

squalid treatment of rehabbing soldiers at Walter Reed, made it plain to their troops that they couldn't talk about what went on at Abu Ghraib or Guantanamo.

Shortly after the revelations of prisoner abuse at Abu Ghraib, I was asked by faculty at the military's medical school, the Uniformed Services University of the Health Sciences, to speak at a forum on the ethics of clinical work with detainees. A tentative date in late summer of 2004 was set. I was then told by the event's sponsors that then-Defense Secretary Donald H. Rumsfeld's civilian staff had ordered the session canceled.

Later that year, Maj. Scott Uithol, an Army psychiatrist deployed to Abu Ghraib to help plan interrogations, was to speak at a forensic psychiatry conference on the ethical and other challenges this work posed. The Army Medical Command, headed then as now by Kiley, ordered him not to do so. Kiley ran Walter Reed from 2002 to 2004.

Many other Army doctors gave us similar accounts of being told to keep silent. Several junior officers spoke of threats from above to end their careers and bring criminal charges against anyone who broke with the brass' "don't-ask, don't-tell" approach to mounting evidence of medical complicity in prisoner abuse. A reservist, Maj. David Auch, was scathingly criticized by Pentagon higher-ups when we quoted him in a New York Times article about nightmarish staff and equipment shortages at Abu Ghraib, to the point that a dentist did heart surgery and chest tubes were taken from the dead for reuse.

Kiley and Winkenwerder, who announced that he would resign as assistant secretary of Defense for health affairs a few days after the Washington Post broke the Walter Reed story, ordered reports on detainee healthcare from their subordinates rather than asking for inquiries from outsiders of equal or greater rank. The message was clear: Evidence of misconduct and neglect was to be cloaked demurely, not bared. Kiley's deputy, Maj. Gen. Lester Martinez-Lopez, who wrote the only, even mildly critical, assessment of prisoner treatment, retired within weeks of submitting his findings.

Army doctors have performed heroically in the Iraq war. But many have become disillusioned about supply and personnel shortages — and about the silencing of their concerns by higher-ups. There is some anecdotal evidence that recruitment and retention have become problems, aggravated by a sense that those who go along to get along are promoted over more able officers who are more inclined to speak freely.

At Walter Reed, news reports and congressional hearings have made it clear that lower-ranking and noncommissioned officers knew about the conditions under which hundreds of wounded and recovering U.S. soldiers lived until last month. It appears that those near the bottom of the chain of command found the squalor unspeakable, but word of it didn't move upward along the usual channels, and those at the top never "walked the barracks" to preempt trouble.

"There's a need for anyone in a leadership post to walk around, to talk to people, to not rely on subordinates only," a predecessor of Kiley as Army surgeon general, retired Lt. Gen. Ronald Blanck, told me last week. Blanck did not criticize Kiley directly, but he

TRANSCOM GHOST DOCS 701

spoke proudly of military medicine's tradition of outspokenness from below.

For efforts by clinicians and administrators to improve the quality of medical care, evasion and denial of mistakes is toxic. The National Academies of Sciences and other bodies have embraced approaches to healthcare quality that stress sharing and vigorous discussion of clinical, bureaucratic and ethical problems. Within military medicine, the climate of fear created from above since 9/11 has made such discussion difficult, if not impossible.

It's urgent that the Walter Reed investigations getting underway address the causes for this climate of fear. Fixing responsibility on a few generals won't be enough (though surely it's time for Kiley to go). We owe America's military health professionals more protection for their independence and willingness to speak out — because they deserve it and because their professional judgment is a potent safeguard against clinical, administrative and moral error.

Military medicine will always pose awkward administrative and ethical challenges, arising from tensions between the ideals of professional autonomy and obedience to command — and between patient well-being and protecting the nation. Silence, enforced by fear, can submerge these tensions for a time. But when they're not talked about, they can emerge explosively, as they did at Guantanamo, Abu Ghraib and now Walter Reed.

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Wednesday, March 14, 2007

USA TODAY

USA Today  
March 14, 2007  
Pg. 7D

## **Do We All Have A Dark Side?**

*Psychologist Argues We Do In 'The Lucifer Effect'*

By Marilyn Elias, USA TODAY

Photographs from Iraq's Abu Ghraib prison sickened eminent psychologist Philip Zimbardo when he saw them on TV three years ago, but it wasn't the first time he had seen such sadism imposed by prison guards.

"It was eerie and all too familiar," he says.

**TRANSCOM GHOST DOCS 702**

Saturday, March 17, 2007

WASHINGTON POST

## Probe of Al-Qaeda Leader's Handling Sought

Senators Urge Inquiry After Mohammed Alleges Abuse

By Dafna Linzer and Josh White  
Washington Post Staff Writers  
Saturday, March 17, 2007; A15

Two senators who observed last week's closed military proceedings against al-Qaeda leader Khalid Sheik Mohammed called for an investigation into allegations that the accused planner of the Sept. 11 attacks was physically abused while in CIA custody.

Mohammed told the tribunal last Saturday that he had been mistreated during three years in CIA custody before his transfer to Guantanamo Bay, and he submitted a written description of the alleged abuse. The military panel immediately classified the submission and redacted from transcripts details of Mohammed's treatment in the CIA's secret prison program.

According to one portion of the transcript made public earlier this week, however, Mohammed told the panel of three unnamed military officers that his children had been held for four months and abused during his incarceration.

"Allegations of prisoner mistreatment must be taken seriously and properly investigated. To do otherwise would reflect poorly on our nation," Sen. Carl M. Levin (D-Mich.), the chairman of the Senate Armed Services Committee, and Sen. Lindsey O. Graham (R-S.C.), a committee member, said in a statement issued yesterday.

The military officer who presided over the hearing promised to forward the allegations for investigation, and a U.S. official said that they had been sent to the CIA's inspector general.

Defense Secretary Robert M. Gates said yesterday that his deputy, Gordon England, was present at Mohammed's hearing last Saturday at Guantanamo Bay, Cuba.

Gates, who was returning from Central Command headquarters in Florida yesterday, told reporters on his flight that he had read the redacted transcript of Mohammed's hearing and had spoken to England about it. Gates said England described Mohammed as calm, giving laconic answers to the tribunal before speaking politely of the terrorist acts he claims to have committed.

"There was no doubt in [England's] mind that this guy meant every word he said," Gates said. "It really was a fresh reminder of the kind of threat that we're facing." Gates said he

TRANSCOM GHOST DOCS 703

did not know whether prosecutors would seek the death penalty should the case go to a military commission, but he said, "One would hope so."

The CIA maintains that it does not torture prisoners but has refused to describe what acts it considers to be torture and has not divulged the interrogation techniques it uses against detainees.

Levin and Graham did not challenge the secret nature of Mohammed's hearing or the classification of his allegations of abuse. But they, along with Gates and others, said they were convinced that he was telling the truth during the hearing.

Mohammed claimed responsibility for more than 30 terrorism plots, including the attacks of Sept. 11, 2001, and the killing of Wall Street Journal reporter Daniel Pearl, whom Mohammed said he beheaded.

"It was apparent to us," the senators wrote in their statement, that Mohammed "wanted to use the tribunal process to detail his role in 9/11 and many other terror plots and to record for history the part he has played in a war that he has unabashedly waged." Mohammed "views himself as a warrior, motivated by religious teachings, and seeks his place in history."

The two senators helped write legislation codifying the Combatant Status Review Tribunals. Yesterday they offered no new details on the content of the hearing but said they were impressed with "the professionalism and demeanor of the tribunal." Mohammed was denied an attorney for the hearing, which was called to establish whether he qualifies as an enemy combatant. Evidence was withheld from him, and the military panel rejected his request to call two witnesses -- also at Guantanamo -- to corroborate assertions that nearly half of the military's case against him is false.

"The true test of the CSRT process is not a case in which the detainee admits the allegations against him, it is a case in which the detainee disputes those allegations. Judicial review of the tribunals is ongoing," the two senators wrote. "We will continue to review the process and will explore possible ways to improve this process through Congressional action," they wrote.

#### WASHINGTON POST

### **Saudi Arabia Routinely Frees Detainees**

Release of Guantanamo Prisoners Undermines U.S. Claims of Threat, Analysis Says

By Joby Warrick  
Washington Post Staff Writer  
Sunday, March 18, 2007; A05

# TRANSCOM GHOST DOCS 704

"We have no desire to be the world's jailer, or to hold detainees any longer than necessary," said Navy Cmdr. Jeffrey Gordon, a Pentagon spokesman. He added: "While some have called for the closure of Guantanamo, none have put forth viable options for handling these dangerous men while preventing their return to terrorism."

The report is not the first to raise questions about custody decisions for detainees. In December, a survey by the Associated Press found that 84 percent of released detainees -- 205 out of 245 individuals whose cases could be tracked -- were set free after being released to the custody of their native countries.

Raut said he began the research because he wanted to find a logical explanation for why some detainees were being returned home while others face years of legal limbo without formal charges or prospects for a court hearing. Of the five Saudis represented by Raut's firm, only two have been discharged to Saudi custody.

"There are certainly bad people in Guantanamo Bay, but there are also other cases where it's hard to understand why the people are still there," said Raut, who has visited the detention camp three times. "We were struggling to find some rationality, something to comfort us that it wasn't just random. But we didn't find it."

In the report, Raut and Friedman said many of the U.S. attempts to link the detainees to terrorism groups were based on evidence they describe as circumstantial and "highly questionable," such as the travel routes they followed in flying commercially from one Middle East country to another. U.S. officials have associated certain travel routes with al-Qaeda, when in fact the routes "involve ordinary connecting flights in major international airports," the report states. With regard to accusations based on similar names, the report states: "This accusation appears to be based upon little more than similarities in the transliterations of a detainee's name and a name found on one of the harddrives."

Raut, in an interview, said he was most struck by the high percentage of Saudi detainees who had been captured and turned over by Pakistani forces. In effect, Raut said, for at least half of the group in the study, the United States "had no first-hand knowledge of their activities" in Afghanistan before their capture.

**Tuesday, March 20, 2007**

**WASHINGTON POST**

EDITORIAL:

## **Top-Secret Torture**

What's stopping the Democrats in Congress from investigating?

Tuesday, March 20, 2007; A18

**TRANSCOM GHOST DOCS 705**

KHALID SHEIK Mohammed's cold-blooded confession of responsibility for the attacks of Sept. 11, 2001, and other horrific crimes before a tribunal in Guantanamo Bay got a lot of attention when the Pentagon released a partial transcript last week -- and understandably so. But another set of disclosures by the al-Qaeda leader that could also be sensational received almost no attention. That's because the Pentagon swiftly classified a document submitted by Mr. Mohammed in which he detailed the torture he says he suffered. The rationale is that disclosure of those allegations would harm national security. In fact, the harm the Bush administration's abuse of prisoners has already done to this country's ability to combat Islamic extremism will only be compounded if it succeeds in making this shameful record a state secret.

The administration claims it has not used torture on prisoners such as Mr. Mohammed. Yet it has been working aggressively to ensure that he and 13 other accused terrorists formerly held in secret CIA prisons are never allowed to reveal how they were treated. In addition to classifying Mr. Mohammed's statement, the administration is making the surreal argument in court that in being subjected to "alternative" interrogation methods, al-Qaeda detainees were receiving top-secret information -- and so may be prohibited from ever discussing their experience, even to the defense attorneys seeking to represent them.

The government claims that this looking-glass policy is necessary to prevent al-Qaeda members still at large from learning of the CIA's methods so that they can train against them. Yet some of the harshest action taken against Mr. Mohammed has already been widely reported: He was treated to "waterboarding," or simulated drowning, an ancient torture method that every U.S. administration prior to this one has considered illegal. CIA detainees are also known to have been subjected to temperature extremes and sleep deprivation. The administration has assured Congress that it has dropped some of these methods, including waterboarding. If that's true, Mr. Mohammed's statement will not alert future detainees, but it will open a debate about whether the CIA's past practices were legal or morally justifiable.

That is what the administration is really trying to stop. If al-Qaeda members are allowed to talk about the abuse they suffered, President Bush's frequent contention that no one was tortured will come under question; so will his determination to maintain the CIA's secret detention "program." If the administration strategy succeeds, much of the trials and appeals of the al-Qaeda suspects will have to be conducted in secret -- something that will strip the proceedings of credibility and legitimacy.

Two senators who attended Mr. Mohammed's Guantanamo hearing, Carl Levin (D-Mich.) and Lindsey O. Graham (R-S.C.), issued a statement calling for an investigation of the torture charges. Yet any administration investigation -- especially one conducted in secret -- will almost certainly conclude that the waterboarding was approved by senior administration officials. What's needed is a genuinely independent investigation, one that airs Mr. Mohammed's charges and tests the administration's claim that the CIA's actions were legal. Mr. Levin -- as chairman of the Senate Armed Services Committee -- could

**TRANSCOM GHOST DOCS 706**

conduct such a probe in cooperation with the Intelligence or Judiciary committees.  
What's stopping him?

## WASHINGTON POST

OPINION:

### **Tortured Credibility**

By Anne Applebaum  
Tuesday, March 20, 2007; A19

Back in 2003, when U.S. forces first took custody of the notorious al-Qaeda mastermind Khalid Sheik Mohammed, there was much speculation about what his capture might signify. Some thought he might possess information about other planned operations, some predicted his loss would fatally damage al-Qaeda, some guessed his arrest would lead to additional arrests. Others, among them Harvard law professor Alan Dershowitz, used his capture to float interesting theories about torture: when and how it might legitimately be used, for example, given a candidate who might seem so clearly deserving of it.

Here is one thing nobody predicted back in 2003: that when the notorious Mohammed eventually stood before a Guantanamo Bay military tribunal and took responsibility not only for the Sept. 11 attacks, the deadliest crime ever carried out on American soil, but also for the horrific death of the journalist Daniel Pearl and some two dozen other operations, the world would greet the confessions with skepticism and indifference.

The Daily Telegraph, normally the most pro-American newspaper in Britain, wrote that it hardly mattered whether Mohammed was guilty, since whatever conclusion is drawn by the military tribunal that will try him, "the world will condemn the procedures by which the verdicts were reached." Germany's Frankfurter Allgemeine Zeitung concluded that "the Bush administration has nobody but itself to blame for the fact that the actions and motives of the perpetrator are now playing second fiddle to the practices used by the Americans in fighting terrorism." In many places, the confessions, which took place nearly a week ago, still have hardly attracted attention.

A small part of this international indifference perhaps derives from the transcript of the confessions, which seem boastful and exaggerated. (What else will he confess to? The murder of JFK?) Most of it, though, surely comes from the widespread, indeed practically universal, assumption that Mohammed was tortured, not in theory but in practice.

Certainly during his hearing at Guantanamo Bay, there are references to "certain treatment [he] claimed to have received," though the relevant parts of the official transcript remain classified. But the assumption that Mohammed was tortured comes from the fact that, as we all now know, the White House, the Pentagon and the Justice Department were also debating the merits of torture about the time of Mohammed's

# TRANSCOM GHOST DOCS 707

They were forced to kneel for 10 hours, during which time “I was hit in the back of the head with the butt of a rifle several times (hard enough to knock me over), slapped in the back of the head, kicked, stepped on, and spat on,” he said. “I could hear the groans and cries of other detainees.”

He was flown back to the ship, and a few days later back to a hangar.

A week or so later, he was flown to Kandahar, where he and other detainees “were forced to lie face down in the mud while soldiers walked across our backs.”

He was stripped, his body hair shaved and a piece of “white plastic was forcibly inserted in my rectum for no apparent purpose,” he wrote. Soldiers made crude comments about the insertion, he said.

Commander Gordon said he had no knowledge of such treatment. Some former detainees have made similar accusations, including Mamdouh Habib, an Australian who was picked up in Pakistan, turned over to the United States and delivered to Egypt, where he says he was badly tortured.

At Guantánamo, Mr. Hicks said he was also shown a picture of Mr. Habib. “In the photo, Habib’s face was black and blue,” Mr. Hicks wrote. “I first thought it was a photo of a corpse,” he said, adding that an interrogator told him that if he did not cooperate he would be sent to Egypt “to suffer the same fate.”

“This regular brutality left me in a heightened state of fear and anxiety about my own safety,” Mr. Hicks wrote in the affidavit.

After Mr. Hicks was formally charged earlier this month, Australian officials said publicly that they hoped a plea bargain allowing Mr. Hicks to come home could be negotiated. Two American officials close to the case said they expected that the deal would be for Mr. Hicks to plead guilty to the one charge, in exchange for the five years he has already been held.

**Wednesday, March 21, 2007**

**NEW YORK TIMES**

March 21, 2007

## **Ex-Captive in Guantánamo Makes Run for Office in Australia**

By RAYMOND BONNER

Page A12

**TRANSCOM GHOST DOCS 708**



AUBURN, Australia — Mamdouh Habib cannot drink cold water. He vomits when he tries to, he said. He knows he must drink water, so he engages in vigorous exercise in order to force some lukewarm water down.

He says his doctor has told him his stomach has been damaged. Mr. Habib thinks it is from having gas forced into it through some kind of tubes inserted into his rectum when he was detained and, he says, tortured in Egypt.

“It made you feel like you were flying,” he said.

Mr. Habib, an unemployed 51-year-old father of four, was an early case of rendition. He was seized in Pakistan in October 2001, where he has alleged that he was tortured, then bound up by tough English-speaking men in black and secretly flown to Egypt, where he was held and, by his accounts, tortured for several months, before being shipped to the American detention facility at Guantánamo Bay, Cuba, in April 2002.

He was released from Guantánamo and returned to Australia in February 2005 without any charges filed against him, because the Bush administration did not want the torture allegations aired in court, Australian and American officials have said.

Now, he is fighting back. He is running in elections on March 24 for a seat in the parliament of the state of New South Wales, whose capital is Sydney.

If the fear has been that those released from Guantánamo would return home more radicalized from their experience, Mr. Habib, for his part, has decided to join the establishment, it seems, as a nonestablishment candidate.

“We have to be inside the parliament to know what’s going on, and to let the people on the outside know what is going on, and that is why we are doing this,” said Raul Bassi, a native of Argentina, who recruited Mr. Habib to run.

The Habibs; Mr. Bassi, a 60-year-old atheist, human rights and antiwar campaigner; and others from Mr. Habib’s somewhat ragtag electoral network gathered on a Saturday morning for coffee at Michel’s, on the busy corner of Auburn Road and Queen Street. The coalition includes the Greens, the Socialist Alliance and the Communist Party.

“I’m from this community,” Mr. Habib said, taking another cigarette. “The people in parliament are not from us — they’re rich people.”

Looking nothing like a traditional candidate, Mr. Habib, his hair in a ponytail, was wearing aviator sunglasses, combat fatigues and a T-shirt with an upside down American flag on it, along with a picture of a hooded prisoner behind barbed wire, and the word “terrorism” defined as “the systematic use of violence and intimidation to achieve some goal.”

The multiracial nature of the Auburn district is visible everywhere, in the people walking the streets — women in full chador, Chinese, lanky Ethiopians and Somalis — and in the shops they go into. Within a 100 yards of Michel's there is the Turkish Gözde Cafe; Ali Baba's Charcoal Chicken; Al Safra Pizza and Kebab House.

Tony Oldfield, who works in a flour mill and is also part of the election team, rattles off the census statistics, precisely: 18.1 percent Chinese, 10.7 percent Anglo-Australian, 10.5 percent Lebanese, 4.5 percent Arabic and Turk; there are also Afghans, Iraqis, Iranians.

American and Australian officials have said that Mr. Habib, who once ran a commercial cleaning service, and then a restaurant, went to Pakistan in 2001, and later to Afghanistan where he trained with Al Qaeda. Mr. Habib does not deny going to Pakistan. He wanted to find a religious school for his children, he has said.

Since starting his campaign, he has not been asked by the voters in his district if he trained with Al Qaeda, he said, and if he is, he will answer. But, he said, he is not going to answer that question from a journalist, nor from the government.

Mr. Habib's campaign has less than \$2,000, Mr. Bassi said, and is relying on one-on-one contacts.

Mike Newman, a 41-year-old computer programmer wearing shorts and sandals who emigrated from Britain seven years ago and whose wife is from Manila, signed a petition in support of Mr. Habib.

"It's an alternative to the two major parties," he said, speaking of the center-right Liberal Party and the center-left Labor Party. On race and immigration issues, there is not a lot of difference between those parties, he said.

Harla Kassem, 24, a bank officer of Lebanese descent, said her two brothers planned to vote for Mr. Habib. But she did not think she would.

"I don't think he's normal, after what he's been through," she said, delicately. There have been stories that Mr. Habib, like many Guantánamo detainees, suffered serious mental problems while in custody. It is another subject Mr. Habib does not wish to talk about.

Mr. Habib said he harbored no bitterness toward the American people. He has sisters and cousins living in New York, he said. He even has respect for many of the guards at Guantánamo. They were just doing their job, he said.

"You can't take your anger with you," he said. "You have to control yourself."

After being beaten and interrogated in Pakistan, he said, an Australian official told him he would never go home, would never see his family again. At the end of what he says was a brutal interrogation, Mr. Habib stood up and shook the man's hand. The man was astonished, Mr. Habib said.

TRANSCOM GHOST DOCS 710

"It makes me proud of myself," he said about his gesture. "It gives me victory. I have my dignity. He doesn't."

Mr. Habib does not expect to win, but he does plan to keep fighting, his own way.

"If we don't win this election, we'll go to the next one," he said. "And if we don't with that one, we'll go to the next, and the next one after that. This is just practice."

Friday, March 23, 2007

NEW YORK TIMES

March 23, 2007

## New to Job, Gates Argued for Closing Guantánamo

By THOM SHANKER and DAVID E. SANGER

Page 1

WASHINGTON, March 22 — In his first weeks as defense secretary, Robert M. Gates repeatedly argued that the detention facility at Guantánamo Bay, Cuba, had become so tainted abroad that legal proceedings at Guantánamo would be viewed as illegitimate, according to senior administration officials. He told President Bush and others that it should be shut down as quickly as possible.

Mr. Gates's appeal was an effort to turn Mr. Bush's publicly stated desire to close Guantánamo into a specific plan for action, the officials said. In particular, Mr. Gates urged that trials of terrorism suspects be moved to the United States, both to make them more credible and because Guantánamo's continued existence hampered the broader war effort, administration officials said.

Mr. Gates's arguments were rejected after Attorney General Alberto R. Gonzales and some other government lawyers expressed strong objections to moving detainees to the United States, a stance that was backed by the office of Vice President Dick Cheney, administration officials said.

As Mr. Gates was making his case, Secretary of State Condoleezza Rice joined him in urging that the detention facility be shut down, administration officials said. But the high-level discussions about closing Guantánamo came to a halt after Mr. Bush rejected the approach, although officials at the National Security Council, the Pentagon and the State Department continue to analyze options for the detention of terrorism suspects.

The base at Guantánamo holds about 385 prisoners, among them 14 senior leaders of Al Qaeda, including Khalid Shaikh Mohammed, who were transferred to it last year from secret prisons run by the Central Intelligence Agency. Under the Pentagon's current plans, some prisoners, including Mr. Mohammed, will face war crimes charges under military trials that could begin later this year.

TRANSCOM GHOST DOCS 711

“The policy remains unchanged,” said Gordon D. Johndroe, a spokesman for the National Security Council.

Even so, one senior administration official who favors the closing of the facility said the battle might be renewed.

“Let’s see what happens to Gonzales,” that official said, referring to speculation that Mr. Gonzales will be forced to step down, or at least is significantly weakened, because of the political uproar over the dismissal of United States attorneys. “I suspect this one isn’t over yet.”

Details of the internal discussions on Guantánamo were described by senior officials from three departments or agencies of the executive branch, including officials who support moving rapidly to close Guantánamo and those who do not. One official made it clear that he was willing to discuss the internal deliberations in part because of Mr. Gonzales’s current political weakness. The senior officials discussed the issue on ground rules of anonymity because it entailed confidential conversations.

The officials said Mr. Gates and Ms. Rice expressed their concerns about Guantánamo in conversations with Mr. Bush and others, including Mr. Gonzales, beginning in January and onward. One widely discussed alternative would move the prisoners to military brigades in the United States, where they would remain in the custody of the Pentagon and would be subject to trial under military proceedings. There is widespread agreement, however, that moving any detainees or legal proceedings to American territory could bring significant complications.

Some administration lawyers are deeply reluctant to move terrorism suspects to American soil because it could increase their constitutional and statutory rights — and invite an explosion of civil litigation. Guantánamo was chosen because it was an American military facility but not on American soil.

Placing the detainees in military brigades on United States territory might fend off some of those challenges. The solution may eventually require a new act of Congress establishing legal standing for the detainees and new rules for their trial and incarceration if brought to the United States.

