The letter told defense lawyers to translate any works they wanted to release publicly into English and then submit the translations to the government for review.

The strict security arrangements governing anything written by Guantanamo Bay inmates meant that Mr. Falkoff had to use linguists with secret-level security clearances rather than translators who specialize in poetry. The resulting translations, Mr. Falkoff writes in the book, "cannot do justice to the subtlety and cadences of the originals."

For the military, even some of the translations appeared to go too far. Mr. Falkoff says it rejected three of the five translated poems he submitted, along with a dozen others submitted by his colleagues.

Cmdr. Gordon says he doesn't know how many poems were rejected but adds that the military "absolutely" remains concerned that poetry could be used to pass coded messages to other militants.

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THE GENERAL'S REPORT

How Antonio Taguba, who investigated the Abu Ghraib scandal, became one of its casualties.

By Seymour M. Hersh

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On the afternoon of May 6, 2004, Army Major General Antonio M. Taguba was summoned to meet, for the first time, with Secretary of Defense Donald Rumsfeld in his Pentagon conference room. Rumsfeld and his senior staff were to testify the next day, in televised hearings before the Senate and the House Armed Services Committees, about abuses at Abu Ghraib prison, in Iraq. The previous week, revelations about Abu Ghraib, including photographs showing prisoners stripped, abused, and sexually humiliated, had appeared on CBS and in *The New Yorker*. In response, Administration officials had insisted that only a few low-ranking soldiers were involved and that America did not torture prisoners. They emphasized that the Army itself had uncovered the scandal.

If there was a redeeming aspect to the affair, it was in the thoroughness and the passion of the Army's initial investigation. The inquiry had begun in January, and was led by General Taguba, who was stationed in Kuwait at the time. Taguba filed his report in March. In it he found:

Numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees . . . systemic and illegal abuse.

Taguba was met at the door of the conference room by an old friend, Lieutenant General Bantz J. Craddock, who was Rumsfeld's senior military assistant. Craddock's daughter had been a babysitter for Taguba's two children when the officers served together years earlier at Fort Stewart, Georgia. But that afternoon, Taguba recalled, "Craddock just said, very coldly, 'Wait here.' " In a series of interviews early this year, the first he has given, Taguba told me that he understood when he began the inquiry that it could damage his career; early on, a senior general in Iraq had pointed out to him that the abused detainees were "only Iraqis." Even so, he was not prepared for the greeting he received when he was finally ushered in.

"Here . . . comes . . . that *famous* General Taguba—of the Taguba report!" Rumsfeld declared, in a mocking voice. The meeting was attended by Paul Wolfowitz, Rumsfeld's deputy; Stephen Cambone, the Under-Secretary of Defense for Intelligence; General Richard Myers, chairman of the Joint Chiefs of Staff (J.C.S.); and General Peter Schoomaker, the Army chief of staff, along with Craddock and other officials. Taguba, describing the moment nearly three years later, said, sadly, "I thought they wanted to know. I assumed they wanted to know. I was ignorant of the setting."

In the meeting, the officials professed ignorance about Abu Ghraib. "Could you tell us what happened?" Wolfowitz asked. Someone else asked, "Is it abuse or torture?" At that point, Taguba recalled, "I described a naked detainee lying on the wet floor, handcuffed, with an interrogator shoving things up his rectum, and said, 'That's not abuse. That's torture.' There was quiet."

Rumsfeld was particularly concerned about how the classified report had become public. "General," he asked, "who do you think leaked the report?" Taguba responded that perhaps a senior military leader who knew about the investigation had done so. "It was just my speculation," he recalled. "Rumsfeld didn't say anything." (I did not meet Taguba until mid-2006 and obtained his report elsewhere.) Rumsfeld also complained about not being given the information he needed. "Here I am," Taguba recalled Rumsfeld saying, "just a Secretary of Defense, and we have not seen a copy of your report. I have not seen the photographs, and I have to testify to Congress tomorrow and talk about this." As Rumsfeld spoke, Taguba said, "He's looking at me. It was a statement."

