding were this shoddy, this unwilling to perform a truth-seeking function, this unable to achieve a fair process, the judge presiding over it would be impeached.

In February, when the Denbeauxs came out with their first startling report, reasonable people asked why the government would continue to detain men whom the government itself had determined not to be members of Al Qaeda or the Taliban. The White House never satisfactorily answered that question. And now a new question reasonably emerges from the smoke and fire of the latest survey: why is our military going through the motions of faux justice at Gitmo? What is the benefit -- legal, practical and otherwise -- of implementing adjudicatory procedures that do not by their very nature determine legitimate, verifiable, and honest facts about the detainees?

You can be sure that the Justices of the United States Supreme Court will get around to asking that question, too. And how the government responds will determine in large fashion how the rest of this sorry story plays out.

Andrew Cohen writes Bench Conference <http://blog.washingtonpost.com/benchconference/> and this regular law column for washingtonpost.com. He is also CBS News Chief Legal Analyst. His

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columns for CBS can be found online here
<http://www.cbsnews.com/sections/opinion/courtwatch/main15515.shtml> .

http://www.washingtonpost.com <http://www.washingtonpost.com>

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Bedford Today
Guantanamo Bay - the inside story
Former detainee will reveal all in Luton A former Guantanamo detainee is coming to Luton to talk about his time in captivity at the internation-ally condemned US prison.

Moazzam Begg, from Birmingham, was finally released without charge last year after being illegally imprisoned for three years at the American government's Cuba-based internment camp.

Mr Begg and hundreds of other Muslims clothed in orange jumpsuits, hoods and shackled were portrayed by President George Bush as the officials and supporters of the Taliban and Al-Qaida.

Mr Bush said: "The only thing we know for certain is that these are very bad people."

Mr Begg and fellow British inmates were released without ever being charged as a result of the efforts of human rights groups and eventually the UK government.

Hundreds of prisoners from other, less powerful countries remain at the prison without hope of a fair trial.

The evening, titled The War On Terror - Where Will It End?, has been organised by the Luton Respect Party and will hear Mr Begg, along with other speakers, describe the effects of the US and UK-led war.

The event is being held on at 7pm, on Wednesday, December 6, at the Dallow Learning Community Centre.
30 November 2006
http://www.bedfordtoday.co.uk <http://www.bedfordtoday.co.uk>

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(b)(6)
Office of the DoD General Counsel (Legal Counsel) (b)(2)
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From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Monday, December 18, 2006 4:47 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 146

Cc: (b)(2),(b)(6) [redacted]

Subject: GTMO Bird: Detaines returned; Investigation about administration's actions; GTMO clamp down; Hicks; Navy vet held in Iraq; Easy cases lingered; Blocking justice

All:

Here is today's GTMO Bird.

Thanks,
(b)(6) [redacted]
Office of the DoD General Counsel (Legal Counsel)
(b)(2) [redacted] (DSN (b)( ))
(fax)
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The Daily Star
Guantanamo returnee put on remand
Staff Correspondent

Police yesterday took Mobarak, who was detained at Guantanamo Bay for five years for his suspected al-Qaeda connection, on a three-day remand to learn if he has any militancy links in the land.

Airport police showed him arrested under Section 54 of the Criminal Procedure Code and placed him before the court of Chief Metropolitan Magistrate with the remand prayer.

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A special US Air Force plane on Sunday flew Mobarak Hossain, 30, son of Abul Hashem of Brahmanbaria in Bangladesh and handed him over to the Zia International Airport Immigration.

Mobarak went to Pakistan for studies in 1998 and taught in a madrasa in Karachi after completion of two-year study.
In 2001, Pakistan intelligence arrested him and suspecting his link with al-Qaeda, handed over to the US authorities who later took him to the Guantanamo Bay prison.

Mobarak need to be quizzed to learn his 'true' objective for going to Pakistan, if he was a member of any banned organisation in the country and if he had any criminal records, said Sub-Inspector Masud of Airport police in the remand prayer.

Police also revealed that Mobarak went to Kabul in Afghanistan to visit his friend Rafiq, whom he met while teaching at a Karachi madrasa.

Then he went to Jalalabad in Afghanistan from where Pakistan intelligence arrested him and kept detained for 32 weeks.
The Pakistan authorities later handed him over to the US authorities, who interrogated him at different camps in Pakistan and lastly sent to the Guantanamo Bay prison, Masud said in the police report placed before the court.

Mobarak's father Abul Hashem reiterated his claim that his son is innocent. "If they [US authorities] had found the slightest clue about his militancy link, they would not have released him," he told The Daily Star.

http://www.thedailystar.net/2006/12/19/d6121901149.htm
<http://www.thedailystar.net/2006/12/19/d6121901149.htm>
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Washington Post
December 18, 2006
Pg. 19
U.S. Sends Home 33 Detainees From Guantanamo Bay
By Josh White, Washington Post Staff Writer
Thirty-three detainees who had been held at the U.S. military detention facility at Guantanamo Bay, Cuba, were returned to their home countries over the past week, part of a government effort to reduce the facility's population to a core group of terrorism suspects who could be held indefinitely.

The Defense Department announced yesterday that it transferred 17 detainees to their home countries over the weekend: seven to Afghanistan, five to Yemen, three to Kazakhstan, one to Libya and one to Bangladesh. Military officials announced Thursday that 16 detainees were sent to Saudi Arabia last week.

With the transfer of the 33 detainees -- nearly 8 percent of the facility's population -- Guantanamo now holds about 395 detainees, almost none of whom have been charged with a crime. State Department officials have been working to significantly reduce the number of Guantanamo detainees through lengthy negotiations with other countries, although the United States is unwilling to release detainees into the custody of nations where they would likely be abused, tortured or killed.

A large percentage of the remaining population is from Saudi Arabia and Yemen.
According to Pentagon figures, approximately 380 detainees have departed Guantanamo for at least 29 countries since 2002, meaning the facility's current population represents slightly more than half of the suspects captured and transferred to U.S. custody in Cuba. An additional 85 detainees are slated for transfer or release to their home nations pending the outcome of diplomatic discussions. Their departure would leave the number of detainees at Guantanamo at about 310.

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"Departure of these remaining detainees approved for transfer or release is subject to ongoing discussions between the United States and other nations," according to a Defense Department news release yesterday. "The United States does not desire to hold detainees for any longer than necessary."

Guantanamo did not accept new detainees from September 2004 to this past September, when 14 high-value suspects who had been in secret CIA custody were moved to Cuba.

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Houston Chronicle
Dec. 16, 2006, 8:49AM
7 Afghans return home after imprisonment
By RAHIM FAIEZ Associated Press Writer
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KABUL, Afghanistan - Seven Afghan men on Saturday arrived in their home country _ weary, angry and proclaiming their innocence _ after years of imprisonment in the U.S. military prison at Guantanamo Bay, Cuba.

With long, unkempt beards and wearing blue numbered uniforms, the men appeared at a news conference beside Sibghatullah Mujaddedi, head of Afghanistan's reconciliation commission. The commission assists with the release of detainees from Guantanamo and another U.S. prison at the Bagram military base north of Kabul.

All seven men said they were wrongly arrested, but that they were not beaten or mistreated in any way during their imprisonment.

In interviews with The Associated Press, one claimed he was forced to join the Taliban, while another said he was arrested merely for being Muslim.

"We had to go with the Taliban. If we didn't go with them, they wanted money from us," said Abdul Rahman, 46, from Helmand province.

"I didn't have money to pay the Taliban, so I was forced to join them," he said. "I didn't want to."
Rahman swore he did not kill anyone or even fire any bullets. The Taliban sent him to northern Kunduz province, where he was arrested and again pressed for money.

He said he was told: "If you pay us money, we will release you, otherwise, we will sell you to the Americans." He claimed that American forces paid $20,000 for him, presumably bounty for his capture.

The men were the eighth group released from Guantanamo and sent back to Afghanistan, said Mohammad Akram, an official with the independent reconciliation commission.

Akram said 47 Afghan prisoners have been released from Guantanamo since the establishment of the commission in 2004. Another 462 prisoners have been released from the U.S. prison in Bagram.

Many Afghans formerly held at Guantanamo claim that they were beaten, kept awake for days and treated like animals.
Mujaddedi, the head of the commission, said that 70 Afghans were still being detained in Guantanamo.
"We will try to release them, or bring them here to Afghanistan (for detention)," Mujaddedi said.
Alef Mohammad, 62, was also held for five years. He, too, denied involvement with the Taliban.

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"I was just a simple farmer in Helmand province," Mohammad said.
He said U.S. troops bombed the area where he lived and that 18 people were killed, including a nephew. Mohammad was arrested.

"I'm innocent, you can ask anyone in my village. They know me," he shouted angrily, waving his arms.
Reciting excerpts of the Quran, Mohammad claimed his crime was being a Muslim.
"The only fault that I had was that I read the holy word," he said.
http://www.chron.com/disp/story.mpl/ap/world/4407074.html
<http://www.chron.com/disp/story.mpl/ap/world/4407074.html>

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International Herald Tribune
6 Yemenis released from U.S. prison at Guantanamo Bay return home
SAN'A, Yemen: Six Yemenis released from the U.S. military prison in Guantanamo Bay returned home and were being held by Yemeni authorities to determine if they have any terror ties, officials said Monday.

The Yemenis returned home over the past two days, an official with the Yemeni Interior Ministry said. The official spoke on condition of anonymity because he was not authorized to speak to the media.

Lawyer Khaled al-Ansi, who heads the Yemeni Human Rights Organization, said that the organization was in contact with Interior Ministry to find out how the ministry will handle the six detainees.

The U.S. military repatriated 18 detainees from Guantanamo Bay over the weekend to Afghanistan, Yemen, Kazakhstan, Libya and Bangladesh, a Pentagon spokesman said Sunday. The men, flown out of the U.S. naval base in southeastern Cuba on Friday, were all transferred to the custody of governments in their native countries except for one Yemeni detainee, who was released without conditions, said Navy Lt. Cmdr. Chito Peppler. Yemeni officials did not have any information about the detainee released without conditions.

Yemeni authorities last year received four detainees, who were released after a Yemeni judiciary found that they did not have terror connections.

About 100 Yemenis remain at Guantanamo, according to a list received by the Yemeni government from U.S. In June, a Yemeni and two Saudi Arabians committed suicide at Guantanamo, and their bodies were sent to their homelands

Yemen, the ancestral land of al-Qaida leader Osama bin Laden, has largely allied itself with the United States in the war on terror.

Last week, 16 Saudis also returned home from Guantanamo and were being held by Saudi authorities. Interior Minister Prince Nayef bin Abdul Aziz said the government hopes to finish questioning the detainees and if no terror ties are found, release them.

But he warned that "we should not ignore the past of those people," according to remarks published in Saudi newspapers on Monday.

"We sympathized with them because they were in a foreign country and worked on getting them back to their country, we will treat them like we treat any other citizen, but this will depend on their cooperation with us, the kingdom law will be implemented," he said.

Some 759 people have been held over the years at Guantanamo, according to U.S. Defense Department documents released to The Associated Press in response to a Freedom of Information Act lawsuit.

OGC AMNESTY/CCR 150

http://www.iht.com/articles/ap/2006/
<http://www.iht.com/articles/ap/2006/12/18/africa/ME_GEN_Yemen_Guantanamo.php>

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Incoming Chairmen Ready to Investigate
Democratic-Led Panels to Probe Administration's Actions in War and Counterterrorism
By Charles Babington
Washington Post Staff Writer
Saturday, December 16, 2006; A05

Incoming Democratic committee chairmen say they will hold a series of hearings and investigations early next year to build the case for their call for a phased withdrawal of U.S. troops from Iraq and for possible action against defense contractors found to have wasted billions in federal funds.

The emerging plans to grill administration officials on the conduct of the war are part of a pledge for more aggressive congressional oversight on issues such as prewar intelligence, prisoner treatment at Abu Ghraib and Guantanamo Bay, and the government's use of warrantless wiretaps.

Among the most eager incoming chairmen is Sen. Carl M. Levin <http://projects.washingtonpost.com/congress/members/l000261/> (D-Mich.), a lawyer with a professor's demeanor and a prosecutor's doggedness. As head of the Senate Armed Services Committee, Levin, 72, will be his party's point man on the Iraq war and on the Democrats' call to begin withdrawing troops in the coming months.

Levin said he also plans inquiries into "documentation of waste and fraud and abuse in the contracting areas" of the military. Aggressive oversight "is not just a budget issue," he said, but at some point "becomes a significant moral issue." In the House, Rep. John P. Murtha <http://projects.washingtonpost.com/congress/members/m001120/> (D-Pa.), another leading advocate of a phased withdrawal, has vowed to use his Appropriations subcommittee chairmanship to investigate the Iraq war, holding "two hearings a day for the first three or four months . . . to find out exactly what happened and who's been responsible for these mistakes."

In committee after committee next month, the gavel will be handed by Bush allies to ardent Democrats deeply frustrated by what they see as the GOP-led Congress's refusal to conduct meaningful oversight and to hold the executive branch accountable.

Sen. Patrick J. Leahy <http://projects.washingtonpost.com/congress/members/l000174/> (D-Vt.) said he will use his Judiciary Committee perch to conduct "real oversight" of the FBI and the Justice Department and to delve into "the abuse of billions of taxpayers' dollars sent as development aid to Iraq."

"I am not prepared to accept answers like 'I can't talk about it,' " Leahy said in a recent speech at Georgetown University's law school.

Levin, a sharp critic of the administration's use of prewar intelligence, will have new, substantial powers to press the White House for information and for a new direction in Iraq.

In a recent interview in his Senate office, Levin said the Senate Armed Services Committee's first priority will be to seek ways to stabilize Iraq and gradually disengage the United States from the war. But the committee will also hold retrospective hearings, he said, to determine whether administration officials manipulated intelligence before the war and whether the post-invasion provisional government abused its contracting powers and wasted huge sums of money.

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"There is a responsibility from a lessons-learned perspective and an accountability perspective to fill in the blanks," said Levin, who voted against authorizing the war in 2002. "And there have been a number of blanks." Some lower-level military personnel have been held accountable for matters such as detainee mistreatment, he said, "but almost none in the intelligence community."

Having Levin replace John W. Warner <http://projects.washingtonpost.com/congress/members/w000154/> (R-Va.) as chairman of the Senate Armed Services Committee will "hugely" change oversight, said Sen. John D. Rockefeller IV <http://projects.washingtonpost.com/congress/members/r000361/> (D-W.Va.), a longtime colleague. Rockefeller, incoming chairman of the Senate intelligence committee, also plans more aggressive hearings.

"Oversight doesn't have to be a hostile process," Rockefeller said. But he said he and Levin are determined to overcome the administration's long-standing refusal to hand over documents concerning the White House contention in 2002 and 2003 that Saddam Hussein had weapons of mass destruction. "The public must understand that you can't do that," Rockefeller said.

Warner is not considered an administration apologist, but the committee's posture is certain to be more combative as soon as Levin assumes the chairmanship, colleagues and analysts said.

Levin "takes issues of oversight and hearings and authorization very seriously, and he guards very carefully the prerogatives of Congress," said Kurt Campbell, a former Pentagon official now with the Center for Strategic and International Studies. Levin will quiz military commanders on their advice about Iraq, Campbell said, and he will dig deeply into allegations of mismanagement and favoritism in the granting of contracts and plum jobs after the fall of Hussein.

"I think the Republicans will bristle at some of the things he wants to do," Campbell said, "because this really gets to the question of whether the previous Congress dropped the ball."

Levin plans to use his new powers in his long-running dispute with the Bush administration over the conduct of Douglas J. Feith, former undersecretary of defense for policy. Levin says Feith exaggerated the relationship between Hussein's government and al-Qaeda when the Bush administration was trying to build public support for the Iraq invasion.

The administration's repeated refusal to give Levin 58 documents related to Feith's activities is about to be tested. "We're entitled to those documents," Levin said. "If necessary, I intend to subpoena those documents."

Levin's House counterpart, incoming Armed Services Committee Chairman Ike Skelton <http://projects.washingtonpost.com/congress/members/s000465/> (D-Mo.), also plans Iraq-related hearings. "His big priorities are support for our troops and their families; readiness, especially in the Army and Marine Corps; oversight; and Afghanistan, which he feels is the forgotten war," said his spokeswoman, Loren Dealy. "His concerns have been the lack of oversight in general. He feels it has not been adequate."

Levin said Iraq's future is his top priority. The situation "has got to be solved by the Iraqis politically," he said. "There is no military solution to it."

He said the 2003 invasion obligated the United States to help post-Hussein Iraq get back on its feet. "We have carried out that obligation," Levin said. "We've been there three years plus. We've given them the opportunity."

Levin said he plans later hearings on the abuses of Iraqi detainees at the Abu Ghraib prison and the treatment of terrorism suspects at Guantanamo Bay, Cuba, and elsewhere.

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Under Warner, the committee showed some interest in those topics, Levin said, "but the subpoenas haven't gone out, obviously. We may have to issue subpoenas in that area as well."

http://www.washingtonpost.com <http://www.washingtonpost.com>

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International Herald Tribune
Guantánamo officials clamp down on prisoners
By Tim Golden
Saturday, December 16, 2006

GUANTÁNAMO BAY, Cuba
As the first detainees began moving last week into Guantánamo's modern, new detention facility, Camp 6, the military guard commander stood beneath the high, concrete walls of the compound, looking out on a fenced-in athletic yard.

The yard, where the detainees were to have played soccer and other sports, was part of a plan to ease the conditions under which more than 400 men are imprisoned here, nearly all of them without having been charged. But that plan has changed.

"At this point, I just don't see using that," the guard commander, Colonel Wade Dennis, said. After two years in which the military sought to manage terrorism suspects at Guantánamo with incentives for good behavior, steady improvements in their living conditions and even dialogue with prison leaders, the authorities here have clamped down decisively in recent months.

Security procedures have been tightened. Group activities have been scaled back. With the retrofitting of Camp 6 and the near-emptying of another showcase camp for compliant prisoners, military officials said about three-fourths of the detainees would eventually be held in maximum-security cells. That is a stark departure from earlier plans to hold a similar number in medium-security units.

Officials said the shift reflected the military's analysis - after a series of hunger strikes, a riot last May and three suicides by detainees in June - that earlier efforts to ease restrictions on the detainees had gone too far.

The commander of the Guantánamo task force, Rear Admiral Harry Harris Jr., said the tougher approach also reflected the changing nature of the prison population, and his conviction that all of those now held here are dangerous men.

"They're all terrorists; they're all enemy combatants," Harris said in an interview. He added, "I don't think there is such a thing as a medium-security terrorist."

Harris, who took command on March 31, referred in part to the recent departure from Guantánamo of the last of 38 men whom the military had classified since early 2005 as "no longer enemy combatants." Shortly after Harris's remarks, another 15 detainees were sent home to Saudi Arabia, where they were promptly returned to their families.

Still, about 100 others who had been cleared by the military for transfer or release remain here while the State Department tries to arrange their repatriation.

The detainee population here has also been reshaped by the arrival in September of 14 terror suspects, including the man accused of being the mastermind of the attacks of Sept. 11, 2001, who had been held by the Central Intelligence Agency in secret prisons overseas.

U.S. officials said the so-called high- value suspects were being held apart from the rest of the Guantánamo prisoners, at a secret detention facility supervised by CIA officers. The 14

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have been visited twice by representatives of the International Committee of the Red Cross, but have not yet been interrogated by military intelligence officials, these officials said.

Next year, after the Defense Department finishes rewriting rules for the military tribunals that the Bush administration first established in November 2001, the intelligence agency's prisoners are to be charged with war crimes. The timetable for their prosecutions remains uncertain.

Military officials said they would continue to try to improve conditions at the prison to the extent that security considerations allowed. They said they have abandoned special cell blocks for discipline and segregation, so that prisoners who violate rules are now punished simply by the withdrawal of various privileges in their regular cells. The authorities have also standardized rules for exercise, allowing each detainee at least two hours a day, they said.

Nonetheless, the tightening of security at the detention center represents a significant shift in Guantánamo's operations.

Since the spring of 2004, the military's handling of the detainees had been heavily influenced by the political and diplomatic pressures that grew out of the Abu Ghraib scandal and other cases of prisoner abuse. At the same time, Guantánamo's focus was shifting from interrogations to the long-term detention of men who, for the most part, would never be charged with any crime.

With little guidance from Washington, senior officers here began in 2005 to edge back toward the traditional Geneva Convention rules for prisoner treatment that President Bush had disavowed after 9/11, for the fight against terrorism, military officials said. Military officers began listening more attentively to the prisoners' complaints, and eventually met a few times with a council of detainee leaders.

Those talks were quickly aborted in August 2005. The hunger strikes were effectively broken last January, when the military began strapping detainees into padded "restraint chairs" to force- feed them through stomach tubes. But those protests gave way to several drug overdoses in May and the hangings in June of three prisoners -- all of whom had previously been hunger strikers.

The current Guantánamo commanders eschewed any criticism of their predecessors. But they were blunt in laying out a different approach.

Asked about his discussions with prisoners, Dennis said he basically had none. As for the handful of detainees who have continued to wage hunger strikes, including three who were being force-fed last week, he said they would be get no "special attention" from him.

"If they want to do that, hook it up," he said, apparently referring to the restraint chair system for force-feeding. "If that's what you want to do, that's your choice."

Harris said he had ordered a hardening of the security posture on the basis of new insights into the threat that the detainees pose. "We have learned how committed they are, just how serious they are, and how dangerous they are," he said.

Several military officials said Harris took over the Guantánamo task force with a greater concern about security, and soon ordered his aides to draw up plans to deal with hostage-takings and other emergencies.

He and Dennis both asserted that Camp 4 - where dozens of detainees rioted during an aggressive search of their quarters last May - represented a particular danger. Harris said

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detainees there had used the freedom of the camp to train one another in terrorist tactics, and in 2004 plotted unsuccessfully to seize a food truck and use it to run over guards.

"Camp 4 is an ideal planning ground for nefarious activity," he said.
But according to several recent interviews with military personnel who served here at the time, the riot in May did not transpire precisely as military officials described it at the time. The disturbance culminated with what the military had said was an attack by detainees on a members of a Quick Reaction Force that burst into one barracks to stop a detainee who appeared to be hanging himself.

But officers familiar with the event said the force stormed in after a guard saw a detainee merely holding up a sheet and that his intentions were ambiguous. A guard also mistakenly broadcast the radio code for multiple suicide attempts, heightening the alarm, the officers said.

Harris conceded that an error "could have been" made, but said "it was certainly no accident" that the prisoners had slicked the floor of their quarters with soapy water and excrement, and fought the guards with makeshift weapons. He said he believed the guards acted properly.

The May 18 search took place after at least two prisoners were found unconscious from overdoses of hoarded drugs. The detainees who attacked the guards were known as an especially religious group, who had been angered in the past by searches of their Qurans.

After the three suicides in June, Camp 6 was substantially reconfigured. Staircases and catwalks were fenced in so that detainees could not jump from them to attack guards or try to kill themselves. Shower stalls were built higher so they could not be used for hangings. Exercise yards were divided up into a series of one-man pens.

The detainees will still look out the small windows of their computer-controlled cell doors to see the stainless steel picnic tables where they were once supposed to have shared their meals; they just will not be able to sit at those tables with other detainees.

Military officials confirmed that since the suicides in June, three detainees who were part of the council that negotiated with military commanders had been kept isolated from nearly all other prisoners in Camp Echo, a collection of bungalows where detainees often see their lawyers.

Those detainees include Shaker Aamer, a Saudi resident of Britain who is accused of having ties to al-Qaida; Ghassan al-Sharbi, a Saudi electrical engineer who was charged earlier with plotting to make bombs for Qaida forces in Afghanistan; and Saber Lahmar, an Algerian religious scholar seized in Bosnia.

Lawyers for both Aamer and Lahmar said that they had been alone for most of that time, and that the isolation was causing them psychological damage.

"They have thrown away the key and forgotten him even though he is spiraling down physically and psychologically," Lahmar's lawyer, Stephen H. Olesky, said.

Noting that Lahmar's petition for relief has been before a federal appeals court for nearly two years, he added, "They know we do not have a judge to take this case to, so they can pile on the detainee."

Dennis, the commander of the detention group, said Lahmar was being allowed to exercise and had access to any medical attention he required.

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The Daily Telegraph

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US military blocks Hicks's plea

US military authorities have blocked a request by Guantanamo Bay inmate, Australian David Hicks, to undergo an independent mental health assessment.

Hicks's Pentagon lawyer, US Major Michael Mori, told Fairfax newspapers a visit by Paul Mullen, clinical director of Victoria's Forensic Mental Service, planned for next month had been vetoed.

Hicks was entitled only to an assessment by US military psychologists, who had also been involved in his interrogation.
"I want him to get help," Major Mori said.
"He's not going to open up to his jailers."
Hicks has been imprisoned at Guantanamo Bay since January 2002 after being arrested in Afghanistan on or around December 9, 2001, during the US invasion.

He had pleaded not guilty to charges of conspiracy, attempted murder and aiding the enemy. However, the charges were dropped after the US Supreme Court in June declared illegal the military tribunals set up to try Hicks and other inmates.

The Australian Government believes Hicks could face charges next month with the enactment of new regulations governing the US military commission expected to try him.

Major Mori doubted the US assurances given to Australia Defence Minister Brendan Nelson and Foreign Affairs Minister Alexander Downer during their visit to Washington last week.

http://www.news.com.au/dailytelegraph/story/0,22049,20950605-5001028,00.html
<http://www.news.com.au/dailytelegraph/story/0,22049,20950605-5001028,00.html>

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Herold News Daily
U.S. military rehearses terror hearings
2006/12

By MICHAEL MELIA, Associated Press Writer 4 minutes ago
GUANTANAMO BAY NAVAL BASE, Cuba - The U.S. military is rehearsing for hearings on whether 14 top terror suspects can be held indefinitely without charge as enemy combatants, but defense lawyers say the outcome is preordained.

At the hearings, a military panel will evaluate whether the men should be classified as "enemy combatants," a designation which allows them to be held indefinitely and prevents them from challenging their detention in the U.S. court system.

"The biggest thing we're doing is opening up the books, reviewing procedures and conducting rehearsals so that we do it correctly," said Navy Capt. Philip Waddingham, the lead officer at Guantanamo for the Pentagon -based office in charge of determining detainees' status.

It is unclear whether Mohammed and the others - who until recently were being held in secret CIA prisons - will agree to attend the hearings. If they do, the military says they will remain shackled and would be forbidden to talk to reporters.

Combatant Status Review Tribunals were held for 558 detainees between July 2004 and January 2005. All but 38 were deemed enemy combatants.

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"There is no question that these 14 have no chance," said Brent Mickum, an attorney who represents two Britons at Guantanamo. "The decision has (already) been made that they are enemy combatants."

Bush announced on Sept. 6 that the 14 detainees had been transferred to Guantanamo. Mohammed, who was believed to be the No. 3 al-Qaida leader, has not been seen in public since he was captured in Pakistan in 2003. The others include the alleged architects of the USS Cole bombing in Yemen in 2000 and the 1998 bombings of the U.S. embassies in Kenya and Tanzania.

Waddingham said in September that he expected the hearings for the 14 new detainees to be held within three months. That timeframe has been pushed back to early 2007 as top officials at the Pentagon, the Justice Department and the military Joint Task Force in charge of the prison camps coordinate the proceedings, he said.

U.S. authorities repatriated a 28-year-old Bangladeshi man on Sunday after years of imprisonment in Guantanamo, a police official at the airport in Bangladesh's capital Dhaka said. The official, Tahera Banu, said the man was being interrogated.

http://www.heraldnewsdaily.com/
<http://www.heraldnewsdaily.com/ViewArticle.aspx?id=35667%26source=2>

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Houston Chronicle
Dec. 18, 2006, 1:09AM
Navy vet held by U.S. in Iraq for months
Security worker who became an FBI informer gets a firsthand look at detention methods
By MICHAEL MOSS
New York Times
One night in mid-April, the steel door clanked shut on detainee No.200343 at Camp Cropper, the U.S. military's maximum-security detention site in Baghdad, Iraq.

American guards arrived at the man's cell periodically over the next several days, shackled his hands and feet, blindfolded him and took him to a padded room for interrogation, the detainee said. After an hour or two, he was returned to his cell, fatigued but unable to sleep.

When he was released after 97 days he was exhausted, depressed and scared.
Detainee 200343 was among thousands of people who have been held and released by the American military in Iraq, and his account has provided one of the first detailed views of the Pentagon's detention operations since Abu Ghraib.

Passed information to FBI
The detainee was Donald Vance, a 29-year-old Navy veteran from Chicago who went to Iraq as a security contractor. He wound up as a whistle-blower, passing information to the FBI about suspicious activities at the Iraqi security firm where he worked, including possible illegal weapons trading.

When U.S. troops raided the company at his urging, Vance and another American who worked there were detained as suspects by the military, which was unaware that Vance was an informer, according to officials and military documents.

Nathan Ertel, the American held with Vance, carried away military records that shed further light on the detention camp and its secretive tribunals. Those records include a legal memorandum explicitly denying detainees the right to a lawyer at detention hearings.

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Their story illuminates the U.S. military's haphazard system of detention and prosecution that has evolved in Iraq, where detainees are often held for long periods without charges or legal representation, and where the authorities struggle to sort through the endless stream of detainees to identify those who pose real threats.

"Even Saddam Hussein had more legal counsel than I ever had," said Vance.
Treated 'humanely'
A spokeswoman for the Pentagon's detention operations in Iraq, 1st Lt. Lea Ann Fracasso, said in written answers to questions that the men had been "treated fair and humanely," and that there was no record of either complaining about their treatment.

She said officials did not reach Vance's contact at the FBI until he had been in custody for three weeks. Even so, she said, officials determined that he "posed a threat" and decided to continue holding him.

He was released two months later, Fracasso said, based on a "subsequent re-examination of his case" and his stated plans to leave Iraq.

Ertel, 30, a contract manager who knew Vance from an earlier job in Iraq, was released more quickly.
Vance is back in Chicago, still feeling the effects of having been a prisoner of the war in Iraq.
"It's really hard. I don't really talk about this stuff with my family," he says. "I feel half the man that I used to be."

http://www.chron.com/disp/story.mpl/world/4409150.html
<http://www.chron.com/disp/story.mpl/world/4409150.html>
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aljazeera.com
"Gitmo detainees to be held even without evidence"

Guantanamo detainees would be held indefinitely even if there is insufficient evidence to bring them to trial, either because they are deemed a security threat or because there is nowhere to send them in case the military authorities at the U.S. detention facility in Cuba decide to release them, said John Bellinger, the legal adviser at the U.S. State Department; responsible for defending Guantanamo's legal status.

Since the establishment of Guantanamo <http://www.aljazeera.com/me.asp?service_ID=10356> jail in 2001, some 360 detainees have been released from it and sent to Albania, Afghanistan, Australia, Bahrain, Belgium, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kuwait, the Maldives, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, Sudan, Tajikistan, Turkey, Uganda, the United Kingdom and Yemen.

Currently there are 435 "suspects" held at the U.S. detention camp, only 10 of which have so far been charged with terrorism and related charges.

14 detainees, described by the U.S. military as high value detainees, including Khalid Sheikh Mohammed, whom the U.S. accuses him of masterminding the September 11 attacks, are to face trial.

"The remaining people - other than the ones who have been approved for release - really do pose a threat," Mr. Bellinger claimed in an interview with the Daily Telegraph.

"Ten percent of the people we have released have gone right back to fighting generally in Afghanistan. It's hard to tell exactly how many people would go back to actual acts of terrorism, or whether they would just go back to fighting in Afghanistan."

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"There are at this point no plans to transfer those people from Guantanamo <http://www.aljazeera.com/me.asp?service_ID=10356> out of Guantanamo <http://www.aljazeera.com/me.asp?service_ID=10356> ," he said. "At this point the trials will be held on Guantanamo."

The Bush <http://www.aljazeera.com/me.asp?service_ID=%2010215> administration has rejected numerous calls to shut down the detention facility in Cuba, established more than five years ago following September 11 attacks on the U.S.

Most of the detainees who have been held at Guantanamo <http://www.aljazeera.com/me.asp?service_ID=10356> since its establishment, part of American President's so-called war against international terrorism, were detained during the war in Afghanistan where the U.S. occupation toppled the ruling regime of Taliban.

http://www.aljazeera.com/me.asp?service_ID=12721
<http://www.aljazeera.com/me.asp?service_ID=12721>
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Wall Street Journal
December 18, 2006
Pg. 1
At Guantanamo, Even 'Easy' Cases Have Lingered
Balky Intelligence Agencies, War-Torn Crime Scene Hinder Legal Process; Maj. Groharing's Village Hunt
By Jess Bravin
After an hours-long firefight in an Afghan village called Ab Khail, an enemy fighter hurled a grenade at Sgt. First Class Christopher Speer, causing fatal injuries. For more than a year, Maj. Jeffrey Groharing, a Marine Corps prosecutor, has been trying to bring the alleged killer to justice.

Winning a conviction should have been easy. The suspect, Omar Ahmed Khadr, a Toronto-born teenager whose relatives have ties to al Qaeda, was captured after the July 2002 skirmish and taken to Guantánamo Bay. Under an order President Bush issued in November 2001, Mr. Khadr could claim few of the rights afforded defendants in civilian courts or courts-martial.

But for Maj. Groharing, the case of U.S. v. Omar Khadr, slated for an American military commission at Guantánamo, has been a headache. Intelligence agencies refused to share their files with the prosecutor, fearing their methods or sources might be disclosed. Soldiers who witnessed the incident are scattered across the globe. Defense attorneys hurled a series of legal challenges that paralyzed proceedings. And the crime scene -- a remote village still contested by Taliban fighters -- was all but obliterated by American bombs, making it nearly impossible to conduct an independent investigation.

Such challenges help explain why the Bush administration failed to complete a single Guantánamo trial in the five years before the Supreme Court struck the system down in June. The decision threw into limbo the prosecution of Mr. Khadr and nine other Guantánamo prisoners who were charged prior to the high court ruling. Congress has since passed the Military Commissions Act, which grants defendants some of the rights President Bush previously had sought to deny. But even when the deck was stacked in the government's favor, prosecutors struggled to convict fighters captured overseas amid a continuing conflict.

"At the end of the day, the question is: Can you actually try a case under these conditions?" says Prof. Robert Chesney, a specialist in national-security law at Wake Forest University.

Maj. Groharing acknowledges that the Guantánamo cases have had "some fits and starts," and presented challenges that few other prosecutors face. He says the effort is nonetheless worthwhile.

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"What's the alternative? To not hold him accountable? We are certainly not going to give him a pass for killing a U.S. service member and plotting to kill many more," the prosecutor says. "The difference between us and al Qaeda is that when we had him on the battlefield, we didn't summarily execute him," he says.

The U.S. has employed forms of military commissions in past conflicts, most recently World War II, when hundreds of Axis officials and soldiers were tried for offenses such as crimes against humanity and mistreatment of American prisoners of war. But those trials took place after fighting had ended and before the introduction of stricter courtroom and evidentiary standards, as laid out by the Geneva Conventions, the U.S. Uniform Code of Military Justice and other laws.

Air Force Col. Moe Davis, the chief Guantánamo prosecutor, estimates that about 70 of some 435 Guantánamo prisoners will eventually face trial for specific war crimes; the rest will be held until the U.S. determines they no longer pose a threat. Those expected to face military trial include Khalid Sheikh Mohammed and Ramzi Binalshibh, alleged plotters of the Sept. 11, 2001, terror attacks. President Bush transferred them in September from a secret Central Intelligence Agency prison to Guantánamo.

The majority of the defendants are relative unknowns whose alleged crimes fall short of the catastrophic hijacking attacks. Mr. Khadr was selected as an early prosecution target precisely because his case seemed so simple. Of the prisoners previously charged, Mr. Khadr is the only one accused of killing anybody. Sgt. Speer's combat death, alone of the 194 American military personnel killed by enemy fire in and around Afghanistan, is the only one that has prompted a murder charge.

In contrast to some other cases, "we have a crime scene, we have facts, we have witnesses," says Maj. Groharing.
Defense attorneys say the allegations against Mr. Khadr amount to nothing other than taking part in a battle he didn't start.

The Marine attorney assigned to represent Mr. Khadr, Lt. Col. Colby Vokey, initially was barred by his commander from communicating with reporters after filing an affidavit accusing Guantánamo prison guards of abusing detainees. Muneer Ahmad, an American University law professor helping represent Mr. Khadr, says: "It's hard to think this is a case prosecuted solely on its merits without regard to the political benefits to the administration."

Mr. Khadr, he adds, "has been punished for the perceived sins of his family."
Mr. Khadr's father, Ahmed Said Khadr, an Egyptian-born Canadian citizen, was closely identified with extremist Islamic causes. In the 1980s, Ahmed Khadr traveled to Pakistan and Afghanistan, where he became a confidant of Osama bin Laden. In 1993, Mr. Khadr moved his family to Afghanistan, where U.S. authorities say he funneled money to al Qaeda under cover of charity work.

Mr. Khadr's boys trained at al Qaeda-run camps and played with Mr. bin Laden's children, Khadr family members said in interviews with the Canadian Broadcasting Corp. According to Pentagon charges, "while traveling with his father, Omar Khadr saw or personally met senior al Qaeda leaders," including Mr. bin Laden, Ayman al-Zawahiri and Muhammed Atef.

After the U.S. invaded Afghanistan to topple the Taliban regime in October 2001, the Khadrs scattered. Ahmed Khadr was killed by Pakistani forces in an October 2003 battle that also left his youngest son paralyzed.

Omar, meanwhile, "received approximately one month of one-on-one, private al Qaeda basic training" arranged by his father, Pentagon charges say, including "the use of rocket-propelled grenades, rifles, pistols, grenades and explosives."

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In late July 2002, U.S. forces picked up satellite telephone transmissions from a village about seven miles outside Khost, Afghanistan, says retired Army Sgt. First Class Layne Morris, part of the unit sent to reconnoiter. Mr. Morris's account of the day is corroborated by contemporary news reports, charging documents and other court papers, including a successful civil suit filed by Mr. Morris and the widow of Sgt. Speer in U.S. District Court in Utah.

The Khadr family's Canadian lawyer, Dennis Edney, contends that suit was illegitimate and that it may color Mr. Morris's credibility.

According to Mr. Morris and press accounts, a detachment of about 40 U.S. soldiers, along with a few allied Afghan militiamen, headed to Ab Khail. Mr. Morris recalls leading a five-man squad to a compound outside the main village, with a mud wall surrounding a homestead with buildings and animal pens.

The sergeant peered through the compound's green metal gate, spotting what he says were well-dressed Arabs with AK-47 machine guns sitting around a fire. "They looked at me and I looked at them," Mr. Morris says.

Mr. Morris backed up, ordered his soldiers into position and called for reinforcements. About 100 villagers were hanging around watching events unfold. About 45 minutes later, the rest of the detachment arrived, including Sgt. Speer. The Americans took cover and sent the Afghans into the compound to inquire further, Mr. Morris says.

The men inside immediately shot the Afghans dead and began firing guns and throwing grenades at the U.S. soldiers, Mr. Morris says. The ensuing battle was ferocious, costing Mr. Morris his right eye, wounding four other Americans and ending only after U.S. F-18s dropped two 500-pound bombs on the compound, destroying it.

U.S. soldiers, assuming the enemy fighters were all dead, advanced on the compound, Mr. Morris says. That's when Mr. Khadr, then 15, allegedly rose and threw a grenade that wounded Sgt. Speer, a 28-year-old medic.

The soldiers shot Mr. Khadr. When they got to his prone body, he begged them, in English, to finish him off, Mr. Morris says. U.S. soldiers said at the time in press interviews they restrained their desire to do so and instead ordered medical treatment. Mr. Khadr survived, but lost most sight in his left eye. His three companions, all Arabs, were dead.

Sgt. Speer, shrapnel lodged in his head, was taken to an Army hospital in Germany, where he died on Aug. 7. Mr. Khadr was sent to Guantánamo Bay.

Maj. Groharing, 36, had long nursed dreams of becoming a Marine. He didn't join the Corps until 1996 after graduating from the University of Nebraska law school and a brief but unexciting exposure to private practice. For most of his career, he worked as a defense attorney representing Marines accused of crimes. He sometimes found the role uncomfortable, he says, partly because it involved standing up to commanders who want the offenders punished.

In 2002, he was transferred from San Diego to Washington, D.C., for a job with the Marine Corps commandant's legal counsel. Eager for experience at the prosecution table, he next sought appointment to the Office of Military Commissions.

"I wanted to do something that needed to be done," says Maj. Groharing. After he arrived in June 2005, Guantánamo reporters nicknamed him "Kevin Bacon," after his resemblance to the actor who played a Marine prosecutor in the picture, "A Few Good Men."

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Prosecutors had already requested that President Bush authorize charges against Mr. Khadr based on the voluminous array of potential evidence. Over three years of detention, Mr. Khadr had told interrogators about his father's activities and connections, shedding light on al Qaeda's organizational structure, military officials say.

Soldiers who took part in the battle could be called to testify, along with relatives of Sgt. Speer. Both would likely hold weight with the seven U.S. officers appointed as judges. To top it off, soldiers had recovered a video tape from Ab Khail, which the Pentagon says shows a smiling Mr. Khadr building and planting bombs.

In November 2005, the administration formally charged Mr. Khadr with conspiracy, murder by an unprivileged belligerent, attempted murder by an unprivileged belligerent and aiding the enemy. The charges stem from Mr. Khadr's classification as an unlawful combatant, or a person who has no right to commit acts of war; if he was adjudged to be part of a regular army, his actions likely would be considered legal under the rules of war.

Maj. Groharing went to Guantánamo to personally deliver the news. He recalls thinking that Mr. Khadr looked "somewhat hardened, far from a typical teenager" and "a bit arrogant, cocky."

Mr. Khadr didn't appear know who the Marine was. "He advised me he didn't want me to be his lawyer. I said, 'I'm not your lawyer,' " and handed him the charges.

Mr. Khadr already had an impressive legal team. His family in Canada had hired counsel. In addition, Prof. Ahmad and a faculty colleague, Richard Wilson, represented him in civil litigation challenging his detention at Guantánamo. To these were added an Army lawyer and Col. Vokey, an experienced military defense counsel.

Mr. Khadr's lawyers say none of the charges are crimes, citing a variety of legal arguments. They note the Supreme Court plurality has found that conspiracy is not a war crime, based on post-World War II precedents that considered the charge too vague.

Prof. Ahmed says murder by an unprivileged belligerent "has never been recognized as a violation of the laws of war," and was instead "invented" by the Bush administration. The other charge, aiding the enemy, makes no sense, the law professor adds, because Mr. Khadr owes no allegiance to the U.S. Lastly, because Mr. Khadr was 15 at the time of the alleged crime, he should be treated as a juvenile, says Prof. Ahmad, following historic precedent.

His attorneys allege Mr. Khadr was subjected to years of abuse, including being used as a "human mop" to clean up urine, being shackled until he soiled himself, and being threatened with deportation to Egypt, where he would be raped.

Col. Davis, the chief Guantánamo prosecutor, says the allegations are under review and have not to date been substantiated. Maj. Groharing says if he ever gets his case into a courtroom, he can deal with such objections by citing evidence collected prior to the interrogation.

That wasn't the only problem. The prosecution needed help from other Pentagon offices but instead found uneven support for the commission plan. The tribunals had originated with Bush political appointees rather than professional military lawyers, many of whom thought existing court-martial procedures were more than adequate. Defense Secretary Donald Rumsfeld had little time for the commissions, officials say, since administration lawyers concluded prisoners could be held indefinitely, regardless of whether they were tried or even acquitted.

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In the Pentagon bureaucracy, ambivalence translated into inertia, if not outright resistance. Intelligence agents refused to make key material available. Maj. Groharing tacked over his desk an intelligence report he received whose entire contents had been blacked out.

"There's an inherent conflict between what they're doing and what we're doing," Maj. Groharing says he realized. And the intelligence mission "trumps what we're doing."

Maj. Groharing says he was prepared to try his case based on the paper files and interviews with surviving U.S. servicemen. But Col. Vokey, the defense attorney, wanted to interview witnesses and gather evidence himself. Because that meant a trip to contested areas of Afghanistan and regions of Pakistan unfriendly to Americans, Maj. Groharing had to make arrangements for his adversary's travel, something the prosecutor considered "awkward."

Col. Vokey agrees, saying he didn't want to conduct his investigation with the prosecutor "looking over my shoulder." (Shortly before this article's publication, Col. Vokey said the ban on his communication with journalists had been lifted.)

By chance, lawyers in other military commission cases had business of their own in the region and the office planned a group trip. Maj. Groharing decided to go, too, so he could attend Col. Vokey's depositions and hunt down additional witnesses of his own.

The group flew to Islamabad, Pakistan, in May. Col. Vokey immediately came down with food poisoning "and that put him down for a week," the prosecutor says. "From that day on, he never had another kebab or naan."

After a stop in Peshawar, a border city where Ahmed Khadr once volunteered for a charity called Human Concern International, the group flew to Bagram air base in Afghanistan. From there, they took a helicopter to Khost, where an Army unit was assembled to escort the lawyers, now wearing Kevlar battle gear, to the crime scene.

At first, they couldn't find the village. When the convoy of six Humvees and some 25 soldiers finally rumbled into Ab Khail, villagers surrounded the U.S. group. The prosecutor wanted to find witnesses who would say that foreign fighters had been in the compound.

Several villagers "clearly remembered" the incident, Maj. Groharing says, before the village elder showed up and took charge of the encounter. "Anyone we tried to talk to, he would always jump in and answer for everyone else," the prosecutor says. The elder denied the very essence of the prosecution case: that al Qaeda fighters had fought U.S. soldiers in the village.

"There wasn't going to be a 'Perry Mason' moment where all of a sudden he admitted everything when I confronted him with the evidence," Maj. Groharing says.

Both the prosecutor and the defense attorney tried various feints to distract the elder. "We did talk to some folks on the side without him, but we also didn't want to upset the apple cart," Maj. Groharing says. "We wouldn't be doing a very good job of winning hearts and minds" by offending the local establishment.

The Americans examined the new compound, which had been built over the rubble of the previous buildings, noting a few reused bricks with bullet holes and spotting the shrapnel-damaged green metal gate, leaning unused against the compound's mud wall. After about three frustrating hours, they gave up and returned to Khost, Maj. Groharing says.

Their last stop was Jalalabad, a southern Afghan city where Ahmed Khadr ran an organization called Health and Education Project International. The U.S. says it was a front for financing al Qaeda. Col. Vokey wanted to interview the organization's current director.

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Narrow streets and congested traffic made it impossible for their Humvees to maneuver, forcing the uniformed U.S. lawyers to walk the last few blocks. As they approached, explosions went off, Maj. Groharing recalls. Arriving at the address, they found a crowd watching the entire city block in flames.

"We were looking at the map and the grid coordinates and, no kidding, it's the place Col. Vokey wanted to see," Maj. Groharing says. The two lawyers, fearing for their safety, quickly left the scene.

The case against Mr. Khadr is now one of many held up by the Supreme Court's decision to strike down the Bush administration's original commission plan. Maj. Groharing says he expects to refile charges after the Pentagon draws up rules and procedures implementing the new system of military commissions, to be completed as soon as January. The Bush administration, meanwhile, plans to build a courtroom complex at Guantánamo by July 2007 at a cost of up to $125 million.

But lawmakers of both parties have questioned the courtroom project, and the ultimate fate of military commission trials remains unclear. Last week a federal judge found Guantánamo prisoners had no right to challenge the Military Commissions Act, but the outgoing and incoming chairmen of the Senate Judiciary Committee, Sens. Arlen Specter (R., Pa.) and Patrick Leahy (D., Vt.), have said they plan to revisit the legislation.

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Washington Post
JURISPRUDENCE
Blocking Justice
By Emily Bazelon
Sunday, December 17, 2006; Page B02

On Wednesday, a federal judge dismissed the habeas corpus petition of Salim Ahmed Hamdan, a detainee at Guantanamo Bay, Cuba. Latin for "you have the body," habeas corpus allows detainees to ask a court to order their warden to explain the basis for their detention. Hamdan's petition was dismissed because of the Military Commissions Act, which Congress passed last fall to take away the habeas rights of Guantanamo Bay detainees. The MCA is a classic example of "jurisdiction stripping." When the courts hand down rulings that Congress doesn't like, lawmakers sometimes retaliate by trying to take away their power to hear certain kinds of cases, or by strictly limiting what they can do.

That is also the story behind another case this week, in which the Supreme Court reversed a lower court's decision to grant a new trial in a murder case. At the original trial, the victim's family members wore large buttons with his picture on them, which the U.S. Court of Appeals for the 9th Circuit ruling violated the rights of the defendant, Mathew Musladin. Musladin brought a habeas corpus petition arguing that the buttons could have prejudiced the jury. Most of the Supreme Court justices agreed that seeing the victim's picture every day didn't exactly dispose the jury to be more fair. But the federal courts could not intervene, they ruled unanimously, because of a 1996 statute that allows them to give habeas relief only when the state courts have gotten the law utterly wrong.

Why does Congress get to take cases away from judges? In his book "America's Constitution," Yale law professor Akhil Reed Amar points out that judges weren't the heroes of the revolution. They were appointed by the British crown. The Constitution's drafters gave Congress weapons to use against the courts without giving judges much to defend themselves with. The president can draw his veto pen if Congress goes after him. The Supreme Court has to find a straight-faced way to declare a law unconstitutional when it weakens the judiciary's powers, Amar writes.

The MCA is such a law. It also may be unconstitutional in some cases. But Hamdan's case isn't one of them, according to last week's ruling by U.S. District Judge James Robertson. Hamdan's

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problem is that he's a non-citizen whose contact with the United States has been "involuntary." The MCA stripped Hamdan of the right to habeas corpus granted by federal statute. There are also constitutional rights to habeas. But non-citizens don't have the sort of "substantial connection with our country" that justifies invoking the constitutional right to habeas corpus, the Supreme Court ruled in 1990 in United States v. Verdugo-Urquidez.

If Robertson is right that this ruling applies to Hamdan -- a question the Supreme Court will eventually settle -- hundreds of Guantanamo Bay detainees won't get federal habeas review either.

The limitations of habeas review, in the wake of Congress's tinkering, are on display in cases such as Musladin's. The legislation that Congress passed in 1996 says that the federal courts can't grant a habeas petition that state courts have turned down unless the state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." That is a high bar. The ruling in Musladin's case underscores how high: The 9th Circuit was wrong to spend its time determining whether it was fair for the victim's family to wear the photo buttons in front of the jury. Instead, the federal courts can only look to see whether the Supreme Court has already said it's not fair.

There are reasons for federal judges to defer to state judges -- among them the principle of comity, according to which different branches of government show respect for one another, and the principle of finality, which in this context basically means that you get your habeas crack in the state courts, and that's enough. But habeas review has historically given defendants a chance to air their appeals outside the state system, with its giant caseloads and sometimes rushed rulings. Congress's 1996 habeas law has largely choked off this avenue. Consider Justice Anthony M. Kennedy's concurrence in Musladin's appeal. "Buttons proclaiming a message relevant to the case ought to be prohibited as a matter of course," he wrote, and called for a new rule to make it so -- in a future case. In other words, too late for Mathew Musladin.

If Musladin's predicament doesn't move you, consider that of Paul Gregory House. Twenty years ago, a Tennessee jury convicted him of a woman's murder after FBI testing appeared to show his semen on her clothing and her blood on his jeans. He was sentenced to death.

Then DNA testing showed that the semen on the victim's clothes came from her husband, and that the blood on House's jeans came from autopsy samples that spilled in the crime lab. Whoops. But House still had a big problem: His claims of innocence were barred by state procedural rules. Would the federal courts pry open the doors?

It was hardly a slam-dunk. Last June, in a dissent by Chief Justice John G. Roberts Jr., four justices said that the courts need not reconsider House's appeal, because he had not proved his innocence. But five justices said that House should get his second day in court because he had shown that it was likely that no reasonable juror would find him guilty beyond a reasonable doubt.

Even so, House doesn't get out of prison, nor is he spared the death penalty. He doesn't automatically get a new trial. Because of the 1996 habeas law, he has to plunge back into the procedural thicket.

Letting Congress strip the courts of the authority to hear certain claims or cases means giving more power to the people, who can elect their lawmakers but not their federal judges. From a pre-revolutionary vantage point, that made sense. But these days it's more often judges whom we can count on, if we can count on anyone, to stand up for the procedural rights of murder defendants and Guantanamo Bay detainees. Should Congress be able to block them?

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OGC AMNESTY/CCR 166

(b)(6)

From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Monday, January 22, 2007 4:12 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 167

Cc: (b)(2) (b)(6) [redacted]

Subject: GTMO Bird: Manual; German detainee; Moroccans; Afghan 15 returns to fight; U.K say close GTMO; U.K knew about CIA prisons; Detainee deaths

All:

Here is today's GTMO Bird.

Thanks,
(b)(6) [redacted]
Office of the DoD General Counsel (Legal Counsel) (b)(2) [redacted]
(b)(2) [redacted] (DSN (b)( ))
(fax)
CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

New York Times
January 19, 2007
Pg. 18
Pentagon Revises Its Rules On Prosecution Of Terrorists By Mark Mazzetti WASHINGTON, Jan. 18 - The Pentagon on Thursday unveiled its new courtroom rules for prosecuting prisoners held as terrorists, allowing military tribunals to consider hearsay evidence and testimony obtained through coercion, but not torture.

Pentagon officials said, however, that the new policy more closely resembled courts-martial governed by the Uniform Code of Military Justice than the previous procedures used to prosecute terrorist suspects.

Under legislation signed into law last year, the government is poised to restart tribunals that the Supreme Court halted last summer. Pentagon officials said military prosecutors had determined there was sufficient evidence to bring war crimes charges against 60 to 80 of the 395 prisoners detained at the military prison at Guantánamo Bay, Cuba.

The Pentagon detailed the new procedures in a 238-page manual released Thursday.
The new procedures follow the guidelines Congress set down in the Military Commissions Act late last year.

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Representative Ike Skelton, the Missouri Democrat who became chairman of the House Armed Services Committee this month when control of the House changed hands, pledged to scrutinize the new procedures so that they did not "run afoul" of the Constitution.

The new manual explicitly forbids military prosecutors from using evidence obtained through torture. At the same time, it makes a distinction between torture and coercion, allowing testimony that came as the result of coercive techniques used by military and intelligence officials until late 2005, when Congress passed a law banning cruel and inhumane treatment of prisoners.

In order for coerced testimony to be used in military commissions, a military judge would have to determine that it was both reliable and relevant to the case. The matter is particularly important because the Pentagon is planning for the trials of 14 "high value" detainees, who until they were moved to Guantánamo Bay in September were kept elsewhere in secret prisons run by the Central Intelligence Agency.

The prisoners detained at those sites, including Khalid Shaikh Mohammed, the accused mastermind of the terrorist attacks of Sept. 11, 2001, are believed to have been subjected to particularly harsh interrogation methods like "water boarding," which induces a feeling of drowning.

Daniel J. Dell'Orto, the Pentagon's principal deputy general counsel, told reporters on Thursday that the new procedures followed the guidelines of the Military Commissions Act and ensured that detainees receive, as called for by international law, "all the judicial guarantees which are recognized as indispensable by civilized people."

Pentagon officials said that none of the most significant prisoners would be among the first group to stand trial before the military commissions.

"Those cases are going to have to be developed carefully, and it's going to take some time, because they are extraordinarily complex," said Brig. Gen. Thomas L. Hemingway, a Pentagon official who helped draft the new guidelines.

The Bush administration established the military commissions in the months after the Sept. 11 attacks to prosecute "unlawful combatants" captured during counterterrorism operations around the globe, many of them in Afghanistan.

Last summer, the Supreme Court struck down the commissions as unconstitutional, forcing the White House and Congress to develop new guidelines.

Human rights groups on Thursday criticized the new procedures for straying from the military's traditional rules for courts-martial. Among other things, the rules allow too much leeway for government lawyers to keep defendants from viewing classified evidence, they said.

"Classified sources and methods are protected," said Jennifer Daskal, a lawyer at Human Rights Watch. "This creates the possibility that the defense will not learn the ways in which the evidence was obtained, which could have been through coercive techniques like water boarding and sleep deprivation."

Mr. Dell'Orto said that while defendants would not be allowed to see classified evidence, defense lawyers would be given an unclassified summary of the material.

There are currently 395 detainees held at Guantánamo Bay, but it is likely that only a fraction of those will be prosecuted before military commissions. Even if prisoners are not charged, officials said, the United States still has the right to detain them indefinitely or hand them over to their native governments.

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"It doesn't mean that they are not unlawful combatants. It doesn't mean that they shouldn't be detained," said Bryan Whitman, a Pentagon spokesman.

Besides Mr. Mohammed, according to the government, the former C.I.A. detainees currently at Guantánamo Bay include senior members of Al Qaeda believed to be responsible for the bombing of the United States destroyer Cole in 2000 in Yemen and the 1998 attacks on American embassies in Kenya and Tanzania.

The prosecutors for the trials of those men will be a mix of military and civilian lawyers.
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Pentagon issues guidelines for Guantánamo Bay detainees' trials By Julian E. Barnes Los Angeles Times WASHINGTON - The Pentagon paved the way Thursday for trials of detainees being held at Guantánamo Bay, issuing new rules that activate the nation's controversial law on interrogating and prosecuting suspected terrorists.

With the rules in place, the military plans to charge 60 to 80 of the approximately 395 detainees there. Trials are likely to begin this spring, officials said, but it is unlikely the so-called "high value" detainees formerly held by the CIA will be among the first to be given a hearing.

The first 10
Instead, the military is likely to issue new charges against the 10 detainees who were first brought to court under the old commission rules that were tossed out by the Supreme Court last year. Their trials have been on hold since the court's ruling last June.

The rules implement the controversial compromises worked out last year by Congress, including provisions that ban the use of statements obtained through torture but allow some coerced statements to be admitted with the permission of a judge. The law was enacted in the weeks before the midterm election, pushed by Republicans as a national-security issue.

Protections excluded
With its new rules, the Pentagon, as expected, created a legal system for the detainees that eliminates the use of Miranda rights or search warrants, legal protections that officials say make little sense for suspects captured on the battlefield.

But the rules unveiled Thursday touched off a new debate over the role of harsh interrogations in prosecutions. In some cases, the rules appear to go further than the military-commissions act itself in relaxing usual U.S. courtroom standards by allowing use of potentially tainted evidence.

Obtaining evidence
For instance, under normal practices, any evidence obtained illegally - for example, through torture or abusing a witness - is excluded. Under the rules issued by the Pentagon on Thursday, statements obtained through torture cannot be used as evidence. But if the questionable treatment of a detainee yielded a piece of physical evidence, such as the location of an incriminating document, that information could be used.

Angry reaction
Human-rights organizations reacted angrily to that rule, arguing that the use of tainted evidence sent the message that torture could sometimes be justified. "As long as you are willing to use what was obtained by torture, you are endorsing torture," said Jumana Musa, an advocacy director for Amnesty International.

The military-commission law does not explicitly refer to the exclusion of evidence obtained through torture. Administration officials have argued that if Congress wanted all physical evidence obtained through torture to be thrown out, it would have said so.

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International Herald Tribune
Guantanamo inmate's lawyer, family slam new military tribunals as unfair

The Associated Press
Thursday, January 18, 2007

SYDNEY, Australia
Australia's sole remaining inmate at Guantanamo Bay has no chance of receiving a fair trial under the new U.S. military tribunal system, his lawyer and family said Friday.

The Pentagon released the new rules on Thursday in a 238-page manual which stipulates that a detainee's lawyer cannot reveal classified evidence in a client's defense until the government has reviewed it. Suspects would be allowed to view summaries of classified evidence, not the material itself.

The new regulations are intended to track a law passed last autumn by the U.S. Congress restoring President George W. Bush's plans to have special military commissions try terror-war prisoners. Those commissions were struck down in June by the Supreme Court.

Maj. Michael Mori, the Pentagon-appointed lawyer for Australian prisoner David Hicks, said Friday the new rules "just don't provide for a fair trial."

"Actually things are worse under this new system," he said, referring to provisions that could allow terror suspects to be convicted, and perhaps executed, on hearsay - a witness quoting someone else.

The law governing the new tribunals also strips non-U.S. citizens held under suspicion of being enemy combatants of their right to challenge their detention in civilian courts with petitions of habeas corpus.

"The right to a speedy trial - that is gone," Mori said. "Any right against self-incrimination has been taken away, the right to confront your accuser."

The lawyer said he was examining avenues for a legal challenge, but said the Supreme Court would not rule on such a case before 2010, by which time Hicks would have been in detention for up to nine years.

Hicks' father, Terry, said he was concerned the new trials would allow evidence obtained by coercion.
"When you boil it all down to the bottom of the pot, it's still the same as before. It's still an unfair and an unjust system," said Terry Hicks who has expressed concern about his son's mental health after he refused to take a phone call from Terry last year - a rare contact that took months to organize.

Hicks, a former kangaroo skinner from southern Australia, was captured in Afghanistan by the Northern Alliance during the U.S.-led invasion in late 2001 and transferred to Guantanamo in January 2002.

He was originally charged with attempted murder, conspiracy to commit war crimes and aiding the enemy, and was selected to face a U.S. military tribunal. But his case was thrown into limbo when the U.S. Supreme Court declared the tribunals illegal last year.

Australia's Attorney General Philip Ruddock said he welcomed the new tribunal system and called on the United States to bring Hicks to trial "without delay."

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http://www.iht.com/articles/ap/2007/01/19/asia/AS-GEN-Australia-Guantanamo-Inmate.php
<http://www.iht.com/articles/ap/2007/01/19/asia/AS-GEN-Australia-Guantanamo-Inmate.php>
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Bloomberg.com
German Terror Inquiry Hears Former Guantanamo Inmate's Evidence By Claudia Rach Jan. 18
(Bloomberg) -- Germany's previous government bears some responsibility for the imprisonment at the Guantanamo camp of a German-born Turk, the man's lawyer told a parliamentary inquiry, raising questions about the role in the case of ministers now serving in the current German administration.

The German Foreign Ministry only administrated Murat Kurnaz's case and wasn't proactive in freeing him, his lawyer, Bernhard Docke, told the inquiry. Docke also said he suspects that the government under then-Chancellor Gerhard Schroeder refused Kurnaz entry into Germany in the fall of 2002, when the U.S. originally offered to release him from the prison camp.

``Until this day I see no real reason why Germany, if it had the offer from the U.S., didn't take it up,'' after both sides had established that Kurnaz wasn't a terror suspect, Docke said today. ``If Kurnaz would have been German, he would already have been free in fall 2002,'' he said.

The testimony presented to the inquiry, called to investigate the government's role in fighting terrorism, raises questions over what Foreign Minister Frank-Walter Steinmeier, who at the time was Schroeder's chief of staff and hence in charge of intelligence, knew about the case and whether he bears political responsibility.

Further Questions
The inquiry now intends to establish why Kurnaz couldn't return home, a matter that raises further questions over the role of Deputy Interior Minister August Hanning, who at the time was head of the BND Federal Intelligence Service, and whether he may have rejected Kurnaz's return to Germany.

Former Foreign Minister Joschka Fischer told Kurnaz's mother in a letter that German help was limited because Kurnaz had Turkish citizenship and the U.S. was only negotiating with the home nations of inmates, Docke said today.

Murat Kurnaz, in his testimony today, said he was arrested on a trip to Pakistan in October 2001 and handed over by the authorities to the Americans, who transferred him to a U.S. prison in Kandahar, Afghanistan, from where he was later moved to Guantanamo. Already in Kandahar, Kurnaz was confronted with details about his life in the northern German city of Bremen that were part of an investigation by the city's authorities, he said.

Docke said he suspects that German authorities had handed over information to the U.S. that confirmed their suspicion he was a member of the al-Qaeda terrorist network, and that his client was therefore transferred to Guantanamo jail.

`Obvious'
``I can't prove that Germany gave information to the U.S. but I consider such a connection as obvious,'' Docke said.
The inquiry is also investigating whether the questioning of Kurnaz in Guantanamo by German officials in February 2002 was appropriate. The government at the time condemned the prison camp, yet was prepared to question Kurnaz over indications that he may have been involved in a possible Islamic terrorist cell in Bremen.

Docke's efforts to free Kurnaz, who was released from Guantanamo without charge in August 2006 after four and three- quarter years, only became more promising when German Chancellor Angela Merkel came to office, he said. She called for Guantanamo jail to be closed and urged

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during her meeting with President George W. Bush in January last year for the U.S. to free him.

Kurnaz's case is also subject to an investigation by the German parliament's Defense Committee, where he testified yesterday in private, briefing lawmakers on his allegations that two German special-forces soldiers beat him up while he was detained in Kandahar in January 2002.

Prosecutors in Germany are already considering filing charges against the two soldiers after Kurnaz identified them from photographs and told investigators one of the men hit his head against the ground and kicked him, the prosecutor's office in the German city of Tuebingen said on Jan. 8. Authorities in Tuebingen and Karlsruhe said they plan to question the soldier and a second member of the KSK special-forces unit who was on guard duty in Kandahar at the time Kurnaz says he was beaten.

http://www.bloomberg.com/apps/news?pid=20601100&sid=al0a4uAfe2aQ&refer=germany
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Gulf News
Court acquits former Guantanamo detainees
Rabat: Five Moroccans previously held at the US prison at Guantanamo Bay were acquitted of terrorism-related charges in Morocco yesterday, the state news agency reported.

The state MAP news agency said the five suspects had been charged with belonging to a criminal organisation, funding a criminal group and forging passports - common charges in Morocco against suspects believed to have been involved in terrorism. The five also were charged with refusing to denounce crimes against state security.

No other details about the trial or the charges were immediately available.
In November, three former Guantanamo detainees were convicted in Morocco for creating a criminal group and forging documents, and sentenced to three to five years in prison.

http://archive.gulfnews.com/articles/07/01/20/10098151.html
<http://archive.gulfnews.com/articles/07/01/20/10098151.html>
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Arab American News.com
Canada: Attorneys try to help Gitmo detainees
By: Reuel Amdur / The Arab American News Mark Denbeaux is a veteran of the civil rights struggles. He was there at Selma during that historic voter registration campaign. He was there when Martin Luther King Jr. delivered his "I have a dream" speech. Now, somewhat longer in the tooth, he is a professor at Seton Hall Law School in Newark, New Jersey, but he still has that fire in the belly when it comes to human rights. That's why the internment camp at Guantanamo stuck in his craw right from the start.

His son Joshua is a more conservative guy. He is also a lawyer, his practice focusing on commercial litigation. His take on Guantanamo was somewhat different. "At the beginning, I was not against it," he said. "I figured that those interned would be given a trial, with the guilty being punished and the others released. Then it slowly dawned on me. There would be no trials. That is so un-American."

He began to come over to his father's side on the issue. He especially finds the government's refusal to give the Red Cross and human rights organizations access to the prisoners to be foolish. It leaves the government unable to defend itself against allegations of torture, "even if untrue."

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So father and son went down to Washington for a training session organized by what is unofficially called the Guantanamo Bar Association. They were assigned a couple Tunisian clients and went to visit them in 2005 and 2006, with an interpreter in tow.

They were unable to contact their clients ahead of time, as there was no phone access possible. The men were distrustful of the lawyers. "Why wouldn't they be?" asked Joshua. The lawyers might just as easily been other interrogators.

Their clients, Rafik al-Hami and Mohammed Rahman, arrived in Guantanamo late in 2002. It appears that Rahman was sold to the Americans by Pakistanis. According to Joshua, two-thirds of the Guantanamo prisoners were sold by Pakistani bounty-hunters, people whose position in Pakistan is uncertain at this time. As well, it appears that they operated without always being given the names of people to pick up. Rather, it was a sales job on their part.

Rahman was, according to Joshua, labeled an enemy combatant because of some alleged contact that he had had with someone who was under suspicion. He says that authorities are fully convinced that Rahman is not an enemy combatant but is being held at Guantanamo because they don't know what to do with him, since he refuses to go back to Tunisia.

Al-Hami was held in prison in Teheran and turned over by Iran to the Americans in 2001, who jailed him in Kabul for a year, where he says he was tortured, before transfer to Guantanamo. It is alleged that he took part in military training under the Taliban régime. Joshua argues that such training would not in itself make him a terrorist. Besides, he wondered how this information was obtained. If by torture, it would be questionable.

The actual interviews were held under rather unfavorable conditions. The men were chained to the floor, and the whole scene was filmed. Rahman complained about untreated heart problems. During the first visit, Rahman's mood appeared normal, but in 2006 he seemed to have lost all hope. He was unwilling to talk or even to look at the lawyers.

It is unclear what the two lawyers can do for their clients. Last year legislation was passed that forbids any recourse to civilian tribunals, but that law is being challenged in the courts. Yet, time drags on slowly for men spending years in isolation, living with uncertainty about the future.

http://www.arabamericannews.com/newsarticle.php?articleid=7333
<http://www.arabamericannews.com/newsarticle.php?articleid=7333>
Miami Herald
January 20, 2007
Ex-Prisoner, Now 19, Is Back In U.S. Custody An Afghan fighter who was detained at Guantánamo Bay when he was about 15 is a prisoner again, captured in a battle with U.S. troops.

By Ben Fox, Associated Press
GUANTANAMO BAY NAVY BASE, Cuba -- Nearly three years after his release, an Afghan teen who was among three youths from his country held here has been recaptured in Afghanistan for fighting against U.S. forces, a senior camp official says.

The Afghan, who was about 15 when he was swept up along with hundreds of others and taken to Guantánamo Bay, is among a few former prisoners who have been killed or recaptured following their release by U.S. authorities, said Paul Rester, director of the Joint Intelligence Group at the detention center.

The former detainee would now be about 19.
Won't come back
He was captured more than a year ago after a shootout with U.S. troops, according to Rester, who said in an interview that there are no plans to bring him back to Guantánamo Bay, where the military holds nearly 400 men on suspicion of links to al Qaeda or the Taliban.

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''He's not been brought back here,'' he said. ``We're not bringing anybody here.'' Authorities did not release the young man's name, and the detention center commander, Navy Rear Adm. Harry B. Harris, said details about his capture remain classified. A Pentagon spokesman also declined to comment.

It was unknown where he was being held in Afghanistan, where the United States holds about 620 prisoners.
The United States has released nearly 380 detainees from Guantánamo Bay, and Defense Department officials say at least 20 have taken up arms again. Those include at least two Russians arrested by authorities in Russia and two other Afghans, the officials said.

''A portion of that 20, we've killed them so we know they've returned to the fight,'' Harris told the Associated Press. ``Some of them are in jail today so we know they returned to the fight.''

Disclosing details about the former detainees could compromise U.S. intelligence gathering, Harris said.
Age was estimated
The twice-captured detainee was one of three Afghans whose ages were estimated to be under 16 by the military, based on medical tests at Guantánamo. U.S. authorities did not know their precise ages.

Human rights groups said the juveniles may have been younger than 15 and urged their release, saying it was wrong to hold them as enemy combatants at the remote detention center at a Navy base in southeast Cuba. The International Committee of the Red Cross, which had visited the juveniles, said it was concerned about keeping them away from their families and the possible psychological effect of detaining them so young.

Attorneys who monitor the detention center said they had been unaware that the young Afghan had been taken back into custody.

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Miami Herald
January 22, 2007
British: Close Guantanamo
British lawmakers who toured the Guantánamo detention camp have recommended actions that would speed up its closure.
By David Stringer, Associated Press
LONDON - A panel of British lawmakers urged the government Sunday to work with the United States to develop an alternative to holding terror suspects in Guantánamo -- aiming to speed up the closure of the much-criticized U.S. military prison.

The Commons Foreign Affairs Select Committee also called for an overhaul of the Geneva Convention, suggesting that Prime Minister Tony Blair should lead efforts to update the international convention to reflect the challenge of extremist terrorism.

Seven panel members in September visited the detention center, located on a U.S. Naval base on the eastern tip of Cuba, a report published Sunday said.

The panel's report said, ''The international community as a whole needs to shoulder its responsibility in finding a longer-term solution'' to the indefinite detention of terrorist suspects at Guantánamo.

''We recommend that the government engage actively with the U.S. administration and with the international community to assist the process of closing Guantánamo as soon as may be

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consistent with the overriding need to protect the public from terrorist threats,'' the report said.

Nine British nationals held at the detention facility had been released by January 2005, but the committee said it believed another nine former British residents remained held at Guantánamo, which was set up by the United States in 2002.

Human rights lawyers previously had said they were aware of eight ex-British residents being detained at the camp.
The committee said it believed Britain had acted correctly in choosing not to accept responsibility for the men -- a decision lawyers are seeking to challenge in appeal courts -- noting concern that returned suspects would require intensive surveillance by security and intelligence agencies.

''Those detained at Guantánamo must be dealt with transparently and in full conformity with all applicable national and international law,'' the report said, adding that the committee recognized that ``many of those detained present a real threat to public safety.''

Following their visit to the prison camp, the lawmakers concluded that facilities were comparable to Belmarsh Prison -- a high security prison complex in south London used to house terrorism suspects -- but that conditions were not, the report said.

Though the image of inmates ''kneeling in the dirt, shackled and hooded'' was no longer accurate, the report said Guantánamo failed to achieve minimum British standards ``on access to exercise and recreation, to lawyers and to the outside world through educational facilities and the media.''

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British gov't knew of CIA prisons
LONDON (AP) - The British foreign secretary admitted Friday her government was aware of a secret CIA prison network before President George W. Bush acknowledged its existence in September.

Foreign Secretary Margaret Beckett made the admission in a written response to a parliamentary question. In a recent speech, Bush included a reference to the "existence of a detention program operated by the CIA."

Bush said 14 "high-value detainees" - including the suspected mastermind of the Sept. 11, 2001 attacks on the United States, Khalid Sheik Mohammed - had been transferred from clandestine centres to the U.S. prison camp at Guantanamo Bay, Cuba.

"Prior to this speech, we were aware of the existence of a secret U.S. detention program only in general terms," Beckett said in response to a question.

A Foreign Office spokesman, speaking on customary condition of anonymity, said the statement was the first confirmation Britain had prior knowledge of the secret prisons.

An Intelligence and Security Committee report quoted an unnamed agent for the British spy agency MI5, who said the United States was "holding some al-Qaida members in detention, other than at Guantanamo but we do not know the locations or terms of their detention and do not have access to them."

The agent told the committee, a panel which meets in secret to scrutinize spy agency work, Britain had received high-value intelligence from the detainees, "some of which has led to the frustration of terrorist attacks" in Britain.

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A draft European Parliament report released Nov. 28 concluded 11 European Union governments - including Britain, Poland and Germany - knew about secret CIA prisons operating in Europe.

http://cnews.canoe.ca/CNEWS/War_Terror/2007/01/19/3412466-ap.html
<http://cnews.canoe.ca/CNEWS/War_Terror/2007/01/19/3412466-ap.html>
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The Boston Globe
SCOTT ALLEN AND STEPHEN XENAKIS
Our duty to war detainees
By Scott Allen and Stephen Xenakis | January 22, 2007 AT LEAST 112 detainees have died in US custody in Iraq and Afghanistan between 2002 and 2005, according to military documents and press reports. Many of these deaths appear to have been preventable. Given the public record of detainee abuses and history of weakened administration support of detainee rights, the possibility of preventable deaths in US custody warrants careful review.

Defense Secretary Robert Gates should promptly authorize an independent investigation of possible military negligence and take action to ensure that the United States is living up to its obligations under the Geneva Conventions.

No such wide-ranging and independent inquiry has occurred. Recently, one of us published the most comprehensive, peer-reviewed study of the reported causes of these fatalities in Medscape General Medicine, finding that the leading causes of detainee death were homicide (43 cases) and enemy mortar attacks (36 cases).

According to the study, at least 11 of the 43 homicide cases involved blunt trauma or asphyxiation. At least three of the homicides reported have resulted in murder charges. Another three have resulted in charges of voluntary manslaughter. The 36 deaths caused by enemy mortar attacks, many of which occurred at Abu Ghraib, suggest clear violations of Geneva prohibitions against placing detainees in range of enemy attack.

Also, the study identified 20 deaths that were attributed to natural causes, and nine were listed as having an unknown cause of death. A group of eight deaths due to natural causes occurred in Iraq in August 2003, raising urgent questions about the conditions of confinement and the adequacy and availability of medical care. Given the difficulty in getting information on the deaths of detainees in US custody, and given the sensitivity of the subject, we believe this review is incomplete.

As physicians, we believe that these findings cast doubt on whether our colleagues in the US military caring for detainees are receiving the direction and resources they need to do their job effectively. Health professionals have professional ethical obligations to preserve and protect the lives of their patients. Congress must ensure that our military medical professionals are equipped and supported to accomplish their mission honorably.

America's military medical corps has long been regarded as the most professional and ethical military medical service in the world. As of five years ago, military regulations instructed all uniformed medical personnel to provide medical care to detainees of an equal standard as that received by US soldiers.

After Sept. 11, however, the Pentagon detached the standard of detainee medical care from the standard of care for US personnel deployed in combat theaters. Also, planning for the security and provision of healthcare for detainees taken into custody early on in the Afghanistan and Iraq conflicts was grossly inadequate, as is tragically evident from incidents at Abu Ghraib, Sheberghan prison in Afghanistan, and other US detention centers.

The responsibility for the conduct of the medics at Guantanamo Bay and Abu Ghraib rests with the senior leadership of the medical departments and the Pentagon. Since the onset of combat in both Afghanistan and Iraq, the leadership has faced difficult challenges regarding the

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appropriate conduct of medics in the treatment of detainees, the way medics handle casualties and deaths of prisoners, and the response to hunger strikes and other medical emergencies in the detention facilities.

The duty and authority for the relevant policies and practices can be neither deferred nor sidestepped. An independent inquiry into detainee deaths is the first step toward ensuring that commanders and policy makers are held accountable for how they treat detainees.

Dr. Scott Allen is a Medicine as Profession Fellow at Physicians for Human Rights. Dr. Stephen Xenakis, a practicing psychiatrist and retired brigadier general, is the former commander of the US Army's Southeast Medical Command. <<...OLE_Obj...>>

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<http://www.boston.com/news/globe/editorial_opinion/oped/articles/2007/01/22/our_duty_to_war_detainees?mode=PF>
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Yemen Times
Imprisoned without a cause:
Former Guantanamo detainee's voice finally heard Nisreen Shaddad
<mailto:editorial@yementimes.com?subject=Attn:%20Nisreen%20Shaddad>
SANA'A, Jan. 21 - A group defending human rights presented on Thursday a program which detailed the plight of a released prisoner, detained for five years in the American prison Guantanamo, where he was abused physically and mentally, denied medical attention, and held without any hope for a trial. Mohammed Al-Asadi, with a crestfallen demeanor, detailed his despair with strong words at The National Organization for Defending Rights and Freedom, or HOOD headquarters in Sana'a.

Families of other detainees were also present at the program. Many of the detainees being held at the American prison in Cuba, have absolutely no evidence against them of having committed hostile acts against the United States. The United States opened the prison in 2002, rounding up many of the men in Pakistan and Afghanistan, and labeling them enemy combatants and terrorists.

"My son went to Pakistan to study but never came back. He was arrested without a definite case ... those are the documents that prove the purpose of his going to Pakistan," said Hail's mother.

Umm Abdullah's says her husband, Ismael Al-Raimi, traveled to the United Arab Emirates to secure work and had been there for two years when he called his wife saying he was returning to Yemen. After that phone call, Al-Raimi disappeared, and his family didn't hear from him for months. The family painstakingly found his name on a list of Guantanamo detainees. However, according to Umm Abdullah, she has been trying to find out more information on her husband through the Red Cross, but has been told he is not in Guantanamo. She fears her husband is in one of America's secret jails, Umm Abdullah said.

The other five Yemeni detainees who were recently released from Guantanamo are still being held in the Central Prison in Sana'a, while the government runs a background investigation.

"Al-Asadi wasn't held with the five other detainees as America released him without requesting further interrogations," said Khalid Al-Anisi, executive director of HOOD.

Although Al-Asadi was tortured for five years, his talk exuded confidence, strength, and faith, and he said he hopes in the future to be able to do more to become a defender of detainee rights.

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"In this conference I call on all people to stand tall to shut down Guantanamo and end the trail of human tragedy at all secret detentions ... America must be aware of the danger the U.S. government is leading them to. Such treatment creates rancor and spite and brings evil to the whole world," Al-Asadi said.

He added, "I will use all my efforts and energy to clarify the sorrow and pain the rest of the detainees suffer from. I will struggle to present their issues to the public and work with the organizations that defend human rights."

Shadi Mokhter, an American lawyer pursuing her doctorate in human rights, and an attendee at Thursday's event, agreed that Guantanamo is an illegal prison, "Release the detainees or give them a fair trial," she said.

Another attendee, Ryadh Al-Ghaili, who was once a detainee at the political security prison in Yemen said, "My coming to this conference is to support all detainees around the world whether they are being held at Guantanamo or Guantanamian systems used in Arabic or Islamic countries. There is no difference between Guantanamo and a political security prison as they are both violations of one of the greatest blessings God gives man, which is freedom."

Others present at the event agreed that before fighting terrorism as security centers claim, they need to heal the tendency of terrorism in their hearts and understand the concept of human rights.

"The issue we need to face today is not only the existence of Guantanamo, but also the upside-down concepts and principles of human rights ... such as a pre-emptive war and a war against terrorism. Such concepts changed the aggressive war against Iraq into a war of liberation, and legalizes arresting innocent men under the banner of 'War Against Terrorism,'" said Tawfeeq Al-Bathi, from the Human Rights Information and Training Center.

Al-Ghaili also explained the cause of terrorism.

"The treatment while being arrested is enough to create terrorists. They snoop on our private affairs, rush into our homes, and illegally detain us for months or years while using torture and depriving us of the necessities of daily life," Al-Ghaili said.

During his statement, Al-Asadi asserted: "It is a war against Islam, because while being in the prison they punished us while we were praying. They stomped on the Holy Quran and threw it in deserted places and toilets. They frisked our private organs. They forced us to shave our beard. And when we asked them for rights, they told us we are neither humans nor animals to deserve rights. We are devils, and devils have no rights."

There were about 759 men, all Muslim, initially held at Guantanamo. The number of detainees fell to 400 in 2006. 100 of the current prisoners are Yemenis, 70 are Saudis, and 230 are other nationalities.

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5,000 sail to Cuba to Close Guantánamo
Press release, 01/22/2007
Just over a week on from the 5th anniversary of the first transfers to the US prison camp at Guantánamo, over 5,000 people from more than 90 countries have set off on a virtual voyage to the US detention centre.

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The travellers are taking part in AI's latest online campaign to persuade the US government to close Guantánamo. The campaign will run until 26 June, International Day for the Protection of Victims of Torture.

Each person who signs up to join the flotilla can design their own outfit, redo their hair and choose from a range of flotation devices from pirate ships and dinghies to dolphins and dragons. People can also choose a message about Guantánamo in a selection of languages. As people progress towards Cuba, they will be invited to sign petitions on behalf of those detained in Guantánamo.

"The protests which took place less than a fortnight ago showed that people across the world want to see Guantánamo closed. We are now taking that struggle from the streets to cyber space," said Denise Searle, Senior Director of Communications at Amnesty International.

"This campaign is also a response to the US government's continuous disregard of international outrage at Guantánamo detentions and to AI's numerous unanswered requests to visit the detainees who are held there virtually incommunicado."

You can visit AI's online flotilla at: http://www.amnesty.org/guantanamoflotilla/
<http://www.amnesty.org/guantanamoflotilla/>
To download a banner to AI's flotilla (in English or Spanish), please go to:
http://web.amnesty.org/pages/stoptorture-bannersflotilla-eng
<http://web.amnesty.org/pages/stoptorture-bannersflotilla-eng>

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(b)(6)

From: (b)(6) DoD OGC
Sent: Tuesday, January 23, 2007 4:16 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 181

Cc: (b)(2),(b)(6)

Subject: GTMO Bird: New deputy commander for JTF; World dislikes GTMO; Kurnaz; DNA; CIA investigation; Legislation

All:

Here is today's GTMO Bird.

Thanks,
(b)(6)
Office of the DoD General Counsel (Legal Counsel) (b)(2)
(b)(2) (DSN (b)( )
(fax)
CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

NewsReview.Info
Oregon officer selected to oversee Guantanamo Bay PORTLAND, Ore. (AP) – An Oregon Army National Guard officer will be the next man to oversee the lives of detainees at Guantanamo Bay.

Brig. Gen. Cameron A. Crawford, 50, deployed Sunday for training and a yearlong assignment as deputy commander of the Joint Task Force-Guantanamo Bay. The Forest Grove native and West Point graduate will help oversee 2,000 service members and 400 detainees. He will handle day-to-day operations under the command of Navy Rear Admiral Harry B. Harris.

Crawford is on military leave from the Weyerhaeuser paper mill in Albany. He is a decorated Army and Guard officer who specialized in military police, corrections and intelligence, called the job "a perfect fit for my 30-plus years of background and experience."

But he acknowledged that media scrutiny, legal battles and stakes make the job "unique."

About 400 people – including alleged Taliban members and senior al-Qaida members alleged to have known of the Sept. 11 terrorist attacks – are at Guantanamo. Many of the conditions condemned worldwide, including use of hoods and outdoor enclosures, ended in 2003.

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Crawford and others say the facility now most resembles a standard federal prison such as the one at Sheridan where Crawford interned while earning a master's degree in correctional administration.

"At the end of the day it's about leadership," Crawford said, "and making sure service members there are doing the right thing executing their mission to legally and humanely detain enemy combatants and secondarily collecting intelligence on the war on terror."

Still, Portland attorneys who represent several detainees say that while physical conditions have improved, treatment is variable. They said the conditions are unlike any other prison, with ever-changing rules and no clear path to trial.

The Federal Defender Office in Oregon represents seven detainees. Steven Wax, Oregon's federal public defender, volunteered the office to take cases in 2005 when a federal court sought assistance from public defenders. In addition, private attorneys at Perkins Coie; Garvey Shubert Barer; and Schwabe, Williamson and Wyatt represent other detainees.

Congress twice passed laws purporting to strip federal courts of the ability to hear prisoners' habeas corpus claims, and the U.S. Supreme Court has twice said federal courts do have jurisdiction. The question is before the D.C. Court of Appeals.

Wax said that in three trips to the base he found detainees face "a psychological torture."

"It creates despair when you hold people without charge, without evidence, without rules, depriving them of access to the courts and not providing them any meaningful review mechanism," Wax said. "You strip them of hope, and in doing so, you are depriving them of their humanity."

Crawford's assignment makes him the second Oregon Guard officer thrust onto the worldwide stage since last January, when Brig. Gen. Douglas A. Pritt took command of Joint Task Force Phoenix, overseeing nearly 4,500 soldiers training the Afghan National Army. When Pritt deployed with more than 850 members of the Oregon Guard's 41st Brigade Combat Team, headquartered in Tigard, Crawford was named its commander.

Col. Crawford was promoted to brigadier general in a ceremony in Salem Friday attended by his wife, Karen; daughters, Sara and Melissa; and parents, Doug and Jeannie Crawford; and Gov. Ted Kulongoski.

Crawford, a high school athlete, entered West Point at 17. He served 14 years' active duty, including in intelligence during the Persian Gulf War, and as an assistant professor of military science at Oregon State University. When he left active duty in 1993, Crawford joined the Oregon Guard and took full-time civilian jobs, one of which was in 1997 as the training manager at the Albany mill.

He took extended military leave in 2003 to serve as deputy brigade commander for the 41st Combat Brigade and was commanding 3,500 soldiers when he was tapped for the Guantanamo job.
http://www.oregonnews.com/article/20070122/NEWS/70122004
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Miami Herald

British poll: World dislikes Guantánamo camp BY CAROL ROSENBERG crosenberg@MiamiHerald.com A new poll by the British Broadcasting Corp. portrays both the war on Iraq and the detention center at Guantánamo Bay, Cuba, as major international liabilities in terms of American esteem abroad.

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The BBC World Service, an independent media entity in the nation seen as the staunchest U.S. ally, ordered the poll, which was conducted by the Program on International Policy Attitudes at the University of Maryland.
It surveyed 26,381 people in 25 countries on attitudes toward the United States and President Bush.
''According to world public opinion, these days the U.S. government hardly seems to be able to do anything right,'' Steven Kull, PIPA director, said with a release of the poll.
Specifically, the poll showed 73 percent disapprove of the Iraq war while 67 percent disapprove of the way the United States has treated terror suspects detained at Guantánamo Bay.
Britain's Tony Blair has been a staunch ally and supporter of Bush's war in Iraq, but his government has separately negotiated the release of all British citizens who were taken from Bagram, Afghanistan, to Guantánamo.
The U.S. presently holds fewer than 400 foreign men and teens -- none of them U.S. citizens -- as enemy combatants at the U.S. Navy base in remote southeast Cuba.
They include fewer than a dozen former British residents -- not citizens -- whose detention has become a cause célèbre in some human rights advocacy circles in London.
Pentagon briefers argue captives there receive medical services similar to that given to U.S. service members. They also say their treatment of prisoners meets the highest of U.S. standards.
In contrast, FBI memos have described early episodes of humiliating interrogations of captives and former Guantánamo detainees have alleged they were tortured in U.S. custody.
Broadly, the BBC poll found ``that world citizens disapprove of the way the U.S. government has handled all six of the foreign policy areas explored.''
Other areas of inquiry included:
• U.S. handling of the Israeli-Hezbollah war this summer -- 65 percent of those polled disapproved; • Iran policy -- 60 percent disapproved; • Global warming policies -- 56 percent disapproved; • The U.S. approach to the North Korea's nuclear crisis -- 54 percent disagreed.
''Interestingly,'' it also noted, ``the American public also seems to have serious doubts about U.S. policy.''
Specifically it found 57 percent of Americans disapproved of how the United States is handling the Iraq war and half of Americans ``disprove of U.S. treatment of detainees in Guantánamo and other prisons.''
The poll was taken between Nov. 3 and Jan. 9, and had a margin of error of 3 percent. It was released on the eve of President Bush's State of the Union address.
Countries included in the survey were: Argentina, Australia, Brazil, Chile, China, Egypt, France, Germany, Great Britain, Hungary, India, Indonesia, Italy, Kenya, Lebanon, Mexico, Nigeria, Philippines, Poland, Portugal, Russia, South Korea, Turkey, United Arab Emirates and the United States.
The Guantánamo question specifically asked people surveyed whether they approved or disapproved of ``U.S. treatment of detainees in Guantánamo and other prisons.''
Germany was the nation with the highest disapproval rate of Guantánamo prisoner treatment, with 89 percent disapproval, followed by Egypt (87 percent), Turkey (85 percent), Portugal (84 percent), France and Italy (82 percent).
Nations less troubled by the U.S. treatment of prisoners at Guantánamo and elsewhere include the Philippines, with 36 percent disapproval, Kenya (38 percent) and India (39 percent).
http://www.miami.com/mld/miamiherald/16526422.htm

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DW-World.Com
EU: Germany Refused US Offer to Release Guantanamo Inmate

A German-born Turk ended up imprisoned in Guantanamo Bay for three years longer than necessary after the former German government refused him entry to the country, an EU parliamentary committee said Tuesday.

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An investigation by the European Parliament into alleged CIA activities in Europe found that "according to confidential institutional information, the German government did not accept the US offer, made in 2002, to release Murat Kurnaz from Guantanamo."

The former government of then-chancellor Gerhard Schröder was accused of abandoning Kurnaz even after "US and German intelligence concluded, as early as 2002, that Murat Kurnaz had no connection to al Qaeda or the Taliban and that he posed no terrorist threat."

US forces seized Kurnaz in Pakistan shortly after the Sept. 11, 2001 attacks in the United States and he was later sent to a US prison in Afghanistan before being incarcerated at Guantanamo Bay in 2002.

He was released last August because of a lack of proof that he had belonged to a terrorist organization, following repeated appeals by current Chancellor Angela Merkel to the US government after she took power in November 2005.

A German parliamentary committee is also investigating the former government's alleged role in Kurnaz' imprisonment and Thursday made similar allegations against the Schröder administration, a coalition of Social Democrats and Greens, which included current Foreign Minister Frank-Walter Steinmeier, of refusing Kurnaz entry into Germany. At the time, Steinmeier was Schröder's chief of staff and responsible for secret service activities.

Steinmeier rejected the European report's conclusion that the German government prolonged Kurnaz' detention.

"I do not know of any such offer," he said Tuesday in Brussels.

"Mr. Kurnaz' long story of suffering in Guantanamo is harrowing," Steinmeier said before adding that the EU's accusations against him were "first of all false and also simply disgraceful."
Under pressure to clarify his knowledge of Kurnaz' case, Steinmeier said Monday he would testify when called on by the German inquiry into the issue.

In an interview with RBB radio, the committee's head, Siegfried Kauder, said March was the earliest the panel would call on Steinmeier. Other committee members, however, said they could imagine hearing his testimony sooner.

The Social Democratic leader in the European investigation, Wolfgang Kreissl-Dörfler, said Steinmeier should not wait until being called before the parliamentary committee.

"You can always tell the truth," he said.

EU report condemns extraordinary renditions

In its final report after a year-long investigation, the European parliamentary committee also scrutinized charges that EU countries helped the US with secret CIA flights and the alleged abductions of terror suspects in Europe. The report was adopted with 28 in favor, 17 against and three abstentions.

The document said Britain, Poland, Italy, Germany and seven other EU countries were aware of the secret flights and the US detention program and slammed them for failing to fulfill "the European obligations, such as the respect of human rights."

There were "at least 1,245 CIA flight in European airspace" between the end of 2001 and the end of 2005, including 336 cases of planes making stops in Germany, according to the report.

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The committee's final conclusions also charged the EU's foreign policy and security chief Javier Solana with not cooperating in the investigation and failing to reveal his knowledge about the US detention program.
http://www.dw-world.de/dw/article/0,2144,2324100,00.html
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Detainee DNA may be put in database; ACLU says plan violates privacy USA TODAY January 19, 2007 Friday

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USA TODAY

WASHINGTON -- The federal government could add DNA from tens of thousands of immigration violators, captives in the war on terrorism and others accused but not convicted of federal offenses to the FBI's crime-fighting database under a plan being finalized by the Justice Department.

Erik Ablin, a Justice Department spokesman, confirmed the plan, which hasn't been publicly disclosed, and said details are expected to be completed soon.

Proponents of the plan, including U.S. Sen. Jon Kyl, R-Ariz., and Maricopa County, Ariz., Sheriff Joe Arpaio, say taking DNA from federal detainees would solve many crimes committed by illegal immigrants and make it easier to identify and track potential terrorists.

Opponents, such as Caroline Fredrickson, director of the American Civil Liberties Union's Washington office, say such mass seizures of DNA violate privacy and do little to improve law enforcement.

Fredrickson says the law that defines federal detainees is so broad that it could apply to hikers stopped by park rangers or airline passengers selected for screening. Authorization for taking the DNA was included in a bill reauthorizing the Violence Against Women Act that President Bush signed last year.

The DNA samples, which contain an individual's unique genetic code, would be compared against genetic profiles from 3.9 million criminals and 157,000 unsolved crimes held by the system of federal and state DNA databases that the FBI administers. The FBI says its system has aided more than 41,000 criminal investigations since 1990.

DNA from federal arrestees and detainees would be held on a computer index, enabling law enforcement to track illegal immigrants who return after being expelled from the USA or who commit crimes after being released. War-on-terrorism detainees, who often use aliases, could be positively identified by DNA and linked to evidence seized at suspected terrorist sites.

"We know from real-life examples that a database of arrestees can prevent many future offenses," Kyl said in a statement.

The plan would greatly increase the pool of DNA profiles available to law enforcement. In most states, a person must be convicted of a crime before his DNA is added to the national system, which the FBI calls CODIS. In seven states, DNA can be taken from suspects after they are arrested and formally charged.

The new plan would apply to "any person arrested under federal authority and from any non-U.S. person who is detained," according to the Violence Against Women law. Each year, the greatest number of those are illegal immigrants caught at the border or rounded up after entering the country.

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DNA from immigration violators would remain on file permanently. Genetic profiles from people arrested for federal crimes could be removed from the database if they are not convicted.

Law enforcement authorities say illegal immigrants commit crimes out of proportion to their numbers. A Justice Department study of 100 illegal immigrants arrested and released by local authorities in 2004 found that 73 were later rearrested. "To me, it's a no-brainer," Arpaio says. "Regardless of how you feel (about illegal immigration), nobody wants criminals to get a free pass to come in here." Fredrickson says collecting DNA from anyone detained by a federal officer would clog the system to "where it becomes useless."

Hundreds of thousands

Federal detainees could have samples of their DNA taken. Many detainees are immigration violators:

*More than 400,000 illegal immigrants were detained and removed from the USA from October 2003 to June 2006.

*More than 270,000 spent time in state or local custody in 2005.

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Expatica
MPs defend US criticism in year-long CIA investigation
23 January 2007
Brussels (dpa) - European Union lawmakers on Tuesday ended a year- long investigation into alleged CIA activities in Europe, rejecting attempts by conservative EU deputies to soften criticism of the United States and senior European officials.

A special European Parliament committee scrutinizing charges that EU countries helped the US with secret CIA flights and the alleged abductions of terror suspects in Europe adopted its final report with 28 in favour, 17 against and 3 abstentions.

The document says that Britain, Poland, Italy, Germany and seven other EU countries were aware of the secret flights and the US detention programme and slams them for failing to fulfil "the European obligations, such as the respect of human rights."

Euro MPs rejected attempts by conservative deputies to water down some of that criticism. Centre-right Euro MPs had argued that although the CIA flights have been secret, evidence gathered was not sufficient to prove that EU human rights laws have been violated.

They were also unsuccessful in trying to soften charges against EU top officials, including the bloc's foreign policy and security chief Javier Solana. The report says that Solana did not cooperate with the investigation and did not reveal his knowledge about the detention programme.

Singling out Poland, which is suspected of having hosted secret CIA camps, EU deputies stressed that European countries are also breaching human rights laws if they fail to carry out independent investigations into the allegations of such violations.

In addition, Euro MPs called on the bloc to monitor more strictly data transfer to non-EU countries and the use of European airspace. They also demanded more EU competencies in the area of combating international terrorism.

Human Rights Watch criticized the report for a weak criticism of so-called "diplomatic assurances," the practice of returning terrorism suspects to risky places on promises of humane treatment.

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"European governments have used these empty promises as a fig leaf to justify sending people to places where they risk being tortured," said HRW's Europe director Holly Cartner.

The committee's final conclusions also accuse the former German Socialist-Green government of a failure to work for the release of a Turkish-German former Guantanamo prisoner.

Murat Kurnaz spent four-and-a-half years in the US prison camp Guantanamo on Cuba after his arrest as a suspected al-Qaeda supporter in Pakistan, shortly after the September 11, 2001 attacks on the US.

"According to confidential institutional information, the German government did not accept the US offer, made in 2002, to release Murat Kurnaz from Guantanamo," EU lawmakers pointed out.

German Foreign Minister Frank-Walter Steinmeier is under growing pressure to explain his role in the prolonged detention of Kurnaz.

Kurnaz was not freed until August 2006 on the intervention of the present government led by Chancellor Angela Merkel.

At least 1,245 CIA-operated flights flew over European airspace or stopped over at airports in Europe, the report stressed.

EU lawmakers bashed European governments' denials of involvement in so-called extraordinary renditions of terrorism suspects, which would be illegal under EU law.

US President George W Bush last September for the first time acknowledged that the CIA was running secret prisons for holding and interrogating high-level al-Qaeda figures that had been captured since the September 11, 2001 attacks.

However, Bush did not give in to European calls to make the location of the camps public.

Clandestine detention centres, secret flights via or from Europe to countries where suspects could face torture, or extraordinary renditions would all breach the continent's human-rights conventions.

Allegations that CIA agents shipped prisoners through European airports to secret detention centres, including compounds in Eastern Europe, were first reported in November 2005.

The special European Parliament committee started its probe in January 2006. Its final report will be voted on by the 785-member plenary next month.
http://www.expatica.com/actual/article.asp?subchannel_id=52&story_id=35755

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The Hill
A submarine commander's daughter ensures safe waters for detainees By Roxana Tiron <mailto:rtiron@thehill.com> Elisa Massimino's line of work requires a flexible definition of victory, and determination to fix problems she may not see solved in her own lifetime.
"A journey of 1,000 miles begins with a single step," the Washington director of Human Rights First said. "You have to have a long timeline to see progress and keep things moving in the right direction."
Bettering the human condition is a lofty goal, and Massimino knows it can't be done without pragmatism and the help of others – sometimes unexpected allies, such as the U.S. military. The daughter of a submarine commander, Massimino grew up with an affinity for and understanding of the armed forces. She said the human-rights community and the military share many values: Both believe in a system of rules and accountability.

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It was, in part, Massimino's success at assembling a coalition of retired military officers and human-rights advocates that gave momentum to the legislation known as the "McCain amendment." The amendment addressed the treatment of military prisoners in the Middle East and at Guantánamo Bay, Cuba.

"A lot of my time has been spent helping to build and organize a coalition of retired general officers who were very concerned about the deviation from the Geneva Conventions, the rejection of the Geneva Conventions and the risk that it posed to our own military," Massimino said.

The legislation set new limits on interrogating military detainees in Iraq and elsewhere, despite opposition from the White House.

Her firm grasp of military hierarchy allowed Massimino to realize that incidents of torture at Iraq's Abu Ghraib prison indicated a breakdown of the military command structure. She also knew that speaking publicly about it does not come easily to military officers.

"It's not a role the military is accustomed to playing, but there were people inside the Pentagon who were trying to make progress and they needed some help," she said.

Those who know Massimino say her approach leads to success. She's passionate, but not emotional, and she understands the policy and the legal framework within which she's working.

"She has great judgment, great passion, drive and knowledge," the chief counsel and staff director of the Senate Judiciary Committee, Bruce Cohen, said. "She has everything you would like in an advocate. Her humanity comes through, [but] she is not lecturing us on human rights; she is trying to get Congress to do the right thing."

Massimino, who has never worked on the Hill, is known by reputation for the many hours she has spent as a witness in hearings and at key meetings with staff and lawmakers.

"She speaks truth to power and she does it eloquently and self-effacing[ly]," Rep. Chris Smith (R-N.J.) said. "She is in this for the victims, not for Elisa Massimino. I have always counted on her to be a real beacon of truth and hope."

Yet her uphill battles grow steep at times.

Despite the passage of the McCain amendment, last year's debate on military tribunals was tough for Massimino. President Bush signed into law the Military Commissions Act late last year, drawing criticism from Democrats and human-rights activists who called the law unconstitutional. The tribunal bill suspends the writ of habeas corpus, among other issues.

"The fallout from that piece of legislation … we have not even begun to see all of it," Massimino said.

But last week the military issued its new military commissions rules – raising the ire of both Congress and the human-rights community.

"No civilized nation permits convictions to rest on coerced evidence, and reliance on such evidence has never been acceptable in military or civilian courts in this country," Massimino said.

According to Massimino, such "tainted" evidence is "inherently unreliable," and permitting its use "debases" the military justice system and "dangerously undermines the prohibition on torture and abusive treatment."

Despite the military commissions setback, Massimino plows ahead. Several proposals that could draw bipartisan support are in the works to overhaul the Military Commissions Act.

There are issues that Congress has not even touched yet, such as "secret detention and rendition" – transporting people to other countries, without judicial supervision, for interrogation or detention, Massimino said.

She hopes oversight will be a first priority for the new congressional leadership in trying to address some of the fallout.

"There is so much that Congress has not examined yet. Congress has never looked at who is at Guantánamo Bay and how we got those people," she said. "What we have here is mistake upon mistake. We keep trying to fix past mistakes, but until you understand the first one you are never going to be able to back out of that maze."

The soft-spoken but assertive Massimino has a unique background that contributes to her approach toward human rights, ethics and the government.

"I liked solving problems," she said, sitting in her office minutes away from the Capitol. She studied philosophy in graduate school at Johns Hopkins University because she was interested in ethics and public policy.

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But the abstract nature of the subject left her frustrated. So Massimino leaped into law. "Unlike many people, I absolutely loved law school because it was so practical and it appealed to my desire to help people," she said.

Although she now teaches a course in human-rights advocacy at Georgetown University's law school, during her time as a student at the University of Michigan she took just a single course in human rights.

"I did not know that there [was] human-rights law that would bring my interest and study of philosophy and ethics and the practical aspect of legal training together," she said.

Shortly after graduating, she joined Hogan & Hartson because the firm had a commitment to pro-bono work. One of the organizations she volunteered with was the Lawyers Committee for Human Rights, since renamed Human Rights First, a non-profit, non-partisan international human-rights organization. She later was offered an opportunity to help establish the organization's Washington office and became director in 1996.

Much of the work she did early on, and still does, focused on protecting refugees seeking asylum in the United States. She started out helping Salvadoran teenagers who had fled forced recruitment during the 1980-1992 civil war.

Her work made her think about the policy issues implicated in those situations, along with the role the U.S. government was playing. "Coming to Human Rights First really opened the door for me to be able to devote all of my time and energy to that," she said.

Refugee protection has remained a challenge for Massimino's organization, complicated even more after September 11, 2001.

"We found that the U.S. response to the attacks was starting to put a strain on human-rights standards and U.S. commitment to upholding those standards, and so in fairly short order we realized it is not going to be a short-term problem," she said. "Counter-terrorism policy of the U.S. government and other governments really touches all of the issues that we work on."

Massimino believes that the United States remains a beacon of hope to other countries when it comes to human rights. But that light has been obscured in the past few years, she said. She has spent time working on issues such as military detainees, she said, "not because they are the worst human-rights issues on the face of the globe, but because U.S. leadership can make a difference around the world."

"The inability of the United States to be that beacon is a huge loss and the cost comes to my friends" around the world, she said. "When I talk to them and ask them how I can help them, invariably their response is, 'Get your own house in order. We need the United States.'"

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(b)(6)

From: (b)(6) DoD OGC
Sent: Thursday, February 15, 2007 4:42 PM
Subject: GTMO Bird; CCR; CIA investigation; Mustafa; Hicks; Choke off funds for GTMO; Bush executive order for trials; Lehnert and GTMO
Attachments: Picture (Metafile)

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)
Office of the DoD General Counsel (Legal Counsel) (b)(2)
(b)(2) (DSN (b)( ))
(fax)
CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

This link is to the Guantanamo Global Injustice Initiative from the Center of Constitutional Rights. It has some interesting material, reports about the MCA and videos.

http://www.ccr-ny.org/v2/gac/

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EU Investigation Into CIA Rendition Only One Of Many Investigations Due To CIA Fallout

February 15, 2007 11:41 a.m. EST
Linda Young - All Headline News Staff Writer Luxembourg, Luxembourg (AHN) - The European Parliament on Wednesday adapted its final report investigating the U.S. Central Intelligence Agency's illegal practice of rendition of suspected terrorists in Europe. The CIA had used air flights originating in European countries, as well as going through them. The report found some EU member nations turned a "blind eye" to what was going on even when the CIA told them it realized an innocent civilian was mistaken for a terrorist and had been kidnapped. Between 2001 and 2005, the CIA operated over 1,000 flights in European airspace. In addition, "temporary secret detention facilities 'may have been located at U.S. military bases'" or hotel rooms in Europe, says the European Parliament's final report.
The report also states that while some of the illegally kidnapped people were merely transported through EU countries that others were citizens of EU nations.
Along with the EU investigation, there are many individual legal investigations continuing within the European nations in question- including Germany, Spain, Portugal and Switzerland, BBC news reported Thursday.
One example: A German citizen was kidnapped by the CIA, held and tortured and then the CIA discovered it had the wrong man. It turns out the CIA asked the German government to take Murat Kurnaz back, in 2002. Germany refused and the CIA kept Kurnaz until 2006 when it dumped him on a road in another nation.
The BBC reported that it was Germany's former intelligence coordinator who made that decision, now he is Germany's foreign minister and the disclosure of his past actions is expected to result in his forced resignation.
Similar fallout is expected elsewhere in Europe, especially in countries such as Austria, Italy, Poland, Portugal and the U.K. that refused to cooperate with the parliament in its report.

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In Italy, for example, the case of an Egyptian imam kidnapped on the streets of Milan in 2003 is going to court on Friday.
The court will decide whether to prosecute 35 people, including 25 CIA agents and the former head of the Italian military intelligence service, Gen Nicolo Pollari, whose lawyers have announced they will call present and former Italian prime ministers to testify, BBC news reported. His lawyer has warned that he will call as witnesses the present and former Italian prime ministers.
http://www.allheadlinenews.com/articles/7006475067

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Spain furious as US blocks access to Madrid bombing 'chief'
Exclusive: on the first day of the Madrid bombing trial, the splits that have emerged between Spain and the US over the War on Terror, which have their roots in the Iraq conflict, are laid bare The al-Qaeda leader who created, trained and directed the terrorist cell that carried out the Madrid train bombings has been held in a CIA "ghost prison" for more than a year.
Spanish officials told The Times last night that they are furious to have been denied access to Mustafa Setmarian Nasar, a Syrian-born terrorist who has been part of the al-Qaeda leadership since the late 1980s.
"This is Spain's most wanted man in the terrorist world - it is galling to know that he is in the hands of an ally and they will not help us," a Spanish official said.
Madrid's anger became known on the day that 29 men went on trial in the Spanish capital <http://www.timesonline.co.uk/tol/news/world/europe/article1388832.ece> in connection with the bomb attacks which killed 191 people in March 2004.

Setmarian, 49, who lived in Madrid, married a Spanish woman and holds Spanish citizenship, inspired and established Spain's first Islamist terror cells.
Searches after the March 2004 bombings uncovered documents which appeared to link the terrorists to Setmarian and he his thought to have issued a coded order giving the go-ahead for the attack.
Setmarian was in Afghanistan in late 2001 when the Taleban regime fell and moved with his family to Pakistan where he continued to be active in al-Qaeda.
A tall man with a pale complexion and flame red hair, Setmarian travelled widely and was often mistaken for a Westerner. He was frequently described as having "Irish looks".
During the mid-1990s he lived in London where he associated with Abu Hamza al-Masri and succeeded the radical cleric as editor of al-Ansar, a propaganda magazine for Algerian terror groups. He also associated with Abu Qatada, the extremist Jordanian cleric currently in prison in Britain.
His suspected role in the Madrid attacks and his knowledge of London meant that he was initially suspected of having played a part in the planning of the 7/7 suicide bomb attacks in 2005.
At the time of those attacks he was still at large in Pakistan where two of the London bombers are known to have received military and explosives training.
Setmarian, who pledged lifelong allegiance to bin Laden and the global jihad, has boasted on al-Qaeda websites of training thousands of foreign recruits at camps where he specialised in bombmaking and the use of poisons.
He was detained in October 2005 as he shopped for breakfast in Quetta, close to the Pakistan-Afghanistan border. Pakistani intelligence agents shot Setmarian's Saudi bodyguard dead but were under specific instructions to take Setmarian alive.
The FBI had offered a $5 million reward for his capture and President Pervez Musharraf of Pakistan stated in his recent memoirs that his country has received substantial sums in bounties from the US authorities.
Within a month of his capture Setmarian was handed over to the United States authorities and spirited away for interrogation at one of their secret prisons. His first stop was probably Bagram airbase, near Kabul, but his current whereabouts are unknown.

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Setmarian's wife and three children moved from Pakistan following his detention and are now believed to be living in Qatar where she is reported to be an English teacher at a private school.
Spanish intelligence agents were said to have been allowed to question inmates of Guantanamo Bay about Setmarian in 2002. But access to suspects in US custody was blocked after Spain withdrew its troops from Iraq following the Madrid bombs.
Spain has made repeated requests to both Pakistan and the US to locate and speak to Setmarian about the train bombings but to no avail. The Spanish courts have discovered that they cannot issuhttp://www.timesonline.co.uk/tol/news/world/europe/article1391123.ecee an extradition request because the man they want to talk to has not been officially arrested.

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Official tells Senate Australia could not send psychiatrist to Guantanamo Bay

CANBERRA, Australia: Australia was refused permission to send an independent psychiatrist to Guantanamo Bay to assess the lone Australian prisoner at the U.S. military base in Cuba, an official said Thursday.
Rod Smith, a senior Foreign Department official, told a Senate committee inquiry that Australia's embassy in Washington wrote to the Pentagon on Dec. 5 last year to request a psychiatric assessment of David Hicks on behalf of his lawyers and family.
Smith said the letter requested a visit by "an independent health professional employed by his legal defense team."
Failing that, Australia wanted an assessment carried out by Guantanamo medical staff.
Australia acted when Hicks' Pentagon-appointed lawyer Maj. Michael Mori raised concerns in the media about the alleged Taliban fighter's mental state after five years in custody.
The office of the U.S. Assistant Secretary of Defense replied on Jan. 26 in a letter that said: "The Department generally does not allow independent medical professionals to meet with detainees at Guantanamo."
"Should Mr. Hicks require additional medical evaluation, it generally will be conducted by the professional medical staff at Guantanamo," Smith said, quoting the letter.
A Guantanamo Bay psychiatrist conducted a 20-minute assessment of Hicks on Jan. 31. She concluded that the 31-year-old did not display symptoms of anxiety or depression and that "his general health was pretty good," Smith said.
Opposition lawmakers used the committee – which is holding a regular and wide-ranging inquiry into the Department of Foreign Affairs and Trade – to ask a range of questions of bureaucrats about Hicks' treatment at Guantanamo.
Asked why the government had not pressed the Americans to allow an independent assessment by a profession Hicks' could trust, Smith said it was the Pentagon's prerogative and "we have no reason to doubt the competence" of the medical staff at Guantanamo.
Smith confirmed that Hicks spent 22 hours a day alone in his cell, had his toilet paper rationed and had had his comb confiscated.
Smith said the Americans had explained that toilet paper was rationed as "a security measure" because some detainees had used it clog toilets and create flooding.
"Toilet paper is rationed 30 sheets at a time, but additional supplies can be provided as requested," Smith said.
Questioned by a lawmaker, Smith denied a claim by Australian lawyer David McLeod had Hicks had been unable to comb his hair since he was moved to Guantanamo's Camp Six on Dec. 16.
"The advice we have is that a comb is available to Mr. Hicks in the shower room," Smith said, adding that combs had been confiscated to prevent their use as weapons.
Hicks is one of three high-profile prisoners at Guantanamo who were selected this month to become the first suspects to be tried by military commissions for alleged terrorist crimes.
He will be charged with attempted murder in violation of the law of war and providing material support for terrorism.
The charges must still be approved by the U.S. Department of Defense legal adviser and another official who oversees the tribunals.

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Prime Minister John Howard, a staunch ally in the U.S.-led war on terror, is under growing pressure from within his own government to bring Hicks home because of the duration of his stay at Cuba without conviction.
http://www.iht.com/articles/ap/2007/02/15/asia/AS-GEN-Australia-Guantanamo-Inmate.php

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Jeremy Rabkin: Gitmo detainees are not ordinary felons David Hicks should not be returned to Australia for trial before a regular criminal court
16feb07

JOHN Howard has raised some eyebrows in the US. He warned this week that electoral success for one of our Democratic presidential hopefuls - one who urged the rapid withdrawal of US forces from Iraq - would be pleasing to al-Qa'ida. He then explained that he felt entitled to comment on US domestic politics because the US is Australia's major ally in the fight against terror.

Now that the Prime Minister has broken the ice, let me return the favour by voicing some exasperation at what some of your Opposition Labor politicians, such as shadow attorney-general Kelvin Thomson, and even federal Liberal backbenchers such as Michael Johnson and Don Randall, are saying about the case of David Hicks.
Hicks was captured in Afghanistan in 2001, fighting alongside Taliban forces. He has been held at the Guantanamo detention centre since 2002. After many delays, Hicks is scheduled for trial before a US military commission in the coming weeks. Critics in Australia say the trial won't be fair. Therefore, they urge, Hicks should be returned to Australia for trial before a regular criminal court.
The case presents a great many technical questions deserving the attention of legal specialists. But the idea that there is some monstrous injustice here is a fantasy of demagogues who always depict US policy in the worst possible light. To quote our mate Howard, that sort of talk must be pleasing to al-Qa'ida.
If Hicks had been treated as an ordinary prisoner of war under the Geneva Conventions, he would still be in a prisoner-of-war camp. Taliban insurgents are still fighting the new Government in Afghanistan, despite the efforts of Australian, British and US troops to suppress them. There's no novelty or injustice in continuing to hold PoWs while the war continues.
True, the US Government doesn't now acknowledge that the full protections of the Geneva Conventions apply in this setting. By its own express terms, the Geneva Conventions cover regular armed forces and other organised combatants who openly identify themselves as such, remain subject to military discipline and honour the laws of war in their own operation. No one seriously claims that these criteria apply to the Taliban guerillas.
Still, the International Red Cross has been allowed ready access to the Guantanamo detention camp, along with many other outside observers. Despite rumours and slogans, no patterns of serious abuse there have been documented. Compromises with full Geneva protections seem to involve rather special policy questions, such as the extent to which prisoners can be separated from each other to facilitate effective interrogations.
The trial now proposed for Hicks is not to determine whether he can be treated as a PoW but whether he should be separately punished as a war criminal. It's true the military commission won't be bound by all the safeguards observed in domestic criminal trials. That does not mean the trial by military commission is improper.
Trials by military commissions were not invented from whole cloth by the Bush administration. They were used in the aftermath of World WarII to try war criminals such as General Tomoyuki Yamashita for Japanese atrocities in The Philippines. Military commissions were used in the American Civil War, among other things for the trial of Abraham Lincoln's (civilian) assassins. Even the Geneva Conventions, in provisions applicable to prisoners covered by all its protections, authorise trial of prisoners by military tribunals when they are accused of special offences. They do not impose many definite procedural requirements for such trials.
In its ruling last year in Hamdan v Rumsfeld, the US Supreme Court held that trials at Guantanamo should conform to the general provision in the Geneva Conventions applying to

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"armed conflict not of an international character": to conflicts where the rest of the conventions' protections do not apply.
That provision (in Article 3) prohibits "passing of sentences ... without ... affording all the judicial guarantees which are recognised as indispensable by civilised peoples". Quite a few aspects of ordinary criminal procedure might be judged as less than indispensable, as all the justices agreed.
The serious questions here are inevitably rather technical. Would it be improper, for example, to judge Hicks based on evidence that might not be allowed in a civilian court, because it came from a witness whose identity was not fully disclosed to the defendant, or it consisted of a witness describing what he had been told by an eyewitness rather than what he had seen himself? Security considerations and distance make it impractical to honour all the safeguards of normal trials. The question is which compromises may go too far.
A reasonable answer is that we ought to see how an actual trial works out under the proposed rules rather than harping on speculative objections based on hypothetical possibilities of abuse. The military commission is not meant to be a model for all times but an accommodation to special circumstances.
Before critics get too worked up, they might recall that the problems here are not unique to US military trials. Compromises with normal procedure have characterised international war crimes trials, too, starting with the Nuremberg and Tokyo tribunals in 1946, where, among other things, defendants were made to answer for some crimes only defined as such in retrospect. The International Criminal Tribunal for the former Yugoslavia has, on several occasions, protected witnesses by shielding their identities from defendants.
Whatever happens to Hicks, we are not likely to see the end of the terror threat any time soon. If critics insist that justice and security point in entirely opposite directions, they shouldn't be confident that governments - and voters - will always give priority to their notions of perfect justice.
Ordinary courts are not well designed to cope with the special challenge posed by terrorists and war criminals. Whatever else one wants to conclude about Hicks, he is not an ordinary felon.
Jeremy Rabkin is a professor of constitutional law at Cornell University in New York state.
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Lawmakers seeking method to choke off funds for Guantanamo By Carol Rosenberg and Lesley Clark WASHINGTON - Two key Democrats in Congress disclosed Wednesday that they are digging through Defense Department funding mechanisms to find a method to choke off funding for the Guantanamo Bay detention facilities.
"We're looking at a schedule - a reasonable schedule - to close it down in stages," Rep. John Murtha, D-Pa., said in a broadcast on National Public Radio. "We can limit the funds for it and that would shut it down."
The Pentagon declined to respond to a query on Murtha's plan - how feasible the proposal was and whether there is in fact Guantanamo-specific funding that Congress could cut from future appropriations.
"I don't have anything for you on this," said Navy Cmdr. Jeffrey Gordon, the Pentagon's spokesman for Guantanamo.
Murtha, who retired after 37 years' service as a Marine Corps colonel, has been one of the most outspoken critics of the Bush administration's prosecution of the war on terror.
He has taken aim at the Guantanamo prison camps for suspected terrorists through his powerful perch as chair of the House Appropriations subcommittee on defense.
House Speaker Nancy Pelosi shares Murtha's "concern about the damage done to the standing of the United States in the eyes of the world by the lengthy detention of so many people at Guantanamo without resolution of their cases," said Pelosi spokesman Drew Hammill, adding that she "looks forward to reviewing how it is addressed by the Appropriations Committee."
So far, Murtha's proposal to cut off funding has not gained traction in the Senate.
But just 10 days ago, he dispatched fellow committee member Rep. James P. Moran, D-Va., and staffers to tour the base with an eye to how to choke off funding for the sprawling, five-year-old detention center, which now holds about 395 foreign captives.
"They're still working on the proposal for how they would deal with the detainees, but the plan is to shut down the detention part of Guantanamo," said Moran spokesman Austin Durrer in

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Washington, who added that Moran had been "concerned about the situation for a couple of years."
Now, staffers, he said, are "working behind the scenes to figure out how to put language in there that gets at it."
There are several mechanisms for choking off funding, said Mackenzie Eaglen, senior policy analyst at the Heritage Foundation think-tank in Washington.
One would be to write legislative language that specifically prohibits the Pentagon from spending funds on the detention center at Guantanamo.
And there is precedent.
Congress earlier legislated that the Pentagon could not build permanent bases in Iraq, she said.
But it may be more difficult to delete the specific project itself because "it's probably spread out over several pots of money - the people, the lights on, the meals and the transportation."
Moreover, she said, "even if you did stop the meals and the lights, I imagine it would be very difficult for Congress to get into the weeds to take away the billets that staff Guantanamo."
At the Brookings Institution, senior fellow Michael O'Hanlon said there may not be an analogous example of Congress closing a facility like Guantanamo.
"Congress cut off money for certain weapons - the B-2 bomber in the early `90s, certain domestic military-related activities - nuclear testing at about the same time, aid to the Contras in Latin America, and certain operations - Vietnam, Somalia," he said. "I'm not sure I can recall a case like this, though."
At the White House, meantime, President Bush signed an executive order on Wednesday empowering the Pentagon to go forward with plans to hold war-crimes trials at Guantanamo.
Under the current formula for the Military Commissions, written into law by the GOP-led Congress, Susan J. Crawford, a former military appeals court judge, will review an Air Force colonel's plans to prosecute three Guantanamo captives - Salim Hamdan of Yemen, David Hicks of Australia and Omar Khadr of Canada.
"Military prosecutors thus far have sworn charges against three individuals," said White House spokesman Blair Jones. "Now those charges can be reviewed and, as appropriate, trials will be able to proceed."
The president issued the order two days after the top legal authority in key British ally Tony Blair's government condemned the would-be tribunals in an address to the American Bar Association.
Guantanamo is "a symbol of injustice that the long tradition of American justice and liberty ought to see removed at the earliest moment," said Lord Goldsmith, long a critic of the U.S. detention center there, who called the latest war court format "too little and too late."
Pentagon spokesmen in the past have defended the project as a necessity of the war on terrorism. They have repeatedly said that, if the "enemy combatants" aren't held at the remote U.S. Navy base in southeast Cuba, they would need to be held elsewhere.
The Miami Herald query on Wednesday asked if there were no funding, how quickly the Defense Department could relocate the captives - and where they might be sent. The Pentagon declined to respond.
http://www.mercurynews.com/mld/mercurynews/news/politics/16699745.htm

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Bush order allows Guantanamo trials to move ahead Reuters Wednesday, February 14, 2007; 8:26 PM WASHINGTON (Reuters) - President George W. Bush on Wednesday issued an executive order that will allow cases against prisoners at Guantanamo Bay to move forward and be considered by military tribunals, the White House said.
The executive order authorizes the establishment of military commissions, fulfilling a technical step required by the Military Commissions Act of 2006, which Bush signed into law last October.
Military prosecutors have filed charges against an Australian, a Yemeni, and a Canadian held at the U.S. detention facility at Guantanamo Bay, where foreign terrorism suspects are being held.

OGC AMNESTY/CCR 196

"Now those charges can be reviewed and, as appropriate, trials will be able to proceed before the military commissions established by this executive order," said Gordon Johndroe, a spokesman for the White House National Security Council.
http://www.washingtonpost.com/wp-dyn/content/article/2007/02/14/AR2007021401517.html
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Lehnert calls for decision on Guantanamo detainees' fate

By: JOE BECK - Staff Writer
SAN MARCOS -- The United States needs to resolve the legal status of suspected al-Qaida and Taliban terrorists held at the American naval base in Guantanamo Bay, Cuba, the commanding general of seven Marine bases in the western United States said Wednesday.

Maj. Gen. Michael Lehnert, who commanded a task force assigned to construct and operate Guantanamo Bay's detention facilities in 2002, said a high priority should be placed on ensuring innocent prisoners do not remain jailed, even if it means risking the release of some of the guilty.
"The bottom line is the administration is going to have resolve this," Lehnert told an audience of about 60 business students during an appearance as a guest speaker in their class on executive leadership at Cal State San Marcos.

Later, in a written statement to the North County Times, Lehnert said that "as a nation, we need to have a serious discussion about the future of Guantanamo."

Lehnert's speech on leadership was part of a series of guest speaker appearances scheduled for the class under the Center for Leadership Innovation and Mentorship Building, part of the College of Business Administration.

Lehnert, who is headquartered at Camp Pendleton, said his remarks should not be interpreted as disapproval of the Bush administration, which has taken harsh criticism from civil libertarians, some legal scholars and human rights activists for treatment of prisoners at Guantanamo Bay. Members of Congress from both political parties have called for closing of the detention facilities, arguing that they are damaging the image of the U.S. overseas.

Guantanamo Bay once held almost 800 prisoners, a number that had fallen to less than 400 by the middle of January as some of original population has been gradually released or transferred.

Of the remaining prisoners captured by U.S. forces during conflicts in Afghanistan and other parts of the world, only a few have been charged with crimes. The chief prosecutor, Air Force Col. Morris Davis, told the Associated Press in January that preparations are under way to put 60 or 80 prisoners on trial before military tribunals.

Lehnert said he believed in applying the centuries-old American legal principle that accepts the risk of allowing a guilty individual to go free to prevent the jailing of innocent people.

He said he adhered to that belief, despite the release of some prisoners from Guantanamo who have rejoined the ranks of terrorists and resumed fighting against the U.S. and its allies.

"I think we have to err on the side of justice," Lehnert said. "That's my personal belief."

Lehnert spoke for more than an hour, delivering wide-ranging remarks on topics that included Marine training, recruiting and values, women in the Marines and the military's budding partnership in California with the state's public universities. He also took questions from several panels of students.

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On Iraq, Lehnert, who served as commander of Marine Logistics Command in the early stages of the conflict, said he could not guarantee a victory. He said much depended on the ability of Iraqis to set aside religious and political rivalries that have festered in a culture unfamiliar with the traditions of democracy.

Lehnert said Marines returning from Iraq have told him of continued progress in fighting the insurgency, despite increasing pessimism on Iraq reflected in public opinion polls and political debate.

"I don't think it's a hopeless cause," Lehnert said.
http://www.nctimes.com/articles/2007/02/15/news/top_stories/1_02_292_14_07.txt

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OGC AMNESTY/CCR 198

(b)(6)

From: (b)(6) DoD OGC
Sent: Thursday, February 22, 2007 3:18 PM
Subject: GTMO Bird: Swift article; Appeals decision; Human rights news; Hicks; Lawsuits

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)
Office of the DoD General Counsel (Legal Counsel) (b)(2)
(b)(2) (DSN (b)( ))
(fax)
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The below link is to an article written by LCDR Swift.
The American Way of Justice
By Lt. Cmdr. Charles Swift
http://www.esquire.com/features/ESQ0307swift

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Time.Com

A federal appeals court in Washington has teed up yet another Guantanamo Bay decision for the U.S. Supreme Court, and if the justices review the case, they probably won't like what they see.
In upholding a law that stops foreign combatants from seeking their freedom through the courts, the appeals court highlighted what has always seemed off about the Bush Administration's approach to incarcerating suspected enemy combatants. Most of those held at Guantanamo Bay were captured in Afghanistan, then hauled halfway around the world to our vicinity. Instead of being placed within the continental United States, however, they were put just offshore at the U.S. military base in Cuba. Sort of America., but foreign enough for the Administration to insist that they are beyond the reach of U.S. courts.
The legal implications are almost nonsensical. To see why, consider Tuesday's decision. After meandering through a bunch of dusty British precedents, the court decided that the Constitution only protects habeas corpus – the right to ask a judge for release from illegal imprisonment – for foreigners when they are held in sovereign territory: areas over which the U.S. has absolute control. That means a foreigner captured by U.S. officials abroad and held by them in, say, Florida, can sue for his release. One held in Mexico – or, apparently, Guantanamo Bay – cannot.
Why should rights as fundamentally important as habeas corpus depend solely on a difference of a few hundred miles? In the days of dusty precedents, when issues of time and distance were important, there were practical obstacles to getting foreigners before a faraway judge, as the appeals court notes. But we're talking about a 21st century military operation, camped out just off the coast specifically to keep prisoners away from U.S. courts. As a basis for denying constitutional rights, this seems a bit arbitrary, if not sneaky, and I suspect that the Supreme Court knows it.
Three years ago, the Bush Administration pulled the same argument on the court in another case involving Guantanamo Bay detainees, Rasul v. Bush. Government lawyers argued that American courts had no habeas jurisdiction over the military base because the U.S. only leases it, and Cuba retains "ultimate sovereignty." The justices dismissed the argument as

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form over substance: "What matters is the unchallenged and indefinite control that the United States has long exercised over Guantanamo Bay," wrote Justice Anthony Kennedy in concurring with the decision to grant the detainees relief.
So what's changed in three years? Well, the Rasul case involved a statute protecting habeas corpus, while the one decided Tuesday involves constitutional protections as well, a technical difference that shouldn't matter to the Supreme Court. There's also been a change in court personnel: Justice O'Connor and Chief Justice Rehnquist have departed, Justice Alito and Chief Justice Roberts have arrived. O'Connor and Rehnquist were on either side of the Rasul decision, and while Roberts has upheld limits on detainee rights as an appeals court judge, there's no way to know how he and Alito would come out in the current case.
Even if they end up supporting the Administration, it's hard to believe they would do so because of Guantanamo Bay's territorial status. To win this case, the White House will probably have to persuade the high court that the new, streamlined process for hearing detainee grievances is an adequate substitute for habeas. If Rasul and common sense are any measure, the justices won't let the Administration duck constitutional protections by simply sneaking detainees off shore.

http://www.time.com/time/nation/article/0,8599,1592560,00.html

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Washington Post

A War Under Law
Congress Must Address U.S. Detainee Policies By Jeffrey H. Smith Thursday, February 22, 2007; Page A19 In November, Americans voiced their frustration with the war in Iraq and gave control of Congress to the Democrats. The voters rejected the president's swaggering, go-it-alone approach and the administration's contemptuous attitude toward the Geneva Conventions, which led to the abuses at Abu Ghraib, actions that so damaged our credibility that other nations are much less willing to cooperate in the war on terrorism. Secretary of State Condoleezza Rice, and her able legal adviser, John Bellinger, have pushed for reforms that have begun to reverse this trend -- but much more must be done.
Sens. Christopher J. Dodd and Patrick J. Leahy introduced legislation <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/13/AR2007021301163.html> last week that will move us further in the right direction. But there are three things Congress should do.
First, Congress should reconsider the detainee legislation passed last fall. Last-minute changes rammed through by the White House watered down many of the bill's key provisions. On the treatment of detainees and interrogation techniques it created two standards -- one for the military and another for the CIA. The standards for the military are in an Army Field Manual, but the CIA standards are to be enumerated in a presidential executive order. Rumors suggest that the White House is struggling to develop those rules. Congress should relieve the president of that task before he makes a bad situation worse.
If Vice President Cheney has his way, a good dunking may be among the approved CIA techniques, even though "waterboarding" is prohibited by the Army Field Manual. Cheney's October remarks <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/26/AR2006102601521.html> that dunking a detainee was " a no-brainer <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/26/AR2006102601517.html> " were irresponsible and added to the confusion in the field (and around the world) about the rules for treatment of detainees.
It is not clear why the military and the CIA should have different standards for the treatment and interrogation of detainees. All U.S. agencies should use the techniques best able to elicit information that is vital to our security. And why should the CIA once again be asked to take risks not knowing whether, when the political winds change in Washington, its officers will be left facing charges that they violated the law?
Hearings should be held to determine which interrogation techniques have produced useful intelligence. Lawmakers should review the recent report <http://www.fas.org/irp/dni/educing.pdf> of the government's Intelligence Science Board,

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which concluded that there was no scientific evidence <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/15/AR2007011501204.html> that coercive techniques produced good intelligence. Congress should also consider the requirements of international law and develop a single standard that will apply equally to all agencies.
Second, Congress should repeal the provisions that stripped detainees at Guantanamo Bay and elsewhere of the right of habeas corpus and that instead gave them an extremely limited right to challenge their detentions. A federal appeals court, interpreting lawmakers' last effort, ruled Tuesday that detainees do not have the right <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/20/AR2007022000490.html> to use a habeas petition to challenge the basis of their detention. The case will surely be appealed to the Supreme Court because detainees must have the right to argue to a federal judge -- not a military officer, as in the current law -- that the factual basis on which they are being held indefinitely and without criminal charges is not accurate. Detainees' right to habeas corpus could be limited, as was suggested by Sens. Arlen Specter and Patrick Leahy, to prevent frivolous lawsuits over conditions at Guantanamo. But detaining men with no hope of a fair hearing ensures that, if they weren't terrorists when they were detained, they probably will be when they are finally released.
Third, Congress should also examine the practice of "rendition," or sending detainees to countries for trial or detention where, it is alleged, they can be mistreated or tortured. Before the attacks of Sept. 11, 2001, rendition was a valuable but selectively used tool of U.S. law enforcement and intelligence agencies. Since Sept. 11 it has been used extensively, and its continued viability has been questioned. Congress should establish a solid legal footing for renditions, including measures to ensure that anyone sent to another country is not mistreated.
The administration should listen, really listen, to the American people and to those in Congress and the military who understand that adhering to international law and our core values will help us win the war on terrorism. It will take years to get out of the hole we're in, but if Congress leads and the president understands, we can begin climbing out.
The writer is a former general counsel of the CIA and a partner at Arnold & Porter, a Washington law firm that represents the International Counsel Bureau. The bureau provides Kuwaiti counsel for the families of the Kuwaiti detainees at Guantanamo.
http://www.washingtonpost.com/wp-dyn/content/article/2007/02/21/AR2007022101583.html

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Human Rights News

Ten Steps to Restore the United States' Moral Authority A Common Sense Agenda for the 110th Congress
(1) Restore Habeas Corpus

Perhaps the most important protection against the arbitrary exercise of executive power, the writ of habeas corpus ensures that all persons can challenge the legality of their detention before an independent court. The Military Commissions Act of 2006, as interpreted by the current administration, would deprive any non-citizen labeled "enemy combatant" of this centuries-old right. A vote to protect the habeas rights of detainees in US military custody lost in the Senate by just three votes in September. Restoring habeas corpus to ensure judicial review of detentions and provide an important independent check on executive power should be a first order of business for the new Congress.

(2) Stop Renditions to Torture

The United States made great strides when, in 2005, it enacted the McCain Amendment prohibiting the use of torture or cruel, inhuman, and degrading treatment by any US official acting anywhere in the world. Now the United States needs to get out of the business of outsourcing torture and ill- treatment to other countries. Congress should pass legislation to protect detainees in US custody from being transferred to abuse.

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(3) Abolish Secret Prisons

Although the US has long criticized other nations for engaging in forced disappearances – imprisoning people in secret – the Bush administration continues to assert the right to do so. While the administration claims to have emptied its secret CIA prisons for the time being, it has not ruled out their future use nor accounted for all the prisoners who are believed to have been secretly detained. Congress should pass legislation to ensure that the secret detention centers are shut down permanently and that no one in US custody is forcibly disappeared or otherwise held incommunicado. Congress should also demand an accounting of the whereabouts of all those formerly held in secret locations.

(4) Hold Abusers Accountable

Although more than six hundred US military and civilian personnel have been implicated in hundreds of known instances of detainee abuse, including 25 cases where the detainee ultimately died, very few have been prosecuted. Only eleven service members have been sentenced for more than a year – all low-ranking; no one has been convicted on the basis of command responsibility; and only one civilian – a contractor to the CIA – has been prosecuted. Congress should demand that the Pentagon and Department of Justice vigorously prosecute those responsible for engaging in, authorizing or condoning detainee mistreatment, including those up the chain of command. This would deter future abuse and demonstrate to the world the US's condemnation of such ill-treatment.

(5) Hold Fair Trials

In October, the Congress authorized the use of military commissions to try non-citizen detainees in US military custody. The rules for these commissions raise serious concerns about the integrity and fairness of such trials. Of particular concern, the rules allow the use of coerced evidence and evidence obtained through cruel, inhuman, and degrading treatment if obtained before January 2006 and found "reliable" by a military judge, also allow the government to withhold from defense lawyers information about how the evidence was obtained. As a result of these provisions, defendants could be convicted based on the wide array of so-called "enhanced" interrogation techniques allegedly employed by the CIA – techniques including extended exposure to extreme cold, prolonged sleep deprivation, and "waterboarding" (mock drowning). Congress should amend these rules to ensure that detainees are not convicted – and possibly executed – based on evidence obtained through torture or other abusive treatment, are provided a fair opportunity to confront their accusers and are given a meaningful chance to gather and present evidence and witnesses.

(6) Prohibit Abusive Interrogations

In the Military Commissions Act, Congress amended the War Crimes Act of 1996, specifying a list of eight "grave breaches" of the humane treatment requirements of the Geneva Conventions that constitute war crimes. Two of the primary authors of the Military Commissions Act, Senators John Warner and John McCain, have publicly stated that they intended to criminalize the abusive interrogation techniques allegedly used by the CIA in the past. But the administration continues to imply that it could continue the CIA secret detention program – and presumably the abusive interrogations that go with it. Congress should clarify that the full range of abusive interrogation techniques that have been prohibited for use by the military's new field manual on interrogations are similar prohibited – and criminalized – if used by the CIA.

(7) Close Guantánamo Bay

The US continues to hold close to 400 detainees in Guantanámo Bay, many of whom have been held for five years without charge and without access to court to challenge the legality of their detention. Those detainees who have engaged in terrorism-related crimes should be

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charged and held accountable; those who are not charged with criminal acts should be released. The administration should work with its allies to develop appropriate procedures in accordance with U.S. and international human rights and humanitarian obligations to ensure that detainees are not returned to countries where they face torture or abuse. Congress should hold oversight hearings about the future of Guantanamo, and push the administration to put forth a plan for its closure.

(8) Respect the Laws of War

The US's unilateral reinterpretation of the Geneva Conventions to support its questionable detention policies undermines respect for the rule of law around the world and puts US service members and civilians at risk if US's policies and practices are adopted by others. Of particular concern, the US Congress in October enacted (in the Military Commissions Act) an overbroad definition of "unlawful enemy combatant" that turns a civilian munitions worker, a mother who provides food to her combatant son, and a US resident accused of giving money to a banned group into "combatants" who can be detained without charge in military custody or tried by a military court. The new Congress should strike this definition of "unlawful enemy combatant" and reaffirm the US's longstanding commitment to the civilian - rather than military - courts to prosecute civilians who violate the law.

(9) Protect Victims of Persecution From Being Defined As Terrorists

The United States will never be able to effectively fight terrorism if it cannot distinguish between terrorists and victims. Yet, overbroad terrorism-related bars in US immigration law are now being used to define innocent victims as terrorists - and denying them entry to the United States. Hmong and Montagnards are being labeled as terrorists solely because they took up arms alongside the United States during the Vietnam War. Rape victims who were forced into sexual slavery by West African rebel groups are being labeled "material supporters" of terrorism because they performed household chores while enslaved. Congress should adopt a reasonable definition of terrorism that does not equate victims with terrorists and define any armed group as terrorist, even if it does not target civilians.

(10) End Indefinite Detention Without Charge

Ever since 9/11, the Bush administration has relied on a variety of means to detain individuals indefinitely and without charge. The material witness warrant law - a law that allows the government to temporarily detain key witnesses who pose credible flight risks - has been misused to detain dozens of terrorism-related suspects, some of whom were held for months without charge. Now, the administration is improperly invoking the "enemy combatant" label to justify the indefinite detention without charge of Ali Saleh Kahlah al-Marri, a lawful US resident who since the eve of his trial for credit card fraud in 2003 has been held in a military brig in South Carolina. Congress should use its oversight authority and pass legislation that will prevent the administration from evading basic due process protections, and, in so doing, undermine respect for fundamental human rights and the rule of law.

http://hrw.org/english/docs/2007/02/22/usdom15384.htm

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Sydney Morning Herald

PM pledges shorter jail term for Hicks if convicted

THE Prime Minister will deduct the time David Hicks has already spent in captivity if he is convicted by a US military commission and sent to Australia to serve any sentence.

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John Howard made the pledge yesterday as he sought to portray the Labor leader, Kevin Rudd, as too indecisive to be prime minister because Mr Rudd had been reluctant to say what he would do with Mr Hicks.
Despite repeated representations by the Government, the US has refused to guarantee deducting the more than five years Mr Hicks has spent at Guantanamo Bay from any sentence he might receive.
In one of the few concessions granted three years ago, the US agreed Mr Hicks would be able to serve any sentence in an Australian jail.
Mr Howard said that if he were still prime minister then, he would grant the deduction if the Americans did not. "If he is convicted before the military commission, our view is that whatever sentence he received should be offset by the amount of time he has served in Guantanamo Bay and the residue should be served in an Australian prison," he said.
Unlike Mr Howard, Mr Rudd does not believe the military commissions will afford a fair trial.
Mr Rudd was asked several times on the ABC's Lateline on Wednesday whether he would pardon Mr Hicks altogether, given he would have been convicted by an unfair process.
Mr Rudd said he would take advice from the attorney-general's department. "That's the proper thing to do and that is precisely how I would act," he said.
Mr Howard said the response was not good enough.
"I'm expected to know the answer to every single thing, which is fair enough," he said.
"But he is asked what would happen in relation to a pardon if [Mr Hicks] came back, well surely Mr Rudd's got a view on that. You don't need the advice of the attorney-general's department to know whether you should think somebody should have a pardon."
The Prime Minister also upbraided Mr Rudd for saying the military commissions lacked the presumption of innocence.
The military commissions do allow this presumption. Mr Howard also said the use of hearsay evidence allowed by the military commissions was no different to that which applied to the war crimes trial of the former Serbian leader Slobodan Milosevic.
"Mr Rudd should cease misleading the Australian public about the military commission process," Mr Howard said.
The overwhelming weight of legal opinion believes the military commissions are flawed, partly because they allow hearsay evidence, including that obtained under duress and coercion of the accused and of witnesses.
http://www.smh.com.au/news/world/pm-pledges-shorter-jail-term-for-hicks-if-he-is-convicted/2007/02/22/1171733953324.html#

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NewsDesk.Org

Lawsuits Target Military Prisons
Abu Ghraib, Guantanamo spur civil rights fears

Graphic descriptions of abuse in U.S. military prisons around the world -- and questions about civil rights, national security and presidential privilege -- have prompted a growing number of lawsuits against the government and the Bush administration.
The plaintiffs include current and former prisoners in Guantanamo Bay, Abu Ghraib and elsewhere, along with activist groups such as the American Civil Liberties Union and Physicians for Human Rights.
In some cases, the lawsuits seek the whereabouts of people being held in secrecy; in others, prisoners, some held for months or years without being charged, are seeking hearings on their status, or are trying to win rights normally granted in U.S. courtrooms, or by the Geneva Conventions.
Michael Ratner, president of the Center for Constitutional Rights in New York City, said that the United States previously supported the conventions, and that its denial of legal rights to military prisoners will erode humanitarian standards in other countries, and civil rights at home.
"What applies to noncitizens now will be applied to citizens later," he said.

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Based in New York City, the CCR has been at the center of some of the most important legal actions involving prisoners in Cuba and Iraq, including more than 60 habeas corpus suits on behalf of families of inmates at Guantanamo seeking an explanation as to why they are being held as "enemy combatants" without specific charges being filed by the government.
Between 500 and 600 prisoners have been held there since shortly after Sept. 11, 2001. Most were captured in Afghanistan, although their nationalities vary widely.

"Although people are being released from [Guantanamo] periodically, the number of detainees seems to remain pretty constant, so others are being brought in," said Dr. Lisa Lynch, an assistant professor of English and media studies at the Catholic University of America in Washington, D.C. "[United Press International] developed the most exhaustive list of prisoners <http://www.upi.com/view.cfm?StoryID=20040204-051623-5923r> more than a year ago ... but there may be many people there no one knows about."
The Washington Post has also published <http://www.washingtonpost.com/wp-srv/nation/guantanamo_nationalities.html> a list of prisoners on its Web site, and in December reported <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2004/12/17/MNG9DAD66D1.DTL> on a secret prisons for "high value" terrorists at Guantanamo and around the world.
The government has not acknowledged that the prisons exist, and will not name any inmates. "Unless we can get access to information about who these people are and where they are being held, they will remain completely vulnerable to abuse and even torture," said Rachel Meeropol, a CCR lawyer. "We must not be a country that condones disappearances."
In the Federal District Court in the Southern District of New York, the ACLU, CCR <http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=5oxhfEGmEG&Content=381> , Physicians for Human Rights, Veterans for Common Sense and Veterans for Peace filed suit in June 2004 demanding the release of information on military prisoner treatment.
In mid-December, the government began providing that information, which the ACLU says shows abuse of prisoners to be systematic <http://www.aclu.org/International/International.cfm?ID=13962&c=36> , not an aberration.
The abuse brought to light by the infamous pictures from Abu Ghraib have also generated lawsuits filed in federal district courts, including one <http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=8tzsXQmAh2&Content=423> in the Southern District of California that names as defendants civilian employees of two private security technology firms, CACI International <http://www.caci.com/> , and Titan Corporation <http://www.titan.com/> .

Another suit seeking $10 million in damages has been filed in the Federal District Court in the District of Columbia, seeking to hold Defense Secretary Donald Rumsfeld and other senior officers in violation of national and international law for the treatment of detainees at Guantanamo.
The filing is by four British citizens <http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=1VSkOOGX7D&Content=455> who were held in the Guantanamo prison, and then returned to their home country without being charged with any crimes.
In another court battle, four Iraqi citizens, with the assistance of CCR, filed suit in the German Federal Prosecutor's Office <http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=1xiADJOOQx&Content=472> against United States officials for abuses at Abu Ghraib.
The complaint was filed under the doctrine of universal jurisdiction under the German Code of Crimes Against International Law, which requires the prosecutor to investigate, no matter where the crime occurred or what the nationality of the victim or defendant is.
Three of the plaintiffs are in Germany, which provides additional grounds for filing, Ratner said. His group is trying to generate public support in the United States and abroad to pressure the German prosecutor to investigate.

OGC AMNESTY/CCR 205

In Canada, an organization called Lawyers Against the War <http://www.lawyersagainstthewar.org/press.html> filed suit in November charging President Bush with torture under the Canadian Criminal Code for torture of prisoners.
The basis of the suit is the United Nations Torture Convention, which was ratified by both the United States and Canada.
Some key court decisions have favored the plaintiffs.
This past summer, a pair of U.S. Supreme Court rulings established that prisoners have a right to access to civilian courts, and the right to an attorney with whom they can have unmonitored conversations.
The government subsequently set up military tribunals in Guantanamo to establish prisoners' legal status.
In November, the court found that the tribunals did not adhere to the judicial requirements established by the Geneva Conventions, and that the Bush administration had set them up illegally, without Congressional approval.
The administration has appealed this and other decisions, arguing that the president is entitled to unusual powers to fight terrorism, and that since the detainees are not fighting for a particular country, they are not entitled to the protections of prisoners of war.
According to Ratner, this puts the United States in the position of violating rules and moral standards it previously championed around the world.
"What moral authority will we have to demand that others adhere to human rights, if we do not? What happens to our soldiers when they are captured? What is happening now is a slide into the Middle Ages," he said.
http://www.newsdesk.org/archives/003275.html

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OGC AMNESTY/CCR 206

(b)(6)

From: (b)(6) DoD OGC
Sent: Friday, February 23, 2007 3:30 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 207

Cc: (b)(2),(b)(6) [redacted]

Subject: GTMO Bird: Padilla; Hicks; al-Hajj; Navy's secret brig; Torture in Iraq; Fordham law;

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)
Office of the DoD General Counsel (Legal Counsel) (b)(2)
(b)(2) (DSN (b)( ))
(fax)
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BBC World News
Padilla 'not fit to stand trial'
A US citizen suspected of being an al-Qaeda conspirator is mentally unfit to stand trial, a psychiatrist for his defence has said.
Speaking at a hearing to determine Jose Padilla's competence, Angela Hegarty said he lacked the capacity to assist his counsel in the case.
He is due to be tried in April along with two co-defendants.
Mr Padilla faces life in jail if convicted of plotting to murder, kidnap and maim persons in a foreign country.
Other charges against him allege he was part of a North American terror cell that provided support to radical Islamists around the world.
Dr Hegarty said after a 22-hour examination of the suspect that Mr Padilla had suffered from intense stress and anxiety following three-and-a-half years in custody as an "enemy combatant".
Mr Padilla claims he was tortured while being held on a brig at Charleston, South Carolina, a charge that officials deny.

OGC AMNESTY/CCR 208

The psychiatrist said Mr Padilla suffered from a facial tic, problems with social contact, lack of concentration and a form of Stockholm Syndrome, by which people in captivity sympathise with their captors.
His trial is scheduled to begin on 16 April with co-defendants Adham Amin Hassoun and Kifah Wael Jayyousi.
The co-defendants also face charges of providing material support to terrorists and conspiring to do so.
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ABC New Online
Govt will pay for Hicks 'unfairness': lawyer The US military lawyer for Guantanamo Bay detainee David Hicks says the Federal Government will be held accountable for letting his client go through an unfair trial process.
Hicks, who is from Adelaide, has been detained at Guantanamo Bay for five years and is in the process of being charged with attempted murder and providing material support for terrorism.
Major Michael Mori says people will watch the trial when it is eventually held and know it is unfair.
Major Mori says he saw Hicks last month and told the terrorism suspect he had a lot of support in Australia.
He says there are no Americans or Britons at Guantanamo Bay and Prime Minister John Howard's determination to make Hicks go through the US military commission has condemned him to at least another year at the facility.
"An Australian is not somehow less valuable than an American and that's why I'm so shocked," Major Mori said.
"I knew that the creators of the commission system in America, the chief prosecutor of the commissions don't want to give an Australian the same rights as an American.
"I just never thought Australian ministers would be supporting that."
Hicks, a convert to Islam, was captured in Afghanistan where he allegedly fought alongside the ruling Taliban against US-led forces who invaded after the September 11, 2001, terrorist attacks in New York.
The US charged him with conspiracy, attempted murder by an unprivileged belligerent and aiding the enemy.
But the charges were dropped after the US Supreme Court ruled it was unlawful for the US military commission to try him.
http://www.abc.net.au/news/newsitems/200702/s1855410.htm
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Mercury News
Al-Jazeera cameraman still at Guantanamo BEN FOX and ALFRED de MONTESQUIOU Associated Press GUANTANAMO BAY NAVAL BASE, Cuba - A TV cameraman is getting an inside view of life at Guantanamo Bay prison - only he is unable to get out and tell the story.
Sami al-Hajj, of the Al-Jazeera TV network, was stopped at the Afghanistan border by Pakistani authorities in December 2001, turned over to U.S. forces and hauled in chains six months later to Guantanamo, where about 390 men are held on suspicion of links to al-Qaida or the Taliban.
Al-Hajj, a 38-year-old native of Sudan, has been held in this U.S. military prison ever since.
He is believed to be the only journalist from a major international news organization held at Guantanamo.
Colleagues from al-Hajj's Qatar-based network and the Sudanese government want to know why he is being held, but the U.S. government is saying little. The military did not even publicly acknowledge holding al-Hajj until last April, when it released a list of Guantanamo detainees in response to a Freedom of Information Act request filed by The Associated Press.
But military documents sketch at least a partial outline of al-Hajj's experiences at Guantanamo and the U.S. grounds for holding him - that he transported money between 1996 and 2000 for a defunct charity that allegedly provided money to militant groups, and that he met a "senior al-Qaida lieutenant."

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When he appeared before a military review panel at this remote U.S. military base in August 2005, al-Hajj, citing the advice of his attorney, declined to respond to questions. But he denied any connection to terrorism.

"With all due respect, a mistake has been made because I have never been a member of any terrorist group," he said, according to a transcript released the following year. "I can say without hesitation that I am not a threat to the United States."

During the hearing, aimed at determining whether al-Hajj posed a threat to the United States or possessed intelligence value, al-Hajj wore a white jumpsuit reserved for the "most compliant" detainees. An officer told the tribunal that al-Hajj was leading Islamic prayer sessions and teaching other prisoners English.

His colleagues at Al-Jazeera claim his detention is American harassment of an Arabic TV network whose coverage has long angered U.S. officials. Near the entrance to the network's Khartoum bureau a banner saying "Free Sami al-Hajj" hangs alongside his photo.

"He's our colleague, so we're very worried," Nassef Salah Eldin, an Al-Jazeera producer in the Sudanese capital. "We feel it could happen to any of us."

Lamis Andoni, a Middle East analyst for the network who helped organize a campaign for al-Hajj's release, noted the network's sour relationship with the American government. In April 2003, an Al-Jazeera journalist was killed when the network's Baghdad bureau was struck during a U.S. bombing campaign. In November 2001, a U.S. missile destroyed Al-Jazeera's office in Kabul, Afghanistan. The U.S. claims both attacks were mistakes.

"When you are targeted once, it could be a mistake," Andoni said in an interview from Amman, Jordan. "But when you are bombed twice, it's something else."

In an interview in Khartoum, Sudanese Justice Minister Mohamed Ali al-Mardi said the holding of the cameraman without charge "is repugnant to all the conventions and principles of international law."

Washington has given Sudan no information about al-Hajj, al-Mardi said. U.S. relations with Sudan are strained over the Darfur conflict.

Al-Hajj has been interrogated at the Guantanamo Bay prison complex, which sits on an arid corner of southeast Cuba overlooking the Caribbean.

"I consider the information that we obtained from him to be useful," Paul Rester, director of the Joint Intelligence Group at the prison, said in an interview at Guantanamo Bay. Rester refused to elaborate or even to comment on the allegations aired at the 2005 hearing.

International human rights and press freedom groups condemn al-Hajj's imprisonment. Reporters Without Borders cited his case when it dropped the United States nine places to 53rd in its 2006 Worldwide Press Freedom Index. The group also noted the case of AP photographer Bilal Hussein, detained by U.S. forces on April 12 in Ramadi, Iraq, and held without charge ever since.

Al-Hajj himself has protested by joining the hunger strike at Guantanamo, according to letters released by his lawyer, Clive Stafford Smith.

"If justice is to be achieved, due sacrifice must be made," al-Hajj wrote.

It was not known whether al-Hajj was among the 11 prisoners that the military said were on hunger strike as of Thursday.

The U.S. military says that in the 1990s, al-Hajj was an executive assistant at a Qatar-based beverage company that provided support to Muslim fighters in Bosnia and Chechnya. The U.S. says he also traveled to Azerbaijan at least eight times to carry money on behalf of his employer to the Al-Haramain Islamic Foundation, a now defunct charity that authorities say funded militant groups.

It was also during this period that he allegedly "met" Mamdouh Mahmud Salim, a senior lieutenant to Osama bin Laden who was arrested in Germany in 1998 and extradited to the United States.

Stafford Smith said al-Hajj did not routinely transport money but that he and his wife once carried $220,000 from Qatar to Azerbaijan for his boss at the beverage company - and that he even declared the cash to customs.

"Sami was only doing what he was told by his boss," Stafford Smith said.

He said al-Hajj, while working for the beverage company, met Salim only once, when he was sent to pick him up at the airport in Qatar in 1998. During the drive, the two discussed schools and housing, the attorney said.

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Al-Hajj, who has a wife and son in Qatar, will mark his fifth anniversary in Guantanamo in June. The military informed him in December that it had reviewed his case and determined he was not among the more than 80 detainees at Guantanamo Bay deemed eligible for release or transfer.
"You will continue to be kept at Guantanamo Bay for at least one more year," the military told al-Hajj in the formal notice.
http://www.mercurynews.com/mld/mercurynews/news/world/16768503.htm

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Inside Navy's secret brig
Report: Hanahan facility geared to dodge scrutiny, keep inmates apart By TONY BARTELME The Post and Courier

Officials at the Navy's brig in Hanahan developed elaborate plans to dodge public scrutiny of its operations to detain enemy combatants, plans that include destroying "critical info," scrubbing public Web sites, and warning brig staff about the temptations of "high priced offers from news agencies," a Navy report shows.
The 17-page document also describes how, with relatively short notice, the Naval Consolidated Brig created an expensive prison-within-a-prison, in part to prevent regular inmates from retaliating against the detainees. In this separate facility, a brig official said detainees are accorded protections under the U.S. Constitution, "except where curtailed by higher guidance."
The document provides a rare insider's glimpse into what has emerged as one of the most secretive installations in the government's anti-terrorism effort. It reveals new details about the challenges of housing high-profile terrorism suspects. It also comes amid a backdrop of lawsuits alleging that the solitary confinement of detainees constitutes torture, and that the administration's policy of holding terrorism suspects without charges is unconstitutional.
Brig officials prepared the paper "Preparing for Enemy Combatant Detainment" for a presentation last summer in Charlotte at a national conference organized by the American Correctional Association. The Navy supplied the document to The Post and Courier in response to a request under the Freedom of Information Act.
The presentation begins with an introduction by Sandy Seymour, technical director of the brig. He declined to comment for this story. In the presentation paper, Seymour describes how the brig's mission evolved after 9/11. Before, it was a medium-level security prison capable of holding 364 inmates, and that its main focus was on rehabilitating inmates. He touted the institution's low recidivism rates.
After 9/11, the Bush administration declared that certain terrorism suspects were "enemy combatants," more akin to prisoners of war than criminals. As such, the administration argued, enemy combatants could be held without criminal charges until the war was over.
Seymour said that brig officials were given five months to prepare to confine enemy combatants.
The first, Jose Padilla, arrived in June 2002, under heavy guard. Two others followed: Yaser Hamdi, an American citizen by birth picked up on a battlefield in Afghanistan; and Ali Saleh al-Marri, who authorities say was an al-Qaida sleeper agent.
Seymour said in the report that security became the brig's overriding concern. "The enemy combatant concept of operations mean establishing two separate facilities on the same real estate," he said, adding later: "There is no rehabilitation mission in detainment." He said one of the brig's challenges was to make sure other inmates didn't come into contact with the detainees.
"Emotional responses by the prisoner population to the events of September 11th made it clear that criminals can be patriots, too," his report said. "We concluded that it was likely, given the opportunity, an inmate might attempt to harm an enemy combatant out of patriotic sentiment." Brig officials paid close attention to such "crossover" contact, making sure, for instance, that staff, instead of regular inmates, prepare and serve detainees' meals.
Seymour said brig officials also had to learn about the detainees' cultural traditions. "Be prepared to explain what some of the basic tools are and the expectation for their use: For

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example a flushing toilet ... Even which hand is used to deliver food or religious material to a person from a Muslim culture can have great significance."
While the Pentagon has allowed more than 1,100 visits by reporters and others to detention facilities in Guantanamo, Cuba, military officials have denied media requests to tour the Hanahan brig. In fact, much of the brig's presentation was devoted to how officials sealed the facility from public scrutiny.
"Taking on a nationally newsworthy mission brings its own pitfalls," the report said. "High-priced offers from news agencies for information or pictures can be very tempting to staff." (Like most daily newspapers, The Post and Courier does not pay for such information.) The report said brig officials scrubbed public access documents and Web sites and destroyed "critical info," including information about rosters and internal operations. "Staff training to counter media probes paid dividends on several occasions," Seymour said without further explanation.
The presentation eventually took on the tone of a primer for corrections colleagues on how to dodge reporters and prepare their institutions for enemy combatant missions.
"Defeat surprise queries by preparing standard answers and keep them near common phone access points and available to all staff ... Focus on where the vulnerabilities are for camera footage by interested parties and look for unconventional access to your operation." Doing so will "starve the query."
Cmdr. Flex Plexico, a Navy spokesman, said Thursday the report "shows the amount of effort and care taken in preparing for the enemy combatant detainment mission supporting the ongoing war on terror." He pointed out that the document stresses "the requirement to treat all detainees humanely, and summarizes the extraordinary steps taken to provide for the safe confinement of enemy combatants while at the same time protecting those responsible for carrying out the detention mission."
Seymour also touched on the legal netherworld the enemy combatants inhabit. "In detaining American citizens, full constitutional rights are afforded except where curtailed by higher guidance or accepted prison practice," the report said.
Jonathan Hafetz, an attorney for the lone detainee in the facility, Ali Saleh al-Marri, said the document shows how the Bush administration is trying to build a separate detention system unbound by the Constitution. "They're saying, 'We'll follow the Constitution, unless the president tells us not to.' That's very significant."
Jacob Hornberger, president of The Future of Freedom, a libertarian think tank near Washington, D.C., added that "the brig officer has it all wrong. The rights enumerated in the Constitution are not privileges bestowed by federal officials subject to discretionary curtailment. Instead, they are inherent, fundamental rights and guarantees that the Constitution expressly prohibits federal officials, including those in the military, from infringing."
Plexico said the term "higher guidance" refers to "guidance higher in the military chain of command than the brig and alludes to rights" that are commonly restricted in detention facilities to ensure order. He added that "even active duty military members in good standing do not have the full benefit of the Constitution, i.e., the First Amendment."
The report also touched on the financial burdens of holding the detainees.
The report doesn't specify how much has been spent to accommodate enemy combatants but did say an entire wing was set aside for one detainee. (The Post and Courier has requested information about costs under the Freedom of Information Act. The military has denied these requests, citing national security concerns.) In the report, Seymour concluded that "the enemy combatant mission is a fluid task without full definition." One thing was clear, he added, "this mission costs money," urging his colleagues, "get access to the money!"
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Centre for Research on Globalization
Routine Practices of Torture by US Forces in Iraq: Testimony of Abbas Z. Abid to the Kuala Lumpur War Crimes Commission Global Research <http://www.globalresearch.ca> , February 23, 2007 Perdana Global Peace Organisation - 2007-02-07

STATUTORY DECLARATION

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I, Abbas Z. Abid (Iraqi Passport No: S379532) of full age and an Iraqi citizen do hereby solemnly and sincerely declare as follows:

1. I am 43 years old.
2. I live in Fallujah, a city in Iraq.
3. I am an Electrical Engineer. Prior to my arrest and detention, I was the Chief Engineer in the Science and Technology Ministry in Baghdad.
4. The purpose of making this statutory declaration is to put on record my torture experience when I was detained in the "Al-Jadiria" prison.
5. This was originally an underground shelter, but was converted into a secret prison.
6. On the evening of 28th of August 2005, about 10pm, a combined force of American forces and National Guards launched a raid on my brother's house. The force consisted of four American Humvees filled with American soldiers and twelve trucks loaded with Iraqi soldiers. More than 15 American and Iraqi soldiers entered the house in a terrifying manner.
7. My nephews came to my house crying for my help as my brother was not at home that night. I stay nearby my brother.
8. I went to my brother's house and welcomed the soldiers and introduced my self as the chief engineer in the Science and Technology Ministry, and told them that my brother is not available for the time being and that I'm ready to answer any questions. They told me that they're searching the house for incriminating evidence. And when not finding anything illegal in the house, the Commander turned to a table in the living room that was used for studying by my nephews.
9. He began to search the table and asked, "Why so many holy books? It's just too many!" I told him that every one in the family has his own holy book. He then examined some papers on the table which were articles downloaded from the internet from various sites - some referred to the violence in Iraq, the future of Iraq and some referred to political figures like Ahmed Al-Jalaby. The Commander asked, "What is this?" and since I didn't know the contents of those papers, I took a quick look at them and told him that they are various articles concerning the situation in Iraq. He said, "I'll take them and show them to my superiors." He took the articles and the five holy books on the table and left the house.
10. At the front door one of his soldiers whispered something in his ears so he came back and asked me, "What kind of a car is your brother driving?" "Where is it now?" I told him that it is an Opel Omega and it's in our father's garage. The Commander then told me that he wanted to check my father's house.
11. They searched and found nothing in my father's house. The soldiers then told me that I was to follow them for further questioning.
12. I was first brought to the Al-Muthanna Brigade Head-Quarters for questioning. They beat me up and demanded to know the names of "terrorists" in my neighbourhood. I told them that I did not know any terrorists. But they did not believe me and continue to beat me. They even electrocuted me and threatened to shoot me. The American took part in the torture and would provide beer to the investigators and guards. I know this because I can hear and understand English.
13. Soon after my detention, the son of my cousin was also detained and he was tortured in order to get a testimony against me. He was released after 18 days of torture and after he had made a false statement against me.
14. I was detained at the Al-Muthana Brigade HQ for four weeks and then transferred to the Al-Jadiria prison. The following detainees were transferred with me:

Hameed Kameel Shared
Taha Hussein
Readh Mustafa
Rabah Mahmoud
Basim Hammed Khalaf
Fauzi Kareem
Muhanned Eesaa

15. There, I was again tortured. My torture consisted of the following:
a. Hitting with various tools (thick cudgels, cables, metal pipes, metal ribbons); b. Electric shocks in various parts of the body and especially the penis; c. Forcing me to drink allot of water mixed with a diuretic solution, and my penis then tied with a rubber band to

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prevent me from urinating; d. Hanging me from the wall while hanging weights from my penis for long hours; e. Threaten to sexually assault me; f. Play with my sexual organs; g. Frightening me by shooting a gun around, near and above my head; h. Threaten to sexually abuse my wife and my mother after bringing them to the prison; i. Cut off all food or drinks (except the water I was forced to drink with the diuretic solution) during the investigation period; j. Forcefully extracting my finger nails; k. Hanging me from the wall for long hours until I fainted - the hanging method is by handcuffing my hands to the back and then hang me up from the handcuffed hands so that my shoulder get dislocated; l. Hanging me from the wall and then hitting me with several tools of torture until the hand-cuffs breaks. That happened many times; 16. Other detainees suffered from the following tortures:
a. Forcing detainees to have sex with other inmates; b. Their bodies being drilled with a "Black & Decker" drill; c. Cutting pieces of flesh from the body with a grinding machine; d. Burning various parts of the bodies with cigarettes and melted nylon; e. Inserting solid objects in the rectum with wooden sticks, pipes and a vacuum cleaner hose pipe; f. Make to stand for long hours.