Mr. Gates’s criticism of Guantánamo marks a sharply different approach than the one taken by his predecessor, Donald H. Rumsfeld. It also demonstrated a new dynamic in the administration, in which Mr. Gates was teaming up with Ms. Rice, who often was at loggerheads with Mr. Rumsfeld. The State Department has long been concerned about the adverse foreign-policy impact of housing prisoners at Guantánamo.

In the end, Mr. Gates did succeed in killing plans to build a \$100 million courthouse and detention complex at Guantánamo, after he argued that the large and expensive project would leave the impression of a long-lasting American detainee operation there and that

the money could be more effectively spent elsewhere by the Pentagon. Mr. Gates approved a far more modest facility at one-tenth of the cost.

The setback in his effort to close Guantánamo was described by senior Pentagon officials as Mr. Gates's only significant failure during an effort in his first three months in office to shift course from policies pursued by Mr. Rumsfeld. The outcome suggests that Mr. Bush, Mr. Cheney and Mr. Gonzales remain committed to a detention plan that has become one of the most controversial elements of the administration's counterterrorism program.

Mr. Cheney's spokeswoman, Lee Anne McBride, said via e-mail that "we don't discuss internal deliberations."

Mr. Bush has repeatedly said he ultimately wants to shutter the detention operations at Guantánamo. But he has also said it is not possible to do so any time soon.

State Department and Pentagon officials have said that even close allies are uncomfortable with American policies toward Guantánamo, making it more difficult in some cases to coordinate efforts in counterterrorism, intelligence and law enforcement.

More than 390 detainees have been transferred abroad from the Guantánamo facility since it was opened amid global controversy in 2002. Last year, 111 detainees were transferred out, and 12 more have been this year. About 20 of those repatriated to home countries have been picked up again in sweeps of terrorism suspects or have been killed or captured in battle, Pentagon officials say.

Many countries do not want to take back the detainees held at Guantánamo. Some home nations will not guarantee that returning detainees would be assured humane treatment and fair trials, while others will not guarantee that detainees viewed by American officials as still dangerous would not be set free.

Mr. Gates's challenge has sent a ripple through the White House, because it forced officials to confront the question of whether Mr. Bush was actually moving to fulfill his stated desire to close the detention facility. Officials who advocate shutting down Guantánamo, including some at the Pentagon and the State Department, said an underlying motivation of those who want to keep the center open is that closing it would be seen as a public admission of an incorrect policy — something the Bush administration is loath to do.

Neither Mr. Gates nor Ms. Rice have made public their comments to Mr. Bush. "Nobody is going to be insubordinate with the president," said one senior administration official involved in the discussions. "You know the saying: 'One war, one team.'"

But in a recent Pentagon news conference, Mr. Gates did speak about his concerns over Guantánamo in general terms.

"I think that Guantánamo has become symbolic, whether we like it or not, for many around the world," Mr. Gates said at the time. "The problem is that we have a certain number of the detainees there who often by their own confessions are people who if released would come back to attack the United States. There are others that we would like to turn back to their home countries, but their home countries don't want them."

He said officials "are trying to address the problem of how do we reduce the numbers at Guantánamo and then what do you do with the relatively limited number that would be irresponsible to release."

"And I would tell you that we're wrestling with those questions right now," he continued.

In an interview on Thursday, Gordon England, the deputy secretary of defense who is Mr. Gates's point man on detention issues, suggested that the long-term answer to Guantánamo might be creating some new international legal structure or set of multilateral agreements to manage captured members of global terrorist organizations.

"I don't know the alternative unless the international community, frankly, develops an alternative," Mr. England said. "It is not a U.S. problem. It is an international problem to be dealt with."

Mr. England said American government officials had "an extraordinarily high degree of confidence from the information available" that many Guantánamo detainees were "going to damage the country, so you just can't let them go."

"So," he added, "this is difficult. I know it's onerous. I know there are a lot of questions about it. We deal with it the best we can. But at the end of the day, we are not going to put the country or our citizens in jeopardy."

## TORTURE

Saturday, March 24, 2007

WASHINGTON POST

# Guantanamo Prison Likely to Stay Open Through Bush Term

By Karen DeYoung and Josh White  
Washington Post Staff Writers  
Saturday, March 24, 2007; A02

The U.S. military prison at Guantanamo Bay, Cuba, is likely to remain open for the remainder of the Bush presidency despite Bush's stated desire to close it, the administration said yesterday.

TRANSCOM GHOST DOCS 714

Sunday, March 25, 2007

NEW YORK TIMES

March 25, 2007

## C.I.A. Awaits Rules on Terrorism Interrogations

By MARK MAZZETTI

Page A14

WASHINGTON, March 24 — A sharp debate within the Bush administration over the future of the Central Intelligence Agency's detention and interrogation program has left the agency without the authority to use harsh interrogation techniques that the White House said last fall were necessary in questioning terrorism suspects, according to administration and Congressional officials.

The agency for months has been awaiting approval for rules that would give intelligence operatives greater latitude than military interrogators in questioning terrorism suspects but would not include some of the most controversial interrogation procedures the spy agency has used in the past.

But the internal debate has left the C.I.A. program in limbo as top officials struggle over where to set boundaries in the treatment of people suspected of being involved in terrorist activities. Until the debate is resolved, C.I.A. interrogators are authorized to use only interrogation procedures approved by the Pentagon.

The C.I.A.'s proposed interrogation rules are part of the first major overhaul of the agency's detention and interrogation program since the agency began jailing terrorism suspects in 2002. The agency has already decided to abandon some past interrogation techniques — among them "waterboarding," which induces a feeling of drowning — that human rights groups and some lawmakers have argued are torture.

Although it is unclear whether the C.I.A. has any prisoners in custody, the White House has not repeated its earlier statements that the secret prisons are empty. The C.I.A.'s proposed interrogation methods remain highly classified, but they may include exposure to extreme temperatures and sleep deprivation.

Much of the debate over the interrogation rules has not been made public. A draft of an executive order providing broad guidelines for interrogators was rejected this year by State Department officials, who argued that the language was too expansive and could leave the Bush administration open to challenges, including some from American allies, that the White House was legalizing practices that violated a provision of the Geneva Conventions.

TRANSCOM GHOST DOCS 715

The Supreme Court ruled last year that all prisoners in American captivity must be treated in accordance with Common Article 3 of the Geneva Conventions, which prohibits the humiliating and degrading treatment of prisoners.

The struggle is evidence of shifting dynamics within the administration and a rethinking of some of the most polarizing policies enacted after the Sept. 11, 2001, attacks to fight terrorism worldwide.

Late last year, Defense Secretary Robert M. Gates forced a debate within the administration about whether to close the military prison at Guantánamo Bay, Cuba, and now some senior officials are questioning how far the C.I.A. interrogation program should go beyond the Army Field Manual for interrogations, which the Pentagon uses to train military interrogators.

It has been six months since President Bush signed a bill authorizing the secret C.I.A. interrogations — a measure the White House promoted as a critical tool to obtain information from high-level terrorism suspects.

Several officials said the C.I.A. had not yet needed to press the White House for the legal authority because there was no one in C.I.A. custody who had required the “enhanced” interrogation techniques.

Still, C.I.A. officials have maintained that it is important to get the detention program on a solid legal footing and to give clarity to operatives in the field about what is permissible and what is not.

“At the end of the day, the director — any director — of C.I.A. must be confident that what he has asked an agency officer to do under this program is lawful,” the agency’s director, Gen. Michael V. Hayden, wrote in a note to agency employees last September. “That’s the story here.”

Some officials said that while the C.I.A. would probably be able to get legal approvals if the agency captured someone it wished to interrogate, doing so could take precious time. The intelligence value of detainees sometimes diminishes quickly.

“You want established, clear rules in place,” said one American official with knowledge of the debate over interrogations. “You don’t want agency officials having to call back to headquarters for ‘Mother may I?’ ”

The Supreme Court decision forced the White House to press Congress for new authority both to try terrorism suspects using military commissions and to detain and interrogate high-level suspects in secret C.I.A. jails abroad.

When President Bush signed the Military Commissions Act last October, the White House released a statement calling the C.I.A. detention program “one of the most successful intelligence efforts in American history.” The new authority, Mr. Bush said,



will “ensure that we can continue using this vital tool to protect the American people for years to come.”

But since passage of the bill, top officials have been wrestling with the executive order and a separate legal opinion from the Justice Department’s Office of Legal Counsel that would authorize the C.I.A. interrogation techniques and explain why the techniques comply with the standards of the Geneva Conventions.

Gordon D. Johndroe, a spokesman for the National Security Council, said the executive order was expected in “the next few weeks.”

“The administration has been engaged in a deliberative and thoughtful interagency process,” Mr. Johndroe said. “This process required additional time as new officials, including the defense secretary, director of national intelligence and White House counsel were brought into the deliberations.”

The Military Commissions Act states that the president “shall” issue an executive order setting out broad guidelines for the interrogation of detainees. Administration officials said the Justice Department had already determined that the language did not compel the White House to issue such an order, but that the administration still planned to complete the document.

Some human rights groups remain skeptical that, even with the Justice Department’s blessing, the new interrogation rules would meet international standards governing the treatment of detainees.

Specifically, they point to a series of Office of Legal Counsel memos written in 2002 in which Justice Department lawyers took a broad view of what is permissible under international conventions barring torture, and said they feared that the office could again authorize interrogation techniques that violate international law.

“I would hope that the O.L.C. has learned its lesson and that they’re not trying to split hairs and draw fine distinctions to undermine the spirit of U.S. law,” said John Sifton, a researcher with Human Rights Watch.

Some lawmakers have expressed anger that the White House, after pushing Congress to pass the Military Commissions Act last year, has yet to issue the executive order.

“Given the speed with which this bill was pushed through Congress last year, the president should have lived up to his obligations under the law by now,” said Senator John D. Rockefeller IV of West Virginia, chairman of the Senate Intelligence Committee, in an e-mail message.

“Providing legal clarity for our interrogators was one of the key factors in my decision to support the Military Commissions legislation,” Mr. Rockefeller said.

TRANSCOM GHOST DOCS 717

Both Mr. Rockefeller and Representative Silvestre Reyes, the Texas Democrat who is chairman of the House Intelligence Committee, have questioned the need for the C.I.A.'s secret prison network and have pledged to make oversight of the agency's detention and interrogation program a priority during this session of Congress.

The interrogation of high-level terrorism suspects in C.I.A. prisons is one of the most criticized aspects of the Bush administration's response to the Sept. 11 attacks.

The prison network was cloaked in secrecy until President Bush confirmed its existence during a speech last September, when he announced that the 14 remaining inmates in C.I.A. prisons would be transferred to the military prison at Guantánamo Bay.

But President Bush defended the C.I.A.'s interrogation techniques as "safe and lawful and necessary," and said the spy agency would continue to detain and question high-level terrorism suspects in the future.

## NEW YORK TIMES

EDITORIAL:  
March 25, 2007  
EDITORIAL

### The President's Prison

George Bush does not want to be rescued.

Page WK11

The president has been told countless times, by a secretary of state, by members of Congress, by heads of friendly governments — and by the American public — that the Guantánamo Bay detention camp has profoundly damaged this nation's credibility as a champion of justice and human rights. But Mr. Bush ignored those voices — and now it seems he has done the same to his new defense secretary, Robert Gates, the man Mr. Bush brought in to clean up Donald Rumsfeld's mess.

Thom Shanker and David Sanger reported in Friday's Times that in his first weeks on the job, Mr. Gates told Mr. Bush that the world would never consider trials at Guantánamo to be legitimate. He said that the camp should be shut, and that inmates who should stand trial should be brought to the United States and taken to real military courts.

Mr. Bush rejected that sound advice, heeding instead the chief enablers of his worst instincts, Vice President Dick Cheney and Attorney General Alberto Gonzales. Their opposition was no surprise. The Guantánamo operation was central to Mr. Cheney's drive to expand the powers of the presidency at the expense of Congress and the courts, and

# TRANSCOM GHOST DOCS 718

Mr. Gonzales was one of the chief architects of the policies underpinning the detainee system. Mr. Bush and his inner circle are clearly afraid that if Guantánamo detainees are tried under the actual rule of law, many of the cases will collapse because they are based on illegal detention, torture and abuse — or that American officials could someday be held criminally liable for their mistreatment of detainees.

It was distressing to see that the president has retreated so far into his alternative reality that he would not listen to Mr. Gates — even when he was backed by Secretary of State Condoleezza Rice, who, like her predecessor, Colin Powell, had urged Mr. Bush to close Guantánamo. It seems clear that when he brought in Mr. Gates, Mr. Bush didn't want to fix Mr. Rumsfeld's disaster; he just wanted everyone to stop talking about it.

If Mr. Bush would not listen to reason from inside his cabinet, he might at least listen to what Americans are telling him about the damage to this country's credibility, and its cost. When Khalid Shaikh Mohammed — for all appearances a truly evil and dangerous man — confessed to a long list of heinous crimes, including planning the 9/11 attacks, many Americans reacted with skepticism and even derision. The confession became the butt of editorial cartoons, like one that showed the prisoner confessing to betting on the Cincinnati Reds, and fodder for the late-night comedians.

What stood out the most from the transcript of Mr. Mohammed's hearing at Guantánamo Bay was how the military detention and court system has been debased for terrorist suspects. The hearing was a combatant status review tribunal — a process that is supposed to determine whether a prisoner is an illegal enemy combatant and thus not entitled in Mr. Bush's world to rudimentary legal rights. But the tribunals are kangaroo courts, admitting evidence that was coerced or obtained through abuse or outright torture. They are intended to confirm a decision that was already made, and to feed detainees into the military commissions created by Congress last year.

The omissions from the record of Mr. Mohammed's hearing were chilling. The United States government deleted his claims to have been tortured during years of illegal detention at camps run by the Central Intelligence Agency. Government officials who are opposed to the administration's lawless policy on prisoners have said in numerous news reports that Mr. Mohammed was indeed tortured, including through waterboarding, which simulates drowning and violates every civilized standard of behavior toward a prisoner, even one as awful as this one. And he is hardly the only prisoner who has made claims of abuse and torture. Some were released after it was proved that they never had any connection at all to terrorism.

Still, the Bush administration says no prisoner should be allowed to take torture claims to court, including the innocents who were tortured and released. The administration's argument is that how prisoners are treated is a state secret and cannot be discussed openly. If that sounds nonsensical, it is. It's also not the real reason behind the administration's denying these prisoners the most basic rights of due process.

The Bush administration has so badly subverted American norms of justice in handling these cases that they would not stand up to scrutiny in a real court of law. It is a clear case of justice denied.

Monday, March 26, 2007

NEW YORK TIMES

March 26, 2007

## Detainee's Lawyers Seek Removal of Prosecutor

By WILLIAM GLABERSON

Page A12

GUANTÁNAMO BAY, Cuba, March 25 — As American officials prepare for the reopening on Monday of the military commissions that will try some of the detainees here, a dispute over the proper role of military defense lawyers in the planned war crimes trials is intensifying.

Defense lawyers for the Australian detainee David Hicks have filed a motion to disqualify the chief prosecutor, Col. Morris D. Davis. In the proceeding Monday, Mr. Hicks, 31, is to be the first of the Guantánamo detainees to be formally arraigned under a Military Commissions Act passed by Congress last year.

The defense lawyers claimed in a motion that Colonel Davis violated rules of professional conduct with a blistering attack this month on Mr. Hicks's military defense lawyer, Maj. Michael Mori of the United States Marine Corps. They asked that Colonel Davis, an Air Force lawyer who supervises the Guantánamo prosecutors, be removed from any role in the Hicks case.

This month, Colonel Davis suggested that Mr. Hicks's military lawyer, Major Mori, might have violated the law with public criticism of the military commissions that has included calling them kangaroo courts.

Colonel Davis was combative on Sunday, saying, "I did nothing wrong," and saying that he was simply trying to define the boundaries of appropriate conduct for military lawyers in the commissions process.

Defense lawyers and American lawyers who have been following the dispute say the public battle over the role of military lawyers could shape how aggressive other military defense lawyers will be as the commissions' proceedings accelerate.

An Australian lawyer who is part of the defense team, David H. B. McLeod, declined to discuss in detail the misconduct accusations. "The public will make up its own mind about Colonel Davis," he said.

TRANSCOM GHOST DOCS 720

After five years they separated, and David hit the road again. First he went to Japan, where he trained horses. One day, in late 1998, he called his parents and said he was going to join the Kosovo Liberation Army. He said he had learned about the war in Bosnia and Kosovo from watching Japanese television. He found out how to join the guerrilla army through the Internet.

In joining the Kosovo Liberation Army, Mr. Hicks was on the side of the United States and NATO, against Slobodan Milosevic, the president of Serbia. The war ended before he saw combat.

Back home, in Adelaide, he tried to join the Australian Army but was rejected. He attended Bible study classes at an Assemblies of God church, but did not find whatever spiritual meaning he was searching for. He turned to Islam. Now he has abandoned that, according to an affidavit he filed in legal proceedings here to obtain British citizenship. In November 1999, Mr. Hicks left for Pakistan, wearing lime green baggy trousers, a long, loose-fitting shirt, a white knit cap and sandals. He had two goals — to learn more about the Koran and to travel the Silk Road, on horseback — he told his parents.

In Pakistan, he linked up with Lashkar-e-Taiba, a guerrilla organization founded, financed and trained by the Pakistani intelligence service to fight in Kashmir. (It has since been outlawed by the Pakistani government.)

The guerrilla fighters trained at Qaeda camps in Afghanistan, and Lashkar-e-Taiba arranged for Mr. Hicks to go there, according to the United States government's charges. The charges say Mr. Hicks attended various training camps and pledged fealty to Osama bin Laden.

After Mr. Hicks's plea Monday, a senator from his home state, South Australia, Natasha Stott Despoja, said he would return "as a guilty man who has not had a fair trial."

"The Australian public will see through this process," Ms. Despoja added.

#### MIAMI HERALD

Miami Herald  
March 28, 2007

### **Key Detainee Leaving As Another Arrives**

*The Guantanamo prison seems no closer to closing: A prisoner pleaded guilty in an authorized criminal process, and the Bush administration transferred in a new prisoner.*

By Warren P. Strobel

One high-profile prisoner may be out of the prison camp at Guantánamo Bay. Australian David Hicks agreed late Monday to plead guilty to lending material support to terrorism, and he is expected to be sent back to his native land to serve the remainder of his yet-to-be-determined sentence.

But as Hicks prepares to leave, a new inmate -- accused of helping to plan a deadly 2002 hotel bombing in Kenya -- arrived at the prison on the U.S. naval base on Cuba's southeastern coast, underscoring that the controversial prison for terrorism suspects will not close anytime soon.

Despite mounting pressure to close it from Congress, foreign allies and even senior members of President Bush's Cabinet, the much-criticized detention center appears destined to remain open through the rest of Bush's 22 months in office and beyond.

"I think the strategy of this administration is to just hand it over to the next administration," said Joanne Mariner, the director of terrorism and counterterrorism programs at New York-based Human Rights Watch.

While its population is slowly shrinking -- more detainees have left Guantánamo than the roughly 385 who remain -- the facility remains stuck in a legal morass that critics charge is of the White House's own making.

About 80 detainees have been cleared to leave, but the U.S. government has yet to persuade their native countries to take them back under the conditions it wants. Transferring the prison's population to American soil, as human rights groups advocate, could open the Bush administration's battered detainee policy to new legal challenges.

"The president made clear back in September that he would love to be able to shut it down, but, unfortunately, the circumstances do not presently permit," White House spokesman Tony Snow said last week.

The plea offer by Hicks late Monday was a turning point of sorts for the facility, which observed its fifth anniversary in January.

The Australian was the first of 774 men known to have passed through the prison to appear before a military tribunal, which Congress authorized last year after the Supreme Court rejected an earlier White House plan to try terrorism suspects. Hicks was accused of attending al Qaeda training camps in Afghanistan, but wasn't charged with engaging in combat against U.S. forces.

Several dozen detainees could face military commissions, although charges have been prepared against only two.

"It could take another several years to get through this," Mariner predicted.

**TRANSCOM GHOST DOCS 722**

Human rights groups were alarmed by the announcement Monday that Abdul Malik, who has been accused of involvement in a bombing in Mombasa, Kenya, that killed 13 people, none of them Americans, had been sent to Guantánamo.

Malik, whom Kenyan authorities apparently picked up in February, is the first terrorism suspect transferred to Guantánamo since September 2004, excluding 14 "high-value detainees" whom Bush moved there last year from secret CIA prisons.

*McClatchy Washington correspondent Renee Schoof contributed to this report.*

Thursday, March 29, 2007

WASHINGTON POST

## Guantanamo Detainee Described as Lost Soul Seeking 'a Way Out'

By Josh White  
Washington Post Staff Writer  
Thursday, March 29, 2007; A09

GUANTANAMO BAY, Cuba, March 28 -- When Australian David Hicks arrived at this island prison as it opened in January 2002, the U.S. government painted him as one of the world's worst terrorists, someone who would do immeasurable harm and needed to face justice. In the five years since, while nearly 400 other detainees have gone home, Hicks has languished in a tiny cell, often wondering, his defense team says, why he has been targeted as one of the chief enemies of the United States.

Hicks's guilty plea on Monday to one count of material support for terrorism was the first step toward concluding his case, one that ultimately amounted to charges that he trained with al-Qaeda and worked with the Taliban after the attacks of Sept. 11, 2001. But the U.S. government dropped allegations that he fired a single shot in the direction of U.S. or allied forces, and a pretrial agreement could limit the amount of prison time he serves to a few years.

This case so far has been less about who Hicks is or what he did than about starting the Bush administration's military commissions resolving an international issue with a close ally. Commission officials have praised the case as showing a transparent and fair system; human rights groups have painted the commissions as a sham with still-unwritten rules.

Lost in the process, in part, is Hicks. His attorneys describe Hicks, who is charged with war crimes allegedly committed in late 2001, as a man who has been terribly affected by years in this detention facility with little human interaction. In recent months he has lived

TRANSCOM GHOST DOCS 723

The second is the realization that "there are some people who have made it very clear they would come back to attack this country," he said.

Mr. Gates said he wanted to know if there was a legal solution "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."

Human rights advocates and European critics have said the United States should close the prison because they say detainees are being unlawfully held.

**Saturday, March 31, 2007**

**WALL STREET JOURNAL**

Wall Street Journal  
March 31, 2007  
Pg. 1

## **The Conscience Of The Colonel**

***Lt. Col. Stuart Couch volunteered to prosecute terrorists. Then he decided one had been tortured***

By Jess Bravin

Washington--When the Pentagon needed someone to prosecute a Guantanamo Bay prisoner linked to 9/11, it turned to Lt. Col. V. Stuart Couch. A Marine Corps pilot and veteran prosecutor, Lt. Col. Couch brought a personal connection to the job: His old Marine buddy, Michael "Rocks" Horrocks, was co-pilot on United 175, the second plane to strike the World Trade Center on Sept. 11, 2001.

The prisoner in question, Mohamedou Ould Slahi, had already been suspected of terrorist activity. After the attacks, he was fingered by a senior al Qaeda operative for helping assemble the so-called Hamburg cell, which included the hijacker who piloted United 175 into the South Tower. To Col. Couch, Mr. Slahi seemed a likely candidate for the death penalty.

"Of the cases I had seen, he was the one with the most blood on his hands," Col. Couch says.

But, nine months later, in what he calls the toughest decision of his military career, Col. Couch refused to proceed with the Slahi prosecution. The reason: He concluded that Mr. Slahi's incriminating statements -- the core of the government's case -- had been taken through torture, rendering them inadmissible under U.S. and international law.

**TRANSCOM GHOST DOCS 724**



The Slahi case marks a rare instance of a military prosecutor refusing to bring charges because he thought evidence was tainted by torture. For Col. Couch, it also represented a wrenching personal challenge. Laid out starkly before him was a collision between the government's objectives and his moral compass.

These kinds of concerns will likely become more prevalent as other high-level al Qaeda detainees come before military commissions set up by the Bush administration. Guantanamo prosecutors estimate that at least 90% of cases depend on statements taken from prisoners, making the credibility of such evidence critical to any convictions. In Mr. Slahi's case, Col. Couch would uncover evidence the prisoner had been beaten and exposed to psychological torture, including death threats and intimations that his mother would be raped in custody unless he cooperated.

Raised in Asheboro, N.C., Col. Couch, now 41 years old, was an Eagle Scout, a graduate of Duke and commander of his Naval ROTC battalion. An Anglican, Col. Couch says he counts among his heroes two men known for making a public commitment to their faith: C.S. Lewis, the academic and book author, and Dietrich Bonhoeffer, the Lutheran pastor hanged by the Nazis in 1945.