At best, Taguba said, "Rumsfeld was in denial." Taguba had submitted more than a dozen copies of his report through several channels at the Pentagon and to the Central Command headquarters, in Tampa, Florida, which ran the war in Iraq. By the time he walked into Rumsfeld's conference room, he had spent weeks briefing senior military leaders on the report, but he received no indication that any of them, with the exception of General Schoomaker, had actually read it. (Schoomaker later sent Taguba a note praising his honesty and leadership.) When Taguba urged one lieutenant general to look at the photographs, he rebuffed him, saying, "I don't want to get involved by looking, because what do you do with that information, once you know what they show?"

Taguba also knew that senior officials in Rumsfeld's office and elsewhere in the Pentagon had been given a graphic account of the pictures from Abu Ghraib, and told of

their potential strategic significance, within days of the first complaint. On January 13, 2004, a military policeman named Joseph Darby gave the Army's Criminal Investigation Division (C.I.D.) a CD full of images of abuse. Two days later, General Craddock and Vice-Admiral Timothy Keating, the director of the Joint Staff of the J.C.S., were e-mailed a summary of the abuses depicted on the CD. It said that approximately ten soldiers were shown, involved in acts that included:

> Having male detainees pose nude while female guards pointed at their genitals; having female detainees exposing themselves to the guards; having detainees perform indecent acts with each other; and guards physically assaulting detainees by beating and dragging them with choker chains.

Taguba said, "You didn't need to 'see' anything—just take the secure e-mail traffic at face value."

I learned from Taguba that the first wave of materials included descriptions of the sexual humiliation of a father with his son, who were both detainees. Several of these images, including one of an Iraqi woman detainee baring her breasts, have since surfaced; others have not. (Taguba's report noted that photographs and videos were being held by the C.I.D. because of ongoing criminal investigations and their "extremely sensitive nature.") Taguba said that he saw "a video of a male American soldier in uniform sodomizing a female detainee." The video was not made public in any of the subsequent court proceedings, nor has there been any public government mention of it. Such images would have added an even more inflammatory element to the outcry over Abu Ghraib. "It's bad enough that there were photographs of Arab men wearing women's panties," Taguba said.

On January 20th, the chief of staff at Central Command sent another e-mail to Admiral Keating, copied to General Craddock and Lieutenant General Ricardo Sanchez, the Army commander in Iraq. The chief of staff wrote, "Sir: update on alleged detainee abuse per our discussion. DID IT REALLY HAPPEN? Yes, currently have 4 confessions implicating perhaps 10 soldiers. DO PHOTOS EXIST? Yes. A CD with approx 100 photos and a video—CID has these in their possession."

In subsequent testimony, General Myers, the J.C.S. chairman, acknowledged, without mentioning the e-mails, that in January information about the photographs had been given "to me and the Secretary up through the chain of command. . . . And the general nature of the photos, about nudity, some mock sexual acts and other abuse, was described."

Nevertheless, Rumsfeld, in his appearances before the Senate and the House Armed Services Committees on May 7th, claimed to have had no idea of the extensive abuse. "It breaks our hearts that in fact someone didn't say, 'Wait, look, this is terrible. We need to do something,' " Rumsfeld told the congressmen. "I wish we had known more, sooner, and been able to tell you more sooner, but we didn't."

Rumsfeld told the legislators that, when stories about the Taguba report appeared, "it was not yet in the Pentagon, to my knowledge." As for the photographs, Rumsfeld told

the senators, "I say no one in the Pentagon had seen them"; at the House hearing, he said, "I didn't see them until last night at 7:30." Asked specifically when he had been made aware of the photographs, Rumsfeld said:

> There were rumors of photographs in a criminal prosecution chain back sometime after January 13th . . . I don't remember precisely when, but sometime in that period of January, February, March. . . . The legal part of it was proceeding along fine. What wasn't proceeding along fine is the fact that the President didn't know, and you didn't know, and I didn't know.

"And, as a result, somebody just sent a secret report to the press, and there they are," Rumsfeld said.