17. I was forced to sign a statement without reading or knowing what's in it because they put a bag over my head. This they do to all prisoners.
18. I was then thrown in the corridor with the bag over my head for long hours. I was then moved to a small room (2.5m by 2.5m) together with 30 other detainees; then after three days I was moved to another nearby room (7m by 3.5m) and there were about 70 detainees there. The numbers increased afterwards and reached about 115 in that room.
19. They put the bag over my head for over two months and only remove it when I am given food. Some prisoners would have the bag over their head for over five months. I've seen many unbelievable things in that room such as follows:
a. There was not enough room for everybody, so the detainees were sitting and sleeping over each other and most of them suffered from burns and frictions and severe wounds, some of them were infected with contagious diseases like TB and scabies.
b. Everybody used to urinate in plastic bottles placed near the door. Visits to the toilet are made once every 4 days.
c. We were separated in groups of 15 detainees. A detainee is allowed only 1 minute in the WC and then he had to leave to let another one in. On any other occasion during the four days intervals, we have to discharge our human waste in the plastic bags given to us and right in front of everybody. These bags were used to bring food and we kept them for this purpose. These toilet bags were placed near the plastic bottles at the door. Because it is so crowded, the bottles and bags get knocked over and the waste would be spread all over the room. Those bottles and bags were emptied once every four days when we went to the WC. Whenever we went to the WC and on our return, we would be beaten by the guards.
d. The guards would offer inducements to convince some of the detainees to report on other detainees about what they know or hear or think and they would sometimes make up stories about their fellow detainees to avoid the torture.
e. Detainees who have names like "Omar", "Baker", "Marwan" which indicate that they are Sunnis, would receive particular attention from the guards who would yell at them and calling them "son of a bitch", "bastard" and other humiliating terms.
f. No medical care was available at all, and detainees were left to die from their injuries caused by torture. While I was at the prison, the following detainees died, namely:

Alaa Khareeb Hassan
Mohammed Khadim
Husham Abbas
Omar Ali Mohammed
Khalid Younis Muhseen
Ali Farhan Mohamed
Waheed Mahmoud Abdullah
Haitham Radhi

20. Each group of five detainees was given a 2ltr bottle of water once every 2-3 days; When thirst became unbearable, some of the detainees drunk from the urine bottles in the room.

OGC AMNESTY/CCR 214

21. Some of the guards in this prison have mobile phones with tones and songs in the Iranian language and they would talk in a language which I do not understand.
22. Even though the Al-Jadiria prison is under the control of the Minister of Interior, American troops have visited the prison many times and therefore cannot deny the existence of such a prison. Yet in the media, they deny knowing it and deliberately try to give the impression that in this prison, only Iraqis soldiers are torturing fellow Iraqis to distract attention from the tortures in Abu Ghraib.
23. On the 5th of September 2006 I was brought to a court, and the judge ruled that I should be set free for the lack of evidence.
24. I was released on the 2nd of October 2006 with three of my inmates, one of them was Syrian. At the prison's gate my brother was waiting for me in his car and he hired a group of police officers to secure me and to ensure that I reached home safely. I asked my inmates to come with us but they refused. Two cars followed us, a BMW and a Toyota Crown both with black windows. But we were able to evade them.
25. Later, I found out that the inmates who were released with me were killed and buried in (Al-Najaf) cemetry and their parents had to pay huge sums of money to reclaim their bodies from Najaf for re-burial in Baghdad.
26. I stayed about an hour in my house and then moved to another house to stay for a few days. I then left my beloved country.
And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1960 Subscribed and solemnly declared by the)
above named Abbas Z. Abid)
at Kuala Lumpur on the day of February)
2006 at a.m./p.m.)
Before me,
Commissioner for Oaths
Kuala Lumpur, Malaysia

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Fordham Law Students Work To Seek Justice For Guantanamo Detainees February 22, 2007

Students at Fordham Law School are learning a lesson in how the law can leave some people in limbo, not convicted of any crime but held as prisoners nonetheless. As Criminal Justice reporter Solana Pyne explains, these would-be attorneys are part of one of the only student law clinics in the country representing Guantanamo detainees.

A computer lab on Manhattan's Upper West Side is very far from the Guantanamo Bay detention center. And yet, some Fordham law school students are among the very few to have any contact at all with those held there.

"We can write them letters trying to explain to them what's going on with the courts and with the legislation," said law student Deborah Mantell. "And also, sort of, checking in with them to see how they're doing."

Mantell is one of more than a dozen students in Fordham's International Law Clinic, representing prisoners held at Guantanamo as enemy combatants. Much of what they study in school just does not apply.

"Things that we would never anticipate be rejected in normal litigation, asking for what is called a factual return, just to get basic information back about our client, can be rejected in the course of this litigation," said Amber Lewis, also part of the clinic.

The government says that as foreign enemy combatants, the prisoners have no right to challenge their detention in court. The U.S. Justice Department says habeas corpus -- the

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constitutional right to ask a judge to decide if they're being improperly held -- does not apply to them.

"A lot of what we're doing is just taking the baby steps and trying to get us to that place where we can get a fair trial," said law student Nick Mitchell.

The students meet weekly, where, in groups, they represent individual detainees. They also work on more general issues, like getting their clients permission to talk on the phone with their families.

The Supreme Court could soon decide if their clients deserve a day in court. But Congress could also legislate it. And the students see part of their job as letting the public know who exactly is at Guantanamo.

Department of Defense documents reportedly say many were handed over as the U.S. was offering hefty bounties.

"The fact is that the government doesn't allow us to review the evidence against our clients, so we have no way of knowing," said James Schmitz, a Fordham Law student also working on the project. "There's just this terrible suspicion that these people were just in the wrong place at the wrong time."

"I think our students are really actors in history in the making," said Fordham University Law Professor Martha Rayner. "They're really able to see how one can impact, or in some cases not impact at all, on what our courts do, what politicians do."

This is something that just cannot be learned in the classroom.

http://www.ny1.com/ny1/content/index.jsp?stid=6&aid=67048#

OGC AMNESTY/CCR 216

A Saudi and an Ethiopian are the latest to have U.S. military officers assigned to convene panels for war-crimes trials at Guantánamo Bay, Cuba.

The Miami Herald
December 17, 2005 Saturday

BYLINE: CAROL ROSENBERG, crosenberg@herald.com

The Pentagon on Friday named two more senior officers to convene military commissions at Guantánamo Bay, Cuba -- one for a former flight school student from Saudi Arabia, another for an Ethiopian captive accused of ''dirty bomb'' plot-making.
Neither Binyam Muhammad, an Ethiopian who sought asylum in Britain, nor Ghassan al Sharbi faces execution if convicted of war crimes, according to documents released Friday.
JAN. 10 COMMISSION
The Pentagon plans to convene its next commission at Guantánamo Jan. 10 -- coinciding with the Islamic holy day, Eid al Adha -- for pretrial proceedings against a Canadian teen accused of killing a U.S. soldier in a grenade attack in Afghanistan and a Yemeni captive accused of being an al Qaeda filmmaker.
The Pentagon named Marine Col. Ralph Kohlmann, with 18 years in military justice, to preside over the trial of Muhammad, who is alleged to have trained at al Qaeda camps in Afghanistan and heard a lecture by Osama bin Laden in 2001.
Later, at a religious school guest house in Pakistan, the charge sheets allege, he and Jose Padilla, a former Broward resident and one-time Chicago gang member, reviewed instructions 'on how to make an improvised `dirty bomb.' ''
Sharbi then allegedly translated the instructions into Arabic and read them aloud.
Sharbi, a Saudi, is believed to be in his late 20s. He is alleged to have trained in military tactics at al Qaeda camps in the 10 weeks prior to the Sept. 11 attacks. He also is alleged to have graduated from Embry-Riddle Aeronautical University in 2000.
In a habeas corpus petition filed last week in U.S. District Court in Washington, the Saudi denied ''any criminal or terrorist conduct. Nor did he kill, injure, fire upon or direct fire upon any U.S. or coalition forces'' before his capture in Pakistan in March 2002.
Vermont attorney Robert Rachlin said Friday that he filed the petition, pro bono, at the request of Sharbi's father in Saudi Arabia. He has never met the captive -- and does not know if he wants an attorney at Guantánamo.
Just in case, Rachlin has Pentagon clearance to help defend Sharbi with Navy Lt. William Kuebler. He also filed the petition, in case Congress and President Bush successfully stop habeas filings for the detainees who are considered enemy combatants.
''It's like chicken soup,'' he said in an interview. ``It may not help but it can't hurt.''
Both military and civilian defense lawyers are challenging the constitutionality of the first U.S. war crimes trials, called commissions, since World War II.
The Supreme Court hears arguments in March on whether military officers can act as judge and jury for the captives, who are held at the Navy base as enemy combatants, not prisoners of war, and allegedly conspired as foot soldiers of a terror group.
''If the laws of war don't apply to these people, what are the war crimes?'' Rachlin asked. ``There's a real issue here about whether acts that were done before there were any military actions either in Afghanistan or Iraq fall under the purview of a military commission.''
PRESUMED INNOCENT
Pentagon officials describe the process as fair, with a presumption of innocence. So far, nine prisoners have been charged among the 500 or so captives at Guantánamo.
Little is known about Sharbi's presiding officer, Navy Capt. Daniel O'Toole.
Kohlmann recently presided at the military trial of a Marine gunnery sergeant who enlisted dozens of illegal immigrants in the Marine Corps from 2002 to 2004 while serving a stint as a military recruiter in Fort Lauderdale.

Let me talk with my kids;
Hicks asks for Xmas phone call

OGC AMNESTY/CCR 217

SUNDAY MAIL (SA)
December 18, 2005 Sunday

BYLINE: Elissa Doherty

TERROR suspect David Hicks is longing to speak to his estranged children this Christmas.
The father of two - a girl and a boy both under 15 - has requested through his lawyer a telephone hook-up with the Adelaide-based children he has not spoken to for more than four years.
The children's maternal grandfather, Dennis Sparrow, has also revealed the difficulties the children have faced coping with the fallout of their father being captured allegedly fighting alongside Taliban forces in Afghanistan.
Mr Sparrow, 55, said the youngsters had experienced periods of being unsettled and had been hassled at school.
He said his daughter Jodie, who declined to speak to the Sunday Mail, would not allow the phone reunion to go ahead.
He said Hicks has not seen the children since some time in the 1990s after the romance soured.
''She wants nothing to do with him and the kids (to have nothing to do with him) at this time,'' Mr Sparrow said.
''She asked me what I think she should do. I told her that, for me, I would want to wait until they are old enough to make up their own minds, but that it's her decision to make.''
The comments come after the High Court in London during the week granted Hicks British citizenship in his attempt to leave the US military base in Cuba.
But the Guantanamo Bay inmate's release to the UK is far from secure because the British Government has signalled its intention to appeal.
Hicks has been charged with conspiracy to commit war crimes, attempted murder by an unprivileged belligerent and aiding the enemy - but is yet to face trial after more than four years in US detention.
Hicks' father Terry said a Christmas day phone call with his young children, which he would attend, would be ''the ultimate''.
''He misses them,'' he said. ''I think it would be a great morale boost for David. He writes to them . . . he does keep in touch with them in some way.''
Mr Sparrow said he was worried about the impact on the children of speaking to their father after more than four years.
''I don't want the kids to get their hopes up, or get upset any more,'' he said.
He did not know if the time languishing in legal limbo in Guantanamo Bay had changed the rodeo lover from Adelaide's northern suburbs.
''I would have to listen to him talk myself; have to wait and see myself,'' he said. ''Maybe after four years he's more mature; he was always immature to me.''
He said the children rarely discussed their father but found it difficult seeing the images of him on TV.
''The kids don't really talk about it,'' Mr Sparrow said.
''They were unsettled when it was first happening.''
Jodie met Hicks in Adelaide in 1992 after he returned from the Gulf of Carpentaria where he had worked as a jackaroo.
Mr Sparrow said he remembered the moment when Hicks first revealed he was moving to Afghanistan, where he would later be captured.
''I remember sitting here having a few beers with Dave and he said he was going to Afghanistan,'' he said, pointing to the chair next to him in his northern suburbs loungeroom.
''It was after he had broken up with Jodie. He said it was for a life change. He said he knew a few people there or something. He didn't mention names or say anything about fighting.
''When I saw a few years later on the news an Australian caught fighting for the Taliban, I said, 'I bet that's Dave'.''
Hicks' Adelaide lawyer David McLeod said it would be a convoluted process to orchestrate a telephone conference in the lead-up to Christmas.

OGC AMNESTY/CCR 218

''He (David) has made the request but the request is currently unanswered,'' he said. ''It's very convoluted, like everything to do with David Hicks.''

OGC AMNESTY/CCR 219

(b)(6)

From: (b)(6) AFIS-HQ/GC
Sent: Tuesday, March 27, 2007 4:22 PM
To: Barber, Allison Ms OSD PA
Subject: FW: GTMO Bird: Hicks; New detainee; GTMO

(b)(5)

(b)(6)
General Counsel
American Forces Information Service
601 N. Fairfax, (b)(2)
Alexandria, Virginia 22314-2082

Office (b)(2)
Fax
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(b)(2),(b)(6)

-----Original Message-----
From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Tuesday, March 27, 2007 5:17 PM
Subject: GTMO Bird: Hicks; New detainee; GTMO

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)
Office of General Counsel, Legal Counsel Department of Defense
(b)(2) (DSN (b)( )
(fax)

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.
(b)(2) (fax)
****
New York Times
March 27, 2007
Pg. 1
Plea Of Guilty From Detainee In Guantanamo By William Glaberson GUANTÁNAMO BAY, Cuba, March 26 – In the first conviction of a Guantánamo detainee before a military commission, an Australian who was trained by Al Qaeda pleaded guilty here Monday to providing material support to a terrorist organization.
The guilty plea by the detainee, David Hicks, was the first under a new military commission law passed by Congress in the fall after the Supreme Court struck down the Bush administration's first system for trying inmates at Guantánamo.

OGC AMNESTY/CCR 220

The guilty plea is sure to be seen by administration supporters as an affirmation of its efforts to detain and try terrorism suspects here, although the government's detention policies still face significant legal and political challenges.

The plea by Mr. Hicks came after an extraordinary day in a pristine red, white and blue courtroom here. Earlier the military judge had surprised the courtroom with unexpected rulings that two of Mr. Hicks's three lawyers would not be permitted to participate in the proceedings, leaving only Maj. Michael D. Mori of the Marine Corps at the defense table. After several acrimonious sessions in which Major Mori claimed that the judge, Colonel Ralph H. Kohlmann of the Marines, was biased, the judge insisted that he was impartial and the hearings came to a close.

But in the evening Judge Kohlmann called the court back into session, saying he had been approached by lawyers who said Mr. Hicks was now prepared to enter a plea.

Mr. Hicks, a stocky 31-year-old former kangaroo skinner who has been held at the prison for five years, was accompanied by guards to a defense table, and Major Mori said he was now prepared to plead guilty to one of two specifications in the charges against him.

That charge described Mr. Hicks's stay in a Qaeda training camp where, it said, he learned kidnapping techniques and was trained in how to fight in an urban environment. Prosecutors have said that Mr. Hicks, who was captured in Afghanistan in late 2001, had never shot at Americans there but that he had taken part in other activities, including collecting intelligence on the American embassy there.

Australia officials, who have described Mr. Hicks as a "lost soul" and "soldier wannabe," had been pressing the United States to resolve the case, and a prosecutor said Mr. Hicks would probably be back there within a year. Major Mori had waged an unusual campaign to rally support for Mr. Hicks in Australia.

During the plea, Judge Kohlmann led Mr. Hicks through a brief session in which he asked whether the earlier dispute about whether his lawyers were authorized to participate in the proceedings had influenced his decision to plead guilty.

"No, sir," Mr. Hicks, dressed in a tan prison uniform, answered calmly several times.

The road to Mr. Hicks's guilty plea was long and fraught with legal and diplomatic strife. The Pentagon had originally hoped to begin trying detainees in the spring of 2002, but the Bush administration's system for military tribunals has been the subject of lengthy legal challenges. The Supreme Court struck down the administration's first plan for tribunals last June, ruling that a principal flaw was that the president had established them without Congressional authorization.

In October, Congress enacted a new law providing for military tribunals, but lawyers for detainees and other critics have challenged it as establishing a trial system that does not afford defendants the same protections as civilian courts. Critics note, for example, that the rules allow for the use of evidence obtained by coercion.

In addition to the legal challenges, the policy of holding "enemy combatants" without charges for as long as five years has drawn international protest, including from allies of the United States.

The Hicks case has drawn particular criticism in Australia, where Mr. Hicks, a high school dropout, turned to Islam after unsuccessfully trying to join the army and then joining an evangelical church.

On Monday, after Mr. Hicks's guilty plea, the judge adjourned the case for further proceedings this week, evidently so that the lawyers could settle on what specific acts he may acknowledge. The sentence will be decided by a five-member military commission.

Lawyers have suggested that he might serve out the remainder of any sentence in Australia. Asked whether Mr. Hicks might be back in Australia by the end of the year, a military prosecutor said, "The odds are pretty good."

Mr. Hicks's arraignment Monday was the first public proceeding under the new tribunal rules. The hearing quickly turned fractious, especially after the judge disqualified the two lawyers.

Mr. Hicks appeared startled as his long-awaited day before the tribunal turned into something a free-for-all, rather than the orderly arraignment that had been anticipated.

"I am shocked because I just lost another lawyer," Mr. Hicks said, after the judge said that one of his two civilian defense lawyers, Joshua L. Dratel, had not complied with the judge's

OGC AMNESTY/CCR 221

rules for handling a military commission case. Mr. Dratel, a well-known lawyer in Manhattan, has been a central player in the Hicks case.
"Right now you do not represent Mr. Hicks," said Judge Kohlmann, the presiding judge of the new military commission organization, who assigned himself to the Hicks case.
Referring to the Bush administration's previous plan for military commission trials struck down by the Supreme Court, Mr. Dratel said in the courtroom before he left that Monday's events showed that the new commission process was as problem-plagued as the old one.
"You cannot predict from one day to the next what the rules are," Mr. Dratel said.
The judge rejected each assertion that he was acting arbitrarily or was biased. In an even tone, but with a flushed face that suggested irritation, he methodically moved through the day's events, turning aside each defense complaint. The defense claims, he said "do not raise matters that would cause a reasonable person to question my impartiality."
Even before Monday's hearing, the case against Mr. Hicks had been marked by an unusual public dispute between Mr. Hicks's military lawyer, who has openly attacked the tribunals, and the military prosecutor.
And Monday, Major Mori was also critical of the judge, saying that some of his rulings seemed aimed at helping the government prove its case against Mr. Hicks. Major Mori said some rulings appeared to be "fixing the rules to fix their mistakes."
Judge Kohlmann said his rulings had been impartial, aimed only at assuring that the case moved ahead professionally and quickly.
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Washington Post
March 27, 2007
Pg. 1
Australian's Guilty Plea Is First At Guantanamo By Josh White, Washington Post Staff Writer
GUANTANAMO BAY, Cuba, March 26 -- Australian David M. Hicks pleaded guilty to one charge of material support for terrorism during a brief military hearing Monday night, becoming the first Guantanamo prisoner to officially accept criminal responsibility for aiding terrorists since the detention facility opened more than five years ago.
The plea during the first day of hearings under the Military Commissions Act of 2006 marks a victory for the Bush administration, which is now likely to secure a conviction in the first case it pursues under Congress's new rules.
Col. Ralph H. Kohlmann, the military commission's presiding officer, has not accepted the plea but is expected to do so in hearings this week.
Military commission officials here said Kohlmann and lawyers for both sides will work out details of Hicks's plea. Then a full military commissions jury panel will meet to decide on a sentence. Hicks faces a possible life term, but prosecutors said in recent days that they probably will not seek a term longer than 20 years.
Defense lawyers for Hicks said late Monday night that they could not discuss details of the guilty plea or whether there is an agreement with prosecutors about a sentence, although they said the case will probably be disposed of by the end of the week. Australian officials were planning for Hicks's possible return within days so he could serve his sentence.
Hicks, 31, entered a plea of guilty to one specification of providing material support for terrorism and pleaded not guilty to one specification of supporting terrorist acts.
Prosecutors alleged that Hicks trained with al-Qaeda in Afghanistan and met Osama bin Laden, but they were not prepared to present evidence that Hicks attempted to kill anyone.
Maj. Michael D. Mori, Hicks's military defense attorney, entered the pleas at a late hearing on Monday after a three-hour session in the afternoon that dealt primarily with legal issues.
Hicks became the first detainee out of hundreds who have gone through Guantanamo Bay to have his case adjudicated. If his plea is accepted, he will be the first detainee from Guantanamo Bay to be convicted of a crime.
Congress wrote new rules for the commissions after the Supreme Court overruled the administration's earlier version of the trials, calling them unconstitutional. Attorneys for Guantanamo detainees have challenged the new law, and members of Congress have vowed to push legislation giving more rights to the detainees. Hicks's guilty plea could give the government a conviction that will not be challenged.

OGC AMNESTY/CCR 222

"I don't look at it as a victory," said Air Force Col. Morris Davis, the chief prosecutor, who said he is pleased the military commissions are underway. "We are satisfied where we stand at this moment."
David H.B. McLeod, a civilian lawyer from Australia who is on Hicks's defense team, said Monday night that he would not comment on the guilty plea other than to say it was "the first step toward David returning to Australia."
Hicks was among the first detainees to arrive at Guantanamo in January 2002 and has spent more than five years incarcerated here.
U.S. military prosecutors allege that he has been involved in militant extremism since the late 1990s, when he joined liberation fighters in Kosovo. Hicks later traveled to Afghanistan and trained with al-Qaeda forces, met bin Laden and secured a tank at an airport in Kandahar, according to the U.S. government. He later allegedly supported the Taliban.
Australian officials have been pressuring President Bush to try Hicks swiftly and have been negotiating to have Hicks returned to Australia to serve out any prison term.
Lawyers from Australia and a delegation representing the Australian government were in the courtroom on Monday, and Hicks, in a tan tunic and pants, at one point looked back, nodded and smiled to people in the front row.
Much of Monday's legal wrangling dealt with Hicks's defense team. The presiding officer ruled that his two civilian attorneys were not qualified to represent him in court, in part because one refused to sign a form he felt would compromise his ethical responsibilities. The lawyers, Rebecca Snyder and Joshua Dratel, separately stormed out of the courtroom.
"I'm shocked because I just lost another lawyer," Hicks said when Kohlmann asked if he wanted Dratel to remain at his defense table, even though he could not represent him. "What's the sense of him sitting here if he's not my lawyer and can't represent me?"
Hicks's father and sister traveled to Cuba for the hearing and spent several hours meeting with him in a private room in the morning, getting the opportunity to hug him, pass on family messages and share lunch with him.
Defense Department officials announced Monday that they had transferred a high-value detainee into Guantanamo over the weekend. Abdulmalik Abdul-Jabbar, who allegedly admitted to participating in a 2002 hotel attack in Kenya and to plotting to shoot down an Israeli airliner near Mombasa, was the first direct transfer to the prison since September 2004. He was arrested in Africa in recent days.
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Gitmo detainee asks for more attorneys
Staff and agencies
26 March, 2007

By MICHAEL MELIA, Associated Press Writer 1 hour, 45 minutes ago GUANTANAMO BAY NAVAL BASE, Cuba - An Australian who allegedly trained with al-Qaida and fought for the Taliban in Afghanistan said in a courtroom Monday that he needed more lawyers to defend himself against a charge that he provided material support for terrorism.
David Hicks, wearing a khaki prison jumpsuit, was being arraigned Monday – the first suspect to face prosecution under revised military tribunals established after the U.S. Supreme Court U.S. Supreme Court last year found the Pentagon 's system for trying Guantanamo detainees was unconstitutional.
The 31-year-old former kangaroo skinner and outback cowboy said he was satisfied with his defense team but would ask later for more defense lawyers.
"I'm hoping to have more lawyers and paralegals to get equality with the prosecution," Hicks told the military court's presiding officer, Marine Corps Col. Ralph Kohlmann.
"All of the options obviously have to be discussed, from not guilty and tough it out, through to 'How do I get out of here at the earliest opportunity,'" McLeod told reporters.
"His support for the al-Qaida organization is what we intend to prove," said Air Force Col. Morris Davis, the chief prosecutor for the tribunals.
Hicks would be eligible for life in prison if convicted, but Davis noted that similar cases – such as that of the American-born Taliban soldier John Walker Lindh – have resulted in 20-year sentences.

OGC AMNESTY/CCR 223

A case against Hicks began in 2004 but was put on hold while the Supreme Court considered the legality of the military trial system devised by the Bush administration. The Australian was charged again under new rules established by Congress and signed into law by President Bush in October.
A challenge of the reconstituted system is pending before the Supreme Court. Lawyers for detainees have asked the high court to step in again and guarantee that they can challenge their confinement in U.S. courts.
The military says the new rules address some concerns of defense lawyers by allowing detainees to see all the evidence against them and making other changes.
During their meeting on Sunday morning, McLeod said Hicks had sunken eyes and showed other signs of weariness from his ordeal of living alone in a small cell. While optimistic that he "has a life ahead of him," he said Hicks was nervous about his first court appearance in nearly three years.
"He recognizes the process ... is one that's designed to achieve convictions," McLeod said.
Terry Hicks, who last saw his son in August 2004, was scheduled to arrive in Guantanamo on Monday with his daughter, Stephanie, to see David.
"He's not going to be the same person I saw three years ago," Terry Hicks said. "We've got to brace ourselves for that bit."
http://www.localnewsleader.com/brocktown/stories/index.php?action=fullnews&id=85413
*****
US: Stop the Guantanamo Circus
Hicks Pleads Guilty; New Detainee Arrives (Guantanamo Bay, March 27, 2007) - Two defense lawyers for Guantanamo detainee David Hicks were barred from representing their client yesterday, highlighting the failure of US military commissions to meet fair trial standards, Human Rights Watch said today. Hicks, the first person to be charged before the military commissions authorized by Congress in 2006, pleaded guilty to a single criminal charge. Hicks' plea came as the Defense Department announced the transfer of a new detainee to Guantanamo. The Kenyan detainee, taken into custody in Kenya, appears to be a criminal suspect who belongs in civilian criminal court.

"The antics at the Hicks hearing underline the illegitimacy of the Guantanamo tribunals," said Jennifer Daskal, advocacy director of the US Program at Human Rights Watch and an observer at the hearing.

Hicks' two civilian defense counsel were prevented from representing him as his hearing got underway on March 26. The presiding judge provisionally dismissed the assistant defense counsel, stating that the government was precluded from assigning civilian government employees to represent defendants, even though military commission rules allow the Department of Justice to assign its civilian lawyers to the prosecution. The judge then removed Joshua Dratel, Hicks' longtime civilian counsel, because he agreed to abide by all "existent" rules, but refused to agree to "all" rules for the tribunal without first knowing what those rules stated. According to the judge, this ran afoul of civilian counsel's obligations to agree to military regulations governing representation - regulations which have not yet been issued.

"Those who doubted these tribunals would be fair have been proved right," said Daskal. "The commission can't even establish basic rules for lawyers representing the defendant. There's little reason to think that if Hicks had gone to trial he would have received a fair hearing."

Hicks' sole remaining lawyer, Major Michael Mori, had recently been threatened by the chief prosecutor of the military commission, Col. Morris Davis, who warned that Mori could be held criminally liable under Article 88 of the Uniform Code of Military Justice because he made public criticisms of President Bush's detainee policies. Mori filed a prosecutorial misconduct motion about this matter, but because Hicks pleaded guilty the motion will likely never be heard.

OGC AMNESTY/CCR 224

Originally the US government had charged Hicks with attempted murder, among other offenses. Hicks pleaded guilty yesterday to one count of material support for terrorism - a crime typically prosecuted in civilian courts. Hicks will appear before the military commission for sentencing later this week and could receive a sentence of up to life imprisonment. He is expected to serve most of his term in Australia.

Human Rights Watch called again for the Bush administration to close the Guantanamo Bay detention facility, stating that the remaining detainees should either be charged and tried in federal court, or released. More than 380 detainees at Guantanamo have not been charged with crimes or held in accordance with the laws of war, and have been denied any opportunity for a meaningful review of the basis for their detention in an independent court.

Transfer of New Detainee

Human Rights Watch also raised concerns about the transfer of a criminal suspect to military custody at Guantanamo instead of to US civilian custody. The Department of Defense announced on March 26 that it had transferred Mohammad Abdul Malik to Guantanamo over the weekend.

"The Bush administration is still using the 'war on terror' to hold criminal suspects while denying them their basic rights," said Daskal. "If Abdul Malik committed terrorist acts, I'm sure federal prosecutors would be happy to indict him."

Abdul Malik is a Kenyan citizen. Kenyan authorities detained him in late February, and local human rights groups briefly saw him in detention in Nairobi. He reportedly disappeared from custody soon after. A March 14 Kenyan media article referred to police sources who stated that he had been flown to Guantanamo.

The Pentagon, which did not reveal where Abdul Malik has been held for the past three weeks, reported that he had confessed to participating in a 2002 hotel attack in Mombasa, Kenya, as well as involvement in a plot to shoot down an Israeli civilian airliner near Mombasa.

Human Rights Watch expressed concern that Abdul Malik was held incommunicado for several weeks and interrogated about alleged criminal activities under questionable circumstances.

"Where was Abdul Malik held these last weeks?" said Daskal "If he was held in secret detention, by the CIA or the military, it raises serious questions about the treatment he experienced and the value of his confession."

Abdul Malik's transfer to Guantanamo comes not long after the extradition of another terrorism suspect from Kenya to Houston, Texas, for prosecution in US federal court. Daniel Joseph Maldonado, a US citizen, was arrested in Kenya in late January for illegally entering the country from Somalia, sent to the United States, and charged with undergoing training in weapons and bomb-making. Abdul Malik was reportedly arrested at a foreign exchange bureau in Mombasa.

"The vastly different treatment of these two terrorism suspects shows the US sees Guantanamo as a parallel criminal justice system for foreigners," said Daskal. "Americans suspected of terrorism rightly go before US courts, while foreigners get sent to Guantanamo for indefinite detention and unfair proceedings."

Human Rights Watch called on the United States to bring Abdul Malik to trial in US federal court, pointing out that discrimination on the basis of nationality in criminal proceedings is prohibited under international law. In an important UK decision in December 2004, the House of Lords struck down a law that permitted the indefinite detention of foreign terrorism suspects, but not UK nationals.

Except for 14 detainees transferred to Guantanamo from CIA custody in September 2006, transfers to Guantanamo had stopped in September 2004.

OGC AMNESTY/CCR 225

http://hrw.org/english/docs/2007/03/27/usdom15572_txt.htm
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New York Times
March 27, 2007
New Detainee At Prison Camp
WASHINGTON, March 26 (Reuters) – American authorities have transferred a man suspected of involvement in terrorist attacks in East Africa to the military prison camp at Guantánamo Bay, the Pentagon said Monday.
A Pentagon spokesman, Bryan Whitman, said the man, Abdul Malik, had admitted involvement in a 2002 attack on a hotel in Mombasa, Kenya, that killed more than a dozen people, and in the attempted downing of an Israeli airliner near Mombasa.
"He came into U.S. custody this year," Mr. Whitman said. "He was picked up in East Africa."
Mr. Whitman would not provide the nationality of the suspect.
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Wall Street Journal
March 27, 2007
Pg. 19
The Gitmo Blues
By David B. Rivkin Jr. and Lee A. Casey
Winning a war is a difficult business under the best of circumstances. In democratic polities, the prospects for victory dim whenever there is strong domestic opposition, as there is today with respect to the handling of both Iraq and the broader war on terror. But far from merely challenging a particular military strategy or a discrete set of combat-related decisions, many critics deny that the United States is fighting a war at all. Terrorism, they say, is a manageable problem that modern American society must learn to accept as the price of its pluralistic institutions and role as a global super-power.
Nothing illustrates this better than the continuing challenges to Guantanamo Bay. Even European officials who have visited the American base acknowledge conditions there -- including housing, food, medical care and recreation -- are better than in most civilian penitentiaries around the world. What most critics really object to is the entire "laws of war paradigm" that has been employed since 9/11 by the Bush administration.
Some claim, incorrectly but passionately, that the U.S. cannot be at war with a non-state like al Qaeda, and that the classification of al Qaeda and Taliban prisoners as "unlawful enemy combatants" violates the Geneva Conventions. Others care less about the legal questions, but assert that Guantanamo and the "war on terror" have done fundamental damage to the U.S. diplomatic position around the world -- sullying its reputation, straining its alliances and undercutting its leadership of the international community. Notably, the prescription of both the policy and law-driven challengers is to close Guantanamo, and to abandon the "war on terror" in favor of an internationally cooperative law-enforcement approach.
The critics rarely acknowledge that using the U.S. criminal justice system would present numerous problems. The most obvious: It would be virtually impossible to prosecute many al Qaeda detainees captured overseas by the U.S. and its allies. This is not because, as alleged by the various human rights organizations, they have been harshly interrogated and any evidence obtained in the process would be inadmissible. The more fundamental problem is the hyper-technical nature of evidentiary and other rules in America's 21st century justice system. Convicting people based upon physical evidence gathered on overseas battlefields, or relying on testimony of soldiers and intelligence agents who at the time of capture were operating in a stressful combat environment, would be exceedingly difficult. The likely result of trying captured al Qaeda members under criminal justice rules is that many of them would go free and return to the fight.
These costs aside, the benefits of adopting the law-enforcement model would be ephemeral at best. There is no doubt that the war on terror in general, and Guantanamo in particular, have cost the U.S. diplomatically. Al Qaeda and its supporters have won -- at least for the time-being -- this propaganda point. Even some high-level American officials have, according to a recent report in the New York Times, argued that the base should be closed and the detainees transferred to the U.S.

OGC AMNESTY/CCR 226

But whatever the immediate diplomatic benefit that might be gained by adopting this suggestion, it is naïve to imagine that closing the Guantanamo detention facilities, and even agreeing to treat captured jihadists as ordinary criminal defendants, would end international criticism of U.S. efforts to defend itself.

After all, many critics' appreciation for the American civilian judicial system is both new and very much conditional. Long before the war on terror, Europe already was refusing to send criminal suspects to the U.S. if there was any chance that the death penalty would be inflicted. So, in order to obtain the transfer or extradition of terror suspects from these states, the U.S. would have to agree not only that they would be processed through the normal criminal system -- accepting the inevitable intelligence cost of presenting all of the evidence against them in open court -- it would also have to agree to eschew the death penalty. And, once that point is won, the question immediately arises whether lifetime imprisonment is itself consistent with Europe's evolving human rights norms.

As for leading non-governmental organizations like Amnesty International and Human Rights Watch, they have long promoted an agenda that requires the subjection of national justice systems to international institutions such as the International Criminal Court. (It was, in fact, originally proposed as a counter-terrorism criminal court.) The claims of bias and lack of independence such groups have leveled against American military commissions can equally be flung at American civilian courts. That was done in the case of the alleged 20th 9/11 hijacker, Zacharias Moussaoui, who was tried in the Eastern District of Virginia. The critics argue that, although federal judges serve for life, they are all employees of the federal government and have taken an oath of allegiance to the U.S. Constitution. The juries that would ultimately determine jihadists' fates are composed of U.S. citizens, the very men and women who are the terrorists prime and preferred t

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Detainees not only mystery in Cuba

* Geoff Elliott
* March 27, 2007

REPORTEDLY there are three Cuban citizens in their 70s who still make their way each day into the Guantanamo Bay US military base to work.

Under an arrangement with the Cubans, they get dropped off, walk across the demilitarised zone and are picked up by the Americans. The process is reversed at the end of the day.

"I doubt you'll see them around," said Sergeant Brian Scott, a media spokesman for the Joint Task Force on Guantanamo. Could we interview them? "No."

It's just another story that can't be told in this bizarre chunk of land, under perpetual lease to the US from the Cubans since 1903. The rules prevent it. Media can't talk to any Cubans or Haitians.

Nor, of course, to the detainees.

David Hicks makes his first quasi-public appearance this morning in a makeshift courtroom that officers on Guantanamo used to call the "Pink Palace", a reference to the washed-out pink the place was painted when it was an administrative building.

The Pink Palace was originally built as a military aircraft terminal and control tower. But now this ordinary building, washed over in the colour khaki these days, represents so much more.

The incongruity of Guantanamo is how it looks like a relic of the Cold War but in reality it is trying to catch up to the shock of a new world in which stateless characters plotted on, and were successful in, attacking the US.

But in the world of detention centres, Guantanamo's Camp Delta is widely acknowledged as state-of-the-art, unlike the tribunal facilities, something even chief US military prosecutor Morris Davis admits.

"You can do the math as well as I can. If we are going to try 75 cases and only do one at a time and each one is going to take 120 days, I'll be retired long before we get to the end of this process, and some of these folks (detainees) are going to die of old age before they get to a courtroom," Colonel Davis said.

http://www.theaustralian.news.com.au/story/0,20867,21452431-2702,00.html

OGC AMNESTY/CCR 227

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OGC AMNESTY/CCR 228

(b)(6)

From: (b)(6) DoD OGC
Sent: Tuesday, March 27, 2007 5:17 PM
Subject: GTMO Bird: Hicks; New detainee; GTMO

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)
Office of General Counsel, Legal Counsel Department of Defense
(b)(2) (DSN (b)( )
(fax)

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(b)(2) (fax)
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New York Times
March 27, 2007
Pg. 1

Plea Of Guilty From Detainee In Guantanamo By William Glaberson GUANTÁNAMO BAY, Cuba, March 26 – In the first conviction of a Guantánamo detainee before a military commission, an Australian who was trained by Al Qaeda pleaded guilty here Monday to providing material support to a terrorist organization.

The guilty plea by the detainee, David Hicks, was the first under a new military commission law passed by Congress in the fall after the Supreme Court struck down the Bush administration's first system for trying inmates at Guantánamo.

The guilty plea is sure to be seen by administration supporters as an affirmation of its efforts to detain and try terrorism suspects here, although the government's detention policies still face significant legal and political challenges.

The plea by Mr. Hicks came after an extraordinary day in a pristine red, white and blue courtroom here. Earlier the military judge had surprised the courtroom with unexpected rulings that two of Mr. Hicks's three lawyers would not be permitted to participate in the proceedings, leaving only Maj. Michael D. Mori of the Marine Corps at the defense table. After several acrimonious sessions in which Major Mori claimed that the judge, Colonel Ralph H. Kohlmann of the Marines, was biased, the judge insisted that he was impartial and the hearings came to a close.

But in the evening Judge Kohlmann called the court back into session, saying he had been approached by lawyers who said Mr. Hicks was now prepared to enter a plea.

Mr. Hicks, a stocky 31-year-old former kangaroo skinner who has been held at the prison for five years, was accompanied by guards to a defense table, and Major Mori said he was now prepared to plead guilty to one of two specifications in the charges against him.

That charge described Mr. Hicks's stay in a Qaeda training camp where, it said, he learned kidnapping techniques and was trained in how to fight in an urban environment. Prosecutors have said that Mr. Hicks, who was captured in Afghanistan in late 2001, had never shot at Americans there but that he had taken part in other activities, including collecting intelligence on the American embassy there.

Australia officials, who have described Mr. Hicks as a "lost soul" and "soldier wannabe," had been pressing the United States to resolve the case, and a prosecutor said Mr. Hicks would probably be back there within a year. Major Mori had waged an unusual campaign to rally support for Mr. Hicks in Australia.

OGC AMNESTY/CCR 229

During the plea, Judge Kohlmann led Mr. Hicks through a brief session in which he asked whether the earlier dispute about whether his lawyers were authorized to participate in the proceedings had influenced his decision to plead guilty.
"No, sir," Mr. Hicks, dressed in a tan prison uniform, answered calmly several times.
The road to Mr. Hicks's guilty plea was long and fraught with legal and diplomatic strife. The Pentagon had originally hoped to begin trying detainees in the spring of 2002, but the Bush administration's system for military tribunals has been the subject of lengthy legal challenges. The Supreme Court struck down the administration's first plan for tribunals last June, ruling that a principal flaw was that the president had established them without Congressional authorization.
In October, Congress enacted a new law providing for military tribunals, but lawyers for detainees and other critics have challenged it as establishing a trial system that does not afford defendants the same protections as civilian courts. Critics note, for example, that the rules allow for the use of evidence obtained by coercion.
In addition to the legal challenges, the policy of holding "enemy combatants" without charges for as long as five years has drawn international protest, including from allies of the United States.
The Hicks case has drawn particular criticism in Australia, where Mr. Hicks, a high school dropout, turned to Islam after unsuccessfully trying to join the army and then joining an evangelical church.
On Monday, after Mr. Hicks's guilty plea, the judge adjourned the case for further proceedings this week, evidently so that the lawyers could settle on what specific acts he may acknowledge. The sentence will be decided by a five-member military commission.
Lawyers have suggested that he might serve out the remainder of any sentence in Australia. Asked whether Mr. Hicks might be back in Australia by the end of the year, a military prosecutor said, "The odds are pretty good."
Mr. Hicks's arraignment Monday was the first public proceeding under the new tribunal rules. The hearing quickly turned fractious, especially after the judge disqualified the two lawyers.
Mr. Hicks appeared startled as his long-awaited day before the tribunal turned into something a free-for-all, rather than the orderly arraignment that had been anticipated.
"I am shocked because I just lost another lawyer," Mr. Hicks said, after the judge said that one of his two civilian defense lawyers, Joshua L. Dratel, had not complied with the judge's rules for handling a military commission case. Mr. Dratel, a well-known lawyer in Manhattan, has been a central player in the Hicks case.
"Right now you do not represent Mr. Hicks," said Judge Kohlmann, the presiding judge of the new military commission organization, who assigned himself to the Hicks case.
Referring to the Bush administration's previous plan for military commission trials struck down by the Supreme Court, Mr. Dratel said in the courtroom before he left that Monday's events showed that the new commission process was as problem-plagued as the old one.
"You cannot predict from one day to the next what the rules are," Mr. Dratel said.
The judge rejected each assertion that he was acting arbitrarily or was biased. In an even tone, but with a flushed face that suggested irritation, he methodically moved through the day's events, turning aside each defense complaint. The defense claims, he said "do not raise matters that would cause a reasonable person to question my impartiality."
Even before Monday's hearing, the case against Mr. Hicks had been marked by an unusual public dispute between Mr. Hicks's military lawyer, who has openly attacked the tribunals, and the military prosecutor.
And Monday, Major Mori was also critical of the judge, saying that some of his rulings seemed aimed at helping the government prove its case against Mr. Hicks. Major Mori said some rulings appeared to be "fixing the rules to fix their mistakes."
Judge Kohlmann said his rulings had been impartial, aimed only at assuring that the case moved ahead professionally and quickly.
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Washington Post
March 27, 2007
Pg. 1

OGC AMNESTY/CCR 230

Australian's Guilty Plea Is First At Guantanamo By Josh White, Washington Post Staff Writer
GUANTANAMO BAY, Cuba, March 26 -- Australian David M. Hicks pleaded guilty to one charge of material support for terrorism during a brief military hearing Monday night, becoming the first Guantanamo prisoner to officially accept criminal responsibility for aiding terrorists since the detention facility opened more than five years ago.
The plea during the first day of hearings under the Military Commissions Act of 2006 marks a victory for the Bush administration, which is now likely to secure a conviction in the first case it pursues under Congress's new rules.
Col. Ralph H. Kohlmann, the military commission's presiding officer, has not accepted the plea but is expected to do so in hearings this week.
Military commission officials here said Kohlmann and lawyers for both sides will work out details of Hicks's plea. Then a full military commissions jury panel will meet to decide on a sentence. Hicks faces a possible life term, but prosecutors said in recent days that they probably will not seek a term longer than 20 years.
Defense lawyers for Hicks said late Monday night that they could not discuss details of the guilty plea or whether there is an agreement with prosecutors about a sentence, although they said the case will probably be disposed of by the end of the week. Australian officials were planning for Hicks's possible return within days so he could serve his sentence.
Hicks, 31, entered a plea of guilty to one specification of providing material support for terrorism and pleaded not guilty to one specification of supporting terrorist acts.
Prosecutors alleged that Hicks trained with al-Qaeda in Afghanistan and met Osama bin Laden, but they were not prepared to present evidence that Hicks attempted to kill anyone.
Maj. Michael D. Mori, Hicks's military defense attorney, entered the pleas at a late hearing on Monday after a three-hour session in the afternoon that dealt primarily with legal issues. Hicks became the first detainee out of hundreds who have gone through Guantanamo Bay to have his case adjudicated. If his plea is accepted, he will be the first detainee from Guantanamo Bay to be convicted of a crime.
Congress wrote new rules for the commissions after the Supreme Court overruled the administration's earlier version of the trials, calling them unconstitutional. Attorneys for Guantanamo detainees have challenged the new law, and members of Congress have vowed to push legislation giving more rights to the detainees. Hicks's guilty plea could give the government a conviction that will not be challenged.
"I don't look at it as a victory," said Air Force Col. Morris Davis, the chief prosecutor, who said he is pleased the military commissions are underway. "We are satisfied where we stand at this moment."
David H.B. McLeod, a civilian lawyer from Australia who is on Hicks's defense team, said Monday night that he would not comment on the guilty plea other than to say it was "the first step toward David returning to Australia."
Hicks was among the first detainees to arrive at Guantanamo in January 2002 and has spent more than five years incarcerated here.
U.S. military prosecutors allege that he has been involved in militant extremism since the late 1990s, when he joined liberation fighters in Kosovo. Hicks later traveled to Afghanistan and trained with al-Qaeda forces, met bin Laden and secured a tank at an airport in Kandahar, according to the U.S. government. He later allegedly supported the Taliban.
Australian officials have been pressuring President Bush to try Hicks swiftly and have been negotiating to have Hicks returned to Australia to serve out any prison term.
Lawyers from Australia and a delegation representing the Australian government were in the courtroom on Monday, and Hicks, in a tan tunic and pants, at one point looked back, nodded and smiled to people in the front row.
Much of Monday's legal wrangling dealt with Hicks's defense team. The presiding officer ruled that his two civilian attorneys were not qualified to represent him in court, in part because one refused to sign a form he felt would compromise his ethical responsibilities. The lawyers, Rebecca Snyder and Joshua Dratel, separately stormed out of the courtroom.
"I'm shocked because I just lost another lawyer," Hicks said when Kohlmann asked if he wanted Dratel to remain at his defense table, even though he could not represent him. "What's the sense of him sitting here if he's not my lawyer and can't represent me?"

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Hicks's father and sister traveled to Cuba for the hearing and spent several hours meeting with him in a private room in the morning, getting the opportunity to hug him, pass on family messages and share lunch with him.
Defense Department officials announced Monday that they had transferred a high-value detainee into Guantanamo over the weekend. Abdulmalik Abdul-Jabbar, who allegedly admitted to participating in a 2002 hotel attack in Kenya and to plotting to shoot down an Israeli airliner near Mombasa, was the first direct transfer to the prison since September 2004. He was arrested in Africa in recent days.
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Gitmo detainee asks for more attorneys
Staff and agencies
26 March, 2007

By MICHAEL MELIA, Associated Press Writer 1 hour, 45 minutes ago GUANTANAMO BAY NAVAL BASE, Cuba - An Australian who allegedly trained with al-Qaida and fought for the Taliban in Afghanistan said in a courtroom Monday that he needed more lawyers to defend himself against a charge that he provided material support for terrorism.
David Hicks, wearing a khaki prison jumpsuit, was being arraigned Monday – the first suspect to face prosecution under revised military tribunals established after the U.S. Supreme Court U.S. Supreme Court last year found the Pentagon 's system for trying Guantanamo detainees was unconstitutional.
The 31-year-old former kangaroo skinner and outback cowboy said he was satisfied with his defense team but would ask later for more defense lawyers.
"I'm hoping to have more lawyers and paralegals to get equality with the prosecution," Hicks told the military court's presiding officer, Marine Corps Col. Ralph Kohlmann.
"All of the options obviously have to be discussed, from not guilty and tough it out, through to 'How do I get out of here at the earliest opportunity,'" McLeod told reporters.
"His support for the al-Qaida organization is what we intend to prove," said Air Force Col. Morris Davis, the chief prosecutor for the tribunals.
Hicks would be eligible for life in prison if convicted, but Davis noted that similar cases – such as that of the American-born Taliban soldier John Walker Lindh – have resulted in 20-year sentences.
A case against Hicks began in 2004 but was put on hold while the Supreme Court considered the legality of the military trial system devised by the Bush administration. The Australian was charged again under new rules established by Congress and signed into law by President Bush in October.
A challenge of the reconstituted system is pending before the Supreme Court. Lawyers for detainees have asked the high court to step in again and guarantee that they can challenge their confinement in U.S. courts.
The military says the new rules address some concerns of defense lawyers by allowing detainees to see all the evidence against them and making other changes.
During their meeting on Sunday morning, McLeod said Hicks had sunken eyes and showed other signs of weariness from his ordeal of living alone in a small cell. While optimistic that he "has a life ahead of him," he said Hicks was nervous about his first court appearance in nearly three years.
"He recognizes the process ... is one that's designed to achieve convictions," McLeod said.
Terry Hicks, who last saw his son in August 2004, was scheduled to arrive in Guantanamo on Monday with his daughter, Stephanie, to see David.
"He's not going to be the same person I saw three years ago," Terry Hicks said. "We've got to brace ourselves for that bit."
http://www.localnewsleader.com/brocktown/stories/index.php?action=fullnews&id=85413
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US: Stop the Guantanamo Circus
Hicks Pleads Guilty; New Detainee Arrives (Guantanamo Bay, March 27, 2007) - Two defense lawyers for Guantanamo detainee David Hicks were barred from representing their client yesterday, highlighting the failure of US military commissions to meet fair trial standards,

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Human Rights Watch said today. Hicks, the first person to be charged before the military commissions authorized by Congress in 2006, pleaded guilty to a single criminal charge. Hicks' plea came as the Defense Department announced the transfer of a new detainee to Guantanamo. The Kenyan detainee, taken into custody in Kenya, appears to be a criminal suspect who belongs in civilian criminal court.

"The antics at the Hicks hearing underline the illegitimacy of the Guantanamo tribunals," said Jennifer Daskal, advocacy director of the US Program at Human Rights Watch and an observer at the hearing.

Hicks' two civilian defense counsel were prevented from representing him as his hearing got underway on March 26. The presiding judge provisionally dismissed the assistant defense counsel, stating that the government was precluded from assigning civilian government employees to represent defendants, even though military commission rules allow the Department of Justice to assign its civilian lawyers to the prosecution. The judge then removed Joshua Dratel, Hicks' longtime civilian counsel, because he agreed to abide by all "existent" rules, but refused to agree to "all" rules for the tribunal without first knowing what those rules stated. According to the judge, this ran afoul of civilian counsel's obligations to agree to military regulations governing representation - regulations which have not yet been issued.

"Those who doubted these tribunals would be fair have been proved right," said Daskal. "The commission can't even establish basic rules for lawyers representing the defendant. There's little reason to think that if Hicks had gone to trial he would have received a fair hearing."

Hicks' sole remaining lawyer, Major Michael Mori, had recently been threatened by the chief prosecutor of the military commission, Col. Morris Davis, who warned that Mori could be held criminally liable under Article 88 of the Uniform Code of Military Justice because he made public criticisms of President Bush's detainee policies. Mori filed a prosecutorial misconduct motion about this matter, but because Hicks pleaded guilty the motion will likely never be heard.

Originally the US government had charged Hicks with attempted murder, among other offenses. Hicks pleaded guilty yesterday to one count of material support for terrorism - a crime typically prosecuted in civilian courts. Hicks will appear before the military commission for sentencing later this week and could receive a sentence of up to life imprisonment. He is expected to serve most of his term in Australia.

Human Rights Watch called again for the Bush administration to close the Guantanamo Bay detention facility, stating that the remaining detainees should either be charged and tried in federal court, or released. More than 380 detainees at Guantanamo have not been charged with crimes or held in accordance with the laws of war, and have been denied any opportunity for a meaningful review of the basis for their detention in an independent court.

Transfer of New Detainee

Human Rights Watch also raised concerns about the transfer of a criminal suspect to military custody at Guantanamo instead of to US civilian custody. The Department of Defense announced on March 26 that it had transferred Mohammad Abdul Malik to Guantanamo over the weekend.

"The Bush administration is still using the 'war on terror' to hold criminal suspects while denying them their basic rights," said Daskal. "If Abdul Malik committed terrorist acts, I'm sure federal prosecutors would be happy to indict him."

Abdul Malik is a Kenyan citizen. Kenyan authorities detained him in late February, and local human rights groups briefly saw him in detention in Nairobi. He reportedly disappeared from custody soon after. A March 14 Kenyan media article referred to police sources who stated that he had been flown to Guantanamo.

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The Pentagon, which did not reveal where Abdul Malik has been held for the past three weeks, reported that he had confessed to participating in a 2002 hotel attack in Mombasa, Kenya, as well as involvement in a plot to shoot down an Israeli civilian airliner near Mombasa.

Human Rights Watch expressed concern that Abdul Malik was held incommunicado for several weeks and interrogated about alleged criminal activities under questionable circumstances.

"Where was Abdul Malik held these last weeks?" said Daskal "If he was held in secret detention, by the CIA or the military, it raises serious questions about the treatment he experienced and the value of his confession."

Abdul Malik's transfer to Guantanamo comes not long after the extradition of another terrorism suspect from Kenya to Houston, Texas, for prosecution in US federal court. Daniel Joseph Maldonado, a US citizen, was arrested in Kenya in late January for illegally entering the country from Somalia, sent to the United States, and charged with undergoing training in weapons and bomb-making. Abdul Malik was reportedly arrested at a foreign exchange bureau in Mombasa.

"The vastly different treatment of these two terrorism suspects shows the US sees Guantanamo as a parallel criminal justice system for foreigners," said Daskal. "Americans suspected of terrorism rightly go before US courts, while foreigners get sent to Guantanamo for indefinite detention and unfair proceedings."

Human Rights Watch called on the United States to bring Abdul Malik to trial in US federal court, pointing out that discrimination on the basis of nationality in criminal proceedings is prohibited under international law. In an important UK decision in December 2004, the House of Lords struck down a law that permitted the indefinite detention of foreign terrorism suspects, but not UK nationals.

Except for 14 detainees transferred to Guantanamo from CIA custody in September 2006, transfers to Guantanamo had stopped in September 2004.
http://hrw.org/english/docs/2007/03/27/usdom15572_txt.htm
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New York Times
March 27, 2007
New Detainee At Prison Camp
WASHINGTON, March 26 (Reuters) – American authorities have transferred a man suspected of involvement in terrorist attacks in East Africa to the military prison camp at Guantánamo Bay, the Pentagon said Monday.
A Pentagon spokesman, Bryan Whitman, said the man, Abdul Malik, had admitted involvement in a 2002 attack on a hotel in Mombasa, Kenya, that killed more than a dozen people, and in the attempted downing of an Israeli airliner near Mombasa.
"He came into U.S. custody this year," Mr. Whitman said. "He was picked up in East Africa."
Mr. Whitman would not provide the nationality of the suspect.
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Wall Street Journal
March 27, 2007
Pg. 19
The Gitmo Blues
By David B. Rivkin Jr. and Lee A. Casey
Winning a war is a difficult business under the best of circumstances. In democratic polities, the prospects for victory dim whenever there is strong domestic opposition, as there is today with respect to the handling of both Iraq and the broader war on terror. But far from merely challenging a particular military strategy or a discrete set of combat-related decisions, many critics deny that the United States is fighting a war at all.

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Terrorism, they say, is a manageable problem that modern American society must learn to accept as the price of its pluralistic institutions and role as a global super-power. Nothing illustrates this better than the continuing challenges to Guantanamo Bay. Even European officials who have visited the American base acknowledge conditions there -- including housing, food, medical care and recreation -- are better than in most civilian penitentiaries around the world. What most critics really object to is the entire "laws of war paradigm" that has been employed since 9/11 by the Bush administration.

Some claim, incorrectly but passionately, that the U.S. cannot be at war with a non-state like al Qaeda, and that the classification of al Qaeda and Taliban prisoners as "unlawful enemy combatants" violates the Geneva Conventions. Others care less about the legal questions, but assert that Guantanamo and the "war on terror" have done fundamental damage to the U.S. diplomatic position around the world -- sullying its reputation, straining its alliances and undercutting its leadership of the international community. Notably, the prescription of both the policy and law-driven challengers is to close Guantanamo, and to abandon the "war on terror" in favor of an internationally cooperative law-enforcement approach.

The critics rarely acknowledge that using the U.S. criminal justice system would present numerous problems. The most obvious: It would be virtually impossible to prosecute many al Qaeda detainees captured overseas by the U.S. and its allies. This is not because, as alleged by the various human rights organizations, they have been harshly interrogated and any evidence obtained in the process would be inadmissible. The more fundamental problem is the hyper-technical nature of evidentiary and other rules in America's 21st century justice system. Convicting people based upon physical evidence gathered on overseas battlefields, or relying on testimony of soldiers and intelligence agents who at the time of capture were operating in a stressful combat environment, would be exceedingly difficult. The likely result of trying captured al Qaeda members under criminal justice rules is that many of them would go free and return to the fight.

These costs aside, the benefits of adopting the law-enforcement model would be ephemeral at best. There is no doubt that the war on terror in general, and Guantanamo in particular, have cost the U.S. diplomatically. Al Qaeda and its supporters have won -- at least for the time-being -- this propaganda point. Even some high-level American officials have, according to a recent report in the New York Times, argued that the base should be closed and the detainees transferred to the U.S.

But whatever the immediate diplomatic benefit that might be gained by adopting this suggestion, it is naïve to imagine that closing the Guantanamo detention facilities, and even agreeing to treat captured jihadists as ordinary criminal defendants, would end international criticism of U.S. efforts to defend itself.

After all, many critics' appreciation for the American civilian judicial system is both new and very much conditional. Long before the war on terror, Europe already was refusing to send criminal suspects to the U.S. if there was any chance that the death penalty would be inflicted. So, in order to obtain the transfer or extradition of terror suspects from these states, the U.S. would have to agree not only that they would be processed through the normal criminal system -- accepting the inevitable intelligence cost of presenting all of the evidence against them in open court -- it would also have to agree to eschew the death penalty. And, once that point is won, the question immediately arises whether lifetime imprisonment is itself consistent with Europe's evolving human rights norms.

As for leading non-governmental organizations like Amnesty International and Human Rights Watch, they have long promoted an agenda that requires the subjection of national justice systems to international institutions such as the International Criminal Court. (It was, in fact, originally proposed as a counter-terrorism criminal court.) The claims of bias and lack of independence such groups have leveled against American military commissions can equally be flung at American civilian courts. That was done in the case of the alleged 20th 9/11 hijacker, Zacharias Moussaoui, who was tried in the Eastern District of Virginia. The critics argue that, although federal judges serve for life, they are all employees of the federal government and have taken an oath of allegiance to the U.S. Constitution. The juries that would ultimately determine jihadists' fates are composed of U.S. citizens, the very men and women who are the terrorists prime and preferred t

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Detainees not only mystery in Cuba
* Geoff Elliott
* March 27, 2007
REPORTEDLY there are three Cuban citizens in their 70s who still make their way each day into the Guantanamo Bay US military base to work.
Under an arrangement with the Cubans, they get dropped off, walk across the demilitarised zone and are picked up by the Americans. The process is reversed at the end of the day.
"I doubt you'll see them around," said Sergeant Brian Scott, a media spokesman for the Joint Task Force on Guantanamo. Could we interview them? "No."
It's just another story that can't be told in this bizarre chunk of land, under perpetual lease to the US from the Cubans since 1903. The rules prevent it. Media can't talk to any Cubans or Haitians.
Nor, of course, to the detainees.
David Hicks makes his first quasi-public appearance this morning in a makeshift courtroom that officers on Guantanamo used to call the "Pink Palace", a reference to the washed-out pink the place was painted when it was an administrative building.
The Pink Palace was originally built as a military aircraft terminal and control tower. But now this ordinary building, washed over in the colour khaki these days, represents so much more.
The incongruity of Guantanamo is how it looks like a relic of the Cold War but in reality it is trying to catch up to the shock of a new world in which stateless characters plotted on, and were successful in, attacking the US.
But in the world of detention centres, Guantanamo's Camp Delta is widely acknowledged as state-of-the-art, unlike the tribunal facilities, something even chief US military prosecutor Morris Davis admits.
"You can do the math as well as I can. If we are going to try 75 cases and only do one at a time and each one is going to take 120 days, I'll be retired long before we get to the end of this process, and some of these folks (detainees) are going to die of old age before they get to a courtroom," Colonel Davis said.
http://www.theaustralian.news.com.au/story/0,20867,21452431-2702,00.html

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OGC AMNESTY/CCR 236

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From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Thursday, March 29, 2007 5:58 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 237

Cc: (b)(2),(b)(6)

Subject: GTMO Bird:YouTube;Hicks;Human Rights Watch; Gates; al-Rawi;
Attachments: Testimony - Katyal.pdf; Testimony - Massimino.pdf; Testimony - Philbin.pdf; Testimony - Taft.pdf; Picture (Metafile)

All:

Here is today's GTMO Bird. Attached please find transcripts from the HASC hearing on GTMO and MCA. Audio can (For a short time) be heard at http://armedservices.house.gov/hearing_information.shtmlhttp://armedservices.house.gov/audiocast.shtml

Thanks,
(b)(6)

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Martin Sheen appears in YouTube video supporting Guantanamo detainee By Carol Rosenberg McClatchy Newspapers
(MCT)
GUANTANAMO BAY NAVY BASE, Cuba - The U.S. attorneys who went global by making a YouTube video about a Sudanese man being held as a captive have added a little celebrity power to their campaign: an Internet appeal by actor Martin Sheen.
The outspoken activist and West Wing veteran appears in a new four-minute YouTube video vouching for Adel Hamad, 48, a former hospital administrator whose lawyers say he has been wrongly detained here for five years as an enemy combatant.
"No one should be detained without a court hearing just on the word of a president. Any president," says Sheen, who played a U.S. president named Josiah Bartlett in the popular TV show.

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The video, Guantanamo: Waiting for Justice, splices together footage of Hamad's family in a red-brick, mud-hut village in Sudan and Sheen in a studio making his plea. It appeared Tuesday on YouTube.
It is part of an Internet campaign conducted by the Oregon Federal Public Defender's Office, court-appointed attorneys who are among hundreds of U.S. lawyers who have filed unlawful detention lawsuits in federal court on behalf of suspected terrorists held at Guantanamo.
The Oregon team, after being stymied in the courts, went global in January and courted world opinion on their client's behalf with a YouTube video first, Guantanamo Unclassified.
That 10-minute video, the public defenders boast, was the first-ever YouTube habeas corpus petition. Since its debut, it has gotten 75,000 hits and elevated the profile of the man listed as Detainee No. 940 in Pentagon files.
Their Internet campaign also comes amid a legal struggle between the Bush administration and civil liberties lawyers over whether foreigners held as enemy combatants have the right to sue for their freedom in federal courts. The White House and Congress have twice stripped Guantanamo prisoners of recourse to habeas corpus; and the U.S. Supreme Court has affirmed detainee rights.
A likely Supreme Court showdown is looming, either this term or next, over a recent federal appeals court ruling that Guantanamo captives have no constitutional rights.
Hamad, 48, born in Sudan, was handed over to U.S. troops after his arrest in Peshawar, Pakistan, where he says he was working as a hospital administrator.
The Pentagon says he is an unlawful "enemy combatant" in league with al-Qaida, although Defense Department officials have notified his attorneys that he could be sent home once U.S. officials negotiate an agreement with counterparts in Khartoum, Sudan.
He denies working for al-Qaida. He says he was a humanitarian relief worker when Pakistan police took him from his home in July 2002 and handed him off to U.S. forces, across the border, in Afghanistan.
"We Americans must not allow fear to overcome our faith in the laws and values that have made this country great," Sheen says in the video. "Like the right not to be detained indefinitely, even by the president."
Portland, Ore., public defender Patrick Ehlers said no one on the team knew Sheen personally, but got him to speak on the video through friends of friends who serve on The Innocence Project, attorneys who advocate using DNA testing to exonerate wrongly convicted U.S. prisoners.
Guantanamo: Waiting for Justice was made by staff at the Oregon Public Defender's Office and includes Hamad family photos and a woman reading a letter from Hamad's wife, Lana, to President Bush, asking him to reunite her husband with their four children.
"Please join me in asking President Bush to answer Mrs. Hamad's question," Sheen says. "When will he come home, Mr. President? When will his good name be cleared?"
Pentagon policy prevents the military from discussing the cases of specific detainees.
Rare exceptions have included the so-called high-value prisoners, among them Khalid Sheik Mohammed, the alleged al-Qaida kingpin blamed for masterminding the Sept. 11 attacks.
They have also discussed the case of David Hicks, the Australian who is pleading guilty to material support of terrorism at the first U.S. war-crimes tribunal since World War II. The U.S. says he sided with al-Qaida and the Taliban amid the U.S. invasion of Afghanistan in 2001.
Hicks' guilty plea is likely to come Friday, with sentencing possible on Saturday.
http://www.kansascity.com/mld/kansascity/news/world/16989220.htm
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YouTube Video mentioned above
http://www.youtube.com/watch?v=0vlQ-RtKn9k

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Hicks is guilty: get over it

THE Left likes to take its information pre-digested, with pre-formed opinions offered by wannabe celebrities.

OGC AMNESTY/CCR 239

Whether its Al Gore's hyperbolic disinformation on global warming or a curtain call of aspiring actresses bleating about maggot-free sheep, the fellow travellers prefer the easy intellectual road.

Listening to David Hicks' supporters attempt to justify his guilty plea is a reminder of the shallow nature of those locked into finding causes which serve to amplify their anti-American prejudices.

Claiming to seek only justice, they aggressively denigrate those who are actually attempting to see justice applied to advocates of chaos and theocratic tyranny, like their self-confessed terrorist and hero Hicks.

It is somewhat ironic that Guantanamo Bay, where Hicks has been held pending appeals and his day in court, probably came to the consciousness of most young Australians through the 1992 film A Few Good Men.

Nominated for four Oscars, the movie starred Tom Cruise as Lt Daniel Kaffee, Jack Nicholson as Colonel Nathan R.Jessep and Demi Moore as Lt-Cdr Jo Anne Galloway.

It's probably best remembered for Aaron Sorkin's fast-moving script and the following exchange between the tough Nicholson character: "You want answers?''

Cruise's character replies: "I think I'm entitled.''

Nicholson: "You want answers?''

Cruise: "I want the truth.''

Nicholson, contemptuously: "You can't handle the truth.''

And that's how it is with the Hicks' deniers, from his father, Terry (who admitted on December 12, 2001, that his son had called him on September 28 - just 17 days after al-Qaeda's attacks on the World Trade Centre Tower and the Pentagon, and told him he was fighting for the Taliban) to a slew of deluded ratings-chasers like Ray Martin, almost the entire cabal of the ABC's staff commentators, and their sob-sisters at SBS.

They can't handle the truth.

The current Opposition Leader Kevin Rudd has to be added to that list too, though not his predecessor Kim Beazley, who was more prescient about national security matters.

Rudd has repeatedly told the ABC's Lateline program that Hicks "should be put before a civilian court, either in America or here''.

Bringing him here was never an option, as host Tony Jones pointed out, because it would have involved passing retrospective laws, the option championed by electronics millionaire and adventurer Dick Smith and a handful of other deluded individuals who relied on the deluded views of poisoned civil rights lawyers for guidance.

Rudd, however, has pledged that, should he be elected, he would seek advice from the Attorney-General's Department about "an appropriate course of action'' which could result in Hicks being freed.

Here's a tip for the ALP's new White Knight: if he or the A-G or anyone else altered the terms of the prisoner transfer agreement under which Hicks is returned to Australia, it would make meaningless every other international agreement on such transfers Australia is party to.

OGC AMNESTY/CCR 240

Rudd, and other leading Labor figures, were notably absent from the line-up of politicians commenting on Hicks on Tuesday. Clearly, they can't handle the truth.

Here's another fact that Hicks' supporters find hard to swallow - US military commissions aren't new. They go back to World War II. Further, the Guantanamo detainees were due to begin appearing before them in 2002 but for a string of appeals - which they were entitled to under Western law, not the Islamist sharia law supported by the Taliban Hicks says he was prepared to die for.

The principal flaw was technical. The US Supreme Court found the tribunals had been established by the White House, not Congress, and they were dissolved. But only for a blink. Congress approved them with all haste.

The Greens, the Democrats, the ALP and political fringe-dwellers like the former Family Court judge Alastair Nicholson have been talking about upholding the Geneva Convention, but the convention permits holding enemy combatants for the duration of a war.

Under its terms, Hicks could languish in Yatala maximum security prison as long as fighting continued in Afghanistan. If there is no war, the convention doesn't apply. Which do they want?
Justice Nicholson should just stick to his knitting.

It has also been said that Americans wouldn't be subjected to the US military tribunals.

That's absolutely true. They were set up to deal with foreign combatants. Most countries, including Australia, have special courts which deal with foreigners on particular matters, but it is worth noting that John Walker Lindh, the US Taliban, faced an American civil court and was rewarded with 20 years in jail.

As for hearsay evidence, Australian courts accept hearsay in certain circumstances and there are few trials more demanding of the admission of hearsay than those into crimes conducted during battle.

The Hicks' cheer squad won't acknowledge that his father Terry told the press in December 2001 that his son David was a terrorist, saying: "I think of a terrorist as someone with a bomb strapped to him, but he's a terrorist in our eyes as he's fighting against his own kind.''

If they still have trouble accepting reality, perhaps there is another Hollywood film that will help them understand which side David Hicks signed-up with: United 93.

Hicks' al-Qaeda friends hijacked four planes on 9/11. Three reached their targets. This is the story of the fourth. On second thoughts, the Hicks lobby won't like this one either. It's too close to the truth they would rather ignore.

http://www.news.com.au/dailytelegraph/story/0,22049,21463023-5001031,00.html
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Potential windfall seen in Guantanamo for Hicks
28 Mar 2007 19:56:39 GMT
By Jane Sutton
GUANTANAMO BAY U.S. NAVAL BASE, Cuba, March 28 (Reuters) - Australian David Hicks could cash in on his notoriety in his homeland as the only prisoner convicted in the Guantanamo war crimes tribunals, a unique status he is expected to hold for the near future.
The 31-year-old pleaded guilty on Monday to providing material support for terrorism and is expected to learn his sentence when the tribunal resumes at the Guantanamo Bay U.S. naval base later this week.

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Although he is not well known in the United States, Hicks is a household name and political symbol in his native Australia. He was captured in late 2001 in Afghanistan, where he was accused of helping al Qaeda fight American troops and their allies during the U.S.-led invasion after the Sept. 11 attacks.
The former farmhand and high-school drop-out could make more than $1 million Australian -- equivalent to about $860,000 -- if he sells the story of five-year incarceration at Guantanamo, Australian celebrity publicist Max Markson told the the Sydney Morning Herald's Web site.
"He could make an absolute fortune, everyone wants to talk to him," Markson said. "There'll be the book and then there'll be the movie."
Hicks' potential windfall will also depend on whether the Australian government pursues him under a law that bars convicts from benefiting financially from their crimes.
Hicks has attained celebrity status in his homeland, where criticism of his treatment by the United States has grown louder and more political as Prime Minister John Howard faces year-end elections.
"The prime minister has aligned himself with the United States and the war on terror. Hicks' cause became a way of attacking that alliance," said television journalist Leila McKinnon, who is covering the tribunals for Nine Network Australia.
"It's not that people think he's necessarily innocent but recently there's been growing anger about how long he'd been held without charges or trial."
Hicks has claimed he was abused and sodomized at Guantanamo, charges the U.S. military denies.
'FLEETING' AUDIENCE
But interest in Hicks' story could be short-lived, cautioned Charlotte Abbott, senior editor at Publishers Weekly. She said books about the misadventures of so-called American Taliban John Walker Lindh, or by British former Guantanamo prisoner Moazzam Begg were not best sellers.
"The current events cycle is so fast. The audience can be fleeting because so much information is available in other forms," Abbott said.
"I'm sure there will be a publisher interested. The question is how popular the book will be. Especially if he (Hicks) is not around to promote it" because he is in prison.
No detail of Hicks' life at the detention camp is inconsequential for the reporters from his homeland, who persuaded the prison librarian to reveal Hicks' favored choice of reading material: surfing and saltwater fishing books.
Hicks is the only detainee charged so far in the new military tribunal system the U.S. Congress created after the Supreme Court struck down an earlier version that President George W. Bush authorized to try foreign captives on terrorism charges.
The military says as many as 80 of the 385 men held at Guantanamo will likely face prosecution, but the process is moving so slowly that no one else is likely to see his case resolved soon, in large part because of a shortage of courtroom space at Guantanamo.
Although Hicks had faced a maximum sentence of life in prison if convicted, the chief prosecutor, Air Force Col. Moe Davis, said he never planned to ask for more than 20 years. That request will now be trimmed because of his guilty plea and will take into account the five years Hicks has spent at Guantanamo, according to Davis. Under a long-standing diplomatic agreement, Hicks will serve his sentence in Australia.

http://www.alertnet.org/thenews/newsdesk/N28357568.htm

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Hicks to detail support for al-Qaida before Guantanamo tribunal

GUANTANAMO BAY NAVAL BASE, Cuba: Australian David Hicks has pleaded guilty to a war-crime charge but must still provide an account of his activities with al-Qaida to seal an agreement to send him home.
A judge presiding over new military tribunals at the U.S. Naval base in Guantanamo Bay, Cuba, will decide whether the details of the confession are enough to convict Hicks of providing material support for terrorism at a hearing expected Friday.

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The session is meant to formalize a plea agreement, but critics said anything could be expected following a tumultuous arraignment Monday where the judge disqualified two of Hicks' three defense attorneys before his surprise guilty plea.
"Nobody knows how these things are supposed to happen, which is why they should be held in U.S. federal courts with accountability," said Jennifer Daskal of Human Rights Watch.
Hicks, a 31-year-old Muslim convert, received al-Qaida training and was captured in Afghanistan shortly after the Sept. 11 attacks. He was among the first prisoners taken to the U.S. military prison at Guantanamo in January 2002.
The former kangaroo skinner is the first detainee to appear before reconstituted tribunals. The U.S. Congress approved the new system to prosecute Guantanamo detainees last year after the Supreme Court struck down as unconstitutional the Pentagon's previous efforts to try them. Prosecutors say they expect to charge as many as 80 of the 385 men held at Guantanamo. Human rights groups say the tribunals are illegal because they do not offer the same protections as U.S. courts, but the military insists they are fair and appropriate to try terror suspects.
A panel of at least five military officers will approve Hicks' sentence under guidelines from the judge. The sentence must be approved by two-thirds of panel members if it calls for 10 years or less, while three-quarters would have to approve a longer sentence.
Hicks, whose extended imprisonment has provoked a popular outcry in Australia, will serve any sentence at home under a prisoner-exchange agreement with the United States.

http://www.iht.com/articles/ap/2007/03/29/news/CB-GEN-Guantanamo-Hicks.php

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Minister says Australia cannot reduce sentence imposed at Guantanamo Bay

CANBERRA, Australia: The government would be powerless to reduce any sentence served in an Australian prison by an Australian Guantanamo Bay detainee who this week admitted aiding al-Qaida, the attorney-general said Thursday.
Former kangaroo skinner David Hicks, 31, is likely to be transferred to a prison in his hometown of Adelaide soon after he is sentenced by a U.S. military commission at the American naval base on Cuba this week.
Hicks – sent to Guantanamo weeks after his capture by the U.S.-backed Northern Alliance in Afghanistan in December 2001 – pleaded guilty this week to a war-crime charge of providing material support to terrorism.
Attorney-General Philip Ruddock said an agreement between Washington and Canberra formally came into effect Thursday that would allow Hicks to apply to return to Australia if he were sentenced to prison.
"The arrangement provides for enforcement of the nature and duration of any sentence, so that the Australian government could not unilaterally shorten or dispose of any such sentence," Ruddock told Parliament.
But Hicks' father said Thursday his son could use Australian courts to contest the legality of whatever sentence, if any, is imposed.
"The legal profession aren't happy about the way it has been done," Terry Hicks told reporters on his return to Adelaide from Guantanamo Bay, where he attended his son's hearing.
Australian legal groups have condemned the U.S. military commission system as unfair.
http://www.iht.com/articles/ap/2007/03/29/asia/AS-GEN-Australia-Guantanamo-Hicks.php
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Hicks letters from Guantanamo
DAVID Hicks is likely to admit he was armed with an AK47 and guarded a Taliban tank when he faces a Guantanamo Bay military tribunal within the next couple of days.
Hicks will be asked to explain why he pleaded guilty to providing material support for terrorism.
The commission will want to know if his confession was genuine before it hands down his sentence.
Hicks's father Terry yesterday said his son was likely to admit to minor offences.

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"Some of the minor things he has been charged with he may have done," Mr Hicks said in Adelaide after returning from an emotional reunion with his son.
"He is supposed to have been guarding a tank that wasn't going anywhere anyway, so that's not a lie."
Mr Hicks said his son would find Yatala Prison in Adelaide a "five-star hotel" compared with Guantanamo Bay.
One of Hicks's closest confidants yesterday said he would be devastated if denied the opportunity to renew his relationship with his children.
Louise Fletcher, who shared a flat with Hicks 10 years ago, said she received letters from the confessed terrorist during his time in the US military jail.
In one letter, dated May 2004, he was elated he had established contact with Bonnie, now 14, and Terry, 12.
"This is the most exciting thing that's happened yet," he wrote in the censored letter, stamped "Approved by US Forces".
"I can't wait to be home with them."
Ms Fletcher revealed the letters after Hicks's former father-in-law, Dennis Sparrow, said the former Taliban fighter had forfeited his rights as a father.
"After all that time behind bars, this is one of the big things he's been waiting for," Ms Fletcher said yesterday.
"And if he couldn't see them he'd be very hurt -- devastated."
The mother of four described Hicks as a modern-day Indiana Jones. Before he left Australia, he spent hours studying the Koran and was excited about going to fight for the Kosovo Liberation Army.
But Ms Fletcher believes he wasn't politically motivated.
"It was nothing like that. He was just an adventurer. He just wanted to travel the world and see things."
Some of Hicks's earlier letters were confiscated by ASIO officials, but the three she showed the Herald Sun reveal a curious and, at times, upbeat Hicks keen for news of friends in Adelaide.
"I can't wait to see him. I want him to come home. I miss him," Ms Fletcher said.
In another letter, Hicks said he had taken up chewing tobacco because he couldn't get cigarettes.
Ms Fletcher's greatest concern is Hicks's state of mind after years in detention and his prospects of a normal life when he is released.
"Who's going to give him a job, or a house to live in? People are going to be harsh to him, and that worries me."
Mr Hicks said his son's Australian lawyers were considering legal action to free him when he returns to Adelaide.
But Attorney-General Philip Ruddock said only America could pardon Hicks under an agreement that allows prisoners to serve their terms on home soil.
Mr Ruddock said Governor-General Michael Jeffery signed off on the agreement yesterday, ensuring Hicks could serve his term at home.
"The arrangement with the United States is such that only the United States can pardon a prisoner," he said.
http://www.news.com.au/heraldsun/story/0,21985,21471708-662,00.html

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Washington Post
March 29, 2007
Pg. 13
Rights Group Challenges Assurances On Torture By Peter Finn, Washington Post Foreign Service
MOSCOW, March 28 -- Human Rights Watch on Wednesday challenged the value of "diplomatic assurances" routinely obtained by the United States from other governments that inmates returned home from Guantanamo Bay, Cuba, will be treated humanely.
The New York-based advocacy group said governments with records of torture "don't suddenly change their behavior" because of agreements with Washington. The group called on the United

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States "to establish screening procedures so that a person being transferred from Guantanamo Bay has an effective opportunity to challenge his transfer before an impartial body."
If an inmate faces a credible threat of torture, then the United States should find a third country to settle the prisoner, the human rights group said. It noted that five Chinese Muslims from the Uighur ethnic minority who faced the risk of persecution in China were resettled in Albania. Other inmates, the group said, should have the same opportunity.
"We think that as a rule diplomatic assurances are inherently untrustworthy," said Carroll Bogert, associate director of Human Rights Watch, which released a report Wednesday on the fate of seven Russians returned here in March 2004 after being held in Guantanamo Bay. "For governments that already torture, it's just another piece of paper."
State Department legal adviser John B. Bellinger III said diplomatic assurances are not prohibited under international law and are an "important tool" in preventing torture of people being returned to foreign countries. He said the credibility of the government offering the assurances must be assessed. In some cases, he said, the United States has chosen not to accept them.
Human Rights Watch, he said, wanted to have things both ways. "We can't both immediately close Guantanamo but not send anyone back to their home country," he said. The group's call for an impartial body to consider prisoners' concerns would go against treaty obligations for the U.S. government to decide whether prisoners face danger.
Human Rights Watch questioned the worth of diplomatic assurances after examining the fate of the seven Russians, who it said were released from Guantanamo because U.S. authorities lacked evidence to prosecute them.
"The Russian authorities have variously harassed, detained, mistreated, and beaten the former Guantanamo detainees since they returned," the group said in a report titled "The 'Stamp of Guantanamo': The Story of Seven Men Betrayed by Russia's Diplomatic Assurances to the United States."
Two of the seven are in prison for the 2005 bombing of a gas pipeline in the Russian republic of Tatarstan. A third is in a pretrial detention center in Russia after being accused in an October 2005 armed uprising in the capital of Kabardino-Balkaria, a republic in southern Russia.
Human Rights Watch said that after a lengthy investigation it concluded that the three were tortured and proceedings against them were riddled with irregularities.
Ravil Gumarov and Timur Ishmuratov, who were accused of the gas pipeline bombing, were first acquitted by a jury, but prosecutors obtained a retrial and they were convicted in May 2006.
Rasul Kudaev, accused of involvement in the uprising in Kabardino-Balkaria, has not been prosecuted, but remains in custody nearly a year and a half later.
Russian officials say the three men were treated fairly.
Six of the seven interviewed by Human Rights Watch said they had begged American officials not to be returned to Russia, according to Bogert. She said U.S. officials failed to monitor what happened to the men despite diplomatic assurances from Russia.
Bellinger said the U.S. government did not have independent word on mistreatment of the men and "will be following up on them.

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New York Times
March 28, 2007
Result Of Military Trial Is Familiar To Civilians By William Glaberson GUANTÁNAMO BAY, Cuba, March 27 — In the first session of the new military commission system set up by Congress, the first detainee to face a judge sounded for a time as though he was ready for a trial.
It was David Hicks, an Australian Qaeda trainee who has become by fluke and design one of the best known of the 385 detainees here. Some 75 detainees face similar war crimes prosecutions.
On Monday afternoon, Mr. Hicks told the judge that he wanted more lawyers "to give me a better chance in my defense."
Between then and a reconvened session after 8 p.m., things changed. He pleaded guilty to providing material support to a terrorist organization. It was the military equivalent of a plea bargain, the rubber-meets-the-road moment that makes it possible for courts all over America to cope with caseloads that would choke them if every defendant insisted on a trial.

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On Tuesday an Australian official said that as part of the deal Mr. Hicks would serve "a bit" more time in prison beyond the five years he has been here, but that he would be allowed to serve it in Australia.
What happened in between the afternoon and evening sessions on Monday, explanations and observations of people at the court here make clear, is just what happens in those tens of thousands of more prosaic cases every day – an emotion-laden measure by both sides of the costs and benefits of pressing ahead.
"It's a way to get home, and he's told us he just wants to get home," Mr. Hicks's father, Terry Hicks, told the Australian Broadcasting Corporation on Tuesday. The father flew out of Guantánamo on Monday between court sessions, after a rare visit with his son.
Though the rules in the military commissions are singular, Mr. Hicks's case showed that the pressures and calculations were much like those that weigh on people in civilian courts.
The commissions, the first war crimes trials conducted by the United States since World War II, are heavy with diplomatic, military and legal implications. Still, Mr. Hicks's sudden arrangement with his prosecutors is not likely to be the last deal as the Guantánamo cases stack up and international pressures increase to give the detainees their day in court.
The events here were not unlike those in the garden-variety case. It was no secret here over the weekend that plea discussions had long been under way. The sole issue seemed to be whether the deal would be done now or down the road.
Before the hearing on Monday, the chief prosecutor, Col. Morris D. Davis of the Air Force, provided a rough calculation of the terms. Though Mr. Hicks faced a possible life sentence, Colonel Davis said that was not in the cards.
"I don't believe this is a life-sentence case," he said.
He mentioned the 20-year sentence that an American court gave John Walker Lindh, the American Muslim who was a Taliban soldier, a young man whose history was not unlike that of Mr. Hicks.
Mr. Hicks, now a plump 31-year-old, has been described as another Westerner in search of meaning in his days in Afghanistan in 2001. The prosecutors say Mr. Hicks once complained to Osama bin Laden about the lack of Qaeda training materials in English.
After the guilty plea, Colonel Davis said Mr. Hicks might be on Australian soil by the end of the year.
The defense, too, had made it plain that anything could occur in court. Before the session on Monday, David H. B. McLeod, an Australian lawyer working with the defense, said he was not sure whether Mr. Hicks would end up pleading guilty, not guilty or entering no plea when he was called on at the planned arraignment by the judge, Col. Ralph H. Kohlmann of the Marines.
The answer turned out to be no plea from Mr. Hicks. The session in a heavily secured squat building facing sparkling Guantánamo Bay ended after 5 p.m. By 7 p.m., word circulated that the court would soon be back in session.
Mr. Hicks's decision came quickly after years of delays, setbacks and waiting. The afternoon session was bitter, with disputes between defense lawyers and the military judge over the rules of the tribunals, offering indications that lengthy legal battles were in the offing in the bumpy process.
In Mr. Hicks's case, all that was required on Monday night was a single word: guilty.
It took just a minute for Mr. Hicks's military defense lawyer, Maj. Michael D. Mori of the Marines, to say that word. Mr. Hicks's decision came five years after the United States had initially expected to try detainees.
From the plea, the process is widely expected to take a few days. The lawyers need to cobble together the specific acts that Mr. Hicks will admit to.
Did he, as the charges state, join with a group of Qaeda fighters near Kandahar Airport in the Afghan conflict? Was he armed with an AK-47 when going by the name Abu Muslim Australia?
When that is worked out, the judge will summon the panel of commission members, at least five military officers, who will formally decide the sentence. The members, whose names have not been released, are expected here by the end of the week.
Raymond Bonner contributed reporting from London

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Gates: Congress should find way to shut Guantanamo By Susan Cornwell Reuters Thursday, March 29, 2007; 12:19 PM WASHINGTON (Reuters) - Defense Secretary Robert Gates said on Thursday

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Congress should look for ways to close the U.S. military prison at Guantanamo Bay, but said any solution must ensure some detainees would remain incarcerated for life.
"Is there a way statutorily to address the concerns about some of these people who really need to be incarcerated forever but that doesn't get them involved in a judicial system where there is the potential of them being released, frankly?" Gates said at a congressional hearing.
"I just don't know the answer," he said.
Gates called for Congress and the White House to discuss the issue.
The United States has faced international criticism over its continued detention of about 385 suspected al Qaeda and Taliban members at the Guantanamo Bay military prison in Cuba.
Human rights groups and other critics have demanded the United States close Guantanamo and that detainees be charged with crimes or released.
President George W. Bush and administration officials have said they would like to close Guantanamo. But they argue it is difficult to accomplish because of the trials to be held there and the group of detainees the United States says should be imprisoned for life.
According to Gates, some of the detainees have said they would attack the United States again if released.
If the United States moves the detainees to some other location, the federal government must ensure the prisoners cannot find a legal avenue to freedom.
"It's an area where frankly I think there needs to be some dialogue between the Congress and the administration," he said.
http://www.washingtonpost.com/wp-dyn/content/article/2007/03/29/AR2007032900970.html

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Guantanamo prisoner to be freed
By Clara Story <mailto:cstory@london.newsquest.co.uk>

New Malden resident Bisher al-Rawi is to be sent home from Guantanamo Bay within the next 72 hours after British diplomats secured his release.
Mr al-Rawi, an Iraqi citizen who has lived in Britain since he was 16, was arrested by the CIA in Gambia in November 2002 where he was helping his brother Wahab set up a peanut factory.
Foreign Secretary Margaret Beckett read the news of his release out in Parliament earlier today, and a Commons statement is due to be given within the next hour.
After more than four years in captivity, friends and relatives have been concerned about Mr al-Rawi's deteriorating state of mind.
Kingston and Surbiton MP Edward Davey made an appeal in Parliament for his release in January.
A spokesman from the Reprieve charity said a formal statement would follow, but said: "It is fabulous news that he is being brought home and we welcome that. But he is the only British resident being released, and there are a number of residents still in Guantanamo Bay."
http://www.wimbledonguardian.co.uk/news/topstories/display.var.1294940.0.guantanamo_prisoner_to_be_freed.php

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From this website: http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/index
The Guantánamo Testimonials Project
Pursuant to its mission, the UC Davis Center for the Study of Human Rights in the Americas (CSHRA) has launched a long term research project to assess the effects of the U.S. war on terror on human rights in the Americas.
Whether invoked as the rationale for the "extraordinary rendition" of Canadian citizen Maher Arar to Syria <http://www.maherarar.ca/index.php> or as the basis for the suppression of indigenous movements in South America <http://ipsnews.net/interna.asp?idnews=28962> , the war on terror has had significant effects on human rights in the Americas. But nowhere have these

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effects been greater than at the detention facilities of the U.S. Naval Base at Guantánamo Bay, Cuba <the-guantanamo-testimonials-project/guantanamo-background> . Consequently, it seemed appropriate to begin our project by looking into the human rights situation at these facilities.
We begin our endeavor with The Guantánamo Testimonials Project. The goal of this project is to gather testimonies of prisoner abuse in Guantánamo, organize them by the source of the testimonies given and the type of the abuse alleged, and post these testimonies on this site even as we gather them. The strength of these testimonies is considerable. Based on them, a number of distinguished individuals and organizations have called for the closure of Guantánamo <the-guantanamo-testimonials-project/calls-for-the-closure-of-guantanamo> .
At CSHRA we take no position as to whether the Guantánamo prisoners are guilty or innocent. Yet we recognize that these individuals are, in either case, entitled to a set of fundamental rights (a) as individuals held during an armed conflict <testimonies/prisoner-testimonies/rights-of-guantanamo-prisoners-as-captured-individuals> , (b) as prisoners in general <rights-of-guantanamo-prisoners-as-prisoners-in-general> , and (c) as ordinary human beings <rights-of-guantanamo-prisoners-as-ordinary-human-beings> .

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New York Times
March 29, 2007
Pg. 21
News Analysis
New Justice System Is A Work In Progress
By Adam Liptak
In the last few weeks, the two most famous prisoners at the Guantánamo Bay naval base responded to proceedings against them by admitting their guilt.
That might appear to be a vindication of the Bush administration's strategy of creating a built-from-the-ground-up military justice system limited to people said to be terrorists.
But because of the unusual circumstances of the two admissions, it is not clear yet that either one is truly representative of the system the administration has established, legal experts said. Neither the guilty plea David Hicks entered on Monday, admitting to providing material support to a terrorist organization, nor the wide-ranging confession from Khalid Shaikh Mohammed, contained in a Pentagon transcript of a closed hearing on March 11, had about it the solemn finality of a conviction in a civilian criminal court, and in some ways, they were aberrations.
To hear critics of the administration describe them, the conclusions of the two proceedings were tainted by past abuse and a justice system not worthy of the name.
"The proceedings themselves just demonstrate the absence of fixed rules," said Jonathan Hafetz, a lawyer with the Brennan Center for Justice at New York University School of Law who represents other prisoners at Guantánamo. "This is justice on the fly."
The administration's defenders say the recent developments are more than satisfactory and demonstrate that the administration may have struck the right balance between gathering intelligence in wartime and providing prisoners with the full array of due-process protections.
"We are finally beginning to see," said John Yoo, a law professor at the University of California, Berkeley, and one of the principal architects of the administration's legal strategy after the Sept. 11 attacks, "whether the military commissions can balance a fair trial with protecting national security in a way that the civilian courts cannot. One of the purposes of the military commissions was to provide a forum where the government and Al Qaeda terrorists could reach plea bargains that would allow our intelligence agencies to win their cooperation."
Guilty pleas are common in ordinary criminal cases, too, of course. But in a garden-variety criminal prosecution, the parties bargain, in the famous phrase, in the shadow of the law. In the usual case, defendants make a rational calculation based on the strength of the evidence against them, the state of the law and, most important, outcomes in earlier cases. If defendants think a plea will result in a shorter sentence than the likely one at trial, discounted by the possibility of acquittal, they plead guilty.

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None of that holds at Guantánamo. The incentives and calculations are quite different there. Mr. Hicks, for instance, was bargaining in the shadow of many things – the conditions at the base, international diplomacy, homesickness and the possibility of indefinite detention without charge. But he was not, for the most part, bargaining in the shadow of the law. The statute under which he was to be tried was brand new and untested. The relevant regulations are as yet largely unwritten. There is no body of similar trials to set the parameters for settlement discussions.

"The proceedings that led to Hicks's plea," Mr. Hafetz said, "underscore that the military commissions are a makeshift system that lacks legitimacy."

In the hours before Mr. Hicks's plea, the military judge hearing the case, Col. Ralph H. Kohlmann of the Marines, disqualified two defense lawyers, one for refusing to agree to abide by regulations that have yet to be written.

Mr. Hicks's plea appears to be based on his calculation that he will be allowed to serve out his sentence in his home country, Australia. He may even be able to challenge his conviction there, in conventional courts.

The alternative to a transfer to Australia was a trial some months from now with an unpredictable outcome, the possibility of having to serve any sentence at Guantánamo and the risk of continued detention as an enemy combatant even once that sentence was completed.

While Mr. Mohammed's calculations seemed very different from Mr. Hicks's, they were just as unusual.

Mr. Mohammed, said to be the mastermind of the Sept. 11 attacks, did not appear before a military commission like the one that heard from Mr. Hicks. The function of a military commission is the one associated with most criminal courts: it hears cases against defendants charged with violating the law and decides whether they are guilty. Military commissions are largely open to the public, and reporters and human rights groups saw Mr. Hicks plead guilty.

Mr. Mohammed, on the other hand, appeared before a combatant status review tribunal. The session at which he apparently issued his comprehensive confession was brief, closed to the public and took place before officers whose names were not disclosed.

Detainees appearing before the status tribunals are not represented by lawyers. And the tribunals' purpose is different from that of a military commission. All they are meant to do is determine if the prisoner before it has been properly designated as an enemy combatant.

Mr. Mohammed used the opportunity for grandstanding and propaganda, comparing himself to George Washington and pleading on behalf of those he said were falsely imprisoned.

He also seemed to allude to having been tortured while in C.I.A. custody, though the transcript was redacted after the topic was introduced. Human rights groups said such abuse could taint and undermine everything Mr. Mohammed said.

The Hicks case is unrepresentative in another way, legal experts said. The vast majority of the 385 men held at Guantánamo have not been charged with any crimes, and the Pentagon may never charge them. The only tribunal they may ever see is the one that heard Mr. Mohammed.

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OGC AMNESTY/CCR 249

Testimony of
Professor Neal Katyal
Georgetown University Law Center
Before the
House Armed Services Committee
March 29, 2007

INTRODUCTION

Thank you Chairman Skelton, Representative Hunter, and Members of the Armed Services Committee, for inviting me to speak to you today. I appreciate the time and attention that your Committee is devoting to the legal and human rights crisis surrounding the detainees at Guantanamo Bay.

On Nov. 28, 2001, I testified before the Senate Judiciary Committee about the President's then two-week old plan to try suspected terrorists before *ad hoc* military commissions. I warned the committee that our Constitution precluded the President from unilaterally establishing military tribunals and that our Founders' structure required that these tribunals be set up by Congress. On June 29, 2006, the Supreme Court agreed in *Hamdan v. Rumsfeld*, invalidating the makeshift tribunal scheme devised by presidential fiat alone.[1]

Indeed, every time the Supreme Court has ruled on the merits regarding the Executive's procedures for detainees, it has found them lacking, forcing Congress and the Executive Branch back to the drawing board at great expense in terms of money, time, and trust. Meanwhile, for five years and counting, the nation and the world at large wait for the United States to bring terrorists to justice consistent with our ideals of democracy and the rule of law.

A few weeks after the *Hamdan* decision, on July 19, 2006, I testified before the Senate Armed Services Committee, advocating a unitary court system for all suspected terrorists. I emphasized that our nation's tried-and-true courts-martial institution, complemented by the existing federal criminal justice system, provide all the safeguards needed to bring suspected terrorists to account without abandoning our most deeply-held beliefs about what it means to administer justice. I warned that legislation specifically crafted for a handful of individuals that does away with important criminal procedure guarantees is not only unnecessary but unwise. Such a two-tiered justice system threatens our nation's foundational values, as well as American credibility in the world arena.

[1] 126 S. Ct. 2749 (2006).

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Unfortunately, like the Detainee Treatment Act of 2005, the Military Commissions Act of 2006 (MCA) implements precisely such an impoverished two-tier system. The MCA provides a blunt instrument for a complex operation. It eliminates the right of habeas corpus for a group defined not by objective principle, but rather by arbitrary judgment of the Executive.[2] Under the MCA, the federal courts lack jurisdiction to hear habeas claims from *any* alien detained by the United States and determined (by an untested and hastily constructed Executive proceeding) to be an enemy combatant.[3] And after constructing a proceeding where the Executive acts as judge, jury, prosecutor, and possibly executioner, the MCA allows only for the most ephemeral review by an independent judicial authority in which neither the facts nor all of the law may be questioned by the defendant. It lightens the government's burden by casting aside constitutional rights and guarantees as if they are simple conveniences, the chaff rather than the grain of our democratic order. This is plainly a stop-gap law, designed for expediency and guaranteed convictions, not for endurance, legitimacy, or justice. In the end, the gravely flawed MCA only burdens this new Congress and the federal courts with divisive litigation. It is a law that does not merely invite judicial scrutiny, but clamors for it.

Forward-thinking members of the Administration and this Congress have foreseen the end result: a new Supreme Court decision, this year or the next, followed by new legislation, this year or the next, driven by reaction rather than deliberation. This Committee has asked me here today, as I understand it, because it is interested in breaking this counterproductive cycle and avoiding a new round of constitutional hot potato between the political branches of government. Leaving a vacuum of constitutional leadership for the Court to fill falls far short of the ideal envisioned by our nation's founders: a vibrant system of innovation, evolution, and interlocking responsibility with Congress at the helm. How can we forget the stirring words of the great statesman, James Madison, as a young Member of this esteemed body, urging the House of Representatives to determine for itself the deep question of whether the proposed Bank of the United States was constitutional?[4] The need for fresh direction, and a return to Madison's view of Congress's role, is apparent.

On the other hand, a litigation-based approach to this problem can only mean delay and embarrassment as the nation and the world wait for real justice, for a sixth year. Congress should act now, rather than later, to restore rights and establish a framework for

[2] The interpretation of the MCA is currently the subject of pending petitions for certiorari before the Supreme Court of the United States. This testimony adopts, *arguendo*, the current controlling interpretation, which has been offered in *Boumediene v. Bush*, No. 05-5062 (D.C. Cir., Feb. 20, 2007) and *Al Odah v. United States*, No. 05-5063 (D.C. Cir., Feb. 20, 2007).

[3] Indeed, the MCA inexplicably attempts to cement into law the enemy combatant determinations of the Combatant Status Review Tribunals, which were hastily conceived and are notoriously skewed to provide the detainee with little opportunity to disprove the "enemy combatant" allegations against him. *See* Corine Hegland, *Empty Evidence*, NATIONAL JOURNAL, Feb. 4, 2006.

[4] James Madison's Speech to the House of Representatives (1791), *in* James Madison, Writings 480-90 (Rakove ed. 1999).

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the habeas procedures that the Supreme Court is likely to require. The legal challenges to the military trials of suspected terrorists held at Guantanamo will cast a glaring spotlight on every nook and cranny of United States policy, and its shortcomings will be apparent. A politics of responsibility, and not reaction, is required now.

I. Moving the Trials to the U.S. Is A First (But Not Last) Step

Defense Secretary Gates has made the most recent brave attempt to argue out of turn on this issue, and I commend his proposal to transfer all terrorism trials from Guantanamo Bay to the United States. As reported by the *New York Times* last week, the purpose of this move would be to make the trials more credible, as high-level officials (evidently including the Secretary of State) acknowledge that Guantanamo's continuing existence hampers the nation's war effort.[5] Moving the trials would communicate to the world that America has no intention of relegating these trials to a "legal black hole," and that the fundamental rights we assume daily here will not be treated as special privileges, doled out to our prisoners at the pleasure of an absentee warden.

However, while the Gates plan would be a first step in signaling the government's intention to integrate these unusual proceedings into our tradition of open, fair adjudication, it would do quite little to substantively further that goal. The MCA denies habeas rights to people based on their citizenship. An alien detainee on trial in Leavenworth, Kansas and an alien detainee on trial in Guantanamo are both excluded from our legal system's most crucial protections, including habeas corpus, under the MCA. This despite the fact that the writ of habeas corpus has been described by the Supreme Court as the "highest safeguard of liberty" in our system.[6]

The Supreme Court has held that geography alone does not create rights. In *Eisentrager v. Johnson*, the Court determined that enemy aliens held abroad did not have enough of a connection to the United States to be entitled to habeas corpus rights.[7] While *Eisentrager* suggested that presence on U.S. soil might change the analysis, the Court later held that lawful but involuntary presence in this country does not necessarily entitle an individual to constitutional protection, either.[8] But even if geography were determinative, a move from Guantánamo to the United States would do little: the Court has already determined that the military base is effectively U.S. soil for reviewing detainee claims.[9]

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[5] Thom Shanker and David E. Sanger, *New to Job, Gates Argued for Closing Guantanamo*, N.Y. TIMES, Mar. 23, 2007, at A1.
[6] *Smith v. Bennett*, 365 U.S. 708, 712 (1961).
[7] 339 U.S. 763 (1950).
[8] *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1991). Notably, however, *Verdugo-Urquidez* did not concern constitutional rights to habeas corpus, but rather Fourth Amendment rights to suppress illegally obtained evidence.
[9] *Rasul v. Bush*, 542 U.S. 466, 480 (2004).

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In short, some of the constitutional and prudential defects of the MCA would follow these alien detainees on their trip from Guantanamo to the United States. Whether these trials take place in the United States or Guantanamo, it is my view that the Court will ultimately hold that the Constitution's fundamental guarantees must govern these trials. Yet if these trials take place at Guantanamo, and the courts follow the Administration's claim that the judiciary is powerless to intervene until after individuals are convicted in these makeshift tribunals, the result will be atrocious: the Court will have to throw out all of the convictions because of the inescapable legal conclusion that Guantanamo is not a legal black hole where the Executive can do anything it wants when it punishes someone.

Therefore, while an incremental step like Secretary Gates's plan would provide a welcome shift of perspective, sure to be lauded by the international community, it would not address all of the substantive legal challenges raised by the detainees or halt the progress of these cases on their way to the Supreme Court. That said, it is a very useful first step in helping to restore the credibility of the United States in this matter, and, as a practical matter, would expedite the trials by eliminating the logistical delays inherent to having trials take place in such a removed locale as Guantanamo.

II. The Military Commissions Act is Unconstitutional

The only way to truly solve the problems that the MCA creates is to repeal the entire law and pass one consistent with this nation's Constitution and moral principles. As it stands, the MCA discriminates against people on the basis of alienage, a violation of the Equal Protection principle so deeply ingrained in our legal culture. And in further contravention of the basic guarantees of a free society, the law burdens the fundamental right of access to the courts. Furthermore, the commissions sanctioned by the MCA flout international law and dispense with procedures fundamental to the fair administration of justice, including the prohibition on hearsay evidence. To solve these infirmities, Congress should repeal the MCA and pass a law using the existing system of courts-martial as the basis of a legal regime to deal with the Guantánamo detainees.

a. The MCA Establishes Unconstitutional Barriers Based on Alienage

The MCA purports to deny the writ of habeas corpus to any alien detained by the United States. As the text of the MCA makes clear, it is not only those whom the Government has held under its control for years in Guantanamo that have their habeas rights removed. The MCA deprives those rights to *all* aliens, even lawful resident aliens living within the United States, who are currently or in the future determined by the Executive's makeshift procedures to be "enemy combatants." Citizen detainees remain free to challenge their detention in civilian courts, while detained aliens are now excluded from independent judicial review based on an arbitrary Executive determination of their combatant status that the MCA cements into law.

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I believe that such distinctions based on alienage will eventually be struck down by the courts. As I explained in my Senate testimony, the Equal Protection components of the Fifth and Fourteenth Amendments preclude the restriction of fundamental rights and government discrimination against a protected class. The MCA targets *both* a fundamental right and a protected class, and as such it just cannot survive the stringent constitutional standard. The statute purports to restrict the right of equal access to the courts, one of the most fundamental of rights under our legal system. Worse still, the line that divides who does and who does not receive full habeas review under the MCA is based on a patently unconstitutional distinction—alienage. The onus is on this Congress and this Committee to recognize that we cannot tolerate this unconstitutional deviation from longstanding American law in the current war on terror any longer.

The commissions set up by the MCA, like President Bush's first set of military commissions, appear to be the first ones in American history designed to apply only to foreigners. The United States first employed military commissions in the Mexican-American war and "a majority of the persons tried . . . were American citizens."[10] The tribunals in the Civil War naturally applied to citizens as well. And in *Quirin*, President Roosevelt utilized the tribunals symmetrically for the saboteur who claimed to be an American citizen and along with the others who were indisputably German nationals, prompting the Supreme Court to hold: "Citizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful because in violation of the law of war."[11]

Those who drafted the Equal Protection Clause knew all too well that discrimination against non-citizens must be constitutionally prohibited. The Clause's text itself reflects this principle; unlike other parts of the section, which provide privileges and immunities to "citizens," the drafters intentionally extended equal protection to "persons."[12] Foremost in their minds was the language of *Dred Scott v. Sandford*, which had limited due process guarantees by framing them as nothing more than the "privileges of the citizen."[13] This language was repeatedly mentioned in the Senate debates on the Fourteenth Amendment, with the very first draft of the Amendment distinguishing between persons and citizens: "Congress shall have power to . . . secure to *all citizens* . . . the same political rights and privileges; and to *all persons in every State* equal protection in the enjoyment of life, liberty, and property."[14] The Amendment's principal author, Representative John Bingham, asked: "Is it not essential to the unity of the people

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[10] David Glazier, Note, *Kangaroo Court or Competent Tribunal?: Judging the 21st Century Military Commission*, 89 VA. L. REV. 2005, 2030 (2005).
[11] *Ex Parte Quirin*, 317 U.S. 1, 37 (1942).
[12] U.S. CONST. amend. XIV, § 1; *see also* John Harrison, *Reconstructing the Privileges or Immunities Clause*, 101 YALE L.J. 1385, 1442-47 (1992) (providing evidence that the Equal Protection Clause was intentionally written as it was specifically in order to extend certain rights to aliens).
[13] Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 449 (1857). *See generally* AKHIL REED AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 170-72 (1998) (tracing the historical origins of the Equal Protection Clause and its use of the word "persons" to *Dred Scott*); *id.* at 217-18 n.* (stating that the Equal Protection Clause is "paradigmatically" concerned with "nonvoting aliens").
[14] AMAR, *supra* note 13, at 173 (quoting a draft of the Fourteenth Amendment) (emphasis added).

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that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States? Is it not essential . . . that all persons, whether citizens or strangers, within this land, shall have equal protection . . . ?"[15]

Moreover, drawing lines based on alienage offends all logic and sound policy judgment for effectively fighting the war on terror. Our country knows all too well that the kind of hatred and evil that has led to the massacre of innocent civilians is born both at home and abroad. And nothing in the MCA, nor the DTA or the Military Order that preceded it, suggests that military commissions are more necessary for aliens than for citizens suspected of terrorist activities. Indeed, both the Executive and Congress appear to believe that citizens and non-citizens pose an equal threat in the war on terror. Since the attacks of September 11th, the Executive has argued for Presidential authority to detain and prosecute U.S. citizens. And in *Hamdi v. Rumsfeld*, the Supreme Court agreed that "[a] citizen, no less than an alien, can be 'part of or supporting forces hostile to the United States or coalition partners' and 'engaged in an armed conflict against the United States.' . . . [S]uch a citizen, if released, would pose the same threat of returning to the front during the ongoing conflict."[16] Likewise, Congress did not differentiate between citizens and non-citizens in the Authorization for the Use of Military Force, which provided the President with the authority to "use all necessary and appropriate force against those nations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001."[17]

The threat of terrorism knows no nationality; rather, it is a global plague, and its perpetrators must be brought to justice no matter what their country of origin. Terrorism does not discriminate in choosing its disciples. If anything, we can expect organizations such as al Qaeda to select, wherever possible, American citizens to carry out its despicable bidding. The Attorney General himself has recently reminded us that "[t]he threat of homegrown terrorist cells . . . may be as dangerous as groups like al Qaeda, if not more so."[18] Given this sensible recognition by all three branches of government that the terrorist threat is not limited to non-citizens, the disparate procedures for suspected terrorist detainees on the basis of citizenship simply makes no sense.

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[15] CONG. GLOBE, 39th Cong., 1st Sess. 1090 (1866). Similarly, Senator Howard stated that the Amendment was necessary to "disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State." *Id.* at 2766.

[16] 504 U.S. 507, 519 (2004).

[17] 115 Stat. 224, note following 50 U.S.C. §1541.

[18] Alberto Gonzales, U.S. Attorney General, Remarks at the World Affairs Council of Pittsburgh on Stopping Terrorists Before They Strike: The Justice Department's Power of Prevention (Aug. 16, 2006) (transcript available at http://www.usdoj.gov/ag/speeches/2006/ag_speech_060816.html); *see also Foiled Dirty-Bomb Plot Reveals Chilling New Threats*, USA TODAY, June 11, 2002, at 10A (reporting that when announcing Jose Padilla's arrest in 2002 for suspicion of planning a dirty bomb attack on U.S. soil, Attorney General John Ashcroft described Padilla's American citizenship as attractive to Al-Qaeda because Padilla could move freely and easily within the United States); Jessica Stern, Op-Ed., *Al Qaeda, American Style*, N.Y. TIMES, July 15, 2006, at A15 (fearing that Al-Qaeda is aiming to recruit American citizens for domestic terror attacks).

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Further, in the wake of international disdain for the military tribunals authorized by President Bush in his Military Order, our country is already under global scrutiny for its disparate treatment of non-U.S. citizens. The reported Gates plan recognizes, at the very least, that our handling of Guantanamo detainees has garnered (and warranted) bad publicity. We must be careful not to further the perception that, in matters of justice, the American government adopts special rules that single out foreigners for disfavor. If American citizens get a "Cadillac" version of justice, and everyone else gets a "beat-up Chevy," the result will be fewer extraditions, more international condemnation, and increased enmity towards America worldwide.

b. The MCA's Attempt to Strip Federal Courts of Habeas Jurisdiction Over Alien Detainees is Unconstitutional

Aliens and citizens alike have a constitutional right to challenge the legality of their trial by military commission. Because Congress has not invoked its Suspension Clause power, it may not eliminate the core habeas rights enshrined into our Constitution.[19] Rather, absent suspension, the Great Writ protects all those detained by the government who seek to challenge executive detention, particularly those facing the ultimate sanctions – life imprisonment and the death penalty.[20]

And even if Congress were to invoke its Suspension Clause power, it lacks *carte blanche* power to suspend the writ at will. Instead, the Constitution permits a suspension of habeas only when in "Cases of Rebellion or Invasion the public Safety may require it."[21] In enacting the MCA, Congress made no such finding that these predicate conditions exist. Indeed, even during evident "Rebellion or Invasion," the Supreme Court has required that congressional suspension be limited in scope and duration in ways that the MCA is not:

First, Congress must tailor its suspension geographically to those jurisdictions in rebellion or facing imminent invasion. Thus, in *Ex parte Milligan*, the Court determined that because Milligan was a resident of Indiana, a state not in rebellion, his right to habeas was protected.[22] Like Indiana, "Guantanamo Bay . . . is . . . far removed from any hostilities."[23] In fact, the detention cells at Guantanamo Bay have served the explicit

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[19] If Congress intends to implement its Suspension Clause power, it must do so with unmistakable clarity. *See INS v. St. Cyr*, 533 U.S. 289, 298-300, 305 (2001). This requirement arises not merely from the principle of avoiding serious constitutional questions, but also from the historical understanding of habeas corpus – and suspension – in our country's history. *See Hamdan v. Rumsfeld*, 464 F. Supp. 2d 9, 14 (2006).

[20] *See* Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 475 (1963) ("The classical function of the writ of habeas corpus was to assure the liberty of subjects against detention by the executive or the military....").

[21] U.S. CONST. art. I, §9, cl. 2.

[22] 71 U.S. 2, 126 (1866). The Court reached this conclusion even though Congress had authorized a broader suspension. *See* Act of Mar. 3, 1863, 12 Stat. 755 (authorizing the President to "suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof.").

[23] *Rasul*, 542 U.S. at 487 (Kennedy, J., concurring).

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purpose of holding captured suspects in U.S. custody away from the tumult of the battlefield abroad.

Moreover, Congress may suspend the writ for only a limited time. The MCA, however, has no terminal date and indefinitely denies alien detainees access to habeas corpus. As a result, alien detainees swept into U.S. custody would be left to languish in an extralegal zone, their fundamental rights left to the whim of the Executive, potentially suspended forever. The Constitution simply does not condone the existence of a lawless vacuum within its jurisdiction.

The MCA's jurisdiction-stripping provision not only breaches the geographical and temporal restraints imposed by the Constitution, it also defies the historic scope and purposes of the writ. Habeas rights have always extended to individuals in U.S. jurisdiction -- citizen or alien, traitor or enemy combatant. The Supreme Court has declared that the judiciary retains the obligation to inquire into the "jurisdictional elements" of the detention of an enemy alien with a sufficient connection to U.S. territory, explaining that "it [is] the alien's presence within its territorial jurisdiction that [gives] the Judiciary the power to act."[24] Guantanamo Bay is not immune from these dictates of the Constitution. In *Rasul*, the Court rejected the Government's assertion that Guantanamo is a land outside U.S. jurisdiction.[25] Indeed, as "[t]he United States exercises 'complete jurisdiction and control' over the Guantanamo Bay Naval Base,"[26] the Court observed that alien detainees held at Guantanamo are not categorically barred from seeking review of their claims. The majority dropped a pointed footnote, strongly suggesting that the detainees were protected by the Constitution.[27] In addition, Justice Kennedy separately concluded that Guantanamo detainees had a constitutional right to bring habeas petitions based on the status of Guantanamo Bay and the indefinite detention that the detainees faced.[28] It makes sense not to constitutionalize the battlefield; but a long-term system of detention and punishment in an area far removed from any hostilities, like that in operation at Guantanamo Bay, looks nothing like a battlefield.

The fact remains that if the military commissions are fundamentally unfair, they are unfair for everyone. It is no more just to subject an alien detainee in Guantanamo Bay to an inferior adjudicatory process than it is to subject a citizen detainee in Norfolk,

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[24] *Eisentrager*, 339 U.S. at 775, 771 (1950).
[25] 542 U.S. at 480-84.
[26] *Id.*. at 480.
[27] The footnote states: "Petitioners' allegations--that, although they have engaged neither in combat nor in acts of terrorism against the United States, they have been held in executive detention for more than two years in territory subject to the long-term, exclusive jurisdiction and control of the United States, without access to counsel and without being charged with any wrongdoing--unquestionably describe 'custody in violation of the Constitution or laws or treaties of the United States.' 28 U.S.C. § 2241(c)(3). *Cf.* United States v. Verdugo-Urquidez, 494 U.S. 259, 277-78 (1990) (Kennedy, J., concurring), and cases cited therein." *Id.* at 484 n.15. This passage certainly contemplates constitutional violations, otherwise the Court's citation to pages in Justice Kennedy's *Verdugo* concurrence would make no sense, as those pages deal exclusively with the Constitution's applicability.
[28] *Id.* at 488 (Kennedy, J., concurring in the judgment).

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Virginia to the very same. The MCA, in its attempt to relegate alien detainees to a lesser brand of justice and eliminate their right to challenge their Executive detention, unconstitutionally tramples on the habeas rights of prisoners held within U.S. jurisdiction. The Constitution will not tolerate such arbitrary exclusions.

Finally, such restrictive habeas review jeopardizes the finality and confidence surrounding verdicts of the military commissions. If the international community believes the entire process is invalid, we cannot expect it to respect the authority of the commission outcomes. Secretary Gates has recognized that the trials of terror suspects must be credible in the eyes of the world. Removing the trials from Guantánamo would lift at least some of the perception of injustice that currently clouds the proceedings.

c. The MCA Establishes a Trial System That Violates Both Domestic and International Law

In addition to violating principles of Equal Protection that are central to our constitutional order, the MCA further violates longstanding rules of criminal procedure and evidence. For example, prosecutions under the MCA may employ hearsay evidence against a defendant on trial for his life, which deprives him of the most elemental opportunity for fairness: challenging allegations against him through cross-examination or confrontation. Further, the MCA leaves open the possibility that evidence that is the fruit of torture may be introduced and used to convict a defendant in the military commissions, a principle previously unheard of in American law.

The MCA also disposes of Common Article 3 of the Geneva Conventions as a possible source of law under which a defendant may assert rights. And what the MCA does retain of the Geneva Conventions is, under the Administration's view, thin gruel. For instance, grave breaches of Common Article 3 are subject to criminal sanction but a court may not consider international or foreign law to determine what would constitute such a grave breach. And American personnel accused of violating Common Article 3 have a ready defense – as long as they acted in good faith that their actions were lawful (which might include reliance on administration memos on torture), they may not be held liable.

The MCA quite simply fails to take our treaty obligations seriously. When this happens, we can no longer be surprised to see our credibility in the world community falling and anti-Americanism on the rise.

d. Congress should repeal the MCA and enact a system to deal with these prosecutions based on the Uniform Code of Military Justice and the courts-martial.

Unlike the dichotomy presented by the media and talk-show hosts, the choice here is not between the unconstitutional tribunals under the MCA and the civilian justice system with the full panoply of criminal procedure rights possessed by any ordinary

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defendant. There is a middle way to run these prosecutions that provides the flexibility required to safeguard national security while still employing fair procedures and protecting fundamental rights. Namely, the longstanding system of courts-martial set forth in the Uniform Code of Military Justice. As Justice Stevens declared in *Hamdan*, "Nothing in the record before us demonstrates that it would be impracticable to apply court-martial rules in this case."

Most importantly, the existing courts-martial are already equipped to deal with the unique circumstances of a terrorism trial and, in fact, have been statutorily authorized to try such cases for ninety years. These military trials use judges and juries that already possess security clearances and can view classified evidence without fear of security compromises. The rules governing courts-martial provide for trials on secure military bases and for courtroom closures when sensitive evidence is presented, another measure that would help guarantee information security. Courts-martial also already utilize measures that would, among other things, protect the identities of witnesses if necessary. In short, the procedures for conducting courts-martial protect vital national security information.

In addition, unlike the rules for tribunals under the MCA, the court-martial rules benefit from the fact that they are fully delineated, tested by litigation, and validated by the Supreme Court. Thus, a system that tries suspected terrorists under these rules of military justice need not be delayed by legal challenges seeking relief from rigged and un-American procedures such as the introduction of evidence resulting from torture. Indeed, all the energy the government currently spends defending these flawed policies could be redirected to actually trying and convicting terrorists under a tough but fair system that is consonant with American values and ideals.

Neither Congress nor the Executive has offered any compelling reason why the established court-martial system would be insufficient to try suspected terrorists. Given its robust safeguards for national security and its careful balance between security and the rights of the defense, the court-martial system is the most acceptable forum in which to try these cases today.

III. Congress Must Take the Lead Now to Repeal the MCA

There is a reason why Law & Order is one of the longest-running shows on television. Trials are gripping, dramatic, and relatively easy to follow. Unlike detention, which involves little drama and no grand moment of resolution, a trial has developments, recognizable characters, and a climax in the form of a verdict. The military trials of the suspected terrorists housed at Guantanamo will be watched by the world because each trial is a self-contained, symbolic event. Yet we must not forget that in these trials, the United States, not just the detainees it is prosecuting, is also facing judgment.

Changing the background set from Guantanamo to a United States military base will not ultimately change the verdict, but it will provide at least an appearance of good

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faith and greater fairness. It is a crucial first step—arguably even more important than the repeal of the habeas-stripping provisions in the MCA and DTA. Still, with the world watching, Congress must be sure that these trials measure up to the substantive standards, both constitutional and moral, against which we judge our own court system.

The Administration clings to the belief that Guantanamo is a legal black hole where literally none of the protections of the American constitution apply. This short-sighted theory is directly responsible for the MCA's unconstitutional provisions, and it will corrupt these important trials. Such views must be repudiated and replaced with an appropriate system that reflects the traditions and values of Americans, one built upon the recognition that the war on terror will only be won with the world – and justice – at our side, not at our back.

As I have argued, the likelihood of an adverse Supreme Court ruling on the MCA is high, and Congress will need to return to the drawing board. Intense discussion and compromise followed the Supreme Court decisions in *Rasul* and *Hamdan*, and ultimately Congress updated the law, much the way doctors re-engineer a vaccine, as if the Constitution were a persistent viral strain coming back to haunt it. This Congress has the choice of getting ahead of the curve to rework the law now, and thereby design a habeas procedure that is consistent both with our national security goals and the Constitution, or it can wait for yet another Court decision and return to cutting corners and erasing words and commas.

Senator Arlen Specter, former Chair of the Senate Judiciary Committee, put it bluntly: "While this exchange of ideas is surely healthy and appropriate, the conversation has begun to generate diminishing returns."[29] No detainee has been tried in the five and a half years since the war on terror began. International perception of the United States remains embarrassingly low for a country that has always been the world's champion of democracy and the rule of law.

I ask the members of this Committee to realize the power that lies in your hands—the power to ensure the safety of our troops and the dignity of the nation and values they defend. As Senator John Warner eloquently put it last summer, "The eyes of the world are on this nation as to how we intend to handle this type of situation and handle it in a way that a measure of legal rights and human rights are given to detainees."[30] The world's scrutiny is specifically targeted at our handling of Guantanamo Bay, and I applaud Secretary Gates and all others in our government who recognize that the only thing worse than making a mistake is failing to correct it when you still have the chance.

Thank you.

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[29] Brief Amicus Curiae of United States Senator Arlen Specter in Support of Petitioners at 19, Boumediene v. Bush, No. 06-1195 (March 2007).

[30] Remarks of Sen. John Warner, *Hearing on the Future of Military Commissions to Try Enemy Combatants*, July 13, 2006.

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TESTIMONY OF
ELISA MASSIMINO

WASHINGTON DIRECTOR
HUMAN RIGHTS FIRST

HEARING ON

THE MILITARY COMMISSIONS ACT AND THE FUTURE OF DETENTION AT GUANTANAMO BAY

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ARMED SERVICES

MARCH 29, 2007

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Introduction

Chairman Skelton, Congressman Hunter and Members of the Committee, thank you for inviting me to be here today to share the views of Human Rights First on these issues of such importance to our Nation. We have appreciated the opportunity to work with your office, Mr. Chairman, as well as with others on the Committee, as you consider how best to ensure that U.S. policy on the detention, interrogation and trial of terrorist suspects is effective, humane and consistent with our laws and values.

My name is Elisa Massimino, and I am the Washington Director of Human Rights First. For the past quarter century, Human Rights First has worked in the United States and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; help build a strong international system of justice and accountability; and work to ensure that human rights laws and principles are enforced in the United States and abroad.

I. Guantanamo: A Failed Policy

The issue facing you today is one of great urgency and import. The policy of detention, interrogation and trial of terrorist suspects at Guantanamo has been a failure and it is, I respectfully submit, your job to fix it. The decision to hold detainees at Guantanamo in the first place was driven at least in part by a desire on the part of the Administration to insulate U.S. actions taken there – detention, interrogation, and trials – from judicial scrutiny, and even from the realm of law itself. Early on, one administration official called Guantanamo "the legal equivalent of outer space." That goal – to create a law-free zone in which certain people are considered beneath the law – was illegitimate and unworthy of this nation. And any policy bent on achieving it was bound to fail.

The policy at Guantanamo has been a failure in several important respects. First, and most obviously, it has failed as a legal matter. The Supreme Court has rejected the government's detention, interrogation and trial policies at Guantanamo every time it has examined them. And it likely will do so again.

Military commissions at Guantanamo have also failed to hold terrorists accountable for the most serious crimes. Unless you count the guilty plea this week of the Australian David Hicks who, after five years in U.S. custody pled guilty to a crime (material support for terrorism) that didn't exist in the laws of war at the time Hicks allegedly committed it, the system has failed to bring a single terrorist to justice.

In addition, fueled by the assertion that it was a "legal black hole," Guantanamo became the laboratory for a policy of torture and calculated cruelty that later migrated to Afghanistan and Iraq and was revealed to the world in the photographs from Abu Ghraib. These policies aided jihadist recruitment and did immense damage to the honor and

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reputation of the United States, undermining its ability to lead and damaging the war effort.

But perhaps most importantly from a security perspective, the policy at Guantanamo – which treats terrorists as "combatants" in a "war" against the United States, but rejects application of the laws of war – has had the doubly pernicious effects of degrading the laws of war while conferring on suspected terrorists the elevated status of combatants.[1]

By taking the strategic metaphor of a "war on terror" literally, the United States Government has unwittingly ceded an operational and rhetorical advantage to al Qaeda, allowing them to project themselves to the world – including to potential recruits and a broader audience in the Middle East – as warriors rather than criminals.

Khalid Sheik Mohammed reveled in this status at his "combatant status review tribunal" hearing at Guantanamo two weeks ago. After ticking off an itemized list of 31 separate attacks and plots for which he claimed responsibility (including the 9/11 attacks and the murder of Daniel Pearl), he addressed – as if soldier-to-soldier – the uniformed Navy Captain serving as president of the military tribunal. Proudly claiming the mantle of combatant ("For sure, I am American enemies"), he lamented, in effect, that war is hell and in war people get killed: "[T]he language of any war in the world is killing…the language of war is victims." He compared himself and Osama bin Laden to George Washington ("we consider we and George Washington doing [the] same thing").

Those whose job it is to take the fight to al Qaeda understand instinctively what a profound error it was to reinforce al Qaeda's vision of itself as a revolutionary force in an epic battle with the United States. General David Petraeus, who took command of the Multi-National Forces in Iraq last month, oversaw the drafting of the Army's new Counterinsurgency Manual, which incorporates lessons learned in a variety of counterinsurgency operations, including Iraq. The Manual stresses repeatedly that defeating non-traditional enemies like al Qaeda is primarily a political struggle, one that must focus on isolating the enemy and delegitimizing it with its potential supporters, rather than elevating it in stature and importance. As the Manual states: "It is easier to separate an insurgency from its resources and let it die than to kill every insurgent… Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power."[2]

But U.S. counterterrorism policy has taken just the opposite approach. Prolonged detention at Guantanamo without access to judicial review, interrogations that violate fundamental human rights norms, and flawed military commissions have nurtured the "recuperative power" of the enemy. It is up to Congress to force a clean break from this misguided approach and begin to construct a counterterrorism policy that conforms to the

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[1] *See* Kenneth Anderson and Elisa Massimino, *The Cost of Confusion: Resolving Ambiguities in Detainee Treatment*, (Muscatine, Iowa: Stanley Foundation, March 2007) *available at* http://www.stanleyfoundation.org/publications/other/Mass_Ander_07.pdf.

[2] U.S. Department of Defense, FM 3-24/MCWP 3-33.5, Counterinsurgency, (December 2006), p. 1-23.

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logic of counterinsurgency operations, adheres to fundamental human rights standards and capitalizes on the advantages of our system of laws.

II. The Way Forward

A. Close Guantanamo

Human Rights First takes seriously the human rights and legal challenges posed by the ongoing detention of prisoners at Guantanamo. Closing the prison raises many complex questions about what to do with prisoners being held there – those the United States believes have committed crimes against it, and those being held without charge "until the end of the conflict." We have not been among the groups calling for closure of the prison over the last several years, in large part because, in our view, it matters less *where* prisoners are held than that their detention, interrogation and trial comport with U.S. and international law.

It is, however, beyond serious question – even among many who initially supported the decision to detain prisoners at Guantanamo – that Guantanamo has become an enormous diplomatic liability, impairing the capacity of the United States to lead the world, not only in counterterrorism operations but on many other issues of priority on which international cooperation is necessary. As Secretary of Defense Gates said last week, "There is no question in my mind that Guantanamo and some of the abuses that have taken place in Iraq have negatively impacted the reputation of the United States."[3] Indeed, Guantanamo has become an icon, in much the same way as the picture of the hooded Iraqi prisoner at Abu Ghraib has become an icon, a symbol of the willingness of this country – in the face of security threats – to set aside its core values and beliefs. Respect for the law and fundamental rights are not the only things that have disappeared into Guantanamo's "black hole" – American credibility is in there somewhere, too.

Of course, while it is important to take into consideration the views of our closest allies, all of whom have called on the United States to close the prison, no one argues that we should change U.S. policy simply because other nations don't like it. The most important questions this Committee should be asking about the current policy are: Is it smart? Is it working? Does it serve the overall objective? Does it comport with our laws and values? Guantanamo policy fails all those tests.

Secretary Gates is reported to have argued that the continued detention of prisoners at Guantanamo is undermining the war effort and that the prison should be shut down as soon as possible. His views echo the conclusion that has now been reached by a broad spectrum of national security policymakers and Members of Congress that, whatever its original utility, the policy at Guantanamo has outlived its usefulness. State Department and Pentagon officials quoted in the New York Times have said that U.S. policy at Guantanamo is "making it more difficult in some cases to coordinate efforts in

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[3] Karen DeYoung and Josh White, "Guantanamo Prison Likely to Stay Open through Bush Term," *Washington Post*, March 24, 2007.

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counterterrorism, intelligence and law enforcement."[4] Former Secretary of State Colin Powell stated at the Aspen Institute in July 2006 that "Guantanamo ought to be closed immediately," arguing that the value of continuing to hold the detainees was questionable while the price of holding the detainees was too high.[5] According to the Washington Post, former Attorney General John Ashcroft had argued that Guantanamo's liabilities outweighed its usefulness.[6]

Again, this is not surprising. As the Army's Counterinsurgency Manual states: "A Government's respect for preexisting and impersonal legal rules can provide the key to gaining widespread and enduring societal support...Illegitimate actions," such as "unlawful detention, torture, and punishment without trial...are self-defeating, even against insurgents who conceal themselves amid non-combatants and flout the law." [7]

Despite the self-defeating nature of the policy and the growing consensus that it should end, Administration spokespeople have said as recently as this week that the detention facility at Guantanamo will likely remain open throughout President Bush's term in office. Far from moving to close the facility, this week the Administration transferred a new detainee to Guantanamo, the first new arrival since 2004 (other than the fourteen former ghost detainees moved from secret prisons to the base in September of last year). The Administration asserts that the new transferee, Mohammad Abdul Malik, who reportedly confessed to involvement in the 2002 hotel bombing in Kenya, was sent to Guantanamo because he represents a "significant threat." It is increasingly clear, however, that the reason many detainees were sent to Guantanamo, rather than being indicted and tried in federal court, was not because that was the smartest or most strategic option available, but because it was the one that relieved the government of burden of making difficult choices. But if U.S. counterterrorism policy consists of detaining or killing everyone who harbors hostility towards the United States (and one hopes that is not the policy), we must face the reality that the 385 men at Guantanamo are a drop in that bucket, and that holding them there without charge or trial in fair proceedings will eventually mean that we will need to get a much bigger bucket.

It is up to Congress to solve this problem, and to chart a way out of the trap that Guantanamo has become, not only for the detainees who have been held there for so many years, but for U.S. counterterrorism policy itself. The first step is to shut it down.[8]

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[4] Thom Shanker and David E. Sanger, "New to Job, Gates Argued for Closing Guantánamo Prison," *New York Times*, March 23, 2007.
[5] David E. Sanger, "Setbacks Mark Turning Point on Bush's War Powers," *International Herald Tribune*, July 15, 2006.
[6] Karen DeYoung and Josh White, "Guantanamo Prison Likely to Stay Open through Bush Term," *Washington Post*, March 24, 2007.
[7] U.S. Department of Defense, FM 3-24/MCWP 3-33.5, Counterinsurgency, (December 2006), p. 1-22.
[8] While world attention has been fixated on Guantanamo as the embodiment of U.S. misconduct in counterterrorism policy, Guantanamo is not the only prison with which Congress should be concerned. The continued assertion by the President, even after passage of the Military Commissions Act of 2006, of the authority to seize individuals anywhere in the world and hold them in secret prisons without access to the Red Cross or notification to their families is every bit as – if not more – troubling than the prolonged detention at Guantanamo. Congress should ban the practice of holding ghost prisoners and force the

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B. Release or Transfer Detainees Not Charged with Crimes and Bring the Rest to the United States

Last July, President Bush said "I'd like to close Guantanamo, but I also recognize that we're holding some people there that are darn dangerous and that we better have a plan to deal with them in our courts." State Department lawyers continue to shop the world for countries that will agree to take the Guantanamo detainees off our hands, but this attempt to sell the Guantanamo problem "retail" is inadequate and unsatisfactory as it leaves U.S. policy at the mercy of other governments, many of whom have no interest in helping.

Despite the growing sense even inside the Administration that the Guantanamo policy is hurting U.S. interests, paralysis has set in and no one in the Administration appears to be prepared to move. Part of the reason for this is that the current system lacks incentives that would force decisions about who to try and who to release. Under current policy, detainees at Guantanamo can be held without trial for an indefinite period. If they are tried and convicted in a military commission, they remain in detention; if they are tried and acquitted, they may also remain in detention.

If the detainees were brought to the United States, that incentive structure would change, and there would be a new sense of urgency to separate those who the United States suspects of having committed crimes against it from those it does not. Detainees not suspected of having committed crimes against the United States should be released to their home countries, if possible, in accordance with U.S. obligations under international human rights and humanitarian laws. Where release to the home country is not possible (for example, because there is a fear that a detainee will be subjected to torture), detainees should be released to a third country in accordance with U.S. obligations under international human rights and humanitarian laws.

U.S. allies, particularly the Europeans who have called most loudly for the prison to be closed, should do much more to help on this score. The United States climbed into this box alone, but its allies have a shared responsibility to help it get out; this is more than just a U.S. problem now. Manfred Nowak, the Austrian U.N. special rapporteur on torture, has urged that European governments assume greater responsibility for helping with third country resettlement of these people. "Europe should help empty it," Nowak has said. "No country is eager to accept people who are accused of having al-Qaeda links. But there should be burden-sharing." We agree.

If a detainee is suspected of having committed a crime in his home country or a third country, he may be transferred there for prosecution in accordance with international human rights and humanitarian laws.

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closure of any place of detention in which the U.S. holds prisoners in violation of international human rights and humanitarian law.

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Detainees suspected of having committed crimes against the United States should be prosecuted, either in a court martial, a military commission that complies with fair trial requirements, or in regular criminal court, depending on the status of the detainee and the type of situation involved. The challenges of prosecuting terrorism cases is addressed further below.

C. Restore Habeas Corpus

My colleagues on this panel will address in detail the constitutional arguments for repealing the MCA's habeas-stripping provisions and for restoring habeas corpus to detainees at Guantanamo, and I will not repeat them here. I strongly concur in those arguments and in the recommendation that Congress should move swiftly to restore habeas to detainees at Guantanamo.

It is worth noting, however, that the debate in Congress about whether detainees at Guantanamo are or should be entitled to raise habeas claims has to a large extent been a dialogue of the deaf. On one side is the argument that granting habeas rights to Guantanamo detainees would be unprecedented; prisoners of war have never been entitled to access to the courts to challenge their detention. On the other is the assertion that anyone in U.S. custody is entitled under the Constitution to habeas corpus, a vital mechanism to check the excesses of executive power against the individual, which can only be suspended "when in Cases of Rebellion or Invasion the public Safety may require it," something Congress has authorized only four times in the Nation's history: the Civil War; in the immediate aftermath of the Civil War to quell rebellions in South Carolina; in the Philippines during a rebellion; and temporarily in Hawaii immediately after the attack on Pearl Harbor

Both sides are right in a way. But the argument against habeas here assumes its premise – that the detainees at Guantanamo are all properly considered wartime prisoners whose detention is regulated by the laws of war. The past five years have clearly shown that some of the detainees have been wrongly held. Habeas corpus is the safety net designed to ensure that a person deprived of liberty is lawfully detained. Unfortunately, the debate over habeas has been contentious in large part because of the misguided insistence on shoe-horning these detainees into a combatant framework. Once you step outside of that framework, it is clear that habeas is required.

D. Amend the Definition of Enemy Combatant

Even if Congress restores the right to habeas for detainees at Guantanamo, however, it should not use that as an excuse to defer to the courts on the critical issue of what constitutes an enemy combatant. The Military Commissions Act defines a combatant not only as those who take part in hostilities, but includes people who "purposefully and materially" support hostilities against the United States, including people arrested far from the battlefield. This definition converts people who would never be considered combatants under the laws of war – such as a doctor who operates on a wounded rebel or a permanent resident of the United States who commits a criminal act

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completely unrelated to armed conflict – into "combatants" who can be placed in military custody and tried by a military commission. Even more troubling, the MCA deems anyone – regardless of whether they fit the above definition – who has been determined to be an "unlawful enemy combatant" based on a determination of a combatant status review tribunal or "another competent tribunal" established by the president or the secretary of defense to be an enemy combatant. This "you're a combatant if we say you are" approach not only flies in the face of established humanitarian law, it has ramifications that go far beyond the status of detainees at Guantanamo.

Under the laws of war, combatants may in most situations be lawfully attacked and killed; civilians (unless they take part in hostilities) cannot. The MCA definition blurs that vital distinction, with potentially dangerous consequences. Congress should consider carefully the precedent it will set if this definition is allowed to stand. For example, is it in the interest of the United States to endorse a definition of enemy combatant that would allow Russian President Vladimir Putin to pick up anyone he deems to have provided "material support" to the Chechens (as many human rights NGOs in Russia who document abuses in Chechnya could be under this broad definition) and treat them as if they were combatants? Would we be comfortable with the Chinese government using this definition to label peaceful Uighers as enemy combatants? Or President Uribe in Colombia, who earlier this year described some members of the political opposition as "terrorists in business suits?" What about the American citizen in Kenya, cleared by the FBI of terrorist connections, but deemed by the Kenyan government to have "engaged in guerrilla war against the democratically elected government" of Somalia and rendered last month by the Kenyans to Ethiopia?

E. Repeal the MCA

In July of last year, I testified before the Senate Armed Services Committee which was at that time deliberating how to try terrorist suspects in the wake of the Supreme Court's ruling in the *Hamdan* case that the Administration's military commissions were unlawful. At that hearing, I argued that terrorist suspects at Guantanamo should be tried either pursuant to the rules for courts martial under the UCMJ or in regular federal courts. Such trials would satisfy the requirement of the laws of war – and of our own laws – that sentences be carried out pursuant to a "previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."[9] That remains our view.

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[9] *See* Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field, Aug. 12, 1949, *entered into force* Oct. 21, 1950, *6 U.S.T. 3217,* 75 U.N.T.S. 31, *available at* http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/fe20c3d903ce27e3c125641e004a92f3; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, *entered into force* Oct. 21, 1950, *6 U.S.T. 3217,* 75 U.N.T.S. 85, *available at* http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/44072487ec4c2131c125641e004a9977; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, *entered into force* Oct. 21, 1950. *6 U.S.T. 3316,* 75 U.N.T.S. 135, *available at* http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68; Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Aug. 12, 1949, *entered into force* Oct. 21, 1950, *6 U.S.T. 3516,* 75 U.N.T.S. 287, *available at* http://www.icrc.org/ihl.nsf/7c4d08d9

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Human Rights First opposed the Military Commissions Act. Even some Members of Congress who voted for it did so while expressing the hope that the courts would step in to remedy its many defects.

With respect, Mr. Chairman, this is no way to run a railroad. Congress should not wait for the courts to come to the rescue, nor should it merely tinker with the machinery of military commissions. Instead, Congress should scrap the Military Commissions Act altogether, and embrace its responsibility to ensure that suspected terrorists are brought to justice in proceedings worthy of this country.

The defects of the MCA are many and have been well-documented by Human Rights First and others. They encompass issues beyond those related to the rules for military commissions, including unconstitutional restrictions on habeas, an overly broad definition of enemy combatant, a narrowing of the scope of acts punishable as war crimes and significantly undermining the means of enforcing compliance with the Geneva Conventions. One approach Congress could take would be to identify a list – and we certainly have one – of the most egregious flaws and amend the statute to fix them.

The Military Commissions fly in the face of 200 years of U.S. court decisions by permitting evidence obtained through coercion – including cruel, inhuman and degrading treatment, if obtained before December 20, 2005. A coerced statement can be admitted if found to be "reliable," sufficiently probative, and its admission is "in the interest of justice," and if the interrogation techniques used to obtain the information are classified, it could be extremely difficult for a defendant to show that coerced evidence should not be admitted. Although evidence obtained through torture is not permitted in Military Commissions, there is an increased likelihood that convictions may rest on such evidence because the rules allow for coerced evidence and hearsay and permit the prosecution to keep sources and methods used to obtain evidence from the defendant.

In violation of a fundamental tenet of the rule of law, defendants before a Military Commission can be convicted for acts that were not illegal when they were committed. Basic due process requires that a person cannot be held criminally responsible for an action that was not legally prohibited at the time it was taken. But Military Commissions may punish individuals for offenses — including the crimes of conspiracy and "providing material support for terrorism" — that were either (i) not illegal before the passage of the MCA, or (ii) not recognized as war crimes under the laws of war.

The scope of judicial review of Military Commissions decisions is restricted and inadequate. The review by the initial appeals court, the Court of Military Commission Review, is limited only to matters of law (not fact) that "prejudiced a substantial trial right" of the defendant. This provision would prevent the first appellate court, the U.S. Court of Appeals for the District of Columbia, and the U.S. Supreme Court from

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considering factual appeals, including possible appeals based on a defendant's factual innocence.

Finally, the Military Commission rules for classified evidence are so broad that they would prevent the defense from seeing evidence that tends to show innocence or a lack of responsibility. Upon the request of the government, the judge may exclude both the defendant and his lawyer from the process in which the government argues to the judge that classified information should be withheld. The government has no duty to disclose classified information that could result in a more lenient sentence for the defendant. The judge is specifically permitted to limit the scope of examination of witnesses on the stand, which could hamper the ability of the defense to challenge a witness's testimony or basis for classification.

One of the most telling indictments of the original military commissions was the way the ad hoc and constantly-changing system looked up close, in practice. It often looked as if the rules were being written in real time, the very antithesis of the rule of law. Unfortunately, little has changed under the new MCA system. This week, a Human Rights First staff member is at Guantanamo for the first proceedings under the newly constituted MCA commissions, and it is clear that there is little to distinguish the new system from the old. Even after the issuance of a military commissions manual, the fundamental ad hoc character of the system has not changed.[10]

There is no question that the commissions are staffed by many talented, dedicated and honorable service personnel. But the system itself is illegitimate, and no amount of good will or good lawyering can change that. It is abundantly clear from our observations why Common Article 3 of the Geneva Conventions requires, as a prerequisite for passing sentences and carrying out executions, trials by a "regularly constituted court." The post-MCA system in operation at Guantanamo does not come close to passing that test.

F. Try Suspects in Courts Martial or Federal Courts

As you recently remarked, Mr. Chairman, "The last thing that we would want is to convict an individual for terrorism and then have that conviction overturned because of fatal flaws in the Military Commissions law passed in the previous Congress." We agree. That risk is quite real. Khalid Sheik Mohammed would likely have few defenses in a fair

[10] For example, on Monday morning, defendant David Hicks had three civilian lawyers; by the end of the day, he had only one. Why? One of his civilian defense counsel was told he would have to sign a form, created by the judge, vowing to comply with DOD regulations for civilian defense counsel. But the regulations have not yet been issued by DOD. So the lawyer, reluctant to agree to rules he had not seen for fear of risking ethical violations, agreed to abide by "existing" rules for civilian defense counsel. That wasn't good enough. The judge told the lawyer he could not represent Hicks, though he could sit at counsel table and consult. Another member of the defense team was excluded by the judge based on his interpretation of a contested – and poorly drafted – provision of the rules for military lawyers detailed to represent detainees.

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trial. But in a military commission under the current rules, he will have the defense that the trial is not fair. The United States can deprive him of that defense by moving his trial to either a court martial or, preferably, to a regular federal criminal proceeding. That not only would guard against the risk you identified, but it is just smart counterterrorism policy. As the Counterinsurgency Manual points out, "to establish legitimacy, commanders transition security activities from combat operations to law enforcement as quickly as feasible. When insurgents are seen as criminals, they lose public support."

Trials in federal court would also offer the advantage of a venue capable of exercising jurisdiction over a much broader spectrum of criminal conduct. The decision to treat terrorism suspects as "enemy combatants" was made in order to justify targeting, detention and trial practices that could not be supported outside of an armed conflict paradigm. There are many reasons, legal and practical, why this decision was, and continues to be, a mistake. One reason is that it has led to the establishment of military commissions that have jurisdiction only over war crimes, limiting the offenses with which terrorist suspects can be charged. This limitation led the administration and Congress to try to expand the jurisdiction of military commissions to include acts such as intentionally causing serious bodily injury; mutilating or maiming; murder and destruction of property in violation of the law of war; terrorism; material support for terrorism; and conspiracy that do not constitute war crimes by simply *calling them* war crimes.

These acts are not criminal under the laws of war if the targets are legitimate military objectives. And though they are war crimes if committed "in violation of the laws of war," it appears from the charges brought so far that they are erroneously being construed to include any act of unprivileged belligerency, which is not a violation of the laws of war. Application of these new crimes to events that occurred before the passage of the law is a textbook violation of the prohibition of ex post facto prosecution, raising additional and legitimate bases for defense counsel to challenge the military commission convictions. These problems can be avoided by using civilian criminal courts and the broader spectrum of established criminal laws available there.

On the other side of the ledger, those who insist that it would be impossible to try terrorist suspects in the federal courts say that such trials would be too dangerous for judges, juries and witnesses. But the risks of reprisals against juries, witnesses, and judges – while extremely serious – is certainly nothing new.

The judiciary has long taken measures to prevent threats of violence from undermining the trial process. We protect those involved in the trial of murderous mob bosses through witness relocation, anonymous juries, and employing the Marshal Service for the safety of judges. We secure courtrooms with Plexiglas shields, extra layers of security screening, metal detectors, and additional police. Our experience with prosecution of organized crime, including violent members of drug cartels throughout much of the 20th Century, indicates that terrorism cases present no unique challenge in this realm.

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Those skeptical of the feasibility of moving these cases to federal court also assert that such prosecutions would force the government to reveal classified information to the defense in order to satisfy constitutional requirements for a fair trial. Leaving aside the fact that terrorist suspects *are* being tried in the federal courts, these are serious concerns that should be explored and fully addressed. But the fact that terrorism cases pose difficult challenges for the criminal justice system should not preclude trials from proceeding successfully to conviction without damage to sensitive information. Given the enormous strategic and political costs of the alternative – the status quo – it is incumbent upon those who would abandon the criminal justice system to demonstrate why the existing procedures, such as the Classified Information Procedures Act (CIPA), designed to protect against such disclosures are insufficient to protect the government's legitimate interests in these cases. Many judges believe that these procedures are adequate to meet the special challenges presented by terrorism cases. Judge Royce Lamberth recently remarked: "I have found the Classified Information Procedure Act to provide all the tools that I have needed as a district judge to successfully navigate the tricky questions presented in spy cases, as well as terrorist cases." In fact, of the hundreds of CIPA motions filed in criminal cases since the law came into effect, there have been no reversible errors found on appeal. Human Rights First is studying these issues carefully. We urge Congress to consider them as well and to explore whether amendments to CIPA or other measures are needed in order to move forward with these prosecutions in federal court.

Conclusion

How we treat terrorist suspects – including how we try them – speaks volumes about who we are as a nation, and our confidence in the institutions and values that set us apart. The distinction between the United States and its terrorist enemies has narrowed over the course of this conflict. This is in part because of lapses in U.S. compliance with human rights norms, but also because U.S. counterterrorism policy has unwittingly elevated al Qaeda by treating it as a military adversary contending with the United States on a global battlefield.

Four years ago, when Judge William Young sentenced al Qaeda terrorist Richard Reid to life plus 110 years in federal prison, this is what he said:

> We are not afraid of any of your terrorist co-conspirators, Mr. Reid. We are Americans. We have been through the fire before. There is all too much war talk here. And I say that to everyone with the utmost respect.
>
> Here in this court where we deal with individuals as individuals, and care for individuals as individuals, as human beings we reach out for justice.
>
> You are not an enemy combatant. You are a terrorist. You are not a soldier in any war. You are a terrorist. To give you that reference, to call you a soldier gives you far too much stature. Whether it is the

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officers of government who do it or your attorney who does it, or that happens to be your view, you are a terrorist.

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So war talk is way out of line in this court. You're a big fellow. But you're not that big. You're no warrior. I know warriors. You are a terrorist. A species of criminal guilty of multiple attempted murders.

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You're no big deal.[11]

Some administration officials argue that adhering to these standards of justice and the rule of law is too great a liability. They say that these rules make for an unfair fight – we fight with one hand tied behind our backs while the enemies do as they please. But while terrorists employ methods that we abhor, we too have an advantage in that asymmetrical conflict: our institutions and values set us apart from our enemies. The goal of terrorists, as Will Taft, the former Legal Advisor to the Department of State described it, is the "negation of law."[12] Yet in many ways, that same impulse – the "negation of law" – was the genesis of the detainee policies at Guantanamo. It is time for a clean break from those policies. This Congress has the opportunity to set a new course, one that takes seriously the long and difficult road ahead in combating the threat of terrorism, while recognizing that adherence to our values and our system of laws is a source of strength in that effort.

Thank you.

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[11] CNN.com, "Reid: 'I am at war with your country'," *CNN.com*, January 31, 2003 at http://www.cnn.com/2003/LAW/01/31/reid.transcript/.

[12] William H. Taft, *The Law of Armed Conflict After 9/11: Some Salient Features*, 28 YALE J. INT'L L. 319 (2003).

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Hearing Before the House Committee on Armed Services

Re: The Strengths and Weaknesses of the Military Commissions Act of 2006 and the Future of the Detention and Interrogation Facilities at the U.S. Naval Station, Guantanamo Bay, Cuba.

March 29, 2007

Prepared Statement of Patrick F. Philbin, former Associate Deputy Attorney General, U.S. Department of Justice.

Chairman Skelton, Ranking Member Hunter, and Members of the Committee, I appreciate the opportunity to address the matters before the Committee today. Both the Military Commissions Act of 2006 ("MCA"), and recent proposals to amend it, and the continued use of the U.S. Naval Base at Guantanamo Bay, Cuba as a detention facility are exceedingly important issues for the Nation's conduct of the continuing armed conflict with al Qaeda and associated terrorist forces. I gained significant expertise with respect to both military commissions and Guantanamo Bay during my service at the Department of Justice from 2001 to 2005. My duties both as a Deputy Assistant Attorney General in the Office of Legal Counsel and, subsequently, as an Associate Deputy Attorney General involved providing advice on many issues related to military commissions, the detention of enemy combatants at Guantanamo Bay, and the creation of the military's procedures for reviewing detentions through both Combatant Status Review Tribunals and annual Administrative Review Boards. Since my return to the private sector, I have continued to follow the developments in this area with interest.

In addressing the topics before the Committee, I intend to make two basic points.

First, in the MCA, Congress has already crafted a set of procedures for military commissions that is both unprecedented in its detail and fully adequate to satisfy all legal requirements, including those specified by the Supreme Court in *Hamdan v. Rumsfeld*, 126 S. Ct.

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2749 (2006). As a result, under the MCA, military commissions are finally poised to proceed more than six years after the President originally issued the order providing for their creation. Indeed, just this Monday, David Hicks entered a guilty plea in the first military commission proceeding initiated under the new rules of the MCA, and by the end of this week it is likely that a conviction will be entered in his case. At this juncture, when the process is finally starting to work, changes to the MCA should be made only if they are required either by a compelling legal need to remedy some constitutional infirmity in the statute or by an imperative operational need of the military. In my view, the changes that some Senators and Members of Congress have proposed are not justified by either necessity. Instead, they would only add confusion to a workable system and further delay the day when military commissions become fully operational.

Second, with respect to Guantanamo Bay, the only feasible alternative to holding enemy combatants at Guantanamo would be bringing them onto U.S. soil. That, in my view, would be a gravely misguided policy choice for at least three reasons. First, as a practical matter it would raise a serious security concern for whatever facility was constructed to house the detainees and for the vicinity around that facility. Second, it would likely materially alter the detainees' legal rights. Under current law, aliens detained outside the United States do not have rights under the Constitution. Once they are brought onto U.S. soil, however, the detainees arguably will have constitutional rights, and that change in status will inevitably spawn a completely new round of litigation. That will only further drain resources from the military and divert attention from the military mission of detaining the enemy combatants to prevent them from rejoining the fight. Third, and finally, simply moving the detainees to the United States will not achieve one of the primary stated objectives of closing Guantanamo — namely, silencing the chorus of criticism the United States receives in the international community and thereby repairing strained relations

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with foreign partners. International criticism does not depend primarily on the *place* where enemy combatants are detained. Instead, at bottom, it rejects the fundamental legal paradigm under which the United States asserts the right to detain individuals as enemy combatants (and, hence, without charge) in the armed conflict with al Qaeda. Unless the United States is prepared to abandon the entire law-of-war framework governing the conflict with al Qaeda — which I strongly believe it should not do — simply moving the detainees to the U.S. is likely to accomplish little in appeasing critics in the international community.

In addressing these issues, I want to emphasize a theme that I believe is too often lost when debate focuses on specific proposals for altering military commission procedures or providing other procedural protections for the enemy combatants at Guantanamo. The proper touchstone for judging the mechanisms the military uses in detaining enemy combatants or in prosecuting enemy combatants for war crimes is not the full panoply of protections provided in criminal trials in Article III courts. Military commissions are part and parcel of the conduct of war and their procedures have always been flexible enough to be adapted to the exigencies of war. Although the United States must ensure that it provides full and fair trials that comply with all of its treaty obligations, it also should not lose sight of the fact that fair trials under the law of war need not replicate the full protections provided by the Constitution in an American criminal court.

I. The Military Commissions Act of 2006 and Proposed Amendments

A. Background

The current debate about amendments to the MCA can be fully understood only in the context of the history — including the series of Supreme Court decisions and congressional responses — that led to the passage of the MCA in 2006. A brief synopsis of that history is thus warranted.

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In late 2001, the President determined that military commissions should be convened to try captured enemy combatants in the conflict with al Qaeda for violations of the laws of war. As administration officials explained to Congress at the time, multiple considerations made military commissions rather than our domestic criminal justice system the most appropriate forum for prosecuting enemy combatants. In part, using military commissions, which are the standard mechanism the Executive has always used for war crimes trials, acknowledged the fundamental fact that the struggle with al Qaeda was not simply a matter a of criminal law enforcement — it had risen to the level of an armed conflict to which the laws of war would apply.

In addition, the circumstances of war-fighting in which enemy combatants are captured and interrogated and in which documents and computers are seized are not remotely adapted to satisfying the strict requirements of the Constitution in later bringing a criminal prosecution in an Article III court. For example, enemy combatants are properly interrogated without a lawyer present, but would that mean that under *Miranda* their statements could not be used? Statements made by other enemy combatants might be useful in the trial of a different accused, but would a record of those statements be barred by hearsay rules? Soldiers raiding an al Qaeda hideout will seize for intelligence purposes materials that might later become "evidence," but they are not concerned (nor should they be) with establishing a chain of custody as FBI agents at a crime scene would. And there was a concern that classified information could not adequately be protected in regular criminal trials. Precisely because the circumstances in fighting a war are always different from those in investigating a crime in our domestic system, military commissions have always been the standard mechanism used for prosecuting war crimes. Thousands of commissions were convened in Europe and the Far East after World War II, and

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(to give just one example) the orders convening those commissions routinely called for flexible evidentiary rules, permitting the admission of "such evidence as in [the commission's] opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man."[1] That practice reflected what the Supreme Court later acknowledged was one of the characteristics of military commissions; namely, that their procedure "has been adapted in each instance to the need that called it forth." *Madsen v. Kinsella*, 343 U.S. 341, 347-48 (1952).

In early 2002, the Department of Defense began detaining enemy combatants seized overseas in operations in Afghanistan at the Naval Base at Guantanamo Bay, Cuba. In addition to the ideal attributes Guantanamo provided from a security perspective and other reasons, the decision to use Guantanamo was based, in part, on reliance on a clear-cut decision from the Supreme Court handed down shortly after World War II holding that aliens seized and detained outside the United States had no right to file habeas corpus petitions in United States courts. That decision was *Johnson v. Eisentrager*, 339 U.S. 763 (1950). When detainees at Guantanamo began to file habeas petitions in federal court, therefore, the Government relied on *Eisentrager* to argue that no federal court had jurisdiction to entertain the petitions.

The Supreme Court ultimately disagreed with that position and in *Rasul v. Bush*, 542 U.S. 466 (2004), concluded that the habeas statute, 28 U.S.C. § 2441, extended jurisdiction to habeas petitions filed by detainees held at Guantanamo. The Court made clear, however, that its holding was based on an interpretation of the habeas statute – not upon the Constitution. *See, e.g., Rasul*, 542 U.S. at 484 ("We therefore hold that § 2241 confers on the District Court jurisdiction to hear

[1] Regulations Governing the Trial of War Criminals, General Headquarters, United States Army Forces, Pacific, 24 September 1945.

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petitioners' habeas corpus challenges to the legality of their detention at Guantanamo Bay Naval Base.").