In 1987, Col. Couch joined the Marines to be a pilot before an assignment on the squadron's legal desk inspired him to enroll in law school. After graduating from Campbell University, Buies Creek, N.C., he was assigned to the team prosecuting a flight crew for a 1998 incident in Aviano, Italy, where a Marine Prowler clipped a ski gondola cable, killing 20. He still keeps in touch with relatives of the accident's victims.

Col. Couch left active duty but found private practice boring. After 9/11, he asked to return to the military. When President Bush issued his Nov. 13, 2001 order creating the first iteration of military commissions, he volunteered.

"I did that to get a crack at the guys who attacked the United States," he says. "I wanted to do what I could do with the skill set that I had."

Col. Couch began his assignment at the Office of Military Commissions in August 2003. Soon after arriving at the commissions' offices in Crystal City, Arlington, Va., he was handed files on several Guantanamo prisoners. The Slahi file stood out as the one directly connected to 9/11.

Mr. Slahi, now 37, is the eighth of 12 children born to a Mauritanian camel herder, according to his lawyers. He studied electrical engineering in Germany and later ran an Internet cafe. Before 9/11, U.S. authorities tried unsuccessfully to link him to the so-called Millennium Plot to blow up Los Angeles International Airport. Mauritanian authorities picked him up after Sept. 11, and shipped him to Jordan, according to testimony he gave to a Guantanamo detention board.

The U.S. got a break one year later, when Ramzi Binalshibh, a top al Qaeda operative, was captured in Pakistan. He told the CIA that in 1999, Mr. Slahi sent him and three

future 9/11 hijackers -- Mohammed Atta, Ziad Jarrah and Marwan al-Shehhi -- from Germany to Pakistan, and then to al Qaeda headquarters in Afghanistan. There, according to the 9/11 Commission, Mr. bin Laden assigned them to the 9/11 operation.

But beyond Mr. Binalshibh's uncorroborated statements, Col. Couch had little additional evidence.

In Crystal City, morale was sinking. Several junior officers complained that, in its rush to win convictions, the office was proceeding with shaky cases, overlooking allegations of abuse and failing to protect exculpatory evidence. Allegations of torture at places such as Abu Ghraib had not yet surfaced, but some officers were starting to express their unease in private. A handful of prosecutors would later quit rather than take part in trials they considered rigged.

Subsequent internal reviews found no criminal wrongdoing, but prompted a shake-up in which the then-chief military commissions prosecutor was ousted.

Col. Couch had his own misgivings. On his first visit to Guantanamo in October 2003, he recalls preparing to watch an interrogation of a detainee when he was distracted by heavy-metal music. Accompanied by an escort, he saw a prisoner shackled to a cell floor, rocking back and forth, mumbling as strobe lights flashed. Two men in civilian dress shut the cell door and told Col. Couch to move along.

"Did you see that?" he asked his escort. The escort replied: "Yeah, it's approved," Col. Couch says. The treatment resembled the abuse he had been trained to resist if captured; he never expected Americans would be the ones employing it.

The incident "started keeping me up at night," he says. "I couldn't stop thinking about it."

Col. Couch contacted a senior Marine lawyer who had been an informal mentor. The officer said: "I know there's a lot of stuff going on, and that's why we need people like yourself in this situation," Col. Couch recalls. "You're shirking your responsibility if you've got issues and you're not willing to do something about it."

"He was looking for a sanity check, asking: 'Am I crazy or does this smell bad to you?' " the Marine lawyer, now a retired brigadier general recalls. "My response was, 'yeah, this is a problem and you need to work this problem.' "

Col Couch's wife, Kim, a nurse, says her husband began to rue each coming week. "I called it the Sunday Night Blues," she says. "It got worse and worse."

Under the Pentagon structure, Col. Couch had no direct contact with his potential defendants, but received instead summaries of their statements. In late 2003, Mr. Slahi suddenly started corroborating the Binalshibh allegations.

"After a while, I just couldn't keep up with him because things were coming out every day," Col. Couch says. "He was giving like a "Who's Who" of al Qaeda in Germany and all of Europe."

The sanitized reports reaching Col. Couch made no mention of what spurred this cooperation. Intelligence agencies refused to share all the information they had on the prisoner.

A colleague let on that Mr. Slahi had begun the "varsity program" -- an informal name for the Special Interrogation Plan authorized by then-Defense Secretary Donald Rumsfeld for the most recalcitrant Guantanamo prisoners.

Col. Couch says he and his case investigator, an agent detailed from the Naval Criminal Investigative Service, began an "under the table" effort to find out what made Mr. Slahi break. Col. Couch says he was suspicious about the sudden change, and felt he needed to know all the circumstances before bringing the case to trial.

"It was like Hansel and Gretel, following bread crumbs," Col. Couch says. The agent spoke to intelligence officers and others with more direct knowledge, pursued documents with details of the interrogations, and passed his findings on to the prosecutor.

What emerged, Col. Couch believed, was torture.

Initially, Mr. Slahi said he was pleased to be taken to Guantanamo. "I thought, this is America, not Jordan, and they are not going to beat you," he told his detention hearing. But after Mr. Binalshibh named him as a top al Qaeda member, "my life...changed dramatically," Mr. Slahi said.

The account of Mr. Slahi's treatment has been pieced together from interviews with government officials, official reports and testimony, as well as Mr. Slahi's attorneys and Col. Couch. Col. Couch wouldn't discuss classified information, including aspects of the Slahi interrogation involving the CIA.

Initially, Mr. Slahi denied having al Qaeda connections, frustrating his interrogators. On May 22, 2003, a Federal Bureau of Investigation interrogator said, "this was our last session; he told me that I was not going to enjoy the time to come."

In the following weeks, Mr. Slahi said, he was placed in isolation, subjected to extreme temperatures, beaten and sexually humiliated. The detention-board transcript states that at this point, "the recording equipment began to malfunction." It summarizes Mr. Slahi's missing testimony as discussing "how he was tortured while here at GTMO by several individuals."

Mr. Slahi was put under more intense interrogation. On July 17, 2003, a masked interrogator told Mr. Slahi he had dreamed of watching detainees dig a grave, according to a 2005 Pentagon report into detainee abuse at Guantanamo, headed by Air Force Lt.

**TRANSCOM GHOST DOCS 727**

Gen. Randall Schmidt and Army Brig. Gen. John Furlow. (Gen. Furlow later testified that Mr. Slahi was "the highest value detainee" at Guantanamo, "the key orchestrator of the al Qaeda cell in Europe.")

The interrogator said he saw "a plain, pine casket with [Mr. Slahi's] identification number painted in orange lowered into the ground." Three days later, the interrogator told Mr. Slahi "that his family was 'incarcerated,'" the report said.

On Aug. 2, an interrogation chief visited the prisoner posing as a White House representative named "Navy Capt. Collins," the report said. He gave the prisoner a forged memorandum indicating that Mr. Slahi's mother was being shipped to Guantanamo, and that officials had concerns about her safety as the only woman amid hundreds of male prisoners, according a person familiar with the matter.

"Capt. Collins" told Mr. Slahi "that if he wanted to help his family he should tell them everything they wanted to know," the report continued.

The same day, an interrogator made a "death threat" to Mr. Slahi, Gen. Schmidt said in testimony to the Senate Armed Services Committee. According to records cited by the report, the interrogator advised Mr. Slahi "to use his imagination to think of the worst possible scenario he could end up in."

In his detention-board testimony, Mr. Slahi provided further details, as did other people familiar with the matter. Two men took a shackled, blindfolded Mr. Slahi to a boat for a journey into the waters of Guantanamo Bay. The hour-long trip apparently led Mr. Slahi to think he was to be killed and, in fear, he urinated in his pants.

After making land, "two Arab guys" took him away, beat him and turned him over to a "doctor who was not a regular doctor [but] part of the team," Mr. Slahi said. The doctor "was cursing me and telling me very bad things. He gave me a lot of medication to make me sleep," Mr. Slahi said. After two or three weeks, Mr. Slahi said, he broke, "because they said to me, either I am going to talk or they will continue to do this."

On Sept. 8, 2003, according to the Pentagon report, Mr. Slahi asked to see "Capt. Collins." Mr. Slahi corroborated the account of Mr. Binalshibh and provided an extensive list of other al Qaeda names.

In later testimony to the Army Inspector General, Gen. Schmidt said he concluded that the interrogation chief "was a rogue guy," a "zealot" who "essentially was having a ball." A Pentagon spokesman says the interrogation chief, who invoked his right against self-incrimination and didn't testify, was not court-martialed. The spokesman declines to say what discipline he received.

Military and law-enforcement officials started warning the Bush administration in 2002 that its unorthodox interrogation practices, which the president has called "tough" and "necessary," were hurting the ability of prosecutors to bring cases to court. Officials

expect the concern to arise in particular with 14 "high-value" al Qaeda suspects transferred to Guantanamo in September after years of secret CIA interrogation. They include Khalid Sheikh Mohammed, the man who claimed responsibility for planning 9/11. Some detainees, including Mr. Mohammed, have alleged they were tortured. Pentagon reviews documented cruel and degrading treatment, while declining to classify such abuse as torture.

"There's a serious question of whether they will ever be able to legitimately prosecute those individuals," if necessary evidence was produced through torture, says retired Maj. Gen. Thomas Romig, who served as the Army's top uniformed lawyer, the judge advocate general, from 2001 to 2005.

Gen. Romig, recently appointed dean at Washburn University law school, Topeka, Kan., says within the government "there was a view that we have got to get intelligence out of these guys, and we don't care we if we prosecute them or not."

The military commissions trying the cases of foreign terrorists don't hew to the rules that govern civilian courts or courts-martial. The 2006 Military Commissions Act permits use of evidence obtained before Dec. 30, 2005, through "cruel, inhuman or degrading" methods, although it bars any obtained by torture.

Top U.S. government officials won't specify which practices cross the line beyond stating that prisoners should be treated "humanely." Such ambiguity has forced decision-making down the chain of command. Even Guantanamo's chief prosecutor, Air Force Col. Moe Davis, says he's still not sure how the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment applies to military commissions.

A report into abuses at Guantanamo concluded that the "threats" made to Mr. Slahi "do not rise to the level of torture as defined under U.S. law" but did violate the Uniform Code of Military Justice, which governs the conduct of the armed forces. The Pentagon won't say how the report reached that conclusion.

By May 2004, Col. Couch had most of the picture relating to Mr. Slahi's treatment, and faced a painful dilemma: Could he seek a conviction based on statements he thought were taken through torture, as permitted by President Bush's November 2001 military commission order citing a "state of emergency?" Or was he nonetheless bound by the Torture Convention, which bars using statements taken "as a result of torture...as evidence in any proceedings."

The convention says "no exceptional circumstances whatsoever" can be cited to justify torture, which it defines broadly. The 1994 federal statute implementing the treaty contains additional definitions, including the "threat of imminent death" or "severe physical pain or suffering," as well as the actual or threatened use of "mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality."

Col. Couch was uneasy over interfering with plans to try Mr. Slahi, given the detainee's history. He turned to others with his dilemma, including Marine lawyers he knew and his wife's two brothers -- one a Protestant theologian, the other a retired Marine infantry officer. Because of the classified nature of the information, Col. Couch didn't give them specifics about the case, and spoke only in generalities. Their advice conflicted.

"He wanted to be a good soldier and yet on the other hand felt his duty to his God to be the greatest duty that he had," recalls Bill Wilder, director of educational ministries at the Center for Christian Study, Charlottesville, Va. "He said more than once to me that human beings are created in the image of God and as a result we owe them a certain amount of dignity."

Mr. Wilder says he agreed with Col. Couch's concerns. "Stuart, you need to pray about this," Mr. Wilder says he advised.

Brian Wilder, the other brother and a former Marine lieutenant, urged Col. Couch to instead consider the context of the war on terrorism, where obtaining intelligence could be crucial to protecting innocent lives.

"I have to also say that I don't agree with everybody's definition of torture," Mr. Wilder says. "If some of the things that people say are torture were torture, then I was tortured at Officer Candidate School at Quantico. And so was he."

In May 2004, attending a baptism at Virginia's Falls Church, Col. Couch joined the congregation in reciting the liturgy. The reading concluded, as is typical, with the priest asking if congregants will "respect the dignity of every human being."

"When I heard that, I knew I gotta get off the fence," Col. Couch says. "Here was somebody I felt was connected to 9/11, but in our zeal to get information, we had compromised our ability to prosecute him." He says, in retrospect, the tipping point came with the forged letter about Mr. Slahi's mother. "For me, that was just, enough is enough. I had seen enough, I had heard enough, I had read enough. I said: 'That's it.'"

In May 2004, at a meeting with the then-chief prosecutor, Army Col. Bob Swann, Col. Couch dropped his bombshell. He told Col. Swann that in addition to legal reasons, he was "morally opposed" to the interrogation techniques "and for that reason alone refused to participate in [the Slahi] prosecution in any manner."

Col. Swann was indignant, Col. Couch says, replying: "What makes you think you're so much better than the rest of us around here?"

Col. Couch says he slammed his hand on Col. Swann's desk and replied: "That's not the issue at all, that's not the point!"

An impassioned debate followed, the prosecutor recalls. Col. Swann said the Torture Convention didn't apply to military commissions. Col. Couch asked his superior to cite

**TRANSCOM GHOST DOCS 730**

legal precedent that would allow the president to disregard a treaty. The meeting ended when Col. Swann asked the prosecutor to turn over the Slahi files so the case could be reassigned, Col. Couch recalls.

Through a spokesman, Col. Swann declined to comment for this article. Col. Swann retired from the Army in 2005. He continues, as a civilian employee, to serve as deputy chief prosecutor, playing a major role in commission operations.

Other trial prosecutors in the office say they respected Col. Couch's decision. "I thought his conduct was perfectly appropriate and I agreed with his approach," says retired Navy Cmdr. Scott Lang, now a state prosecutor in Virginia.

A week later, Col. Couch put his position in writing and asked that his concerns be raised with the Pentagon's general counsel, William J. Haynes II. The legal adviser to the military commissions office, Air Force Brig. Gen. Thomas Hemingway, says: "Mr. Haynes was not informed of the issues raised by Lt. Col. Couch nor did he expect to be told about all internal operations within the Office of Military Commissions."

Gen. Hemingway says Col. Swann "was aware the interrogation techniques used were under investigation at the time Lt. Col. Couch expressed misgivings about the information he had received. Col. Swann removed Lt. Col. Couch from the case to assuage his concerns."

In a written statement, the Defense Department says it "cannot comment on Mohamedou Ould Slahi because he is under investigation. It would be inappropriate for us to discuss ongoing cases that are pending prosecution."

In March 2005, Col. Couch considered quitting, frustrated by how the office was run. Lt. Col. Daniel Daugherty, one of Col. Couch's best friends, urged him in an email to reconsider. "Personally I would rather be fired than quit," Col. Daugherty wrote. "Being fired for your ethics is (in my view) better than walking away."

With the Slahi prosecution on ice, Col. Couch continued work on other cases -- including another "varsity program" prisoner, Mohammed al-Qahtani, who, according to army report overseen by Gens. Schmidt and Furlow, had been made to wear women's underwear, leashed, forced to perform dog tricks and berated as a homosexual. Col. Couch refused to use statements obtained during these interrogations. But he determined the prosecution could continue based on a separate source of evidence compiled by the FBI before Mr. Qahtani's Guantanamo interrogation.

He was also one of the prosecutors who worked on the case of Salim Hamdan, Mr. bin Laden's former driver. Mr. Hamdan's case would eventually go to the Supreme Court, which used the case to strike down the administration's first attempt to create a military commissions system.

Col. Davis, the Guantanamo chief prosecutor, says Mr. Slahi remains among the 75 or so prisoners potentially eligible for trial. He says no one is assigned to the case and that it's unclear when Mr. Slahi will be charged, due to Col. Couch's concerns and a staff shortage.

Today, Mr. Slahi is detained in private quarters at Guantanamo Bay, with a television, a computer and a tomato patch to tend, according to people familiar with the matter. "Since 2004, I really have no complaints," Mr. Slahi told a military detention board.

He has asked to be resettled in the U.S., an option Pentagon officials have not ruled out. Col. Davis declines to comment on plea negotiations. A lawyer representing Mr. Slahi, Nancy Hollander, says that if charged with a crime, Mr. Slahi would plead not guilty.

In a September 2006 letter to his attorneys, Mr. Slahi joked about their request that he detail his discussions with interrogators.

"Are you out of your mind! How can I render uninterrupted interrogation that has been lasting the last 7 years. That's like asking Charlie Sheen how many women he dated," Mr. Slahi writes. He divided his time into pre- and post-torture eras. In the latter, he wrote, "I yessed every accusation my interrogators made."

Col. Couch had been assigned to the prosecutor's office for a three year stint. When it came to an end, Col. Couch decided not to renew his assignment. He says there was no attempt to remove him from office.

After he left, Defense Secretary Rumsfeld awarded Col. Couch the Defense Meritorious Service Medal for his work on Guantanamo prosecutions as is typical when officers move on to new assignments. The citation describes him as "steady in faith, possessed by moral courage and relentless in the pursuit of excellence."

In August 2006, he took on a new assignment as a judge on the Navy-Marine Corps Court of Criminal Appeals.

Col. Couch says he's still frustrated that the actions of the U.S. government helped ruin the case against Mr. Slahi. "I'm hoping there's some non-tainted evidence out there that can put the guy in the hole," he says.

#### WASHINGTON POST

### **Detainee Alleges Abuse in CIA Prison**

Torture Coerced Confession, He Says

By Josh White and Ann Scott Tyson  
Washington Post Staff Writers  
Saturday, March 31, 2007; A01

# TRANSCOM GHOST DOCS 732



GUANTANAMO BAY, Cuba, March 30 -- A high-level al-Qaeda suspect who was in CIA custody for more than four years has alleged that his American captors tortured him into making false confessions about terrorist attacks in the Middle East, according to newly released Pentagon transcripts of a March 14 military tribunal hearing here.

Abd al-Rahim al-Nashiri, who U.S. officials believe was involved in the bombings of two U.S. embassies in East Africa in 1998 and who allegedly organized the attack on the USS Cole in Yemen in 2000, told a panel of military officers that he was repeatedly tortured during his imprisonment and that he admitted taking part in numerous terrorism plots because of the mistreatment.

"The detainee states that he was tortured into confession and once he made a confession his captors were happy and they stopped torturing him," Nashiri's representative read to the tribunal, according to the transcript. "Also, the detainee states that he made up stories during the torture in order to get it to stop."

Nashiri's allegations came just days after Khalid Sheik Mohammed, the self-confessed mastermind of the attacks of Sept. 11, 2001, also alleged abuse during a similar hearing before a Combatant Status Review Tribunal (CSRT) at this island detention facility, though his claims were submitted on paper and have not been released.

It is impossible to confirm or evaluate Nashiri's allegations regarding his interrogation by the CIA. U.S. government officials often caution that terrorists are trained to allege abuse at the hands of their captors, and portions of the 36-page transcript that appeared to detail the locations and methods of the alleged abuse were redacted. But such allegations could call into question the veracity of Nashiri's interrogations and those of other detainees previously held at secret CIA prisons, and could make trying the men at military commissions difficult if the alleged coercion elicited misleading information.

Bryan Whitman, a Pentagon spokesman, said the CIA cited "national security concerns" regarding the locations of detention facilities, interrogation techniques and operational details as rationale for the redactions.

Abuse allegations are generally referred to the CIA inspector general's office, which investigates from within. Defense Department and intelligence officials said Friday that allegations made during the CSRT process will be forwarded to the government agency being accused of abuse.

"I'm not going to respond to those sorts of allegations other than to emphasize that the CIA's terrorist interrogation program has been conducted lawfully, with great care and close review, producing vital information that has helped disrupt terrorist plots and save lives," said Mark Mansfield, a CIA spokesman.

Nashiri, a Saudi national, is one of 14 detainees who were confined secretly for years and are undergoing a process to determine whether they are enemy combatants against the United States and whether they should be held indefinitely in maximum security at

Guantanamo Bay. A spokesman for the International Committee of the Red Cross, which has interviewed all of the detainees, declined to discuss Nashiri's case.

U.S. officials allege that Nashiri is responsible for assisting the bombings of U.S. embassies in Kenya and Tanzania, and for taking a lead role in the Cole bombing. The report of the Sept. 11 commission identified him as "the mastermind of the Cole Bombing and the eventual head of Al Qaeda Operations in the Arabian Peninsula." In addition, Nashiri was named in a New York court as an unindicted co-conspirator in the Cole bombing and was sentenced to death in absentia in Yemen for his role in the bombing.

But Nashiri said he "confessed under torture" to those attacks. "From the time I was arrested . . . they have been torturing me," he said through an interpreter in answers to the tribunal officers' questions. "One time they tortured me one way, and another time they tortured me in a different way."

Nashiri said, according to the transcript, that he "invented" some information just to "make people happy" during his interrogations. One of those statements was that Osama bin Laden, whom he had met numerous times, had procured a nuclear weapon.

"They were extremely happy because of this news," he said, according to the transcript.

It has long been publicly known that the CIA used controversial interrogation techniques that went beyond those used by the military after the Sept. 11 attacks, including waterboarding (which simulates the sensation of drowning), exposure to extreme temperatures and prolonged forced standing. Detainees who think they have been in secret CIA detention facilities have reported serious abuse there.

John Sifton, a senior terrorism researcher at Human Rights Watch, decried the secrecy and said there is ample evidence that the CIA has used illegal tactics on detainees and is trying to hide it.

"It's a bit disingenuous for the CIA to refer allegations to the inspector general" after the agency itself approved questionable techniques, he said.

Nashiri acknowledged connections to the Cole bombers but said that he was involved in a fishing business with them and that he was unaware of the plot to attack a U.S. Navy warship. He said that he sent money to the men who carried out the bombing for a fishing "project" and that he is "not responsible for them or what they have in their heads."

"The cards are stacked against al-Nashiri," said Evan Kohlmann, a terrorism analyst. "There is too much testimony and evidence suggesting his long-standing role as an al-Qaeda operative and recruiter. Many people involved in the USS Cole have been interrogated, and everyone . . . has implicated Nashiri."

Nashiri said he made himself a millionaire by the age of 19 as a merchant and periodically went to Afghanistan to meet with bin Laden. He also said he traveled to battlefields throughout the Middle East "to help people by gathering information."

Nashiri denied being a member of al-Qaeda and said he is not an enemy of the United States, though he criticized U.S. foreign policy.

"If you think that anybody who wants the Americans to get out of the Gulf as your enemy, then you will catch about 10 million peoples in Saudi Arabia that have same opinion," Nashiri said, according to the transcript.

*Tyson reported from Washington. Staff researcher Julie Tate contributed to this report.*

**Sunday, April 01, 2007**

**NEW YORK DAILY NEWS**

New York Daily News  
April 1, 2007

## **How Gitmo Can Cripple Careers**

### ***Defending Qaeda suspects often a dead end***

By James Gordon Meek, Daily News Washington Bureau

WASHINGTON - Military lawyers appointed to defend terror suspects held at the Guantanamo prison have paid a steep price for doing their jobs well.

In a world where the rule is get promoted or get out, being assigned to defend Al Qaeda suspects is a career killer.

So far, two officers who have acted as defense counsel since 2003 have been promoted. At least three officers representing the highest-profile defendants have not advanced in rank, and two from the original defense team opted to retire. "They've been penalized," said retired Air Force Col. Will Gunn, who recruited the defense Judge Advocate General's Corps lawyers, or JAGs, in 2003.

Marine Maj. Michael Mori, who on Friday won a mere nine months' prison term for admitted Al Qaeda accomplice David Hicks, has been passed over twice for promotion.

"He's done," a friend said.

Mori, however, was also threatened with a court-martial for his vigorous efforts to free Hicks, an Australian imprisoned at Gitmo since January 2002.

**TRANSCOM GHOST DOCS 735**

British officials have long refused to represent resident foreigners held at Guantanamo, but took up Rawi's case after it was disclosed that he had provided assistance to MI5, Britain's domestic spy agency.

Rawi's U.S. lawyer, George Brent Mickum IV, said last year that Rawi had agreed during one of at least six interviews with British agents at Guantanamo to work for the British security service in exchange for his release. Nothing came of the offer, Mickum said.

Mickum declined to comment on the case yesterday, except to say that Rawi "is delighted to be back home with his family."

Foreign Secretary Margaret Beckett said Thursday that Rawi's release had been agreed to, but officials and lawyers have not disclosed precisely when the detainee was freed and flown to Britain.

"After over four years in Guantanamo Bay, my nightmare is finally at an end," Rawi said in a statement. "I also feel great sorrow for the other nine British residents who remain prisoners in Guantanamo Bay."