Taguba, watching the hearings, was appalled. He believed that Rumsfeld's testimony was simply not true. "The photographs were available to him—if he wanted to see them," Taguba said. Rumsfeld's lack of knowledge was hard to credit. Taguba later wondered if perhaps Cambone had the photographs and kept them from Rumsfeld because he was reluctant to give his notoriously difficult boss bad news. But Taguba also recalled thinking, "Rumsfeld is very perceptive and has a mind like a steel trap. There's no way he's suffering from C.R.S.—Can't Remember Shit. He's trying to acquit himself, and a lot of people are lying to protect themselves." It distressed Taguba that Rumsfeld was accompanied in his Senate and House appearances by senior military officers who concurred with his denials.

"The whole idea that Rumsfeld projects—'We're here to protect the nation from terrorism'—is an oxymoron," Taguba said. "He and his aides have abused their offices and have no idea of the values and high standards that are expected of them. And they've dragged a lot of officers with them."

In response to detailed queries about this article, Colonel Gary Keck, a Pentagon spokesman, said in an e-mail, "The department did not promulgate interrogation policies or guidelines that directed, sanctioned, or encouraged abuse." He added, "When there have been abuses, those violations are taken seriously, acted upon promptly, investigated thoroughly, and the wrongdoers are held accountable." Regarding early warnings about Abu Ghraib, Colonel Keck said, "Former Secretary of Defense Rumsfeld has stated publicly under oath that he and other senior leaders were not provided pictures from Abu Ghraib until shortly before their release." (Rumsfeld, through an aide, declined to answer questions, as did General Craddock. Other senior commanders did not respond to requests for comment.)

During the next two years, Taguba assiduously avoided the press, telling his relatives not to talk about his work. Friends and family had been inundated with telephone calls and visitors, and, Taguba said, "I didn't want them to be involved." Taguba retired in January, 2007, after thirty-four years of active service, and finally agreed to talk to me about his investigation of Abu Ghraib and what he believed were the serious misrepresentations by officials that followed. "From what I knew, troops just don't take it upon themselves to initiate what they did without any form of knowledge of the higher-

ups," Taguba told me. His orders were clear, however: he was to investigate only the military police at Abu Ghraib, and not those above them in the chain of command. "These M.P. troops were not that creative," he said. "Somebody was giving them guidance, but I was legally prevented from further investigation into higher authority. I was limited to a box."

General Taguba is a slight man with a friendly demeanor and an unfailingly polite correctness. "I came from a poor family and had to work hard," he said. "It was always shine the shoes on Saturday morning for church, and wash the car on Saturday for church. And Saturday also for mowing the lawn and doing yard jobs for church."

His father, Tomas, was born in the Philippines and was drafted into the Philippine Scouts in early 1942, at the height of the Japanese attack on the joint American-Filipino force led by General Douglas MacArthur. Tomas was captured by the Japanese on the Bataan peninsula in April, 1942, and endured the Bataan Death March, which took thousands of American and Filipino lives. Tomas escaped and joined the underground resistance to the Japanese before returning to the American Army, in July, 1945.

Taguba's mother, Maria, spent much of the Second World War living across the street from a Japanese-run prisoner-of-war camp in Manila. Taguba remembers her vivid accounts of prisoners who were bayonetted arbitrarily or whose fingernails were pulled out. Antonio, the eldest son (he has six siblings), was born in Manila in 1950. Maria and Tomas were devout Catholics, and their children were taught respect and, Taguba recalls, "above all, integrity in how you lived your life and practiced your religion."

In 1961, the family moved to Hawaii, where Tomas retired from the military and took a civilian job in logistics, preparing units for deployment to Vietnam. A year after they arrived, Antonio became a U.S. citizen. By then, as a sixth grader, he was delivering newspapers, serving as an altar boy, and doing well in school. He went to Idaho State University, in Pocatello, with help from the Army R.O.T.C., and graduated in 1972. As a newly commissioned second lieutenant, he was five feet six inches tall and weighed a hundred and twenty pounds. His Army service began immediately: he led troops at the platoon, company, battalion, and brigade levels at bases in South Korea, Germany, and across America. (He married in 1981, and has two grown children.) In 1986, Taguba, then a major, was selected to attend the College of Naval Command and Staff at the Naval War College, in Newport, Rhode Island. While there, he wrote an analysis of Soviet ground-attack planning that became required reading at the school. He was promoted, ahead of his peers, to become a colonel and then a general. On the way, Taguba earned three master's degrees—in public administration, international relations, and national-security studies.