At the same time the Court decided *Rasul*, it also decided *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), a decision relevant here primarily for one thing: in it, the plurality outlined the type of procedures that, in keeping with the Due Process Clause of the Constitution, the military could employ to determine to detain an *American citizen* as an enemy combatant in the United States.

The Government responded to these decisions in several ways. The Department of Defense soon promulgated a new procedure – a Combatant Status Review Tribunal or "CSRT" – that would review the determination of enemy combatant status for every detainee at Guantanamo. The CSRTs were modeled in part on the hearings used to determine POW status of captured combatants under the Geneva Conventions. They were also designed to meet the procedural requirements that the Supreme Court in *Hamdi* had suggested would be sufficient to provide due process to a U.S. citizen held in the United States, even though such procedures were not required for the aliens held at Guantanamo. In addition, prior to these decisions, DOD had recently announced another mechanism for reviewing the detention of those at Guantanamo – the Administrative Review Board or "ARB." The ARBs provide a yearly review of the detention of every enemy combatant and, by assessing the threat each continues to pose, provide a determination of whether continued detention is warranted for each combatant.

Congress also responded to the *Rasul* decision by passing the Detainee Treatment Act of 2005 ("DTA"). In addition to defining standards for treatment of detainees, the DTA eliminated habeas jurisdiction for petitions filed by detainees at Guantanamo. In its place, it provided for judicial review in the United States Court of Appeals for the District of Columbia Circuit for

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both the decisions of CSRTs and the decisions of military commissions.[2] Providing such review in regular civilian courts for the decisions of military tribunals was an unprecedented move. Particularly with respect to CSRTs it bears emphasis that the military's determination to detain an alien overseas as an enemy combatant in an armed conflict has never been reviewable in civilian court, and certainly not under the scope of review provided by the DTA, which allows the D.C. Circuit to review whether the CSRT's determination was supported by a preponderance of the evidence and to hear all legal claims under the Constitution and laws of the United States. DTA § 1005(e)(2)(C).

Despite the elimination of habeas jurisdiction in the DTA, the Supreme Court concluded in 2006 that habeas jurisdiction still existed over cases pending when the DTA was passed, and in *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006), struck down the procedures the military had promulgated for conducting military commissions. Once again, the Court's decision was based on statutory, not constitutional grounds, and rested primarily on the conclusion that procedures for the military commissions violated provisions of the UCMJ.

In response, Congress passed the MCA of 2006. In it, Congress closed the jurisdictional loophole that had allowed the *Hamdan* case to proceed by making clear that the elimination of habeas jurisdiction for detainees at Guantanamo applied to *all* cases, including those pending on the date of enactment. In addition, Congress established by statute a detailed procedural framework for the conduct of trials by military commission.

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[2] Although the DTA originally made review in the D.C. Circuit of some military commission decisions discretionary, the MCA has since changed that provision and now makes all final military commission decisions reviewable in the D.C. Circuit as of right.

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The latter was an extraordinary step, but probably a necessary one to ensure that military commissions would finally begin to dispense justice to some of the enemy combatants detained at Guantanamo. Although military commissions have been used almost since the Founding of the Republic, they have traditionally been created, and their procedures determined, wholly by the Executive. As the Supreme Court explained in *Madsen v Kinsella*, 343 U.S. 341, 346-48 (1952), "[s]ince our nation's earliest days, such commissions have been constitutionally recognized agencies for meeting many urgent government responsibilities related to war. They have been called our common law war courts. . . . Neither their procedure nor their jurisdiction has been prescribed by statute," but instead, "it has been adapted in each instance to the need that called it forth." The creation of a detailed set of statutory procedures for the military commissions was thus a measure without precedent in the Nation's history.

Congress was also careful in the MCA to remedy each of the defects identified by the Court (and even by justices not forming a majority) in *Hamdan*. By providing military commissions a statutory basis, the MCA ensures that the commissions are "regularly constituted courts" for purposes of Common Article 3 of the Geneva Conventions, *cf. Hamdan*, 126 S. Ct. at 2796-97, and, among other protections, it also ensures that the accused will have the right to be present at all proceedings and hear all evidence presented against him, *cf. Hamdan*, 126 S. Ct. at 2797-98 (Opinion of Stevens, J, joined by Souter, Ginsburg, and Breyer, JJ.).

As a result of this whole series of events, the unlawful enemy combatants detained at Guantanamo Bay, Cuba currently have available to them an array of procedural protections unprecedented in the history of warfare. Each has his status as an enemy combatant reviewed by a panel of officers in a CSRT according to procedures that were designed to meet the due process requirements that would be necessary for detaining a U.S. citizen as an enemy combatant in the

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United States. The detainee may appear before a board of officers; he may examine unclassified evidence to be considered by the board; he has the assistance of a Personal Representative to help him make his case; and he may call witnesses that are reasonably available. The CSRT's decision is then subject to review in the D.C. Circuit. In addition, each detainee has his detention reviewed once a year by an ARB, which assesses the extent to which the detainee continues to pose a threat and should be detained. Detainees who are charged before a military commission have a complete set of statutory procedures for their trials that – again in an unprecedented departure from past practice – include review by an Article III court.

The point that I would like to make to the Committee is that, given this unprecedented set of procedures, and the amount of time and delay it has already taken to get to this point, the wise choice for Congress now is to let the MCA work. Absent some compelling need for a change that is demanded by the Constitution, there is no need to make further modifications to the Act. Changes at this point will only further postpone the day when military commissions can begin to deliver justice.

B. Proposed Amendments to the MCA

Before I turn to the specifics of proposed amendments to the MCA, it is worth noting the titles of some the bills proposing amendments, because they reflect a fundamental premise that I believe is misguided. The bills bear titles such as "Restoring the Constitution Act of 2007." That title attempts to draw rhetorical force from the unstated assumption that aliens detained as enemy combatants outside the United States in the midst of an armed conflict have constitutional rights that have been taken away by the MCA and that should be "restored." As a matter of law, that is a fundamentally incorrect assumption. As a result, I think it provides a distorted basis for guiding congressional action in this area.

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The Supreme Court made clear more than fifty years ago in *Eisentrager* that aliens held outside the United States do not have rights under the Constitution. As the *Eisentrager* Court explained, if the Constitution conferred rights on aliens detained overseas as enemy combatants, "enemy elements . . . could require the American Judiciary to assure them freedom of speech, press, and assembly as in the First Amendment, the right to bear arms as in the Second, security against 'unreasonable searches and seizures' as in the Fourth, as well as rights to jury trial as in the Fifth and Sixth Amendments." 339 U.S. at 784. As the Court explained, "[s]uch extraterritorial application of organic law would have been so significant an innovation in the practice of governments . . . that it could scarcely have failed to excite contemporary comment." *Id.* But there is nothing in the records of the constitutional convention or contemporary practice to suggest that the Founders intended such a novel approach. Nothing in the Supreme Court's decisions since *Eisentrager* — including the recent decisions in *Rasul* and *Hamdan* — has disturbed these fundamental principles. To the contrary, in ruling in 1990 that the Fourth Amendment did not protect aliens outside our borders, the Court resoundingly reaffirmed the teaching of *Eisentrager*, stressing that in *Eisentrager* "our rejection of extraterritorial application of the Fifth Amendment was emphatic." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269 (1990); *see also Zadvydas v. Davis*, 553 U.S. 678, 693 (2001).[3] *Eisentrager*'s constitutional holding thus remains the law today.

As a result, clothing the debate about the MCA in the rhetoric of constitutional rights distorts the law and improperly obscures the fact that what is at stake here is not a matter of

[3] The same rule, following the Supreme Court's teaching, has been consistently applied in the courts of appeal. *See, e.g., People's Mojahedin Org. of Iran v. U.S. Dep't of State*, 182 F.3d 17, 22 (D.C. Cir. 1999) ("A foreign entity without property or presence in this country has no constitutional rights, under the due process clause or otherwise.").

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constitutional imperative. Instead, the issues at hand are policy choices for Congress to make about the best mechanisms for allowing the military to deal with enemy combatants in an ongoing armed conflict.

1. Providing habeas corpus for detainees at GTMO

One of the primary changes proposed for the MCA would restore jurisdiction of federal courts to hear habeas corpus petitions from enemy combatants at Guantanamo Bay. Such a change is not required by law, and it is certainly not called for by any practical necessity. To the contrary, it would serve only to add an unnecessary and confusing parallel avenue for judicial review of detentions in addition to that already provided in the DTA.

There is no merit to the idea that restoring habeas jurisdiction over claims brought by aliens held at Guantanamo Bay is somehow required by the Suspension Clause of the Constitution. That clause provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const., Art. I, sect. 9, cl. 2. That prohibition does not require any change to the MCA for at least two reasons.

First, as explained above, aliens held outside the United States have no rights under the Constitution, including under the Suspension Clause. The same reasoning that the Supreme Court applied in *Eisentrager* (and reaffirmed in cases such as *Verdugo-Urquidez*) to conclude that aliens overseas do not have rights under the Fifth Amendment applies equally to the Suspension Clause. If it did not, and aliens overseas did have a constitutional right to habeas review, there is no immediately apparent reason why the same right would not apply to aliens held in Iraq or in Baghram, Afghanistan (or to aliens held anywhere in the world any future war). Congress should be reluctant to adopt such a novel and extraordinarily expansive notion of constitutional rights.

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Second, even if aliens at Guantanamo had some rights under the Suspension Clause, the procedures provided in the DTA for judicial review of detentions (after a CSRT decision) fully satisfy any rights they may have. The purpose of the writ of habeas corpus is to provide judicial review for executive detention. As long as Congress provides some mechanism for securing that judicial review, the demands of the Suspension Clause are satisfied, whether or not the procedure is labeled a "habeas" proceeding. As the Supreme Court has explained, "the substitution of a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention does not constitute a suspension of the writ of habeas corpus." *Swain v. Pressley*, 430 U.S. 372, 381 (1977). Indeed, the Court has specifically noted that "Congress could, without raising any constitutional questions, provide an adequate substitute through the court of appeals." *INS v. St. Cyr*, 533 U.S. 289, 314 n.38 (2001). Congress has provided precisely such an adequate substitute here by providing for review in the D.C. Circuit of both the determinations of CSRTs and the final decisions of military commissions.

In fact, the DTA and the MCA provide even greater review than what has been available historically upon habeas challenges to a military tribunal decision in cases where habeas was available. In cases involving military commissions in World War II, the Supreme Court made clear that the function of habeas corpus was simply to test the jurisdiction of the tribunal to issue a decision, not to examine the correctness of its decision. *See Yamashita v. Styer*, 327 U.S. 1, 8 (1946) ("If the military tribunals have lawful authority to hear, decide and condemn, their action is not subject to judicial review merely because they have made a wrong decision on disputed facts. Correction of their errors of decision is not for the courts, but for the military authorities which are alone authorized to review their decision."); *see also Ex parte Quirin*, 317 U.S. 1, 25 (1942). In providing for review of constitutional and other claims, including the legal claim of

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insufficiency of evidence, the DTA and MCA actually provide the detainees at Guantanamo with far more judicial review than has traditionally been provided through habeas to those convicted by a military commission. The MCA thus certainly provides an adequate substitute for any constitutional right to habeas that the detainees could be found to have.

The Court of Appeals for the District of Columbia Circuit has recently rejected the claim that the MCA's elimination of habeas review for Guantanamo violates any constitutional provision. *See Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007). Following the longstanding precedent outlined above, the court ruled that the detainees have no constitutional rights under the Suspension Clause. *See id.* at 988-94. There is certainly no need for Congress to intervene to amend the MCA now when the courts are still in the midst of their review and the latest indication from the Court of Appeals is that the statute's habeas provisions suffer from no constitutional infirmity at all.

Re-establishing habeas jurisdiction over Guantanamo at this point, moreover, would simply generate confusion and wasteful litigation by creating a parallel avenue for legal challenges, but without clear standards to govern them. The Supreme Court recognized long ago the practical dangers that would be posed by permitting enemy combatants detained overseas free access to our courts to file petitions for habeas corpus. As the Court explained in *Eisentrager*, permitting such petitions "would hamper the war effort and bring aid and comfort to the enemy. . . . It would be difficult to devise a more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be a conflict between judicial and military opinion highly comforting to the enemies of the United

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States." 339 U.S. at 779. The initial rounds of habeas litigation on behalf of detainees at Guantanamo, culminating in the *Rasul* decision, proved that Justice Jackson's fears in *Eisentrager* were well founded.

After *Rasul*, however, Congress wisely alleviated the worst of these problems by providing orderly judicial review mechanisms that would proceed only after military decisions had been completed through military processes. Thus, it made the enemy combatant status determination of a CSRT reviewable in the D.C. Circuit and the final decision of a military commission reviewable in the same court. Opening the field up once again to unrestricted challenges under the general habeas statute will only generate a flood of litigation that will unnecessarily divert the resources of the military and the Department of Justice and eliminate the very advantages of an orderly process that Congress sought to achieve through the DTA and MCA. It would do so, moreover, without providing any clear guidance as to any *substantive* change in detainees' rights. To the contrary, presumably no substantive change in rights would be intended. But it would take years of litigation to establish that result.

Based on all of these considerations, there is simply no reason to return to the confusing legal landscape that existed before Congress created the well structured and orderly review mechanisms in the DTA and the MCA.

2. Prohibiting the use of testimony obtained by "coercion"

Another proposed amendment would alter the MCA's carefully balanced provisions regulating the use of statements obtained by some disputed degree of coercion. This amendment would simply ban all testimony obtained by "coercion." I believe such an amendment would be a grave error. It would needlessly deprive military commissions of reliable evidence that was obtained in compliance with all requirements of law and would spawn endless litigation over the meaning of the undefined term "coercion."

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The MCA, of course, rightly includes a categorical prohibition on the use of any evidence obtained by torture. 10 U.S.C. § 948r(b). That is not at issue here. In addition, the MCA takes a balanced approach to deal with the thorny issue of statements obtained through some lesser and disputed degree of coercion. For statements obtained after passage of the DTA, it prohibits the use of any statement obtained in violation of the DTA's standards of treatment. 10 U.S.C. § 948r(d). For statements obtained before passage of the DTA, it provides that the statement may be admitted only if the military judge finds that the statement is reliable and possesses sufficient probative value and "the interests of justice would be served by the admission of the statement into evidence." 10 U.S.C. § 948r(c). This approach wisely ties admissibility to the standards of conduct already provided by the DTA. And, for the period before the passage of the DTA, it ensures that the military judge will provide a safeguard against the use of statements obtained by methods that suggest a degree of pressure that might have produced false testimony.

Changing the MCA to prohibit any use of statements obtained by "coercion" would only sow confusion in military commission proceedings and generate further delay as new rounds of litigation would be needed to determine the meaning of "coercion." To begin with, Congress should recognize that virtually every detainee will assert that his statements (and those of others) were obtained by coercion. Al Qaeda training manuals instruct those who are captured to claim that they were *tortured*. The detainees will hardly fail to assert that their treatment amounted to some lesser level of "coercion."

More important, this provision would likely prove particularly confusing in litigation, because the concept of "coerced" testimony already has a well-developed meaning in the context of the protections provided by the Fifth Amendment in criminal prosecutions. But it would be absurd to apply the finely reticulated standards and presumptions that courts have developed

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under the Fifth Amendment in this context. That would require that any statement obtained without *Miranda* warnings be deemed coerced. Indeed, the very suggestion that all testimony obtained by "coercion" should be prohibited reflects, in my view, a misguided effort to carry over into the context of military commission trials for war crimes the mind-set and standards of the criminal law. War fighting is not the same as prosecuting criminals in the Article III court system. Everything about the detention and interrogation of an unlawful enemy combatant is – under the way we use the term in the criminal law – inherently coercive. But that does not mean that it violates the laws of war (including Common Article 3 of the Geneva Conventions), or the standards of treatment of the DTA. And it certainly does not mean that a military commission should be deprived of the evidence such an interrogation produces if a military judge deems it reliable.

Indeed, most Americans rightly expect that, in interrogating al Qaeda operatives, our military and intelligence services may use some methods that fall within the broad bounds of the term "coercive" – especially as that term is commonly understood when used in our criminal law. Some degree of coercion seems entirely appropriate when the objective is to obtain vital intelligence from a detainee such as Khalid Sheikh Mohammed – intelligence that could save potentially thousands of lives by preventing another attack like that of September 11th. There is a range of permissible conduct between prohibited "cruel, inhuman, and degrading treatment" and mere "coercion," and there is no basis in law or logic for Congress to deprive military commissions of evidence obtained by such lawful means.

Moreover, Congress should be wary that in setting standards for the admission of evidence in military commissions, it does not inadvertently affect the standards used in the vital task of obtaining intelligence from captured members of al Qaeda. Under the MCA, the

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standards for admissibility of evidence and the standards governing interrogators' primary conduct are essentially aligned. If the standard for admissibility in military commissions, however, were changed to depend upon some undefined notion of "coercion" it could have unintended consequences for interrogations. Of course, interrogations of enemy combatants for vital intelligence should be conducted with the paramount objective of obtaining intelligence – not the objective of building a case for a military commission. But if negative consequences would flow from using interrogation practices that, although perfectly lawful under the DTA, might later be deemed "coercive" under a different standard, there is always the chance that, at the margins, interrogators may alter their approach in a way that sacrifices the intelligence objective to preserve the viability of a later prosecution. Congress should avoid risking such an outcome by adhering to the current provisions of the MCA.

None of this, of course, is to suggest that military commissions should receive into evidence statements obtained through means that suggest the declarant was pressured into saying something false to satisfy his questioners. Such a result would be abhorrent to notions of justice deeply rooted in the common law, contrary to the President's order that military commissions provide "full and fair" trials, and would likely violate norms under the laws of war. The MCA, however, already fully guards against that possibility by prohibiting statements obtained in violation of the DTA and by requiring the military judge, in all cases where coercion is at issue, to assess whether "the totality of the circumstances renders the statement reliable and possessing sufficient probative value." 10 U.S.C. § 948r(c)(1), (d)(1). That provision directly addresses the concern at the heart of "coercion" — that false statements not be used as evidence. And it does so through a standard that is far more judicially administrable than a vague prohibition on "coercion" that would only lead to further litigation.

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3. Making CSRT determinations of enemy combatant status reviewable by a military commission for purposes of determining jurisdiction.

Under the MCA as currently written, the final determination of a CSRT that an individual is an enemy combatant conclusively determines that person's status for purposes of the jurisdiction of a military commission.[4] That provision makes eminent sense. It recognizes that the procedures provided by CSRTs (including review by the D.C. Circuit) are fully adequate to make a decision about the status of a detainee that may lead to his detention for years as an enemy combatant and provides finality to that threshold status determination. Allowing a detainee to reopen that fundamental status determination as part of the proceedings of a military commission would serve no useful purpose and would only embroil military commissions in unnecessary further litigation.

As outlined above, CSRTs already provide unlawful enemy combatants a degree of process for determining their status that is unprecedented in the history of warfare. The CSRTs are modeled in part after the procedures used by the military under Army Regulation (AR) 190-8 for determining the POW status of detained personnel under Article 5 of the Geneva Conventions. They provide for a board of three officers to review evidence to determine the status of the detainee and permit the detainee to make a case concerning his status, including the right to call witnesses reasonably available. But the CSRTs also provide procedures well beyond those required in AR 190-8. To name just a few, the detainee is provided a Personal Representative to assist him in presenting his case; he is given access to the unclassified

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[4] Military commissions under the MCA have jurisdiction only over unlawful enemy combatants. 10 U.S.C. §§ 948c, 948d(a).

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evidence being used by the CSRT; and, most significantly, the CSRT determination is subject to judicial review in a civilian court — the D.C. Circuit.

This elaborate process is not only unprecedented in the history of warfare, it was also designed specifically to satisfy the requirements of due process that the Supreme Court outlined in *Hamdi v. Rumsfeld* in describing the process due to a *U.S. citizen* held as an enemy combatant *in the United States*. A plurality of the Court in *Hamdi* explained that the basic elements for such a process consisted of "notice of the factual basis for [the individual's] classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." 542 U.S. at 533. The plurality made clear, moreover, that "the standards we have articulated could be met by an appropriately authorized and properly constituted military tribunal." *Id.* at 538. Indeed, the Court specifically noted that AR 190-8 "already provide[s] for such process," *id.*, in the context of POW-status determinations. The CSRTs are tailor-made to comply with the dictates of due process that the Supreme Court outlined.

It is true that the CSRT is not a full-blown adversarial proceeding involving representation by counsel. But there is no need for such a process in the context of detention of enemy combatants during an armed conflict. Once again, the touchstone for comparison here should not be the procedures we use as part of the criminal law in deciding upon the detention of an individual. That paradigm provides the wrong frame of reference. Adversarial hearings have never been required for detaining enemy combatants until the end of a conflict. And as the Supreme Court itself pointed out in *Hamdi*, even where the detention of a U.S. citizen is concerned, "the exigencies of the circumstances may demand that . . . enemy-combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive at the time of ongoing military conflict." 542 U.S. at 533 (plurality).

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The procedures provided by CSRTs are well tailored to suit the needs of the situation and they are more than adequate to satisfy all legal requirements to justify the detention of enemy combatants under the law of war. If they provide a sufficient process for that purpose — which will deprive a detainee of his liberty potentially for years — they certainly provide sufficient process to treat the status determination they produce as final for purposes of the jurisdiction of a military commission. Affording them that treatment does not eliminate any of the rights of the accused to challenge the evidence presented against him, nor does it eliminate the government's burden to establish every element of a charge beyond a reasonable doubt. Failing to treat CSRT determinations as final would simply generate further re-litigation of an issue already properly decided with full procedural protections and cause confusion and delay in military commission proceedings.

II. Continued Use of U.S. Naval Base, Guantanamo Bay, Cuba as a Detention Facility

The continued use of Guantanamo Bay for detaining enemy combatants unquestionably raises a difficult issue for the United States. There can be no doubt that Guantanamo has become a lightning rod for criticism in the international community. And maintaining good relations with our allies and securing their continuing support (as well as securing the good will of other nations more broadly) is an important aspect of winning the conflict with al Qaeda. At the same time, the detention of those remaining at Guantanamo Bay serves an imperative national security function. The military has reviewed the situation of every enemy combatant at Guantanamo at least twice (and is now starting a third round of review) and determined that they would continue to pose a threat of rejoining al Qaeda or the Taliban if released.[5] I believe the Government has

[5] This leaves to one side the situation of some detainees whom the military has determined to release but who cannot be repatriated to their home countries for fear they would be persecuted there.

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an obligation to the American people not to release such enemy combatants who would continue to pose a threat to the United States and its coalition partners in an ongoing armed conflict. The danger that these detainees potentially pose is quite real, as has been demonstrated by the fact that to date at least 29 detainees released from Guantanamo re-engaged in terrorist activities, some by rejoining hostilities in Afghanistan where they were either killed or captured on the battlefield.[6]

One aspect of the debate about Guantanamo should be dispensed with at the outset. To some extent, critics of Guantanamo assert that the detainees should be "charged or released." Indeed, many articles critical of Guantanamo repeatedly emphasize that those detained there have been "held without charge" for years. These criticisms fundamentally misconceive the nature of the military mission in detaining enemy combatants and the rights under the law of war on which it is founded. Once again, the criticisms are improperly based on assumptions derived from the wholly different context of the criminal law. Under the laws of war, enemy combatants may be detained for the duration of the conflict simply because they are enemy combatants. This detention is not punitive; it is designed simply to prevent the enemy from rejoining the fight. As a result, under the law of war, there is no need to charge an enemy with any violation of the law of war to justify detaining him until the end of the conflict. It is true that, in this unconventional war, the "end of the conflict" is difficult to predict and, at this point, difficult to foresee. But to address that concern, the military has adopted the unprecedented measure of holding ARBs — annual reviews to determine whether each detainee continues to pose a threat warranting his

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[6] *See* www.defenselink.mil/news/Mar2005/d20050304info.pdf (citing outdated figure of 10 confirmed returning to terrorist activity and describing specific cases).

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detention. There is no requirement under the laws of war for such a review, and this innovation ensures that the military will not detain any enemy combatant who no longer poses a threat.

Ultimately, I believe that Guantanamo Bay must continue to be used for three reasons:

First, the Government has a duty to the American people not to release those who would return to the fight and pose a threat to Americans or our coalition partners.

Second, there is no practical alternative to Guantanamo. In particular, moving the detainees to the United States is not a viable alternative for both practical and legal reasons. As a practical matter, there is no adequate facility in the United States for fulfilling the mission currently served at Guantanamo Bay. The facilities at Guantanamo – by virtue of both their location and the physical plant that the military has in place – are the most secure place for these individuals to be detained. They house the detainees in a setting where they pose little risk of escape, and they provide key facilities for the dual missions of detaining enemy combatants and interrogating them for intelligence. Interrogations of detainees at Guantanamo have produced significant intelligence in the war with al Qaeda, and to the extent we continue to capture key al Qaeda operatives, we can expect that the intelligence mission must continue. Indeed, just this Monday an al Qaeda operative potentially possessing valuable intelligence about al Qaeda's network in East Africa was transferred to Guantanamo after being seized in Kenya. As I understand it, the military simply does not have any facility large enough and secure enough to fulfill these roles in the United States. Nor could the detainees be housed by parceling them out to different federal facilities run by the Bureau of Prisons. That solution would inevitably provide the detainees unmonitored means of transmitting and receiving messages to the outside and increase the security threat they pose.

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In theory, if enough money were spent, a new facility might be created in the United States that would be secure enough to house the detainees. But it would inevitably raise additional security concerns that simply are not present at Guantanamo — concerns for the community near that facility. Bringing to a U.S. facility over 270 enemy combatants[7] whom the military has already determined, through multiple reviews, are the ones who are most dangerous and would return to the fight if they were released would likely increase the threat of an attempted escape and the danger of harm to American civilians if there were such an escape. These are individuals who have made various threats confirming their intent to do harm to Americans wherever possible. For example, one detainee has said that if released he would "arrange for the kidnapping and execution of U.S. citizens"; another has threatened MPs that he would come to their homes and cut their throats; and yet another has said that "one day I will enjoy sucking their blood, although their blood is bitter."[8] In addition, any transfer would make the new U.S. facility a prime target of opportunity for any terrorist attack that al Qaeda is able to mount within our borders. Although the Government has been hard at work keeping our borders secure since 9/11, there is always the risk that an al Qaeda cell could evade those efforts and slip into the country. If that happened, an attack on the facility detaining their comrades would provide a target with media potential that would be difficult pass up. That, too, would create a

[7] After the most recent round of ARBs was completed, the military recommended 273 enemy combatants for continued detention at Guantanamo, which reflects an assessment that those detainees are sufficiently dangerous that they must remain in U.S. custody. Other detainees at Guantanamo (at least 55) have been recommended for transfer to another nation. That does not mean, however, that they are not dangerous. As I understand it, a recommendation for transfer (as opposed to a recommendation for release) is conditioned on fulfillment of certain security requirements (including, perhaps, detention by the transferee nation). Many detainees recommended for transfer remain at Guantanamo because those security requirements have not yet been met by the potential transferee nation.

[8] JTF-GTMO Information on Detainees at 2, 3, availalbe at www.defenselink.mil/news/Mar2005/d20050304info.pdf.

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danger for the entire area around such a new facility. In short, the simple fact is that any place inside the United States will be more accessible and less secure than Guantanamo Bay.

In addition to the significant practical hurdles presented by moving enemy combatants to the United States, the legal implications of bringing them onto U.S. soil are also daunting. The law is clear that various constitutional rights do not apply outside the United States to aliens, and nothing in the Supreme Court's recent decision regarding enemy combatants has altered that. But the general rule as to aliens who have crossed our borders is quite different. As the Supreme Court has explained, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (collecting cases); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("[I]t must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by [the Fifth and Sixth] amendments . . . .").

Whether and to what extent these decisions would be applied to unlawful enemy combatants brought to the United States solely for detention purposes is not necessarily foreordained. Current case law, however, favors the conclusion that these individuals would secure constitutional rights once on U.S. soil. And it is a certainty that detainees will attempt to assert such rights in an entirely new round of litigation. Given the array of procedures provided for the detainees, it may well be that even if they were brought to the United States and were held to have constitutional rights, the procedures already provided would satisfy those rights. But even if that were the ultimate outcome, it would take years of further litigation and delay to finally reach that result. In the meantime, the military commission process would be stalled once again, none of the enemy combatants at Guantanamo would be brought to justice, and the scarce

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resources of both the Department of Justice and the Department of Defense would be drained in a needless round of additional litigation.

Third, and finally, I believe that the United States should continue to use Guantanamo because simply closing Guantanamo and moving detainees to U.S. soil would almost certainly not achieve the desired objective of eliminating criticism and securing support from the international community. The criticisms from the international community do not hinge on the *place* where detainees are held. Guantanamo is a flashpoint because it is the place where detainees are held now and, admittedly, because of the initial legal battles about detainees' access to courts. But criticisms have not stopped despite the unprecedented procedures now afforded at Guantanamo, including judicial review. In my view, that is because the fundamental criticism the United States faces is an attack on the entire law-of-war paradigm under which the United States asserts the right to treat the struggle with al Qaeda as an armed conflict and to detain enemy combatants under the laws of war without "prosecuting" them on some "charge." Thus, unless the United States is prepared to abandon the law-of-war framework that currently governs the detention of those at Guantanamo, simply moving the detainees to the United States will likely do little to quell the outcry from the international community. I believe the United States was right to treat the conflict with al Qaeda as an armed conflict; that exercising the rights provided a belligerent under the law of war are critical for succeeding in that conflict; and that the United States should not abandon the course it has pursued.

For these reasons, I believe that the continued use of Guantanamo Bay — even though it has costs for the United States in the international community — provides the only practical alternative for fulfilling the imperative of detaining those enemy combatants who would pose a threat to the United States if released.

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* * *

Thank you, Mr. Chairman, for the opportunity to address the Committee. I would be happy to address any questions the Committee may have.

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TESTIMONY OF
WILLIAM H. TAFT, IV
HOUSE COMMITTEE ON ARMED SERVICES
MARCH 29, 2007

Mr. Chairman and Members of the Committee:

I am pleased to appear in response to your invitation to discuss two subjects – the future of the detention facility at Guantanamo Bay and the Military Commissions Act. As you know, I have testified many times before this committee, but I don't think I have been here since 1988, when I left the Pentagon almost twenty years ago. It's a pleasure to be back. Although I miss some faces, I am glad to see at least a few familiar ones and, of course, many new ones.

Regarding the future of the detention facility at Guantanamo Bay, I understand that most people would like to close it and transfer the persons we have captured in our conflict with al Qaeda and the Taliban regime who are there to other facilities. I share this view. There is no doubt that the facility has acquired a notorious reputation around the world, and its continued use is a focal point for criticism of our foreign policy and a drag on our ability to get important things done. Its notoriety arises, I believe, from two causes. First , it is evident that some detainees have been abused at the facility and that interrogation methods that have been used there have not complied with our international obligations under the Geneva Conventions, particularly Common Article 3 of the conventions. Second, there is an impression that the facility was established in Guantanamo in order to deprive the persons we captured in the conflict with the terrorists of access to our courts and other rights that they would enjoy if they were being held at a facility in the United States.

As to the treatment of the detainees and the methods of interrogation that have been employed at Guantanamo, I believe it was a mistake not to follow the consistent U.S. practice in all our conflicts since World War II. That practice was to treat all detainees in strict accordance with the Geneva Conventions and the Army Field Manual, regardless of whether they were entitled to this. I understand that this is now the policy embodied in the Detainee Treatment Act

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and the Military Commissions Act. Whether the detainees are at Guantanamo or elsewhere, then, will not affect how they are treated going forward. I certainly hope that by treating them properly we will both repair our reputation for compliance with the laws of war generally and, most importantly, increase the chances that our servicemen will be treated properly when they are captured in combat. The capture of a number of British servicemen by Iranian forces earlier this week reminds us that the United States is not the only state that can revise or reinterpret the rules under which its forces operate in war. We created a dangerous president when we set out on that road in February, 2002. Even if it will take some time to repair our reputation, we are right to have begun that work.

Regarding the impression that we established the facility in Guantanamo in order to deprive the persons held there of access to the courts and other rights they would enjoy if they were in custody in the United States, I would make two points.

First, it was not clear at the time the decision to use Guantanamo was made that the persons held there would be treated any differently from the way they would have been treated if they were in custody in the United States. At the time, it was U.S. policy to treat all captured persons in accordance with the Geneva Conventions and the Army Field Manual. Those were the rules of engagement for our forces operating in Afghanistan. Guantanamo had many features that made it a natural choice for us: security, size, ability to obtain intelligence from detainees gathered in one place, no issues with governors or members of congress, etc. What was not a factor at that time was the idea that detainees would be treated differently in Guantanamo than if they were held in the United States. True, many thought that, consistent with the precedent of the Eisentrager case, the detainees would not have access to U.S. courts to review the issue, under habeas corpus, whether they were being lawfully detained at all. I believed the Eisentrager decision would prevent this. The point, however, did not appear to be significant in light of our policy to comply with the Geneva Conventions and our undoubted ability to detain persons captured in combat who posed a threat to us. Those of us who had experience with military law enforcement procedures had confidence, at the time, that the absence of judicial review of our

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forces' conduct in Guantanamo was not likely to result in the abuse of detainees there. It had not done so in Korea or Vietnam or other theaters of war over which the courts have no jurisdiction. It would not, we thought, affect the way the detainees were treated in Guantanamo.

Second, persons captured in the conflict with al Qaeda and the Taliban should not be treated differently because they are in custody in Guantanamo from the way they would be treated if they were in custody in the United States. That is to say, the decision about whether the facility is to be closed should not, in my judgment, be based on how this may affect the legal rights of the detainees. Political and logistical factors should determine our course. Logistically, I imagine, Guantanamo still has a number of advantages over other options. It seems doubtful, however, that these outweigh the political costs of continuing its operation. At some point a brand becomes so toxic that no amount of Madison Avenue talent can rehabilitate its image. What the Reverend Jim Jones did for KoolAid and the British penal system did for Van Diemen's Land, abuse of the detainees seems to have done for Guantanamo. My recommendation would be to cut our losses. Relocation in the United States should not affect the legal rights of the persons held in Guantanamo for the simple reason that they should not be being deprived of any rights because they are there rather than in the United States.

Regarding the Military Commissions Act, I will limit my remarks to just three points.

First, I think it was a mistake for Congress to preclude judicial review of the lawfulness of detaining the persons we have captured in the conflict with al Qaeda and the Taliban. As I understand it, convicted detainees may obtain such review after their criminal cases are concluded, but persons who are not charged with crimes do not have access to the courts to challenge their detention. The benefits of this approach escape me.

It should be recalled that the Supreme Court has on two occasions affirmed the lawfulness of detaining persons captured in the conflict with al Qaeda and the Taliban as long as they pose a threat to the United States. This is black letter law of war. Prior to the enactment of the Military Commissions Act, consistent with this principle, no court had ordered the release of any of the detainees. Nor, will they do so as long as it is shown that the detainee poses a threat.

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Currently, this determination is made by the military. Having it endorsed by a court would greatly enhance its credibility and be consistent with our legal tradition.

Beyond that, providing habeas corpus review of these cases will impose only a very modest burden on the courts. As I say, the cases are comparatively straightforward. My understanding is that many detainees freely state that they would try to harm the United States if they are released. The records of military determinations should make judicial review uncomplicated when compared with the voluminous trial and appellate records involved in most habeas cases. And there are not that many detainees.

My two other points relating to the Military Commissioners Act concern the rules of evidence in the trials before the commissions. I do not think either hearsay evidence or coerced testimony should be used in these trials.

I understand that hearsay evidence is admitted in several international criminal tribunals and in other national courts. But our system and traditions are different. The Sixth Amendment establishes a defendant's right to confront witnesses in criminal trials. The use of hearsay evidence is inconsistent with this right. The hearsay "witness" is not under oath, on the record or available for cross-examination, so his testimony is presumed automatically to be unreliable. Coerced testimony is likewise inherently unreliable. Courts normally exclude such testimony not only because it is unreliable but also in order to discourage the use of coercion by the authorities. Both rationales are relevant to the proceedings of the military commissions.

In proposing these changes in the rules of evidence I recognize that they may make it harder to obtain convictions. If I thought for a moment that Khalid Sheik Muhammed or other detainees like him might be released as a result of such changes, I might hesitate to recommend them. What Khalid Sheik Muhammed says he has done to Daniel Pearl and in planning the 9/11 attacks naturally enrages all Americans. But because he is being held consistent with the law of war he will not be released and, most importantly, it is when we are enraged – when our blood boils - that we most need to adhere to the rule of law as we have established it, not change it to suit our convenience. In this sense, Senator McCain is right when he says that how we treat the

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detainees is not about them but about us. It is in this spirit that I make these proposals for changes in the rules of evidence set out in the Military Commissions Act.

Mr. Chairman, thank you for this opportunity to appear before your committee. This concludes my testimony. I look forward to answering your questions.

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[redacted]illiam H. Taft, IV



William H. Taft, IV is of counsel resident in Fried Frank's Washington, DC office. He joined the firm in 1992. In 2001, Mr. Taft was appointed by President George W. Bush as Legal Adviser to the Department of State. After four years of service at the State Department, he rejoined the firm and became of counsel.

Mr. Taft concentrates his practice in government contracts counseling, international trade, and international litigation and arbitration.

Prior to joining Fried Frank, Mr. Taft was U.S. Permanent Representative to NATO from 1989 to 1992. Before that, he served as Deputy Secretary of Defense from January 1984 to April 1989 and as Acting Secretary of Defense from January to March 1989. From 1981 to 1984, Mr. Taft was General Counsel for the Department of Defense.

Prior to his initial appointment to the Department of Defense, Mr. Taft was in private law practice in Washington, DC, from 1977 to 1981. Before entering private practice, he served in various positions at the Federal Trade Commission, the Office of Management and Budget and the Department of Health, Education and Welfare, where he was appointed by President Ford in 1976 to serve as General Counsel.

Mr. Taft received his JD in 1969 from Harvard Law School and his BA in 1966 from Yale University. He is admitted to the bar in the District of Columbia.

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DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 110th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: WILLIAM H. TAFT, IV

Capacity in which appearing: (check one)

X Individual

___ Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: _____

FISCAL YEAR 2007

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			

FISCAL YEAR 2006

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			

OGC AMNESTY/CCR 306

FISCAL YEAR 2005

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

Federal agencies with which federal contracts are held:

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

Aggregate dollar value of federal contracts held:

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

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Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

Federal agencies with which federal grants are held:

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

Aggregate dollar value of federal grants held:

Current fiscal year (2007):_____;
Fiscal year 2006:_____;
Fiscal year 2005:_____.

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(b)(6)

From: (b)(6) DoD OGC
Sent: Tuesday, April 24, 2007 4:03 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 309

Cc: (b)(2),(b)(6) [redacted]

Subject: GTMO Bird: Charges referred against Khadr; Kurnaz; GTMO Isolation; Fascist America

All:

Here is today's GTMO Bird.

Thanks,

(b)(6) [redacted]
Office of General Counsel, Legal Counsel
Department of Defense
(b)(2) [redacted] (DSN (b)( ))
(fax)

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.
(b)(2) [redacted] (fax)

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Military Commission Charges Referred

The Department of Defense announced today that charges were referred to a military commission in the case of Omar Ahmed Khadr by the Convening Authority, Office of Military Commissions, Susan J. Crawford.

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The convening authority referred charges of murder in violation of the law of war; attempted murder in violation of the law of war; conspiracy; providing material support for terrorism; and spying against Khadr, a non-capital case.

Khadr and his defense counsel will be served a copy of the charges. In accordance with the Military Commissions Act of 2006 and the Manual for Military Commissions, Khadr will be arraigned within 30 days of the service of charges. Within 120 days of charges, the military judge will assemble the military commission. Assembly is the procedural step that usually occurs when all parties, including the members, are present and sworn, and the judge announces on the record that the commission is now assembled. The military judge will contact attorneys in the case to set an initial trial schedule.

Khadr is presumed innocent of any criminal charges unless proven guilty beyond a reasonable doubt at a military commission.

Military commissions are regularly constituted courts, affording all the necessary judicial guarantees which are recognized as indispensable by civilized peoples for purposes of Common Article 3 of the Geneva Conventions.

A copy of the charge sheet is available at the following Web site:
http://www.defenselink.mil/news/Apr2007/KhadrReferral.pdf
<http://www.defenselink.mil/Apr2007/Khadrreferral.pdf>

http://www.defenselink.mil/releases/release.aspx?releaseid=10779

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Khadr charged with murder

Apr 24, 2007 03:08 PM
Michelle Shephard
Staff Reporter
The Pentagon charged Canadian Omar Khadr with murder today, starting a process that will put the former Toronto resident on trial in Guantanamo Bay for war crimes.
Khadr is accused of throwing a grenade that killed U.S. Delta soldier Sgt. Christopher Speer during a firefight in Afghanistan July 27, 2002.
He was 15 at the time and was held for three months in Afghanistan before being transferred to Guantanamo Bay, where he remains today.
In addition to the charge of murder, Khadr will also stand trial on attempted murder, providing material support for terrorism, conspiracy and spying.
Guantanamo's Chief Prosecutor Moe Davis first listed those charges against Khadr in February, but the process could not begin until the military commission's convening authority reviewed and referred the charges.
Khadr will now be required to appear before a Guantanamo court in 30 days. A jury for his trial will be selected within four months.
But what will happen at that hearing, where Khadr's expected to enter a plea, is unknown.
Khadr vowed to boycott the trial and stopped cooperating with his American attorneys, his mother Maha Elsamnah said last month. In the first phone call Khadr has been allowed since his capture almost five years ago, he reportedly told his family he wanted nothing to do with the hearings.
That leaves his American legal team led by Marine Lt. Col. Colby Vokey, in a tough position. They too have reservations about participating in a process that they've publicly condemned as unfair.
The now 20-year-old told his mother he would meet with his family's Canadian lawyers – Edmonton-based Dennis Edney and Nate Whitling – but up until now they have been refused access to Guantanamo Bay.

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Edney said that he received a letter today from Canada's Department of Foreign Affairs saying they had been cleared for travel and are now awaiting a "diplomatic note" affirming their position as foreign attorney consultants.
The U.S. Supreme Court already overturned the Bush administration's first attempt at military commissions last year. The new Congress-endorsed Military Commissions Act, signed into law last October, has not yet been tested by the high court.
The court refused to hear an application brought earlier this month challenging the law that bars Guantanamo detainees from challenging their detentions in U.S. courts – leaving intact a lower court's ruling that said since they were not American citizens or held on U.S. soil, they had no constitutional right to that legal option.
On Friday a conference is scheduled for the high court to now decide on an application brought forward by Khadr and detainee Salim Hamdan, the 36-year-old Yemini-born one-time driver for Osama bin Laden who is also expected to stand trial.
Australian David Hicks has already gone before a new military tribunal and – in a deal orchestrated between his government and the U.S. – the 31-year-old admitted to providing military support for terrorism in exchange for a nine-month jail sentence served at home.
A U.S. Department of Defence spokesperson said it was "premature" to speculate whether a similar deal would be offered to Khadr. The possibility seems unlikely, since Hicks' deal is largely credited to the intense public and political pressure to gain his release – something not seen in Canada where the Khadr family is largely reviled due to their past association with bin Laden.
Khadr is also facing more serious charges than Hicks and, since his arrest, the Pentagon has made it clear that they will show little leniency, other than agreeing to remove the death penalty as an option if he's convicted.
Once Hicks leaves Guantanamo next month, Khadr will be the only detainee from a Western country remaining at the U.S. Navy camp in Cuba.
http://www.guardian.co.uk/usa/story/0,,2064157,00.html?gusrc=rss&feed=1

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German-Born Ex-Guantanamo Inmate Publishes Memoir

Former Guantanamo inmate and German-born Turkish citizen Murat Kurnaz has published a harrowing account of the time he spent in the notorious US prison.

Beatings, amputations and torture were parts of the excruciating daily routine with which Murat Kurnaz claims to have lived for almost 5 years. The 24-year old German-born Turk was a prisoner in Guantanamo Bay and the subject of a legal battle with the German government of the time, who, according to Kurnaz, failed to secure his release when they had the chance.

His memoir, entitled "Five Years of My Life," which hit German bookstands on Tuesday, paints a disturbing picture of Kurnaz' ordeal.

"I understood a long time ago what this prison was about," Kurnaz said. "They could do with us whatever they wanted."

Kurnaz was arrested in Pakistan shortly after the Sept. 11 attacks on the United States. Kurnaz insists he didn't travel to Pakistan to fight alongside al Qaeda, but rather to work for an Islamic "Salvation Army" to help the homeless, among others. Kurnaz claims he was "sold" to US soldiers by unscrupulous bounty hunters. He was then taken to Afghanistan, where he faced torturous interrogations.

No help from Germany

According to his own account, Kurnaz was left for days to hang by his hands that were tied behind his back and that were attached to electrodes. He hoped in vain that the German authorities would help him out.

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"One of the German soldiers came, pulled my head up and asked if I knew who they were," Kurnaz said. "He said they were the elite force, the KSK, and slammed my head on the floor. Later another one came up and kicked me and the group of soldiers started laughing."

Kurnaz was subsequently transported to Guantanamo. In the book, he accuses the US soldiers there of gross maltreatment. He describes how doctors would make unnecessary amputations and how guards would hand out regular beatings. Kurnaz himself spent over a year in solitary confinement, suffering from extreme cold, heat, darkness and oxygen deprivation.

"I never imagined I would come out of it alive," Kurnaz said. "I presumed I could die at any minute. I was often unconscious due to the pain and the cold. My body couldn't take any more."

Personal intervention

It wasn't until August 2006 that the newly elected Chancellor Angela Merkel intervened personally to secure Kurnaz' release from Guantanamo. The US was reportedly prepared to release him as early as 2002, but the Germans were allegedly reluctant to allow him to return to Germany at the time -- a fact that sparked uproar and prompted a parliamentary inquiry.

The question whether Kurnaz did represent a terror threat and whether the government of the time should have done more to free him is the subject of an ongoing investigation. According to former Interior Minister Otto Schily, however, the Social Democratic-Green party government coalition headed by Gerhard Schröder responded adequately to the situation.

"We have a responsibility for the safety of our citizens," Schily said. "And that includes keeping people out of our country who represent a danger to our security. And that was the case with Murat Kurnaz."

Now back in his home city of Bremen, Kurnaz says he just wants to get on with his life. He says the book is not intended to settle any scores, but rather to tell the world how his co-prisoners lost their legs, hands and lives in Guantanamo Bay.

http://www.dw-world.de/dw/article/0,2144,2455819,00.html
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Guantanamo Detainees in Isolation, Diplomatic Limbo
By William Fisher
t r u t h o u t | Report
Saturday 21 April 2007
A top human rights advocate is characterizing as "a self-inflicted wound" the failure of the Bush administration to find countries willing to grant asylum to Guantanamo prisoners it has cleared for release.
"The administration created this problem by repeatedly describing all Guantanamo detainees as 'the worst of the worst'. A lot of people are working very hard to find countries to take these people," says Jumana Musa of Amnesty International USA in an exclusive interview with Truthout. But, she adds, "Given the misleading rhetoric our government has used to describe these prisoners, we shouldn't be surprised that no one wants to take them."
Musa, who is Amnesty's director of domestic human rights and international justice programs, told Truthout that the Bush administration has also failed to seek help in relocation from groups such as the United Nations High Commission for Refugees (UNHCR).
"In fact," she says, "these groups have largely been shut out of any involvement in the relocation issue, despite their years of experience."
In 2002, former Defense Secretary Donald Rumsfeld referred to Guantanamo prisoners as "the worst of the worst." In June 2005, he said, "If you think of the people down there, these are people, all of whom were captured on a battlefield. They're terrorists, trainers, bomb makers, recruiters, financiers, (Osama bin Laden's) bodyguards, would-be suicide bombers, probably the 20th 9/11 hijacker."

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Other Bush administration officials have been equally certain. For example, retired Air Force Gen. Richard Myers, said when he was chairman of the Joint Chiefs of Staff, "They were so vicious, if given the chance they would gnaw through the hydraulic lines of a C-17 while they were being flown to Cuba."

Nevertheless, of the approximately 760 prisoners brought to Guantanamo since 2002, the Pentagon reports that the military has now released all but approximately 385. Reliable evidence shows that, of the original number, many were not captured on the battlefields of Afghanistan, but kidnapped off the streets of Europe and various locations in the Middle East, and many others were "sold" to US authorities in Afghanistan and Pakistan for bounties. It has also become clear that others were simply in the wrong place at the wrong time.

The fiercely nonpartisan National Journal magazine reported, "Notwithstanding Rumsfeld's description, the majority of (Guantanamo prisoners) were not caught by American soldiers on the battlefield. They came into American custody from third parties, mostly from Pakistan, some after targeted raids there, most after a dragnet for Arabs after 9/11."

And a February 2006 report by Seton Hall law professor Mark Denbeaux and attorney Joshua Denbeaux found that 55 percent of the detainees were determined by the government to have committed no hostile acts against the United States or its coalition allies. Their report also asserted that only eight percent of the detainees were classified by the government as al-Qaeda fighters.

Not even the CIA bought into Rumsfeld's "worst of the worst" characterization. Michael Scheuer, who headed the agency's bin Laden unit through 1999 and resigned in 2004, said, "By the fall of 2002, it was common knowledge around CIA circles that fewer than 10 percent of Guantanamo's prisoners were high-value terrorist operatives.... Most of the men were probably foot soldiers at best" who were "going to know absolutely nothing about terrorism."

The Center for Constitutional Rights, whose lawyers represent many of the Guantanamo detainees, characterizes as "myth" the notion that "The US wants to transfer detainees to the custody of other countries, but no country will take them. " The CCR says the fact is that countries are willing to accept detainees but many are not willing to unlawfully detain them, as the US is requesting they do."

Of the prisoners who have been released, some have been jailed by their new host countries "pending investigations," while others have simply been freed. In all cases, US authorities have sought "diplomatic assurances" that the released prisoners will not be subjected to torture in custody. But many have been released to countries repeatedly cited by the US State Department for their long histories of prisoner abuse.

The bottom line, Musa says, is that 385 people are still in detention, many having been held for years, designated as enemy combatants, but without charges or trials. "Many of these have long been approved for release, but they are still incarcerated," she declares.

Musa also asserts that the Military Commissions Act of 2006 (MCA) "fails to provide any credible legal framework for assessing the status of these detainees, much less providing them with a fair trial."

The Act was hurriedly passed by Congress after the Supreme Court struck down the administration' s detention and adjudication policies because they lacked Congressional authorization. It allows the use of hearsay testimony and evidence obtained through coercion and cruel, inhuman and degrading treatment, and bars detainees from filing habeas corpus petitions to challenge their detention in federal court. But not everyone agrees with the positions taken by Amnesty and by other human rights and legal organizations such as Human Rights Watch, Human Rights First, and the Center for Constitutional Rights. For example, James Carafano, a senior research fellow at the Center for Foreign Policy Studies at the conservative Heritage Foundation, stated that he had heard the same kind of criticisms about US policy during the Cold War.

"They were vacuous then and they are vacuous now," he told Cybercast News Service. "It is criticism without context or content. Carping from the sidelines by those who have no responsibility to do the job and have no respect for the magnitude of the challenge is not productive," Carafano added. "The challenge in any long war is to provide for security, promote economic growth, protect the liberties of your citizens, respect those of your allies and promote human rights for all - and win the war of ideas. Accomplishing all those tasks

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well is no easy challenge, but vital," he said. "US policies are trying hard to do all these equally."

The first legal action under the MCA was the "trial" of David Hicks, an Australian originally alleged to have conspired with the Taliban in Afghanistan to murder American soldiers. Hicks pled guilty to providing material support to terrorists and was given a given a seven-year sentence with all but nine months suspended because of the plea agreement. His sentence will be served in an Australian prison. He also agreed to refrain from describing his detention to the media for a year.

Amnesty and many other human rights groups point out that because of his guilty plea, Hicks never had a trial.

And Amnesty's Musa also questions the timing of the Hicks case. She told Truthout that it's "curious" that Hicks "will be sitting in an Australian jail, barred from talking to the media, until well after the election of the next Australian prime minister."

The case has become an election issue for Australian Prime Minister John Howard, a stalwart ally of President George W. Bush. He has been criticized for not doing more to secure Hicks's release from Guantanamo.

Meanwhile, the MCA remains a contentious political issue in the US. A number of legislators have drafted measures to repeal the Military Commissions Act and to restore habeas corpus rights to detainees. The effort is being led by the Democratic chairman of the Senate Judiciary Committee, Sen. Patrick Leahy of Vermont, and the committee's top Republican, Sen. Arlen Specter of Pennsylvania. Similar legislation has also been introduced by Sen. Chris Dodd of Connecticut, who is a candidate for the Democratic presidential nomination.

Amnesty's Musa declined to predict the outcome of this proposed legislation. She told Truthout, "We see politicians acting like politicians, and the degree of resolve of the full Congress remains unclear."

Musa's comments came on the heels of Amnesty's release of a new report on detainee conditions at Guantanamo.

The report charges that many detainees who remain at Guantanamo Bay are "held in cruel conditions of isolation."

"Most detainees have suffered harsh treatment throughout their detention, confined to mesh cages or maximum security cells. Moreover, a new facility that opened in December 2006, known as Camp 6, has created even harsher and apparently more permanent conditions of extreme isolation and sensory deprivation," the report alleges.

Guantanamo Bay "is the festering symbol of the Bush administration's continued contempt for international law and disregard for human rights - further diminishing our country's moral standing," says Larry Cox, Amnesty International USA executive director.

"The administration continues to think that it can justify ongoing human rights violations in the name of national security. Perhaps President Bush needs to think again, because the voices calling for the closure of this disgrace to American values are only getting louder," Cox adds.

According to the Amnesty report, "Detainees are reportedly confined for 22 hours a day to individual, enclosed, steel cells where they are almost completely cut off from human contact. The cells have no windows to the outside or access to natural light or fresh air. No activities are provided, and detainees are subjected to 24-hour lighting and constant observation by guards through the narrow windows in the cell doors. They exercise alone in a high-walled yard where little sunlight filters through; detainees are often only offered exercise at night and may not see daylight for days at a time.

US authorities have described Camp 6 as a "state of the art modern facility" that is safer for guards and "more comfortable" for the detainees, Amnesty says. But the advocacy group believes that the conditions, as shown in photographs and described by detainees and their attorneys, "contravene international standards for humane treatment. In some respects, they appear more severe than the most restrictive levels of 'super-maximum' custody on the US mainland, which have been criticized by international bodies as incompatible with human rights treaties and standards."

Amnesty's report says, "It appears that around 80 percent of the approximately 385 men currently held at Guantanamo are in isolation - a reversal of earlier moves to ease conditions and allow more socializing among detainees."

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According to the Pentagon, 165 detainees had been transferred to Camp 6 from other facilities on the base by mid-January 2007. A further 100 detainees are held in solitary confinement in Camp 5, another maximum-security facility, the report asserts.
"As many as 20 detainees are also believed to be held in solitary confinement in Camp Echo, a facility set apart from others on the base, where conditions have been described by the International Committee of the Red Cross as "extremely harsh."
The report concludes, "While the United States has an obligation to protect its citizens and those living within its borders from attacks by armed groups, that does not relieve the United States from its responsibilities to comply with human rights and the rule of law. By rounding up men from all over the world and transporting them to an isolated penal colony, holding them without charge or trial, the United States has violated several US and international laws and treaties."
Statements by the Bush administration that these men are "enemy combatants," "terrorists" or "very bad people" do not justify the complete lack of due process rights," Amnesty says.
Says Jumana Musa, "It seems that detainees are being placed in extreme lockdown conditions not because of their individual behavior, but because of harsher camp operating procedures. Even men who have been cleared for release are being held in isolation."
Amnesty is urging the Bush administration to close the facility and either charge and try detainees under international fair-trial norms or else release them. "US authorities must take immediate steps to ensure that no detainee is subjected to prolonged isolation in conditions of reduced sensory stimulation, and allow detainees more association and activities as well as regular contact with their families, with opportunities for phone calls and visits," the organization declares. It is also calling for independent health care professionals and human rights experts to be able to examine and visit detainees in private.
"Secretary of Defense Robert Gates is the latest US official, including President Bush, to say that Guantanamo should be closed. There's no reason to dawdle ... there's no reason to delay ... but there are many reasons to end one of the worst blemishes on the United States's human rights record," says Amnesty's Larry Cox.
Asked by Truthout if closing Guantanamo might lead to its current detainees being transferred to 'secret prisons', Amnesty's Musa says, "It's hard to 'disappear' people whose names we already know. Now that the existence of the CIA's 'black sites' has been acknowledged by President Bush, it is unlikely that any Guantanamo prisoner could be spirited away without public scrutiny."
http://www.truthout.org/docs_2006/042107A.shtml
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Fascist America, in 10 easy steps

From Hitler to Pinochet and beyond, history shows there are certain steps that any would-be dictator must take to destroy constitutional freedoms. And, argues Naomi Wolf, George Bush and his administration seem to be taking them all

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Last autumn, there was a military coup in Thailand. The leaders of the coup took a number of steps, rather systematically, as if they had a shopping list. In a sense, they did. Within a matter of days, democracy had been closed down: the coup leaders declared martial law, sent armed soldiers into residential areas, took over radio and TV stations, issued restrictions on the press, tightened some limits on travel, and took certain activists into custody.

They were not figuring these things out as they went along. If you look at history, you can see that there is essentially a blueprint for turning an open society into a dictatorship. That blueprint has been used again and again in more and less bloody, more and less terrifying ways. But it is always effective. It is very difficult and arduous to create and sustain a democracy - but history shows that closing one down is much simpler. You simply have to be willing to take the 10 steps.

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As difficult as this is to contemplate, it is clear, if you are willing to look, that each of these 10 steps has already been initiated today in the United States by the Bush administration.

Because Americans like me were born in freedom, we have a hard time even considering that it is possible for us to become as unfree - domestically - as many other nations. Because we no longer learn much about our rights or our system of government - the task of being aware of the constitution has been outsourced from citizens' ownership to being the domain of professionals such as lawyers and professors - we scarcely recognise the checks and balances that the founders put in place, even as they are being systematically dismantled. Because we don't learn much about European history, the setting up of a department of "homeland" security - remember who else was keen on the word "homeland" - didn't raise the alarm bells it might have.

It is my argument that, beneath our very noses, George Bush and his administration are using time-tested tactics to close down an open society. It is time for us to be willing to think the unthinkable - as the author and political journalist Joe Conason, has put it, that it can happen here. And that we are further along than we realise.

Conason eloquently warned of the danger of American authoritarianism. I am arguing that we need also to look at the lessons of European and other kinds of fascism to understand the potential seriousness of the events we see unfolding in the US.

1. Invoke a terrifying internal and external enemy

After we were hit on September 11 2001, we were in a state of national shock. Less than six weeks later, on October 26 2001, the USA Patriot Act was passed by a Congress that had little chance to debate it; many said that they scarcely had time to read it. We were told we were now on a "war footing"; we were in a "global war" against a "global caliphate" intending to "wipe out civilisation". There have been other times of crisis in which the US accepted limits on civil liberties, such as during the civil war, when Lincoln declared martial law, and the second world war, when thousands of Japanese-American citizens were interned. But this situation, as Bruce Fein of the American Freedom Agenda notes, is unprecedented: all our other wars had an endpoint, so the pendulum was able to swing back toward freedom; this war is defined as open-ended in time and without national boundaries in space - the globe itself is the battlefield. "This time," Fein says, "there will be no defined end."

Creating a terrifying threat - hydra-like, secretive, evil - is an old trick. It can, like Hitler's invocation of a communist threat to the nation's security, be based on actual events (one Wisconsin academic has faced calls for his dismissal because he noted, among other things, that the alleged communist arson, the Reichstag fire of February 1933, was swiftly followed in Nazi Germany by passage of the Enabling Act, which replaced constitutional law with an open-ended state of emergency). Or the terrifying threat can be based, like the National Socialist evocation of the "global conspiracy of world Jewry", on myth.

It is not that global Islamist terrorism is not a severe danger; of course it is. I am arguing rather that the language used to convey the nature of the threat is different in a country such as Spain - which has also suffered violent terrorist attacks - than it is in America. Spanish citizens know that they face a grave security threat; what we as American citizens believe is that we are potentially threatened with the end of civilisation as we know it. Of course, this makes us more willing to accept restrictions on our freedoms.

2. Create a gulag

Once you have got everyone scared, the next step is to create a prison system outside the rule of law (as Bush put it, he wanted the American detention centre at Guantánamo Bay to be situated in legal "outer space") - where torture takes place.

At first, the people who are sent there are seen by citizens as outsiders: troublemakers, spies, "enemies of the people" or "criminals". Initially, citizens tend to support the secret prison system; it makes them feel safer and they do not identify with the prisoners. But soon enough, civil society leaders - opposition members, labour activists, clergy and journalists - are arrested and sent there as well.

This process took place in fascist shifts or anti-democracy crackdowns ranging from Italy and Germany in the 1920s and 1930s to the Latin American coups of the 1970s and beyond. It is standard practice for closing down an open society or crushing a pro-democracy uprising.

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With its jails in Iraq and Afghanistan, and, of course, Guantánamo in Cuba, where detainees are abused, and kept indefinitely without trial and without access to the due process of the law, America certainly has its gulag now. Bush and his allies in Congress recently announced they would issue no information about the secret CIA "black site" prisons throughout the world, which are used to incarcerate people who have been seized off the street.

Gulags in history tend to metastasise, becoming ever larger and more secretive, ever more deadly and formalised. We know from first-hand accounts, photographs, videos and government documents that people, innocent and guilty, have been tortured in the US-run prisons we are aware of and those we can't investigate adequately.

But Americans still assume this system and detainee abuses involve only scary brown people with whom they don't generally identify. It was brave of the conservative pundit William Safire to quote the anti-Nazi pastor Martin Niemöller, who had been seized as a political prisoner: "First they came for the Jews." Most Americans don't understand yet that the destruction of the rule of law at Guantánamo set a dangerous precedent for them, too.

By the way, the establishment of military tribunals that deny prisoners due process tends to come early on in a fascist shift. Mussolini and Stalin set up such tribunals. On April 24 1934, the Nazis, too, set up the People's Court, which also bypassed the judicial system: prisoners were held indefinitely, often in isolation, and tortured, without being charged with offences, and were subjected to show trials. Eventually, the Special Courts became a parallel system that put pressure on the regular courts to abandon the rule of law in favour of Nazi ideology when making decisions.

3. Develop a thug caste

When leaders who seek what I call a "fascist shift" want to close down an open society, they send paramilitary groups of scary young men out to terrorise citizens. The Blackshirts roamed the Italian countryside beating up communists; the Brownshirts staged violent rallies throughout Germany. This paramilitary force is especially important in a democracy: you need citizens to fear thug violence and so you need thugs who are free from prosecution.

The years following 9/11 have proved a bonanza for America's security contractors, with the Bush administration outsourcing areas of work that traditionally fell to the US military. In the process, contracts worth hundreds of millions of dollars have been issued for security work by mercenaries at home and abroad. In Iraq, some of these contract operatives have been accused of involvement in torturing prisoners, harassing journalists and firing on Iraqi civilians. Under Order 17, issued to regulate contractors in Iraq by the one-time US administrator in Baghdad, Paul Bremer, these contractors are immune from prosecution

Yes, but that is in Iraq, you could argue; however, after Hurricane Katrina, the Department of Homeland Security hired and deployed hundreds of armed private security guards in New Orleans. The investigative journalist Jeremy Scahill interviewed one unnamed guard who reported having fired on unarmed civilians in the city. It was a natural disaster that underlay that episode - but the administration's endless war on terror means ongoing scope for what are in effect privately contracted armies to take on crisis and emergency management at home in US cities.

Thugs in America? Groups of angry young Republican men, dressed in identical shirts and trousers, menaced poll workers counting the votes in Florida in 2000. If you are reading history, you can imagine that there can be a need for "public order" on the next election day. Say there are protests, or a threat, on the day of an election; history would not rule out the presence of a private security firm at a polling station "to restore public order".

4. Set up an internal surveillance system

In Mussolini's Italy, in Nazi Germany, in communist East Germany, in communist China - in every closed society - secret police spy on ordinary people and encourage neighbours to spy on neighbours. The Stasi needed to keep only a minority of East Germans under surveillance to convince a majority that they themselves were being watched.

In 2005 and 2006, when James Risen and Eric Lichtblau wrote in the New York Times about a secret state programme to wiretap citizens' phones, read their emails and follow international financial transactions, it became clear to ordinary Americans that they, too, could be under state scrutiny.

In closed societies, this surveillance is cast as being about "national security"; the true function is to keep citizens docile and inhibit their activism and dissent.

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5. Harass citizens' groups

The fifth thing you do is related to step four - you infiltrate and harass citizens' groups. It can be trivial: a church in Pasadena, whose minister preached that Jesus was in favour of peace, found itself being investigated by the Internal Revenue Service, while churches that got Republicans out to vote, which is equally illegal under US tax law, have been left alone. Other harassment is more serious: the American Civil Liberties Union reports that thousands of ordinary American anti-war, environmental and other groups have been infiltrated by agents: a secret Pentagon database includes more than four dozen peaceful anti-war meetings, rallies or marches by American citizens in its category of 1,500 "suspicious incidents". The equally secret Counterintelligence Field Activity (Cifa) agency of the Department of Defense has been gathering information about domestic organisations engaged in peaceful political activities: Cifa is supposed to track "potential terrorist threats" as it watches ordinary US citizen activists. A little-noticed new law has redefined activism such as animal rights protests as "terrorism". So the definition of "terrorist" slowly expands to include the opposition.

6. Engage in arbitrary detention and release

This scares people. It is a kind of cat-and-mouse game. Nicholas D Kristof and Sheryl WuDunn, the investigative reporters who wrote China Wakes: the Struggle for the Soul of a Rising Power, describe pro-democracy activists in China, such as Wei Jingsheng, being arrested and released many times. In a closing or closed society there is a "list" of dissidents and opposition leaders: you are targeted in this way once you are on the list, and it is hard to get off the list.

In 2004, America's Transportation Security Administration confirmed that it had a list of passengers who were targeted for security searches or worse if they tried to fly. People who have found themselves on the list? Two middle-aged women peace activists in San Francisco; liberal Senator Edward Kennedy; a member of Venezuela's government - after Venezuela's president had criticised Bush; and thousands of ordinary US citizens.

Professor Walter F Murphy is emeritus of Princeton University; he is one of the foremost constitutional scholars in the nation and author of the classic Constitutional Democracy. Murphy is also a decorated former marine, and he is not even especially politically liberal. But on March 1 this year, he was denied a boarding pass at Newark, "because I was on the Terrorist Watch list".

"Have you been in any peace marches? We ban a lot of people from flying because of that," asked the airline employee.

"I explained," said Murphy, "that I had not so marched but had, in September 2006, given a lecture at Princeton, televised and put on the web, highly critical of George Bush for his many violations of the constitution."

"That'll do it," the man said.

Anti-war marcher? Potential terrorist. Support the constitution? Potential terrorist. History shows that the categories of "enemy of the people" tend to expand ever deeper into civil life.

James Yee, a US citizen, was the Muslim chaplain at Guantánamo who was accused of mishandling classified documents. He was harassed by the US military before the charges against him were dropped. Yee has been detained and released several times. He is still of interest.

Brandon Mayfield, a US citizen and lawyer in Oregon, was mistakenly identified as a possible terrorist. His house was secretly broken into and his computer seized. Though he is innocent of the accusation against him, he is still on the list.

It is a standard practice of fascist societies that once you are on the list, you can't get off.

7. Target key individuals

Threaten civil servants, artists and academics with job loss if they don't toe the line. Mussolini went after the rectors of state universities who did not conform to the fascist line; so did Joseph Goebbels, who purged academics who were not pro-Nazi; so did Chile's Augusto Pinochet; so does the Chinese communist Politburo in punishing pro-democracy students and professors.

Academe is a tinderbox of activism, so those seeking a fascist shift punish academics and students with professional loss if they do not "coordinate", in Goebbels' term,

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ideologically. Since civil servants are the sector of society most vulnerable to being fired by a given regime, they are also a group that fascists typically "coordinate" early on: the Reich Law for the Re-establishment of a Professional Civil Service was passed on April 7 1933.

Bush supporters in state legislatures in several states put pressure on regents at state universities to penalise or fire academics who have been critical of the administration. As for civil servants, the Bush administration has derailed the career of one military lawyer who spoke up for fair trials for detainees, while an administration official publicly intimidated the law firms that represent detainees pro bono by threatening to call for their major corporate clients to boycott them.

Elsewhere, a CIA contract worker who said in a closed blog that "waterboarding is torture" was stripped of the security clearance she needed in order to do her job.

Most recently, the administration purged eight US attorneys for what looks like insufficient political loyalty. When Goebbels purged the civil service in April 1933, attorneys were "coordinated" too, a step that eased the way of the increasingly brutal laws to follow.

8. Control the press

Italy in the 1920s, Germany in the 30s, East Germany in the 50s, Czechoslovakia in the 60s, the Latin American dictatorships in the 70s, China in the 80s and 90s - all dictatorships and would-be dictators target newspapers and journalists. They threaten and harass them in more open societies that they are seeking to close, and they arrest them and worse in societies that have been closed already.

The Committee to Protect Journalists says arrests of US journalists are at an all-time high: Josh Wolf (no relation), a blogger in San Francisco, has been put in jail for a year for refusing to turn over video of an anti-war demonstration; Homeland Security brought a criminal complaint against reporter Greg Palast, claiming he threatened "critical infrastructure" when he and a TV producer were filming victims of Hurricane Katrina in Louisiana. Palast had written a bestseller critical of the Bush administration.

Other reporters and writers have been punished in other ways. Joseph C Wilson accused Bush, in a New York Times op-ed, of leading the country to war on the basis of a false charge that Saddam Hussein had acquired yellowcake uranium in Niger. His wife, Valerie Plame, was outed as a CIA spy - a form of retaliation that ended her career.

Prosecution and job loss are nothing, though, compared with how the US is treating journalists seeking to cover the conflict in Iraq in an unbiased way. The Committee to Protect Journalists has documented multiple accounts of the US military in Iraq firing upon or threatening to fire upon unembedded (meaning independent) reporters and camera operators from organisations ranging from al-Jazeera to the BBC. While westerners may question the accounts by al-Jazeera, they should pay attention to the accounts of reporters such as the BBC's Kate Adie. In some cases reporters have been wounded or killed, including ITN's Terry Lloyd in 2003. Both CBS and the Associated Press in Iraq had staff members seized by the US military and taken to violent prisons; the news organisations were unable to see the evidence against their staffers.

Over time in closing societies, real news is supplanted by fake news and false documents. Pinochet showed Chilean citizens falsified documents to back up his claim that terrorists had been about to attack the nation. The yellowcake charge, too, was based on forged papers.

You won't have a shutdown of news in modern America - it is not possible. But you can have, as Frank Rich and Sidney Blumenthal have pointed out, a steady stream of lies polluting the news well. What you already have is a White House directing a stream of false information that is so relentless that it is increasingly hard to sort out truth from untruth. In a fascist system, it's not the lies that count but the muddying. When citizens can't tell real news from fake, they give up their demands for accountability bit by bit.

9. Dissent equals treason

Cast dissent as "treason" and criticism as "espionage'. Every closing society does this, just as it elaborates laws that increasingly criminalise certain kinds of speech and expand the definition of "spy" and "traitor". When Bill Keller, the publisher of the New York Times, ran the Lichtblau/Risen stories, Bush called the Times' leaking of classified information "disgraceful", while Republicans in Congress called for Keller to be charged with treason, and rightwing commentators and news outlets kept up the "treason" drumbeat. Some

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commentators, as Conason noted, reminded readers smugly that one penalty for violating the Espionage Act is execution.

Conason is right to note how serious a threat that attack represented. It is also important to recall that the 1938 Moscow show trial accused the editor of Izvestia, Nikolai Bukharin, of treason; Bukharin was, in fact, executed. And it is important to remind Americans that when the 1917 Espionage Act was last widely invoked, during the infamous 1919 Palmer Raids, leftist activists were arrested without warrants in sweeping roundups, kept in jail for up to five months, and "beaten, starved, suffocated, tortured and threatened with death", according to the historian Myra MacPherson. After that, dissent was muted in America for a decade.

In Stalin's Soviet Union, dissidents were "enemies of the people". National Socialists called those who supported Weimar democracy "November traitors".

And here is where the circle closes: most Americans do not realise that since September of last year - when Congress wrongly, foolishly, passed the Military Commissions Act of 2006 - the president has the power to call any US citizen an "enemy combatant". He has the power to define what "enemy combatant" means. The president can also delegate to anyone he chooses in the executive branch the right to define "enemy combatant" any way he or she wants and then seize Americans accordingly.

Even if you or I are American citizens, even if we turn out to be completely innocent of what he has accused us of doing, he has the power to have us seized as we are changing planes at Newark tomorrow, or have us taken with a knock on the door; ship you or me to a navy brig; and keep you or me in isolation, possibly for months, while awaiting trial. (Prolonged isolation, as psychiatrists know, triggers psychosis in otherwise mentally healthy prisoners. That is why Stalin's gulag had an isolation cell, like Guantánamo's, in every satellite prison. Camp 6, the newest, most brutal facility at Guantánamo, is all isolation cells.)

We US citizens will get a trial eventually - for now. But legal rights activists at the Center for Constitutional Rights say that the Bush administration is trying increasingly aggressively to find ways to get around giving even US citizens fair trials. "Enemy combatant" is a status offence - it is not even something you have to have done. "We have absolutely moved over into a preventive detention model - you look like you could do something bad, you might do something bad, so we're going to hold you," says a spokeswoman of the CCR.

Most Americans surely do not get this yet. No wonder: it is hard to believe, even though it is true. In every closing society, at a certain point there are some high-profile arrests - usually of opposition leaders, clergy and journalists. Then everything goes quiet. After those arrests, there are still newspapers, courts, TV and radio, and the facades of a civil society. There just isn't real dissent. There just isn't freedom. If you look at history, just before those arrests is where we are now.

10. Suspend the rule of law

The John Warner Defense Authorization Act of 2007 gave the president new powers over the national guard. This means that in a national emergency - which the president now has enhanced powers to declare - he can send Michigan's militia to enforce a state of emergency that he has declared in Oregon, over the objections of the state's governor and its citizens. Even as Americans were focused on Britney Spears's meltdown and the question of who fathered Anna Nicole's baby, the New York Times editorialised about this shift: "A disturbing recent phenomenon in Washington is that laws that strike to the heart of American democracy have been passed in the dead of night ... Beyond actual insurrection, the president may now use military troops as a domestic police force in response to a natural disaster, a disease outbreak, terrorist attack or any 'other condition'."

Critics see this as a clear violation of the Posse Comitatus Act - which was meant to restrain the federal government from using the military for domestic law enforcement. The Democratic senator Patrick Leahy says the bill encourages a president to declare federal martial law. It also violates the very reason the founders set up our system of government as they did: having seen citizens bullied by a monarch's soldiers, the founders were terrified of exactly this kind of concentration of militias' power over American people in the hands of an oppressive executive or faction.

Of course, the United States is not vulnerable to the violent, total closing-down of the system that followed Mussolini's march on Rome or Hitler's roundup of political prisoners.

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Our democratic habits are too resilient, and our military and judiciary too independent, for any kind of scenario like that.
Rather, as other critics are noting, our experiment in democracy could be closed down by a process of erosion.
It is a mistake to think that early in a fascist shift you see the profile of barbed wire against the sky. In the early days, things look normal on the surface; peasants were celebrating harvest festivals in Calabria in 1922; people were shopping and going to the movies in Berlin in 1931. Early on, as WH Auden put it, the horror is always elsewhere - while someone is being tortured, children are skating, ships are sailing: "dogs go on with their doggy life ... How everything turns away/ Quite leisurely from the disaster."
As Americans turn away quite leisurely, keeping tuned to internet shopping and American Idol, the foundations of democracy are being fatally corroded. Something has changed profoundly that weakens us unprecedentedly: our democratic traditions, independent judiciary and free press do their work today in a context in which we are "at war" in a "long war" - a war without end, on a battlefield described as the globe, in a context that gives the president - without US citizens realising it yet - the power over US citizens of freedom or long solitary incarceration, on his say-so alone.
That means a hollowness has been expanding under the foundation of all these still- free-looking institutions - and this foundation can give way under certain kinds of pressure. To prevent such an outcome, we have to think about the "what ifs".
What if, in a year and a half, there is another attack - say, God forbid, a dirty bomb? The executive can declare a state of emergency. History shows that any leader, of any party, will be tempted to maintain emergency powers after the crisis has passed. With the gutting of traditional checks and balances, we are no less endangered by a President Hillary than by a President Giuliani - because any executive will be tempted to enforce his or her will through edict rather than the arduous, uncertain process of democratic negotiation and compromise.
What if the publisher of a major US newspaper were charged with treason or espionage, as a rightwing effort seemed to threaten Keller with last year? What if he or she got 10 years in jail? What would the newspapers look like the next day? Judging from history, they would not cease publishing; but they would suddenly be very polite.
Right now, only a handful of patriots are trying to hold back the tide of tyranny for the rest of us - staff at the Center for Constitutional Rights, who faced death threats for representing the detainees yet persisted all the way to the Supreme Court; activists at the American Civil Liberties Union; and prominent conservatives trying to roll back the corrosive new laws, under the banner of a new group called the American Freedom Agenda. This small, disparate collection of people needs everybody's help, including that of Europeans and others internationally who are willing to put pressure on the administration because they can see what a US unrestrained by real democracy at home can mean for the rest of the world.
We need to look at history and face the "what ifs". For if we keep going down this road, the "end of America" could come for each of us in a different way, at a different moment; each of us might have a different moment when we feel forced to look back and think: that is how it was before - and this is the way it is now.
"The accumulation of all powers, legislative, executive, and judiciary, in the same hands ... is the definition of tyranny," wrote James Madison. We still have the choice to stop going down this road; we can stand our ground and fight for our nation, and take up the banner the founders asked us to carry.
· Naomi Wolf's The End of America: A Letter of Warning to a Young Patriot will be published by Chelsea Green in September
http://www.guardian.co.uk/usa/story/0,,2064157,00.html?gusrc=rss&feed=1

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OGC AMNESTY/CCR 322

(b)(6)

From: (b)(6) DoD OGC
Sent: Thursday, April 26, 2007 4:19 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 323

Cc: (b)(2),(b)(6)

Subject: GTMO Bird: SASC hearing; Limiting access to GTMO; Khadr; Released detainees; MOAC director reports on GTMO visit

Attachments: 070426 SASC Detainee Partial Hrng Transcript.doc

All:
Here is today's GTMO Bird.
Thanks,
++

Attached below please find a partial transcript from today's SASC hearing.
Panel 1
Honorable Patrick J. Leahy <testimony.cfm?wit_id=6392&id=2674>
Panel 2
Mr. Daniel J. Dell'Orto, <testimony.cfm?wit_id=3387&id=2674> Principal Deputy General Counsel Department of Defense; Rear Admiral John D. Hutson, USN (Ret.), <testimony.cfm?wit_id=6238&id=2674> Former Judge Advocate General of the Navy; Mr. Jeffrey H. Smith, <testimony.cfm?wit_id=6239&id=2674> Former General Counsel of the Central Intelligence Agency; Mr. Neal K. Katyal, <testimony.cfm?wit_id=6240&id=2674> Professor of Law Georgetown University Law Center; Mr. Mark P. Denbeaux, <testimony.cfm?wit_id=6241&id=2674> Professor of Law Seton Hall Law School; Mr. David B. Rivkin, Jr., <testimony.cfm?wit_id=6242&id=2674> Partner Law Firm of Baker Hostetler

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New York Times
April 26, 2007
Pg. 1
U.S. Asks Court To Limit Lawyers At Guantanamo By William Glaberson The Justice Department has asked a federal appeals court to impose tighter restrictions on the hundreds of lawyers who represent detainees at Guantánamo Bay, Cuba, and the request has become a central issue in a new legal battle over the administration's detention policies.

OGC AMNESTY/CCR 324

Saying that visits by civilian lawyers and attorney-client mail have caused "intractable problems and threats to security at Guantánamo," a Justice Department filing proposes new limits on the lawyers' contact with their clients and access to evidence in their cases that would replace more expansive rules that have governed them since they began visiting Guantánamo detainees in large numbers in 2004.

The filing says the lawyers have caused unrest among the detainees and have improperly served as a conduit to the news media, assertions that have drawn angry responses from some of the lawyers.

The dispute is the latest and perhaps the most significant clash over the role of lawyers for the detainees. "There is no right on the part of counsel to access to detained aliens on a secure military base in a foreign country," the Justice Department filing argued.

Under the proposal, filed this month in the United States Court of Appeals for the District of Columbia Circuit, the government would limit lawyers to three visits with an existing client at Guantánamo; there is now no limit. It would permit only a single visit with a detainee to have him authorize a lawyer to handle his case. And it would permit a team of intelligence officers and military lawyers not involved in a detainee's case to read mail sent to him by his lawyer.

The proposal would also reverse existing rules to permit government officials, on their own, to deny the lawyers access to secret evidence used by military panels to determine that their clients were enemy combatants.

Many of the lawyers say the restrictions would make it impossible to represent their clients, or even to convince wary detainees — in a single visit — that they were really lawyers, rather than interrogators.

Jonathan Hafetz of the Brennan Center for Justice at New York University, a lawyer who has helped to coordinate strategy for the detainees, said the government was trying to disrupt relationships between the lawyers and their clients and to stop the flow of public information about Guantánamo, which he described as a "legal black hole" before the courts permitted access for the lawyers in 2004.

"These rules," Mr. Hafetz said, "are an effort to restore Guantánamo to its prior status as a legal black hole."

The dispute comes in a case in which detainees are challenging decisions by military panels that they were properly held as enemy combatants. The Justice Department's proposed rules could apply to similar cases that lawyers say are likely to eventually involve as many as 300 of the roughly 385 detainees now held at Guantánamo.

Some of the detainees' lawyers say the Justice Department proposal is only the latest indication of a long effort to blunt their effectiveness, which they say was evident in statements of a senior Pentagon official early this year. The official, Charles D. Stimson, deputy assistant secretary for detainee affairs, resigned after he was criticized for suggesting that corporations should consider severing business ties with law firms that represented Guantánamo detainees.

Under the current rules, legal mail is inspected for contraband but is not read. The lawyers, who have security clearances, are presumed to be entitled to review classified evidence used against their clients.

There is no limit on the number of times lawyers can visit their clients. Some say that they have been to Guantánamo 10 or more times and that they have needed the time to work with clients who are often suspicious and withdrawn.

Justice Department officials would not comment on the proposal, which is scheduled to be the subject of a court hearing on May 15.

The filing used combative language, saying lawyers had been able to "cause unrest on the base" and mentioned hunger strikes, protests and disobedience. An affidavit by a Navy lawyer at Guantánamo, Cmdr. Patrick M. McCarthy, that accompanied the filing, said lawyers had gathered information from the detainees for news organizations. Commander McCarthy also said the lawyers had provided detainees with accounts of events outside Guantánamo, like a speech at an Amnesty International conference and details of terrorist attacks.

"Such information," his affidavit said, "threatens the security of the camp, as it could incite violence among the detainees."

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Several detainees' lawyers involved in some of the incidents denied that they had caused security problems. Neil H. Koslowe, a lawyer at Shearman & Sterling in Washington, called the assertion a "McCarthy-era charge" that was not supported by the evidence.
The dispute over the lawyers' role is one of the first issues the appeals court in Washington will have to decide as it opens a new chapter of the legal battle over Guantánamo. In 2005, Congress designated that court as the forum for detainees to challenge directly decisions made by the Pentagon's combatant status review tribunals designating them as enemy combatants.
But many detainees' lawyers have resisted filing petitions to review those decisions because Congress narrowly defined the arguments the appeals court could consider. The law said the court could review whether a panel's decision "was consistent with the standards and procedures" set forth by the Pentagon.
Instead, many detainees' lawyers pursued habeas corpus petitions, using the centuries-old legal proceeding to ask a judge for release from imprisonment. But after a complex trip through the courts, Congress last year passed a provision intended to strip courts of the authority to hear habeas corpus cases involving Guantánamo detainees.
A divided panel of the federal appeals court in Washington upheld that provision in February. And early this month, the United States Supreme Court declined to review that decision. Two justices, John Paul Stevens and Anthony M. Kennedy, said that before the Supreme Court could again consider whether Congress was permitted to strip the courts of the ability to consider the habeas corpus cases, the detainees had to try to complete the appeals court review of their enemy combatant decisions.
As a result, much of the focus in the legal battle is now shifting to the appeals court. Scores of petitions seeking review of the combatant-status rulings are expected to be filed in the coming weeks, according to the Center for Constitutional Rights, an advocacy group that has been coordinating the detainees' lawyers. The May 15 arguments will focus on rules that could apply to all of those cases.
Lawyers say they are pressing ahead with the more limited review process in the appeals court as part of an effort to set the stage for a return to the Supreme Court. Some lawyers said that while they may lose, that would allow them to argue to the Supreme Court that the reviews were so limited that the detainees needed the more sweeping consideration permitted in habeas corpus cases.
But government lawyers, too, are developing new strategies in the wake of the Supreme Court action this month. They say that Congress and the courts have determined that expansive habeas corpus petitions are not available to the detainees.
As a result, they say, rules like those that allowed unlimited visits with detainees are no longer necessary as the detainees pursue the more limited appeals court review.
But, while arguing that detainees have no right to lawyers, the Justice Department filing said the government was giving the Guantánamo detainees enough access to lawyers so that "the court's review will be assisted by having informed counsel."
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Washington Post
April 25, 2007
Pg. 10
Canadian Detainee Charged In '02 Death Of U.S. Soldier By Dan Eggen, Washington Post Staff Writer The U.S. military filed charges of murder and other crimes yesterday against a Canadian detainee whose family is alleged to have close ties to Osama bin Laden, launching the second case under a new military trial system at the naval base at Guantanamo Bay, Cuba.
Omar Khadr, 20, is accused of killing a U.S. soldier with a grenade and injuring another during a firefight at an alleged al-Qaeda compound in Afghanistan in 2002. He was charged with murder and attempted murder in violation of the law of war, as well as conspiracy, spying and providing material support for terrorism, according to charging documents.
Khadr is the second prisoner to be charged under the new military commission system created by Congress last year, after the Supreme Court struck down as unconstitutional a previous version of the trials.
He could become the first prisoner to face trial under the new system. The first defendant, Australian David M. Hicks, pleaded guilty last month to lending material support to

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terrorists as part of a plea agreement. Hicks is scheduled to be turned over to Australian authorities by the end of May.
Although the murder charge could carry the death penalty, Khadr is not charged with a capital offense, according to military documents. He faces life imprisonment if convicted.
His military defender did not return a telephone call seeking comment.
Khadr was 15 when he was captured, and his case has attracted widespread attention in Canada, largely because of his family's notoriety. U.S. authorities say that the family lived in bin Laden's compound for several years and that his father, Ahmed Said Khadr, was a key al-Qaeda commander before he was killed by Pakistani troops in 2003. Omar Khadr's brother was imprisoned briefly at Guantanamo Bay.
The charges stem from a gunfight at a compound near Khost, Afghanistan, on July 27, 2002. Khadr surprised U.S. troops by throwing a grenade that allegedly killed Sgt. Christopher J. Speers and injured another soldier.
The U.S. military also alleges that Khadr received training from al-Qaeda, spied on U.S. troops, set land mines, threw grenades and fired shots at U.S. and Afghan soldiers.
Robert M. Chesney, a Wake Forest University law professor who closely follows the military commissions, said the government argues that Khadr is not entitled to the normal legal protections afforded soldiers because he was fighting on behalf of a non-state terrorist group. That allegation also forms the basis for charging Khadr with violating the law of war, Chesney and others said.
"Was it a violation of the law of war to throw a grenade at the soldier?" Chesney asked. "The government obviously believes it is. But others would say that it's not a war crime, that he just doesn't get the defense that normal soldiers would have."
Chesney said that unlike some of the other potential defendants at Guantanamo Bay, Khadr is accused of committing a crime that U.S. soldiers witnessed, making the allegations potentially easier to prove at trial.
Staff researcher Julie Tate contributed to this report.
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Guantánamo defense team angry over Khadr charges Here is the full text of the statement from the attorneys for Omar Khadr of Canada, an enemy combatant at Guantánamo Bay, Cuba, following the Defense Department's announcement that he would be tried by military commission:
``We have just learned that our client, Omar Khadr, has been charged by the United States government with several offenses that are not even valid war crimes, for which he will be tried by military commission under The Military Commissions Act of 2006. This is the third set of charges laid against Omar. Yet, no matter how many times the government issues new charges, the military commissions system will continue to be an illegitimate one. Indeed, the system is virtually indistinguishable from the one previously invalidated by the Supreme Court in Hamdan v. Rumsfeld just last year.
'The recent plea agreement accepted by David Hicks after less than a day of military commission proceedings and after significant negotiations between Australia and the U.S. demonstrates that the resolution of these cases is political and not the result of a legal process. Clearly, the U.S. is using the case of Omar in an attempt to rehabilitate the military commissions, which Hicks' plea demonstrated is a tainted process. In doing so, the U.S. will be the first country in modern history to try an individual who was a child at the time of the alleged war crimes. Indeed, the charge of conspiracy against Omar is based on alleged acts some of which occurred when Omar was less than 10 years of age.
``Omar Khadr was taken into U.S. custody at the age of 15 and has been detained at Guantánamo since he was 16, in conditions equal to or worse than those given to convicted adult criminals, such as prolonged solitary confinement and repeated instances of torture. After nearly 5 years in such conditions, the government is now demanding his appearance before what can only amount to a kangaroo court. The fact that this Administration has seen fit to designate this youth for trial by military commission is abhorrent.
``Now is the time for Canada and the U.S. to negotiate a political resolution because the commissions system is incapable of justice. Otherwise, Omar, just barely twenty years of age and a minor at the time of the alleged crimes, is guaranteed to be convicted in one of the greatest show trials on earth. This should not be the legacy of America or Canada.''
Signed,

OGC AMNESTY/CCR 327

Muneer Ahmad
Kristine Huskey
Richard Wilson
American University
College of Law
Washington D.C.
Lt. Col. Colby Vokey
U.S. Marine Corps.
Lt. Cmdr. William Kuebler
U.S. Navy
http://www.miamiherald.com/416/story/85286.html
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U.S. returns 2 Guantanamo detainees to Afghanistan and Morocco SAN JUAN, Puerto Rico: Two detainees at the U.S. military prison at Guantanamo Bay – an Afghan and a Moroccan – have been transferred to the custody of their native countries, authorities said Thursday.
The men were flown out of the U.S. Naval base in southeastern Cuba on Tuesday, according to Guantanamo spokesman Navy Cmdr. Rick Haupt.
They were allowed to leave after a military review of whether the prisoners have intelligence value or pose a threat to the United States. The military does not provide details about individual cases.
About 380 detainees remain at Guantanamo on suspicion of links to al-Qaida or the Taliban, including 80 who have been deemed eligible for transfer or release. The vast majority have been held for years without being charged.
"These transfers are a demonstration of the United States' desire not to hold detainees any longer than necessary," a Pentagon statement said.
Some 395 detainees have been released or transferred since the Guantanamo detention center opened in January 2002, according to the military.
http://www.iht.com/articles/ap/2007/04/26/news/CB-GEN-Guantanamo-Detainee-Transfer.php
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MPAC Director Reports on Visit to Guantanamo Bay Detention Center April 17, 2007 Last week, Muslim Public Affairs Council Executive Director Salam Al-Marayati was the first Muslim American to observe conditions at the Guantanamo Bay detention facility. Amid the sirens sounded by human rights groups calling for the detention facility to be shut down, the U.S. military is trying to make the best out of a very bad situation. In an effort to present their perspective, the Pentagon invited legal scholars, analysts and journalists to visit the detention center on April 10, 2007.

Other members of the delegation included Quin Hillyer, editor of the American Spectator; Benjamin Wittes, formerly of the Washington Post and now with the Brookings Institution; Thomas Wells, president-elect of the American Bar Association; Thurgood Marshall, Jr., former Assistant to the President and Cabinet Secretary for President Clinton; David Rivkin, former Deputy Director of the Office of Policy Development for President Reagan; Dr. J. Peter Pham, professor of international politics at James Madison University; and Steve Engel, Deputy Assistant Attorney General at the Department of Justice. The visit was hosted by William Haynes, legal counsel to the Secretary of Defense Robert Gates, and coordinated on the island by Rear Admiral Harry Harris, Commander of the Joint Task Force (JTF) for the Guantanamo Naval base.

SEE: Air America "State of Belief" Interview with Salam Al-Marayati About Gitmo Trip <http://interfa.wmod.llnwd.net/a117/o1/SBAudio/STATE_OF_BELIEF_04-15-07.mp3> (4/15/07) SEE ALSO: www.airamerica.com/stateofbelief

MPAC acknowledges the efforts of our troops in carrying out the orders of our policymakers with professionalism, even if the policies are wrong. MPAC commends and supports Defense Secretary Robert Gates' <http://www.cbsnews.com/stories/2007/03/23/terror/main2599984.shtml> public call for the closing of the prison. This stance has been supported by human rights

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groups which have investigated and condemned U.S. interrogation and incarceration practices at Guantanamo.

Sam Zarifi of Human Rights Watch provides this critique in his commentary, "A Few Good Men at Gitmo" <http://hrw.org/english/docs/2004/09/13/usdom9344.htm> : "The military commissions now taking place at Guantanamo Bay, Cuba, fall somewhere between a trial and a farce. The military officials involved in the process all seem committed to doing the best they can, but it is clear that they are struggling to make sense of a needlessly complicated and faulty system foisted on them for political purposes, not justice." Amnesty International also hosts a web page dedicated to the closure of Guantanamo <http://web.amnesty.org/pages/guantanamobay-index-eng> , calling it a symbol of injustice and abuse.

That said, the inclusion of a Muslim American representative on the trip is an important demonstration of engagement undertaken by the Pentagon to initiate dialogue on this important domestic and international flashpoint. As MPAC has underscored repeatedly, continuing interaction between the U.S. government and the Muslim American community is a welcome and necessary step for both the security of the nation and the political integration of more than six million Muslim Americans.

Summary of the Trip

During the tour, military officials briefed the delegation on the treatment of detainees. They repeated stressed that more detainees have been released, about 390, than currently remain at the U.S. Naval base, and emphasized the desire of U.S. officials, including President Bush, to "get them all out." Military officials at Guantanamo asserted that some Muslim countries have denied repatriation of detainees who have been cleared for release.

They reminded the visiting group that the base is under constant scrutiny from approximately 1,000 journalists and hundreds of human rights lawyers, along with congressional oversight, which has forced more transparency in the procedures of detainee treatment. Military officials strive to perform and enforce with perfection the instructions received from the President and his Cabinet officials, and the delegates were impressed with the meticulous execution of the Joint Task Force on Guantanamo.

The detainees' designation as "enemy combatants" does not afford them due process, otherwise guaranteed if they were defendants in a criminal court of justice. Nonetheless, military officials emphasized in the briefing that one key aspect of the Joint Task Force for Guantanamo Bay (JTF) is to provide "safe and humane care" of the detainees.

To that end, the base is clean and orderly, and military officials vehemently reject any claims of torture or Quranic desecration. Meals provided to detainees are certified as halal (prepared according to Islamic dietary law), served three times daily, and provide 4000-5000 calories daily, greatly surpassing the daily recommended caloric intake. Officials also stressed their respect for the prisoner's Islamic faith, repeatedly mentioning that each cell has a Quran and an arrow indicating the direction for prayer (qibla). They also pointed to the presence of the International Red Cross, which has a permanent installation on the island.

MPAC's Observations

The problem with Guantanamo is not the operation per se but the poor policy that created a detention center that does not serve American interests and is in violation of basic human rights. While government officials have stated a desire to shut the detention center down, real political will on Capitol Hill among the administration and lawmakers must be demonstrated in order to turn this into an overdue reality.

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The delegation was not allowed to speak with any detainees, who were out of sight for the most part. One of the glaring problems in the procedures at Guantanamo is the lack of legal representation of detainees facing the Combatant Status Review Tribunal. Even the military-appointed lawyer cannot advocate for the defendant before the tribunal. Extra-judicial practices such as those at Guantanamo provide political and religious extremists a recruiting tool, particularly when they can point to contradictions with the U.S. campaign to promote democracy throughout the world.

The ways and means by which detainees were captured and transferred to Guantanamo are key factors in determining the validity of their detention in the first place. Were they Al-Qaeda agents planning attacks on America and if so, on what evidentiary basis was that determined? Corrupted intelligence has become too often an overlooked mistake in various incidents, first and foremost the make-up of the argument to go to war in Iraq. The American public will become more confident in decision-making at the policy and military levels of our government if more transparency is placed in the process.

Providing detainees with legal rights through the military tribunal is crucial to establishing this transparency. The lack of legal representation provided to detainees when they are in front of the Combatant Status Review Tribunal undermines our national commitment to the rule of law. Without adequate legal representation, the detainees are deprived of basic human rights.

SEE: MPAC Commends Supreme Court Ruling on Gitmo Military Tribunals
<http://www.mpac.org/article.php?id=365> (1/3/07)

There were other troubling observations made by Al-Marayati. In Camp 6, detainees were pacing back and forth in claustrophobic cells. One elderly man looked at the delegation from afar with a gaze of despair, another plastered his face to a glass window. In other prisons, hardened criminals usually behave differently, whereby lifelessness is manifested in a more callous way. MPAC recommends that the government look to criminal psychoanalysts and psychiatric professionals to assess the mental state of the detainees. Amnesty and the International Committee of the Red Cross are both concerned that the conditions at Guantanamo could lead to adverse mental and psychological conditions of detainees.

MPAC supports the recommendation made by International Red Cross Committee President Jakob Kellenberger <http://www.icrc.org/web/eng/siteeng0.nsf/html/kellenberger-interview-191006> , who said last fall: "People suspected of having committed war crimes or any other criminal offence can and should be prosecuted. But these individuals must be afforded essential judicial guarantees such as the presumption of innocence, the right to be tried by an impartial and independent tribunal, the right to qualified legal counsel and the exclusion of any evidence obtained as a result of torture or other cruel, inhuman or degrading treatment."

As Defense Secretary Gates has argued, the U.S. should imprison and conduct the trials of these suspects elsewhere, because Guantanamo is identified in the minds of other nations with torture. Nonetheless, the JTF is preparing state of the art court chambers for military tribunals to take place on the island. As such, it is a permanent stain on this nation's reputation and a constant reminder to others of past U.S. mistakes. That inhibits other countries' cooperation with the United States.

MPAC will provide policy recommendations to Mr. Haynes and other U.S. officials on counterterrorism policies in hopes of enhancing America's national security while respecting human rights. MPAC also calls on the President and the Congress to devise a mechanism to "get them all out" with more efficiency compared to the sluggish-pace of government progress on this issue so far.

It is clear that the Admiral and his staff believe they are serving our country and they are doing so with professionalism. For that, they must be commended. However, as Al-Marayati told

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senior military officials last week, "the medical metaphor may apply here: the operation is a success but the patient is dying". To that, military officials in Guantanamo replied affirmatively and pointed to the policymakers who are responsible for giving them further orders.

The Muslim Public Affairs Council is an American institution which informs and shapes public opinion and policy by serving as a trusted resource to decision makers in government, media and policy institutions. MPAC is also committed to developing leaders with the purpose of enhancing the political and civic participation of American Muslims.

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Pep prof and Guantanamo

DEMI JONES

Staff Writer

The smell of salt in the air, sandy beaches stretching for miles, the ocean sparkling under the sun. What does this image bring to mind? A hot vacation spot maybe? Or the view seen every day from Pepperdine? What about the view from Guantanamo Bay, Cuba's detention facilities?

Dan Caldwell, a professor of social sciences at Pepperdine, toured the detention facilities at Guantanamo in February, as part of a program called the Joint Civilian Orientation Conference. The JCOC is an effort established by the Department of Defense (DOD) in 1948 to inform opinion makers about military programs. DOD chose members from across the country for the public outreach program and it was extremely selective. To join JCOC one must be nominated by one of the major offices of DoD or a JCOC alumni. Members are typically influential in the country and have some expertise in DoD or "strong" relationships with senior members of the military. According to the JCOC website (http://jcoc.dod.mil), "JCOC participants attend briefings by senior military and civilian officials followed by hands-on experience observing exercises, participating in training and interacting with troops stationed across the globe."

Guantanamo currently holds 397 detainees presumed dangerous to the United States. The detainees are all considered a direct threat to the United States.

During Caldwell's visit to Guantanamo he met with leaders, officials and military personnel along with touring the base and the facilities.

Upon first glance, Caldwell admitted to being impressed with the contrast between the detention facilities and the beautiful view.

"I was struck with the multi-sided nature of the place," Caldwell said. "Beautiful spot–but it's a prison."

Caldwell said there were two main reasons for visiting the facilities in Guantanamo: because the United States government says the "worst of the worst" are kept at Guantanamo, but on the other hand, many civil libertarians believe there is a violation of due process for the detainees. The biggest issue is whether or not they are entitled to due process and habeas corpus.

"I'm concerned about the presumption of guilt," Caldwell said. "Prisoners [there] are presumed guilty until proven innocent."

Despite Guantanamo's shortcomings, Caldwell was surprised at the conditions.

"I thought the prisons were in better shape than I was expecting," Caldwell said.

Caldwell, in a paper he is currently writing, described the island as consisting of five different Guantanamos: the Cuban, the American military personnel, the detainees/prisoners, lawyers and secrets.

The Cuban Guantanamo relies on the "regularized and proper" relations that exist between the Cuban and American authorities. Although the base once employed 1,000 commuters during the Cuban revolution, only three remain. There is only one entrance/exit to the base and officials meet outside of the gates every three months.

The military side of Guantanamo is typical of any American base. The personnel live with their families and the base has its own high school, along with fast food restaurants such as McDonald's and Subway.

"It's like a tropical military base," Caldwell said. "None were angry about being there."

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Next there are the prisons, which resemble a regular maximum security prison. Originally Guantanamo was the home of Camp X-Ray, the prison camps that shocked the world as the "cells" were merely covered fences, leaving the prisoners exposed to nature. Now that Camp X-Ray has been closed, there are currently three camps, containing six prisons, on Guantanamo, collectively called Camp Delta. The detainees are organized into the different camps based on the level of threat they impose on the United States.

Guantanamo gives rise to many questions about the treatment of the detainees, particularly relating to their legal rights. Because most of the detainees are not American citizens and because they are not in the United States they do not receive the rights of American courts. They have no right to an attorney, no right to see classified evidence against them, nor do they have the right to know the identity of their accusers, therefore Caldwell said, "they essentially have no way out."

The last element of Guantanamo is the "secret" Guantanamo. In this side, Caldwell mentions that Guantanamo currently holds the 14 highest detainees, but the CIA never revealed their locations. Assorted government publications and agencies admit to the presence of "Other Government Agencies" but these agencies are not specified.

Despite the multi-faceted Guantanamo, Caldwell was able to get a flavor for the treatment of the detainees by touring the facilities. In the prisons there is an area for Muslims to worship and each cell comes with prayer mats and a copy of the Quran. There are also arrows throughout the centers pointing to Mecca and the guards allow a quiet time during prayer times.

"They are treated humanely with respect to their religion," Caldwell said.

The camps also have good medical centers for the prisoners. In Caldwell's paper he states that the health of the detainees is of great concern to the personnel. The detainees have their own hospital with seven full-time physicians and 150 medical personnel. They have performed 300 surgeries and provide prosthetic devices and physical therapies for those who were injured in combat.

Caldwell also respects and sympathizes with the Joint Task Force (JTF) soldiers working at the base.

"It is a tough job they're doing," Caldwell said. "They're doing their duties, but they're stuck between a rock and a hard place."

Another concern that Caldwell has for the JTF is that prisoners often want to harm them.

"Detainees are angry at them as a symbol," Caldwell said.

Therefore, the JTF has to refrain from wearing name tags and calling each other by name while in the centers. The guards are often harassed by the detainees, especially the female guards. In Caldwell's paper he added: "I marvel at the ability of those connected with JTF to perform their duties."

Although the conditions of Guantanamo's camps seem impressive, Caldwell also mentions, "I only saw Guantanamo in the middle of the day."

As the detainees are held longer, the question of whether their legal treatment is fair continues to grow and create more conflict.

"If you assume they are enemies, they're treatment is pretty good. If you assume they aren't, it's bad," Caldwell said. "I felt that ambivalence when I was there.

Submitted 04-23-2007

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The inhuman stain

In its conduct towards the detainees of Guantánamo, the Bush administration is fighting not so much a war on terror, as a war on justice.

Chain reaction: a shackled detainee on his way to a hearing at Guantánamo.

Photograph: Brennan Linsley/AP.

In the latest round of never-ending court filings, the Bush administration's scorched earth litigation tactics involving the prisoners at Guantánamo continue apace <http://www.nytimes.com/2007/04/26/washington/26gitmo.html?_r=1&th&emc=th&oref=slogin> .

Advancing legal arguments which the civilised word reviles as morally repugnant, the government renews its claims that: 1) prisoners have no right to counsel; 2) the military is free to disregard the attorney-client privilege that, among other things, may be outlining

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legal strategy; and 3) prisoners' attorneys who have security clearance are forbidden access to classified information.

Representing the prisoners at Guantánamo is, perhaps, the most difficult legal task I have undertaken in a career in which I have tried murder cases, represented Fortune 500 companies in massive, multi-district class actions, and prosecuted cases as a Special Assistant United States Attorney. But it is impossible to represent a client in a meaningful way if you are denied reasonable access to your client. Consider the case of a prisoner who has been in isolation for more than a year and does not possess all his faculties. What is the likelihood that he will agree to have you represent him based on a single meeting? And what is the likelihood that such a client would be able to assist in his own defence even if he did? It is also impossible to represent a client if you are forced to share your litigation strategy with the military. Does any legal system in the world require one side to expose its strategy to the other?

Finally, it is impossible to represent a client when you are unable to review the evidence against him. We know the result; it has happened innumerable times in the tribunal processes at Guantánamo. The following is an actual colloquy that took place between a prisoner and the tribunal after he was read the charge against him:

Prosecutor: While living in Bosnia, the detainee associated with a known al-Qaida operative.

Detainee: Give me his name.

President of the tribunal: I do not know.

Detainee: How can I respond to this?

President: Did you know of anybody who was a member of al-Qaida?

Detainee: No, no.

President: I'm sorry, what was your response?

Detainee: No. If you tell me the name, I can respond and defend myself against this accusation.

President: We are asking you the questions and we need you to respond to what is on the classified summary.

Although this could have come from The Adventures of Alice in Wonderland, it is the Bush administration's version of justice at Guantánamo.

Sadly, the world knows why the Bush administration wants to close the window on Guantánamo. Through the work of attorneys and NGOs, the horrors of Guantánamo and the CIA black sites are being exposed. The Bush administration frequently asserts that the prisoners at Guantánamo are among the most highly-trained, vicious killers in the world, calling them the worst of the worst. But the staggering number of innocent men at Guantánamo belies this hollow pronouncement.

Leaving aside the high-risk prisoners who were recently transferred to Guantánamo, what do we know about the men who have been held without charge for more than five years? If the administration had its way, the public would know nothing. Guantánamo would have remained the torture and interrogation centre beyond the rule of law that the administration intended it to be. But following the supreme court's decision in Rasul v Bush <http://en.wikipedia.org/wiki/Rasul_v._Bush> , which allowed attorneys access to the prisons, we now know the faces of the men who inhabit the isolation cells at Guantánamo.

Take David Hicks <http://en.wikipedia.org/wiki/David_Hicks> , the original poster boy for the Bush administration, a terrorist seemingly on the fast track to a death sentence, but for the intervention of a military JAG [Judge Advocate General's Corps] officer who refused orders to plead his client guilty. In a trial that was more circus than serious, the military offered no evidence that Hicks ever took up arms against the United States or committed any violent acts. If the United States had not attacked Afghanistan, David Hick's actions would not even

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be criminal. Eventually, Hicks pleaded guilty to a single charge of training with the Taliban and was sentenced to nine months. After being tortured and held for more than five years, most of it spent in solitary confinement, David Hicks will soon be free.

But what about the prisoners at Guantánamo who will never be charged? Declassified portions of the Combat Status Review Tribunals, which were released by the military in response to a Freedom of Information Act request, reveal that the majority of the prisoners are not terrorists. Of all the prisoners at Guantánamo, only 8% were found by the military to be al-Qaida fighters. The military concluded that 55% committed no hostile act against the United States. Only 5% of the prisoners at Guantánamo were captured by the United States. A vast number of the prisoners at Guantánamo - 86% - were turned over by warlords in Pakistan and Afghanistan in return for huge bounties offered by the United States.

Given the foregoing, how does the military justify classifying the prisoners as enemy combatants? Setting aside the absolute inability of the prisoners even to see the evidence against them, much less meaningfully defend themselves, perhaps the following explanation sheds some light on the subject. In many cases, military tribunals found prisoners to be enemy combatants on the basis of their affiliation with 72 different terrorist organisations. The only problem with such a finding is that 52 of the organisations, 72% of the total, do not even appear on the Patriot Act terrorist exclusion list or State Department exclusion lists. Members of 64 of the 72 groups identified by the military as terrorists, 89% of the total, would be permitted entry into the United States.

In the final analysis, however, it is the government's breathtaking ability to classify almost anyone an enemy combatant that accounts for the continued detention of most of the prisoners at Guantánamo. At a hearing before Judge Green in December 2004, the government revealed the extent of its authority to detain the innocent indefinitely. Answering a series of hypothetical question posed by Judge Green, the following, clearly innocent individuals all fall within the purview of the government's definition of an enemy combatant: 1) a little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan, but really is a front to finance al-Qaida activities; 2) a resident of London who collects money from worshippers at mosques to support a hospital in Syria, but unknowingly entrusts the money for that purpose to someone in al-Qaida; 3) a resident of Dublin who unknowingly teaches English to the son of a person the CIA knows to be a member of al-Qaida; 4) a Wall Street Journal reporter who knows the location of Osama bin Laden, but does not reveal it to protect her source.

Begrudgingly, the administration has released more than 400 prisoners. Of the 245 released prisoners we have been able to follow, we know that 205 were either freed without charge or cleared of charges relating to their detention at Guantánamo. The head of Afghanistan's Reconciliation Commission is on record saying that all 83 Afghans who were repatriated were innocent and ended up at Guantánamo because of tribal or personal rivalries. A senior official in the Pakistani Interior Ministry has said investigators determined that 67 of 70 prisoners repatriated to Pakistan were sold for bounties by Afghan warlords who invented the links to al-Qaida. He is quoted as saying, "We consider them innocent." Thirty detainees repatriated to Britain, Spain, Germany, Russia, Australia, Turkey, Denmark, Bahrain and Maldives were freed, some within hours after being sent home for "continued detention". All of the Saudis who have been repatriated, with the exception of the most recently released group, have been freed.

Although the Bush administration continues to assert that the men who populate the prisons at Guantánamo pose a threat, the facts and statistics belie that contention. My experience, and that of most of my colleagues, is that, like the little old lady from Switzerland, most of the prisoners are innocent. The Bush administration would do well to reflect on Gandhi's and Martin Luther King's admonishment that it is not possible to have peace without justice. Amen.

http://commentisfree.guardian.co.uk/brent_mickum/2007/04/the_inhuman_stain.html

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CONGRESSIONAL TRANSCRIPTS
Congressional Hearings
April 26, 2007
Senate Armed Services Committee Holds Hearing on Detainees
LIST OF PANEL MEMBERS AND WITNESSES

LEVIN:

Good morning, everybody.

America's standing in the world has taken a nosedive since the world embraced us after 9/11. According to a recent poll conducted by the Program on International Policy Attitudes, 67 percent of the people surveyed across 25 countries disapprove of the U.S. handling of Guantanamo detainees.

The program director explained that, quote, "The thing that comes up repeatedly is not just anger about Iraq. The common theme is hypocrisy. The reaction tends to be, 'You were a champion of a certain set of rules, now you're breaking your own rules.'"

The secretary of defense recognized this problem last month when he acknowledged that he had recommended closing Guantanamo because there is a taint about it.

America at its best is a beacon for human rights and human liberty, and that's how we like to see ourselves. But much of the world sees us in a very different way when we fail to live up to the standards that we profess.

For us, the symbol of American values is the Statue of Liberty. For much of the world, it is that horrific photograph of a hooded prisoner at Abu Ghraib, standing on a box, strung up with wires.

It's no doubt hard to care about due process for people like Khalid Sheikh Mohammed and Abu Zubaida. But, as Senator Graham said at the time of our trip to Guantanamo to observe the tribunal for Khalid Sheikh Mohammed, it's not about them, it's about us.

There are many reasons not to allow abuse of detainees or the use of coerced testimony: It's morally wrong.

LEVIN:

It produces unreliable information. It violates domestic and international law. It undermines the support we need in the world community to win the war against terrorism. And it jeopardizes our own troops if they are captured.

But there is also this: People are less likely to believe what we say about our detainees if they've been abused. Even when an admitted terrorist like Khalid Sheikh Mohammed confesses to the most heinous of terrorist acts, the world focuses far too much on how we treated him and not nearly enough on what, by his own words, he did to us.

In sum, when we fail to uphold our own values, we undermine our own security.

The administration would like us to believe that detainees' allegations of abusive treatment are fabrications, based on Al Qaida training manuals. But listen to what our own people at Guantanamo were saying.

In late 2002, FBI personnel at Guantanamo objected to aggressive military interrogation techniques. Law enforcement personnel -- our law enforcement personnel --

questioned the legality of these techniques and told their own FBI leaders back in Washington, quote, "You won't believe it."

And a Defense Department investigation led by Lieutenant General Randall Schmidt found that the use of these techniques constituted "abusive treatment."

Last September, this committee approved on a bipartisan 15-9 vote a bill that would have helped address the problems caused by our treatment of detainees by establishing new procedures for trying detainees, consistent with the Supreme Court's ruling in Hamdan v. Rumsfeld.

LEVIN:

However, this bill was never taken up by the full Senate.

Instead, the administration persuaded a majority of Congress to: one, narrow the accepted definitions of cruel and inhuman treatment; two, authorize the administration to unilaterally redefine its obligations under the Geneva Conventions; three, allow the use of hearsay and coerced testimony in criminal trials of detainees; four, insulate senior administration officials from accountability for detainee abuses; five, bar detainees from ever bringing any legal action challenging any aspect of their detention; six, prohibit the courts from providing legal relief for detainees who are found to be improperly held.

Most detainees will never be tried by a military commission, so they will not receive even the limited rights provided by the Military Commissions Act.

Under procedures established by the administration for conducting the combatant status review tribunals at Guantanamo, these detainees -- which are most of them -- can be detained without a criminal trial for life as enemy combatants on the basis of coerced testimony and hearsay evidence, without having a lawyer, without knowing what the evidence was against them, and, therefore, without having a reasonable opportunity to disprove the evidence.

LEVIN:

In proceedings in federal district court in 2004, Justice Department attorneys went so far as to take the position that the executive branch has the authority to unilaterally detain as enemy combatants, quote, "a little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but really is a front to finance Al Qaida activities," close quote, or, quote, "a person who teaches English to the son of an Al Qaida member," close quote.

The administration's definition of the term "enemy combatant" does not even require that that support provided, as they allege, to terrorist activities be knowing or intentional support.

Professor Mark Denbeaux of Seton Hall University, who will be testifying here today, has reviewed the publicly available records of CSRTs -- these tribunals that determine the combatant status -- which are conducted at Guantanamo.

Professor Denbeaux found, among other things, that the government never called a single witness at any of the 393 proceedings for which full or partial records have been released, and that for 93 percent of those hearings, the detainee was not provided access

to any of the classified or unclassified evidence relied upon by the government to determine his status.

Professor Denbeaux also reports that only 5 percent of the Guantanamo detainees were captured by U.S. forces on the battlefield, compared to 86 percent who were apprehended either by Pakistan or the Northern Alliance and turned over to the United States at a time when the United States was offering large bounties for turning over suspected terrorists.

I believe that the current tribunal process falls short of the Supreme Court requirement that an alternative to habeas corpus must be adequate and effective to test the legality of a person's detention.

LEVIN:

I believe that this process fails to provide the protections that we would insist upon for our own troops, that it fails to meet our standards as a nation, and that it undermines our position in the world and our own security.

If so, we have an obligation to act now to establish a process which we can defend.

Senator Warner?

WARNER:

Mr. Chairman, first I'd like to put in a statement on behalf of the distinguished ranking member, Senator McCain, who is unable to be with us here today.

LEVIN:

Thank you.

WARNER:

I'd like to step back. You have given a lot of specific examples, and let's look at this thing in the context of what we as a republic, the United States as a republic, how we have dealt with this.

We have three branches of government, as you well know. And I think unquestionably we are proceeding in an orderly fashion to let each of the three branches of government address this complex issue.

First and foremost, I'm rather proud you recited that this committee stepped forward and passed a bill. You may recall, at that time I was privileged to be chairman. You were ranking member. And in some ways I acted not to the full support of my party and our side of the aisle at that time.

But we got it through, and then we did work out a reconciliation of some differences with the administration. And the important thing is, the first step was taken with total transparency, total opportunity for debate, and the Congress of the United States, the Senate voting 65-34, the House of Representatives 250-170.

WARNER:

So step one of our triumvirate of branches worked.

Then we moved to step two, and that was the administration beginning to process the cases. And that they've done.

Step three is for the federal judiciary to review the actions of both the Congress and the administration acting in concert with the law to determine its constitutionality. The Supreme Court has given a preliminary ruling, on the 15th, the possibility further action should be taken.

What we're trying to do in this hearing is get out ahead of the process that the founding fathers laid down for this government to operate.

And I wish to remind all present here today, we're dealing about the most serious of consequences. This is a nation at war. We are doing everything to protect our citizens and our nation. And I think we've got to be exceedingly careful and act. As the founding fathers said, step one, the Congress; step two the administration acting consistent with the law; and three, the judicial process.

After those three steps have been taken, then it's of course an option of the Congress to step back in and review those actions.

LEVIN:

Thank you. Thank you, Senator Warner.

We're delighted that Senator Patrick Leahy, who is the chairman of the Judiciary Committee, is our first witness.

And as always, it's great to see you here, Senator Leahy, and we welcome your testimony.

WARNER:

Thank you. I join in that welcome, Senator Leahy. I know you spoke very forcefully in the course of the debates that I've alluded to as to your views.

LEAHY:

Well, thank you, Mr. Chairman.

Thank you, Senator Warner.

You're both good friends and both senators I respect highly.

I must admit, it feels a little bit different sitting down here. I spent some time -- I spent some time over the -- especially the past few weeks sitting up where you are.

But both of you talked about this not only here (inaudible), but the way we treat people who are detained by our government outside of the judicial systems. And the laws that we pass governing those detainees provides a window into our own values, our own traditions, our own identity as a country. The issue is central to the way America is viewed in the world, the way we view ourselves as a nation.

But, unfortunately, the image of America created by our treatment of detainees and by laws we have passed on this issue is not the kind of image that I or many of you would have preferred to present to the world.

Last year's Military Commission Act, reported by this commission, and then altered at the request of the White House before Senate passage, I believe was a mistake of historic proportions.

It is on the elimination of habeas corpus rights that I'd like to focus. Speaking first as an American, then as a senator, and then as chairman of the Judiciary Committee, I

believe it was the worst of the unfortunate changes made by that hastily passed legislation in the weeks before an election.

Senator Specter and I fought hard to remove the disastrous habeas provision from the bill, with the support of Senator Levin and many others came within a couple votes of prevailing.

I hope we can work together in a bipartisan way to correct this historic wrong. And I anticipate the Judiciary Committee will hold a hearing on the issue next month.

So with the help of the chairman and others, I hope we can fix this.

Justice Scalia, a conservative Republican, wrong in the Hamdi case, "The very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom of imprisonment -- from indefinite imprisonment at the will of the executive."

And the remedy that secures that most basic freedoms, of course, is habeas corpus. It provides a check against arbitrary detentions and constitutional violations, guarantees an opportunity to go to court with the aid of a lawyer to prove one's innocence. And this fundamental protection is rolled back in unprecedented, unnecessary way in the Military Commission Act.

The Military Commissions Act eliminated that right permanently for any noncitizen labeled an enemy combatant, even if the detainee is awaiting determination of whether the status of enemy combatant even applies.

So the sweep of this habeas provision goes far beyond the few hundred detainees currently held at Guantanamo Bay. It includes an estimated 12 million lawful permanent residents in the United States today. These are people who work here lawfully, pay taxes, abide by our laws. It applies to anybody who's visiting the United States legally, and other legal immigrants as well.

These are people we've traditionally welcomed to our shores.

LEAHY:

The new law means that any of these people can be detained forever, without any ability to challenge their detention in federal court.

And that's forever. I don't use that word lightly, but it's forever.

They can't challenge the detention anywhere, simply on the government's say-so they're waiting -- awaiting determination as to whether they're enemy combatant.

Now, Chairman Levin has used an example, and last fall I spelled out a nightmare scenario about a hardworking legal permanent resident who makes an innocent donation to a charity to help poor people around the world. That's in the finest American tradition.

But if that charity is secretly suspected, the person making the contribution doesn't even know this, but secretly we suspect it, that it's being -- it's funding critics of the United States government, that innocent act could lead to indefinite and unchallengeable incarceration.

On the basis of a charitable donation, perhaps a report of suspicious behavior from an overzealous neighbor, or from information secretly obtained, maybe from a cursory view of what that person borrowed from the public library, the permanent resident can be brought in for questioning, denied a lawyer, confined.

LEAHY:

They had no recourse in the courts for years or decades, or forever.

That's the kind of disappearance that America has rightly criticized and condemned in parts of the world ruled by autocratic regimes. That is not America. That's not the image of America we want the world to have.

And most people would view this kind of nightmare scenario as fanciful, but sadly it's not. Indeed, last November, just after enactment of these provisions, the scenario I spelled out was confirmed by the Department of Justice in a legal brief submitted in federal court in Virginia.

The Justice Department, in a brief to dismiss a detainee's habeas case, said that the Military Commissions Act allows the government to detain any non-citizen designated as an enemy combatant without giving that person any ability to challenge his detention in court. Even if the government has made a total mistake, it can't be challenged.

And this is not just at Guantanamo Bay. The Justice Department said it's true even of somebody arrested and imprisoned in the United States.

We've removed a vital check that our legal system provides against the government arbitrarily detaining people for life without charge. It's wrong. It's unconstitutional. And I'd say clearly it is un-American.

A group of four distinguished admirals and generals who have served as senior military lawyers argued passionately for fixing this problem in a letter they sent me last month. And I'd ask, Mr. Chairman, consent that that letter be included in the record.

LEVIN:

Will be made part of the record.

LEAHY:

They wrote -- let me just quote one part -- "In discarding habeas corpus, we are jettisoning one of the core principles of our nation precisely when we should be showcasing to the world our respect for the rule of law and basic rights. These are the characteristics that make our nation great. These are the values our men and women in uniform are fighting to preserve," end quote.

We should take steps to ensure that our enemies can be brought to justice. And I introduced a bill to do that back in 2002, as did Senator Specter, when we proposed to establish military commissions.

So establishing appropriate military commissions is not the question.

LEAHY:

But what we have to revisit and correct is the suspension of the great writ -- the great writ of habeas corpus -- for millions of legal immigrants and others, denying their right to challenge indefinite detention just because the government says they should be.

So in closing let me say, it's from strength -- it's from strength that America should defend our values and our way of life. It is from the strength of our freedoms, our Constitution and the rule of law that we can prevail.

We should not be legislating from fear. We can ensure our security without giving up our liberty.

I'll keep working on this issue until we restore the checks and balances that are fundamental to preserving the liberties that define us as a nation.

Mr. Chairman, I thank you for the privilege of appearing before this committee. This is the first committee I served on, 32 years ago, when I came to the Senate. I've always respected this committee. It's had some of the finest men who have chaired it in both parties. I see two of them before me right now.

Mr. Chairman, I can't tell you how passionately I believe in my own soul we've got to go back to America's basic values. That's what's going to make us safe. That's what's going to make us strong.

LEVIN:

Senator Leahy, thank you for your...

(APPLAUSE)

WARNER:

Mr. Chairman, if I could just ask our distinguished colleague...

LEVIN:

Before you do that, Senator Warner, let me just ask the audience, they're going to have to refrain from those kind of responses if this hearing is going to continue in a way which this issue is entitled to, which is a hearing where we're going to hear from witnesses, we're going to hear without demonstration from the audience.

The issue is that serious. It requires this kind of respect from the audience for different points of view. And we are going to ask everybody in the audience to please refrain from any further demonstrations.

Senator Leahy, thank you very much...

WARNER:

Thank you very much.

Could I just ask one word of our distinguished colleague?

Your remarks today coincided with the fervor and the commitment of your remarks during the course of the debate. But when you use the word "un-American," how do you wish to revisit that in the context of a significant majority of both the Senate and the House did approve this legislation?

LEAHY:

Well, Mr. Chairman, over the years, as we know, the House and the Senate has voted a number of things that we wish we could revisit. I'd go back to the internment of Japanese in -- Japanese- Americans in World War II.

LEAHY:

The House and the Senate agreed with the president, the president of my own party, in doing that -- and the governor of California, who later became the chief justice of the

United States. We were good enough decades later to admit that was a horrible mistake and did not follow our values. We made mistakes.

Senator Warner, I've cast more votes in the United States Senate than all but a dozen people in our nation's history. And I'm proud of that. Did I make mistakes in some of those? I know I have. And I'm willing to go back and revisit them.

But this is a mistake that will haunt not just us, but our children and our children's children if we don't correct it.

WARNER:

I don't wish to ever question the patriotic allegiance of any of our colleagues no matter how strongly our differences may be. And I just feel that we should allow the republic to function as the founding fathers said it. We're getting ahead of the judicial branch. How do you answer that? Why the urgency at this moment given that the judicial branch is consistently reviewing these decisions?

LEAHY:

The judicial branch is consistent in reviewing this, but since we passed this act we've had at least one court opinion that has gone along with our removal of the great writ of habeas corpus.

The fact is we are three independent branches of government. That doesn't mean that we can turn our responsibilities from one branch over to the other branch. We set the jurisdiction. For example, the federal courts, that's under the Constitution. We've done this over the years, sometimes wisely, sometimes unwisely.

Every one of us know -- should know in our core of our being one of the great -- one of the things that make us a great nation is our commitment to the great writ of habeas corpus. You talk about the founding fathers and what we did. The founding fathers knew that. The founding fathers fought a revolution to make sure we'd have those rights. Let us not in a matter of a day's debate or something do away with those rights.

We are not harmed as a nation by keeping to our traditions and our values and those balances.

LEVIN:

Senator Leahy, let me just ask you a quick question -- following up on Senator Warner's question -- do you know of any doctrine that requires, suggests that Congress needs to await a judicial outcome before it should legislate on an issue if it believes that it is important and appropriate to legislate...

(CROSSTALK)

WARNER:

I would yield. No, there is no doctrine.

(CROSSTALK)

LEAHY:

I think we'd all agree...

LEVIN:
I'm just asking Senator Leahy whether he's ever heard of a doctrine

LEAHY:
... there is no such doctrine and, in fact, Congress has, over more than two centuries -- has acted often without awaiting for a judicial determination on Marbury v. Madison on through where they say those -- our actions can still be reviewed. But we all know -- and within the service of the three of us we have done this a number of times.

LEVIN:
Senator Warner, would you add anything to...

WARNER:
No, that's fine. No, that's fine.

LEVIN:
Thank you.
Senator Leahy?

LEAHY:
Thank you. It is a privilege to be here. Thank you, sir.

CORNYN:
Well, it's a privilege to have you. Mr. Chairman? Mr. Chairman? Mr. Chairman?

LEVIN:
Excuse me. I'm sorry. I should have asked other -- excuse me, Senator Leahy, forgive me -- I...

CORNYN:
If I could just have three minutes.

LEVIN:
No, no, absolutely, Senator. No, no, I made a mistake in not looking to my colleagues to see if there's other questions. Forgive me.
Senator Cornyn?

CORNYN:
I appreciate it, Mr. Chairman, and I should refer to Senator Leahy as my chairman as well. Of course, we serve together on the Judiciary Committee, and he and I have had the privilege of working together on some important legislation and I know we'll continue to have that opportunity in the future. But he and I obviously disagree on this issue, and I just wanted to ask a couple of very brief questions.

I'm not aware of any recorded English common law case that grants habeas corpus relief to an alien detained as an enemy combatant, and I wondered if the senator was aware of any case that so held.

LEAHY:

What I've referred to in this, Mr. Chairman, is the fact that, under this law, we can have any -- we can detain any alien. We could detain a professor who's here on -- teaching on sabbatical, an alien here with appropriate visas and everything else. That is not the issue.

This is so broad, we can detain anybody. We don't even have to go into the enemy combatant. We can detain anybody and say they are, whether they are or not. We have seen the mistakes that have occurred in this. We know that our government makes mistakes.

Point to the example out in Oregon where a lawyer -- a different situation, but a lawyer is arrested, his law practice virtually ruined because he was somehow suspected of being involved in the bombing of a train in Spain. When (inaudible) found out what a mistake it was, our government has paid him a very large sum of money.

CORNYN:

The reason I ask this question, Mr. Chairman, is because I'm not aware of any case from the United States Supreme Court, any English common law case, that's granted habeas corpus relief to an alien detained as an enemy combatant, although it is clear, I think, from my reading of the cases, that an alternative method of providing judicial review is an important factor.

And I just -- you know, I'm familiar with the fact that lawyers disagree all the time. That's what lawyers do, and I attribute this to a good faith disagreement as to what the law requires but, ultimately, we have to, as Senator Warner suggested, submit these disputes among lawyers in good faith to the tribunals that are authorized under the law to resolve those disputes finally.

LEAHY:

Mr. Chairman, I'm not suggested that if you have an enemy combatant that we're going to write the law that allows that determination. But we will determine if you're being held properly or not.

This is not to give anybody any new rights or any different rights, but if anybody is picked up, held as -- and said, "You're an enemy combatant," right now they can't even raise the question, "You've got the wrong guy, you've got some" -- and we know this has happened over and over again to somebody of a similar name.

It's similar to what we see even in our -- as Americans when we fly.

LEAHY:

Senator Ted Kennedy's been stopped half a dozen or more times getting on a plane he's been taking for 40 years, because his list is on -- his name is on a no-fly list. It got mixed up with somebody else.

A year-old child is stopped until they get a -- his parents get a passport for him to prove he's not a 40-some-odd-year-old terrorist.

Catholic nuns. You know, you could go on and on.

The fact is mistakes are made. You've got to at least be able to go to court and say, "Hey, you've got the wrong person."

CORNYN:

Mr. Chairman, again we disagree. In today's New York Times, in an article entitled "Court Asks to Limit Lawyers at Guantanamo," it's noted that in 2005 Congress designated that the Court of Appeals -- the D.C. Court of Appeals was the court -- is the forum for detainees to challenge directly decisions made by the Pentagon's combatant status review tribunals designating them as enemy combatants.

And I believe Congress has amply provided a tribunal and an opportunity for those determinations to be made and then challenged and reviewed by an impartial Article III court.

And, of course, as Senator Leahy acknowledged earlier, a divided panel of the federal Court of Appeals in Washington upheld that provision in February. And, of course, we'll all have to wait to see if, once it makes its way to the United States Supreme Court, whether that court does it.

But I just -- in closing, I think what Senator Warner has suggested has a lot of merit. We ought to give this law a chance to function, and allow the courts to do -- a chance to do their job.

But I respect those who hold a different opinion, and we'll all wait to see what the courts decide.

Thank you very much.

LEAHY:

Mr. Chairman, I hope everybody will read the letter from the four flag officers who agree with my position and feel that we are not helping our nation doing it this way.

Thank you.

LEVIN:

Certainly. I just -- is there anyone else, first of all...

SESSIONS:

Mr. Chairman...

LEVIN:

Yes.

SESSIONS:

I think that Senator Cornyn, former Justice Cornyn, has given a fair summary of where I see this matter.

The Constitution has never given enemy combatants -- lawful or unlawful -- who've been captured habeas corpus rights.

So what I understand this legislation to do, to be taking us a step we've never gone before. And that is to give classical habeas corpus rights to enemy combatants, even unlawful enemy combatants who have rejected the rules of warfare.

We have in fact -- and I'll go through in my remarks later -- provided quite a number of hearings and reviews, including an annual review, of anybody that's being detained, including a right -- as the senator indicated -- to go to court.

But it does appear to me that, while there may be some cases that need review as the system will allow, I do not believe that this Congress should go so far as to provide habeas corpus review to non- citizen enemy combatants seized on the battlefield.

LEVIN:

Let me ask Senator Leahy a question.

Am I not correct that your bill does not provide habeas corpus rights to anybody? It would eliminate the prohibition that was in the law that the Congress adopted against courts granting habeas corpus.

So ironically my two colleagues who have spoken on this, who say we should allow courts to do their job -- as a matter of fact it is the Congress -- am I not correct? -- that passed a law that removed from the courts a chance to do their job as they saw fit. Because we prohibit in our law courts from granting habeas corpus should they deem it fit.

LEVIN:

Is that not correct?

LEAHY:

The chairman is absolutely correct.

LEVIN:

So it's the opposite, I believe, of what you say, Senator Cornyn. I agree with you there may not be a case. There may not be a case where habeas corpus was granted to an enemy combatant.

That proves, it seems to me, the point that you shouldn't -- there's no need to take from the court the jurisdiction to grant habeas corpus if, in fact, they've never used that jurisdiction to grant it to an enemy combatant.

Why, in heaven's name, would Congress then take a radical step of denying courts the jurisdiction to grant a writ which they have never granted?

Why would we interfere with the courts to take from them the right to adjudicate?

And if Senator Warner is correct, as he often is, that we should allow the courts to do their work, it is our law which takes from the courts the right, should they deem it appropriate, to grant habeas corpus. And my...

LEAHY:

You're saying -- and not only that, but you're also saying what Admiral Guter, Admiral Hutson, General Brahms and General Cullen have said in the letter they've given to you.

They say -- I quote -- "It's certainly true that prisoners of war have never been given access to courts that challenge their detention. But the United States does have a history of providing access to courts to those who have not been granted POW status and instead are being held as unlawful combatants, as are the detainees in this conflict."

LEVIN:
And one last question from me -- and others may want to jump in here -- but is it not true that our Constitution, in Article I, says that, quote, "The privilege of the writ of habeas corpus shall not be suspended" -- they're referring to the Congress -- "unless, when in cases of rebellion or invasion, the public safety may require it."

Is that a correct reading?

LEAHY:
Absolutely. You have the...

LEVIN:
And as a matter of fact, has...

LEAHY:
I have the Constitution right here, and that's precisely what it says.

LEVIN:
Let me call on my colleague...

CORNYN:
Mr. Chairman...

LEVIN:
Senator Cornyn?

CORNYN:
I appreciate it. Mr. Chairman, it's my position that, even though there is no legal requirement to provide habeas corpus release to an alien that is an enemy combatant, that's -- and no one has cited any case to the contrary -- that we have gone a step further and provided an opportunity for both administrative and judicial reviews in a court, the D.C. Court of Appeals, which is acknowledged as the second highest court in the land.

So, rather than deny legal rights to our very enemies, people who do not observe the law of war and who have no regard for the distinction between those who wear the uniform and innocent civilians, we have, because I believe we are a great country that believes in the rule of law, gone further than the law required, by conferring that right of review.

And so that's, again, where we differ. And I respect your right to your views. And I hope it's a two-way street. Thank you.

SESSIONS:
Mr. Chairman?

LEAHY:
Of course, in the...

LEVIN:
Senator Sessions?

LEAHY:
Mr. Chairman, if I might say, in the Rasul case, the Supreme Court said the detainees could assert habeas rights. Now, that was before we passed this act. We've now removed the right.
(CROSSTALK)
And I'd be glad to stay here as long as you like. We also have the director of the FBI before our other committee. And I'm supposed to be chairing that.

LEVIN:
Do you have time for one more question?

LEVIN:
Senator Sessions?

LEAHY:
Of course. I'm here at your...
(CROSSTALK)

LEVIN:
No, no, no. You have your other responsibilities.
Senator Sessions?

SESSIONS:
I'm like Senator Cornyn, I have both my chairmen here, and my respect for both of you is immense, and both of you are exceedingly fine lawyers. Pretty good Armed Services Committee chairmen, but also a great lawyer.

LEVIN:
Among lawyers that's a compliment. Among the rest of the world, I'm not sure it is.
(LAUGHTER)

SESSIONS:
However, I think the true fact, Mr. Chairman, Armed Services Committee Chairman Levin, is that the Constitution does not confer habeas corpus rights on people seized on the battlefield.
The basis for Rasul and the case that indicated that there would be some right was based on a statutory act of Congress. And after full debate, we decided that statutory act had in fact created the possibility that all the unlawful combatants that we're capturing will end up suing us and overwhelming the court system. And we created a system, as the senator said, to provide justice without going through the normal habeas corpus rights that have never been given under the Constitution to prisoners seized on the battlefield.

I think that's a fair summary of it.

LEVIN:
Thank you. Thank you, Senator Sessions.
And thank you again, Senator Leahy. We appreciate your coming by.

LEAHY:
Thank you.
Now we'll call on our second panel.
Daniel Dell'Orto, who's the principal deputy general counsel for the Department of Defense. Admiral John Hutson, retired, former judge advocate general of the Navy. Jeffrey Smith, former general counsel of the Central Intelligence Agency. Neal Katyal, who's professor of law, Georgetown University Law Center. Mark Denbeaux, professor at Seton Hall Law School. And David Rivkin, who's partner of the law firm of Baker Hostetler.
Thank you, gentlemen, for coming by today. We've already indicated what a lively subject this is, even before this panel, which I know will continue the lively debate. We look forward to it.
Mr. Dell'Orto, we thank you for coming.
Mr. Dell'Orto, as I said, is the principal deputy general counsel, Department of Defense.
And would you please start?

WARNER:
Mr. Chairman, just one reference here. Very distinguished panel, but we have before us Mr. Smith. Mr. Smith was trained by this committee many, many years. So I hope that that training is manifested today in his remarks.
(LAUGHTER)

SMITH:
Thank you, Senator. It certainly sharpens the intensity of my preparation.

WARNER:
Correct.

LEVIN:
(OFF-MIKE) will remind Senator Warner after your remarks of the fact that you were trained here, so that he will then bear responsibility should he by any chance disagree with anything you might say.
Now, Mr. Dell'Orto, thank you for coming to join us today. And would you begin?
I think we ought to ask our witnesses, if you could keep your testimony, since there's such a large panel and many senators interested, to five minutes. And we'll put entire statements in the record. We would appreciate it.
Mr. Dell'Orto?

DELL'ORTO:

OGC AMNESTY/CCR 350

Thank you, Mr. Chairman, Senator Warner, members of the committee, for the opportunity to testify before you today regarding individuals detained by the Department of Defense as unlawful enemy combatants.

Dr. Samuel Johnson, the esteemed English philosopher, poet and critic, famously tells us, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

DELL'ORTO:

The Military Commissions Act, developed by the president and the Congress in light of the Supreme Court's decision in Hamdan v. Rumsfeld, in conjunction with the other procedures implemented by the U.S. government relating to the determination of detainee status, represent precisely this combination of wisdom, experience and concern for the public interest.

The Military Commissions Act provides a system whereby alien unlawful enemy combatants accused of violations of the law of armed conflict will be tried fairly, while ensuring the national security of the United States and allowing the continued prosecution of the global war on terrorism.

Similarly, the Combatant Status Review Tribunal and the Administrative Review Board processes provide the detainees with a measure of process significantly beyond that which is required by international law.

The United States is in a state of armed conflict with Al Qaida, the Taliban and their supporters. During this conflict, persons have been captured by the United States and its allies. And some of those persons have been detained as enemy combatants.

The United States is entitled to hold these enemy combatant detainees until the end of hostilities. The principal purpose of this detention is to prevent the persons from returning to the battlefield, as some have done upon their release.

Detention of enemy combatants in war time is not criminal punishment, and therefore does not require that the individual be charged or tried in a court of law. It is a matter of security and military necessity that has long been recognized as legitimate under international law.

The United States relies today -- just as we always have -- on commanders in the field to make the initial determination of whether persons detained by U.S. forces qualify as enemy combatants.

Since the war in Afghanistan began, the United States has captured, screened and released approximately 10,000 individuals. Initial screening has resulted in only a small percentage of those captured being transferred to Guantanamo. The United States only wishes to hold those who are enemy combatants who pose a continuing threat to the United States and its allies.

In addition to the screening procedures used initially to screen detainees at the point of capture, the Department of Defense has created two administrative review processes at Guantanamo: Combatant Status Review Tribunals and Administrative Review Boards.

The Combatant Status Review Tribunal, the CSRT, is a formal review process created by the department and incorporated into the Detainee Treatment Act of 2005 that provides the detainee with the opportunity to have his status considered by a mutual

decision-making panel composed of three commissioned military officers sworn to execute their duties faithfully and impartially.

The CSRTs provide significant process and protections. In addition to the opportunity to be heard in person, and to present additional evidence that might benefit him, a detainee can receive assistance from a military officer to prepare for his hearing and to ensure that he understands the process.

Furthermore, the CSRT recorder is obligated to search government files for evidence suggesting the detainee is not an enemy combatant, and to present such evidence to the tribunal.

Moreover, in advance of the hearing, the detainee is provided with an unclassified summary of the evidence supporting his enemy combatant classification. Every decision by a tribunal is subject to review by a higher authority empowered to return the record to the tribunal for further proceedings.

In addition, a CSRT decision can be directly appealed to an American domestic federal civilian court, the United States Court of Appeals for the District of Columbia Circuit. Providing review of enemy combatant determination in our nation's own domestic courts is an unprecedented protection in the history of war.

In addition to the CSRT, an Administrative Review Board conducts an annual review to determine the need to continue the detention of the enemy combatant. The review includes an assessment of whether the detainee poses a threat to the United States or its allies, or whether there are other factors that would support the need for continued detention -- intelligence value, as an example.

Based on this assessment, the ARB can recommend to a designated civilian official that the individual continue to be detained, be released or be transferred to his country of nationality.

DELL'ORTO:

The ARB process is unprecedented and is not required by the law of war or by international or domestic law. The United States created this process to ensure that we detain individuals no longer than necessary.

Approximately 390 detainees have been released or transferred out of Guantanamo Bay. Approximately 80 detainees are awaiting transfer or release once their governments' provide credible assurances that they will be treated humanely and that the countries will take steps to mitigate the threat those individuals pose to the United States and its allies. This underscores our commitment not to hold any detainee longer than necessary.

Where appropriate, the president has indicated that military commissions should be used to try those suspected of serious war crimes. As you're likely aware, criminal charges were referred this week against a Guantanamo detainee who was accused of, among other things, murdering a U.S. soldier. This individual and others to follow will face trail under the military commission procedures found in the Military Commissions Act of 2006.

Transfer and trials before a military commission from the secure facility at Guantanamo Bay to the continental United States would hamstring the nation's ability to prosecute terrorist war crimes. The existing civilian court system is ill-equipped to handle the dispensation of justice in the chaotic and irregular circumstances of armed conflict.

Rules of evidence and procedure designed for information derived from civilian law enforcement investigations are impracticable for the trial of accused terrorist war criminals.

Much of the evidence against these accused war criminals was collected on foreign battlefields where reading Miranda-style rights warnings and obtaining court-issued search warrants would be impossible and would in any case cripple intelligence-gathering efforts.

For this reason, this nation has since the earliest days of the republic used military commissions as a means to try enemy combatants during wartime.

The system created by the Military Commissions Act and implemented by the Office of Military Commissions is designed to provide for prosecution of accused war criminals before regularly constituted courts, affording all the judicial guarantees recognized as indispensable by civilized peoples.

The MCA and the manual for military commissions provide extensive procedural guarantees to commission defendants, including presumption of innocence until proven guilty beyond a reasonable doubt, trial before a commission made up of at least five members -- 12 in capital cases -- and an impartial judge, the ability to call witnesses and present evidence, the ability to cross-examine the prosecution witnesses, the privilege against self-incrimination, and many others.

The current system thus provides an accommodation to unlawful enemy combatants beyond what is required by the Geneva Conventions and indeed unprecedented in the history of war.

To abandon this carefully crafted system in attempt to transplant the trials of enemy combatants into the civilian courts would be ill- advised as would be transplanting the commissions themselves from the secure facility at Guantanamo to some unspecified location in the United States.

In the nine months since the Supreme Court's Hamdan decision, the Congress and the administration have made great strides in moving forward. Congress drafted and enacted legislation. The president signed that legislation into law. The courts have begun ruling on that legislation and have rejected challenges to the act. Military commissions have begun again and are proceeding in earnest.

The department has been criticized for the delay in conducting military commissions. We are now moving forward. It would be worse than counterproductive to make any changes to the legislation at this point while the courts are actively engaged in reviewing the Military Commission Act and military commissions are hearing cases.

Together, Congress and the president developed the Detainee Treatment Act and the Military Commissions Act. Those statutes, along with the CSRT and ARB processes, represent the result of the combined wisdom of the president, the Congress and numerous military and civilian personnel applied to the nation's accumulated experience in fighting an entirely new kind of war. They seek to provide justice fairly and lawfully administered while safeguarding the security of the American people.

To discard the system or any element of it would be to ignore wisdom and experience, and doing so would do a disservice to the American public.

Thank you, Mr. Chairman.

LEVIN:

Thank you, Mr. Dell'Orto.

Our next witness will be Rear Admiral John Hutson, United States Navy retired. He is the former judge advocate general of the Navy.

Admiral Hutson?

HUTSON:

Thank you, Mr. Chairman. I thank Mr. Warner -- Senator Warner, for the opportunity to participate in what I think is a critically important hearing. I have a prepared statement that I'd ask to be made part of the record.

LEVIN:

All the statements will be made part of the record.

HUTSON:

Thank you.

My years of experience, observation, and studying history have taught me that there is one and only one immutable rule of international relations: that is that nation states will always, always, always do what they believe to be in their self-interest. They may be wrong. They may be short-sighted. But they will always do what they believe is in their self-interest, and that includes the United States.

For generations, the president, Congress, the courts and the American people have believed that it was in our self-interests to uphold the rule of law and to support human rights. We understood that it was not a rule of law if we only applied it when it was convenient. It was not a human right if we only applied it to our friends rather than to all humans.

Those values were in our self-interests because it was our greatest strength. It was what we stood for that gave us our strength.

If you believe that combatant status review tribunals in which the fate of people is determined without access to all the information -- after the commander in chief and the secretary of defense and everybody else has already said very publicly the status of the individuals -- is in our self-interest, if you believe the military commissions with secret evidence that have tried successfully -- I think, it's one person in the last five years -- an overly broad definition of enemy combatant, stripping habeas corpus from the detainees, if you believe that that's in our self-interest, if that's what makes us strong, then we should continue that.

If you believe as I do that they are not in our self-interest, that they undermine our national character and our strength, then it's incumbent upon us to stop them.

HUTSON:

I like Senator Warner's description of the system, from Congress to the courts -- or to the president to the courts, and then back to Congress.

In prior wars, that system was upset to some extent -- understandably and perhaps justifiably -- because Congress and the courts very much deferred to the president as commander in chief. As others have said before me, this is unlike other wars. And I think

that it is -- in this context, in this struggle, it is less appropriate for Congress to simply defer to the commander in chief on issues such as these.

Specifically, in summary, I urge you to narrow the definition of enemy combatant, to disband the ill-conceived combatant status review tribunals. That dog won't hunt. They are fundamentally and fatally and irretrievably flawed.

I urge you to restore habeas corpus, and to restore prosecutions to the federal court system.

I was a very early supporter of military commissions. I thought military commissions were the way to go. I've testified to that. I've talked to the media about that. I thought they were the way to go. I was wrong.

We can't fix them anymore. We've tried. We've tried a couple of times. They just aren't going to work.

We've got the greatest court system in the world, and we ought to be using it. We should be trumpeting, heralding our judicial system for all the world to see. We should be using it as an example that we want everybody else to emulate, rather than hiding it behind the concertina wire of Guantanamo Bay.

We have the opportunity now to demonstrate to the world how strong we are, how just we are. Rather, we are proving to the world that we're frightened, that we don't really stand for the things that we have said for all these generations that we stand for.

I believe that we cannot -- we dare not -- fundamentally change who we are in the face of this enemy. Because for this enemy, fundamental changes in our DNA as a nation is victory. They can't beat us on the battlefield. The only thing they can do is try to cause us to change ourselves. And they seem to be succeeding in that regard.

We owe it to our forebears, who fought so hard and shed blood to give us this great country, to turn it over to our progeny in the same condition or better than it was when we got it in the first place.

HUTSON:

So, again, thank you for this opportunity. I look forward to your questions, specifically with regard to some of the recommendations that I've made. And thank you for holding this hearing, Mr. Chairman.

LEVIN:

Thank you, Admiral.

Our next witness will be Jeff Smith, former general counsel of the Central Intelligence Agency, and, as Senator Warner's pointed out, formerly a very esteemed staff member of this committee.

SMITH:

Thank you, Mr. Chairman. It is indeed a special honor for me to appear before the committee this morning that I was privileged to serve for nearly five years, initially as minority counsel, and then as general counsel, under Senator Sam Nunn.

And it's, I think, especially important that the committee is addressing these enormously important issues that really go to the core of who we are as a nation and how we fight and win our wars.

And I should say that we are in a war, and it's important that we succeed, but that it's important that we also fight it in a way that when the war ends or we reach some kind of political settlement we have not prejudiced our ability to reach that settlement through the manner in which we fight the war.

Mr. Chairman, the president was correct, in my view, when he concluded that many of our laws were inadequate or outmoded when it came to responding to the new threats that we saw after 9/11. The president was wrong, however, when he concluded that he could adhere to those laws with which he agreed and disregard those with which he did not agree.

Law matters, especially in time of war. It matters because we are a democracy and because we respect the rule of law. It matters because the law of war governs how we fight, it governs how we treat those whom we capture, and perhaps most importantly, it governs how we expect our fellow citizens to be treated when they're captured.

Fidelity to the law also matters because how we fight the war and how others see us shapes the political landscape after the war is over. And this is especially true of the wars we're currently fighting.

Mr. Chairman, I'm concerned that in our efforts to get tough with the terrorists, with which we all agree, we have strayed from some of our fundamental principles and undermined 60 years of American leadership in the law of war.

In six short years, our disregard for the rule of law has undermined our standing, and with it our ability to achieve our objectives in the broader war. Our actions have affected the level of cooperation we have received from allied and friendly governments. Senator McCain has observed this on many occasions, as have other members of this committee.

You've asked me to address, Mr. Chairman, a few specific matters, and I will do so. But there are a couple of principles I'd like to address up front.

First, I believe the United States must regain its leadership in upholding the law of war and promoting adherence to the Geneva Conventions.

Second, the United States must take concrete steps to convince the world that we do not torture any person held in U.S. custody.

Third, the president has said he wishes to close Guantanamo. I believe it would be an important step and urge the Congress to direct the president to outline a specific plan to close Guantanamo. I recognize that's not easy, a lot of pragmatic considerations, but I think we should have that as an objective.

Fourth, Congress should revise the Military Commissions Act along the lines suggested by Senator Dodd in S. 576, cosponsored by Senator Kennedy of this committee.

Fifth, the use of renditions, which I've been asked to address, in part because of my role in the intelligence world, has been a very valuable tool in the war on terror and in law enforcement matters.

It's recently been called into question, particularly in Europe, but I believe it's an important tool, and I believe the president, perhaps with congressional authority, should issue an executive order establishing clear criteria for the conduct of renditions, including specific matters to ensure that to the maximum extent practicable individuals are not handed over to states where they may be tortured.

OGC AMNESTY/CCR 356

SMITH:

Sixth, and of critical importance, the United States must develop clear guidance for the men and women of the armed forces and intelligence services who implement these policies and enforce these laws.

We ask these brave men and women to take physical risks on our behalf. We should not also ask them to take legal and financial risks. Too frequently, these officers are asked to carry out directives not knowing whether, when the political winds in Washington shift, they will be left out on a limb and forced to face multiple investigations and possible prosecution for doing what was thought to be proper at the time.

We owe it to these men and women to be clear in what we want them to do, and then back them up when they do it.

Mr. Chairman, about two minutes on my remaining time on the specifics.

As I said, I believe S. 576 is important, and I certainly support its adoption.

With respect to the CSRTs, I am sad to say I disagree with Admiral Hutson. I believe they play an important role.

I favor the restoration of the right of habeas corpus for individuals detained in Guantanamo. But I believe that combatant status review tribunals should have their procedures considerably strengthened, because I do believe they fill an important but different function than that of habeas corpus.

So I am hopeful that we can find a way to do that. I agree that they are not currently effective, but I believe ways can be made to strengthen them.

Finally, Mr. Chairman, the question has been asked of me of whether I believe that the president should continue to have the right to use the CIA to detain people outside of the military system, the so-called ghost detainees.

I am skeptical of the need for that. And I'm pleased that the president has now moved all of those individuals into the military system.

But I would not by statute deny the president the right to do that. We may need to do that at some point in the future. I hope we don't, but I'm reluctant to say by statute the president should not have that right.

With that, Mr. Chairman, I look forward very much to your questions.

LEVIN:

Thank you very much.

And next we'll call on Neal Katyal. Pronounce your name for me, if you would.

KATYAL:

Perfect.

LEVIN:

Perfect. Thank you.

Mr. Katyal is the -- is a professor of law at Georgetown University Law Center.

Thank you for being with us.

KATYAL:

Thank you, Mr. Chairman and Senator Warner, for inviting me.

I want to begin by thanking the chairman's staff, particularly Peter Levine and Bill Monahan. They're outstanding public servants who have spent countless hours with me and folks on the other side during the 2005 Detainee Treatment Act debates and the 2006 Military Commission Act debates.

KATYAL:

Mr. Dell'Orto started this hearing quoting Samuel Johnson. Let me do so as well. He once called second marriage the triumph of hope over experience. The same, I think, might be said of the Military Commission Act. It represents the triumph of unsupported hopes, namely to avoid the Constitution and judicial review, over instructive experience.

Experience said the previous military commission system was a failure. In the five years it existed, it spent tens of millions of taxpayer dollars, produced zero trials and zero convictions and was ultimately held illegal by the Supreme Court -- five wasted years.

While the military commission system was busy wasting resources and producing no results, many terrorism cases were prosecuted successfully in our civilian courts. The Justice Department recently heralded over 500 terrorism prosecutions since 9/11.

The documented successes of the established judicial system and the failure of the commission experiment call into question the need for an alternative judicial system at all.

But if military commissions are to be retained, experience suggests the need for reform to make them work fairly, accurately and economically.

I want to make three points today. First, while habeas corpus has gotten the bulk of attention, I think the reported views of Secretaries Gates and Rice that the military commission trials be moved to the United States are right.

It is a crucial first step, perhaps even more important than repealing the MCA's habeas provisions. Trials are gripping, dramatic and easy to follow. This is the reason why shows like "Law & Order" are running so long on television. They're unlike detention, which involve little drama and no grand moment of resolution.

The trials at Guantanamo will be watched by the world. And we must not forget that in them, our nation, not just the detainees, face judgment.

Yet, the administration clings to the idea that Guantanamo should be a legal black hole, where none of the protections of our great Constitution apply. This shortsighted theory will corrupt these trials. These ideas should be repudiated and replaced with American traditions and values.

Second, Congress should repeal the Military Commission Act and use our proud traditional system of courts-martial to try terrorism suspects, as suggested by Senator Dodd.

Here, I want to focus on something basic, which is the role of equality. When I first met Mr. Hamdan in 2004 at Guantanamo, he asked everyone to leave his cell, except for me.

I thought he was going to yell at me. He'd been detained for a long period of time there.

He said to me just one thing -- he said, "I have one simple question for you." He said, "Why are you doing this? Why are you defending me?" He said, "I thought your last client was Al Gore."

And I told him the reason why was that my parents had come to this land from India with $8 in their pockets, and they chose America because they knew they could arrive on our shores and be treated fairly.

"There's no other nation on earth," I told him, "who would give me, the son of immigrants, the opportunities I had." I told him, "I'm deeply patriotic for these reasons," and that when the president issued his military commission order, it was the first time I felt, in my life, that this vision, my parents' vision, had been violated.

Remember our history. We are a land of immigrants. The Declaration of Independence lists as its first self-evident truth that all men are created equal. That promise is the centerpiece of the Equal Protection Clause, which protects all persons, not simply citizens.

When you think about the Military Commission Act, think about that. For the first time, Congress has set up a separate and unequal trial system, to only apply to the 5 billion people in the world and 12 million green card holders who live here.

A United States citizen gets the Cadillac justice system, the American civilian trial, no matter what he's accused of. A foreigner gets the beat-up Yugo, a stripped-down Guantanamo one. We've never done that before.

KATYAL:

We've had military commissions since 1847. They've always applied symmetrically to citizens and foreigners alike.

Not only does this offend the Constitution, it's bad policy. As Justice Scalia has warned, the genius of the equal protection guarantee is to avoid letting Congress sidestep difficult choices by singling out the powerless for disfavor.

It's not surprising that this act was introduced on September 6th and passed this body on September 29th. It did so in record time not because, with all due respect, the act was written by Plato. It passed because it only affected the powerless, people who literally had no vote in this chamber. Ultimately, I believe the Military Commission Act will be struck down for this and other reasons.

Third and finally, instead of trying to avoid a court ruling on the legitimacy of these military commissions, I believe Congress should expedite it. It should at the very minimum repeal the provisions requiring trials to take place before legal challenges can ensue.

That's the kind of delay that the administration had told the Supreme Court to take in Hamdan. They told the Supreme Court, "Don't decide this case. Let's have the trials first."

Think about what would have happened, the atrocious result. We would have had dozens of military commission trials. They would have all gone forward. Some of these folks would have been convicted. And then all those convictions would have to be overturned, because the previous system was illegal.

Before gambling on the administration's shaky legal theories once more, we should be absolutely sure the system will stand up in court. The expedited review is a system we

used in the McCain-Feingold campaign finance reform package, and it is crucial here as well.

In sum, I ask you to realize the power that lies in your hands: the power to ensure the safety of our troops and the dignity of the values they defend.

I applaud Secretary Gates and all others who recognize that the only thing worse than making a mistake is failing to correct it when you have the chance.

(APPLAUSE)

LEVIN:

Excuse me. Please, no demonstrations or you'll have to leave.

Mr. Denbeaux?

DENBEAUX:

Thank you very much.

Unlike Mr. Smith, I've never been on your staff. I've never been before the Senate. And I've never testified. So I hope you'll bear with me. I will try to...

LEVIN:

So far you're just doing great, by the way.

(LAUGHTER)

DENBEAUX:

Thank you very much.

I guess as you said last time, I'll wait until the end to see how you think I did.

When I -- this is a personal beginning. After Rasul, my co- counsel, my co-author and my eldest son asked me what I thought about Guantanamo. And I'm ashamed to say that I said I hadn't thought much about it at all.

He asked if I felt we had the right people there. And I replied we probably did.

Then he asked whether my father -- his grandfather -- who was a chaplain with General Patton, would have believed that the United States Army marching across Germany during World War II could have accurately selected the 500 bad Germans civilians from all the rest.

And I said, "I'm sure he would not have believed that the 3rd Army could have made those distinctions in combat as it was moving along, and it wouldn't have bothered."

But I said, "My father also wouldn't have cared, because my father didn't believe that there were any good Germans during that period of time."

And my son Joshua said, "Isn't that the whole point?"

I'm grateful to him for that because I then started looking into this. And, frankly, I think in one sense it's my lips moving but it's the government documents talking.

DENBEAUX:

Because what I did, as a result of the efforts of a series of my law students, was decide to look and see what the government records actually said.

And one of the things that I discovered was, that what our United States government said before habeas corpus was granted, even temporarily, which was also before any of

the government documents for the CSRT proceedings had to be prepared, and before they had to publish any of those documents, we learned that the government had made a series of statements that were totally false.

And one of the scary parts about that is, those statements are very difficult to pull out of the record once they have been made. One of those statements was "The detainees there are the worst of the worst." And I had a poignant moment when a student came into my office and he said, "Where are the worst of the worst?" He'd been looking through all of them.

And he showed me a record, and this is the entire CSRT charge against one person. It said -- this is it in its entirety -- "Detainee is associated with the Taliban. He indicates he was conscripted into the Taliban. He was engaged in hostilities against the U.S. or its coalition partners. One, he was a cook's assistant for the Taliban forces. Two, he fled from Narim to Kabul during the Northern Alliance attack and surrendered to the Northern Alliance."

That's the entire charge upon which he was being held. My student said, "All right, we have the assistant cook. Where's Mr. Big? Where's the cook? Why do we have the sous chef and not the chef?" And he turned and walked out of the room.

And, you know, I don't have an answer to that, and I think all Americans should ask that, but especially those of you who say "We have the worst of the worst there," because what's really scary is when you look at the government records and find out who is there.

They say all the time "They're the worst of the worst," and what -- if you look at our records, you'll find out that 55 percent -- and this is government's own records from their CSRTs -- are not even accused of committing a single hostile act.

So these enemy combatants, 55 percent of them, are enemy civilians, as my students point out. But you don't have to be a combatant to be an enemy combatant, to be the worst of the worst, to be held in Guantanamo. But you also don't have to be a member of Al Qaida.

You don't -- it turns out that 60 percent of all those detained in Guantanamo are not even accused by the United States government of being fighters for or members of either Al Qaida or the Taliban.

DENBEAUX:

Another point that's been made by several of you today -- and it's distressing because it's not true based on the government's own records -- the number of members of the executive branch who have consistently said the detainees were captured on the battlefields of Afghanistan shooting at Americans.

Our government's own records show that 66 percent of the detainees weren't even captured in Afghanistan. Yet people keep saying they were captured in Afghanistan shooting at U.S. forces.

The second percent is, depending if you give the government the maximum benefit of the doubt, only 8 percent of those detainees were ever captured on the battlefield -- or, pardon me, were captured by Americans.

And you know, if you look at all of the charges against everybody in the CSRTs, eight individuals are alleged to have fired weapons at U.S. forces.

Now, those people are enemy combatants. I'm not here to argue they're not. They deserve to be prosecuted. And the CSRT process, if they were to go through the proper process -- and it's true they should be held there. But it's very distressing.

And I want to say another factor the government records show.