Britain's Foreign Office said only five foreign nationals resident in Britain are held at the prison camp, in Cuba.

Rawi and another British resident, Jamil el-Banna, were alleged to have been associated with al-Qaeda through their connection with the London-based radical Muslim cleric Abu Qatada. Rawi had lived in Britain since 1985, and Banna was granted refugee status in Britain in 2000.

"The hopelessness you feel in Guantanamo can hardly be described. You are asked the same questions hundreds of times," Rawi said. "Allegations are made against you that are laughably untrue, but you have no chance to prove them wrong."

The two were arrested in 2002 in Gambia while trying to return to Britain with electronic equipment authorities described as suspicious. The men's lawyers say it was a battery charger.

#### WASHINGTON TIMES

OPINION:

Washington Times  
April 2, 2007  
Pg. 17

**Send Jihadists To Federal Court**

**TRANSCOM GHOST DOCS 736**

## *Military hearings raise disturbing questions*

By Nat Hentoff

The questions around the world on how much to believe of Khalid Sheikh Mohammed's recent confessions reminded me of the Supreme Court's reaction (ex parte Milligan, 1866) to Abraham Lincoln's suspension of habeas corpus while trying espionage suspect in military courts. With Guantanamo military procedures far removed from our civilian rule of law, former Sen. Bob Kerrey, a member of the 9/11 Commission, proposes that Mohammed and the other such detainees be moved to our civilian courts.

Citing the skepticism both here and abroad about Khalid Sheikh Mohammed's CIA-censored "confessions" at his Gitmo hearings, Mr. Kerrey says (New York Daily News, March 18): "The families of the victims and the people of the United States deserve to know more about what is true and false about his 'confession' " from which reporters were banned.

Moreover, Mohammed's written submission about his alleged torture by the CIA in its secret prison was omitted from the official transcript of his confession. As Anne Applebaum, an expert on Stalin's gulags, emphasizes (Washington Post, March 20): "The mystery surrounding [Mohammed's interrogation over the years in that CIA secret prison] renders any confession he makes completely null, either in a court of law or in the court of international public opinion."

Also, so deeply flawed are the procedures at Gitmo that the London Daily Telegraph, a pro-American newspaper, predicts that when Mohammed is convicted by the Gitmo tribunal, "the world will condemn the procedures by which the verdicts were reached." Not all the world will be that critical, but many citizens of our allies will be. And among our enemies, Mohammed will get his wish by becoming a "martyr" of the Crusaders' injustice.

Even the members of the September 11 commission, Mr. Kerrey points out, were denied access by the CIA to Mohammed and other high-level "detainees." Mr. Kerrey, now the president of New York's New School University, answers those who insist that putting such prisoners as Mohammed in our civilian federal courts would greatly endanger national security. He points to "the 10-year history of terrorist prosecutions in [our] federal and state courts [that] has established bringing those accused to justice." "This has happened," he continues, "without weakening the rule of law, making the accused international heroes or damaging the cases against other terrorists." Among the 20 successful prosecutions of terrorists in our civilian courts, Mr. Kerrey notes that Mir Amal Kasi, killer of two CIA employees, was captured in Pakistan and, having been brought back here, was tried in Virginia courts and executed.

And tried in the U.S. District Court in New York City was Ramzi Yousef, a chief planner of the 1993 terrorist attack on the World Trade Center. After he was arrested and returned

from Pakistan, Yousef and two terrorist associates were sentenced to 240 years and forbidden all contact with the outside world.

I asked Mr. Kerrey about the reaction to his proposal to return to our actual rule of law in these cases. "What struck me," Mr. Kerrey said, "was how many usually knowledgeable people were surprised to learn about the successful prosecutions in our federal courts of these terrorists without danger to national security, as parts of the proceedings were classified. And by having the trials here, Americans learned so much about these convicted terrorists and how they operated."

If Congress amends the Military Commissions Act, as Mr. Kerrey suggests, so that Mohammed "can defend himself and, quite likely, find himself convicted in a U.S. court," the results will include, says Mr. Kerrey that: "Justice will be served, national security protected and secondary damage, either to other cases or to prospects for peace and stability around the world, will be avoided."

Meanwhile, some House Democrats, among them, Rep. James Moran of Virginia, are trying to gather support to move Guantanamo captives to military briggs in this country. Defense Secretary Robert Gates agrees that persistent world criticism of Gitmo would then cease, and the prisoners would be held securely here. The president and Attorney General Alberto Gonzales have rejected Mr. Gates' proposal.

But that approach doesn't restore our rule of law when, under the Military Commissions Act, "unlawful enemy combatants" could be held in those briggs indefinitely while subject to "coercive" interrogation that could lead to suspect "confessions." The Supreme Court was right in 1866: "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances" including prisoners of Guantanamo Bay.

Whether the John Roberts Supreme Court agrees would affect as terrorism continues indefinitely how much confidence the free world will have in the United States as a key protector and fighter for the values that are wholly opposed by the terrorists.

*Nat Hentoff's column for The Washington Times appears on Mondays.*

**Tuesday, April 03, 2007**

**WASHINGTON POST**

## **Justices Won't Hear Detainee Rights Cases -- for Now**

By Amy Goldstein  
Washington Post Staff Writer  
Tuesday, April 3, 2007; A09

**TRANSCOM GHOST DOCS 738**

The new cases involve a second generation of legal issues involving Guantanamo Bay, as the administration and the GOP-led Congress sought to grapple with the high court's earlier rulings, in *Rasul v. Bush* in 2004 and in *Hamdan v. Rumsfeld* last year.

After the first ruling, the Defense Department established special review hearings for detainees to determine whether they are properly being held as enemy combatants. The hearings allow evidence that would be inadmissible in a U.S. court and provide the detainee a military representative but not a lawyer, detainee advocates say.

The system allows detainees who want to challenge the findings of their hearing to appeal to the U.S. Court of Appeals for the D.C. Circuit, which is to base its review on standards different from those that govern habeas petitions. A second statute, the Military Commissions Act, was enacted to make clear that the system applied to all noncitizen detainees held by the government at Guantanamo Bay and other facilities not on U.S. soil.

Two sets of Guantanamo detainees challenged last year's law in the D.C. Circuit. In February, that court upheld the law, and that ruling was the basis of the appeals the Supreme Court declined to hear. The cases are *Boumediene v. Bush* and *Al Odah v. United States*.

"What the court is saying today is that Congress has spoken explicitly about the denial of the court's jurisdiction about the pending cases, and those cases should be reviewed first of all by the D.C. Circuit," said Douglas W. Kmiec, a professor of constitutional law at Pepperdine University. Kmiec noted that Kennedy and Stevens signaled that they may be willing to reconsider "after the process has run its course."

On Capitol Hill, Democrats sought to leverage the court's decision into momentum for their own efforts to grant detainees broader legal rights. "We cannot and should not outsource our legal, moral and constitutional responsibilities," said Senate Judiciary Committee Chairman Patrick J. Leahy (Vt.). He is co-sponsoring legislation that would grant the detainees habeas rights with the committee's ranking Republican, Sen. Arlen Specter (Pa.), who called on his colleagues yesterday to "act promptly" to adopt their bill.

*Staff writer Elizabeth Williamson contributed to this report.*

## WASHINGTON POST

OPINION:

### **Orwell at Guantanamo**

By Eugene Robinson  
Tuesday, April 3, 2007; A23

TRANSCOM GHOST DOCS 739

Here's what the Bush administration has done to the values, traditions and honor of the United States of America: An accused terrorist claims he confessed to heinous crimes so that agents of the U.S. government would stop torturing him, and no one is shocked or even surprised. There's reason to believe, in fact, that what the suspect says about torture is probably true.

There's also reason to doubt that the suspect -- Abd al-Rahim al-Nashiri, held in U.S. custody without charges for more than four years -- is the Zelig-like innocent bystander he claims to be. But we can't be sure, because George W. Bush disgraced himself and his country by ordering extrajudicial kidnappings of suspects in the war on terror, indefinite secret detention and interrogation by "alternative" methods that the civilized world calls torture.

On Friday, the Defense Department released a heavily redacted transcript of a March 14 hearing, held at Guantanamo Bay, Cuba, to determine whether Nashiri should be classified as an "enemy combatant." I apologize for resorting to cliché, but the only way to describe this amazing, infuriating document is to call it Orwellian. Reading it gives you the chills.

None of the members of the military tribunal sitting in judgment is named. The officer serving as Nashiri's "personal representative" likewise is not named. Unclassified evidence is presented in summary -- an unnamed "recorder" reads a document quoting statements by witnesses that attest to Nashiri's involvement in the 1998 bombings of U.S. embassies in Tanzania and Kenya, in which 224 people died, and the 2000 bombing of the USS Cole, which killed 17 U.S. sailors. The witnesses are not present, so, of course, there is no opportunity to challenge their statements.

Nashiri's representative, a lieutenant commander in the Navy, presents a stunning response: "The Detainee states that he was tortured into confession and once he made a confession his captors were happy and they stopped torturing him. Also, the Detainee states that he made up stories during the torture in order to get it to stop."

The response states that Nashiri confessed under torture not only to the East Africa and USS Cole bombings but also to the 2002 bombing of the French oil tanker Limburg, some bombings and rocket attacks in Saudi Arabia, a plan to bomb American ships in the Persian Gulf, and "a plan to hijack a plane and crash it into a ship." Oh, and he also told investigators that Osama bin Laden had acquired a nuclear bomb.

"I just said those things to make the people happy," Nashiri tells the tribunal. "They were very happy when I told them those things."

One gets the sense that he would have confessed to the murders of Tupac Shakur and Biggie Smalls if that would have made his interrogators happy.

Nashiri denies having anything to do with terrorism, although he acknowledges taking money from bin Laden. He paints himself -- unconvincingly, in my view -- as a simple

## TRANSCOM GHOST DOCS 740



merchant who makes poor choices in friends and has a habit of being in the wrong place at the wrong time.

The Navy captain serving as president of the tribunal gets around to asking Nashiri about the alleged torture. Who did it? They were Americans, Nashiri says. When did it happen? "From the time I was arrested five years ago, they have been torturing me."

Only George Orwell could have written what comes next in the transcript. The following is what we are allowed to know of Nashiri's response when asked *how* he was tortured:

"What else do I want to say? [REDACTED]. Many things happened. There were doing so many things. What else did they do? [REDACTED]. They do so many things. So so many things. What else did they do? [REDACTED]. After that another method of torture began. [REDACTED]. They used to ask me questions and the investigator after that used to laugh. And, I used to answer the answer that I knew. And, if I didn't reply what I heard, he used to [REDACTED]. So many things happened. I don't in summary, that's basically what happened."

I guess that's how the U.S. government extracts information from detainees: [REDACTED].

The Pentagon told reporters that Nashiri's claims were censored because of "national security concerns" about disclosing where detainees were held and how they were treated. But that would be unnecessary if Nashiri were lying, since no harm could come from disclosing a bunch of made-up stories. The censorship makes sense only if some or all of what Nashiri alleges is true.

But we're not permitted to know what he alleges.

Orwell had it figured out: "Ignorance is Strength."

Wednesday, April 04, 2007

WASHINGTON POST

EDITORIAL:

## **Spectacle at Guantanamo**

The new legal system for holding and trying detainees produces a predictable mess.

Wednesday, April 4, 2007; A12

THE SUPREME Court's decision not to consider, for now, the denial of appeal rights for foreign prisoners at Guantanamo Bay, when combined with the results of the first criminal case held there, vividly demonstrates the folly of the legal scheme for detainees that Congress hastily approved last year. David Hicks, the 31-year-old Australian who

TRANSCOM GHOST DOCS 741

was the first person to be brought before the special military commissions Congress sanctioned, escaped with a plea bargain that will free him after he serves nine more months in an Australian prison. Mr. Hicks pleaded guilty last week to a terrorism charge; a prosecutor described him as "an enemy" who was "trying to kill Americans."

Yet while Mr. Hicks goes home, nearly 300 Guantanamo inmates who almost certainly will never be charged with any crime continue to face indefinite detention, without the right to challenge their imprisonment under the ancient right of habeas corpus. Their only recourse is the review panels set up by the Pentagon, where they cannot be represented by lawyers and don't have access to the classified evidence that is often used against them. Some may be genuinely dangerous militants; some are almost certainly victims of mistaken identity or men who fit the description Mr. Hicks's lawyer gave of him -- a hapless "wannabe" who never tried to kill anyone.

Far from resolving the mess at Guantanamo, Congress's decisions and the Bush administration's use of them has deepened the quagmire. Senior al-Qaeda suspects formerly held in secret CIA prisons are finally being produced for quasi-public hearings - - but the administration is censoring their allegations of torture, which only strengthens suspicions that the CIA is covering up illegal activity.

The Hicks case has meanwhile demonstrated that the commissions can be politically twisted in a way that would be inconceivable in a credible court of law. Mr. Hicks's guilty plea was the result of a deal made by the Bush political appointee who oversees the commissions; to be returned to Australia, Mr. Hicks agreed to stipulate that he has "never been illegally treated" -- despite his previous allegations to the contrary -- and promised not to speak to reporters for a year. That means he will return home before the expected reelection bid of Australian Prime Minister John Howard, a close ally of President Bush.

Secretary of Defense Robert M. Gates was right when he told a congressional hearing last week that "there is a taint" about Guantanamo and that trials there "lack credibility" in "the international community." Mr. Gates said he'd like to see Guantanamo closed and Congress pass new legislation to govern those prisoners who must still be held. Those are good goals that may take time to reach. That's why Congress should take the immediate remedial action that is available: restoring habeas corpus appeal rights to all prisoners at Guantanamo.

Thursday, April 05, 2007

NEW YORK TIMES

April 5, 2007  
World Briefing | Australia

## **U.S. Detainee May Be Able to Speak to News Media**

By THE ASSOCIATED PRESS

TRANSCOM GHOST DOCS 742

Military officials have described the restraint chair regimen as unpleasant but necessary. They originally said prisoners needed to be restrained while digesting, so they could not purge what they were fed.

Now, the rationale has changed. The restraints are generally applied “for safety of the detainee and medical staff,” records show, and they are kept on for as little as 15 minutes at a time, rather than the two hours commonly used before. Afterward, the prisoners are moved to a “dry cell” and monitored to make sure they do not vomit.

Even so, some detainees describe the experience as painful, even gruesome.

One Sudanese detainee, Sami al-Hajj, a 38-year-old former cameraman for Al Jazeera, described feeling at one point that he could not bear the tube for another instant. “I said I would begin to scream unless they took it out,” he wrote in a recent diary entry given to his lawyer. “They finally did.”

Stephen H. Oleskey, who represents Saber Lahmar, an Algerian religious scholar whom military officials accused of propagating a religious legal ruling that was linked to the suicides, said of his client: “The man has been in segregation — virtual isolation — for over nine months. Physically and emotionally, he’s collapsing. We think this punishment does exceed what the law allows, and that he won’t survive.”

Military officials said Mr. Lahmar and other detainees had received adequate medical attention.

*Margot Williams and William Glaberson contributed reporting.*

**Tuesday, April 17, 2007**

**WASHINGTON POST**

## **CIA Chief Complains About Agency's Critics in Europe**

Hayden Speaks to Foreign Envoys on Anti-Terror Efforts

By Walter Pincus  
Washington Post Staff Writer  
Tuesday, April 17, 2007; A12

CIA Director Michael V. Hayden has taken the unusual step of complaining privately to European diplomats about officials in their countries criticizing U.S. intelligence programs that involve renditions, detentions and interrogations of terrorism suspects.

At a luncheon last month at the German Embassy in Washington, Hayden gave a frank report on the controversial counterterrorism programs and spoke of his concern about the inaccurate information surrounding them and the “unbounded criticism” directed at them,

**TRANSCOM GHOST DOCS 743**

particularly from the European Parliament, according to Western diplomats and officials aware of his remarks. They spoke on the condition of anonymity because the meeting was private.

Word of Hayden's protest came on the eve of testimony by members of the European Parliament who investigated the U.S. programs, scheduled for this afternoon before a House Foreign Affairs subcommittee.

Hayden has told colleagues that he is worried that misinformation could force some countries to end their cooperation on these programs. In addition, he is bothered that some foreign officials whose security services have benefited from intelligence derived from the programs have been hypocritical in publicly criticizing them, former intelligence officials said.

A February report by the European Parliament called CIA renditions illegal and complained that many cases involved incommunicado detentions and torture.

In describing the size of the CIA programs, details of which remain classified, Hayden said fewer than 100 people had been held in secret "black site" facilities since spring 2002, according to the diplomats and officials. He added that fewer than half had been subjected to what President Bush described as "alternative procedures" during interrogations, the sources recalled. Terrorism suspect Abu Zubaida, who Hayden said in his speech was the first captured suspect to undergo such procedures, said he was tortured, according to a transcript of his Combatant Status Review Tribunal released yesterday by the Pentagon.

"The United States does not conduct or condone torture, and the CIA interrogation program is conducted lawfully," a CIA spokesman said yesterday.

Hayden said that renditions -- the transfers of CIA detainees to third countries -- have totaled fewer than 100, fewer than the 1,254 CIA flights that were identified in the European report. The report acknowledged that "not all those flights have been used for extraordinary rendition."

Hayden said the renditions were undertaken with the consent and often the assistance of the countries where the detainees were located. He attempted to differentiate the CIA's small-scale detention and interrogation program, targeted at the most dangerous detainees, and the larger Defense Department prison system, which is focused around 400 or more terrorism suspects who have been held at Guantanamo Bay, Cuba.

**Wednesday, April 18, 2007**

**WALL STREET JOURNAL**

OPINION:

**TRANSCOM GHOST DOCS 744**

Three of the six resurfaced as senior commanders in Afghanistan, the Defense Department said, while a fourth was identified after his release as having been a Taliban deputy defense minister.

Pentagon officials said the detainees lied about their past and that their assertions were sometimes backed up by fellow inmates.

The six were among 30 former detainees who have rejoined the fight against U.S. and coalition forces upon their release from Guantanamo, the officials said. About 390 detainees have been released or transferred from the prison.

"While we have long maintained that we would like to close Guantanamo, there are a number of highly dangerous men who if released would pose a grave danger to the public," said Navy Cmdr. J.D. Gordon, a Pentagon spokesman.

Critics calling for the prison's closure have said that only a small number of Guantanamo detainees fought against U.S. forces.

Among the detainees identified yesterday was Mohamed Yusif Yaqub, who the Pentagon said assumed control of Taliban operations in southern Afghanistan after his release and died fighting U.S. forces May 7, 2004.

Abdullah Mahsud became a militant leader in Waziristan, with ties to the Taliban and al-Qaeda.

Maulavi Abdul Ghaffar became the Taliban's regional commander in two provinces and was killed by Afghan security forces, the Pentagon said.

#### WASHINGTON POST

## Terrorism Suspect Alleges 'Mental Torture'

By Eric Rich  
Washington Post Staff Writer  
Wednesday, May 16, 2007; A02

A suspected terrorist who once lived in Maryland told a military tribunal that he was "mentally tortured" at the U.S. detention facility at Guantanamo Bay, Cuba, and was driven to twice attempt suicide by chewing through his own arteries, according to a transcript of a hearing released yesterday by the Pentagon.

Majid Khan, 27, one of 14 "high-value" suspects held for years by the CIA at secret foreign prisons before their transfer to Guantanamo Bay, also said he lost 30 pounds in 27 days during a hunger strike, according to the transcript. In a statement redacted in places by government censors, he complained of mistreatment that ranged from having his beard

# TRANSCOM GHOST DOCS 745

forcibly shaved and spending weeks without sunlight to the poor quality of the camp's weekly newsletter, it says.

"I swear to God this place in some sense worst than CIA jails," Khan is quoted as telling the Combatant Status Review Tribunal on April 15 as it considered whether to designate him an enemy combatant.

Cmdr. J.D. Gordon, a Pentagon spokesman, said yesterday that Khan has been "treated humanely" in the custody of the Defense Department.

According to the transcript, Khan, who graduated from public high school in suburban Baltimore in 1999, denied being a terrorist and twice volunteered to submit to a polygraph test. He told the tribunal that he helped the FBI take an illegal Pakistani immigrant into custody in 2002 -- a claim an FBI spokesman declined to comment on yesterday.

U.S. officials allege that Khan, a Pakistani national, took orders from Khalid Sheik Mohammed, who is accused of orchestrating the Sept. 11, 2001, attacks and is also a high-value detainee at Guantanamo Bay. Khan was allegedly asked to research how to poison U.S. reservoirs and to blow up U.S. gas stations, and was considered for an effort to assassinate the Pakistani president.

At the hearing, the government cited statements it said were made by two of Khan's family members in 2003. A brother of Khan's allegedly said that Khan was "involved with a group that he believed to be al-Qaeda," and his father allegedly said that Khan had been "influenced by anti-American thoughts."

The government also cited statements it said were made by Iyman Faris, an Ohio truck driver who pleaded guilty in 2003 to supporting a plot to destroy the Brooklyn Bridge and to launch a simultaneous attack on Washington. Faris said Khan referred to Mohammed as his uncle, according to the documents, and told the government that Khan once spoke of his desire to martyr himself by detonating an explosives vest to assassinate Pakistani President Pervez Musharraf.

But Faris disavowed those earlier claims in a statement provided to the tribunal at Khan's request. "That is an absolute lie," Faris wrote of his earlier statements, saying he was coerced or deceived into making them.

Khan's father, Ali S. Khan, also provided the tribunal with a statement disavowing his and his son's earlier statements. "Anything we may have said about Majid Khan was simply out of shock because we only knew that Majid had disappeared and was pure speculation based on what FBI agents in the United States told us and pressured us to say," he wrote.

Majid Khan was detained in March 2003 while staying with a brother in Pakistan. His whereabouts were not officially disclosed until September, when President Bush named him as one of the 14 high-value detainees transferred to Guantanamo Bay.

Gitanjali Gutierrez, Khan's attorney at the Center for Constitutional Rights in New York, said that Khan's response to the conditions of his confinement show how formidable they are. "He's definitely under a great deal of mental stress," she said. "The idea of indefinite detention is something that the Red Cross identified years ago as being tantamount to torture."

Some of Khan's complaints were less serious than others, including his allegation that he and other detainees are given "cheap branded, unscented soap" and must suffer with a loud fan that "drives us all crazy." He also complained about the condition of athletic equipment.

Damaging information about Khan came from Saifullah Paracha, a Guantanamo Bay detainee who provided a statement to the tribunal at Khan's request. Paracha said that, while in Karachi, he and a man later identified to him as Khan were introduced by Ammar al-Baluchi, a nephew of Mohammed's who is accused of helping finance the Sept. 11 attackers.

*Staff researcher Julie Tate contributed to this report.*

## WASHINGTON POST

EDITORIAL:

### **A Question of Torture**

Excepting John McCain, Republican candidates for president seem to favor it.

Thursday, May 17, 2007; A16

THE REPUBLICAN presidential candidates were asked at their debate in South Carolina on Tuesday about "a million-to-one scenario" involving the interrogation of suspected foreign terrorists. Only one in 10 got it right.

That one would be Sen. John McCain (Ariz.), the only presidential candidate who has experienced torture. "Torture" is Mr. McCain's correct description of the "enhanced interrogation techniques" that President Bush authorized the CIA to use on captured members of al-Qaeda -- methods that soon spread to the military prison at Guantanamo Bay, and then to Afghanistan and Iraq. Until Mr. McCain succeeded in passing a legislative restriction two years ago, the methods included "waterboarding," or simulated drowning, an ancient torture technique that every U.S. government before the Bush administration considered illegal and immoral.

# TRANSCOM GHOST DOCS 747

The scenario posited by questioner Brit Hume supposed that, after suicide attacks in several U.S. cities, a group of attackers believed to know about further strikes was captured off the coast of Florida and taken to Guantanamo. "How aggressively would you interrogate . . . ?" Mr. Hume asked. Mr. McCain answered that in that extreme and most unlikely situation, "I, as the president of the United States, would take that responsibility" for determining interrogation methods. But, he added, "We could never gain as much from that torture as we lose in world opinion."

The senator's words carried the weight not only of his own experience but that of the Bush administration, which has all but destroyed U.S. standing in many parts of the world because of the human rights abuses at Guantanamo, at Iraq's Abu Ghraib and in the CIA's secret prisons. Yet Mr. McCain's rivals seem to have learned nothing from this history. Rudy Giuliani said he would tell interrogators to use "every method they could think of," including waterboarding. Nonsensically, he added, "I've seen what can happen when you make a mistake about this," though prisoner interrogations had nothing to do with the attacks of Sept. 11, 2001.