"I'll talk to you about discrimination," he said one morning, while discussing, without bitterness, his early years as an Army officer. "Let's talk about being refused to be served at a restaurant in public. Let's talk about having to do things two times, and being accused of not speaking English well, and having to pay myself for my three master's

degrees because the Army didn't think I was smart enough. So what? Just work your ass off. So what? The hard work paid off."

Taguba had joined the Army knowing little about his father's military experience. "He saw the ravages and brutality of war, but he wasn't about to brag about his exploits," Taguba said. "He didn't say anything until 1997, and it took me two years to rebuild his records and show that he was authorized for an award." On Tomas's eightieth birthday, he was awarded the Bronze Star and a prisoner-of-war medal in a ceremony at Schofield Barracks, in Hawaii. "My father never laughed," Taguba said. But the day he got his medal "he smiled—he had a big-ass smile on his face. I'd never seen him look so proud. He was a bent man with carpal-tunnel syndrome, but at the end of the medal ceremony he stood himself up and saluted. I cried, and everyone in my family burst into tears."

Richard Armitage, a former Navy counter-insurgency officer who served as Deputy Secretary of State in the first Bush term, recalled meeting Taguba, then a lieutenant colonel, in South Korea in the early nineteen-nineties. "I was told to keep an eye on this young guy—'He's going to be a general,' " Armitage said. "Taguba was discreet and low key—not a sprinter but a marathoner."

At the time, Taguba was working for Major General Mike Myatt, a marine who was the officer in charge of strategic talks with the South Koreans, on behalf of the American military. "I needed an executive assistant with brains and integrity," Myatt, who is now retired and living in San Francisco, told me. After interviewing a number of young officers, he chose Taguba. "He was ethical and he knew his stuff," Myatt said. "We really became close, and I'd trust him with my life. We talked about military strategy and policy, and the moral aspect of war—the importance of not losing the moral high ground." Myatt followed Taguba's involvement in the Abu Ghraib inquiry, and said, "I was so proud of him. I told him, 'Tony, you've maintained yourself, and your integrity.' "

Taguba got a different message, however, from other officers, among them General John Abizaid, then the head of Central Command. A few weeks after his report became public, Taguba, who was still in Kuwait, was in the back seat of a Mercedes sedan with Abizaid. Abizaid's driver and his interpreter, who also served as a bodyguard, were in front. Abizaid turned to Taguba and issued a quiet warning: "You and your report will be investigated."

"I wasn't angry about what he said but disappointed that he would say that to me," Taguba said. "I'd been in the Army thirty-two years by then, and it was the first time that I thought I was in the Mafia."

THE INVESTIGATION

Taguba was given the job of investigating Abu Ghraib because of circumstance: the senior officer of the 800th Military Police Brigade, to which the soldiers in the photographs belonged, was a one-star general; Army regulations required that the head of

the inquiry be senior to the commander of the unit being investigated, and Taguba, a two-star general, was available. "It was as simple as that," he said. He vividly remembers his first thought upon seeing the photographs in late January of 2004: "Unbelievable! What were these people doing?" There was an immediate second thought: "This is big."

Taguba decided to keep the photographs from most of the interrogators and researchers on his staff of twenty-three officers. "I didn't want them to prejudge the soldiers they were investigating, so I put the photos in a safe," he told me. "Anyone who wanted to see them had to have a need-to-know and go through me." His decision to keep the staff in the background was also intended to insure that none of them suffered damage to his or her career because of involvement in the inquiry. "I knew it was going to be very sensitive because of the gravity of what was in front of us," he said.

The team spent much of February, 2004, in Iraq. Taguba was overwhelmed by the scale of the wrongdoing. "These were people who were taken off the streets and put in jail—teen-agers and old men and women," he said. "I kept on asking these questions of the officers I interviewed: 'You knew what was going on. Why didn't you do something to stop it?' "