For those who have been told that we're holding those people because they're the repositories of useful information, General Schmidt's report indicates that over more than 30 months of interrogation, the Defense Department conducted 24,000 interrogations of those detained in Guantanamo. That sounds like a lot.

But there are 759 detainees. That averages one interrogation a month. We're holding people there for their intelligence purposes in order to interrogate them once a month during the first 30 months of their detention. And at least one FBI agent has reported that most interrogations last approximately three hours.

It's deeply troubling, if you're worried about our security, to believe that we're holding those people there in order to interrogate them, in order to spend approximately one afternoon a month finding out what they know.

Now, one of my really distressing parts of this is, I believe, in all fairness, anybody's belief that those are the worst of the worst, that they were captured on the battlefield, that they shot at Americans, is simply been misled by information made public before habeas corpus.

We would not know it now, if habeas corpus had not existed, that those statements were false. And we would not be able to refute those false statements that have penetrated all levels of our government, all branches of our government, the press and the popular world. But they're false.

Now, how is it that those detainees are still there?

DENBEAUX:

The CSRT proceedings -- which, by the way, the very first attempt to create the CSRT proceedings -- the establishment of the procedures, their implementation, and the completion and the final decision in the first CSRT proceeding took 24 days.

So when you talk about working out a complicated, sophisticated process to find out if you do have the right people there, they spent -- they didn't complete the process for almost three weeks. Within three days of the completion of the process, they had the first CSRT proceeding. On that same day, the decision was made. And on that same day, the detainee was found to be an enemy combatant.

The cook, the assistant cook, was found to be an enemy combatant, and to the best of our ability to check those records, that assistant cook remains in Guantanamo to this day, after five years, with no impartial review.

Now, I want to talk about what the CSRT proceedings are and how they operate. And I appreciate the chairman citing some of our information. But it's really very distressing.

It turns out that a detainee is assigned a personal representative, and the personal representative may not be a lawyer. And in fact a personal representative must come in, and there's a script, he has to come in and tell the detainee, "I am not your lawyer. I'm not your advocate. What you tell me may be shared with the panel. How can I help you?"

The average length of those interviews is less than 90 minutes, and that includes translation time. Those often happen within 48 hours of the hearing. A significant number happen the same day as the hearing.

Then the detainee is brought into the room, and 200 of them, after being given that offer by the personal representative, choose not to come.

Two hundred do not. The remainder do come in. And they're brought in the usual shackles. They're shackled to the floor. They're alone in a room, seated against the wall, with a tribunal on one side. And this is their chance to have a hearing.

And at this hearing, the rules say they're entitled to question witnesses. To my absolute shock, in 100 percent of the cases the government's made public the United States produced zero witnesses.

So the opportunity under the process to question witnesses is a complete sham, not because it isn't offered, but because the government doesn't exercise it. Because in this impartial hearing, the government is entitled to rely on the classified secret evidence the detainee never sees, and it's presumed to be reliable and valid. So the government doesn't call a witness.

And, in fact, in 94 percent of the cases it produces no documentary evidence for the detainee to see.

So detainees actually have their impartial hearing when they walk into a room, only to discover that no evidence will be presented against them, they'll hear no evidence, they see no evidence, and then the government turns to them and says, "Well, now you may speak."

Most of the detainees believe it's another form of interrogation because they hear nothing and they're asked to speak.

And then, after that, they're told, "You may call witnesses." Well, you know, every detainee who ever asked for any witness who was not a fellow detainee was always turned down because the witness was not reasonably available.

Even when the detainees would say, "Would you please allow by telephone to call my brother, here's the phone number," our government would decide to work through the Afghani embassy to find the person, and there'd be a brother waiting by a phone.

DENBEAUX:

And they wouldn't call him.

Now, those detainees were then, at the end of the hearing -- the personal representatives, 98 percent of the time, had the opportunity to speak and didn't.

And if I may just -- I probably used up all my time, Senator, but if I could just end with one point?

In terms of impartial, they say this can be reviewed. They can be reviewed. And do you know, every time a detainee won, even in that process, they were reviewed. And every time they were reviewed, when they won, it was sent back down again.

Two detainees won; went up through the chain of command; came back down again. And it turned out they were tried again.

One detainee won twice, and they sent it back down the third time. That's the impartial review they give.

Now, the question is, what can be done to solve this?

When I was a young man and I was trying to get by on cars, I used spit, baling wire, glue to keep a car going. And I actually believed that it was economical and efficient. And I think we've all experienced that. And it isn't economical and it isn't efficient.

But I'll tell you, even in my youth, I never tried to fix a car after it hit a bridge abutment at a high speed.

The CSRTs are a vehicle that has hit a bridge abutment at a high speed. You can't tinker with these and fix it. They are totaled. They never operated. They are not distinguishing people. Every detainee loses.

And my final point is only this. When we talk about habeas corpus, all I want to do is to allow the courts to evaluate whether we have the right people.

My problem with this process isn't giving them rights. My problem is we have the wrong people there, if you believe our own government's records.

And the question is, what do you say to those people who have been held wrongly, after the CSRTs confirmed, nonetheless, to be enemy combatants, wrongly?

What do you say to them?

We're not talking about habeas corpus in terms of post-conviction release, where they've had the trial. This is the purpose habeas corpus was for.

When the sheriff of Nottingham wanted to lock somebody up, in the time of Robin Hood and Magna Carta, what Magna Carta said was, you couldn't hold him for no reason, without any hearing, indefinitely; you had to produce the body and explain why.

Detainees in the United States always ask for second bites of the apple. The people detained in Guantanamo have never had a first apple. They haven't had a nibble.

And I ask you simply to appreciate how this system has failed us, based not on what I say but what our own records say and only our own records.

Thank you very much.

LEVIN:

Thank you, Mr. Denbeaux.

Next it's David Rivkin, Jr., who is a partner at the firm of Baker Hostetler. We welcome you, Mr. Rivkin. Please proceed.

RIVKIN:

Chairman, thank you.

Chairman Levin, Senator Warner, I wanted to thank the committee for giving me a chance to share my views on the Military Commissions Act of 2006, the Detainee Treatment Act, the procedures used by Department of Defense to determine detainees' status under the international law of armed conflict, and to try some of them for war crimes.

RIVKIN:

Fundamentally, I believe that both MCA and DTA comport with our Constitution and more than meet applicable international law standards.

Their procedures are streamlined yet fair. They essentially provide detainees with judicial process that is more than sufficient to enable them, at appropriate times, to mount

a meaningful challenge to the government's -- core government decisions that impacted them.

Meanwhile, the actual procedures used by the Department of Defense to determine their status -- and we heard today about CSRTs to try them for war crimes by military commissions -- in my view are constitutionally sufficient and give them far more due process -- far more due process -- than they've had in the past under any competent tribunal convened, for example, under Article V or Geneva Convention III, or any military commission in American history or history of any other country.

To me the fact that DOD, in addition to these procedures, also implemented something called administrative review boards, which focus primarily not on whether or not an individual is an enemy combatant, but they question whether or not individuals detained in U.S. custody pose a continued danger, and whether or not a viable alternative exists for their continued detention, underscores the extent to which the U.S. has opted -- with input from both political branches -- to provide captured enemy combatants with additional rights that go far beyond those provided for under the Constitution or international law of armed conflict.

Let me try and underscore this point somewhat dramatically.

Since the notion of enabling captured enemy combatants to be released on parole -- and even then, it'd apply not to everybody but to officers and the gentlemen -- fell out of practice in late 19th century. The current U.S. practice of releasing captured enemy combatants before the end of hostilities, ladies and gentlemen, is historically unprecedented and does represent a very generous act on the part of the United States.

And, of course, we all know, because you cannot always be right -- I agree with my colleagues who think the government does make mistakes -- a number of those individuals went back to combat. And it must be a very difficult situation to explain to somebody who's lost a loved one how that person got killed not by an individual before we had a chance to apprehend him, but by somebody who was actually in U.S. custody and was let go.

RIVKIN:

Now, primarily, planning to talk about habeas, I believe, today. And I don't need to describe in detail how the DTA and MCA work for designating the United States Court of Appeals for the District of Columbia Circuit as the exclusive venue for dealing with appeals from a decision of CSRTs and military commissions.

Now, substantively, the judicial review timelines aside, it's limited to essentially two questions: Whether or not a HUMINT CSRT or military commission operated consistent with the rules and standards adopted by it and also whether or not the CSRT or military commission reached a decision that, quote, "is consistent with the Constitution and laws of the United States."

Now, this review has been derided, I would say, as being austere and inadequate, in particular because it allegedly does not grapple with the facts. I think it is a misreading of the statute and applicable case law.

The scope of judicial review, in my opinion, is sufficient not only for noncitizens held abroad, but it's constitutionally sufficient for the United States citizens themselves.

The fact that the review does not commence at the district court level and does not fall on all the particulars the existing federal statutory habeas procedures codified at 28 USC 2241 is constitutionally unexceptional.

And contrary to critics' assertions that these procedures are deficient because they don't allow for review of factual issues, I believe that the scope of habeas review provided by DT-MC is not limited to merely reviewing the legality of procedures. A detainee should be able to claim that he is in fact not an enemy combatant, that he is an innocent civilian, a shepherd, if you will, or an aid worker, and that the relevant factual record of a CSRT military commission would be judicially reviewable.

Indeed, there's nothing particularly noble about it. This is exactly the same type of review the Nazi saboteurs, of whom at least one was a U.S. citizen, in Ex parte Quirin received before the United States Supreme Court, at least -- people will think that was a long time ago, that is still a good case. That case was referred to in approval in the Supreme Court's recent opinion in Hamdan v. Rumsfeld.

And of course recently the D.C. Circuit upheld the constitutionality of the MCA against attack by the detainees who were asserting pre-existing claims in Boumediene.

Now, I know that predicting what the Supreme Court is going to do is chancy business. But with all respect to my good colleague, Professor Katyal, to me the fact that six Supreme Court justices, including two justices, Stevens and Kennedy, who were in the majority in the recent Hamdan decision which struck down the pre-MCA version of military commissions, let stand the D.C. Circuit Boumediene decision and refused to consider the facial challenge to the MCA is highly significant.

In my view, it certainly casts substantial doubt on the critics' contention that MCA is palpably unconstitutional.

Now, we're not going to get, at least now, in a detailed discussion about the procedures used by CSRTs and military commissions. They've been much criticized.

But I would challenge my critics and others who criticized those procedures to look at the facts, facts as reflected in state practice of other countries, the competent tribunals convened under Article 5, Geneva 3, to show this committee or anybody else, for that matter, how these other historical precedents implemented by countries like Britain and Canada are more plentiful, are more robust in their procedures than CSRTs, because, with all due respect, the answer is, they're not.

And the only appropriate point of reference for assessing the sufficiency of procedures used by CSRTs and military commissions is not our civilian criminal justice system, with all due respect, but their historical international counterparts.

And I'm going to repeat myself to say you get a lot more due process in CSRT and military commission than you've gotten either in Article 5 tribunals convened under Geneva 3 or in World War II-style military commissions.

Let me just briefly make a couple points reflecting the discussion that went on before. I understand that we're not popular in the world, and I don't disagree with some of the opinion polls that have been cited.

With all due respect, having looked at the subject carefully, having written about it, having engaged a lot of my European friends and colleagues in debates, I'm afraid -- I'm afraid -- that even if we closed Guantanamo tomorrow, even if we were to deploy the criminal justice system as the exclusive avenue for dealing with enemy combatants, that would not vitiate the problem.

RIVKIN:

Simply put, there's a huge doctrinal, philosophical gulf between us and most of our allies on the issue of the laws of war and it's a very complicated subject. But, to me, it is not a fair proposition, but if we were to close Guantanamo or move the trials here, that would fundamentally change the equation. I could be wrong on that.

Two other points briefly. On the whole issue of why do we need a second-tier justice system, why shouldn't we use at least courts- martial, I would submit to you that the way a society treats a given class of problem is not only driven by fairness to their accused. It is that, of course, but it also tells us a great deal about how society views a particular type of problem.

If you look at this historically, the reason to use military commissions and not courts-martial -- and not just utilitarian. It's not a question where it's easier to convict somebody. There's enormous and fundamental differences between unlawful combatants and lawful combatants when lawful combatants (inaudible) of humanity, committing disproportionate portion of war crimes and just being absolutely bad people.

These are institutions and practices that ought to be delegitimized and suppressed, and that has always been the case historically. One of a few remaining ways, especially because we do give a lot more due process to unlawful enemy combatants than in the past and properly so -- the only way in which in those differences are still manifest, are still palpable in trying them by fair procedures under a different system called military commissions and not by courts-martial.

And last but not least, with all due respect to my colleague, Professor Denbeaux, under the laws of war, the fact that you are a cook absolutely makes you a combatant subject to detention.

So in his case, if you have somebody who admitted to being an assistant cook for a particular Taliban detachment, given the fact that Taliban is an unlawful combatant entity, I'm very sorry to say that individual is an unlawful combatant and no other particular review as to his motivations, as to whether or not he was oppressed or how much he did need not be done.

You do not need to fire guns or machine guns, you do not need to charge the enemy trenches to be considered a enemy combatant. A person who repairs vehicles for a military unit is an enemy combatant. So is the cook. So is the person who processes payroll. This is a fundamental difference between the military system that looks at individuals in that context and the civilian justice system.

Thank you, and I'm looking forward to the questions from the committee.

LEVIN:

Thank you very much, Mr. ricin. Let's try a eight-minute round for round one.

Mr. Smith, you indicated that we should maintain the CSRT system but we should reform it. Is that correct?

SMITH:

That's correct.

LEVIN:
What reforms do you recommend and why?

SMITH:
Mr. Chairman, first of all, I want to be very clear. I am in favor or restoring the right to habeas corpus. That is to say, as you said earlier, repealing that section of the Military Commissions Act that denied the courts jurisdiction to hear habeas cases. But I believe the CSRTs can fulfill a vital role.

I believe they are not currently doing so because the procedures are inadequate, but I believe that under Article 5 of Geneva III, there is an important role to be held by or to be fulfilled by those commissions, review tribunals. Insofar as increasing their effectiveness, I agree with much of what has been said.

SMITH:
I think they ought to be...

LEVIN:
By whom?

SMITH:
I'm sorry. By my colleagues here who favor giving them an attorney, giving them some degree of access to the evidence against them.

We can have cleared attorneys on their behalf able to see the evidence that the government has. Seems to me that's an important step. The detainee themselves, in many instances, probably should not be entitled to see it, but I think their lawyers ought to see it.

And then, secondly, I think there ought to be meaningful review in the court of appeals. The current review is so constrained that it reviews only the issue of whether or not the tribunal stayed within the four corners of their authority. That's so limited that it's not meaningful.

So I would give them much stronger review, but I would have ultimately the right to file habeas once the CSRTs have been exhausted.

LEVIN:
What other changes would you make in the CSRT law? For instance, would you say that if witnesses are available you should not use hearsay testimony?

SMITH:
I'm not sure I would...
(CROSSTALK)

LEVIN:
I think that's in the Dodd bill, although I'm not positive.

SMITH:
I'm not sure I would go quite that far, Mr. Chairman. This is something less than a full-scale habeas. It's designed to be a, sort of, first rough cut justice to say, "Do we have the right person?"

I do think there's clearly a difference between those individuals whom we capture and hold in Iraq or Afghanistan. And I think we're not talking about those individuals.

LEVIN:
We're not.

SMITH:
We're talking about those individuals who for whatever reason we believe are a sufficient threat to kill Americans that they should be detained specially at Guantanamo or some other place if we close Guantanamo.

And the concern I have is that under the current scheme, as Senator Leahy said, they can be locked up forever. And this is a war with a very uncertain end. And in that sense it's different than World War II, it's different than Korea, where we did have some end in sight. And we need to have some procedure.

LEVIN:
You want to preserve the CSRTs though...
(CROSSTALK)

LEVIN:
And I want to just go into what other changes would you make and why in the law, besides the one you say.

One, the current representative, you say -- or I assume you believe -- doesn't fulfill a proper function because that representative doesn't have any fiduciary duty to the detainee, as a matter of fact, could be interrogated by the government as to what the detainee told them. So you would recommend a lawyer at those hearings, those detainee hearings.

Secondly, as I understand it, he would have some access to the evidence, at least by a cleared lawyer, to know what it is that the evidence is that is being used by the government to decide whether or not that person should be held.

Are there any other changes you'd make?

SMITH:
Yes, Mr. Chairman. Two other things. I'd change the presumption. At the moment, the burden is on the detainee to prove that he should not -- the government is entitled a presumption that he's legitimately a combatant. I would change that around and put the burden on the government to prove that he's being held on basis.

The other thing is I would not permit the use of any evidence obtained by coercion and torture. And I would permit the detainee rights to be able to get at whether the -- any evidence was obtained by coercion or torture.

LEVIN:
Thank you.
Mr. Dell'Orto, in your opening statement you say that the CSRT recorder is required to search government files, quote, "for evidence suggesting the detainee is not an enemy combatant and to present such evidence to the tribunal."
It is our understanding the recorder receives a package of evidence from the Office for the Administrative Review of the Detention of Enemy Combatants in Washington and does not have access to any other government files.
Am I right?

DELL'ORTO:
I think you're generally right, Mr. Chairman. But I do think he can have access to the other materials if he so desires.
And, certainly, there are people on the other end who are -- or as they review the information are certainly obligated to take a look for anything that might indicate that the detainee is not an unlawful combatant.

LEVIN:
The recorder, however -- am I correct that he is given a packet of information?

DELL'ORTO:
He is.

LEVIN:
And that is where he reviews the evidence?

DELL'ORTO:
Yes.

LEVIN:
Do you disagree, Mr. Dell'Orto, with the accuracy of the data that Professor Denbeaux has presented on the CSRT process, particularly the two items that he mentioned here this morning, that 66 percent of the people who are being held were not captured in Afghanistan?

LEVIN:
Do you have any reason to disagree with that?

DELL'ORTO:
I've read the reports. I don't have firsthand knowledge of information that would enable me to either confirm or rebut those. I do know that we are -- we -- certain people are undergoing reviews of the records that we have to establish whether that information, that data are correct.

I do on certain aspects of what I've read in the report, based on information I do know, I would say that I disagree.

LEVIN:
Would you get for the committee any specific disagreements that you have factually with the reports of Mr. Denbeaux?

DELL'ORTO:
We think that...

LEVIN:
I don't mean right now. For the record.

DELL'ORTO:
I understand. Within a relatively short period of time, although I think one of the reviews is going to take us about another 30 days, Mr. Chairman.

LEVIN:
That's fine. That'd be very helpful. And if you'd send Mr. Denbeaux a copy of your review, we'd appreciate it.

DELL'ORTO:
Well, at least one of them will be classified, so I'll have to provide that only to the Congress.

LEVIN:
At least the unclassified part, if you'd share that with Mr. Denbeaux.
The definition of enemy combatant is a big issue here. The District Court for the District of Columbia reviewed the administration's position on the scope of the term enemy combatant, and the brief, or the counsel for the government, argued that the executive branch has the authority to detain the following individuals until the conclusion of the war on terrorism. The first example is a, quote, "little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but really is a front to finance Al Qaida activities." And apparently the counsel for the government said, yes, that that little old lady, without any requirement that there be knowing and willful support for Al Qaida, simply writing checks to a person who the lady believes is a harmless person, is just a charity that helps orphans.
Do you agree with that answer?

DELL'ORTO:
I guess I would want to see the question in a larger context.
I would say that as we in the department make our assessments of unlawful enemy combatants in our operational scheme, we are probably more conservative than that view in making those sorts of assessments.

LEVIN:

Do you require any knowledge or intent on the part of the person, that little old lady?

DELL'ORTO:
Well, generally, I think, for our purposes, when we are engaged in reviews of target-and-capture decisions, probably require a little bit more in the way of indicia. But I'm not -- I wouldn't say that that's a wrong assertion, but I do think that -- I do know that we apply a more conservative approach...
(CROSSTALK)

LEVIN:
I would hope so. But you would take the position that you have the right to hold somebody who writes those checks who has no knowledge or intent that that charity is, in fact, a front to finance Al Qaida. Would you agree with that answer, that you have the right to do it? Put aside your practice for a moment.

DELL'ORTO:
On the extreme end of that sort of an assessment, I'd want to be able to consider it a little bit more, Mr. Chairman.

LEVIN:
You say consider it more, I mean, would you -- does that mean that you have doubts about that answer? I mean, give us a little more than consider it more.
(CROSSTALK)

DELL'ORTO:
Well, again, I mean, I think that's a bare-bones hypothetical. I'd want to know more about the -- I mean, how frequent was the practice, what was the organization, where was it listed, where was it identified.
I mean, you know, we talk about people with knowledge. There's more than just what they actually know, but what they probably should know is a factor to take into consideration.

LEVIN:
Well, but the counsel for the government did not say that he needed or she needed to know more. They knew enough. It's not enough for you. Is that fair to say?

DELL'ORTO:
I would say I want to know more, yes, Mr. Chairman.

LEVIN:
Senator Warner?

WARNER:
Thank you, Mr. Chairman.

WARNER:
Basically, I still strongly adhere to my earlier comments that we should have let the sequence of actions by the three components of our government to run their course.

Nevertheless, I was greatly taken with Mr. Smith's thoughts about certain revisions that he would recommend in response to Senator Levin's question to the CSRT and ARB processes.

Given that I'm not advocating any support for a change of law at this time, are there some thoughts within DOD and Justice maybe to take into consideration the views that we've heard today and that you and others have been available to you for some time to change some of the procedures now?

DELL'ORTO:
Senator Warner, I have to admit I'm not -- I don't quite understand Mr. Smith's approach to both reinstating the habeas -- the statutory habeas access and the CSRT. To have the dual process doesn't seem to make sense to me.

Again, I think at this point, with the Military Commissions Act, a relatively recent legislative initiative, and its signing into law, and our grappling with all that came from that with respect to in particular the military commissions themselves, I have not given and I'm not aware -- there may be other discussions under way, but I'm not aware of any as to whether we should at this point undertake a revision in any way of the CSRT process.

DELL'ORTO:
Again, I do think that with...
(CROSSTALK)

WARNER:
Then why don't you go back and assess from your other colleagues in Justice the views and just advise the committee in a written response to the record?

DELL'ORTO:
OK.

WARNER:
Thank you.

DELL'ORTO:
We will.

WARNER:
Mr. Smith, you've had a long and distinguished career regarding security issues in this country. And I thought you spoke very boldly about your views with regard to our

intelligence gathering and the necessity to have certain areas remain in effect simply for national security reasons in this time of war.

But what about the provisions in S. 576 about the expanded discovery rights? Do you have any views on the implications of those expanded provisions as it would affect our security?

SMITH:

I do, Senator Warner. I think that the expanded right of defense counsel to get clearances -- and, by the way, one of the things I suggest in my statement is that the defense counsel in -- S. 576 permits civilian defense counsel to be appointed.

I think either a civilian or military defense counsel should be granted clearances if they are eligible, and I think they should be permitted to see the underlying evidence that would be used against a detainee.

I've been involved in a number of litigations and criminal matters over the years where defense counsel have gotten access to highly classified code word information, and then they've respected it in not being able to share it with their client, the defendant.

And that works. It requires a lot of effort on the part of the court, but it does work. I think it can be done, and I think it would not necessarily be harmful to the nation's security.

WARNER:

But S. 576 would authorize a military judge upon motion from a defense counsel to disclose the intelligence sources, methods or activities by which the U.S. obtained an out-of-court statement intended to be introduced at trial to a military judge who determines that the intelligence sources, method and activities might affect the weight to be given an out-of-court statement.

Now, it seems to me we're moving very close to a fine line of impairing our intelligence collecting if that sort of situation prevails.

SMITH:

Well, I'd be very troubled if it did, Senator Warner. My experience with both -- I've not tried a court-martial in decades, but my experience with military judges and certainly civilian judges is they make good decisions. And as I strike the balance, I would be prepared to give defense counsel access to that kind of information.

To make it clear, I would not be in favor of giving it to the detainees, but I believe our system works quite well with responsible counsel. I think if -- and there are sometimes irresponsible counsel, but I think responsible counsel can be trusted.

WARNER:

Well, history shows that while we have a great deal of confidence in our judiciary system, each day courts are reversing the findings and directions of lower courts.

WARNER:

And such a finding and direction by a lower court to release that evidence that's out and gone by the time the review panel says it was injudicious to do so, that's what concerns me.

We go then to Mr. Rivkin.

If habeas corpus jurisdiction were restored for alien unlawful enemy combatants, should habeas corpus be reviewed to the fundamental question of the determination of enemy combatant status or should it extend to all conditions of capture and confinement.

RIVKIN:

I think, Senator Warner, I think it should be the latter.

One of the things that we have not touched upon so far, that it is not -- repeated not -- just a question of testing the adequacy of the government's determination that somebody's an enemy combatant.

I happen to think that, whether you call it habeas, whether you call it judicial review of a government's decision is very important, and the way in which it's done in the DTA and MCA is entirely appropriate and consistent, as a matter of fact, with Supreme Court teachings on that.

But your question goes to another issue. Believe it or not, we now have people who have sued the government under so-called Bivens- type actions. This is a famous early '70s case styled, if I'm not mistaken, Bivens against 26 federal agents, which basically goes to the deprivation of an ability to recover, if you will, of deprivations of individual civil rights in the context of badly handled apprehension.

I happen to actually support Bivens-type jurisprudence in its proper place. But do we really want to have Bivens-type actions brought against aliens for apprehensions conducted overseas in a combat environment?

One of the reasons, of course, to have Bivens-style actions, just like Miranda type jurisprudence, is because you want to give clear standards of behavior, inculcate better behavior on the part of police and federal agents operating in a law enforcement context.

And, Senator Warner, we as a society made a decision in the last 30 or 40 years to basically create such -- place such enormous importance on inculcating those good standards that we created rules that allow guilty parties to go free.

But that is in a domestic law enforcement environment where the government enjoys the monopoly in force and where the rules are fairly straightforward.

To me, it would be -- unprecedented would be a charitable way of putting it, to allow people captured in Pakistan -- and this is not -- it's not a hypothetical. They haven't gotten very far so far, but we have Bivens-type actions pending, brought by lawyers, very good and aggressive lawyers, against government agents, presumably military and intelligence agents, for activities conducted in the United States.

I'm not even talking about interrogation here and levels of coercion, but just how the person was apprehended. Do you really want to tell our soldiers, you know, (inaudible) you can throw somebody to the ground as you arrest them in a combat environment, what's the level of force to exert?

RIVKIN:

So the problem we have, quite frankly -- and this is the problem I mentioned earlier about the fundamental differences between us and the Europeans, but also...

WARNER:
I have to ask you to...

RIVKIN:
Very briefly.

WARNER:
... provide -- yes.

RIVKIN:
Very briefly, a fundamental difference in this country, critics don't understand the difference between legal approaches appropriate for wartime context and the criminal justice system.

WARNER:
I think that's important. We've got to fight the war.

Could we just ask, Mr. Denbeaux, I was very taken by your reference to your family and served with distinction in a great chapter of history that I am old enough to remember quite vividly myself.

And I thought, given your objectivity, that you might wish to comment on my views that let's let the court system run its course before Congress tries to jump in and rewrite this law.

DENBEAUX:
OK, with total and complete respect, when I listened to your statement, what dawned on me was you think it's been done in an orderly way. My own view of the last 5.5 years is of disorder and tardiness.

One of my problems is it's one thing to set up a system and have it work from the beginning, quickly. It's something else to try to say, after 5.5 years, let's now let the process work orderly, as it keeps getting changed right in front of everybody's eyes.

My assistant cook, who Mr. Rivkin thinks is and should be an enemy combatant, has been waiting for 5.5 years for somebody to review it -- his decision and others.

And I think my problem is that I believe all the evidence is our courts can handle these quickly. I don't think most of these cases are very hard. When the government says they were shooting at American soldiers, I don't think there's a federal district court in the United States that's going to say no.

I think in answer to the question about impartiality -- about what should be done, I actually am somewhat conservative on the doctrine of habeas corpus and the federal courts. I think they really can handle it.

And we're spending a lot of time trying to find any way but having habeas corpus. I'm not -- I don't care what way we come up with. If you had an impartial tribunal -- and my big problem is I don't see how to design that now in a process that's been done over and over and over again, and come to the same result.

WARNER:
Thank you. My...

DENBEAUX:
I apologize if I went too long.

LEVIN:
Thank you, Senator Warner.
Senator Akaka?

AKAKA:
Thank you very much, Mr. Chairman.

I want to add my welcome to Senator Leahy, who preceded you, and also welcome our panel members who are joining us today. And I want to tell you that what you are contributing here will be helpful to the committee.

I think that the passing of the Military Commissions Act, Mr. Chairman, during the past session of Congress has left me and many of my colleagues feeling unsatisfied with the final law. While it may have been a good start, I think it is clear that we still have more work to do to ensure that these military commissions are conducted in a manner that upholds the values, as was mentioned frequently here today, on which our great democracy was founded.

After the Supreme Court's decision in the Hamdi case in 2004, Mr. Dell'Orto, the Department of Defense established combatant status review tribunals with the stated objective of providing Guantanamo detainees, and I quote, "the opportunity to contest designation as an enemy combatant," unquote.

However, it is clear that the CSRT procedures enacted by the military, that the detainee really does not have an opportunity to seriously contest his designation as an unlawful enemy combatant.

My question to you is why is a detainee not allowed to have any advocate or lawyer to represent him? I note that he is assigned a personal representative, who specifically does not represent him in the proceedings, which makes the title of a personal representative a misnomer, to say the least.

So why is a detainee not allowed to have any advocate or lawyer to represent him?

DELL'ORTO:
Senator Akaka, let me talk about how you get CSRTs as derived from other recognized processes for an individual to contest his designation as a combatant.

The standard in our Geneva conflicts, which are conflicts involving lawful combatants in that shorthand way, are processes generally laid out in Army Regulation 190-8, which is a recognized process -- the so-called Article 5 tribunal -- that is the mechanism by which an individual picked up on a more normal, conventional battlefield is assessed for whether he should be detained as an enemy combatant.

If you compare the 190-8 process to the CSRTs, you find that there is no aspect of the CSRT process that provides less in the way of rights to a combatant than 190-8 does.

And, in many ways, the CSRT process provides more. And so, for instance, you ask about a personal representative. One thing I want to correct from what was stated earlier, a personal representative currently is cleared to see all of the classified information. He can see all of it. He cannot show it to the person he is assisting, but he is cleared to see all of it. So he does see all of that information.

But in a 190-8 setting, a conventional conflict, Geneva-governed conflict, the individual who is picked up on a battlefield has no personal representative. It's he alone, and so my response is that if we look at this and say -- the CSRT process and say, "Well, why doesn't he have this, why doesn't he have that," my response is, "He already has more than we give lawful combatants on a conventional battlefield."

And I find it remarkable that we are criticized for providing greater rights to an unlawful enemy combatant in this setting than we do to a lawful combatant in a Geneva-governed, more conventional conflict.

And then the question is, how far do you take that?

CQ Transcriptions, April 26, 2007

List of Panel Members and Witnesses

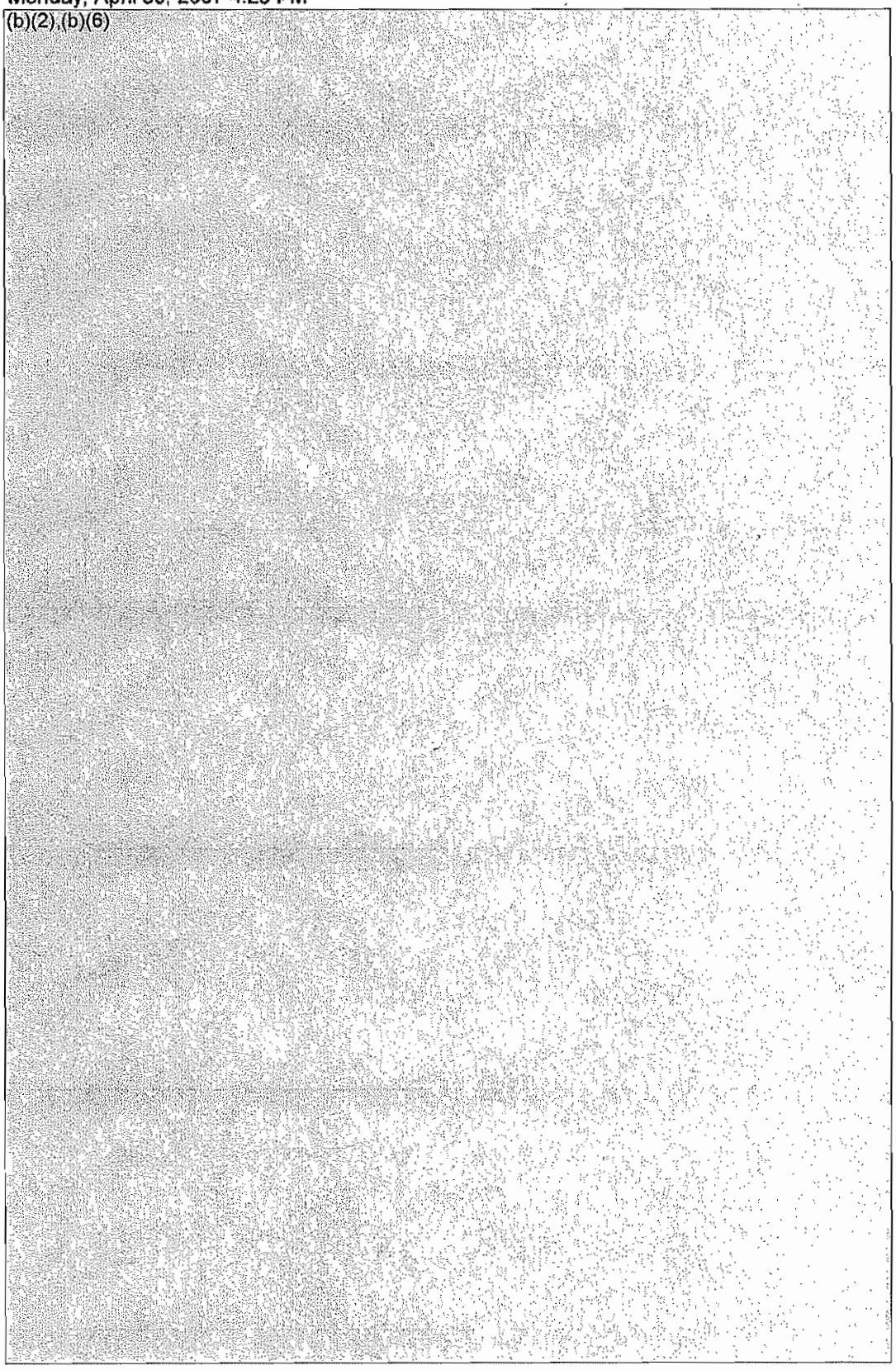
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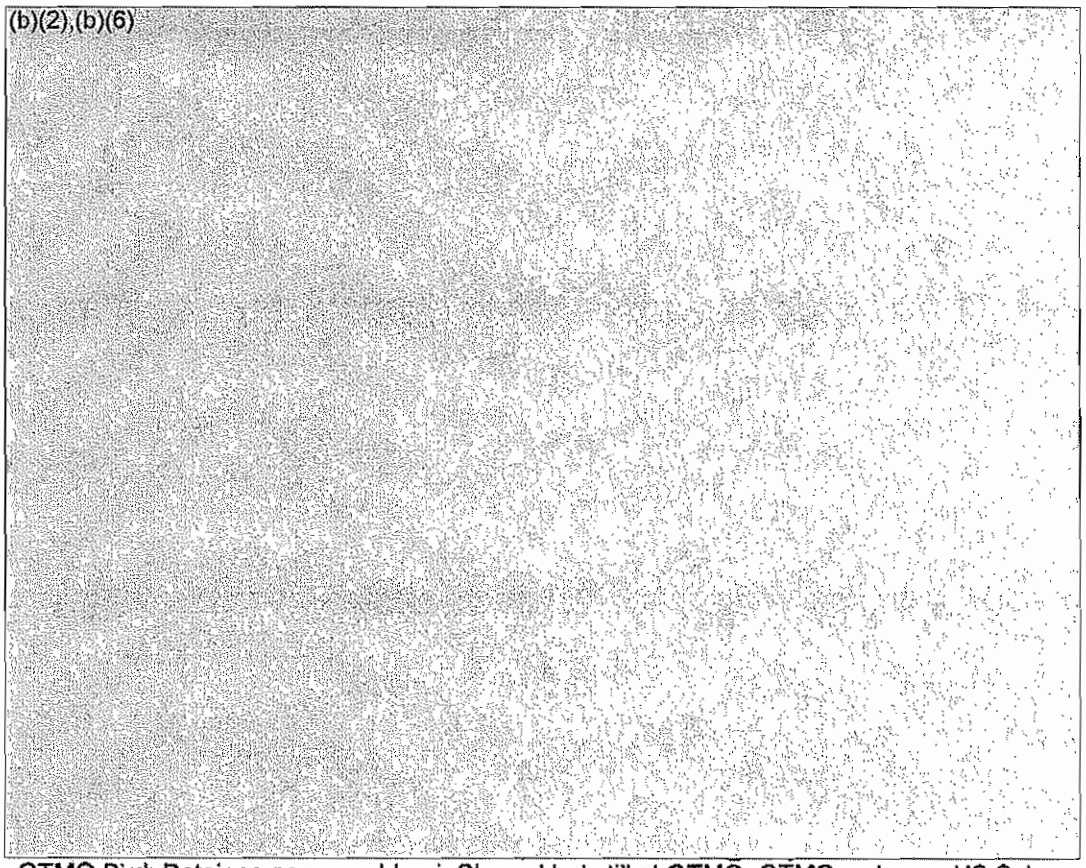
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Subject: GTMO Bird: Detainee access; al-Iraqi; Cleared but still at GTMO; GTMO a shame; US Sct. Rejects GTMO case; Senators and detainees; More suicides;

All:

Here is today's GTMO Bird.

Thanks,

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Washington Post
April 27, 2007
Pg. 12
U.S. Wants To Limit Guantanamo Detainees' Access To Lawyers
By Carol D. Leonnig, Washington Post Staff Writer
The Bush administration is urging a federal appeals court to clamp down on Guantanamo Bay prisoners' ability to see their attorneys and obtain government records to help argue their innocence.

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As the legal battle over the detentions moves to a new arena, the Justice Department is trying to tightly restrict the tactics that a persistent and largely volunteer group of defense lawyers can use to challenge the government's basis for holding their clients.
In recent court filings, the Justice Department argues that defense lawyers' visits to the prisoners "cause unrest on the base," including hunger strikes and protests, and are often a pretext for obtaining accounts from the detainees to relay to the media.
The effort to restrict detainees' access to lawyers and documents comes as the fight over their fate moves out of a federal trial court -- which was often at odds with the administration's assertion that it could hold them indefinitely without charges -- to the U.S. Court of Appeals for the District of Columbia, which generally has been more supportive of the president's claim of broad powers in fighting terrorism.
In filings to the appellate court in recent weeks, the Justice Department argued that detainees should be allowed three visits with their attorneys, instead of an unlimited number. The government said more visits are unnecessary because the clients' testimony and views are not needed for the kind of limited appellate-court review now allowed by the law.
The Justice Department also argued that the U.S. Court of Appeals should not consider new evidence or information in reviewing Pentagon decisions about continued detention. The court should take into account only the facts that a military combatant status review tribunal considered in determining that each detainee should be held, the government argued.
The government has rejected attorneys' demands for other records, saying the government will determine which records are relevant.
"We've brought suit to prove our client is innocent. And the government says it gets to decide what is relevant to those facts," attorney Susan Baker Manning said. "It is absolutely, utterly at odds with everything in our legal system."
Many of the approximately 380 foreign nationals at the U.S. Navy prison at Guantanamo Bay, Cuba, have been imprisoned for years. The president declared the men enemy combatants, saying they were either terrorism suspects or had links to terrorist groups.
Defense attorneys, who were first able to interview their clients at Guantanamo in 2004, began compiling evidence that some detainees were kidnapped by local bounty hunters or were seized by U.S. troops by mistake. Such accounts were a source of embarrassment for the administration.
But under a law approved in 2005, detainees' attorneys now must seek to prove their clients' innocence in the appeals court. The law, crafted by the White House and approved by Congress when Republicans controlled both chambers, denies detainees the right to challenge their detentions in trial courts and requires them to petition the U.S. Court of Appeals for the District of Columbia to review Pentagon decisions to hold them.
Staff researcher Julie Tate contributed to this report.
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New York Times
April 30, 2007
Pg. 15
Bar Criticizes Proposed Detainee Rules
WASHINGTON, April 29 (AP) — The Bush administration is trying to evade responsibility for problems at the Guantánamo Bay prison by falsely blaming defense lawyers, the New York City Bar says.
The president of the group leveled the criticism on Friday in a letter asking Attorney General Alberto R. Gonzales to abandon a Justice Department proposal to limit lawyers' access to the nearly 400 detainees at the prison.
In a court filing this month, the department said that the lawyers' use of mail to communicate with their clients had "enabled detainees' counsel to cause unrest on the base by informing detainees about terrorist attacks."
The mail system was "misused" to inform detainees about military operations in Iraq, activities of terrorist leaders, efforts to fight terrorism, a Hezbollah attack on Israel and abuse at the Abu Ghraib prison, the department said in the filing.
In his letter to Mr. Gonzales, the bar association's president, Barry M. Kamins, said, "This is an astonishing and disingenuous assertion."

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"Blaming counsel for the hunger strikes and other unrest is a continuation of a disreputable and unwarranted smear campaign against counsel," the letter said.
A Justice Department spokesman, Erik Ablin, said the department was reviewing the letter.
The department wants to narrow the definition of "legal mail" and set a three-visit limit on face-to-face meetings once a detainee agrees at an initial meeting to let a lawyer represent him.
The Court of Appeals for the District of Columbia Circuit will hear arguments on the proposal on May 15.
The 137-year-old New York City Bar, with more than 23,000 members, is one of the oldest and largest lawyers' organizations in the country.

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Los Angeles Times
April 28, 2007
Top Al Qaeda Member Captured, Pentagon Says
The Pentagon says the high-ranking member has provided key details and was transferred last week to Guantanamo.
By Josh Meyer, Times Staff Writer
WASHINGTON — The Pentagon said Friday that it had taken custody of one of Al Qaeda's most senior members, an operational commander who had been active in Afghanistan and Pakistan.
Defense Department and U.S. intelligence officials would not say precisely when or where Abd al-Hadi al-Iraqi was captured, or by whom, only that he was headed for his home country of Iraq when detained. Officials said Hadi was handed over to the CIA in late 2006 and has been providing crucial information about Al Qaeda.
"This was a very important capture. He was one of Al Qaeda's highest-ranking and experienced senior operatives," said U.S. Army Col. Gary L. Keck, a Pentagon spokesman. "He had been one of the organization's key paramilitary commanders in Afghanistan, and we know he was in direct communication" with Al Qaeda's second in command, Ayman Zawahiri, and perhaps leader Osama bin Laden.
In a declassified summary of Hadi's alleged activities released Friday by the Pentagon, he is accused of launching attacks on U.S. and coalition forces from Pakistan and leading an effort to assassinate Pakistani President Pervez Musharraf as well as unidentified United Nations officials.
The summary said Hadi was trying to get back into Iraq to manage Al Qaeda's affairs there "and possibly focus on operations outside Iraq against Western targets." Hadi had met with Al Qaeda members in Iran, and "believed that they should be doing more with the fight, including supporting efforts in Iraq and causing problems within Iran," the Pentagon summary said.
Hadi, who was born in Mosul, Iraq, in 1961, was transferred from CIA custody to the Pentagon's this week. The handover occurred at the U.S. military detention facility at Guantanamo Bay, Cuba, where Hadi joins 14 other accused Al Qaeda leaders whose cases are being reviewed by military commissions to determine whether they should face a tribunal.
The Pentagon said in a statement that Hadi was expected to undergo a similar proceeding, given his alleged stature within the terrorist organization.
Officials did not disclose where the CIA had held Hadi or why he was being transferred to Guantanamo.
Friday's announcement drew immediate criticism from human rights organizations.
"When was [Hadi] taken into custody? How long has he been in CIA detention? Where has he been held, and what were his confinement conditions?" Amnesty International said in a statement. "The lack of information around this transfer only adds to the deep concerns surrounding the United States' conduct in the so-called 'war on terror.' "
Human Rights Watch said in a statement, "The CIA's reliance on enforced disappearance also raises serious concerns about the likelihood of torture and other cruel, inhuman or degrading treatment."
Joanne Mariner, terrorism and counter-terrorism director at Human Rights Watch, added, "The CIA's secret detention of Abd al-Hadi al-Iraqi is a blatant violation of international law.

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This transfer shows that Congress will have to act to end the CIA's illegal detention program."
A U.S. counter-terrorism official said Hadi had been providing crucial information about Al Qaeda's command structure and its operations, including continuing efforts to launch attacks around the world with help from senior leaders in Afghanistan and Pakistan.
That official spoke on condition of anonymity, saying he could not discuss the details of Hadi's arrest or the cooperation between the United States and at least one U.S. ally that participated in his capture.
"This is sensitive. It would put key foreign partners at risk were we to disclose where he was captured," said the official, who added that "the CIA was deeply involved in efforts to locate and capture this individual."
The official and others said Hadi was not caught in Pakistan, a U.S. ally that Washington believes is Al Qaeda's new base of operations. In the past, the Islamabad government has not wanted to publicize its close working relationship with the CIA and U.S. military in the capture of suspected terrorists.
U.S. officials also said Hadi was not caught in Iran.
Hadi was believed to be in close contact with senior Al Qaeda leaders who have been working out of Pakistan since late 2001 airstrikes drove them from their haven in neighboring Afghanistan. Hadi's suspected close associates included former chief of operations and confessed Sept. 11 mastermind Khalid Shaikh Mohammed and commanders who replaced Mohammed after his capture.
Hadi also figured prominently in Al Qaeda's training activities and paramilitary operations dating back to well before the Sept. 11 attacks, and was instrumental in developing the terrorist network's relationship with the Taliban, the counter-terrorism and Pentagon officials said.
In recent months, they said, Hadi provided his CIA interrogators with key information about the men who now make up Al Qaeda's senior leadership, and the group's continuing operational planning and efforts to develop ties to other terrorist organizations. He even briefed his captors on Al Qaeda's "succession plan" for replacing top strategic and operational leaders who have been captured or killed, according to the counter-terrorism official.
The Pentagon said that as a result of Hadi's transfer, there are now "approximately 385 detainees" at Guantanamo.
Back story
With the addition of alleged Al Qaeda operative Abd al-Hadi al-Iraqi, the U.S. military detention center at Guantanamo Bay, Cuba, now houses 15 so-called high-value detainees.
The prisoners were all held by the CIA in secret prisons abroad.
The other 14 were sent to Guantanamo Bay in September and since have undergone military hearings there to affirm their status as enemy combatants eligible for military trials.
Among them is Khalid Shaikh Mohammed, who claimed responsibility for organizing the Sept. 11 attacks and other terrorist plots.
Mohammed also boasted in a military hearing in March that he beheaded Wall Street Journal reporter Daniel Pearl in Pakistan in 2002.
Some of the detainees – such as Abd al Rahim al Nashiri, who confessed to the bombing of the U.S. warship Cole in 2000 – said they admitted to accusations only after being tortured by American captors.
Another detainee, Ali Abdul Aziz Ali, also known as Ammar al-Baluchi, Mohammed's nephew, said he deserved leniency for providing "vital information" to Americans.
Source: Times research
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Washington Post
April 28, 2007
Pg. 16
CIA Held Al-Qaeda Suspect Secretly
Officials Disclose That Use of Overseas Prisons Resumed
By Dafna Linzer, Washington Post Staff Writer
An Iraqi man accused of being a key aide to Osama bin Laden and a top leader of al-Qaeda was arrested late last year on his way to Iraq and handed over to the CIA, the Pentagon announced

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yesterday, in what became the first secret overseas detention since President Bush acknowledged the existence of such a program last September.
The disclosure revealed that the Bush administration reopened its detention program within three months of announcing that no secret prisoners remained in the CIA's custody. The program has been criticized by human rights organizations and U.S. allies.
In a statement yesterday, the Defense Department described Abd al-Hadi al-Iraqi, 46, as "one of al-Qaeda's highest-ranking and experienced senior operatives" and announced that he has been sent to the Pentagon-run prison at Guantanamo Bay, Cuba.
Bush acknowledged the CIA's detention program last September and transferred all 14 of its senior al-Qaeda suspects to Guantanamo Bay. One intelligence official said al-Iraqi was the first person held by the CIA since Bush made the acknowledgment, but the official would not say whether other people have been held since al-Iraqi was handed over to the agency earlier this year.
"What the president said in September was that there was no one in CIA custody at that time," an intelligence official said, speaking on the condition of anonymity. "This individual was captured late last year, well after the president's speech, and transferred to the CIA several weeks later."
The Pentagon and the CIA confirmed yesterday that al-Iraqi was held by the CIA for several months before he was transferred earlier this week to Guantanamo Bay.
Pentagon officials said al-Iraqi was behind assassination attempts against Pakistani President Pervez Musharraf and a U.N. official. The Pentagon also accused him of coordinating with the Taliban in its insurgency against U.S. troops in Afghanistan.
But his most recent assignment was as the successor to Abu Musab al-Zarqawi, the leader of al-Qaeda in Iraq who was killed by U.S. forces last summer. Officials said al-Iraqi hoped to lead Sunni insurgents in Iraq and coordinate their efforts with al-Qaeda's global operation.
The Pentagon said he traveled to Iran, meeting with al-Qaeda operatives to urge them to do more against U.S. troops in Iraq.
U.S. officials would not say where al-Iraqi was captured, but sources ruled out all of Iraq's immediate neighbors, as well as Pakistan and Afghanistan, and said he was not stopped at a border crossing. Officials said that several recent reports that al-Iraqi was operating freely were erroneous and that he has been in custody, in a third country, since late December.
Intelligence officials and experts have referred to al-Iraqi as al-Qaeda's chief planner and a top-ranking leader. The Pentagon said he is known and trusted by both bin Laden and his deputy, Ayman al-Zawahiri, and once served as Zawahiri's chief aide.
Before the attacks of Sept. 11, 2001, when al-Qaeda was firmly based inside Afghanistan, al-Iraqi served on a council of advisers to bin Laden.
He spent 15 years in Afghanistan as a trainer and planner beginning in the early 1990s, the Pentagon said. Before leaving his home country to join al-Qaeda's Islamic movement, al-Iraqi served in Saddam Hussein's military, rising to the rank of major.
The officials, who agreed to discuss limited aspects of the case on the condition of anonymity, said as many as five countries provided information that led to al-Iraqi's capture.
In a staff-wide e-mail, CIA Director Michael V. Hayden called the capture "a significant victory" and said the agency played a "key role in efforts to locate" al-Iraqi.
Anticipating concerns about the nature of the ongoing CIA program, Hayden told his staff that the secret detentions and interrogation methods conducted in the program are "legal and thoroughly reviewed by our government to ensure that they are fully in accordance with our laws and treaty obligations."
Cmdr. J.D. Gordon, a Pentagon spokesman, said al-Iraqi and other detainees "have provided information essential to developing our knowledge of al-Qaeda's organizational structure, operations, communications, finances, logistics and criminal activities."
But human rights groups challenged the Bush administration and the CIA to publicly reveal their interrogation methods and disputed the legality of secret detention.
Yesterday's announcement "raises worrying questions about how long he has been detained by the CIA, where he was held, what kind of treatment he endured, and whether other prisoners still remain in CIA detention," the New York-based organization Human Rights Watch said in a

OGC AMNESTY/CCR 385

statement, referring to al-Iraqi. The group called the secret detention "a blatant violation of international law."
Staff researcher Julie Tate and correspondent Craig Whitlock in Berlin contributed to this report.
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New York Times
April 28, 2007
C.I.A. Held Qaeda Leader In Secret Prison For Months
By Mark Mazzetti and David S. Cloud
WASHINGTON, April 27 – The Central Intelligence Agency held a captured Qaeda leader in a secret prison since last fall and transferred him last week to the American military prison at Guantánamo Bay, Cuba, officials said Friday.
Abd al-Hadi al-Iraqi, an Iraqi Kurd who is said to have joined Al Qaeda in the late 1990s and ascended to become a top aide to Osama bin Laden, is the first terrorism suspect known to have been held in secret C.I.A. jails since President Bush announced the transfer of 14 captives to Guantánamo Bay last September.
The Pentagon announced the transfer, giving few details about his arrest or confinement.
Mr. Iraqi's case suggests that the C.I.A. may have adopted a new model for handling prisoners held secretly – a practice that Mr. Bush said could resume and that Congress permitted when it passed the Military Commissions Act of 2006.
Unlike past C.I.A. detainees, including the Sept. 11 plotter Khalid Shaikh Mohammed, who was held by the agency for several years after being seized in Pakistan in 2003, Mr. Iraqi was turned over to the Pentagon after a few months of interrogation. He appears to have been taken into C.I.A. custody just weeks after Mr. Bush declared C.I.A. jails empty.
Last fall, Mr. Bush declared the agency's interrogations "one of the most successful intelligence efforts in American history." But its secret detention of terrorism suspects has been widely criticized by human rights organizations and foreign governments as a violation of international law that relied on interrogation methods verging on torture.
Intelligence officials said that under questioning Mr. Iraqi had provided valuable intelligence about Qaeda hierarchy and operations. It appears he gave up this information after being subjected to standard interrogation methods approved for the Defense Department – not harsher methods that the C.I.A. is awaiting approval to use.
A debate in the administration has delayed approval of the proposed C.I.A. methods.
Military and intelligence officials said the prisoner was captured last fall on his way to Iraq, where he may have been sent by top Qaeda leaders in Pakistan to take a senior position in Al Qaeda in Mesopotamia. That group has claimed responsibility for some of the deadliest attacks in Iraq, including the bombing last year of the Golden Mosque in Samarra.
In a message to agency employees on Friday, Gen. Michael V. Hayden, the C.I.A. director, called the capture "a significant victory." He said C.I.A. operatives had played "a key role in efforts to locate" Mr. Iraqi. Though American officials would not say where or when he had been captured, they said it was not in Pakistan or Iran, countries where he was known to have operated in recent years.
Human rights advocates expressed anger that the United States continued a program of secret detention, and some wondered why the C.I.A. claimed it needed harsh interrogation methods to extract information from detainees when it appeared that Mr. Iraqi had given up information using Pentagon interrogation practices.
"The C.I.A. can't seem to get its story straight, said John Sifton of Human Rights Watch. "If they can get good intelligence without using abusive techniques, why do they so desperately need to use the abusive techniques?" But he said that there was no way to know whether Mr. Iraqi had been mistreated, because "no independent monitors have been able to see him since his arrest."
In his message on Friday, General Hayden said that the agency always operated "in keeping with American laws and values."
American officials have long been worried about efforts by Qaeda leadership in Pakistan to exert control over its Iraqi offshoot, known as Al Qaeda in Mesopotamia, and the dispatch of Mr. Iraqi to help run the Iraqi affiliate has raised concern among American military officials that the links between the groups are growing.

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"We do definitely see links to the greater Al Qaeda network," Gen. David H. Petraeus, the top American commander in Iraq, told reporters at the Pentagon on Thursday.
But the relationship between Qaeda fighters in Iraq and the top leadership has appeared to wax and wane over the years, often over tactical disagreements.
In 2005, Ayman al-Zawahri, Al Qaeda's second in command, wrote a letter to Abu Musab al-Zarqawi, then the top Al Qaeda operative in Iraq, urging him to refrain from killing Shiites.
But since then, terrorist experts have said that they see Al Qaeda in Mesopotamia as largely independent of the organization hub in Pakistan.
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Washington Post
April 29, 2007
Pg. 1
82 Inmates Cleared But Still Held At Guantanamo
U.S. Cites Difficulty Deporting Detainees
By Craig Whitlock, Washington Post Foreign Service
LONDON -- More than a fifth of the approximately 385 prisoners at Guantanamo Bay, Cuba, have been cleared for release but may have to wait months or years for their freedom because U.S. officials are finding it increasingly difficult to line up places to send them, according to Bush administration officials and defense lawyers.
Since February, the Pentagon has notified about 85 inmates or their attorneys that they are eligible to leave after being cleared by military review panels. But only a handful have gone home, including a Moroccan and an Afghan who were released Tuesday. Eighty-two remain at Guantanamo and face indefinite waits as U.S. officials struggle to figure out when and where to deport them, and under what conditions.
The delays illustrate how much harder it will be to empty the prison at Guantanamo than it was to fill it after it opened in January 2002 to detain fighters captured in Afghanistan and terrorism suspects captured overseas.
In many cases, the prisoners' countries do not want them back. Yemen, for instance, has balked at accepting some of the 106 Yemeni nationals at Guantanamo by challenging the legality of their citizenship.
Another major obstacle: U.S. laws that prevent the deportation of people to countries where they could face torture or other human rights abuses, as in the case of 17 Chinese Muslim separatists who have been cleared for release but fear they could be executed for political reasons if returned to China.
Compounding the problem are persistent refusals by the United States, its European allies and other countries to grant asylum to prisoners who are stateless or have no place to go.
"In general, most countries simply do not want to help," said John B. Bellinger III, legal adviser to Secretary of State Condoleezza Rice. "Countries believe this is not their problem. They think they didn't contribute to Guantanamo, and therefore they don't have to be part of the solution."
A case in point is Ahmed Belbacha, 37, an Algerian who worked as a hotel waiter in Britain but has been locked up at Guantanamo for five years. The Pentagon has alleged that Belbacha met al-Qaeda founder Osama bin Laden twice and received weapons training in Afghanistan. His attorneys dispute the charges and say he was rounded up with other innocents in Pakistan in early 2002.
On Feb. 22, without explanation, the Pentagon notified Belbacha's lawyers in London that he had been approved to leave Guantanamo. Despite entreaties from the State Department, however, the British government has refused to accept Belbacha and five other immigrants who had lived in the country, because they lack British citizenship.
This month, Clint Williamson, the State Department's ambassador for war crimes, visited Algiers to discuss possible arrangements for the return of two dozen Algerians who remain at Guantanamo, including Belbacha, but no breakthroughs were reported. That country has been slow to accept its citizens.
Zachary Katznelson, a lawyer who represents Belbacha and several other prisoners who have been cleared, said defense attorneys have tried to speed up the process by contacting foreign governments to see if there are any specific obstacles to the return of their clients. In

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many cases, he said, the prisoners and officials in their home countries are willing to approve the transfer, but the delays persist.

"The holdup is a mystery to me, frankly," said Katznelson, senior counsel for Reprieve, a British legal defense fund. "If the U.S. has cleared these people and they want to go back, I don't understand why they can't just put them on a plane."

Other prisoner advocates said the Bush administration has made its task more difficult by exaggerating the threat posed by most Guantanamo inmates -- officials repeatedly called them "the worst of the worst" -- and refusing to acknowledge mistaken detentions.

Foreign governments have also questioned why U.S. officials should expect other countries to pitch in, given that Washington won't offer asylum to detainees either.

"This is a problem of our own creation, and yet we expect other countries to shoulder the entire burden of a solution," said Ben Wizner, staff attorney with the American Civil Liberties Union. "There needs to be a worldwide solution here. The U.S. has to bear some of that burden. It can't simply expect its partners and allies to absorb all its detainees."

The 82 cleared prisoners who remain stuck in limbo come from 16 countries in the Middle East, North Africa and South Asia, according to defense attorneys who have received official notification of their clients' status.

The 17 Chinese Muslim separatists make up the largest contingent. Other countries with multiple prisoners awaiting release include Afghanistan, Sudan, Tunisia, Uzbekistan and Yemen.

The Pentagon has reduced the population at Guantanamo by roughly half since the peak of 680 people in May 2003, generally by sending prisoners back to their native countries. But U.S. officials said progress has slowed because of the complexity of the remaining cases.

Of the roughly 385 still incarcerated, U.S. officials said they intend to eventually put 60 to 80 on trial and free the rest. But the judicial process has likewise moved at a glacial pace, largely because of constitutional legal challenges.

Only two people have been charged under a military tribunal system approved by Congress last year. One of those cases has been adjudicated. David M. Hicks, an Australian citizen, pleaded guilty in March to lending material support to terrorists. He was sentenced to nine months in prison and is scheduled to be transferred to Australia in May to serve his time there.

Defense lawyers for some of the 82 cleared prisoners whose release is pending said Hicks received a better deal than did their clients who were not charged with any offenses. "One of the cruel ironies is that in Guantanamo, you've got to plead guilty to be released," said Wizner, the ACLU attorney. "It's the only way out of there."

Complicating the return process is that virtually all the prisoners at Guantanamo come from countries that the State Department has cited for records of human rights abuses. Under U.S. rules, a pattern of abuses in a country does not automatically preclude deportation there. Rather, U.S. officials must investigate each case to determine whether an individual is likely to face persecution.

The investigations are time-consuming and often meet with resistance from the prisoners' home countries, which can be sensitive to suggestions that they allow torture, U.S. officials said. In cases where there is a risk of mistreatment, U.S. policy is to obtain a written promise from the host government that the prisoner will not be abused and that U.S. officials will be allowed to monitor the arrangement.

"It often takes us months and months, or even years, to negotiate the human rights assurances that we are comfortable with before we will transfer someone to another country," said Bellinger, the State Department's legal adviser.

Human rights groups have criticized the written assurances as unreliable. In March, the New York-based group Human Rights Watch issued a report on the fate of seven Russians who were released from Guantanamo three years ago, asserting that three of the men have been tortured since their return.

The watchdog group urged the U.S. government to find third-party countries willing to take Guantanamo inmates who are judged to be at risk for political persecution. U.S. officials countered that they have tried to do that for years, with virtually no success.

Only one country has been willing to accept Guantanamo prisoners who had never previously set foot inside its borders. Last year, after prodding by the State Department, the Balkan nation

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of Albania agreed to take five Chinese separatists who belong to an ethnic group known as Uighurs.
The men were captured in late 2001 after they crossed the Chinese border into Afghanistan and Pakistan. Their attorneys said they were mistakenly taken into custody and had not taken up arms against U.S. forces. U.S. officials said dozens of countries refused to grant asylum to the Uighurs for fear of angering China, which considers them terrorists for leading a secession movement in the western province of Turkestan.
Seventeen other Uighurs who were caught in similar circumstances have been cleared for release but remain in Guantanamo because the State Department has been unable to find a home for them. Human rights groups have pressed the U.S. government to offer the men asylum, to no avail.
A senior U.S. official who spoke on condition of anonymity said that the Bush administration had considered granting the Uighurs asylum but that the idea was nixed by the Department of Homeland Security. The Uighurs would be rejected under U.S. immigration law, the official said, because they once trained in armed camps and because their separatist front, the East Turkestan Islamic Movement, was labeled a terrorist organization by the U.S. government in 2002.
Attorneys for the Uighurs said their predicament has been compounded by the Pentagon's unwillingness to say they don't pose a national security risk to the U.S. government or its allies. In announcing that the Uighurs had been approved to leave Guantanamo, military officials made a point of noting that they had not been exonerated and were still classified as enemy combatants.
"It's not a distinction that makes sense at all," said Michael J. Sternhell, a New York lawyer whose firm represents four of the Uighurs. "It's a caveat that the Defense Department is offering to cover itself."
Some human rights advocates said the Bush administration could speed things up by asking the United Nations or another international body for help.
Manfred Nowak, an Austrian law professor who serves as the U.N. special monitor on torture, said European allies and other countries would continue to duck requests to accept released prisoners as long as the U.S. government approaches them separately. An international commission responsible for finding a solution, he said, might carry more weight.
"If the U.S. is willing to do something to close down Guantanamo, then it should be done in a cooperative manner with the international community," Nowak said. "It's a question of burden-sharing. Otherwise, every individual country that the U.S. approaches says, 'Why us?' "
Staff researcher Julie Tate in Washington contributed to this report.
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Miami Herald
April 29, 2007
Detainees: Putting Faces To The Story
By Carol Rosenberg
Time and again, citizen photography -- or its absence -- has shaped world opinion in the global war on terror.
Shaken New Yorkers captured some of the most enduring images of the Sept. 11, 2001, attacks. An alarmed soldier slipped souvenir snapshots under a commander's door to blow the whistle on prisoner abuse at Abu Ghraib, Iraq.
The Pentagon still bans photography, official or otherwise, of flag-draped coffins bringing home America's war dead.
So, when independent lawyers offered to help skeptical Guantánamo Bay captives, held in shackles and largely isolated at the detention center at the U.S. Navy base in Cuba, they, too, turned to photos to forge trust and build attorney-client relationships.
Some lawyers posed with family in Arabia to vouch for their veracity. Others brought images of home to connect with the men whom the Pentagon portrays as caged terrorists, enemy combatants.
In crude, cell-side chats, some lawyers used photos to find common ground.
Now, a foundation called FotoFest has mounted an extraordinary exhibition -- right here, in Texas, President Bush's state -- that offers a sympathetic view of some Guantánamo captives, and the lawyers who have taken up their causes, free of charge.

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''There are real individuals and real people there,'' says curator Wendy Watriss, as she walks along the exhibition. ``They're not just faceless terrorists, and we need to understand more.''
Part crude snapshots, part home-style travelogue, the 88-image exhibit with accompanying audio-video installations, on display until June 2, is called Guantánamo: Pictures from Home, Questions of Justice.
And the display is timely: It comes just as the Justice Department is seeking to curb attorney access -- after the U.S. Supreme Court decided to pass on review, this year, of Congress' decision to strip these lawyers of the opportunity to argue their clients' cases in U.S. District Court.
The exhibit ranges across two floors in a cavernous, renovated former railroad warehouse beneath a highway in downtown Houston, at FotoFest, a two-decade-old photographic arts center whose themes have for years spanned the planet -- offering portraits of everything from Czechoslovakia's Velvet Revolution to New Yorkers' snapshots from Ground Zero on Sept. 11, called here is new york: a democracy of photographs.
Now the lens is turned on Guantánamo, but without a single image from the remote U.S. Navy base itself.
Rather, it focuses on three dozen Guantánamo detainees using pictures before their capture or portraying them as absent fathers and sons -- and the American lawyers who have shuttled between big-city firms, the remote U.S. prison compounds in Cuba and Afghanistan and the Arabian Peninsula in a quest to set them free.
In one photo, a New York lawyer sits on a couch with a client's family, in Yemen.
Another shows attorneys meeting a client's father over a traditional meal, in Bahrain.
In another, the daughters of one Guantánamo captive pose with paper flowers -- fashioned from toilet paper inside Camp Delta and carried half a world away by a lawyer.
The images, says Watriss, herself a former news photographer, ``are not photojournalism. They're about a particular kind of intra-professional and inter-human communication.''
Watriss assembled the show from photos that Margot Herster, a former New York photography student, collected from several attorneys, among them her husband, who now teaches at the University of Texas.
There is outrage and sadness -- everything but the U.S. administration's version of these prisoners as dangerous fanatics whose freedom could threaten America.
The attorneys narrate the show, in video and audio displays, and emerge as advocates on a mission, globe trotters offering a unique bridge between cell-side chats that no camera can record and conversations with kin half a world away.
Says one attorney in a video, talking about a client: ``He's very depressed, and he gave me his last will and testament . . .''
Then, nearly sobbing, she tells the videographer to stop.
Elsewhere, another lawyer soberly describes finding his captive hanging and bloody from self-inflicted wounds. His words are heard in a darkened chamber where the visitor hears crude recordings of detainee status hearings and lawyers discussing their clients' cases.
''I think it's novel that any work that could be seen as critical of the [Bush] administration would be shown in Houston, especially by a big institution like ours,'' says FotoFest publicist Vinod Hopson.
Lawyers turned to their photography to overcome huge gaps. For more than two years, the Bush administration forbade lawyers from representing war-on-terror captives at Guantánamo.
Then a U.S. Supreme Court decision cracked open the cages, just a bit, for attorney-client conferences. So, slowly, in stages, America's legal establishment embraced the idea of habeas corpus counsel for ``the worst of the worst.''
But by the time some lawyers got to Guantánamo, their clients, after years of interrogation and isolation, didn't believe that the attorney sitting across from them was actually their advocate.
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Houston Chronicle
April 29, 2007
Guantanamo Still A Shame We Can Fix
Congress should restore Habeas corpus, a right of detained to be charged or let go

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By Murray Fogler

Our government has made a lot of mistakes in dealing with the prisoners at Guantanamo. But we have a chance now to correct one of the biggest ones.

Most of the remaining 385 prisoners at Guantanamo have been there for over five years. None of them has yet to have a fair hearing. How can we claim to be bringing democracy to the world when we ourselves have taken away one of the fundamental building blocks of the rule of law? That basic right is called habeas corpus.

The "Great Writ" of habeas corpus has been around since the Magna Carta in 1215. At its core, it serves as a check on the unbridled power of the executive to imprison. The writ of habeas corpus requires the executive to justify its detention of a prisoner – it must either charge the prisoner with a crime or let him go. This right is so fundamental to our country that it is embedded in the Constitution. The Founding Fathers prohibited Congress from suspending the writ of habeas corpus except in times of invasion or rebellion.

In spite of the history of the habeas right, the Bush administration has from the beginning sought to deny the Guantanamo prisoners any right to challenge their detention. It asserted that neither the Constitution nor the Geneva conventions applied to these men.

The U.S. Supreme Court, however, held that the prisoners had the right to use a habeas petition to challenge their detention in a U.S. court. The decision was handed down in June 2004. Almost three years later, there has yet to be a single hearing on any of the habeas petitions brought by the prisoners.

All three branches of our government share in this shame. In response to the Supreme Court decision, the Defense Department set up a military tribunal system to review its designation of the prisoners as "enemy combatants." This system was intended to replace any hearing in a U.S. court, but it was hardly fair. The prisoners had no right to counsel and no right to hear any evidence that the administration chose to label as classified. Not surprisingly, more than 90 percent of these tribunals rubber-stamped the enemy-combatant label.

When the volunteer lawyers representing the prisoners challenged the fairness of these tribunals in their habeas cases, the administration asked Congress to strip the courts of any jurisdiction to hear the cases. At the end of 2005, in the Detainee Treatment Act (DTA), Congress tried to do just that. The Supreme Court, though, ruled in June 2006 that the DTA did not apply to pending habeas cases, only to new ones filed after the DTA was enacted.

Undaunted, the administration urged Congress to plug the hole. Congress, by a narrow margin, complied with this request in September 2006 by passing the Military Commissions Act (MCA). Congress took away any authority for the courts to hear any habeas petitions of any aliens declared to be enemy combatants.

The final nail was driven by the courts. The D.C. Circuit Court of Appeals, which had procrastinated for two years making any decision on the fairness of the tribunal system, seized on the MCA as a way to dismiss the cases for lack of jurisdiction. The court said that these men were not protected by the Constitution.

This time, the Supreme Court has declined to overturn that decision. The habeas rights of the Guantanamo prisoners are now dead.

What can be done about this sad chapter in our nation's history? Simple: Tell Congress to restore the fundamental right of habeas corpus to these prisoners. Several senators have already vowed to do just that. A bill is now pending in Congress that would give the Guantanamo prisoners the right to challenge their detention in our courts.

This is not about being soft on terrorism. It is about preserving the basic freedoms on which our country was built.

We have nothing to fear from giving these men a fair hearing. If the evidence proves that a prisoner has committed or supported a terrorist act, throw the book at him. But if there is no evidence, we must let him go. When we have preserved this right for the Guantanamo prisoners, we have maintained freedom for all of us.

Fogler is a Houston attorney. Along with co-counsel Rachel Clingman, he represents Salim Muhood Adem, a Sudanese national who was arrested in Pakistan in early 2002 and has been in Guantanamo since then.

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US court rejects Guantanamo case

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The US Supreme Court has refused to hear a case lodged by two Guantanamo Bay prisoners who sought to challenge the legality of US military courts.
The court gave no reason for its decision but three out of nine judges said they would have heard the case.
A total of four votes would have been sufficient to have the case heard by the Supreme Court.
The case was brought by Salim Ahmed Hamdan, from Yemen, and Omar Khadr, a Canadian citizen.
Ahmed Hamdan won a landmark case last year when the US Supreme Court ruled the military tribunal system illegal.
The decision forced US President George W Bush to return to Congress to obtain the legal authority to continue with the system of military tribunals.
Approaching trials
Lawyers for the pair of Guantanamo detainees claim that the new system is identical to the old one which the Supreme Court rejected a year ago.
The high court sided with Mr Bush's administration, which insisted that the trials should take place before the two men could bring an appeal.
Ahmed Hamdan is accused of being Osama bin Laden's personal bodyguard and driver and Omar Khadr, 20, faces a charge of murder for throwing a grenade that killed a US soldier.
The two men are among the first detainees that the US government plans to intends to prosecute this summer in its military courts.
Both men had urged the court to hear their case before they go to trial and asked the Supreme Court to clarify whether they were protected by the constitution.
Some 385 detainees are held at Guantanamo Bay, in Cuba.
http://news.bbc.co.uk/2/hi/americas/6609251.stm

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Associated Press
Senators Skirmish Over Gitmo Detainees
By BARRY SCHWEID 04.26.07, 9:02 PM ET

A Senate skirmish over detainees at Guantanamo Bay ended in a draw Thursday, with Democrats urging action on the prisoners' behalf but running into stiff opposition from Republicans.
"What is the hurry?" Sen. John Warner, R-Va., asked at a Senate Armed Services Committee hearing.
The indefinite detention of nearly 400 prisoners without charges is "unconstitutional. It's un-American," said the Senate Judiciary Committee chairman, Sen. Patrick Leahy, D-Vt., one of half a dozen witnesses.
The debate came amid complaints in the legal community over a new effort by the Justice Department to restrict defense lawyers' access to prisoners at the U.S. facility in Cuba.
A Supreme Court ruling last year amounted to a repudiation of the Bush administration's plan for putting detainees on trial. After the decision, Congress acted to limit detainees' access to U.S. courts.
Citing the new law's "nightmare scenario," Leahy laid out this scenario: a hardworking and legal permanent U.S. resident innocently donates to a charity that is suspected by the government of funding an anti-U.S. group. This person, Leahy said, could be detained, even tortured and have no recourse in courts for years or even forever.
"America at its best is a beacon for human rights and human liberty, and that's how we like to see ourselves," said Sen. Carl Levin, D-Mich., chairman of the Senate Armed Services Committee. "But much of the world sees us in a very different way when we fail to live up to the standards we profess."
Warner, the committee's top Republican, urged Congress "not to get ahead of this process" and to wait for another ruling by the Supreme Court.
The justices turned aside the detainees on April 2, saying they should first take their complaints to the U.S. Court of Appeals for the District of Columbia Circuit, which was handed an extremely limited mandate on detainee issues.
Rather than enabling the prisoners to challenge their indefinite detention and treatment, the Republican-controlled Congress last year said the appeals court can decide only whether the

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military followed proper procedures when it categorized detainees as unlawful enemy combatants.
"This is a nation at war," said Warner. "We are doing everything to protect our citizens and our nation. And I think we have got to be exceedingly careful. ... We are getting ahead of the judicial branch."
Also speaking in opposition to quick changes, Sen. John Cornyn, R-Texas, said he was "not aware of any recorded English common law case that grants habeas corpus relief to an alien detained as an enemy combatant."
Yet, Cornyn said, "we have gone a step further and provided an opportunity for both administrative and judicial review in a court" to people "who do not observe the law of war."
Sen. Jeff Sessions, R-Ala., said the Constitution does not confer habeas corpus rights on people seized on the battlefield.
Among the witnesses, Daniel J. Dell'Orto, deputy general counsel at the Pentagon, defended the tribunal system. He said about 390 detainees had been released or transferred out of Guantanamo and about 80 were awaiting release or transfer when assurances of humane treatment are received.
"This underscores our commitment not to hold any detainee longer than necessary," Dell'Orto said.
The Justice Department this month filed court papers seeking to severely restrict defense lawyers' access to detainees at Guantanamo.
"This is just one more bad decision that follows in the stream of bad policy," said Jack Einwechter, recently one of the prosecutors in a military commission case against Osama bin Laden's former driver, Salim Ahmed Hamdan.
"There needs to be a balance between the needs of national security and the need for defense counsel to be informed," Einwechter said during an interview. "The proposed standard goes too far in restricting defense counsel access."
Retired from the military and now with a Washington law firm, Einwechter said the department's position is driven by the fact that "Congress has foreclosed any broad review of the issue of detention."
Cutting back defense lawyers' access is a "pretty outrageous move on the part of the government and is just indicative of the way they have tried at every step to frustrate the ability of lawyers to represent their clients," said Neal Sonnett, chairman of the American Bar Association task force on treatment of enemy combatants.
Justice Department spokesman Erik Ablin said the plan for attorney access goes well beyond what the Constitution and law require and is "unprecedented in the history of warfare" because it allows private civilian lawyers access to detained enemy combatants.
http://www.forbes.com/feeds/ap/2007/04/26/ap3659849.html
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By David McFadden
ASSOCIATED PRESS
12:09 a.m. April 30, 2007
SAN JUAN, Puerto Rico - Lawyers envision more suicides and despair at Guantanamo Bay if the U.S. Justice Department succeeds in severely restricting access to detainees by defense attorneys, virtually the only contact inmates have with the outside world.

The Justice Department has asked the U.S. Court of Appeals for the District of Columbia Circuit to limit the number of lawyer visits allowed to three after an initial face-to-face meeting, to tighten censorship of mail from attorneys and to give the military more control over what they can discuss with detainees.
Lawyers for detainees believe that if their visits are limited, detainee desperation will deepen and more will try to kill themselves. On June 10, 2006, two Saudi detainees and one Yemeni hanged themselves with sheets, the first and only suicides since the 2002 opening of the detention center that now holds about 380 inmates.
"Visits by lawyers are one of the few bright spot these men have," attorney Zachary Katznelson told The Associated Press from Guantanamo, where he is spending two weeks to meet with 18 client detainees.

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Clive Stafford Smith, an attorney for several Guantanamo detainees, said curtailing lawyer visits would likely lead more prisoners to attempt suicide.
"The level of depression is soaring, I am afraid," he said over the weekend.
Many detainees are kept in isolation in small cells with no natural light. With no prison sentence having been pronounced - except for one Australian detainee - the detainees do not know when they will get out, if ever. Many have been there for more than five years.
Attorney Stephen Oleskey, who represents six Algerians, said more suicides are "a real risk" if the court restricts lawyer-client contacts.
"I've seen firsthand the mental conditions of my clients deteriorate in isolation," Oleskey said from Boston. "And I think the impact of further restrictions would be dramatic."
Meanwhile, Katznelson sees the move to restrict attorney access as an attempt to seal the facility from critics.
"If we cannot come in, the only news getting out of here will be the government's carefully crafted version," Katznelson said in an e-mail Saturday.
It is the attorneys, arriving at the base in southeast Cuba aboard military planes or tiny commuter flights, who provide the world with information about hunger strikes, solitary confinement and other details about the detainees.
Journalists can visit but are barred by the military from interviewing detainees. The Red Cross, which occasionally visits, keeps its findings confidential.
But military commanders at Guantanamo and the Justice Department view the lawyers with suspicion.
Navy Cmdr. Jeffrey Gordon, a Pentagon spokesman, told the AP the military has been giving broad lawyer access to many detainees - even though they are accused of having al-Qaeda or Taliban links and the United States is still at war.
The mail system was "misused" to inform detainees about military operations in Iraq, activities of terrorist leaders, efforts in the war on terror, the Hezbollah attack on Israel and abuse at Abu Ghraib prison, the Justice Department said in this month's court filing.
Barry M. Kamin, president of the New York City Bar, called the assertions "astonishing and disingenuous" in a letter to U.S. Attorney General Alberto Gonzales.
Lawyers for detainees also dismissed the claims, calling them a pretext to deprive detainees of proper legal representation.
"There have been a lot of extreme statements made," said Oleskey, referring to U.S. government criticism of legal defense efforts. "I think it's unfortunate and it should stop."
http://www.wcsh6.com/news/article.aspx?storyid=59171

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Former deputy at Gitmo offers insight on center BY BILL HESS Monday, April 30, 2007
Herald/Review

FORT HUACHUCA - Media outlets tout horror stories about detainees being held at Guantanamo Bay, a piece of America under the control of the U.S.
Navy in communist Cuba.

But the former deputy commander of the terrorist detention center says the tales fall in the fiction category and only have a touch of truth.

Hunger strikes happen. But Army Brig. Gen. Edward Leacock said Thursday night that force feeding a detainee through tubes in their nostrils is designed to keep them alive.

The detainees who engage in the non-eating campaigns even tell the people who put in the tubes which nostril to use, he told more than 100 people at a dinner meeting of the Coronado Chapter of the Military Officers Association of America.

A hunger striker who has not taken solid food for more than 500 days "has gained 20 pounds," Leacock said.

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While the subject of his talk was serious, that comment and one of another detainee who has ballooned from about 200 pounds to more than 400 elicited laughter from the audience.

That many of the nearly 400 detainees are doing well physically and eating good - the average caloric intake is 4,200 per person per day - belies the tales of food deprivation, the recently returned deputy commander of Joint Task Force Guantanamo said.

Not a gulag

"It's not a gulag," he said.

A gulag is a term that comes from the Soviet systems of prisons of little hope from the Stalinist years. The word has been used by some to describe the series of six camps built to hold enemy combatants, many of whom have connections to al-Qaida or the Taliban.

The detention force of nearly 1,900 people at the Guantanamo facility - mostly military with about 250 civilians, including contractors - is known as JT-GTMO in military jargon.

Leacock said the Geneva Convention is adhered to there, and in some cases the actions with the detainees - they are not called prisoners - exceed the requirements.

The missions of the task force is "the safe and human care and custody of detainees," with the mission of obtaining intelligence for combat commanders, said the general, who is the assistant adjutant general for the Maryland National Guard.

He, like other soldiers from the Maryland Guard, deployed to Cuba last year and spent 13 months of duty at the detention center.

At one time, nearly 800 detainees were kept at one of the six camps, which are structured from low to maximum security, the general said.

Some detainees have been released to their home nations or another country because arrangements could not be made with their native land or the fear they would be harmed if they returned to a nation of their birth, Leacock said.

No nation in a time of war has released detainees as the United States is doing, he added.

About 80 of the 381 detainees will be released once a nation is found to take them, the general said.

As for allegations Americans torture those in custody, Leacock bristled at the suggestion.

"We don't torture detainees," he emphatically said, pointing and shaking his right index as he made his point.

GIs are harassed

On the other hand, the most hardened of those in custody harass the soldiers who are guarding them, he said.

For example, there is the cocktail thrown at Americans, the general said. The cocktails are not pleasant, for they are a mixture of bodily fluids - urine, feces, blood, vomit and spit - thrown on the guards.

His description of the cocktail brought sounds of horror and disgust from the audience.

OGC AMNESTY/CCR 395

There are leaders among the detainees, ranging from political to military, and those who are the enforcers, Leacock said.

Leaders and troublemakers are separated from the majority of the detainees, but they're never put into solitary confinement, the general said. A segregation area has been created that is designed to keep violent people and others who want to do harm away from the general detainee population. While in segregation, the detainees can talk with one another, have time for physical exercise, eat and received medical treatment.

What bothers Leacock is that some media outlets keep referring to Camp X-Ray years after the detention center was created. Camp X-Ray was built years before to keep migrants who failed in their attempts to enter the United States illegally.

That camp, which he admitted was run down, was open for less than a half year while other areas were built.

But as late as last year, an international media outlet did a story about the detention center, implying Camp X-Ray was operating and used a photo of that facility that was at least four years old showing a detainee and American soldiers.

Because of all the media trips and other investigations by American and international groups, the center "is the most transparent detention facility in the world," the former deputy commander said.

All those who work at the facility ask for is a fair shake in media reporting, the general said. And, surprisingly, that has happened in recent Arabic language media stories.

While Secretary of Defense Robert Gates recently said he wants to close the facility, as has President George W. Bush, the question is who would become responsible for the detainees, the general said.

"It's a policy decision, not a military one," Leacock said.

Intelligence needed

Some people say there is no longer any intelligence value that can be obtained from the detainees, some of whom have been held for years.

But Leacock said there is always new information that can be obtained, especially when a detainee decides to open up.

Once it is decided a detainee is no longer a threat, which is subjective and could be wrong, action is taken to release that person, Leacock said. One individual who was released went back to the fight, like about 40 others, and he was reportedly killed.

"We take risks when we release detainees," the general said.

Any intelligence is important, said Leacock, who is an intelligence officer and who has the responsibility of being the deputy commander for reserve affairs at Fort Huachuca's Intelligence Center as well as his Maryland National Guard job.

Treating some detainees with respect does provide benefits.

"We get more out of them," Leacock added.

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The medical treatment provided them is excellent, and if the medical facility at the detention center needs help, the Navy hospital on the other side of the bay is available and has been used, the general said.

During his tour, three detainees committed suicide in 2006.

Although the investigations into those deaths are still being done, Leacock said he believes they were "political statements" to keep heat on America by alluding to blatantly untrue stories of inhumane treatment.

Detainees well treated

The detainees have access to lawyers, a library where there are books in 13 languages, receive and send mail, have call to prayer five times a day as the Muslim faith dictates and are fed meals based on their religious diets, Leacock said.

"Their favorite book is Harry Potter," he added.

For the Americans who have to work at the center, the stress is heavy and that is why the military allows for a two-week leave and some rest and recuperation trips, Leacock said.

The center's senior leaders don't stay in their offices. Along with senior noncommissioned officers, they are out in the different camps keeping a pulse on those who have the hard jobs of fending off attacks from the detainees and threats that they or their families will be hunted down and killed, the general said.

If there is one thing he would like the American people to realize, it is that "your young men and women are doing a phenomenal job in stressful situations."

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Tribal Pakistan: Complexity, fragility

An assassination attempt on the Pakistani interior minister illustrates the fragile security situation in Pakistan's tribal areas, as the government pursues controversial peace deals with local leaders.

By Shaun Waterman in Washington, DC for ISN Security Watch (30/04/07)

The attempted suicide-assassination of Pakistan's interior minister at the weekend is the latest sign that Islamic extremists there continue to target the government of President Pervez Musharraf.

The attack, in the volatile North West Frontier Province, comes as Pakistan continues to pursue its much-criticized strategy of peace deals with local leaders along the Afghan border.

Witnesses told the Associated Press that the suicide bomber got within 15 yards of Interior Minister Aftab Ahmad Khan Sherpao as he was heading to his car to leave the town of Charsadda. The blast left the minister with minor shrapnel wounds in his legs, but killed 28 other people, including his political secretary.

Although there was no immediate claim of responsibility, it showed similar characteristics to a recent series of attacks launched by Pakistani Islamic extremists against the government and military, reported the Times of India.

As in four previous blasts, "Russian-made explosives and [a] jacket packed with ball bearings were used in the attack," the paper reported, quoting unnamed officials from the Federal Investigation Agency.

Officials told other news outlets they had recovered the bomber's head and other remains and that they were seeking to identify him.

Leading Pakistani daily, The Dawn, reported Sunday that Sherpao had named the Islamic militant leader behind the attack.

"Preliminary investigations have revealed that the attack was committed by a suicide bomber of Abdullah Mehsud," the paper quoted him as saying.

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If that turns out to be true, it will be embarrassing for the US, which released Mehsud, also known as Noor Alam, in March 2004, after he spent more than two years in Guantanamo Bay.

Fragile security

But whichever faction was behind the attack, it highlights the fragile security situation in the tribal areas on Pakistan's lawless border - and the continuing efforts by Islamic militants based there to target the Musharraf government.

Sherpao is a vocal defender of the Musharraf strategy of striking peace deals with local leaders on the border - something critics see as appeasement of the Taliban.

He told a recent symposium in London organized by the Royal United Services Institute that the use of military force alone could not transform the security situation in the tribal areas.

"Local population must not be alienated and their customs, culture and traditions be respected," he was quoted as saying by Pakistan's News Network International.

Defenders of the deals say that only pulling the military out of the tribal areas - which comprise some of the most inaccessible terrain on earth and have proved ungovernable for centuries - can create the space for a political settlement with their inhabitants.

US officials have said that the deals created a sanctuary for the Taliban and al-Qaida, and blamed them for a steep rise in cross-border attacks against NATO and US forces in Afghanistan last year.

Although reporters are banned from the tribal areas and accurate accounts of facts on the ground are hard to come by, most observers seem to concur that the peace deals have led to the "Talibanization" of the local power structures, with tribal elders or other leaders who oppose the al-Qaida-linked extremists being murdered or driven out of power.

Moreover, although one condition of the deal was that the tribal leaders would expel foreign militants who refused to adopt a "peaceable life" ("what does a 'peaceable life,' mean in Waziristan, anyway?" joked one US official), in practice there has been almost no action against the estimated thousands of foreign Islamic fighters there.

The fighters - mainly Arabs, Chechens, Uzbeks and Uighurs - came to the tribal areas after the fall of the Taliban regime in neighboring Afghanistan, where they had fought the US-backed Northern Alliance. Islamic customs, and the local tradition of Pashtunwali, require hospitality to those seeking shelter.

Missing the point

Pakistani officials have made much of recent clashes between tribal militias and Uzbek militants from a breakaway faction of the Islamic Movement of Uzbekistan (IMU) in South Waziristan, one of the semi-autonomous tribal areas where the government inked a deal.

In a series of clashes beginning in mid-March, Pakistani officials said more than 200 Uzbeks and dozens of militiamen from local Pashtun tribes were killed.

Sherpao told reporters that the fighting was "the result of the agreements the government made with tribal people in which they pledged to expel foreigners and now they are doing it," according to Pakistani newspaper The Nation.

But in reality, the fighting appears to have been the product of a much more complex conjuncture of sub-tribal power struggles, criminal rivalries and thuggish over-reaching by one group of Uzbeks.

And one of the local leaders who moved against the Uzbeks, Mullah Mohammed Nazir, dispelled any illusions that he was part of an anti-terror alliance when he said last week that he would happily shelter al-Qaida leader Osama bin Laden.

"I have never met bin Laden but if he comes to this area and seeks protection, we will help him according to the tribal laws and customs" as a Muslim in need of aid, Nazir told reporters in the town of Wana in South Waziristan, according to Deutsche Presse Agentur.

But critics of the peace deals may be missing the point, and the dire predictions of a huge spring offensive by the Taliban and their allies in Afghanistan have so far largely failed to materialize.

The general in charge of US coalition forces in Afghanistan, Joseph Votel, told reporters recently that the number of border incidents had declined since January.

"I really attribute that to the very close tactical cooperation and communication that we're able to achieve with the Pakistan military" there, he said.

OGC AMNESTY/CCR 398

"We see ebbs and flows of activity along the border, and literally every day [...] we have some level of contact, albeit relatively small in most cases, with some insurgents or other personnel along the border," he said.

With "thousands every day" crossing a border the tribes do not recognize, Votel said he had concentrated on working with the Pakistan military to try to identify infiltration routes most used by militants "and then position our forces so that we have control over those areas," to "minimize disruption" to daily life in the region.

"We have worked very hard over the last couple of months to ensure that our tactical headquarters on the Afghanistan side of the border and the Pakistan tactical headquarters on their side of the border can talk and communicate freely," he said, adding, "We have seen significant progress in that communication chain."

So successful was the cooperation, he said, that the feared spring offensive by the Taliban had fizzled.

"We have been more offensive than I think they have in our posturing and in our ability to dominate areas on the battlefield," he said.

"We continue to be probed on a regular basis. We continue to see attacks in the interior. But we have not seen what I would describe as a spring offensive by the Taliban."

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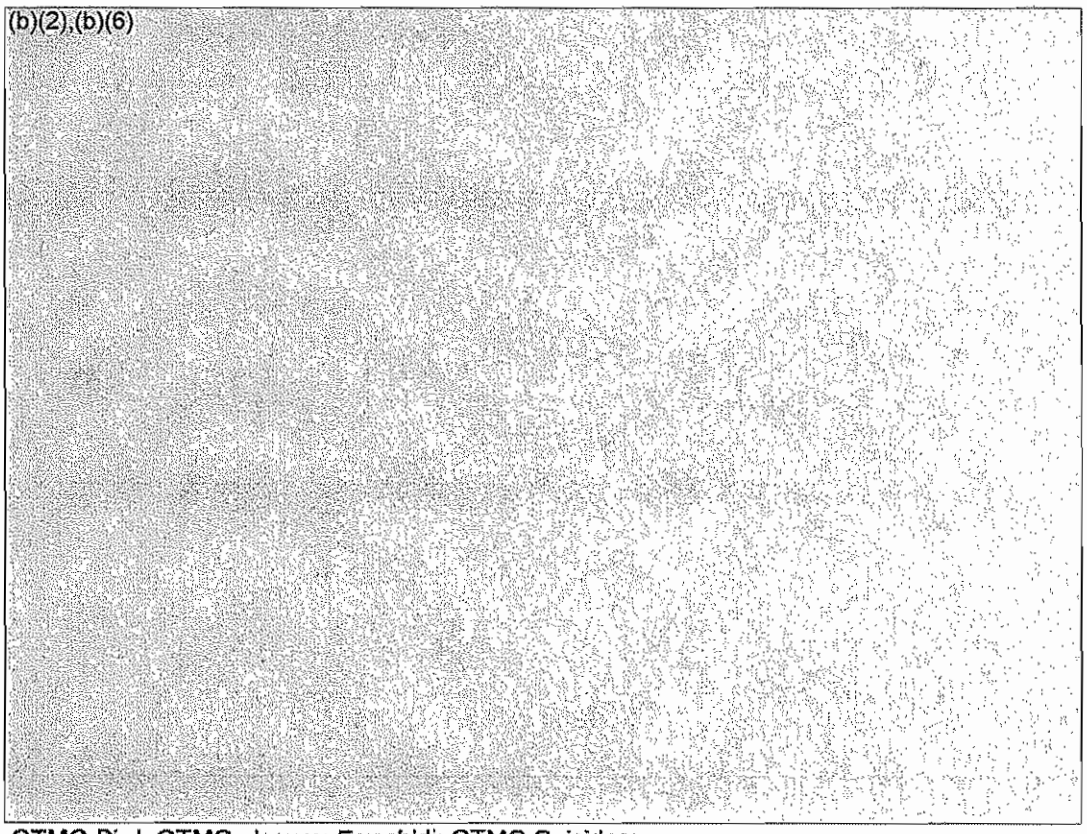
(b)(6)

From: (b)(6) DoD OGC
Sent: Thursday, May 03, 2007 4:55 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 400

Cc: (b)(2),(b)(6)



Subject: GTMO Bird: GTMO closure; Errachidi; GTMO Suicides;
Attachments: Picture (Metafile)

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)
Office of General Counsel, Legal Counsel Department of Defense
(b)(2) (DSN (b)( ))
(fax)

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Another Guantanamo outrage
May 3, 2007

UNWILLING TO close Guantanamo, bring its prisoners to US soil, and let them fight their detention in US courts, the Bush administration now wants to shutter the one window the outside world has on the Kafkaesque conditions in the camp. It is proposing to clamp down on the prisoners' only nonmilitary contacts, their lawyers. The US Appeals Court in Washington should reject this shameful proposal out of hand.

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Under the Justice Department plan, lawyers could meet just three times with their Guantanamo clients after an initial meeting in which the prisoner decides whether or not to use the lawyer's services. Prisoners who have been through several interrogations at the hands of the military are often so distrustful of Americans, including lawyers, that it takes extended visits just to establish a normal attorney-client relationship.

The new rules would also allow US intelligence officers to read lawyers' letters to their clients, and they would permit US officials to deny a lawyer access to secret evidence used by the military to determine that a client is an enemy combatant -- all flagrant departures from American justice. As it stands now, the lawyers -- all of whom have security clearances -- can see the material but are forbidden to share it with their clients.

The administration's laughable justification for these restrictions is that client-attorney contacts have led to unrest at Guantanamo. A more obvious cause of the unrest is the fact that many of the prisoners have been held there for more than five years -- with no criminal charge placed against them. Many had so little involvement with either the Taliban in Afghanistan or Al Qaeda that the camp's commanders would happily release them if they could find countries to accept them. But former secretary of defense Donald Rumsfeld made that hard by describing Guantanamo inmates as "the worst of the worst." Unrest might also be caused by the fact the military is now holding about half the prison's 385 prisoners in isolation, which often leads to mental and physical deterioration.

The Bush administration could end Guantanamo unrest and the international black eye the prison is causing by transferring the detainees to prisons in the United States and handling their cases under military or civilian criminal procedures, either of which would offer them the due process rights they are now being denied. Congress, for its part, should approve pending legislation that would repeal the clause of last year's Military Commissions Act that strips the prisoners of their habeas corpus right to challenge their continued detention in court.
The last thing the government should do is further limit the prisoners' rights with the proposed restrictions on their lawyers. Those attorneys, most of whom are working on a pro-bono basis, are the thin line that is keeping Guantanamo from becoming a gulag.
http://www.boston.com/news/globe/editorial_opinion/editorials/articles/2007/05/03/another_guantanamo_outrage/

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New detainees show Bush has no plans to close Guantanamo Bay Michael Roston
Published: Wednesday May 2, 2007

The announcement of the transfer of a new detainee to Guantanamo Bay on Friday was the latest signal sent by the Bush administration that it was not committed to any plan to close the detention facility. More than suggesting that Guantanamo will remain open, the announcement showed that the CIA had re-opened its system of secret prisons.
But while the Bush administration moves to continue its detention programs, members of Congress have plans of their own to shut down Guantanamo.
'No inclination' to close Guantanamo Bay, says Senator Senator Dianne Feinstein (D-CA) introduced legislation on Monday to close Guantanamo Bay. The bill would require the shuttering of the detention facility within a year of its enactment.
"The President himself has said that he would like the detention facility closed. Yet it is clear that the Administration shows no inclination to close it," the Senator said in a statement she released Monday.
She added, "We must recognize the sustained damage this facility is doing to our international standing. We are better served by closing this facility and transferring the detainees elsewhere."
Feinstein's spokesman, Scott Gerber, told RAW STORY <http://rawstory.com> that the statements of President Bush and Secretary of Defense Robert Gates that they want the base to close rang hollow.

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"Bush and other members of his administration have stated that as a wish, but there does not appear to be any action," Gerber said Tuesday. "Senator Feinstein is taking action where the administration has failed to do so."

While Secretary Gates has stated a desire to close Guantanamo Bay, another Defense Department official made it clear that Pentagon planners had no real intention of shutting the prison down.

"To abandon this carefully crafted system and attempt to transplant the trials of enemy combatants into the civilian courts would be ill-advised, as would be transplanting the commissions themselves from the secure facility at Guantanamo to some unspecified location in the United States," Daniel Dell'Orto, a Defense Department lawyer, told the Senate Armed Services Committee last Thursday.

Senator Carl Levin (D-MI), who chairs that committee, declined to comment to RAW STORY <http://rawstory.com> on Dell'Orto's remark.

But in the House of Representatives, a powerful subcommittee will take up the question of closing Guantanamo.

"We're going to look at what's going on down there, and there are a lot of questions coming out that need to be answered," said Austin Durrer, a spokesman for Rep. Jim Moran (D-VA). The Congressman will hold a hearing on May 9 looking at how to close Guantanamo Bay next year. Rep. John Murtha (D-PA), Chairman of the Defense Appropriations Subcommittee, has asked Moran to take the lead in examining the question.

Durrer added, "We're looking forward to exploring these issues and finding out what's going on, why they're adding more prisoners, and what the administration is looking at in the long-term."

New Guantanamo detainee second added this year Durrer's reference to the new prisoners at Guantanamo was occasioned by Friday's announcement that a new detainee had been taken into custody by the Defense Department at Guantanamo Bay.

Abd al-Hadi al-Iraqi was described in a Defense Department press release <http://www.defenselink.mil/releases/release.aspx?releaseid=10792> as "one of al-Qaida's highest-ranking and experienced senior operatives." The Pentagon also noted that "As a result of this latest transfer, there are now approximately 385 detainees at Guantanamo Bay, Cuba."

Al-Iraqi is the second new detainee to be sent to Guantanamo Bay in 2007. In late March, the Pentagon announced <http://www.defenselink.mil/releases/release.aspx?releaseid=10662> the transfer to the facility of Abdul Malik, a detainee accused of being involved in terrorist activities in East Africa.

Dell'Orto, the Pentagon legal counsel, explained in the previous week's Senate hearing why the Pentagon was holding detainees like Malik and Al-Iraqi at Guantanamo Bay.

"Since the war in Afghanistan began, the United States has captured, screened, and released approximately 10,000 individuals. Initial screening has resulted in only a small percentage of those captured being transferred to Guantanamo," Dell'Orto explained. "The United States only wishes to hold those who are enemy combatants who pose a continuing threat to the United States and its allies."

The Pentagon's screening process is ongoing. The Washington Post wrote on April 29 that 82 detainees at Guantanamo have been informed that they will be sent home as soon as possible. "Eighty-two remain at Guantanamo and face indefinite waits as U.S. officials struggle to figure out when and where to deport them, and under what conditions," wrote Craig Whitlock. <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/28/AR2007042801145_pf.html>

Still, Whitlock noted that the Pentagon would not free all of the Guantanamo detainees. "Of the roughly 385 still incarcerated, U.S. officials said they intend to eventually put 60 to 80 on trial and free the rest," he added.

New detainee shows CIA secret prisons re-opened But even as the Pentagon appeared to be winnowing down the number of detainees who would stay at Guantanamo indefinitely, new prisoners appeared to be emerging from secret CIA prisons that President Bush had previously promised were closed.

"Prior to his arrival at Guantanamo Bay, he was held in CIA custody," the Pentagon's news release acknowledged.

Various news reports referred to an e-mail sent to CIA staff by Director of Central Intelligence Michael Hayden on Friday, saluting the CIA's interrogation programs.

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"In an E-mail message to CIA employees hailing the arrest as a 'triumph,' CIA director Michael Hayden said the agency's interrogation program was vital and legal. 'The information it has produced has prevented terrorist attacks and saved innocent lives,' he wrote," according to an item at the News Desk blog <http://www.usnews.com/usnews/blogs/news_blog/070427/captured_qaeda_suspect.htm?s_cid=rss:site1> , produced by US News and World Report.

The revelation of continued CIA detention of terror suspects triggered strong condemnation from one member of Congress.

"Last September when the president announced that he was moving detainees from secret CIA prisons to Guantanamo, he left the distinct impression that his Administration was discontinuing their secret prison program," Rep. Ed Markey (D-MA) said in a statement sent to RAW STORY <http://rawstory.com> . "Unfortunately, we learned this past weekend that the Administration never saw an error in their ways and that secret CIA prisons are still operating outside the law and outside the public eye."

Human rights groups were also alarmed by the announcement.

"In the absence of clear knowledge about how al-Iraqi was detained and treated, there have to be serious red flags raised everywhere as a result of this announcement," said Hina Shamsi, deputy director of Human Rights First's Law and Security Program. "Even as the rules governing CIA interrogation are being debated, it appears that the CIA program has continued. Congress should demand to know under what rules these detentions and interrogations may be operating."

The group Human Rights Watch also accused the President of misleading the public.

"We're skeptical that President Bush was telling the whole story when he said the CIA prisons were empty," said Joanne Mariner, the group's terrorism and counterterrorism director. "It's quite possible that his claim was based on legal niceties: that while detainees were in the custody of other countries, the CIA had the power to determine their fate."

Human Rights Watch believes at least 38 additional detainees who were at one time held in the CIA's secret prisons still cannot be accounted for.

Rep. Markey has sponsored the "Torture Outsourcing Prevention Act" to restrict the ability of the CIA and other agencies to cooperate with other countries for extra-legal detentions and interrogations.

http://rawstory.com/news/2007/New_detainees_show_Bush_has_no_0501.html

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Former Guantanamo inmate walks free in Morocco

RABAT (Reuters) - A Moroccan man sent home from the U.S. detention camp at Guantanamo Bay last week was released by local authorities after terrorism-related charges were dropped, a human rights lawyer and relatives said on Thursday.

Ahmed Errachidi, 41, was arrested on his return to Morocco and appeared before a judge on Wednesday on suspicion of preparing and carrying out terrorist acts, lawyer Mohamed Sebbar told Reuters.

"The charges were dropped, he was released last night and he is now back home with his family," said Sebbar. A relative confirmed his release and return home.

Errachidi spent more than five years at the U.S. detention camp for terrorist suspects at Guantanamo Bay in Cuba before being freed without charge last week. He has a wife and two young sons living in Morocco Relatives say he suffers from bipolar disorder, also known as manic depression, and needs to take medication regularly.

Errachidi lived in Britain for 17 years and worked as a chef in London restaurants. According to the British-based legal charity Reprieve, which represents him, he was arrested in Pakistan after traveling there in 2001 on a business venture to fund a heart operation for his younger son, Imran.

While there, he was affected by television footage of the U.S. invasion of neighboring Afghanistan and went there to try to help refugees from bombing raids, a decision his lawyers say reflected his erratic judgment caused by his illness.

Once in Afghanistan, he soon realized there was nothing he could do and it was dangerous to stay. He was detained after crossing back into Pakistan.

OGC AMNESTY/CCR 404

Pakistani officials then "sold Ahmed to the U.S. military for a bounty that was negotiated while he stood by in shackles and a hood", Reprieve said in a press release on his case.
The U.S. government has repatriated 10 Moroccans from Guantanamo in the past three years, according to lawyers.
They were charged with forming criminal gangs, forgery, illegal migration or belonging to an international terrorist organization but only one was imprisoned.
Three Moroccans remain in the maximum security prison in Cuba.
http://www.reuters.com/article/worldNews/idUSL0338635720070503?pageNumber=2

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Study Examines the Pathologization of Guantanamo Suicides

Toronto - infoZine - In an article published in International Political Sociology, author Alison Howell traces the psychological pathologization of the Guantanamo detainees, noting that both advocates and resisters of the detainment accredit the attempted suicides to the impaired psyches of the suspects.

As the high prevalence of suicide attempts at the Guantanamo Bay terrorist detention center has come to light, two major responses have emerged: the United States military has presented the attempts as "manipulative self-injurious behavior," and not as true efforts at suicide, using them as examples of the alleged barbarity and inhumanness of the terrorist suspects. In contrast, humanitarian groups have argued that these attempts are the results of psychological deterioration resulting from detention.

Howell posits that the use of the "psy" disciplines (psychology, psychiatry, psychotherapeutics, etc.) by both the United States government and humanitarian organizations serves to categorize the Guantanamo detainees as being irrational madmen, which plays a part in the possibility of their infinite detention. Although humanitarian agencies aim to present the psychological states of the detainees as indicators of the abominable conditions of their detention, by presenting the attempted suicides as the result of impaired psychological functioning, they inadvertently play into notions of the detainees as being unstable and potentially dangerous. In this way, both governmental and humanitarian groups may contribute, albeit unintentionally, to continued detainment in much the same way that those deemed mentally ill may be involuntarily and indefinitely incarcerated.

"U.S. military representations of the detainees - or of purported "Islamic terrorists" more generally - as suicidal (and homicidal) fanatical madmen categorize the detainees in ways that make possible their excision from the global body politic in the form of indefinite detention," argues Howell, noting that "while human rights organizations have done excellent work in resisting these detentions, when such groups represented the detainees as suicidal depressive victims, they did little to dispel the construction of the detainees (or of Islam in general) as pathological and as deserving of excision."

This study is published in International Political Sociology.

http://www.infozine.com/news/stories/op/storiesView/sid/22632/

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A Guantánamo exit strategy

The 5-year-old military prison at Guantánamo Bay, with its indefinite detention rules, lack of judicial review and insufficiently regulated interrogation techniques, is an ugly stain on America's tradition of respect for the rule of law and an endless propaganda bonanza for the country's enemies. Yet it is clear that despite the good advice of friendly foreign leaders, members of Congress and even his own cabinet, President George W. Bush has no intention of closing the facility unless Congress forces him to do so.

OGC AMNESTY/CCR 405

This week, Senator Dianne Feinstein, a California Democrat, introduced legislation aimed at doing just that. Her bill would shut down the prison and transfer the 385 or so people still held there to more conventional, and accountable, detention facilities, either for trial in the United States or repatriation to their home countries, with assurances that they would not be tortured or otherwise mistreated.

Feinstein's initiative is long overdue. It deserves passage by a bipartisan, veto-proof majority.

Previous congressional efforts on Guantánamo, like the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006, only made matters worse by limiting judicial review and retrospectively legalizing lawless executive branch behavior. By contrast, the Feinstein bill strikes at the heart of the problem. It would begin moving most of the detainees back into the time-tested procedures of the normal American legal system.

Many of those held at Guantánamo may not be dangerous terrorists at all, but people scooped up on the battlefields of Afghanistan and elsewhere to be sorted out later. Most have been jailed ever since.

The only way to determine who should continue to be held and who should not is through genuine trials, not dubious military commission proceedings, which produce implausibly wide-ranging confessions or plea deals.

It is hard to see how such results serve justice or the urgent need to identify and root out currently operating terrorist cells.

http://www.iht.com/articles/2007/05/03/opinion/edgitmo.php

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OGC AMNESTY/CCR 406

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From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Friday, June 01, 2007 3:40 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 407

Cc: (b)(6)

Subject: RE: GTMO Bird: Detainee Suicide; Interrogation Abuse; Khadr Fires Lawyers; US Request Khadr & Hamdan move to Fed Cts; Gitmo Photo Exhibit

Attachments: Picture (Metafile)

All

Todays GTMO Bird. Please reply to this e-mail as I am setting up a distro list. I think I have deleted/added anyone I received e-mails from - however, I ask that you bear with me as I "fine-tune" the system. Thank you

(b)(6)
Paralegal, GySgt, USMC (Ret.)
Department of Defense
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1600 Defense Pentagon
Washington, D.C. 20301-1600
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Dead Gitmo detainee a Saudi vet
By Josh White
The Washington Post

OGC AMNESTY/CCR 408

WASHINGTON – A detainee who was found dead in his cell at Guantánamo Bay, Cuba, on Wednesday was a Saudi army veteran who trained with U.S. forces before fighting with the Taliban in Afghanistan, according to military hearing records.
Abdul Rahman Maadha al-Amry had been imprisoned at the military-detention facility in Cuba since February 2002 without meeting with a lawyer or being charged with a crime, according to a legal-defense group, a circumstance the group said could explain his apparent suicide.
U.S. officials declined to provide details or evidence of his cause of death. Al-Amry's body will be prepared for repatriation to Saudi Arabia after an autopsy, officials said Thursday.
Saudi officials Thursday identified the detainee as al-Amry, 34, who told his U.S. captors that he was essentially a foot soldier in Afghanistan because he felt a duty to fight jihad.
U.S. Southern Command officials characterized al-Amry as a midlevel al-Qaida operative who ran safe houses and fought against the United States in November 2001.
But al-Amry, at a military hearing at Guantánamo, said he had no particular animosity toward the United States.
"Detainee said had his desire been to fight and kill Americans, he could have done that while he was side by side with them in Saudi Arabia," according to a U.S. military account of al-Amry's statements to a Combatant Status Review Tribunal of military officers, who concluded he was an enemy and needed to be held indefinitely.
"His intent was to go and fight for a cause that he believed in as a Muslim toward jihad, not to go fight against the Americans," the tribunal reported him as saying.
Al-Amry said he served in the Saudi army for nine years and four months, at times receiving training from the U.S. military.
U.S. Southern Command said guards found him dead Wednesday afternoon in his cell in Camp 5, a modern, high-security section of Guantánamo generally reserved for detainees considered to have intelligence value or who do not follow prison rules.
Al-Amry was the fourth to commit suicide at the detention center, which holds about 380 men on suspicion of links to al-Qaida or the Taliban.
Al-Amry was said by another detainee to have been on a hunger strike in March. Military records suggest he had also refused food in the past, with his weight dropping below 90 pounds at one point in 2005. He weighed 150 pounds when he arrived.
Guantánamo spokesman Navy Cmdr. Rick Haupt said al-Amry was not on a hunger strike at the time of his death, but he had been force-fed in the past. He did not know if the prisoner had previously attempted suicide.
Associated Press material is included in this report.
http://seattletimes.nwsource.com/cgi-bin/PrintStory.pl?document_id=2003730326&zsection_id=2002107549&slug=gitmo01&date=20070601

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Dead Gitmo prisoner trained with U.S. soldiers TheStar.com - News - Dead Gitmo prisoner trained with U.S. soldiers
May 31, 2007
Jane Sutton
reuters news agency
MIAMI-The Guantanamo prisoner who died in his cell this week was a Saudi army veteran who trained with U.S. soldiers before going to fight for the Taliban in Afghanistan, military records show.
The man, described by the U.S. military Thursday as a mid-level Al Qaeda operative, apparently committed suicide Wednesday at the prison camp for foreign terrorism suspects at the U.S. naval base in Guantanamo Bay, Cuba.
The Saudi Arabian government identified him as Abdul-Rahman bin Ma'ada bin Dhafer al Aameri and said it had begun procedures to bring home his body.
"A team of Saudi specialists has started, upon an invitation from the American side, a visit to the Guantanamo detention (centre) to review the conditions on the Saudi detainees and intensify the effort to repatriate them as soon as possible," the state-run Saudi Press Agency said.

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A guard found the man lifeless in his cell and camp officials were unable to revive him, said a spokesperson for the U.S. military's Southern Command, Jose Ruiz.
He was the fourth detainee to die in an apparent suicide at the camp, which holds about 380 captives. Another 395 detainees have been released or transferred to other governments since the camp opened in January 2002.
Last June, two Saudis and a Yemeni simultaneously hanged themselves with clothing and bedding in their cells.
All four deaths are under investigation by the Naval Criminal Investigative Service.
There were no other suicide attempts at the camp Wednesday, Ruiz said.
U.S. military documents give a slightly different spelling of al Aameri's name, a common occurrence when Arabic names are transliterated into English.
According to records previously released by the U.S. military, al Aameri told his captors he was trained by Americans during the nine years and four months he served in the Saudi army.
He said he went to Afghanistan six months after leaving the army because he felt it was his duty to fight jihad, or holy war, when asked by a Muslim government, in this case the Taliban. But he denied he intended to fight Americans.
"Had his desire been to fight and kill Americans, he could have done that while he was side by side with them in Saudi Arabia," he said through a U.S. military officer assigned as his representative before an administrative panel that classified him as an "unlawful enemy combatant."
Al Aameri said he had seen Osama bin Laden and other Al Qaeda figures from a distance in Afghanistan and admitted carrying an AK-47 assault rifle at the rear of the battle lines in Tora Bora while trying to flee to Pakistan.
The Southern Command said in a statement al Aameri had fought on the front lines north of Kabul and engaged in combat with U.S. forces in Tora Bora in November 2001.
He became a mid-level Al Qaeda operative with direct ties to higher-level members during his time in Afghanistan and had met with bin Laden, it said. He had links with bin Laden's bodyguards and Al Qaeda recruiters and also ran Al Qaeda safe houses, the command said.
Al Aameri had been held in one of two maximum-security buildings at Guantanamo where detainees live in one-man cells with long narrow windows, concrete walls and built-in slabs topped with a mattress.
Human rights groups have long condemned the United States for holding prisoners indefinitely at Guantanamo.
They cited Wednesday's death as a sign that captives were being driven to despair by isolation and sensory deprivation in the maximum-security camps and uncertainty over their fates.
"This is inconsistent with American values and must stop immediately," said Anthony Romero, executive director of the American Civil Liberties Union.
The U.S. military said the Guantanamo prisoners are terrorists who must be locked up to safeguard Americans.
"We regret any loss of life at the camp and we're going to do whatever we can to prevent something like this from happening again," Ruiz said.
http://www.thestar.com/printArticle/220140

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Guantanamo 'suicide' was in maximum-security cell
[Published: Friday 1, June 2007 - 09:49]
By Rupert Cornwell
The Saudi Arabian prisoner who apparently committed suicide at Guantanamo Bay this week was being held in isolation in the maximum-security Camp Five section.
That disclosure can only add to international pressure for the facility to be shut down.
The Pentagon has not named the victim, nor formally confirmed a cause of death. It was left to the Saudi government in Riyadh to identify him as Abdul Rahman Maadha al-Amry. According to US Southern Command, in whose jurisdiction the prison falls, he was found dead in his cell on Wednesday afternoon "unresponsive and not breathing".

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There was no word of what Mr al-Amry - who had not been charged - was supposed to have done, or where he was originally picked up. But a US spokesman said he had been detained in the part of Guantanamo reserved for the "least compliant" and "high-value" inmates. "The actual cause of death is under investigation," he added.
Assuming it is confirmed, the suicide would be the fourth since the prison camp opened in January 2002, after two Saudi detainees and one Yemeni hanged themselves with sheets a year ago.
"I can assure you it is hell on earth," said Wells Dixon, a US defence lawyer who has met detainees at Camp Five. Many of them were in evident despair: "You can see it on their faces. It's transparent."
Clive Stafford Smith, the director of the Reprieve organisation which represents 37 Guantanamo prisoners, said last night: "After more than five years without any charges, the prisoners in Guantanamo are becoming increasingly desperate." The group had warned that more suicides were inevitable, but "they [the US military] remain frozen in a nightmare of their own creation".
Guantanamo must be closed immediately, he added. "There is enough blood on everyone's hands."
In a separate challenge to the treatment of terrorist suspects, the American Civil Liberties Union is suing Jeppesen Dataplan, a subsidiary of the Boeing company, claiming it secretly flew three CIA-held suspects overseas, where they were tortured.
The cases involve Binyam Mohamed, an Ethiopian citizen, in July 2002 and January 2004; Elkassim Britel, an Italian citizen, in May 2002; and Ahmed Agiza, an Egyptian citizen, in December 2001.
http://www.belfasttelegraph.co.uk/news/world-news/article2602247.ece

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U.S.: Dead Detainee Was Of High Value
SAN JUAN, Puerto Rico, May. 31, 2007

(AP) A Saudi Arabian detainee who apparently committed suicide at Guantanamo Bay had been held at the prison camp reserved for the least compliant and most "high-value" inmates, a U.S. military spokesman said Thursday.

The Saudi government identified the man who died Wednesday as Abdul Rahman Maadha al-Amry. A spokesman for the kingdom's Interior Ministry, Maj. Gen. Mansour al-Turki, said it was too early to judge how al-Amry died.

The U.S. military has not confirmed the detainee's identity or explained how it arrived at the conclusion that he probably committed suicide.

"The actual cause of death is under investigation," Southern Command spokesman Jose Ruiz said by telephone from Miami on Thursday.

Ruiz said the man was held at the maximum-security Camp 5.

Guards at the U.S. Naval Base in southeast Cuba found the detainee unresponsive and not breathing in his cell Wednesday afternoon, the Southern Command announced Wednesday.

It would be the fourth suicide at Guantanamo since the prison camp opened in January 2002. On June 10, 2006, two Saudi detainees and one Yemeni hanged themselves with sheets.

Prisoners in Camp 5, which is similar to the highest-security U.S. prisons, are kept in individual, solid-wall cells and allowed outside for only two hours a day of recreation in an enclosed area.

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Wells Dixon, a defense attorney who met with detainees at Camp 5 last month, said many showed signs of desperation.

"I can assure you that it is hell on earth," Dixon said. "You can see the despair on the faces of detainees. It's transparent."

Other critics said detainees are frustrated at being held indefinitely without charges.

"You have five and a half years of desperation there with no legal way out," said Michael Ratner, president of the New York-based Center for Constitutional Rights, which represents hundreds of Guantanamo detainees. "Sadly, it leads to people being so desperate they take their own lives."

Lawyer Julia Tarver Mason, whose firm represents eight Saudi detainees at Guantanamo, said the government so far has declined to tell her if the man who died was among her clients. There are about 80 detainees from Saudi Arabia held at Guantanamo.

"They are in the care of the United States government and that should mean that deaths should not occur," Mason said.

The death came as Guantanamo prepares to hold pretrial hearings for two detainees in military tribunals.

One of the detainees, Canadian Omar Khadr, fired his American attorneys on Wednesday, leaving him without defense counsel, his former U.S. military attorney told The Associated Press.

Khadr is still to be arraigned Monday. He and Salim Ahmed Hamdan, a Yemeni who also faces a hearing Monday, are among only three of the roughly 380 Guantanamo prisoners to be charged with a crime. The third, David Hicks, was convicted of aiding al-Qaida and returned to his native Australia.

Khadr was 15 when he was captured in Afghanistan during a firefight in which he allegedly killed a U.S. Army special forces soldier with a grenade.

"He doesn't trust American lawyers, and I don't particularly blame him," said U.S. Marine Lt. Col. Colby Vokey, who was taken off the case Wednesday. "The United States is responsible for his interrogation and his treatment under a process that is patently unfair."

Many of the "enemy combatants" at the isolated prison camp have been held for more than five years. In most cases, the military accuses them of having links to al-Qaida or the Taliban.

The former commander of the detention facilities, Navy Rear Adm. Harry Harris, described earlier suicides as acts of "asymmetric warfare" _ an effort to increase condemnation of the prison.

A cultural adviser was helping the military handle the remains. "The remains of the deceased detainee are being treated with the utmost respect," the military said.

Assocated Press writers Andrew O. Selsky and Ben Fox contributed to this story.

http://www.cbsnews.com/stories/2007/05/31/ap/world/printable2870329.shtml

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ACLU Calls for Immediate Investigation into Death at Guantánamo Bay (5/31/2007)

FOR IMMEDIATE RELEASE

OGC AMNESTY/CCR 412

CONTACT: media@aclu.org
Prisoner Death Comes Just Days Before ACLU Set to Monitor Military Commission Proceedings
NEW YORK - The American Civil Liberties Union today called for an independent investigation into the death of a Saudi national held at the U.S. detention facility in Guantánamo Bay. Military officials have described the death as an "apparent suicide," making it the fourth death in custody at Guantánamo in the past year.
The U.S. government has previously downplayed the significance of suicides and suicide attempts at Guantánamo Bay, said the ACLU. Last year, officials drew widespread criticism after calling the suicides of three detainees "an act of asymmetric warfare."
"Further deaths at Guantánamo should not surprise us when prisoners are afforded a second class system of justice, are held indefinitely without charge, and are given only limited access to their lawyers," said Anthony D. Romero, Executive Director of the ACLU. "Guantánamo Bay has operated for far too long under a shroud of secrecy. The global community and the American public have rightfully lost their trust in the U.S. government after countless reports of abuses and injustices at Guantánamo."
"Guantánamo remains a legal black hole," Romero added. "This is inconsistent with American values and must stop immediately."
The ACLU has called on Congress and the Bush administration to shut down Guantánamo Bay. Last week, the ACLU endorsed legislation introduced by Senator Tom Harkin (D-IA) that would effectively end the practice of indefinite detention without charge or due process for detainees who have been held for as long as five years without knowing the reason for their detention. It would also provide an incentive for the government to finally charge those detainees it believes are guilty of crimes against the United States.
"The military commission system at Guantánamo Bay delivers only the illusion of justice," said Jameel Jaffer, Director of the ACLU's National Security Project. "Most of the prisoners have not been charged at all, and those prisoners who have been charged are being tried under rules that are fundamentally unfair."
Jaffer will travel to Guantánamo Bay to observe the arraignments of Salim Ahmed Hamdan and Omar Khadr, both of which are scheduled to take place on Monday, June 4. Hamdan is a Yemeni national who is alleged to have been Osama bin Laden's bodyguard and chauffeur. He is charged with conspiracy and providing material support to terrorism. Hamdan previously challenged the military commissions system in a case that reached the United States Supreme Court. In June 2006, the Supreme Court ruled in Hamdan v. Rumsfeld that the military commissions authorized by President Bush violated U.S. military law and international treaties. Following that ruling, Congress enacted the Military Commissions Act (MCA), which was signed by President Bush on October 17, 2006. Hamdan and Khadr are being tried under the MCA.
Khadr, a 20-year-old Canadian citizen, will be arraigned on charges of murder, attempted murder, conspiracy, material support and espionage. Most of the charges relate to a 2002 incident in Afghanistan in which Khadr is alleged to have thrown a grenade, killing a U.S. soldier. At the time, Khadr was 15 years old. Khadr's lawyers argue that he should be treated as a minor and that he was abused by U.S. forces at Guantánamo Bay.
At their respective arraignments, Khadr and Hamdan will be asked to enter pleas. It is not yet known how they will respond. The ACLU's Jaffer will post his observations of the hearings to the ACLU's blog at http://blog.aclu.org <http://http:/blog.aclu.org> .
The ACLU is one of four organizations that have been granted status as human rights observers at the military commission proceedings. When the tribunals began in 2004, Romero and two ACLU lawyers attended the proceedings and blogged about their observations.
http://www.aclu.org/safefree/detention/29940prs20070531.html

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AMNESTY INTERNATIONAL USA
PRESS STATEMENT

May 31, 2007
Another Life Succumbs to the Horrors of Isolation and Indefinite Detention in Guantanamo Bay
Amnesty International Repeats its Call to Close the Facility

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(Washington, DC) - Larry Cox, Amnesty International USA?s Executive Director, made the following statement in response to reports of the death of a detainee by apparent suicide in Guantanamo Bay:
"This tragedy is another illustration of the desperation many detainees face at Guantanamo Bay and one more reason that the Guantanamo Bay prison camp must be shut down. Many suspects have been in custody without charge or trial, most for over 5 years. Amnesty International urges an immediate independent investigation into the man's death and calls on Bush administration officials to improve conditions for those who remain. Many detainees are held in very harsh, permanent conditions of extreme isolation and sensory deprivation - particularly those in Camps 5 and 6.
"As Amnesty International sends it condolences to the deceased's family, we must remember that every man in the facility is a father, brother or son. Regardless of one's innocence or guilt, everyone must be afforded due process and the rule of law - the cornerstone of justice."
Amnesty International also reiterates its call for independent human rights monitors to be given full, unlimited access to the detainees at the detention facility in Guantanamo Bay. The organization urges that all detainees be allowed regular contact with their families and that independent health care professionals are permitted to examine detainees in private.
http://www.amnestyusa.org/document.php?id=ENGUSA20070531001&lang=e
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Psychologists in Gitmo & Iraq Interrogation Abuse
Thursday, 31 May 2007, 9:59 am
Opinion: Stephen Soldz
Defense Department Releases Evidence of Central Role of Psychologists in Guantánamo and Iraq Interrogation Abuse:
Inspector General documents role of Survival, Evasion, Resistance and Escape (SERE) techniques
By Stephen Soldz
The Defense Department (DoD) has just declassified a report <http://www.fas.org/blog/secrecy/2007/05/dod_inspector_general_reviews.html> from their Inspector General (OIG) looking at the various investigations that the Department has conducted into repeated claims of detainee abuse - a.k.a. "torture" and "cruel, inhuman, or degrading treatment" - banned by international and United States law. The report documents <http://www.fas.org/irp/agency/dod/abuse.pdf> that the various DoD "investigations were, individually and in total, inadequate:
Allegations of detainee abuse were not consistently reported, investigated, or managed in an effective, systematic, and timely manner. Multiple reporting channels were available for reporting allegations and, once reported, command discretion could be used in determining the action to be taken on the reported allegation. We did not identify any specific allegations that were not reported or reported and not investigated. Nevertheless, no single entity within any level of command was aware of the scope and breadth of detainee abuse.

SERE
Perhaps the most important information in this report, however, is that it provides further documentation that psychologists were central to the development of the abusive interrogation paradigm developed at Guantánamo and migrated to Abu Ghraib and other Iraqi prisons. In particular, the OIG provides concrete evidence that techniques developed in the US military's SERE <http://www.fas.org/irp/doddir/army/ar350-30.pdf> (Survival, Evasion, Resistance, and Escape) program to help US troops at high risk of becoming POWs evade capture and resist breaking under abusive interrogations were systematically imported to Guantánamo and, less systematically, to Iraq and Afghanistan. As the report describes:
"DoD SERE training, sometimes referred to as code of conduct training, prepares select military personnel with survival and evasion techniques in case they are isolated from friendly forces. The schools also teach resistance techniques that are designed to provide U.S. military members, who may be captured or detained, with the physical and mental tools to

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survive a hostile interrogation and deny the enemy the information they wish to obtain. SERE training incorporates physical and psychological pressures, which act as counterresistance techniques, to replicate harsh conditions that the Service member might encounter if they are held by forces that do not abide by the Geneva Conventions." (p. 23)

As part of the SERE program, trainees are subjected to abuse, including sleep deprivation, sexual and cultural humiliation, and, in some instances, waterboarding <http://www.talkingpointsmemo.com/archives/011198.php> , described by one SERE graduate thus: "[Y]ou are strapped to a board, a washcloth or other article covers your face, and water is continuously poured, depriving you of air, and suffocating you until it is removed, and/or inducing you to ingest water. We were carefully monitored (although how they determined these limits is beyond me), but it was a most unpleasant experience, and its threat alone was sufficient to induce compliance, unless one was so deprived of water that it would be an unintentional means to nourishment.

Former Air Force officer and now psychoanalyst Eric Anders <http://ericanders.blogspot.com/2004/05/on-american-abuse-of-prisoners-i.html> described his SERE training experience thusly:

"I remember a variety of sadistic abuses, often in the form of mind games and humiliation. It was a horrible experience, but I imagine it might have prepared me to be in the position some of the Iraqi prisoners have unfortunately found themselves in."

Central to SERE is the role of psychologists. A psychologist is required to be present during certain aspects of the process, such as waterboarding as a "safety officer," to stop the training if (s)he perceives the trainee is being overly-traumatized.

In 2005, the New Yorker's Jane Mayer <http://www.newyorker.com/archive/2005/07/11/050711fa_fact4?printable=true> reported evidence that interrogators at Guantánamo were being trained in SERE techniques; they were "reverse engineering" the resistance techniques in order to figure out how to break down detainees. While Mayer reported suspicions, direct evidence of SERE involvement at Guantánamo was lacking for another year, till, in July 2006 Salon's Mark Benjamin, in Torture Teachers <http://www.salon.com/news/feature/2006/06/29/torture/> reported documentary evidence that SERE was, indeed, taught at Guantánamo. In addition to documentary evidence that SERE techniques were taught at Guantánamo, Benjamin pointed out the similarities between what is done to US troops during SERE training and what was done to US detainees:

"There are striking similarities between the reported detainee abuse at both Guantánamo and Abu Ghraib and the techniques used on soldiers going through SERE school, including forced nudity, stress positions, isolation, sleep deprivation, sexual humiliation and exhaustion from exercise."

Michael Otterman, in his marvelous and very disturbing new book, American Torture <http://www.amazon.com/American-Torture-Cold-Ghraib-Beyond/dp/0745326706/ref=pd_bbs_sr_1/104-0675437-1154348?ie=UTF8&s=books&qid=1180357434&sr=1-1> , put together then extant evidence of SERE reverse-engineering. Though the use of SERE techniques at US detention facilities was hardly in doubt after the reporting of Mayer, Benjamin, and Otterman , it was not clear until the OIG report whether the use of the techniques was intentional or inadvertent, a result of widespread exposure to them by US personnel during training.

The new OIG report resolves this question, containing as it does official admissions that SERE was, indeed systematically taught at Guantánamo and in Iraq.

"Counterresistance techniques taught by the Joint Personnel Recovery Agency [the agency responsible for SERE training <http://www.jpra.jfcom.mil/mission.cfm>] contributed to the development of interrogation policy at the U.S. Southern Command. According to interviewees, at some point in 2002, the U.S. Southern Command began to question the effectiveness of the Joint Task Force 170 (JTF-170), the organization at Guantánamo that was responsible for collecting intelligence from a group of hard core al Qaeda and Taliban detainees…. Counterresistance techniques were introduced because personnel believed that interrogation methods used were no longer effective in obtaining useful information from some detainees. On June 17, 2002, the Acting Commander, Southern Command requested that the Chairman, Joint Chiefs of Staff (CJCS) provide his command with an external review of ongoing detainee intelligence collection operations at Guantánamo Bay, which included an examination of information and psychological operations plans…. The CJCS review recommended that the Federal

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Bureau of Investigation Behavioral Science Unit, the Army's Behavioral Science Consultation Team, the Southern Command Psychological Operations Support Element, and the JTF-170 clinical psychologist develop a plan to exploit detainee vulnerabilities. The Commander, JTF-170 expanded on the CJCS recommendations and decided to also consider SERE training techniques and other external interrogation methodologies as possible DoD interrogation alternatives" (pp. 24-25).

As a result of this review, SERE was introduced at Guantánamo. Notice that psychologists were key to this process:

On September 16, 2002, the Army Special Operations Command and the Joint Personnel Recovery Agency co-hosted a SERE psychologist conference at Fort Bragg for JTF-170 [the military component responsible for interrogations at Guantánamo <http://www.globalsecurity.org/military/agency/dod/jtf-170.htm>] interrogation personnel. The Army's Behavioral Science Consultation Team from Guantánamo Bay also attended the conference. Joint Personnel Recovery Agency personnel briefed JTF-170 representatives on the exploitation techniques and methods used in resistance (to interrogation) training at SERE schools. The JTF-170 personnel understood that they were to become familiar with SERE training and be capable of determining which SERE information and techniques might be useful in interrogations at Guantánamo. Guantánamo Behavioral Science Consultation Team personnel understood that they were to review documentation and standard operating procedures for SERE training in developing the standard operating procedure for the JTF-170, if the command approved those practices. The Army Special Operations Command was examining the role of interrogation support as a " Sere Psychologist competency area <http://www.jpra.jfcom.mil/HFcoreskills.cfm> " (p. 25, emphasis added.)

For those of opposed to the participation of psychologists in abusive interrogations, this document contains the first definitive proof that the Behavioral Science Consultation Teams (BSCTs), consisting at that point of psychologists and psychiatrists (later, the military announced that they preferred psychologists <http://psychoanalystsopposewar.org/resources_files/PsychologistsPreferredForDetainees.html> for this role), were deliberately trained in abusive SERE techniques.

According to the OIG report, SERE psychologists were apparently not directly involved in individual interrogations. Rather, their role was to train those conducting or supervising the interrogations:

"On September 24, 2002, a Joint Personnel Recovery Agency representative at the SERE conference recommended in a conference memorandum report to his Commander that their organization "not get directly involved in actual operations." Specifically, the memorandum states that the agency had "no actual experience in real world prisoner handling," developed concepts based "on our past enemies," and assumes that "procedures we use to exploit our personnel will be effective against the current detainees." In a later interview, the Commander, Joint Personnel Recovery Agency stated that his agency's support to train and teach "was so common that he probably got 15 similar reports [memoranda] a week" (p. 25).

Indeed, the report documents that SERE instructors went to Guantánamo and provided training:

"On at least two occasions, the JTF-170 requested that Joint Personnel Recovery Agency instructors be sent to Guantánamo to instruct interrogators in SERE counterresistance interrogation techniques. SERE instructors from Fort Bragg responded to Guantánamo requests for instructors trained in the use of SERE interrogation resistance techniques" (p. 26).

These efforts led to a October 11, 2002 memorandum and legal brief <http://www1.umn.edu/humanrts/usdocs/guantanamo/d20040622doc3.pdf> requesting approval of a selection of these SERE techniques. This request led to December 2, 2002 approval <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.12.02.pdf> of many of these SERE-based techniques by Secretary of Defense Rumsfeld

All evidence is that these SERE techniques continued to be used, with active participation of the BST psychologists. For example, it is well documented <http://ajobonline.com/journal/j_articles.php?aid=1140> (see the interrogation log <http://www.time.com/time/2006/log/log.pdf>) that the chair of the Guantánamo BSCT team, psychologist Major John Leso participated in the abusive interrogation (a.k.a. torture) of prisoner 063, Mohammed al-Qahtani. A July 14, 2004 memo

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<http://www.aclu.org/torturefoia/released/FBI_4622_4624.pdf> from the FBI to the Army Criminal Investigation Command documents the effects of this interrogation on al-Qahtani: "In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee __ after he had been subjected to intense isolation for over three months. During that time period, __ was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in the corner of a cell covered with a sheet for hours on end). It is unknown to the FBI whether such extended isolation was approved by DoD authorities."

SERE in Iraq and Afghanistan

According to the report, these SERE techniques "migrated" to Afghanistan and Iraq: "Counterresistance interrogation techniques in the U.S. Central Command Area of Operation derived from multiple sources that included migration of documents and personnel, the JTF-Guantánamo Assessment Team, and the Joint Personnel Recovery Agency" (p. 26).

The report also provides direct evidence that SERE techniques were deliberately brought to Iraq.

"The Joint Personnel Recovery Agency was also responsible for the migration of counterresistance interrogation techniques into the U.S. Central Command's area of responsibility. In September 2003, at the request of the Commander, TF-20, the Commander, Joint Personnel Recovery Agency sent an interrogation assessment team to Iraq to provide advice and assistance to the task force interrogation mission. The TF-20 was the special mission unit that operated in the CJTF-7 area of operations" (p. 28).

In fact, TF-20 was a 40-person special forces unit <http://en.wikipedia.org/wiki/Task_Force_20> , with its own "private aviation unit" tasked with capturing or killing former Iraqi Baath leadership and resistance leaders ("high value targets"). TF-20 was accused of being "trigger happy <http://www.guardian.co.uk/Iraq/Story/0,2763,1007694,00.html> ," leading to innocent civilian deaths. Those captured by TF-20 were, according to the OIG report, subject to SERE techniques. In Iraq it also appears that SERE staff got to participate directly in interrogations:

" The Commander, Joint Personnel Recovery Agency, explained that he understood that the detainees held by TF-20 were determined to be Designated Unlawful Combatants (DUCs), not Enemy Prisoners of War (EPW) protected by the Geneva Convention and that the interrogation techniques were authorized and that the JPRA team members were not to exceed the standards used in SERE training on our own Service members. He also confirmed that the U.S. Joint Forces Command J-3 and the Commanding Officer, TF-20 gave a verbal approval for the SERE team to actively participate in "one or two demonstration" interrogations" (p. 28).

It appears that TF-20 were so brutal in their application of SERE techniques that there was disagreement between SERE and TF-20 staff regarding the appropriateness of using the SERE-based techniques:

"SERE team members and TF-20 staff disagreed about whether SERE techniques were in compliance with the Geneva Conventions. When it became apparent that friction was developing, the decision was made to pull the team out before more damage was done to the relationship between the two organizations. The SERE team members prepared After Action Reports that detailed the confusion and allegations of abuse that took place during the deployment" (p. 28).

American Psychological Association response

With the release of the OIG's report, it is now irrefutable that both SERE psychologists and Guantánamo BSCT psychologists were involved in the development of these forms of interrogation abuse, forms of interrogation that clearly constitute psychological torture <http://physiciansforhumanrights.org/library/report-2005-may.html> and were illegal under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <http://www.unhchr.ch/html/menu3/b/h_cat39.htm> , and various US laws until the 2006 Military Commissions Act <http://web.amnesty.org/library/index/ENGAMR511542006> granted immunity to those who had previously broken these laws during the "Global War On Terror."

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Since psychologists became aware that their profession was being utilized to teach and conduct abusive interrogations, there has been a movement among them to ban participation in abusive interrogations. In response, the American Psychological Association (APA), the main psychologist professional organizations adopted a resolution condemning torture and cruel, inhuman or degrading treatment <http://www.apa.org/governance/resolutions/notortureres.html> and forbidding members to participate in abusive treatment.

However, like the Bush administration, the APA is always against torture and abusive treatment but never actually sees it. Thus, the APA has never expressed concern as reports have come flooding out suggesting that abuse treatment (whether formally "torture" or merely "cruel, inhuman, or degrading treatment or punishment") is common in US detention facilities holding so-called enemy combatants. Neither has the APA expressed concern at the repeated reports of psychologist participation <http://www.washingtonmonthly.com/features/2007/0701.levine.html> in abusive interrogations. Rather, they have attacked the critics of psychologist abuse. In a statement that he probably now regrets for making so obvious his contempt for those shedding light on psychologists' role in abusive interrogations, the 2006 APA President, Gerald Koocher, wrote <http://www.apa.org/monitor/feb06/pc.html> : "A number of opportunistic commentators masquerading as scholars have continued to report on alleged abuses by mental health professionals."

However, the APA, like other health provider professional organizations felt the heat as these reports escalated. Thus, in June 2005 they convened a Presidential Task Force on Psychological Ethics and National Security (PENS), clearly designed to provide a rubber stamp on the participation of psychologists in national security interrogations. After 2½ days of deliberations this Task Force concluded <http://www.apa.org/releases/PENSTaskForceReportFinal.pdf> :

"It is consistent with the APA Code of Ethics for psychologists to serve in consultative roles to interrogation- or information-gathering processes for national security-related purposes. While engaging in such consultative and advisory roles entails a delicate balance of ethical considerations, doing so puts psychologists in a unique position to assist in ensuring that such processes are safe and ethical for all participants."

Of course, the value of a Task Force report depends upon the composition and expertise of the membership of that Task Force. So who did the APA see fit to include on its Task Force? Strangely, when the report was released, it did not include a list of members; its authorship was, rather, anonymous. When members asked who was on the task Force, they were told the membership was confidential. (For the record it should be noted that the PENS membership, while kept from the public and the broader Association membership, was, in fact, released to the APAs Council of Representatives) When, a year later, the membership was finally published by Mark Benjamin in Salon <http://www.salon.com/news/feature/2006/07/26/interrogation/> , it was revealed that six of nine voting members were from the military and intelligence agencies with direct connections to interrogations at Guantánamo and elsewhere; the conclusion of the task Force's deliberations was obviously foregone.

Especially relevant, given the revelations in this newly-released OIG, at least two of the members <http://www.webster.edu/peacepsychology/tfpens.html> of this Task Force had direct SERE connections. Captain Bryce E. Lefeve had served at the Navy SERE school from 1990 to 1993 before joining the special forces and becoming the "Joint Special Forces Task Force psychologist to Afghanistan in 2002, where he lectured to interrogators and was consulted on various interrogation techniques." (Criously,, he has "lectured on Brainwashing: The Method of Forceful Interrogation".)

But perhaps most disturbingly, on the task force was Colonel Morgan Banks. His biography <http://www.webster.edu/peacepsychology/tfpens.html> states that "[h]e is the senior Army Survival, Evasion, Resistance, and Escape (SERE) Psychologist, responsible for the training and oversight of all Army SERE Psychologists, who include those involved in SERE training…. He provides technical support and consultation to all Army psychologists providing interrogation support…. His initial duty assignment as a psychologist was to assist in establishing the Army's first permanent SERE training program involving a simulated captivity experience."

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Given what the OIG's report reveals about the central role of SERE in the development of US abusive interrogation techniques, as well as revelations <http://psychoanalystsopposewar.org/blog/2007/04/27/member-of-apa-pens-task-force-brags-of-being-with-tortured-prioners/http:/psychoanalystsopposewar.org/blog/2007/04/27/member-of-apa-pens-task-force-brags-of-being-with-tortured-prioners/> regarding other PENS members, it appears ever more likely that the APA appointed some of this country's top torturers to formulate its policy on participation in abusive interrogations. The PENS report lacks any credibility. If the APA maintained a shred of decency, they would take the opportunity provided by the release of the OIG report to admit that they made a mistake in creating the PENS Task Force and would immediately set aside the PENS report and begin a new open discussion of the facts and the ethics involved in participation in national security interrogations.

In addition, if the APA were really concerned about ethics and decency, they would join the call by Physicians for Human Rights <http://actnow-phr.org/campaign/no_more_abu_ghraibs> and by bioethicist Steven Miles <http://psychoanalystsopposewar.org/blog/2007/05/28/stephen-miles-on-new-oig-report-documenting-sere-psychologists-role-in-abusive-interrogations/> for an independent Congressional (or Congressional sponsored) investigation into detainee abuse and the role of psychologists and other health professionals in that abuse. For only a full investigation can clear up the question of exactly what types of abuse went on in the US detention facilities and exactly what role did psychologists and other health professionals play in these abuses. If, as the APA repetitively states as if a mantra, its policies are based upon <http://www.apa.org/releases/washingtonmonthly.pdf> "our belief that having psychologists consult with interrogation teams makes an important contribution toward keeping interrogations safe and ethical," then the APA would surely want an investigation to reveal any abuses that occurred so as to help prevent future abuses. Of course, if, despite the mountains of evidence, psychologists truly are innocent of involvement in detainee abuse, only a full investigation could clear the air.

Unfortunately, I don't expect the APA to set aside the PENS report nor to endorse an independent investigation of detainee abuse. All evidence is that, from the beginning, APA actions have had one goal in mind, to maintain psychologist involvement in interrogations at all cost. After 9/11, the APA sought to show the government that psychologists were key players in "homeland security" [see Making psychological research a priority for countering terrorism <http://www.apa.org/monitor/mar05/ppup.html>]. To eschew involvement, abuse or not, would be to forsake the access and influence for which they have fought so hard.

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http://www.scoop.co.nz/stories/print.html?path=HL0705/S00513.htm

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US: Move Khadr and Hamdan Cases to Federal Court

01 Jun 2007 16:33:16 GMT
Source: Human Rights Watch
Reuters and AlertNet are not responsible for the content of this article or for any external internet sites. The views expressed are the author's alone.

Washington, DC, June 1, 2007) The trial of Omar Ahmed Khadr, the 20-year-old Canadian who was been in US detention since he was 15, and Salim Ahmed Hamdan, the 36-year-old Yemeni who

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successfully challenged the initial military commission proceedings before the Supreme Court, should be moved to US federal court, Human Rights Watch said today. On June 4, both men will be formally charged by military commissions in Guantanamo Bay, Cuba. Omar Khadr: In a new backgrounder <http://hrw.org/backgrounder/usa/us0607> released today, Human Rights Watch said that although Khadr was just 15 when he was arrested, the United States has completely ignored his juvenile status throughout his detention. The US government incarcerated him with adults, reportedly subjected him to abusive interrogations, failed to provide him any educational opportunities, and denied him any direct contact with his family.

"For the past five years, the United States has turned a blind eye to Khadr's rights as a child," said Jennifer Daskal, US program advocacy director. "The US should not now add insult to injury by prosecuting Khadr before an unfair military tribunal."

The US has charged Khadr with murder for allegedly throwing a grenade during a 2002 firefight in Afghanistan that killed US Army Sergeant First Class Christopher Speer, as well as attempted murder, conspiracy, providing material support for terrorism, and spying. The government alleges that Khadr's father introduced him to al-Qaeda leaders starting at age 10 and that Khadr received formal military training from al-Qaeda members at age 15.

"We have here a kid who was dragged to meet al-Qaeda leaders from the age of 10, sent to military training camps at age 15, and then out to the battlefield to be shot at," said Daskal. "He hardly qualifies as the 'worst of the worst.'"

In detaining Khadr, the United States has flouted juvenile justice standards that provide for children to be treated in accordance with their unique vulnerability, lower degree of culpability, and capacity for rehabilitation. Although international standards allow for detention of juveniles only as a last resort, and require a prompt determination of all cases involving children, Khadr was held in US custody for more than two years before even being provided access to an attorney, more than three years before being charged before the first military commissions, and another two years before being prosecuted in this case.

Khadr has also reportedly been beaten, denied adequate medical treatment, held in solitary confinement for long periods of time, and left bound in uncomfortable "stress positions" until he soiled himself.

The treatment of Khadr also conflicts with the international obligations of the US to promote the demobilization and rehabilitation of child soldiers. Under a treaty banning children under the age of 18 from participating in armed conflict, ratified by the United States in 2002, the United States is obliged to assist in the demobilization and rehabilitation of former child soldiers within its jurisdiction. In 2004, the Pentagon released from Guantanamo three children, believed to be between the ages of 13 and 15 at the time of their capture, to rehabilitation programs operated by UNICEF in Afghanistan.

However, it refused to consider Khadr for a similar rehabilitation program, or to provide him with special protection at Guantanamo.

On Wednesday, Khadr fired his US military and civilian legal counsel. He is still represented by two Canadian lawyers, but US military commission rules prohibit foreign lawyers from acting as lead counsel at commission hearings.

Salim Hamdan: It was Hamdan's court challenge that led the Supreme Court to declare the first military commissions authorized by President Bush unlawful. On June 4, Hamdan will be charged again by the military commissions approved by Congress last September.

"The administration responded to the Supreme Court's ruling in Hamdan's case by pushing through Congress a new set of commissions with a few cosmetic improvements," said Daskal. "But these newly created commissions remain fundamentally flawed and should be struck down as well."

Of particular concern are rules that allow the use of evidence obtained through abusive interrogation techniques prior to January 2006. The rules also allow interrogation methods and activities to be protected from disclosure, even to defense counsel and even for the purposes of challenging the use of evidence obtained by torture. This will make it difficult ? if not impossible ? to demonstrate that a particular statement is the product of torture or abuse.

Human Rights Watch expects the question of abuse to be a central in Hamdan's case. Hamdan has alleged that he was beaten, forced into painful stress positions, subjected to extreme cold temperatures, and threatened with death when he was detained in Afghanistan in 2001 and early

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2002. He also described being kept in such extreme isolation after being transferred to Guantanamo that he once considered "pleading guilty in order to get out of here."
Hamdan is being charged with conspiracy and providing material support for terrorism based on allegations that he served as a driver and bodyguard to Osama bin Laden, transported weapons, and attended an al-Qaeda training camp.
Both Khadr and Hamdan are the second and third detainees to be charged under the new commissions. David Hicks, the only other person to be brought before these commissions, who pled guilty in April to one count of providing material support to terrorism has since returned to his home in Australia to serve a nine-month sentence.
Approximately 380 other detainees continue to be held at Guantanamo without charge and who, under the terms of the Military Commissions Act of 2006, are prohibited from bringing habeas corpus petitions to challenge the legality of their detention.
To view a Human Rights Watch Q&A on the Military Commissions Act of 2006, please visit: http://hrw.org/backgrounder/usa/qna1006/ <http://hrw.org/backgrounder/usa/qna1006>
To view an April 1, 2007 commentary by US Program Advocacy Director Jennifer Daskal on the conviction of David Hicks by a US military commission, published in the International Herald Tribune, please visit: http://hrw.org/english/docs/2007/04/03/usdom15648.htm/ <http://hrw.org/english/docs/2007/04/03/usdom15648.htm>

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Posted on Thu, May. 31, 2007
Young detainee fires all his American lawyers
BY CAROL ROSENBERG
Guantánamo's youngest known detainee, facing a war-crimes charge of murder, has fired all his American lawyers almost on the eve of his arraignment before a Military Commission, his now-fired Marine Corps lawyer said Wednesday night.
Canadian Omar Khadr, 20, is slated to appear before a U.S. war court for the most serious charges so far at 8 a.m. on Monday.
The Toronto-born scion of a radical Muslim family has been in U.S. custody since his July 2002 capture --at age 15-- in a firefight with U.S. forces in Afghanistan.
Khadr met with two family lawyers from Canada last week and told them he was firing his Pentagon-appointed defense attorney, and also dismissing a team of American University law professors who have been suing on his behalf in federal court.
So, Khadr's Pentagon-appointed attorney, Marine Lt. Col. Colby Vokey, told The Miami Herald late Wednesday that he would not be traveling to the remote U.S. Navy base for Khadr's commission session before U.S. Army Col. Peter Brownback.
''He doesn't trust American lawyers, and I don't particularly blame him,'' said Vokey. ``The United States is responsible for his interrogation and his treatment under a process that is patently unfair.''
Moreover, Vokey said his supervisor, Marine Col. Dwight Sullivan, had formally excused him from his obligation to serve as Khadr's uniformed defense counsel.
In consideration of his young age, Pentagon prosecutors have not sought a death sentence if Khadr is convicted at President Bush's Military Commissions.
He is accused of murder in the grenade killing of a U.S. Army Special Forces medic, Sgt. First Class Christopher Speer, 28, of New Mexico -- and separately of planting roadside bombs meant to shred passing U.S. patrols in Afghanistan.
http://www.miamiherald.com/416/v-print/story/123847.html

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Khadr fires U.S. lawyers, wants Canadians
PAUL KORING
From Friday's Globe and Mail
June 1, 2007 at 4:51 AM EDT

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WASHINGTON – Omar Khadr, the Canadian accused of killing a U.S. soldier for al-Qaeda, has fired his U.S. lawyers in a move that may torpedo the Bush administration's efforts to get war-crimes trials under way at Guantanamo Bay.
Mr. Khadr has fired both his U.S. civilian and military lawyers and intends to demand to be represented only by Canadian lawyers Dennis Edney and Nate Whitling, even though they met him for the first time a week ago at the U.S. naval base in Cuba.
"It seems that Omar doesn't want American lawyers," said Muneer Ahmad, the American University law professor who long led the civilian team representing him. "American lawyers haven't been able to do anything for him, and I think it's important that he have the counsel of his choice."
Mr. Ahmad confirmed that he won't be on the flight to Guantanamo on Sunday or at Mr. Khadr's early morning arraignment before the tribunal on Monday.
Meanwhile, the senior and experienced military lawyer, U.S. Marine Lieutenant-Colonel Colby Vokey, confirmed he has been taken off the case.
The revised U.S. military commission's rules require that a U.S. military lawyer be assigned to all defendants and Lieutenant-Commander William Kuebler, who has had no previous involvement with the Khadr case, is expected to be at the defence table Monday.
That sets the stage for a procedural brouhaha that could transform the session into a circus -- not the smooth opening day that the Bush administration may have hoped would defuse international condemnation of the process.
Mr. Khadr is entitled to represent himself. But the rules don't allow for foreign lawyers to address the court, only to serve as advisers.
Earlier this week, the State Department's legal adviser, John Bellinger, said the rules were established so that defendants from countries such as Yemen, Saudi Arabia and Pakistan couldn't demand lawyers from jurisdictions entirely unfamiliar with U.S. law.
But Colonel Peter Brownback, the veteran army judge now presiding in the Khadr case, showed scant tolerance for procedural wangling over legal representation last year. When Major Tom Fleener said he couldn't represent Ali Hamza al-Bahlul because the al-Qaeda publicist wanted a Yemeni lawyer, Col. Brownback simply ordered Major Fleener to the defence table.
http://www.theglobeandmail.com/servlet/story/RTGAM.20070601.wkhadr01/BNStory/International/?page=rss&id=RTGAM.20070601.wkhadr01

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Lawyer slams Guantanamo treatment
By NICKI THOMAS, SPECIAL TO SUN MEDIA

Canadian Omar Khadr, 20, continues to rot away in Guantanamo Bay five years after his arrest in Afghanistan, charges his Edmonton lawyer.
"He is a broken young man," his lawyer Dennis Edney told Sun Media yesterday.
"Dogs are treated better," Edney said.
The conditions at Guantanamo have been condemned by Khadr's lawyer and human rights organizations.
Khadr is being held in Camp 6, a new facility that Amnesty International (AI) reports has "created even harsher and apparently more permanent conditions of extreme isolation and sensory depravation."
According to AI, detainees in Camp 6 are kept in individual, windowless steel cells where they receive little human contact.
Exercise is permitted for an hour a day, alone in a high-walled yard. Often this exercise time is given at night, preventing prisoners from seeing daylight for days.
Edney, who saw his client in person for the first time last week, says Khadr's physical and mental health has deteriorated since he was taken into custody in 2002 at the age of 15.
"He looked pale. He looked thin. He looked unwell," he said.
Edney and his partner, Nate Whitling, have been fighting for an independent medical and psychological assessment of Khadr but have so far been unsuccessful.
The issue is something they will raise at Khadr's hearing Monday.

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Khadr is charged with murder and attempted murder in violation of the law of war, spying, conspiracy, and providing material support to terrorism.
The Pentagon alleges that Khadr threw a grenade that killed an American soldier and wounded another.
http://www.edmontonsun.com/News/Canada/2007/05/31/pf-4222319.html

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Photo exhibit shows glimpse of home for Guantanamo detainees

The Associated Press
Thursday, May 31, 2007
HOUSTON: At first glance, the photographs seem simple.
A Dairy Queen in Bahrain. Three daughters in Yemen holding up paper flowers made by their father. Snowcapped mountains in the Afghan countryside that seem to belong in a vacation scrapbook.
The photos were the work of attorneys representing detainees at Guantanamo Bay Naval Base, where about 380 people are being held on suspicion of links to al-Qaida or the Taliban. The pictures were taken during trips lawyers made to the prisoners' countries and capture images of them interacting with their clients' families.
They also offer reminders of home as landscapes or snapshots of a living room or favorite restaurant.
Eighty-eight of these photographs, which document the trust that grew between detainees and their attorneys, are on display in an exhibit at Fotofest called "Guantanamo. Pictures From Home. Questions of Justice."
Photographer Margot Herster, who helped put the show together, started gathering the images when her husband's law firm, Allen & Overy, represented 11 detainees from Yemen at the military detention center in southeastern Cuba. She was spurred on by a growing curiosity about the men that her husband Scott Sullivan would visit.
"It's a slice of what's going on in Guantanamo from the perspective of this relationship that had developed between the attorneys and the detainees," Herster said.
All detainees are classified as "enemy combatants" – a status that accords them fewer rights than prisoners of war under international law. Most have been held for years without charges.
"Bringing a picture of us standing next to their father in their living room, that really solidified the idea their family was behind this and we are who we say we are," said Doug Cox, who along with Sarah Havens, works for Allen & Overy, based in London.

The exhibit, Herster said, was also designed to counter the common image of Guantanamo Bay: images of detainees in orange jumpsuits herded around by U.S. soldiers.
"You take them on a one-to-one basis and (the exhibit) gives you an idea about who these people really are," Cox said.
None of the photographs in the show, which centers on 32 detainees, were taken at Guantanamo. They were shot by the lawyers during trips to their client's home countries – Afghanistan, Bahrain, Kuwait, Saudi Arabia and Yemen. The photos are accompanied by text of interviews with the attorneys as well as excerpts from military tribunals at Guantanamo.
The exhibit also features several short videos family members made, telling the prisoners to trust their attorneys, as well as a 15-minute film in which the lawyers discuss their experiences.
Another section of the exhibit is mounted with the audio in a darkened room, made to resemble the isolated environment at Guantanamo.
Although the photos are simple, the images offered the prisoners a chance to reconnect with their lives, as many had not seen their relatives or homes in years. Some of the detainees became obsessed with the photographs, learning every detail and sharing the images with other prisoners.

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A photograph of detainee Abdulaziz al Swidi's three daughters in Yemen, holding up paper flowers, let al Swidi know the girls had received his gift for them – flowers he had made from toilet paper at Guantanamo. A more abstract photo featured a pair of gold earrings that al Swidi's attorneys, Cox and Havens, gave to his mother for him. It was accompanied by a note in Arabic that read, "Don't despair, someone in the sky is taking care," a phrase al Swidi's mother used to tell him.

The image of a Dairy Queen in Bahrain reminded detainee Isa al Murbati of trips he and his family used to make. In two other photos, nieces and nephews for detainee Abdullah al Anazi, from Saudi Arabia, hold up his Guantanamo mug shot; his favorites clothes – a gray soccer shirt and white athletic pants – hang outside a closet in his room.

Other photos are more picturesque reminders of home, offering views of crowded downtown Kabul, Afghanistan, and a small village within a green valley in Yemen.

Herster said she wasn't necessarily trying to make a political statement about Guantanamo with the exhibit or make judgments on guilt or innocence.

"Guantanamo is something the public is very ambivalent about. We are torn between national security and the ideals of justice that we are used to. I was hoping the stories and images would create an entryway to wanting to understand more," Herster said.

For Havens, the photographs have became much more than a byproduct of her legal efforts.

"Part of the project of Guantanamo for the government is to erase these people's identities," she said. "These photos are valuable because they remind them they have a history and have a place in life."

The exhibit, sponsored by FotoFest, a nonprofit photographic arts and education organization, will be on display through June 2. Part of the exhibit will be displayed in New York City next month.

http://www.iht.com/articles/ap/2007/06/01/america/NA-FEA-A-E-ART-US-Guantanamo-Photo-Exhibit.php

OGC AMNESTY/CCR 424

(b)(6)

From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Tuesday, June 19, 2007 3:59 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 425

Cc: (b)(2),(b)(6) [redacted]

Subject: RE: GTMO Bird: Interrogation Specifics; Gitmo; Judicial View of Detainees; Detainee Fights Transfer Home; Moran on Gitmo; Yemeni's to be Freed; The Baghdad Bar; Taguba and Abu Ghraib;

Good afternoon

Here is today's GTMO Bird.

(b)(6) [redacted]
Paralegal, GySgt, USMC (Ret.)
Department of Defense
Office of the General Counsel (Legal Counsel)
1600 Defense Pentagon
Washington, D.C. 20301-1600
Comm: (b)(2),(b)(6) [redacted]
DSN:
NIPR:
SIPR:

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

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Administration Struggles With Interrogation Specifics
By Karen DeYoung, Washington Post Staff Writer

Eight months after President Bush signed a bill authorizing the CIA to resume using "enhanced interrogation techniques" on terrorism suspects, the administration has been unable to agree on what constitutes "humiliating and degrading treatment" of detainees.

The CIA program remains in limbo, awaiting an executive order about the techniques that has become the subject of tense discussions within the administration and between the White House and the Senate Select Committee on Intelligence.

The issue is expected to receive a rare public airing today as the committee holds a confirmation hearing for John A. Rizzo, nominated by Bush in March 2006 as the CIA's legal counsel. Senators plan to ask Rizzo, a 30-year CIA veteran who is serving as acting counsel, about his involvement in past interrogation policymaking as well as the pending guidelines.

The CIA months ago promulgated a proposed list of interrogation guidelines, reportedly jettisoning some of the more controversial techniques authorized in the past such as

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simulated drowning, a practice known as "waterboarding." CIA Director Michael V. Hayden has provided lawmakers with a detailed briefing on the guidelines.

Under a provision of the Military Commissions Act he signed last October, Bush must provide an interpretation of a key provision of the international Geneva Conventions and certify that the CIA, while given wider latitude than military interrogators, does not use methods that constitute what the provision calls "outrages upon personal dignity, in particular humiliating and degrading treatment."

"It is all still under review," said one senior administration official, who called the issue "hard, complicated and controversial." The official, who declined to speak on the record about an intelligence matter, said that "everybody recognizes that we're writing against, far from a blank slate, a very dirty slate. The administration would like to try to get it right."

In a further complication, the Senate panel demanded that Bush obtain a Justice Department review of the interpretation and guidelines, and provide a copy of the review to the committee. The administration is believed to have already obtained the review but is unlikely to turn it over to Congress, the administration official said. Lawmakers will be asked to accept Bush's assurance in the executive order that the program has been deemed lawful.

The committee, in its version of the fiscal 2008 intelligence authorization bill, said a copy of the review was needed "as part of its ongoing oversight" of the program. "The committee is saying that it's meaningless to us until you provide the legal justification for it," one Senate source said.