Mitt Romney, noting that "some people" have said we ought to close Guantanamo, boasted that "we ought to double Guantanamo," presumably doubling the international damage. He added that he liked to have suspects in Guantanamo because "they don't get the access to lawyers they get when they're on our soil." In fact, even President Bush has said he'd like to close Guantanamo; and his administration recently retreated from an attempt to curtail lawyers' access to the Guantanamo prisoners.

Does Mr. Romney think the president has gone soft on terrorism? More likely, he and most of the other GOP candidates are calculating that they can curry favor with voters by promising that torture will be a tool of their presidential administrations. Let's hope they are wrong. As Mr. McCain put it, "It's not about the terrorists, it's about us. It's about what kind of country we are."

#### WASHINGTON POST

OPINION:

### **It's Our Cage, Too**

Torture Betrays Us and Breeds New Enemies

By Charles C. Krulak and Joseph P. Hoar  
Thursday, May 17, 2007; A17

Fear can be a strong motivator. It led Franklin Roosevelt to intern tens of thousands of innocent U.S. citizens during World War II; it led to Joseph McCarthy's witch hunt, which ruined the lives of hundreds of Americans. And it led the United States to adopt a policy at the highest levels that condoned and even authorized torture of prisoners in our custody.

# TRANSCOM GHOST DOCS 748



Fear is the justification offered for this policy by former CIA director George Tenet as he promotes his new book. Tenet oversaw the secret CIA interrogation program in which torture techniques euphemistically called "waterboarding," "sensory deprivation," "sleep deprivation" and "stress positions" -- conduct we used to call war crimes -- were used. In defending these abuses, Tenet revealed: "Everybody forgets one central context of what we lived through: the palpable fear that we felt on the basis of the fact that there was so much we did not know."

We have served in combat; we understand the reality of fear and the havoc it can wreak if left unchecked or fostered. Fear breeds panic, and it can lead people and nations to act in ways inconsistent with their character.

The American people are understandably fearful about another attack like the one we sustained on Sept. 11, 2001. But it is the duty of the commander in chief to lead the country away from the grip of fear, not into its grasp. Regrettably, at Tuesday night's presidential debate in South Carolina, several Republican candidates revealed a stunning failure to understand this most basic obligation. Indeed, among the candidates, only John McCain demonstrated that he understands the close connection between our security and our values as a nation.

Tenet insists that the CIA program disrupted terrorist plots and saved lives. It is difficult to refute this claim -- not because it is self-evidently true, but because any evidence that might support it remains classified and unknown to all but those who defend the program.

These assertions that "torture works" may reassure a fearful public, but it is a false security. We don't know what's been gained through this fear-driven program. But we do know the consequences.

As has happened with every other nation that has tried to engage in a little bit of torture -- only for the toughest cases, only when nothing else works -- the abuse spread like wildfire, and every captured prisoner became the key to defusing a potential ticking time bomb. Our soldiers in Iraq confront real "ticking time bomb" situations every day, in the form of improvised explosive devices, and any degree of "flexibility" about torture at the top drops down the chain of command like a stone -- the rare exception fast becoming the rule.

To understand the impact this has had on the ground, look at the military's mental health assessment report released earlier this month. The study shows a disturbing level of tolerance for abuse of prisoners in some situations. This underscores what we know as military professionals: Complex situational ethics cannot be applied during the stress of combat. The rules must be firm and absolute; if torture is broached as a possibility, it will become a reality.

This has had disastrous consequences. Revelations of abuse feed what the Army's new counterinsurgency manual, which was drafted under the command of Gen. David Petraeus, calls the "recuperative power" of the terrorist enemy.

TRANSCOM GHOST DOCS 749

Former defense secretary Donald Rumsfeld once wondered aloud whether we were creating more terrorists than we were killing. In counterinsurgency doctrine, that is precisely the right question. Victory in this kind of war comes when the enemy loses legitimacy in the society from which it seeks recruits and thus loses its "recuperative power."

The torture methods that Tenet defends have nurtured the recuperative power of the enemy. This war will be won or lost not on the battlefield but in the minds of potential supporters who have not yet thrown in their lot with the enemy. If we forfeit our values by signaling that they are negotiable in situations of grave or imminent danger, we drive those undecideds into the arms of the enemy. This way lies defeat, and we are well down the road to it.

This is not just a lesson for history. Right now, White House lawyers are working up new rules that will govern what CIA interrogators can do to prisoners in secret. Those rules will set the standard not only for the CIA but also for what kind of treatment captured American soldiers can expect from their captors, now and in future wars. Before the president once again approves a policy of official cruelty, he should reflect on that.

It is time for us to remember who we are and approach this enemy with energy, judgment and confidence that we will prevail. That is the path to security, and back to ourselves.

*Charles C. Krulak was commandant of the Marine Corps from 1995 to 1999. Joseph P. Hoar was commander in chief of U.S. Central Command from 1991 to 1994.*

## WASHINGTON POST

### **Guantanamo Detainee Returns to Australia**

Hicks to Serve Out Sentence Near Home

By Spencer S. Hsu  
Washington Post Staff Writer  
Monday, May 21, 2007; A10

David M. Hicks, the first of hundreds of Guantanamo Bay detainees convicted under Congress's new rules for enemy-combatant terrorism trials, arrived home in Australia yesterday to finish his prison sentence after more than five years in U.S. custody, the Pentagon and the Australian government announced.

Hicks, 31, will serve nine months in isolation at a maximum-security prison near his home town of Adelaide, under a March 30 plea deal in which he confessed to material support of terrorists and received a suspended seven-year sentence.

# TRANSCOM GHOST DOCS 750

People in a position to know, including Army Brig. Gen. Patrick Finnegan, dean of the U.S. Military Academy, have gone on record about the problem this presents. Some West Point cadets, under the influence of "24," have come to believe that torture is justifiable and, largely erroneously, that it works. Finnegan, quoted in the New Yorker in late February, said seniors in his laws of war class have asked, "If torture is wrong, what about '24'?"

Likewise, the Intelligence Science Board, an advisory group to the U.S. intelligence community, expressed these concerns in a comprehensive report published in December, arguing that similar reality-distorting effects could be seen in the public at large.

I enjoy "24" and other suspense-filled shows at least as much as the 11-million-plus other viewers who tuned in this season. But with such extraordinary popularity comes some responsibility. Intentionally or not — and for better and for worse — fiction can play a real role in the construction of political reality. Amid the global war on terror, those in Hollywood and those in Washington would do well to take heed of this fact about fiction.

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Wednesday, May 30, 2007

NEW YORK TIMES

May 30, 2007

## Advisers Fault Harsh Methods in Interrogation

By SCOTT SHANE and MARK MAZZETTI

Page 1

WASHINGTON, May 29 — As the Bush administration completes secret new rules governing interrogations, a group of experts advising the intelligence agencies are arguing that the harsh techniques used since the 2001 terrorist attacks are outmoded, amateurish and unreliable.

The psychologists and other specialists, commissioned by the Intelligence Science Board, make the case that more than five years after the Sept. 11 attacks, the Bush administration has yet to create an elite corps of interrogators trained to glean secrets from terrorism suspects.

While billions are spent each year to upgrade satellites and other high-tech spy machinery, the experts say, interrogation methods — possibly the most important source of information on groups like Al Qaeda — are a hodgepodge that date from the 1950s, or are modeled on old Soviet practices.

TRANSCOM GHOST DOCS 751

Some of the study participants argue that interrogation should be restructured using lessons from many fields, including the tricks of veteran homicide detectives, the persuasive techniques of sophisticated marketing and models from American history.

The science board critique comes as ethical concerns about harsh interrogations are being voiced by current and former government officials. The top commander in Iraq, Gen. David H. Petraeus, sent a letter to troops this month warning that “expedient methods” using force violated American values.

In a blistering lecture delivered last month, a former adviser to Secretary of State Condoleezza Rice called “immoral” some interrogation tactics used by the Central Intelligence Agency and the Pentagon.

But in meetings with intelligence officials and in a 325-page initial report completed in December, the researchers have pressed a more practical critique: there is little evidence, they say, that harsh methods produce the best intelligence.

“There’s an assumption that often passes for common sense that the more pain imposed on someone, the more likely they are to comply,” said Randy Borum, a psychologist at the University of South Florida who, like several of the study’s contributors, is a consultant for the Defense Department.

The Bush administration is nearing completion of a long-delayed executive order that will set new rules for interrogations by the Central Intelligence Agency. The order is expected to ban the harshest techniques used in the past, including the simulated drowning tactic known as waterboarding, but to authorize some methods that go beyond those allowed in the military by the Army Field Manual.

President Bush has insisted that those secret “enhanced” techniques are crucial, and he is far from alone. The notion that turning up pressure and pain on a prisoner will produce valuable intelligence is a staple of popular culture from the television series “24” to the recent Republican presidential debate, where some candidates tried to outdo one another in vowing to get tough on captured terrorists. A 2005 Harvard study supported the selective use of “highly coercive” techniques.

But some of the experts involved in the interrogation review, called “Educing Information,” say that during World War II, German and Japanese prisoners were effectively questioned without coercion.

“It far outclassed what we’ve done,” said Steven M. Kleinman, a former Air Force interrogator and trainer, who has studied the World War II program of interrogating Germans. The questioners at Fort Hunt, Va., “had graduate degrees in law and philosophy, spoke the language flawlessly,” and prepared for four to six hours for each hour of questioning, said Mr. Kleinman, who wrote two chapters for the December report.

Mr. Kleinman, who worked as an interrogator in Iraq in 2003, called the post-Sept. 11 efforts “amateurish” by comparison to the World War II program, with inexperienced interrogators who worked through interpreters and had little familiarity with the prisoners’ culture.

The Intelligence Science Board study has a chapter on the long history of police interrogations, which it suggests may contain lessons on eliciting accurate confessions. And Mr. Borum, the psychologist, said modern marketing may be a source of relevant insights into how to influence a prisoner’s willingness to provide information.

“We have a whole social science literature on persuasion,” Mr. Borum said. “It’s mostly on how to get a person to buy a certain brand of toothpaste. But it certainly could be useful in improving interrogation.”

Robert F. Coulam, a research professor and attorney at Simmons College and a study participant, said that the government’s most vigorous work on interrogation to date has been in seeking legal justifications for harsh tactics. Even today, he said, “there’s nothing like the mobilization of effort and political energy that was put into relaxing the rules” governing interrogation.

The director of the science board project, Robert A. Fein, a forensic psychologist at Harvard, declined to speak on the record.

In a prologue to the December report, the first of a planned series, Mr. Fein said the shortage of research meant that many American interrogators were “forced to ‘make it up’ on the fly,” resulting in “unfortunate cases of abuse.”

But associates say Mr. Fein does not want to antagonize intelligence officials, whom he hopes to persuade to bring the reality check of research to bear on interrogation practices.

Defenders of the harshest interrogations, particularly as practiced by the C.I.A. at secret overseas sites, say they were carefully devised and have produced valuable intelligence. An agency spokesman, Paul Gimigliano, said the program “has generated a rich volume of intelligence that has helped the United States and other countries disrupt terrorist activities and save innocent lives.”

He said the agency’s interrogators were “seasoned, well trained, and have the linguistic resources they need,” and added, “The agency learned terrorist interrogation after 9/11, but — based on the effectiveness of this fully legal program — it learned it well.”

A. B. Krongard, who was the executive director of the C.I.A., the No. 3 post at the agency, from 2001 to 2004, agreed with that assessment but acknowledged that the agency had to create an interrogation program from scratch in 2002.

He said officers quickly consulted counterparts in Egypt, Saudi Arabia, Israel and other countries to compile a “catalog” of techniques said to be effective against Arab and

Muslim prisoners. They added other methods drawn from those that American troops were trained to withstand in case of capture.

Mr. Krongard even recalls receiving a proposal for help with questioning Qaeda suspects from an American dentist who said he “could create pain no human being could withstand.”

The agency rejected such ideas as ludicrous. But administration lawyers approved a list of harsh methods that have drawn widespread condemnation.

In an April lecture, Philip D. Zelikow, the former adviser to Ms. Rice, said it was a grave mistake to delegate to attorneys decisions on the moral question of how prisoners should be treated.

Mr. Zelikow, who reviewed the C.I.A. detention program as the executive director of the Sept. 11 commission, said the “cool, carefully considered, methodical, prolonged and repeated subjection of captives to physical torment, and the accompanying psychological terror, is immoral.”

Many of the techniques that have come in for such criticism were based on those used in the military’s Survival, Evasion, Resistance and Escape training, or SERE, in which for decades American service members were given a sample of the brutal treatment they might face if captured.

Because the training was developed during the cold war, the techniques later adopted by the C.I.A. and Special Operations officers in Iraq were based, at least in part, on how the Soviet Union and its allies were believed to treat prisoners. Such techniques included prolonged use of stress positions, exposure to heat and cold, sleep deprivation and even waterboarding.

A report on detainee abuse by the Defense Department’s inspector general, completed in August but declassified and released May 18, gives new details of how the military training was “reverse engineered” for use by American interrogators. It says that as early as 2002, some SERE trainers and some military intelligence officers vehemently objected to the use of the techniques, but their protests were ignored.

Senator Carl Levin, a Michigan Democrat and chairman of the Senate Armed Services Committee, said he found the report “very troubling” and intended to hold hearings on how the SERE training methods became the basis for interrogation. “They were put to a purpose that was never intended,” Mr. Levin said.

Mr. Kleinman, the former Air Force interrogator who took part in the “Educating Information” study, said the mistakes of the past five years “have made interrogation synonymous in many people’s minds with torture.” But he said the group wanted to redirect the debate toward the future of interrogation.

“Our intention is not to point fingers at anyone,” he said. “We’re just saying we have to bring interrogation up to the level of professionalism in other intelligence disciplines.”

Thursday, May 31, 2007

WASHINGTON POST

## Death of Guantanamo Detainee Is Apparent Suicide, Military Says

By Josh White  
Washington Post Staff Writer  
Thursday, May 31, 2007; A08

A Saudi detainee at the U.S. military detention facility at Guantanamo Bay, Cuba, was found dead in his cell from an apparent suicide yesterday afternoon, military officials said. He would be the fourth detainee to take his own life at the facility in the past year.

Military officials at U.S. Southern Command did not release details about the death or identify the detainee, who was among about 80 Saudi Arabians in custody. Attorneys with the Center for Constitutional Rights, a New York-based law group that represents many Guantanamo detainees, said they had learned no details as of last night and did not have independent confirmation that the death was a suicide.

"The detainee was found unresponsive and not breathing in his cell by guards," military officials said in a news release on Southcom's Web site. "The detainee was pronounced dead by a physician after all lifesaving measures had been exhausted."

The Naval Criminal Investigative Service has started an investigation, and a cultural adviser is assisting officials at the base to ensure that the detainee's body is handled in a "culturally sensitive and religiously appropriate manner," according to the release.

Three detainees committed suicide in their cells simultaneously on June 10, 2006, using clothes and sheets to fashion makeshift nooses. U.S. officials called the incident an act of "asymmetric warfare" and a way to garner negative publicity for the detention facility on the U.S. base. Those detainees, according to the military, allegedly conspired with others to carry out a suicide pact and passed notes among themselves about how to do it.

The three suicides in June were the first detainee deaths reported at Guantanamo since it opened in January 2002. As of last year, there had been more than 40 suicide attempts by about 25 detainees, including some who had tried to overdose on hoarded drugs and one who repeatedly tried to die by hanging and slashing himself.

TRANSCOM GHOST DOCS 755

Such cases are illustrative of the negative image that Guantanamo has internationally; even Defense Secretary Robert M. Gates has expressed a desire to close the facility because of the taint it carries. Attorneys for detainees have talked emotionally about the desperation their clients feel and have railed against what they consider worsening conditions at the facility's newest camp, which is modeled after U.S. prisons.

There are about 380 detainees at Guantanamo, fewer than half of the 775 detainees who have been there since it was opened to house those captured in the war in Afghanistan and in the larger Bush administration effort against terrorism. Three detainees have been charged with crimes under the Military Commissions Act of 2006.

Military spokesmen at the Pentagon and at Guantanamo referred all inquiries to Southcom. A Southcom spokesman said last night that he could not elaborate on details of yesterday's death.

Wells Dixon, an attorney at CCR, said last night that he has asked the Justice Department for information about the detainee, and that his organization is already calling for an independent investigation into his death. Dixon, who visited Saudi detainees at Guantanamo earlier this month, said they "were suffering terribly."

"The fact that four detainees have now died while in military custody should not surprise anyone," Dixon said. "These results are predictable, given the fact that these men have been confined for so long without charge or trial under such difficult circumstances."

*Staff researcher Julie Tate contributed to this report.*

**Friday, June 01, 2007**

**WASHINGTON POST**

## **Senators Seek Legal Review of CIA Methods**

By Walter Pincus  
Washington Post Staff Writer  
Friday, June 1, 2007; A05

The Senate Select Committee on Intelligence has demanded a legal review of the CIA's detention and interrogation program for terrorism suspects as part of its version of the fiscal 2008 intelligence authorization bill.

In its report on the measure yesterday, the panel acknowledged that the CIA's harsh interrogation methods have led to the disclosure of the identifies of terrorists and have disrupted plots, but it questioned whether such methods are "the best means to obtain a full and reliable intelligence debriefing of a detainee."

**TRANSCOM GHOST DOCS 756**



The panel's chairman, Sen. John D. Rockefeller IV (D-W.Va.), said that "significant legal issues about the CIA detention and interrogation program remain unresolved," along with questions about the agency's decision to operate under rules different from those governing military and law enforcement officers.

As it has in previous years, the panel called for the president to make public the costs of the national programs whose budgets make up almost three-quarters of the roughly \$48 billion proposed for intelligence collection and analysis next year. The other funds are for military intelligence activities. The Bush administration has strongly opposed such a disclosure.

Another Senate provision, which also appears in the House-passed intelligence bill, would modify the practice of telling only the chairmen and ranking members of the intelligence committees about the most sensitive operations, such as the warrantless domestic wiretapping involving terrorism suspects that began almost immediately after the attacks of Sept. 11, 2001.

The committee's version would require that all panel members be notified of such briefings and be told about the "main features" of such intelligence activities, including covert actions.

In other provisions, the committee:

- Joined the House in requiring a study of the impact of global climate change on national security. While House Republicans opposed this provision, Sen. John W. Warner (R-Va.) supported it.
- Increased the maximum penalty for intentionally disclosing the name of an undercover intelligence officer or agent from 10 to 15 years -- a change provoked in part by the leak of the name of covert CIA officer Valerie Plame.
- Required the president to provide all President's Daily Briefs that deal with Iraq, from the last four years of the Clinton administration through March 19, 2003, when the U.S.-led coalition began its invasion of that country. The briefings comprise the highly secret material provided each day to the president, and this requirement was described by the panel's Republican vice chairman, Sen. Christopher S. Bond (Mo.), as "the most problematic provision in the bill."
- Called for presidential nomination and Senate approval of the deputy CIA director as well as the directors of the National Security Agency, which collects electronic intelligence; the National Reconnaissance Office, which designs, builds and manages intelligence-gathering satellites; and the National Geospatial-Intelligence Agency, which collects and analyzes imagery. The White House has said it opposes a similar provision in the House bill.

· Found that the number of personnel in the intelligence community has grown by 20 percent since the 2001 attacks on the World Trade Center and the Pentagon, and recommended that additional growth be halted pending further study.

WASHINGTON POST

## **Detainee Found Dead Trained With U.S. Forces**

By Josh White  
Washington Post Staff Writer  
Friday, June 1, 2007; A11

A detainee found dead in his cell at Guantanamo Bay 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 Ma'ath Thafir al-Amri 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 that the group said could explain his apparent suicide.

U.S. officials said he was not on suicide watch at the time guards found him unresponsive Wednesday afternoon, but they have declined to provide details or evidence of his cause of death. Amri's body will be prepared for repatriation to Saudi Arabia after an autopsy, the officials said yesterday.

Saudi officials yesterday identified the detainee as Amri, 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 Amri as a mid-level al-Qaeda operative who ran safe houses and fought against the United States in November 2001.

But Amri, appearing at a military hearing in Guantanamo, declared 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 Amri'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 saying.

U.S. Southern Command said guards found him dead on Wednesday afternoon in his cell in the detention center's Camp 5, a modern building in which detainees have their own small cells. A U.S. military official said Amri was held in high security because he was a

TRANSCOM GHOST DOCS 758

noncompliant prisoner and deemed a security threat, even though he was not charged with war crimes.

Three detainees who killed themselves last year used clothes and bedsheets to fashion nooses before hanging themselves. Other detainees have hoarded medicine and slashed at main arteries in numerous unsuccessful suicide attempts. Amri was the fourth detainee to die at the facility.

The Center for Constitutional Rights, a legal group based in New York that represents many Guantanamo detainees, said yesterday that Amri was a party to litigation against the Bush administration but that lawyers had never been granted the opportunity to meet with him.

"To my knowledge, he has not been visited by an attorney," said J. Wells Dixon, a CCR lawyer. He said Amri's death shows how far detainees have deteriorated mentally. "We have actively tried to see him and the other detainees, and the government has prevented that."

A Pentagon official said attorneys were not allowed to meet with Amri because he was not specifically named as a plaintiff in any habeas corpus petition.

Human rights groups yesterday again assailed the military for failing to properly care for the detainees. Some called for an independent investigation and for the military to release a cause of death.

Amri's path to Guantanamo was not unlike the way many other detainees arrived there. According to hearing records, he surrendered to Pakistani police after fighting in Tora Bora and he admitted carrying an AK-47 assault rifle. Amri never completed middle school and spent nine years and four months in the Saudi army, training on antitank weapons, artillery and light weaponry.

*Staff researcher Julie Tate contributed to this report.*

## WASHINGTON POST

EDITORIAL:

### **Bad Methods**

President Bush's 'alternative' techniques for questioning terrorism suspects have no basis in science or law.

Friday, June 1, 2007; A14

IN ASKING Congress to legalize the CIA's secret prison program last year, President Bush claimed that the "alternative procedures" adopted for the interrogation of terrorism

# TRANSCOM GHOST DOCS 759

suspects "were designed to be safe, to comply with our laws, our Constitution and our treaty obligations." In fact, as is made clear in a newly declassified report by the Defense Department's deputy inspector general for intelligence, the administration did not so much design as reverse-engineer its methods. The guiding authority was not the Constitution but the practices of secret police in places such as the former Soviet Union.

Techniques such as prolonged sleep deprivation, exposure to temperature extremes and death threats were taught to interrogators at the Guantanamo Bay prison in 2002 and to special Army teams in Iraq a year later by military trainers whose normal duty was to school U.S. soldiers on resisting torture in the event they were captured by a lawless regime. No studies were done to determine whether the methods were effective or whether other interrogation practices might get better results. The Survival, Evasion, Resistance and Escape (SERE) training, according to the report, "replicate[s] harsh conditions that the [U.S.] Service member might encounter if they are held by forces that do not abide by the Geneva Conventions. . . . The SERE expertise lies in training personnel how to respond [to] and resist interrogations -- not in how to conduct interrogations." Yet many of the methods used on "high-value" detainees in both Guantanamo and Iraq came from SERE.

Mr. Bush and other administration officials argue that those methods got results from such al-Qaeda prisoners as Khalid Sheikh Mohammed, a claim that cannot be independently verified because the records of those interrogations have been kept secret. What administration officials don't mention is that at least two top prisoners, Mohamed Qatani and Ibn al-Shaykh al-Libi, are now known to have provided false information to interrogators after being tortured -- in Mr. al-Libi's case, by Egyptian jailers. Moreover, an extensive report by the Intelligence Science Board, sponsored by the Pentagon, concluded that there is no scientific evidence to back up the administration's contention that the techniques it adopted are effective. In fact, the intelligence experts concluded that some painful and coercive treatment could prevent interrogators from getting good information.

What makes these conclusions particularly significant is that the administration is preparing an executive order that would set new rules for the CIA's "alternative procedures," under the terms of the flawed legislation that Congress approved last fall. According to a report this week in the New York Times, the order is near completion and would reauthorize some of the harsh methods. If so, Mr. Bush will act in contravention of his administration's own expert advisers and the military investigators who showed how the techniques of totalitarians were recklessly adopted by Americans. Congress, which was wrong to hand the president the authority to bend the Geneva Conventions, ought to intervene to prevent further abuse.

#### CHRISTIAN SCIENCE MONITOR

posted May 31, 2007 at 1:10 p.m. EDT - <http://www.csmonitor.com/2007/0531/p99s01-duts.html>

# TRANSCOM GHOST DOCS 760

Colonel Davis said that was a significant precedent. "If the United Nations has signed on to the principle that people who are 15 can be prosecuted for war crimes," he said, "the notion that we're blazing a new trail with Mr. Khadr is a false assumption."