Taguba's assignment was limited to investigating the 800th M.P.s, but he quickly found signs of the involvement of military intelligence—both the 205th Military Intelligence Brigade, commanded by Colonel Thomas Pappas, which worked closely with the M.P.s, and what were called "other government agencies," or O.G.A.s, a euphemism for the C.I.A. and special-operations units operating undercover in Iraq. Some of the earliest evidence involved Lieutenant Colonel Steven L. Jordan, whose name was mentioned in interviews with several M.P.s. For the first three weeks of the investigation, Jordan was nowhere to be found, despite repeated requests. When the investigators finally located him, he asked whether he needed to shave his beard before being interviewed—Taguba suspected that he had been dressing as a civilian. "When I asked him about his assignment, he says, 'I'm a liaison officer for intelligence from Army headquarters in Iraq.' " But in the course of three or four interviews with Jordan, Taguba said, he began to suspect that the lieutenant colonel had been more intimately involved in the interrogation process—some of it brutal—for "high value" detainees.

"Jordan denied everything, and yet he had the authority to enter the prison's 'hard site' "—where the most important detainees were held—"carrying a carbine and an M9 pistol, which is against regulations," Taguba said. Jordan had also led a squad of military policemen in a shoot-out inside the hard site with a detainee from Syria who had managed to obtain a gun. (A lawyer for Jordan disputed these allegations; in the shoot-out, he said, Jordan was "just another gun on the extraction team" and not the leader. He noted that Jordan was not a trained interrogator.)

Taguba said that Jordan's "record reflected an extensive intelligence background." He also had reason to believe that Jordan was not reporting through the chain of command. But Taguba's narrowly focussed mission constrained the questions he could ask. "I

suspected that somebody was giving them guidance, but I could not print that," Taguba said.

"After all Jordan's evasiveness and misleading responses, his rights were read to him," Taguba went on. Jordan subsequently became the only officer facing trial on criminal charges in connection with Abu Ghraib and is scheduled to be court-martialled in late August. (Seven M.P.s were convicted of charges that included dereliction of duty, maltreatment, and assault; one defendant, Specialist Charles Graner, was sentenced to ten years in prison.) Last month, a military judge ruled that Jordan, who is still assigned to the Army's Intelligence and Security Command, had not been appropriately advised of his rights during his interviews with Taguba, undermining the Army's allegation that he lied during the Taguba inquiry. Six other charges remain, including failure to obey an order or regulation; cruelty and maltreatment; and false swearing and obstruction of justice. (His lawyer said, "The evidence clearly shows that he is innocent.")

Taguba came to believe that Lieutenant General Sanchez, the Army commander in Iraq, and some of the generals assigned to the military headquarters in Baghdad had extensive knowledge of the abuse of prisoners in Abu Ghraib even before Joseph Darby came forward with the CD. Taguba was aware that in the fall of 2003—when much of the abuse took place—Sanchez routinely visited the prison, and witnessed at least one interrogation. According to Taguba, "Sanchez knew exactly what was going on." Taguba learned that in August, 2003, as the Sunni insurgency in Iraq was gaining force, the Pentagon had ordered Major General Geoffrey Miller, the commander at Guantánamo, to Iraq. His mission was to survey the prison system there and to find ways to improve the flow of intelligence. The core of Miller's recommendations, as summarized in the Taguba report, was that the military police at Abu Ghraib should become part of the interrogation process: they should work closely with interrogators and intelligence officers in "setting the conditions for successful exploitation of the internees."

Taguba concluded that Miller's approach was not consistent with Army doctrine, which gave military police the overriding mission of making sure that the prisons were secure and orderly. His report cited testimony that interrogators and other intelligence personnel were encouraging the abuse of detainees. "Loosen this guy up for us," one M.P. said he was told by a member of military intelligence. "Make sure he has a bad night."

The M.P.s, Taguba said, "were being literally exploited by the military interrogators. My view is that those kids"—even the soldiers in the photographs—"were poorly led, not trained, and had not been given any standard operating procedures on how they should guard the detainees."

Surprisingly, given Taguba's findings, Miller was the officer chosen to restore order at Abu Ghraib. In April, 2004, a month after the report was filed, he was reassigned there as the deputy commander for detainee operations. "Miller called in the spring and asked to meet with me to discuss Abu Ghraib, but I waited for him and we never did meet,"

Taguba recounted. Miller later told Taguba that he'd been ordered to Washington to meet with Rumsfeld before travelling to Iraq, but he never attempted to reschedule the meeting.