Although the committee said the earlier CIA program produced "valuable information that has led to the identification of terrorists and the disruption of terrorist plots," it questioned whether it was the "best means to obtain a full and reliable intelligence debriefing of a detainee." It also advised that the program be "weighed against" the complications it caused in prosecuting suspected terrorists, some of whom have said they were tortured, and "the damage the program does to the image of the United States abroad."

Rizzo's hearing was repeatedly postponed as senators requested additional information from the CIA and the Justice Department related to the history of the detention and interrogation program since the Sept. 11, 2001, attacks. Many, but not all, of the requested documents have been provided over the past several months, a Senate source said.

The Justice Department so far has refused to turn over earlier legal opinions justifying interrogation techniques that human rights organizations and some members of Congress have said constituted torture.

Hayden replaced much of the senior CIA leadership after taking over last summer. His decision to leave Rizzo's nomination in place led opponents of the CIA program to question Hayden's commitment to ensuring its legality.

Sen. Russell Feingold (D-Wis.), an intelligence committee member who has advocated ending all enhanced interrogations, said that "given this administration's willingness to violate the law and keep Congress in the dark . . . it is particularly important for Mr. Rizzo to provide assurances . . . that he will ensure that CIA respects the laws that Congress writes and will not rely on the administration's theory of inherent constitutional authority to violate the law."

Another committee member, Sen. John W. Warner (R-Va.), said in an interview that it is essential that the CIA "have a sort of parallel framework that can stand alongside" military regulations and allow the agency "to continually confirm to the Congress that they are operating within the framework of the law."

Bush acknowledged the existence of secret CIA detention centers last September and said the last 14 prisoners being held had been transferred to the U.S. military prison at Guantanamo Bay, Cuba. The administration at the same time left open the possibility that new prisoners could be detained under the program, which Bush called a crucial national security tool.

Last summer, the Supreme Court ruled that all U.S. detainees were covered by provisions of the Geneva Conventions. The Military Commissions Act specified Geneva prohibitions against "inhumane" treatment, such as rape and murder, but left it to the president to intepret what a provision known as Common Article 3 meant by "humiliating" and "degrading."

The CIA is free to interrogate prisoners within existing military guidelines and believes that the enhanced techniques it has presented to the administration and to Congress fall

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within a legal definition. But it has been reluctant to authorize use of the techniques until the White House endorses its proposal.
Although the White House said in March that it expected to issue the executive order in "the next few weeks," a spokesman said last week that officials "can't anticipate when the deliberations will be completed."
Noting that the "Military Commissions Act sets forth no timing requirement for its issuance," the spokesman added that since the order "would be authoritative in its interpretation of the Geneva Conventions, it is important that the administration takes time to consider fully all legal and administrative aspects."
http://ebird.afis.mil/ebfiles/e20070619523334.html
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How To Handle Guantanamo Bay Puzzles Candidates
Detention center emerges as key campaign issue as security concerns and legal challenges mount
By Martha T. Moore, USA Today
Promising to close the prison holding terrorism suspects at Guantanamo Bay, Cuba, is a big applause line for Democratic presidential candidates. Just how to do it is a thorny thicket they haven't thoroughly explored.
For Republicans, who view fighting terrorism as a top issue in their presidential nomination fight, the divide is over whether to close the prison and how to extract information from detainees. Among the 10 announced Republican candidates, only Arizona Sen. John McCain and Texas Rep. Ron Paul favor closing the prison.
Guantanamo, a symbol of U.S. efforts to fight terrorism, is a critical part of what both political parties see as a defining issue facing the next president: how to repair international relations while battling terrorist plots.
Polls show that voters are evenly split on whether the government should be allowed to keep terrorism suspects at Guantanamo indefinitely without charging them — 44%-43% in a Pew Research Center poll last year. Republicans support the policy (63%), and most Democrats (57%) are opposed.
"This is a highly partisan issue, like so much of things that relate to the war on terrorism and the war in Iraq," says Andrew Kohut, director of the Pew Research Center.
Foreigners picked up by the U.S. military in searches for al-Qaeda suspects began arriving at Guantanamo in February 2002. Today, there are more than 380 foreigners held there on suspicion of terrorism and awaiting trials.
Senate legislation to close Guantanamo has won support from three of the eight Democratic candidates: New York Sen. Hillary Rodham Clinton, Connecticut Sen. Chris Dodd and Delaware Sen. Joseph Biden. Clinton and Dodd are co-sponsors of a bill by Sen. Dianne Feinstein, D-Calif.
"In the eyes of the world, Guantanamo is ammunition for our enemies, and it is time to close Guantanamo and to deal with both the security and the legal challenges," Clinton said at a Senate Armed Services Committee hearing in April.
Biden supports competing legislation from Sen. Tom Harkin, D-Iowa, which would require release of detainees who are not charged. Harkin's bill also would close Guantanamo more quickly, Biden spokeswoman Marion Steinfels says.
Illinois Sen. Barack Obama has not backed either bill though he repeatedly calls for closing Guantanamo and restoring the right of prisoners to challenge their detention. "Ultimately, he supports Guantanamo closing and is still working to find the best possible solution for the prisoners who are there right now," said Bill Burton, Obama's campaign spokesman.
None of the Democrats have specific plans on how to shut down the prison. McCain and Biden advocate moving the prisoners to the military's only maximum-security prison, Fort Leavenworth in Kansas. That might run into a space crunch: The military prison there can hold 500 prisoners and currently has 450 inmates, according to Janet Wray, Fort Leavenworth spokeswoman.
McCain wants to close Guantanamo, he says, because its existence is damaging U.S. credibility abroad. He also wants to speed up trials. "He would want to speed up the tribunal process for

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prisoners, because he doesn't support indefinite detentions," McCain spokesman Danny Diaz says.
Last week, former secretary of State Colin Powell said in an ABC interview that he believes the prison should be closed and detainees moved into the federal legal system.
"I'm not inclined to agree right now that we should necessarily close Guantanamo," former New York City mayor Rudy Giuliani said in New Hampshire, a few days after Powell's interview. "I'd have to go look and see what are the conditions today."
Amnesty International and other human rights groups have criticized the U.S. military's early treatment of prisoners, who were shackled and kept in open-air cages. Adil al-Zamil, a former Kuwaiti government clerk, told the Associated Press he was without food for two days and menaced by dogs. The Supreme Court ruled last June that the detainees are covered by the Geneva Conventions, which forbid degrading treatment.
McCain, who endured torture as a prisoner of war in Vietnam, clashed with President Bush last year as Congress debated a plan for military tribunals and interrogations to comply with the Supreme Court ruling. McCain insisted that interrogation rules need to comply with the Geneva Conventions.
Former governors Mitt Romney of Massachusetts and Mike Huckabee of Arkansas, who says he hasn't taken a position on closing the prison, have both said conditions at Guantanamo are acceptable. "The food down there is unbelievable. This is not this gulag; this is a modern prison which treats people with dignity," Romney said this month.
Romney said in a June 5 Republican debate that "we ought to double Guantanamo" but didn't mean it literally, spokesman Kevin Madden says. His remark was "recognition that the governor wants to go out and catch more terrorists and doesn't want to import them once they're captured," Madden says. "The legal rationale for keeping them there is that they ought not to be afforded all the legal rights of a U.S. citizen."
One divide among Republican candidates concerns how to get information from suspects. McCain has rejected "waterboarding," a practice in which prisoners are held under water, which he says is tantamount to torture. Giuliani and Romney have not ruled out waterboarding specifically; they support "enhanced" techniques.
"I would tell the people who had to do the interrogation to use every method they could think of," Giuliani said at the June 5 New Hampshire debate. "It shouldn't be torture, but every method they can think of."
How quickly military commission trials, authorized by Congress last year, will occur was thrown into doubt by a court ruling this month. A military judge at Guantanamo said that two detainees headed for trial had not been classified as "unlawful enemy combatants," as required by the law authorizing military commission trials.
Contributing: Tali Yahalom, Associated Press
Views on Gitmo
Where presidential contenders stand on the U.S. military's detention center at Guantanamo Bay, Cuba:
Close it
Democrats -- Joseph Biden, Hillary Rodham Clinton, Chris Dodd, John Edwards, Mike Gravel, Dennis Kucinich, Barack Obama, Bill Richardson. Republicans -- John McCain, Ron Paul
Keep it open
Republicans -- Sam Brownback, Jim Gilmore, Rudy Giuliani, Duncan Hunter, Mitt Romney, Tom Tancredo, Tommy Thompson
No position
Republican -- Mike Huckabee
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News Analysis
Judicial View Of Detainees Still Evolving
Are terrorists warriors or criminals? Nearly six years after the 9/11 attacks, the courts are still grappling with the issue.
By Carol Rosenberg

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It's approaching six years since the 9/11 attacks but, as two recent sets of judicial rulings illustrate, America is still at odds with itself over its war on terrorism -- and how to treat captives.

Is the globe America's battlefield? Is al Qaeda ideology and the war on terrorism like Soviet communism and the Cold War, meaning an American president can someday declare victory?

Or, in the view of U.S. law, is it more like the drug war -- with no end in sight -- picking off alleged criminals one by one?

And, most critically, there is still no consensus about whether to treat U.S.-held captives as alleged criminals afforded a presumption of innocence or as enemy combatants allowed no recourse in federal court.

In other words, when does the Bush administration get to treat those it brands as ''terrorists'' as criminals? When are they warriors?

Legal scholars say the federal judiciary has traditionally deferred to presidential authority in time of war. And that has more or less been the case since the Sept. 11 attacks. But the latest rulings suggest that the pendulum may be swinging back to the courts.

Last week, a conservative federal appeals court in Richmond, Va., decided 2-1 that the clock ran out on the president's designation of Ali al Marri, 42, as an enemy combatant. He has been in a military brig in South Carolina since June 2003.

Marri and his family arrived in the United States Sept. 10, 2001, ostensibly to attend graduate school in Peoria, Ill. But the Bush administration claims he is an al Qaeda ''sleeper agent'' who met Osama bin Laden and 9/11 mastermind Khalid Sheik Mohammed.

'Put simply, the Constitution does not allow the President to order the military to seize civilians residing in the United States and detain them indefinitely without criminal process, and this is so even if he calls them `enemy combatants,' '' wrote Judge Diana Gribbon Motz in a 77-page decision.

The Justice Department said it would appeal to the full U.S. Court of Appeals for the Fourth Circuit, one of the most conservative circuits in the country. Unless the U.S. transfers him to a civilian proceeding, releases him or deports him, one side or the other is likely to appeal to the U.S. Supreme Court.

Former Bush administration deputy assistant attorney general John Yoo, an architect of the policy, said the matter of how to handle detainees designated enemy combatants should have been already settled.

Twice the Supreme Court sought to give certain rights to detainees held at Guantánamo Bay, Cuba as a result of the war on terror. And twice, Yoo said, Congress and President Bush overruled them, with the Detainee Treatment Act and the Military Commissions Act, which stripped non-U.S. citizens designated by Bush as enemy combatants of the right to challenge their detention in federal court through habeas corpus.

'Bizarre' opinion

He called the appellate court decision an ''outlier'' by judges who don't agree that America is engaged in a global war on terrorism. He expects the full Fourth Circuit to overrule them. The judiciary defers to the executive and Congress in a time of war, he said, and as he sees it, America is at war with al Qaeda, not battling a criminal enterprise.

''It's completely bizarre. Under this opinion, none of the 9/11 hijackers were enemy combatants,'' Yoo said by phone from Berkeley Law School in California, where he is a professor.

Suppose the passengers aboard the fourth airliner that crashed in a Pennsylvania field in 2001 had wrestled control of the plane from the hijackers and landed it safely? he asked. ``According to this opinion, the hijackers on that plane could not be enemy combatants. They would have to be given lawyers, Miranda warnings and a jury trial.''

Precisely, say opponents of enemy combatant policy who argue the executive branch got it wrong by assuming the power to have the military detain -- indefinitely, without charge or trial. In the instance of Marri, in fact, without any review.

A Defense Department spokesman said as long as the court appeal was under way, the Pentagon would not be staging a so-called Combatant Status Review Tribunal in which U.S. military officers, not judges, simulate a battlefield status hearing to determine if there is reason to hold him.

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That very process was at the heart of a dispute that saw not one, but two, U.S. military judges dismiss charges against a Canadian and Yemeni at Guantánamo.
Neither Navy Capt. Keith Allred nor Army Col. Peter Brownback III, the judges, dispute that they are at war. In fact, their roles presiding at the military commissions are conditioned on the assumption. But they said the Pentagon's own processes had -- so far -- failed to distinguish between captives who were legitimately on the battlefield, and therefore ''lawful enemy combatants,'' and those who either fought unfairly or didn't have the right to be there -- ``unlawful enemy combatants.''
The overarching issue reflects an evolving process across the years on how to categorize and hold captives, and a continuing debate on whether they are to be treated as criminals or combatants, said constitutional law scholar Douglas Kmiec of Pepperdine University.
Law taking shape
Before 9/11, he said, there was no law that would govern a war on terrorism that ranged across the globe. ''It was largely undeveloped and unstructured before we confronted it, and it's only beginning to take shape now,'' he said.
That's why it's no coincidence, he said, that the Supreme Court this year left to lower courts to grapple with the latest challenges to the war tribunals and habeas corpus stripping provisions.
Tradition and precedent has allowed the president vast powers in times of war.
During the Civil War, Abraham Lincoln suspended habeas corpus and used military tribunals -- only drawing a Supreme Court rebuke in 1866, once the war was over. During World War II, the justices upheld Franklin Roosevelt's executive order authorizing the internment of tens of thousands of Japanese and Japanese Americans -- and it took until 1988 for Congress and a president, Ronald Reagan, to apologize.
''They're letting the lower courts bat this around in part because they don't have any answers, either,'' said Kmiec, who sees the recent decisions as part of an emerging if halting mosaic. ``After the fact, the scholarly judges can speak.''
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Guantanamo Under A Steady Hammering
Experts foresee more legal obstacles ahead for the detention camp, although others think the system is salvageable.
By Carol J. Williams, Times Staff Writer
GUANTANAMO BAY, CUBA — Inside of a week, a U.S. federal court, retired Gen. Colin L. Powell and two military judges assigned to the war-crimes tribunals here dealt serious blows to the Bush administration's efforts to detain and prosecute terrorism suspects.
Some legal scholars and analysts predict more obstacles to trials for any of the 385 foreign prisoners at the U.S. military detention compound.
But others believe that the system could be salvaged with repairs to its rules and procedures and with reduction of the prisoner population to only those likely to face charges.
Authorities have no plans to prosecute an estimated 300 of the prisoners.
"The government talks about [the Guantanamo prisoners] being the worst of the worst, but obviously not all of them are like that," said Amos N. Guiora, a Case Western Reserve University law professor and director of the Institute for Global Security Law and Policy.
Guiora proposed that the U.S. government create a domestic court to try terrorism cases, one that would give defendants most of the U.S. constitutional protections of federal criminal courts, along with rights due prisoners of war as recognized by the Geneva Convention.
"Part of this process would imply the release of individuals who need not be there," Guiora said. "At the end of the day, we should be left with just those who do pose a threat to national security."
Guiora and others have argued that the Bush administration's insistence that it has the right and responsibility to detain any foreigner it designates an enemy combatant for the duration of its open-ended war on terrorism has damaged the image of the United States abroad.
"The international community is very upset with the fact we've said we can hold a citizen of the world indefinitely without charges or trial," said Scott Silliman, a retired Air Force

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colonel and judge advocate now heading Duke University Law School's Center on Law, Ethics and National Security.
Silliman added that ignoring the international chorus of criticism could dissuade allies from contributing troops or support for the wars in Iraq and Afghanistan.
Jeff Addicott, another former military judge now heading the Center for Terrorism Law at St. Mary's University in San Antonio, agrees that the number of detainees poses a public relations problem for the U.S. government that complicates efforts to prosecute the biggest security threats.
But he believes some of the blame lies with countries that have refused to take responsibility for their citizens here.
"We've got 80 people we've cleared for release and want to move out, but their governments won't take them back," Addicott said. Those detainees were made eligible for release or transfer during annual Administrative Review Boards.
Many of the others unlikely to be prosecuted may be rehabilitated and released once Guantanamo detention authorities judge them to pose no further threat to U.S. security, he said.
The main obstacle to bringing terrorism suspects to justice, Addicott said, was the disagreement between the United States and most other countries as to whether the war on terrorism should be governed by the laws of war defined by the Geneva Convention, which never envisioned nonstate combatants like those in Al Qaeda.
"We're trying to fit a square peg into a round hole. We never used the laws of war in this kind of a situation," Addicott said.
The commissions were put on indefinite hold this month when two military judges exposed a technical glitch in the jurisdictional rules that would require the Pentagon to reevaluate any potential defendant to determine whether he was an "unlawful alien enemy combatant" or a soldier in his national armed forces entitled to defend himself.
A Pentagon spokesman confirmed that the jurisdiction rulings and dismissal of charges against Salim Ahmed Hamdan, a former driver for Osama bin Laden, and Canadian Omar Khadr were being appealed.
The commissions' appellate body has yet to be seated, though. Meanwhile, Defense Secretary Robert M. Gates has said nothing about how or whether he wants the commissions to proceed.
Powell, former Secretary of State and head of the Joint Chiefs of Staff during the Persian Gulf War, delivered damning criticism of Guantanamo when he told NBC's "Meet the Press" last week that he would close the operations "not tomorrow, but this afternoon."
In another blast at the administration's handling of terrorism suspects, a panel of the U.S. 4th Circuit Court of Appeals ruled Monday that a foreign suspect arrested on U.S. soil has constitutional protections. The court ruled that Ali Saleh Kahlah al-Marri, a citizen of Qatar and Saudi Arabia and a legal U.S. resident, must be released from military custody, where he has been held without charges for four years.
The al-Marri decision was "a bombshell," said Rebecca Dick, whose Washington firm represents several Guantanamo prisoners in habeas corpus appeals made after a 2004 Supreme Court ruling. Those at Guantanamo aren't U.S. residents, "but the same principles of justice apply," she said.
Even if detainees eventually recover the habeas corpus rights stripped by the Military Commissions Act — the Senate Judiciary Committee this month voted to restore that recourse — "much of [the government's] evidence was obtained under circumstances that preclude its use in any fair proceeding," Dick said.
Several prisoners were being released each month late last year at a pace that would have emptied the detention center in about five years. But "the releases have nearly stopped" since the first of this year, Dick said.
Habeas attorneys believe the halt is due to the U.S. government's insistence that the home countries detain their nationals to validate U.S. claims that it had grounds to jail them for the last five years.
Officials at the Pentagon and in the Joint Task Force that supervises the detention facility and interrogation operations contend they need to hold the prisoners to keep them from rejoining terrorist groups and attacking the United States again. They insist, though, that they don't want to hold anyone longer than necessary.

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Addicott noted that the Saudi government had spent millions to reeducate and settle about 65 citizens repatriated from Guantanamo – a model, he said, for dissuading released detainees from rejoining Al Qaeda.

"If we see signs that these guys are abandoning their jihadist worldview, we would certainly want to move them to the status for release or transfer and start processing them out. Nobody wants to keep these people longer than we have to," he said.

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Libyan Detainee, Fearing Torture, Fights Transfer Home

Abuse Concerns Slow U.S. Effort To Empty Prison

By Josh White, Washington Post Staff Writer

Abdul Ra'ouf Omar Mohammed Abu al-Qassim has been held at the U.S. detention facility at Guantanamo Bay, Cuba, for more than five years, and he longs to leave it. But the one place the U.S. government is willing to send the "enemy combatant" -- his native Libya is the country Qassim fears most.

Having exhausted all possible legal remedies in U.S. courts -- including a petition to the Supreme Court in April -- Qassim is facing possibly imminent transfer to Libya, a country that the State Department deems a regular abuser and torturer of its captives. Qassim, accused by U.S. officials of being part of a terrorist group that aims to overthrow Libya's leader, expects that returning there means torture and perhaps death.

Qassim is one of the first detainees deemed an "alien enemy combatant" who is publicly fighting his departure from Guantanamo. His attorneys and at least one member of Congress have pleaded with U.S. officials to spare him from transfer to a country known for its human rights transgressions.

Qassim is among about 80 detainees at Guantanamo who have been cleared for release or transfer, and he represents a problem that could recur many times as the United States tries to clear out the facility: sending the men into the custody of nations known to employ torture.

Human rights groups estimate that there are more than a dozen men at Guantanamo slated to go to countries with spotty rights records. Absent court intervention, the men have no choice but to go where the United States sends them.

"It's a huge problem," said Shayana Kadidal, a lawyer with the Center for Constitutional Rights who represents Qassim. "It's the number one crisis we're dealing with. A large number of people who are cleared for release are cleared to go to countries where they likely will be tortured. They will be suspect just for the fact that the U.S. has detained them for such a long period of time."

State Department officials said they will not return detainees to their home countries unless the nations guarantee them humane treatment. However, such negotiations occur in private and are hard to enforce.

Numerous detainees at Guantanamo have not been returned to their home countries for fear of torture, but so far no third country has been willing to accept a detainee whom the United States has deemed an enemy combatant, a senior State Department official said.

"We take very seriously our commitments under international law and our policy obligations, and we want to ensure everyone is treated humanely upon return to their home country," the official said. In cases where detainees cannot be sent home, the official said, the United States is seeking other options: "We will continue to pound the pavement and look for countries who will be willing to take them as a humanitarian gesture."

The relationship between Washington and Tripoli has improved dramatically over the past year, and the Bush administration considers Libya a close ally in fighting terrorism. Libya was pulled from a U.S. list of states that sponsor terrorism in June 2006, though it is unclear what assurances the United States has regarding abuse.

Libyan Embassy officials in Washington did not return calls this week. U.S. officials declined to discuss Qassim's case but said several Libyan nationals could be transferred from Guantanamo as soon as next week.

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Rep. Edward J. Markey (D-Mass.) has urged the State Department not to send Qassim to Libya and to consider other options. Qassim, now in his early 40s, is married to an Afghan woman. They have a daughter, entitling him to apply for citizenship in Afghanistan.
Markey, in a letter to the State Department this week, said it would be a "grave injustice" to send Qassim to Libya, because the State Department has reported that the country engages in torture, including electric shocks and suffocation. Markey said in an interview that Qassim -- by virtue of his alleged connection to a group that opposes the Libyan government -- is at particular risk for abuse.
"The State Department doesn't have a leg to stand on if they're going to contradict their own analysis," Markey said.
Qassim contends that he was never a terrorist or a member of the Libyan Islamic Fighting Group (LIFG), as U.S. and Libyan officials allege. He wrote in a sworn statement that he was trained in weaponry while a conscript in the Libyan army, deserted in 1989 and went to Afghanistan in 1993. He and his pregnant wife fled Kabul for Pakistan when the U.S. bombing raids began in the fall of 2001.
"I did not participate in any hostilities against the Americans," Qassim said. "I especially did not endorse the September 11th attack."
"For all these years, I have been fleeing persecution, arrest and torture or death at the hands of the Libyan government," Qassim said. "I cannot go back to Libya because the risk is too great."
Human Rights Watch representatives believe there must be an open process that addresses detainees' fears of torture. So far, only five ethnic Chinese Uighurs have succeeded in avoiding transfer to China amid torture worries, but they were considered "no longer enemy combatants." The five went to Albania last year.
"While the vast majority of detainees want to go home and don't want there to be any more hurdles to slow down that process, there are a small number of individuals who have a credible fear of torture and who should not be sent home, based on no-torture promises from known torturers," said Jennifer Daskal, of Human Rights Watch.
Staff researcher Julie Tate contributed to this report.
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Five Yemeni's to be freed from Gitmo
Mon, 18 Jun 2007 12:12:59

US forces are to free five Yemeni citizens detained at the US military prison in Guantanamo Bay in Cuba, according to Yemen's Defense Ministry.

"Yemen would receive soon five of its citizens detained at the Guantanamo prison," the ministry said in a statement posted on its website.

It did not give any further details on the detainees or the exact date or their handover.

Some 384 men from several countries are still imprisoned at Guantanamo, over one quarter of them Yemenis. Of the more than 100 Yemeni detainees, only 10 have been sent home.

Five of the returning detainees were released by Yemeni authorities while the rest were charged with falsifying identification documents. None were charged with terrorism-related activities.

Last year, Yemen called for an investigation into the death of a Yemeni detainee at Guantanamo Bay who the US military said had committed suicide.

A team of US lawyers representing Yemeni nationals imprisoned at Guantanamo appealed to the Yemeni government last month to take visible steps to secure the release of its citizens.

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President George W. Bush is under intense pressure to shut down the prison, where 385 detainees are being held. Many human rights watchdogs say the prison is illegal because detainees are being held there without charge.

Washington started sending suspected al-Qaeda and Taliban captives there in 2002.

Yemen, the ancestral homeland of al-Qaeda leader Osama bin Laden, joined the so-called US-led 'war on terror' after the September 11 attacks.

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http://www.presstv.ir/detail.aspx?id=13527&sectionid=351020206

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JOSHUA COLANGELO-BRYAN AND RACHAEL KRUEGER: REPEAL LAW SO DETAINEES CAN RECEIVE FAIR HEARINGS

BY JOSHUA COLANGELO-BRYAN AND RACHAEL KRUEGER

We have heard the Guantanamo Bay detainees described in terms that are rarely applied even to convicted mass murderers in the United States. Former Defense Secretary Donald Rumsfeld once said that the detainees are "among the most dangerous, best-trained vicious killers on the face of the Earth."

Such statements are chilling but simply untrue, as military officers have readily admitted. Maj. Gen. Jay Hood, a former commander at Guantanamo, told the Wall Street Journal, "Sometimes we just didn't get the right folks." His deputy, Brig. Gen. Martin Lucenti, stated, "Most of these guys weren't fighting." Erik Saar, former Army interpreter at Guantanamo, wrote that "the fact that some of our captives had no business being at Guantanamo was plain to anyone who paid a visit."

In fact, the government does not actually accuse a majority of the detainees of any involvement in violence.

Why have so many innocent people been detained? When the United States went to war in Afghanistan in 2001, the White House ordered U.S. forces not to hold the hearings that the military has used for 50 years to determine the status of those captured on or near the battlefield. Such hearings should have been seen as essential in Afghanistan -- former Secretary of State Colin Powell argued that they were -- because the vast majority of prisoners were picked up by Afghan warlords or Pakistani forces and sold to us for bounties. In fact, of the Guantanamo detainees, only 5 percent were captured by the United States.

Now that these men are at Guantanamo, the government asserts that they have no enforceable rights at all. Rather, they can be detained forever without charge simply because we call them "enemy combatants."

Does this make America safer? Defense Secretary Robert Gates and Secretary of State Condoleezza Rice don't think so and have argued that Guantanamo should be closed. Of course, we can't effectively close Guantanamo unless we distinguish between those who have no business being there and those who actually are dangerous.

Attorneys for the detainees tried to bring sense to this situation by filing petitions for habeas corpus. At its core, habeas means that if the government intends to imprison someone indefinitely, it must present evidence against the person in a court hearing.

In 2004, the U.S. Supreme Court found that the detainees were entitled to bring habeas cases. Then last year Congress passed the Military Commissions Act, mandating that the courts dismiss all habeas cases brought by detainees in favor of an alternative process. According to the government, the alternative process does not examine whether a detainee is actually an enemy combatant, but only examines whether certain procedures were followed in applying the enemy combatant label to detainees. For that reason, detainees cannot present evidence of their innocence that wasn't considered by the military, or challenge evidence obtained through torture.

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Plainly, this alternative process will not separate the wheat from the chaff. Thus, it is time for Americans to demand that Congress repeal the Military Commissions Act, which would allow detainees fair hearings through habeas. Not only would such a step be consistent with American values, it would be in our national security interest.
Joshua Colangelo-Bryan is a New York City attorney who has represented Guantanamo detainees. Rachael Krueger is a legal analyst in New York City and an Emporia native.

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The Al-Marri Decision: A Victory for One Man, and for a Principle, But One With Limited or Nonexistent Practical Consequence
By JESSELYN RADACK

<http://writ.news.findlaw.com/scripts/printer_friendly.pl?page=/commentary/20070618_radack.html>
Monday, Jun. 18, 2007
On Monday, June 11, the U.S. Court of Appeals for the Fourth Circuit issued its decision <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/almarri/almarriwright61107opn.pdf> in the case of Ali Saleh Kahlah al-Marri. The ruling was a blow to the Bush Administration. The Fourth Circuit is one the most conservative federal appeals courts in the country.
Yet the decision - written by Judge Diana Gribbon Motz - not only rejected the Administration's arguments, but suggested in its first paragraph that they went directly contrary to the Constitution, as interpreted through "two centuries of growth and struggle, peace and war…."
This strong language had been foreshadowed by Judge Motz's stinging dissent to the Fourth Circuit's denial of rehearing en banc order <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=4th&navby=case&no=027338R1P> , following its since-vacated 2003 decision in Hamdi v. Rumsfeld. In her dissent, Judge Motz wrote: "I fear that [this court] may also have opened the door to the indefinite detention, without access to a lawyer or the courts, of any American citizen, even one captured on American soil, who the Executive designates an 'enemy combatant,' as long as the Executive asserts that the area in which the citizen was detained was an 'active combat zone,' and the detainee, deprived of access to the courts and counsel, cannot dispute this fact."
In this week's decision, the three-judge panel was unanimous that the jurisdiction-stripping section of the Military Commissions Act of 2006 (MCA) did not apply to al-Marri. Therefore, the court could properly entertain his petition.
In addition, the panel voted 2-1 in favor of al-Marri on the merits of his petition, holding that while the government is free to try al-Marri, it is not free to continue to detain him indefinitely without charge.
For civil libertarians, this should all be cause for celebration. But what will the practical effect of the decision be? The answer is: virtually nil. That's because it benefits only those who are both under the direction of an enemy nation and living legally in the U.S. - a class of persons one would hope, if Homeland Security is at all effective, would be a tiny one.
The Factual Background: One of Three U.S.-Held "Enemy Combatants"
Thus far, only three people have been held in the United States as "enemy combatants." One is al-Marri. Another is U.S. citizen Jose Padilla - initially touted as a "dirty bomb" conspirator, but currently on trial for a different charge. The third is Yaser Esam Hamdi, the Louisiana native whom the government first declared a serious threat to national security, and then set free on the condition that he move to Saudi Arabia and renounce his U.S. citizenship.
All three men were held for long periods of time in a South Carolina military brig, without charge and with spotty or no access to counsel. Al-Marri is still being held there, as he has been for the past four years. Padilla's case <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=426> and Hamdi's

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case <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=507> ended up in the Supreme Court. Al-Marri's, too, is likely to be heard by the Court.

Before his arrest, al-Marri, a Qatari national, was attending graduate school at Bradley University in Illinois. He was legally in the United States when he was detained. Originally, the government held him on a "material witness" warrant. Then it charged him with making false statements. Less than a month before his trial was scheduled to begin, however, the government dropped its charges against him and declared him an "enemy combatant."

Who Counts as an "Enemy Combatant" Under the MCA?

But who counts as an "enemy combatant" under the MCA? Both military judges and the recent Fourth Circuit decision have been careful about parsing the statute's language.

Last week, two military judges - Navy Capt. Keith Allred and Army Col. Peter Brownback - dismissed charges against two Guantánamo detainees, Omar Khadr of Canada, and Salim Hamdan of Yemen, who had been set to be tried before military commissions. The reasoning was that the men were just garden-variety "enemy combatants," not "alien unlawful enemy combatants" as required by the MCA.

(Readers may remember Hamdan as the victor in a Supreme Court decision issued last June <http://laws.findlaw.com/us/000/05-184.html> , and wonder why he was before a military commission in the first place. The answer is that while the Court held that the President could not try detainees by military commission without Congressional approval, Congress gave that very approval in the MCA.)

Meanwhile, the Fourth Circuit panel held - as noted above - that al-Marri did not fall within the section of the MCA that purports to strip courts of jurisdiction to hear habeas corpus petitions from "an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant, or who is awaiting such determination."

The Fourth Circuit held that for a detainee to fit this description, a two-step process must occur. First, an initial decision must be made to detain the alien. That occurred in al-Marri's case when President Bush issued a 2003 order placing him in military custody. Second, there must be a determination "by the United States" that the designation was proper - for example, a determination by the Combatant Status Review Tribunals (CSRTs) used on Guantánamo Bay.

There was no CSRT determination in al-Marri's case, since he was detained in the U.S. Moreover, the Fourth Circuit noted, the MCA's legislative history makes plain that it is a CSRT decision that is required, and that the MCA was not intended to apply to persons captured in the U.S.

Who else might benefit from this holding? Potentially, no one - as I will explain in the next section. While there may well be other persons captured in the U.S. in war-on-terror-related investigations, those persons will likely not come within this precedent.

Why No One Else Is Likely to Benefit

The question of who can be deemed an "enemy combatant" remains a troubled and troubling one. The Supreme Court's Hamdi decision <http://laws.findlaw.com/us/000/03-6696.html> and Padilla decision <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=426> both looked to law-of-war principles, resting "enemy combatant" status upon affiliation with the military arm of an enemy nation. Thus, both upheld the President's authority pursuant to his 2001 Authorization for Use of Military Force (AUMF) to detain as enemy combatants individuals who affiliated with and fought on behalf of Taliban government forces, against the armed forces of the United States and its allies, on the battlefield in Afghanistan.

But the Fourth Circuit's al-Marri decision <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/almarri/almarriwright61107opn.pdf> looks not only to law-of-war principles, but also to treaty obligations under the Hague and Geneva Conventions and related principles of customary international law. The opinion thus draws a line between "combatants" (members of a nation's military, militia, or other armed forces, and those who fight alongside them) and "civilians" (all other persons). And it notes that al-Marri's detention was neither the "classic wartime detention" the government claimed had rendered Hamdi an enemy combatant, nor the "classic battlefield detention" the government claimed had rendered Padilla an enemy combatant.

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Indeed, unlike Hamdi and Padilla, the court explained "al-Marri is not alleged to have been part of a Taliban unit, not alleged to have stood alongside the Taliban or the armed forces of any other enemy nation, not alleged to have been on the battlefield during the war in Afghanistan, not alleged to have been in Afghanistan during the armed conflict there, and not alleged to have engaged in combat with United States forces anywhere in the world."
Hamdi was claimed to have fought with the Taliban in Afghanistan, and was first detained at Guantánamo before his transfer to military prison. In al-Marri, the government argued that Padilla was an enemy combatant because he, like Hamdi, "engaged in armed conflict" alongside the Taliban "against our forces in Afghanistan."
This point, however, may leave readers scratching their heads - if they recall that the government's allegations against Padilla in earlier stages of that case mirrored its allegations against al-Marri here: that Padilla had associated with al Qaeda and engaged in conduct in preparation for acts of terrorism. Indeed, the Fourth Circuit's own Judge Wilkinson, in his concurrence to the denial of rehearing en banc in the Hamdi case, argued that "[t]o compare [Hamdi's] battlefield capture to the domestic arrest in Padilla . . . is to compare apples and oranges."
The government's response is that Judge Wilkinson's observation came before the Government had proffered any evidence that Padilla had carried arms alongside the Taliban against U.S. armed forces during the conflict in Afghanistan. And in al-Marri, the Fourth Circuit panel apparently accepted the government's argument - perhaps because it allowed the panel to bring principled reasoning to the question of who receives the "enemy combatant" designation: only those who take up arms against the U.S. on the battlefield.
It's too bad the government will appeal the decision, first by requesting en banc review in the Fourth Circuit, and if the Fourth Circuit does not reverse, then to the Supreme Court. Luckily, the Supreme Court has ruled against the Administration in all enemy combatant cases.
Jesselyn Radack is the author of The Canary in the Coalmine: Blowing the Whistle in the Case of "American Taliban" John Walker Lindh, available at www.patriotictruthteller.net
http://writ.news.findlaw.com/commentary/20070618_radack.html
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Guantanamo Bay puzzles candidates

By Martha T. Moore, USA TODAY
Promising to close the prison holding terrorism suspects at Guantanamo Bay, Cuba, is a big applause line for Democratic presidential candidates. Just how to do it is a thorny thicket they haven't thoroughly explored.
For Republicans, who view fighting terrorism as a top issue in their presidential nomination fight, the divide is over whether to close the prison and how to extract information from detainees. Among the 10 announced Republican candidates, only Arizona Sen. John McCain <http://www.usatoday.com/news/politics/election2008/john-mccain.htm> and Texas Rep. Ron Paul <http://www.usatoday.com/news/politics/election2008/ron-paul.htm> favor closing the prison.
Guantanamo, a symbol of U.S. efforts to combat terrorism, is a critical part of what both political parties see as a defining issue facing the next president: how to repair international relations while continuing to battle terrorist plots.
Polls show that voters are evenly split on whether the government should be allowed to keep terrorism suspects at Guantanamo indefinitely without charging them, 44%-43%. Republicans support the policy (63%), and most Democrats (57%) are opposed.
"This is a highly partisan issue, like so much of things that relate to the war on terrorism and the war in Iraq," says Andrew Kohut, director of the Pew Research Center.
Foreigners picked up by U.S. military in searches for al-Qaeda terrorism suspects began arriving at Guantanamo in February 2002. Today, there are more than 380 foreigners being held there on suspicion of terrorism and awaiting trials.
Legislation in the Senate to close Guantanamo has won support from three of the eight Democratic candidates: New York Sen. Hillary Rodham Clinton <http://www.usatoday.com/news/politics/election2008/hillary-rodham-clinton.htm> , Connecticut Sen. Chris Dodd <http://www.usatoday.com/news/politics/election2008/chris-dodd.htm> and

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Delaware Sen. Joseph Biden <http://www.usatoday.com/news/politics/election2008/joseph-biden.htm> . Clinton and Dodd are co-sponsors of a bill by Sen. Dianne Feinstein, D-Calif. "In the eyes of the world, Guantanamo is ammunition for our enemies, and it is time to close Guantanamo and to deal with both the security and the legal challenges," Clinton said at a Senate Armed Services Committee hearing in April.

Biden supports competing legislation from Sen. Tom Harkin, D-Iowa, which would require release of detainees who are not charged. Harkin's bill also would close Guantanamo more quickly, Biden spokeswoman Marion Steinfels says.

Illinois Sen. Barack Obama <http://www.usatoday.com/news/politics/election2008/barack-obama.htm> has not backed either bill though he repeatedly calls for closing Guantanamo and restoring the right of prisoners to challenge their detention. "Ultimately, he supports Guantanamo closing and is still working to find the best possible solution for the prisoners who are there right now," said spokesman Bill Burton, Obama's campaign spokesman.

None of the Democrats have specific plans on how to shut down the prison. McCain and Biden advocate moving the Guantanamo prisoners to the military's only maximum-security prison, Fort Leavenworth in Kansas. That might run into a space crunch: The military prison there can hold 500 prisoners and currently has 450 inmates, according to Janet Wray, Fort Leavenworth spokeswoman.

McCain wants to close Guantanamo, he says, because its existence is damaging U.S. credibility abroad. He also wants to speed up trials. "He would want to speed up the tribunal process for prisoners, because he doesn't support indefinite detentions," McCain spokesman Danny Diaz says.

Last week, former secretary of State Colin Powell said in an ABC interview that he believes the prison should be closed and detainees moved into the federal legal system.

"I'm not inclined to agree right now that we should necessarily close Guantanamo," former New York City mayor Rudy Giuliani <http://www.usatoday.com/news/politics/election2008/rudy-giuliani.htm> said in New Hampshire, a few days after Powell's interview. "I'd have to go look and see what are the conditions today."

Amnesty International and other human rights groups have criticized the U.S. military's early treatment of prisoners, who were shackled and kept in open-air cages. Adil al-Zamil, a former Kuwaiti government clerk, told the Associated Press he was without food for two days and menaced by dogs. The Supreme Court ruled last June that the detainees are covered by the Geneva Conventions, which forbid degrading treatment.

McCain, who endured torture as a prisoner of war in Vietnam, clashed with President Bush last year as Congress debated a plan for military tribunals and interrogations to comply with the Supreme Court ruling. McCain insisted that interrogation rules need to comply with the Geneva Conventions.

Former Massachusetts governor Mitt Romney <http://www.usatoday.com/news/politics/election2008/mitt-romney.htm> and former Arkansas governor Mike Huckabee <http://www.usatoday.com/news/politics/election2008/mike-huckabee.htm> have both said conditions at Guantanamo are acceptable.

"The food down there is unbelievable. This is not this gulag; this is a modern prison which treats people with dignity and respect," Romney said this month.

Romney said in a June 5 Republican debate that "we ought to double Guantanamo" but didn't mean it literally, spokesman Kevin Madden says. His remark was "recognition that the governor wants to go out and catch more terrorists and doesn't want to import them once they're captured," Madden says. "The legal rationale for keeping them there is that they ought not to be afforded all the legal rights of a U.S. citizen."

One divide among Republican candidates concerns how to get information from suspects. McCain has rejected "waterboarding," a practice in which prisoners are held under water, which he says is tantamount to torture. Giuliani and Romney have not ruled out waterboarding specifically; they support "enhanced" techniques.

"I would tell the people who had to do the interrogation to use every method they could think of," Giuliani said at the June 5 New Hampshire debate. "It shouldn't be torture, but every method they can think of."

How quickly military commission trials, authorized by Congress last year, will occur was thrown into doubt by a court ruling this month. A military judge at Guantanamo said that two

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detainees headed for trial had not been classified as "unlawful enemy combatants," as required by the law authorizing military commission trials.
Contributing: Tali Yahalom, Associated Press
http://www.usatoday.com/news/politics/2007-06-18-gitmo-candidates_N.htm
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Britain's Highest Court Upholds Detainees' Rights

The ruling in the case involving the death of an Iraqi recognizes that people in British custody anywhere are protected.

By Alicia Lozano, Times Staff Writer

LONDON — Britain's highest court sent a stern message to the country's military Wednesday, ruling that detainees held in British facilities throughout the world are protected under both the European Convention on Human Rights and British laws.

The Law Lords upheld an appeal by the father of Baha Mousa, a 26-year-old detainee in Iraq who died in British custody. Mousa sustained 93 injuries, including broken ribs and a broken nose, lawyers for his family said.

But the Law Lords, the nation's highest judicial authority, dismissed the cases of five other Iraqi civilians killed by British troops because the deaths occurred in the streets of Basra and not on British-owned or occupied territory. Lawyers for the five families said they would take their cases to the European Court of Human Rights in Strasbourg, France.

Human rights activists applauded the Mousa ruling, saying the government must be held accountable for conditions for its detainees not just on British soil but also throughout the world.

Shami Chakrabarti of Liberty, a human rights organization that helped bring the case to court, said at a news conference: "There could now never be a British Guantanamo. The British will never be able to build a prison anywhere in the world and say it is a legal black hole."

Although there is no immediate impact from the ruling outside Mousa's case, human rights activists hope to use it to force government officials to clarify their policies on harsh treatment of detainees and to hold senior military leaders, not just lower-ranking jailers, accountable when standards are breached.

British troops detained Mousa in 2003 while he was working as a receptionist at a Basra hotel. He was taken to a military base where he was "brutally beaten by British troops," according to court documents.

He later died of injuries sustained during "conditioning," during which troops tortured him to make interrogation more effective, Mousa's lawyers said.

The decision by the Law Lords to recognize the rights of detainees in British custody comes after a three-year legal battle between Mousa's father, Daoud, and the British government, which appealed a lower court decision.

In 2005, the Court of Appeals ruled that Britain's Human Rights Act, established in 1998, protects people detained by British officials throughout the world. The government appealed, arguing that the Defense Ministry had accomplished its duty to take action against torture by court-martialing a soldier who pleaded guilty to the brutalization of Mousa.

"We want the public to understand that British troops have always worked under English law and the Geneva Convention, both of which make torture an offense," said Defense Ministry spokesman Nick Manning. "The court-martial was an open proceeding, and it was that investigation which led to [a] conviction." Human rights activists argue that the court-martial, which resulted in the dismissal and imprisonment of Cpl. Donald Payne, was insufficient because the military used the accused as a scapegoat and let other guilty soldiers escape punishment.

"The rulings recognize that the UK has an obligation to conduct an effective investigation set out in the European Convention," said Carla Ferstman, director of Redress, a human rights organization involved in the case. "You can't have a superfluous investigation," she said. "There is a need for those in government to investigate with a view to holding all people responsible."

Human rights groups pledged to continue investigating detainee abuse and said they would take their case back to the lower courts in hopes of conducting an independent public inquiry.

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The Defense Ministry, however, says troop conduct is unlikely to change despite the decision because torture has been long banned under the European Convention on Human Rights.
"We are looking at the things we could do better," Manning said. "Steps taken today are fully compliant with UK law and the Geneva Convention."
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Moran on Guantanamo
Michael Shank | June 14, 2007
Editor: John Feffer
James Moran (D-VA) has been in the House of Representatives since 1991. In 2002, he was one of 133 House members to vote against authorizing the invasion of Iraq. Most recently, he has proposed holding hearings in July on closing the detention facilities at Guantanamo Bay, Cuba, that currently holds several hundred detainees. FPIF contributor Michael Shank interviews him on the implications of his position on Guantanamo.
Michael Shank: You have said that Guantanamo is a stain on our reputation as a nation. You and others, including former U.S. Secretary of State Colin Powell, have called for it to be closed immediately. Is shutting it down, and moving prisoners to military prisons in the United States as you've suggested, sufficient to restore U.S. reputation? What else needs to be done?
Rep. James Moran: If we were to shut it down it might signal that there are new decision-makers in charge, that there's a new attitude. This is one of the most egregious examples of un-American actions taken by this administration. Closing down Guantanamo in and of itself is not going to convince the world that we've gotten our bearings again as a nation. But I think it sends a very positive signal. And every day that we leave it open we lose ground in the global war on terrorism.
Shank: Why do you think the president has been so reluctant to move forward constructively on Guantanamo?
Moran: For the same reason he's been reluctant to take constructive action with regard to the Iraq War. One, he wants to save face. And two, he's surrounded by the very same people that resulted in our establishment of a detainee policy of indefinite detention without charges and without the ability to defend yourself. These are close-minded people who have little respect for the Constitution or the Bill of Rights or why America has become the greatest nation on the planet. It was for reasons that are really the antithesis of what this administration's policy has been.
I'm not surprised that he's reluctant to do the right thing. I can't think of where he has used his presidency to do the right thing, frankly, in any area of policy. The one possible exception might be the immigration bill, and he didn't have sufficient commitment to get it passed. Apparently it was a half-hearted commitment on his part.
Shank: If you and other members are successful in shutting down Guantanamo, will [the closing] ultimately and fundamentally change the way the U.S. government treats its enemy combatants in the so-called war on terrorism? Guantanamo has become highly symbolic, but will the system change?
Moran: The system is kind of a patchwork policy. In Afghanistan we're detaining thousands of people. We're going to defer to the Afghan government to prosecute them. In Iraq we have about 30,000 people detained, half of them by the Iraqi government, half of them by the U.S. military. Again, if there's a conclusion to the war we'll leave it to the Iraqi government to decide what they want to do with them. In Guantanamo it's a legal black hole, and that's the kind of situation this administration likes. But I don't think there's any coherent policy, so I don't expect any particular policy change.
If Guantanamo closes it's not going to be because the administration decided to do the right thing. It will be because they decided the political downside is too much or they had to compromise in order to achieve some other objective.
Shank: In The New York Times on Sunday there was an article on the Chinese Uighurs, former Guantanamo detainees, who have been in Albania for a year since their release. They remain in limbo. What responsibility does the U.S. have to detainees once they're released?

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Moran: We should put them in a country where they're not going to be executed when they step off the plane. Albania was an unusual place to put them. We created a Uighur community in Albania which didn't exist before. They're still trying to figure out how to ask for a glass of water. They don't know any Albanian and the Albanians don't have any way to communicate with them. Now that we've established this Uighur community I think that's probably where we're going to place the rest of the Uighur [detainees].

But when you think about it, these are people that had no animosity towards the United States. What are they doing in an American detention facility for five years? There should've been another way to resolve this. If they were looking for refuge, we could've given them refuge here in some other place. But to send them into a legal black hole for five years because they were opposed to an authoritarian communist regime that we oppose as well, because they didn't have any rights to represent themselves politically, because they couldn't practice their own religion or express their individual beliefs. We should detain them for five years because the Chinese government considers them terrorists? Whose side are we on?

Shank: A federal appeals court recently decided that the president cannot indefinitely imprison a U.S. resident on suspicion alone and that constitutional protection, including the rights of habeas corpus must be afforded to all U.S. citizens regardless of criminal status. What are the implications of this decision?

Moran: They're most encouraging because the most conservative court in the country recognizes that the Constitution should still be the referential document for their decisions, the foundational document for their decisions. This administration hasn't believed that. To have the fourth circuit, particularly, say that legal precedence -- and the obvious interpretation of the Constitution that [administration] policy is wrong -- that has implications beyond the specifics of this situation. The specific situation doesn't necessarily apply to the people at Guantanamo, but I think it sends a signal that the credibility of the administration in these areas is lacking. Hopefully it will give some greater confidence to other courts around the country to look first at the Constitution rather than to political signals from Karl Rove and Alberto Gonzales.

Shank: On Guantanamo, what can we expect from your office and from Congress in the coming weeks?

Moran: I've given Jack Murtha the language that I would recommend be put in the bill and he has indicated that he's leaving it to my recommendation on how to handle Guantanamo in the regular defense appropriations bill. Obviously nobody in the Congress acts unilaterally. And as strong a relationship as I have with Jack Murtha, the leadership is going to make that decision and they'll have to look not just at the policy but at the politics of the issue. I'm sure there are people within our party who will not want [Guantanamo closed]. I know there are because we had a vote on the House floor. I won on my amendment to require the administration to come up with a plan to close Guantanamo, but I won just barely. Hopefully I'll be able to keep it in the bill through the Senate and through conference.

But there are some Democrats who don't want us to close it. I hope that I can persuade them to change their minds when they see the evidence. I think in the regular defense appropriations bill the language that I recommended to Mr. Murtha will be included, which closes down Guantanamo. Not tomorrow, but it will do so in an orderly and determinate manner. And I suspect it will relocate the detainees to military brigs within this country, at least in terms of those who can be charged. Those for whom we have no charges would be relocated to their country of origin.

There are a considerable number of detainees from Saudi Arabia, for example. The administration says that the Saudis don't want them. I've talked with the Saudi ambassador, that's not true. They will accept anybody who is a Saudi citizen. And then the administration says they're going to release them. They will release them if they have no charges that can be established. They're not going to have the kinds of legal protections that we should be giving people in the United States, but they will look at the charges and make a determination, hopefully an objective determination. But then when they release them, they follow them.

That's what's happened with those they've released in the past. They follow them, they watch their contacts. If you want to gain information from these people because you believe they

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have contacts with Muslim fundamentalists groups -- and that's the primary reason 95% of them are there because they have some affiliation or contact, or knowledge of, or friendship with somebody who belongs to an Al-Qaeda-type related group, which means basically any fundamentalist Muslim organization -- then you follow them, that's how you get information. The Saudis contact their parents. They let them know they're being monitored and they monitor them. It seems to me a more intelligent way of collecting information than keeping someone outside any communication with anybody for five years. You've isolated these people to such an extent that even anything they knew five years ago is not particularly helpful today. It's bizarre to think that there's anything they're going to get from these people.

Then for most of the five years, all they've given them to read is the Quran. So if they weren't radicalized when we put them in, undoubtedly they are now. But even if they are radicalized, our system of justice says that you punish people for what they do, not for what they believe.

Shank: The Saudis are receiving positive press for their reintegration programs that help de-brainwash potential extremists or fanatics and bring them back into the community. Is this how you undermine fanaticism and extremism?

Moran: You do. If these stone heads that established and continue to carry out this Guantanamo detainee policy had thought about it, this is an opportunity to de-brainwash them. How about exposing them to some of the great works of literature of philosophy or theology? They've got all the time in the world. Let them read other points of view that they haven't been exposed to. These are not people who were born with a criminal mind. They have become radicalized because of the environment in which they have lived and the people that have had influence over them. If you've got them for five years, how about developing the kind of empathy that naturally is created through contact with the sources of our value system, whether it be in religion or philosophy or even economics.

There's a reason why the founding fathers established a Constitution and a Bill of Rights that has had such sustainable value not just to the United States but to the whole world and it's because of the value of ideas, ideas that we believe in. If we believe in them, how about letting these detainees for five years read something beyond the Quran? Let them read the Quran all they want, but here's something else you might be interested in reading to get a broader perspective perhaps.

It's so disappointing that the military, who should have a system of discipline and adherence to a mission independent of the administration, couldn't have come up with a more thoughtful policy. But I don't see that, I don't see any evidence of that at Guantanamo. You know, there's a phrase at the gate to the prison, "In Defense of Liberty" or "Always Defending Liberty" or something. It's so inconsistent with what has happened at Guantanamo.

I don't expect anything out of this administration at this point. But the military is an organization that should rise above politics and we should have enough people in there that would come up with a more thoughtful policy, particular in regard to Guantanamo. Is Colin Powell the only one who realizes how wrongheaded this Guantanamo policy is? I shouldn't be too harsh on the military but when President Bush declared that Iraq was part of the global war on terrorism, there wasn't one military officer who could see any link to the war on terrorism. Not a one. But only one resigned. Where were the rest of them? Unfortunately I think they're just too easily intimidated by people in political power and it's disappointing.

Shank: For those of you in favor of shutting down Guantanamo and providing habeas corpus to criminal detainees, how do you respond to critics like Mitt Romney who think that in the global war on terrorism these individuals should not be afforded any special privileges, constitutional rights and protections, access to an attorney, etc.?

Moran: I saw Mitt Romney's response with regard to Guantanamo. He is either utterly ignorant or a pure political panderer to his audience. I suspect that it's more political pandering than it is ignorance because he has been pandering on any number of other issues that are quite inconsistent with policies that he implemented as governor of Massachusetts. This is a different constituency. He assumes that Republicans are very conservative, are narrow-minded and mean-spirited. So that's what he is appealing to. I think he's wrong. I think the Republican base is going to reject most of these people, including Giuliani, because the

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Republican base is a lot more thoughtful and has a lot more respect for our fundamental principles as a nation than these candidates are exhibiting.
Shank: If correlations are being drawn abroad between terrorist attacks and U.S. policy in Iraq, Israel-Palestine, and Guantanamo, where do you think Guantanamo ranks as a motivating factor?
Moran: I think it's a contributing factor. They are all contributing factors. Unfortunately none of these things is an aberration. They're all consistent. And that's what's most troubling. And if we can close down Guantanamo hopefully it will establish some momentum for doing the right thing in other areas, including Iraq, including showing some leadership with regard to the Israeli-Palestinian struggle. Because if this is about our security, we are doing just the opposite of what common sense would indicate.
Michael Shank is a doctoral student at the Institute for Conflict Analysis and Resolution at George Mason University and a frequent contributor to Foreign Policy In Focus (www.fpif.org)
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The Baghdad Bar
By MELANIE KIRKPATRICK
June 15, 2007; Page A17
At last count, 46 lawyers have been assassinated in Iraq since the summer of 2003, according to a grim tally compiled by the Iraqi Bar Association. Some of the victims were kidnapped before being murdered; others were gunned down in the street or caught in crossfire. A recent casualty is Abdul-Sahib Abdulla al-Kanani, who was killed on his way to the grocery store in Baghdad on May 20. He leaves behind a wife and five children.
Aswad al-Minshidi, president of the Iraqi Bar Association, recounted this story in a phone call from Baghdad the other day. He is anguished at his association's scant ability to help the murdered lawyers' families, who often have no means of support. "Dear Miss Melanie," he says, "I know when a journalist is killed in Iraq, his or her colleagues around the world provide support and raise their voices in outrage. But where are the voices of outrage of lawyers in other countries when a lawyer is killed for doing his job?"
Where, indeed? Here in the U.S., it would be nice to think that part of the answer is that the lawyers, law firms and legal associations that might provide assistance are ignorant of the need. But part of the answer lies, too, in the different priorities many attorneys have set for themselves. Bar associations churn out papers on Guantanamo, Abu Ghraib and the execution of Saddam Hussein. Law firms line up to provide legal services to detainees. Cully Stimson, a deputy assistant secretary of defense, lost his job earlier this year for criticizing American lawyers for such work. The legal establishment's outrage against Mr. Stimson would have been easier to take had it been working even half as hard to help re-establish the rule of law in Iraq.
The legal profession "is the pillar on which any society is built," says Feisal al-Istrabadi, Iraq's deputy permanent representative to the United Nations. "Clearly the insurgents are trying to disrupt our society at every level." The rule of law is a primary target -- and the killings include judges, police officers and recruits, as well as ordinary lawyers. Mr. Minshidi says he and his family have been threatened.
The Iraqi legal system is based on the Napoleonic Code, and in the first half of the 20th century it served as a model for other countries in the region. Mr. Istrabadi, a U.S.-trained attorney who practiced law in Indiana and Illinois from 1988 until 2004, says that after decades of operating under totalitarian rule, the Iraqi legal system is much stronger than he had anticipated. After Saddam's ouster, "we expected to find that judicial system and the legal profession had been politically corrupted by the previous regime ... but that was not the fact."
Saddam created an alternative judicial system, where political crimes were tried. The code of ethics among the Iraqi bar was so strong, Mr. Istrabadi says, that "Saddam was unable to corrupt the judicial system and was therefore forced to create an extra-judicial system."
Iraq has a cadre of "world-class" judges and professors educated in the 1950s and 1960s, he says, but "young law professors have been cut off from the world for two decades or more" and younger attorneys need help.

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So far the assistance has been meager. While the American Bar Association and the International Bar Association have operated programs, the focus has been on training judges and prosecutors, and most or all of their efforts have been funded by the U.S. and other governments. A program to refurbish Iraqi law schools, operated by DePaul University College of Law, lost its U.S. AID funding after one year. Mr. Minshidi of the Iraqi Bar Association says he is unaware of any efforts to date by U.S. bar associations, law schools or other non-governmental organizations to help, though he notes that the ABA has invited him to attend its annual meeting in August and the Federalist Society will host a small conference for Iraqi bar leaders this fall.

"There is much to do to establish the rule of law," he says. "So far it has mostly been training judges and prosecutors. Little has been done for law students and lawyers." (A model here could be the Afghan Women Leaders Connect, founded by American businesswomen to assist Afghan women, including lawyers and judges.)

"Where are the great associations of law we hear about?" asks Mr. Minshidi. "Where are the great law firms? ... Where are the law schools? ... The help we need is not only the help of the government. We need the help of our brothers in the law."

Ms. Kirkpatrick is a deputy editor of the Journal's editorial page.

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Annals of National Security

The General's Report

How Antonio Taguba, who investigated the Abu Ghraib scandal, became one of its casualties.

by Seymour M. Hersh

<http://www.newyorker.com/search/query?query=authorName:%22Seymour%20M.%20Hersh%22> June 25, 2007

On the afternoon of May 6, 2004, Army Major General Antonio M. Taguba was summoned to meet, for the first time, with Secretary of Defense Donald Rumsfeld in his Pentagon conference room. Rumsfeld and his senior staff were to testify the next day, in televised hearings before the Senate and the House Armed Services Committees, about abuses at Abu Ghraib prison, in Iraq. The previous week, revelations about Abu Ghraib, including photographs showing prisoners stripped, abused, and sexually humiliated, had appeared on CBS and in The New Yorker. In response, Administration officials had insisted that only a few low-ranking soldiers were involved and that America did not torture prisoners. They emphasized that the Army itself had uncovered the scandal.

If there was a redeeming aspect to the affair, it was in the thoroughness and the passion of the Army's initial investigation. The inquiry had begun in January, and was led by General Taguba, who was stationed in Kuwait at the time. Taguba filed his report in March. In it he found:

Numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees . . . systemic and illegal abuse.

Taguba was met at the door of the conference room by an old friend, Lieutenant General Bantz J. Craddock, who was Rumsfeld's senior military assistant. Craddock's daughter had been a babysitter for Taguba's two children when the officers served together years earlier at Fort Stewart, Georgia. But that afternoon, Taguba recalled, "Craddock just said, very coldly, 'Wait here.' " In a series of interviews early this year, the first he has given, Taguba told me that he understood when he began the inquiry that it could damage his career; early on, a senior general in Iraq had pointed out to him that the abused detainees were "only Iraqis." Even so, he was not prepared for the greeting he received when he was finally ushered in. "Here . . . comes . . . that famous General Taguba–of the Taguba report!" Rumsfeld declared, in a mocking voice. The meeting was attended by Paul Wolfowitz, Rumsfeld's deputy; Stephen Cambone, the Under-Secretary of Defense for Intelligence; General Richard Myers, chairman of the Joint Chiefs of Staff (J.C.S.); and General Peter Schoomaker, the Army chief of staff, along with Craddock and other officials. Taguba, describing the moment nearly three years

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later, said, sadly, "I thought they wanted to know. I assumed they wanted to know. I was ignorant of the setting."

In the meeting, the officials professed ignorance about Abu Ghraib. "Could you tell us what happened?" Wolfowitz asked. Someone else asked, "Is it abuse or torture?" At that point, Taguba recalled, "I described a naked detainee lying on the wet floor, handcuffed, with an interrogator shoving things up his rectum, and said, 'That's not abuse. That's torture.' There was quiet."

Rumsfeld was particularly concerned about how the classified report had become public. "General," he asked, "who do you think leaked the report?" Taguba responded that perhaps a senior military leader who knew about the investigation had done so. "It was just my speculation," he recalled. "Rumsfeld didn't say anything." (I did not meet Taguba until mid-2006 and obtained his report elsewhere.) Rumsfeld also complained about not being given the information he needed. "Here I am," Taguba recalled Rumsfeld saying, "just a Secretary of Defense, and we have not seen a copy of your report. I have not seen the photographs, and I have to testify to Congress tomorrow and talk about this." As Rumsfeld spoke, Taguba said, "He's looking at me. It was a statement."

At best, Taguba said, "Rumsfeld was in denial." Taguba had submitted more than a dozen copies of his report through several channels at the Pentagon and to the Central Command headquarters, in Tampa, Florida, which ran the war in Iraq. By the time he walked into Rumsfeld's conference room, he had spent weeks briefing senior military leaders on the report, but he received no indication that any of them, with the exception of General Schoomaker, had actually read it. (Schoomaker later sent Taguba a note praising his honesty and leadership.) When Taguba urged one lieutenant general to look at the photographs, he rebuffed him, saying, "I don't want to get involved by looking, because what do you do with that information, once you know what they show?"

Taguba also knew that senior officials in Rumsfeld's office and elsewhere in the Pentagon had been given a graphic account of the pictures from Abu Ghraib, and told of their potential strategic significance, within days of the first complaint. On January 13, 2004, a military policeman named Joseph Darby gave the Army's Criminal Investigation Division (C.I.D.) a CD full of images of abuse. Two days later, General Craddock and Vice-Admiral Timothy Keating, the director of the Joint Staff of the J.C.S., were e-mailed a summary of the abuses depicted on the CD. It said that approximately ten soldiers were shown, involved in acts that included:

Having male detainees pose nude while female guards pointed at their genitals; having female detainees exposing themselves to the guards; having detainees perform indecent acts with each other; and guards physically assaulting detainees by beating and dragging them with choker chains.

Taguba said, "You didn't need to 'see' anything—just take the secure e-mail traffic at face value."

I learned from Taguba that the first wave of materials included descriptions of the sexual humiliation of a father with his son, who were both detainees. Several of these images, including one of an Iraqi woman detainee baring her breasts, have since surfaced; others have not. (Taguba's report noted that photographs and videos were being held by the C.I.D. because of ongoing criminal investigations and their "extremely sensitive nature.") Taguba said that he saw "a video of a male American soldier in uniform sodomizing a female detainee." The video was not made public in any of the subsequent court proceedings, nor has there been any public government mention of it. Such images would have added an even more inflammatory element to the outcry over Abu Ghraib. "It's bad enough that there were photographs of Arab men wearing women's panties," Taguba said.

On January 20th, the chief of staff at Central Command sent another e-mail to Admiral Keating, copied to General Craddock and Lieutenant General Ricardo Sanchez, the Army commander in Iraq. The chief of staff wrote, "Sir: update on alleged detainee abuse per our discussion. DID IT REALLY HAPPEN? Yes, currently have 4 confessions implicating perhaps 10 soldiers. DO PHOTOS EXIST? Yes. A CD with approx 100 photos and a video—CID has these in their possession."

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In subsequent testimony, General Myers, the J.C.S. chairman, acknowledged, without mentioning the e-mails, that in January information about the photographs had been given "to me and the Secretary up through the chain of command. . . . And the general nature of the photos, about nudity, some mock sexual acts and other abuse, was described."

Nevertheless, Rumsfeld, in his appearances before the Senate and the House Armed Services Committees on May 7th, claimed to have had no idea of the extensive abuse. "It breaks our hearts that in fact someone didn't say, 'Wait, look, this is terrible. We need to do something,' " Rumsfeld told the congressmen. "I wish we had known more, sooner, and been able to tell you more sooner, but we didn't."

Rumsfeld told the legislators that, when stories about the Taguba report appeared, "it was not yet in the Pentagon, to my knowledge." As for the photographs, Rumsfeld told the senators, "I say no one in the Pentagon had seen them"; at the House hearing, he said, "I didn't see them until last night at 7:30." Asked specifically when he had been made aware of the photographs, Rumsfeld said:

There were rumors of photographs in a criminal prosecution chain back sometime after January 13th . . . I don't remember precisely when, but sometime in that period of January, February, March. . . . The legal part of it was proceeding along fine. What wasn't proceeding along fine is the fact that the President didn't know, and you didn't know, and I didn't know.

"And, as a result, somebody just sent a secret report to the press, and there they are," Rumsfeld said.

Taguba, watching the hearings, was appalled. He believed that Rumsfeld's testimony was simply not true. "The photographs were available to him—if he wanted to see them," Taguba said. Rumsfeld's lack of knowledge was hard to credit. Taguba later wondered if perhaps Cambone had the photographs and kept them from Rumsfeld because he was reluctant to give his notoriously difficult boss bad news. But Taguba also recalled thinking, "Rumsfeld is very perceptive and has a mind like a steel trap. There's no way he's suffering from C.R.S.—Can't Remember Shit. He's trying to acquit himself, and a lot of people are lying to protect themselves." It distressed Taguba that Rumsfeld was accompanied in his Senate and House appearances by senior military officers who concurred with his denials.

"The whole idea that Rumsfeld projects—'We're here to protect the nation from terrorism'—is an oxymoron," Taguba said. "He and his aides have abused their offices and have no idea of the values and high standards that are expected of them. And they've dragged a lot of officers with them."

In response to detailed queries about this article, Colonel Gary Keck, a Pentagon spokesman, said in an e-mail, "The department did not promulgate interrogation policies or guidelines that directed, sanctioned, or encouraged abuse." He added, "When there have been abuses, those violations are taken seriously, acted upon promptly, investigated thoroughly, and the wrongdoers are held accountable." Regarding early warnings about Abu Ghraib, Colonel Keck said, "Former Secretary of Defense Rumsfeld has stated publicly under oath that he and other senior leaders were not provided pictures from Abu Ghraib until shortly before their release." (Rumsfeld, through an aide, declined to answer questions, as did General Craddock. Other senior commanders did not respond to requests for comment.)

During the next two years, Taguba assiduously avoided the press, telling his relatives not to talk about his work. Friends and family had been inundated with telephone calls and visitors, and, Taguba said, "I didn't want them to be involved." Taguba retired in January, 2007, after thirty-four years of active service, and finally agreed to talk to me about his investigation of Abu Ghraib and what he believed were the serious misrepresentations by officials that followed. "From what I knew, troops just don't take it upon themselves to initiate what they did without any form of knowledge of the higher-ups," Taguba told me. His orders were clear, however: he was to investigate only the military police at Abu Ghraib, and not those above them in the chain of command. "These M.P. troops were not that creative," he said. "Somebody was giving them guidance, but I was legally prevented from further investigation into higher authority. I was limited to a box."

General Taguba is a slight man with a friendly demeanor and an unfailingly polite correctness. "I came from a poor family and had to work hard," he said. "It was always shine

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the shoes on Saturday morning for church, and wash the car on Saturday for church. And Saturday also for mowing the lawn and doing yard jobs for church."

His father, Tomas, was born in the Philippines and was drafted into the Philippine Scouts in early 1942, at the height of the Japanese attack on the joint American-Filipino force led by General Douglas MacArthur. Tomas was captured by the Japanese on the Bataan peninsula in April, 1942, and endured the Bataan Death March, which took thousands of American and Filipino lives. Tomas escaped and joined the underground resistance to the Japanese before returning to the American Army, in July, 1945.

Taguba's mother, Maria, spent much of the Second World War living across the street from a Japanese-run prisoner-of-war camp in Manila. Taguba remembers her vivid accounts of prisoners who were bayonetted arbitrarily or whose fingernails were pulled out. Antonio, the eldest son (he has six siblings), was born in Manila in 1950. Maria and Tomas were devout Catholics, and their children were taught respect and, Taguba recalls, "above all, integrity in how you lived your life and practiced your religion."

In 1961, the family moved to Hawaii, where Tomas retired from the military and took a civilian job in logistics, preparing units for deployment to Vietnam. A year after they arrived, Antonio became a U.S. citizen. By then, as a sixth grader, he was delivering newspapers, serving as an altar boy, and doing well in school. He went to Idaho State University, in Pocatello, with help from the Army R.O.T.C., and graduated in 1972. As a newly commissioned second lieutenant, he was five feet six inches tall and weighed a hundred and twenty pounds. His Army service began immediately: he led troops at the platoon, company, battalion, and brigade levels at bases in South Korea, Germany, and across America. (He married in 1981, and has two grown children.) In 1986, Taguba, then a major, was selected to attend the College of Naval Command and Staff at the Naval War College, in Newport, Rhode Island. While there, he wrote an analysis of Soviet ground-attack planning that became required reading at the school. He was promoted, ahead of his peers, to become a colonel and then a general. On the way, Taguba earned three master's degrees—in public administration, international relations, and national-security studies.

"I'll talk to you about discrimination," he said one morning, while discussing, without bitterness, his early years as an Army officer. "Let's talk about being refused to be served at a restaurant in public. Let's talk about having to do things two times, and being accused of not speaking English well, and having to pay myself for my three master's degrees because the Army didn't think I was smart enough. So what? Just work your ass off. So what? The hard work paid off."

Taguba had joined the Army knowing little about his father's military experience. "He saw the ravages and brutality of war, but he wasn't about to brag about his exploits," Taguba said. "He didn't say anything until 1997, and it took me two years to rebuild his records and show that he was authorized for an award." On Tomas's eightieth birthday, he was awarded the Bronze Star and a prisoner-of-war medal in a ceremony at Schofield Barracks, in Hawaii. "My father never laughed," Taguba said. But the day he got his medal "he smiled—he had a big-ass smile on his face. I'd never seen him look so proud. He was a bent man with carpal-tunnel syndrome, but at the end of the medal ceremony he stood himself up and saluted. I cried, and everyone in my family burst into tears."

Richard Armitage, a former Navy counter-insurgency officer who served as Deputy Secretary of State in the first Bush term, recalled meeting Taguba, then a lieutenant colonel, in South Korea in the early nineteen-nineties. "I was told to keep an eye on this young guy—'He's going to be a general,' " Armitage said. "Taguba was discreet and low key—not a sprinter but a marathoner."

At the time, Taguba was working for Major General Mike Myatt, a marine who was the officer in charge of strategic talks with the South Koreans, on behalf of the American military. "I needed an executive assistant with brains and integrity," Myatt, who is now retired and living in San Francisco, told me. After interviewing a number of young officers, he chose Taguba. "He was ethical and he knew his stuff," Myatt said. "We really became close, and I'd trust him with my life. We talked about military strategy and policy, and the moral aspect of war—the importance of not losing the moral high ground." Myatt followed Taguba's involvement in the Abu Ghraib inquiry, and said, "I was so proud of him. I told him, 'Tony, you've maintained yourself, and your integrity.' "

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Taguba got a different message, however, from other officers, among them General John Abizaid, then the head of Central Command. A few weeks after his report became public, Taguba, who was still in Kuwait, was in the back seat of a Mercedes sedan with Abizaid. Abizaid's driver and his interpreter, who also served as a bodyguard, were in front. Abizaid turned to Taguba and issued a quiet warning: "You and your report will be investigated." "I wasn't angry about what he said but disappointed that he would say that to me," Taguba said. "I'd been in the Army thirty-two years by then, and it was the first time that I thought I was in the Mafia."

THE INVESTIGATION

Taguba was given the job of investigating Abu Ghraib because of circumstance: the senior officer of the 800th Military Police Brigade, to which the soldiers in the photographs belonged, was a one-star general; Army regulations required that the head of the inquiry be senior to the commander of the unit being investigated, and Taguba, a two-star general, was available. "It was as simple as that," he said. He vividly remembers his first thought upon seeing the photographs in late January of 2004: "Unbelievable! What were these people doing?" There was an immediate second thought: "This is big."

Taguba decided to keep the photographs from most of the interrogators and researchers on his staff of twenty-three officers. "I didn't want them to prejudge the soldiers they were investigating, so I put the photos in a safe," he told me. "Anyone who wanted to see them had to have a need-to-know and go through me." His decision to keep the staff in the background was also intended to insure that none of them suffered damage to his or her career because of involvement in the inquiry. "I knew it was going to be very sensitive because of the gravity of what was in front of us," he said.

The team spent much of February, 2004, in Iraq. Taguba was overwhelmed by the scale of the wrongdoing. "These were people who were taken off the streets and put in jail—teen-agers and old men and women," he said. "I kept on asking these questions of the officers I interviewed: 'You knew what was going on. Why didn't you do something to stop it?' "

Taguba's assignment was limited to investigating the 800th M.P.s, but he quickly found signs of the involvement of military intelligence—both the 205th Military Intelligence Brigade, commanded by Colonel Thomas Pappas, which worked closely with the M.P.s, and what were called "other government agencies," or O.G.A.s, a euphemism for the C.I.A. and special-operations units operating undercover in Iraq. Some of the earliest evidence involved Lieutenant Colonel Steven L. Jordan, whose name was mentioned in interviews with several M.P.s. For the first three weeks of the investigation, Jordan was nowhere to be found, despite repeated requests. When the investigators finally located him, he asked whether he needed to shave his beard before being interviewed—Taguba suspected that he had been dressing as a civilian. "When I asked him about his assignment, he says, 'I'm a liaison officer for intelligence from Army headquarters in Iraq.' " But in the course of three or four interviews with Jordan, Taguba said, he began to suspect that the lieutenant colonel had been more intimately involved in the interrogation process—some of it brutal—for "high value" detainees.

"Jordan denied everything, and yet he had the authority to enter the prison's 'hard site' "—where the most important detainees were held—"carrying a carbine and an M9 pistol, which is against regulations," Taguba said. Jordan had also led a squad of military policemen in a shoot-out inside the hard site with a detainee from Syria who had managed to obtain a gun. (A lawyer for Jordan disputed these allegations; in the shoot-out, he said, Jordan was "just another gun on the extraction team" and not the leader. He noted that Jordan was not a trained interrogator.)

Taguba said that Jordan's "record reflected an extensive intelligence background." He also had reason to believe that Jordan was not reporting through the chain of command. But Taguba's narrowly focussed mission constrained the questions he could ask. "I suspected that somebody was giving them guidance, but I could not print that," Taguba said.

"After all Jordan's evasiveness and misleading responses, his rights were read to him," Taguba went on. Jordan subsequently became the only officer facing trial on criminal charges in connection with Abu Ghraib and is scheduled to be court-martialled in late August. (Seven M.P.s were convicted of charges that included dereliction of duty, maltreatment, and assault; one defendant, Specialist Charles Graner, was sentenced to ten years in prison.) Last month,

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a military judge ruled that Jordan, who is still assigned to the Army's Intelligence and Security Command, had not been appropriately advised of his rights during his interviews with Taguba, undermining the Army's allegation that he lied during the Taguba inquiry. Six other charges remain, including failure to obey an order or regulation; cruelty and maltreatment; and false swearing and obstruction of justice. (His lawyer said, "The evidence clearly shows that he is innocent.")

Taguba came to believe that Lieutenant General Sanchez, the Army commander in Iraq, and some of the generals assigned to the military headquarters in Baghdad had extensive knowledge of the abuse of prisoners in Abu Ghraib even before Joseph Darby came forward with the CD. Taguba was aware that in the fall of 2003—when much of the abuse took place—Sanchez routinely visited the prison, and witnessed at least one interrogation. According to Taguba, "Sanchez knew exactly what was going on."

Taguba learned that in August, 2003, as the Sunni insurgency in Iraq was gaining force, the Pentagon had ordered Major General Geoffrey Miller, the commander at Guantánamo, to Iraq. His mission was to survey the prison system there and to find ways to improve the flow of intelligence. The core of Miller's recommendations, as summarized in the Taguba report, was that the military police at Abu Ghraib should become part of the interrogation process: they should work closely with interrogators and intelligence officers in "setting the conditions for successful exploitation of the internees."

Taguba concluded that Miller's approach was not consistent with Army doctrine, which gave military police the overriding mission of making sure that the prisons were secure and orderly. His report cited testimony that interrogators and other intelligence personnel were encouraging the abuse of detainees. "Loosen this guy up for us," one M.P. said he was told by a member of military intelligence. "Make sure he has a bad night."

The M.P.s, Taguba said, "were being literally exploited by the military interrogators. My view is that those kids"—even the soldiers in the photographs—"were poorly led, not trained, and had not been given any standard operating procedures on how they should guard the detainees."

Surprisingly, given Taguba's findings, Miller was the officer chosen to restore order at Abu Ghraib. In April, 2004, a month after the report was filed, he was reassigned there as the deputy commander for detainee operations. "Miller called in the spring and asked to meet with me to discuss Abu Ghraib, but I waited for him and we never did meet," Taguba recounted. Miller later told Taguba that he'd been ordered to Washington to meet with Rumsfeld before travelling to Iraq, but he never attempted to reschedule the meeting.

If they had spoken, Taguba said, he would have reminded Miller that at Abu Ghraib, unlike at Guantánamo, very few prisoners were affiliated with any terrorist group. Taguba had seen classified documents revealing that there were only "one or two" suspected Al Qaeda prisoners at Abu Ghraib. Most of the detainees had nothing to do with the insurgency. A few of them were common criminals.

Taguba had known Miller for years. "We served together in Korea and in the Pentagon, and his wife and mine used to go shopping together," Taguba said. But, after his report became public, "Miller didn't talk to me. He didn't say a word when I passed him in the hallway."

Despite the subsequent public furor over Abu Ghraib, neither the House nor the Senate Armed Services Committee hearings led to a serious effort to determine whether the scandal was a result of a high-level interrogation policy that encouraged abuse. At the House Committee hearing on May 7, 2004, a freshman Democratic congressman, Kendrick Meek, of Florida, asked Rumsfeld if it was time for him to resign. Rumsfeld replied, "I would resign in a minute if I thought that I couldn't be effective. . . . I have to wrestle with that." But, he added, "I'm certainly not going to resign because some people are trying to make a political issue out of it." (Rumsfeld stayed in office for the next two and a half years, until the day after the 2006 congressional elections.) When I spoke to Meek recently, he said, "There was no way Rumsfeld didn't know what was going on. He's a guy who wants to know everything, and what he was giving us was hard to believe."

Later that month, Rumsfeld appeared before a closed hearing of the House Defense Appropriations Subcommittee, which votes on the funds for all secret operations in the military. Representative David Obey, of Wisconsin, the senior Democrat at the hearing, told me that he had been angry when a fellow subcommittee member "made the comment that 'Abu

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Ghraib was the price of defending democracy.' I said that wasn't the way I saw it, and that I didn't want to see some corporal made into a scapegoat. This could not have happened without people in the upper echelon of the Administration giving signals. I just didn't see how this was not systemic."

Obey asked Rumsfeld a series of pointed questions. Taguba attended the closed hearing with Rumsfeld and recalled him bristling at Obey's inquiries. "I don't know what happened!" Rumsfeld told Obey. "Maybe you want to ask General Taguba."

Taguba got a chance to answer questions on May 11th, when he was summoned to appear before the Senate Armed Services Committee. Under-Secretary Stephen Cambone sat beside him. (Cambone was Rumsfeld's point man on interrogation policy.) Cambone, too, told the committee that he hadn't known about the specific abuses at Abu Ghraib until he saw Taguba's report, "when I was exposed to some of those photographs."

Carl Levin, Democrat of Michigan, tried to focus on whether Abu Ghraib was the consequence of a larger detainee policy. "These acts of abuse were not the spontaneous actions of lower-ranking enlisted personnel," Levin said. "These attempts to extract information from prisoners by abusive and degrading methods were clearly planned and suggested by others." The senators repeatedly asked about General Miller's trip to Iraq in 2003. Did the "Gitmo-izing" of Abu Ghraib—especially the model of using the M.P.s in "setting the conditions" for interrogations—lead to the abuses?

Cambone confirmed that Miller had been sent to Iraq with his approval, but insisted that the senators were "misreading General Miller's intent." Questioned on that point by Senator Jack Reed, Democrat of Rhode Island, Cambone said, "I don't know that I was being told, and I don't know that General Miller said that there should be that kind of activity that you are ascribing to his recommendation."

Reed then asked Taguba, "Was it clear from your reading of the [Miller] report that one of the major recommendations was to use guards to condition these prisoners?" Taguba replied, "Yes, sir. That was recommended on the report."

At another point, after Taguba confirmed that military intelligence had taken control of the M.P.s following Miller's visit, Levin questioned Cambone:

LEVIN: Do you disagree with what the general just said?
CAMBONE: Yes, sir.
LEVIN: Pardon?
CAMBONE: I do.

Taguba, looking back on his testimony, said, "That's the reason I wasn't in their camp—because I kept on contradicting them. I wasn't about to lie to the committee. I knew I was already in a losing proposition. If I lie, I lose. And, if I tell the truth, I lose."

Taguba had been scheduled to rotate to the Third Army's headquarters, at Fort McPherson, Georgia, in June of 2004. He was instead ordered back to the Pentagon, to work in the office of the Assistant Secretary of Defense for Reserve Affairs. "It was a lateral assignment," Taguba said, with a smile and a shrug. "I didn't quibble. If you're going to do that to me, well, O.K. We all serve at the pleasure of the President." A retired four-star Army general later told Taguba that he had been sent to the job in the Pentagon so that he could "be watched." Taguba realized that his career was at a dead end.

Later in 2004, Taguba encountered Rumsfeld and one of his senior press aides, Lawrence Di Rita, in the Pentagon Athletic Center. Taguba was getting dressed after a workout. "I was tying my shoes," Taguba recalled. "I looked up, and there they were." Rumsfeld, who was putting his clothes into a locker, recognized Taguba and said, "Hello, General." Di Rita, who was standing beside Rumsfeld, said sarcastically, "See what you started, General? See what you started?"

Di Rita, who is now an official with Bank of America, recalled running into Taguba in the locker room but not his words. "Sounds like my brand of humor," he said, in an e-mail. "A comment like that would have been in an attempt to lighten the mood for General Taguba." (Di Rita added that Taguba had "my personal respect and admiration" and that of Rumsfeld. "He did a terrific job under difficult circumstances.") However, Taguba was troubled by the encounter, and later told a colleague, "I'm now the problem."

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DENIABILITY

A dozen government investigations have been conducted into Abu Ghraib and detainee abuse. A few of them picked up on matters raised by Taguba's report, but none followed through on the question of ultimate responsibility. Military investigators were precluded from looking into the role of Rumsfeld and other civilian leaders in the Pentagon; the result was that none found any high-level intelligence involvement in the abuse.

An independent panel headed by James R. Schlesinger, a former Secretary of Defense, did conclude that there was "institutional and personal responsibility at higher levels" for Abu Ghraib, but cleared Rumsfeld of any direct responsibility. In an August, 2004, report, the Schlesinger panel endorsed Rumsfeld's complaints, citing "the reluctance to move bad news up the chain of command" as the most important factor in Washington's failure to understand the significance of Abu Ghraib. "Given the magnitude of this problem, the Secretary of Defense and other senior DoD officials need a more effective information pipeline to inform them of high-profile incidents," the report said. Schlesinger and his colleagues apparently were unaware of the early e-mail messages that had informed the Pentagon of Abu Ghraib.

The official inquiries consistently provided the public with less information about abuses than outside studies conducted by human-rights groups. In one case, in November, 2004, an Army investigation, by Brigadier General Richard Formica, into the treatment of detainees at Camp Nama, a Special Forces detention center at Baghdad International Airport, concluded that detainees who reported being sodomized or beaten were seeking sympathy and better treatment, and thus were not credible. For example, Army doctors had initially noted that a complaining detainee's wounds were "consistent with the history [of abuse] he provided. . . . The doctor did find scars on his wrists and noted what he believed to be an anal fissure." Formica had the detainee reëxamined two days later, by another doctor, who found "no fissure, and no scarring. . . . As a result, I did not find medical evidence of the sodomy." In the case of a detainee who died in custody, Formica noted that there had been bruising to the "shoulders, chest, hip, and knees" but added, "It is not unusual for detainees to have minor bruising, cuts and scrapes." In July, 2006, however, Human Rights Watch issued a fifty-three-page report on the "serious mistreatment" of detainees at Camp Nama and two other sites, largely based on witness accounts from Special Forces interrogators and others who served there. Formica, asked to comment, wrote in an e-mail, "I conducted a thorough investigation . . . and stand by my report." He said that "several issues" he discovered "were corrected." His assignment, Formica noted, was to investigate a unit, and not to conduct "a systematic analysis of Special Operations activities."

The Army also protected General Miller. Since 2002, F.B.I. agents at Guantánamo had been telling their superiors that their military counterparts were abusing detainees. The F.B.I. complaints were ignored until after Abu Ghraib. When an investigation was opened, in December, 2004, General Craddock, Rumsfeld's former military aide, was in charge of the Army's Southern Command, with jurisdiction over Guantánamo—he had been promoted a few months after Taguba's visit to Rumsfeld's office. Craddock appointed Air Force Lieutenant General Randall M. Schmidt, a straight-talking fighter pilot, to investigate the charges, which included alleged abuses during Miller's tenure.

"I followed the bread-crumb trail," Schmidt, who retired last year, told me. "I found some things that didn't seem right. For lack of a camera, you could have seen in Guantánamo what was seen at Abu Ghraib."

Schmidt found that Miller, with the encouragement of Rumsfeld, had focussed great attention on the interrogation of Mohammed al-Qahtani, a Saudi who was believed to be the so-called "twentieth hijacker." Qahtani was interrogated "for twenty hours a day for at least fifty-four days," Schmidt told investigators from the Army Inspector General's office, who were reviewing his findings. "I mean, here's this guy manacled, chained down, dogs brought in, put in his face, told to growl, show teeth, and that kind of stuff. And you can imagine the fear."

At Guantánamo, Schmidt told the investigators, Miller "was responsible for the conduct of interrogations that I found to be abusive and degrading. The intent of those might have been to be abusive and degrading to get the information they needed. . . . Did the means justify the ends? That's fine. . . . He was responsible."

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Schmidt formally recommended that Miller be "held accountable" and "admonished." Craddock rejected this recommendation and absolved Miller of any responsibility for the mistreatment of the prisoners. The Inspector General inquiry endorsed Craddock's action. "I was open with them," Schmidt told me, referring to the I.G. investigators. "I told them, 'I'll do anything to help you get the truth.' " But when he read their final report, he said, "I didn't recognize the five hours of interviews with me."

Schmidt learned of Craddock's reversal the day before they were to meet with Rumsfeld, in July, 2005. Rumsfeld was in frequent contact with Miller about the progress of Qahtani's interrogation, and personally approved the most severe interrogation tactics. ("This wasn't just daily business, when the Secretary of Defense is personally involved," Schmidt told the Army investigators.) Nonetheless, Schmidt was impressed by Rumsfeld's demonstrative surprise, dismay, and concern upon being told of the abuse. "He was going, 'My God! Did I authorize putting a bra and underwear on this guy's head and telling him all his buddies knew he was a homosexual?' "

Schmidt was convinced. "I got to tell you that I never got the feeling that Secretary Rumsfeld was trying to hide anything," he told me. "He got very frustrated. He's a control guy, and this had gotten out of control. He got pissed."

Rumsfeld's response to Schmidt was similar to his expressed surprise over Taguba's Abu Ghraib report. "Rummy did what we called 'case law' policy—verbal and not in writing," Taguba said. "What he's really saying is that if this decision comes back to haunt me I'll deny it."

Taguba eventually concluded that there was a reason for the evasions and stonewalling by Rumsfeld and his aides. At the time he filed his report, in March of 2004, Taguba said, "I knew there was C.I.A. involvement, but I was oblivious of what else was happening" in terms of covert military-intelligence operations. Later that summer, however, he learned that the C.I.A. had serious concerns about the abusive interrogation techniques that military-intelligence operatives were using on high-value detainees. In one secret memorandum, dated June 2, 2003, General George Casey, Jr., then the director of the Joint Staff in the Pentagon, issued a warning to General Michael DeLong, at the Central Command:

CIA has advised that the techniques the military forces are using to interrogate high value detainees (HVDs) . . . are more aggressive than the techniques used by CIA who is [sic] interviewing the same HVDs.

DeLong replied to Casey that the techniques in use were "doctrinally appropriate techniques," in accordance with Army regulations and Rumsfeld's direction.

THE TASK FORCES

Abu Ghraib had opened the door on the issue of the treatment of detainees, and from the beginning the Administration feared that the publicity would expose more secret operations and practices. Shortly after September 11th, Rumsfeld, with the support of President Bush, had set up military task forces whose main target was the senior leadership of Al Qaeda. Their essential tactic was seizing and interrogating terrorists and suspected terrorists; they also had authority from the President to kill certain high-value targets on sight. The most secret task-force operations were categorized as Special Access Programs, or S.A.P.s. The military task forces were under the control of the Joint Special Operations Command, the branch of the Special Operations Command that is responsible for counterterrorism. One of Miller's unacknowledged missions had been to bring the J.S.O.C.'s "strategic interrogation" techniques to Abu Ghraib. In special cases, the task forces could bypass the chain of command and deal directly with Rumsfeld's office. A former senior intelligence official told me that the White House was also briefed on task-force operations.

The former senior intelligence official said that when the images of Abu Ghraib were published, there were some in the Pentagon and the White House who "didn't think the photographs were that bad"—in that they put the focus on enlisted soldiers, rather than on secret task-force operations. Referring to the task-force members, he said, "Guys on the inside ask me, 'What's the difference between shooting a guy on the street, or in his bed, or in a prison?' " A Pentagon consultant on the war on terror also said that the "basic strategy was 'prosecute the kids in the photographs but protect the big picture.' "

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A recently retired C.I.A. officer, who served more than fifteen years in the clandestine service, told me that the task-force teams "had full authority to whack—to go in and conduct 'executive action,' " the phrase for political assassination. "It was surrealistic what these guys were doing," the retired operative added. "They were running around the world without clearing their operations with the ambassador or the chief of station."

J.S.O.C.'s special status undermined military discipline. Richard Armitage, the former Deputy Secretary of State, told me that, on his visits to Iraq, he increasingly found that "the commanders would say one thing and the guys in the field would say, 'I don't care what he says. I'm going to do what I want.' We've sacrificed the chain of command to the notion of Special Operations and GWOT"—the global war on terrorism. "You're painting on a canvas so big that it's hard to comprehend," Armitage said.

Thomas W. O'Connell, who resigned this spring after nearly four years as the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, defended the task forces. He blamed the criticisms on the resentment of the rest of the military: "From my observation, the operations run by Special Ops units are extraordinarily open in terms of interagency visibility to embassies and C.I.A. stations—even to the point where there's been a question of security." O'Connell said that he dropped in unannounced to Special Operations interrogation centers in Iraq, "and the treatment of detainees was aboveboard." He added, "If people want to say we've got a serious problem with Special Operations, let them say it on the record."

Representative Obey told me that he had been troubled, before the Iraq war, by the Administration's decision to run clandestine operations from the Pentagon, saying that he "found some of the things they were doing to be disquieting." At the time, his Republican colleagues blocked his attempts to have the House Appropriations Committee investigate these activities. "One of the things that bugs me is that Congress has failed in its oversight abilities," Obey said. Early last year, at his urging, his subcommittee began demanding a classified quarterly report on the operations, but Obey said that he has no reason to believe that the reports are complete.

A former high-level Defense Department official said that, when the Abu Ghraib scandal broke, Senator John Warner, then the chairman of the Armed Services Committee, was warned "to back off" on the investigation, because "it would spill over to more important things." A spokesman for Warner acknowledged that there had been pressure on the Senator, but said that Warner had stood up to it—insisting on putting Rumsfeld under oath for his May 7th testimony, for example, to the Secretary's great displeasure.

An aggressive congressional inquiry into Abu Ghraib could have provoked unwanted questions about what the Pentagon was doing, in Iraq and elsewhere, and under what authority. By law, the President must make a formal finding authorizing a C.I.A. covert operation, and inform the senior leadership of the House and the Senate Intelligence Committees. However, the Bush Administration unilaterally determined after 9/11 that intelligence operations conducted by the military—including the Pentagon's covert task forces—for the purposes of "preparing the battlefield" could be authorized by the President, as Commander-in-Chief, without telling Congress.

There was coördination between the C.I.A. and the task forces, but also tension. The C.I.A. officers, who were under pressure to produce better intelligence in the field, wanted explicit legal authority before aggressively interrogating high-value targets. A finding would give operatives some legal protection for questionable actions, but the White House was reluctant to put what it wanted in writing.

A recently retired high-level C.I.A. official, who served during this period and was involved in the drafting of findings, described to me the bitter disagreements between the White House and the agency over the issue. "The problem is what constituted approval," the retired C.I.A. official said. "My people fought about this all the time. Why should we put our people on the firing line somewhere down the road? If you want me to kill Joe Smith, just tell me to kill Joe Smith. If I was the Vice-President or the President, I'd say, 'This guy Smith is a bad guy and it's in the interest of the United States for this guy to be killed.' They don't say that. Instead, George"—George Tenet, the director of the C.I.A. until mid-2004—"goes to the White House and is told, 'You guys are professionals. You know how important it is. We know you'll get the intelligence.' George would come back and say to us, 'Do what you gotta do.' "

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Bill Harlow, a spokesman for Tenet, depicted as "absurd" the notion that the C.I.A. director told his agents to operate outside official guidelines. He added, in an e-mailed statement, "The intelligence community insists that its officers not exceed the very explicit authorities granted." In his recently published memoir, however, Tenet acknowledged that there had been a struggle "to get clear guidance" in terms of how far to go during high-value-detainee interrogations.

The Pentagon consultant said in an interview late last year that "the C.I.A. never got the exact language it wanted." The findings, when promulgated by the White House, were "very calibrated" to minimize political risk, and limited to a few countries; later, they were expanded, turning several nations in North Africa, the Middle East, and Asia into free-fire zones with regard to high-value targets. I was told by the former senior intelligence official and a government consultant that after the existence of secret C.I.A. prisons in Europe was revealed, in the Washington Post, in late 2005, the Administration responded with a new detainee center in Mauritania. After a new government friendly to the U.S. took power, in a bloodless coup d'état in August, 2005, they said, it was much easier for the intelligence community to mask secret flights there.

"The dirt and secrets are in the back channel," the former senior intelligence officer noted. "All this open business—sitting in staff meetings, etc., etc.—is the Potemkin Village stuff. And the good guys—like Taguba—are gone."

In some cases, the secret operations remained unaccountable. In an April, 2005, memorandum, a C.I.D. officer—his name was redacted—complained to C.I.D. headquarters, at Fort Belvoir, Virginia, about the impossibility of investigating military members of a Special Access Program suspected of prisoner abuse:

[C.I.D.] has been unable to thoroughly investigate . . . due to the suspects and witnesses involvement in Special Access Programs (SAP) and/or the security classification of the unit they were assigned to during the offense under investigation. Attempts by Special Agents . . . to be "read on" to these programs has [sic] been unsuccessful.

The C.I.D. officer wrote that "fake names were used" by members of the task force; he also told investigators that the unit had a "major computer malfunction which resulted in them losing 70 per cent of their files; therefore, they can't find the cases we need to review." The officer concluded that the investigation "does not need to be reopened. Hell, even if we reopened it we wouldn't get any more information than we already have."

CONSEQUENCES

Rumsfeld was vague, in his appearances before Congress, about when he had informed the President about Abu Ghraib, saying that it could have been late January or early February. He explained that he routinely met with the President "once or twice a week . . . and I don't keep notes about what I do." He did remember that in mid-March he and General Myers were "meeting with the President and discussed the reports that we had obviously heard" about Abu Ghraib.

Whether the President was told about Abu Ghraib in January (when e-mails informed the Pentagon of the seriousness of the abuses and of the existence of photographs) or in March (when Taguba filed his report), Bush made no known effort to forcefully address the treatment of prisoners before the scandal became public, or to reëvaluate the training of military police and interrogators, or the practices of the task forces that he had authorized. Instead, Bush acquiesced in the prosecution of a few lower-level soldiers. The President's failure to act decisively resonated through the military chain of command: aggressive prosecution of crimes against detainees was not conducive to a successful career.

In January of 2006, Taguba received a telephone call from General Richard Cody, the Army's Vice-Chief of Staff. "This is your Vice," he told Taguba. "I need you to retire by January of 2007." No pleasantries were exchanged, although the two generals had known each other for years, and, Taguba said, "He offered no reason." (A spokesperson for Cody said, "Conversations regarding general officer management are considered private personnel discussions. General Cody has great respect for Major General Taguba as an officer, leader, and American patriot.")

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"They always shoot the messenger," Taguba told me. "To be accused of being overzealous and disloyal—that cuts deep into me. I was being ostracized for doing what I was asked to do." Taguba went on, "There was no doubt in my mind that this stuff"—the explicit images—"was gravitating upward. It was standard operating procedure to assume that this had to go higher. The President had to be aware of this." He said that Rumsfeld, his senior aides, and the high-ranking generals and admirals who stood with him as he misrepresented what he knew about Abu Ghraib had failed the nation.

"From the moment a soldier enlists, we inculcate loyalty, duty, honor, integrity, and selfless service," Taguba said. "And yet when we get to the senior-officer level we forget those values. I know that my peers in the Army will be mad at me for speaking out, but the fact is that we violated the laws of land warfare in Abu Ghraib. We violated the tenets of the Geneva Convention. We violated our own principles and we violated the core of our military values. The stress of combat is not an excuse, and I believe, even today, that those civilian and military leaders responsible should be held accountable."

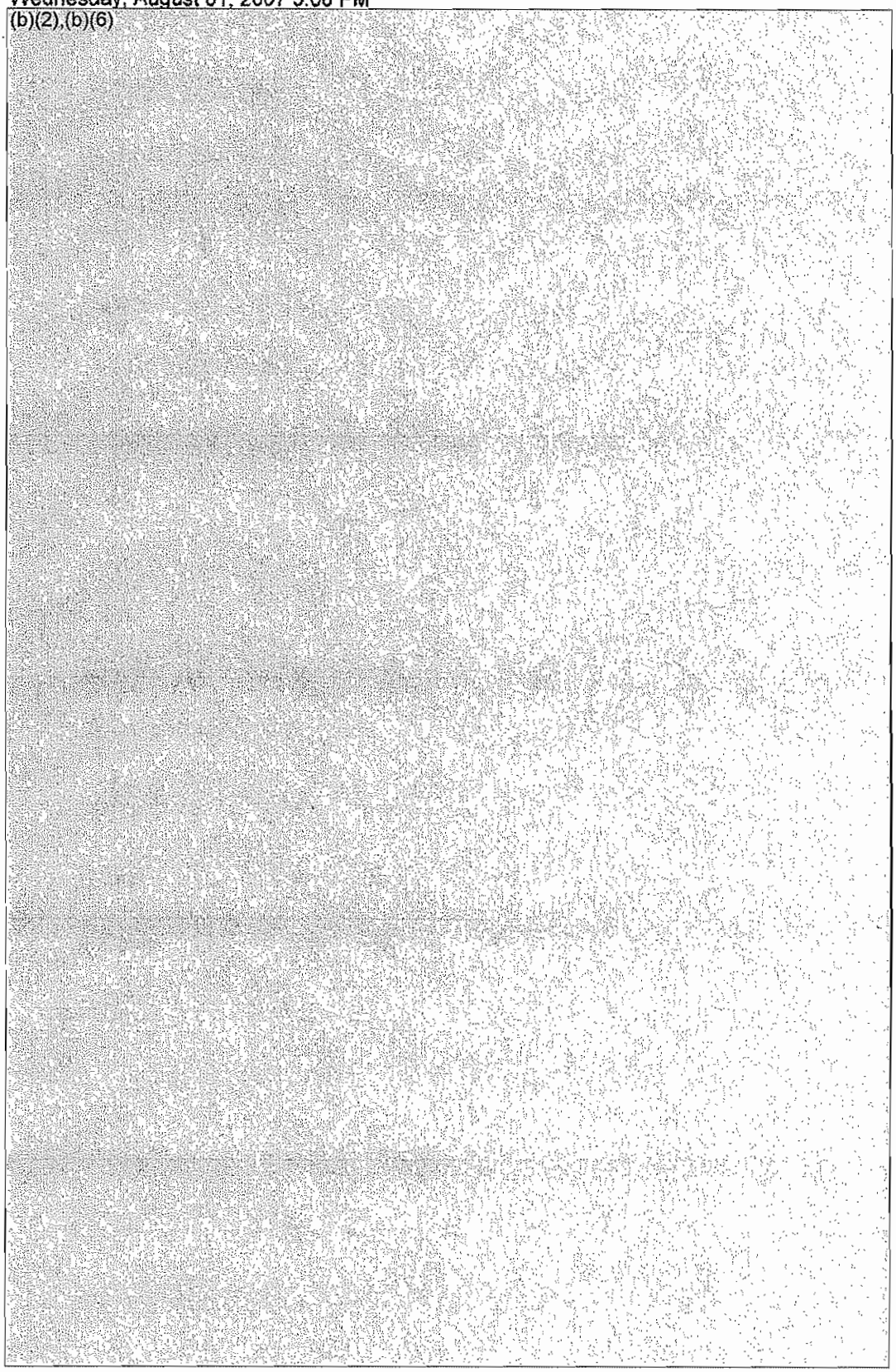
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(b)(6)

From: (b)(6) DoD OGC
Sent: Wednesday, August 01, 2007 5:00 PM
To: (b)(2),(b)(6)

Cc:



OGC AMNESTY/CCR 457

Cc: (b)(2),(b)(6) [redacted]

Subject: GTMO BIRD: Gitmo Force-Feeding Violates Medical Ethics; Cheney Says Don't Close Gitmo; Shoebat Against Releasing Detainees; Victims of CIA's Rendition Program; Questions for Murtha and Moran

>All
>
>Today's Gitmo Bird. Re: First Article - I have annotated the abbreviated JAMA Article directly relating to the Associated Press story.
>
>
>(b)(6) [redacted]
>Paralegal, GySgt, USMC (Ret.)
>Department of Defense
>Office of the General Counsel (Legal Counsel) 1600 Defense Pentagon
>Washington, D.C. 20301-1600
>Comm: (b)(2),(b)(6) [redacted]
>DSN:
>NIPR:
>SIPR:
>
>CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.
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Guantanamo Force-Feeding Violates
Medical Ethics, Commentary Says

Associated Press
July 31, 2007 4:02 p.m.

CHICAGO -- Military doctors violate medical ethics when they approve the force-feeding of hunger strikers at the U.S. prison camp at Guantanamo Bay, according to a commentary in a prestigious medical journal.
The doctors should attempt to prevent force-feeding by refusing to participate, the commentary's three authors write in Wednesday's Journal of the American Medical Association.
"In medicine, you can't force treatment on a person who doesn't give their voluntary informed consent," said Sondra Crosby of Boston University, one of the authors. "A military physician needs to be a physician first and a military officer second, in my opinion."
As of Tuesday, 20 of 23 fasting detainees at Guantanamo were being fed liquid meals through flexible tubes inserted through their noses and throats, said Guantanamo spokesman Navy Cmdr.

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Rick Haupt. The strikers are protesting conditions at the camp and their open-ended confinement.
A few physicians have declined to participate in force-feeding, although the specific number has not been tracked, Cmdr. Haupt said. The military does not punish doctors who won't participate in force-feeding, Cmdr. Haupt wrote Friday in an email response to questions from the Associated Press.
A mass hunger strike began at Guantanamo in August 2005 and reached a peak of 131 detainees. Last year, the military started strapping detainees in restraint chairs during tube feedings to prevent the prisoners from resisting or making themselves vomit. The restraint chairs constitute excessive force and coercion, Dr. Crosby said.
Department of Defense spokeswoman Cynthia Smith said force-feeding is done "in a humane and compassionate manner," using a method that is consistent with procedures used in U.S. federal prisons. "No patient receives any medical treatment unless medically necessary," Ms. Smith said.
Last year, Dr. Crosby and another co-author reviewed the medical records of two detainees who were force-fed and wrote affidavits filed in federal court. They were not paid for that work, which they did at the request of the prisoners' attorneys. Reviewing those medical records prompted the commentary, Dr. Crosby said. "We were and still are disturbed by the practices," she said.
The medical records contained no evidence that the hunger strikers received ongoing psychiatric evaluations or had been adequately told about the risks of fasting or tube feeding, Dr. Crosby said. If they understand the consequences, the ethical approach is to let them fast without force-feeding, Dr. Crosby said. She said it's also unclear whether the strikers have access to independent medical consultation.
Cmdr. Haupt, the Navy spokesman, said strikers are seen once each week by mental health professionals. The strikers' physical and mental health is closely monitored, he said. However, they aren't allowed to consult with independent doctors, Cmdr. Haupt said.
The commentary calls on professional organizations to back doctors who refuse to participate in force-feeding. Commentaries are the opinions of the authors, not of the journal's editors or of the American Medical Association, but the AMA has endorsed the World Medical Association's policy against force-feeding.
About 360 men are still held at Guantanamo on suspicion of terrorism or links to al Qaeda or the Taliban.

"CLINICIAN'S CORNER
Hunger Strikes, Force-feeding, and Physicians' Responsibilities Sondra S. Crosby, MD; Caroline M. Apovian, MD; Michael A. Grodin, MD JAMA. 2007;298:563-566.
Prison hunger strikes present clinical, ethical, legal, and human rights challenges to physicians who care for hunger strikers. Controversy continues over the care of prisoners who are hunger striking at the US Naval Base in Guantánamo Bay, Cuba.1 The World Medical Association (WMA) has updated the Declaration of Malta with guidelines on care of hunger strikers,2 and recent court opinions in the United States and Europe have attempted to define the obligations of physicians caring for hunger strikers in prison settings.3 This Commentary describes the medical aspects of starvation and examines the ethical, legal, and human rights dimensions of decision making by health care professionals caring for imprisoned patients who are hunger striking.
Prisoner Hunger Strikes

A hunger strike, by definition, is food refusal used as a form of protest or demand. Hunger strikes occur in various settings, but . . . [Full Text of this Article <http://jama.ama-assn.org/cgi/content/full/298/5/563>] Author Affiliations: Departments of Medicine (Drs Crosby and Apovian) and Psychiatry (Dr Grodin), Boston University School of Medicine, and Department of Health Law, Bioethics and Human Rights, Boston University School of Public Health (Drs Crosby and Grodin), Boston, Massachusetts.
http://jama.ama-assn.org/cgi/content/short/298/5/563"
http://online.wsj.com/article/SB118590430311983608.html?mod=googlenews_wsj

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Cheney: Don't Close Guantanamo Yet
By Michael Abramowitz
Washington Post Staff Writer
Wednesday, August 1, 2007; A04
Vice President Cheney
<http://www.washingtonpost.com/ac2/related/topic/Dick+Cheney?tid=informline> said yesterday that he would not immediately close the prison housing terrorism suspects at Guantanamo Bay <http://www.washingtonpost.com/ac2/related/topic/Guantanamo+Bay?tid=informline> , because there is no other place to send some of the world's most dangerous men.
President Bush
<http://www.washingtonpost.com/ac2/related/topic/George+W.+Bush?tid=informline> has said repeatedly that he wants to close the prison once administration officials figure out what to do with several hundred remaining detainees. But senior administration officials have been divided about how to accomplish that, given practical impediments such as the reluctance on the part of some countries to accept the return of their citizens detained there.
Cheney gave voice to his position in an interview with CNN <http://www.washingtonpost.com/ac2/related/topic/Cable+News+Network+LP+LLLP?tid=informline> 's Larry King <http://www.washingtonpost.com/ac2/related/topic/Larry+King?tid=informline> , who asked whether Cheney agreed with former secretary of state Colin L. Powell <http://www.washingtonpost.com/ac2/related/topic/Colin+Powell?tid=informline> that the facility should be closed "yesterday."
"I think you need to have someplace to hold those individuals who have been captured during the global war on terror. I'm thinking of people like Khalid Sheik Mohammed <http://www.washingtonpost.com/ac2/related/topic/Khalid+Shaikh+Mohammed?tid=informline> . This is a man we captured in Pakistan <http://www.washingtonpost.com/ac2/related/topic/Pakistan?tid=informline> . He's the mastermind of 9/11," Cheney replied. "There are hundreds of people like that, and if you closed Guantanamo, you'd have to find someplace else to put these folks."
Cheney also came to the defense of a former aide, Eric S. Edelman <http://www.washingtonpost.com/ac2/related/topic/Eric+Edelman?tid=informline> , now an undersecretary of defense. Edelman recently stirred controversy when he responded to a request from Sen. Hillary Rodham Clinton <http://projects.washingtonpost.com/congress/members/c001041/> (D-N.Y.) for a briefing on withdrawal plans from Iraq <http://www.washingtonpost.com/ac2/related/topic/Iraq?tid=informline> by accusing her of reinforcing "enemy propaganda that the United States will abandon its allies" by discussing a timetable for withdrawal.
Cheney said he thought Edelman wrote "a good letter" and added that "we don't get into the business of sharing operational plans -- we never have -- with the Congress."
A spokesman for Clinton noted that Defense Secretary Robert M. Gates <http://www.washingtonpost.com/ac2/related/topic/Robert+Gates?tid=informline> took a more "conciliatory tone" after the Edelman letter and reaffirmed Congress's role in overseeing the administration. "It seems the right hand doesn't know what the far-right hand is doing," said Clinton spokesman Philippe Reines.
Cheney also disclosed that he recently had dinner with his former chief of staff I. Lewis "Scooter" Libby, whose 30-month sentence for perjury and obstruction of justice was commuted by Bush. Cheney said earlier this week that he disagreed with the verdict.
"He's doing well," Cheney said. "He obviously went through a very, very difficult time, very hard for him and for his family. I think having the commutation of sentence decided has been a huge relief for him, but he still has a very difficult road. He's got -- obviously he needs to find work. He's got legal bills. He carries the burden of having been convicted. All those are not easy problems. But he's clearly in -- he's in good spirits and getting on with his life."
http://www.washingtonpost.com/wp-dyn/content/article/2007/07/31/AR2007073101725.html

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Fox guest compares releasing Gitmo detainees to Russian roulette
07/31/2007 @ 9:04 am
Filed by David Edwards and Muriel Kane
Fox News on Tuesday raised the question of whether the US detention center at Guantanamo Bay should be shut down, weighing the possibility of released terrorists returning to the battlefield against that of holding innocent people indefinitely.
Fox spoke to self-described former PLO terrorist, Walid Shoebat, who compared releasing the Guantanamo inmates to playing Russian roulette, where a gun with a bullet in only one chamber can still be fatal. "It is a crazy idea," he said. Shoebat's advise on the detainees was to "keep them in prison, sentence them later on. Look, in Israel, we had administrative arrests. You can go for years until you are proven innocent or guilty."
When asked, "You're a former terrorist. ... Why'd you turn your life around?" Shoebat replied, "I came to America and I've converted to Christianity. ... I began to recognize the pathological lies that we grew up under. Even in prison ... we made all kinds of claims."
Shoebat, an Evangelical Christian, has since 9/11 made frequent appearances supporting Israel and condemning Islam, which he compares to Nazism. His background and credentials have at times been called into question <http://www.sourcewatch.org/index.php?title=Walid_Shoebat> .
http://rawstory.com/news/2007/Fox_guest_Russian_Roulette_for_Gitmo_0731.html

The video interview can also be seen at the above link.

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Two More Victims of CIA's Rendition Program, Including Former Guantánamo Detainee, Join ACLU Lawsuit Against Boeing Subsidiary (8/1/2007) Evidence of Company's Role in CIA Program Mounts
FOR IMMEDIATE RELEASE
CONTACT: media@aclu.org

NEW YORK -- Today, two additional victims of the United States government's unlawful "extraordinary rendition" program joined a lawsuit brought by the American Civil Liberties Union against Jeppesen Dataplan, Inc., a subsidiary of Boeing Company. The ACLU charges in its amended complaint that Jeppesen knowingly provided direct flight services to the CIA enabling the clandestine transportation of Bisher al-Rawi and Mohamed Farag Ahmad Bashmilah to secret overseas locations where they were subjected to torture and other forms of cruel, inhuman and degrading treatment.
"Being a victim of the CIA's rendition program was horrific beyond words," said al-Rawi. "Regrettably, there are many more like me who haven't been fortunate enough to be released. No one should have to endure such illegal and inhumane treatment."
In addition to adding two more plaintiffs to the case, today's amended complaint cites further evidence of Jeppesen's involvement in the CIA's program. Citing a report from the Council of Europe, the amended complaint alleges that Jeppesen intentionally submitted "dummy flights" to various aviation authorities in order to conceal the true flight paths of the rendition planes. The ACLU's original complaint cited a New Yorker article that reported that a former Jeppesen employee informed the magazine that, at an internal corporate meeting, a senior Jeppesen official stated, "We do all of the extraordinary rendition flights - you know, the torture flights. Let's face it, some of these flights end up that way." (Jane Mayer, The New Yorker, Oct. 30, 2006.) "The more evidence we obtain, the more we learn about the magnitude of Jeppesen's role in the CIA's rendition program," said Anthony D. Romero, Executive Director of the ACLU. "It is reprehensible for American corporations to profit from a government program involving kidnapping and torture. The rendition program is unlawful, immoral, and anathema to American values. Companies that choose to facilitate it should be held legally accountable."
The ACLU's original complaint, filed on May 30 in the U.S. District Court for the Northern District of California, was initiated on behalf of Binyam Mohamed, Abou Elkassim Britel and Ahmed Agiza, three other victims of the CIA's rendition program.

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The lawsuit charges that Jeppesen, through its travel service known as Jeppesen International Trip Planning, has been a main provider of flight and logistical support services for aircraft used by the CIA in the U.S. government's extraordinary rendition program. The CIA rendition flights transfer terror suspects to countries where the U.S. government knows detainees are routinely tortured or otherwise abused in contravention of universally accepted legal standards. The lawsuit also charges that Jeppesen has facilitated flights to U.S.-run detention facilities overseas where the U.S. government maintains that the safeguards of its laws do not apply. According to the lawsuit, since December 2001, Jeppesen has provided flight and logistical support to at least 15 aircraft that have made a total of 70 rendition flights.

"The support services provided by Jeppesen have been absolutely critical to the functioning of the government's rendition program," said Steven Watt, a staff attorney for the ACLU's Human Rights Program.

Specifically, the ACLU alleges in its amended complaint that Jeppesen provided crucial support services to the CIA for the following flights involving al-Rawi and Bashmilah:

* In December 2002, Iraqi citizen and British resident Bisher al-Rawi was stripped, dressed in a diaper, shackled, blindfolded, restrained in a harness, and flown from Banjul, Gambia to Kabul, Afghanistan where he was secretly detained, interrogated, and tortured at the secret U.S.-run detention facility known as the "Dark Prison" and then at the Bagram Air Base.

* In October 2003, Yemeni citizen Mohamed Farag Ahmad Bashmilah was beaten, stripped, dressed in a diaper, shackled, blindfolded, hooded, strapped in an airplane, and flown from Jordan to Kabul, Afghanistan and then taken to Bagram Air Base where he was interrogated, tortured, and held incommunicado by the U.S. government for about six months.

"Through the entire flight from Gambia to Kabul, I was on the verge of screaming," said al-Rawi. "I was terrified."

After their detentions in Afghanistan, al-Rawi and Bashmilah continued to endure brutal treatment in U.S. custody. In February 2003, al-Rawi was flown to the U.S. prison in Guantánamo Bay, Cuba. He was released in March 2007 and now resides in England. No charges have ever been brought against him.

In April 2004, Bashmilah was again stripped, diapered, shackled, hooded, and transferred to a CIA "black site" in an unknown country where he was once again tortured. In May 2005, he was once again "prepared" for flight, this time to Yemen where he was detained for about nine months before being released.

The lawsuit was filed under the Alien Tort Statute, which permits aliens to bring claims in the United States for violations of the law of nations or a United States treaty. The statute recognizes international norms accepted among civilized nations that are violated by acts such as enforced disappearance, torture and other inhuman treatment described in the lawsuit.

In a related case, the ACLU has petitioned the United States Supreme Court to review the case of Khaled El-Masri, an innocent German citizen who was also a victim of the government's unlawful rendition program. Although the story of El-Masri's mistaken kidnapping and detention at the hands of the CIA is known throughout the world, his lawsuit was dismissed by the U.S. District Court for the Eastern District of Virginia after the government invoked the so-called "state secrets" privilege. That decision was upheld by the U.S. Court of Appeals for the Fourth Circuit in March 2007.

More information on the Jeppesen lawsuit, including copies of the original and amended complaints, as well as information on El-Masri's case, can be found online at www.aclu.org/rendition In addition to Watt, attorneys on the Jeppesen lawsuit are national ACLU Legal Director Steven Shapiro, Ben Wizner, Alexa Kolbi-Molinas and Jameel Jaffer of the national ACLU, Ann Brick of the ACLU of Northern California, Paul Hoffman of Schonbrun DeSimone Seplow Harris & Hoffman LLP, and Hope Metcalf of the Yale Law School Lowenstein Clinic. In addition, Margaret L. Satterthwaite of the International Human Rights Clinic of New York University School of Law represents Mohamed Farag Ahmad Bashmilah, and Clive Stafford-Smith and Zachary Katznelson represent Binyam Mohamed.

Khaled El-Masri is represented by Watt, Wizner, Shapiro, Jaffer and Melissa Goodman of the national ACLU, Rebecca Glenberg of the ACLU of Virginia and Victor Glasberg of Victor M. Glasberg & Associates.

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http://www.aclu.org/safefree/torture/31165prs20070801.html

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Questions for Reps. Murtha and Moran
August 1, 2007

Tomorrow, the House is expected to take up the defense appropriations bill, and despite the good news coming out of Iraq in recent days, the Democratic leadership is prepared to do everything it can to tack on amendments aimed at discrediting the war on terror. The chairman of House Defense Appropriations Subcommittee, Rep. Jack Murtha, says he will offer an amendment to shut down the detention facility at Guantanamo Bay, Cuba, where approximately 360 jihadists captured abroad are being held. For years political opponents of the Bush administration led by organizations like the Center for Constitutional Rights, the hard-left outfit founded by attorney William Kunstler, have held that the overwhelming majority of Gitmo detainees are either innocents who were snatched up by unscrupulous bounty hunters for money and turned over to the U.S. military or low-level members of hostile groups who posed no real threat to U.S. military forces.

CCR and its political allies thought they had hit the jackpot in February 2006, when a report published by the Seton Hall University School of Law and a pair of attorneys representing detainees surveyed declassified information on persons who had been detained at Gitmo and concluded that only 8 percent had been characterized as al Qaeda fighters and that more than half of the detainees had not committed any hostile act against the United States. But a just-published study of the same data – 516 military hearings conducted in 2004 and 2005 to determine whether individual detainees should continue to be held as enemy combatants – suggests that the oft-cited Seton Hall study dramatically understated the danger posed by the detainees.

According to the new study, published by the Combatting Terrorism Center (CTC) at West Point, 73 percent of the detainees were "demonstrated threats" to coalition forces; 95 percent represented at least a "potential threat" as an enemy combatant – defined as someone "who supported hostile activities or was affiliated with groups that executed and/or supported terrorist acts," or received weapons training or possessed weapons that could be used in support of terrorist activities. The potential enemy combatants included people who were identified as fighters for al Qaeda or the Taliban; persons who received training at an al Qaeda or Taliban camp and ones who " eceived training in the employment of combat weapons other than or in addition to rifles/small arms including grenades, rocket-propelled grenades, sniper rifles and the construction and/or deployment of explosives and [improvised explosive devices]."

When Mr. Murtha and advocates like Rep. Jim Moran make the case to shut down Gitmo, we hope that more responsible Democrats and Republicans will ask them serious questions about the jihadists at Guantanamo Bay. It would be interesting to know two things: Do they know how dangerous Gitmo detainees are, and where do they plan to send them if Gitmo is shut down?

http://washingtontimes.com/apps/pbcs.dll/article?AID=/20070801/EDITORIAL/108010001

OGC AMNESTY/CCR 463

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From: (b)(6) DoD OGC
Sent: Friday, September 28, 2007 4:00 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 464

Cc: (b)(2),(b)(6) [redacted]

Subject: GTMO BIRD: HVD's ALLOWED LAWYERS; GITMO DETAINEE RELEASED; CCR FILES VISIT REQUEST FOR KHAN; LAWYERS DENIED ACCESS TO DETAINEES; O'CONNOR COMMENTS ON TERROR TRIALS; DETAINEE ART; LCDR SWIFT & HAMDAN; YEE SPEECH

>All
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>Today's GTMO bird.
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>(b)(6) [redacted]
>Paralegal, GySgt, USMC (Ret.)
>Department of Defense
>Office of the General Counsel (Legal Counsel)
>1099 14th Street, NW (Franklin Court)
>(b)(2) [redacted]
>Washington, DC
>Comm: (b)(2),(b)(6) [redacted]
>NIPR: [redacted]
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U.S. to Allow Key Detainees to Request Lawyers
14 Terrorism Suspects Given Legal Forms at Guantanamo By Josh White and Joby Warrick
Washington Post Staff Writers Friday, September 28, 2007; A01 Fourteen "high-value" terrorism suspects who were transferred to Guantanamo Bay, Cuba
<http://www.washingtonpost.com/ac2/related/topic/Guantanamo+Bay?tid=informline> , from secret CIA
<http://www.washingtonpost.com/ac2/related/topic/Central+Intelligence+Agency?tid=informline> prisons last year have been formally offered the right to request lawyers, a move that could allow them to join other detainees in challenging their status as enemy combatants in a U.S. appellate court.
The move, confirmed by Defense Department
<http://www.washingtonpost.com/ac2/related/topic/U.S.+Department+of+Defense?tid=informline> officials, will allow the suspects their first contact with anyone other than their captors and representatives of the International Committee of the Red Cross

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<http://www.washingtonpost.com/ac2/related/topic/International+Federation+of+Red+Cross+and+Red+Crescent+Societies?tid=informline> since they were taken into custody.
The prisoners, who include Khalid Sheikh Mohammed
<http://www.washingtonpost.com/ac2/related/topic/Khalid+Shaikh+Mohammed?tid=informline> , the alleged mastermind of the Sept. 11, 2001, attacks, have not had access to lawyers during their year at Guantanamo Bay or while they were held, for varying lengths of time, at the secret CIA sites abroad. They were entitled to military "personal representatives" to assist them during the administrative process that determined whether they are enemy combatants.
U.S. officials have argued in court papers against granting lawyers access to the high-value detainees without special security rules, fearing that attorney-client conversations could reveal classified elements of the CIA's secret detention program and its controversial interrogation tactics.
Defense officials gave the detainees "Legal Representation Request" forms during the last week of August and the first week of September, and sources familiar with the process said at least four detainees have requested attorneys.
The form, referring to the Combatant Status Review Tribunal, allows the detainees to say whether they "wish to have a civilian lawyer represent me and assist me with filing a petition to challenge the CSRT determination that I am an Enemy Combatant." The Detainee Treatment Act, enacted in late 2005, gives Guantanamo Bay captives the right to challenge their enemy-combatant designations in the U.S. Court of Appeals
<http://www.washingtonpost.com/ac2/related/topic/U.S.+Court+of+Appeals?tid=informline> for the District of Columbia Circuit.
The form distributed to the high-value suspects also allows them to request that the American Bar Association
<http://www.washingtonpost.com/ac2/related/topic/American+Bar+Association?tid=informline>
"find a lawyer who will represent my best interests, without charge."
William H. Neukom, the association's president, criticized the use of the organization's name on the form, telling government lawyers yesterday that his organization does not want to "lend support and credibility to such an inadequate review scheme."
A Pentagon spokesman said this week that the detainees, like all others at Guantanamo, are provided information on how to request counsel.
"These counsel will be permitted to visit the detainee and engage in confidential written communications with the detainee once the counsel has obtained the necessary security clearance" and agrees to certain special court rules, said Navy Cmdr. J.D. Gordon. One Pentagon official warned that those lawyers will have to undergo especially thorough background checks before they are allowed to see the high-value captives.
Defense and intelligence officials said the decision to allow legal representation does not represent a shift in policy.
"It was the intent and the plan all along that they would have a right to counsel," said a senior intelligence official, who insisted on anonymity because many details of the detention program remain classified. The official said the concerns about protecting sensitive government information apply equally to the 14 men and the approximately 325 other detainees at Guantanamo Bay.
"The goal here is to have the trials open and public to the greatest extent consistent with protecting classified information," the official said.
But lawyers and advocacy groups pressing for legal rights for the detainees contend that there has been a change in tone since last fall, when Justice Department
<http://www.washingtonpost.com/ac2/related/topic/U.S.+Department+of+Justice?tid=informline> lawyers argued that the detainees might reveal details about their captivity that may "reasonably be expected to cause extremely grave damage" to national security, according to an Oct. 26 court filing.
One of the 14 special detainees, Majid Khan, 27, who went to high school in the Baltimore
<http://www.washingtonpost.com/ac2/related/topic/Baltimore?tid=informline> area, filled out his form on Sept. 5. He signed the document and added a short handwritten note at the bottom of the page. That note and the fact that the U.S. military
<http://www.washingtonpost.com/ac2/related/topic/U.S.+Armed+Forces?tid=informline> had him

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sign the document have riled defense lawyers who have been attempting to represent Khan for more than a year at the request of his family but who have been denied access to him.
In the note, Khan said that he believes he already has an attorney at the Center for Constitutional Rights but that he has never received any official correspondence from that lawyer. The lawyer, Gitanjali Gutierrez, said yesterday that she has written Khan letters over the past year that clearly did not reach him.
"Please send me a lawyer or representative who can brief me with my options," Khan wrote, according to a copy of the form provided to The Washington Post <http://www.washingtonpost.com/ac2/related/topic/The+Washington+Post+Company?tid=informline> by the Center for Constitutional Rights. "Also please, if you can send me basic introduction criminal law books with all law terms, etc. Also I would like to know what has media said about me and full copy of tribunal CSRT about me, which was available on the Internet. (Thanks in advance)."
The government alleges that Khan took orders from Mohammed, and was asked to research how to poison U.S. reservoirs and how to blow up U.S. gas stations.
Gutierrez said she thinks the effort to connect detainees with lawyers is the Defense Department "trying to put some gloss on the idea that this review process is legitimate and the high-value detainees are being given access to the courts."
"Now it's their opportunity to turn it from a gloss to a reality," Gutierrez said. "But we'll see if they come through."
Staff researcher Julie Tate contributed to this report.
http://www.washingtonpost.com/wp-dyn/content/article/2007/09/27/AR2007092702458.html?hpid=topnews

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Gitmo prisoner released
2 Denver lawyers work to free man held for six years

By Sue Lindsay, Rocky Mountain News
September 28, 2007

Two Denver lawyers have won the release of a man held prisoner at Guantanamo Bay for six years.
"We are overjoyed for our client," attorney John Holland said. "We're relieved for the resolution of this particular injustice, but the problem continues for many other prisoners who are likewise held unjustly and denied all fundamental rights known to the Western world. "There are many thousands of people who remain completely voiceless in secret prisons. We don't even know their names."
Holland and his daughter, Anna Cayton-Holland, represent the man, who is from the African country of Mauritania, and three other Guantanamo prisoners. Hundreds of other prisoners are represented by teams of volunteer lawyers from throughout the U.S.
Mohamed Al Amin was 17 when he was arrested in Pakistan in 2002. He had been been held since then at Guantanamo, without being charged.
Al Amin was returned to Mauritania on Wednesday and was jailed, awaiting release there, Holland said.
U.S. authorities determined that he was "eligible for release" earlier this year, Holland said, "but he is just now getting out."
"Approximately 90 other people have been determined eligible for release but many still have not been released," he said.
Cayton-Holland said that Al Amin was studying the Quran in Pakistan when he was "sold into custody" by bounty hunters.
"Being a foreign citizen living in Pakistan made him an easy mark," she said. "There has never been any evidence put forward that he was a terrorist."
Holland and Cayton-Holland traveled to Mauritania in January to encourage newly elected President Sidi Ould Cheikh Abdellahi to lobby for Al Amin's release.

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"I feel an overwhelming sense of relief," Holland said. "You stay up at night thinking about people like this. You feel terrible because you're impotent - you can't get a hearing."
He said that Guantanamo prisoners are detained for years without a hearing or charges being filed.
http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_5709320,00.html

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FORMER GHOST DETAINEE AT GUANTÁNAMO TO RECEIVE LAWYERS CCR FILES VISIT REQUEST TO SEE CLIENT MAJID KHAN IN EARLY OCTOBER Synopsis On September 28, 2007, attorneys with the Center for Constitutional Rights (CCR) filed a visit request with the Defense Department to see their client, Majid Khan, who was transferred one year ago from secret CIA detention to Guantánamo. Two attorneys from the Center received Top Secret SCI clearance this week, higher than many members of the military who conducted the detainees' Combatant Status Review Tribunals (CSRT's), and expect to finally meet their client after a year of fighting for access. The request was made for visits either the week of October 8 or the week of November 5.
Said CCR attorney Wells Dixon, "We are glad the government finally agrees that Majid is entitled to immediate access to his counsel, and we fully expect they will approve our pending visit request and allow us access to him in Guantánamo within a few weeks."
Majid Khan wrote by hand at the bottom of a form offering to have the American Bar Association help him retain counsel, "I think I already have a lawyer at CCR, but I never received any official letters from my lawyers (Gitanjali S. Gutierrez)… Please send me a lawyer or representative who can brief me with my options. Also please, if you can send me basic introduction criminal law books with all law terms, etc. Also I would like to know what has media said about me and full copy of tribunal CSRT about me, which was available on the Internet. (Thanks in advance)."
Said Shayana Kadidal, Managing Attorney of the Center for Constitutional Rights Guantánamo Global Justice Initiative, "What is disturbing about the form given to the detainees is the way the government is trying to make a fundamentally flawed process look legitimate by invoking the name of the American Bar Association. The Detainee Treatment Act review is so limited it doesn't even come close to a substitute for habeas corpus."
http://www.ccr-ny.org/v2/reports/report.asp?ObjID=tkqBlem3rU&Content=1121

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Lawyers are Denied Access to Detainees
A Bad Week at Guantánamo
By ANDY WORTHINGTON
One thing you learn when studying Guantánamo is that nothing can ever be taken for granted, and the events of the last week have demonstrated, yet again, that this is the case. In Washington, last week District Court Judge Ricardo Urbina dismissed 16 lawsuits, challenging the indefinite imprisonment of at least 40 detainees in Guantánamo. This has had the knock-on effect of denying lawyers access to their clients. Crowing smugly, Justice Department lawyer Andrew Warden declared after the decision, "In light of this development, counsel access (both legal mail and in-person visits) is no longer permitted."
That this is possible, 39 months after the Supreme Court ruled decisively, in Rasul v. Bush, that the detainees had the right to challenge the basis of their detention, and that habeas corpus was, as Justice John Stephens so memorably described it, "a writ antecedent to statute throwing its roots deep into the genius of our common law," demonstrates, succinctly, how the Bush administration has, for the last six years, shamed the "genius" of the American legal system by reducing it to a game of legislative ping-pong.
Although lawyers for the detainees remain confident that the Supreme Court will rule in the detainees' favor (probably in spring 2008), this is a terrible setback for the detainees in question. Imprisoned without charge or trial for over five and a half years, they have no other contact with the outside world apart from through the minimal ministrations of the International Committee of the Red Cross, and their lawyers are often their only lifeline. This process is made that much harder when, year after year, the lawyers are driven to admit

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to their clients that, despite widespread opposition to the existence of Guantánamo, their attempts to bring them justice-- a day in court before a judge who can impartially weigh the evidence set before him by the government-- are repeatedly obstructed by the administration.
In all likelihood, Judge Urbina's ruling will not shut down the lawyer-client relationship entirely. As reported by the Associated Press, Andrew Warden "outlined a series of legal steps that would be required before the attorneys could resume contact with the detainees." After jumping through hoops and being generally belittled, more restrictive arrangements will be arranged with the lawyers, but they may come too late for the Libyan detainee Abdul Rauf al-Qassim. Cleared by a military administrative board after five years at Guantánamo, al-Qassim, a deserter from the Libyan army, had spent a decade living in Afghanistan and Pakistan without raising arms against anyone, and was kidnapped from a house in Lahore, Pakistan, in May 2002, after fleeing Afghanistan with his pregnant Afghan wife.
Al-Qassim has spent most of this year fighting cynical attempts by the administration to return him to the country of his birth, where he has legitimate fears that he will be tortured. Wells Dixon, one of his lawyers at the Center for Constitutional Rights, explained that he would "most likely not be able to complete [the new] measures in time for a scheduled visit" with al-Qassim next month, which he described as "crucial," because he was "in the midst of trying to prevent the government from transferring [him] back to Libya. In measured tones, he added, "This is just the latest example of the government's efforts to frustrate counsel access to detainees." In a press release, another CCR attorney, Shayana Kadidal, spelt out al-Qassim's plight in stronger terms: "We need to remember that this is a man the government has cleared for release-- as close to a statement of innocence as the government will ever issue. Abdul Rauf should never have been taken to Guantánamo in the first place, and the courts should not allow the government to 'disappear' him into Libya in order to cover up its own mistake."
In a second, and far more shocking development, the Military Commissions at Guantánamo-- the widely derided show trials, which purport to provide justice, while relying on secret evidence obtained through torture-- stumbled back to life on Monday. Condemned as illegal under US law and the Geneva Conventions by the Supreme Court in June 2006, the Commissions were reinstated in the Military Commissions Act (MCA) last fall, but were derailed again three months ago, when the military judges appointed to preside over the cases of child soldier Omar Khadr and Salim Hamdan, one of Osama bin Laden's chauffeurs, shut down the trials. They argued, correctly, that the MCA had mandated them to try "illegal enemy combatants," whereas the system that had made them eligible for trial-- the Combatant Status Review Tribunals, "administrative" hearings which also relied on secret evidence obtained through unknown means-- had only declared them to be "enemy combatants."
After a farcical interlude, in which the administration declared petulantly that it would appeal the judges' decisions, and was then pilloried when it transpired that the appeals court in question had not yet been established, the Court of Military Commissions Review convened a month ago in a borrowed courtroom near the White House.
Announcing their verdict on Monday, the court's three military judges-- all appointed by the Pentagon-- agreed with Khadr's military judge, Col. Peter Brownback, that Khadr's classification as an "enemy combatant" at his Combatant Status Review Tribunal in Guantánamo "failed to meet the requirements for jurisdiction set forth in the Military Commissions Act," but explained that Brownback had "erred" in ruling that a Tribunal Review was required to determine that Khadr was an "unlawful enemy combatant" as a pre-requisite for bringing charges against him under the Military Commissions Act. They added, moreover, that he had "abused his discretion in deciding this critical jurisdictional matter without first fully considering" the government's evidence.
The decision was immediately condemned by human rights activists. Jameel Jaffer, the director of the American Civil Liberties Union's national security project, declared, "This ruling may be a step forward for the military commissions but it's a step backwards for the rule of law. While there are prisoners at Guantánamo who should be tried for war crimes, they should be tried under rules that are fair and that will be perceived as fair. The current rules fail this test."
More importantly, the verdict was also condemned by Khadr's defense lawyers, led by Lt. Cmdr. William Kuebler, the principled military attorney, who, in the past few months, has described

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the Commissions as rigged, ridiculous, unjust, farcical, a sham, and a lawless process. As soon as Pentagon spokesman Bryan Whitman announced that Khadr's trial had been revived, and that it was the Pentagon's intention "to move out in an expeditious manner to get the military commission cases to trial," Kuebler responded by saying that Khadr's legal team would appeal, asking a civilian court in Washington to block the trial. "This court," Kuebler explained, referring to the Court of Military Commissions Review, "had the chance to bring some degree of legitimacy to an otherwise lawless process," adding, pointedly, "It failed to do so." In a statement, he and Khadr's other lawyers-- Dennis Edney and Nathan Whitling-- accused the military judge of "prohibited off-the-record coordination," and explained that the date set by the Pentagon for Khadr's trial to begin-- October 11-- failed to allow them enough time to challenge the case. "It is the latest evidence of the government's determination to rush forward with the flawed military commission process at breakneck speed, disregarding whatever rights of the accused that may get in the way," Kuebler declared.
Expect more fireworks to follow from the latest in an increasingly long line of government-appointed military lawyers to have turned on their masters in the most principled manner possible. Those in any doubt that Lt. Cmdr. Kuebler means what he says should recall that in June he explained to a GQ reporter, "I think things have been done to people that under any definition except this administration's very narrow one would be torture."
Andy Worthington (www.andyworthington.co.uk <http://www.andyworthington.co.uk/>) is a British historian, and the author of 'The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison' <http://www.amazon.com/exec/obidos/ASIN/0745326641/counterpunchmaga> (to be published by Pluto Press in October 2007).
He can be reached at: andy@andyworthington.co.uk
http://www.counterpunch.org/worthington09272007.html

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Retired U.S. justice says terror cases will be a challenge for years 20 hours ago OTTAWA - A long-serving justice of the U.S. supreme court said those still on the highest American bench will have to deal with interrogation techniques and whether they constitute torture.
Sandra Day O'Connor, the first woman to sit on the American high court, told students at the University of Ottawa that classifying interrogation techniques might not be as clear-cut as many may think.
While she said civil liberties cannot be thrown out in pursuit of security, she quoted one of her predecessors who observed that "the bill of rights is not a suicide pact."
O'Connor, who was appointed to the court by Republican president Ronald Reagan, said she has no illusions about the dangers posed by terrorism.
"We can't grow complacent in our concern about threats to security."
Students asked which side - security or liberty - should be favoured and she said there are no absolutes.
"It depends on the question," she said.
"It depends on the exigencies of the danger involved."
O'Connor, who retired last year after a quarter-century on the high court, said judges have wrestled with similar problems in the past.
She told the students of a time when a president of the United States in wartime decided to use special military tribunals to try citizens accused of colluding with the enemy.
However, she added, that president wasn't George W.
Bush and Guantanamo, it was Abraham Lincoln.
And in that case, the American supreme court ruled that military tribunals had no jurisdiction as long as the civilian courts were open and functioning.
O'Connor, 76, said the issues today are distinct from those facing Lincoln, but they also have their similarities and she suggested the courts can look to history for guidance.
Dealing with terrorism will challenge lawyers and judges for years to come, O'Connor said.
She told law students that terrorism is a major legal issue today and will continue to be one as courts wrestle with the implications of laws aimed at suppressing terrorists.

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The key is striking a balance between protecting national security and preserving civil liberties.
"If I were a law student today, I would be totally fascinated by these very fundamental issues," she said.
Courts in Canada, the United States, Britain, Germany and Australia have all tackled terror cases in recent years.
"In all these nations, people are engaged in discussions concerning these very important issues," she said.
And despite the court rulings, that's not the end of it.
"We haven't heard the last of these issues."
Justice Marshall Rothstein of the Supreme Court of Canada, who also spoke to the group, said these judgments depend on the facts in individual cases.
"It's a balancing exercise," he said.
http://canadianpress.google.com/article/ALeqM5gD5C9pw67Q_HtII99CbZXakqP5Cg

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New exhibit from artist Margot Herster seeks to put faces to the detainees at Guantánamo Bay.
by leah bartos
Sentinel correspondent
From the cloaked silhouettes of Abu Ghraib prisoners to the smoke pluming from the Twin Towers, the most infamous images of the so-called War on Terror depict nothing short of human ugliness stemming from all sides of the frontlines.
But photographer Margot Herster has taken a different view.
In her quest to restore the personalities of a handful Guantánamo Bay prisoners, Herster compiled images of 11 detainees and their families for a new installation titled, "Guantánamo: Pictures from Home," now exhibiting at the Porter Sesnon Gallery on the campus of UC Santa Cruz.
Featuring more than 100 photographs, video vignettes and audio installations, the exhibit offers an alternate view of the Guantánamo detainees, who have gone essentially nameless to the American public at large.
"Everything that we see about the War on Terror has a characteristic of evoking fear and mistrust. This is a project about building trust and building relationships, instead of breaking down relationships," Herster said.
Herster's project was first inspired by her husband's stories about the detainees he represented while doing pro bono work for the Allen & Overy law firm in New York.
From his anecdotes and personal details about the detainees, such as one man whose legs were too short to touch the ground, Herster began to imagine the lives of these individuals, even though she herself would not be permitted to meet them.
After connecting with several other attorneys representing the detainees, Herster began collecting copies of the detainees' passport photos, as well as snapshots of their families that the lawyers had taken when visiting the detainees' home countries of Yemen, Afghanistan, Saudi Arabia, Kuwait, and Bahrain. The attorneys then brought the photos back to the detainees, many of whom had become rather skeptical of the entire U.S. legal process. The family photos, Herster explained, played a key role in establishing a trusting relationship between lawyer and client.
Commenting on the family photos, Herster said, "What struck me was the warmth in them; they were so welcoming and comfortable in the families' living rooms. Given the anxiety and fear and all the things we associate with the people at Guantánamo, it's such a stark contrast to flip through these photos"
There are about 340 people currently detained at Guantánamo on suspected terrorism charges or links to al Qaeda and the Taliban. And while attorneys are working to attain writs of habeas corpus, which would allow them to challenge their detainment in a federal court, Herster is also working to bring faces to these numbers.
"You can start to see a personality developing, even though we don't really know anything about these people," Herster said of the stories that emerge in the installation.

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In addition to the photographs for "Pictures from Home," Herster also collaborated with video artist and photographer Carolyn Mara Borlenghi to produce a short video called "The Lawyers," in which the attorneys recount their experiences representing the Guantánamo detainees, as well as a sound installation called Interview Cell Recordings.
Though an accomplished photographer herself, Herster did not take any of the photos or shoot any of the video footage in the "Pictures from Home" installation. Herster believes that the art lies in the relationship between the photographer and the subject. In this case, the relationship she highlights is between families and detainees, as well as the attorneys who are working to bring them back together. The power of these images, she says, comes from the context in which they were produced.
"It's really interesting how amateur photography has become so prominent in this time, in this conflict. Some of the most powerful images of the war have been from people who are bystanders or participants in the war in some way," Herster said.
While the family photographs were originally produced to build a relationship between the attorneys and the detainees, Herster believes that in a new context, the photographs offer great insights into the lives of these otherwise faceless individuals.
"I think that's all art can do, is give people a vehicle for connecting with one another"
http://www.santacruzsentinel.com/archive/2007/September/28/style/stories/03style.htm

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Above All, an Advocate for Justice

Visiting Associate Professor Charles Swift successfully represented Salim Hamdan, a Guantanamo Bay detainee, before the U.S. Supreme Court. He joined the School of Law faculty this semester.

In December 2003, Lt. Commander Charles Swift, a Navy lawyer, was appointed to represent Salim Ahmed Hamdan, a Guantánamo Bay detainee and Osama bin Laden's former driver. Hamdan was to be tried before a military tribunal on the charges of conspiracy and providing material support for terrorism.

Hamdan didn't want to plead guilty, so Swift decided to challenge the system of military tribunals itself by suing the man who had created it: his boss, President Bush.

"Filing a lawsuit against the president wasn't our idea of courage," said Swift, who is now on the faculty at the School of Law. "Real courage was to face the idea that we could be embarrassed and we could fail and do it anyway."

The controversial case, Hamdan v. Rumsfeld, proceeded all the way to the U.S. Supreme Court. Hamdan, a Yemeni man, denied a role in the 9/11 attacks and protested the injustice of the Bush administration's military commissions.

It was the second time Swift had appeared in federal court, and only the first time for his partner, Neal Katyal.

"It was hard to find anyone who believed for a moment that we would be successful," Swift said.

Swift and Katyal won the case for Hamdan, with the Supreme Court ruling that military commissions violated the Geneva Conventions and the Uniform Code of Military Justice.

Two weeks after the decision, however, Swift was passed over for promotion at the Pentagon, leading to his retirement from the military. Many speculated that this surprise had something to do with Swift's controversial stance defending a man accused of aiding terrorism.

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Swift, who was named one of the National Law Journal's "100 Most Influential Lawyers in America" in 2006, was appointed to the law school's faculty in July.

David F. Partlett, the dean of the law school, said Swift's supposed controversial stance does not detract from, but rather adds to Swift's strength of character.

"I think it's a great thing for Emory law school to have someone who believes so thoroughly in the way law should work in America," Partlett said. "He's an excellent lawyer and he believes that everyone should have the protection of law – and good lawyers everywhere want that."

Shaina Stahl, a third-year law student, also said Swift's presence will only add to the University's prestige.

"I think that it's good to have more and more controversial people – it sparks discussion and that's what we're here to do in an academic environment," Stahl said.

Visiting Associate Professor Charles Swift was born in Franklin, N.C., and graduated from the U.S. Naval Academy in 1984 before attending Seattle University Law School. After graduating cum laude, Swift joined the Judge Advocate General's Corps so he could practice law while remaining a uniformed officer of the U.S. Navy.

Named Junior Officer of the Year in 1997 at Naval Legal Service Northwest, Swift went on to represent more than 150 service members in military justice proceedings.

"The greatest reward you will ever receive in your life is from public service," Swift said. "The amazing thing about life is that it is impossible to know, when that opportunity is presented, whether you will or won't [seize it]."

Swift, a history major at the Naval Academy, expressed admiration for President John Adams, who after the Boston Massacre represented the British soldiers in court, to the detriment of his reputation.

"I think that [America's] greatest strength is that we are first and foremost a nation of laws," Swift said, praising the United States' system, in which someone like Hamdan can triumph over the President in court.

Now the acting director of the International Humanitarian Law Clinic, an offshoot of the work of six Emory law students who also worked with Guantánamo Bay detainees, Swift emphasized the idea that students should get involved in humanitarian efforts.

"You are receiving at Emory an incredible gift … and that is the ability to make a difference," Swift said. "If students come to this school and say, 'I believe in what I believe in, I understand that I could fail, but I'm going to do it anyway,' they are going to make an incredible difference in this world."

Partlett also spoke of the importance of having Swift on campus as an emblem of humanitarian law and the great benefits both faculty and students will reap from his presence at Emory.

"We're all delighted," Partlett said. "He's a wonderful colleague, he's very outgoing, his experience is vast, and it's great for him to be here."

http://www.emorywheel.com/detail.php?n=24344

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At Guantanamo, a chaplain's story
By Michael Moreno,

Captain James Yee saw guards tear pages from the Quran, interrogators yell, "The devil is your God now," and female guards forcibly give lap dances and touch detainees' genitalia.

But despite his efforts to educate soldiers and improve treatment of detainees, the former Guantanamo Bay Chaplain was labeled a spy.

Yee, who became a prisoner himself after he voiced concern over what he felt to be inappropriate treatment of detainees, spoke at Binghamton University Tuesday night about his experiences and the importance of protecting civil rights.

Yee received his appointment at the detention camp after educating soldiers on Islam following the Sept. 11 terrorist attacks.

During his tenure there Yee counseled Muslim detainees.

"They used Islam against the prisoners to break them," said Yee, who fought for policy changes, including the provision of a small cloth hammock for prisoners to keep their Quran – which was regularly desecrated during cell searches.

Unfortunately for Yee, this same service is what would lead to him being labeled as a spy, arrested and thrown into a maximum security prison for over two months.

"I want the audience to leave here tonight with an awareness of the seriousness and issues surrounding Guantanamo Bay, Cuba," said Yee prior to taking the stage.

His speech touched on many of the interrogation methods he witnessed during his time there, including the mistreatment of the Quran by prison guards and interrogations involving the use of satanic imagery, and the use of female guards in such sexual acts as lap dances and the touching of genitalia.

"Some detainees were brought into a small room with a satanic circle drawn on the ground," said Yee. "They were forced to kneel in the circle, much like in prayer, while the interrogator yelled, 'The devil is your God now, not Allah!'"

Yee, who spent much of his time attempting to defend the rights of the 600-plus Muslims detained at United States Naval base in southeast Cuba, found himself the target of the same treatment when he was arrested by FBI agents at a Florida airport in September of 2003.

Yee was returning from "Gitmo" for a short reprieve to see his family when he was named an enemy combatant and sent to the Consolidated Naval Brig, in Charleston, S.C. There, he was kept for 76 days and treated with sensory deprivation techniques.

Upon his release, he was tried for the mishandling of classified documents, but no evidence was found against him and all charges were dropped. Yee believes to this day that he was singled out not just for being a Muslim, but also because of his Chinese heritage.

He still remembers the words of a fellow soldier at Gitmo: "Who the hell does this Chinese Taliban think he is, telling us how to treat our prisoners?"

Captain Yee, since honorably discharged from service, now travels across the country giving speeches on his ordeal and the the conditions at Guantanamo Bay.

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"Our county's leadership needs to change," said Yee. "The current leadership is bringing us down the wrong path. These post-9/11 counter-terrorism policies have eroded our civil liberties."

Yee hopes that his speeches will help "inspire students to protect their freedoms."

"You, as our future leaders, must put this country back on the right track," he said. "We need to become a beacon of human rights to the world again."
http://www.bupipedream.com/pipeline_web/display_article.php?id=5705

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From: (b)(6) DoD OGC
Sent: Tuesday, October 30, 2007 3:47 PM
To: (b)(2),(b)(6)

Cc:

OGC AMNESTY/CCR 476

Cc: (b)(2),(b)(6)

Subject: GTMO BIRD: Dutch Offended by Lantos; NATO Countries Refuse Detainees; Gitmo Lawyer Breaks Ranks; CIA Jails and Ghost Prisoners; Torture Complaint Filed; UN Special Rapporteur Accuses US of Torture; Shutting Gitmo Down; Restoring Habeas Corpus;

Attachments: Picture (Metafile)

>All
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>Todays GTMO bird.
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>(b)(6)
>Paralegal, GySgt, USMC (Ret.)
>Department of Defense
>Office of the General Counsel (Legal Counsel)
>1099 14th Street, NW (Franklin Court)
>(b)(2)
>Washington, DC
>Comm: (b)(2),(b)(6)
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Dutch Lawmakers Offended by Rep. Lantos
By DESMOND BUTLER - 1 day ago
WASHINGTON (AP) - Dutch lawmakers who recently visited the Guantanamo Bay military prison said they were offended by a testy exchange in Washington with a senior congressional Democrat.
The lawmakers said that Rep. Tom Lantos, D-Calif., chairman of the House Foreign Affairs Committee, told them that "Europe was not as outraged by Auschwitz as by Guantanamo Bay." Lantos, a Holocaust survivor, was responding to arguments that the United States should shut down the prison, located on a U.S. naval base in Cuba, the lawmakers said. Mariko Peters, a member of the Dutch Green Party, who began the exchange with Lantos, said she took notes of the remarks.
A Lantos aide said the lawmaker realizes the Guantanamo facility does harm to the reputation of the United States and has praised judges who ruled in favor of extending legal rights to prisoners. Lantos has not suggested that the prison be closed.

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Before the Guantanamo exchange, the lawmakers had discussed a debate in the Netherlands about whether the country should maintain its 1,600 troops serving in NATO's Afghanistan operations.
"You have to help us, because if it was not for us you would now be a province of Nazi Germany," Lantos said, according to the Dutch lawmakers.
"The comments killed the debate," said Harry van Bommel, a member of the Socialist Party. "It was insulting and counterproductive."
A Lantos spokeswoman said Lantos was not available and had no comment.
The Dutch government soon will announce whether its troops will stay in the southern Afghan province of Uruzgan, where they recently have begun an anti-Taliban offensive backed by British and Afghan forces. Lantos has praised the Netherlands' contribution to the Afghan mission.
"It was a diplomatically strange situation," Peters said. "The mere suggestion that the United States could be compared with Nazi Germany is so flawed."
It was not the first time that Lantos had offended European political circles. In May, he lashed out at the former leaders of France and Germany. His comments, which included calling former German Chancellor Gerhard Schroeder a "political prostitute," provoked a rebuke from German Foreign Minister Frank-Walter Steinmeier.
The lawmakers, from the Dutch House of Representatives' Foreign Affairs Committee, were invited to visit Guantanamo and Washington by the U.S. ambassador to the Netherlands, Roland Arnall. The lawmakers also met senior Bush administration officials, including Deputy Secretary of State John Negroponte and Deputy Defense Secretary Gordon England.
Members of the delegation said they were given an extensive tour this past week of the Guantanamo Bay prison, which has been heavily criticized by human rights groups.
Some of the lawmakers said that while they found the physical conditions of the prison acceptable, they remain concerned that prisoners were not being given proper legal treatment.
Most of the delegation called for the closing of Guantanamo.
"We have to close Guantanamo because it symbolizes for me everything that is wrong with this war on terror," Peters said.
But at least one member disagreed.
"Let's not forget we are in a state of war – not only the United States but also my country – with Islamic terrorists," said the far right Freedom Party leader, Geert Wilders. "I think we could only learn from Guantanamo."
A number of the members said that the United States should consult international institutions and other countries to answer some of the difficult quandaries about closing the facility.
"We need to work out an international deal on the future of Guantanamo Bay," said Hans van Baalen, of the Liberals, who led the delegation
http://ap.google.com/article/ALeqM5hzN-Cjx7Ky5gjZbhBu-gFo5vR2YwD8SI36002

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MPs oppose US Guantanamo request
29-10-2007
Suggestions that the Netherlands and other NATO countries should take in prisoners from the US prison camp at Guantanamo Bay have been rejected by a majority of MPs, news agency ANP reports.
The Christian Democrats, Labour party (PvdA) and SP, which control a majority of seats in parliament, dismissed the idea. It is 'absurd,' said Martijn van Dam (PvdA). 'Why should the Netherlands take in people that the US refuses to deal with?'
On Friday, the Parool reported that the US wanted NATO countries to take in ex Guantanamo Bay prisoners who could not return to their country of origin.
The US has not made a formal request to the Netherlands to take in former prisoners but has sounded out officials behind the scenes, ANP said.
http://www.dutchnews.nl/news/archives/2007/10/mps_oppose_us_guantanamo_reque.php

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Guantanamo military lawyer breaks ranks to condemn 'unconscionable' detention
By Leonard Doyle in Washington
Published: 27 October 2007
An American military lawyer and veteran of dozens of secret Guantanamo tribunals has made a devastating attack on the legal process for determining whether Guantanamo prisoners are "enemy combatants".
The whistleblower, an army major inside the military court system which the United States has established at Guantanamo Bay, has described the detention of one prisoner, a hospital administrator from Sudan, as "unconscionable".
His critique will be the centrepiece of a hearing on 5 December before the US Supreme Court when another attempt is made to shut the prison down. So nervous is the Bush administration of the latest attack - and another Supreme Court ruling against it - that it is preparing a whole new system of military courts to deal with those still imprisoned.
The whistleblower's testimony is the most serious attack to date on the military panels, which were meant to give a fig- leaf of legitimacy to the interrogation and detention policies at Naval Base at Guantanamo Bay. The major has taken part in 49 status review panels.
"It's a kangaroo court system and completely corrupt," said Michael Ratner, the president of the Centre for Constitutional Rights, which is co-ordinating investigations and appeals lawsuits against the government by some 1,000 lawyers. "Stalin had show trials, but at Guantanamo they are not even show trials because it all takes place in secret."
Combatant Status Review Tribunals were held for 558 detainees at the Guantanamo in 2004 and 2005. All but 38 detainees were determined to be "enemy combatants" who could be held indefinitely without charges. Detainees were not represented by a lawyer and had no access to evidence. The only witnesses they could call were other so-called "enemy combatants".
The army major has said that in the rare circumstances in which it was decided that the detainees were no longer enemy combatants, senior commanders ordered another panel to reverse the decision. The major also described "acrimony" during a "heated conference" call from Admiral McGarragh, who reports to the Secretary of the US Navy, when a the panel refused to describe several Uighur detainees as enemy combatants. Senior military commanders wanted to know why some panels considering the same evidence would come to different findings on the Uighurs, members of a Muslim minority in China.
When the whistleblower suggested over the phone that inconsistent results were "good for the system ... and would show that the system was working correctly", Admiral McGarragh, he said, had no response. The latest criticism emerged when lawyers investigating the case of a Sudanese hospital administrator, Adel Hamad, who has been held for five years, came across a "stunning" sworn statement from a member of the military panel. The officer they interviewed was so frightened of retaliation from the military that they would not allow their name to be used in the statement, nor to reveal whether the person was a man or woman.
Two other military lawyers have also gone public. In June, Army Lt-Col Stephen Abraham, a 26-year veteran in US military intelligence, became the first insider to publicly fault the proceedings. In May last year, Lt-Com Matthew Diaz was sentenced to six months in prison and dismissed from the military after he sent the names of all 551 men at the prison to a human rights group.
William Teesdale, a British-born lawyer investigating Mr Hadad's case, said he was certain of his client's innocence, having tracked down doctors who worked with him at an Afghan hospital. "Mr Hamad is an innocent man, and he is not the only one in Guantanamo."
http://news.independent.co.uk/world/americas/article3101949.ece

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From CIA Jails, Inmates Fade Into Obscurity
Dozens of 'Ghost Prisoners' Not Publicly Accounted For
By Craig Whitlock
Washington Post Foreign Service
Saturday, October 27, 2007; A01

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ISLAMABAD, Pakistan <http://www.washingtonpost.com/wp-srv/world/countries/pakistan.html?nav=el> -- On Sept. 6, 2006, President Bush <http://www.washingtonpost.com/ac2/related/topic/George+W.+Bush?tid=informline> announced that the CIA <http://www.washingtonpost.com/ac2/related/topic/Central+Intelligence+Agency?tid=informline> 's overseas secret prisons had been temporarily emptied and 14 al-Qaeda <http://www.washingtonpost.com/ac2/related/topic/Al+Qaeda?tid=informline> leaders taken to Guantanamo Bay, Cuba <http://www.washingtonpost.com/wp-srv/world/countries/cuba.html?nav=el> . But since then, there has been no official accounting of what happened to about 30 other "ghost prisoners" who spent extended time in the custody of the CIA.

Some have been secretly transferred to their home countries, where they remain in detention and out of public view, according to interviews in Pakistan <http://www.washingtonpost.com/ac2/related/topic/Pakistan?tid=informline> and Europe <http://www.washingtonpost.com/ac2/related/topic/Europe?tid=informline> with government officials, human rights groups and lawyers for the detainees. Others have disappeared without a trace and may or may not still be under CIA control.

The bulk of the ghost prisoners were captured in Pakistan, where they scattered after the U.S. invasion of Afghanistan <http://www.washingtonpost.com/wp-srv/world/countries/afghanistan.html?nav=el> in 2001.

Among them is Mustafa Setmariam Nasar, a dual citizen of Syria <http://www.washingtonpost.com/ac2/related/topic/Syria?tid=informline> and Spain <http://www.washingtonpost.com/ac2/related/topic/Spain?tid=informline> and an influential al-Qaeda ideologue who was last seen two years ago. On Oct. 31, 2005, the red-bearded radical with a $5 million U.S. bounty on his head arrived in the Pakistani border city of Quetta, unaware he was being followed.

Nasar was cornered by police as he and a small group of followers stopped for dinner. Soon after, according to Pakistani officials, he was handed over to U.S. spies and vanished into the CIA's prison network. Since then, various reports have placed him in Syria, Afghanistan and India <http://www.washingtonpost.com/wp-srv/world/countries/india.html?nav=el> , though nobody has been able to confirm his whereabouts.

Nearly all the Arab members of al-Qaeda caught in Pakistan were given to the CIA, Pakistani security officials said. But the fate of several Pakistani al-Qaeda operatives who were also captured remains murky; the Pakistani government has ignored a number of lawsuits filed by relatives seeking information.

"You just don't know -- either these people are in the custody of the Pakistanis or the Americans," said Zafarullah Khan, human rights coordinator for the Pakistan Muslim League, an opposition political party.

Others have been handed over to governments that have kept their presence a secret.

Since 2004, for example, the CIA has handed five Libyan fighters to authorities in Tripoli <http://www.washingtonpost.com/ac2/related/topic/Tripoli?tid=informline> . Two had been covertly nabbed by the CIA in China <http://www.washingtonpost.com/wp-srv/world/countries/china.html?nav=el> and Thailand <http://www.washingtonpost.com/ac2/related/topic/Thailand?tid=informline> , while the others were caught in Pakistan and held in CIA prisons in Afghanistan, Eastern Europe <http://www.washingtonpost.com/ac2/related/topic/Eastern+Europe?tid=informline> and other locations, according to Libyan sources.

The Libyan government has kept silent about the cases. But Libyan political exiles said the men are kept in isolation with no prospect of an open trial.

Other ghost prisoners are believed to remain in U.S. custody after passing into and out of the CIA's hands, according to human rights groups.

Relatives of a Tunisian al-Qaeda suspect known as Retha al-Tunisi, captured in Karachi <http://www.washingtonpost.com/ac2/related/topic/Karachi?tid=informline> , Pakistan, in 2002, received notice recently from the International Committee of the Red Cross <http://www.icrc.org/> that he is detained at a U.S. military <http://www.washingtonpost.com/ac2/related/topic/U.S.+Armed+Forces?tid=informline> prison in Afghanistan, said Clara Gutteridge, an investigator for Reprieve <http://www.reprieve.org.uk/> , a London

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<http://www.washingtonpost.com/ac2/related/topic/London?tid=informline> -based legal rights group that represents many inmates at the U.S. prison at Guantanamo Bay. Other prisoners, since released, had previously reported seeing Tunisi at a secret CIA "black site" in Afghanistan.

At least one former CIA prisoner has been quietly freed. Ahmad Khalil Ibrahim Samir al-Ani, an Iraqi intelligence agent captured after the invasion of Iraq <http://www.washingtonpost.com/wp-srv/world/countries/iraq.html?nav=el> in 2003, was detained at a secret location until he was released last year.