But the former chief war crimes prosecutor for Sierra Leone, David M. Crane, said in an interview that soon after he was appointed by Secretary General Kofi Annan of the United Nations in 2002, he announced that he would not prosecute anyone under 18.

Mr. Crane, a former senior Pentagon legal official who is now a professor at Syracuse University Law School, said the Sierra Leone civil war included a catalogue of horrific acts by teenagers and children. But he said he concluded that warriors under 18 did not have the intellectual and emotional maturity to be prosecuted for war crimes.

"I called them as much victims as the people they raped, maimed and mutilated," he said.

One person who has reached a different conclusion about the culpability of child fighters is Layne Morris, a housing administrator in a Salt Lake City suburb. Mr. Morris is a former Army Special Forces sergeant, who, like Mr. Khadr, is half-blind because of the firefight that day outside Khost, Afghanistan.

On a recent day, Mr. Morris remembered the stream of shots from AK-47s inside a compound a coalition patrol had surrounded. He remembered the hand grenades that kept coming over the wall. And he described the feeling of the shrapnel that took half his sight.

He said the battle did not unfold quickly, as it sometimes seems in the retelling. American forces surrounded the compound. And then they waited. Some women from the compound emerged and were allowed to leave, Mr. Morris said. A boy fighter would have had the chance to walk out of the gate, too, he said.

There were shots. And more waiting, as the Americans called for air support.

Anyone who was inside had a choice of fighting or surrendering, he said, including Mr. Khadr.

"There is just no way you can say this is a poor befuddled, brainwashed kid," Mr. Morris said. "This is a kid who made a whole lot of decisions on his own."

#### NEW YORK TIMES

June 3, 2007

WORD FOR WORD | THEY'LL SAY ANYTHING

### **Soviet-Style 'Torture' Becomes 'Interrogation'**

By SCOTT SHANE

TRANSCOM GHOST DOCS 761

HOW did the United States, in the aftermath of the 9/11 attacks, come to adopt interrogation techniques copied from the Soviet Union and other cold war adversaries?

Investigators for the Senate Armed Services Committee are examining how the methods, long used to train Americans for what they may face as prisoners of war, became the basis for American interrogations.

In 2002, the C.I.A. and the Pentagon became concerned that standard questioning was inadequate for suspected terrorists and turned to a military training program called Survival, Evasion, Reconnaissance and Escape, or SERE. For decades, SERE trainers had exposed aviators and others at high risk for capture to Soviet-style tactics, including disrupted sleep, exposure to extreme heat and cold, and hours in uncomfortable stress positions. Sometimes the ordeal included waterboarding, in which a prisoner's face is covered with cloth and water is poured from above to create a feeling of suffocation.

Some of those techniques have been used on prisoners at Guantánamo Bay and in Afghanistan and Iraq, and at the C.I.A.'s secret overseas jails for high-level operatives of Al Qaeda.

Many SERE veterans were appalled at the "reverse engineering" of their methods, said Charles A. Morgan III, a Yale psychiatrist who has worked closely with SERE trainers for a decade.

"How did something used as an example of what an unethical government would do become something we do?" he asked.

His question is only underscored by a 1956 article, "Communist Interrogation," in *The Annals of Neurology and Psychiatry*, recently turned up by the Intelligence Science Board, which advises the spy agencies. Written by doctors working as Defense Department consultants, Lawrence E. Hinkle Jr. and Harold G. Wolff, the article shows that methods embraced after 2001 were once considered torture that would produce false information. SCOTT SHANE

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The article describes basic Soviet N.K.V.D. (later K.G.B.) methods: isolation in a small cell; constant light; sleep deprivation; cold or heat; reduced food rations. Soviets denied such treatment was torture, just as American officials have in recent years:

The effects of isolation, anxiety, fatigue, lack of sleep, uncomfortable temperatures, and chronic hunger produce disturbances of mood, attitudes and behavior in nearly all prisoners. The living organism cannot entirely withstand such assaults. The Communists do not look upon these assaults as "torture." But all of them produce great discomfort,

and lead to serious disturbances of many bodily processes; there is no reason to differentiate them from any other form of torture.

Interrogators looked for ways to increase the pressure, including “stress positions”:

Another [technique] widely used is that of requiring the prisoner to stand throughout the interrogation session or to maintain some other physical position which becomes painful. This, like other features of the KGB procedure, is a form of physical torture, in spite of the fact that the prisoners and KGB officers alike do not ordinarily perceive it as such. Any fixed position which is maintained over a long period of time ultimately produces excruciating pain.

Overt brutality was discouraged, as it was at American facilities:

The KGB hardly ever uses manacles or chains, and rarely resorts to physical beatings. The actual physical beating is, of course, repugnant to overt Communist principles and is contrary to K.G.B. regulations.

Closed trials and military tribunals were standard, as at Guantánamo:

Prisoners are tried before “military tribunals,” which are not public courts. Those present are only the interrogator, the state prosecutor, the prisoner, the judges, a few stenographers, and perhaps a few officers of the court.

The Bush administration concluded that the Geneva Conventions did not apply to Qaeda detainees. Similarly, the Soviets argued that international rules did not apply to foreign detainees:

In typical Communist legalistic fashion, the N.K.V.D. rationalized its use of torture and pressure in the interrogation of prisoners of war. When it desired to use such methods against a prisoner or to obtain from him a propaganda statement or “confession,” it simply declared the prisoner a “war-crimes suspect” and informed him that, therefore, he was not subject to international rules governing the treatment of prisoners of war.

Communist-style interrogation routinely produced false confessions:

The cumulative effects of the entire experience may be almost intolerable. [The prisoner] becomes mentally dull and loses his capacity for discrimination. He becomes malleable and suggestible, and in some instances he may confabulate. By suggesting that the prisoner accept half-truths and plausible distortions of the truth, [the interrogator] makes it possible for the prisoner to rationalize and thus accept the interrogator’s viewpoint as the only way out of an intolerable situation.

LOS ANGELES TIMES

OPINION:

TRANSCOM GHOST DOCS 763

January 2002: First prisoners arrive at Camp Delta, a terrorist detention camp at Guantánamo Bay, Cuba; by June, there are 536 detainees.

May 2003: The Defense Department says it will hold special military commissions to try detainees for special war crimes.

December 2003: David Hicks, an Australian who allied with the Taliban, is the first detainee to receive counsel from a US military lawyer.

June 2004: The Supreme Court rules that Guantánamo detainees may challenge their detention in a US court.

July 2004: The Defense Department authorizes special military tribunals to determine if each detainee is an 'enemy combatant.'

November 2004: A federal judge rules that the military commission process set up to try Salim Hamdan, accused of being Osama bin Laden's driver, is illegal.

November 2005: After a government appeal and a ruling in federal appeals court, the Supreme Court agrees to hear the Hamdan case.

June 2006: The Supreme Court rules that the president overstepped his authority in creating military commissions; the administration and Congress respond by writing the Military Commissions Act (MCA),

October 2006: Bush signs the MCA, authorizing military trials.

June 2007: Military judges dismiss charges against Hamdan and Omar Khadr, accused of killing a US serviceman and detained at age 15. The judges state that the MCA draws a distinction between 'unlawful' and 'lawful' enemy combatants; only unlawful combatants can be tried by a military commission.

Sources: National Institute of Military Justice, news reports – Compiled by Leigh Montgomery

Thursday, June 7, 2007

WASHINGTON POST

## **Pentagon Says Terror Suspect Has Been Moved to Guantnamo**

Groups to Sue, Alleging Disappearance of Dozens Held by U.S.

TRANSCOM GHOST DOCS 764



By Josh White  
Washington Post Staff Writer  
Thursday, June 7, 2007; A16

A Somali man who U.S. authorities allege has close ties to al-Qaeda operations in Africa was transferred to the U.S. detention facility at Guantanamo Bay, Cuba, this week, Defense Department officials announced yesterday, the third detainee to arrive at the prison in recent weeks.

Defense officials identified the man as Abdullahi Sudi Arale but provided scant information about him. They described him as a courier between al-Qaeda operatives in East Africa and Pakistan and said he "assisted extremists in acquiring weapons and explosives," as well as facilitating travel by providing false documents for al-Qaeda operatives and foreign fighters.

"The capture of Abdullahi Sudi Arale exemplifies the genuine threat that the United States and other countries face throughout the world from dangerous extremists," a Pentagon news release said. The release also suggested that interrogators can learn about terrorist operations in Africa by questioning Arale at Guantanamo Bay.

In bringing three detainees to Guantanamo since March, the Defense Department has signaled a willingness to keep approximately 385 detainees there in indefinite custody and to increase the population held there, despite bipartisan sentiment in favor of closing the facility. In September, President Bush ordered 14 high-value detainees to be moved from CIA secret prisons to Guantanamo, the first new detainees brought there since September 2004.

Navy Cmdr. J.D. Gordon, a Pentagon spokesman, said Arale was transferred to Guantanamo earlier this week and that he was captured recently in the Horn of Africa region. Gordon declined to offer more details. Arale was in U.S. custody overseas for an unspecified period of time before his transfer.

A group of human rights organizations plans to release a report today naming as many as 39 people believed to have been taken into secret CIA custody and who have since disappeared. Arale is not among those listed. The report decries the Bush administration's secret imprisonment of those people and calls on the United States to end the program, acknowledge who is in secret custody and provide the International Committee of the Red Cross access to them.

Today, three of the groups -- Amnesty International, the Center for Constitutional Rights and the International Human Rights Clinic at New York University -- plan to file in federal court a lawsuit seeking documents and information about the people who have apparently disappeared. The suit is to be filed against several U.S. government agencies, including the Defense Department, the CIA and the Justice Department.

"The duty of governments to protect people from acts of terrorism is not in question," said Claudio Cordone, a senior director at Amnesty International. "But seizing men,

**TRANSCOM GHOST DOCS 765**

women and even children, and placing people in secret locations deprived of the most basic safeguards for any detainees most definitely is."

ICRC officials hope to meet with Arale soon, at about the same time that they plan to meet with Abd al-Hadi al-Iraqi, the only other detainee at Guantanamo whom ICRC officials have not seen. ICRC representatives have met with all 14 detainees who were transferred to Guantanamo in September.

Arale may face a military tribunal in the coming months as part of the authorities' effort to verify whether he is, in fact, an enemy combatant. But it is unclear whether the military will proceed with its traditional tribunal process, which was called into question by two military judges at Guantanamo on Monday. For Arale to face a military commission on war crimes charges, he would have to be deemed an "unlawful enemy combatant," a designation the tribunals currently do not have as an option.

"We view him as an unlawful enemy combatant," Gordon said.

*Staff researcher Julie Tate contributed to this report.*

## WASHINGTON POST

EDITORIAL:

### **Stuck in Guantanamo**

President Bush tried to create a new legal system for terrorism suspects. He created a quagmire instead.

Thursday, June 7, 2007; A26

THE BUSH administration's chronically failing attempt to invent a new legal system for holding and trying terrorism suspects has suffered yet another setback. On Monday, war crimes charges against two al-Qaeda suspects held at the Guantanamo Bay prison were dismissed by two different military judges. Both ruled that the administration had not legally established that the accused were "unlawful enemy combatants" and thus subject to trial by Guantanamo's military commissions. More than five years after President Bush rejected the Geneva Conventions and the U.S. court-martial system for handling al-Qaeda and Taliban prisoners, the first trial of a detainee once again has been put off indefinitely. That gives Congress a chance to rework the bad system it was stampeded into approving before last fall's midterm elections.

The administration's latest stumble resulted from the fact that the two men it was trying to put on trial, Salim Ahmed Hamdan and Omar Khadr, had been judged by Guantanamo's parallel system of Combatant Status Review Tribunals to be "enemy combatants" only, without the designation "unlawful." Contrary to the claims of embarrassed Pentagon spokesmen, the problem is not merely semantic but stems directly from Mr. Bush's disastrous decision to ignore the Geneva Conventions. Capt. Keith J. Allred, a military

# TRANSCOM GHOST DOCS 766

that stripped detainees of their ability to bring their cases to court under the centuries-old legal principle of habeas corpus.

The Republican majority passed the Military Commissions Act in October over strong objections that it was unconstitutional and that it inappropriately allowed the government to hold detainees at Guantanamo indefinitely without court challenge.

The bill will head to the Senate floor as part of the Defense Authorization Bill. That legislation also includes measures to dramatically change military tribunals and military courts designed to deal with "enemy combatants" captured in the Bush administration's anti-terrorism campaign.

Though voting was largely split on partisan lines, yesterday's passage of the bill is among the first bold rebukes of the administration's detention policies by a Congress that vowed to make changes when elected in November. Habeas corpus, one of the bedrock elements of U.S. law, has long been a target for lawmakers who feel its suspension was a dramatic move toward abridging basic freedoms.

"We must make clear that our laws do not permit the government to detain people, including people on U.S. soil, indefinitely without court review," said Sen. Russell Feingold (D-Wis.). "This bill is an important first step in reasserting the primacy of American values in our law."

Although there was no debate of the bill yesterday, many Republican lawmakers have praised existing law because it provides for court review of a detainee's enemy combatant status and because they maintain that foreign nationals held at Guantanamo should not have the same rights as U.S. citizens. U.S. officials have opposed giving habeas corpus rights to detainees, and the new bills to alter the legal systems at Guantanamo could meet similar resistance from the Bush administration.

Democratic efforts gained steam this week when two U.S. military judges at Guantanamo threw out charges of war crimes against two detainees because of the way the Military Commissions Act is written. They ruled that the law requires detainees to be "unlawful enemy combatants" to go to trial. Detainees there are currently designated "enemy combatants."

Critics of the law cited the error as evidence that the legal system is a failure; supporters called it a technicality.

WASHINGTON POST

**European Report Addresses CIA Sites**  
Prisons in Poland, Romania, It Says

TRANSCOM GHOST DOCS 767

By Molly Moore and Julie Tate  
Washington Post Foreign Service  
Friday, June 8, 2007; A16

PARIS, June 7 -- A European investigator said he has "factually established" that Poland and Romania allowed the CIA to operate secret prisons where alleged al-Qaeda operatives were detained and interrogated, according to documents scheduled to be presented Friday to Europe's official human rights organization.

Dick Marty, a Swiss lawyer for the Council of Europe, the continent's human rights agency, said detainees who were considered "especially sensitive" were incarcerated in Poland and those believed "to be less important were held in Romania," the documents said.

The documents, which were obtained by The Washington Post, include the cover letter and explanatory note of a report Marty has drafted, as well as a related draft resolution to be proposed to the council. Those documents did not provide details of the evidence Marty used to verify the participation of Poland and Romania in the covert CIA program.

Those two countries have repeatedly denied hosting CIA prisons. Marty said the two countries' government agencies did not cooperate with his investigation.

The report -- part of a larger investigation into partnerships among the CIA, NATO and European nations in the capture, transfer and detention of suspected terrorists -- reflects European outrage over the secret operations.

"Large numbers of people have been abducted from various locations across the world and transferred to countries where they have been persecuted and where it is known that torture is a common practice," Marty wrote, adding, "The fight against terrorism must not serve as an excuse for systematic recourse to illegal acts, massive violation of fundamental human rights and contempt for the rule of law."

Marty wrote that he was "not ruling out the possibility that secret CIA detentions may also have occurred" in other European countries, adding that his investigation was hampered by the failure of the United States, NATO and many European countries to cooperate with the probe.

The Post, which first reported on the existence of the secret prisons in 2005, has not published the names of East European countries involved in the program at the request of senior U.S. officials, who argued the disclosure could hamper counterterrorism efforts.

"Some individuals were kept in secret detention centers for periods of several years where they were subjected to degrading treatment and so-called 'enhanced interrogation techniques' (essentially a euphemism for a kind of torture)," Marty wrote.

He said many of the actions are "unacceptable under the laws of European countries" and would be legally challenged if they were undertaken in the United States.

**TRANSCOM GHOST DOCS 768**

"The fact that the measures only apply to non-American citizens reflects a kind of 'legal apartheid,' " he wrote.

In his explanatory note, Marty concluded, "There is no real international strategy against terrorism. . . . The refusal to establish and recognize a functioning international judicial and prosecution system is also a major weakness in our efforts to combat international terrorism."

John Sifton, a senior researcher at Human Rights Watch, said his group has long alleged that Romania and Poland participated in the CIA program.

"The use of secret detention sets a terrible example for other countries, who may use it to jail political opponents or journalists, by labeling them 'enemies,' " he said in an e-mail. "It can also be counter-productive and undermine the moral equation of terrorism and counter-terrorism, by making suspected perpetrators of terrorism into victims, while making the original victims of terrorism into perpetrators."

The Council of Europe functions as the continent's official human rights watchdog. Its 47 member nations are legally bound to observe its human rights statutes, although the council has limited power to enforce the rules.

*Tate reported from Washington.*

## NEW YORK TIMES

June 8, 2007

### **Secret Prisons in 2 Countries Held Qaeda Suspects, Report Says**

By STEPHEN GREY and DOREEN CARVAJAL

Page A12

LONDON, June 7 — Investigators have confirmed the existence of clandestine C.I.A. prisons in Romania and Poland housing leading members of Al Qaeda, contends a new report from the Council of Europe, the European human rights monitoring agency.

Dick Marty, the Swiss senator leading the inquiry, said in a recent interview that his conclusions were based on information from intelligence agents on both sides of the Atlantic, including members of the C.I.A. counterterrorism center. The report is to be released on Friday.

The report says the jails operated from 2003 to 2005. "Large numbers of people have been abducted from various locations across the world and transferred to countries where

# TRANSCOM GHOST DOCS 769

they have been persecuted and where it is known that torture is common practice,” it says.

These suspects included Khalid Shaikh Mohammed, the confessed master planner for the Sept. 11 attacks; Ramzi bin al-Shibh, a member of the Hamburg, Germany, cell that organized the conspiracy; and Abu Zubaida, believed to have been a senior figure in Al Qaeda.

The report says that some of the information comes from trusted intelligence agents, who reported directly to former President Aleksander Kwasniewski of Poland and to two former Romanian leaders, Ion Iliescu and Traian Basescu.

The governments of Poland and Romania have denied the existence of such prisons, and officials could not be reached for comment on Thursday. Poland has criticized Mr. Marty and his investigators in the past for not traveling there to investigate the compound that the report describes as a prison.

The current president, Lech Kaczynski, has said that since he came to power in December 2005 “there has been no secret prison — I am 100 percent sure of it,” adding, “I am assured there never were any in the past either.”

Romania has repeatedly denied the presence of a secret prison there.

But last year, President Bush acknowledged for the first time that terrorism suspects had been held in C.I.A.-run prisons overseas, without specifying where.

Paul Gimigliano, a C.I.A. spokesman, said Thursday that, “While I’ve yet to see the report, Europe has been the source of grossly inaccurate allegations about the C.I.A. and counterterrorism,” and he added, “People should remember that Europeans have benefited from the agency’s bold, lawful work to disrupt terrorist plots.”

The report contends, “What was previously just a set of allegations is now proven.” An advance copy of the report was obtained by the British Channel 4 program “Dispatches” and provided to The New York Times.

Apart from the statements of what his report describes as former and serving intelligence agents, Mr. Marty quotes aviation records that he suggests provide detailed evidence of clandestine visits by C.I.A. planes to Szymany, in Poland; as well as the text of confidential military agreements signed between the United States and Romania that, he suggests, allowed the establishment of a C.I.A. base in the country.

Mr. Marty said the C.I.A.’s partners in establishing the secret prisons were the military intelligence agencies of both countries, which reported only to their presidents and defense ministers. Neither the countries’ prime ministers nor the two Parliaments’ intelligence committees were consulted or informed.

Prisoners in the secret jails were subjected to sleep deprivation and water-boarding, or simulated drowning, said Mr. Marty, who also said that the two jails had been divided into two categories.

The main C.I.A. jail was centered in a Soviet-era military compound at Stare Kjekuty, in northeastern Poland, where about a dozen high-level terrorism suspects were jailed, the report concludes. Lower-level prisoners from Afghanistan and Iraq were held in a military base near the Black Sea in Romania, the report contends.

Jails were staffed entirely by the C.I.A., and local guards secured the perimeters, the report says. “The local authorities were not supposed to be aware of the exact number or the identities of the prisoners who passed through the facilities — this was information that they did not ‘need to know,’ ” the report said.

Mr. Marty said last month in an interview with the Swiss newspaper *La Liberté* that the report relied on information from disaffected C.I.A. agents and other intelligence officials on the other side of the Atlantic. Many of the agents said they were surprised that the prisons remained a secret for so many years. “They spoke to me because they found what was happening to be disgusting,” he was quoted as saying.

The report includes more specific conclusions than a study issued in June last year that contended that at least 14 European countries had accepted secret transfers of terrorism suspects by the United States. That report listed a web of landing points around the world that it said had been used by American authorities for its air network.

The new report contends that the C.I.A. took extraordinary measures to cover its activities. When C.I.A. jets flew to the Szymany airport in Poland, they used flight plans with “fictitious routes,” it says, giving no indication that the airport was the destination. Polish air traffic controllers — working with military intelligence — completed the cover-up, the report says.

Although the report singled out Poland and Romania, it said that it could not rule out the possibility that other European countries permitted these jails to operate.

Among its accusations, this report said NATO agreements, under the guise of waging a “war on terror,” provided the framework that the C.I.A. used to expand its European operations after Sept. 11.

The Marty report says it would be pointless for researchers to visit the Polish compound because “we have no doubts about the capability of those who would have removed any traces of the prisoner’s presence.”

*Mark Mazzetti contributed reporting from Washington.*

NEW YORK TIMES

June 8, 2007

## Italy Braces for Legal Fight Over Secret C.I.A. Program

By IAN FISHER and ELISABETTA POVOLEDO

Page A12

ROME, June 7 — There is no dispute over the central event of Feb. 17, 2003, on Via Guerzoni in Milan: an imam, known as Abu Omar and eyed as a terrorism suspect, vanished while walking to his mosque.

And no one is seriously denying what he and Italian prosecutors now allege: that this was the work of the Central Intelligence Agency, part of the contentious American program of “extraordinary rendition,” in which terrorism suspects are seized and sent for interrogation to other countries, including some in which torture is practiced. A hundred or more terrorism suspects have similarly disappeared worldwide since the 9/11 attacks.

The real dispute has played out over the attempt here in Italy to call this a crime.

On Friday, the same day that President Bush arrives here, a trial opens in Milan charging not only 25 C.I.A. operatives but Italy’s former intelligence chief with breaking Italian laws by abducting the imam. If it goes ahead — legal challenges could delay the start until the fall — it will be the first such trial anywhere.

But even if it does go ahead, it is far from certain that there will ever be any legal conclusion to a secretive and complicated case that risks poisoning ties between the United States and Italy, deep embarrassment for both countries and, possibly, full-scale scandal here.

American officials have stated blankly that they will never extradite the C.I.A. operatives. And the government of Prime Minister Romano Prodi, trying to derail the case, has charged that the chief prosecutor, Armando Spataro, overstepped his bounds and violated state secrecy laws as he gathered evidence. The suggestion is that a trial risks exposing Italy’s most closely held security secrets.

Mr. Spataro fired back, saying he had an obligation to prosecute law-breaking even in the name of fighting terrorism. Investigators say the abduction also ruined a long investigation by the Italian police into Abu Omar, whose real name is Hassan Mustafa Osama Nasr, and a suspected network of militants.

“Kidnapping Abu Omar was a serious crime,” Mr. Spataro said, “and did serious damage to our fight against terrorism.”

TRANSCOM GHOST DOCS 772



Now, the nation's Constitutional Court is deciding whether Mr. Spataro did, indeed, violate secrecy laws by wiretapping Italian secret agents and using documents from a safe house used by agents. Mr. Spataro contends that his work complied fully with the law.

The decision could have a decisive impact on the trial, suppressing crucial evidence or halting the proceedings.

With a decision not expected until the fall, one of the first orders of business on Friday will be arguments on whether to suspend the criminal trial in the abduction until then.

If the trial does go forward, it will tantalize with a possible glimpse of the darker side of the American fight against terrorism — broadly, whether the Bush administration overreached, overstepping the laws of allies like Italy, since the 9/11 attacks. There has been no similar trial, and for the United States, it risks exposing details of a program it has acknowledged only broadly and refuses to discuss specifically.

For Italy, the stakes are perhaps more immediate. Among those charged is Nicolò Pollari, who was in charge of the nation's military intelligence, a powerful defendant whose job was roughly equivalent to that of the C.I.A. director.

As might be expected from such a figure, Mr. Pollari is playing for keeps. His list of potential witnesses includes Silvio Berlusconi, who was prime minister at the time of the abduction, and Mr. Prodi, along with top aides to the two men.