If they had spoken, Taguba said, he would have reminded Miller that at Abu Ghraib, unlike at Guantánamo, very few prisoners were affiliated with any terrorist group. Taguba had seen classified documents revealing that there were only "one or two" suspected Al Qaeda prisoners at Abu Ghraib. Most of the detainees had nothing to do with the insurgency. A few of them were common criminals.

Taguba had known Miller for years. "We served together in Korea and in the Pentagon, and his wife and mine used to go shopping together," Taguba said. But, after his report became public, "Miller didn't talk to me. He didn't say a word when I passed him in the hallway."

Despite the subsequent public furor over Abu Ghraib, neither the House nor the Senate Armed Services Committee hearings led to a serious effort to determine whether the scandal was a result of a high-level interrogation policy that encouraged abuse. At the House Committee hearing on May 7, 2004, a freshman Democratic congressman, Kendrick Meek, of Florida, asked Rumsfeld if it was time for him to resign. Rumsfeld replied, "I would resign in a minute if I thought that I couldn't be effective. . . . I have to wrestle with that." But, he added, "I'm certainly not going to resign because some people are trying to make a political issue out of it." (Rumsfeld stayed in office for the next two and a half years, until the day after the 2006 congressional elections.) When I spoke to Meek recently, he said, "There was no way Rumsfeld didn't know what was going on. He's a guy who wants to know everything, and what he was giving us was hard to believe."

Later that month, Rumsfeld appeared before a closed hearing of the House Defense Appropriations Subcommittee, which votes on the funds for all secret operations in the military. Representative David Obey, of Wisconsin, the senior Democrat at the hearing, told me that he had been angry when a fellow subcommittee member "made the comment that 'Abu Ghraib was the price of defending democracy.' I said that wasn't the way I saw it, and that I didn't want to see some corporal made into a scapegoat. This could not have happened without people in the upper echelon of the Administration giving signals. I just didn't see how this was not systemic."

Obey asked Rumsfeld a series of pointed questions. Taguba attended the closed hearing with Rumsfeld and recalled him bristling at Obey's inquiries. "I don't know what happened!" Rumsfeld told Obey. "Maybe you want to ask General Taguba."

Taguba got a chance to answer questions on May 11th, when he was summoned to appear before the Senate Armed Services Committee. Under-Secretary Stephen Cambone sat beside him. (Cambone was Rumsfeld's point man on interrogation policy.) Cambone, too, told the committee that he hadn't known about the specific abuses at Abu Ghraib until he saw Taguba's report, "when I was exposed to some of those photographs."

Carl Levin, Democrat of Michigan, tried to focus on whether Abu Ghraib was the consequence of a larger detainee policy. "These acts of abuse were not the spontaneous actions of lower-ranking enlisted personnel," Levin said. "These attempts to extract information from prisoners by abusive and degrading methods were clearly planned and suggested by others." The senators repeatedly asked about General Miller's trip to Iraq in 2003. Did the "Gitmo-izing" of Abu Ghraib—especially the model of using the M.P.s in "setting the conditions" for interrogations—lead to the abuses?

Cambone confirmed that Miller had been sent to Iraq with his approval, but insisted that the senators were "misreading General Miller's intent." Questioned on that point by Senator Jack Reed, Democrat of Rhode Island, Cambone said, "I don't know that I was being told, and I don't know that General Miller said that there should be that kind of activity that you are ascribing to his recommendation."

Reed then asked Taguba, "Was it clear from your reading of the [Miller] report that one of the major recommendations was to use guards to condition these prisoners?" Taguba replied, "Yes, sir. That was recommended on the report."

At another point, after Taguba confirmed that military intelligence had taken control of the M.P.s following Miller's visit, Levin questioned Cambone:

LEVIN: Do you disagree with what the general just said?
CAMBONE: Yes, sir.
LEVIN: Pardon?
CAMBONE: I do.