Ani gained notoriety before the Iraq war when Bush administration officials said he had met in Prague <http://www.washingtonpost.com/ac2/related/topic/Prague?tid=informline> with Sept. 11, 2001, hijacker Mohamed Atta. Some officials, including Vice President Cheney <http://www.washingtonpost.com/ac2/related/topic/Dick+Cheney?tid=informline> , cited the rendezvous as evidence of an alliance between al-Qaeda and Saddam Hussein <http://www.washingtonpost.com/ac2/related/topic/Saddam+Hussein?tid=informline> . The theory was later debunked by U.S. intelligence agencies and the Sept. 11 commission, which revealed in 2004 that Ani was in U.S. custody.

The Iraqi spy resurfaced two months ago when Czech officials revealed that he had filed a multimillion-dollar compensation claim. His complaint: that unfounded Czech intelligence reports had prompted his imprisonment by the CIA.

Guantanamo Newcomers

When Bush confirmed the existence of the CIA's prisons in September 2006, he said they had been vacated for the time being. But he said the U.S. government would use them again, if necessary.

The CIA has resumed its detention program. Since March, five new terrorism suspects have been transferred to Guantanamo. Although the Pentagon <http://www.washingtonpost.com/ac2/related/topic/The+Pentagon?tid=informline> has not disclosed details about how or precisely when they were captured, officials have said one of the prisoners, Abd al-Hadi al-Iraqi, had spent months in CIA custody overseas.

Details of the secret detention program remain classified. U.S. officials have offered only vague descriptions of its reach and scope.

Last month, in a speech in New York <http://www.cfr.org/publication/14158/> , CIA Director Michael V. Hayden <http://www.washingtonpost.com/ac2/related/topic/Michael+Hayden?tid=informline> said "fewer than 100 people" had been detained in the CIA's overseas prison network since the program's inception in early 2002.

In June, a coalition of human rights groups <http://hrw.org/backgrounder/usa/ct0607/> identified 39 people who may have been in CIA custody but are still missing. Many of those on the list, however, were identified by partial names or noms de guerre, such as one man described only as Mohammed the Afghan.

Joanne Mariner, director of terrorism and counterterrorism research for Human Rights Watch <http://www.washingtonpost.com/ac2/related/topic/Human+Rights+Watch?tid=informline> , said the CIA has moved many prisoners from country to country and relied on other spy services to take custody of suspects, sometimes temporarily and sometimes for good.

"The large majority have gone to their countries of origin," she said. "But that doesn't mean all of them. There could be some that are still in proxy detention."

In a footnote to its 2004 report <http://www.9-11commission.gov/report/index.htm> , the Sept. 11 commission named nine al-Qaeda suspects who were in U.S. custody at black sites. Seven were later transferred to Guantanamo.

Still missing is Hassan Ghul, a Pakistani national captured in northern Iraq in January 2004. U.S. officials have described him as a high-level emissary between al-Qaeda's core command in Pakistan and its affiliates in Iraq.

Another prisoner on the commission's list was Ali Abd al-Rahman al-Faqasi al-Ghamdi, a Saudi accused of planning attacks in the Arabian Peninsula <http://www.washingtonpost.com/ac2/related/topic/Arabian+Peninsula?tid=informline> . He surrendered to Saudi authorities in June 2003.

Although the Sept. 11 commission reported that Ghamdi was in U.S. custody, Saudi officials said that was not the case. They said he remains in prison in Saudi Arabia

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<http://www.washingtonpost.com/wp-srv/world/countries/saudiarabia.html?nav=el> and has never left the country.

"He was never, under no condition, in U.S. custody," said a Saudi security source who spoke on condition of anonymity.

Officials with the International Committee of the Red Cross said they have failed to find dozens of people once believed to have been in CIA custody, despite repeated queries to the U.S. government and other countries.

"The ICRC remains gravely concerned by the fate of the persons previously held in the CIA detention program who remain unaccounted for," said Simon Schorno, a Red Cross spokesman in Washington. "The ICRC is concerned about any type of secret detention."

The CIA declined to comment on whether certain individuals were ever in its custody.

"Apart from detainees transferred to Guantanamo, the CIA does not, as a rule, comment publicly on lists of people alleged to have been in its custody -- even though those lists are often flawed," said Paul Gimigliano, a CIA spokesman.

Out in the Cold

When the Bush administration disclosed last year that 14 senior al-Qaeda leaders had been transferred to Guantanamo -- leaving the CIA prisons temporarily vacant -- some conspicuous names were missing from the list.

One was an al-Qaeda training camp leader known as Ibn al-Sheikh al-Libi. He was arrested in the Pakistani border town of Kohat in late 2001 and eventually taken to Cairo <http://www.washingtonpost.com/ac2/related/topic/Cairo?tid=informline> , where the CIA enlisted Egyptian intelligence agents to help with the interrogation.

Libi began to talk. Among his claims: that the Iraqi regime had provided training in poisons and mustard gas to al-Qaeda operatives.

His statements were cited by the Bush administration as part of the rationale for invading Iraq in 2003. He recanted after the war began, however, and his continued detention became a political liability for the CIA.

Although the CIA has since acknowledged that Libi was one of its prisoners, U.S. officials have not disclosed what happened to him. In interviews, however, political exiles from Libya <http://www.washingtonpost.com/ac2/related/topic/Libya?tid=informline> said he was flown by the CIA to Tripoli in early 2006 and imprisoned by the Libyan government.

Libi reported that the CIA had taken him from Egypt <http://www.washingtonpost.com/wp-srv/world/countries/egypt.html?nav=el> to several other covert sites, including in Jordan, Morocco <http://www.washingtonpost.com/ac2/related/topic/Morocco?tid=informline> and Afghanistan, according to a Libyan security source.

He also claimed that he had been kept someplace very cold and that his CIA captors had told him he was in Alaska <http://www.washingtonpost.com/ac2/related/topic/Alaska?tid=informline> , the source said. Human rights groups have suggested that Libi was part of a small group of senior al-Qaeda figures held in a CIA prison in northern Poland <http://www.washingtonpost.com/ac2/related/topic/Poland?tid=informline> .

In Tripoli, Libi joined several other Libyans who had spent time in the CIA's penal system. All were members of the Libyan Islamic Fighting Group, a network that had plotted for years from exile to overthrow Moammar Gaddafi.

After the U.S. invasion of Afghanistan in 2001, members of the Libyan network who had been staying there dispersed. The CIA helped Libya's spy agencies track down some of the leaders. One of them, Abdallah al-Sadeq, was apprehended in a covert CIA operation in Thailand in the spring of 2004, according to Noman Benotman, a former member of the Libyan militant network. Another, Abu Munder al-Saadi, the group's spiritual leader, was caught in the Hong Kong <http://www.washingtonpost.com/ac2/related/topic/Hong+Kong?tid=informline> airport. In both cases, Benotman said, the Libyans were held briefly by the CIA before U.S. agents flew them to Tripoli.

"They realized very quickly that these guys had nothing to do with al-Qaeda," Benotman said in an interview in London. "They kept them for a few weeks, and that's it."

Benotman said he confirmed details of the CIA operations when he was allowed to see the men during a visit to a Tripoli prison this year. The trip was arranged by the Libyan government as part of an effort to persuade the Libyan prisoners to reconcile with the Gaddafi regime.

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The CIA has transferred at least two other Libyans to Tripoli, Benotman said. Khaled al-Sharif and another Libyan known only as Rabai were captured in Peshawar <http://www.washingtonpost.com/ac2/related/topic/Peshawar?tid=informline> , Pakistan, in 2003 and spent time in a CIA prison in Afghanistan, he said.
The Libyan Embassy in Washington did not respond to a faxed letter seeking comment.
A Missing 'Gold Mine'
In Spain, prosecutors have been searching for Nasar, the redheaded al-Qaeda ideologue, for four years.
In 2003, he was indicted by an investigative magistrate in Madrid <http://www.washingtonpost.com/ac2/related/topic/Madrid?tid=informline> , accused of helping to build sleeper cells in Spain. A prolific writer and theoretician in the jihadi movement, Nasar had lived in several European countries as well as Afghanistan <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/22/AR2006052201627.html> .
Spain has filed requests for information about Nasar with the Pakistani government, to no avail. Spanish Foreign Minister Miguel Angel Moratinos also raised the issue during a visit to Islamabad <http://www.washingtonpost.com/ac2/related/topic/Islamabad?tid=informline> last year.
"We don't have any indication of where he is," said a source in the Spanish Foreign Ministry, who spoke on condition of anonymity.
Brynjar Lia, a Norwegian terrorism analyst and the author of a new book on Nasar, "Architect of Global Jihad," said the radical would know valuable details about the inner workings of al-Qaeda.
"The Americans are probably the ones who want him the most because he was prominently involved in al-Qaeda in the 1990s," said Lia, a senior researcher at the Norwegian Defense Research Establishment <http://www.mil.no/felles/ffi/english/start/research/Analysis_Division/_TERRA/> . "He must be a gold mine of information."
Some Spanish media have speculated that Nasar is being held in Syria, his place of birth. The CIA has transferred other terrorism suspects to Syria despite tense diplomatic relations between Washington and Damascus <http://www.washingtonpost.com/ac2/related/topic/Damascus?tid=informline> .
Other Spanish press reports have claimed that Nasar remains in U.S. custody. Another rumor is that he's being held in a CIA-run prison in India, said Manuel Tuero, a Madrid lawyer who represents Nasar's wife.
Though Nasar would go on trial if he was brought back to Spain, that would be preferable to indefinite detention in a secret prison, Tuero said.
"He's in a legal limbo," he said. "The Americans would never give him a fair trial. Spain would."
Special correspondents Munir Ladaa in Berlin and Cristina Mateo-Yanguas in Madrid contributed to this report.
http://www.washingtonpost.com/wp-dyn/content/article/2007/10/26/AR2007102602326.html

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Torture Complaint Filed Against Rumsfeld
By PIERRE-ANTOINE SOUCHARD
The Associated Press
Friday, October 26, 2007; 2:57 PM
PARIS -- American and European rights groups filed a legal complaint in France <http://www.washingtonpost.com/wp-srv/world/countries/france.html?nav=el> accusing former U.S. Defense Secretary Donald Rumsfeld of responsibility for torture in Iraq <http://www.washingtonpost.com/wp-srv/world/countries/iraq.html?nav=el> and at Guantanamo Bay.
The complaint was filed with the Paris prosecutor's office as Rumsfeld arrived in France for a visit, according to the New York-based Center for Constitutional Rights, the Berlin-based European Center for Constitutional and Human Rights and two Paris-based groups, the International Federation of Human Rights and the League of Human Rights.

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Lawrence Di Rita, former Pentagon spokesman under Rumsfeld, said: "These assertions have no merit, and they have been completely dismissed when made in other jurisdictions."
"Complaints such as this have zero foundation in the truth or the facts as presented in countless investigations," he said.
The rights groups say their complaint could go forward because people suspected of torture can be prosecuted in France if they are on French soil.
The complaint will now be examined by French prosecutors, who will decide whether it is well-founded and should be pursued or whether it should be rejected. The Paris prosecutor's office said on Friday night that it was checking whether Rumsfeld is protected by any sort of diplomatic immunity and whether he was still in France.
The complaint says Rumsfeld, in his former position as defense secretary, "authorized and ordered crimes of torture to be carried out ... as well as other war crimes."
Filed Thursday, the complaint cites various documents, including memos from Rumsfeld, internal reports and testimony from former U.S. Army Brig. Gen. Janis Karpinski _ the one-time commander of U.S. military prisons in Iraq _ to bolster its claims. It asks the prosecutor to open an inquiry and take Rumsfeld into custody.
"We know that we can't get him into prison right now, but it would be great to make sure that he couldn't safely leave the U.S. anymore," said Michael Ratner, president of the Center for Constitutional Rights.
Ratner's group already filed a formal request in Germany <http://www.washingtonpost.com/wp-srv/world/countries/germany.html?nav=el> to try to bring an investigation against Rumsfeld and other current and former Bush administration officials for either ordering, aiding or failing to prevent torture.
German federal prosecutors rejected that request in April, saying it was up to the U.S. to hold any inquiry.
http://www.washingtonpost.com/wp-dyn/content/article/2007/10/26/AR2007102601461_pf.html

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UN rights expert urges US to prosecute or release Guantanamo prisoners
Jaime Jansen <http://jurist.law.pitt.edu/jurist_search.php?q=Jaime%20Jansen> at 7:52 AM ET

[JURIST] UN Special Rapporteur on human rights and counterterrorism Martin Scheinin <http://www.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm> [official website] called on the US in a report <http://www.un.org/News/briefings/docs/2007/071029_Scheinin.doc.htm> [press release] released Monday to quickly prosecute or release terror suspects detained at Guantanamo Bay <http://jurist.law.pitt.edu/currentawareness/guantanamo.php> [JURIST news archive] so that the US can close the detention center. Scheinin paid an official visit to the United States in May after receiving permission from US officials <http://jurist.law.pitt.edu/paperchase/2007/01/un-rights-investigator-visiting-us-to.php> [JURIST report] to examine US detention practices, although he was not allowed to interview Guantanamo detainees in private. In Monday's report, Scheinin also recommended:
* that legislative amendments be made to remove the denial of habeas corpus rights under the Military Commissions Act 2006 and the restrictions upon the ability of Guantánamo Bay detainees to seek full judicial review of their combatant status, with the authority of the reviewing court to order release...;
* that other States be willing to receive persons currently detained at Guantánamo Bay. The United States and the United Nations High Commissioner for Refugees should work together to establish a joint process by which detainees can be resettled in accordance with international law, including refugee law and the principle of non-refoulement...;
* that [military commissions] be disestablished. Wherever possible, ordinary civilian courts should be used to try terrorist suspects...;
* [that the United States] ensure that all its officials and agencies comply with international standards, including the article 7 of ICCPR, the Convention against Torture and, in the context of an armed conflict, common article 3 of the Geneva Conventions...;

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* [that the US government] take transparent steps to ensure that the CIA practice of "extraordinary rendition" is discontinued and is not conducted in the future...;
* that all detainees are held in accordance with international human rights standards, including the requirement that all detainees be held in regularized facilities, that they be registered, that they be allowed contact with the outside world (lawyers, International Committee of the Red Cross, where applicable, and family), and that any form of detention is subject to accessible and effective court review, which entails the possibility of release...;
* [that the US government] restrict definitions of "international terrorism", "domestic terrorism" and "material support to terrorist organizations" in a way that is precise and restricted to the type of conduct identified by the Security Council as conduct to be suppressed in the fight against terrorism...[and ensure] that it does not participate in the extrajudicial execution of any person, including terrorist suspects.

Last year, Scheinin said US officials have been stonewalling investigations <http://jurist.law.pitt.edu/paperchase/2006/05/un-rights-official-says-us.php> [JURIST report] into allegations that the Central Intelligence Agency (CIA) flew terrorism suspects through Europe to countries where they could be tortured. He also expressed concern <http://jurist.law.pitt.edu/paperchase/2006/10/un-rights-investigator-fears-us.php> [JURIST report] that the US Military Commissions Act of 2006 <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930enr.txt.pdf> (MCA) [text; JURIST news archive <http://www.jurist.law.pitt.edu/jurist_search.php?q=military+commissions+act>] would lead to lower worldwide standards regarding interrogation techniques and trial procedures for noncitizen detainees. AP has more <http://apnews.myway.com/article/20071030/D8SJAE5O1.html> .

http://jurist.law.pitt.edu/paperchase/2007/10/un-rights-expert-urges-us-to-prosecute.php

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US accused of torture

Ian Munro Herald Correspondent in New York

October 31, 2007

THE United States's willingness to resort to harsh interrogation techniques in its so-called war on terror undermined human rights and the international ban on torture, a United Nations spokesman says.

Manfred Nowak, UN Special Rapporteur on torture, said the US's standing and importance meant it was a model to other countries which queried why they were subject to scrutiny when the US resorted to measures witnessed at Guantanamo Bay and Abu Ghraib prison.

Mr Nowak was speaking after releasing his finding that the use of torture was routine and widespread in Sri Lanka ,despite laws against it.

"I am very concerned about the undermining of the absolute prohibition of torture by interrogation methods themselves in Abu Grahib, in Guantanamo Bay and others, but also by rendition and the whole CIA secret places of detention. All that is really undermining the international rule of law in general and human rights but also the prohibition of torture," said Mr Nowak.

"(Other countries) say why are you criticising us if the US, the most democratic country with the oldest history of human rights, if they are torturing you should first go there. It has a negative effect because the US is a very powerful and important country and many other countries take the US as a model."

His comments come amid continuing controversy over whether the use of waterboarding - which simulates drowning - is torture. US senators are threatening to stop the appointment of Michael Mukasey, President Bush's new nominee for Attorney-General, following Mr Mukasey's refusal to condemn waterboarding at judiciary committee hearings recently.

Reports have linked CIA interrogations of al-Qaeda suspects, including alleged 9/11 planner Khalid Sheikh Mohammed, to the technique.

President Bush has said the US does not restort to torture, but his administation has refused to say if waterboarding has been used. During waterboarding a cloth is used to cover a prisoner's mouth and water poured over it, triggering the gag reflex.

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Commenting on his investigation into Sri Lanka, Mr Nowak said that the use of torture in counter-terrorism operations was prone to become routine.
During his visit there this month he received many "consistent and credible" allegations from detainees who claimed they were ill-treated by police.
He said that he was alerted to a new form of torture which his medical aide had initially thought was impossible. It involved individuals being suspended only by their thumbs which were bound together so they could be hoisted into the air.
He said he had received two independent accounts of its use in Army camps. The effects were verified by medical examination. Six months after the alleged incidents the individuals had not regained use of their thumbs.
Mr Nowak said that Italy and Germany had shown in the 1970s and 1980s that terrorism could be beaten within the rule of law.
"Certain human rights such as the prohibition on torture are absolute. It doesn't matter how dangerous a person is, governments have an absolute obligation never to resort to torture or other forms of cruel, inhuman or degrading punishment," said Mr Nowak.
"In my opinion, this ill-conceived, security oriented counter terrorism strategy is having a very, very negative effect, not only on human rights in the USA, but for the first time I would say in a long period of time, the US is really engaging in systematic violation of human rights, but also a very negative effect on many other countries."
Mr Nowak is next month to investigate complaints of torture in Indonesia. He said that he expected the use of torture to have diminished following action by the Indonesian government but would not discuss the nature of the allegations until after his inquiries.
http://www.smh.com.au/news/world/us-accused-of-torture/2007/10/30/1193618879492.html

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October 30, 2007
News Analysis
On Torture, 2 Messages and a High Political Cost
By SCOTT SHANE
<http://topics.nytimes.com/top/reference/timestopics/people/s/scott_shane/index.html?inline=nyt-per>
WASHINGTON, Oct. 29 — Six years after the Bush administration embraced harsh physical tactics for interrogating terrorism suspects, and two years after it reportedly dropped the most extreme of those techniques, the taint of torture clings to American counterterrorism efforts.
The administration has a standard answer to queries about its interrogation practices: 1) We do not torture, and 2) we will not say what we do, for fear of tipping off future prisoners. In effect, officials want Al Qaeda
<http://topics.nytimes.com/top/reference/timestopics/organizations/a/al_qaeda/index.html?inline=nyt-org> to believe that the United States does torture, while convincing the rest of the world that it does not.
But that contradictory catechism is not holding up well under the battering that American interrogation policies have received from human rights organizations, European allies and increasingly skeptical members of Congress.
The administration does not acknowledge scaling back the Central Intelligence Agency
<http://topics.nytimes.com/top/reference/timestopics/organizations/c/central_intelligence_agency/index.html?inline=nyt-org> 's secret detention program, perhaps to avoid implying that earlier methods were immoral or illegal. President Bush has repeatedly defended what the administration calls "enhanced" interrogation methods, saying they have produced invaluable information on Al Qaeda. But the administration's strategy has exacted an extraordinary political cost.
The nomination of Michael B. Mukasey
<http://topics.nytimes.com/top/reference/timestopics/people/m/michael_b_mukasey/index.html?inline=nyt-per> as attorney general, once expected to sail through the Senate, has run into trouble as a result of his equivocation about waterboarding, or simulated drowning. Mr. Mukasey has refused to characterize the technique as torture, which would put him at odds

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with secret Justice Department legal opinions and could put intelligence officers in legal jeopardy.

At a House hearing last week, Secretary of State Condoleezza Rice <http://topics.nytimes.com/top/reference/timestopics/people/r/condoleezza_rice/index.html?inline=nyt-per> admitted that the United States had mishandled the case of Maher Arar <http://topics.nytimes.com/top/reference/timestopics/people/a/maher_arar/index.html?inline=nyt-per> , a Canadian engineer who was seized in New York in 2002 on suspicion of terrorism and shipped to Syria, where he was imprisoned and severely beaten.

But Ms. Rice refused to acknowledge the torture or to apologize to Mr. Arar, perhaps to avoid exposing to attack the policy of extraordinary rendition, in which the United States delivers suspects to other countries, including some that routinely use torture.

C.I.A. officers have been criminally charged in Italy and Germany in connection with rendition cases. The torture issue has complicated Americans' standing in criticizing other countries.

At a House hearing on the crackdown on dissent in Myanmar, formerly known as Burma, where protest leaders have reportedly endured waterboarding, Jeremy Woodrum, a director of the United States Campaign for Burma, said American conduct was thrown back at him, testifying: "People say, 'Why are you guys talking to us about this when you have the mess in your own backyard?' "

Even inside the government, there are tensions. At the C.I.A., the director, Gen. Michael V. Hayden <http://topics.nytimes.com/top/reference/timestopics/people/h/michael_v_hayden/index.html?inline=nyt-per> , has come under fire from Congress for ordering a review of the agency's own inspector general, whose aggressive investigations of secret detention programs have raised hackles.

The moral debate over torture has seeped deeply into popular culture, from the black comedy of "The Daily Show" and its "senior interrogation correspondent" to the new movie "Rendition," based loosely on Mr. Arar's case. Candidates for president have repeatedly faced questions and exchanged barbs on the proper limits of interrogation.

Meanwhile, key members of Congress are raising questions about the future of the C.I.A.'s detention operation. Senator John D. Rockefeller IV <http://topics.nytimes.com/top/reference/timestopics/people/r/john_d_iv_rockefeller/index.html?inline=nyt-per> , chairman of the Senate Intelligence Committee, said in response to a question from The New York Times that it "has produced valuable intelligence, but the question is at what cost?"

Mr. Rockefeller, Democrat of West Virginia, whose committee has recently heard classified testimony about the noncoercive interrogation methods of the F.B.I. <http://topics.nytimes.com/top/reference/timestopics/organizations/f/federal_bureau_of_investigation/index.html?inline=nyt-org> and the military, said he was not sure the C.I.A's harsher approach was justified.

"Unfortunately, the intelligence community has not yet made a convincing argument that a separate, secret program is indeed necessary," he said. "The committee is engaged in answering these fundamental questions and fully intends to take action on the future of this program."

Even as the administration has maintained in secret Justice Department legal opinions that its harshest methods are legal, it has quietly but steadily backed away from them in practice.

Since last year, military interrogators have been bound by the new Army Field Manual, which prohibits all physical coercion.

The C.I.A. stopped using waterboarding by the end of 2005, former agency officials have said. Mike McConnell <http://topics.nytimes.com/top/reference/timestopics/people/m/john_michael_mcconnell/index.html?inline=nyt-per> , the director of national intelligence, said in July that prisoners were also now "not exposed to heat and cold," another technique previously used at the C.I.A.'s secret jails.

But administration officials seem loath to let potential prisoners know they have softened their interrogations. In his July remarks, Mr. McConnell suggested that Qaeda operatives had

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talked in part "because they believe these techniques might involve torture." At the same time, "the United States does not engage in torture," he said. "The president has been very clear about that."
In a PBS
<http://topics.nytimes.com/top/reference/timestopics/organizations/p/public_broadcasting_service/index.html?inline=nyt-org> interview with Charlie Rose
<http://topics.nytimes.com/top/reference/timestopics/people/r/charlie_rose/index.html?inline=nyt-per> last week, General Hayden, the C.I.A. director, complained about negative press coverage of the agency's interrogation practices. "What puzzles me is to why there seems to be this temptation, almost irresistible temptation, to take any story about us and move it into the darkest corner of the room," General Hayden said.
Yet, illustrating the administration's predicament, General Hayden did nothing to dispel the mystery about the agency's "enhanced" interrogation tactics.
"What is 'enhanced technique'?" Mr. Rose asked. "Is it something close to torture?"
The C.I.A. director said, "No," adding, "I'm not going to talk about any specific techniques."
Whether Congress will act remains uncertain. Congressional Democrats have cited interrogation policies in blocking the confirmations of John A. Rizzo
<http://topics.nytimes.com/top/reference/timestopics/people/r/john_a_rizzo/index.html?inline=nyt-per> as general counsel of the C.I.A. and Steven G. Bradbury, author of secret legal opinions on interrogation, as head of the Office of Legal Counsel at the Justice Department. Now Mr. Mukasey's confirmation hangs in the balance.
Both the Senate and House Intelligence Committees have held closed hearings on the program. The only public glimpse — unclassified testimony recently released from a Sept. 25 Senate hearing — was a series of fierce attacks by human rights advocates, legal experts and a veteran interrogator on the effectiveness and morality of harsh interrogation.
Most Republicans, for now, are offering the administration conditional support. Senator Christopher S. Bond
<http://topics.nytimes.com/top/reference/timestopics/people/b/christopher_s_bond/index.html?inline=nyt-per> of Missouri, the vice chairman of the Intelligence Committee, said that he was concerned about the international reputation of the United States and that Congress "should continue to look at what other methods are effective."
But Mr. Bond said conversations with C.I.A. interrogators had convinced him that some legal but tough tactics could work on recalcitrant suspects. "Coercion has opened the dialogue," he said.
http://www.nytimes.com/2007/10/30/washington/30torture.html?_r=1&oref=slogin

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The Smart Way to Shut Gitmo Down
By Matthew Waxman
Sunday, October 28, 2007; B04
In July 2005, I joined a group of senior policymakers at the White House for a review of administration policies on the U.S. military prison at Guantanamo Bay, Cuba. As we shuffled into the national security adviser's West Wing office, televisions nearby flashed with the ghastly news of a massive London subway attack that had the hallmarks -- coordination, skill and murderous imagination -- of an al-Qaeda
<http://www.washingtonpost.com/ac2/related/topic/Al+Qaeda?tid=informline> strike. As the news sank in, one senior White House
<http://www.washingtonpost.com/ac2/related/topic/The+White+House?tid=informline> official spoke up. "It seems to me," he declared, to my astonishment, "this meeting is now irrelevant."
Yes, the ongoing threat of terrorism is very real, but it does not follow that we must keep Guantanamo Bay
<http://www.washingtonpost.com/ac2/related/topic/Guantanamo+Bay?tid=informline> open -- or even that the prison helps our fight against al-Qaeda. It did not occur to that official that

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the previous four years' worth of experience might offer lessons that would help us revise the U.S. approach to detaining suspected foreign terrorists. But they do.

President Bush <http://www.washingtonpost.com/ac2/related/topic/George+W.+Bush?tid=informline> has said publicly that he would like to see Guantanamo Bay closed, if he could do so without putting Americans in greater danger. He can, and he should. My experience advising former defense secretary Donald H. Rumsfeld <http://www.washingtonpost.com/ac2/related/topic/Donald+H.+Rumsfeld?tid=informline> and Secretary of State Condoleezza Rice <http://www.washingtonpost.com/ac2/related/topic/Condoleezza+Rice?tid=informline> on these issues has convinced me that there's a way out, but it will take some painful truth-telling to get there. For even if Guantanamo Bay could be defended in legal or moral terms, it still hurts us more than it helps us in battling al-Qaeda.

I'm not trying to challenge the improvised decision to create Guantanamo Bay's detention site in 2002. Rather, I want to challenge its continued operation in 2007. Fair-minded people can differ over whether the Bush administration was justified in sending suspected al-Qaeda fighters there immediately after Sept. 11, 2001, but as time wears on, it's almost impossible to argue that the prison is keeping us safer.

To solve our Gitmo problem, we need to understand it better. Unfortunately, amid all the rhetorical heat, Guantanamo Bay's defenders and detractors have gotten carried away. For example, the soothing notion among some critics that everyone at the prison is an innocent bystander erroneously swept up in post-9/11 dragnets is a fantasy. But so is the Bush administration's dogged insistence that all the detainees there are the "worst of the worst." Some of them should never have been there (including several supposed jihadists turned over for bounty based on assertions that later proved flimsy), and such imprisonments have had tragic and dangerous consequences.

Likewise, the administration's critics are wrong to assert that we no longer gain valuable intelligence at Guantanamo Bay. But we should not exaggerate the value of the current information-gathering there either, which often comes from detainees who haven't been involved in terrorist plotting for years now. And while the improved general conditions I repeatedly saw are humane by the standards of U.S. and European prisons, Guantanamo Bay's defenders hurt their own credibility when they refuse to acknowledge the well-documented abuse that has occurred there.

Yes, Guantanamo Bay has incapacitated many al-Qaeda plotters and has given the U.S. government a better picture of the enemy. But those benefits came at a serious cost. On balance, the prison -- and the widespread perception that it exists simply to keep detainees forever beyond the reach of the law -- has become a drag on America's moral credibility and, more to the point, its global counterterrorism efforts, too.

For example, the continued controversy over Guantanamo Bay has hampered cooperation with our friends on such critical counterterrorism tasks as information sharing, joint military operations and law enforcement. I know: As a State Department <http://www.washingtonpost.com/ac2/related/topic/U.S.+Department+of+State?tid=informline> official, I often spent valuable time and diplomatic capital fruitlessly defending our detention practices rather than fostering counterterrorism teamwork. Guantanamo Bay leaves us playing defense and hinders our ability to play effective offense.

What to do? It's easy to demand that the prison be closed, but it's hard to figure out what to do with the most dangerous detainees there, such as Khalid Sheik Mohammed <http://www.washingtonpost.com/ac2/related/topic/Khalid+Shaikh+Mohammed?tid=informline> , the mastermind of the 9/11 plot. And even if we agree that we shouldn't use Guantanamo Bay as a long-term detention site, we still need to work out what sort of system could hold large numbers of terrorist operatives rolled up in ongoing or future campaigns against al-Qaeda. Simply returning all the detainees to their home countries (such as Yemen <http://www.washingtonpost.com/ac2/related/topic/Yemen?tid=informline> , Syria <http://www.washingtonpost.com/ac2/related/topic/Syria?tid=informline> , Egypt <http://www.washingtonpost.com/ac2/related/topic/Egypt?tid=informline> and Pakistan <http://www.washingtonpost.com/ac2/related/topic/Pakistan?tid=informline>) is no answer.

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Some of these nations won't take them; some would probably mistreat them; others might even release dangerous militants.

Prosecuting the Gitmo detainees for crimes in U.S. courts isn't a panacea either. Criminal prosecutions should be carried out whenever possible, but the evidence against a particular suspect often can't be presented in open civilian court without compromising intelligence sources and methods. Or the evidence may not be admissible under U.S. criminal law rules.

So the best way to close Guantanamo Bay lies somewhere in between: transferring many of the detainees to their home countries, sending some to third countries and bringing the remainder -- including those who would be prosecuted for war crimes -- to secure facilities in the United States. They would be held in military facilities, like those that already kept suspected American terrorists such as Jose Padilla <http://www.washingtonpost.com/ac2/related/topic/Jose+Padilla?tid=informline> , or in ultra-secure federal prisons such as the one that holds Ramzi Yousef, the architect of the 1993 World Trade Center <http://www.washingtonpost.com/ac2/related/topic/World+Trade+Center?tid=informline> bombing.

The White House needs to take the lead, but don't look only at it. Unless Congress and our allies step up, closing Guantanamo Bay this way can't happen. To be sure, the administration has done far too little to work with Capitol Hill <http://www.washingtonpost.com/ac2/related/topic/Capitol+Hill?tid=informline> . But Congress should ensure safe and effective detention -- both by narrowly defining a category of terrorism suspects whom the executive branch can legally detain, and by mandating sensible oversight and review of those detentions by the courts.

Our allies, too, need to do more: They must seriously lessen the threat that some former detainees will pose, not just call from the sidelines for shuttering Guantanamo Bay. Washington should make it clear that the pace of the prison's closure depends directly on our partners' willingness and ability to take custody of some of the detainees and to help pressure other countries to follow suit -- all with protections against further abuse of the type that has so weakened America's standing.

Still, Guantanamo Bay is only the immediate manifestation of a much larger problem. For the foreseeable future, the United States and its partners will continue to capture suspected operatives of al-Qaeda and other terrorist groups. We need a durable, long-term framework for handling detainees -- one that lets us hold the most dangerous individuals and collect intelligence from them (including through lawful interrogation), but also (unlike Guantanamo Bay) has rules and procedures that are politically, legally and diplomatically sustainable. Neither U.S. criminal law nor the international laws of war were built to deal with networks of terrorists stretching across continents and bent on appalling carnage. So the United States, along with its closest democratic allies, ought to craft rules that are.

To get there, we should move beyond the debate between those who say that only traditional habeas corpus rights to a fair hearing can sort out these cases and those who say that noncitizen enemy fighters captured abroad in wartime have never been entitled to their day in court. We'd all be better off forging a broad agreement about the minimum acceptable conditions for any long-term detention process, firmly within the rule of law. These should include periodic reviews by an independent judge of the factual bases for a detention, under clearly legislated standards, and meaningful chances to challenge those premises with the assistance of lawyers. It's almost impossible to perform judicial review in combat zones, so we may have to make careful exemptions there. But any system without these features will lack legitimacy at home and abroad.

Both of these proposals -- shutting Guantanamo Bay and establishing robust judicial review of detentions -- carry risks. But those risks should kick-start the discussion, not end it. Detention policy is not about eliminating dangers, but about balancing and managing competing dangers. And keeping Gitmo open -- sapping U.S. prestige, alienating our allies and handing al-Qaeda a propaganda tool -- carries downsides, too.

Civil libertarians and security-minded hawks will both no doubt criticize these suggestions. But it's past time to close Guantanamo Bay. Rumsfeld, my former boss, famously described the prison in 2002 as the "least bad option." Whatever the validity of his assessment then, my plan for shutting Gitmo is less bad now.

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http://www.washingtonpost.com/wp-dyn/content/article/2007/10/26/AR2007102601761.html

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Restoring habeas corpus
October 30, 2007

Bruce Fein - In confronting international terrorism, President George W. Bush and Congress have abandoned the Founding Fathers' suspicion of unchecked power in favor of the French Revolution's Jacobins.

Their creed, voiced by Louis de Saint Just, proclaimed, "No liberty for the enemies of liberty." Accordingly, suspected enemies were routinely imprisoned without trial based on edicts of the French Terror. President Bush has echoed the militant Jacobins: "We must not let foreign enemies use the forums of liberty to destroy liberty itself." He has similarly detained suspected unlawful enemy combatants at Guantanamo Bay indefinitely on his say-so alone. In so doing, President Bush has suspended the Great Writ of habeas corpus, with the consent of Congress in the Military Commissions Act of 2006, by denying enemy combatant suspects an opportunity to challenge the factual or legal foundations for their detentions before an independent and impartial federal judiciary.

Congress should restore habeas corpus at Guantanamo Bay and renounce the Jacobins' creed. An attempt in the Senate recently failed, but should be renewed.

The Founding Fathers enshrined the Great Writ in the Constitution to prevent the president from judging the lawfulness of his own detentions. Making proper deductions for the ordinary depravity of human nature, they worried that the president would be tempted to cast political or personal enemies into dungeons or to detain in furtherance of a political agenda absent checking by independent judges. A narrow exception was made "in Cases of Rebellion or Invasion [when] the public Safety may require it," neither of which fits September 11, 2001, or the threat of international terrorism.

Proponents of suspending habeas corpus for Guantanamo detainees proclaim their faith in the inerrancy of the United States military in capturing enemy combatants. They contend that habeas corpus would be superfluous because only vile terrorists apprehended on the battlefield are being detained. In support, they summon former secretary of defense Donald Rumsfeld and Rear Adm. John D. Stufflebeem, deputy director of operations for the Joint Chiefs of Staff. Mr. Rumsfeld characterized the detainees as "the worst of the worst." Rear Adm. Stufflebeem chorused: "They are the bad guys. They are the worst of the worst, and if let out on the street, they will go back to the proclivity of trying to kill Americans and others." Members of Congress have scoffed at habeas corpus premised on their trust in President Bush – like the Queen of Hearts in "Alice in Wonderland" – to target only the guilty for detention.

But based on the government's own enemy combatant status determinations compiled by Combatant Status Review Tribunals (CSRTs), the probability of error is great. Restoring habeas corpus is necessary to avert unjust life sentences and the corresponding creation of poster children for al Qaeda's recruiters.

Seton Hall law professor Mark Denbeaux and lawyer Joshua Denbeaux examined the CSRT records for 517 detainees released in 2005. They revealed that 55 percent of the detainees had not committed a hostile act against the United States or its coalition allies. That finding discredits the idea that the detainees are "the worst of the worst." Moreover, "hostile act"

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was defined to include the following loosely incriminating circumstances: "The detainee fled, along with others, when the United States forces bombed their camp. The detainee was captured in Pakistan, along with other Uighur fighters."

Only 8 percent of detainees were characterized by the CSRTs as "fighters for" al Qaeda. Of the remainder, 40 percent had no connection to al Qaeda and 18 percent were unaffiliated with either al Qaeda or Taliban.

The definition of "enemy combatant" was elusive: "[A]n individual who was part of or supporting the Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners." Definitional vagueness invites error, a hazard compounded by the routine blending of terrorists into civilian populations. Former Secretary Rumsfeld acknowledged: "The circumstances in which individuals are apprehended on the battlefield can be ambiguous. . .. This ambiguity is not only the result of the inevitable disorder of the battlefield; it is an ambiguity created by enemies who violate the laws of war by fighting in civilian clothes."

Only 5 percent of the detainees were apprehended by the United States. The overwhelming percentage was captured by either Pakistan or the Northern Alliance, neither of which fields highly trained military units or other safeguards against mistaken identification. The probability of wrongful detentions rocketed when the United States distributed flyers in impoverished Afghanistan wracked by ethnic, tribal and clan rivalries promising rich bounties for the capture of persons identified as enemy combatants. One flyer, smacking of a Donald Trump infomercial, made economizing on the truth by Afghans irresistible: "Get wealth and power beyond your dreams. ... You can receive millions of dollars helping the anti-Taliban forces catch al Qaeda and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people."

CSRTs are no substitutes for review of enemy combatant determinations by federal courts. The military tribunals rely on secret evidence that cannot be rebutted by the detainee; and, the CSRTs are biased instruments of the executive branch. Lt. Col. Stephen Abraham testified before the House Armed Services Committee: "When we found no evidence to support an enemy-combatant determination, we were told to leave the hearing open. When we unanimously held the detainee not to be an enemy combatant, we were told to reconsider. And ultimately when we did not alter our course ... a new panel was selected that reached a different result."

Contrary to President Bush and Congress, the Great Writ of habeas corpus has a major mission at Guantanamo Bay: averting life imprisonments for the innocent unworthy of a civilized people. Congress should restore the Writ forthwith.

Bruce Fein is a constitutional lawyer at Bruce Fein & Associates and chairman of the American Freedom Agenda.
http://washingtontimes.com/article/20071030/COMMENTARY01/110300009/1012/commentary

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Bringing Judaism to Guantanamo Bay Entails Doing Whatever's Necessary

By Dovid Zaklikowski <http://www.chabad.org/search/keyword.htm/kid/4685>
Oct 25, 2007
Last month, Chabad-Lubavitch Rabbi Jacob Goldstein planted the seeds of a Jewish infrastructure in a location most people don't think of a home to Jews: the U.S. military installation at Guantanamo Bay, Cuba. The expectation, said the Army colonel and chaplain, is that Jewish life there will only expand.

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The Army asked Goldstein to spend the Hebrew month of Tishrei at the base - which provides support to naval and Coast Guard operations in the Caribbean, houses the Joint Task Force-Guantanamo, which is the military's detention center for suspected terrorists - to do all he could in assisting the installation's Jewish personnel to provide Jewish services for the High Holidays.

"The military does a lot to support the needs of its soldiers," said Goldstein, who at the Army's behest has deployed and led services and counseled Jewish personnel in South Korea, Iraq, Afghanistan, and Bosnia. He was also the military's chief chaplain at Ground Zero, where he spent many months.

While at Gitmo, as the military refers to Guantanamo, the colonel assisted the Joint Task Force chaplain there to provide religious services for the Jewish High Holidays. But Goldstein, a native New Yorker and Chasid of the Lubavitcher Rebbe, Rabbi Menachem Mendel Schneerson, of righteous memory, didn't stop spreading Jewish pride anyway he could.

He took no time in helping Karen Einhorn, principal of the Defense Department's school at Gitmo, affix a mezuzah to the front door of her home. It was reportedly the first time a mezuzah graced a Guantanamo doorway. Using extra pairs of tefillin he also helped soldiers don the phylacteries.

Goldstein arrived before Rosh Hashanah and stayed through the duration of Sukkot, bringing a Torah with him from New York. He utilized every possible moment to teach about Judaism. While on a tour of the bay's pristine waters, he used fish caught from the sea to lecture chaplains and chaplain's assistants about the differences kosher and non-kosher species.

For Sukkot, he supervised the construction of a sukkah at the island base's hilltop chapel, which was lit at night with the help of some engineers from the Navy. During the holiday, the structure shone through the night, becoming in Goldsteins's words, a "beacon on the hill."

The 60-year-old Goldstein is the only member of the armed services who sports a full-length beard. He joined the New York Army National Guard in 1977 and credits the Rebbe, whose worldwide tefillin campaign began 10 years earlier, for his enlistment every being possible.

"It was before the Six Day War when the Rebbe came out with the tefillin campaign," said the rabbi, who in those days was a student at Lubavitch World Headquarters in Brooklyn, N.Y., and went with other students on visits to Army bases to encourage Jewish soldiers to put on tefillin. "I never stopped, even after I was married."

Although he was asked many times to sign up and join the military, one event in particular spurred him to action.

"You're doing such a good job," he remembered one chaplain telling him before asking who he reported to. "We need you in the army. I want to ask him to send you to us."

When the proposal was brought before the Rebbe, he wholeheartedly agreed. He then encouraged Goldstein to remain in the Army with a full-grown beard.

Citing military grooming policies, "the Army gave me 30 days to either leave or shave," said Goldstein.

He fought fiercely to keep his beard, but was constantly denied dispensations by military brass. Nearly at wit's end, he wrote to the Rebbe, who told him to stay. Soon after, he finally got the official exception allowing him to keep the beard.

Goldstein, who was recently awarded the Joint Forces Commendation Medal for his contributions to chaplaincy operations at Gitmo, stressed that his family has supported him every step of the way.

"I have a great family of Lubavitch Chasidim, who believe in the shlichus," said Goldstein, using the term - loosely translated as mission - that Chabad adherents use to refer to the task of spreading Judaism wherever Jews may be found.

Referring to the fact that he spent the High Holidays away from his family, he added: "You have emissaries that have a tough Rosh Hashanah and Yom Kippur. My mission's a little different."

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HEADLINE: HEARING OF THE SENATE ARMED SERVICE COMMITTEE

SUBJECT: DETAINEE INTERROGATION

CHAIRED BY: SENATOR JOHN WARNER (R-VA)

WITNESSES: VICE ADMIRAL ALBERT CHURCH

LOCATION: 216 HART SENATE OFFICE BUILDING, WASHINGTON, D.C.

BODY:

SEN. JAMES INHOFE (R-OK): (Audio fed in progress) — classified briefings. The Church Report was initiated to provide a comprehensive evaluation of DOD Detention Operations, and the role interrogation procedures may or may not have played in the abusive treatment of detainees. Admiral Church has conducted what appears to be a thorough review analyzing all previous reports, and conducting over 800 new interviews, including uniform personnel of all ranks and levels of command, and senior policy officials.

I now cite two conclusions of this report, and I'm quoting now: "Number one, we found no link between approved interrogation techniques and detainee abuse. Number two" — still quoting — "we note, therefore, that our conclusion is consistent with the findings of the independent panel that is the Schlesinger panel, which in its August 2004 report determined that" — and quoting from that report — "no approved procedures called for or allowed the kind of abuse that, in fact, occurred. There is no evidence of that policy of abuse promulgated by senior officials or military authority."

In my judgment, these findings are consistent with the findings of all previous reports. According to the Church Report, the 70 incidents of substantiated abuse were, quoting from the Church Report, "perpetrated by a variety of active duty, reserve, and national guard personnel from three different services, on different dates, and in different locations throughout Afghanistan and Iraq, as well as a small number of cases at GITMO." Admiral Church concludes that there is not a single overarching reason for abuse, but that the stressful combat situation, particularly at the point of capture and as Admiral Church characterized it, "a breakdown of good order and discipline in some units could account for some incidents of abuse." This does not excuse the abuses that did occur, but I believe it is important to put this discussion in context.

As we meet this morning, a large number of trials by courts martial have been completed, and sentences have been rendered. In a great many of these cases, the military defendants pled guilty. Additional criminal procedures are ongoing. We have shown the world we are a nation of laws, and that we will not tolerate abusive, inhumane behavior by members of our armed forces. We will investigate wrongdoing and hold accountable those responsible for misconduct. To date, over a million U.S. servicemen and women have served in Iraq and Afghanistan, and have served with distinction. As of the date of this report, 36 service personnel have been convicted of criminal misconduct, and a few more trials are pending. As Admiral Church noted "the vast majority of detainees held by U.S. forces during the global war on terrorism have been treated humanely."

The Church Report found that no policy promulgated by the Department either advocates or encouraged abusive or inhumane treatment of detainees. The report also found that approved interrogation policies did not lead to illegal or abusive interrogation techniques being used. The Church Report candidly pointed out "dissemination of interrogation policy in Iraq and Afghanistan was generally poor, and interrogators fell back on their training and next hand experience, often relying on a broad interpretation of Army Field Manual FM 34-52." The Church Report continues "while these

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problems of policy dissemination and compliance was certainly cause for concern, we found that they did not lead to the employment of illegal or abusive interrogation techniques."

Admiral Church found that interrogators knew that abusive behavior was prohibited. There are very few allegations of abuse by trained interrogators at established detention centers. Many of the allegations of interrogation related abuse originated at the point of capture in the immediate aftermath of the heat of battle. In the period of time since these allegations of abuse first surfaced, the Department has been steadfast in examining its procedures and implementing constructive changes as appropriate. The Department of the Army in particular, which has principal responsibility for the conduct of detention and interrogation operations, has updated training procedures and doctrine to ensure the proper treatment of detainees and the effective conduct of interrogators.

These steps taken by the Department and the military services as well as the continuing reviews of issues of individual accountability throughout the chain of command will be the subject of a future hearing by this committee. The members of the U.S. Armed Forces have been tarnished by these isolated incidents of abuse by a few within their ranks, but they have shown their typical honor and resilience by the manner in which they have responded. We must remember that the vast majority of our brave men and women in uniform are performing remarkable tasks on a daily basis in austere, stressful environments, and in some cases making the ultimate sacrifice of life and limb to win the war on terror.

We honor their service, and that of their families. Our efforts to get this information and openly discussing it with the American people and with the world are intended to strengthen our Armed Forces. I thank our witness and his team for this report, and I thank you for coming and continuing to serve our nation, Admiral Church.

Senator Levin.

SEN. LEVIN: Thank you, Mr. Chairman.

And we welcome Admiral Church. Today we hear from Admiral Church on his investigation into the detention operations and interrogation techniques in Iraq, Afghanistan, and Guantanamo. Vice Admiral Church's investigative team has done extensive work collecting hundreds of statements and reviewing thousands of documents, and I would like to thank you, Admiral, and your team for that service.

The Church Report is not and does not purport to be a comprehensive report. It doesn't fill many of the significant gaps left by earlier investigations regarding the nature and causes of detainee abuse in Iraq, Afghanistan, Guantanamo and elsewhere. One gap in the investigation to date is what was the role of "other government agencies," primarily the CIA, in detainee abuse.

General Faye's report found the CIA practices "led to a loss of accountability, abuse, and an unhealthy mystique that further poisons the atmosphere at Abu Ghraib." However, General Faye was unable to fully investigate the CIA's role in detainee abuse because the CIA denied his request for documents. Both the Taguba and Faye Reports highlighted the problem of unaccounted for CIA ghost detainees. The Schlesinger panel was also aware of this issue. They had limited access to information on the CIA's role in detention operations. Vice Admiral Church's report states his team received limited cooperation from the CIA. The report also makes clear he was not tasked to investigate the existence of or policies in effect for detention facilities controlled by the CIA rather than by the DOD.

A second major gap in the Department of Defense led investigations which the Church Report fails to address is the issue of senior leadership responsible for creating an environment which he has contributed to abusive behavior, or which condoned or tolerated, or appears to condone or tolerate such behavior. The Schlesinger Panel report found that abuses were widespread, and that there was both "institutional and personal responsibility at higher levels." Matters of personal accountability were explicitly outside the scope of Schlesinger Panel's tasking from the Department of Defense. So, there's been no assessment of accountability of any senior official either within or outside of the Department of Defense for the policies that may have contributed to abuses of prisoners.

Numerous other gaps remain unaddressed by Admiral Church's report. For example, the Army Inspector General and his assessment of detention operations, doctrine and training looked only at Iraq and Afghanistan, not Guantanamo. The Formica Report looked into allegations of abuse by special operations forces only in Iraq, not Afghanistan or elsewhere. As a result, significant abuse allegations have fallen between the cracks.

In addition, previous reports containing conflicting conclusions, make it difficult to get a clear picture of the nature and cause of the abuses. These conflicting findings are not addressed in the Church Report. For example, reports are in

conflict with whether detainee abuse was systemic. General Taguba found "systemic and illegal" abuse of detainees by military police at Abu Ghraib. General Faye in his report found "systemic problems and abuses also contributed to the volatile environment in which abuses occurred," and included two dozen findings relating to systemic failures, including doctrine and policy concerns, leadership, and command and control issues, resources and training issues.

On the other hand, beyond the Inspector General reporting in July 2004 was "unable to identify system failures that resulted in incidents of abuse." Vice Admiral Church's report notes that despite that statement of the Inspector General of the Army, that the Army Inspector General at another point "recounted numerous system failures in his detailed findings which contributed to detainee abuse." I hope that the Admiral will clarify for this committee whether he agrees with General Taguba and General Faye that systemic problems contributed to detainee abuse.

Earlier reports found policies and guidance at least indirectly contributed to abuses. The Schlesinger Panel report says that interrogation policies were, "inadequate or deficient at three levels, the Department of Defense, CENTCOM combined joint task force, and Abu Ghraib prison. That report, the Schlesinger report adds that changes in DOD interrogation policy, approved by the Secretary of Defense contributed to confusion in the field about what methods were authorized. And perhaps most significantly, the Schlesinger panel found, "both institutional and personal responsibility at higher levels," for widespread abuses, not just at lower levels.

Similarly, General Faye found that multiple, "national policy", the DOD directives, were inconsistent with Army doctrine and resulted in interrogation policies that contributed to the confusion at Abu Ghraib. But, the Church Report concludes that approved interrogation techniques were not a "causal" factor of detainee abuse. These are simply "missed opportunities" in the process of developing policies on detainee operations. There isn't even a determination that we can find in the church report as to whether or not detainee abuse would have been reduced or avoided had those missed opportunities been acted upon.

In addition, the Church Report's assessment that there were simply "missed opportunities" is difficult to reconcile with the facts set forth in the report itself. Simply concluding that there were missed opportunities does not adequately explain why Secretary Rumsfeld approved aggressive interrogation techniques for use at Guantanamo in December 2002, including stress positions, 20-hour interrogations, nudity, and the use of dogs in interrogation. And he approved those in the face of serious concerns about such techniques, which had been forwarded by military lawyers from all four services to the joint staff.

Simply saying that there were missed opportunities does not explain why the Office of Secretary of Defense failed to promulgate an interrogation policy for Afghanistan consistent with the amended policy approved for Guantanamo in April 2003, even though, even though according to the Vice Chairman of the Joint Chiefs of Staff, General Pace, and the Chairman of the Joint Chiefs had set up a recommendation that the same interrogation guidelines apply in both places. The bland label of missed opportunities does not explain the absence of policy governing the conduct of CIA interrogators to DOD facilities, which contributed to abuses at Abu Ghraib and elsewhere. Those are all failures of command at high levels.

It is also difficult to reconcile the notion of missed opportunities with policies that have come to light since Admiral Church apparently ended his investigation in September of 2004. A few months ago the Justice Department confirmed the existence of a memo relating to the authority to use specified interrogation techniques, a memo produced by their Office of Legal Counsel, concurrently with the August 1, 2002, torture memo, that was so flawed the administration disavowed it in mid-2004.

Just in the past few months we have learned of FBI agent's strong objection to aggressive and coercive interrogation techniques at Guantanamo, which FBI agents in one e-mail labeled torture, and in a number of e-mails deemed so disturbing that agents had guidance to, "step out of the picture," when the military were carrying out interrogations. The Guantanamo commanders defended these methods by saying that the Department of Defense has their "marching orders" from the Secretary of Defense. Nor does the Church report explain the recent revelations that the administration reportedly authorized the CIA to engage in the handing over of detainees to foreign countries, including ones with a track record of torture.

This failure of accountability of senior leaders sends the wrong signal to our troops, and to the American people. It harms the United States' standing as a nation of laws, and it undermines the high standards of our armed forces. It places our brave and honorable military men and women in jeopardy when they become prisoners. In the end, I conclude that the Defense Department is not able to assess accountability at senior levels, particularly when investigators are in the

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chain of command of the officials whose policies and actions they are investigating. Only an independent review can fully and objectively assess both the institutional and personal accountability towards the abuse of detainees.

I thank you, Mr. Chairman.

SEN. WARNER: Thank you, Senator.

I apologize for my tardiness, and I appreciate you taking my statement. As Senator Inhofe said on my behalf, this committee will have at least one more hearing on this subject, on the issues of accountability. And as I listened to your final comments, I say most respectfully to my colleague, there has not been a finality in terms of the assessment of accountability of either senior policy people, or senior officers. They remain open, as you are probably aware, the Army review of its senior officers. So more work has to be done by this committee.

We welcome you Admiral, and thank you very much for undertaking this very prodigious and challenging effort.

ADM. CHURCH: Thank you, Senator Warner, Senator Levin, and thank you to the members of the committee for the opportunity to be here today.

I have a short opening statement, sir, if I may. Approximately 10 months ago the Secretary of Defense tasked me with some very specific things that he wanted done. The first of that was to look at all the interrogation techniques that had ever been considered, authorized, employed, or prohibited in any theater at any time. He asked me to specifically look at the issue of migration, and the techniques migrated where and when. He specifically tasked me to analyze and review DOD support to or participation in the interrogation activities, as non-DOD activities. He asked me to work in direct support of the independent panel, chaired by the honorable James Schlesinger, which we did, and I would add that the data that they had in their report came from our group, and we supported their findings, and reviewed their work, as well.

Implicit in that task was to determine whether, and to what extent the nature and migration of all of these interrogation techniques, directly or indirectly, resulted in the detainee abuse that we've all become familiar with. As has been mentioned earlier, he asked me to look at gaps and seams. We did that. We expanded our tasking to look at ICRC issues, medical issues, and contract interrogators, as an example.

I believe my investigation was thorough and exhaustive. We conducted over 800 interviews, the majority of which resulted in sworn statements. We took interviews or written statements from senior civilian and military leaders in the Pentagon. We reviewed thousands of pages of documents based on data calls from the Pentagon, from the combatant commanders.

We did leverage all of the other ongoing investigations, so as not to reinvestigate that which has already been investigated. We looked very carefully at the 70 completed cases of abuse, criminal cases, to see if there is anything in those that relates to interrogation, or interrogation techniques.

Finally, I'd like to give you, as has been mentioned earlier, a backdrop on some of my findings. It was clear during the investigation that if we're going to win the global war on terror, we have to have intelligence, and embodied in that is we need human intelligence. As has been mentioned also, the overwhelming majority of our service members have served honorably under very difficult and challenging conditions. And the vast majority of detainees have been treated humanely and appropriately. When that was not the case, that's been investigated.

My key findings said clearly there was no policy, written or otherwise, at any level that directed or condoned torture or abuse. There was no link between the authorized interrogation techniques, and the abuses that, in fact, occurred. Nevertheless, we did identify a problem with dissemination and development, migration of the interrogation techniques, both in Afghanistan and in Iraq. And we documented another problem which is the lack of field level guidance for the interaction of DOD and other government agency personnel.

Also previously mentioned, with benefit of hindsight, we saw two missed opportunities. The lessons acquired from unconventional conflict were never specifically communicated to our troops, as a means of lessons learned. And no guidance or interrogation techniques were promulgated for Afghanistan or Iraq, either to CENTCOM or by CENTCOM.

I'd like to make several quick points on the detainee abuse, there were 70 closed cases, 6 were deaths, 26 were serious, and 38 were minor abuse cases, as we categorized them. Approximately one-third of these cases occurred at the point of capture, where emotions run very high. The majority of these cases, even those considered interrogation related, as we define them, consisted of simple assaults, punching, kicking, and slapping detainees. We looked for any discernible

pattern of abuse, and we were unable to find it. It varied by unit, active duty, guard, active reserves, guard, in different theaters. As the independent panel stated, "no approved procedures call for or allow the kinds of abuses that, in fact, occurred."

Finally, a quick word about the FBI documents, we were aware of the 14, July, 2004 memo that highlighted three instances, that was sent to us by the Army. Two of those incidents had previously been investigated. The Army CID, Criminal Investigation Division began an investigation on the third one. Last Friday I had a meeting with the current Naval IG, who is, as you know, going over the FOIA requests, and General Furlow from SOUTHCOM who's doing an investigation of the specific incidents. And I'd be happy to answer questions on the progress of those two ongoing investigations later. That concludes my comments, sir and —

SEN. WARNER: Thank you very much, Admiral. We'll proceed to have a six-round initial questions by members.

Admiral, let's go directly to the evidence that the American people, indeed the world, saw by virtue of these pictures. Tragic pictures. I mean, incomprehensible almost to, say, a person like me who's had the privilege of a half-century of association with the men and women of the armed forces. However, apart from those pictures, you've described other types of infractions which do not have a pictorial record. Largely we learned of them through testimony. I think it's important that we lay before the public the full range of tortures with some specificity. The pictures were explicit. Tragic. Were there other types of incidents which you felt resulted in bringing people to trial, which we do not have in mind fully as to what occurred?

ADM. CHURCH: From the work that we did, Senator, I think that everything that has been alleged is being investigated. And —

SEN. WARNER: I'm not suggesting it isn't being investigated. But I think we've got to have a full understanding of the types of wrongdoings that were perpetrated.

ADM. CHURCH: It's —

SEN. WARNER: The pictures captured certainly what went on in that prison. But there are other incidents, for instance, at the point of detention in the heat of battle. Often there's extenuating circumstances in the heat of battle for those who are making that apprehension. But, in other words, I want it here in the record as best we can, a description of other things that were the basis for these trials that we have not seen by virtue of those pictures.

ADM. CHURCH: It's the full range, Senator. We have six deaths of those who were detainees. There were a number of detainee deaths. Most of them were by natural causes. We looked at every single detainee death. There were six of those.

SEN. WARNER: You say by natural causes, the deaths resulted as a result, excuse me, resulted in, because of blows to the system, I suppose.

ADM. CHURCH: No sir, these were —

SEN. WARNER: They weren't?

ADM. CHURCH: Natural causes were —

SEN. WARNER: Oh, natural —

ADM. CHURCH: We looked at all these deaths, all the detainee deaths to ensure that anything that looked problematic was further investigated. There are six of the 70 abuse cases that are closed that involved detainee death. And I'm trying to answer your question on the range of problems. That was the far end. To the low end, you'd probably go to Guantanamo where there were incidents of slapping, there were what we call minor abuse cases. There were a couple of sexual assaults that were in that 70 at the high end, and there was the range all the way in between.

SEN. WARNER: The International Red Cross performed and has throughout contemporary history, I mean, going back many years, a very valuable service of trying to monitor the detainee situations worldwide. And they were active participants in this case. And in the closed session of this hearing this morning, which will follow the open session, we'll ask you to give us further details of their involvement. But on the whole, do you feel their involvement was constructive, and did it provide reasonable early warning to our chains of commands that reviewed these reports?

ADM. CHURCH: I do, Senator. I think it was very positive. I think the reactions to the ICR reports were, in general,

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very good. But in a couple cases, the reaction was not as swift or comprehensive as it could have been. And Abu Ghraib is one example.

SEN. WARNER: The responsibility of individual leaders. In your report, you talk about the deterioration of good order and discipline in some units, and the related failure of unit-level leadership to react to warning signs and stressful conditions, and how this may have contributed to some incidents of abuse. To what do you attribute this breakdown of good order and discipline in the United States military. To what levels did these failures of leadership extend in your judgment? And what recommendations do you make to prevent or reduce such breakdowns of good order and discipline in the future? Because, in a subsequent hearing of this committee, I mean, we will eventually get into exactly what corrective measures the Department of Defense and other agencies and departments to some extent, have taken in that breakdown. But, they will draw on your report. Much has been done already. But I'm sure this report will further refine the steps that have been done. So let's talk about your professional judgment. You're an officer of extraordinary capabilities and distinction in your own career, and to what do you attribute this breakdown of good order and discipline?

ADM. CHURCH: Answer in two parts, Senator. Having come to the conclusion, having looked at the 70 closed cases that the interrogation techniques were not a causal factor in the abuse that happened, I felt it was important to try to offer an opinion as to, if that wasn't and this is my best military judgment having looked at this for 9 months, what did cause the abuse? And as I noted, a third of these happened at the point of capture which is where emotions run high. And then after that, it became —

SEN. WARNER: Let's make it clear to those following this hearing. At the point of capture, you mean in the field —

ADM. CHURCH: In the field.

SEN. WARNER: — where there's active combat in many instances either going on, or there are combat conditions, and an individual is apprehended.

ADM. CHURCH: Yes, sir. And that could be —

SEN. WARNER: You said emotions and not only that but time is measured in microseconds in trying to make a capture and then get back and protect yourselves. So what you are —

ADM. CHURCH: That's exactly right, Senator. And of course, that's when, once a detainee is captured, the rules change, and people have to be aware of that. And that's where a third of this happened. I said about 20 of the incidents involved were interrogation-related, and I used a very expansive definition of that. Anything involved in MI, if an MI, military interrogator, was in the area, if it was an MP, even at debriefing at the point of capture, I called that interrogation-related, frankly, so I wouldn't be challenged on not including that. And very little of this involved interrogation. So you're left, really, with looking at each individual case and saying, what happened? And the events of Abu Ghraib are a shining example where you ask the question, where was the leadership? And not only the NCOs, but the mid-grade officers who, I use the analogy of the ship because that's my background, and you can get an illegal order and it doesn't matter. You're still responsible for the safety of that ship. And to me, that's where the breakdown was, and the remedies are, you know, we can talk about that for a long time. It's accountability at that level.

SEN. WARNER: Thank you, Admiral. Senator Levin?

SEN. LEVIN: Thank you, Mr. Chairman. Admiral, according to your report, in response to a JCS joint staff request for comments on the request for Guantanamo commanders in November of 2002 for authorization to use more aggressive interrogation techniques, military service lawyers expressed "serious reservations" about approving the proposed interrogation techniques without further legal and policy review. What was the nature of their serious reservations?

ADM. CHURCH: They felt that the techniques were too aggressive, that it needed additional legal review to see if they were, in fact, lawful.

SEN. LEVIN: And were those concerns brought to the attention of Secretary Rumsfeld prior to his December 2, 2002 approval of additional aggressive interrogation techniques?

ADM. CHURCH: Nobody was able to succinctly answer that question, because I think — I think not, because it was overcome by events. That was my opinion. The need —

SEN. LEVIN: So you were unable to determine whether or not —

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ADM. CHURCH: With absolute certainty, no sir.

SEN. LEVIN: OK now, there was a Department of Defense working group on interrogation techniques which was initiated in January 2003. And that working group ultimately recommended interrogation techniques for use against enemy combatants. And most of the recommendations were adopted. However, as you note in the body of your report, you show that the working group, in which military lawyers were participating, was stopped from developing its own legal analysis and instead, was required to accept the legal analysis contained in a memorandum from the Justice Department's Office of Legal Counsel, a memorandum in which the working group strongly disagreed. According to your report, that memo, entitled "Military Interrogation of Alien Unlawful Combatants" was prepared by Deputy Assistant Attorney General John Yoo for Department of Defense General Counsel Haines, and that memo had a date of March 14, 2003. This memo was presented, as your report indicates, to the working group as "controlling authority" on all legal issues. And I want to refer that now to the March 14, 2003 memo from now on.

Access of working group members to this memo was apparently restricted, as you noted, and no notes were permitted. You also noted that conclusions of that memo are nearly identical to those of the August 1, 2002 Office of Legal Counsel memo which is known as the Torture Memo, which the administration avowed in the middle of — disavowed in the middle of last year, which among other things concluded that for physical pain to amount to torture, it had to be equivalent to the pain accompanying "organ failure, impairment of bodily functions, or even death." So, basically that working group in the DOD was told they had to follow this March 14 memo from the Deputy Assistant Attorney General Yoo to Mr. Haines. My question is, did you have access to that March memo?

ADM. CHURCH: Yes sir, we did.

SEN. LEVIN: And do you have a copy of it?

ADM. CHURCH: No sir, we did not get a copy. We were — we went and read it and took notes —

SEN. LEVIN: Were you allowed to take a copy of it?

ADM. CHURCH: No sir, we, they didn't — we were not (to ?) take a copy.

SEN. LEVIN: So even in your classified report, there is no copy of that memo. Is that correct?

ADM. CHURCH: That's correct, sir.

SEN. LEVIN: And has that memo been superseded like the Torture Memo on which it was based, do you know?

ADM. CHURCH: I'd have to get back to you, sir. I can't say for certain.

SEN. LEVIN: Alright now, General Pace stated that on May 15, 2003, the chairman sent up a memo, chairman of the Joint Chiefs, sent up a memo recommending that the same interrogation guidelines be issued to CENTCOM as existed for Guantanamo. It was sent to the office of the Secretary of Defense, this request from the chairman, and recommendation. Do you know whether the office of the Secretary of Defense responded to the chairman's May 15, 2003 letter with that recommendation?

ADM. CHURCH: There was no response that I'm aware of, sir.

SEN. LEVIN: And did you find any evidence explaining why the office of the Secretary of Defense failed to act on the recommendation?

ADM. CHURCH: Not specifically, sir.

SEN. LEVIN: You made reference to the FBI memos. In December of last year, the FBI released emails under a FOIA request in which FBI agents describe the DOD interrogation techniques in use at Guantanamo as torture, and stated in their emails the following. I send you — this is one FBI agent talking to another. "When I return to DC, I will bring a copy of the military's interview plan. You won't believe it." Are you familiar with that memo?

ADM. CHURCH: Yes, sir.

SEN. LEVIN: Did you see the plan?

ADM. CHURCH: I believe, if that's the one you're referring to, I believe I did, yes sir.

SEN. LEVIN: And that plan was described as containing coercive techniques in the military's interviewing toolkit.

Are you familiar with those coercive techniques?

ADM. CHURCH: I think we're referring to the same incident, sir.

SEN. LEVIN: Would you agree those were coercive techniques the way the FBI described them?

ADM. CHURCH: There were a couple of interrogations that I would classify as humane but coercive.

SEN. LEVIN: Finally, the Schlesinger panel — by the way, do you have a copy of that in your classified report, of those documents that the FBI was referring to?

ADM. CHURCH: I believe it's in the back of the material, sir. If not, we'll get it.

SEN. LEVIN: Did you talk to those FBI agents about that, what they saw at Guantanamo?

ADM. CHURCH: We talked to folks that were with them. We talked to members of the criminal investigative task force and CIS. They were all working collaboratively. So I'm very familiar with the incidents you're talking about

SEN. LEVIN: And you've talked with people who actually witnessed it in the FBI?

ADM. CHURCH: Not specifically, but I've —

SEN. LEVIN: Finally, the Schlesinger panel found that abuses were widespread, and "the abuses were not just the failure of some individuals to follow known standards, and they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels." That's Schlesinger. Do you agree with that finding of the Schlesinger panel?

ADM. CHURCH: Yes sir.

SEN. LEVIN: Pardon?

ADM. CHURCH: I do.

SEN. LEVIN: And have you identified anyone at higher levels who bears personal responsibility?

ADM. CHURCH: I have to give you a little bit of a longer answer, Senator. I worked very closely with the Schlesinger panel. And as we worked together, it evolved that the issues of responsibility needed to be addressed. That was not in my charter. So it was understood that Schlesinger panel were going to make those calls. SEN. LEVIN: Alright, thank you. Thank you, Mr. Chairman.

SEN. WARNER: Thank you, Senator. Senator Inhofe?

SEN. INHOFE: Thank you, Mr. Chairman. I know, Admiral Church, that you're, the scope of your work goes far beyond Abu Ghraib, but I'll confine my questions to just Abu Ghraib.

First of all, I want to thank my colleagues who've been very nice to me, in spite of the fact that on May 4, 2004 I was the skunk at the family picnic, and the picnic's still going on. And I haven't changed my opinion at that time. I felt, and I still feel today, that that relationship between the quality of interrogation and the quality of intelligence in American lives is there, and it's very important. Let me first of all — it's been, it was my understanding then and it's my understanding now that the detainees that were held in Abu Ghraib, now specifically say in cell blocks 1A and 1B were either actively involved in operational planning for attacks against our coalition forces or had already participated in attacks against our forces. They were working on behalf of former Ba'athists now acting as insurgents or on behalf of terrorist leaders from outside of Iraq, such as Zarqawi. Is that your understanding?

ADM. CHURCH: That's my understanding, sir.

SEN. INHOFE: I have several question, and they can just be short answers if you would do that for me, Admiral. First of all, we've outlined the number of investigations and reports that have been coming. Some commentators have dismissed several of the previous reports as whitewash or cover-up. Did you come across anything that would cause you to believe or suspect that any of these officials who conducted these investigations were pursuing an agenda other than seeking the truth? Did you find any evidence of that?

ADM. CHURCH: No sir, I did not.

SEN. INHOFE: Regardless of whether you are talking about properly approved techniques or improperly approved

techniques, did you every find anything that sanctioned the practices that showed up in the incidents and photos at Abu Ghraib?

ADM. CHURCH: Senator, that was one of the key findings of the report, that none of the instances that we saw, in particular Abu Ghraib —

SEN. INHOFE: Can you pull that mike up a little bit? Your voice is just not projecting.

ADM. CHURCH: Yes sir, I'm sorry. That was one of the key findings of my investigation, that none of these abuse cases that have been highlighted, that we are all familiar with, bore any resemblance to any policy or interrogation technique that was ever considered or authorized.

SEN. INHOFE: Yes, I know that, but I think it's a key point that's worth repeating. Is it fair to say that whatever confusion there might have been, no one could have reasonably believed that was we saw in those photos was in accordance with approved practices?

ADM. CHURCH: There's been a lot of discussion on the word confusion. Regardless of which copy or which operative, standard operating procedure an interrogator was using, none of the abuses that we saw would've been condoned.

SEN. INHOFE: Alright, sir. Did you ever find any evidence to support the allegations that commanders preferred to look the other way, that's a quote out of some of the accusations, rather than investigate abuse if they could get away with it?

ADM. CHURCH: We did not find that.

SEN. INHOFE: In the winter and spring of 2003, there was a working group that was led by Air Force General Counsel Mary Walker that reviewed the law on interrogation practices and made a recommendation to the Secretary of Defense on what techniques should be allowed at Guantanamo Bay. How many techniques did the working group recommend, and how many did Secretary of Defense approve? Isn't it correct that the Secretary of Defense approved for use, fewer than the total number of interrogation techniques approved by the working group? In other words, his directive was narrower than what the group concluded the law allowed?

ADM. CHURCH: The working group sent forward 35 interrogation techniques based on advice of general counsel recommending restraint. The Secretary of Defense approved 24.

SEN. INHOFE: All right sir. You know I can recall when even back in the days I was in the House of Representatives, certainly many years ago when I came to this body. Certainly on the intelligence committee — and human intelligence went out of vogue for a while. There's an idea that somehow we're abusing people and when we're going after human intelligence. It should be done electronically or by some other means.

In your report, you say that intelligence gathering, particularly human intelligence, has assumed greater importance in the war on terror. I would like to have you explain why it's assumed a greater role like in this particular war on terror than in previous uses.

ADM. CHURCH: It's the nature of the enemy, sir. We don't know who they are, where they are. If we're going to learn anything about what might be around the corner, we have to have intelligence, and it's human intelligence that's going to be key.

SEN. INHOFE: Sir, can you think of any group that you might come upon where the potential of human intelligence would be any greater than those who were incarcerated with the detainees in cell bloc 1A and 1B of Abu Ghraib?

ADM. CHURCH: That would be one good example. Certainly —

SEN. INHOFE: — fertile field for intelligence gathering, yes.

ADM. CHURCH: Certainly the detainees at Guantanamo Bay would fit that criteria.

SEN. INHOFE: And I would assume that you would agree with me that there is a direct relationship between the quality of intelligence and American lives, our men and women in uniform?

ADM. CHURCH: We know that for a fact by some of the intelligence that we've gained.

SEN. INHOFE: You've done great work and I thank you for your service. Thank you Mr. Chairman.

SEN. WARNER: Thank you, Senator. Senator Lieberman?

SEN. LIEBERMAN: Thank you Mr. Chairman. Admiral Church, good morning and thank you for your work. I wanted first to put in some perspective the cases that you investigated because while no case of abuse is tolerable by this country, whereas everyone has said and agreed we live by the rule of law, even in the most difficult of circumstances, times of war, times of war on terror. I think it is important as we react, particularly to the pictures of Abu Ghraib that Chairman Warner referred to about the numbers here. Am I correct as I saw in one section of the unclassified version of your report, that your estimate is that there have been more than 50,000 detainees thus far in the global war on terror?

ADM. CHURCH: Yes sir. At a point in time that was the figure.

SEN. LIEBERMAN: So probably more now, but there was a point in time you wrote September 30th of '04, that would include Iraq, Afghanistan, Guantanamo, and then other places where detainees may be held.

ADM. CHURCH: That was the best estimate, yes sir.

SEN. LIEBERMAN: And as a result of your investigation, you identified 70 cases of abuse that were substantive cases of abuse?

ADM. CHURCH: Yes, sir. We reviewed what the Naval Criminal Investigative Service and the Army Criminal Investigative Service had, which included reports from the field as well as the criminal misconduct. We reviewed everything we could get our hands on.

SEN. LIEBERMAN: Right. So my point is that 70 cases out of 50,000 detainees is about one-tenth of 1 percent of the detainees, and it justifies your conclusion that in the overwhelming majority of cases, detainees to the best of our knowledge now, have been treated within the standards that we in American would want detainees to be treated.

To go one level forward, your judgment as given to the committee today, that there were 20 of those 70 cases of abuse that you found to be real, were associated with interrogation. Then we're at about one-twenty fifth of one percent of all detainees. I just say this not to minimize the offenses, but simply to put them in perspective that most of the American personnel, service men and women who are holding detainees and in fact interrogating them, to the best of our knowledge, are acting within the law. Is that your conclusion?

ADM. CHURCH: That's absolutely correct, senator.

SEN. LIEBERMAN: Let me ask you a factor related to the way you conducted the investigation. I was interested that you did not interview any of the detainees, but you did base a lot of your work on the report of the International Committee of the Red Cross, which is certainly in our perspective an advocate or a protector at least of the detainees. Could you explain why you did not talk to any of the detainees?

ADM. CHURCH: First of all the scope of the investigation really was to try to catalogue and document all the interrogation techniques. So that was where we started, and as we expanded I felt that ICRC reports, that all the working papers, would give me a pretty good feel for what the detainees' complaints were. And we'll get into this in the next section, session, but from looking at all the ICRC reports, I got a pretty good feel of what the complaints were and what the reactions to those complaints were; were they being followed up and that was the purpose of that particular section.

SEN. LIEBERMAN: General Casey the other day — and there is some reference to it in your report — that recently issued a set of new procedures regarding the handling of detainees and which techniques were available appropriately to those carrying on interrogation or just holding of the detainees. Could you elucidate for the committee at this time, in some detail, about what those additional safeguards are, pursuant to General Casey's directive?

ADM. CHURCH: Senator, I'll have to get back to you. I did read that. That was subsequent to our investigation. I know he's come very much in line with doctrine 3452 and put in a number of safeguards and also clarifies some ambiguities that he felt were left over from the previous guidance.

SEN. LIEBERMAN: Just for the record, give us a brief description of what doctrine 3452 is.

ADM. CHURCH: Sorry. That's the basic interrogation doctrine that the services all use. It lists 17 techniques starting with direct approach and that's what was in effect for a good part of the initial global war on terror before we started expanding that.

SEN. LIEBERMAN: I want to go back to the overall view and the perspective through which you look at this, and I quote from your unclassified executive summary. "Any discussion of military interrogation must begin with its purpose, which is to gain actionable intelligence in order to safeguard the security of the United States. Interrogation is often an adversarial endeavor. Generally detainees are not eager to provide information and the resist interrogation to the extent that their personal character or training permits. Confronting detainees or interrogators whose mission is to extract useful information as quickly as possible, military interrogators are trained to use creative means of deception and to play upon detainees' emotions and fears when conducting interrogations of enemy prisoners of war who enjoy the full protections of the Geneva Convention. But people unfamiliar with military interrogations might view a perfectly legitimate interrogation of an enemy prisoner of war in full compliance with the Geneva conventions as offensive by its very nature."

Obviously some of what we saw in Abu Ghraib, and some of what you've described go well beyond that. But it is important to set it in that context.

I wanted to ask you this question in terms of detainee interrogation and the global war on terror. Do the existing procedures that govern interrogation make any distinction between — and I understand this can be a slippery slope — between detainees who may have general knowledge of enemy plans and detainees who we have reason to believe may have knowledge of an imminent terrorist operation?

I know that there are circumstances of a so-called ticking time bomb case where in other countries which attempt to live by the rule of law, the standards of the nature of an interrogation of a detainee can be quite simply more aggressive if there's a conclusion reasonably arrived at that the detainee has knowledge of the allegorical ticking time bomb, and if you break that detainee, you can stop the bomb from exploding. Do our procedures now allow for those kinds of distinctions?

ADM. CHURCH: I'll try to answer that, sir. The policies, the doctrine, the approved interrogation techniques wouldn't change based on what you know, the value of the intelligence of the detainee. What might change is the interrogation plan of how you approach that, how you might use techniques in combination to try to get the information you use. Each interrogation plan might be different. I doubt you would waste much time on somebody who is of little intelligence value but you would probably spend a lot of time on somebody who had actionable intelligence that might save time.

SEN. LIEBERMAN: Thank you Admiral. My time's up. Thanks Mr. Chairman.

ADM. CHURCH: Thank you, sir.

SEN. WARNER: Senator McCain?

SEN. MCCAIN: Admiral, thank you for your report. Are all the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?

ADM. CHURCH: Yes, sir.

SEN. MCCAIN: In your mind there's no doubt?

ADM. CHURCH: There's no doubt in my mind.

SEN. MCCAIN: Is there in your mind a difference in the status of a Taliban prisoner who was captured in the war in Afghanistan and that of a terrorist who is apprehended in Omaha, Nebraska? In other words the Taliban guy, fighter, eligible for the Geneva Conventions for the treatment of prisoners of war and is the terrorist caught in Omaha eligible?

ADM. CHURCH: The latter is, the first — as you remember from the president's -

SEN. MCCAIN: The latter is eligible for Geneva Conventions -

ADM. CHURCH: A terrorist caught in the United States? He's not a prisoner of war so he wouldn't fall in that category.

SEN. MCCAIN: Okay. Is the Taliban prisoner fighting for the then-government of Afghanistan eligible for the Geneva Conventions for the treatment of prisoners of war?

ADM. CHURCH: As you'll remember, the president said the Taliban cannot conduct themselves in a matter where they would be considered party to the Geneva. So the answer to your question is no.

SEN. MCCAIN: So the president of the United States has decided that the Taliban even though there was a government recognized by some in Kabul, is not eligible.

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ADM. CHURCH: He made that determination, yes sir.

SEN. MCCAIN: You know that North Vietnamese made the same determination about American prisoners?

ADM. CHURCH: Yes sir?

SEN MCCAIN: But the Geneva Conventions clearly state that those who are fighting for a country and — in other words, in my view, those who were fighting for the Afghan government, whether they were Taliban or average citizens, they were fighting in the army of that government of Afghanistan. How do you argue that they're now?

ADM. CHURCH: I'm not sure that I am specially qualified to have the legal debate with you sir, but — SEN MCCAIN: Well I'm not having a debate with you, I'm asking a question, and you of all people should be well versed on what eligibility, treatment, under what conditions should be.

ADM. CHURCH: I am, and I understand what the president said. He also said that all would be treated humanely and consistent with military necessity in accordance with Geneva. So Geneva underpinned all of this.

SEN. MCCAIN: So the United States policy now is that we decide when we are in a conflict whether the combatants of that nation are eligible for the Geneva Conventions or not?

ADM. CHURCH: You know senator — In Iraq Geneva EPW applied. In Afghanistan, detainees in Gitmo, there were different rules.

SEN. MCCAIN: So you've got somebody who has captured — different rules for — so you've got somebody captured in Baghdad who was fighting for Saddam Hussein and they're sent to Abu Ghraib or another prison facility. Next to them is a combatant who was captured in Afghanistan in the same cell. There's different treatment for those two prisoners?

ADM. CHURCH: There'd be no different treatment in Guantanamo but the difference between — the applicability of Geneva would be different.

SEN. MCCAIN: Say that again.

ADM. CHURCH: The different categories were -

SEN. MCCAIN: Let me give you this example. Saddam Hussein's army versus Taliban army, both in the same prison.

ADM. CHURCH: Different rules apply and as for al Qaeda, they're different

SEN. MCCAIN: Doesn't this get a little confusing for the people who were in charge of developing specific policies for treatment of prisoners?

ADM. CHURCH: I did no find that.

SEN. MCCAIN: It's no problem.

ADM. CHURCH: I did not find that for the interrogators that was a problem because they had the basic underpinning? That human treatment was to be observed at all times and they used the same set of techniques for the interrogations. So by the time it translated down to the interrogation piece that I was looking at, I didn't see much of a distinction?

SEN. MCCAIN: You didn't see much of a distinction?

ADM. CHURCH: No -

SEN. MCCAIN: Don't you think there are specific protections under the Geneva Conventions for the treatment of prisoners of war that should not apply to terrorists?

ADM. CHURCH: I think I agree with you sir.

SEN. MCCAIN: My point here is, Admiral, that I don't believe that it is clear the difference in policy towards treatment of those who are eligible for the Geneva Conventions, the treatment of prisoners of war versus those that are not. I don't argue that Mohammed Atta is not eligible for the Geneva Conventions protection. What I am saying that unless you have specific guidelines then obviously if you treated those both the same, you either not doing quite maybe what you should to the terrorists, and maybe not enough to protect — to be in compliance with a treat that we signed. And I worry Admiral, very much, that if we decide that a certain country's military personnel are not eligible for treatment under a convention that we signed, then wouldn't it be logical to expect then they would declare as the North Vietnamese did, that

American prisoners are not eligible for protection under the Geneva Conventions?

ADM. CHURCH: Those were the arguments, yes sir.

SEN. MCCAIN: Well what's your opinion?

ADM. CHURCH: My opinion is that the president made the right call.

SEN. MCCAIN: So everything's fine?

ADM. CHURCH: No sir. I said, I don't believe al Qaeda should have been eligible because they don't meet the criteria.

SEN. MCCAIN: Nor do I. Nor do I .

ADM. CHURCH: And I don't believe that the Taliban, by their behavior, should have been eligible for EPW treatment.

SEN. MCCAIN: Certainly the German SS shouldn't of been eligible.

ADM. CHURCH: They wore a uniform sir.

SEN. MCCAIN: These guys wore a uniform of sorts.

ADM. CHURCH: But their behavior didn't, didn't meet the criteria for EPW.

SEN MCCAIN: But the SS's divisions' behavior was okay?

ADM. CHURCH: Sir you asked me for my opinion, and it's a good debate. That's my opinion.

SEN. MCCAIN: Well sir I think it's a little bit more than a good debate because I think this nation may face other conflicts in the future, and I'm very concerned about what might happen to Americans who are taken prisoners unless we have clear and specific guidelines that we adhere to, including the Geneva Conventions, where applicable under international law. I thank you. Mr. Chairman?

SEN. WARNER: Senator Kennedy?

SEN. KENNEDY:. Thank you very much Mr. Chairman.

On page 124 on your report Admiral Church on the unclassified paragraphs you describe the initial meetings of Haynes working group and their briefing from the office of legal counsel on the applicable law. Your report states that fairly early in the working group process, the OLC the draft legal memoranda was presented to the action officers as the controlling authority for all questions of domestic and international law. This memoranda was basically the Bybee Torture memoranda, and you said that the working group expressed a great deal of disagreement with the OLC analysis. In your report, you write that members of the working groups were only permitted to read the memoranda in Mr. Haynes or Ms. Walker's offices, initially without taking notes. In addition you write that your investigators were not allowed to obtain this crucial memoranda either, but only could review it without taking verbatim notes. This memo has never been provided to the committee, despite our requests. This issue also highlights the involvement of Mr. Haynes. Now the memo was -- you said the working group expressed a great deal of disagreement of the OLC analysis. They said interrogation techniques should follow Geneva Conventions, the conventions against war and U.S. law. Now that's not what the Haynes group finally recommended. So Admiral, could you tell us how this dispute was resolved, were the members of the working group overruled?

ADM. CHURCH: Thank you for the question senator. I want to state initially that the value I think of my investigation is that I lay all this out. This has never been laid out before, so that we can understand exactly everything that went on in the determination of these techniques.

As I did my research , I came to understand that what the justice department had said was in fact binding on the Department of Defense. So that was the legal underpinning that this group began working on. They ultimately, working through that, recommended 35 techniques. The secretary of defense approved 24, but again, there was the underpinning of humane treatment that was not only in the memo but also in the consideration. But you're correct, sir.

SEN. KENNEDY: Well, I am not sure I'm correct about what I'm correct about. You said the working group expressed a great deal of disagreement about the OLC analysis, and they said the interrogation should follow the Geneva. Now I was asking how was that issue resolved? Here you have a number of the people that have had responsibility or trained people, the JAG I imagine other lawyers, that express a great deal of disagreement. Those are your words. Eventually this

issue was resolved and I am asking you about how that was resolved and who resolved it? Was it just resolved by Haynes.

ADM. CHURCH: It was resolved by, I guess the chairman of the committee Ms. Walker, basically said we're not going to revisit the decisions of Justice; we are going to move on. So they moved on and they started looking at techniques, and as they looked at the 35 techniques, they assessed those in numerous categories dealing with humane treatment versus how this would be perceived internationally and in many other categories. So the short answer, Senator they moved on. They accepted what the legal starting point was.

SEN. KENNEDY: Well I know they've moved on, and I'm familiar with the working group published, and how they published virtually identical to the Bybee amendment, I'm familiar. The point I am trying to find out is who made the judgment? When you had talk about a great deal of disagreement with the OLC, who was the one who made the call on this? Who was the one that finally said, when there was disagreement in your own words, a great deal of disagreement and as we all know that from other memoranda, there was an enormous amount of disagreement. Someone finally made the call that what they were going to do is in the working group, they would actually print exactly the words in Bybee amendment. I'm just asking you who made that call.

ADM. CHURCH: I believe the answer was, the office of the general counsel.

SEN. KENNEDY: That's Mr. Haynes?

ADM. CHURCH.: It is, but I'd like to add one thing. I looked at that very closely, and that's why I came to the conclusion, because I questioned the same thing, and the lawyers made those issues that the rulings of the Justice Department were binding on the Defense Department, and that's what I called in my investigation. So it was not a bad call.

SEN. KENNEDY: I can understand and appreciate your position. Many of us understand that it was the CIA went to Mr. Gonzales with the understanding of Mr. Haynes to request this memoranda from OLC, and that Mr. Gonzales talked to OLC during the course of the preparation of this? This has been laid out in different hearings. And then finally they came back, the Bybee amendment came back and this was just fine with the CIA and with the DOD, and it was sent on over and the record shows that there were many in the JAG and otherwise that did not feel that it did not feel that it followed the Geneva Conventions, and you expressed a similar opinion about this. I want to know who within the DOD made the call on it, and it's quite clear now that it's Mr. Haynes who's the general counsel on it. That's basically what I am trying to have.

My time is up, Mr. — unless there's something you want to add to that.

SEN. WARNER: Let the witness finish the answer, yes, please.

ADM. CHURCH: No, sir, I think I've answered the question. I did go down this road, as I mentioned, to try to see if that was in fact an appropriate determination, and ultimately concluded — and I think it's in the report that it was — that memo, of course, as we all know, has, you know, now been discredited in different —

SEN. KENNEDY: Well, it was in effect for 2-1/2 years.

ADM. CHURCH: You're correct, Senator, it was.

SEN. KENNEDY: So — but it took some time before it was.

ADM. CHURCH: Yes, sir.

SEN. KENNEDY: Thanks, Mr. Chairman.

SEN. WARNER: I thank the Senator.

Senator Talent.

SEN. JAMES TALENT (R-MO): Thank you, Mr. Chairman.

I want to thank you for your service, Admiral, in what's undoubtedly been a very difficult and trying endeavor.

I just want to refer you to page four of your report when you — the narrative recites how in the fall of 2002 the belief on the part of our interrogators at Guantanamo was that the techniques they had were inadequate, and they asked for permission or further guidance to use other techniques. And SOUTHCOM commander approved 19 counter-resistance

techniques that were divided into categories 1, 2, and 3. And I was curious in reading it because originally, the secretary's decision only allowed one Category 3 technique, which was authorization of mild, non-injurious physical contact, such as grabbing, poking in the chest with a finger, and light pushing. That was originally allowed and then subsequently disallowed. And the Category 2 techniques were subsequently disallowed. So I'm wondering, what were some of the Category 2 techniques that were subsequently disallowed?

ADM. CHURCH: I'd have to refer quickly to the memo.

(To staff) Can we do that?

SEN. TALENT: Sure. Could you do it quickly? Or one of the other folks there?

I'm wondering, because Category 3 techniques — and maybe I don't understand interrogation very well — but grabbing, poking in the chest with a finger, I mean, that's not normally what I would think of as torture. That used to happen in settlement negotiations when I was practicing law rather a lot. I've seen worse at conference committees.

ADM. CHURCH: Well, you're correct, the —

SEN. TALENT: I presume Category 2 techniques were milder than the Category 3 techniques?

ADM. CHURCH: That's correct, sir. They were tiered —

SEN. TALENT: Yeah. So what — I mean, give me an idea of what was the Category 2 techniques that were originally approved.

ADM. CHURCH: I'm sorry, these are all running together after 9 months.

SEN. TALENT: Yeah, sure.

ADM. CHURCH: Stress positions —

SEN. TALENT: Stress positions, like standing at attention for a while?

ADM. CHURCH: Or in a kneeling position. There's various interpretations of that.

Use of hooding. Removal of clothing was actually one. Use of detainees' individual phobias. There was 14 initially in the list.

SEN. TALENT: Okay. And the reason why the original request went up to SOUTHCOM and then to the Joint Chiefs, the chairman, Chairman Myers or General Myers, and then to the secretary of Defense, was that they thought they weren't getting enough intel, because these guys had been trained to resist effectively the techniques, and it doesn't surprise me that they would have been able to resist these techniques. Well, Category 2 was permitted, but then subsequently that was revoked. So Category 2 wasn't permitted either, right?

ADM. CHURCH: That's correct, sir.

SEN. TALENT: Well, Mr. Chairman. Senator Lieberman and Senator Inhofe spoke for me. There was a VBIED that went off in Hillah, as you know, Mr. Chairman, two weeks ago — 150 Iraqi recruits to the police were killed — 500 IED attacks a month, 750 Americans lost in Iraq because of that. This is a subject that I have investigated personally, and I know you have to, Mr. Chairman, and we have on the committee. And everybody I have talked to who is in the business of fighting IEDs — in our military, in our intel, in Israeli military and intel, in British intel — tells me that getting good intel is a key to stopping this IED threat.

And speaking for myself, if our guys want to poke somebody in the chest to get the name of a bomb maker so that they can save the lives of Americans, I'm for it. And, Mr. Chairman, if the Department of Defense wants to investigate me for that, and have 15 investigations and call me inhumane, fine. I've been over there, I've talked to these guys. This is the single biggest threat we face in the war on terror, and we have to empower our people to deal with it.

Now, I know it's important that we stick to our own beliefs. That's important in fighting the war on terror. And I'm glad you've had these hearings, Mr. Chairman, because it shows that we care in this country. Boy, at a certain point we have to introduce a note of proportion, and I think that's what Senator Lieberman was saying — I don't want to speak for him. We have the best military in the world. I don't need an investigation to tell me that there was no comprehensive or systematic use of inhumane tactics by the American military, because those guys and gals just wouldn't do it. Everything

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about the culture and the training in the military and at home works against that. That's why the terrorists are attacking us, because we're not the kind of society that would do that.

Thanks for holding this hearing, giving me a chance to say that, Mr. Chairman. I appreciate your service, Admiral.

ADM. CHURCH: Senator, I need to clarify one answer I gave you for the record. You are correct in that the Tier 1, 2 and 3 techniques were all rescinded, and that gave way to the 24 techniques in the — the more restrained of the 35 recommended.

And they were no longer referred — if — there may have been one or two Tier 2 techniques that became one of the 24. I'd have to check. But clearly they moved to more restraint when they issued the second —

SEN. TALENT: Admiral, it's a great country we have, in part because we sweat so much over this stuff. And I don't mean to be out of proportion myself. If you sweat the small stuff, then you can have confidence that you're not doing the big stuff. And maybe that's what Senator McCain was saying. And so I admire us for doing that, but man, I want people to know this is not the sort of thing we do, but we need to do — we need to have effective interrogation techniques to get this intel. This is the whole game — beating these IEDs. And we won't do it just with force protection measures or electronic countermeasures. We're not going to win this from the sky. We're going to win it on the ground, with real intel, and that includes effective interrogation techniques.

Thank you, Mr. Chairman.

SEN. WARNER: Thank you, Senator. Senator, next week this committee will have a briefing on the very serious situation of the IEDs. And part of that will be the discussion of the issues that you have raised.

SEN. TALENT: Mr. Chairman, you and I have talked personally about this, and I want to compliment you on your leadership in this area.

Unfortunately, for the purpose of the public, most of what we do in that area, of course, we have to do in closed session.

SEN. WARNER: Yes.

SEN. TALENT: So the public doesn't necessarily see us in our — and the work that you have led —

SEN. WARNER: But the work is going on here in Congress.

SEN. TALENT: Absolutely, Mr. Chairman.

SEN. WARNER: I thank my colleague.

Senator Reed.

SEN. JACK REED (D-RI): Thank you, Mr. Chairman.

Thank you, Admiral. Admiral, in the course of your investigation, did you speak to or interview — speak with or interview Ambassador Bremer?

ADM. CHURCH: No, sir, I did not.

SEN. REED: Why would you not speak with someone who was the senior Defense Department official who made significant decisions about using Abu Ghraib, presumably was the interface between our military operations, as an employee of the Department of Defense, and our other agencies, like the Central Intelligence Agency?

ADM. CHURCH: It's a several-part answer. The first is, it was the scope of my investigation. But I did pursue —

SEN. REED: Let me follow up, if I may.

ADM. CHURCH: Sir.

SEN. REED: You were specifically told not to interview —

SEN. WARNER: Well, Senator, let him just finish his reply and then I'll give you extra time to develop this —

SEN. REED: Thank you, Mr. Chairman.

ADM. CHURCH: But sir, no, I was —

SEN. WARNER: — to respond to the senator's question.

ADM. CHURCH: Excuse me, Senator. I was not limited in who I asked questions of. I almost said "interrogated." I generally stayed within DOD because that was — you know, as — Ambassador Bremer, as I understood it, worked for the Department of State —

SEN. REED: Admiral, you're fundamentally wrong.

SEN. WARNER: Wrong.

MR. : Maybe.

ADM. CHURCH: I'm sorry. Which —

SEN. WARNER: Let the record show that this committee was advised that he was taken on by the secretary of Defense. It may have been some technical salary arrangement, but for all intents and purposes, am I not correct —

SEN. REED: You're absolutely correct, Mr. Chairman. He was an appointee of the secretary of Defense, clearly within the chain of command of the civilian authorities and the secretary of Defense.

ADM. CHURCH: The short answer to your question, sir. I apologize for being in error. There was one or two things I was trying to determine in terms of what Ambassador Bremer knew about potential abuses at Abu Ghraib. You're correct that I did not ask him the direct questions, but I talked to his military assistants, I talked to all those who — a number of those who were at the daily meetings, to try to determine if there was any indication -- early indication that he had of abuses that he passed to General Sanchez. That was the specific tasking I was looking at at the time. But I did not interview Ambassador Bremer, that's correct.

SEN. REED: Admiral, that seems to be a stunning omission. Here's an individual who was the direct representative of the secretary of Defense, who was, I would assume, nominally the commander of General Sanchez, who had coordination ability, virtually the viceroy of Iraq. And to simply stop with his military assistants to see if they might have gleaned something in a meeting or a conversation seems to be woefully inadequate, with all due respect.

ADM. CHURCH: I accept the criticism, sir. I was trying to — again, the charter was to look at how the interrogation techniques were developed and migrated. I didn't need to interview Ambassador Bremer to determine that. As I expanded the scope of my investigation, some questions arose which I then followed up on, but I didn't specifically have a need, in my mind, to interview him. And frankly, I'm not sure what questions I would ask him if I were interviewing him today.

SEN. REED: How about, "Did you in any way authorize any military officer to violate the law or convention?" "Did you authorize or allow the Central Intelligence Agency" — presumably, the station chief worked for him — "to conduct operations that were contrary to American law?" I mean, I think those are pretty basic questions.

ADM. CHURCH: Well, sir —

SEN. REED: Which goes to how these techniques migrate.

ADM. CHURCH: I think I have a pretty good track on the techniques, what was used and how they migrated, sir.

SEN. REED: Thank you.

Let me turn to Guantanamo now. In the course of your investigation, did you discover techniques that were either authorized or used — and I recognize some were merely authorized but never used — that included basically the environmental deprivations, like hot rooms, cold rooms, withholding of food, hooding for periods of time, removal of clothing, placed in isolation? Were these techniques that were either in an interrogation plan or at times used at Guantanamo in the course of the many months that the facility was operated?

ADM. CHURCH: As I describe in the investigation, there were at least one or two instances where we know that those techniques were employed, where we had clear need for actionable intelligence.

SEN. REED: And by that — I don't want to put words in your mouth. These tools, if you will, were available, all these, perhaps — let me ask that question. Were these range of tools available?

ADM. CHURCH: I'd have to do a side by side, sir, but most of those were not generally available. They were not,

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as I remember, part of the 24 that had been approved by the secretary of Defense. There were a couple of interrogations where specific techniques were authorized beyond those 24.

SEN. REED: And what techniques were used in those interrogations?

ADM. CHURCH: There was sleep management, hooding, stress positions, as I remember, for a few.

SEN. REED: Did you interview General Miller in your investigation?

ADM. CHURCH: Yes, sir.

SEN. REED: On May 19th, I asked General Miller the following question: "It's been reported that you developed a 72-point matrix for stress and duress, lays out types of coercion, escalating levels.

They include harsh heat or cold, withholding food, hooding for days at a time, naked isolation, and cold, dark cells. Is that correct?"

His answer was, "Sir, that is categorically incorrect."

My response: "That never happened?"

"That is categorically incorrect."

How do you rationalize your statement today that, at least in several instances, things like this happened, and that categorical denial?

ADM. CHURCH: I think we're mixing two events. I am not familiar with any matrix.

SEN. REED: Well — go ahead, sir.

ADM. CHURCH: I'm not saying it doesn't exist, but we asked for every piece of paper that existed and made a couple of trips to Guantanamo Bay. I'm not aware of that. But there were two instances where we know that specific interrogation plans were used against those with actionable intelligence.

SEN. REED: Well, if we substitute the word "interrogation plan" for "matrix," how do you reconcile the statements?

ADM. CHURCH: Obviously I don't see the same thing. As a matrix, I understand that to be, Senator, some pre-planned slope of techniques that I've never seen.

SEN. REED: So the real categorical denial was it wasn't a matrix. These techniques were available. You indicate they were used, but it wasn't a matrix. So General Miller categorically denied that it was called a matrix. Is that your interpretation?

ADM. CHURCH: I've never had that specific conversation with him.

SEN. REED: It seems to me a terribly misleading response, based upon your findings, to suggest that none of this ever happened; none of this was ever in any type of document, in any type of plan. And I'll just stop there.

ADM. CHURCH: Senator, I hope —

SEN. REED: Would you like to respond?

ADM. CHURCH: — my investigation clearly lays out everything that happened, both at Guantanamo and the development of techniques. And we know that there was the 2 December memo. We know that was rescinded. We know how we got to the 24 techniques approved by the secretary of Defense. And we know that on a couple of occasions there were exceptions to that that the secretary of Defense approved, and he's openly discussed.

SEN. REED: All of these happened before May 19th, 2004.

ADM. CHURCH: Yes, sir.

SEN. REED: And you had a uniformed officer coming up here and objecting to the term "matrix" by saying, "That's categorically wrong." Of course, we use these things occasionally.

ADM. CHURCH: I'm sorry, Senator. I don't have the context of the question or answer.

SEN. REED: Let me turn now to another issue. You worked closely with the Schlesinger committee. When

Secretary Schlesinger was here with Secretary Brown, I asked the question, "In October of 2003, Secretary Rumsfeld, at the request of Mr. Tenet, ordered the military chain of command to deny at least the registration rights under the Geneva Convention to an individual who I believe is an Iraqi citizen, an Al An-Salaam (ph). Do you think that is consistent with the application of the Geneva Convention in Iraq, Secretary Brown?"

"The answer to that is no. It is not inconsistent."

Dr. Schlesinger: "If that happened, this is not consistent."

Now, again, there's a factual predicate here. I got my information from the public media, so there might be facts in dispute. But have you looked into the situation, and certainly the military officers that might have transmitted that command down the chain?

ADM. CHURCH: We document that in our investigation in terms of what happened. And I think you're referring to what's generally referred to as Larry or Triple-X. If that's the same individual — and I don't remember the name — we know how that happened. The secretary of Defense has said that shouldn't have happened that way.

SEN. REED: Well, it's nice it shouldn't have happened. But there were military officers that at least arguably were following orders that contravened the Geneva Convention. Did you —

ADM. CHURCH: The secretary of Defense did say that — yes, sir, that's right. He was not assigned an interment security number for many, many months, and that's been acknowledged.

SEN. REED: As a violation of the Geneva Convention?

ADM. CHURCH: Yes, sir.

SEN. REED: Well, what about those officers that carried out that order, Admiral? They weren't privates and corporals and sergeants. They started with generals and colonels, all the way down.

ADM. CHURCH: The individual you're talking to — I think the quote that I've seen — "kind of fell through the cracks." In the chaos of the ongoing war, they accepted the individual, didn't assign an interment security number, and since we forgot about him for many number of months until people started trying to find out where he was, and they found him.

SEN. REED: And who's being held responsible for allowing that to happen?

ADM. CHURCH: I can't answer your question. We know it happened and we know why it happened. It was an unfortunate incident, but it happened.

SEN. WARNER: But your charter by the secretary of Defense did not require you to reach a conclusion. That's my understanding.

ADM. CHURCH: This whole discussion is well beyond the charter of my investigation. I tried to —

SEN. WARNER: This whole what?

ADM. CHURCH: This whole discussion is really beyond the charter. I tried to capture as much as I could. We know that this particular individual fell through the cracks, as I said earlier.

SEN. WARNER: Senator, resume, please.

SEN. REED: Thank you, Mr. Chairman. Just a point. Someone who has been singled out for specialized treatment by the secretary of Defense and the Central Intelligence Agency director, I find it hard to believe he just falls through the cracks. I find it hard to believe that it was just an administrative goof. And I think frankly that part of your responsibilities were to look closely at the military chain of command, certainly, as to how they responded to these orders, some of which arguably are contrary to the convention.

Admiral, this to me is a very disappointing report. The limitations both imposed on you from without and self-imposed, apparently, particularly with respect to Mr. Bremer, lead to conclusions — and, again, this report is not simply laying out the facts. You've drawn some conclusions. And it seems to me the conclusion is this is all just one big misunderstanding, this policy here; falling through the cracks, et cetera — which I don't think is an adequate response to the problems we've seen.

And I think the chairman asked a very fundamental question. What contributes to breakdown of good order and discipline? And I would argue, at least in part, it's when people in authority, not just E-5s and E-6s, find ways to excuse violations of the law. And that is a very toxic ingredient.

There is an ancient Roman that posed the question, "Who will guard the guardians?" It's a question we face today. Who will look after those that we've entrusted with our national security and defense and make sure that they follow laws? And I think the jury is still out.

ADM. CHURCH: Senator Warner, can I make a comment?

SEN. WARNER: Yes, of course. You have adequate time to respond to the senator's last observation and any others you wish.

ADM. CHURCH: Thank you, sir. I'd like to challenge the premise that this was all one big misunderstanding. We spent nine months, as I said initially, over 800 interviews, reviewed thousands and thousands of pages of documents, leveraged all the other reports.

I very seriously took my charge as an IG, and I understand I was picked because I was an IG, because they wanted an independent look at exactly what happened, how it happened, why it happened. And I think I've laid that out with some precision.

I'm just reacting to the characterization of the report, which I'm proud of the work the folks did, as a misunderstanding. Clearly some things were done wrong. Clearly some things in hindsight, Senator, would be done differently. And I think I've captured those. I've laid out all the abuse cases. And had the chips fallen differently, I would have made that call. They didn't.

And I was as factual — and I think that's why you ask an IG to do something like this is because you get — every IG I've known takes that position of independence very seriously. And I took it where it led. And the facts are the facts. And I understand that some people won't like the facts or, in some cases, the conclusions. But it's not all one big misunderstanding, sir.

SEN. REED: Well, Admiral, I respectfully disagree. And I think failing to pursue all the facts, failing to at least talk to Ambassador Bremer, failing to follow up on certain things that seem to emerge from our discussion, suggests that this is not the thorough, complete, no-holds-barred report that many of us expected.

Thank you.

SEN. WARNER: I would simply say, Senator, that I sort of share your views with regard to the integral role that Ambassador Bremer had in the overall decision-making in this time period that he had the designation really given by the president at the recommendation of the secretary of Defense is my understanding.

However, I'd like to — and I think, Admiral, look — a tough old bird. You had a difficult job. You did the best you could professionally, drawing on years of experience. And there's obviously going to be, I think, respectful differences of view. But I'm glad you've stated for the record and reaffirmed the work that you and your many subordinates — how large was your team?

ADM. CHURCH: We started with 50 when we went into theater and started doing our actual investigatory work and asking questions for the record, taking sworn statements. Very shortly after that we were down to a dozen or so. And I think there's two of us standing today, Senator.

SEN. WARNER: I want to call your attention to the headlines, and I select the Washington Post. It reads, "Abuse Review Exonerates Policy." I think probably that you would reflect that headline as being reasonably accurate. Wouldn't that — in other words, you said the policy —

ADM. CHURCH: The policy did not contribute to the abuse.

SEN. WARNER: — was not the root cause of these egregious breaches and criminal acts. But the next line sort of could, in the minds of individuals, cause confusion. And it reads, "Low-Level Leaders and Confusion Blamed." That implies that the upper level received some type of exoneration. It could be inferred by some. And I want to clarify that.

In your series of interviews, I presume you interviewed General Karpinski, General Fast, General Sanchez. Would that be correct?

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ADM. CHURCH: We did not specifically interview General Karpinski, but the other two we did.

SEN. WARNER: You did. Was there reason for Karpinski, because of her legal situation at this time —

ADM. CHURCH: No, sir. We — again, I leveraged a lot of the other reports. Because General Taguba, Fay, Kern, Jones had all looked so thoroughly at that —

SEN. WARNER: Right.

ADM. CHURCH: — I didn't reinvestigate Abu Ghraib. So I felt no need to interview her. But I did have some questions for General Sanchez and some others, but I did not interview her.

SEN. WARNER: Well, the Department of the Army, under the immediate direction of the secretary, and subject to review by the secretary of Defense, are looking at the issues of accountability and participation by those three officers. And it was never your charter, clearly, to establish accountability.

So I wish to make clear for the record, you were not interviewing for purposes, I presume, of accountability. But as I, in my initial question, stated, what was the root cause of so many instances where regulations were completely ignored, good-standing regulations and procedures, which allowed these acts to take place? In your interviews with, say, General Fast and General Sanchez, could you comment on what you learned from each of them?

ADM. CHURCH: Both General Fast and General Sanchez, in my opinion —

SEN. WARNER: Don't mix them. Just take one at a time.

ADM. CHURCH: Well, General Sanchez — I had specific questions primarily for General Sanchez as to how we develop the techniques that he promulgated in September and then repromulgated in October. So that was the line of questioning. And I needed to understand from him what was given to him. Did it have a legal review? "Why did you not just rely on Geneva or the doctrine? Why did you promulgate separate interrogation techniques in September?" And so the line of questioning was, "How did we develop and promulgate, and why did you do that?"

I was also trying to follow up on what he knew about the events at Abu Ghraib that maybe hadn't already been covered. I didn't uncover anything new that hadn't really — we didn't already know. And General Fast —

SEN. WARNER: Let me just summarize. Then with General Sanchez, you determined from your interview that the information he provided you was consistent with the same information he'd given others, and which information had been published in any of the other nine series of reports. Is that correct?

ADM. CHURCH: It was. I gleaned a couple of other things regarding pressure on interrogators, but that's a correct statement, Senator. Yes, sir.

SEN. WARNER: Did you confirm that General Sanchez was very short-handed with staff? He was given an enormous responsibility; very short-handed with staff, was managing a very hot-war situation at the same time he was trying to do a lot of administrative things of this nature. Is that correct?

ADM. CHURCH: Consistent with the other investigations, I confirmed that, yes, sir.

SEN. WARNER: Thank you. Now we turn to General Fast.

ADM. CHURCH: I questioned General Fast on —

SEN. WARNER: You might describe for the record what her area of responsibility was. I know, but —

ADM. CHURCH: She was, I guess, the C-2 or the — head of the intelligence function at CJTF-7 —

SEN. WARNER: Which is General Sanchez's command.

ADM. CHURCH: — and worked directly for General Sanchez. And she was brought in specifically to put into place the intelligence architecture. My purpose in talking to her was that what she knew about the interrogation policies and what she knew about any instances of abuse and when she knew them, and I was able to document all that. And she really was not particularly engaged in the interrogation techniques. It turns out that was mostly the judge advocate generals who put that together.

But since you've mentioned those two, I will say that of all the people I interviewed in the course of this investigation,

those two individuals were the most responsive and forthcoming of anybody. And both of them at the time were in the process of permanent change-of-station orders. And I would get 24-hour turnaround on the question that I needed answered. So that wasn't your specific question, but I took the opportunity, Senator, to make that point.

SEN. WARNER: No, but I think that's an important observation. Now, there's considerable question in the minds of many as to the culpability or non-culpability of seniors in this chain of command. You go up from Colonel Pappas, I presume. Did you have an opportunity to talk with him?

ADM. CHURCH: No, sir. I relied on previous investigations.

SEN. WARNER: Previous investigations. Well, let's talk about the chain of command, as you went up the chain of command, whom you interviewed. Obviously Karpinski, you've answered that; Fast, not direct chain of command, staff, nevertheless reporting to Sanchez. You've covered Sanchez. Did you talk to General Abizaid?

ADM. CHURCH: I did, sir.

SEN. WARNER: And what can you share with regard to his responses?

ADM. CHURCH: General Abizaid -- actually, I debriefed him on the way out. And primarily what I did with the Central Command is I reviewed all the documentation that they had, relevant to the development of interrogation policies. I did not interview him specifically because I had all my questions answered.

SEN. WARNER: Any other senior-level individuals did you interview?

ADM. CHURCH: Yes, sir, throughout the Pentagon, all the way up to the deputy secretary of Defense and the vice chairman and chief of staff.

SEN. WARNER: Well, I think let's go through very thoroughly, now. You went through the chain of command right up to the Department of Defense.

ADM. CHURCH: Yes, sir.

SEN. WARNER: And you interviewed right up through Secretary Wolfowitz. Is that correct?

ADM. CHURCH: That's correct, sir.

SEN. WARNER: And the general counsel?

ADM. CHURCH: The general counsel. I interviewed general counsel.

SEN. WARNER: Secretary Cambone?

ADM. CHURCH: I did, sir.

SEN. WARNER: All right. So, really, you did cover with, in my judgment, thoroughness the entire chain as it related to your charter.

ADM. CHURCH: That was my attempt, yes, sir.

SEN. WARNER: And I've already indicated that there are ongoing assessments of the culpability of several of these individuals whom we've mentioned, and you're aware of that.

ADM. CHURCH: I'm aware of that, yes, sir.

SEN. WARNER: So any inference that just low-level officers and leaders were blamed could be misconstrued, because the seniors are still being examined.

ADM. CHURCH: I've seen the list and that's correct, sir.

SEN. WARNER: I just want to make that eminently clear. And this committee will continue to discharge its responsibility in this matter as further reports are made available to us, and we'll perhaps do some of our own independent work in this area. But your report constitutes a very valuable part of this committee's record.

On the question of ghost detainees, you found that there were violations of the Geneva Convention regarding failures to account for some detainees called ghost detainees and to make their presence in Abu Ghraib known to the ICRC, International Red Cross.

What were your findings with respect to this issue? Did you find the type of violation at other detention facilities?

ADM. CHURCH: Senator, we did not find that anywhere else. If I didn't say it earlier, I should have. The CIA cooperated with our investigation and, in fact, reviewed that section of the report. Between what we had and what they had, we determined that there were about 30, quote, "ghost detainees," although that's not a term of doctrine, that existed. I think the maximum was for a period of 45 days. That has long since been discontinued, but we did document that we think about 30 ghost detainees did occur.

SEN. WARNER: Our vote has not started as yet. Let's turn to the professional military intelligence in the Department of the Army. You conclude in your report that only 20 of the substantiated cases of abuse were interrogation-related and that only a few of these incidents actually involved military interrogators.

Were the methods and techniques used by these interrogators derived from any policy issued by the local command? And in the absence of that policy or the circumstances of the changing policy, what guided the actions of these interrogators? And did you feel that the professional military interrogators were well-trained individuals?

ADM. CHURCH: You're correct, sir. Using the expansive definition of interrogation-related, we found about 20 instances of the seventy abuse cases. Again, the way we classified that, that was even MPs or any member at the point of capture.

None of these directly related to any of the authorized interrogation techniques. And although interrogators were in short supply, as we've known and documented, I found the professional training to be quite good, those that we had.

SEN. WARNER: And therefore, you feel that the intelligence segment of the Department of the Army had in the field well-trained individuals.

ADM. CHURCH: Yes, sir, not in sufficient numbers, but well-trained.

SEN. WARNER: Thank you very much. Senator Levin.

SEN. LEVIN: Thank you, Mr. Chairman. There's been reference to a very critical memo here that you were able to look at but not take a copy of, and that's that March 14th memo prepared by Deputy Assistant General Mr. Hu (ph) for Mr. Haynes.

Mr. Chairman, we have a right to that memo. I think the admiral had a right to have a copy of that memo, but that's up to him to decide. But this committee has a right to that memo. And I would ask that we, on an urgent basis, get that memo. It's been referred to numerous times. It was a key part of this whole interrogation decision. It was a memo which was the controlling memo, despite the concerns of the lawyers inside of the military.

And I would ask you, Mr. Chairman, that we make a formal request for a copy of that memo. Obviously if they want to give it to us on a classified basis, that's one thing. But not to have a copy of that memo is totally unacceptable. And I'm afraid it's too typical of a very great reluctance on the department's part to be fully supportive with documentation which has been requested on other occasions by us.

But anyway, my specific request, Mr. Chairman —

SEN. WARNER: As you know from our —

SEN. LEVIN: — for that March 14th, 2003 memo.

SEN. WARNER: In our long working relationship of 27 years on this committee, I feel that the Congress is a co-equal branch, and as such, unless there's executive privilege attached to certain documents, the Congress should have them. And I will look into this.

SEN. LEVIN: I thank you.

SEN. WARNER: Thank you.

SEN. LEVIN: I thank you for that. Now, Admiral, you indicated that, as I understand it, that you were not tasked to assess personal responsibility at senior levels. Is that correct?

ADM. CHURCH: That's correct, sir.

SEN. LEVIN: In your report you say that issues of senior official accountability were addressed by the Schlesinger

panel. But the Schlesinger panel did not address the issue. As a matter of fact, they were specifically tasked not to.

In their tasking from the secretary of Defense on May 12th, 2004, they were told that issues of personal accountability will be resolved through established military justice and administrative procedures. So they were not tasked. In fact, they were quite clearly told, "Stay away from it." And then this one qualifier was added, "Although any information you may develop will be welcome."

So what did you mean when you said the Schlesinger panel was tasked to assess personal accountability at senior levels; that was not your job?

ADM. CHURCH: Thank you for the opportunity to explain. The Schlesinger panel charter was pretty open-ended. The secretary of Defense verbally told them, "You look at anything you need to look at it." And you're correct, it may not be in writing.

We worked very closely with that panel. As I mentioned earlier, I think we provided all the data that you see in their report. I reviewed their drafts. We exchanged information. Early on, in working together with that panel, I made the observation that I was not tasked to look at responsibility, individual or high-level responsibility. And it evolved, and an agreement was made that they would do that.

And that kept me within my charter to look at interrogation and development of interrogation techniques. There was nothing formal about that, but there was an understanding that they would do that. And as I looked at their report, I thought they had. There's a difference between responsibility and accountability, as you well know, Senator. I thought they assessed responsibility fairly clear.

SEN. LEVIN: I think about the only thing they said that we can find, that the abuses were not just a failure of some individuals to follow known standards; they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels. Did they identify anybody at higher levels who bears personal responsibility?

ADM. CHURCH: Well, they did, sir. There's about five instances in the report that I've pulled out. One comment; Lieutenant General Sanchez and his deputy failed to ensure proper staff oversight of detention interrogation operations. The quote that you just had, interrogation policies with respect to Iraq, where the majority of the abuses occurred, were inadequate or deficient in some respects at three levels — DOD, CENTCOM, JTF-7 and the prison itself.

SEN. WARNER: Could you give us a citation of the material that you were reading?

SEN. LEVIN: I quoted that before.

ADM. CHURCH: I'm sorry —

SEN. LEVIN: We do have that citation. Did you identify any personal responsibility?

ADM. CHURCH: Well —

SEN. LEVIN: Did they say who it was up in the chain of command that was the cause of the confusion? What was the reason why there were inconsistent rules relative to interrogation, who it was that blocked the lawyers who had objections to the rules that were proposed by the Office of Criminal Justice? Did they do any assessment of responsibility, name any names up that chain of command above Sanchez?

ADM. CHURCH: Well, beyond what I've told you, no, sir.

SEN. LEVIN: Okay. There was a reference here to the definition of humane treatment that was supposed to be followed at Guantanamo. Did you agree with General Miller's definition of humane treatment?

ADM. CHURCH: I don't remember specifically what that was, so I won't give you a specific answer, sir. He may have said something I'm not aware of.

SEN. LEVIN: So you don't remember having a reaction to his definition of humane treatment as to whether it was too narrow?

ADM. CHURCH: No, sir, I don't. Sorry.

SEN. LEVIN: Okay. And one of the tactics which was referred to in the e-mail, the FBI e-mail, was — I'm quoting

here -- "The DOD interrogators impersonated special agents of the FBI when talking to detainees," that this tactic produced no intelligence, they said, of a threat, that it may have destroyed any chances of prosecuting the detainee.

But my point here is the tactic itself of impersonating, DOD personnel and interrogators impersonating FBI agents. Did you check on that and see what the basis of that tactic was, the origin of the tactic?

ADM. CHURCH: There is a tactic, impersonating personnel from third countries, for example. That's part of the basic concept of interrogation, which is to try to get the information. You could almost make the case that falls within doctrine.

SEN. LEVIN: It says here that -- well, the FBI objected to that. Is that correct?

ADM. CHURCH: Yes, sir, as I remember.

SEN. LEVIN: And did you talk to the FBI about why they objected to it?

ADM. CHURCH: We had the FBI memo. I hope I mentioned, we looked very carefully at that. We know a couple of instances they're talking about. In the early development of the techniques, a lot of things were being considered. That eventually led to the October memo that SOUTHCOM forwarded up. But we're aware of that, sir.

SEN. LEVIN: Did you talk to the FBI people as to why they objected, though?

ADM. CHURCH: Not specifically, no, sir.

SEN. LEVIN: It's hard for me to believe that it's doctrine, it's DOD doctrine, that they impersonate FBI agents. You're saying it is doctrine that they do that?

ADM. CHURCH: No, sir, I'm not saying that. I'm saying that doctrine in itself and interrogation in itself is deceptive in that you are trying to get information from a witness who doesn't want to give you that information.

It calls to point the basic elasticity of doctrine. One of the doctrine techniques is -- (inaudible) -- up harsh. And as many have said before me, much of the expanded interrogation techniques could easily have fit within that definition of doctrine, which is why I make the case in the report is that we need to clearly get new doctrine out there that all of our interrogators understand. That's the imperative piece -- doctrine that will allow us to get the actionable intelligence that we need.

SEN. LEVIN: Staying within the rules of law?

ADM. CHURCH: Absolutely, sir.

SEN. LEVIN: It's that elasticity which I'm afraid was stretched beyond the rule of law here and which has gotten us and our troops -- us in a lot of trouble as a nation and our troops in the future in some real threatening situations. That is really what the issue is here.

And I guess my last question is -- and I don't know whether you perhaps have answered this question or not -- but the reference in the FBI document to the torture techniques that they witnessed, I just specifically want to ask you, did you talk to the writers of that memo about what they witnessed and described as torture techniques by DOD personnel?

ADM. CHURCH: No, sir.

SEN. LEVIN: Why not?

ADM. CHURCH: Well, I got the information -- we actually even had a member of our team who was part of the criminal investigative task force working with the FBI down there. So we knew about this. We had the information. And when we saw the memo, we quickly reacted to see if, in fact, we had covered everything that was in that memo. And there was, as I mentioned, I hope, one incident that we didn't think had been followed up.

And I'd like to add, as you already know, SOUTHCOM is following up on the allegations. And the current naval inspector general has already reviewed, I believe, 16,000 documents to try to trace this back to make sure we don't have any gaps in that information, Senator.

ADM. CHURCH: There's a named person whose name is redacted for us. And it seems to me a thorough investigation would talk to the writer of those memos. That's just part of thoroughness to me. You can say you think you covered it in other ways, and maybe you did. But you don't know until you talk to the people who wrote the memos, who saw what

they described as torture techniques. So I think it's just not — it's not satisfactory to simply leave it at that. I can't.

Thank you very much.

SEN. WARNER: Thank you, Senator Levin. We've got to immediately get to the vote. They're holding it for us. I want the record to reflect that the charter given by the secretary of Defense to the Schlesinger commission — and, by the way, I, in my modest career, have never met a finer man than Jim Schlesinger. I was privileged to serve under him as secretary of the Navy during the Vietnam War era, and I have a similar respect for his partner, the undersecretary of Defense. And we will be in consultation with them.

But I read from the charter given by Rumsfeld, "Issues of personal accountability will be resolved through established military justice and administrative procedures, although any information you" — that is, Schlesinger and Harold Brown and others — "may develop will be welcomed."

And I find on page 47 of the Schlesinger Report some fairly specific findings pursuant to that charter. For example, the CJTF-7 deputy commander failed to initiate action to request additional military police for detention operations after it became clear there were insufficient assets in Iraq. And there's several others cited here. I'll put them in the record in their entirety.

Now, this committee will continue to work with the secretary of Defense, who has been extremely cooperative throughout our work here in the committee. He was the first witness. He stood up and said in his capacity as the ultimate authority he takes his share of the accountability. I commended him for that and still do. And I know a number of ongoing things initiated by the secretary and others under the administrative and judicial procedures.

So there's much work yet to be done. But I think it's to the credit of this great nation that there have been 10 reports on this very distressing chapter in our military history — otherwise a military history that is envied by the whole world. And as I mentioned in my opening statement, over a million men and women in uniform have rotated in and out of the AOR of Iraq — and then more in Afghanistan. And when you look at the small fraction of those who have been adjudged guilty and are still in the process, it shows that these fine persons in uniform — and others — went there and discharged those difficult and dangerous missions with great integrity and in accordance with the rule of law as best they could understand it.

I thank you, Admiral. We'll have — resume this hearing in closed session in 222 Russell as soon as three consecutive votes are finished.

SEN. LEVIN: Okay.

LOAD-DATE: March 11, 2005



In other Belgian News...

Prepared by the Embassy Press Section

Thursday, March 19, 2009

I. The EU Corner

EU-Secret Prisons -- European Parliament to decide on inquiry into alleged CIA secret prisons, flights

BRUSSELS, Belgium -- The European Parliament will decide next week whether to launch its own formal inquiry into alleged CIA secret prisons and flights on European territory, officials said Friday.

Three parliamentary groups _ the Socialists, Liberal Democrats and Greens _ are pushing for the establishment of a committee of inquiry, despite the EU governments' satisfaction with comments by U.S. Secretary of State Condoleezza Rice explaining Washington's views on secret prisons and the treatment of terrorist suspects.

The parliamentary investigation would complement and add political weight to a probe that is already being carried out by the Council of Europe, a human rights watchdog.

"A whole series of EU states must have been informed (of the CIA flights)," said Martin Schulz, chairman of the Socialist group in the EU assembly, adding that the inquiry committee should demands clear and unambiguous answers from EU member states.

"We must ask: are people transported on these flights? Are they EU citizens? Are extralegal arrests carried out on European territory? Was there active or passive contribution of EU members states to these flights?" Schulz told journalists.

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The parliament's civil liberties committee will discuss the issue on Monday in Strasbourg, France, in the presence of EU Justice and Home Affairs Commissioner Franco Frattini and members of the Council of Europe.

Swiss lawmaker Dick Marty is investigating on behalf of the Council of Europe the CIA's reported transfers of prisoners through European airports to secret detention centers. Poland and Romania have been identified by the New York-based Human Rights watch as sites of possible CIA secret prisons, but both countries have repeatedly denied any involvement.

During her five-day trip to Europe, which ended Friday, Rice refused to answer directly whether the United States keeps terrorist suspects in detention centers that violate European legal and human rights guarantees. But she asserted that the U.S. acts within the law, and argued that the Europeans were safer because of tough U.S. tactics.

Rice told NATO and EU foreign ministers in Brussels on Wednesday that the United States did not violate the rights of terrorist suspects. European officials expressed satisfaction with her explanation, seeking to shift away from a confrontation with Washington over the issue.

But the EU parliament and the Council of Europe refused to be placated by Rice's remarks, and promised not to let the issue go until all questions regarding the hundreds of reported CIA flights over Europe and reports of detention centers were answered.

II. In Other News...

Serbia-War Crimes -- EU,U.S. losing patience with Serbia over war crimes fugitives, FM says

BELGRADE, Serbia-Montenegro -- The United States and the European Union are losing patience with Serbia over its failure to arrest top U.N. war crimes suspects, foreign minister said in comments published Friday.

Vuk Draskovic told the Beta news agency that Gen. Ratko Mladic and Radovan Karadzic are still at large because their capture depends on Serbia's "unreformed security services" which remain under the control of former President Slobodan Milosevic's allies.

Draskovic, an opposition leader under the former regime, has claimed that Milosevic's allies still control Serbia's police despite his ouster from power in 2000, and his extradition to the U.N. war crimes tribunal in 2001.

The arrest in Spain of top Croatian war crimes suspect Ante Gotovina put the spotlight on Serbia to come up with the two other top fugitives from the Balkan wars. Mladic and Karadzic are believed to be hiding in Serbia or in the Serb-controlled half of Bosnia.

The U.S. and the EU "are still supporting Serbia's European future, but are losing patience because of our failure to carry out our obligations" toward the U.N. tribunal in The Hague, Netherlands, Draskovic said.

Wartime Bosnian Serb leader Karadzic and army commander Mladic were charged by the tribunal with orchestrating the 1995 massacre of 8,000 Muslim boys and men from Srebrenica _ Europe's worst carnage since World War II.

Norway-ElBaradei-Iran -- Nobel peace laureate ElBaradei says world patience running out over Iran nuclear program

OSLO, Norway -- The international community is losing patience with Iran over its nuclear program, Nobel Peace Prize laureate Mohamed ElBaradei said Friday.

"They are inching forward and I'm asking them to leap forward," said ElBaradei, who shares the coveted award with the International Atomic Energy Agency he leads.

He said he hopes outstanding nuclear issues with the country will be clarified by the time he presents his next report on Iran in March, because "the international community is losing patience with the nature of that program."

"The ball is in Iran's court. It is up to Iran to show the kind of transparency they need to show," ElBaradei told reporters in Oslo.

He encouraged European negotiators to continue talks with Iran.

"The parties need to sit together, discuss their grievances and reach a solution," he said. "If we can do that without escalating the problem, all the much better."

No date has been set to resume the talks with Britain, France and Germany, which broke off in August after Tehran restarted uranium conversion, a precursor to enrichment.

The IAEA and much of the world community have been pushing Iran's religious leaders to allow closer inspection of the nuclear program that Tehran claims is intended only for energy.

ElBaradei is to receive the Nobel Prize at an award ceremony on Saturday.

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Dow Jones & Reuters

US-PRISONERS.

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CIA using third degree on Al Qaeda, Taliban prisoners: report

Washington, Dec 26 (PTI) US intelligence is using third degree methods to elicit information from Al Qaeda and Taliban prisoners in its overseas detention centres, and if these techniques did not work, were shipping them to countries where **torture** is common, a media report said Thursday.

The Central Intelligence Agency (**CIA**) is using "stress and duress" system to break its prisoners in detention centres at **Bagram** Air Base in Afghanistan, Diego Garcia islands in the Indian Ocean and other secret detention centres, it said.

Prisoners in **Bagram** are held in metal shipping containers and kept standing or kneeling for hours in black hoods or spray-painted goggles, intelligence specialists familiar with **CIA** interrogation methods were quoted as saying.

At times, the detainees are held in awkward, painful positions and deprived of sleep with a 24-hour bombardment of lights, part of the "stress and duress techniques", they said.

While specially trained **CIA** officials personally supervised the interrogation of Al Qaeda and Taliban leaders, lower level captives were handed over to foreign intelligence agencies - notably those of Jordan, Morocco, Egypt and Saudi Arabia, with a list of questions the agency wanted answered.

These "extraordinary renditions" are done without resorting to legal procedures and usually involve countries with security services known for using brutal methods, the 'Washington Post' reported.

According to US officials, nearly 3,000 suspected Al Qaeda members and supporters have been detained worldwide since September 11, 2001. About 625 are at the US military's confinement facility at Guantanamo Bay, Cuba.

Some officials estimated that fewer than 100 captives have been "rendered" to other countries.
While the Guantanamo Bay is open to visits by military

lawyers, reporters and the Red Cross, the **Bagram** detention centre is strictly off-limits for officials of even other US agencies, the 'Post' reported.

The US government publicly denounces the use of **torture** but each of the national security officials interviewed for the 'Post's' article defended the use of violence against captives as "just and necessary". They expressed confidence that the American public would back their view.

"If you don't violate someone's human rights some of the time, you probably are not doing your job," said one official who has supervised the capture and transfer of accused terrorists. "I don't think we want to be promoting a view of zero tolerance on this." The **CIA** refused to comment.

The method of arrest of the suspects was also violent,

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the daily said.
Abu Zubaida, who is believed to be the most important Al

Qaeda member in detention, was shot in the groin during his capture in Pakistan in March. National security officials said he is now cooperating and his information has led to the apprehension of other Al Qaeda members.

US officials said many of the successes in obtaining information from terrorists were a result of information gained during interrogations.

The capture of Al Qaeda leaders Ramzi Binalshibh in Pakistan, Omar al Faruq in Indonesia, Abd al-Rahim al-Nashiri in Kuwait and Muhammad al Darbi in Yemen were all partly the result of information gained during interrogation, they said. All four are now in **CIA** custody.

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Executive Summary of the Church Report,
published 10 Mar 05

Located at: http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf

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Executive Summary (U)

Introduction (U)

(U) On May 25, 2004, Secretary of Defense Donald H. Rumsfeld directed the Naval Inspector General, Vice Admiral Albert T. Church, III, to conduct a comprehensive review of Department of Defense (DoD) interrogation operations. In response to this tasking, Vice Admiral Church assembled a team of experienced investigators and subject matter experts in interrogation and detention operations. The Secretary specified that the team was to have access to all documents, records, personnel and any other information deemed relevant, and that all DoD personnel must cooperate fully with the investigation. Throughout the investigation - which included over 800 interviews with personnel serving or having served in Iraq, Afghanistan and Guantanamo Bay, Cuba, and senior policy makers in Washington, as well as review and analysis of voluminous documentary material - an impressive level of cooperation was evident throughout DoD.

(U) Any discussion of military interrogation must begin with its purpose, which is to gain actionable intelligence in order to safeguard the security of the United States. Interrogation is often an adversarial endeavor. Generally, detainees are not eager to provide information, and they resist interrogation to the extent that their personal character or training permits. Confronting detainees are interrogators, whose mission is to extract useful information as quickly as possible. Military interrogators are trained to use creative means of deception and to play upon detainees' emotions and fears even when conducting interrogations of Enemy Prisoners of War (EPWs), who enjoy the full protections of the Geneva Conventions. Thus, people unfamiliar with military interrogations might view a perfectly legitimate interrogation of an EPW, in full compliance with the Geneva Conventions, as offensive by its very nature.

(U) The natural tension that often exists between detainees and interrogators has been elevated in the post-9/11 world. In the Global War on Terror, the circumstances are different than those we have faced in previous conflicts. Human intelligence, or HUMINT - of which interrogation is an indispensable component - has taken on increased importance as we face an enemy that blends in with the civilian population and operates in the shadows. And as interrogation has taken on increased importance, eliciting useful information has become more challenging, as terrorists and insurgents are frequently trained to resist traditional U.S. interrogation methods that are designed for EPWs. Such methods - outlined in Army Field Manual (FM) 34-52, *Intelligence Interrogation*, which was last revised in 1992 - have at times proven inadequate in the Global War on Terror; and this has led commanders, working with policy makers, to search for new interrogation techniques to obtain critical intelligence.

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(U) Interrogation is constrained by legal limits. Interrogators are bound by U.S. laws, including U.S. treaty obligations, and Executive (including DoD) policy - all of which are intended to ensure the humane treatment of detainees. The vast majority of detainees held by U.S. forces during the Global War on Terror have been treated humanely. However, as of September 30, 2004, DoD investigators had substantiated 71 cases of detainee abuse, including six deaths. Of note, only 20 of the closed, substantiated abuse cases - less than a third of the total - could in any way be considered related to interrogation, using broad criteria that encompassed any type of questioning (including questioning by non-military-intelligence personnel at the point of capture), or any presence of military-intelligence interrogators. Another 130 cases remained open as of September 30, 2004, with investigations ongoing.

(U) The events at Abu Ghraib have become synonymous with the topic of detainee abuse. We did not directly investigate those events, which have been comprehensively examined by other officials and are the subject of ongoing investigations to determine criminal culpability. Instead, we considered the findings, conclusions and recommendations of previous Abu Ghraib investigations as we examined the larger context of interrogation policy development and implementation in the Global War on Terror. In accordance with our direction from the Secretary of Defense, our investigation focused principally on: (a) the development of approved interrogation policy (specifically, lists of authorized interrogation techniques), (b) the actual employment of interrogation techniques, and (c) what role, if any, these played in the aforementioned detainee abuses. In addition, we investigated DoD's use of civilian contractors in interrogation operations, DoD support to or participation in the interrogation activities of other government agencies (OGAs), and medical issues relating to interrogations. Finally, we summarized and analyzed detention-related reports and working papers submitted to DoD by the International Committee of the Red Cross (ICRC). Our primary observations and findings on these issues are set forth below.

(U) Many of the details underlying our conclusions remain classified, and therefore cannot be presented in this unclassified executive summary. In addition, we have omitted from this summary any discussion of ICRC matters in order to respect ICRC concerns, and comply with DoD policy, regarding limitation of the dissemination of ICRC-provided information. Issues of senior official accountability were addressed by the Independent Panel to Review DoD Detention Operations (hereinafter "Independent Panel") - chaired by the Honorable James R. Schlesinger - with which we worked closely. Finally, we have based our conclusions primarily on the information available to us as of September 30, 2004. Should additional information become available, our conclusions would have to be considered in light of that information.

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Interrogation Policy Development (U)

(U) Overview

(U) An early focus of our investigation was to determine whether DoD had promulgated interrogation policies or guidance that directed, sanctioned or encouraged the abuse of detainees. We found that this was not the case. While no universally accepted definitions of "torture" or "abuse" exist, the theme that runs throughout the Geneva Conventions, international law, and U.S. military doctrine is that detainees must be treated "humanely." Moreover, the President, in his February 7, 2002 memorandum that determined that al Qaeda and the Taliban are not entitled to EPW protections under the Geneva Conventions, reiterated the standard of "humane" treatment. We found, without exception, that the DoD officials and senior military commanders responsible for the formulation of interrogation policy evidenced the intent to treat detainees humanely, which is fundamentally inconsistent with the notion that such officials or commanders ever accepted that detainee abuse would be permissible. Even in the absence of a precise definition of "humane" treatment, it is clear that none of the pictured abuses at Abu Ghraib bear any resemblance to approved policies at any level, in any theater. We note, therefore, that our conclusion is consistent with the findings of the Independent Panel, which in its August 2004 report determined that "[n]o approved procedures called for or allowed the kinds of abuse that in fact occurred. There is no evidence of a policy of abuse promulgated by senior officials or military authorities."

(U) Nevertheless, with the clarity of hindsight we consider it a missed opportunity that no specific guidance on interrogation techniques was provided to the commanders responsible for Afghanistan and Iraq, as it was to the U.S. Southern Command (SOUTHCOM) for use at Guantanamo Bay. As the Independent Panel noted, "[w]e cannot be sure how the number and severity of abuses would have been curtailed had there been early and consistent guidance from higher levels."

(U) Another missed opportunity that we identified in the policy development process is that we found no evidence that specific detention or interrogation lessons learned from previous conflicts (such as those from the Balkans, or even those from earlier conflicts such as Vietnam) were incorporated into planning for operations in support of the Global War on Terror. For example, no lessons learned from previous conflicts were referenced in the operation orders (OPORDs) for either Operation ENDURING FREEDOM (OEF) in Afghanistan or Operation IRAQI FREEDOM (OIF). These OPORDs did cite military doctrine and Geneva Convention protections, but they did not evidence any specific awareness of the risk of detainee abuse - or any awareness that U.S. forces had confronted this problem before. Though we

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did not find evidence that this failure to highlight the inherent risk led directly to any detainee abuse, we recommend that future planning for detention and interrogation operations in the Global War on Terror take full advantage of prior and ongoing experience in these areas.

(U) Set forth below is a brief discussion of the significant events in the development of interrogation policy for Guantanamo Bay, Afghanistan and Iraq.

(U) Guantanamo Bay, Cuba (GTMO)

(U) Interrogation policy for GTMO has been the subject of extensive debate among both the uniformed services and senior DoD policy makers. At the beginning of interrogation operations at GTMO in January 2002, interrogators relied upon the techniques in FM 34-52. In October 2002, when those techniques had proven ineffective against detainees trained to resist interrogation, Major General Michael E. Dunlavey - the Commander of Joint Task Force (JTF) 170, the intelligence task force at GTMO at the time - requested that the SOUTHCOM Commander, General James T. Hill, approve 19 counter resistance techniques that were not specifically listed in FM 34-52. (This request, and descriptions of the 19 techniques, were declassified and released to the public by the Department of Defense on June 22, 2004.) The techniques were broken down into Categories I, II, and III, with the third category containing the most aggressive techniques. The SOUTHCOM Commander forwarded the request to the Chairman of the Joint Chiefs of Staff, General Richard B. Myers, noting that he was uncertain whether the Category III techniques were legal under U.S. law, and requesting additional legal review. On December 2, 2002, on the advice of the DoD General Counsel, William J. Haynes II, the Secretary of Defense approved the use of Category I and II techniques, but only one of the Category III techniques (which authorized mild, non-injurious physical contact such as grabbing, poking in the chest with a finger, and light pushing). The Secretary's decision thus excluded the most aggressive Category III techniques: use of scenarios designed to convince the detainee that death or painful consequences are imminent for him and/or his family, exposure to cold weather or water, and the use of a wet towel and dripping water to induce the misperception of suffocation. (Notably, our investigation found that even the single Category III technique approved was never put into practice.)

(U) Shortly after the December 2, 2002 approval of these counter resistance techniques, reservations expressed by the General Counsel of the Department of the Navy, Alberto J. Mora, led the Secretary of Defense on January 15, 2003 to rescind his approval of all Category II techniques and the one Category III technique (mild, non-injurious physical contact), leaving only Category I techniques in effect. The same day, the Secretary

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directed that a working group be established to assess interrogation techniques in the Global War on Terror, and specified that the group should comprise experts from the Office of General Counsel of the Department of Defense, the Office of the Under Secretary of Defense for Policy, the military services and the Joint Staff.

(U) Following a sometimes contentious debate, this working group - led by U.S. Air Force General Counsel Mary Walker, and reporting to the DoD General Counsel - produced a series of draft reports from January through March 2003, including a March 6, 2003 draft report recommending approval of 36 interrogation techniques. As many as 39 techniques had been considered during the working group's review, including "water boarding" (pouring water on a detainee's toweled face to induce the misperception of suffocation), which did appear among the 36 techniques in the March 6 draft. Four of the 39 techniques were considered unacceptable, however - including water boarding - and were ultimately dropped from the review, leaving 35 techniques that the working group recommended for consideration by the Secretary of Defense. In late March 2003, the Secretary of Defense adopted a more cautious approach, choosing to accept 24 of the proposed techniques, most of which were taken directly from or closely resembled those in FM 34-52. (The 35 techniques considered were reflected in the working group's final report, dated April 3, 2003.) The Secretary's guidance was promulgated to SOUTHCOM for use at GTMO in an April 16, 2003 memorandum (also declassified in June 2004) that remains in effect today.

(U) As this discussion demonstrates, the initial push for interrogation techniques beyond those found in FM 34-52 came in October 2002 from the JTF-170 Commander who, based on experiences to that point, believed that counter resistance techniques were needed in order to obtain actionable intelligence from detainees who were trained to oppose U.S. interrogation methods. In addition, the Secretary of Defense moderated proposed interrogation policies, cutting back on the number and types of techniques that were presented by some commanders and senior advisors for consideration. This was true when the Secretary rejected the three most aggressive Category III techniques that JTF-170 requested, and was later apparent in the promulgation of the April 16, 2003 policy, which included only 24 of the 35 techniques recommended for consideration by the working group, and included none of the most aggressive techniques.

(U) Military department lawyers were provided the opportunity for input during the interrogation policy debate, even if that input was not always adopted. This was evident during the review of JTF-170's initial request for counter resistance techniques in the lead-up to the December 2, 2002 policy, when service lawyer concerns were forwarded to the Joint Staff, and later in the establishment of the working group in January 2003 that led to the April 16, 2003 policy.

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In the first case, in November 2002 the services expressed serious reservations about approving the proposed counter resistance techniques without further legal and policy review, and thus they were uncomfortable with the Secretary's adoption of a subset of these techniques on December 2, 2002. However, in the aftermath of 9/11, the perceived urgency of gaining actionable intelligence from particularly resistant detainees - including Mohamed al Kahtani, the "20th hijacker" - that could be used to thwart possible attacks on the United States, argued for swift adoption of an effective interrogation policy. (In August 2001 Kahtani had been refused entry into the U.S. by a suspicious immigration inspector at Florida's Orlando International Airport, where the lead 9/11 hijacker, Mohamed Atta, was waiting for him.) This perception of urgency was demonstrated, for example, by the SOUTHCOM Commander's October 2002 memorandum forwarding the counter resistance techniques for consideration, which stated, "I firmly believe that we must quickly provide Joint Task Force 170 counter-resistance techniques to maximize the value of our intelligence collection mission."

(U) Afghanistan

(U) Rather than being the subject of debate within the Office of the Secretary of Defense, interrogation techniques for use in Afghanistan were approved and promulgated by the senior command in the theater. (Initially, this was Combined Joint Task Force 180, or CJTF-180, subsequently renamed CJTF-76. At present, Combined Forces Command-Afghanistan, or CFC-A, commands operations in Afghanistan, with CJTF-76 as a subordinate command.)

(U) From the beginning of OEF in October 2001 until December 2002, interrogators in Afghanistan relied upon FM 34-52 for guidance. On January 24, 2003, in response to a Joint Staff inquiry via U.S. Central Command (CENTCOM), the CJTF-180 Acting Staff Judge Advocate forwarded to the CENTCOM Staff Judge Advocate a memorandum that listed and described the interrogation techniques then in use in Afghanistan. Many of these techniques were similar to the counter resistance techniques that the Secretary had approved for GTMO on December 2, 2002; however, the CJTF-180 techniques had been developed independently by interrogators in Afghanistan in the context of a broad reading of FM 34-52, and were described using different terminology.

(U) In addition to these locally developed techniques, however, the January 24, 2003 memorandum tacitly confirmed that "migration" of interrogation techniques had occurred separately. During December 2002 and January 2003, according to the memorandum, interrogators had employed some of the techniques approved by the Secretary of Defense for use at GTMO. Use of the Tier II and single Tier III technique ceased, however, upon the Secretary's rescission of their

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approval for GTMO on January 15, 2003.

(U) CJTF-180 did not receive any response to its January 24, 2003 memorandum from either CENTCOM or the Joint Staff, and interpreted this silence to mean that the techniques then in use (which, again, no longer included the tiered GTMO techniques) were unobjectionable to higher headquarters and therefore could be considered approved policy.

(U) On February 27, 2003, the CJTF-180 Commander, Lieutenant General Dan K. McNeill, revised the January 24, 2003 techniques by modifying or eliminating five "interrogator tactics" not found in FM 34-52 in response to the investigation of the December 2002 deaths of two detainees at the Bagram Collection Point. While the abuses leading to the Bagram deaths consisted of violent assaults, rather than any authorized techniques, the CJTF-180 Commander modified or eliminated these five tactics as a precaution, out of a general concern for detainee treatment. This revised policy remained in effect until March 2004, when CJTF-180 issued new interrogation guidance.

(U) The March 2004 guidance was not drafted as carefully as it could have or should have been. First, it revived some of the practices that CJTF-180 had modified or eliminated in February 2003, without explanation and without even referencing the February 2003 modifications. Second, some of the techniques in the new guidance were based upon an unsigned draft memorandum from the Secretary of Defense to CENTCOM (prepared by the Joint Staff) that was substantively identical to the Secretary's April 16, 2003 interrogation policy for GTMO. We found no evidence that the Secretary was ever aware of this draft memorandum, which was never approved.

(U) The March 2004 interrogation policy remained in effect until June 2004, when the CENTCOM Commander, General John Abizaid, directed that all interrogations in CENTCOM be standardized under a single policy. The CFC-A Commander, Lieutenant General David W. Barno, then directed that CJTF-76 adopt the existing interrogation policy used in Iraq, which had been developed in May 2004. This policy relies almost exclusively on interrogation techniques specifically outlined in FM 34-52, and remains in effect today.

(U) Iraq

(U) As in Afghanistan, interrogation policy in Iraq was developed and promulgated by the senior command in the theater, then Combined Joint Task Force-7, or CJTF-7. At the inception of OIF on March 19, 2003, interrogators relied upon FM 34-52 for guidance. In August 2003, amid a growing insurgency in Iraq, Captain Carolyn Wood, the commander of Alpha Company, 519th Military Intelligence Battalion (A/519), stationed at Abu Ghraib, submitted a draft interrogation policy directly to the 205th Military Intelligence Brigade and the CJTF-7 staff. This draft policy

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was based in part on interrogation techniques being used at the time by units in Afghanistan. On August 18, 2003, the Joint Staff's Director for Operations (J-3) sent a message requesting that the SOUTHCOM Commander provide a team of experts in detention and interrogation operations to provide advice on relevant facilities and operations in Iraq. As a result, from August 31 to September 9, 2003, the Joint Task Force Guantanamo (JTF-GTMO) Commander, Major General Geoffrey Miller, led a team to assess interrogation and detention operations in Iraq. One of his principal observations was that CJTF-7 had "no guidance specifically addressing interrogation policies and authorities disseminated to units" under its command.

(U) To rectify this apparent problem, the CJTF-7 Commander, Lieutenant General Ricardo Sanchez, published the first CJTF-7 interrogation policy on September 14, 2003. This policy was heavily influenced by the April 2003 JTF-GTMO interrogation policy, which MG Miller had provided during his visit, and was also influenced by the A/519 draft policy which, as noted above, contained some interrogation techniques in use in Afghanistan. However, LTG Sanchez and his staff were well aware that the Geneva Conventions applied to all detainees in Iraq, and thoroughly reviewed the CJTF-7 policy for compliance with the Conventions prior to its approval.

(U) After reviewing the September policy once it was issued, CENTCOM's Staff Judge Advocate considered it overly aggressive. As a result, CJTF-7 promulgated a revised policy on October 12, 2003 that explicitly superseded the previous policy. This new policy removed several techniques that had been approved in the September 2003 policy, rendering the October 2003 policy quite similar to the guidance found in FM 34-52. It should be noted that none of the techniques contained in either the September or October 2003 CJTF-7 interrogation policies would have permitted abuses such as those at Abu Ghraib.

(U) On May 13, 2004, CJTF-7 issued another revised interrogation policy, which remains in effect today. The list of approved techniques remained identical to the October 2003 policy; the principal change from the previous policy was to specify that under no circumstances would requests for the use of certain techniques be approved. While this policy is explicit in its prohibition of certain techniques, like the earlier policies it contains several ambiguities, which - although they would not permit abuse - could obscure commanders' oversight of techniques being employed, and therefore warrant review and correction. (The details of these ambiguities remain classified, but are discussed in the main body of this report.) As noted above, in June 2004 this policy was adopted for use in Afghanistan.

(U) Subsequent to the completion of this

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report, we were notified that the Commander, Multi-national Forces Iraq (MNF-I), General George W. Casey, Jr., had approved on January 27, 2005 a new interrogation policy for Iraq. This policy approves a more limited set of techniques for use in Iraq, and also provides additional safeguards and prohibitions, rectifies ambiguities, and – significantly – requires commanders to conduct training on and verify implementation of the policy and report compliance to the Commander, MNF-I.

Interrogation Techniques Actually Employed by Interrogators (U)

(U) Guantanamo Bay, Cuba

(U) In GTMO, we found that from the beginning of interrogation operations to the present, interrogation policies were effectively disseminated and interrogators closely adhered to the policies, with minor exceptions. Some of these exceptions arose because interrogation policy did not always list every conceivable technique that an interrogator might use, and interrogators often employed techniques that were not specifically identified by policy but nevertheless arguably fell within the parameters of FM 34-52. This close compliance with interrogation policy was due to a number of factors, including strict command oversight and effective leadership, adequate detention and interrogation resources, and GTMO's secure location far from any combat zone. And although conditions at GTMO were initially spartan, relying on improvised interrogation booths and pre-existing detention facilities (Camp X-Ray, constructed in the 1990s to house Cuban and Haitian refugees), these conditions continuously improved over time. The most important development was establishment in November 2002 of a command organization that placed detention and intelligence operations under the command of a single entity, JTF-GTMO, superseding the bifurcated organization which had at times impeded intelligence collection due to lack of proper coordination between interrogators and military police. JTF-GTMO, with its well-developed standard operating procedures and clear lines of authority, enabled effective coordination.

(U) In light of military police participation in many of the abuses at Abu Ghraib, the relationship between military police (MP) and military intelligence (MI) personnel has come under scrutiny. Under the GTMO model of MP/MI relations, military police work closely with military intelligence in helping to set the conditions for successful interrogations, both by observing detainees and sharing observations with interrogators, and by assisting in the implementation of interrogation techniques that are employed largely outside the interrogation room (such as the provision of incentives for cooperation). When conducted under controlled conditions, with specific guidance and rigorous command oversight, as at GTMO, this is an effective model that greatly

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enhances intelligence collection and does not lead to detainee abuse. In our view, it is a model that should be considered for use in other interrogation operations in the Global War on Terror. Current MP and MI doctrine, however, is vague on the proper relationship between MP and MI units, and accordingly requires revision that spells out the details of the type of coordination between these units that has proven successful at GTMO.

(U) Finally, we determined that during the course of interrogation operations at GTMO, the Secretary of Defense approved specific interrogation plans for two "high-value" detainees who had resisted interrogation for many months, and who were believed to possess actionable intelligence that could be used to prevent attacks against the United States. Both plans employed several of the counter resistance techniques found in the December 2, 2002 GTMO policy, and both sucessfully neutralized the two detainees' resistance training and yielded valuable intelligence. We note, however, that these interrogations were sufficiently aggressive that they highlighted the difficult question of precisely defining the boundaries of humane treatment of detainees.

(U) Afghanistan and Iraq

(U) Our findings in Afghanistan and Iraq stand in contrast to our findings in GTMO. Dissemination of interrogation policy was generally poor, and interrogators fell back on their training and experience, often relying on a broad interpretation of FM 34-52. In Iraq, we also found generally poor unit-level compliance with approved policy memoranda even when those units were aware of the relevant memoranda. However, in both Afghanistan and Iraq, there was significant overlap between the techniques contained in approved policy memoranda and the techniques that interrogators employed based solely on their training and experience.

(U) While these problems of policy dissemination and compliance were certainly cause for concern, we found that they did not lead to the employment of illegal or abusive interrogation techniques. According to our investigation, interrogators clearly understood that abusive practices and techniques - such as physical assault, sexual humiliation, terrorizing detainees with unmuzzled dogs, or threats of torture or death - were at all times prohibited, regardless of whether the interrogators were aware of the latest policy memorandum promulgated by higher headquarters. Thus, with limited exceptions (most of which were physical assaults, as described below in our discussion of detainee abuse), interrogators did not employ such techniques, nor did they direct MPs to do so. Significantly, nothing in our investigation of interrogation and detention operations in Afghanistan or Iraq suggested that the chaotic and abusive environment that existed at the Abu

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Ghraib prison in the fall of 2003 was repeated elsewhere.

(U) Nevertheless, as previously stated, we consider it a missed opportunity that interrogation policy was never issued to the CJTF commanders in Afghanistan or Iraq, as was done for GTMO. Had this occurred, interrogation policy could have benefited from additional expertise and oversight. In Iraq, by the time the first CJTF-7 interrogation policy was issued in September 2003, two different policies had been thoroughly debated and promulgated for GTMO, and detention and interrogation operations had been conducted in Afghanistan for nearly two years. Yet, CJTF-7 was left to struggle with these issues on its own in the midst of fighting an insurgency. As a result, the September 2003 CJTF-7 interrogation policy was developed, as the CJTF-7 Staff Judge Advocate at the time stated, in an "urgent" fashion. Interrogation policy reflecting the lessons learned to date in the Global War on Terror should have been in place in Iraq long before September 2003.

(U) Finally, there has been much speculation regarding the notion that undue pressure for actionable intelligence contributed to the abuses at Abu Ghraib, and that such pressure also manifested itself throughout Iraq. It is certainly true that "pressure" was applied in Iraq through the chain of command, but a certain amount of pressure is to be expected in a combat environment. As LTG Sanchez has stated, "if I had not been applying intense pressure on the intelligence community to know my enemy I would have been derelict in my duties and I shouldn't have been a commanding general." Our investigation indicated that interrogators in Iraq indeed were under intense pressure for intelligence, but this derived chiefly from a challenging detainee to interrogator (and interpreter) ratio and an inherent desire to help prevent coalition casualties. We agree with MG Fay's observation that pressure for intelligence "should have been expected in such a critical situation," and that it was not properly managed by unit-level leaders at Abu Ghraib. We found no evidence, however, that interrogators in Iraq believed that any pressure for intelligence subverted their obligation to treat detainees humanely in accordance with the Geneva Conventions, or otherwise led them to apply prohibited or abusive interrogation techniques. And although Major General Fay's investigation of the events at Abu Ghraib noted that requests for information were at times forwarded directly from various military commands and DoD agencies to Abu Ghraib, rather than through normal channels, we found no evidence to support the notion that the Office of the Secretary of Defense, the National Security Council staff, CENTCOM, or any other organization applied explicit pressure for intelligence, or gave "back-channel" permission to forces in the field in Iraq (or in Afghanistan) to use more aggressive interrogation techniques than those authorized by either command interrogation policies or FM 34-52.

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Detainee Abuse (U)

(U) Overview

(U) We examined the 187 DoD investigations of alleged detainee abuse that had been closed as of September 30, 2004. Of these investigations, 71 (or 38%) had resulted in a finding of substantiated detainee abuse, including six cases involving detainee deaths. Eight of the 71 cases occurred at GTMO, all of which were relatively minor in their physical nature, although two of these involved unauthorized, sexually suggestive behavior by interrogators, which raises problematic issues concerning cultural and religious sensitivities. (As described below, we judged that one other substantiated incident at GTMO was inappropriate but did not constitute abuse. This incident was discarded from our statistical analysis, as reflected in the chart below.) Three of the cases, including one death case, were from Afghanistan, while the remaining 60 cases, including five death cases, occurred in Iraq. Additionally, 130 cases remained open, with investigations ongoing. Finally, our investigation indicated that commanders are making vigorous efforts to investigate every allegation of abuse - regardless of whether the allegations are made by DoD personnel, civilian contractors, detainees, the International Committee of the Red Cross, the local populace, or any other source.

(U) Included among the open cases were several ongoing investigations related to abuse at Abu Ghraib, including the death of a detainee who was brought to Abu Ghraib by a special operations/OGA team in November 2003. Though not included in our abuse analysis, this case was considered in our review of medical issues. Similarly, the open cases include the December 2002 Bagram Collection Point deaths, as those investigations were not completed until October 2004; however, observations on the Bagram deaths are provided in our discussion below.

(U) We also reviewed a July 14, 2004 letter from an FBI official notifying the Army Provost Marshal General of several instances of "aggressive interrogation techniques" reportedly witnessed by FBI personnel at GTMO in October 2002. One of these was already the subject of a criminal investigation, which remains open. The U.S. Southern Command and the current Naval Inspector General are now reviewing all of the FBI documents released to the American Civil Liberties Union (ACLU) - which, other than the letter noted above, were not known to DoD authorities until the ACLU published them in December 2004 - to determine whether they bring to light any abuse allegations that have not yet been investigated.

(U) For the purposes of our analysis, we categorized the substantiated abuse cases as

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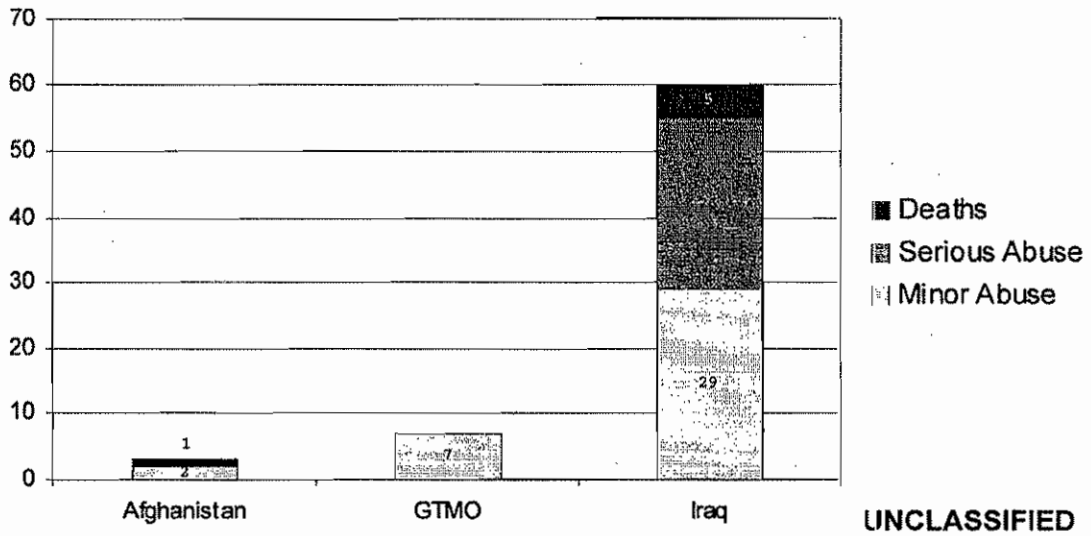
deaths, serious abuse, or minor abuse. We considered serious abuse to be misconduct resulting or having the potential to result in death, or in grievous bodily harm (as defined in the Manual for Courts-Martial, 2002 edition.) In addition, we considered all sexual assaults, threats to inflict death or grievous bodily harm, and maltreatment likely to result in death or grievous bodily harm to be serious abuse. Finally, as noted above, we concluded that one of the 71 cases did not constitute abuse for our purposes: this case involved a soldier at GTMO who dared a detainee to throw a cup of water on him, and after the detainee complied, reciprocated by throwing a cup of water on the detainee. (The soldier was removed from his assignment as a consequence of inappropriate interaction with a detainee.) We discarded this investigation, leaving us 70 substantiated detainee abuse cases to analyze. The chart below reflects the breakdown of these 70 abuse cases.

(U) There are approximately 121 abuse victims in these 70 cases of detainee abuse. As of September 30, 2004, disciplinary action had been taken against 115 service members for this misconduct, including numerous nonjudicial punishments, 15 summary courts-martial, 12 special courts-martial and nine general courts-martial.

(U) No Connection Between Interrogation Policy and Abuse

(U) We found no link between approved interrogation techniques and detainee abuse. Of

Closed Substantiated Abuse Cases (U)



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the 70 cases of closed, substantiated abuse, only 20 of these cases, or less than one-third, could be considered "interrogation-related;" the remaining 50 were unassociated with any kind of questioning, interrogation, or the presence of MI personnel. In determining whether a case was interrogation-related, we took an expansive approach: for example, if a soldier slapped a detainee for refusing to answer a question at the point of capture, we categorized that misconduct as interrogation-related abuse - even though it did not occur at a detention facility, the soldier was not an MI interrogator, and there was no indication the soldier was (or should have been) aware of interrogation policy approved for use by MI interrogators.