Mr. Berlusconi and three aides could testify, Mr. Pollari's lawyer wrote in a legal brief, that Mr. Pollari opposed, "with absolute firmness, any possibility of projects for illegal activity even with the aim of fighting terrorism (and particularly any activity of renditions)."

Asked whether someone higher in the Italian government than Mr. Pollari had assented to the abduction, the lawyer, Titta Madia, said dryly, "Evidently, it wasn't the doorman."

In fact, the case here is the only documented rendition in Western Europe in which suspects were not handed over outright to American officials. The reason it seems to have happened only in Italy is not clear, and officials here broadly agree that there were more dangerous militants in Europe at the time.

But Mr. Nasr represented enough of a threat that he also was under investigation by the Italian antiterrorism police at the time. Suspected of being a veteran of Afghan training camps and the Balkan wars, he was said to have had a role in recruiting and financing militants in Europe.

"He was involved in activity that represented a serious danger to our national security," said Claudio Scajola, chairman of the parliamentary committee on the secret services.

On Feb. 17, 2003, Mr. Nasr disappeared on his way to a mosque considered then to be the center of radical Islamic activity in Milan. There was little news of him until he was released from prison in Egypt in February. He said he had been jailed all that time, apart from a few weeks in 2004. He said he was tortured after the C.I.A. flew him to Cairo.

“Egypt’s government did what it always does: carry out Washington’s orders,” Mr. Nasr told the German magazine Der Spiegel. “The dirty work to get me to talk was to be done here. That is why they tortured me, hooked up electric wires to my genitals, hung me on the wall in a solitary cell for days, subjected me to unbearably loud music through headphones.

“In the first 14 months, I would have confessed to anything,” he said.

(Shortly after his release, Mr. Nasr agreed to a request from The New York Times for an interview but then canceled the night before because, he and his lawyer said, an Italian television station had offered to pay for an exclusive interview.)

But during the time Mr. Nasr’s whereabouts were unknown, prosecutors in Milan, led by Mr. Spataro, a veteran of domestic terrorism cases, meticulously pieced together the case. In the end, he won the indictment of 25 C.I.A. operatives, plus an American Air Force colonel, Mr. Pollari and other Italian agents.

The work was simplified to some degree by the sloppiness of the American intelligence operatives, who were traced through cellphones, bills for rental cars, expensive meals and \$500-a-night hotels.

Legal experts speculate that this sloppiness was a sign that the Americans had no fear of getting caught, meaning that there was high-level permission from the Italian government for Mr. Nasr’s abduction.

But secret recordings and testimony made public have not provided concrete suggestions of the culpability of any official higher than Mr. Pollari. He contends that other documents exist proving his innocence, which the government says cannot be released on state secrecy grounds.

Testimony also shows some resistance in the C.I.A., specifically from the station chief in Milan at the time, Robert Seldon Lady. A deposition from a military intelligence agent, Stefano D’Ambrosio, recounts a conversation he said he had with Mr. Lady before the abduction, in which Mr. Lady said he opposed the rendition. Mr. Lady’s stated reason was that the Italian police, already investigating Mr. Nasr, could keep watching him for more information.

Some bureaucratic infighting appeared to exist, too. In the conversation, Mr. Lady blamed the top C.I.A. officer in Italy at the time, Jeffrey Castelli, for the rendition.

"I believe that he spoke to me about it as a personal outlet and to manifest to me, for future reference, his objection," Mr. D'Ambrosio said in his deposition about Mr. Lady's conversation with him.

Mr. Lady, through his lawyer, refused a request for an interview.

Given the level of detail that could emerge about one of America's most secret programs, the trial has potentially deep ramifications for ties between the United States and Italy.

Mr. Berlusconi's staunchly pro-American government refused to demand the extradition of the C.I.A. operatives, but so, too, has Mr. Prodi's government, which has generally cooler relations with Washington.

Some Italian critics argue that it is not in the national interest to have such a trial, and they hope that the Constitutional Court kills the case.

"No foreign secret services will speak to Italian secret services, because the Italian secret services are no longer secret," argued Luigi Pannella, a lawyer for one of the Italian defendants.

Others argue that the C.I.A. operatives, and possibly Mr. Pollari, were merely acting on orders, and that any trial should focus on those who ordered the abduction.

But many say the trial must go forward on one basic ground: an Italian law may have been broken in the case of Mr. Nasr's disappearance, and the question of any links Mr. Nasr had to terrorism groups should have been settled in a trial by the laws of Italy, not by a foreign power kidnapping him.

"It's a question of principle," said Caterina Interlandi, the judge who issued the indictments. "Today, it's Abu Omar. Tomorrow, it could be my daughter. These are fundamental human rights, and we have to respect them."

*Paolo Biondani contributed reporting from Milan, and Elaine Sciolino from Florence.*

**Saturday, June 09, 2007**

**WASHINGTON POST**

## **Report Gives Details on CIA Prisons**

NATO Pacts Exploited, European Probe Finds

By Molly Moore  
Washington Post Foreign Service  
Saturday, June 9, 2007; A01

**TRANSCOM GHOST DOCS 775**

PARIS, June 8 -- The CIA exploited NATO military agreements to help it run secret prisons in Poland and Romania where alleged terrorists were held in solitary confinement for months, shackled and subjected to other mental and physical torture, according to a European investigative report released here Friday.

Some of the United States' highest-profile terrorism suspects, including Khalid Sheik Mohammed, considered the prime organizer of the Sept. 11, 2001, attacks, were detained and interrogated at the facility in Poland, according to the 72-page report completed for the Council of Europe, the continent's human rights agency.

Dick Marty, a Swiss lawyer hired by the council, said the CIA conducted "clandestine operations under the NATO framework," providing military intelligence agencies in member countries -- including Poland and Romania -- the cover to assist the agency in disguising the use of secret flights, operations and detention facilities from the days immediately following the Sept. 11 attacks until the fall of last year.

Officials speaking on behalf of the CIA, NATO, Poland and Romania on Friday criticized the report's findings. Both Poland and Romania have denied that the CIA established secret prisons on their soil.

"The CIA's counter-terror operations have been lawful, effective, closely reviewed, and of benefit to many people -- including Europeans -- by disrupting plots and saving lives," CIA spokesman Paul Gimigliano said. "Our counter-terror partnerships in Europe are very strong." He described the report as "biased and distorted."

Disclosure of the existence of CIA prisons in Eastern Europe, but not the specific countries where they were located, by The Washington Post in 2005 triggered widespread anger in Europe. The Council of Europe commissioned Marty to find out all he could about the program.

In the report, Marty expressed deep disapproval of U.S. practices with the prisoners. "We must banish forever the Bush Administration mindset that effectively says, 'if it is illegal for us to use such a practice at home or on our own citizens, let us export or outsource it so we will not be held to account for it,' " the report concluded.

The report was also critical of European governments for having allowed the prisons or the transport of prisoners through their airspace. Many did not cooperate with the investigation, the report said, nor did NATO or the United States.

Investigators relied primarily on sources they did not identify in the report, but Marty said they spoke to more than 30 serving or retired members of intelligence services in the United States and Europe as well as civilians performing contract work for intelligence agencies.

The report provided new details about the CIA's purported methods of operation, detention tactics and detainees in the secret facilities. The report said evidence indicated

**TRANSCOM GHOST DOCS 776**

that in order to bypass civilian authorities the CIA used emergency provisions approved by the NATO alliance after the Sept. 11 attacks to partner with European military and intelligence agencies.

"The CIA's clandestine operations in Europe -- including its transfers and secret detentions of HVDs [high-value detainees] -- were sustained and kept secret only through their operational dependence on alliances and partnerships in what is more traditionally the military sphere," the report said.

The secret "high-value" prisoner program was given the NATO classification of "Cosmic Top Secret," according to the report.

The report said the NATO-oriented arrangement was particularly effective with two of the alliance's newest members, Poland and Romania, which were eager to assist the United States and strengthen their ties with Washington.

A facility at Poland's Stare Kiejkuty intelligence training base was used to detain and interrogate the most important CIA suspects, including Khalid Sheik Mohammed and Abu Zubaydah, a suspected senior al-Qaeda operative, the report said. By its account, both men were "held and questioned using 'enhanced interrogation techniques,' " described in the report as a euphemism for torture.

The report said that based on flight documents and information provided by intelligence sources, "it is likely" that Mohammed, who was arrested in Rawalpindi, Pakistan, on March 1, 2003, was transferred to Kabul, then flown on March 7 to the Szymany military airport in Poland.

Sources told investigators that when a CIA flight approached the Szymany airfield, Polish operatives would order all Polish personnel to leave the area of the runway. An American "landing team" usually waited at the end of the runway "in two or three vans with their engines often running."

When the aircraft came to a stop, the vans would race toward the plane. American officials would board the craft, then hustle the detainee into one of the vans, usually out of the line of sight of the Polish control tower.

The vans would then speed through the airport's front security gates, using high beams that blinded Polish guards, then drive down a paved road "lined by thick pine forests on both sides" and follow an unpaved road along a lake, eventually reaching the entrance to the Stare Kiejkuty intelligence training base, where prisoners were held and questioned, the report said.

The report went on to describe conditions in the CIA secret detention cells, based on interviews with "former or current detainees, human rights advocates, or people who have worked in the establishment or operations of CIA secret prisons." The report said

the descriptions were not based on a single prisoner or cell, but on a compilation of accounts. It did not specify which country's prison was being described.

According to those accounts, detainees were often kept naked in their cells for several weeks and endured up to four consecutive months of "solitary confinement and extreme sensory deprivation in cramped cells, shackled and handcuffed at all times." Temperatures in the cells were often kept at extreme levels: "sometimes so hot one would gasp for breath, sometimes freezing cold."

The Council of Europe is Europe's official human rights watchdog. It has limited power to enforce human rights regulations.

*Staff researcher Julie Tate in Washington contributed to this report.*

**Sunday, June 10, 2007**

**WASHINGTON TIMES**

OPINION:

Washington Times  
June 10, 2007  
Pg. B1

## **Tortured Logic**

By Deroy Murdock

One side in the War on Terror is devoted to victory. Too bad it's not ours.

U.S. military judges on Monday dismissed charges against Guantanamo detainees Salim Hamdan of Yemen, allegedly Osama bin Laden's personal driver, and Canadian Omar Khadr, arrested in Afghanistan, officials say, for killing U.S. Army Sgt. Christopher Speer with a grenade in 2002. While Hamdan and Khadr remain incarcerated, their charges must be refiled. Why?

The 2006 Military Commissions Act governs "unlawful enemy combatants." The Pentagon declared these Muslim zealots "enemy combatants." Terrorists with neither uniforms nor flags operate beyond the laws of war. Nonetheless, without the word "unlawful" on their indictments, Hamdan's and Khadr's charges are moot, pending appeals and additional paperwork.

Like many Gitmoites, these Islamic extremists consult attorneys; Khadr once had nine. They also enjoy occasional access to civil judges. The U.S. Supreme Court ruled last year

**TRANSCOM GHOST DOCS 778**

sadistic techniques to control other volunteers who had randomly been picked to be "prisoners."

"The Stanford prison study shows, in these situations, the individual is compromised by the social situation," Zimbardo said. "He or she would do things he would never do under ordinary circumstances . . . anyone can become a torturer."

Zimbardo has helped to defend some of the U.S. Army reservists who tortured Iraqis at Abu Ghraib prison in Iraq. In "The Lucifer Effect," he quotes then-Cpl. Charles A. Graner Jr., who was responsible for committing many horrific acts, explaining his reasons for torturing Iraqi prisoners to another reservist:

"Every time a bomb goes off outside the wire, or outside the fence, they come in, and they tell me, that's another American losin' their life. And unless you help us, their blood's on your hands as well."

**BOSTON GLOBE**

## **No signs of phaseout for Guantanamo**

By Farah Stockman, Globe Staff | June 11, 2007

Page 1

WASHINGTON -- The Bush administration has transferred three suspected terrorists to the Guantanamo Bay prison since March, despite recent legal setbacks and President Bush's statement that he would like to close the controversial facility.

The three detainees are the first to arrive in Guantanamo Bay since 2004, with the exception of those who were abruptly transferred last fall when Bush closed secret CIA prisons in Europe after their existence became known. Two of the recent transfers were captured in a sweeping counterterrorism operation in Somalia. The third is Iraqi.

The lack of new arrivals -- and the large number of detainees who were being sent home -- had led many human rights advocates to believe the Guantanamo Bay prison was being phased out amid widespread international outrage.

But now, new detainees are arriving and the flow of releases has slowed significantly -- from 102 last year to 15 this year.

"It's like Guantanamo is getting its second wind, and becoming a permanent option," said Joanne Mariner, director of the Terrorism and Counterterrorism Program at Human Rights Watch, a New York-based human rights organization.

**TRANSCOM GHOST DOCS 779**

Some legal advocates for detainees expressed concern that the prison is being used for detainees from the Somali operation.

"Rather than closing Guantanamo, they are using it for the next phase, in another front in the war on terror," said Jonathan Hafetz, a lawyer at the Brennan Center for Justice, a New York-based law institute that focuses on justice and democracy. "It shows that the administration still believes Guantanamo is a viable way to hold people indefinitely without due process."

Commander Jeffrey Gordon, a Defense Department spokesman, said that despite the international outrage directed at Guantanamo Bay, the prison remains the administration's best option for holding terrorism suspects.

"While we have long maintained that we would like to close Guantanamo, there are a number of highly dangerous men who -- if released -- would pose a grave threat to the international public," Gordon said.

Last week, the Department of Defense announced the transfer of Abdullahi Sudi Arale, a suspected member of Al Qaeda's network in East Africa and a leader in the Council of Islamic Courts, a political movement believed to be linked to Al Qaeda.

In March, the Pentagon transferred Abdul Malik, who allegedly admitted to involvement in the 2002 attack on a hotel in Kenya that killed 13 and injured 80.

In April, the Pentagon announced the transfer of Abd al-Hadi al-Iraqi, one of "Al Qaeda's highest-ranking and experienced senior operatives." Iraqi is accused of directing cross-border attacks on coalition forces in Afghanistan, and of directing plots to assassinate President Pervez Musharraf of Pakistan. US military documents say Iraqi was attempting to return to Iraq.

Gordon did not dispute the idea that hundreds of detainees would be kept in Guantanamo Bay for the foreseeable future, without the option of trial or release.

He said 80 detainees have been determined to be eligible for release to their home countries and 80 more have been identified as candidates for prosecution. But the remaining 220 will stay indefinitely at Guantanamo Bay.

"They are going to continue to undergo annual administrative review boards to see if there is something new in their status, if they want to decide to cooperate with authorities, with the system in place," Gordon said. "The reason they are there is because they are so dangerous or they refuse to talk."

Legal rights advocates say that the three new detainees should have been sent to federal court, where they could be tried and convicted, like the perpetrators of the 1998 Al Qaeda embassy bombings in Kenya and Tanzania.

**TRANSCOM GHOST DOCS 780**



"The federal court system is ready and willing to deal with terrorism cases," said John Sifton, another Human Rights Watch researcher. "The federal justice system has broken the back of terrorists since the 1860s."

Gordon acknowledged that the government does not have enough evidence to try the bulk of detainees in a federal court system, yet maintained that releasing them would be foolhardy.

"We don't have battlefield detectives out there finding fingerprints on AK-47s," he said, referring to the type of evidence that would be needed for trials. "It would be difficult to secure prosecutions against the majority of them, but they are dangerous enough that we don't want them to become the next hijacking crew."

David Rivkin , a Washington lawyer who has served in previous Republican administrations, agrees.

"The notion that you can successfully process most individuals in federal district court is utterly implausible," Rivkin said. He said the rules of evidence in US federal court are so strict that they would exclude much of what could be collected in war zones abroad.

Yet federal courts have begun to handle cases coming from the recent counter terrorism operations in Somalia.

Daniel Maldonado , 28, a Boston native who traveled to Somalia in 2006 to join the Islamic Court movement, pleaded guilty in a federal court in Houston to receiving training from a foreign terrorist organization. Maldonado was arrested at the Kenyan border in January and interrogated by FBI officials in Africa.

Hafetz represented the family members of another American, Amir Mashal , arrested by Kenyan authorities with Maldonado.

Mashal, an American of Egyptian descent who says he went to Somalia for religious training, was arrested on the Kenya-Somalia border with scores of others. He was then sent to Somalia for about a week and later to a secret prison in Ethiopia, Hafetz said .

Eventually, US officials released Mashal and let him return home to New Jersey. He has never been charged with a crime.

"They didn't have a case against him," Hafetz said. "But if this guy was not an American citizen, he could have been sent to Guantanamo for years."

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including a videotape he said he had seen of a male soldier in uniform sodomizing a female detainee.

While his inquiry was limited to the conduct of the military police guarding the prison, he said he had strongly suspected that the guards had been influenced by military intelligence units, who were in charge of interrogating prisoners. Seven members of the military police, all enlisted soldiers, were convicted for their role in the abuse.

**Monday, June 18, 2007**

**LOS ANGELES TIMES**

EDITORIAL:

## **Do we use torture?**

**It's up to Congress to get straight answers on secret CIA prisons and 'enhanced' interrogation techniques.**

June 18, 2007

IS THE CIA DOING the United States more harm than good by interrogating suspected terrorists in secret prisons overseas? Inquiring minds on the Senate Intelligence Committee want to know, and they're entitled to an answer. And in pressing the administration to justify this shadowy program, senators should demand answers on a related question: Will the CIA continue to subject prisoners to what President Bush demurely calls "alternative" interrogation techniques that may border on torture?

In approving an authorization bill for intelligence agencies last month, the committee stopped short of de-funding the program but recommended in a report that it be shut down unless the administration proved that it is "necessary, lawful and in the best interests of the United States."

That the CIA program survives became clear in April, when the administration revealed that Abd al-Hadi al-Iraqi, a former advisor to Osama bin Laden, was being transferred to Guantanamo Bay from CIA custody. What isn't clear is whether the CIA has forsworn interrogation techniques such as sleep deprivation and "water-boarding." Some members of Congress believe that these and other cruel and degrading techniques were ruled out by legislation introduced by Sen. John McCain (R-Ariz.) and reluctantly signed by Bush in December 2005. But the president confused matters with a signing statement in which he reserved the right to interpret the law in a way consistent with "protecting the American people from further terrorist attacks."

In September, after the Supreme Court ruled that detainees enjoy the protections of the Geneva Convention, then-Director of National Intelligence John Negroponte said the CIA had discontinued "tough" and "aggressive" interrogation techniques. But the next month, Bush signed the Military Commissions Act, which he said would allow "the

**TRANSCOM GHOST DOCS 782**

continuation of a CIA program that has been one of America's most potent tools in fighting the war on terror." Administration lawyers are still devising new guidelines for the CIA that will allow unspecified "enhanced" interrogation techniques.

All of this has created ambiguity about a subject that cries out for clarity. Torture violates basic norms of American society; it is wrong wherever practiced and by whatever euphemism. If the administration persists in defining torture down, Congress should push back — by using the power of the purse. As McCain, a former prisoner of war in Vietnam, put it in the Republican debate in South Carolina: "It's not about the terrorists; it's about us. It's about what kind of country we are."

Citation: <http://www.latimes.com/news/opinion/la-ed-interrogation18jun18.0,6261903.story?coll=la-opinion-leftrail>

## WASHINGTON POST

### New Questions About Abu Ghraib

By Dan Froomkin  
Special to washingtonpost.com  
Monday, June 18, 2007; 2:12 PM

A New Yorker article is raising uncomfortable questions for the White House about what President Bush knew about the horrific abuse at Abu Ghraib, when he knew it -- and whether he and his top lieutenants bear more responsibility for it than they have acknowledged.

The shocking news and appalling photographs chronicling the sadistic torture of Iraqi prisoners by U.S. personnel first emerged in April 2004, deeply damaging America's reputation, particularly in the Arab world. Bush responded by expressing disgust at the behavior of a small number of people who, he said, were acting on their own. He said those responsible would be held accountable. And he said he had not seen the photographs before they were made public.

But according to Seymour M. Hersh's blockbuster story in the New Yorker, Bush was told about the abuse Abu Ghraib long before the photographs went public, failed to respond appropriately -- and may indeed have recognized what happened at Abu Ghraib as the predictable result of administration policy rather than the random act of a few bad apples.

Hersh's story is based on interviews with Antonio M. Taguba, the former two-star general who submitted a scathing (and career-killing) secret report about Abu Ghraib in March 2004. Hersh also concludes that then-defense secretary Donald Rumsfeld knew more than he admitted and that the abuses were in some cases similar to treatment of detainees at Guantanamo Bay, Cuba.

But from a White House perspective, the most significant aspect of Hersh's story is that it threatens to associate Bush with a sordid chapter of the Iraq war from which he has managed to remain largely disconnected by pointing fingers down the chain of command. Hersh's report raises the possibility that those truly responsible for Abu Ghraib have never been held accountable.

Here's Hersh talking to Wolf Blitzer on CNN yesterday: "The question you have to ask about the president is this: No matter when he learned -- and certainly he learned before it became public -- and no matter how detailed it was, is there any evidence that the president of the United States said to Rumsfeld, 'What's going on there, Don? Let's get an investigation going.'

"Did he do anything? Did he ask for a -- did he want to have the generals come in and talk to him about it? Did he want to change the rules? Did he want to improve the conditions?

"BLITZER: And what's the answer?

"HERSH: Nada. He did nothing. . . .

"BLITZER: Here's the White House response. We asked the White House for a response to your article: 'The president addressed this fully. He first saw the pictures on TV and he was upset by them. He called for the investigation to go forward. He found the actions abhorrent and urged the Defense Department to get to the bottom of the matter.'

"HERSH: It's not when they saw the photographs. It's when they learned how serious it was. They were told in memos what the photographs showed."

### **From Hersh's Piece**

Writes Hersh: "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 reevaluate 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."

Taguba wrote in his report of "[n]umerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees . . . systemic and illegal abuse." But he wasn't allowed to trace the behavior to its root cause.

Writes Hersh: "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.'"

Hersh suspects one reason Bush was so intent on casting blame at the lowest levels was that "from the beginning the Administration feared that the publicity would expose more secret operations and practices."

Hersh notes: "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 . . . 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."

Hersh exposes another executive-power end-run by the White House: "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."

In other words, declare the world your battlefield and the military your intelligence service -- and suddenly there's no need to tell Congress anything.

And here's one more insight from Hersh into how the White House operates: "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.'"

**The Wilkerson Explanation**

**TRANSCOM GHOST DOCS 785**

Of course, this is far from the first time that it's been suggested that responsibility for the abuse of detainees lies higher up the chain of command.

Larry Wilkerson, former chief of staff to secretary of state Colin Powell, wrote in July 2006 for NiemanWatchdog.org (where I am deputy editor): "Documents and memos that have already made their way into the public domain make it clear that the Office of the Vice President bears responsibility for creating an environment conducive to the acts of torture and murder committed by U.S. forces in the war on terror.

"There is, in my view, insufficient evidence to walk into an American courtroom and win a legal case (though an international courtroom for war crimes might feel differently). But there is enough evidence for a soldier of long service -- someone like me with 31 years in the Army -- to know that what started with John Yoo, David Addington, Alberto Gonzales, William Haynes at the Pentagon, and several others, all under the watchful and willing eye of the Vice President, went down through the Secretary of Defense to the commanders in the field, and created two separate pressures that resulted in the violation of longstanding practice and law."

#### **Previous White House Statements**

Here's Bush at an April 30, 2004, Rose Garden event:

"Q What is your reaction to photos of U.S. soldiers abusing Iraqi prisoners? How are you going to win their hearts and minds with these sort of tactics?

"PRESIDENT BUSH: Yes, I shared a deep disgust that those prisoners were treated the way they were treated. Their treatment does not reflect the nature of the American people. That's not the way we do things in America. And so I -- I didn't like it one bit.

"But I also want to remind people that those few people who did that do not reflect the nature of the men and women we've sent overseas. That's not the way the people are, that's not their character, that are serving our nation in the cause of freedom. And there will be an investigation. I think -- they'll be taken care of."

In an interview on May 5 with Alhurra Television:

"Q Mr. President, in a democracy and a free society, as you mentioned, people investigate, but at the same time, even those who are not directly responsible for these events take responsibility. With such a problem of this magnitude, do we expect anyone to step down? Do you still have confidence in the Secretary of Defense?

"THE PRESIDENT: Oh, of course, I've got confidence in the Secretary of Defense, and I've got confidence in the commanders on the ground in Iraq, because they -- they and our troops are doing great work on behalf of the Iraqi people. We're finding the few that wanted to try to stop progress toward freedom and democracy. And we're helping the

Iraqi people stand up a government. We stand side-by-side with the Iraqis that love freedom.