Taguba, looking back on his testimony, said, "That's the reason I wasn't in their camp—because I kept on contradicting them. I wasn't about to lie to the committee. I knew I was already in a losing proposition. If I lie, I lose. And, if I tell the truth, I lose." Taguba had been scheduled to rotate to the Third Army's headquarters, at Fort McPherson, Georgia, in June of 2004. He was instead ordered back to the Pentagon, to work in the office of the Assistant Secretary of Defense for Reserve Affairs. "It was a lateral assignment," Taguba said, with a smile and a shrug. "I didn't quibble. If you're going to do that to me, well, O.K. We all serve at the pleasure of the President." A retired four-star Army general later told Taguba that he had been sent to the job in the Pentagon so that he could "be watched." Taguba realized that his career was at a dead end.

Later in 2004, Taguba encountered Rumsfeld and one of his senior press aides, Lawrence Di Rita, in the Pentagon Athletic Center. Taguba was getting dressed after a workout. "I was tying my shoes," Taguba recalled. "I looked up, and there they were." Rumsfeld, who was putting his clothes into a locker, recognized Taguba and said, "Hello, General." Di Rita, who was standing beside Rumsfeld, said sarcastically, "See what you started, General? See what you started?"

Di Rita, who is now an official with Bank of America, recalled running into Taguba in the locker room but not his words. "Sounds like my brand of humor," he said, in an e-mail. "A comment like that would have been in an attempt to lighten the mood for

General Taguba." (Di Rita added that Taguba had "my personal respect and admiration" and that of Rumsfeld. "He did a terrific job under difficult circumstances.") However, Taguba was troubled by the encounter, and later told a colleague, "*I'm* now the problem."

DENIABILITY

A dozen government investigations have been conducted into Abu Ghraib and detainee abuse. A few of them picked up on matters raised by Taguba's report, but none followed through on the question of ultimate responsibility. Military investigators were precluded from looking into the role of Rumsfeld and other civilian leaders in the Pentagon; the result was that none found any high-level intelligence involvement in the abuse.

An independent panel headed by James R. Schlesinger, a former Secretary of Defense, did conclude that there was "institutional and personal responsibility at higher levels" for Abu Ghraib, but cleared Rumsfeld of any direct responsibility. In an August, 2004, report, the Schlesinger panel endorsed Rumsfeld's complaints, citing "the reluctance to move bad news up the chain of command" as the most important factor in Washington's failure to understand the significance of Abu Ghraib. "Given the magnitude of this problem, the Secretary of Defense and other senior DoD officials need a more effective information pipeline to inform them of high-profile incidents," the report said. Schlesinger and his colleagues apparently were unaware of the early e-mail messages that had informed the Pentagon of Abu Ghraib.

The official inquiries consistently provided the public with less information about abuses than outside studies conducted by human-rights groups. In one case, in November, 2004, an Army investigation, by Brigadier General Richard Formica, into the treatment of detainees at Camp Nama, a Special Forces detention center at Baghdad International Airport, concluded that detainees who reported being sodomized or beaten were seeking sympathy and better treatment, and thus were not credible. For example, Army doctors had initially noted that a complaining detainee's wounds were "consistent with the history [of abuse] he provided. . . . The doctor did find scars on his wrists and noted what he believed to be an anal fissure." Formica had the detainee reëxamined two days later, by another doctor, who found "no fissure, and no scarring. . . . As a result, I did not find medical evidence of the sodomy." In the case of a detainee who died in custody, Formica noted that there had been bruising to the "shoulders, chest, hip, and knees" but added, "It is not unusual for detainees to have minor bruising, cuts and scrapes." In July, 2006, however, Human Rights Watch issued a fifty-three-page report on the "serious mistreatment" of detainees at Camp Nama and two other sites, largely based on witness accounts from Special Forces interrogators and others who served there.

Formica, asked to comment, wrote in an e-mail, "I conducted a thorough investigation . . . and stand by my report." He said that "several issues" he discovered

"were corrected." His assignment, Formica noted, was to investigate a unit, and not to conduct "a systematic analysis of Special Operations activities."

The Army also protected General Miller. Since 2002, F.B.I. agents at Guantánamo had been telling their superiors that their military counterparts were abusing detainees. The F.B.I. complaints were ignored until after Abu Ghraib. When an investigation was opened, in December, 2004, General Craddock, Rumsfeld's former military aide, was in charge of the Army's Southern Command, with jurisdiction over Guantánamo—he had been promoted a few months after Taguba's visit to Rumsfeld's office. Craddock appointed Air Force Lieutenant General Randall M. Schmidt, a straight-talking fighter pilot, to investigate the charges, which included alleged abuses during Miller's tenure.