(U) At GTMO, where there have been over 24,000 interrogation sessions since the beginning of interrogation operations, there are only three cases of closed, substantiated interrogation-related abuse, all consisting of minor assaults in which MI interrogators exceeded the bounds of approved interrogation policy. As noted above, these cases included those of two female interrogators who, on their own initiative, touched and spoke to detainees in a sexually suggestive manner in order to incur stress based on the detainees' religious beliefs. All three cases resulted in disciplinary action against the interrogators.

(U) In Afghanistan, one case of interrogation-related abuse had been substantiated prior to September 30, 2004. On March 18, 2004, when elements of a U.S. infantry battalion conducted a cordon and search operation in the village of Miam Do, the U.S. forces were met with resistance and several Afghans were killed in subsequent fighting. The unit then detained the entire population of the village for four days in order to conduct screening operations. An Army Lieutenant Colonel attached to the Defense Intelligence Agency accompanied the battalion during the screening operations, in which he punched, kicked, grabbed and choked numerous villagers. As a result, he was disciplined and suspended from participating in operations involving detainees.

(U) In addition, there are now two cases of closed, substantiated interrogation-related abuse involving two detainees who died on December 4 and December 10, 2002 at the Bagram Collection Point in Afghanistan. Those investigations were not closed until October 2004, after our data analysis had been completed, and thus are not included in our statistics. We did, however, review the final Army Criminal Investigative Division (CID) Reports of Investigation, which included approximately 200 interviews. We found both investigations to be thorough in addressing the practices and leadership problems that led to the deaths and we note that CID officials have already recommended charges against 15 soldiers (11 MP and four MI) in relation to the December 4 death, and 27 soldiers (20 MP and seven MI) in relation to the

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December 10 death. (Some of the same personnel are named in the detention and interrogation of both detainees.) Significantly, our review of the investigations showed that while this abuse occurred during interrogations, it was unrelated to approved interrogation techniques.

(U) In Iraq, there are 16 cases of closed, substantiated interrogation-related abuse. Five of these cases involved MI interrogators. There is no discernible pattern in the 16 cases: the incidents occurred at different locations and were committed by members of different units. The abusive behavior varied significantly among these incidents, although each involved methods of maltreatment that were clearly in violation of U.S. military doctrine and U.S. law of war obligations, as well as U.S. interrogation policy. The most common type of detainee abuse was straightforward physical abuse, such as slapping, punching and kicking. In addition, threats were made in nine of the 16 incidents.

(U) As the preceding discussion illustrates, there is no link between any authorized interrogation techniques and the actual abuses described in the closed, substantiated interrogation-related abuse cases. First, much of the abuse involved the sort of straightforward physical violence that plainly transgressed the bounds of any interrogation policy in any theater, and also violated any definition of "humane" detainee treatment. Second, much of the abuse is wholly unconnected to any interrogation technique or policy, as it was committed by personnel who were not MI interrogators, and who almost certainly did not know (and had no reason to know) the details of such policy. Nevertheless, these personnel either knew or should have known that their actions were improper because they clearly violated military doctrine and law of war obligations. And third, even when MI interrogators committed the abuse, their actions were unrelated to any approved techniques. Even if interrogators were "confused" by the issuance of multiple interrogation policies within a short span of time, as some have hypothesized regarding Abu Ghraib, it is clear that *none* of the approved policies - no matter which version the interrogators followed - would have permitted the types of abuse that occurred.

(U) Underlying Reasons for Abuse

(U) If approved interrogation policy did not cause detainee abuse, the question remains: what did? While we cannot offer a definitive answer, we studied the DoD investigation reports for all 70 cases of closed, substantiated detainee abuse to see if we could detect any patterns or underlying explanations. Our analysis of these 70 cases showed that they involved abuses perpetrated by a variety of active duty, reserve and national guard personnel from three services on different dates and in different locations throughout Afghanistan and Iraq, as well as a small number of cases at GTMO. While this diversity argues against a single, overarching

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reason for abuse, we did identify several factors that may help explain why the abuse occurred.

(U) First, 23 of the abuse cases, roughly one third of the total, occurred at the point of capture in Afghanistan or Iraq - that is, during or shortly after the capture of a detainee. This is the point at which passions often run high, as service members find themselves in dangerous situations, apprehending individuals who may be responsible for the death or serious injury of fellow service members. Because of this potentially volatile situation, this is also the point at which the need for military discipline is paramount in order to guard against the possibility of detainee abuse, and that discipline was lacking in some instances. Additionally, the nature of the enemy, and the tactics it has employed in Iraq (and to a lesser extent, in Afghanistan) may have played a role in this abuse. Our service members may have at times permitted the enemy's treacherous tactics and disregard for the law of war - exemplified by improvised explosive devices and suicide bombings - to erode their own standards of conduct. (Although we do not offer empirical data to support this conclusion, a consideration of past counter-insurgency campaigns – for example, in the Philippines and Vietnam – suggests that this factor may have contributed to abuse.) The highly publicized case involving an Army Lieutenant Colonel in Iraq provides an example. On August 20, 2003, during the questioning of an Iraqi detainee by field artillery soldiers, the Lieutenant Colonel fired his weapon near the detainee's head in an effort to elicit information regarding a plot to assassinate U.S. service members. For his actions, the Lieutenant Colonel was disciplined and relieved of command.

(U) Second, there was a failure to react to early warning signs of abuse. Though we cannot provide details in this unclassified executive summary, it is clear that such warning signs were present - particularly at Abu Ghraib - in the form of communiqués to local commanders, that should have prompted those commanders to put in place more specific procedures and direct guidance to prevent further abuse. Instead, these warning signs were not given sufficient attention at the unit level, nor were they relayed to the responsible CJTF commanders in a timely manner.

(U) Finally, a breakdown of good order and discipline in some units could account for other incidents of abuse. This breakdown implies a failure of unit-level leadership to recognize the inherent potential for abuse due to individual misconduct, to detect and mitigate the enormous stress on our troops involved in detention and interrogation operations, and a corresponding failure to provide the requisite oversight. As documented in previous reports (including MG Fay's and MG Taguba's investigations), stronger leadership and greater oversight would have lessened the likelihood of abuse.

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Use of Contract Personnel in Interrogation Operations (U)

(U) It is clear that contract interrogators and support personnel are "bridging gaps" in the DoD force structure in GTMO, Afghanistan and Iraq. As a senior intelligence officer at CENTCOM stated: "[s]imply put, interrogation operations in Afghanistan, Iraq and Guantanamo cannot be reasonably accomplished without contractor support." As a result of these shortfalls in critical interrogation-related skills, numerous contracts have been awarded by the services and various DoD agencies. Unfortunately, however, this has been done without central coordination, and in some cases, in an *ad hoc* fashion (as demonstrated, for example, by the highly publicized use of a "Blanket Purchase Agreement" administered by the Department of the Interior to obtain interrogation services in Iraq from CACI, Inc.). Nevertheless, we found - with limited exceptions - that contractor compliance with DoD policies, government command and control of contractors, and the level of contractor experience were satisfactory, thanks in large part to the diligence of contracting officers and local commanders.

(U) Overall, we found that contractors made a significant contribution to U.S. intelligence efforts. Contract interrogators were typically former MI or law enforcement personnel, and on average were older and more experienced than military interrogators; many anecdotal reports indicated that this gave contract interrogators additional credibility in the eyes of detainees, thus promoting successful interrogations. In addition, contract personnel often served longer tours than DoD personnel, creating continuity and enhancing corporate knowledge at their commands.

(U) Finally, notwithstanding the highly publicized involvement of some contractors in abuse at Abu Ghraib, we found very few instances of abuse involving contractors. In addition, a comprehensive body of federal law permits the prosecution of U.S. nationals - whether contractor, government civilian, or military - who may be responsible for the inhumane treatment of detainees during U.S. military operations overseas. Thus, contractors are no less legally accountable for their actions than their military counterparts.

DoD Support to Other Government Agencies (U)

(U) For the purposes of our discussion, other government agencies, or OGAs, are federal agencies other than DoD that have specific interrogation and/or detention-related missions in the Global War on Terror. These agencies include the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), U.S. Customs and Border Protection, and the Secret Service. In conducting our investigation, we con-

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sidered DoD support to all of these agencies, but we focused primarily on DoD support to the CIA. (The CIA cooperated with our investigation, but provided information only on activities in Iraq.) It is important to highlight that it was beyond the scope of our tasking to investigate the existence, location or policies governing detention facilities that may be exclusively operated by OGAs, rather than by DoD.

(U) DoD personnel frequently worked together with OGAs to support their common intelligence collection mission in the Global War on Terror, a cooperation encouraged by DoD leadership early in Operation ENDURING FREEDOM. In support of OGA detention and interrogation operations, DoD provided assistance that included detainee transfers, logistical functions, sharing of intelligence gleaned from DoD interrogations, and oversight and support of OGA interrogations at DoD facilities. However, we were unable to locate formal interagency procedures that codified the support roles and processes.

(U) In OEF and OIF, senior military commanders were issued guidance that required notification to the Secretary of Defense prior to the transfer of detainees to or from other federal agencies. This administrative transfer guidance was followed, with the notable exception of occasions when DoD temporarily held detainees for the CIA - including the detainee known as "Triple-X" - without properly registering them and providing notification to the International Committee of the Red Cross. This practice of holding "ghost detainees" for the CIA was guided by oral, *ad hoc* agreements and was the result, in part, of the lack of any specific, coordinated interagency guidance. Our review indicated, however, that this procedure was limited in scope. To the best of our knowledge, there were approximately 30 "ghost detainees," as compared to a total of over 50,000 detainees in the course of the Global War on Terror. The practice of DoD holding "ghost detainees" has now ceased.

(U) Aside from the general requirement to treat detainees humanely, we found no specific DoD-wide direction governing the conduct of OGA interrogations in DoD interrogation facilities. In response to questions and interviews for our report, however, senior officials expressed clear expectations that DoD-authorized interrogation policies would be followed during any interrogation conducted in a DoD facility. For example, the Joint Staff J-2 stated that "[o]ur understanding is that any representative of any other governmental agency, including CIA, if conducting interrogations, debriefings, or interviews at a DoD facility must abide by all DoD guidelines." On many occasions, DoD and OGA personnel did conduct joint interrogations at DoD facilities using DoD-authorized interrogation techniques. However, our interviews with DoD personnel assigned to various detention facilities throughout Afghanistan and Iraq demonstrated that they did

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not have a uniform understanding of what rules governed the involvement of OGAs in the interrogation of DoD detainees. Such uncertainty could create confusion regarding the permissibility and limits of various interrogation techniques. We therefore recommend the establishment and wide promulgation of interagency policies governing the involvement of OGAs in the interrogation of DoD detainees.

Medical Issues Related to Interrogation (U)

(U) In reviewing the performance of medical personnel in detention and interrogation-related operations during the Global War on Terror, we were able to draw preliminary insights in four areas: detainee screening and medical treatment; medical involvement in interrogation; interrogator access to medical information; and the role of medical personnel in preventing and reporting detainee abuse. We note that the Office of the Secretary of Defense is currently developing specific policies to address all of the issues raised below.

(U) First, the medical personnel that we interviewed understood their responsibility to provide humane medical care to detainees, in accordance with U.S. military medical doctrine and the Geneva Conventions. The essence of these requirements is captured succinctly in a DoD policy issued by the Assistant Secretary of Defense for Health Affairs on April 10, 2002, "DoD Policy on Medical Care for Enemy Persons Under U.S. Control Detained in Conjunction with Operation Enduring Freedom." The policy states, "[i]n any case in which there is uncertainty about the need, scope, or duration of medical care for a detainee under U.S. control, medical personnel shall be guided by their professional judgments and standards *similar to those that would be used to evaluate medical issues for U.S. personnel*, consistent with security, public health management, and other mission requirements" (emphasis added). Few U.S. personnel, however, had received specific training relevant to detainee screening and medical treatment. As a result, in Afghanistan and Iraq we found inconsistent field-level implementation of specific requirements, such as monthly detainee inspections and weight recordings. Thus there is a need for a focused training program in this area so that our medical personnel are aware of and comply with detainee screening and medical treatment requirements.

(U) Second, it is a growing trend in the Global War on Terror for behavioral science personnel to work with and support interrogators. These personnel observe interrogations, assess detainee behavior and motivations, review interrogation techniques, and offer advice to interrogators. This support can be effective in helping interrogators collect intelligence from detainees; however, it must be done within proper limits. We found that behavioral science personnel were not involved in detainee

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medical care (thus avoiding any inherent conflict between caring for detainees and crafting interrogation strategies), nor were they permitted access to detainee medical records for purposes of developing interrogation strategies. However, since neither the Geneva Conventions nor U.S. military medical doctrine specifically address the issue of behavioral science personnel assisting interrogators in developing interrogation strategies, this practice has evolved in an *ad hoc* manner. In our view, DoD policy-level review is needed to ensure that this practice is performed with proper safeguards, as well as to clarify the status of medical personnel (such as behavioral scientists supporting interrogators) who do not participate in patient care.

(U) Another area that deserves DoD policy-level review (and that is unaddressed by the Geneva Conventions or current DoD policy) is interrogator access to detainee medical information. Interrogators often have legitimate reasons for inquiring into detainees' medical status. For example, interrogators need to be able to verify whether detainees are being truthful when they claim that interrogations should be restricted on medical grounds. Granting interrogators unfettered access to detainee medical records, however, raises the problem that detainee medical information could be inappropriately exploited during interrogations. Such access might also discourage detainees from being truthful with medical personnel, or from seeking help with medical issues, if detainees believe that their medical histories will be used against them during interrogation. Although U.S. law provides no absolute confidentiality of medical information for any person, including detainees, DoD policy-level review is necessary in order to balance properly these competing concerns. This is especially true given the substantial variation that we found in field-level practices for maintaining and securing detainee medical records. While access to medical information was carefully controlled at GTMO, we found in Afghanistan and Iraq that interrogators sometimes had easy access to such information. Nevertheless, we found no instances where detainee medical information had been inappropriately used during interrogations, and in most situations interrogators had little interest in detainee medical information even when they had unfettered access to it.

(U) Finally, it was not possible for us to assess comprehensively whether medical personnel serving in the Global War on Terror have adequately discharged their obligation to report (and where possible, prevent) detainee abuse. However, our interviews with medical personnel indicated that they had only infrequently suspected or witnessed abuse, and had in those instances reported it through the chain of command. Separately, we performed a systematic review of investigative notes and autopsy results in order to assess the roles of medical personnel, especially in any case where detainee abuse was suspected. We reviewed 68 detainee deaths: 63 in Iraq and five in Afghanistan;

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there were no deaths at GTMO. (These deaths were not all abuse-related, and therefore do not correlate directly to the death cases described in our analysis of abuse.) Of these deaths, we identified three in which it appeared that medical personnel may have attempted to misrepresent the circumstances of death, possibly in an effort to disguise detainee abuse. Two of these were the previously described deaths in Bagram, Afghanistan in December 2002, and one was the aforementioned death at Abu Ghraib in November 2003. The Army Surgeon General is currently reviewing the specific medical handling of these three cases.

Conclusion (U)

(U) Human intelligence in general, and interrogation in particular, are indispensable components of the Global War on Terror. The need for intelligence in the post-9/11 world, and our enemy's ability to resist interrogation, have caused our senior policy makers and military commanders to reevaluate traditional U.S. interrogation methods and search for new and more effective interrogation techniques. According to our investigation, this search has always been conducted within the confines of our armed forces' obligation to treat detainees humanely. In addition, our analysis of 70 substantiated detainee abuse cases found that no approved interrogation techniques caused these criminal abuses; however, two specific interrogation plans approved for use at GTMO did highlight the difficulty of precisely defining the boundaries of humane treatment.

(U) It bears emphasis that the vast majority of detainees held by the U.S. in the Global War on Terror have been treated humanely, and that the overwhelming majority of U.S. personnel have served honorably. For those few who have not, there is no single, overarching explanation. While authorized interrogation techniques have not been a causal factor in detainee abuse, we have nevertheless identified a number of missed opportunities in the policy development process. We cannot say that there would necessarily have been less detainee abuse had these opportunities been acted upon. These are opportunities, however, that should be considered in the development of future interrogation policies.

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Army Regulation 15-6: Final Report

Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility

EXECUTIVE SUMMARY

Detention and interrogation operations at Joint Task Force Guantanamo (JTF-GTMO) cover a three-year period and over 24,000 interrogations. This AR 15-6 investigation found only three interrogation acts in violation of interrogation techniques authorized by Army Field Manual 34-52 and DoD guidance. The AR 15-6 also found that the Commander of JTF-GTMO failed to monitor the interrogation of one high value detainee in late 2002. The AR 15-6 found that the interrogation of this same high value detainee resulted in degrading and abusive treatment but did not rise to the level of being inhumane treatment. Finally, the AR 15-6 found that the communication of a threat to another high value detainee was in violation of SECDEF guidance and the UCMJ. The AR 15-6 found no evidence of torture or inhumane treatment at JTF-GTMO.

INTRODUCTION

In June 2004, the Federal Bureau of Investigation (FBI) began an internal investigation to determine if any of its personnel had observed mistreatment or aggressive behavior towards detainees at Guantanamo Bay, Cuba (GTMO). On 9 Jul 04, the FBI – Inspection Division (INSD), sent an e-mail message to all FBI personnel who had served in any capacity at GTMO. The e-mail stated in relevant part:

"You have been identified as having conducted an assignment at GTMO, Cuba since 9/11/2001. The Inspection Division has been tasked with contacting those employees who have served in any capacity at GTMO and obtain information regarding the treatment of detainees. Employees should immediately respond to the following:

1) Employees who observed aggressive treatment, which was not consistent with Bureau interview policy guidelines, should respond via e-mail for purposes of a follow-up interview.

2) Employees who worked at GTMO and observed no aggressive treatment of detainees should respond via an EC documenting a negative response..."

The above e-mail message was sent by INSD to 493 FBI personnel who had served in GTMO between 9 Sep 01 and 9 Jul 04. INSD received 434 total

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responses, and 26 agents stated that they had observed aggressive treatment of detainees at GTMO.

In response to FBI agent allegations of aggressive interrogation techniques at Joint Task Force Guantanamo Bay (JTF-GTMO) Cuba, that were disclosed in Dec 04 as a result of FOIA releases, General (GEN) Bantz J. Craddock, Commander United States Southern Command (USSOUTHCOM), ordered an AR 15-6 investigation and appointed Brigadier General (BG) John T. Furlow, United States Army South Deputy Commander for Support, as the investigating officer. BG Furlow was directed to address the following allegations:

a. That military interrogators improperly used military working dogs during interrogation sessions to threaten detainees, or for some other purpose;

b. That military interrogators improperly used duct tape to cover a detainee's mouth and head;

c. That DoD interrogators improperly impersonated FBI agents and Department of State officers during the interrogation of detainees;

d. That, on several occasions, DoD interrogators improperly played loud music and yelled loudly at detainees;

e. That military personnel improperly interfered with FBI interrogators in the performance of their FBI duties;

f. That military interrogators improperly used sleep deprivation against detainees;

g. That military interrogators improperly chained detainees and placed them in a fetal position on the floor, and denied them food and water for long periods of time;

h. That military interrogators improperly used extremes of heat and cold during their interrogation of detainees.

Subsequent to the initial appointment, GEN Craddock directed BG Furlow to investigate two additional allegations concerning a female military interrogator performing a "lap dance" on a detainee and the use of faux "menstrual blood" during an interrogation. Finally, the appointment letter directed BG Furlow to not limit himself to the listed allegations.

On 28 Feb 05, after two months of investigation, BG Furlow advised GEN Craddock that he needed to interview officers senior in grade to himself. On 28 Feb 05 GEN Craddock appointed Lieutenant General (Lt Gen) Randall M. Schmidt, United States Southern Command Air Forces Commander. Davis-

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Monthan AFB, AZ, as the senior investigating officer. This report reflects the combined findings and conclusions of the initial investigative efforts and the combined investigative efforts of both BG Furlow and Lt Gen Schmidt.

After submission of the AR15-6 Report of Investigation on 1 Apr 05, CDR USSOUTHCOM directed on 5 May 2005 that the investigation be reopened to consider memos dated 11 Dec 04 and 24 Dec 04, that had recently been discovered, regarding the subject of the second Special Interrogation Plan. Prior to completion of the follow-up, CDR USSOUTHCOM directed on 2 Jun 05 that the investigation should also address new allegations made by the subject of the first Special Interrogation Plan.

SCOPE OF REVIEW

This investigation was directed and accomplished under the "informal procedures" provisions of Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers, dated 30 Sep 96, (AR 15-6). This AR 15-6 investigation centered on alleged abuses occurring during interrogation operations. This AR 15-6 found incidents of abuse during detention operations; all of which were appropriately addressed by the command. The investigation team conducted a comprehensive review of thousands of documents and statements pertaining to any allegations of abuse occurring at GTMO, to include the complete medical records of the subjects of the first and second Special Interrogation Plan. The team interviewed 30 FBI agents, conducted interviews of over 100 personnel from 6 Jan 05 to 24 Mar 05 and had access to hundreds of interviews conducted by several recent investigations. These interviews included personnel assigned to GTMO, USSOUTHCOM, and OSD during the tenure of JTFs 160, 170, and GTMO. It included nine DIA personnel, including every Joint Intelligence Group Chief and every Intelligence Control Element Chief. It included 76 DoD personnel, to include every General Officer who commanded Joint Task Force 160, Joint Task Force 170 and Joint Task Force GTMO. DoD personnel interviewed also included personnel who served as interrogators at GTMO and instructors at the US Army Intelligence School and Center. During the course of the investigation, the team visited Birmingham, AL; Chicago, IL; Ft Bragg, NC; Ft Devens, MA; Ft Huachuca, AZ; GTMO (twice); Los Angeles, CA; Miami, FL; and Washington D.C. (five times).

The investigation team attempted to determine if the allegations alleged by the FBI, in fact, occurred. During the course of the follow up investigation the AR15-6 also considered allegations raised specifically by detainees the subject of the first and second Special Interrogation Plans. The investigating team applied a preponderance standard of proof consistent with the guidance contained in AR15-6. The team also applied guidance contained in FM 34-52, CDR USSOUTHCOM, and SECDEF memorandums authorizing special interrogation techniques in deciding if a particular interrogation approach fell properly within an authorized technique. In those cases in which the team concluded that the

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allegation had in fact occurred, the team then considered whether the incident was in compliance with interrogation techniques that were approved either at the time of the incident or subsequent to the incident. In those cases where it was determined the allegation occurred and to have not been an authorized technique, the team then reviewed whether disciplinary action had already been taken and the propriety of that action. On 28 Mar 05, GEN Craddock, as the investigation appointing authority, asked Lt Gen Schmidt to determine accountability for those substantiated violations that had no command action taken.

The team did not review the legal validity of the various interrogation techniques outlined in Army Field Manual 34-52, or those approved by the Secretary of Defense.

BACKGROUND

On 7 Mar 05 Vice Admiral A.T. Church, III submitted his final report of detention operations and detainee interrogation techniques in the Global War on Terror to the Secretary of Defense. (hereinafter "Church Report") That report included a thorough background discussion of detainee operations at GTMO. Our investigation independently researched the genesis and adjustments to policy and interrogation techniques from the origination of GTMO to the present. Our independently derived findings regarding the development and adjustments to policy and interrogation techniques are identical to the Church report. Therefore, I have adopted relevant portions of the Church report to show the development of permissible interrogation techniques.

Interrogation operations at GTMO began in January 2002. Initially interrogators relied upon the interrogation techniques contained in FM 34-52. These techniques were ineffective against detainees who had received interrogation resistance training. On 11 Oct 2002, Major General Michael E. Dunlavey, the Commander of Joint Task Force (JTF) 170, the intelligence task force at GTMO, requested that the CDR USSOUTHCOM, GEN James T. Hill, approve 19 counter resistance techniques that were not specifically listed in FM 34-52. The techniques were broken down into Categories I, II, and III, with the third category containing the most aggressive techniques. On 25 Oct 02 CDR USSOUTHCOM forwarded the request to the Chairman of the Joint Chiefs of Staff, General Richard B. Myers. On 2 Dec 02, the Secretary of Defense approved the use of all Category I and II techniques, but only one of the Category III techniques (which authorized mild, non-injurious physical contact such as grabbing, poking in the chest with a finger, and light pushing). In the approval memorandum, the SECDEF approved the techniques for use by CDR USSOUTHCOM, who subsequently verbally delegated the authority to approve and apply these techniques to CDR JTF-GTMO.

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On 15 Jan 03, SECDEF rescinded his approval of all Category II techniques and the one Category III technique leaving only Category I techniques in effect. The SECDEF memo permitted use of Category II and III techniques only with SECDEF approval. No approval was requested or granted.

On 16 Apr 03, the Secretary of Defense issued a new policy accepting 24 techniques, most of which were taken directly from or closely resembled those in FM 34-52. The Secretary's guidance remains in effect today. This policy memorandum placed several requirements on CDR USSOUTHCOM. First, it required all detainees to continue to be treated humanely. Second, it required SECDEF notification prior to the implementation of any of the following aggressive Interrogation techniques: Incentive/Removal of Incentive; Pride and Ego Down; Mutt and Jeff; and Isolation. Third, it specifically limited the use of these aggressive techniques to circumstances required by "military necessity." The memorandum did not attempt to define the parameters of "humane treatment" or "military necessity."

The CDR USSOUTHCOM issued a memorandum on 2 Jun 03 providing further guidance on the implementation of the 16 Apr 03 SECDEF approved techniques. This guidance provided that prior to the use of any of the specified aggressive techniques, the JTF Commander would submit the request in writing to CDR USSOUTHCOM for submission to SECDEF. The guidance also stated that "specific implementation guidance with respect to techniques A-Q is provided in Army Field Manual 34-52. Further implementation guidance with respect to techniques R-X will need to be developed by the appropriate authority." GTMO standard operating procedure on interrogations provides guidance for interrogations.

In addition, the CDR USSOUTHCOM guidance provided the following clarification to the SECDEF's 16 Apr 03 memorandum: **(quoting)**

(a) Reference Technique B, the Working Group was most concerned about removal of the Koran from a detainee—something we no longer do. Because providing incentives (e.g., McDonald's Fish Sandwiches or cigarettes) is an integral part of interrogations, you will notify me in writing when the provided incentive would exceed that contemplated by interrogation doctrine contained in Army FM 34-52, or when the interrogators intend to remove an incentive from a detainee;

(b) Reference Techniques I and O, you will notify me in writing when use of these standard interrogation techniques goes beyond the doctrinal application described in Army FM 34-52. When use of the technique is consistent with FM 34-52, you do not need to notify me;

(c) I define "sleep deprivation", referenced in Technique V, as keeping a detainee awake for more that 16 hrs, or allowing a detainee to rest

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briefly and then repeatedly awakening him, not to exceed four days in succession;

(d) Reference Technique X, I do not consider the use of maximum-security units as isolation. A detainee placed in a maximum-security unit is segregated, but not truly isolated;

(e) I define the "least intrusive method" as the technique that has the least impact on a detainee's standard of treatment, while evoking the desired response from the detainee during interrogations;

(f) Except in the case of Techniques B, I, O, and X, I have determined that the first 0-6/GG-15 in the chain of command or supervision, is the "appropriate specified senior approval authority," unless approval authority is withheld from that individual by higher authority.

Lastly, I have told the Secretary of Defense his 16 April guidance applies to all interagency elements assigned or attached to JTF GTMO. **(end quote)**

There have been over 24,000 interrogation sessions at GTMO since the beginning of interrogation operations.

FINDINGS

GENERAL DETAINEE POPULATION

Allegation: That DoD interrogators improperly impersonated FBI agents or Department of State officers during the interrogation of detainees.

Finding #1: On several occasions in 2003 various DoD interrogators impersonated agents of the FBI and the Department of State.

Technique: Authorized: FM 34-52 (p. 3-13); Category I technique approved by SECDEF – Deceiving interrogator identity

Discussion: The Chief of the Special Interrogation Team directed two interrogators to pose as US State Department representatives during an interrogation. In addition another interrogator posed as an FBI agent on one occasion. This impersonation came to the attention of the Senior Supervisory Agent (SSA) of the FBI at Guantanamo Bay when several other agents advised him that detainees were complaining during interviews that the FBI had already asked them the same questions. The SSA approached the Joint Interrogation Group (JIG) Chief, with his agents' concerns. According to the SSA, the JIG Chief did not contest the FBI agents' accusations. In fact, the JIG Chief knew of at least one military interrogator who had impersonated an FBI agent. After the

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meeting, the JIG Chief agreed to stop the practice of DoD interrogators impersonating FBI agents without prior FBI approval. The SSA made it clear to the investigation team that he did not believe the impersonation interfered with FBI operations and was pleased with the JIG Chief's rapid and thorough response to the situation.

Organizational response: Immediately stopped the practice.

Recommendation #1: The allegation should be closed. The technique, while authorized, was undermining the inter-agency working relationship. No additional corrective action is necessary or appropriate.

Allegation: **That a female military interrogator performed a "lap dance" on a detainee during an interrogation. I have expanded this allegation to "That female military interrogators performed acts designed to take advantage of their gender in relation to Muslim males."**

Finding #2a: On one occasion between October 2002 and January 2003, a female interrogator put perfume on a detainee by touching the detainee on his arm with her hand;

Technique: Authorized: FM 34-52 (p. 3-11); Category III technique approved by SECDEF – Mild, non-injurious physical touching

Discussion: a. On at least one occasion in late 2002, a female interrogator rubbed perfume on a detainee. The Interrogation Control Element (ICE) Chief stated that he specifically directed the interrogator to go to the PX and purchase rose oil with the intent of rubbing a portion of the perfume on the detainee's arm to distract the detainee. The interrogator admitted to using this approach with a detainee. At the time of the event the detainee responded by attempting to bite the interrogator and lost his balance, fell out of his chair, and chipped his tooth. He received immediate and appropriate medical attention and did not suffer permanent injury.

Organizational response: a. The interrogator was not disciplined for rubbing perfume on a detainee since this was an authorized technique.

Finding #2b: During the month of March 2003, a female interrogator approached a detainee from behind, rubbed against his back, leaned over the detainee touching him on his knee and shoulder and whispered in his ear that his situation was futile, and ran her fingers through his hair.

Technique: Authorized: FM 34-52 technique – Futility – Act used to highlight futility of the detainee's situation.

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Discussion: b. On 17 Apr 03, An interrogation supervisor supervised a female interrogator as she interrogated a detainee with her BDU top off[1], and subsequently the interrogator ran her fingers through the detainee's hair. The interrogator also approached the detainee from behind, touched him on his knee and shoulder, leaned over him, and placed her face near the side of his in an effort to create stress and break his concentration during interrogation.

Organizational response: b. The interrogation supervisor was given a written letter of admonishment for failure to document the techniques to be implemented by the interrogator prior to the interrogation. There is no evidence that either activity ever occurred again.

Recommendation #2: Command action was effective and sufficient with respect to the individual interrogators. AR 15-6 recommends that the approval authority for the use of gender coercion as futility technique be withheld to the JTF GTMO-CG.

Allegation: That a female military interrogator wiped "menstrual blood" on a detainee during an interrogation.

Finding #3: In March 2003, a female interrogator told a detainee that red ink on her hand was menstrual blood and then wiped her hand on the detainee's arm.

Technique: Authorized: FM 34-52 technique – Futility – act used to highlight futility of the detainee's situation

Discussion: The female interrogator is no longer in military service and has declined to be interviewed. According to a former ICE Deputy the incident occurred when a detainee spat in the interrogator's face. According to the former ICE Deputy, the interrogator left the interrogation room and was crying outside the booth. She developed a plan to psychologically get back at him. She touched the detainee on his shoulder, showed him the red ink on her hand and said; by the way, I am menstruating. The detainee threw himself on the floor and started banging his head. This technique was not in an approved interrogation plan.

Organizational response: The ICE Deputy verbally reprimanded the interrogator for this incident. No formal disciplinary action was taken. There is no evidence that this happened again.

Recommendation #3: Command action was inadequate with respect to the individual interrogator. The interrogator should have been formally admonished or reprimanded for using a technique that was not approved in advance. Advance approval ensures that retaliatory techniques are not

[1] It was common practice at GTMO to conduct interrogations in a t-shirt with the BDU top removed because of the heat and humidity.

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employed on impulse. Considering the lapse in time, recommend this allegation be closed.

Allegation: That DoD interrogators improperly played loud music and yelled loudly at detainees.

Finding #4: On numerous occasions between July 2002 and October 2004, detainees were yelled at or subjected to loud music during interrogation.

Technique: Authorized: FM 34-52 technique – Incentive and Futility – acts used as reward for cooperating or to create futility if not cooperating.

Discussion: Almost every interviewee stated that yelling and the use of loud music were used for interrogations at GTMO. On a few occasions, detainees were left alone in the interrogation booth for an indefinite period of time while loud music played and strobe lights flashed. The vast majority of yelling and music was accomplished with interrogators in the room. The volume of the music was never loud enough to cause any physical injury. Interrogators stated that cultural music would be played as an incentive. Futility technique included the playing of Metallica, Britney Spears, and Rap music.

Organizational response: None.

Recommendation #4: The allegation should be closed. Recommend JTF-GTMO develop specific guidance on the length of time that a detainee may be subjected to futility music. Placement of a detainee in the interrogation booth and subjecting him to loud music and strobe lights should be limited and conducted within clearly prescribed limits.

Allegation: That military interrogators improperly used extremes of heat and cold during their interrogation of detainees.

Finding #5: On several occasions during 2002 and 2003, interrogators would adjust the air conditioner to make the detainee uncomfortable.

Technique: Unauthorized prior to 16 Apr 03: SECDEF did not approve exposure to cold in his 2 Dec 02 list of approved techniques

Technique: Authorized after 16 Apr 03: SECDEF approved technique. This technique was officially permitted under 16 Apr 03 SECDEF Memorandum – Environmental Manipulation

Discussion: Two FBI agents indicated that they were aware of DoD interrogators using temperature adjustment as an interrogation technique. Many interviewees, FBI agents and military interrogators, believed the hot climate at GTMO and the detainee's comfort in a hot climate caused a differing in opinions

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regarding the use of the air conditioning units in the interrogation booths. There were several individuals who were interviewed who acknowledged that certain military interrogators would adjust the air conditioning down (cool) in an attempt to make the detainee uncomfortable for the interrogation. Several witnesses indicated that the practice of adjusting the temperature ceased when CDR JTF-GTMO directed that the practice no longer be employed. The current GTMO SOP still permits interrogators to adjust the temperature. In addition, one interrogator supervisor stated that detainees were interrogated at Camp X-Ray, where the "booths" were not air-conditioned, to make the detainees uncomfortable.

Organizational response: No disciplinary action required.

Recommendation #5: The allegation should be closed.

Allegation: That military interrogators improperly used sleep deprivation against detainees.

Finding #6: During 2003 and 2004 some detainees were subjected to cell moves every few hours to disrupt sleep patterns and lower the ability to resist interrogation. Each case differed as to length and frequency of the cell moves.

Technique: Unauthorized prior to 2 Dec 02 and between 15 Jan 03 and 16 Apr 03: Neither sleep disruption or deprivation is an authorized FM 34-52 technique

Technique: Authorized between 2 Dec 02 and 15 Jan 03 and after 16 Apr 03: The exact parameters of this technique remained undefined until 2 Jun 03 when CDR USSOUTHCOM established clear guidance on the use of sleep adjustment. His guidance prohibited the practice of keeping a detainee awake for "more than 16 hours or allowing a detainee to rest briefly and then repeatedly awakening him, not to exceed four days in succession."

Discussion: Only one FBI agent alleged sleep deprivation; his complaint was that an individual was subjected to 16 hours of interrogation followed by four-hour breaks. He says he was told about these sessions by DoD interrogators and they implied that these 16 hour interrogations were repeated on a 20 hour cycle, but he did not know for certain what in fact occurred. The FBI agent was at GTMO from 2 Jun 03 to 17 Jul 03. Under CDR USSOUTHCOM's 2 Jun 03 guidance, 16 hour interrogations were permitted and do not constitute sleep deprivation if done on a 24 hour cycle. During the course of the investigation of the FBI allegation, the AR 15-6 did conduct a review of the interrogation records to see if there was any evidence that corroborated this allegation. While not directly supporting the FBI's allegation, records indicated that some interrogators recommended detainees for the "frequent flyer program." A current GTMO interrogation analyst indicated that this was a program in effect throughout 2003

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and until March 2004 to move detainees every few hours from one cell to another to disrupt their sleep. Documentation on one detainee indicated that he was subjected to this practice as recently as March 2004.

Organizational response: None. Current JTF-GTMO Commander terminated the frequent flyer cell movement program upon his arrival in March 04.

Recommendation #6: The allegation should be closed. Recommend USSOUTHCOM clarify policy on sleep deprivation.

Allegation: That military interrogators improperly used duct tape to cover a detainee's mouth and head.

Finding #7: Sometime in October 2002 duct tape was used to "quiet" a detainee.

Technique: Unauthorized

Discussion: In his testimony, the ICE Chief testified that he had a situation in which a detainee was screaming resistance messages and potentially provoking a riot. At the time of the incident there were 10 detainees in the interrogation section and the ICE Chief was concerned about losing control of the situation. He directed the MPs to quiet the detainee down. The MP mentioned that he had duct tape. The ICE Chief says he ultimately approved the use of duct tape to quiet the detainee. The MP then placed a single strand of duct tape around the detainee's mouth. The single strand proved ineffective because the detainee was soon yelling again. This time the MPs wrapped a single strand of duct tape around the mouth and head of the detainee. The detainee removed the duct tape again. Fed up and concerned that the detainee's yelling might cause a riot in the interrogation trailer, The ICE Chief ordered the MPs to wrap the duct tape twice around the head and mouth and three times under the chin and around the top of the detainee's head. According to an FBI agent, he and another FBI agent were approached by the ICE Chief who was laughing and told the agents that they needed to see something. When the first agent went to the interrogation room he saw that the detainee's head had been wrapped in duct tape over his beard and his hair. An interrogator testified that another interrogator admitted to him that he had duct taped the head of a detainee. According to the first agent, the ICE Chief said the interrogator wrapped the detainee's head with duct tape because the detainee refused to stop "chanting" passages from the Koran.

Organizational response: The JTF-170 JAG testified that she became aware of the incident and personally counseled the ICE Chief. The counseling session consisted of a verbal admonishment.[2] The ICE Chief did not receive any formal

[2] While the ICE Chief testified that he was counseled by the JTF-GTMO Commander this is not possible. The Commander in question did not arrive until the month following the event. The previous Commander has no recollection of the event.

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discipline action. We have no evidence that duct tape was ever used again on a detainee.

Recommendation #7: Command action was inadequate with respect to the ICE Chief. He should be formally admonished or reprimanded for directing an inappropriate restraint to be used on a detainee.

Allegation: That military interrogators improperly chained detainees and placed them in a fetal position on the floor

Finding #8: On at least two occasions between February 2002 and February 2003, two detainees were "short shackled" to the eye-bolt on the floor in the interrogation room.

Technique: Unauthorized.

Discussion: Two FBI agents each stated that they witnessed a detainee in an interrogation room that had been "short shackled" to the floor. Short shackling is the process by which the detainee's hand restraints are connected directly to an eyebolt in the floor requiring the detainee to either crouch very low or lay in a fetal position on the floor. The FBI agents indicated that each of the detainees was clothed. Another FBI agent stated she witnessed a detainee short shackled and lying in his own excrement. The AR 15-6 was unable to find any documentation, testimony, or other evidence corroborating the third agent's recollection, to this allegation or her email allegation that one of the detainees had pulled his hair out while short shackled. We also found that 'short shackling' was initially authorized as a force protection measure during the in processing of detainees.[3]

Organizational response: None. JTF-GTMO has implemented SOPs that prohibit short shackling.

Recommendation #8: The allegation should be closed. The AR 15-6 was not able to find any evidence to adequately assign responsibility for these actions. This practice is now specifically prohibited by current GTMO interrogation policy.

Allegation: That military personnel improperly interfered with FBI interrogators in the performance of their FBI duties.

Finding #9: We discovered no evidence to support this allegation.

[3] During the course of a site visit to GTMO several detention operations personnel indicated that they understood that short shackling was permitted in the early days of GTMO as a force protection measure. They all stated that it was no longer authorized as either a detention measure or during interrogations.

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Discussion: This allegation stems from an FBI agent objections to a proposed Special Interrogation Plan. The dispute resulted in a DoD official being rude to the FBI agent. The team did not find any evidence of "interference" with FBI interrogations that extended beyond the dispute over which techniques worked best in interrogation. During the infancy of interrogation operations at GTMO, it was obvious that the different investigative agencies had different interrogation objectives. Law enforcement agencies were primarily interested in interviews that would produce voluntary confessions that would be admissible in U.S. Federal District Courts. Conversely, DoD interrogators were interested in actionable intelligence and thus had greater latitude on the techniques used during the interrogations. These different goals created friction.

Recommendation #9: The allegation should be closed.

Allegation: That military interrogators denied detainees food and water for long periods of time.

Finding #10: We discovered no evidence to support the allegation that the detainees were denied food and water.

Discussion: This allegation stems from the statement of an FBI Agent. She reports two incidents of observing two detainees in "the fetal position and lying on the floor of interview rooms." And that there were was no "evidence of any food or water." The Agent admits in her statement that she made an assumption that the detainees were denied food and water based solely upon their appearance. The Agent was unable to provide any specific information as to the day she made these observations to permit additional proof or assignment of responsibility.

Recommendation #10: The allegation should be closed.

SPECIAL INTERROGATION PLANS

During the course of interrogations certain detainees exhibited refined resistance techniques to interrogations. These detainees were suspected to possess significant current intelligence regarding planned future terrorist attacks against the United States. For these reasons Special Interrogation Plans were proposed and approved for the detainees. A total of two Special Interrogation Plans were carried out. They are referred to herein as the "First Special Interrogation Plan" and the "Second Special Interrogation Plan".

THE FIRST SPECIAL INTERROGATION PLAN

On 23 Nov 02 interrogators initiated the first Special Interrogation Plan. The interrogation plan was designed to counter resistance techniques of the subject

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of the first Special Interrogation Plan. The memo authorizing the techniques for this interrogation was signed by SECDEF on 2 Dec 02. These techniques supplemented techniques already permitted under the provisions of FM 34-52.

Allegation: That military interrogators improperly used military working dogs (MWD) during interrogation sessions to threaten detainees, or for some other purpose.

Finding #11a: On one occasion in October 2002 a military working dog was brought into the interrogation room and directed to growl, bark, and show his teeth at the subject of the first Special Interrogation Plan.

Technique: Unauthorized prior to 12 Nov 02.

Discussion: a. October 2002 incident: GTMO records indicate that on 01 Oct 02, the Commander of JTF-170 requested Joint Detention Operations Group (JDOG) support for interrogation operations to interrogate the subject of the first Special Interrogation Plan. The dog was requested to assist in the movement of the subject of the first Special Interrogation Plan between Camp X-ray and the GTMO Naval Brig to "discourage the detainee from attempting to escape." The interrogation plan (IP) indicates that the interrogation would begin on the 2nd or 3rd of October 2002. One FBI agent in his statement recalls the MWD being used on or about 05 Oct 02. He indicated that the events were notable for several reasons. He had recently purchased a German Shepard and wanted to get some "tips" from the dog handlers. The FBI agent noticed that there were two working dog teams (one Navy and one Army) present for the interrogation of the subject of the first Special Interrogation Plan. Finally, the FBI agent recalled that he and his partner left the observation room when the MWD was introduced into the interrogation room. The FBI agent's partner corroborates this statement.

In addition an interrogator indicated that she recalled a MWD being brought into the interrogation room during interrogation of the subject of the first Special Interrogation Plan at Camp X-ray, between 02-10 Oct 02. She stated that the dogs were used only "briefly." She stated that the use of the dog was documented on the IP and approved by the ICE Chief and CDR, JTF-GTMO

Finding #11b: In November 2002 a military working dog was brought into the interrogation room and directed to growl, bark, and show his teeth at the subject of the first Special Interrogation Plan.

Technique: Authorized: SECDEF approved the use of Category I and II techniques for the subject of the first Special Interrogation Plan. Category II technique permits the use of dogs to exploit "individual phobias" during interrogations.

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Discussion: b. An interrogator testified that the MWD was in the booth on one occasion for the subject of the first Special Interrogation Plan. He testified that he was approached by another interrogator and discussed the use of a MWD in an interrogation session. Specifically, the first interrogator stated that the second interrogator told him that a MWD was brought into the doorway of the interrogation room and ordered by the dog handler to growl, show teeth and bark at the detainee. In addition a psychologist assigned to the Behavioral Science Consultation Team (BSCT) for JTF-170/JTF-GTMO witnessed the use of a MWD named "Zeus" during a military interrogation of the subject of the first Special Interrogation Plan during the November 2002 time period. In his interview, the ICE Chief acknowledged that an MWD had entered the interrogation room of the subject of the first Special Interrogation Plan under the authority of a "special IP" for the subject of the first Special Interrogation Plan. The unsigned but approved interrogation plan for the subject of the first Special Interrogation Plan is from 12 Nov 02. (Church p. 115) It indicates dogs will only be used in interrogation if approved in writing, in advance. Both JTF-GTMO Commanders who were in charge during the execution of the special interrogation plan deny that they authorized the use of MWDs in the interrogation room.

Organizational response: a. and b. None. Current SOPs expressly prohibit the use of MWDs in the interrogation room. There is no evidence that this has ever happened again.

Recommendation #11: The allegation should be closed. While the ICE Chief was aware of and condoned the first use of the MWD, additional corrective action is not necessary. The event occurred on two occasions and was expressly approved after the first occasion for this detainee. This practice is now specifically prohibited by current GTMO interrogation policy.

Allegation: That a female military interrogator performed a "lap dance" on a detainee during an interrogation. I have expanded this allegation to "That female military interrogators performed acts designed to take advantage of their gender in relation to Muslim males."

Finding #12a: On 21 and 23 Dec 02, MPs held down a detainee while a female interrogator straddled the detainee without placing weight on the detainee;

Technique: Authorized: FM 34-52 technique – Futility – Act used to highlight futility of the detainee's situation.

Finding #12b: On 04 Dec 02, a female interrogator massaged the detainee's back and neck over his clothing;

Technique: Authorized: FM 34-52 technique – Futility – Act used to highlight futility of the detainee's situation.

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Finding #12c: On various occasions between October 2002 and January 2003, a female interrogator invaded the private space of a detainee to disrupt his concentration during interrogation;

Technique: Authorized: FM 34-52 technique – Futility – act used to highlight futility of the detainee's situation.

Discussion: Interrogation logs and MFRs for the subject of the first Special Interrogation Plan document that on both 21 and 23 Dec 02, a female interrogator straddled, without putting any weight on the detainee, the subject of the first Special Interrogation Plan while he was being held down by MPs. During these incidents a female interrogator would tell the detainee about the deaths of fellow Al-Qaeda members. During the straddling, the detainee would attempt to raise and bend his legs to prevent the interrogator from straddling him and prayed loudly. Interrogation MFRs also indicate that on 04 Dec 02, a female interrogator began to enter the personal space of the subject of the first Special Interrogation Plan, touch him, and ultimately massage his back while whispering or speaking near his ear. Throughout this event, the subject of the first Special Interrogation Plan prayed, swore at the interrogator that she was going to Hell, and attempted to get away from her. The female interrogator admitted in her interview that she personally prepared portions of the MFRs of the the subject of the first Special Interrogation Plan interrogations. She asserts that she had permission to employ all these techniques. We have found no evidence of a lap dance ever occurring.

Organizational response: No disciplinary action taken. The ICE Chief approved these techniques at the time.

Recommendation #12: The allegation should be closed. No command action is necessary with respect to the individual interrogators. Their supervisor acknowledged that he approved the approaches at the time of the interrogation. AR 15-6 recommends that the approval authority for the use of gender coercion as futility technique be withheld to the JTF GTMO-CG.

Allegation: That DoD interrogators improperly played loud music and yelled loudly at detainees.

Finding #13: On numerous occasions between November 2002 and 15 Jan 03, the subject of the first Special Interrogation Plan was yelled at or subjected to loud music during interrogation.

Technique: Authorized: FM 34-52 technique – Incentive and Futility – acts used as reward for cooperating or to create futility in not cooperating.

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Discussion: See above discussion for Finding #4.

Organizational response: No disciplinary action required; technique authorized.

Recommendation #13: The allegation should be closed. Recommend JTF-GTMO develop specific guidance on the length of time that a detainee may be subjected to futility music. Placement of a detainee in the interrogation booth and subjecting him to loud music and strobe lights should be limited and conducted within clearly prescribed limits.

Allegation: That military interrogators improperly used extremes of heat and cold during their interrogation of detainees.

Finding #14: On several occasions between November 2002 and January 2003 interrogators would adjust the air conditioner to make the subject of the first Special Interrogation Plan uncomfortable.

Technique: Unauthorized prior to 16 Apr 03: SECDEF did not approve exposure to cold in his 2 Dec 02 list of approved techniques

Discussion. There are no medical entries indicating the subject of the first Special Interrogation Plan ever experienced medical problems related to low body temperature. The subject of the first Special Interrogation Plan's medical records do indicate that he did have a body temperature between 95 and 97 degrees twice. The subject of the first Special Interrogation Plan's medical records do indicate that from 7-9 Dec 02 he was hospitalized for observation after an episode of bradycardia. He was released within forty-eight hours, after the bradycardia resolved without intervention and he maintained stable hemodynamics.[4] He experienced a second episode of bradycardia in Feb 03.

Organizational response: None

Recommendation #14: The allegation should be closed.

Allegation: That military interrogators improperly used sleep deprivation against detainees.

Finding #15: From 23 Nov 02 to 16 Jan 03, the subject of the first Special Interrogation Plan was interrogated for 18-20 hours per day for 48 of the 54 days, with the opportunity for a minimum of four hours rest per day.

Technique: Authorized: SECDEF approved technique. This technique was officially permitted under 2 Dec 02 SECDEF Memorandum – The use of 20-hour interrogations

[4] Bradycardia is a relatively slow heart; hemo dynamics are mechanics of blood circulation.

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Discussion: SECDEF approved 20 hour interrogations for every 24-hour cycle for the subject of the first Special Interrogation Plan on 12 Nov 02. Later, CDR USSOUTHCOM formalized the definition of sleep deprivation in his 02 Jun 03 memorandum "promulgating" SECDEF's interrogation techniques of 16 Apr 03. He defined sleep deprivation as keeping a detainee awake for more than 16 hours, or allowing a detainee to rest briefly and then repeatedly awakening him, not to exceed four days in succession.

Organizational response: None. This was an authorized interrogation technique approved by SECDEF.

Recommendation #15: The allegation should be closed. Recommend USSOUTHCOM clarify policy on sleep deprivation.

Additional Allegations, Re: The subject of the first Special Interrogation Plan: In addition to the FBI allegations addressed above, the following additional interrogation techniques (not all inclusive) were used in the interrogation of the subject of the first Special Interrogation Plan. Each act is documented in the interrogation MFRs maintained on the subject of the first Special Interrogation Plan.

Finding #16a: That the subject of the first Special Interrogation Plan was separated from the general population from 8 Aug 02 to 15 Jan 03.

Technique: Unauthorized prior to 12 Nov 02: SECDEF did not approve movement of detainee to an "isolation facility" for interrogation purposes prior to approval of Category II techniques for the subject of the first Special Interrogation Plan on 12 Nov 02.

Technique: Authorized after 12 Nov 02:

Discussion: The subject of the first Special Interrogation Plan was never isolated from human contact. The subject of the first Special Interrogation Plan was however placed in an "isolation facility" where he was separated from the general detainee population from 8 Aug 02 to 15 Jan 03. The subject of the first Special Interrogation Plan routinely had contact with interrogators and MPs while in the "isolation facility." The SECDEF did not define "isolation facility" when he approved the use of an "isolation facility" for up to 30 days with additional isolation beyond 30 days requiring CDR JTF-GTMO approval on 12 Nov 02. Prior to the SECDEF's approval, placement in an "isolation facility" was not an authorized interrogation technique.

Organizational response to Additional Allegations, Re: The subject of the first Special Interrogation Plan: None taken.

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Eight Techniques Below: Authorized: FM 34-52 technique – Ego down and Futility.

Finding #16b: On 06 Dec 02, the subject of the first Special Interrogation Plan was forced to wear a woman's bra and had a thong placed on his head during the course of the interrogation.

Finding #16c: On 17 Dec 02, the subject of the first Special Interrogation Plan was told that his mother and sister were whores.

Finding #16d: On 17 Dec 02, the subject of the first Special Interrogation Plan was told that he was a homosexual, had homosexual tendencies, and that other detainees had found out about these tendencies

Finding #16e: On 20 Dec 02, an interrogator tied a leash to the subject of the first Special Interrogation Plan's chains, led him around the room, and forced him to perform a series of dog tricks.

Finding #16f: On 20 Dec 02, an interrogator forced the subject of the first Special Interrogation Plan to dance with a male interrogator.

Finding #16g: On several occasions in Dec 02, the subject of the first Special Interrogation Plan was subject to strip searches.[5] These searches, conducted by the prison guards during interrogation, were done as a control measure on direction of the interrogators.

Finding #16h: On one occasion in Dec 02, the subject of the first Special Interrogation Plan was forced to stand naked for five minutes with females present. This incident occurred during the course of a strip search.

Finding #16i: On three occasions in Nov 02 and Dec 02, the subject of the first Special Interrogation Plan was prevented from praying during interrogation

Finding #16j: Once in Nov 02, the subject of the first Special Interrogation Plan became upset when two Korans were put on a TV, as a control measure during interrogation, and in Dec 02 when an interrogator got up on the desk in front of the subject of the first Special Interrogation Plan and squatted down in front of the subject of the first Special Interrogation Plan in an aggressive manner and unintentionally squatted over the detainee's Koran.

Finding #16k: On seventeen occasions, between 13 Dec 02 and 14 Jan 03, interrogators, during interrogations, poured water over the subject of the first Special Interrogation Plan head.

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[5] The subject of the first Special Interrogation Plan alleges that he was subject to "cavity searches." During the course of interrogation, the subject of the first Special Interrogation Plan was strip searched. The AR 15-6 was unable to determine the scope of these strip searches.

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Discussion: the subject of the first Special Interrogation Plan was a high value detainee that ultimately provided extremely valuable intelligence. His ability to resist months of standard interrogation in the summer of 2002 was the genesis for the request to have authority to employ additional counter resistance interrogation techniques. The techniques used against the subject of the first Special Interrogation Plan were done in an effort to establish complete control and create the perception of futility and reduce his resistance to interrogation. For example, this included the use of strip searches, the control of prayer, the forced wearing of a woman's bra, and other techniques noted above. It is clear based upon the completeness of the interrogation logs that the interrogation team believed that they were acting within existing guidance. Despite the fact that the AR 15-6 concluded that every technique employed against the subject of the first Special Interrogation Plan was legally permissible under the existing guidance, the AR 15-6 finds that the creative, aggressive, and persistent interrogation of the subject of the first Special Interrogation Plan resulted in the cumulative effect being degrading and abusive treatment. Particularly troubling is the combined impact of the 160 days of segregation from other detainees, 48 of 54 consecutive days of 18 to 20-hour interrogations, and the creative application of authorized interrogation techniques. Requiring the subject of the first Special Interrogation Plan to be led around by a leash tied to his chains, placing a thong on his head, wearing a bra, insulting his mother and sister, being forced to stand naked in front of a female interrogator for five minutes, and using strip searches as an interrogation technique the AR 15-6 found to be abusive and degrading, particularly when done in the context of the 48 days of intense and long interrogations.[6] While this treatment did not rise to the level of prohibited inhumane treatment the JTF-GTMO CDR was responsible for the interrogation of the subject of the first Special Interrogation Plan and had a responsibility to provide strategic guidance to the interrogation team. He failed to monitor the interrogation and exercise commander discretion by placing limits on the application of otherwise authorized techniques and approaches used in that interrogation. The Commander stated he was unaware of the specific details or impacts of the techniques on the detainee for this important interrogation. His failure to supervise the interrogation of the subject of the first Special Interrogation Plan allowed subordinates to make creative decisions in an environment requiring extremely tight controls[7].

Recommendation #16: The Commander JTF-GTMO should be held accountable for failing to supervise the interrogation of the subject of the first Special Interrogation Plan and should be admonished for that failure.

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[6] The AR 15-6 found no evidence that the subject of the first Special Interrogation Plan was ever physically assaulted. His medical records show no evidence of any physical assaults. A medical examination completed on the subject of the first Special Interrogation Plan on 16 Jan 03 found no medical conditions of note.

[7] The JTF-GTMO Commander's testimony that he was unaware of the creative approaches taken in the interrogation is inconsistent with his 21 Jan 03 letter to CDR USSOUTHCOM in which he asserts that the CJTF approved the interrogation plan in place and it was followed "relentlessly by the command."

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Allegation: In addition to the allegations above, the AR 15-6 also considered additional allegations raised specifically by the subject of the first Special Interrogation Plan.

Finding #17: The AR 15-6 was unable to corroborate the subject of the first Special Interrogation Plan's allegations to the point of concluding that they had occurred by a preponderance of the evidence. Specific findings include:

The AR 15-6 did find that the subject of the first Special Interrogation Plan was required to stand for periods of time which he may have interpreted as forced positions.

There is evidence that the subject of the first Special Interrogation Plan regularly had water poured on his head. The interrogation logs indicate that this was done as a control measure only.

There is no evidence that the subject of the first Special Interrogation Plan was subjected to humiliation intentionally directed at his religion. It is however possible that the subject of the first Special Interrogation Plan interpreted many of the interrogation techniques employed to be religious humiliation.

The AR 15-6 found no evidence that the subject of the first Special Interrogation Plan was threatened with homosexual rape. He was told on 17 Dec 02 that he was a homosexual but not threatened in any manner.

There is no evidence, to include entries in his medical records, that either occurred regarding the subject of the first Special Interrogation Plan or any other detainee.

Discussion: In reaching conclusions on the treatment of the subject of the first Special Interrogation Plan the AR 15-6 relied heavily on the interrogations logs. The level of specificity of the logs strongly supports their credibility regarding the interrogation of the subject of the first Special Interrogation Plan and thus they carried considerable weight on the findings.

Recommendation #17: The allegation should be closed

THE SECOND SPECIAL INTERROGATION PLAN

In July 03 interrogators initiated a request for approval of a Special Interrogation Plan for a detainee. This plan was approved by SECDEF on 13 Aug 03. Interrogation logs indicate that the techniques were never implemented because the subject of the second special interrogation plan began to cooperate prior to the approval.

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In addition to the interrogation logs, the AR 15-6 also considered allegations of abuse raised by the subject of the second special interrogation, himself. Specifically, after months of cooperation with interrogators, on 11 Dec 04, the subject of the second special interrogation notified his interrogator that he had been "subject to torture" by past interrogators during the months of July to October 2003.[8]

Allegation: That military interrogators improperly used extremes of heat and cold during their interrogation of detainees.

Finding #18: During the summer of 2003, interrogators would adjust the air conditioner to make the subject of the second special interrogation uncomfortable.

Technique: Authorized: SECDEF approved technique. This technique was officially permitted under 16 Apr 03 SECDEF Memorandum – Environmental Manipulation.

Discussion: The interrogation logs of the subject of the second Special Interrogation Plan indicate that on at least two occasions on 10 and 11 Jul 03 the air conditioner was turned off to heat up the room. In addition the subject of the second special interrogation alleges that on repeated occasions from Jul 03 to Oct 03, he was subjected to placement in a room referred to as the "freezer."

Organizational response: No disciplinary action required. Environmental manipulation was expressly permitted in the 16 Apr 03 SECDEF Memorandum. There is no evidence in the medical records of the subject of the second special interrogation being treated for hypothermia or any other condition related to extreme exposure.

Recommendation #18: The allegation should be closed.

Allegation: The subject of the second special interrogation alleges that female military interrogators removed their BDU tops and rubbed themselves against the detainee, fondled his genitalia, and made lewd sexual comments, noises, and gestures.

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[8] He reported these allegations to an interrogator. The interrogator was a member of the interrogation team at the time of the report. The interrogator reported the allegations to her supervisor. Shortly after being advised of the alleged abuse, the supervisor interviewed the subject of the second special interrogation, with the interrogator present, regarding the allegations. Based upon this interview, and notes taken by the interrogator, the supervisor prepared an 11 Dec 04 MFR addressed to JTF – GTMO JIG & ICE. The supervisor forwarded his MFR to the JTF – GTMO JIG. The JIG then forwarded the complaint to the JAG for processing IAW normal GTMO procedures for investigating allegations of abuse. The JAG by email on 22 Dec 04 tasked the JDOG, the JIG, and the JMG with a review of the complaint summarized in the 11 Dec 04 MFR and directed them to provide any relevant information. The internal GTMO investigation was never completed.

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Finding #19: The AR 15-6 was unable to corroborate the allegations to the point of concluding that they had occurred by a preponderance of the evidence.

Discussion: The interrogation logs for the subject of the second special interrogation indicate that on a number of occasions female interrogators used their status as females to distract the subject of the second special interrogation during the interrogation but there is nothing to corroborate the allegation of the subject of the second special interrogation.

Organizational response: No disciplinary action taken.

Recommendation #19: The allegation should be closed.

Allegation: The subject of the second Special Interrogation Plan alleges that in late summer of 2003 he was hit by guards and an interrogator "very hard" and "with all their strength" he was hit "all over."

Finding #20: The AR 15-6 was unable to corroborate the allegations to the point of concluding that they had occurred by a preponderance of the evidence.

Discussion: The interrogation logs contain no reference to any physical violence against the subject of the second Special Interrogation Plan. His medical records indicate that in August 2003 the subject of the second special interrogation reported "rib contusions" from an altercation with MPs when moved between camps. During this examination the physician also noted an "edema of the lower lip" and a "small laceration" on his head. There are no other medical entries of any other physical injuries. There are no indications of swelling or contusions to support a conclusion that the subject of the second special interrogation was hit "very hard all over."

Organizational response: No disciplinary action taken. The allegation was not substantiated.

Recommendation #20: The allegation should be closed. There is no evidence to support the subject of the second special interrogation's allegation of physical abuse.

Allegation: A DoD interrogator improperly impersonated a Navy Captain assigned to the White House.

Finding #21: The Special Team Chief impersonated a USN Captain assigned to the White House during interrogation of the subject of the second special interrogation.

Technique: Authorized: This technique is permitted under FM 34-52 – Deception.

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Discussion: On 2 Aug 03 the Special Team Chief presented himself to the subject of the second special interrogation dressed as a Captain in the USN and indicated he was from the White House in an effort to convince the subject of the second special interrogation that he needed to cooperate with his interrogators. The Special Team Chief presented a letter to the subject of the second special interrogation, which indicated that because of the subject of the second special interrogation's lack of cooperation, U.S. authorities in conjunction with authorities from the country of origin of the subject of the second Special Interrogation Plan would interrogate the mother of the subject of the second Special Interrogation Plan. The letter further indicated that if his mother was uncooperative she would be detained and transferred to U.S. custody at GTMO for long term detention. While the JTF-GTMO Commander acknowledges that he was aware of the intent by the interrogator to wear Captain's rank and purport to be from the White House, he stated that he was not aware of the intention to convey a threat or the plan to use a fictitious letter.

Organizational response: None taken.

Recommendation #21: The allegation should be closed. No further action necessary.

Allegation: That Military interrogators threatened the subject of the second special interrogation and his family.

Finding #22: The Special Team Chief threatened the subject of the second special interrogation and his family in July, August and September 2003.

Technique: Unauthorized: This technique was rejected by SECDEF on 2 Dec 2002

Discussion: During the interrogation of the subject of the second special interrogation, a masked interrogator was used to interrogate the subject of the second special interrogation [9]. On 17 Jul 03 the masked interrogator told that he had a dream about the subject of the second special interrogation dying. Specifically he told the subject of the second special interrogation that in the dream he "saw four detainees that were chained together at the feet. They dug a hole that was six-feet long, six-feet deep, and four-feet wide. Then he observed the detainees throw a plain, pine casket with the detainee's identification number painted in orange lowered into the ground." The masked interrogator told the detainee that his dream meant that he was never going to leave GTMO unless he started to talk, that he would indeed die here from old age and be buried on "Christian... sovereign American soil." On 20 Jul 03 the masked interrogator, "Mr.

[9] The interrogator was a DoD interrogator who was masked so as to preserve the identity of the interrogator. This was done in case the interrogation team wanted to use that interrogator later in another role.

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X", told the subject of the second Special Interrogation Plan that his family was "incarcerated." On 2 Aug 03, the Special Team Chief, while impersonating a USN Captain from the White House, told the subject of the second special interrogation that he had a letter indicating that the subject of the second special interrogation's family had been captured by the United States and that they were in danger.[10] He went on to tell the subject of the second special interrogation that if he wanted to help his family he should tell them everything they wanted to know. The MFR dated 02 Aug 03 indicates that the subject of the second special interrogation had a messenger that day there to "deliver a message to him". The MFR goes on to state:

> "That message was simple: Interrogator's colleagues are sick of hearing the same lies over and over and are seriously considering washing their hands of him. Once they do so, he will disappear and never be heard from again. Interrogator assured detainee again to use his imagination to think of the worst possible scenario he could end up in. He told Detainee that beatings and physical pain are not the worst thing in the world. After all, after being beaten for a while, humans tend to disconnect the mind from the body and make it through. However, there are worse things than physical pain. Interrogator assured Detainee that, eventually, he will talk, because everyone does. But until then, he will very soon disappear down a very dark hole. His very existence will become erased. His electronic files will be deleted from the computer, his paper files will be packed up and filed away, and his existence will be forgotten by all. No one will know what happened to him and, eventually, no one will care."

Finally, interrogator MFRs dated 08 Sep 03 indicate that the subject of the second special interrogation wanted to see "Captain Collins" and that they "understood that detainee had made an important decision and that the interrogator was anxious to hear what Detainee had to say. Detainee stated he understood and will wait for interrogator's [Captain Collins] return and that the subject of the second Special Interrogation Plan "...was not willing to continue to protect others to the detriment of himself and his family."

In investigating the actions above, the AR 15-6 focused on the threat made by the Special Team Chief.[11] When questioned about the threats to the subject of the second special interrogation, the Special Team Chief indicated that prior to the "threat" to detainee the subject of the second special interrogation he cleared the proposal and the letter with the senior judge advocate who approved the technique as a "deception." As written the letter does contain a threat to detain the subject of the second special interrogation's mother but does not contain any threat on her life or that of her family. The SJA indicated in his initial interview

[10] The actual content of the letter simply indicates that his mother will be taken into custody and questioned.

[11] Mr. X's dream story does not rise to the level of a threat. It appears to be a staged prelude to the direct threat made by the Special Team Chief.

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that he did not recall the letter. He subsequently elected to exercise his Article 31 rights and declined to answer direct questions about the letter and the threats. The Special Team Chief also indicated that both JIG Chiefs in charge during the promulgation of the Special Interrogation Plan[12] were also aware of the threat letter. The first JIG Chief has retired and was unwilling to cooperate with this investigation. The second JIG Chief indicated under oath that he was unaware of the interrogation events discussed above. He recognizes, that read in conjunction with each other, they indicate a threat. He believes that the Commander of JTF-GTMO was not aware of the threat since the second JIG Chief was not aware of the threat. The second JIG Chief stated that they had weekly meetings with the Commander to discuss interrogations but they would not have covered this level of detail in that meeting. Neither he nor the Commander read interrogation MFRs on a regular basis. Finally, the Commander denies any knowledge of the existence of the threat or the letter. He does not recall ever discussing the issue of threats with the interrogators. He is aware that this is a prohibited practice and would not have permitted it if he had been aware of the plan.

Taken as a whole, it appears that the decision to threaten the subject of the second Special Interrogation Plan was made by the Special Team Chief. He claims that he cleared the plan with the senior judge advocate but not with his supervisors. Considering the actual content of the letter, it is reasonable to conclude that the JAG advised that the letter was a proper deception and therefore additional approval was not required. The Special Team Chief knew that under FM 34-52 deception did not require additional approval.

Despite the fact that the letter may be a proper deception technique under FM 34-52, the interrogation logs clearly indicate that the interrogation went well beyond the "threat to detain" made in the letter, and in fact was a threat to the subject of the second special interrogation and his family that violated the UCMJ, Article 134 Communicating a threat.

Organizational Response: None taken.

Recommendation #22: While the threats do not rise to the level of torture as defined under U.S. law, the facts support a conclusion that the Special Team Chief violated the UCMJ, Article 134, by communicating a threat. Recommend his current commander discipline the Special Team Chief.

[12] The first JIG Chief was in charge during the approval process for the second Special Interrogation Plan and then rotated out of JTF-GTMO. The second JIG Chief was in charge during the execution of the second Special Interrogation Plan

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SUMMARY OF FINDINGS

The findings above fall into three categories: Techniques that were authorized throughout the interrogation periods; techniques that were never authorized and finally, techniques that were originally unauthorized, and then subsequently authorized. The summary below only outlines the latter two categories of techniques to address whether the findings violated the UCMJ, international law, U.S. Law, regulations or directives.

Techniques that were never authorized: AR 15-6 determined the following acts were NEVER authorized under any interrogation guidance:

a) On at least two occasions between February 2002 and February 2003, two detainees were "short shackled" to the eye-bolt on the floor in the interrogation room;

b) Sometime in October 2002 duct tape was used to "quiet" a detainee.

c) Military interrogators threatened the subject of the second special interrogation and his family;

Techniques that became authorized after the fact: AR 15-6 determined the following acts were initially not authorized under existing interrogation guidance but later authorized as an approved technique.

a) On several occasions during 2002 and 2003, interrogators would adjust the air conditioner to make the detainees, to include the subject of the first Special Interrogation Plan, uncomfortable. This technique is now permitted under the SECDEF 16 Apr 03 guidance.

b) On several occasions prior to 2 Dec 02 and between 15 Jan 03 and 16 Apr 03 interrogators had detainees moved from one cell to another every few hours to disrupt sleep patterns and lower the ability to resist interrogation. This technique is now permitted under the SECDEF 16 Apr 03 guidance.

c) In October 2002 a Military Working Dog was brought into the interrogation room during the course of interrogation of the subject of the first Special Interrogation Plan and directed to growl, bark, and show his teeth at the detainee. This technique is subsequently approved for the interrogation of the subject of the first Special Interrogation Plan by SECDEF on 12 Nov 02.

d) The subject of the first Special Interrogation Plan was separated from other detainees in an isolation facility away from the general population from 8 Aug 02 to 12 Nov 02. This technique was subsequently approved

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for the interrogation of the subject of the first Special Interrogation Plan by SECDEF on 12 Nov 02.

In each of the incidents above the violations can best be characterized as violations of policy. The SECDEF's subsequent approval of each of the techniques clearly establishes the ultimate legitimacy of that technique and thus additional corrective action is not necessary.

Additional Matters: In addition to findings outlined above it is important to document some additional findings:

a) The team found no evidence that any detainee at GTMO was improperly documented or unaccounted for at any time. Every agency interviewee clearly indicated that they never knew of any "ghost detainees" at GTMO;

b) Several past interrogators at GTMO declined to be interviewed. In the case of personnel who are currently in a civilian status we had extremely limited authority to compel the individuals to cooperate with this investigation; of particular note was former SGT Erik Saar who has written a book into "activities" at GTMO. Despite repeated requests he declined to be interviewed;

c) During the course of this investigation, JTF-GTMO CG investigated and took action for personal misconduct of senior DoD personnel on GTMO. These allegations were reviewed and it was determined that they were not relevant to this investigation, and did not rise to a level to suggest a leadership environment with any impact on interrogation or detainee operations.

ADDITIONAL RECOMMENDATIONS

This AR15-6 recommends consideration of the following:

a) ***Recommendation #23*** Recommend a policy-level review and determination of the status and treatment of all detainees, when not classified as EPWs. This review needs to particularly focus on the definitions of humane treatment, military necessity, and proper employment of interrogation techniques. (e.g. boundaries or extremes);

b) ***Recommendation #24*** Recommend study of the DoD authorized interrogation techniques to establish a framework for evaluating their cumulative impact in relation to the obligation to treat detainees humanely;

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c) ***Recommendation #25*** Recommend a reevaluation of the DoD and Inter-agency interrogation training consistent with the new realities of the requirements of the global war on terror;

d) ***Recommendation #26*** Recommend a policy-level determination on role of Military Police in "setting the conditions" for intelligence gathering and interrogation of detainees at both the tactical level and strategic level facilities;

e) ***Recommendation #27*** Recommend an Inter-Agency policy review to establish "standards" for interrogations when multiple agencies and interrogation objectives are involved. Particular emphasis should be placed on setting policy for who has priority as the lead agency, the specific boundaries for the authorized techniques in cases with multiple agencies involved, a central "data-base" for all intelligence gathered at a detention facility, and procedures for record keeping to include historical, litigation support, lessons learned, and successful/unsuccessful intelligence gathering techniques.

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Parliamentary **Assembly**
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Parliamentary Assembly
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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Doc. 10957
12 June 2006

Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe

Summary

Our analysis of the CIA 'rendition' programme has revealed a network that resembles a 'spider's web' spun across the globe. The analysis is based on official information provided by national and international air traffic control authorities, as well as on other information. This 'web' is composed of several landing points, which we have subdivided into different categories, and which are linked up among themselves by civilian planes used by the CIA or military aircraft.

Analysis of the network's functioning and of ten individual cases allows us to make a number of conclusions both about human rights violations – some of which continue – and about the responsibilities of some Council of Europe Member states, which are bound by the European Convention on Human Rights and the European Convention for the Prevention of Torture.

The United States, an observer state of our Organisation, actually created this reprehensible network, which we criticise in light of the values shared on both sides of the Atlantic. But we also believe having established that it is only through the intentional or grossly negligent collusion of the European partners that this "web" was able to spread also over Europe.

Whilst hard evidence, at least according to the strict meaning of the word, is still not forthcoming, a number of coherent and converging elements indicate that secret detention centres have indeed existed and unlawful inter-state transfers have taken place in Europe. It is not intended to pronounce that the authorities of these countries are 'guilty' for having tolerated secret detention sites, but rather it is to hold them 'responsible' for failing to comply with the positive obligation to diligently investigate any serious allegation of fundamental rights violations.

The draft resolution and recommendation propose different measures so that terrorism can be fought effectively whilst respecting human rights at the same time.

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Doc. 10957

A. Draft resolution

1. The Council of Europe is both the point of reference and the guardian for human rights, democracy and respect for the rule of law in Europe. It draws its legal and moral authority from, *inter alia*, the common standards of human rights protection embodied in the European Convention on Human Rights (ECHR) and the European Convention on the Prevention of Torture (ECPT), to which all of its 46 member States subscribe.

2. The Parliamentary Assembly of the Council of Europe places human rights at the heart of its work. The Assembly must raise the alarm internationally whenever human rights are set aside, or when established standards of their application are undermined.

3. The Assembly reaffirms its absolute commitment to overcoming the threat of terrorism; but it must equally speak out in the strongest possible terms against the numerous and systematic human rights abuses committed in the pursuit of the so-called "war on terrorism". It considers that such violations play into the hands of the terrorists and ultimately serve to strengthen those who aim to destroy the established political, legal and social order.

4. The United States of America finds that neither the classic instruments of criminal law and procedure nor the framework of the laws of war (including respect for the Geneva Conventions) have been apt to address the terrorist threat. As a result, it has introduced new legal concepts, such as "enemy combatant" and "rendition", which were previously unheard of in international law and stand contrary to the basic legal principles that prevail on our continent.

5. Thus, across the world, the United States has progressively woven a clandestine "spider's web" of disappearances, secret detentions and unlawful inter-state transfers, often encompassing countries notorious for their use of torture. Hundreds of persons have become entrapped in this web, in some cases merely suspected of sympathising with a presumed terrorist organisation.

6. The "spider's web" has been spun out with the collaboration or tolerance of many countries, including several Council of Europe member States. This co-operation, which took place in secret and without any democratic legitimacy, has spawned a system that is utterly incompatible with the fundamental principles of the Council of Europe.

7. The facts and information gathered to date, along with new factual patterns in the process of being uncovered, indicate that the key elements of this "spider's web" have notably included : a world-wide network of secret detentions on CIA "black sites" and in military or naval installations; the CIA's programme of "renditions", under which terrorist suspects are flown between States on civilian aircraft, outside of the scope of any legal protections, often to be handed over to States who customarily resort to degrading treatment and torture; and the use of military airbases and aircraft to transport detainees as human cargo to Guantanamo Bay in Cuba or to other detention centres.

8. The Assembly condemns the systematic exclusion of all forms of judicial protection and regrets that, by depriving hundreds of suspects of their basic rights, including the right to a fair trial, the United States has done a disservice to the cause of justice and has tarnished its own hard-won reputation as a beacon of the defence of civil liberties and human rights.

9. Some Council of Europe member States have knowingly colluded with the United States to carry out these unlawful operations; some others have tolerated them or simply turned a blind eye. They have also gone to great lengths to ensure that such operations remain secret and protected from effective national or international scrutiny.

10. This collusion with the United States of America by some Council of Europe member States has taken several different forms. Having carried out legal and factual analysis on a range of cases of alleged secret detentions and unlawful inter-state transfers, the Assembly has identified instances in which Council of Europe member States have acted in one or several of the following ways, wilfully or at least recklessly in violation of their international human rights obligations, as explained in the explanatory memorandum:

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10.1. secretly detaining a person on European territory for an indefinite period of time, whilst denying that person's basic human rights and failing to ensure procedural legal guarantees such as *habeas corpus*;

10.2. capturing a person and handing the person over to the United States, in the knowledge that such a person would be unlawfully transferred into a US-administered detention facility;

10.3. permitting the unlawful transportation of detainees on civilian aircraft carrying out "renditions" operations, travelling through European airspace or across European territory;

10.4. passing on information or intelligence to the United States where it was foreseeable that such material would be relied upon directly to carry out a "rendition" operation or to hold a person in secret detention;

10.5. participating directly in interrogations of persons subjected to "rendition", or held in secret detention;

10.6. accepting or making use of information gathered in the course of detainee interrogations, before, during or after which the detainee in question was threatened or subjected to torture or other forms of human rights abuse;

10.7. making available civilian airports or military airfields as "staging points" or platforms for rendition or other unlawful detainee transfer operations, whereby an aircraft prepares for and takes off on its operation from such a point; and

10.8. making available civilian airports or military airfields as "stopover points" for rendition operations, whereby an aircraft lands briefly at such a point on the outward or homeward flight, for example to refuel.

11. Attempts to expose the true nature and extent of these unlawful operations have invariably faced obstruction or dismissal, from the United States and its European partners alike. The authorities of most Council of Europe member States have denied their participation, in many cases without actually having carried out any inquiries or serious investigations.

12. In other instances such attempts have been thwarted on the grounds of national security or state secrecy. The Assembly takes the view that neither national security nor state secrecy can be invoked in such a sweeping, systematic fashion as to shield these unlawful operations from robust parliamentary and judicial scrutiny.

13. The Assembly highlights the widespread breach of the positive obligations of all Council of Europe member States to investigate such allegations in a full and thorough manner. It has now been demonstrated incontestably, by numerous well-documented and convergent facts, that secret detentions and unlawful inter-state transfers involving European countries have taken place, such as to require in-depth inquiries and urgent responses by the executive and legislative branches of all the countries concerned.

14. While the Assembly has been seized in this instance with looking into allegations concerning very specific facts, it cannot ignore other allegations surrounding the existence of other secret detention centres in Europe, apparently also set up in the context of the "war on terrorism". In particular, the Assembly expresses its deep concern at the continued reports of secret detentions in the North Caucasus. The European Committee for the Prevention of Torture issued a Public Statement on this subject in 2003, which was recently supplemented by new, detailed victim testimony and credible allegations from non-governmental organisations. Further serious investigation and analysis of secret detentions in the North Caucasus is clearly required.

15. The Assembly also regrets that detention centres in Kosovo were not accessible, until very recently, to the European Committee for the Prevention of Torture. The lack of access seems all the more unacceptable in light of the fact that the international community intervened in that region with the declared aim of restoring order, peace and the respect for human rights.

16. The Assembly's central objective is to prevent violations of the sort described in this resolution from occurring in the future.

17. The Assembly therefore commends the Secretary General of the Council of Europe for the swift and thorough use of his power of inquiry under Article 52 ECHR.

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18. The Assembly calls upon the member States of the Council of Europe to:

18.1. undertake a critical review of the legal framework that regulates the intelligence services, with the dual objective of enhancing their efficiency and strengthening accountability mechanisms against abuse;

18.2. ensure that the laws governing state secrecy protect persons who disclose illegal activities of state organs (so-called "whistle-blowers") from disciplinary or criminal sanctions;

18.3. undertake a review of bilateral agreements signed between Council of Europe member States and the United States, particularly those on the status of US forces stationed in Europe and on the use of military and other infrastructures, to ensure that these agreements conform fully to applicable international human rights norms;

18.4. urge the United States to dismantle its system of secret detentions and unlawful inter-state transfers and to co-operate more closely with the Council of Europe in establishing common means of overcoming the threat of terrorism in line with international human rights standards and respect for the rule of law.

19. The Assembly also calls on the United States of America, which is an Observer State to the Council of Europe and Europe's long-standing ally in resisting tyranny and defending human rights and the rule of law, to:

19.1. send a strong message to the world by demonstrating that terrorism can be vanquished by lawful means, thereby proving the superiority of the democratic model founded on respect of human dignity;

19.2. co-operate more closely in identifying and employing the most effective means with which to prevent and suppress the terrorist threat in conformity with international human rights norms and the rule of law;

19.3. align its definitions of torture and other cruel, inhuman or degrading treatment with the definition used by the UN Committee Against Torture;

19.4. prohibit the transfer of persons suspected of involvement in terrorism to countries that practise torture and that fail to guarantee the right to a fair trial;

19.5. issue official apologies and award compensation to the victims of illegal detentions against whom no formal accusations, nor any court proceedings, have ever been brought; and

19.6. refrain from prosecuting any officials, former officials or journalists who, by providing testimony or other information, have helped to bring to light the system of unlawful detentions and mistreatment.

20. The Assembly calls upon its Committee on Legal Affairs and Human Rights urgently to establish an ad hoc Sub-Committee to continue this inquiry into alleged secret detentions and unlawful inter-state transfers involving Council of Europe member States, in view of new facts that are still in the process of being uncovered.

21. The Assembly further urges its members to call for rigorous inquiries in their respective national parliaments, especially in those States from which no or insufficient information has been forthcoming.

22. The Assembly recognises, in the context of the present inquiry into secret detentions, that it lacks appropriate investigative powers akin to those provided to parliamentary inquiries in member States, including the powers to subpoena witnesses and compel disclosure of documents, and calls for consideration of this issue.

23. Finally, the Assembly expresses its appreciation to the relevant European Union institutions (European Commission, European Parliament and EU Satellite Centre), as well as to Eurocontrol, for their invaluable contributions to this inquiry, whilst reiterating the Council of Europe's role as the guardian of human rights throughout Europe.

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B. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2006) on alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states.

2. The Assembly also recalls its Resolution 1433 (2005) and its recommendation on the legality of the detention of persons by the United States in Guantanamo Bay.

3. The Assembly urges the Committee of Ministers to draft a recommendation to Council of Europe member States containing:

3.1. common measures to guarantee more effectively the human rights of persons suspected of terrorist offences who are captured from, detained in or transported through Council of Europe member States; and

3.2. a set of minimum requirements for "human rights protection clauses", for inclusion in bilateral and multilateral agreements with third parties, especially those concerning the use of military installations on the territory of Council of Europe member States.

4. The Assembly urgently requests that:

4.1. an initiative be launched on an international level, expressly involving the United States, an Observer to the Council of Europe, to develop a common, truly global strategy to address the terrorist threat. The strategy should conform in all its elements with the fundamental principles of our common heritage in terms of democracy, human rights and respect for the rule of law;

4.2. a proposal be considered, in instances where States are unable or unwilling to prosecute persons accused of terrorist acts, to bring these persons within the jurisdiction of an international court that is competent to try them. One possibility worth considering would be to vest such a competence in the International Criminal Court, whilst renewing invitations to join the Court to the United States and other countries that have not yet done so.

5. The Assembly finally recommends that the Committee of Ministers should consider means of improving the Council of Europe's ability to react rapidly and effectively to allegations of systematic human rights abuse involving several member States.

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C. Explanatory memorandum
by Mr Dick Marty, Rapporteur

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1. Are human rights little more than a fairweather option?

1.1. 11 September 2001

1. The tragedies that took place on 11 September 2001 undoubtedly marked the beginning of an important new chapter in the terrible, never-ending history of terrorism. It is a history of indiscriminate violence, instigated in order to create a climate of insecurity and fear with the intention of attacking the existing political and social system. For the first time, spectacular and extremely lethal acts struck highly symbolic targets at the very heart of the United States of America, the most powerful state in the world. Europe, for its part, already has a long and painful experience of terrorism, involving numerous victims and large-scale attacks, particularly in Italy[2], Germany, Spain, the United Kingdom, France and, more recently, Russia.

2. While the states of the Old World have dealt with these threats primarily by means of existing institutions and legal systems[3], the United States appears to have made a fundamentally different choice: considering that neither conventional judicial instruments nor those established under the framework of the laws of war could effectively counter the new forms of international terrorism, it decided to develop new legal concepts. The latter are based primarily on the *Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War against Terrorism* signed by President Bush on 13 November 2001[4]. It is significant that, to date, only one person has been summoned before the courts to answer for the 11 September attacks: a person, moreover, who was already in prison on that day, and had been in the hands of the justice system for several months[5]. By contrast, hundreds of other people are still deprived of their liberty, under American authority but outside the national territory, within an unclear normative framework. Their detention is, in any event, altogether contrary to the principles enshrined in all the international legal instruments dealing with respect for fundamental rights, including the domestic law of the United States (which explains the existence of such detention centres outside the country). The following headline appears to be an accurate summary of the current administration's approach: *No Trials for Key Players: Government prefers to interrogate bigger fish in terrorism cases rather than charge them*[6].

3. This legal approach is utterly alien to the European tradition and sensibility, and is clearly contrary to the European Convention on Human Rights and the Universal Declaration of Human Rights. Cicero's old adage, *inter arma silent leges*, appears to have left its mark even on international bodies supposed to ensure the rule of law and the fair administration of justice. It is frankly alarming to see the UN Security Council sacrificing essential principles pertaining to fundamental rights in the name of the fight against terrorism. The compilation of so-called "black lists" of individuals and companies suspected of maintaining connections with organisations considered terrorist and the application of the associated sanctions clearly breach every principle of the fundamental right to a fair trial: no specific charges, no right to be heard, no right of appeal, no established procedure for removing one's name from the list[7].

1.2. Guantanamo Bay

4. At Guantanamo Bay, on the island of Cuba, several hundred people are being detained without enjoying any of the guarantees provided for in the criminal procedure of a state governed by the rule of law or by the Geneva Conventions on the law of war. These people have been arrested in unknown circumstances, handed over by foreign authorities without any extradition procedure being followed, or

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[2] More than 14 500 politically motivated acts of violence were recorded in Italy between 1969 and 1987, causing 419 deaths and 1181 casualties (Interior Ministry figures).

[3] We may recall the words of the former President of Italy, Sandro Pertini (albeit translated in paraphrased form): *"Italy can proudly say that it has defeated terrorism in the law courts, rather than resorting to "stadium justice".*

[4] Regarding the various decisions taken by the American administration following the 11 September attacks, I refer readers to the excellent report by Kevin McNamara, *Lawfulness of Detentions by the United States in Guantanamo Bay*, accompanying the resolution and recommendation adopted by the PACE on 26 April 2005 (Doc 10497).

[5] The person in question is Zacarias Moussaoui, a French citizen of Moroccan descent, sentenced to life imprisonment by a Virginia grand jury on 3 May 2006; the jurors did not impose the death penalty sought by the federal prosecutors (thereby avoiding the trap set by the defendant, who clearly wished to be sentenced to death so as to appear a martyr). According to an American government document, now declassified, six important Al-Qaeda members directly involved in the organisation and funding of the 11 September attacks have apparently been captured by the United States. Although more heavily involved than Moussaoui, they have not been summoned before the American courts to answer for their actions (see also *Le Monde* of 22 April 2006).

[6] Los Angeles Times of 4 May 2006.

[7] A motion raising the issue of the UN black lists (Doc 10856) has been referred to the PACE Committee on Legal Affairs and Human Rights, which will submit a report on the subject in the near future.

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illegally abducted in various countries by United States special services. They are considered "enemy combatants", according to a new definition introduced by the American administration[8].

5. The Parliamentary Assembly of the Council of Europe (PACE) has strongly criticised this state of affairs: on 26 April 2005, it unanimously adopted Resolution 1433 (2005) and Recommendation 1699 (2005) in which it urges the United States Government to put a stop to this situation and to ensure respect for the principles of the rule of law and human rights. It also concludes that *"the United States has engaged in the unlawful practice of secret detention"*. In its reply of 17 June 2005 (Doc 10585), the Committee of Ministers expresses *"its full support to all such efforts and to all efforts to obtain a prompt release or fair trial of persons detained at Guantánamo Bay by an independent and impartial court. It urges the United States Government to ensure that the rights of all detainees are ensured and that the principle of the rule of law is fully respected. For its own part, it expresses the determination of the member States to ensure that the rights of persons released and returned to their jurisdiction are fully respected"*. The Committee of Ministers has conveyed a message in these terms to the Government of the United States of America[9]. To our knowledge, no reply has been received to date.

6. The UN Committee against Torture has also called for the closure of the Guantanamo Bay detention facility in recent times, criticising its secret character and the denial of access to the ICRC[10].

1.3. Secret CIA prisons in Europe?

7. This was the news item circulated in early November 2005 by the American NGO Human Rights Watch (HRW), the Washington Post and the ABC television channel. Whereas the Washington Post did not name specific countries hosting, or allegedly having hosted, such detention centres, simply referring generically to "eastern European democracies", HRW reported that the countries in question are Poland and Romania. On 5 December 2005, ABC News in turn reported the existence of secret detention centres in Poland and Romania, which had apparently been closed following the Washington Post's revelations. According to ABC, 11 suspects detained in these centres had been subjected to the harshest interrogation techniques (so-called "enhanced interrogation techniques') before being transferred to CIA facilities in North Africa.

8. It is interesting to recall that this ABC report, confirming the use of secret detention camps in Poland and Romania by the CIA, was available on the Internet for only a very short time before being withdrawn following the intervention of lawyers on behalf of the network's owners. The Washington Post subsequently admitted that it had been in possession of the names of the countries, but had refrained from naming them further to an agreement entered into with the authorities. It is thus established that considerable pressure was brought to bear to ensure that these countries were not named. It is unclear what arguments prevailed on the media outlets in question to convince them to comply. What is certain is that these are troubling developments that throw into question the principles of the freedom and independence of the press. In this light, it is worth noting that just before the publication of the original revelations by the reporter Dana Priest in early November 2005, the Executive Editor of the Washington Post was invited for an audience at the White House with President Bush[11].

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[8] Following an injunction by an American court, based on the provisions of press law, in April 2006 the Pentagon published, for the first time, a list of the names and nationalities of 558 people detained at Guantanamo. However, no details are given for some 140 people previously detained but no longer imprisoned at Guantanamo on that date. Furthermore, no outside body can confirm whether this list is actually comprehensive.

[9] The United States has enjoyed observer status with the Committee of Ministers since 10 January 1996.

[10] See Press Release of the United Nations Office at Geneva, *CAT Concludes Thirty-Sixth* Session, 19 May 2006: "The Committee was concerned by allegations that the State party had established secret detention facilities, which were not accessible to the International Committee of the Red Cross. The Committee recommended that the United States cease to detain any person at Guantánamo Bay and that it close that detention facility, permit access by the detainees to judicial process or release them as soon as possible, ensuring that they were not returned to any State where they could face a real risk of being tortured"; available at: http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/5FBB9C351B9E70E8C1257173004EB4CE?OpenDocument.

[11] This meeting, along with several similar instances, was reported in a column in the Washington Post at the end of 2005. Leonard Downie, the Executive Editor of the Washington Post, said: *"We met with them on more than one occasion... The meetings were off the record for the purpose of discussing national security issues in [Dana Priest's] story"*. See Howard Kurtz, "Bush Presses Editors on Security", *The Washington Post*, 26 December 2005; available at http://www.washingtonpost.com/wp-dyn/content/article/2005/12/25/AR2005122500665_pf.html.

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1.4. The Council of Europe's response

9. The Council of Europe responded straight away. The President of the PACE immediately took a very firm position, and asked the Committee on Legal Affairs and Human Rights to look into the matter without delay. The latter did so at its meeting of 7 November 2005. The Secretary General of the Council, for his part, set in motion the procedure established by Article 52 of the European Convention on Human Rights (ECHR). The Committee on Legal Affairs and Human Rights also requested the Venice Commission to prepare an opinion on the international legal obligations and duties of Council of Europe member States in respect of secret detention facilities and inter-state transport of prisoners. Cooperation was likewise established with the Council of Europe's Human Rights Commissioner.

10. The European Union Commission, via its Vice-President Franco Frattini, expressed its full support for the Council of Europe. The EU Commission's support proved invaluable in obtaining the necessary information from Eurocontrol and the European Union Satellite Centre. The reference to named European countries suddenly aroused huge media interest. Yet these incidents – secret detentions and "renditions" – had already been attracting condemnation for some time, both from the PACE itself, *inter alia* through the aforementioned resolution and recommendation concerning Guantanamo Bay, the re-reading of which I cannot recommend highly enough, and in extremely detailed reports by NGOs, university professors and journalists known for their very painstaking work[12]. These revelations had met with curious indifference from the media, governments and political circles in general.

1.5. European Parliament

11. Members of the European Parliament also became alarmed at the mounting evidence that European countries, or at least facilities located on European territory, had been the scene of systematic human rights violations. In early 2006, a 46-member Temporary Committee was set up and instructed to investigate the alleged existence of CIA prisons in Europe in which terrorist suspects had allegedly been detained and tortured[13].

12. I welcomed this initiative in my previous memorandum, considering it wholly consistent with the Council of Europe's desire to ascertain the truth. Co-operation with the Temporary Committee has been extremely satisfactory, both at the level of our respective secretariats and with its Chairman, Carlos Miguel Coelho, and rapporteur, Claudio Fava. I had the opportunity to address members of the European Parliament's committee during one of its first public hearings.

13. On 24 April 2006 the Temporary Committee presented its draft interim report, which confirmed strong indications of illegal actions carried out by the CIA in Europe. In its initial analysis, the report largely supported the observations we made in our own *Information Memorandum II* on 24 January 2006. The TDIP rapporteur Claudio Fava, in presenting his interim report, spoke of *"more than a thousand flights chartered by the CIA [that] have transited through Europe, often in order to carry out extraordinary renditions"*[14]. In a press conference, Mr Fava clarified that, according to information given to him in confidence by an intelligence source, "*30 to 50 people have been rendered by the CIA in Europe*" and that "*the CIA could not*

[12] These include the Human Rights Watch Briefing Paper of October 2004 entitled *The United States' 'Disappeared': The CIA's Long-Term Ghost Detainees*; and the Amnesty International report AMR 51/051/2006 of 5 April 2006, entitled *Below the radar: secret flights to torture and "disappearance"*, as well as numerous articles describing in detail the new techniques for fighting terrorism, such as *extraordinary renditions;* for instance, the articles in the *Corriere della Sera* by Paolo Biondani and Guido Olimpio, which the latter has compiled and edited in a well-researched book (*Operazione Hotel California*, Feltrinelli, 2005), along with articles by Stephen Grey (*America's Gulag*, The New Statesman, 17 May 2004; *US Accused of Torture Flights*, The Sunday Times, 14 November 2004; *Les Etats-Unis inventent la délocalisation de la torture*, Le Monde Diplomatique, April 2005); Alfred McCoy (*Cruel Science: CIA Torture and U.S. Foreign Policy*, New England Journal of Public Policy, Boston, 2004, an article subsequently expanded and published in book form, and also published in German under the title *Foltern und foltern lassen*, Zweitauseneins, 2005; *Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions"*, report published in 2004 by the Committee on International Human Rights of the Association of the Bar of the City of New York and the Center for Human Rights and Global Justice, New York University School of Law, the conclusions of which could not be clearer: "*Extraordinary Rendition is an illegal practice under both domestic and international law, and that, consistent with U.S. policy against torture, the U.S. government is duty bound to cease all acts of Extraordinary Rendition, to investigate Extraordinary Renditions that have already taken place, and to prosecute and punish those found to have engaged in acts that amount to crimes in connection with Extraordinary Rendition.*"

[13] Temporary Committee on the Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners (TDIP; http://www.europarl.eu.int/comparl/tempcom/tdip/default_en.htm).

[14] See *Le Monde*, 27 April 2006.

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have carried out such renditions without the agreement of European states"[15]. The Temporary Committee proposes to continue its work[16].

1.6. Rapporteur or investigator?

14. I have often been described as an "investigator", or even a "special investigator". It might be helpful to point out, therefore, that I do not enjoy any specific investigatory powers and, in particular, am not entitled to use coercive methods or to require the release of specific documents. My work has consequently consisted primarily of interviews and analysis. I submitted a set of questions to governments via their national parliamentary delegations, and asked the latter to take the debate to the national level. Parliamentary questions were thereby tabled in many states with a view to obtaining information from the various governments. Special parliamentary commissions of inquiry were set up in some countries. The work undertaken by a number of NGOs has proven invaluable and even, in many cases, more detailed and reliable than the information supplied by governments. A significant contribution was also made by many journalists investigating on the ground, often for months on end. I also received information entrusted to me only on the assurance that I would keep it confidential and protect my sources. The information thus received clearly cannot be presented as evidence; it did, however, point my research in certain more specific directions, and enables me to state with certainty that the search for the truth about what really happened to terrorist suspects in Europe will not end with the present report.

15. I received considerable assistance in this task from the head of the secretariat of the Committee on Legal Affairs and Human Rights and one of his colleagues – both of whom were already very busy with other tasks connected with the committee's operation and work with other rapporteurs – as well as from another young colleague who, in the end, was temporarily assigned specifically to this investigation (and whose help proved invaluable). I am extremely grateful to them for their outstanding competence and exceptional readiness to assist.

16. I was formally designated as Rapporteur on 13 December 2005. Within the Council of Europe it was considered that the report should be presented as quickly as possible. Taking into account the breadth and complexity of the subject, as well as the extremely modest means put at my disposal, I have certainly not been able to present a complete overview of the different aspects of what has really occurred. Moreover, we are still far from knowing all the details of "extraordinary renditions" and the conditions in which abducted persons have been detained and interrogated in Europe. It is thus highly likely that the Council of Europe should remain seized on this subject matter. Elements presently in the public domain - which are supplemented with new information as every week goes by - not only justify, but require that member States finally decide to open serious inquiries on the extent to which they were directly or indirectly implicated in such activities.

17. As I stated in my previous memorandum, serious consideration must be given to whether the Assembly should equip itself with other resources for dealing with such complex matters. Where investigations relate to possible human rights violations that are not confined to individual cases (for which the European Court of Human Rights has jurisdiction) and transcend borders, thereby sidestepping national procedures, one is justified in questioning the effectiveness of existing instruments. Instead of appointing a single member as rapporteur with the support of the normal resources of the Committee's secretariat, which is already overwhelmed by other reports in preparation, we might seriously consider whether setting up a proper commission of inquiry, assisted by experts and enjoying genuine investigatory powers, might not be a better solution for dealing with these new and important challenges.

18. We have tackled this problem with determination and a constant concern for objectivity, mindful of both the enormity of the task entrusted to me and the frankly derisory resources available and the risk of being manipulated. My aim was by no means to amass evidence for the purpose of condemning or stigmatising. On the contrary, I was guided by a desire to ascertain the truth in order to reaffirm the values the Council of Europe has always striven to uphold, and to guard against the repetition of such incidents.

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[15] See *Le Monde*, 18 May 2006.

[16] The draft resolution of the European Parliament, produced as an annex to the interim report, can be consulted at: http://www.europarl.europa.eu/comparl/tempcom/tdip/interim_report_en.pdf. I should like to thank the Temporary Committee and its Rapporteur, Mr Fava, for having made it possible for a member of my team to join their visits to Macedonia and the United States.

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1.7. Is this an Anti-American exercise?

19. I consider this reproach, made fairly frequently when criticisms are voiced about violations of fundamental rights committed in the context of the fight against terrorism, downright ridiculous and wholly inaccurate. It overlooks the fact that the initial criticisms, relating to the establishment of the detention centre at Guantanamo Bay as well as the use of *extraordinary renditions* and torture, were first forcefully expressed by American journalists, NGOs and politicians, often thanks to detailed information released by sources within the administration, and indeed the intelligence services themselves. The debate has been, and in my view still is, considerably more heated in the United States than in Europe, at least in certain circles and media.

20. Moreover, the United States Supreme Court itself pointed out, in an extraordinary June 2004 judgment, that *"at stake in this case is nothing less than the essence of a free society. (...) For if this Nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny"*[17]. This is a sharp reminder of the great democratic tradition of the United States and its exemplary commitment to human rights. The United States is, and remains, a deeply democratic country. Indeed, criticisms of some of the current administration's decisions also reflect a concern that a country which unquestionably serves as an example to the rest of the world is committing what we consider to be mistakes that not only violate fundamental principles, but also constitute a counterproductive anti-terrorism strategy.

1.8. Is there any evidence?

21. It is paradoxical to expect bodies without any real investigatory powers – the Council of Europe and the European Parliament – to adduce evidence in the legal sense. Indeed, these European bodies have been prompted to undertake such investigations owing to a lack of willingness and commitment on the part of national institutions that could, and should, have completely clarified these allegations which from the outset did not appear to be totally unfounded.

22. At this stage there is no formal evidence of the existence of secret CIA detention centres in Poland, Romania or other Council of Europe member States, even though serious indications continue to exist and grow stronger. Nevertheless, it is clear that an unspecified number of persons, deemed to be members or accomplices of terrorist movements, were arbitrarily and unlawfully arrested and/or detained and transported under the supervision of services acting in the name, or on behalf, of the American authorities. These incidents took place in airports and in European airspace, and were made possible either by seriously negligent monitoring or by the more or less active participation of one or more government departments of Council of Europe member States.

23. In the light of the silence and obvious reluctance on the part of the bodies that could have provided the necessary information, it is legitimate to assume that there are more such cases than can be proven at present. In effect, the facts as would appear to be established today – and as will be illustrated throughout the report – as well as the total absence of serious inquiries by the national authorities concerned, implies, in my view, the reversal of the burden of proof: in such a situation it is incumbent on the Polish and Romanian authorities to conduct an independent and in-depth inquiry and to make public not only its results but also the method and the different stages of the enquiry[18]. Even if proof, in the classical meaning of the term, is not as yet available, a number of coherent and converging elements indicate that such secret detention centres did indeed exist in Europe. Such an affirmation does not pretend to be a judgment of a criminal court, necessitating "proof beyond reasonable doubt" in the Anglo-Saxon meaning of the term; it rather reflects a conviction based on a careful balance of probabilities, as well as logical deductions from clearly established facts. The intention is not to determine that the authorities of these countries are "guilty" for having tolerated

[17] These are the words of Judge Sandra Day O'Connor in the case of José Padilla, judgement of the United States Supreme Court, 28 June 2004.

[18] Reversal of the burden of proof if the authorities concerned do not discharge their positive duty to investigate is not a new idea: Article 39 of the Rules of Procedure of the Inter-American Commission of Human Rights provides that *"The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion"*. At the Council of Europe, this idea was applied in the Independent Experts' report to the Secretary General (by Mr Alkema and Mr Trechsel) on political prisoners in Azerbaijan (doc. SG/Inf (2001) 34 Addendum I), in which it was stated that the cases concerned had been submitted to the authorities for comments and observations and that, in the absence of substantive observations by the authorities, the experts had had to base their findings on plausible allegations from other sources (idem, p. 20).

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secret detention sites, but rather to hold them "responsible" for failing to comply with the positive obligation to investigate serious allegations.

2. The global "spider's web"[19]

24. The system of targeting, apprehending and detaining terrorist suspects, which forms the focus of this report, was not created overnight. Nor has it been built up from scratch in the wake of the terrorist attacks of 11 September 2001.

25. I have chosen to adopt the metaphor of a global "spider's web" as the *leitmotif* for my report. It is a web that has been spun out incrementally over several years, using tactics and techniques that have had to be developed in response to new theatres of war, new terms of engagement and an unpredictable threat.

26. The chief architect of the web, the United States of America, has long possessed the capacity to capture individual targets abroad and carry them to different parts of the world. Through its Central Intelligence Agency (CIA), the United States designed a programme known as "rendition" for this purpose in the mid-1990s. The CIA aimed to take terrorist suspects in foreign countries "off the streets" by transporting them back to other countries, usually their home countries, where they were wanted for trial, or for detention without any form of due process.

2.1. The evolution of the rendition programme

27. During a recent mission to the United States, a member of my team came into contact with several "insider sources" in the US intelligence community. The most prominent such witness was Mr Michael Scheuer, who designed the original rendition programme in the 1990s under the Clinton Administration and remained employed by the CIA until November 2004[20]. Excerpts of Mr Scheuer's testimony are reflected verbatim in this report and, to the extent possible, have been substantiated or corroborated by a range of other source material in the account below[21].

28. The strategic target of the CIA rendition programme has always been, and remains, the global terrorist network known as Al-Qaeda. In the conception of the United States, Al-Qaeda exists as a nebulous collection of "cells" in countries around the world, comprising "operatives" who perform various roles in the preparation of terrorist attacks. When the US National Security Council became alarmed, in 1995, at what appeared to be a serious prospect of Osama bin Laden acquiring weapons of mass destruction, it developed rendition, according to Scheuer and others, as a way of *"breaking down Al-Qaeda", "taking down cells"* and *"incarcerating senior Al-Qaeda people"*.

29. Rendition was designed, at the outset of the programme at least, to fit within the United States' interpretation of its legal obligations[22]. The prerequisites for launching a rendition operation in the pre-9/11 period included:

- an "outstanding legal process" against the suspect, usually connected to terrorist offences in his country of origin;
- a CIA "dossier", or profile of the suspect, based on prior intelligence and in principle reviewed by lawyers;
- a "country willing to help" in the apprehension of the suspect on its territory; and
- "somewhere to take him after he was arrested".

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[19] This section should be read in conjunction with the graphic map annexed to this explanatory memorandum, entitled: *The global "spider's web" of secret detentions and unlawful inter-state transfers*

[20] Mr Michael Scheuer was Chief of the Bin Laden Unit in the CIA Counter-Terrorism Center for four years, from August 1995 to June 1999. He then served for a further three years, from September 2001 to November 2004, as Special Advisor to the Chief of the Bin Laden Unit. He is recognised as one of the most important authorities on the evolution of rendition. Mr Scheuer graciously granted my representative a three-hour personal interview in Washington, DC in May 2006. Unlike many intelligence sources with whom my team spoke, he agreed to go "on the record", talking extensively about his first-hand operational experience of the rendition programme. A transcript of the interview is on file with the Rapporteur. Excerpts are cited in this report as follows: "Michael Scheuer, former Chief of the Bin Laden Unit in the CIA Counter-Terrorism Center".

[21] I also wish to recognise the valuable work of various non-governmental organisations and academic institutions in researching the evolution of rendition and to thank them for meeting with my team to relay their insights first-hand. In particular, the following groups have produced papers that I have consulted extensively: The Center for Human Rights and Global Justice at New York University School of Law, Human Rights First, Amnesty International, Human Rights Watch and Cage Prisoners.

[22] For further detail on the United States' interpretation of its international legal obligations, see the section below entitled *The point of view of the United States*, at heading 10.1.

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30. The receiving countries were, as a matter of policy, only asked to provide diplomatic assurances to the United States that they would "treat the suspects according to their own national laws". After the transfer, the United States made no effort to assess the manner in which the detainees were subsequently treated[23].

31. Intelligence gathering, according to Scheuer, was not considered to be a priority in the pre-9/11 programme:

> *"It was never intended to talk to any of these people. Success, at least as the Agency defined it, was to get someone, who was a danger to us or our allies, 'off the street' and, when we got him, to grab whatever documents he had with him. We knew that once he was captured he had been trained to either fabricate or to give us a great deal of information that we would chase for months and it would lead nowhere. So interrogations were always a very minor concern before 9/11."*[24]

32. Several current Council of Europe member States are known to have co-operated closely with the United States in the operation of its rendition programme under the Clinton Administration[25]. Indeed, the United Kingdom Government has indicated to the Council of Europe[26] that a system of prior notification existed in the 1990s, whereby even intended stopovers or overflights were reported by the United States in advance of each rendition operation[27].

33. The act of "rendition" may not *per se* constitute a breach of international human rights law. It is worth noting that other States have also asserted their right to apprehend a terrorist suspect on foreign territory in order to bring him to justice if the tool of international judicial assistance or cooperation did not attain the desired result[28].

34. The most prominent legal authorities in the United States, including its Supreme Court, have interpreted the object of the pre-9/11 rendition programme to be within the law[29]. Indeed, several human rights NGOs have assessed the original practice under the rubric of "rendition to justice", conceding that an inter-state transfer could be lawful if its object is to bring a suspect within a recognised judicial process respectful of human rights[30]. This indicator might in fact provide a legal benchmark against which unlawful inter-state transfers can be measured[31].

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[23] In my *Information Memorandum II* in January, I quoted several former CIA agents who indicate that the United States knew some of the treatment of detainees would flout minimum standards of protection in international law. Mr Scheuer simply told my representative: *"I check my moral qualms at the door"*.

[24] Michael Scheuer, former Chief of the Bin Laden Unit in the CIA Counter-Terrorism Center, interview carried out by the Rapporteur's representative, *supra* note 19.

[25] See Jane Mayer, *Outsourcing Torture: The secret history of America's "extraordinary rendition" program*, in The New Yorker, 14 and 21 February 2005. Mayer refers to well-documented cases of rendition in which Croatia (1995) and Albania (1998) collaborated with the United States in apprehending suspects; at pages 109-110. Mr Scheuer gave a further example involving Germany, in which a suspect named Mahmood Salim, alias Abu Hajer, was arrested by Bavarian police.

[26] See Jack Straw, Secretary of State for Foreign and Commonwealth Affairs, *Written Ministerial Statement – Enquiries in respect of rendition allegations*, appended to the Response of the United Kingdom Government to the Request of the Secretary-General for an explanation in accordance with Article 52 ECHR, available at: http://www.coe.int/T/E/Com/Files/Events/2006-cia/United-Kingdom.pdf.

[27] *Ibid.* Mr Straw states: "There were four cases in 1998 where the US requested permission to render one or more detainees through the UK or Overseas Territories. In two of these cases, records show the Government granted the request, and refused two others."

[28] See US Secretary of State Condoleeza Rice, *Remarks upon her departure for Europe*, Andrews Air Force Base, 5 December 2005. Ms Rice refers to France's actions in the case of "Carlos the Jackal": "A rendition by the French government brought him to justice in France, where he is now imprisoned."

[29] See *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), in which the Supreme Court upheld the jurisdiction of a US court to try a man brought to the US from Mexico by means of abduction rather than extradition. Case law on this matter dates back to the 1886 case of *Ker v. Illinois*, 119 U.S. 436 (1886), in which the Supreme Court said: "There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will."

[30] This concept of "rendition to justice" is discussed in greater detail in: Center for Human Rights and Global Justice, NYU School of Law, *Beyond Guantanamo: Transfers to Torture One Year after Rasul v. Bush*, 28 June 2005. I am also grateful to the staff of Human Rights First for their thorough explanations, in meetings, of the contemporary legal dilemmas faced in bringing terrorist suspects to justice.

[31] For a detailed analysis of the legal parameters of inter-state transfers, see Opinion No. 363/2005 of the European Commission for Democracy through Law (Venice Commission), available at: http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp. See also the section below on the point of view of the Council of Europe, at heading 10.2.1.

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35. However, there has clearly been a critical deviation away from notions of justice in the rendition programme. In the wake of the 9/11 attacks, the United States transformed rendition into one of a range of instruments with which to pursue its so-called "war on terror". The attacks of 9/11 genuinely signalled something of a watershed in the United States approach to overcoming the terrorist threat[32]. This new "war on terrorism" was launched by the military intervention in Afghanistan in October 2001. At the same time new importance was attached to the collection of intelligence on persons suspected of terrorism. The CIA was put under pressure to play a more proactive role in the detention and interrogation of suspects rather than just putting them "behind bars". Without appropriate preparation, a global policy of arresting and detaining "the enemies" of the United States was – still according to Scheuer – improvised hastily. It was up to the lawyers to "legitimise" these operations, whilst the CIA and the American military became the principal supervisors and operators of the system[33].

36. Rendition operations have escalated in scale and changed in focus. The central effect of the post-9/11 rendition programme has been to place captured terrorist suspects outside the reach of any justice system and keep them there. The absence of human rights guarantees and the introduction of "enhanced interrogation techniques" have led, in several cases examined, as we shall see, to detainees being subjected to torture.

37. The reasons behind the transformation in the character of rendition are both political and operational. First, it is clear that the United States Government has set out to combat terrorism in an aggressive and urgent fashion. The executive has applied massive political pressure on all its agencies, particularly the CIA, to step up the intensity of their counter-terrorist activities. According to Scheuer, "after 9/11, we had nothing ready to go – the military had no plans, they had no response; so the Agency felt the brunt of the executive branch's desire to show the American people victories"[34].

38. Second, and more importantly, the key operational change has been the mandate given to the CIA to administer its own detention facilities. When it takes terrorist suspects into its custody, the CIA no longer uses rendition to transport them into the custody of countries where they are wanted. Instead, for the high-level suspects at least, rendition now leads to secret detention at the CIA's so-called "black sites"[35] in unspecified locations around the world. Rather than face any form of justice, suspects become entrapped in the spider's web.

2.2. Components of the spider's web

39. In addition to CIA "black sites", the spider's web also encompasses a wider network of detention facilities run by other branches of the United States Government. Examples reported in the public domain have included the US Naval Base at Guantanamo Bay and military prisons such as Bagram in Afghanistan and Abu Ghraib in Iraq. Although the existence of such facilities is known, there are many aspects of their operation that remain shrouded in secrecy too.

40. It should also be noted that "rendition" flights by the CIA are not the only means of transporting detainees between different points on the web. Particularly in the context of transfers to Guantanamo Bay, detainees have been moved extensively on military aircraft[36], including large cargo planes. Accordingly military flights have also fallen within the ambit of my inquiry.

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[32] See Cofer Black, former Head of the CIA Counter-Terrorism Center, testimony before the House and Senate Intelligence Committees, *Hearings on Pre-9/11 Intelligence Failures*, 26 September 2002: "All you need to know is that there was a 'before 9/11' and an 'after 9/11'. After 9/11, the gloves came off."

[33] General Nicolo Pollari, the Director of the Italian Intelligance and Security Services (SISMI), testified before the European Parliament's TDIP Temporary Committee on 6 March 2003 that "the rules of the game have changed" in terms of international co-operation in the intelligence sector: "many security activities are now carried out on the borderline of legality, albeit within the legal framework".

[34] Michael Scheuer, former Chief of the Bin Laden Unit in the CIA Counter-Terrorism Center, interview carried out by the Rapporteur's representative, *supra* note 19.

[35] For an impressive account of CIA "black sites", see: Center for Human Rights and Global Justice, NYU School of Law, *Fate and Whereabouts Unknown: Detainees in the "War on Terror"*, 17 December 2005. The term "black sites" came into the public debate largely as a result of Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Washington Post, 2 November 2005.

[36] See, *inter alia*, US Department of Defense documents released in response to a lawsuit under the *Freedom of Information Act* by Stephen H. Oleskey, Wilmer Hale LLP (copies of all disclosed documents on file with the Rapporteur). These materials shed light on the full extent to which military planes were used to transport detainees to Guantanamo Bay: in five consecutive missions in early January 2002 alone, nearly 150 detainees were transferred there (including out from European countries).

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41. The graphic included in this report depicts only a small portion of the global spider's web. It consists of two main components.

42. First it illustrates the flights of both civilian and military aircraft, operated by the United States, which appear to be connected to secret detentions and unlawful inter-state transfers also involving Council of Europe member States. This inquiry is based on seven separate sets of data from Eurocontrol[37], combined with specific information from about twenty national aviation authorities in response to my requests. In this way, we have obtained a hitherto unique database[38].

43. Second, it distinguishes four categories of aircraft landing points, which indicate the different degrees of collusion on the part of the countries concerned. These landing points have been placed into their respective categories as follows on the basis of the preponderance of evidence gathered[39]:

Category A: "**Stopover points**"
(points at which aircraft land to refuel, mostly on the way home)

Prestwick
Shannon
Roma Ciampino
Athens
Santa Maria (Azores)
Bangor
Prague

Category B: "**Staging points**"
(points from which operations are often launched - planes and crews prepare there, or meet in clusters)

Washington
Frankfurt
Adana-Incirlik
Ramstein
Larnaca
Palma de Mallorca
Baku

Category C: "**One-off pick-up points**"
(points from which, according to our research, one detainee or one group of detainees was picked up for rendition or unlawful transfer, but not as part of a systematic occurrence)

Stockholm-Bromma
Banjul
Skopje
Aviano
Tuzla

Category D: "**Detainee transfer / Drop-off points**"
(places visited often, where flights tend to stop for just short periods, mostly far off the obvious route – either their location is close to a site of a known detention facility or a *prima facie* case can be made to indicate a detention facility in their vicinity)

Cairo
Amman
Islamabad
Rabat
Kabul

[37] Eurocontrol is the European Organisation for the Safety of Air Navigation. I am grateful to Eurocontrol's Director General, Mr Victor Aguado, and his staff for responding to my various enquires in such an efficient and collegial manner. See the section below, at heading 2.3

[38] I sent a round of letters to the Heads of National Parliamentary Delegations on 31 March 2006 in which I asked specifically for information from their respective national aviation authorities.

[39] In this regard we have gathered detainee testimonies, exhibits placed before judicial and parliamentary enquiries, information obtained under *Freedom of Information* legislation, interviews with legal representatives and insider sources, the accounts of investigative journalists and research conducted by non-governmental organisations.

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Guantanamo Bay
Timisoara / Bucharest
Tashkent
Algiers
Baghdad
Szymany

2.3. Compiling a database of aircraft movements

44. As we began our work in November 2005, various organisations and individuals in the non-governmental sector, especially investigative journalists and NGOs, sent us lists of aircraft suspected either of belonging to the CIA or of being operated on the CIA's behalf by bogus "front companies". The lists contained details such as the type of aircraft, the registered owner and operator, and the "N-number" by which an aircraft is identified. These lists are the result of painstaking efforts to piece together information that is publicly available on certain Internet sites, observations by "planespotters" and testimony from former detainees. We subsequently received from Eurocontrol "flight plans" regarding these planes, at least in so far as the European air space is concerned, for the period between the end of 2001 and early 2005. The Eurocontrol data received in January and February 2006 include, on the one hand, the plans of flights foreseen (which can be changed even during a flight for different reasons) and, on the other hand, information that has been verified following a request for collection of route charges, and flight data obtained from aviation authorities in the United States and elsewhere.

45. The lists requested from Eurocontrol in our original correspondence were somewhat speculative, but knowingly so. It was important for the inquiry team, in conjunction with external experts and investigators familiar with the topic, to gain a sense of how CIA-related aircraft operate in relation to the thousands of other, non-CIA aircraft that use European airspace. In other words we sought to build a profile of the characteristics of CIA flights. Additionally we hoped that by casting our net widely, we would be able to identify planes never before connected to the CIA.

46. We subsequently reverted to Eurocontrol on several occasions to obtain additional flight records[40]. As our work has progressed, we have been able to narrow down the number of aircraft movements that are of interest to our work and develop our analysis into a more sophisticated, realistic measure of the extent of illegality in the CIA's clandestine flight operations.

47. Based on our initial analysis, we sent a series of one-off additional requests to certain national air traffic control bodies in order to obtain records of the flights actually made in their countries; we also asked for data on the movements of military aircraft, which are not covered by Eurocontrol.

48. I am happy to report that through this channel I received useful information from various state institutions in different Council of Europe member States, including from transport ministries, aeronautic authorities, airport operators and state airlines. In addition, I obtained official records from national parliaments directly, including papers lodged by ministries of defence in response to parliamentary questions[41]. All of these diverse sources have contributed to the database of aircraft movements relied upon in this report.

2.4. Operations of the spider's web

49. We believe that we have made a significant step towards a better comprehension of the system of "renditions" and secret detention centres. One observation must be made. We should not lose our sense of proportion. It would be exaggerated to talk of thousands of flights, let alone hundreds of renditions concerning Europe. On this point I share the views expressed by members of the US Department of State, who recently delivered a first-hand briefing in Washington, DC at which a member of my team was present[42]. We undermine our credibility and limit the possibility for serious discussion if we make allegations that are

[40] Notably, in February 2006, I met with the staff of Eurocontrol for a very constructive briefing session.
[41] See, *inter alia*, the letter of the Rt. Hon Adam Ingram, UK Minister of State for the Armed Forces, in response to parliamentary questions in the House of Commons about the use of UK military airfields by US registered aircraft, dated 2 March 2006.
[42] See John Bellinger, Chief Legal Advisor to the US Secretary of State, and Dan Fried, Assistant Secretary of State, Bureau of European and Eurasian Affairs; *Briefing to European Delegation during the visit of the TDIP Temporary Committee of the European Parliament to Washington, DC*, 11 May 2006 (transcript on file with the Rapporteur – hereinafter "Bellinger, *Briefing to European Delegation*" or "Fried, *Briefing to European Delegation*").

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ambiguous, exaggerated or unsubstantiated[43]. Indeed, it is evident that not all flights of CIA aircraft participate in "renditions". As Mr John Bellinger pointed out:

> *"Intelligence flights are a manifestation of the co-operation that happens amongst us. They carry analysts to talk with one another, they carry evidence that has been collected... I'm sure the Director of Intelligence himself was personally on a number of those flights."*[44]

Mr Scheuer gave another explanation as to the purposes of such flights:

> *"There are lots of reasons other than moving prisoners to have aircrafts. It all depends on what you are doing. If you are in Afghanistan and you're supplying weapons to a commander that is working with Karzai's Government, then it could be a plane load of weapons. It could be food – the CIA is co-located with the US Military in bases around the country, so it could be rations.*
>
> *Also, we try to take care of our people as well as we can, so it's toiletries, it's magazines, it's video recorders, it's coffee makers. We even take up collections at Christmas, to make sure we can send out hundreds and hundreds of pounds of Starbucks Coffee. So out of a thousand flights, I would bet that 98% of those flights are about logistics!"*[45]

In fact it is precisely the remaining 2% that interests us.

50. In order to understand the notion of a "spider's web", what is important to bear in mind is not the overall numbers of flights[46]; but rather the nature and context of individual flights. Our research has covered ten case studies of alleged unlawful inter-state transfers, involving a total of seventeen individual detainees. In most of these cases it was possible to generate flight logs from the amalgamated official flight database referred to earlier. I have then matched those logs with the times, dates and places of the alleged transfer operations – according to victims themselves, lawyer's notes or other sources. Finally, where possible, I have corroborated this information with factual elements acquired from legal proceedings in Council of Europe member States or in the United States.

51. In translating these case studies into graphic representations, I resolved to trace each flight route not individually, but as part of a circuit. Each circuit begins and ends, where possible, at the aircraft's "home base" (very often Dulles Airport in Washington, DC) in the United States. Following these flight circuits helps to better understand the different categories of aircraft landings – simple stopovers for refuelling, staging points that host clusters of CIA aircraft or serve to launch operations, and detainee drop-off points. Despite being a fairly simple analytical technique, it has also helped discover some significant new information, which we present in the following sections.

2.5. Successive rendition operations and secret detentions

52. We believe we are in a position to state that successive CIA rendition operations have taken place in the course of the same, single flight circuit. Two of the rendition case studies examined in this report, both involving Council of Europe member States to differing degrees, belonged to the same clandestine circuit of abductions and renditions at different points of the spider's web. The information at our disposal indicates that the renditions of Binyam Mohamed and Khaled El-Masri were carried out by the same CIA-operated aircraft, within 48 hours of one another, in the course of the same 12-day tour in January 2004. This finding appears significant for a number of reasons. First, since neither man even knows of the other – Mr Mohamed is still detained at Guantanamo Bay and Mr El-Masri has returned to his home community near Ulm in the South of Germany – their respective stories can be used to lend credence to one another. My team has received direct or indirect testimony from each of them independently.

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[43] *Ibid.* According to Mr Bellinger: "We have been trying, from Secretary Rice down, to engage in a real dialogue with our different partners in Europe, be it the EU, be it the Council of Europe. We know your concerns and we are interested in talking to you directly, but on the basis of fact and not mere hyperbole." According to Mr Fried: "If the charges are absurd, it becomes difficult to deal with the real problems of the legal regime and the legal framework in which we have to conduct this struggle."

[44] Bellinger, *Briefing to European Delegation*, *supra* note 41.

[45] Michael Scheuer, former Chief of the Bin Laden Unit in the CIA Counter-Terrorism Center, interview conducted by the Rapporteur's representative, *supra* note 19.

[46] Bellinger, *Briefing to European Delegation*, *supra* note 41: "There really is not evidence of this. There is not evidence of a thousand detainees; there's not evidence of a hundred detainees; there's not even evidence of ten detainees."

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53. As they both allege having been subjected to CIA rendition, the fact that the same aircraft - operated by a CIA-linked company – carried out two transfers in such quick succession allows us to speak of the existence of a "rendition circuit" within the "spider's web".

54. It is also possible to develop a hypothesis as to the nature of some other aircraft landings belonging to the same renditions circuit. Thus, for example, the landings which occurred directly before and directly after the El-Masri rendition bear the typical characteristics of rendition operations[47].

55. Our analysis of the rendition programme in the post-9/11 era allows us to infer that the transfer of other detainees on this rendition circuit must have entailed detainees being transferred out of Kabul to alternative detention facilities in different countries. Thus, drawing upon official flight data, the probable existence of secret detention facilities can be inferred in Algeria and, as we will see, in Romania.

2.6. Detention facilities in Romania and Poland

2.6.1 The case of Romania

56. Romania is thus far the only Council of Europe member State to be located on one of the rendition circuits we believe we have identified and which bears all the characteristics of a detainee transfer or drop-off point. The N313P rendition plane landed in Timisoara at 11.51 pm on 25 January 2004 and departed just 72 minutes later, at 1.03 am on 26 January 2004. I am grateful to the Romanian Civil Aeronautic Authority for confirming these flight movements[48].

57. It is known that detainee transport flights are customarily night flights, as is the case of the other rendition flights already documented. The only other points on this rendition circuit from which the plane took off at a similar hour of the morning were Rabat, Morocco (departure at 2.05 am) and Skopje, "the former Yugoslav Republic of Macedonia" (hereinafter "Macedonia") (departure at 1.30 am). In both of these cases, we possess sufficient indications to claim that when the plane left its destination, it was carrying a prisoner to a secret detention centre situated in Kabul.

58. We can likewise affirm that the plane was not carrying prisoners to further detention when it *left* Timisoara. Its next destination, after all, was Palma de Mallorca, a well-established "staging point", also used for recuperation purposes in the midst of rendition circuits.

59. There is documentation in this instance that the passengers of the N313P plane, using US Government passports[49] and apparently false identities[50], stayed in a hotel in Palma de Mallorca for two nights before returning to the United States. One can deduce that these passengers, in addition to the crew of the plane, comprised a CIA rendition team, the same team performing all renditions on this circuit.

60. The N313P plane stayed on the runway at Timisoara on the night of 25 January 2004 for barely one hour. Based on analysis of the flight capacity of N313P, a Boeing 737 jet, in line with typical flight behaviours of CIA planes, it is highly unlikely that the purpose of heading to Romania was to refuel. The plane had the capacity to reach Palma de Mallorca, just over 7 hours away, directly from Kabul that night – twice previously on the same circuit, it had already flown longer distances of 7 hours 53 minutes (Rabat to Kabul) and 7 hours 45 minutes (Kabul to Algiers).

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[47] See *Flight logs related to the successive rendition operations of Binyam Mohamed and Khaled El-Masri in January 2004*, reproduced in this report in the Appendix to the present document. The landings in question are at Algiers (Algeria) and Timisoara (Romania).

[48] See *Information from the records of the Romanian Civil Aeronautic Authority and the Romanian Ministry of National Defence*, contained as Appenices to the letters sent to me by György Frunda, Chairman of the Romanian delegation to PACE, dated 24 February 2006 and 7 April 2006. I wish to thank my colleague Mr Frunda for his outstanding efforts in gathering information from various Romanian authorities on my behalf.

[49] See Andrew Manreas, *La investigación halla en los vuelos de la CIA decenas de ocupantes con estatus diplomatico*, in El Pais, Palma de Mallorca, 15 November 2005.

[50] See Matias Valles, journalist with Diario de Mallorca, *Testimony before theTDIP Temporary Committee of the European Parliament*, 20 April 2006. Valles researched a total of 42 names he had uncovered from the records of a hotel in Mallorca where the passengers of the N313P plane stayed. Many proved to be "false identities", apparently created using the names of characters from Hollywood movies such as *Bladerunner* and *Alien*. Valles confirmed that at least some of the persons who arrived back in Palma de Mallora from Romania after the rendition circuit were the same persons who had stayed in the hotel at a previous point on the circuit – thus indicating that the "rendition team" remained on the plane throughout its trip.

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61. It should be recalled that the rendition team stayed about 30 hours in Kabul after having "rendered" Khaled El-Masri. Then, it flew to Romania on the same plane. Having eliminated other explanations – including that of a simple logistics flight, as the trip is a part of a well-established renditions circuit – the most likely hypothesis is that the purpose of this flight was to transport one or several detainees from Kabul to Romania.

62. We consider that while all these factual elements do not provide definitive evidence of secret detention centres, they do justify on their own a positive obligation to carry out a serious investigation, which the Romanian authorities do not seem to have done to date.

2.6.2. The case of Poland

63. Poland was likewise singled out as a country which had harboured secret detention centres.

64. On the basis of information obtained from different sources we were able to determine that persons suspected of being high level terrorists were transferred out of a secret CIA detention facility in Kabul, Afghanistan in late September and October 2003[51]. During this period, my official database shows that the only arrival of CIA-linked aircraft from Kabul in Europe was at the Polish airport of Szymany. The flights in question, carried out by the well-known "rendition plane" N313P, bear all the hallmarks of a rendition circuit.

65. The plane arrived in Kabul, on 21 September 2003, from Tashkent, Uzbekistan. The axis between Tashkent and Kabul was well known for detainee transfers[52]. Still, according to information received, the most significant detainee movements at this time probably involved transfers *out of* Kabul. The explanation attributed by NGO sources and journalists who have investigated this period[53] is that the CIA required a more isolated, secure, controlled environment in which to hold its high-level detainees, due to the proliferation of both prison facilities and prisoners in Afghanistan arising from the escalating "war on terrorism".

66. Thus, the circuit in question continued on 22 September 2003, when the plane flew from Kabul to Szymany airport in Poland. On the same grounds given above for the case of Romania, one may deduce that this flight was a CIA rendition, culminating in a "detainee drop-off" in Poland.

67. Szymany is described by the Chairman of the Polish delegation to PACE as a "former Defence Ministry airfield", located near the rural town of Szczytno in the North of the country. It is close to a large facility used by the Polish intelligence services, known as the Stare Kiejkuty base. Both the airport and the nearby base were depicted on satellite images I obtained in January 2006[54].

68. It is noteworthy that the Polish authorities have been unable, despite repeated requests, to provide me with information from their own national aviation records to confirm any CIA-connected flights into Poland. In his letter of 9 May 2006, my colleague Karol Karski, the Chairman of the Polish delegation to PACE, explained:

> *"I addressed the Polish authorities competent in gathering the air traffic data, related to these aircraft numbers... I was informed that several numbers from your list were still not found in our flight logs'*

[51] My team has worked closely with Human Rights Watch to corroborate the available evidence of detainee movements out of Afghanistan. For an indication of the earlier analysis of this information, see *Human Rights Watch Statement on US Secret Detention Facilities in Europe*, 7 November 2005, available at: http://hrw.org/english/docs/2005/11/07/usint11995.htm.

[52] See Craig Murray, former United Kingdom Ambassador to Uzbekistan, *Exchange of views with the Committee on Legal Affairs and Human Rights (AS/Jur)*, Strasbourg, 24 January 2006. The minutes reflect that Mr Murray spoke of "evidence of the CIA chartering flights to Uzbekistan, between Kabul and Tashkent, and of the use of torture by Uzbek agents, as well as evidence that the American and British authorities were willing to receive and use information obtained under torture by foreign agencies, the relevant decision having been taken at a high level". See also Don van Natta Jr, *Growing Evidence US Sending Prisoners to Torture Capital: Despite Bad Record on Human Rights, Uzbekistan is Ally*, New York Times, 1 May 2005, available at: www.nytimes.com/2005/05/01/international/01renditions.html?ex=1272600000&en=932280de7e0c 048&ei=5088&partner=rssnyt&emc=rss.

[53] For an excellent account of the motivations for moving detainees to secret locations, see James Risen, *State of War: The Secret History of the CIA and the Bush Administration*, Free Press, New York, 2006, at pages 29 to 31: "The CIA wanted secret locations where it could have complete control over the interrogations and debriefings, free from the prying eyes of the international media, free from monitoring by human rights groups, and, most important, far from the jurisdiction of the American legal system."

[54] See European Union Satellite Centre, information provided to the Rapporteur on 23 January 2006. For further information see the section below at heading 4.1.

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records. Being not aware about the source of your information connecting these flight numbers with Polish airspace, I am not able, [nor are] the Polish air traffic control authorities, to comment on the fact of missing them in our records."[55]

69. Mr. Karski also made the following statement, which reflects the position of the Polish Government on the question of CIA renditions:

"According to the information I have been provided with, none of the questioned flights was recorded in the traffic controlled by our competent authorities – in connection with Szymany or any other Polish airport."

70. The absence of flight records from a country such as Poland is unusual. A host of neighbouring countries, including Romania, Bulgaria and the Czech Republic have had no such problems in retrieving official data for the period since 2001. Indeed, the submissions of these countries, along with my data from Eurocontrol, confirm numerous flights into and out of Polish airports by the CIA-linked planes that are the subject of this report.

71. In this light, Poland cannot be considered to be outside the rendition circuits simply because it has failed to furnish information corroborating our data from other sources. I have thus presented in my graphic the suspected rendition circuit involving Szymany airport, in which the landing at Szymany is placed in the category of "detainee drop-off" points.

72. According to records in our possession, the N313P plane remained at Szymany airport on 22 September 2003 for just 64 minutes. I can also confirm that the plane then flew from Szymany to Romania, where it landed, after a change of course, at Bucharest Baneasa airport. Here, as in the case of Timisoara above, the aircraft landing in Romania fits the profile of a "detainee drop-off".

73. It is possible that several detainees may have been transported together on the flight out of Kabul, with some being left in Poland and some being left in Romania. This pattern would conform with information from other sources, which indicated the simultaneous existence of secret prisons in these two Council of Europe member States[56].

74. This suspected rendition circuit continued after Romania by landing in Rabat, Morocco, which several elements point to as a location that harbours a detention facility[57]. It is conceivable that this landing may even have constituted a third "detainee drop-off" in succession before the plane returned to the United States, via Guantanamo Bay.

75. As for Romania, I find that there is now a preponderance of indications, not to prove the existence of detention centres, but in any case to open a real in-depth and transparent inquiry. One can add that the sources at the origin of the publications by Human Rights Watch, The Washington Post and ABC News, referring to the existence of such centres in Romania and Poland, are multiple, concordant and particularly well informed, as they belong to the very services that have directed these operations.

2.7. The human impact of rendition and secret detention

76. Rendition is a degrading and dehumanising practice; certainly for its victims, but also for those who perform the operations. This simple realisation has become clear to me and my team as we have met with various people whose lives have been indelibly changed by rendition.

77. Therefore, while it is necessary to analyse the global system that rendition has become, we should never lose sight of the human dimension, as this is at the core of the abuses.

78. I have considered the human impact of rendition in two ways: first, the systematic CIA practice of preparing a detainee to be transported on a rendition aircraft; and second, the grave and long-lasting psychological damage that extraordinary rendition inflicts upon its victims.

[55] Letter sent to me by Karol Karski, Chairman of the Polish delegation to PACE, dated 9 May 2006.
[56] See, *inter alia*, Brian Ross and Richard Esposito, *Sources Tell ABC News Top Al-Qaeda Figures Held in Secret CIA Prisons: 10 out of 11 Terror Leaders Subjected to "Enhanced Interrogation Techniques"*, ABC News, 5 December 2005, available at: http://abcnews.go.com/WNT/Investigation/story?id=1375123.
[57] See the case study of Binyam Mohamed al Habashi at section 3.9 of this report.

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2.7.1. CIA methodology – how a detainee is treated during a rendition

79. The descriptions of rendition operations in this report reflect many different individual cases. These cases entail a diverse range of victims, being captured in and transferred to numerous different countries, spanning a time period of several years. The stories are recounted by both first- and second-hand witnesses, speaking various languages in various public and private forums. Some of the people subjected to rendition have since been released, while others are still detained in the custody of the United States or another country. In short, the cases appear to have little or no connection to one another.

80. Yet on the contrary there are striking parallels between several of these renditions, particularly as they relate to the CIA's methodology. It seems that in each separate case, rendition was carried out in an almost identical manner. Collectively the cases in the report testify to the existence of an established *modus operandi* of rendition, put into practice by an elite, highly-trained and highly-disciplined group of CIA agents who travel around the world mistreating victim after victim in exactly the same fashion.

81. It falls to analyse this methodology through the lens of human rights, as they are enshrined in the European Convention on Human Rights (ECHR) and applied in the vast majority of the countries that share these values. Every individual, even those accused, or found guilty, of involvement in terrorism and other categories of serious crime, has the unqualified right not to be tortured or subjected to inhuman and degrading treatment or punishment. While state agents have the right to use force in carrying out their work, there are obviously strict limits on the extent to which restraining or coercive measures may be applied during the course of an arrest or transfer operation.

82. According to Michael Scheuer, the CIA intentionally puts security concerns ahead of the rights of the detainee during a rendition operation:

> *"Clearly your first priorities in those situations are to protect your officers. So the person would generally be shackled and restrained. And probably at least getting on to the plane and while it was on the ground, he was blindfolded.*
>
> *I would think that the locals who arrested him would probably be the ones who would handcuff and blindfold him. Then he would be put on the plane, prepared and tied into his seat, or however it happened, and be watched over by guards from the receiving country he was going back to."*[58]

83. I consider that no security measure justifies a massive and systematic violation of human rights and dignity. In the cases examined – whilst being conscious of dealing with possibly dangerous persons – the principle of proportionality was simply ignored and with it the dignity of the person. In several instances, the actions undertaken in the course of a "security check" were excessive in relation to security requirements[59] and may therefore constitute a violation of Article 3 ECHR[60]. While it does not appear to reach the threshold for torture[61], it may well be considered as inhuman or degrading, particularly in the extent to which it humiliates the person being rendered[62].

84. The "security check" used by the CIA to prepare a detainee for transport on a rendition plane was described to us by one source in the American intelligence community as a "twenty-minute takeout"[63]. His

[58] Michael Scheuer, former Chief of the Bin Laden Unit in the CIA Counter-Terrorism Center; interview carried out by Rapporteur's representative in Washington, DC, 12 May 2006 (transcript on file with the Rapporteur).

[59] Mr Scheuer appears to understate severity of the measures taken during a "security check". A further discrepancy with his description is that in most cases, as far as I can discern, American agents carry out the entire "security check" themselves. I have not received any account of European security police being directly involved in administering these coercive measures, although there was at least one Egyptian policeman involved in the transfer of Ahmed Agiza and Mohamed Alzery from Sweden.

[60] Article 3 ECHR states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

[61] I agree with the assessment of Sweden's Parliamentary Ombudsman, Mats Melin, on the threshold for torture: "It is clear that torture is a concept reserved for cases involving the intentional infliction of severe pain or grave suffering intended, for example, to obtain information to punish or intimidate." See Mats Melin, Parliamentary Ombudsman (Sweden), *A review of the enforcement by the Security Police of a Government decision to expel two Egyptian citizens*, Adjudication No. 2169-2004, dated 22 March 2005. Melin cites the judgement of the European Court of Human Rights (ECtHR) in *Salman v. Turkey*, 27 June 2000.

[62] In determining whether the standard for degrading treatment is met, the ECtHR takes account of whether it has been expressly *intended* to humiliate the individual in question, along with its effect on the individual's personality. In the context of a deprivation of liberty, the treatment must be in excess of the humiliation inherent in arrest or detention. See the judgement of the ECtHR in *Öcalan v. Turkey*, 12 March 2003.

[63] Confidential interview with a source in the US intelligence community who wished to remain anonymous; interview carried out in the United States by the Rapporteur's representative.

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explanation was that within a very short space of time, a detainee is transformed into a state of almost total immobility and sensory deprivation. *"The CIA can do three of these guys in an hour. In twenty minutes they're good to go."*[64] An investigating officer for the Swedish Ombudsman was struck by the *"fast and efficient procedure"* used by the American agents[65], while the Swedish interpreter who witnessed the CIA operation at Bromma Airport said simply: *"It surprised me how the heck they could have dressed him so fast"*[66].

85. The general characteristics of this "security check" can be established from a host of testimonies as follows[67]:

i. it generally takes place in a small room (a locker room, a police reception area) at the airport, or at a transit facility nearby.
ii. the man is sometimes already blindfolded when the operation begins, or will be blindfolded quickly and remain so throughout most of the operation.
iii. four to six CIA agents perform the operation in a highly-disciplined, consistent fashion – they are dressed in black (either civilian clothes or special "uniforms'), wearing black gloves, with their full faces covered. Testimonies speak, variously, of *"big people in black balaclavas"*[68], people *"dressed in black like ninjas"*[69], or people wearing *"ordinary clothes, but hooded"*[70].
iv. the CIA agents *"don't utter a word when they communicate with one another"*[71], using only hand signals or simply knowing their roles implicitly.
v. some men speak of being punched or shoved by the agents at the beginning of the operation in a rough or brutal fashion[72]; others talked about being gripped firmly from several sides
vi. the man's hands and feet are shackled.
vii. the man has all his clothes (including his underwear) cut from his body using knives or scissors in a careful, methodical fashion; an eye-witness described how *"someone was taking these clothes and feeling every part, you know, as if there was something inside the clothes, and then putting them in a bag"*[73].
viii. the man is subjected to a full-body cavity search, which also entails a close examination of his hair, ears, mouth and lips.
ix. the man is photographed with a flash camera, including when he is nearly[74] or totally naked[75]; in some instances, the man's blindfold may be removed for the purpose of a photograph in which his face is also identifiable[76].

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[64] *Ibid.*
[65] See Office of the Parliamentary Ombudsman (Sweden), *Interview conducted with state official X of the Security Police (Säpo)*, Case No. 2169-2004, 30 September 2004 (translated transcript on file with the Rapporteur – hereinafter "Interview with Swedish Säpo interpreter"); comment made at page 23.
[66] *Ibid*, observation made by the Säpo interpreter in answer to a question, at page 13.
[67] The person subjected to the "security check" is referred to generically as "the man", because we have not thus far heard of any cases in which it has happened to women. This overview contains aspects common to several renditions, while excerpts from individual testimonies are cited separately hereunder.
[68] See Bisher Al-Rawi, statement made to his lawyer during an interview at Guantanamo Bay (contained in unclassified attorney notes), submitted to the High Court of Justice in Case No. 2005/10470/05 through the *Witness Statement of Clive Stafford Smith* (hereinafter "Al-Rawi statement to lawyer"), at page 31.
[69] See Jamil El-Banna, statement made to his lawyer during an interview at Guantanamo Bay (contained in unclassified attorney notes), submitted to the High Court of Justice in Case No. 2005/10470/05 through the *Witness Statement of Clive Stafford Smith* (hereinafter "El-Banna statement to lawyer"), at page 40.
[70] See Interview with Swedish Säpo interpreter, *supra* note 85, at page 10.
[71] See Office of the Parliamentary Ombudsman (Sweden), *Interview conducted with Kjell Jönsson, Swedsh lawyer for Mohamed Alzery*, Case No. 2169-2004, September 2004 (translated transcript on file with the Rapporteur – hereinafter "Ombudsman's Interview with Swedish lawyer Jönsson"); at page 6.
[72] See Declaration of Khaled El-Masri in support of Plaintiff's Opposition to the United States' Motion to Dismiss, in *El-Masri v. Tenet et al*, Eastern District Court of Virginia in Alexandria, 6 April 2006 (hereinafter "El-Masri statement to US Court in Alexandria, 6 April 2006") at page 9: "As I was led into this room I felt two people violently grab my arms... They bent both my arms backwards. This violent motion caused me a lot of pain. I was beaten severely from all sides."
[73] See Interview with Swedish Säpo interpreter, *supra* note 65, at page 13.
[74] See Interview with Swedish Säpo interpreter, *supra* note 65, at page 13: "he wasn't naked, he had his underpants on; the upper body was undressed and then his picture was taken."
[75] See Binyam Mohamed Al-Habashi, statement made to his lawyer during an interview at Guantanamo Bay, contained in unclassified attorney notes of Clive A. Stafford Smith, dated 1 August 2005 (document on file with the Rapporteur – hereinafter "Binyam Mohamed statements to lawyer at Guantanamo"), at page 19: "there was a white female with glasses... One of them held my penis and she took digital pictures."
[76] See El-Masri statement to US Court in Alexandria, 6 April 2006, *supra* note 71, at page 9: "They took off my blindfold... As soon as it was removed, a very bright flashlight went off and I was temporarily blinded. I believe from the sounds that they had taken photographs of me throughout."

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x. some accounts speak of a foreign object being forcibly inserted into the man's anus; some accounts speak more specifically of a tranquiliser or suppository being administered *per rectum*[77] - in each description this practice has been perceived as a grossly violating act that affronts the man's dignity.
xi. the man is then dressed in a nappy or incontinence pad and a loose-fitting "*jump-suit*" or set of overalls; "*they put diapers on him and then there is some handling with these handcuffs and foot chains, because first they put them on and then they are supposed to put him in overalls, so then they have to alternately unlock and relock them*"[78].
xii. the man has his ears muffled, sometimes being made to wear a pair of "*headphones*"[79]
xiii. finally a cloth bag is placed over the man's head, with no holes through which to breathe or detect light; they "*put a blindfold on him and after that a hood that apparently reaches far down on his body*"[80].
xiv. the man is typically forced aboard a waiting aeroplane, where he may be "*placed on a stretcher, shackled*"[81], or strapped to a mattress or seat, or "*laid down on the floor of the plane and they bind him up in a very uncomfortable position that makes him hurt from moving*"[82].
xv. in some cases the man is drugged and experiences little or nothing of the actual rendition flight[83]; in other cases, factors such as the pain of the shackles or the refusal to allow him to drink water or use the toilet make the flight unbearable: "*this was the hardest moment in my life*"[84].
xvi. in most cases, the man has no notion of where he is going, nor the fate that awaits him upon arrival.

86. This manner of treating detainees has been heavily criticised by the lawyers of many of the persons subjected to rendition. In his testimony to the Swedish Ombudsman, Kjell Jönsson, the Swedish lawyer for Mohamed Alzery[85], stated his concern that the measures taken before the rendition were disproportionate to the security needs: "from Alzery's point of view it would have been perfectly enough to ask him to co-operate and he would have done that just like he always has done before"[86].

87. Perhaps the most troubling aspect of this systematic practice, however, is that it appears to be intended to humiliate. Many accounts speak of these measures being taken despite "strong resistance", both physical and verbal, on the part of the detainee. The nudity, forced shackling "like an animal"[87] and being forced to wear nappies appear offensive to the notions of dignity held by the detainees. In my view it is simply not acceptable in Council of Europe member States for security services, whether European or foreign, to treat people in a manner that amounts to such "extreme humiliation"[88].

2.7.2. The effects of rendition and secret detention on individuals and families

88. In compiling this report, members of my team and I have met directly with several victims of renditions and secret detentions, or with their families. In addition, we have obtained access to further first-hand accounts from victims who remain detained, in the form of their letters or diaries, unclassified notes from their discussions with lawyers, and official accounts of visits from Embassy officials.

89. Personal accounts of this type of human rights abuse speak of utter demoralisation. Of course, the despair is greatest in cases where the abuse persists – where a person remains in secret detention, without knowing the basis on which he is being held, and where nobody apart from his captors knows about his

[77] See Ombudsman's Interview with Swedish lawyer Jönsson, *supra* note 70, at page 6: "they bend him forward and he can feel that something is being pushed up his rectum... after that he felt calmer and felt a muscle relaxation in all his body, but he was wide awake, so he was not sedated".
[78] See Ombudsman's Interview with Swedish lawyer Jönsson, *supra* note 70, at page 6.
[79] See El-Masri statement to US Court in Alexandria, 6 April 2006, *supra* note 71, at page 9. Also see reference to "earmuffs" in Al-Rawi statement to lawyer, *supra* note 67, at page 31; and reference to "earphones" in Binyam Mohamed statements to lawyer at Guantanamo, at page 5.
[80] See Ombudsman's Interview with Swedish lawyer Jönsson, *supra* note 70, at page 6.
[81] See Al-Rawi statement to lawyer, *supra* note 67, at page 31.
[82] See Ombudsman's Interview with Swedish lawyer Jönsson, *supra* note 70, at page 6.
[83] See El-Masri statement to US Court in Alexandria, 6 April 2006, *supra* note 71, at page 10: "They put something over my nose. I think it was some kind of anaesthaesia. It felt like the trip took about four hours, but I can't really remember. I was mostly unconscious for the duration".
[84] See Al-Rawi statement to lawyer, *supra* note 67, at page 31.
[85] For more detail on the cases of Ahmed Agiza and Mohamed Alzery, please refer to the case study in the following section.
[86] See Ombudsman's Interview with Swedish lawyer Jönsson, *supra* note 70, at page 8.
[87] The detainee who made this statement asked that he remain anonymous.
[88] The words "extreme humiliation" are used in the Ombudsman's Interview with Swedish lawyer Jönsson, *supra* note 70, at page 8. In El-Masri statement to US Court in Alexandria, 6 April 2006, *supra* note 71, at page 9 he talks of "degrading and shameful" acts that left him feeling "terrified and utterly humiliated".

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exact whereabouts or wellbeing. The uncertainty that defines rendition and secret detention is torturous, both for those detained and those for whom they are "disappeared"[89].

90. Yet the ordeal continues long after a detainee is located, or even released and able to return home. Victims have described to us how they suffer from flashbacks and panic attacks, an inability to lead normal relationships and a permanent fear of death. Families have been torn apart. On a personal level, deep psychological scars persist; and on a daily basis, stigma and suspicion seem to haunt anybody branded as "suspect" in the "war on terror". In short, links with normal society appear practically impossible to restore.

91. I salute the remarkable courage and resilience of those who have been held in secret detention and subsequently released, like Khaled El-Masri and Maher Arar. Both these men have spoken eloquently to us about what moves them to recount their experiences despite the obvious pain and trauma of doing so. From these words we must draw our own resolve to uncover the secret abuses of the spider's web and ensure that they never again be allowed to occur. From Mr El-Masri, "all I want is to know the truth about what happened to me and to have the American Government apologise for what it did"[90]; from Mr Arar, "the main purpose of talking about my torture is to prevent the same treatment from ever happening to another human being"[91].

3. Specific examples of documented renditions

3.1. Khaled El-Masri

92. We spoke for many hours with Khaled El-Masri, who also testified publicly before the Temporary Committee of the European Parliament, and we find credible his account of detention in Macedonia and Afghanistan for nearly five months.

3.1.1. The individual account of Mr El-Masri

93. A summary of the unprecedented suffering endured by Mr El-Masri reads as follows:

94. [A]ccording to the statement of facts presented to the US District Court[92], Khaled El-Masri, a German citizen of Lebanese descent, travelled by bus from his home near Neu Ulm, Germany, to Skopje, Macedonia, in the final days of 2003. After passing through several international border crossings without incident, Mr El-Masri was detained at the Serbian-Macedonian border because of alleged irregularities with his passport. He was interrogated by Macedonian border officials, then transported to a hotel in Skopje. Subsequent to his release in May, 2004, Mr El-Masri was able to identify the hotel from website photographs as the Skopski Merak, and to identify photos of the room where he was held and of a waiter who served him food. Over the course of three weeks, Mr El-Masri was repeatedly interrogated about alleged contacts with Islamic extremists, and was denied any contact with the German Embassy, an attorney, or his family. He was told that if he confessed to Al-Qaeda membership, he would be returned to Germany. On the thirteenth day of confinement, Mr El-Masri commenced a hunger strike, which continued until his departure from Macedonia. After 23 days of detention, Mr El-Masri was videotaped, blindfolded, and transported by vehicle to an airport.

95. There, he was beaten, stripped naked, and thrown to the ground. A hard object was forced into his anus. When his blindfold was removed, he saw seven or eight men, dressed in black and hooded. He was placed in a diaper and sweatsuit, blindfolded, shackled, and hurried to a plane, where he was chained spreadeagled to the floor. He was injected with drugs and flown to Baghdad, then on to Kabul, Afghanistan, an itinerary that is confirmed by public flight records. At some point prior to his departure, an exit stamp was placed in his passport, confirming that he left Macedonia on January 23, 2004.

96. Upon arrival in Kabul, Mr El-Masri was kicked and beaten and left in a filthy cell. There he would be detained for more than four months. He was interrogated several times in Arabic about his alleged ties to 9/11 conspirators Muhammed Atta and Ramzi Bin Al-Shibh and to other alleged extremists based in

[89] See Louise Arbour, United Nations High Commissioner for Human Rights, *Human Rights: A casualty of the war on terror?*; interview for UN World Chronicle No. 996, 7 December 2005 (transcript provided by UN Television, on file with the rapporteur): "Secret detention under these extreme conditions is an unacceptable treatment, both of the person detained and I would certainly suggest of members of their families [for whom], for all purposes, these people have disappeared."

[90] Khaled El-Masri made this statement to me during our meeting in Strasbourg in April 2006.

[91] Maher Arar made this statement to my representative during their meeting in Brussels in March 2006.

[92] See El-Masri statement to US Court in Alexandria, 6 April 2006, *supra* note 71.

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Germany. American officials participated in his interrogations. All of his requests to meet with a representative of the German government were refused.

97. In March, Mr El-Masri and several other inmates commenced a hunger strike. After nearly four weeks without food, Mr El-Masri was brought to meet with two American officials. One of the Americans confirmed Mr El-Masri's innocence, but insisted that only officials in Washington, D.C. could authorize his release. Subsequent media reports confirm that senior officials in Washington, including the CIA Director Tenet, were informed long before Mr El-Masri's release that the United States had detained an innocent man. Mr El-Masri continued his hunger strike. On the evening of April 10, Mr El-Masri was dragged from his room by hooded men and force-fed through a nasal tube.

98. At around this time, Mr El-Masri felt what he believed to be a minor earthquake. Geological records confirm that in February and April, there were two minor earthquakes in the vicinity of Kabul.

99. On May 16, Mr El-Masri was visited by a uniformed German speaker who identified himself as "Sam". "Sam" refused to say whether he had been sent by the German government, or whether the government knew about Mr El-Masri's whereabouts. Subsequent to his release, Mr El-Masri identified "Sam" in a photograph and a police lineup as Gerhard Lehmann, a German intelligence officer.

100. On May 28, 2004, Mr El-Masri, accompanied by "Sam," was flown from Kabul to a country in Europe other than Germany. He was placed, blindfolded, into a truck and driven for several hours through mountainous terrain. He was given his belongings and told to walk down a path without turning back. Soon thereafter, he was confronted by armed men who told him he was in Albania and transported him to Mother Theresa Airport in Tirana. There, he was accompanied through customs and immigration controls and placed on a flight to Frankfurt.

101. Upon his return to Germany, Mr El-Masri contacted an attorney and related his story. The attorney promptly reported Mr El-Masri's allegations to the German government, thereby initiating a formal investigation by public prosecutors. Pursuant to their investigation, German prosecutors obtained and tested a sample of Mr El-Masri's hair, which proved consistent with his account of detention in a South-Asian country and deprivation of food for an extended period. That investigation, as well as a German parliamentary investigation of Mr El-Masri's allegations, is ongoing.

3.1.2. Elements of corroboration for Mr El-Masri's account

102. Mr El-Masri's account is borne out by numerous items of evidence, some of which cannot yet be made public because they have been declared secret[93], or because they are covered by the confidentiality of the investigation underway in the office of the Munich prosecuting authorities following Mr El-Masri's complaint of abduction.

103. The items already in the public domain are cited in the afore-mentioned memorandum[94] submitted to the Virginia court in which Mr El-Masri lodged his complaint:

- Passport stamps confirming Mr El-Masri's entry to and exit from Macedonia, as well as exit from Albania, on the dates in question;
- Scientific testing of Mr El-Masri's hair follicles, conducted pursuant to a German criminal investigation, that is consistent with Mr El-Masri's account that he spent time in a South-Asian country and was deprived of food for an extended period of time;
- Other physical evidence, including Mr El-Masri's passport, the two t-shirts he was given by his American captors on departing from Afghanistan, his boarding pass from Tirana to Frankfurt, and a number of keys that Mr El-Masri possessed during his ordeal, all of which have been turned over to German prosecutors;
- Aviation logs confirming that a Boeing business jet owned and operated by defendants in this case, then registered by the FAA as N313P, took off from Palma, Majorca, Spain on January 23, 2004; landed at the Skopje airport at 8:51 p.m. that evening; and left Skopje more than three hours later, flying to Baghdad and then on to Kabul, the Afghan capital;

[93] The information in question appears in the report of the German Federal Government to the parliamentary committee monitoring the secret services (PKG) ; I was able to obtain from the chairman of that committee a "public" version of the report, which contains no particulars of individual cases. A version classified "confidential - for official use only" was handed to me by a journalist. This information enabled me to form a judgment as to the credibility of Mr El-Masri's account, but I have chosen to preserve the confidentiality of that report although, to be frank, I believe that the public should have access to this kind of information. To my knowledge, there is an even fuller version classified "secret", which I declined to obtain out of respect for German parliamentary procedure.

[94] See El-Masri statement to US Court in Alexandria, 6 April 2006, *supra* note 71.

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- Witness accounts from other passengers on the bus from Germany to Macedonia, which confirm Mr El-Masri's account of his detention at the border;
- Photographs of the hotel in Skopje where Mr El-Masri was detained for 23 days, from which Mr El-Masri has identified both his actual room and a staff member who served him food;
- Geological records that confirm Mr El-Masri's recollection of minor earthquakes during his detention in Afghanistan;
- Evidence of the identity of "Sam," whom Mr El-Masri has positively identified from photographs and a police line-up, and who media reports confirm is a German intelligence officer with links to foreign intelligence services;
- Sketches that Mr El-Masri drew of the layout of the Afghan prison, which were immediately recognizable to another rendition victim who was detained by the U.S. in Afghanistan;
- Photographs taken immediately upon Mr El-Masri's return to Germany that are consistent with his account of weight loss and unkempt grooming.

Numerous government inquiries, including the German prosecutors' investigation, a German parliamentary investigation, and various intergovernmental human rights inquiries, are almost certain to produce additional corroborating evidence.

3.1.3. The role of "the former Yugoslav Republic of Macedonia"

104. The role of "the former Yugoslav Republic of Macedonia" in the rendition of Khaled El-Masri has yet to be fully understood. The information collected on site by a member of my team appears to show a certain ambiguity in the Macedonian position. In effect, the Government of Macedonia has adopted an "official line" of complete negation, repeated in a rigid and stereotyped fashion.

105. I am indebted to the delegation from the European Parliament for arranging and administering an excellent programme of meetings with the highest-level representatives of the Macedonian Government and Parliament[95]. I share many of the reflections of my colleagues from the European Parliament in their review of these meetings, not least the sense of discomfort that in many areas the Macedonian authorities fell short of genuine transparency[96].

3.1.3.1. The position of the authorities

106. The "official line" of the Macedonian Government was first contained in a letter from the Minister of Interior, Ljubomir Mihajlovski, to the Ambassador of the European Commission, Erwan Fouere, dated 27 December 2005. In its simplest form, it essentially contains four items of information '*according to police records*": first, Mr El-Masri arrived by bus at the Macedonian border crossing of Tabanovce at 4 pm on 31 December 2003; second, he was interviewed by "*authorised police officials*" who suspected "*possession of a falsified travel document*"; third, approximately five hours later, Mr El-Masri "*was allowed entrance*" into Macedonia, apparently freely; and fourth, on 23 January 2004, he left Macedonia over the border crossing of Blace into Kosovo.

107. Mr Mihajlovski restated exactly the same Government position in response to a parliamentary question in the Sobranie on 26 January 2006[97]. He cited "*official evidence of the Ministry of Interior*" and went on to describe the allegations as "*speculative and unfounded*".

108. The President of the Republic, Branko Crvenkovski, set out a firm stance in the very first meeting with the European Parliament delegation, providing a strong disincentive to any official who may have wished to break ranks by expressing an independent viewpoint: "*Up to this moment, I would like to assure you that I have not come across any reason not to believe the official position of our Ministry of Interior. I have no additional comments or facts, from any side, to convince me that what has been established in the official report of our Ministry is not the truth.*"

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[95] The programme of meetings took place between 27 and 29 April 2006.

[96] President Branko Crvnekovski said in his opening remarks on 27 April 2006: *"Macedonia is completely determined and open for co-operation with you. What I want to repeat is that we're completely prepared to establish the truth... Our joint task is to find out the truth and not to respond to the current public opinion or the positions of the media"*; Siljan Avramovski, the former Head of the UBK, Macedonia's counter-intelligence service stated on 28 April: *"We will provide maximum transparency and openness in our discussions"*. These were fairly typical of the sentiments expressed by all the officials who met with the delegation.

[97] Mr Slobodan Casule, a prominent opposition politician who met with the European delegation on 27 April 2006, posed the question. He said he sought clarification about the El-Masri case because he believes that '*such issues should be opened and closed within the Parliament*'.