"And -- but people will be held to account. That's what the process does. That's what we do in America. We fully investigate; we let everybody see the results of the investigation; and then people will be held to account."

In a May 5 interview with Al Arabiya Television: "[I]t's very important for people, your listeners, to understand, in our country that when an issue is brought to our attention on this magnitude, we act -- and we act in a way where leaders are willing to discuss it with the media. And we act in a way where, you know, our Congress asks pointed questions to the leadership. In other words, people want to know the truth. That stands in contrast to dictatorships. A dictator wouldn't be answering questions about this. A dictator wouldn't be saying that the system will be investigated and the world will see the results of the investigation. A dictator wouldn't admit reforms needed to be done."

On May 6, Robin Wright and Bradley Graham wrote in The Washington Post: "President Bush privately admonished Defense Secretary Donald H. Rumsfeld yesterday, a senior White House official said, as other U.S. officials blamed the Pentagon for failing to act on repeated recommendations to improve conditions for thousands of Iraqi detainees and release those not charged with crimes. . . .

"The president was particularly disturbed at having had to learn from news reports this week about the scope of misconduct documented in an Army investigative report completed in March, according to the official, who refused to be named so he could speak more candidly. . . .

"Bush aides conceded that Rumsfeld had earlier given Bush a general sense of the investigation of Abu Ghraib during a meeting that included Chief of Staff Andrew H. Card Jr. But White House press secretary Scott McClellan said officials have not been able to pin down the exact date, except that it was after Jan. 16, when the Pentagon issued a release announcing the probe."

Indeed, as I wrote in my May 7 column, the White House consistently refused to offer specifics about what Bush was told and when.

And consider this tidbit from a May 7 article by Mike Allen in The Post: "Marine Gen. Peter Pace, vice chairman of the Joint Chiefs of Staff, said Wednesday on CBS's 'Early Show' that beginning in mid-January, everyone 'up the chain of command . . . was kept apprised orally of the ongoing investigation.'

"Asked if Bush 'was well aware of the situation,' Pace replied: 'Yes.'"

#### **White House E-Mails**

A report just in from the House Oversight and Government Reform Committee finds:

# TRANSCOM GHOST DOCS 787

" \* The number of White House officials given RNC [Republican National Committee] e-mail accounts is higher than previously disclosed. In March 2007, White House spokesperson Dana Perino said that only a 'handful of officials' had RNC e-mail accounts. In later statements, her estimate rose to '50 over the course of the administration.' In fact, the Committee has learned from the RNC that at least 88 White House officials had RNC e-mail accounts. The officials with RNC e-mail accounts include Karl Rove, the President's senior advisor; Andrew Card, the former White House Chief of Staff; Ken Mehlman, the former White House Director of Political Affairs; and many other officials in the Office of Political Affairs, the Office of Communications, and the Office of the Vice President.

" \* White House officials made extensive use of their RNC e-mail accounts. The RNC has preserved 140,216 e-mails sent or received by Karl Rove. Over half of these e-mails (75,374) were sent to or received from individuals using official '.gov' e-mail accounts. Other heavy users of RNC e-mail accounts include former White House Director of Political Affairs Sara Taylor (66,018 e-mails) and Deputy Director of Political Affairs Scott Jennings (35,198 e-mails). These e-mail accounts were used by White House officials for official purposes, such as communicating with federal agencies about federal appointments and policies.

" \* There has been extensive destruction of the e-mails of White House officials by the RNC. Of the 88 White House officials who received RNC e-mail accounts, the RNC has preserved no e-mails for 51 officials.... In addition, there are major gaps in the e-mail records of the 37 White House officials for whom the RNC did preserve e-mails. The RNC has preserved only 130 e-mails sent to Mr. Rove during President Bush's first term and no e-mails sent by Mr. Rove prior to November 2003. . . .

" \* There is evidence that the Office of White House Counsel under Alberto Gonzales may have known that White House officials were using RNC e-mail accounts for official business, but took no action to preserve these presidential records."

Here's the [full report](#). "These violations could be the most serious breach of the Presidential Records Act in the 30-year history of the law," it says. Here's what looks like a fascinating deposition from former Rove aide [Susan Ralston](#). More on all this tomorrow.

## **Iran Watch**

[Helene Cooper](#) and [David E. Sanger](#) write in the New York Times: "A year after President Bush and Secretary of State Condoleezza Rice announced a new strategy toward Iran, a behind-the-scenes debate has broken out within the administration over whether the approach has any hope of reining in Iran's nuclear program, according to senior administration officials.

"The debate has pitted Ms. Rice and her deputies, who appear to be winning so far, against the few remaining hawks inside the administration, especially those in Vice



President Dick Cheney's office who, according to some people familiar with the discussions, are pressing for greater consideration of military strikes against Iranian nuclear facilities."

Cooper and Sanger note that "[o]n Thursday, Mohamed ElBaradei, the head of the international nuclear watchdog agency, warned anew that military action against Iran would 'be an act of madness.'"

Robin Wright writes in The Washington Post: "Iran is in the midst of a sweeping crackdown that both Iranians and U.S. analysts compare to a cultural revolution in its attempt to steer the oil-rich theocracy back to the rigid strictures of the 1979 revolution.

"The recent detentions of Iranian American dual nationals are only a small part of a campaign that includes arrests, interrogations, intimidation and harassment of thousands of Iranians as well as purges of academics and new censorship codes for the media. Hundreds of Iranians have been detained and interrogated, including a top Iranian official, according to Iranian and international human rights groups."

In her final paragraph, Wright cites a possible reason for this crisis: "The Bush administration's \$75 million fund to promote democracy in Iran is the key reason for the recent arrest of several dual U.S.-Iranian citizens in Iran, including D.C. area scholar Haleh Esfandiari. Iranian analysts contend that the U.S. funds have also made civil society movements targets because of government suspicions that they are conspiring to foster a 'velvet revolution' against the regime."

Najmeh Bozorgmehr and Guy Dinmore put it more strongly in the Financial Times: "The survival of Iran's fragile pro-democracy movement is being threatened by the US administration's continuing attempts to fund the country's civil society, leading activists have warned.

"Prominent NGOs say the US funding for opposition groups, and Iranian suspicions that the money is designed to create the conditions for a 'soft revolution', have helped President Mahmoud Ahmadi-Nejad justify a crackdown on their activities.

"The recent arrests of four Iranian-American dual citizens -- two on charges of espionage -- have sharpened what was already a fierce debate in Tehran and Washington on whether the lack of transparency in identifying the recipients of US funding makes local activists vulnerable to action by the regime. . . .

"One insider in Washington said some officials had even welcomed the backlash from Tehran, arguing that it would clarify the divisions between the Iranian government and 'opposition'. He said that Nicholas Burns, the undersecretary leading Iran policy, was a keen proponent of the funding programme, seen as another lever to use against Tehran."

And Karen J. Greenberg writes for TomDispatch.com that in the case of the four Iranian-Americans being detained, Bush's "frantic, fear-filled, information-impooverished, but

stubbornly defended policy" on detainees held by the United States "has finally blown back on America's own citizens. . . .

"President Bush is correct. These detentions represent a travesty of justice and a violation of the rules of conduct among nations. It is horrifying that these Americans, who are engaged in foreign affairs at non-governmental and scholarly levels, are held, seemingly without recourse to law and certainly without respect for international rights.

"But there is another disturbing reality here which must be faced. In numerous ways, the U.S. has robbed itself of the right to proclaim the very principles by which these prisoners should be defended. Though President Bush and his spokespersons may not see it, their past policies have set a trap for the government -- and for Americans generally. More than five years after setting up Guantanamo, and then implementing national security strategies based upon torture, secret prisons, and illegal detentions, the Bush administration has managed to obliterate the moral high ground they now seek to claim in relation to Iran."

### **Iraq Watch**

Karen DeYoung writes in The Washington Post: "Conditions in Iraq will not improve sufficiently by September to justify a drawdown of U.S. military forces, the top commander in Iraq said yesterday.

"Gen. David H. Petraeus . . . and Ambassador Ryan C. Crocker, his diplomatic counterpart in Baghdad, said a key report they will deliver to Washington in September will include what Crocker called 'an assessment of what the consequences might be if we pursue other directions.'"

So instead of an objective report describing progress that we were promised, we'll get a fear campaign? Talk about moving the goalposts.

Steven Simon and Ray Takeyh write in a Washington Post opinion piece: "The war in Iraq is lost. The only question that remains -- for our gallant troops and our blinkered policymakers -- is how to manage the inevitable. What the United States needs now is a guide to how to lose -- how to start thinking about minimizing the damage done to American interests, saving lives and ultimately wresting some good from this fiasco.

"No longer can we avoid this bitter conclusion. Iraq's winner-take-all politics are increasingly vicious; there will be no open, pluralistic Iraqi state to take over from the United States. Iraq has no credible central government that U.S. forces can assist and no national army for them to fight alongside. U.S. troops can't beat the insurgency on their own; our forces are too few and too isolated to compete with the insurgents for the public's support. Meanwhile, the country's militias have become a law unto themselves, and ethnic cleansing gallops forward. . . .

"The same policymakers who assumed that Iraq would be a cakewalk now assume that the hard-to-predict consequences of leaving will be vastly worse than the demonstrated costs of hanging on."

### **Maliki and Bush**

Larry Kaplow and Christopher Dickey write in Newsweek about the mutually sycophantic and dependent relationship between Bush and Iraqi Prime Minister Nuri al-Maliki. "[T]he dour-faced Shiite politician's aides say he often brightens up after talking to the U.S. president one-on-one, whether by phone, in person or in a videoconference. 'You can see how happy he is,' says Sami Al-Askari, a close adviser, speaking of past encounters. 'Mr. Bush encourages him.' . . .

"Perhaps it's not surprising that a stubborn president of the United States and this equally stubborn prime minister of Iraq find solace in each other's company. They're both increasingly isolated from the people they are supposed to lead. They are contemporaries (Bush is 60, Maliki is 57), and both spent most of their lives as relatively unworldly men, albeit worlds apart. Both have had to learn on the job while in the top job. Both are surrounded by small circles of confidants who have given them demonstrably bad advice where the future of Iraq is concerned. Both are at odds with fractious legislatures. Both are deeply religious and have important fundamentalist constituencies. Each of them very much needs the other to succeed, and neither has any real alternative.

"But while Bush reassures Maliki, the American public's patience is running out."

From Kaplow's interview with Maliki:

Kaplow: "Some say both of you need to be more flexible -- him in recognizing more of Iraq's realities and you reaching out to your government's opponents."

Maliki: "Destiny wanted to bring together two people who strongly stick to their principles."

### **Personnel Watch**

Michael Duffy writes in Time: "Over the past month, President George W. Bush has removed many of the last traces of the team that conceived and then executed the Iraq war. It is probably a good sign that many of the new replacements are Navy admirals, who tend to think more creatively than their counterparts in the hidebound Army. At the White House, meanwhile, day-to-day responsibility for coordinating policy on Iraq and Afghanistan has been taken from long-standing National Security Adviser Stephen Hadley and handed to a three-star general, Doug Lute, who opposed the surge from the start. The political team is molting too: longtime GOP operative Ed Gillespie is set to replace Bush senior adviser Dan Bartlett. . . .

"All these moves suggest -- but hardly guarantee -- a course correction on Iraq by September, when the patience of even GOP lawmakers will probably run out. Talk of a partial U.S. drawdown or a new acceleration of Iraqi-troop training increases with each day. A senior Administration official who participates in foreign policy meetings chose his words carefully last week: 'It will be easier to execute a change in direction if the people who have to decide on it do not feel bound by things they have said and done in the past.'"

### **Scooter Libby Watch**

Mike Allen writes for the Politico: "White House loyalists have begun arguing that clemency for I. Lewis 'Scooter' Libby -- either a pardon or a commuted sentence -- would be a way for an embattled President Bush to reassert himself, particularly among conservatives.

"The White House has not ruled out a pardon for Libby, sources say. But several Republicans, who sense a movement in Libby's favor, said a more likely possibility might be a presidential commutation -- a reduction or elimination of Libby's 2½-year federal prison sentence. Such a move, they said, would be less divisive for the country. . . .

"The lobbying is subtle, according to participants. They say that making the case directly to the president or his top aides would be insulting and could backfire. Instead, friends of Bush and Libby have been quietly working cocktail parties and other venues, laying out their logic for a pardon."

So does that mean they're lobbying people like Allen himself, rather than Bush? Writes Allen: "In an effort to get their messages to the top echelons of the White House, Libby's friends cooperated with recent articles by Jim Rutenberg of The New York Times and John Dickerson of Slate, whose piece bore the subhead: 'No way Scooter Libby is going to prison.'"

### **Tabloid Watch**

Bob Roberts and Ryan Parry write in Britain's Daily Mirror: "Tony Blair feared George Bush would 'nuke the s\*\*t' out of Afghanistan in revenge for 9/11, a sensational documentary will claim this week.

"Giving the inside story on the war, former British ambassador to the US Chris Meyer reveals: 'Blair's real concern was that there would be quote unquote 'a kneejerk reaction' by the Americans. . . . they would go thundering off and nuke the s\*\*t out of the place without thinking straight.' . . .

"In Channel 4's candid two-part documentary The Rise and Fall of Tony Blair, Mr Meyer claims the threat explains why the Prime Minister vowed to stand 'shoulder-to-shoulder' with Bush over the invasion of Iraq and Afghanistan -- to thwart his allguns blazing battle plan."

Citation: <http://www.washingtonpost.com/wp-dyn/content/blog/2007/06/18/BL2007061800791.html>

Tuesday, June 19, 2007

WASHINGTON POST

## Administration Struggles With Interrogation Specifics

By Karen DeYoung  
Washington Post Staff Writer  
Tuesday, June 19, 2007; A04

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 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."

TRANSCOM GHOST DOCS 793

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 interpret 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 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."

## NEW YORK TIMES

June 19, 2007

### **Question Time for Nominee Linked to Interrogations**

By MARK MAZZETTI and SCOTT SHANE

Page A17

WASHINGTON, June 18 — In the months after the Sept. 11 attacks, at a time when the Central Intelligence Agency had long been out of the interrogation business, senior C.I.A. officers scrambled to build a program to question terror suspects in secret jails abroad.

To check on the legality of the harsh interrogation techniques they proposed, they turned to John A. Rizzo, who was then acting as the agency's top lawyer.

On Tuesday, Mr. Rizzo will go before the Senate Intelligence Committee for a confirmation hearing to become the C.I.A.'s general counsel, giving the new Democratic majority its first chance at a public airing of agency practices that drew condemnation abroad and set off a prolonged debate at home.

# TRANSCOM GHOST DOCS 795

Mr. Rizzo has been acting general counsel off and on for most of the last six years, serving without Senate confirmation. He was first nominated to the position last year, but a confirmation hearing was delayed.

In a report last month, the committee questioned whether the C.I.A. program was “necessary, lawful and in the best interests of the United States,” particularly in view of “the damage the program does to the image of the United States abroad.”

Mr. Rizzo, an agency lawyer for three decades who is known for his dapper dress and his discretion, will probably be questioned in open and closed sessions about the most contentious policies: holding terror suspects in secret; subjecting them to tough physical treatment, including the simulated drowning technique called waterboarding; and delivering some to countries that routinely practice torture.

“He’ll be the piñata,” said A. B. Krongard, executive director of the C.I.A. from 2001 to 2004, who remains a strong defender of the detention and interrogation program.

Mr. Krongard said Mr. Rizzo worked hard to see that the program was lawful, insisting on written legal opinions from the Justice Department.

“He did everything possible to get it right,” Mr. Krongard said. For any legal faults, he added, “Rizzo can be held accountable, I guess, but nowhere near as much as the Justice Department.”

Committee Democrats said they planned tough questioning for Mr. Rizzo, who was a crucial link between the interrogators and the Justice Department lawyers who gave their approval.

“I have serious concerns about this nomination,” said Senator Dianne Feinstein, Democrat of California, who said she wanted to gauge Mr. Rizzo’s precise role in what she believed were deeply flawed legal justifications.

Gen. Michael V. Hayden, C.I.A. director since May 2006, strongly defended the program and Mr. Rizzo’s role in shaping it.

Paul Gimigliano, an agency spokesman, said, “Mr. Rizzo knows better than anyone the full range of complex legal issues that influence intelligence operations in a democracy.”

Mr. Rizzo has earned a reputation for helping overseas operatives find a legal way to do what they feel is necessary. But officials said he did reject some proposed interrogation methods as excessive and illegal.

John Radsan, who worked as a C.I.A. lawyer from 2002 to 2004 but is critical of the detention program, said Mr. Rizzo “bears a share of responsibility” for the program and perhaps should have counseled against actions that were “technically legal but wrongheaded.”



But Mr. Radsan said top Bush administration officials deserved greater blame “for asking to push things right to the point of illegality.”

Mr. Rizzo, who is not granting interviews before his confirmation hearing, is no stranger to the agency’s legal controversies. A graduate of Brown University and the George Washington University Law School, he joined the agency in 1976, when the Church Committee of the Senate had just unearthed the agency’s involvement in assassination plots.

In the 1980s, he worked for the C.I.A.’s inspector general, investigating accusations of wrongdoing at agency stations abroad. He later became the agency’s point man for outside investigations into the Iran-contra affair, in which three agency officers were charged with crimes.

Since 1995, as senior deputy general counsel, Mr. Rizzo has often filled in as acting general counsel for months at a time. That was the case from November 2001 to October 2002, when top C.I.A. officials were negotiating the placement of secret jails abroad.

Interrogation was uncharted territory for most serving C.I.A. officers. A 1963 agency interrogation manual described the infliction of pain, including the use of electrical shock, but such techniques were banned by the 1980s, and by 2001, few C.I.A. officers had any experience in questioning suspects.

Mr. Krongard said deciding the limits of interrogation for Al Qaeda’s top operatives was not easy. “Can you slap someone in the face? Maybe,” he said. “But can you hit them as hard as you can? Maybe not.”

The approved options were first applied after the capture in March 2002 of Abu Zubaydah, a senior Qaeda figure. Mr. Rizzo was responsible for the legal advice to the officers holding him in Thailand as they escalated physical and mental pressure.

But colleagues said Mr. Rizzo insisted on Justice Department approval for actions they knew might be second-guessed.

“We were always conscious in the agency that we are judged not by the standards of today, but by the standards of tomorrow,” said Robert Richer, who retired in 2005 as second in command of the C.I.A.’s clandestine service.

The intelligence officers’ conviction that the political and legal winds would shift has proved accurate. A Justice Department memorandum in 2002 declared that nothing short of the pain associated with organ failure constituted illegal torture; the department later withdrew it and Congress set new limits on interrogation last year with the Military Commissions Act.

Since then, the C.I.A. has awaited White House approval for a new set of interrogation methods. It will again be up to Mr. Rizzo, if he is confirmed, to tell the agency what is and is not permitted.

Wednesday, June 20, 2007

WASHINGTON POST

## Senators Question CIA Nominee on Torture

By Karen DeYoung  
Washington Post Staff Writer  
Wednesday, June 20, 2007; A06

John A. Rizzo, who has spent much of the past five years honing the CIA's interrogation policies, knows how to avoid answering questions under pressure -- at least in public. In nearly two hours of Senate testimony yesterday, his longest response by far was six sentences long.

For much of the session, Rizzo confined himself to "Yes, sir," "No, sir" and "I think I'd best address that in closed session."

Senators used the rare open hearing of the Select Committee on Intelligence, held to consider Rizzo's confirmation as CIA general counsel, as an opportunity to air concerns about the long-secret CIA detention and interrogation program. What they wanted to know, and asked in a dozen different ways, was whether Rizzo had helped provide a legal rationale for torture. If he did, said Sen. Diane Feinstein (D-Calif.), "it's very difficult for me to vote for you."

Asked if he approved of a Justice Department opinion that only pain resulting in "organ failure, impairment of bodily function, or even death" qualified as torture, Rizzo carefully said he "did not object." Perhaps it "did appear overbroad," he added, "but I can't say that I had any specific objections to any specific parts of it."

Sen. John W. Warner (R-Va.) observed that there is a difference between failure to object and approval. "I'm not a lawyer," Warner said with a chuckle, adding that he "learned that little lesson" from Rizzo's formulation.

Affable and calm, Rizzo rolled a pen between his fingers as he issued other parsimonious replies to the five Democrats and two Republicans present. Dapper, white-haired and bearded, he resembled a slimmed-down Santa Claus in civilian dress more than Hollywood's version of a CIA consigliere.

Rizzo has spent virtually his entire career at the agency, including serving as acting general counsel for most of the time since September 2001 -- a job in which he passed

TRANSCOM GHOST DOCS 798

judgment on the legality of numerous operations never meant to be publicly disclosed or debated. If confirmed, he will be the first person to hold the job who has risen through the ranks.

When Rizzo arrived at the agency more than three decades ago, the CIA had 19 lawyers, compared with more than 100 today. At the time, he said in his opening statement, it was deep in the doldrums. The Senate had just exposed intelligence excesses -- including assassination plots against Cuban President Fidel Castro and others -- and was demanding a major overhaul.

One change was to subject the agency to stronger congressional oversight, Rizzo said. But he explained that it took the 1980s Iran-contra affair, during which he served as the agency's "focal point" for dealings with Capitol Hill investigators, to convince him of the importance of coming clean with Congress.

"I saw firsthand the tremendous damage my agency sustained -- and all of it stemmed from the fact that, as an institution, CIA had kept the intelligence committees in the dark," he said. "Worse yet, a few senior CIA officers -- people I had worked with and admired for years -- wound up being prosecuted for misleading Congress." Careers were ruined along with the agency's reputation, Rizzo said.

The "indelible" lesson he learned, he said, was that the "CIA courts disaster whenever it loses sight of the absolute necessity to inform the intelligence communities on a timely basis what they need to know in order to perform effective, constructive oversight."

But there were limits to what he thought they needed to know in an open session, with reporters, the public and representatives of the ACLU, Human Rights Watch and other organizations in the audience.

When Sen. Christopher S. Bond (R-Mo.), the ranking minority member, asked whether Rizzo thought a ban on CIA domestic surveillance activities should be lifted, he responded: "I happen to believe, senator, that the CIA can continue to be effective in its assigned mission . . . without any domestic surveillance authority capability. So I do believe, on a number of grounds, that that area is best left to the FBI and other domestic law enforcement agencies."

Noting that the Supreme Court last summer ruled that all prisoners in U.S. custody -- including those held by the CIA -- must be treated in accordance with the Geneva Conventions, Committee Chairman John D. Rockefeller IV asked whether pending interrogation rules had been approved by the White House. "Not to date, sir," Rizzo replied.

Rockefeller's follow-up, asking about how the president will interpret the relevant provisions of the Geneva Conventions in relation to CIA activities, elicited the longest response of the day. "Okay," Rizzo said, launching an explanation of the difference between "grave" and "non-grave" offenses under the conventions. "Let me give it a shot."

But when Sen. Ron Wyden (D-Ore.) asked whether Rizzo agreed with the reminder given to troops by the top U.S. commander in Iraq, Gen. David H. Petraeus, that torture is not only illegal but "frequently neither useful or necessary" in eliciting information, Rizzo chose his words carefully.

"I don't have any objection to that statement," Rizzo replied.

Sen. Carl M. Levin (D-Mich.) tried a different tack. "Have detainees been rendered by us, including the CIA, to countries that use torture?"

Rizzo said he would have to answer behind closed doors.

"I'm not asking you which countries," said Levin, who is also a lawyer. He repeated the question.

"Well, again, if you don't mind, senator . . . it's difficult to give a yes or no answer to that in an open session."

Levin later asked for the record to reflect "a statement of the president in December 2005 that we do not render to countries that torture, a statement made in public . . . in contrast to Mr. Rizzo's statement that he could not answer that question in public."

## WASHINGTON POST

### **6 Detainees Repatriated By Military**

By Josh White  
Washington Post Staff Writer  
Wednesday, June 20, 2007; A06

Six detainees were transferred this week out of the U.S. military detention facility at Guantanamo Bay, Cuba, including one detainee who was returned to Tunisian authorities over the objections of his attorneys amid fears that he will be tortured by a government known for human rights violations.

Defense Department officials announced yesterday that four men were transferred to Yemen and two others to Tunisia, bringing the detention facility's population down to approximately 375. About 75 other detainees have been cleared for release or transfer but await arrangements for their departure from Guantanamo.

Several of those detainees are slated to go to countries with questionable human rights records.

"Detainees who are cleared for transfer resulting from the annual administrative review boards depart Guantanamo once their respective governments provide credible

# TRANSCOM GHOST DOCS 800