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109. On Friday 28 April the official position was presented in far greater detail during a meeting with Siljan Avramovski, who was Head of the UBK[98], Macedonia's main intelligence service, at the time of the El-Masri case. Avramovski stated that the UBK's "Department for Control and Professional Standards" had undertaken an investigation into the case and traced official records of all Mr El-Masri's contact with the Macedonian authorities. The further details as presented by Mr Avramovski[99] are summarized as follows:

> Mr El-Masri arrived on the Macedonian border on 31 December 2003, New Year's Eve. The Ministry of Interior had intensified security for the festive period and was operating a higher state of alert around the possible criminal activity. In line with these more intense activities, bus passengers were being subjected to a thorough security check, including an examination of their identity documents.
>
> Upon examining Mr El-Masri's passport, the Macedonian border police developed certain suspicions and decided to "*detain him*". In order not to make the other passengers wait at the border, the bus was at this point allowed to continue its journey.
>
> The objective of holding Mr El-Masri was to conduct an interview with him, which (according to Avramovski) was carried out in accordance with all applicable European standards. Members of the UBK, the security and counter-intelligence service, are present at all border points in Macedonia as part of what is described as "Integrated Border Management and Security". UBK officials participated in the interview of Mr El-Masri.
>
> The officials enquired into Mr El-Masri's reasons for travelling into the country, where he intended to stay and whether he was carrying sufficient amounts of money. Avramovski explained: "I think these were all standard questions that are asked in the context of such a routine procedure – I don't think I need to go into further details".
>
> At the same time, Macedonian officials undertook a preliminary visual examination of Mr El-Masri's travel documents. They suspected that the passport might be faked or forged – noting in particular that Mr El-Masri was born in Kuwait, yet claimed to possess German citizenship.
>
> A further passport check was carried out against an Interpol database. The border point at Tabanovce is not linked to Interpol's network, so the information had to be transmitted to Skopje, from where an electronic request was made to the central Interpol database in Lyon. A UBK official in the Analytical Department apparently made this request using an electronic code, so the Macedonian authorities can produce no record of it. Mr El-Masri was made to wait on the border point while the Interpol search was carried out.
>
> When it was established that there existed no Interpol warrant against Mr El-Masri and no further grounds on which to hold him[100], he was released. He then left the border point at Tabanovce, although Macedonian officials were not able to describe how. Asked directly about this point in a separate meeting, the Minister of Interior, Mr Mihajlovski said: "*we're not able to tell you exactly what happened to him after he was released because it is not in our interest; after the person leaves the border crossing, we're not in a position to know how he traveled further*"[101].
>
> The Ministry of Interior subsequently established, according to Avramovski, that Mr El-Masri had stayed at a hotel in Skopje called the "Skopski Merak". Mr El-Masri is said to have checked in on the evening of 31 December 2003 and registered in the Guest Book. He stayed for 23 nights, including daily breakfast, and checked out on 23 January 2004.
>
> The Ministry then conducted a further check on all border crossings and discovered that on the same day, 23 January 2004, in the evening, Mr El-Masri left the territory of Macedonia over the border crossing at Blace, into the territory of Kosovo. When asked whether Mr El-Masri had received a stamp to indicate his departure by this means, Avramovski answered: "*Normally there should be a*

[98] Uprava za Bezbednosti i Kontrarazuznavanje, or the Security and Counter-Intelligence Service.
[99] Meeting with Siljan Avramovski, now Deputy Director of UBK in the Ministry of Interior, 28 April 2006, transcript on file with the Rapporteur.
[100] Avramovski stated that Macedonian border police decided for themselves that Mr El-Masri's passport was genuine, after an unspecified process or length of examination "*At our border points, expert members of the border police are qualified to assess whether a passport is counterfeit or not. When they decided that it was genuine, they took no further action. They did not inform the German Embassy; they didn't feel the need to request any documents against which to compare the passport.*"
[101] Meeting with Ljubomir Mihajlovski, Minister of Interior, 28 April 2006, transcript on file with the Rapporteur.

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stamp on the passport as you cross the border out of Macedonia, but I can't be sure. UNMIK is also present on the Kosovo border and is in charge of the protocol on that side... My UBK colleague has just informed me that he has crossed the border at Blace twice in recent times and didn't receive a stamp on either occasion."

Avramovski concluded his summary with the words: "*This is the truth of the case that has been exploited by the media – the so-called El-Masri case.*"

110. In a separate meeting directly following Avramovski's briefing, Minister Mihajlovski retained the position and added very few further details. Both officials were keen to talk about the case as if it were a routine matter, one which only came to their attention when it was reported in the local and international press. They referred repeatedly to the media "prejudice" and "pressure" against Macedonia. Mihajlovski even implied that there was a conspiracy theory at play, designed to discredit the country: "*Who is really behind all of this? This case is making so much damage to the country. If you can get a reason why it is happening, please send us a message; tell us.*"

111. It seems clear that the Macedonian public has reacted negatively to the El-Masri affair. Most Macedonians feel aggrieved that their country has been given such a bad press and is associated with what is often portrayed as a manipulative operation. Many regard the international media interest as a thinly veiled attempt to discredit Macedonia's prospects for European integration. In reality, it seems that the Macedonian Government is itself responsible for this situation. More transparency, and a greater degree of preparedness genuinely to seek the truth, rather than locking themselves into a pre-established, dogmatic scheme, would have certainly avoided much criticism and suspicion.

3.1.3.2. Further elements

112. The Government's official line is based on what Mr Avramovski called "*a reconstruction after the fact, based on information we established through documents and discussions*" with, *inter alia*, "*employees of the hotel*". There is no doubt in my mind that the Ministry of Interior has put together a very thorough reconstruction of the case; just not an accurate one. Equally I accept that the Ministry has undertaken "*discussions*" with witnesses, including hotel employees; but I regard these as efforts to harmonise the official line, not to establish the truth.

113. One could, with sufficient application, begin to tease out discrepancies in the official line. For example, the Ministry of Interior stated that "*the hotel owner should have the record of Mr El-Masri's bill*", while the hotel owner responded to several inquiries, by telephone and in person, by saying that the record had been handed over to the Ministry of Interior.

114. Contacts we were able to make with sources close to the administration and to the intelligence services have enabled us to obtain much more credible information, in order to better understand what really happened. We can consequently present a more coherent analysis of this case. For obvious reasons, the sources contacted locally wish to stay anonymous, at least for the time being.

115. The Government's public portrayal seems at first glance perfectly plausible. However, it ceases to be credible when it asserts that El-Masri was allowed to proceed freely from Tabanovce on the evening of 31 December 2003. In reality, that evening signalled the beginning of his five-month ordeal in secret detention ordered by the CIA.

116. What is not said in the official version is the fact that the Macedonian UBK routinely consults with the CIA on such matters (which, on a certain level, is quite comprehensible and logical). According to confidential information we received (of which we know the source), a full description of Mr El-Masri was transmitted to the CIA via its Bureau Chief in Skopje for an analysis similar to the one Avramovski says was undertaken by Interpol: did the person in question have contact with terrorist movements, in particular with Al Qaida? Based on the intelligence material about Khaled El-Masri in its possession – the content of which is not known to us – the CIA answered in the affirmative. The UBK, as the local partner organisation, was requested to assist in securing and detaining Mr El-Masri until he could be handed over to the CIA for transfer.

117. The UBK has an excellent reputation for its professionalism. It is well practiced in the conduct of clandestine surveillance and detention operations, having exploited its own network of "secret apartments"

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for decades[102]. Information obtained from our internal sources indicates that the UBK is equally skilled in working on behalf of the CIA. – we even learned of one previous collaborative operation between these services in the past, targeted at apprehending suspected Islamic terrorists. In the El-Masri case, according to our understanding, this co-operation was particularly efficient and the Macedonian services fulfilled the expectations of the CIA.

118. The choice of the Skopski Merak hotel as a detention site warrants comment. The Macedonian authorities have categorically denied that this hotel could have served as a place for detention, considering such a possibility as downright ridiculous. Avramovski said he could "*absolutely*" rule out the prospect of Mr El-Masri's being held there:

> "*Look, I can state this very specifically and decisively. The 31 December is New Year's Eve – that period is a holiday, there are always a lot of guests, many of them tourists, in the hotel to celebrate the New Year. There is not even a theoretical possibility [laughing] that a person could be detained in an open hotel, where there's a constant flow of people coming and going. There were many guests there at the time, including foreign nationals – it's a well-known, open hotel with a fine reputation in this city!*"

In fact, a busy place with this hotel's features lends itself very well to a clandestine operation, given that a top-floor room facing away from the street was used.

119. Whilst the operation was driven and directed by CIA agents, the Americans kept a very low profile throughout the operation in Macedonia. The CIA transmitted to UBK the questions to ask the suspect, without ever taking part in any interrogation.

120. Several of our interviewees told us – with varying degrees of knowledge – that German intelligence was informed of the fact that Mr El-Masri was in Macedonian custody in the days immediately following the arrest, but not about the operational details. Intelligence material from Germany was added to the dossier from which questions were later asked, both in Macedonia and in Afghanistan, by interrogators of various nationalities.

121. According to our insider sources in the intelligence community, whom we consider serious and well-informed, approximately 20 officials were involved overall on the Macedonian side, including "four or five" politically responsible persons in Government. Three teams of three agents rotated in the task of guarding and surveillance. Technicians and analysts helped to compile the record of the operation, which was a running log rather than a cumulative written report. An operational commander and a deputy marshalled the Macedonian agents and took responsibility for reporting to their liaisons in the CIA.

122. The period for which the Macedonians held Mr El-Masri in advance of his rendition – 23 days – was abnormally long for any operation involving the CIA. Partner agencies and CIA officials alike prefer to keep the time between the initial arrest and the transfer to a CIA detention centre as short as possible[103].

123. The delay in this case appears to have been caused by logistical reasons, in particular related to the availability of an aircraft. A flight on an unusual route, from Skopje into the Middle East, had to be incorporated into an existing schedule for that month, which, as established above in the description of the newly-discovered rendition circuit, included other detainee transfers.

124. According to further eye-witness accounts from persons in the civil aviation sector, who described the presence and movements of the suspect rendition plane at Skopje airport that evening, the aircraft thought to have taken Mr El-Masri on board did not follow regular procedures. The manner in which the plane registered with ground staff and paid its "route charge" fees was highly unusual – as the Ministry of Interior himself confirmed, no passengers even left the plane to enter the terminal building and thus cross officially onto Macedonian territory. Instead the plane taxied into position at the far end of the runway, more than a kilometer from the terminal. A detail of armed Macedonian security police formed a lookout nearby,

[102] The Macedonian Helsinki Committee for Human Rights has researched questions of secret detention and produced a variety of credible reports (copies of which are on file with the Rapporteur). In many cases, people are held in secret apartments to get them "out of the system" for an indefinite period of time, for the UBK to interrogate them and elicit confessions. Further still, in the notorious "Rastanski Lozja" case of March 2002, Macedonian police were said to have shot dead "seven members of a terrorist group" in what seemed like an act of summary execution. The Helsinki Committee wrote in its Annual Report of 2002: "the largest number of human rights violations was perpetrated by officers of the special units at the Ministry of Interior".

[103] See, for example, Michael Scheuer, former Chief of the Bin Laden Unit in the CIA Counter-Terrorism Center, interview carried out by the Rapporteur's representative, *supra* note 19.

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under strict instructions to face away from the plane itself. Asked whether such a measure was conventional for foreign aircraft, Minister of Interior Mihajlovski answered:

> *"No, no. Not at all. The plane is not Macedonian territory; if Spain sends us a plane, it's the territory of Spain. If there's a bomb on board we must come inside; but otherwise it's like a ship, a diplomatic territory".*

125. All these factual elements indicate that the CIA carried out a "rendition" of Khaled El-Masri. The plane in question had finished transferring another detainee just two days earlier and the plane was still on the same "rendition circuit". The plane and its crew had spent the interim period at Palma de Mallorca, a popular CIA staging point. The physical and moral degradation to which Mr El-Masri was subjected before being forced aboard the plane in Macedonia corresponds with the CIA's systematic "rendition methodology" described earlier in this report. The destination of the flight carrying Mr El-Masri, Kabul, forms a hub of CIA secret detentions in our graphic representation of the "spider's web".

126. All the indications are that the Macedonian authorities have decided to deny their part in the abduction of El-Masri, admitting only what has already been clearly proven and trying to conceal the rest. It is regrettable that the will is lacking to perform a true inquiry and that Parliament has not shown the initiative to take up the issue (as the German *Bundestag* has done in the same case). To this must be added the further accusations of the Macedonian Helsinki Committee for Human Rights. According to reports produced by this NGO, suspects were and still are interrogated and sometimes imprisoned and ill-treated for several days, outside the normal arrest and custody system[104], specifically in the "apartments" that had been widely used by the previous regime.

127. It is worth repeating that the analysis of all facts concerning this case points in favour of the credibility of El-Masri. Everything points in the direction that he was the victim of abduction and ill-treatment amounting to torture within the meaning of the term established by the case-law of the United Nations Committee against Torture. In addition, numerous indications support the conclusion that German services participated in a manner that still remains to be precisely established (not excluding the fact that the same services were in the end instrumental in El-Masri's release; the latter told me that he considered "Sam" as his guardian angel, a kind of "life insurance')[105].

128. The detailed information with which El-Masri was confronted during his interrogations in Skopje and in Afghanistan included details of his private life in Neu-Ulm. It is hard to imagine that such information could have been obtained by foreign services without help from their German counterparts. For example, the interrogators in Afghanistan knew that El-Masri had met a certain Reda Seyam[106] at the *Multikulturhaus* and had agreed to get a car, which Seyam had just bought with his help and had registered in the name of El-Masri's wife in order to save on the cost of insurance. El-Masri assured me that he had shared this information only with Seyam and his wife. In addition, the same interrogators confronted him with bank details of money transfers between his bank in Neu-Ulm and an account in Norway[107]. Such bank details are not normally accessible to foreign services.

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[104] My representative who travelled to Macedonia was able to see former "secret apartments", which are now closely supervised by NGOs defending human rights.

[105] In a recent development, the BND was forced to admit that one of its agents had indeed heard about El-Masri's detention at the hands of the Macedonian services and his hand-over to the Americans as early as January 2004 in a civil service canteen in Skopje (see Spiegel-Online of 31 May and 1 June 2006). The German Minister of the Interior tried to play down the importance of this revelation by calling it a mere breakdown of communications, as the higher echelons of the BND had not been informed. Nonetheless it is interesting to note that the truthfulness of the content of this conversation was never called into question.

[106] According to a German source, Mr Seyam, a German national of Indonesian origin, had returned in an unbelievable manner from a stay in that country. He had allegedly been arrested by the Indonesian authorities who suspected him of involvement in the Bali bombing. He had been released for lack of evidence, and taken back to Germany by German agents, who had been sent in order to prevent Mr Seyam being "handed over" to the Americans, who were apparently already waiting. Mr Seyam then allegedly went to Neu-Ulm at the instigation of his German "rescuers", who recommended that he go to the *Multikulturhaus*. The latter, according to the source, was under observation by both the *Baden-Württemberg* services (who had "planted" an informer there in the person of Dr Yousif, an Islamic preacher at the centre and an old acquaintance of Mr Seyam) and those of neighbouring Bavaria who – not knowing that Yousif was working for *Baden-Württemberg* – regarded him as a "preacher of hate". It was in this Islamic cultural centre frequented by Mr El-Masri that the latter came to know Mr Seyam (against whom a judicial investigation had also been opened in Germany, and closed shortly afterwards for lack of evidence). The two men, both looking for housing for their large families, became friends.

[107] According to Mr El Hasri, these were money transfers relating to Norwegian customers in connection with his car sales activity.

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129. In my opinion, this detailed knowledge of Mr El-Masri's – real – life also rules out the theory that Mr El-Masri was the victim of mere mistaken identity[108], being confused with a person of the same (or similar) name, whose name appeared in the American Congressional report on the 11 September attacks[109] as having travelled by train in Germany together with members of the "Hamburg cell" of the terrorists of 11 September, including one of the murderous pilots, Muhammad Atta[110].

130. As regards the identity of "Sam", who came and interrogated Mr El-Masri in Afghanistan and accompanied him back on the return flight to Europe, speaking German with a Northern accent, Mr El-Masri remains convinced that this is Mr Lehmann, an agent of the German *Bundeskriminalamt*. He had identified him with "100%" certainty on photographs and a videotape, and with "90%" certainty at a surprise police lineup on 22 February 2006[111].

131. Mr El-Masri has also been the victim of a defamatory campaign. The press service of the Baden-Württemberg Ministry of the Interior had indicated that El-Masri was a member of "Al Tawid", implying "Al Tawid al Jihad", a group belonging to Al Quaida and headed by Abu Musab al-Zarkawi. According to Mr Gnjidic, the confusion was deliberate: El-Masri did belong to a militant anti-Syrian party (a nationalist party of the left also including Islamist elements) called "Al Tawid", founded in 1982 and wound up in 1985 after the Syrian invasion. Whereas certain members were captured by the Syrians, El-Masri fled and sought political asylum in Germany, for precisely that reason. That group allegedly had absolutely nothing in common (except part of the name, which means "all-powerful god") with the terrorist group headed by al-Zarkawi. Mr El-Masri was again faced with this confusion at his hearing by the Temporary Committee of the European Parliament, where at least one EP deputy asked him to what other terrorist groups he belonged. As Mr El-Masri was still in a fragile psychological state, I find it particularly odious that he was also the subject of an article, with a photograph, in the local press[112] once again insinuating his links with terrorist circles without any evidence whatsoever. He told us that he now hardly dares to leave his home.

132. The case of Khaled El-Masri is exemplary. Some aspects still require further investigation and it is for that reason that inquiries are ongoing in the *Bundestag*'s Committee of Inquiry and by the Munich prosecutors. The story of El-Masri is the dramatic story of a person who is evidently innocent – or at least against whom not the slightest accusation could ever be made - who has been through a real nightmare in the CIA's "spider's web", merely because of a supposed friendship with a person suspected at some point in time of maintaining contacts with terrorist groups. El-Masri is still waiting for the truth to be established, and for an apology. His application to a court in the United States has been rejected, at least in the first instance: not because it seemed unfounded, but because the Government brought to bear so-called "national security" and "state secrecy" interests. This speaks for itself.

3.2. "The Algerian Six"

133. Six Bosnians of Algerian origin – four Bosnian citizens and two longstanding residents[113] were arrested in October 2001 by order of the Supreme Court of the Federation of Bosnia and Herzegovina and

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[108] This appears to be the argument of the German government, in the context of the talks between Federal Chancellor Angela Merkel and American Secretary of State Condoleezza Rice (cf. the link to the record of the joint press conference by Mrs Merkel and Mrs Rice on 6 December 2005 [http://www.state.gov/secretary/rm/2005/57672;htm]. Mrs Merkel confirmed that she had spoken to Mrs Rice about the El-Masri case and said that the American government, the American administration, had admitted that the man had been taken by mistake and that the American administration did not deny in principle that this had occurred).

[109] Page 165.

[110] Mr El Masri stated in our talks that he had not even been questioned about this train journey mentioned in the report on 11 September. In his written deposition to the Virginia court (Declaration of Khaled El-Masri in support of plaintiff's opposition to the United States' motion to dismiss [...] dated 6 April 2006, p. 13), he said that he was interrogated in Afghanistan also about his alleged association with important terrorists such as Muhammad Atta, Ramzi Bin Al-Shibh and other presumed extremists based in Germany.

[111] To the surprise of El-Masri and his lawyer, Mr Gnjidic, the prosecutor's office immediately announced to the press that the identification of "Sam" had failed. Subsequently the magazine "Stern" unearthed a CIA agent of German origin, Thomas V., who spoke German with the "north German" accent detected in "Sam" by El-Masri who had been posted in 2000 to the United States Consulate General in Hamburg and who might be "Sam"[111]. The Munich prosecutor in charge of the case, Mr Hofmann, now rules out the possibility of "Sam" being the same person as the federal agent Lehmann, believing that it is now almost fully established that he was present at the *Bundeskriminalamt* office in Berlin throughout May 2004. But Mr El-Masri and his German lawyer Gnjidic remain convinced that "Sam" is indeed Lehmann, and that the Thomas V. trail was intended mainly to exonerate the German services.

[112] See Neu Ulmer Zeitug, *Islamisten zieht es nach Ulm; Multi-Kultur-Leute treffen sich jetzt im Donautal – Welche Rolle spielt Khaled El-Masri?* 15 March 2006.

[113] Mustafa Ait Idir, Hadz Boudella, Lakhdar Boumediene, Saber Lahmar and Mohammed Nechle and Belkacem Bensayah.

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detained on remand. They were suspected of having planned bomb attacks on the American and British embassies.

134. The investigation, between October 2001 and January 2002, did not reveal any evidence linking these men to a terrorist plot. On 17 January 2002, the office of the federal prosecutor informed the investigating magistrate at the supreme court that he had no reason to keep the men in custody any longer. On that same day at about 3pm the investigating magistrate ordered the immediate release of the six men.

135. Again on the same day, at about 5pm, the Human Rights Chamber of Bosnia and Herzegovina issued an interim order, following an application lodged by four of the men[114]. The order, which had statutory force in Bosnia according to the Dayton peace accords, required the Government of Bosnia and Herzegovina to take all necessary steps to prevent the forcible deportation of the applicants from Bosnia and Herzegovina.

136. However, on the evening of 17 January 2002 the six men were arrested by Bosnian police officers, and handed over to members of the United States military forces stationed in Bosnia and Herzegovina on the morning of 18 January. This is recorded as an established fact in a judgment of the Human Rights Chamber for Bosnia and Herzegovina of 4 April 2003[115]. The Chamber refers to a document of the Council of Ministers dated 4 February 2002, according to which members of the police forces of the Federation under the authority of the Federal Minister of the Interior and of forces of the Minister of the Interior of the Canton of Sarajevo handed the applicants over to the American forces at the Butmir base on 18 January at 6am.

137. According to the victims' evidence, transmitted by their lawyers[116], the six victims were handcuffed in uncomfortable positions and hooded so that they could not see the aircraft which they were forced to board, at a given time on 18 or 19 January 2002. According to the lawyers, official documents obtained in the course of the judicial proceedings in progress show that two aircraft were assigned to this operation[117], and that the aircraft which the six men were made to board was at the Tuzla military base. After a flight of several hours, the aircraft landed and the six men were made to disembark, at a place which they describe as very cold[118]. During the flights the men were beaten and tied up in uncomfortable positions. At the stopover – probably Incirlik – they were joined by other detainees, some of whom said they came from Afghanistan. The human cargo arrived at Guantanamo on 20 January 2002.

138. The six men have been prisoners at Guantanamo until the present time, that is to say for over four years.

139. The illegal nature of these detentions was recognised by the Human Rights Chamber for Bosnia[119]. In the three decisions, the Chamber invited the Government of Bosnia to assist the six men, including recourse to diplomatic and judicial means. In the decision of 4 April 2003 concerning Mr Ait Idir, the Chamber even ordered the Government of Bosnia to take all possible steps to secure the release of the applicant and his return home[120].

140. The Bosnian government has recognised its legal obligations but not complied with them.

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[114] cf. Boudella, Boumediene, Nechle and Lahmar v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, Human Rights Chamber for Bosnia and Herzegovina, cases nos. CH/02/8679, CH/02/8690, CH/O2/8691, Order for Provisional Measures and on the Organization of the Proceedings, 17 January 2001.

[115] Case no. CH/O2/9499, Bekasem Bensayah against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina (cf. in particular paras. 50 et 164).

[116] The international law firm Wilmer Hale, which supplied written documentation and oral testimony (Mrs Karin Matussek on 11 April 2006 to our committee, and Mr Steven Oleskey to the temporary committee of the European Parliament, on 25 April 2006.) My representative also met with four WilmerHale attorneys working on this case at their offices in Boston, USA in May 2006. I am grateful to this firm for its excellent cooperation.

[117] Two C-130 cargo planes bearing serial numbers UJM166301019 and UQU09Z10L019, one of which also used the American base at Ramstein in Germany for the purposes of this operation. The documents in question also show that the aircraft transporting the six men stopped over at the American base at Incirlik in Turkey.

[118] The six men think it might have been in Turkey, on the basis of what little they were able to see and hear.

[119] Afore-mentioned judgment of 4 April 2003 concerning Mr Bensayah and Mr Ait Idir; in a judgment of 11 October 2002, the Chamber had already decided the cases of the other four men (Boudellaa, Boumediene, Nechle and Lahmar against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, cases nos. CH/02/8679, CH/02/8689, CH/02/8690, CH02/8691, decision of 11 October 2002).

[120] Idem, para. 168.

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141. In the Council of Ministers document cited by the Human Rights Chamber[121], the Government of Bosnia and Herzegovina admitted that the six men had been "handed over" to the American forces by the Bosnian authorities without extradition formalities being observed[122].

142. On 21 April 2004, the Human Rights Committee of the Parliament of Bosnia and Herzegovina exhorted the Bosnian executive to execute the decision of the Human Rights Chamber and start proceedings with the United States for the repatriation of the detainees. Its report was endorsed by the parliament chamber on 11 May 2004.

143. On 11 March 2005, the Minister of Justice confirmed that the Bosnian government had sent a letter to the American government requesting the return of the six men.

144. On 21 June 2005, the Bosnian Prime Minister Mr Adnan Terzic confirmed before the Parliamentary Assembly of the Council of Europe[123] the importance of this case as an indicator of democratic progress in Bosnia, and declared his willingness to identify the best way of ensuring the release of the six Bosnian citizens and former residents from Guantanamo, in accordance with Parliamentary Assembly Resolution 1433 (2005).

145. Lastly, on 16 September 2005, the Bosnian parliament adopted a resolution inviting the Council of Ministers of Bosnia and Herzegovina to make contact with the American government in order to resolve the problem of the six men as rapidly as possible.

146. It is all the more surprising that, in spite of all these promising declarations, including that of the Prime Minister to the Parliamentary Assembly of the Council of Europe, there has been no government initiative aimed at the release of the six men.

147. According to their lawyers[124], the American government has declared on several occasions that it is willing to enter into bilateral discussions with the governments of countries whose citizens are detained at Guantanamo in order to arrange their repatriation, subject to adequate security conditions. In the case of the six men in question, such measures would be unnecessary anyway, since the charges against them have already been investigated by the competent authorities and those investigations have shown that they are innocent. Nonetheless, the Bosnian government has apparently made no credible move to initiate negotiations in that direction[125].

148. The innocence of the men in question – which is in any event presumed, and is in no sense a condition for treating the suspects in accordance with legal rules – has just been strengthened by a report drawn up by the German military. This report, produced in decidedly unusual circumstances[126], which also

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[121] Note 115 above.

[122] The Human Rights Chamber, in the above-mentioned Bensayah judgment (note 114), explains in a relevant manner that the "handing over" of the applicant can in no way be deemed to constitute extradition. In particular, the note dated 17 January 2002 from the US embassy cannot be regarded as a request for extradition by the United States. In that note, the US embassy in Sarajevo informs the Government of Bosnia and Herzegovina that it is willing to take charge of the six Algerian citizens in question and offers to arrange for the physical transfer of these persons at a time and place suitable to both parties.

[123] In reply to a question from our former colleague Kevin McNamara, following Resolution 1433 (2005) adopted by the Parliamentary Assembly on 26 April 2005, calling on all Council of Europe member States, including Bosnia and Herzegovina, to protect the rights of their citizens or residents detained at Guantanamo and to have them released and repatriated.

[124] Memorandum of 12 April 2006, addressed to the Temporary Committee of the European Parliament.

[125] See Matthew A. Reynolds, Acting Assistant Secretary, Legislative Affairs, US Department of State, letter to Senator James M. Jeffords, response to a requeset for information (copy on file with the Rapporteur), 15 June 2005: *"Although the Government of Bosnia and Herzegovina has made several inquiries regarding the condition of each detainee and has asked for their release, it has not indicated that it is prepared or willing to accept responsibility for them upon transfer."*

[126] German military personnel posed as journalists in order to conduct an interview with Mr Bensayah's wife, Mrs Anela Koblica, on 17 June 2003. The report subsequently drawn up by the German military concluded that the grounds on which the six men were arrested and deported were *"highly dubious"* and that documents examined gave rise to the suspicion that at least some of the six had been *"subjected to an injustice"*.

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aroused the interest of the German media and parliamentarians[127], concluded *inter alia* that the reasons for arresting the six men were "highly dubious"[128].

149. In my opinion, the case of the "Bosnian six" is another well documented example of the abduction of European citizens and residents by the American authorities with the active collusion of the authorities of a Council of Europe member state. The government of Bosnia and Herzegovina has the merit of no longer denying the fact that it handed over the six men to the American forces. According to information I have received[129], the Bosnian authorities acted under extraordinary pressure from the American embassy in Sarajevo, but the fact remains that they acted in violation of clear decisions by the Supreme Court and the Human Rights Chamber ordering the release of these men. If the damage to the good human rights reputation of Bosnia and Herzegovina is to be repaired, official recognition of the facts is an important step in the right direction, but it must be followed as swiftly as possible with credible diplomatic intervention vis-à-vis the American government in order to secure the rapid repatriation of these six men, who have now been festering in Guantanamo Bay for over four years.

3.3. Ahmed Agiza and Mohammed Alzery (El Zari)

150. The case of the two Egyptian asylum-seekers "handed over" by the Swedish authorities to American agents who took them to Egypt, where they were tortured in spite of diplomatic assurances given to Sweden, is another very well documented case. It led to Sweden's being condemned by the United Nations Committee against Torture (UN-CAT)[130]. The Swedish authorities were also criticised for having attempted to conceal the facts from UN-CAT[131].

151. The affair was brought to public notice mainly by the "Kalla Fakta"[132] television programme, and research by the Swedish investigative journalists blew open the secret system of CIA aircraft transporting clandestine prisoners in the "war against terrorism". The aircraft used for this operation – a Gulfstream, number N379P – has become one of the most notorious "rendition" aircraft[133].

152. The behaviour of the Swedish secret police (Säpo) gave rise to a detailed investigation by the Swedish parliamentary ombudsman, Mats Melin[134]. The judicial authorities also examined the case and concluded that there were no grounds for a criminal prosecution against either the Swedish agents involved, or the pilot of the aircraft, or other American agents who were part of the team responsible for transporting Mr Agiza and Mr Alzery to Egypt[135].

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[127] See, for example, http://www.tagesschau.de/aktuell/meldungen/0,1185,OID5072374,00.htm . Journalists' associations protested vehemently at methods of investigation that involved intelligence agents masquerading as journalists, as this exposed real journalists to suspicion and possible reprisals.

[128] From a confidential source, I received a copy of this report, which, it was claimed, was deleted from the German military archives and never received by the German embassy in Sarajevo, to which it was said originally to have been addressed. See *Supplementary Intelligence Report*, 16 July 2003 (copy on file with the Rapporteur).

[129] See for example the Wilmer Hale memorandum of 12 April 2006, at page 3, supported by a wealth of documents given to us by Wilmer Hale, copies of which are all on file with the Rapporteur.

[130] United Nations Committee against Torture, decision of 20 May 2005, CAT/C/34/D/233/2003; see also United Nations Committee against Torture, Conclusions and recommendations of the Committee against Torture: Sweden. 06/06/2002, CAT/C/CR/28/6 (Concluding Observations/Comments), and the Swedish reply (Comments by the Government of Sweden on the Concluding Observations of the Human Rights Committee (CCPR/CO/74/SWE) of 14 May 2003. In that reply (para. 16), the Swedish government said that in its opinion, the "assurances" given by Egypt were being and would continue to be fully respected, and that the government had received no information to cast doubt on that conclusion.

[131] See "Kalla Fakta" (note 131 below), page 10 : the Swedish reply to the final observations (note 129 above) seems to be contradicted by the first report of the Swedish Ambassador in Egypt, according to which Mr Agiza had spoken to him about the abuse and violence which he and Mr Alzery had suffered. According to "Kalla Fakta", the Swedish government had filed this information and refused to hand it to the United Nations. In its decision of 20 May 2005 (note 129 above, para. 13.10), UN-CAT notes that Sweden has not fulfilled its obligation to co-operate fully with the Committee, and has not made all the relevant and necessary information for resolving the case available to the Committee.

[132] Translation of the title of the programme: "Cold facts"; a transcript of the broadcast of 22 November 2004 was provided to me by TV4.

[133] Kalla Fakta has given an account of its research into the owner of N379P, Premier Executive Transport Services. Posing as potential clients, journalists satisfied themselves as to the governmental, clandestine nature of this firm (cf. transcript, note 131 above, pages 4-5).

[134] See Mats Melin, Parliamentary Ombudsman (Sweden), *A review of the enforcement by the Security Police of a Government decision to expel two Egyptian citizens*, Adjudication No. 2169-2004, dated 22 March 2005. (Translated copy on file with the Rapporteur.)

[135] *Ibid*, at page 3.

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153. In short, the facts occurred in the following manner: on 18 December 2001, Mr Agiza and Mr Alzery, Egyptian citizens seeking asylum in Sweden, were the subject of a decision dismissing the asylum application and ordering their deportation on grounds of security, taken in the framework of a special procedure at ministerial level. In order to ensure that this decision could be executed that same day, the Swedish authorities accepted an American offer to place at their disposal an aircraft which enjoyed special overflight authorisations[136]. Following their arrest by the Swedish police, the two men were taken to Bromma airport where they were subjected, with Swedish agreement, to a "security check" by hooded American agents.

154. The account of this "*check*" is especially interesting, as it corresponds in detail to the account given independently by other victims of "rendition", including Mr El-Masri. The procedure adopted by the American team, described in this case by the Swedish police officers present at the scene[137], was evidently well rehearsed: the agents communicated with each other by gestures, not words. Acting very quickly, the agents cut Agiza's and Alzery's clothes off them using scissors, dressed them in tracksuits, examined every bodily aperture and hair minutely, handcuffed them and shackled their feet, and walked them to the aircraft barefoot.

155. The ombudsman condemns as degrading the way in which the detainees were treated from the time when they were taken charge of by the American agents until the end of the operation when the two men were handed to the Egyptian authorities. He does not consider that it constitutes torture for the purposes of Article 3 of the European Convention on Human Rights, but asks the question – though he does not answer it – whether the execution of the deportation order nonetheless violates Article 3. In any event, he finds that the operation was carried out in an inhuman and therefore unacceptable manner[138].

156. According to the ombudsman's findings, the Swedish officers, who were poorly led, lost control of the operation from the start of the American team's intervention. They ought to have intervened to put an end to the degrading treatment of the detainees, which was not justified on security grounds since the Swedish police had already carried out a body search on the detainees at the time of arrest.

157. Prior to deportation of the two men to Egypt, Sweden sought and obtained "diplomatic assurances" that they would not be subjected to treatment contrary to the anti-torture convention, would have fair trials and would not be subjected to the death penalty. The "assurances" were even backed up by a monitoring mechanism, regular visits by the Swedish Ambassador and participation by Swedish observers at the trial.

158. Developments in the case show that these "assurances" were not honoured. Mr Alzery's lawyer, Kjell Jonsson[139], states that extremely grave acts of torture took place[140]. Although Mr Alzery was released from prison in October 2003, he is not allowed to leave his village without permission from the authorities. Mr Agiza was sentenced to 25 years imprisonment by a military court in a trial from which the Swedish observers were excluded for the first two days out of a total of four. Despite the fact that Mr Agiza complained of torture during his detention, which lasted over two years after his forced return to Egypt, and despite the fact that the prison doctor's report did record physical injuries sustained in prison, the military court did not act on the defence request for an independent medical examination[141].

159. The UN-CAT decision shows that the "diplomatic assurances", even with follow-up clauses attached, are not such as to prevent the risk of torture[142]. The deporting state therefore still bears responsibility.

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[138] An internal Säpo report seems to indicate that the American involvement was approved by the Ministry of Foreign Affairs; persons who attended the meeting with the minister and were questioned by the ombudsman have no recollection that this was mentioned.

[137] Owing to lack of space in the room made available to the Americans, the Swedish police were not able to observe everything. In particular, they did not see that (tranquillising) suppositories were administered and that diapers were affixed, as the detainees maintain, and as was done in other "renditions". See the earlier section of this report on the "Human Impact of Renditions and Secret Detentions".

[138] See the report by Mats Melin, *supra* note 134, page 23.

[139] Mr Jonsson testified before the Temporary Committee of the European Parliament on 23 March 2005; he spoke at great length with a member of my team during his visit to Brussels.

[140] Electric shock torture was used, with electrodes fixed to the most sensitive parts of the body, in the presence of a doctor who assesses what electrical charge the prisoner can survive. In order to prevent marks, the places affected are treated specially at the end of each torture session.

[141] A representative of Human Rights Watch observed the entire trial ; the observed violations of the rights of the defence are listed in a HRW communiqué of 5 May 2005 (Sweden Implicated in Egypt's abuse of Suspected Militant – Egypt violated diplomatic promises of fair trial and no torture for terrorism suspect (http://hrw.org/english/docs/2004/05/05/egypt8530_txt.htm).

[142] Diplomatic assurances are not the focus of my mandate; here, nevertheless, are two very pertinent reports on the subject: Amnesty International, *"Diplomatic Assurances" – no protection against torture or ill-treatment*, report No. ACT

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160. All things considered, the Swedish case of Agiza and Alzery cannot be classed as "abduction" by the CIA. The two men were the subject of a Swedish deportation procedure following dismissal of the asylum application; that procedure was severely criticised by UN-CAT, and rightly so: the immediate execution of the decision deprived the two men of any possibility of appeal, including under the United Nations Convention against Torture – an appeal which moreover would have stood a good chance of success, in view of the risk of torture they faced in Egypt. Other criticisms directed at Sweden are the "slack" implementation of the follow-up clause relating to the assurances obtained prior to extradition[143], and above all the fact that Sweden did not send UN-CAT all the relevant information[144]. On the other hand, with regard to the ill-treatment of the prisoners at Bromma airport and in the aircraft, the reproach is aimed primarily at the United States. I share Mats Melin's view that such degrading and humiliating treatment is unacceptable.

161. Nonetheless, in my opinion it is for Sweden to clarify further the reasons and responsibilities: how was it that the Swedish officers present on the scene allowed their American counterparts to do as they wished, letting them take control of this operation while still on Swedish soil?

3.4. Abu Omar

162. At midday on 17 June 2003, Hassam Osama Mustafa Nasr, known as Abu Omar, an Egyptian citizen, was abducted in the middle of Milan. Thanks to an outstanding and tenacious investigation by the Milan judiciary and the DIGOS police services, Abu Omar's is undoubtedly one of the best-known and best-documented cases of "extraordinary rendition"[145]. Via the military airbases at Aviano (Italy) and Ramstein (Germany), Abu Omar was flown to Egypt, where he was tortured before being released and re-arrested. To my knowledge, no proceedings were brought against Abu Omar in Egypt. The Italian judicial investigation established beyond all reasonable doubt that the operation was carried out by the CIA (which has not issued any denials). The Italian investigators likewise established that the presumed leader of the abduction operation – who had also worked as the American consul in Milan – was in Egypt for two weeks immediately after Abu Omar was handed over to the Egyptian authorities. It may safely be inferred that he contributed, in one way or another, to Abu Omar's interrogation. The proceedings instituted in Milan concern 25 American agents, against 22 of whom the Italian judicial authorities have issued arrest warrants. Abu Omar was a political refugee. Suspected of Islamic militancy, he had been under surveillance by the Milan police and judicial authorities. As a result of the surveillance operation, the Italian police were probably on the verge of uncovering an activist network operating in northern Italy. Abu Omar's abduction, as the Milan judicial authorities expressly point out, sabotaged the Italian surveillance operation and thereby dealt a blow to the fight against terrorism. Is it conceivable or possible that an operation of this kind, with a deployment of resources on this scale in a friendly country that was an ally (being a member of the coalition in Iraq), was carried out without the Italian authorities – or at least the corresponding Italian officials – being informed? The Italian Government has denied having been informed. There has recently been a significant new development in the investigation by the Milan prosecuting authorities, however: an agent belonging to an elite *Carabinieri* unit has admitted taking part in Abu Omar's abduction as part of an operation co-ordinated by the military intelligence services (SISMI)[146]. But General Pollari, head of SISMI, had formally denied any SISMI participation in the abduction; he had even affirmed that he had only been informed of this episode after the abduction itself[147].

40/021/2005, 1 December 2005; and Human Rights Watch, *Still at Risk: "Diplomatic Assurances" No Safeguard against Torture*, Report No. 17, Vol. 3D, 17 April 2005.

[143] See the afore-mentioned HRW communiqué of 5 May 2005: the first visit Mr Agiza received from a Swedish diplomat was only five weeks after his arrival in Egypt, despite the fact that experience shows that torture and ill-treatment take place during the first days of detention. Furthermore, the Swedish diplomats, who were not trained to recognise signs of torture, apparently gave several days' notice of their visits, and all conversations were apparently monitored by the Egyptian warders.

[144] Sweden justifies the fact that it did not send its ambassador's first visit report, in which Mr Alzery's complaints of ill-treatment are recorded, for fear of reprisals against the detainees, given doubts about respect for confidentiality within UN-CAT. But in any case those complaints were known to the Egyptian authorities, who were represented during the ambassador's visit.

[145] I met the prosecutor heading the investigation, Armando Spataro, and was able to obtain as full information as confidentiality and procedural requirements permitted. The Abu Omar case is likewise described in the aforementioned book by Guido Olimpio, *Operazione Hotel California*, Feltrinelli, October 2005. The main documents in the judicial investigation have been collected and reproduced in a book by Guido Ruotolo and Vincenza Vasile: *Milano-Cairo. Viaggio senza ritorno. L'iman rapito in Italia dalla CIA*, Tullio Pironti Editore, 2005.

[146] See *Corriere della Sera* and *La Repubblica* of 11 May 2006.

[147] Statement of General Pollari at the meeting of the TDIP on 6 March 2006.

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3.5. Bisher Al-Rawi and Jamil El-Banna

163. This case, which concerns two British permanent residents arrested in Gambia in November 2002 and transferred first to Afghanistan and from there to Guantanamo (where they still are) is an example of (ill-conceived) cooperation between the services of a European country (the British MI5) and the CIA in abducting persons against whom there is no evidence justifying their continued detention in prison and whose principal crime is to be on social terms with a leading Islamist, namely Abu Qatada.

164. The information made public to date[148] shows that the abduction of Messrs Al-Rawi and El-Banna was indeed motivated by information – partly erroneous – supplied by MI5.

165. Bisher Al-Rawi and Jamil El-Banna were arrested in Gambia on 8 November 2002. They intended to join Mr Al-Rawi's brother Wahab, a British citizen, and help him set up a mobile peanut processing plant. The British authorities were well aware of this business trip[149]. On 1 November, Messrs Al-Rawi and El-Banna left on their trip, but did not get very far. At Gatwick airport they were arrested by reason of a suspect item in Mr Al-Rawi's hand luggage.

166. On the same day, a first telegram from MI5 informed the CIA that the two men had been arrested under the 2000 anti-terrorist act. That telegram contained false information, including the statement that Mr Al-Rawi was an Islamist extremist, and that the search of his luggage had revealed that he was carrying a sort of improvised electronic device which could be used, according to preliminary investigations, as a component of a home-made bomb[150].

167. The two men spent 48 hours in police custody, until the police decided that the "suspicious device" was nothing other than a battery charger on sale in several electronic goods shops (Dixons, Argos, Maplins). Mr Al-Rawi explained this when he was arrested, but it had to be checked. The conclusion to the charger episode – that it was indeed a "harmless device" – was communicated to the Ministry of Foreign Affairs by MI5 in a telegram of 11 November 2002. Unfortunately, there is no evidence that this information was ever conveyed to the CIA. The allegations concerning this "device" reappeared in their "trial" before the CSRT (Combatant Status Review Tribunal)[151] as "evidence" that they were "enemy combatants".

168. Messrs Al-Rawi and El-Banna returned home on 4 November 2002 and reorganised their trip to Gambia for 8 November. Meanwhile, several telegrams were sent by MI5 to the Americans concerning the two men, informing them that they knew Abu Qatada and that Mr El-Banna was the latter's "financier". It is true that the two men knew Abu Qatada[152]. On the other hand, according to the lawyers, Mr Al-Rawi had helped MI5 to prepare the non-violent arrest of Abu Qatada, and British agents had even thanked him for doing so[153].

169. On 8 November 2002, the day when the two men flew to Gambia, MI5 sent another telegram giving the flight details, including the departure of the delayed flight and the estimated arrival time. The telegram states that "*this message should be read in the light of earlier communications*". In addition, the telegram of 8

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[148] I wish to thank in particular my British colleague Andrew Tyrie, Chairman of the House of Commons All-Party Parliamentary Group (APPG) on renditions, who helped to arrange for two members of our committee secretariat to attend an APPG hearing withMr Al-Rawi and Mr El Banna's lawyers and family. This hearing took place on 28 March 2006. I also thank the two men's American and British lawyers, Mr Brent Mickum and Ms Gareth Peirce, along with Mr Clive Stafford-Smith, the legal director of REPRIEVE, for the detailed information they provided for my inquiries.

[149] Mr El-Banna informed his lawyer that two MI5 agents had come to his home and told him that they knew all about his planned trip. In reply to his question as to whether everything was in order, they said yes and wished him good luck. Mr El-Banna's wife confirmed this visit at the APPG hearing on 28 March 2006.

[150] Telegram of 1 November 2002, made public on 27 March 2006, with other telegrams dated 4, 8 and 11 November and 6 December 2002 ; these documents are normally classified secret, but came into the public domain after being cited on 22 and 23 March 2006 at a public hearing in the Queens Bench Division of the High Court in London, before Lord Justice Latham and Mr Justice Tugendhat. The telegrams were also the subject of the APPG hearing on 27 March 2006. It is clear to their lawyers that not everything is said in the telegrams, which moreover refer to other communications, including telephone calls.

[151] See US Department of Defense, unclassified Combatant Status Review Tribunal (CSRT) transcripts disclosed in the matter of *El-Banna et al v. Bush*, in the US District Court of Columbia (copies of all transcripts on file with the Rapporteur), October 2004.

[152] At the APPG hearing on 27 March 2006, Mr El-Banna's wife explained that their "social" relations derived from the fact that the three men had family ties with Jordan.

[153] Al-Rawi's cooperation with MI5 is said also to be the reason for several visits by MI5 agents to Guantanamo. The lawyers presented details of these conversations in public as recounted by their clients (copy in file). MI5 has not officially recognised this cooperation, which Al-Rawi also claimed in his depositions to the CSRT.

November does not mention, as the earlier telegrams do, that this information "*must not be used as the basis of overt, covert or executive action*".

170. At Banjul airport, Al-Rawi and El-Banna, accompanied by a collaborator, Mr El Janoudi, met Bisher Al-Rawi's brother Wahab, who had gone to Gambia one week before the others, and all four were arrested by Gambian agents. They were taken to a house outside Banjul. Mr Janoudi managed to telephone his wife in London, and another brother of Mr Al-Rawi, Numann, went to see his MP, Edward Davey, who informed the Foreign Ministry.

171. During the following days, according to Wahab's account, American agents were very present, but the detainees never saw a British official despite the fact that they asked to see a consular representative. Wahab stated at the APPG hearing that the CIA and Gambian officials repeatedly alluded to the fact that *"it is the British who have told us to arrest you"*. Mr El-Banna says he has continually been told the same thing during his subsequent detention at Guantanamo Bay:

> "*My interrogator asked me 'Why are you so angry at America? It is your Government, Britain, the MI5, who called the CIA and told them that you and Bisher were in The Gambia and to come and get you. Britain gave everything to us. Britain sold you out to the CIA*'"[154].

172. On 5 December 2002, after 27 days, Wahab was released and returned to the United Kingdom. Some days afterwards, on a Sunday, Bisher Al-Rawi and Jamil El-Banna were flown to Afghanistan in a military jet with over 40 seats. There were at least 7 or 8 American agents on board including a female doctor. Through their lawyers, the two men gave a detailed account of their degracing and humiliating treatment, many details of which echo the treatment suffered by other victims of "renditions"[155].

173. At Kabul, they were taken in less than 15 minutes to the prison identified as the "Dark Prison". The description of the inhuman detention conditions in this prison[156], an important link in the CIA "spider's web", corresponds in many details to that given by other victims of "renditions" who were brought there. After two weeks in this sinister prison, the two men were transferred to Bagram by helicopter. At Bagram they were imprisoned and ill-treated for a further two months. The American interrogators allegedly offered Mr El-Banna large sums of money in exchange for false witness against Abu Qatada. When these offers failed to produce the expected result, the interrogators allegedly threatened to send him back for a year to the "Dark Prison", followed by 5 or 10 years in Cuba, and made shameful threats against his family living in London[157].

174. Finally, the two men were transported to Guantanamo, where they were again subject to inhuman treatment. Mr Al-Rawi says he received many visits from MI5 agents, the first of them in early autumn 2003, and that he was interrogated by ten or so different CIA agents. One of the MI5 agents, he says, even apologised to him. In January 2004, two British agents ("Martin" and "Mathew") asked him whether he would be willing to work for MI5 again. Mr Al-Rawi replied that he would, provided that this would serve the cause of peace. Several months later, a certain "Alex" with whom Mr Al-Rawi had worked in London came to see him at Guantanamo, accompanied by an "attractive female agent". However, at the time of his "trial" before the CSRT, the British authorities refused to send to Guantanamo the witnesses he named or simply to confirm his links with MI5, thereby condemning him to continuous detention – detention which continues to this day, having lasted almost four years in all.

175. The families of Messrs Al-Rawi and El-Banna and their lawyers at the London firm Birnberg, Peirce & Partners brought an action to oblige the British government to make representations to the United States through diplomatic channels in order to secure the release and repatriation of the two men as soon as possible. According to the latest information, the British government has acted along those lines with regard to Mr Al-Rawi, but not with regard to Mr El-Banna. The judgment at first instance, given in May 2006, dismissed the families' complaints.

176. In view of these highly disturbing facts, I find that the British authorities must shed light on this case in full. I welcome the fact that our colleague, Andrew Tyrie, has devoted much energy to this matter in order for truth to be established in this disturbing case. Meanwhile, the United Kingdom, even if it has no

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[154] See El-Banna's statement to his lawyer, *supra* note 68.

[155] They were dressed in diapers, wore hoods without eye-holes, had their ears blocked up, their legs shackled and their hands painfully handcuffed behind their backs, and were denied access to toilets.

[156] *"Diabolically"* loud music round the clock, total absence of light, rotten food, no possibility to wash or use a toilet, uncomfortable handcuffing and leg shackling, cold cells, inadequate clothing, and the frequent beating and trampling of prisoners.

[157] I prefer not to quote this extremely upsetting testimony.

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recognised legal obligation, must make good the consequences of the apparently very imprecise communication between the MI5 and the American services. There is indeed little doubt that the arrest of the two men was largely triggered or at least influenced by the messages of November 2002, only part of which (the afore-mentioned telegrams) is public knowledge.

3.6. Maher Arar

177. Maher Arar, a Canadian citizen of Syrian origin, came to testify in public before the Temporary Committee of the European Parliament[158]. During a stopover on return from holiday in Tunisia, in September 2002, he was arrested at JFK airport in New York by American agents. After being detained in a high-security prison and interrogated for two weeks by the New York police, the FBI and the American immigration service, he was allegedly transported from New Jersey airport via Washington, Rome and Amman to a prison belonging to Syrian military intelligence[159]. He spent more than ten months there, during which he says he was tortured, abused and forced to make false confessions. During his stay in Syria, he says, he also heard the voice of a German prisoner being tortured. After a tenacious campaign by his wife, Mr Arar was able to have irregular contacts with Canadian diplomats posted in Syria. He says he has never been the subject of criminal charges in any country. Mr Arar stills suffers from post-traumatic stress syndrome following his terrible experience.

178. The American Government considers the "rendition" of Arar as a legitimate procedure in conformity with its immigration rules[160].

179. According to Mr Arar, the agents on board the aircraft never identified themselves, but he heard that they belonged to a *"special removal unit"*. In this specific case, the transfer of Mr Arar to Syria seems to be a well established example of the "outsourcing of torture", a practice mentioned publicly by certain American officials[161].

180. The question which interests us more particularly, in view of our mandate, is whether and if so, to what extent, the European states concerned (in particular Italy and Greece) were aware of the illegal transport of Mr Arar and perhaps even gave logistical support[162].

181. Another question is the role of the Canadian authorities in the matter. This question is the subject of a very thorough investigation by a special commission[163].

182. The initial report of the investigator Stephen J. Toope was published on 14 October 2005[164]. Mr Toope, who has lengthy experience in working with torture victims, has convincingly established the truthfulness of Mr Arar's depositions, which he has compared with those of other former Syrian prisoners held in the same prison run by Syrian military intelligence (Far Falestin). His report, which also mentions the findings of specialist doctors whom Mr Arar consulted on his return, describes in detail Mr Arar's treatment in Syria, which he unhesitatingly regards as torture within the meaning of the United Nations Convention against Torture. However, that report does not cover the part played by the Canadian authorities in the matter. This point will be covered in the final report of the Commission, which is expected to be published by the end of the summer of 2006[165]. It is thus premature to draw any conclusions at this stage[166].

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[158] Accompanied by his lawyer, he also had exhaustive talks with a member of the Committee's secretariat.

[159] This journey was retraced by a British investigative journalist, whose research is corroborated by data obtained by us from Eurocontrol and national air traffic control authorities. See *Flight logs related to the rendition of Maher Arar*, in the Appendix to this report.

[160] See Bellinger, *Briefing to European Delegation, supra* note XX: "With respect to Maher Arar, I can't comment on his case either. But I do know his case has gotten added to the list of so-called renditions, when in fact his removal was dealt with as an immigration matter, which is what all countries do when they find someone in their country and they don't want to prosecute them inside their countries. So he was expelled from the United States by order of an Immigration Court. I think that's a different situation. So this is not the same situation as these other cases."

[161] See the quotations reproduced in my information report of 22 January 2006.

[162] See *Flight logs related to the rendition of Maher Arar*, in the Appendix to this report.

[163] Commission of inquiry into the action of Canadian officials in relation to Maher Arar, set up on 5 February 2004 *"to throw light on the actions of the Canadian authorities concerning the deportation and detention of Maher Arar"*. The commissioner heading the inquiry is the Honourable Dennis R. O'Connor, deputy chief judge of Ontario.

[164] Available on the commission's website : www.commissionarar.ca; the reports of experts/witnesses, the rules of procedure and – albeit greatly truncated – summaries of the hearings in camera are among other items also published on this website.

[165] See the communiqué of 11 April 2006, indicating that the delay (five months after the date originally planned) is *"largely attributable to the process that was adopted to analyse reports in regard to the government's requests designed to protect certain information on grounds of confidentiality in connection with national security (CLSN)"*. The communiqué

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183. The working methods of this commission, a genuine commission of inquiry with real powers of investigation, empowered to take cognisance of classified information, strike me as very interesting. However, Mr Paul Cavalluzo, principal lawyer to the Commissioner, the Honourable Dennis O'Connor, has reportedly deplored the tendency of the Canadian authorities to use national security confidentiality; Mr Arar's lawyers, Lorne Waldman et Marlys Edwardh, have accused the Government to "hide behind" official secrecy considerations.

3.7. Muhammad Bashmila and Salah Ali Qaru

184. The cases of Mr Bashmila and Mr Ali Qaru are described in an Amnesty International report[167] based on inquiries made on the spot and intensive discussions with the victims. It is likely that they owe their recent release to Amnesty's commitment. The two men, who have never been accused of the slightest terrorist crimes, were arrested in Jordan and disappeared, as far as their families were concerned, into the American "spider's web" in October 2003[168]. According to AI's investigations, they were held in at least four secret American detention centres, probably in three different countries. The former detainees themselves say that they spent time in Djibouti, Afghanistan and - of particular interest to us - "*somewhere in eastern Europe*". The exact location of the place where they spent the final 13 months from the end of April 2004 onwards remains unknown. The men gave a precise description of their place of detention, which has not yet been published in full[169], and of the route along which they were taken. Particularly intriguing is their return flight to Yemen on 5 May 2005, reportedly a non-stop flight lasting approximately seven hours. I wrote to the Yemeni authorities and asked where the plane had come from, and the arrival of the aircraft on that date with the two men on board was officially confirmed to me. Unfortunately, although I wrote again, I have not yet received the specific information requested. Since the aircraft concerned was probably a military one, the information obtained from Eurocontrol has also been unable to clarify this matter. We have been unable to locate a site corresponding to the description provided.

3.8. Mohammed Zammar

185. Mr Zammar, a German of Syrian origin, was suspected of having been involved in the "Hamburg cell" of Al Qaeda and had been under police surveillance for several years in Germany. After 11 September 2001, he had been the subject of a criminal investigation for "support for a terrorist organisation", but there was insufficient evidence to keep him in prison.

186. On 27 October 2001, he is reported to have left Germany for Morocco, where he spent several weeks. When he attempted to return to Germany, he was allegedly arrested by Moroccan officials at Casablanca airport early in December, and to have been questioned by Moroccan and American officials for over two weeks. Towards the end of December 2001, he is said to have been flown to Damascus, Syria, on a CIA-linked aircraft[170].

187. The case has received extensive press coverage[171], and there have been allegations that Mr Zammar's arrest in Morocco was facilitated through the provision of information by German services, that he was tortured by Syrian services and that he was questioned in Syria by German officials.

188. A detailed German government report to the *Bundestag*, a copy of which I have obtained[172], gives a balanced version of this affair.

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describes in detail the procedures followed where the government invokes CLSN, disputes on the matter being settled in the last resort by the federal court.

[166] See the "summaries of hearings in camera" (note 163 above), in particular para. 12 pp and 33 Given the provisional and incomplete nature of these summaries, I prefer not to comment in greater detail.

[167] Below the radar: secret flights to torture and "disappearance", 5 April 2006, AI Index: AMR 51/051/2006. My particular thanks go to Mrs Anne Fitzgerald for her co-operation with our committee's secretariat on this subject.

[168] AI's report (pp 9-16) gives a precise description of the sufferings of the victims and their families.

[169] Cf AI report (pp 13 and 14). One particularly interesting piece of information is a geographical deduction based on the prayer times provided, which were taken from an Internet site (islamicfinder.org). The time of the sunset prayer ranged from 4.30 to 8.45 pm (allowing for the change to summer time, which the whole of Europe uses, but not Afghanistan, Jordan or Pakistan). This corresponds to a location north of the 41st parallel, so well to the north of the Middle East, and very probably within a Council of Europe member state.

[170] The Eurocontrol data available to us does not enable us to confirm this flight, which took place between two non-European airports.

[171] Examples are the items published in the Washington Post on 12 and 19 June 2002 and 31 January 2003, in *Der Spiegel* in July 2002 and November 2005, and in Focus of 20 September 2002, and shown on *Kalla Fakta* (the fourth Swedish TV channel) on 22 November 2004.

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189. Mr Zammar's arrest in Morocco was objectively facilitated by exchanges of information between the German services and their Dutch, Moroccan and also American counterparts. These exchanges of information about the travel plans of a person suspected of terrorist activities (the German government's report contains detailed information which seem to justify such suspicion) are part of normal international co-operation in the fight against terrorism. It cannot be deduced from the fact that the German services informed their colleagues of the dates on which Mr Zammar had flight reservations that it was their intention - or even that they suspected - that he would be arrested and held in violation of normal procedures. The facts date back to December 2001, well before the public revelations about the illegal practice of "rendition flights".

190. The German Ministry for Foreign Affairs and the Damascus and Rabat Embassies intervened several times, firstly to establish Mr Zammar's whereabouts, then to give him consular assistance during his detention in Syria. Syria refused any kind of consular intervention, on the basis of its non-recognition of his renunciation of Syrian nationality when he underwent naturalisation in Germany, a policy applied generally by Syria.

191. German officials did indeed question Mr Zammar in Syria. While Mr Zammar is said to have told his German interrogators that he had been beaten both in Morocco and in the early stages of his detention in Syria, but nothing supports the conclusion that this mistreatment related to the presence and intervention of the German agents. The German officials are reported to have found him in a good physical and psychological condition, although he had lost a considerable amount of weight. Relations between Mr Zammar and his Syrian guards did not seem tense, although the German visitors did note a somewhat authoritarian relationship.

192. As indicated above, a *Bundestag* committee of inquiry is looking into the matter, and it is appropriate to await its results.

3.9. Binyam Mohamed al Habashi

193. Binyam Mohamed al Habashi is an Ethiopian citizen who has held resident status in the United Kingdom since 1994. While many of his family members emigrated to the United States and became naturalised citizens there, Binyam moved to the UK as a teenager and claimed asylum. He spent seven years pursuing his education in London while his asylum application was considered in a protracted, ultimately unresolved process. He had problems with drugs and converted to Islam at the age of twenty.

194. Binyam is now detained at Guantanamo Bay and has been selected as one of the first group of ten prisoners to appear before a special United States Military Commission, probably later in 2006. We were able to view Binyam's diary, an account of the last five years of his life, and a series of letters he has written from Guantanamo. A member of my team was also able to hear first-hand testimony from members of his family and his legal representatives in the United Kingdom.

195. In treating Binyam's case in my report I shall avoid any reference to the charges he is likely to face before the Military Commission. Suffice to say that I regard such commissions generally as a flawed basis on which to prosecute allegations of the most serious nature, since the defendant's due process rights are severely impaired[173]. I do not consider these commissions to be fair hearings and I reiterate my position that the global effort to bring terrorist suspects to justice should depend primarily upon judicial remedies.

196. Of greatest concern in Binyam's case are the accounts of torture and other serious human rights violations which he says he has suffered. He speaks of being wounded all over his body with a scalpel and a razor blade, beaten unconscious and hung from the walls in shackles. He suffered gross physical injuries, including broken bones. He was constantly threatened with death, rape and electrocution.

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[172] Following my request to the Chair of the *Bundestag* committee responsible for monitoring the special services, I received a copy of the public version of this report. I also received from an anonymous source a version classified "confidential/for official use only", of which I made responsible use, in the spirit of the decision taken by the Legal Affairs Committee at its meeting of 13 March 2006 on the receipt of confidential information. I was also offered a copy of an even more detailed version classified "secret", which I opted not to accept for ethical reasons. place my trust in the members of the *Bundestag* to whom this document was addressed to take the necessary action on the basis thereof, including appropriate action to alert me to any fact reported in this version directly related to my terms of reference as rapporteur.

[173] Reference to the Executive Order that established Military Commissions for Guantanamo detainees, signed by President Bush in Oct / Nov 2001.

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197. It is difficult to say whether this account actually reflects reality. Let us just recall that some of these acts are included in what has been called "enhanced interrogation techniques", which have been developed by the United States in the "war on terror"[174]. Furthermore many of the abuses described by Binyam bear striking similarities to the allegations of other detainees who have been held in the same detention facilities at various points over the last few years[175].

198. Binyam's case is an example for the very numerous detainees – most of whose names and whereabouts we do not know – who have become trapped in the United States' spider's web during the course of the "war on terror". Binyam has been subjected to two CIA renditions, a US military transfer to Guantanamo Bay and several other clandestine transfers by plane and helicopter. He has been held in at least two secret detention facilities, in addition to military prisons. During his illegal interrogations, he has been confronted with allegations that could only have arisen from intelligence provided by the United Kingdom.

199. Binyam's family told my representative that he disappeared in the summer of 2001. His close-knit family subsequently endured several years of desperate uncertainty about his whereabouts and well-being, only partially clarified by their first visit from FBI agents three years later, in 2004. Although they have received a handful of letters from him in Guantanamo, none of the family has been able to see or speak to Binyam for five years.

200. According to his testimony, Binyam travelled voluntarily to Afghanistan in 2001[176] and spent some time there, probably several months, before crossing into Pakistan and seeking to return to the UK. He was arrested by Pakistani officials at Karachi Airport on 10 April 2002 for attempting to travel on a false passport. Within ten days of his arrest, he was interrogated by American officials. Upon asserting his right to a lawyer, and later upon refusing to answer questions, American officers are alleged to have told him: "*The law has been changed. There are no lawyers. You can co-operate with us the easy way, or the hard way. If you don't talk to us, you're going to Jordan. We can't do what we want here, the Pakistanis can't do exactly what we want them to do. The Arabs will deal with you.*"

201. The initial interrogations in Karachi involved Pakistani, American and British agents. Binyam was never accused of a particular crime and was told by MI6 agents that "*they checked out my story and said they knew I was a nobody*". When he was discharged from Pakistani custody, however, he was not released. Instead, the Pakistani security services took him to a military airport in Islamabad and handed him over to the United States.

202. Binyam testifies that he underwent his first rendition on 21 July 2002. He was set upon by unidentified people "*dressed in black, with masks, wearing what looked like Timberland boots*". He describes how they "*stripped [him] naked, took photos, put fingers up [his] anus and dressed [him] in a tracksuit. [He] was shackled, with earphones, and blindfolded*", before being forced onto an aircraft and flown to Morocco. Official flight records obtained by this inquiry show that the known rendition plane, N379P, took off from Islamabad on 21 July 2002 and flew to Rabat, Morocco.

203. Binyam has described various secret detention facilities in which he was held in Morocco, including one prison that was submerged "*almost underground*" and one more sanitary place in which he was apparently placed to recover from injuries sustained from his torture. Between July 2002 and January 2004 Binyam was tortured on numerous occasions by a team of interrogators and other officials, most of whom were Moroccan. Some of the officials wore masks, while others did not; at least one interrogator, who identified herself as a Canadian, is thought to have been an American CIA agent.

204. It appears that the object of the torture was to break Binyam's resistance, or to destroy him physically and psychologically, in order to extract confessions from him as to his involvement in terrorist activities. In addition to the sustained abuse and threats, the torturers used information, apparently obtained from intelligence sources, to indicate to Binyam that they knew a lot about him. Much of the personal information – including details of his education, his friendships in London and even his kickboxing trainer – could only have originated from collusion in this interrogation process by UK intelligence services.

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[174] Reference to some of the many documents on interrogation techniques obtained by the ACLU in its series of applications under the Freedom of Information Act.

[175] In this regard, see the Human Rights Watch reports on Temara in Morocco, plus a range of NGO and detainee accounts from the Dark Prison in Kabul.

[176] Binyam told his lawyer that he wanted to travel to Afghanistan to see the Taliban with his own eyes and decide "*whether it was a good Islamic country or not*". He also wanted to get away from a social life in London that revolved around drug use.

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205. Binyam has described his ill-treatment in Morocco to his lawyer in several phases: an initial "softening up"; a routine "circle of torture"; and eventually a "heavy" abuse involving mental torment and the infliction of physical injury. In the first few weeks of his detention he was repeatedly suspended from the walls or ceilings, or otherwise shackled, and brutally beaten: "*They came in and cuffed my hands behind my back. Then three men came in with black ski masks that only showed their eyes... One stood on each of my shoulders and the third punched me in the stomach. The first punch... turned everything inside me upside down. I felt I was going to vomit. I was meant to stand, but I was in so much pain I'd fall to my knees. They'd pull me back up and hit me again. They'd kick me in the thighs as I got up. They just beat me up that night... I collapsed and they left. I stayed on the ground for a long time before I lapsed into unconsciousness. My legs were dead. I could not move. I'd vomited and pissed on myself.*"

206. At its worst, the torture involved stripping Binyam naked and using a doctor's scalpel to make incisions all over his chest and other parts of his body: "*One of them took my penis in his hand and began to make cuts. He did it once and they stood for a minute, watching my reaction. I was in agony, crying, trying desperately to suppress myself, but I was screaming. They must have done this 20 to 30 times, in maybe two hours. There was blood all over. They cut all over my private parts. One of them said it would be better just to cut it off, as I would only breed terrorists.*"

207. Eventually Binyam began to co-operate in his interrogation sessions in an effort to prevent being tortured: "*They said if you say this story as we read it, you will just go to court as a witness and all this torture will stop. I could not take any more... and I eventually repeated what they read out to me. They told me to say I was with bin Laden five or six times. Of course that was false. They continued with two or three interrogations a month. They weren't really interrogations – more like trainings, training me what to say.*"

208. Binyam says he was subjected to a second rendition on the night from 21 to 22 January 2004. After being cuffed, blindfolded and driven for about 30 minutes in a van, he was offloaded at what he believes was an airport. Again, Binyam's description matches the "methodology" of rendition described earlier in this report: "*They did not talk to me. They cut off my clothes. There was a white female with glasses – she took the pictures. One of them held my penis and she took digital pictures. When she saw the injuries I had, she gasped. She said: 'Oh my God, look at that'.*"

209. The second rendition of Binyam Mohamed took place within the "rendition circuit" that I have identified in this inquiry. The aircraft N313P, operated on behalf of the CIA, is shown in my official data to have flown from Rabat to Kabul in the early hours of 22 January 2004. Two days later, as part of the same circuit, the same plane flew back to Europe and was used in the rendition of Khaled El-Masri[177].

210. Binyam Mohamed's ordeal continued in Kabul, Afghanistan, where he was held in the facility he refers to as "The Prison of Darkness"[178] for four months. Detention conditions in this prison amount to inhuman and degrading treatment. In addition, forcing prisoners to remain in painful positions, sleep alteration, sensory deprivation and other recognised "enhanced interrogation techniques"[179] are known to be deployed there routinely by the United States military and its partners. At various times, Binyam was chained to the floor with his arms suspended above his head, had his head knocked against the wall and describes "*torture by music*", involving the sounds of loud rap and heavy metal, thunder, planes taking off, cackling laughter and horror sounds that amounted to a "*perpetual nightmare*".

211. Up until his transfer by helicopter to Bagram at the end of May 2004, Binyam was not allowed to see daylight. He was persistently interrogated and told about terrorist plots and activities in which he was accused of involvement. He was subjected to irregular eating patterns and "*weird*" sessions with psychiatrists.

212. In a detention facility at Bagram Air Base, Afghanistan, Binyam was forced to write out a lengthy statement prepared by the Americans. The content of the statement is unknown to us. Binyam has told his lawyers that he wrote and signed this document in a state of complete mental disarray: "*I don't really remember [what I wrote], because by then I just did what they told me. Of course, by the time I was in Bagram I was telling them whatever they wanted to hear.*"

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[177] References to the sections on rendition circuits and the individual case of El-Masri.

[178] Many other accounts in the file of the Rapporteur refer to this facility as the "Dark Prison" or the "Disco Prison".

[179] These so-called "enhanced interrogation techniques", which are considered acceptable in the context of some interrogations by the Americans, were exposed by the ACLU in its application under the *Freedom of Information Act*. In particular, these techniques are enumerated in a document from the FBI, available at www.aclu.org.

213. The case of Binyam Mohamed is sufficient grounds for an urgent and decisive change of course in the international effort to overcome terrorism. The Council of Europe is duty-bound to ensure that secret detentions, unlawful inter-state transfers and the use of torture are absolutely prohibited and never resorted to again.

214. It remains to be seen whether a Military Commission process will decide for or against Binyam Mohamed. The only certain legacy of this case is the deeply disturbing recognition that a human being has, in his own words, been completely dehumanised: *"I'm sorry I have no emotion when talking about the past, 'cause I have closed. You have to figure out all the emotional part; I'm kind of dead in the head."*

4. Secret places of detention

215. After the publication of allegations by the Washington Post and Human Rights Watch[180], we centred our search on certain sites in Poland and Romania.

4.1. Satellite photographs

216. We obtained from the European Union Satellite Centre (EUSC) in Torrejón a number of satellite photographs of the sites concerned[181], some taken at different times. We studied these with the assistance of an independent expert.

217. These photographs do not constitute conclusive evidence. With the expert's help, we were able to identify several specific locations at a civil airport and a secret services base (in Poland) and at military airfields (in Romania) which would be very suitable for the secret detention of persons flown in from abroad. There are however hundreds of equally favourable locations throughout Europe. As the EUSC did not have available, for most of the places concerned, sequences of photographs which would have shown whether physical structures (huts, fences, watchtowers, and so on) had been altered (added or dismantled) at certain relevant times, the satellite photographs do not enable us to reach any conclusions with a high degree of certainty.

218. On the other hand, they did enable us to request certain clarifications from the Polish and Romanian delegations. All the replies we received, in my opinion, show a lack of transparency and genuine willingness to co-operate in the authorities concerned[182].

4.2. Documented aircraft movements

219. As we showed above, the information received from Eurocontrol and certain national air traffic control authorities, confirmed by witnesses' accounts, makes it possible to be sure that certain flights were made between known detention centres and the suspected places in Poland and Romania. The geographical position of these places making them unlikely to be used for refuelling, the period spent on the ground in these places by these aircraft, and in particular the fact that the landings in question belong to well-established "rendition circuits"[183], allow us to suspect that they are or were places of detention which form part of the "spider's web" referred to above.

4.3. Witnesses' accounts

220. Accounts given by witnesses to Amnesty International[184] make it look very likely that a relatively large place of detention had to be located in a European country, without any more detail.

221. A journalist working for German television[185] interviewed a young Afghan in Kabul who said that he had been held in Romania. This witness, very frightened and unwilling to give direct evidence to a member

[180] See para. 7 above.
[181] The following sites were captured in the satellite photographs: Cataloi, Fetesti and Mihail Kogalniceanu in Romania; and Szczytno / Szymany in Poland.
[182] In Poland's case, we detected, at an airfield said not to have been used for military purposes since the end of World War II, a very well-maintained double fence around a structure identified as containing munitions bunkers. Our question as to the reason for keeping this double fence in perfect condition did not receive a convincing reply. Where Romania is concerned, the authorities first stated that the construction works at the airbases concerned were merely being carried out to maintain existing infrastructure; only when the question was raised again, backed up by the only single-site photo sequence available to us, clearly showing the building of a new hangar and an extension of the aircraft parking area, did the Romanian authorities confirm that some new building had also been done.
[183] See para. 52 above.
[184] See para. 184 above, the case of Mr Bashmila and Mr Ali Qaru.

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of my team, was reported to have been told by a guard to whom he had complained about his conditions of detention that he was lucky in fact to be in Romania.

222. Let us recall also – as mentioned in my note of January 2006[186] - that according to a fax sent by the Egyptian Ministry for European Affairs to the Egyptian Embassy in London and intercepted by Swiss intelligence services, such centres had existed in Romania, Bulgaria, Macedonia, Kosovo and in Ukraine.

223. Both sources from inside the CIA referred to by the Washington Post, ABC and HRW are said to have named Poland and Romania, but without indicating specific places[187].

4.4. Evaluation

224. Whilst to date no evidence, in the formal sense of the term, has come to light, many coherent and convergent elements provide a basis for stating that these secret CIA detention centres have indeed existed in Europe, and we have seen that several indicators point at these two countries. As explained above, even if these elements do not constitute evidence, they are sufficiently serious to reverse the burden of proof: it is now for the countries in question to address their "positive obligations" to investigate, in order to avoid endangering the credibility of their denials.

5. Secret detentions in the Chechen Republic

225. Although massive violations of human rights in Chechnya began and were denounced long before the American "spider's web" was woven, it is regrettable and worrisome to observe that the two principal world powers cite the fight against terrorism as a reason to abandon the principle of respect for fundamental rights. This creates a mechanism of "reciprocal justification" and sets a deplorable example for other states.

226. It is hardly possible to speak of secret detention centres in Council of Europe member States without mentioning Chechnya. Mr Rudolf Bindig's very recent report also notes not only numerous cases of forced disappearance and torture, but also the existence of secret places of detention.

5.1. The work of the European Committee for the Prevention of Torture (CPT)

227. The situation in Chechnya, where unofficial places of detention are concerned, has already been roundly criticised by the CPT in two public declarations to which I referred in my memoranda of December 2005 and January 2006[188]. The positions expressed therein could not be clearer, but the Committee of Ministers of the Council of Europe has not yet given them the attention they deserve. During a very recent visit to the region, in May 2006, a CPT delegation again had grounds to believe that locations which might serve as unofficial places of detention were in the region[189].

5.2. Damning recent accounts by witnesses

228. Aaron Rhodes, Executive Director of the International Helsinki Federation for Human Rights (IHF), sent me an open letter dated 12 May 2006[190] accompanied by a report compiled by the IHF, with the help of Russian non-governmental organisations active in the region, containing damning accounts by the victims of secret detention and torture, often followed by enforced disappearance, in the North Caucasus region. Many of these cases were attributed to the *Kadyrovtsi*, the militia under the direct command of the current Prime Minister of the Chechen Republic, Ramzan Kadyrov. According to several of these accounts, some places used as unofficial places of detention were in Tsentoroy, the village where the Kadyrov family originated[191].

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[185] Ashwin Raman, one of the makers of an ARD documentary shown on the ARD channel on 1 March and on SWF on 8 March 2006.
[186] Information note dated 22 January 2006, para. 5 and 52.
[187] *Ibid*, see para. 7.
[188] See the two Public Declarations concerning the Chechen Republic, CPT/Inf (2001) 15 and CPT/Inf (2003) 33, available at: http://www.cpt.coe.int/documents/rus/2001-07-10-eng.htm
and http://www.cpt.coe.int/documents/rus/2003-33-inf-eng.htm
[189] Cf. CPT press release: http://www.cpt.coe.int/documents/rus/2006-05-09-eng.htm. Exceptionally, a CPT visit was interrupted when access to the village of Tsentoroy (Khosi-Yurt), south-east of Gudermes, was denied on 1 May 2006; the visit resumed the next day, when the delegation gained access to the village early in the afternoon.
[190] See the letter entitled: "*Secret prisons in Europe should be of concern to the Council of Europe*", authored by Aaron Rhodes, IHF; 12 May 2006; http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4249.
[191] See note 82 above.

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229. Concern about our Organisation's credibility means that these allegations deserve to be investigated in the same way as the violations committed by American services, especially as the Chechen Republic is on the territory of a member state of the Council of Europe.

6. Attitude of governments

230. It has to be said that most governments did not seem particularly eager to establish the alleged facts. The body of information gathered makes it unlikely that European states were completely unaware of what, in the context of the fight against international terrorism, was happening at some of their airports, in their airspace or at American bases located on their territory. Insofar as they did not know, they did not want to know. It is inconceivable that certain operations conducted by American services could have taken place without the active participation, or at least the collusion, of national intelligence services. If this were the case, one would be justified in seriously questioning the effectiveness, and therefore the legitimacy, of such services. The main concern of some governments was clearly to avoid disturbing their relationships with the United States, a crucial partner and ally. Other governments apparently work on the assumption that any information learned via their intelligence services is not supposed to be known[192].

231. The most disturbing case – because it is the best documented – is probably that of Italy. As we have seen, the Milan prosecuting authorities and police have been able, thanks to a remarkably competent and independent investigation, to reconstruct in detail the *extraordinary rendition* of the imam Abu Omar, abducted on 17 February 2003 and transferred to the Egyptian authorities. The prosecuting authorities have identified 25 persons responsible for this operation mounted by the CIA, and have issued arrest warrants against 22 of them. The then Justice Minister in fact used his powers to impede the judicial authorities' work: as well as delaying forwarding requests for judicial assistance to the American authorities, he categorically refused to forward the arrest warrants issued against 22 American citizens[193]. Worse still: the same Justice Minister publicly accused the Milan judiciary of attacking the terrorist hunters rather than the terrorists themselves[194]. Furthermore, the Italian Government did not even consider it necessary to ask the American authorities for explanations regarding the operation carried out by American agents on its own national territory, or to complain about the fact that Abu Omar's abduction ruined an important anti-terrorism operation being undertaken by the Milan judiciary and police. As I stated in my January 2006 memorandum, it is unlikely that the Italian authorities were not aware of this large-scale CIA operation. As mentioned in chapter 3.4 above, the investigation in progress shows that Italian officials directly took part in Abu Omar's abduction and that the intelligence services were involved.

232. In an effort to be impartial, I shall also discuss the example of my own country, Switzerland. As we shall see, a number of aircraft described as suspect and mentioned in the questionnaires sent to the member States landed in Geneva (and Zurich, as Amnesty International investigations subsequently showed). The United States did not respond to the Swiss authorities' requests for explanations for several months. A few hours before the annual clearance for aircraft flying on behalf of the American Government to overfly Swiss territory was due to expire, an American official apparently gave a Swiss Embassy representative in Washington verbal assurances that the United States had respected Switzerland's sovereignty and had not transported prisoners through Swiss airspace, thus simply reiterating the statement made by Ms Rice in Brussels on 5 December 2005. This assurance was very belated and, above all, not particularly credible in the light of the established facts: the Italian judicial authorities have established, on the basis of some very convincing evidence, that Abu Omar, abducted in Milan on 17 February 2003, was flown the same day from the Aviano base to the base at Ramstein in Germany, passing through Swiss airspace; this flight has been confirmed, moreover, by Swiss air traffic controllers. The Italian investigation also established that the head of the Milan operation stayed in Switzerland. The Swiss Government deliberately ignored these allegations[195] – despite their detailed and clearly serious nature – and settled for that vague, somewhat informal response from an official. It has taken a formalistic position, claiming that it did not have any evidence and, under international law, had to rely on the principle of trust. It clearly wished to renew the overflight clearance, which it quickly did without asking any further questions. The Confederal Prosecutor's Office has nevertheless opened a preliminary investigation to establish whether there have been violations of the law under Swiss jurisdiction in the Abu Omar case. At the same time, the Military Prosecutor's Office has begun an investigation aimed at identifying and punishing the perpetrator(s) of the leak which allowed the

[192] Some states' legislation expressly prohibits them from using or releasing information gathered by their intelligence services. This is the case in Hungary, for example.

[193] Article 4 of the extradition treaty between the United States and Italy also provides for the extradition of each country's own nationals. It should be added, however, that warrants issued by the Italian judiciary are enforceable in EU countries, as European arrest warrants do not have to be forwarded by the Ministry via diplomatic channels.

[194] ANSA agency, 27 February 2006, widely published in the Italian press.

[195] The Swiss federal prosecuting authorities have, however, instituted a preliminary investigation into these allegations.

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publication of the Egyptian fax intercepted by the intelligence services. The journalists who published this are also being prosecuted, on the basis of rules whose compatibility with the principles of the freedom of the press in a democratic system seems highly doubtful. A revelation made these days rekindles the criticism directed at the authorities accused of servile obedience towards the United States: according to press reports, based on apparently well-informed sources, the Swiss authorities are said to have deliberately failed to execute an international arrest warrant brought by the Italian judicial authorities following the abduction of Abu Omar in February 2003. Robert Lady, the head of the detail wanted by the police, who was at the time in charge of the CIA in Milan holding the title and status of Consul of the United States, is said to have stayed in Geneva very recently; the police had been ordered to merely carry out discrete surveillance.

233. The principle of trust has also been invoked by other governments. This is the case with Ireland, for example: the government has stated that there was no reason to investigate the presence of American aircraft, since the United States had given assurances[196]. In Germany, the government and the ruling parties opposed – ultimately in vain – the establishment of a parliamentary commission of inquiry, despite the significant questions being raised about the role of the intelligence services, particularly in the case of the abduction of El-Masri. Lastly, in November 2005 I sent a request for information to the United States Ambassador (an observer to the Council of Europe). The Ambassador responded by sending me the public statement made by the American Secretary of State on 5 December 2005. In particular, the latter stated that the United States had not violated the sovereignty of European states, that "renditions" had saved human lives and that no prisoners had been transported for the purpose of torture[197]. European ministers, meeting in the framework of NATO, hastened to declare themselves satisfied with these assurances[198]. Or almost[199].

234. It should be pointed out that some governments have deliberately assisted in "renditions". This is especially well established with regard to Bosnia and Herzegovina, which has rendered six persons to the American forces outside of any legal procedure, as established by the national judicial authorities, as we have noted above. This certainly deserves to be stressed and welcomed. It is true that the Government of Bosnia and Herzegovina was regrettably not particularly determined, but it should not be forgotten that this young republic had been strongly pressured by a great power present on its territory. We have already criticised the Macedonian authorities, which have locked themselves up in categorical denial without having carried out any serious enquiry. Sweden has also rendered two asylum seekers to American operatives for "rendition" to the Egyptian authorities, as formally condemned by the UN Committee against Torture. The Swedish authorities, despite this international condemnation and parliamentary requests to this effect have yet to commence a proper inquiry into these facts[200].

235. When the previous memoranda, which set out interim summaries, were published, criticisms were voiced that the evidence referred primarily to NGO reports and accounts related in the press. It should be pointed that without the work undertaken by these organisations and the investigations of competent and tenacious journalists, we would not today be talking about this affair – which, nobody can now dispute, has some basis in fact. Indeed, governments did not spontaneously or autonomously take any real action to seek evidence for the allegations, despite their serious and detailed nature. Critics included those who, given their existing or previous positions and responsibilities, could have helped to establish the truth. Furthermore, it is shocking that some countries put pressure on journalists not to publish certain news items (I have mentioned the cases of the ABC and the *Washington Post*) or prosecuted them for publishing documents deemed confidential[201]. Such zeal would have been better employed in seeking to ascertain the truth – a fundamental requirement in a democracy – and prosecuting those guilty of perpetrating or tolerating any kind of abuse, such as illegal abductions or other acts contrary to human dignity.

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[196] *We would not see any reason to because we have received categorical assurances from the US that they are not using Shannon in this way* (Irish Examiner, 22 February 2006).

[197] *The United States does not transport, and has not transported, detainees from one country to another for the purpose of interrogation using torture* (statement of 5 December 2005).

[198] The German Foreign Minister, Mr Steinmeier, emphasised the need for such clarification, because, he said, *we should not diverge from one another on the interpretation of international law* (AP 8 December 2005).

[199] *Only Bernard Bot, the Dutch Foreign Affairs Minister, considered the American explanations "inadequate"; Scandinavian diplomats also protested against the American services' use of "methods on the edge of legality". On the whole, however, the Europeans, headed by Britain's Jack Straw, kept a low profile so as not to offend the "iron lady" of American diplomacy.* (Le Figaro of 8 December 2005).

[200] As condemned by the Council of Europe's Commissioner for Human Rights in his statement on "fight against terrorism by legal means" published on the Council of Europe's website on 3 April 2006.

[201] In particular, this is what happened to the two Swiss journalists who, in early January 2006, published the content of the Egyptian fax, intercepted by Swiss intelligence services, mentioning the existence of detention centres in Eastern Europe. The two journalists have published a book outlining the circumstances by which they came into possession of the document: Sandro Brotz, Beat Jost, *CIA-Gefängnisse in Europa – Die Fax-Affäre und ihre Folgen*, Orell Füssli, 2006.

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236. The American administration's attitude to the questions being raised in Europe about the CIA's actions was, once again, clearly illustrated during the fact-finding visit to the United States by a delegation from the European Parliament's Temporary Committee (TDIP): no or few replies were given to the numerous questions. I have already discussed the response to my request from the United States Ambassador to the Council of Europe (3.1.4). It is obvious that if the American authorities did not constantly raise the objection of secrecy for national security reasons, it would be far easier to establish the truth. We find that today, this secrecy is no longer justified. In a free and democratic society, it is far more important to establish the truth on numerous allegations of serious human rights violations, many of which are proven to a large extent.

7. Individual cases: judicial proceedings in progress

7.1. A positive example: the Milan public prosecutor's office (Abu Omar case)

237. In this case, the Italian judicial authorities and police have shown great competence and remarkable independence in the face of political pressures. Their competence and independence was already proven during the tragic years stained with blood by terrorism. The Milan public prosecutor's office was able to reconstitute in detail a clear case of "rendition" and a regrettable example of the lack of international cooperation in the fight against terrorism[202]. As I have already said[203], the Italian judicial authorities have brought international arrest warrants against 22 American officials. In addition, the ongoing investigation seems to be in the process of showing that operatives belonging to the Italian services have participated in the operation.

7.2. A matter requiring further attention: the Munich (El-Masri case) and Zweibrücken (Abu Omar case) public prosecutors' offices

238. The German justice system gave its attention to the Abu Omar and El-Masri cases in terms of criminal proceedings for abduction against persons unknown. In the first-named case, normal co-operation took place with the Milan public prosecutor's office. As I have already stated, in my memorandum of January 2006, the Zweibrücken public prosecutor's office came up against a total lack of co-operation by the American authorities, who refused to provide any information on what had happened at the Ramstein base.

239. Where the second case is concerned, I have already[204] given some information showing that certain serious investigative measures have already been taken and that more remains to be done, especially in relation to the witnesses named by El-Masri and to clarification of the possible role played by the various German intelligence services.

7.3. Another matter requiring further attention: the Al Rawi and El Banna case

240. Where the case of Al Rawi and El Banna is concerned, the British justice system has had to deal with an application by the families of the persons concerned attempting to force the UK government to intercede with the US government to obtain the release of both men, who are still held at Guantánamo Bay. It was in the framework of this procedure that the telegrams proving that the MI5 was involved in the two men's arrest in Gambia came into the public domain. After proceedings had begun, the UK authorities agreed to intercede on Mr Al Rawi's behalf, but not on that of his fellow detainee, Mr El Banna, although he had been arrested for the same reasons with the assistance of the UK services. In May 2006, the action was dismissed by the court of first instance.

241. In view of the circumstances which have led up to the arrest of these two men, one may think that the UK government is under at least a moral and political obligation to do everything in its power to actively intercede to secure their release from Guantanamo so that they can return to the country.

7.4. Sweden: what next in the Agiza and Alzery case?

242. Sweden was condemned by the UN Committee against Torture in respect of the case of Mr Agiza and Mr Alzery, which led to an investigation by the parliamentary ombudsman, Mr Mats Melin. He noted that a preliminary investigation by the judicial authorities had culminated in the termination of the proceedings[205].

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[202] I talked to Chief Prosecutor Mr Spataro for several hours and I wish to thank him for being so generous with his time.
[203] In para. 162
[204] In para. 103
[205] See above, para. 152

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243. According to some criticisms, which do not appear unfounded, different aspects of the case need further investigation. This disguised extradition, without any possibility of appeal and judicial scrutiny, and the ill-treatment at Bromma airport, still on the ground, under the eyes of Swedish officials, as well as the incomplete information provided to UN-CAT are serious matters which require that the whole truth be exposed.

7.5. Spain

244. The Palma de Mallorca public prosecutor's office has begun an investigation following the transmission of a *Guardia Civil* file containing the names of the passengers on the aircraft which took off from the local airport bound for Skopje, where they were most likely joined by Mr El-Masri and flown on to Afghanistan[206].

7.6. Mr El-Masri's complaint in the United States

245. With the assistance of the American Civil Liberties Union[207], Mr El-Masri has taken judicial action in Alexandria, in Virginia, seeking compensation from the CIA. On 19 May 2006, his complaint was rejected by the court of first instance, without a ruling on the merits of his application, as the court accepted the US government's argument that continuation of the proceedings would have jeopardised national security. In the course of the trial, the CIA's secret methods would indeed become the subject of discussions before the court.

8. Parliamentary investigations

246. As long ago as January, I called on national parliaments to put questions to their governments and to begin inquiries, where appropriate, to clarify the role of European governments in this affair. A large number of questions were indeed raised in the parliaments of numerous Council of Europe member States, which is very gratifying. Unfortunately, the government replies were almost without exception vague and inconclusive. The German and UK parliaments were particularly active, whereas parliamentary reactions in three of the main countries concerned by the allegations that are the subject of this report (Poland, Romania and "the former Yugoslav Republic of Macedonia") were particularly feeble, if not inexistent.

8.1. Germany

247. Opposition MPs in Germany, although few in number since the recent elections, have put numerous questions to their government[208]. The replies were very general in every case[209]. The government systematically hid behind the responsibility of the parliamentary monitoring committee (*parlamentarisches Kontrollgremium*, known as the PKG) for dealing with matters relating to the activities of the secret services. A number of questions relating to the subject of this report have effectively been discussed within the PKG, but the government's detailed report to this very select group, which works in very carefully maintained secrecy, was classified "secret". The chair of the committee, Mr Röttgen (CDU), in response to my request, sent me the "public" version of this report, which is, frankly, not very informative and does not mention the individual cases raised by the media. The government attempted to avoid setting up a committee of inquiry by sending all members of the *Bundestag* a more informative version, classified "confidential", which contains some information about some of the aforementioned individual cases[210]. At the insistence of the three opposition parties, a committee of inquiry has nevertheless been set up, and it started work in May[211]. Its mandate includes investigation of the allegations of collusion between the German authorities and the CIA in the case of Mr El-Masri. In short, the *Bundestag* has been highly active, urged on by the opposition parties in particular.

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[206] I have in my possession a copy of this list, but I have no information on the states concerned.
[207] I should like to thank the ACLU for making detailed documentation about this case available to me.
[208] I should like to thank not only our Committee colleague Sabine Leutheusser-Schnarrenberger (Liberal), but also Mr Stroebele (Green party), for the information they have regularly supplied to me on this subject.
[209] The same is true of the replies given by other governments questioned by members of their parliaments, such as those of Belgium, the United Kingdom, Sweden and Ireland.
[210] The names of persons were represented by initials. See note 92 above in respect of my approach to the "confidential" and "secret" versions of this report.
[211] I have been invited to address this committee in the near future.

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8.2 The United Kingdom

248. Our work regarding the United Kingdom benefited greatly from the efforts of a variety of interlocutors, whom I should like to salute in this report[212]. The United Kingdom parliament has not yet established a formal inquiry into possible British participation in abuses committed by the United States in the course of the "war on terror", but there have been several noteworthy parliamentary initiatives designed to broaden the public debate and encourage greater openness.

249. Late last year, one of the UK Parliament's standing committees, the Joint Committee on Human Rights (JCHR), launched an inquiry into UK Compliance with the United Nations Convention against Torture. As part of its mandate the Committee examined several issues of relevance to this inquiry, including the use of diplomatic assurances and the practice of "extraordinary rendition".

250. The JCHR held a series of evidentiary sessions, featuring Ministers of the United Kingdom Government[213] as well as representatives of non-governmental organisations[214]. Members of my team, on a visit to London in March 2006, met with a Committee Specialist of the JCHR and attended its evidentiary session with the UK Minister of State for the Armed Forces, Rt. Hon. Adam Ingram. In its report on UK Compliance with UNCAT published on 26 May 2006[215], the JCHR recognised the "*growing calls for an independent public inquiry*" in the UK, but ultimately decided that such an inquiry would be "*premature*" until the Government's own inquiries have been given a chance to publish the "*detailed information required*".

251. In the meantime an ad-hoc body known as the "All-Party Parliamentary Group (APPG) on Extraordinary Renditions" has engaged Members of the UK Parliament belonging to all political parties. On Tuesday 28 March, members of my team attended the APPG's information session on the cases of Bisher Al-Rawi and Jamil El-Banna[216], which featured testimony from both men's legal representatives, MPs and family members. This session stimulated considerable media interest in the case and coincided with the public release of government telegrams passed on to the CIA in advance of the men's rendition. I wish to thank the Chairman of the APPG, Mr Andrew Tyrie MP, along with his dedicated staff, for their valuable support.

8.3. Poland: a parliamentary inquiry, carried out in secret

252. A parliamentary inquiry into the allegations that a "secret prison" exists in the country has been conducted behind closed doors in Poland. Promises made beforehand notwithstanding, its work has never been made public, except at a press conference announcing that the inquiry had not found anything untoward. In my opinion, this exercise was insufficient in terms of the positive obligation to conduct a credible investigation of credible allegations of serious human rights violations.

8.4. Romania and "the former Yugoslav Republic of Macedonia": no parliamentary inquiry

253. To my knowledge, no parliamentary inquiry whatsoever has taken place in either country, despite the particularly serious and concrete nature of the allegations made against both. What is more, the committee which supervises the secret services in "the former Yugoslav Republic of Macedonia" ceased operations three years ago[217], and this is particularly worrying in a country where the secret services not so very long ago played a particularly important and controversial role.

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[212] In this regard, I should like to make particular mention of the London-based non-governmental organisation REPRIEVE, which has supported my team by providing contacts, research insights and materials relating to the cases they work on.

[213] For example, on 6 March 2006 the JCHR heard evidence from the Solicitor General and Minister of State in the Department for Constitutional Affairs, Harriet Harman, along with other officials from her department. An uncorrected transcript of the session is available online at:
http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/uc701-iii/uc70102.htm

[214] On 21 November 2005 the JCHR heard evidence from Human Rights Watch, Amnesty International and REDRESS. An uncorrected transcript of the session is available online at:
http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/uc701-i/uc70102.htm

[215] The full report is available online at: http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/18502.htm; a full record of oral and written evidence was published in a separate volume, available at:
http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/185-ii.pdf.

[216] See to the section of the report that treats these cases, at 3.5 above.

[217] Response of the Parliament of the former Yugoslav Republic of Macedonia (Sobranie) to the questionnaire of the TDIP Temporary Committee of the European Parliament. Available at: www.statewatch.org/rendition.

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9. Commitment to combating terrorism

9.1. Fight against terrorism: an absolute necessity

254. The fight against terrorism is unquestionably a priority for every government and, above all, for the international community as a whole. The use of terror, previously employed primarily as a weapon against individual governments, has increasingly become a means of attacking a political and social model, and indeed a lifestyle and civilisation represented by large parts of the planet. Terrorism has taken on a clear international connotation in recent years, and it too has taken advantage of the tremendous technological progress made in the fields of arms, telecommunication and mobility. It is consequently vital to co-ordinate the fight against terrorism at the international level.

255. It has to be said, however, that there are still significant deficiencies in such co-ordination, and that it too often depends on the goodwill, but also the arbitrary nature, of intelligence services. An understanding of this phenomenon, its structures, the resources at its disposal and its leaders is essential in order to deal with the terrorist threat successfully. Intelligence services consequently play an important and irreplaceable role. That role must, however, be specified and delimited within a well-defined institutional framework consistent with the principles of the rule of law and democratic legitimacy. This also calls for effective supervisory mechanisms; the evidence under consideration has highlighted alarming flaws in such mechanisms. It is a well-known fact that the various American and European intelligence services have set up working groups and exchanged information. This initiative can only be welcomed. The events of recent years show, however, that international co-ordination is still seriously inadequate. The Milan imam's abduction is emblematic in this regard: the operation by CIA agents ruined the efforts of the Italian judiciary and police, who were involved in a major anti-terrorism investigation targeting precisely the Milan mosque[218].

256. The governments' very replies and especially their silence are a telling indication that intelligence services appear increasingly to work outside the scope of proper supervisory mechanisms. The way in which American services were able to operate in Europe, carrying out several hundred flights and transporting illegally arrested persons without any scrutiny, can only point to the participation or collusion of several European services – or, alternatively, incredible incompetence, a scenario which, frankly, is difficult to envisage. Indeed, everything seems to indicate that the American services were given considerable latitude and allowed to act as they saw fit, even though it would have been impossible not to be aware that their methods were incompatible with national legal systems and European standards relating to respect for human rights[219]. Such passivity on the part of European governments and administrative departments is disturbing, and such a careless, laissez-faire attitude unworthy.

257. The Council of Europe has already had the opportunity to voice clearly its concern *about certain practices that have been adopted, particularly in the fight against terrorism, such as the indefinite imprisonment of foreign nationals on no precise charge and without access to an independent tribunal, degrading treatment during interrogations, the interception of private communications without subsequently informing those concerned, extradition to countries likely to apply the death penalty or the use of torture, and detention or assault on the grounds of political or religious activism, which are contrary to the European Convention on Human Rights (ETS n° 5) and the protocols thereto, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS n° 126), and the Framework Decision of the Council of the European Union*[220].

9.2. The strength of unity and of the law

258. The Parliamentary Assembly has already expressed its views very clearly: it unreservedly shares *the United States' determination to combat international terrorism and fully endorses the importance of detecting and preventing terrorist crimes, prosecuting and punishing terrorists and protecting human lives*[221]. This determination must also be shared by all of Europe. Back in 1986, the Assembly regretted *the procrastination of European states in reacting multilaterally to the terrorist threat, and the absence up to the present time of a coherent and binding set of co-ordinated measures adopted by common consent*[222].

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[218] This fact was expressly confirmed by Milan's Deputy Public Prosecutor, during his hearing before the European Parliament's Temporary Committee in Brussels on 23 February 2006.

[219] In an interview with the German magazine *Die Zeit* on 29 December 2005, Mr Michael Scheuer, former head of the CIA's "Bin Laden" unit and one of the architects of the "rendition" system further developed during Bill Clinton's presidency and with his agreement, stated that the CIA was within its rights to break all laws except American law. See also Michael Scheuer, former Chief of the Bin Laden Unit in the CIA Counter-Terrorist Centre, *supra* note 19.

[220] Recommendation 1713 (2005) of the PACE on *Democratic oversight of the security sector in member States.*

[221] Resolution 1433 (2005), on *Lawfulness of detentions by the United States in Guantánamo Bay*, § 1.

[222] Resolution 863 (1986) on the European response to international terrorism, § 3.

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Despite the intervening years and the spectacular development of this threat, no significant progress has really been made. It is more necessary than ever to extend this *coherent and binding set of co-ordinated measures* to Europe and to other parts of the world, starting with the United States. The approach of simply leaving the United States to it and pretending not to know what is happening, in many cases even on one's own territory, is unacceptable. Only the adoption of a joint strategy by all the countries concerned can successfully counter the new threats, such as terrorism and organised crime. If, as the United States believes, existing legal instruments are no longer adequate to counter the new threats, the situation must be analysed and discussed on a joint basis.

259. It is highly likely that existing resources and arrangements will have to be adapted in order to combat international terrorism effectively. This is the view held by the United States Government, in particular[223]. Police investigation tools and the rules of criminal procedure clearly need to take into account the development of more serious forms of crime. However, such adaptation calls for multilateral consultation, presupposing dialogue, debate or even a frank and open confrontation, which clearly have yet to take place. On the contrary, the states of the European Union have just issued a particularly negative signal: giving in to what appears to be a nationalist reflex, in late April 2006 they turned down a Commission proposal to step up judicial and police co-operation under the Schengen Agreement[224].

260. Efforts to combat impunity are undoubtedly a crucial element in the fight against terrorism. It is unfortunate that the American administration has systematically opposed the establishment of a universal jurisdiction, refusing to ratify the Rome agreement on the establishment of the International Criminal Court[225]. Handing over terrorist suspects (without, moreover, any verification of the substance of the accusations by a judicial authority) to states one knows, or must presume, will not respect fundamental rights, is unacceptable. Relying on the principle of trust and on diplomatic assurances given by undemocratic states known not to respect human rights is simply cowardly and hypocritical.

261. The American administration states that *rendition* is a vital tool in the fight against international terrorism[226]. We consider that *renditions* may be acceptable, and indeed desirable, only if they satisfy a number of very specific requirements (which, with a few exceptions[227], has not been the case in any of the known *renditions* to date). If a state is unable, or does not wish, to prosecute a suspect, it should be possible to apply the following principle: no person genuinely suspected of a serious act of terrorism should feel safe anywhere in the world. In such cases, however, the person in question may be handed over only to a state able to provide all the guarantees of a fair trial, or – even better – to an international jurisdiction, which in my view should be established as a matter of urgency.

262. The UN High Commissioner for Human Rights, Louise Arbour, has publicly criticised the practice of handing over detainees – outside the scope of the justice system – to countries known to use torture, while demanding assurances that these prisoners will not be ill treated. She added that secret detention was a form of torture[228].

263. Abandoning or relativising human dignity and fundamental human rights is utterly inconceivable. All of history shows that arbitrary decisions, contempt for human values and torture have never been effective, have failed to resolve anything and, ultimately, have led only to a subsequent exacerbation of violence and brutality. In the end, such abuses have served only to confer a sense and appearance of legitimacy on those who attack institutions. In fact, giving in to this temptation concedes a major initial victory to the very people attacking our values. Furthermore, attempting to focus solely on security aspects, as is the case at present – with an outcome that is more than questionable – plays into the hands of the terror lords. It is imperative for a global anti-terrorism strategy to consider political and social aspects. Above all, we must be mindful of the strength of the values of the society for which we are fighting[229]. Benjamin Franklin inevitably comes to mind,

[223] *The captured terrorists of the 21st century do not fit easily into traditional systems of criminal or military justice, which were designed for different needs. We have had to adapt.* (Ms Rice, statement of 5 December 2005).
[224] See, for instance, Le Figaro of 28 April 2006.
[225] See, for example, Resolution 1336 (2003) on *Threats to the International Criminal Court.*
[226] *Rendition is a vital tool in combating transnational terrorism* (Ms Rice, in her statement of 5 December 2005).
[227] In particular, this applies to the case of the terrorist Carlos, which was mentioned by Ms Rice. She appears to forget, however, that Carlos was abducted in Sudan, where he enjoyed total impunity and was transported to France, where he was judged according to a procedure consistent with the European Convention on Human Rights.
[228] Le Monde of 9 December 2005.
[229] A judgment of the Israeli Supreme Court, called to rule on an alleged breach of the principle of equality following the distribution of gas masks on the West Bank during the Gulf War, contains the following remarkable passage written by the President of the Court, Aaron Barak, himself a survivor of the Kovnus ghetto in Lithuania: "*When the guns speak, the Muses fall silent. But when the guns speak, military commands must comply with the law. A society that wishes to be able to confront its enemies must above all be mindful that it is fighting for values worth protecting. The rule of law is one*

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and his approach seems more relevant than ever: *they that can give up essential liberty to attain a little temporary security deserve neither liberty nor safety*[230].

264. Legality and fairness by no means preclude firmness, but confer genuine legitimacy and credibility on a state's inevitable preventive actions. In this respect, some of the international community's attitudes are disturbing. I have already mentioned the unacceptable practice involving the application of UN Security Council sanctions on the basis of black lists. Another example is the situation in Kosovo, where the international community intervened to restore peace, justice and democracy: the inhabitants of this region are still the only people in Europe – with the exception of Belarus – not to have access to the European Court of Human Rights; its prisons are a virtual black hole, not open for inspections or monitoring by the Committee for the Prevention of Torture. In the name of what legitimacy, and with what credibility, is this same international community entitled to lecture Serbia? *Examples are more effective than threats* (Corneille).

10. Legal perspectives

10.1. The point of view of the United States

265. In May 2006 the United States sent its first state delegation to the United Nations Committee against Torture (UN CAT) since the Bush Administration came to power. The delegation was headed by the Chief Legal Advisor to the Department of State, Mr John Bellinger.

266. Mr Bellinger oversaw the presentation of a 184-page submission to UN CAT, in which the United States set out its "exhaustive written responses" to most of the Committee's list of issues. The United States should certainly be commended for this level of engagement, notwithstanding that its policy regarding secret detentions and intelligence activities remained, for the most part, at a firm "*no comment*"[231].

267. There can have been few more opportune times at which to engage Mr Bellinger on discussion of pertinent legal issues than in the week of his return from the UN CAT to Washington, DC. In a briefing lasting about one hour[232], Mr Bellinger and his colleague Dan Fried, Assistant Secretary of State for European Affairs, provided us with a range of valuable perspectives, which I think it worthwhile to indicate in this report as the best contemporary first-hand portrayal of the US legal position.

268. Mr Bellinger made clear on several occasions that a programme of renditions remains a key strand of United States' foreign policy: "*As Secretary Rice has said, we do conduct renditions, we have conducted renditions and we will not rule out conducting renditions in the future.*"

269. He was very decisive, however, in drawing a distinction between the original meaning of rendition and the popular, media-driven notion of Extraordinary Rendition:

> "*To the extent that extraordinary rendition – as I have seen it defined – means the intentional transfer of an individual to a country, expecting or intending that they will be mistreated, then the United States does not do extraordinary renditions to begin with. The United States does not render people to other countries for the purpose of being tortured, or in the expectation that they will be tortured.*"

270. Dan Fried used the briefing to explain some of the underlying considerations for the United States in pursuit of its "war on terror":

> "*We are attempting to keep our people safe; we are attempting to fight dangerous terrorist groups who are active and who mean what they say about destroying us. We are trying to do so in a way consistent with our values and our international legal obligations. Doing all of those things in practice is not easy, partly because – as we've discovered as we've gotten into it – the struggle we are in does not fit neatly either into the criminal legal framework, or neatly into the law of war framework.*"

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of those values"; in: Aaron Barak, *Democrazia, Terrorismo e Corti di giustizia*, Giurisprudenza Costituzionale, 2002, 5, p. 3385.

[230] Quoted just recently by Heinrich Koller, *Kampf gegen Terrorismus – Rechstaatlichen Grundlagen und Schranken*, conference held in Zurich on 19 January 2006 before the *Schweizerische Helsinki Vereinigung für Demokratie, Rechtsstaat und Menschenrechte.*

[231] See the CAT submission of the United States and the newly-published comments of the Committee (at page 4) on secret detentions, available at www.usmission.ch.

[232] Detailed notes of the meeting with Mr Bellinger and transcripted comments are on file with the Rapporteur.

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271. With regard to the question of fitting into legal frameworks, I find it particularly noteworthy that the United States does not see itself bound to satisfy anyone's interpretation of international law but its own. Mr Bellinger continually expressed this view: *"We have to comply with our legal obligations. None of this can be done in an illegal way. We think from our point of view that we comply with all the legal obligations we have."*

272. Similarly, in one of his longer explanations, Mr Bellinger defended the United States' record in the eyes of its European partners:

> *"For those who say we're not following our international obligations in certain cases, I have to say that sometimes it comes down to a disagreement on what the obligation is.*
>
> *With regard to Article 3 of CAT, this is a technical issue. The obligation under Article 3 of the Convention Against Torture requires a country not to return, expel or refouler an individual. For more than a decade, the position of the US Government, and our courts, has been that all of those terms refer to returns from, or transfers out from the United States.*
>
> *So we think that Article 3 of the CAT is legally binding upon us with respect to transfers of anyone from the United States; but we don't think it is legally binding outside the United States.*
>
> *Similarly the Senate of the United States and our courts for more than ten years have taken a position that the words 'substantial grounds' means 'more likely than not'. If we transfer a person from one point outside the United States to another point outside the United States then, as a policy matter, if we think there are substantial grounds to believe that the individual will be tortured or mistreated, we follow the same rules. I think it is a reasonable position for our courts to have set – that 'substantial grounds' means 'more likely than not'.*
>
> *What I can say, though, is that there are different legal regimes between the European Court of Human Rights and our courts, and you can't 'beat up' our courts and our Senate based on some things that they said ten years ago as how they interpret the law.*
>
> *You may wish that the ECtHR interpretation of the CAT was the same position that we have here, but it is not. We do, though, take our legal obligations seriously. And there needs to be a recognition that there may be different interpretation of the terms, but nonetheless the United States still takes our legal obligations seriously – and we do that."*

Mr Bellinger's interpretation also serves to explain why a detention facility like Camp Delta is situated at Guantanamo Bay, in Cuba, and not in the desert of Arizona. The United States' formalistic and positivist approach shocks the legal sensibilities of Europeans, who are rather influenced by "teleological" considerations. In other words, the European approach is to opt for an interpretation that affords maximum protection to the values on which the legal rule is based.

273. Mr Bellinger was predictably reluctant to discuss the legal issues surrounding any of the cases of rendition that are alleged to have occurred, including the case studies treated in this report. He cited a considered policy on the part of the US Government to refrain from commenting:

> *"We have thought seriously about whether we can answer specific questions publicly and say that there were one, two, or three renditions and where they went through. But we have concluded that, due to the nature of intelligence activities, we simply cannot get into the business of confirming or denying specific questions – as much as we would like to. I'm not going to confirm or deny whether there have been any renditions that have gone through Europe at all."*

274. The United States Government is always prepared, however, to explain the "hard choices" it feels it has to make to protect its citizens[233]. Mr Bellinger, for his part, described a hypothetical *"policy dilemma"* based loosely on a real-life scenario, where a member of Al-Qaeda is captured at the Kenyan border, *"trying to enter the country but the Kenyans don't want him there"*. The captive is known to be wanted by *"some other country such as Egypt, Pakistan or Jordan"* and the United States has an aircraft it could use to render him back. Mr Bellinger concluded his briefing by characterising the choice:

> *"If the choice is between letting a person go who's suspected of involvement in terrorism, or taking them back to their country of nationality, or some other country where they're wanted – then that's*

[233] See Secretary Rice's remarks upon her departure for Europe, Andrews Air Base, 5 December 2005: *"Protecting citizens is the first and oldest duty of any government. Sometimes these efforts are misunderstood. I want to help all of you understand the hard choices involved, and some of the responsibilities that go with them."*

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your choice, because there's no extradition treaty and you obviously don't want us to put more people in Guantanamo.

If the choice is whether the person will disappear and be let go, or the country of his nationality or some other country wants him back, and the US is able to provide that – what should be done? That's your choice.

The United States says there are cases where in fact rendition might make sense."

10.2. The point of view of the Council of Europe

10.2.1. The European Commission for Democracy through Law (Venice Commission)

275. The legal issues raised by the facts examined in this report, from the point of view of the Council of Europe, have been set out clearly and precisely by the Venice Commission, whom the Committee on Legal Affairs and Human Rights had asked for a legal opinion in December 2005[234].

276. In its conclusion, the Venice Commission stresses the responsibility of the Council of Europe's member States to ensure that all persons within their jurisdiction enjoy internationally agreed upon fundamental rights (including the right to security of the person, freedom from torture and the right to life), even in the case of persons who are aboard an aircraft that is simply transiting through its airspace[235]. The Venice Commission also confirms that the obligations arising out of the numerous bilateral and multilateral treaties in different fields such as collective self-defence, international civil aviation and military bases, "*do not prevent States from complying with their human rights obligations*"[236].

277. In reply to the specific questions asked by the Committee on Legal Affairs and Human Rights, the Venice Commission has drawn the following conclusions:

"As regards arrest and secret detention

a) *Any form of involvement of a Council of Europe member State or receipt of information prior to an arrest within its jurisdiction by foreign agents entails accountability under Articles 1 and 5 of the European Convention on Human Rights (and possibly Article 3 in respect of the modalities of the arrest). A State must thus prevent the arrest from taking place. If the arrest is effected by foreign authorities in the exercise of their jurisdiction under the terms of an applicable Status of Forces Agreement (SOFA), the Council of Europe member State concerned may remain accountable under the European Convention on Human Rights, as it is obliged to give priority to its jus cogens obligations, such as they ensue from Article 3.*

b) *Active and passive co-operation by a Council of Europe member State in imposing and executing secret detentions engages its responsibility under the European Convention on Human Rights. While no such responsibility applies if the detention is carried out by foreign authorities without the territorial State actually knowing it, the latter must take effective measures to safeguard against the risk of disappearance and must conduct a prompt and effective investigation into a substantiated claim that a person has been taken into unacknowledged custody.*

c) *The Council of Europe member State's responsibility is engaged also in the case where its agents (police, security forces etc.) co-operate with the foreign authorities or do not prevent an arrest or unacknowledged detention without government knowledge, acting ultra vires. The Statute of the Council of Europe and the European Convention on Human Rights require respect for the rule of law, which in turn requires accountability for all form of exercise of public power. Regardless of how a State chooses to regulate political control over security and intelligence agencies, in any event effective oversight and control mechanisms must exist.*

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[234] Opinion on the International Legal Obligations of Council of Europe Member States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners, adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006) on the basis of comments by Mssrs Iain Cameron (Substitute Member, Sweden), Pieter van Dijk (Member, the Netherlands), Olivier Dutheillet de Lamothe (Member, France), Jan Helgesen (Member, Norway), Giorgio Malinverni (Member, Switzerland) and Georg Nolte (Substitute Member, Germany) – opinion no. 363/2005, CDL-AD(2006)009.

[235] cf. Opinion cited above, paras. 143-146.

[236] ibid., para. 156. See EU Network of Independent Experts on Fundamental Rights, Opinion No. 3-2006 on "*The Human Responsibilities of the EU Member States in the Context of the CIA Activities in Europe ('Extraordinary Renditions')*, 25 May 2006, at page 7. The Network reaches the same conclusion on the basis of Article 6(1) EU.

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d) *If a State is informed or has reasonable suspicions that any persons are held incommunicado at foreign military bases on its territory, its responsibility under the European Convention on Human Rights is engaged, unless it takes all measures which are within its power in order for this irregular situation to end.*

e) *Council of Europe member States which have ratified the European Convention for the Prevention of Torture must inform the European Committee for the Prevention of Torture of any detention facility on their territory and must allow it to access such facilities. Insofar as international humanitarian law may be applicable, States must grant the International Committee of the Red Cross permission to visit these facilities.*

As regards inter-state transfers of prisoners

f) *There are only four legal ways for Council of Europe member States to transfer a prisoner to foreign authorities: deportation, extradition, transit and transfer of sentenced persons for the purpose of their serving the sentence in another country. Extradition and deportation proceedings must be defined by the applicable law, and the prisoners must be provided appropriate legal guarantees and access to competent authorities. The prohibition to extradite or deport to a country where there exists a risk of torture or ill-treatment must be respected.*

g) *Diplomatic assurances must be legally binding on the issuing State and must be unequivocal in terms; when there is substantial evidence that a country practices or permits torture in respect of certain categories of prisoners, Council of Europe member States must refuse the assurances in cases of requests for extradition of prisoners belonging to those categories.*

h) *The prohibition to transfer to a country where there exists a risk of torture or ill-treatment also applies in respect of the transit of prisoners through the territory of Council of Europe member States: they must therefore refuse to allow transit of prisoners in circumstances where there is such a risk.*

As regards overflight

i) *If a Council of Europe member State has serious reasons to believe that an airplane crossing its airspace carries prisoners with the intention of transferring them to countries where they would face ill-treatment in violation of Article 3 of the European Convention on Human Rights, it must take all the necessary measures in order to prevent this from taking place.*

j) *If the state airplane in question has presented itself as a civil plane, that is to say it has not duly sought prior authorisation pursuant to Article 3 c) of the Chicago Convention, the territorial State must require landing and must search it. In addition, it must protest through appropriate diplomatic channels.*

k) *If the plane has presented itself as a state plane and has obtained overflight permission without however disclosing its mission, the territorial State cannot search it unless the captain consents. However, the territorial State can refuse further overflight clearances in favour of the flag State or impose, as a condition therefor, the duty to submit to searches; if the overflight permission derives from a bilateral treaty or a Status of Forces Agreement or a military base agreement, the terms of such a treaty should be questioned if and to the extent that they do not allow for any control in order to ensure respect for human rights.*

l) *In granting foreign state aircraft authorisation for overflight, Council of Europe member States must secure respect for their human rights obligations. This means that they may have to consider whether it is necessary to insert new clauses, including the right to search, as a condition for diplomatic clearances in favour of State planes carrying prisoners. If there are reasonable grounds to believe that, in certain categories of cases, the human rights of certain passengers risk being violated, States must indeed make overflight permission conditional upon respect of express human rights clauses. Compliance with the procedures for obtaining diplomatic clearance must be strictly monitored; requests for overflight authorisation should provide sufficient information as to allow effective monitoring (for example, the identity and status (voluntary or involuntary passenger) of all persons on board and the destination of the flight as well as the final destination of each passenger). Whenever necessary, the right to search civil planes must be exercised.*

m) *With a view to discouraging repetition of abuse, any violations of civil aviation principles in relation to irregular transport of prisoners should be denounced, and brought to the attention of the competent*

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authorities and eventually of the public. Council of Europe member States could bring possible breaches of the Chicago Convention before the Council of the International Civil Aviation Organisation pursuant to Article 54 of the Chicago Convention.

n) *As regards the treaty obligations of Council of Europe member States, the Commission considers that there is no international obligation for them to allow irregular transfers of prisoners or to grant unconditional overflight rights, for the purposes of combating terrorism. The Commission recalls that if the breach of a treaty obligation is determined by the need to comply with a peremptory norm (jus cogens), it does not give rise to an internationally wrongful act, and the prohibition of torture is a peremptory norm. In the Commission's opinion, therefore, States must interpret and perform their treaty obligations, including those deriving from the NATO treaty and from military base agreements and Status of Forces Agreements, in a manner compatible with their human rights obligations."*

10.2.2 The Secretary General of the Council of Europe (Article 52 ECHR)

278. The Secretary General has made use of his power of enquiry under Article 52 ECHR as rapidly and as completely as possible. In his report dated 28 February 2006[237], the Secretary General takes a clear position as regards member States' responsibilities:

> *"The activities of foreign agencies cannot be attributed directly to States Parties. Their responsibility may nevertheless be engaged on account of either their duty to refrain from aid or assistance in the commission of wrongful conduct, acquiescence and connivance in such conduct, or, more generally, their positive obligations under the Convention.[5] In accordance with the generally recognised rules on State responsibility, States may be held responsible of aiding or assisting another State in the commission of an internationally wrongful act.[6] There can be little doubt that aid and assistance by agents of a State Party in the commission of human rights abuses by agents of another State acting within the former's jurisdiction would constitute a violation of the Convention. Even acquiescence and connivance of the authorities in the acts of foreign agents affecting Convention rights might engage the State Party's responsibility under the Convention. Of course, any such vicarious responsibility presupposes that the authorities of States Parties had knowledge of the said activities."*[238]

As regards the result of the Secretary General's request for information, the report of 28 February concludes in a preliminary fashion that "*all forms of deprivation of liberty outside the regular legal framework need to be defined as criminal offences in all States Parties and be effectively enforced. Offences should include aiding and assisting in such illegal acts, as well as acts of omission (being aware but not reporting), and strong criminal sanctions should be provided for intelligence staff or other public officials involved in such cases. However, the most significant problems and loopholes revealed by the replies concern the ability of competent authorities to detect any such illegal activities and take resolute action against them. Four main areas are identified where further measures should be taken at national, European and international levels:*

- the rules governing activities of secret services appear inadequate in many States; better controls are necessary, in particular as regards activities of foreign secret services on their territory;

- the current international regulations for air traffic do not give adequate safeguards against abuse. There is a need for States to be given the possibility to check whether transiting aircraft are being used for illegal purposes. But even within the current legal framework, States should equip themselves with stronger control tools;

- international rules on State immunity often prevent States from effectively prosecuting foreign officials who commit crimes on their territory. Immunity must not lead to impunity where serious human rights violations are at stake. Work should start at European and international levels to establish clear human rights exceptions to traditional rules on immunity;

- mere assurances by foreign States that their agents abroad comply with international and national law are not enough. Formal guarantees and enforcement mechanisms need to be set out in agreements and national law in order to protect ECHR rights."[239]

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[237] SG/Inf (2006)5, available at the Council of Europe's website (http://www.coe.int).
[238] ibid., para. 23 ; see also the excellent analysis of the case law of the European Court of Human Rights regarding member States' "positive obligations" in paras. 24-30
[239] *Ibid.*, p. 1 (non-official executive summary)

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279. In this context, the Secretary General, referring to my memorandum of 21 January 2006, was worried about the fact that some countries have not replied, or have not replied completely, to his question concerning the involvement of any public official in such deprivation of liberty or transport of detainees, and whether any official investigation is under way or has been completed. Consequently, the Secretary General has asked additional questions to some countries. The replies are not yet in the public domain.

11. Conclusion

280. Our analysis of the CIA "rendition" programme has revealed a network that resembles a "spider's web" spun across the globe. The analysis is based on official information provided by national and international air traffic control authorities, as well as other information including from sources inside intelligence agencies, in particular the American. This "web", shown in the graphic[240], is composed of several landing points, which we have subdivided into different categories, and which are linked up among themselves by civilian planes used by the CIA or military aircraft.

281. These landing points are used for various purposes that range from aircraft stopovers to refuel during a mission to staging points used for the connection of different "rendition circuits" that we have identified and where "rendition units" can rest and prepare missions. We have also marked the points where there are known detention centres (Guantanamo Bay, Kabul and Baghdad...) as well as points where we believe we have been able to establish that pick-ups of rendition victims took place.

282. In two European countries only (Romania and Poland), there are two other landing points that remain to be explained. Whilst these do not fall into any of the categories described above, several indications lead us to believe that they are likely to form part of the "rendition circuits"[241]. These landings therefore do not form part of the 98% of CIA flights that are used solely for logistical purposes[242], but rather belong to the 2% of flights that concern us the most. These corroborated facts strengthen the presumption – already based on other elements - that these landings are detainee drop-off points that are near to secret detention centres.

283. Analysis of the network's functioning and of ten individual cases allows us to make a number of conclusions both about human rights violations – some of which continue – and about the responsibilities of some Council of Europe member States.

284. It must be emphasised that this report is indeed addressed to the Council of Europe Member states. The United States, an observer state of our Organisation, actually created this reprehensible network, which we criticise in light of the values shared on both sides of the Atlantic. But we also believe to have established that it is only through the intentional or grossly negligent collusion of the European partners that this "web" was able to spread also over Europe.

285. The impression which some Governments tried to create at the beginning of this debate – that Europe was a victim of secret CIA plots – does not seem to correspond to reality. It is now clear – although we are still far from having established the whole truth - that authorities in several European countries actively participated with the CIA in these unlawful activities. Other countries ignored them knowingly, or did not want to know.

286. In the draft resolution, which sums up this report's conclusions, I have not directly named the countries responsible simply because there is not enough room in such a text to adequately develop the nuances of each individual case. In addition, we only know part of the truth so far, and other countries may still turn out to be implicated in light of future research or revelations. This explanatory note, however, explains the discovered facts in far greater detail. Finally, the purpose of this report is not to attribute "grades" to different member States, but to try to understand what really happened throughout Europe and to stop certain violations shown from reoccurring in future. I would add that a key element seems to be the urgent need to improve the international response to the threat of terrorism. This response presently appears today as largely inadequate and insufficiently coordinated.

287. Whilst hard evidence, at least according to the strict meaning of the word, is still not forthcoming, a number of coherent and converging elements indicate that secret detention centres have indeed existed and unlawful inter-state transfers have taken place in Europe. I do not set myself up to act as a criminal court, because this would require evidence beyond reasonable doubt. My assessment rather reflects a conviction

[240] See graphic annex to this report: "The global "spider's web" of secret detentions and unlawful inter-state transfers"
[241] See paragraph 51 above.
[242] See paragraph 49 above (quoting Michael Scheuer, architect of the rendition programme).

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based upon careful examination of balance of probabilities, as well as upon logical decuctions from clearly established facts. It is not intended to pronounce that the authorities of these countries are "guilty" for having tolerated secret detention sites, but rather it is to hold them "responsible" for failing to comply with the positive obligation to diligently investigate any serious allegation of fundamental rights violations.

288. In this sense, it must be stated that to date, the following member States could be held responsible, to varying degrees, which are not always settled definitively, for violations of the rights of specific persons identified below (respecting the chronological order as far as possible):

- Sweden, in the cases of Ahmed Agiza and Mohamed Alzery ;
- Bosnia-Herzegovina, in the cases of Lakhdar Boumediene, Mohamed Nechle, Hadj Boudella, Belkacem Bensayah, Mustafa Ait Idir and Saber Lahmar (the "Algerian six") ;
- The United Kingdom in the cases of Bisher Al-Rawi, Jamil El-Banna and Binyam Mohamed ;
- Italy, in the cases of Abu Omar and Maher Arar ;
- "The former Yugoslav Republic of Macedonia", in the case of Khaled El-Masri ;
- Germany, in the cases of Abu Omar, of the "Algerian six", and Khaled El-Masri ;
- Turkey, in the case of the "Algerian six".

289. Some of these above mentioned states, and others, could be held responsible for collusion – active or passive (in the sense of having tolerated or having been negligent in fulfilling the duty to supervise) - involving secret detention and unlawful inter-state transfers of a non specified number of persons whose identity so far remains unknown:

- Poland and Romania, concerning the running of secret detention centres;
- Germany, Turkey, Spain and Cyprus for being "staging points" for flights involving the unlawful transfer of detainees;
- Ireland, the United Kingdom, Portugal, Greece and Italy for being "stopovers" for flights involving the unlawful transfer of detainees.

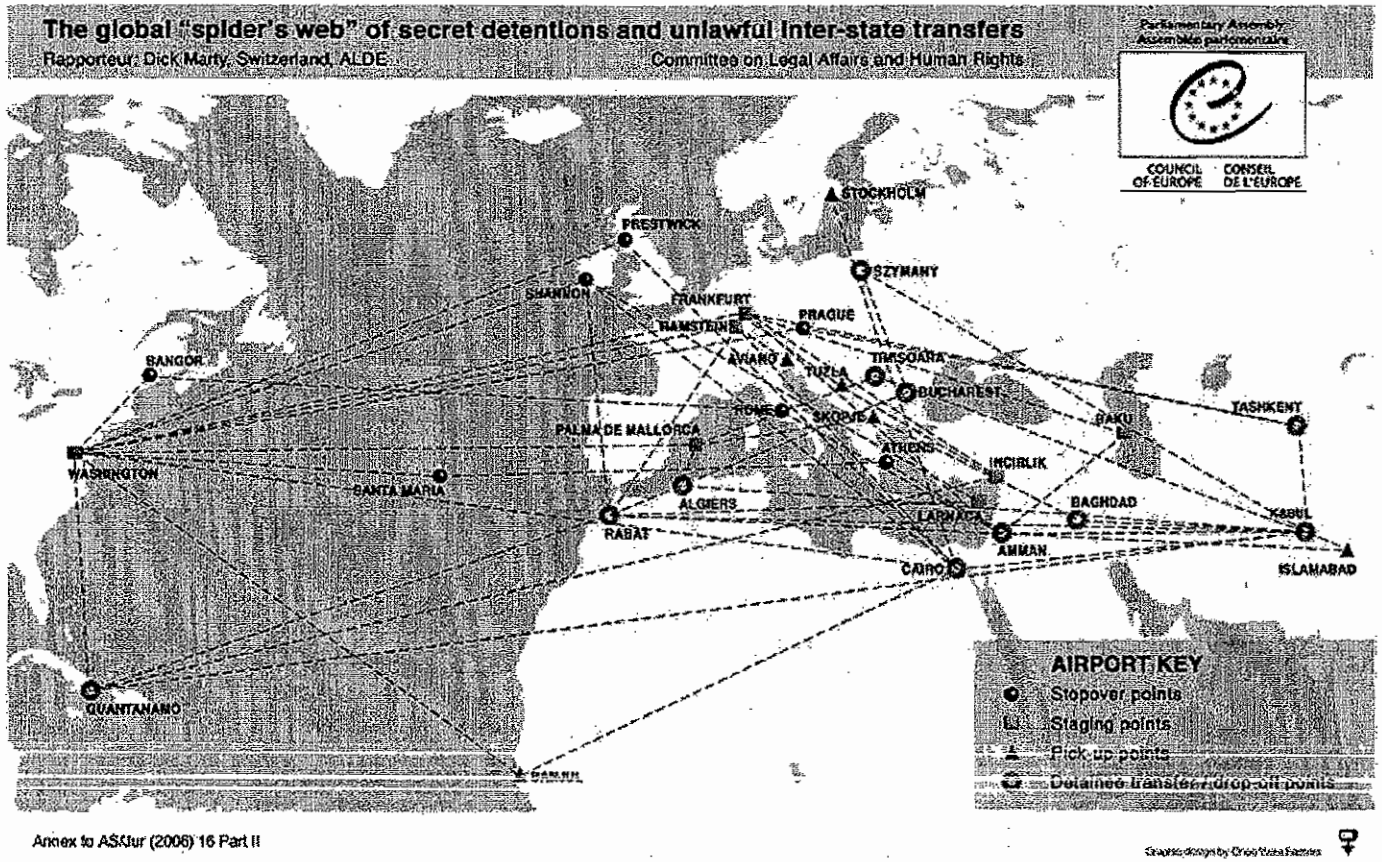
290. Other States should still show greater willingness and zeal in the quest for truth, as serious indications show that their territory or their airspace might have been used, even unbeknownst, for illegal operations (the example of Switzerland was cited in this context).

291. The international community is finally urged to create more transparency in the places of detention in Kosovo, which to date qualify as "black holes" that cannot even be accessed by the CPT. This is frankly intolerable, considering that the international intervention in this region was meant to restore order and lawfulness.

292. With regards to these extremely serious allegations, it is urgent – that is the principal aim of this report – that all Council of Europe member States concerned finally comply with their positive obligation under the ECHR to investigate. It is also crucial that the proposals in the draft resolution and recommendation are implemented so that terrorism can be fought effectively whilst respecting human rights at the same time.

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ANNEX



Annex to AS/Jur (2006) 16 Part II

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ANNEX

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10748 and Reference No 3153 of 25 November 2005

Draft resolution and draft recommendation unanimously adopted by the Committee on 7 June 2006

Members of the Committee : Mr Dick **Marty** (Chairperson), Mr Erik **Jurgens**, Mr Eduard Lintner, Mr Adrien Severin (Vice-Chairpersons), Mrs Birgitta Alhqvist, Mr Athanasios Alevras, Mr Rafis Aliti, Mr Alexander Arabadjiev, Mr Miguel Arias, Mr Birgir Ármannsson, Mr José Luis Arnaut, Mr Abdülkadir Ateş, Mr Jaume **Bartumeu Cassany**, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise **Bernelmans-Videc**, Mr Giorgi Bokeria, Mrs Olena Bondarenko, Mr Erol Aslan Cebeci, Mrs Pia Christmas-Møller, Mr Boriss **Cilevičs**, Mr Domenico Contestabile, Mr András Csáky, Mrs Herta **Däubler-Gmelin**, Mr Marcello Dell'Utri, Mrs Lydie Err, Mr Jan Ertsborn, Mr Václav **Exner**, Mr Valeriy Fedorov, Mr György **Frunda**, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Stef Goris, Mr Valery **Grebennikov**, Mrs Gultakin Hajiyeva, Mrs Karin Hakl, Mr Nick Harvey, Mr Michel **Hunault**, Mr Rafael **Huseynov**, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Sergei Ivanov, Mr Tomáš Jirsa, Mr Antti Kaikkonen (alternate: Mr Kimmo **Sasi**), Mr Uyriy Karmazin, Mr Karol Karski, Mr Hans Kaufmann (alternate: Mr Andreas **Gross**), Mr Nikolay Kovalev, Mr Jean-Pierre Kucheida, Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Humfrey Malins, Mr Andrea Manzella, Mr Alberto Martins, Mr Tito Masi, Mr Andrew McIntosh, Mr Murat Mercan, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav Nikolić, Ms Ann Ormonde, Mr Rino Piscitello, Mrs Maria Postoico, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Martin Raguž, Mr François Rochebloine, Mr Armen Rustamyan, Mr Michael Spindelegger, Mrs Rodica Mihaela Stănoiu, Mr Christoph Strasser, Mr Petro Symonenko, Mr Vojtech **Tkáč**, Mr Øyvind **Vaksdal**, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis (alternate: Mrs Elsa **Papadimitriou**), Mrs Renate Wohlwend, Mr Krysztof Zaremba, Mr Vladimir Zhirinovsky, Mr Zoran Žižić, Mr Miomir **Žužul**

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the Committee: Mr Drzemczewski, Mr Schirmer, Ms Heurtin, Mr Simpson

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(b)(1),(b)(5)

(b)(1),(b)(5)

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CDS
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HEADER
R 120631Z JUN 06
FM JOINT STAFF WASHINGTON DC (b)(2)
TO RHEFLGX/SAFE WASHINGTON DC
(b)(2)
R 120244Z JUN 06
FM DIA WASHINGTON DC (b)(2),(b)(3):10 USC 424
(b)(2)
(b)(2),(b)(3):10 USC 424
INFO RHEFLGX/SAFE WASHINGTON DC
XMT CNR ARLINGTON VA
BT
CONTROLS
~~S E C R E T NOFORN~~ (b) SECTION 1 OF 5
/******** THIS IS A COMBINED MESSAGE ********/
BODY
SUBJ: (U) DIA NMJIC INTELLIGENCE SUMMARY FOR 12 JUNE 2006
SUMMARY OF FEATURES
(b)(1)

SOCOM AMNESTY/CCR 8

(b)(1)

ROMANIA: (U) BUCHAREST REACTS TO RENDITION REPORT

(U) ROMANIAN POLITICAL LEADERS REACTED STRONGLY AGAINST THE COUNCIL OF EUROPE REPORT ABOUT "RENDITIONS" AND **SECRET DETENTION** CENTERS THAT SOME FEAR COULD CAUSE DIFFICULTIES IN ROMANIA'S EU MEMBERSHIP EFFORTS.

(b)(1)

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ROMANIA: (U) BUCHAREST REACTS TO RENDITION REPORT
/****** BEGINNING OF SECTION 4 ******
(U) ROMANIAN POLITICAL LEADERS REACTED STRONGLY AGAINST THE COUNCIL OF EUROPE (COE) REPORT DETAILING "RENDITIONS" ON ROMANIAN TERRITORY, WHICH SOME FEAR COULD CAUSE ROMANIA DIFFICULTIES IN ITS EU MEMBERSHIP EFFORTS. THE REPORT, WRITTEN BY SWISS "EUROPARLIAMENTARIAN" DICK MARTY FOR THE COE, OFFICIALLY WAS RELEASED ON THE COE WEBSITE 7 JUNE. IN THE REPORT MARTY ACCUSES BUCHAREST OF COMPLICITY IN AIDING RENDITIONS (MOVING PEOPLE FROM ONE COUNTRY TO ANOTHER) AND THE RUNNING OF SECRET **CIA DETENTION** FACILITIES, EVEN THOUGH MARTY ADMITTED THAT HIS INVESTIGATION DOES NOT HAVE DEFINITIVE PROOF THAT

SOCOM AMNESTY/CCR 16

SECRET DETENTION CENTERS EXIST IN ROMANIA. THE REPORT LED TO A FIRESTORM OF REACTION FROM ROMANIAN POLITICAL LEADERS, WHO CHARGE THE REPORT IS WITHOUT MERIT.

-- (U) PRIME MINISTER TARICEANU STATED ROMANIAN AUTHORITIES REPEATEDLY HAVE DENIED THE EXISTENCE OF **CIA DETENTION** CENTERS IN ROMANIA.

-- (U) SENATE VICE PRESIDENT TEODOR MELESCANU STATED THE REPORT CAUSES "SEVERE PREJUDICE TO ROMANIA'S INTERESTS" AND ACTS AS A "SMOKE SCREEN FOR HIDDEN INTERESTS."

-- (U) GOVERNMENT SPOKESPERSON OANA MARINESCU STATED THE CONCLUSIONS OF THE REPORT ARE BASED ON SPECULATION AND ARE "UNACCEPTABLE."

~~(C)~~ (b)(1),Sec. 1.4(b),Sec. 1.4(d)

(b)(1),Sec. 1.4(b),Sec. 1.4(d)

(b)(1),1.4 (b),1.4 (d)

-- (U) A SENIOR GERMAN MEMBER OF THE EUROPEAN PARLIAMENT SUGGESTED THAT ROMANIA'S EU MEMBERSHIP SHOULD BE DELAYED IF THE ACCUSATIONS ARE CONFIRMED. ALTHOUGH THE RENDITION REPORT IS AT THE MOMENT SPECULATION, IT COULD CAUSE FURTHER DIFFICULTIES FOR BUCHAREST AS IT MOVES FORWARD IN EURO-ATLANTIC INSTITUTIONS.

(b)(2),(b)(3):10 USC 424

(b)(2),(b)(3):10 USC 424

(b)(2),(b)(3):10 USC 424

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- CLOSE HOLD - FOR YOUR REVIEW - Vice President's Remarks to the Washington Institute for Near E
From: (b)(6) OSD POLICY
Sent: Thursday, October 18, 2007 12:17 PM
To: (b)(6) OSD-POLICY; Liotta, Alan, CIV, OSD-POLICY; (b)(6) OSD-POLICY; (b)(6) OSD POLICY
Cc: (b)(6) OSD-POLICY; (b)(6) OSD POLICY; (b)(6) OSD POLICY
Subject: RE: HOT HOT - CLOSE HOLD - FOR YOUR REVIEW - Vice President's Remarks to the Washington Institute for Near East Policy
Signed By: (b)(6)@osd.mil

Attachments: InstituteforNearEastPolicy21October2007#1.doc

(b)(6)
Here are several edits on page 6 that Detainee Affairs believes are essential in order to distinguish between the CIA detainee program and the DOD detainees.
Thx, (b)(6)

-----Original Message-----
From: (b)(6) OSD-POLICY
Sent: Thursday, October 18, 2007 10:56 AM
To: Liotta, Alan, CIV, OSD-POLICY; (b)(6) OSD POLICY; (b)(6) OSD-POLICY
Cc: (b)(6) OSD-POLICY; (b)(6) OSD POLICY; Henton, (b)(6) OSD POLICY
Subject: FW: HOT HOT - CLOSE HOLD - FOR YOUR REVIEW - Vice President's Remarks to the Washington Institute for Near East Policy
Importance: High

Only thing in here I see for GSA is detainee related. Reply direct given the suspense.
-----Original Message-----
From: (b)(6) OSD POLICY
Sent: Thursday, October 18, 2007 10:40 AM
To: (b)(6) OSD POLICY; (b)(6) OSD-POLICY; (b)(6) OSD-POLICY; (b)(6) OSD POLICY; (b)(6) OSD-POLICY; (b)(6) OSD-POLICY; (b)(6) OSD-POLICY
Cc: (b)(6) OSD-POLICY; Rand, Robin BrigGen (USAF) OSD POLICY; (b)(6) OSD-POLICY; Liotta, Alan, CIV, OSD-POLICY; (b)(6) (b)(6) OSD-POLICY; (b)(6) OSD POLICY; (b)(6) (b)(6) OSD-POLICY; (b)(6) OSD-POLICY
Subject: HOT HOT - CLOSE HOLD - FOR YOUR REVIEW - Vice President's Remarks to the Washington Institute for Near East Policy
Importance: High

ISA-ME, SOLIC SOC, and GSA Detainee Affairs:

This is a HOT, SHORT suspense coodination request. Attached (and below) for your clearance is a close-hold Vice-Presidential speech on Middle East policy and the GWOT, with brief mention of GTMO/Detainee issues. The speech is to be delivered this Sunday, 21 October to the Washington Insitute. The SECDEF requested our clearance on this, and plans to personally review any edits submitted at 1600 today, so I need coordination on this soonest but NLT 1500 today. I apologize for this very short suspense.

ISA, please take the lead on this (consolidating all other DASD/ASD input) and coordinate with GSA and SOLIC. All - comment in the attached on any factual inaccuracies or sensitivities, and provide rationales for changes - each comment submitted is required to indicate the position of the highest level of clearance within each organization (i.e. DASD Special Ops or AASD ISA). NOTE: The White House will not accept changes without rationales.

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- CLOSE HOLD - FOR YOUR REVIEW - Vice President's Remarks to the Washington Institute for Near E

Clearance should be at least at the DASD level, given SecDef interest in our clearance on this speech. ISA, please provide a consolidated, cleared document to me NLT 1500 TODAY (10/18) and copy (b)(6) on the response.

Thank you and please feel free to call/email with any questions. Again, apologies for the short-suspense.

Regards,
(b)(6)
Policy Coordination Point for Presidential Speeches Support to Public Diplomacy

-----Original Message-----
From: (b)(6) OSD LA
Sent: Thursday, October 18, 2007 10:08 AM
To: (b)(6) OSD POLICY; (b)(6) JCS CJCS; (b)(6) JCS OCJCS
Cc: (b)(6) OSD LA
Subject: CLOSE HOLD - Vice President's Remarks to the Washington Institute for Near East Policy
Importance: High

All,

The Secretary's staff would like the attached speech to be run through the "normal" channels. Please pass on to your folks and have them read through and return any comments/edits/suggestions by 1530 TODAY. The Secretary wants to personally go over any edits, and must have the remarks with DoD comments, in his hand by 1600 today. I know it's a tight deadline.

Many thanks,

(b)(6)

Washington Institute for Near East Policy

Lansdowne, Virginia

Sunday, October 21, 2007

Draft #1

Thank you very much. Roger, thanks for the very kind words, and thank all of you for the warm welcome. I've been looking forward to joining this conference.

It's been my privilege to address the Washington Institute a number of times over the years. In fact, most of you knew me long before anyone called me Darth Vader. I've been asked if that nickname bothers me, and the answer is no. After all, Darth Vader is one of the nicer things I've been called lately.

All of us do know each other well, and I see some good friends in

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the audience. In particular I want to thank your president, Howard Berkowitz . chairman Fred Lafer . your founding president, Barbi Weinberg . and chairman emeritus, Mike Stein.

I've gained much from the wisdom of many in the room today, as well as from the work of analysts and writers who've been affiliated with the Washington Institute. I'm proud to say that your former deputy director, John Hannah, is now my assistant for national security affairs. John and his staff are on duty night and day, and with his leadership they're doing a tremendous job for the United States of America.

I'm pleased to be among the many participants in this conference, a group that includes your keynoter, Walid Jumblatt from Lebanon. I've met with Mr. Jumblatt on a number of occasions, and I admire the courageous stand he's taking for freedom and democracy in his home country.

This is a period of great consequence for the Middle East - and, as always, the Washington Institute is providing a forum for calm, nonpartisan, rigorous discussion. For 22 years, you've brought clear and careful thinking to bear on some of the most complex and vital issues of the age. You've provided a venue for many fine scholars, and you've hosted countless forums for the sharing of ideas and discussion. It's an enormously productive enterprise, and your work is more relevant and useful today than ever before. All of us respect the Washington Institute for its high standards of research, study, and insight. And so, for both myself and President Bush, I want to congratulate the men and women of the Institute on the exceptional work you do each and every day.

You're focused on many of the same matters that take up a good deal of our time in the White House - starting with the intelligence briefing I have with the President early in the morning. In nearly every category of national interest, what happens in the Middle East is of direct concern to the people of the United States. The region is home to important allies, valued friends, and trading partners. Its resources and commercial routes are at the very heart of the global economy. Its history and its holy sites have deep meaning to hundreds of millions of people in many, many countries. And, of course, across the broader Middle East - from the Sinai Peninsula, to the Arabian Sea, to the Iraqi desert and the mountains of Afghanistan - many thousands of our fellow Americans are on military deployments.

As a nation of influence and ideals, the United States has been engaged in the Middle East for generations. Our goal is peace among its many nations, and a lasting stability that benefits all the world. And the stability we seek is not the kind that simply keeps a lid on things - the lid, of course, being held down by the heavy hand of a dictator. Real stability, long-term stability, depends on giving men and women the freedom to conduct their own affairs and choose their own leaders. This, we believe, offers the only real chance of resolving the underlying problems of the region, and lifting the hopes of all who live there. As President Bush has said, so long as the Middle East "remains a place where freedom does not flourish, it will remain a place of stagnation, resentment, and violence ready for export."

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The ideological struggle that's playing out in the Middle East today - the struggle between moderation and extremism - is going to concern America for the remainder of our Administration, and well into the future. On September 11th, 2001, we suffered a heavy blow, right here at home, at the hands of extremists who plotted the attacks from an outpost thousands of miles from our shores. Since that terrible morning, Americans have properly called this a war. For their part, the terrorists agree. The difference is that they began calling it a war a good many years prior to 9/11. And they have been waging that war with clear objectives, aggressive tactics, and a strategy they want to carry out at any cost.

They've stated their objectives. The terrorists want to end all American and Western influence in the Middle East. Their goal in that region is to seize control of a country, so they have a base from which to launch attacks and wage war against governments that do not meet their demands. Ultimately they seek to establish a totalitarian empire through the Middle East, and outward from there. They want to arm themselves with chemical, biological or even nuclear weapons; to destroy Israel; to intimidate all Western countries; and to cause mass death here in the United States.

The tactics, of course, are familiar to all the world - suicide attacks, car bombs, beheadings on the Internet, the hijackings of 9/11. And the strategy is clear as well: Through acts of stealth, and murder, and spectacular violence, they intend to frighten us and break our will - to hit us again and again until we run away. It's not easy for a civilized society to comprehend evil like that of a bin Laden or a Zawahiri. It shocks us to hear such men exhorting other people's sons to "join a caravan" of martyrs, proclaiming that heaven favors the merciless and murder is the path to paradise.

They've chosen this method because they believe it works, and they believe the history of the late 20th century proves the point. During the 1980s and 90s, as terror networks began to wage attacks against Americans, we usually responded, if at all, with subpoenas, indictments, and the occasional cruise missile. As time passed, the terrorists believed they'd exposed a certain weakness and lack of confidence in the West, particularly in America. Dr. Bernard Lewis explained the terrorists' reasoning this way. "During the Cold War," Dr. Lewis wrote, "two things came to be known and generally recognized in the Middle East concerning the two rival superpowers. If you did anything to annoy the Russians, punishment would be swift and dire. If you said or did anything against the Americans, not only would there be no punishment; there might even be some possibility of reward, as the usual anxious procession of diplomats and politicians, journalists and scholars and miscellaneous others came with their usual pleading inquiries: 'What have we done to offend you? What can we do to put it right?'" End quote.

Not surprisingly, the terrorists became more ambitious in their strikes against American interests, choosing bigger targets and racking up a higher body count. In Beirut in 1983, terrorists killed 241 of our servicemen. Thereafter, the U.S. withdrew from Beirut. In Mogadishu in 1993, terrorists killed 19 Americans; thereafter, the U.S. withdrew from Somalia. This emboldened them still further, confirming their belief that they could

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strike America without paying a price. Indeed they did strike, and indeed they did not pay the price. We had the bombing of the World Trade Center in New York in 1993; the attack on U.S. facilities in Riyadh in 1995; the murder of U.S. servicemen at Khobar Towers in 1996; the attack on our embassies in Kenya and Tanzania in 1998; the attack on the USS Cole in 2000; and, ultimately, September 11th and the loss of nearly 3,000 lives inside the United States in the space of a few hours.

In a violent world, the safety of distance was suddenly gone. And with grave new dangers directly in view, the strategic situation changed fundamentally. From the morning of 9/11, we have assumed, correctly, that more strikes would be attempted against us. So we have made enormous changes to harden the targets and better prepare the nation to face this kind of emergency. We've reorganized the government to protect the homeland, and put good people in charge of big responsibilities. One of them is Judge Michael Mukasey, who presided over the trial of the blind sheikh and has a profound grasp of the work at hand. Judge Mukasey had his confirmation hearing this past week and he did a superb job. He'll be an outstanding attorney general of the United States.

But we can't protect our country, much less win a war, by simply bracing for another attack. The President made a decision to marshal all the elements of strategic power to confront the extremists, to deny them safe haven, and above all to deny them the means to wage catastrophic attacks. We've also made clear that in the post-9/11 era, regimes that harbor terror and defy the demands of the civilized world should be held to account - before it is too late.

One of the best weapons against terrorism is good intelligence - information that helps us figure out the movements of the enemy, the extent of the network, the location of the cells, the plans they're making, the methods they use, the targets they want to hit. Information of this kind is the hardest to obtain, but it's worth the effort in terms of the plots averted and the lives that are saved. So our government has taken careful but urgent steps to monitor the communications of enemies at large, and to get information from the ones apprehended.

In the days following 9/11, the President authorized the National Security Agency to intercept terrorist-linked international communications that have one end in the United States and the other end overseas. This is the very kind of communication that was going on prior to the attack on America - and the 9/11 commission was rightly critical of our government's inability to uncover links between terrorists at home and terrorists abroad. It's called connecting the dots - and in times like these, it's critical to protecting the American people. The program has been falsely referred to as domestic surveillance. It is international surveillance. It is limited in scope to surveillance associated with terrorists; it is carefully conducted; and the information obtained is used strictly for national security purposes. It's been carried out with the utmost regard for the civil liberties of the American citizens. Appropriate members of Congress have been briefed into the program from the beginning - indeed I have personally conducted many of those briefings. This program has, without question, helped to detect and prevent possible terrorist attacks in the United States.

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We've also received help from Congress in updating the Foreign Intelligence Surveillance Act, or FISA. The law was written nearly 30 years ago, before the age of the Internet and disposable cell phones. And the statutory language seemed to require that legal protections meant only for people in the United States should now apply to terrorists overseas. That left a huge gap in the kinds of intelligence we could gather. We were missing a lot, so we asked Congress to fix the problem. Congress did the right thing - but they also wrote some fine print into the law. The FISA revisions are set to expire on the first of February - some 103 days from now. There's no good reason to sunset this vital legislation, and we're asking Congress to renew the FISA revisions as soon as possible.

Members of Congress are also well aware that some companies are now facing multi-billion dollar lawsuits - merely because they are believed to have assisted in the effort to defend the United States after 9/11. We're asking Congress to grant liability protection for those companies. Without that protection, the lawsuits carry the risk of laying state secrets in front of the enemy. That's not a risk we ought to be taking in the middle of a war.

It's worth remembering a few things that the President told Congress and the country in his speech on September 20th, 2001. He said, "The thousands of FBI agents who are now at work in this investigation may need your cooperation, and I ask you to give it." He asked Americans for patience in a long struggle. And he said the fight against terror would involve not "one battle, but a lengthy campaign," including perhaps "dramatic strikes, visible on TV, and covert operations, secret even in success."

Most everyone understood this when the memory of 9/11 was still fresh. Most everyone understood that it would be a luxury and a fantasy to suppose that we could answer terrorism without going on the offensive against the terrorists themselves. Because we've been focused, because we've refused to let down our guard, we've gone more than six years without another 9/11. No one can promise there won't be another attack; the terrorists hit us first, and they're hell-bent on doing it again.

We know this because of their public declarations, and because of the intelligence we've gathered through monitoring and, yes, interrogations. There's been a good deal of misinformation about the detainee program, and unfair comments have been made about America's intentions and the conduct of American agents. Many of the details are, understandably, classified. Yet the basic facts are these. A small number of high-value detainees have gone through the program, which is run by the CIA. This is different from Guantanamo Bay, where most of the captured terrorists are sent and interrogated according to the Army field manual. The CIA program involves tougher customers and tougher interrogations. The procedures are designed to be safe, legal, and in full compliance with the Constitution and treaty obligations. They've been carefully reviewed by the Department of Justice. The program is run by highly trained professionals who understand their obligations under the law. And the program has uncovered a wealth of information that has foiled specific attacks before they occurred - information that has on numerous occasions made the difference between life and death.

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The United States is a country that takes human rights seriously. We don't torture, and we reject the degradation of human beings. We're proud of our country and what it stands for. We expect all who serve America to conduct themselves with honor. And we enforce the rules. Several years ago, when a few guards at Abu Ghraib committed abuses, Americans were mortified and rightly outraged. The wrongdoers were arrested, prosecuted, and sent to jail, as justice demanded. America is a fair and decent country, and President Bush has made it clear, both publicly and privately, that our duty to uphold the laws and standards of this nation admits no exceptions in wartime. As he put it, "We are in a fight for our principles, and our first responsibility is to live by them."

The war on terror is, after all, more than a contest of arms and more than a test of will. It is also a battle of ideas. To prevail in the long run, we have to remove the conditions that inspire such blind, prideful hatred that drove 19 men to get onto airplanes and come to kill us. Many have noted that we're in a struggle for the "hearts and minds" of people in a troubled region of the world. That is true and it should give us confidence. Outside a small and cruel circle, it's hard to imagine anybody being won over, intellectually or emotionally, by random violence, the beheading of bound men, or the desecration of a mosque. The extremists in the Middle East are not really trying to win hearts and minds, but to paralyze them . to seize power by force . to keep power by intimidation . and to build an empire of fear.

We offer a nobler alternative. We know from history that when people live in freedom, have their rights respected, and have real hope for the future, they will not be drawn in by ideologies that stir up hatreds and incite violence. We know, as well, that when men and women are given the chance, most by far will choose to live in freedom. That is the cause we serve today in Afghanistan and Iraq - helping the peoples of those two nations to achieve security, peace, and the right to chart their own destiny. Both peoples face attack from violent extremists who want to end democratic progress and pull them back toward tyranny. We are helping them fight back because it is the right thing to do - and because the outcome is important to our own long-term security.

When historians look back on the especially difficult struggle in Iraq, I think they'll regard recent events in Anbar Province to have been a crucial turning point. Local residents and tribal leaders are sick of the violence, and repulsed by the mindless brutality and bullying by al-Qaeda. They now see al-Qaeda as the enemy, and they've worked with Iraqi and American forces to drive the terrorists from Ramadi and other population centers in Anbar. It's still dangerous in the province, and the terrorists recently killed one of the sheikhs who had been in the fight against al-Qaeda. But that fight goes on, and America's support will not waver.

Our new offensive strategy in Iraq - led by General Petraeus and backed up by a surge in forces - is producing good results. Even though we have more troops carrying out more perilous missions, our casualty rates are way down. Many al-Qaeda sanctuaries have been wiped out. Our military has seized the initiative, and conditions in the country are getting better.

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President Bush has made clear that America's word is good, and our nation will do its part to keep Iraq on the road of freedom, security, and progress. And we expect Iraq's national government to press much harder in the work of national reconciliation, to match the kind of cooperation now taking place at the local and provincial levels. We'll continue, as well, our intensive effort to train Iraqi security forces, so that over time Iraqis can take the lead in protecting their people. Progress has been uneven at times and the National Police especially need improvement. But Iraq's army is becoming more capable. And because there's a now greater degree of cooperation from local populations, Iraqi forces are better able to keep the peace in areas that have been cleared of extremists.

We have no illusions about the road ahead in Iraq. As Fouad Ajami said recently, it's not yet "a country at peace, and all its furies have not burned out, but a measure of order has begun to stick on the ground." Iraq won't become a perfect democracy overnight, but success will have an enormous positive impact on the future of the Middle East, and will have a direct effect on our own security as well. The only illusion to guard against is the notion that we don't have to care about what happens in that part of the world . or to think that when we took down Saddam Hussein our job was done. America has no intention of abandoning our friends, permitting the overthrow of a democracy, and allowing a country of 170,000 square miles to be a staging area for further attacks against us. Tyranny in Iraq was worth defeating, and democracy in Iraq is worth defending. We're going to complete the mission, so another generation of American soldiers and Marines doesn't have to go back and do it again.

Success in Iraq will confirm our good intentions in the Middle East more than words alone ever could. Especially in a region of such great strategic importance and so many dashed hopes, commitments are credible only if they're backed up by deeds. The United States, and certainly this Administration, has shown a willingness not just to proclaim great objectives, but to work and sacrifice to achieve them. George W. Bush is the first president to call for a two-state solution, with Israel and Palestine living side by side in peace and security. He has announced a peace conference to be held in Annapolis later this year, and Secretary Rice just made her seventh journey to the Middle East to lay the groundwork for that conference.

Further progress in the region will depend on responsible conduct by regional governments; respect for the sovereignty of neighbors; compliance with international agreements; peaceful words - and peaceful actions. And if you apply all these measures, it becomes immediately clear that the government of Iran falls far short, and is a growing obstacle to peace in the Middle East.

Given the recent appearance by the Iranian president in New York City, no one can fail to understand the nature of the regime this man represents. He has called repeatedly for the destruction of Israel, and has spoken of his yearning for a world without the United States. Under their current rulers, the people of Iran live in a climate of fear and intimidation - with secret police, arbitrary detentions, and a hint of violence in the air. In the space of a generation, the regime has solidified its grip on the country and grown ever more arrogant and brutal

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toward the Iranian people. Journalists are intimidated. Religious minorities are persecuted. A good many dissidents and freedom advocates have been murdered, or have simply disappeared. Visiting scholars who have done nothing wrong have been seized and jailed. The regime has also long used political assassinations and bombings against fellow Iranians who live overseas. Killings have occurred in other Middle Eastern countries, in France, in Germany, and even in Bethesda, Maryland, in 1980.

This same regime that approved of hostage-taking in the 1970s . that attacked Saudi and Kuwaiti ships in the 80s . that incited suicide bombings and jihadism in the 90s and beyond . is now the world's leading state sponsor of terror. As to its next-door neighbor Iraq, the Iranian government claims to be a friend that supports regional stability. In fact it is a force for the opposite. As General Petraeus has noted, Iran's Qods Force is trying to set up a "Hezbollah-like force to serve its interests and fight a proxy war against the Iraqi state and coalition forces in Iraq." At the same time, Iran is "responsible for providing the weapons, the training, the funding and in some cases the direction for operations that have indeed killed U.S. soldiers."

The Qods Force is a branch of Iran's Islamic Revolutionary Guard Corps - the defender of the theocracy. The regime has used the Qods Force to provide weapons, money, and training to terrorists and Islamic militant groups abroad, including Hamas and Palestinian Islamic Jihad in Gaza and the Palestinian territories; militants in Afghanistan and the Balkans; and Hezbollah terrorists who are trying to destabilize Lebanon's democratic government. Indeed the Qods Force operates Hezbollah training camps in Lebanon's Bekaa Valley. The Qods Force is also believed to have had a key role in the attack on Khobar Towers in 1996.

The Iranian regime's efforts to destabilize the Middle East and gain hegemonic power is a matter of record. And now, of course, we have the inescapable reality of Iran's nuclear program - a program they claim is strictly for energy purposes, but which they have worked hard to conceal; a program carried out in complete defiance of the international community and resolutions of the UN Security Council. Our intelligence does not indicate that Iran now has a nuclear weapon, but it's clearly on course to do so. The world knows this. The Security Council has twice imposed sanctions on Iran and called on the regime to cease its uranium enrichment. Yet the regime continues to do so, and continues to practice delay and deception in an obvious attempt to buy time. Given the nature of Iran's rulers, the declarations of the Iranian president, and the trouble the regime is causing in the region - including direct involvement in the killing of Americans - our country and the entire international community cannot stand by as a terror-supporting state fulfills its most aggressive ambitions.

The Iranian regime needs to know that if it stays on its present course, the international community is prepared to impose serious consequences. The United States joins other nations in sending that regime a clear message: We will not allow Iran to have a nuclear weapon.

<<...>>

The irresponsible conduct of the ruling elite in Tehran is a tragedy for all

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Iranians. The regime has passed up every opportunity to be a positive force in the Middle East. For more than a generation, it has only isolated a great nation, suppressed a great people, and subjected them to economic hardships that get worse every year. The citizens of Iran deserve none of this. They are the proud heirs of a culture of learning, humanity, and beauty that reaches back many centuries. Iranian civilization has produced shining achievements - from the Persian Book of Kings, to celebrated achievements in astronomy and mathematics, to art and music that are admired on every continent. The Iran of today - a nation of 70 million, most them under the age of 30 - is a place of unlimited potential. And the Iranian people have every right to be free from oppression and tyranny in their own country.

The spirit of freedom is stirring in Iran. The voices of change and peaceful dissent will not be silent. We can expect to hear more from the courageous reformers, the bloggers, and the advocates for women's rights - because these men and women are more loyal to their country than to its regime. All Iranians know that America respects them, cares about their troubles, and stands firmly on the side of liberty, human dignity, and individual rights. Freedom in the Middle East requires freedom for the Iranian people. America looks forward to the day when Iranians reclaim their destiny . the day that our two countries, as free and democratic nations, can be the closest of friends.

It's been given to us, ladies and gentlemen, to live in an era crowded with decisive events, and we've had to face challenges that no generation would choose for itself. All of you know those challenges better than most, and you've devoted time, energy, and intellect to the great issues confronting the Middle East today. In all your discussions, and in all that lies ahead, you can be certain that our country will stay engaged in the Middle East, making the hard choices and providing the kind of leadership that makes this world a better place. We accept that responsibility, for the sake of our own security and in service to our founding ideals. And as long as America continues to lead - steady in the face of adversaries, and firm in the defense of freedom - this young century will be a time of rising hopes, and advancing peace.

Thank you very much.

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