"I followed the bread-crumb trail," Schmidt, who retired last year, told me. "I found some things that didn't seem right. For lack of a camera, you could have seen in Guantánamo what was seen at Abu Ghraib."

Schmidt found that Miller, with the encouragement of Rumsfeld, had focussed great attention on the interrogation of Mohammed al-Qahtani, a Saudi who was believed to be the so-called "twentieth hijacker." Qahtani was interrogated "for twenty hours a day for at least fifty-four days," Schmidt told investigators from the Army Inspector General's office, who were reviewing his findings. "I mean, here's this guy manacled, chained down, dogs brought in, put in his face, told to growl, show teeth, and that kind of stuff. And you can imagine the fear."

At Guantánamo, Schmidt told the investigators, Miller "was responsible for the conduct of interrogations that I found to be abusive and degrading. The intent of those might have been to be abusive and degrading to get the information they needed. . . . Did the means justify the ends? That's fine. . . . He was responsible."

Schmidt formally recommended that Miller be "held accountable" and "admonished." Craddock rejected this recommendation and absolved Miller of any responsibility for the mistreatment of the prisoners. The Inspector General inquiry endorsed Craddock's action. "I was open with them," Schmidt told me, referring to the I.G. investigators. "I told them, 'I'll do anything to help you get the truth.' " But when he read their final report, he said, "I didn't recognize the five hours of interviews with me."

Schmidt learned of Craddock's reversal the day before they were to meet with Rumsfeld, in July, 2005. Rumsfeld was in frequent contact with Miller about the progress of Qahtani's interrogation, and personally approved the most severe interrogation tactics. ("This wasn't just daily business, when the Secretary of Defense is personally involved," Schmidt told the Army investigators.) Nonetheless; Schmidt was impressed by Rumsfeld's demonstrative surprise, dismay, and concern upon being told of the abuse. "He was going, 'My God! Did I *authorize* putting a bra and underwear on this guy's head and telling him all his buddies knew he was a homosexual?' "

Schmidt was convinced. "I got to tell you that I never got the feeling that Secretary Rumsfeld was trying to hide anything," he told me. "He got very frustrated. He's a control guy, and this had gotten out of control. He got pissed."

Rumsfeld's response to Schmidt was similar to his expressed surprise over Taguba's Abu Ghraib report. "Rummy did what we called 'case law' policy—verbal and not in writing," Taguba said. "What he's really saying is that if this decision comes back to haunt me I'll deny it."

Taguba eventually concluded that there was a reason for the evasions and stonewalling by Rumsfeld and his aides. At the time he filed his report, in March of 2004, Taguba said, "I knew there was C.I.A. involvement, but I was oblivious of what else was happening" in terms of covert military-intelligence operations. Later that summer, however, he learned that the C.I.A. had serious concerns about the abusive interrogation techniques that military-intelligence operatives were using on high-value detainees. In one secret memorandum, dated June 2, 2003, General George Casey, Jr., then the director of the Joint Staff in the Pentagon, issued a warning to General Michael DeLong, at the Central Command:

> CIA has advised that the techniques the military forces are using to interrogate high value detainees (HVDs) . . . are more aggressive than the techniques used by CIA who is [sic] interviewing the same HVDs.

DeLong replied to Casey that the techniques in use were "doctrinally appropriate techniques," in accordance with Army regulations and Rumsfeld's direction.

THE TASK FORCES

Abu Ghraib had opened the door on the issue of the treatment of detainees, and from the beginning the Administration feared that the publicity would expose more secret operations and practices. Shortly after September 11th, Rumsfeld, with the support of President Bush, had set up military task forces whose main target was the senior leadership of Al Qaeda. Their essential tactic was seizing and interrogating terrorists and suspected terrorists; they also had authority from the President to kill certain high-value targets on sight. The most secret task-force operations were categorized as Special Access Programs, or S.A.P.s.

The military task forces were under the control of the Joint Special Operations Command, the branch of the Special Operations Command that is responsible for counterterrorism. One of Miller's unacknowledged missions had been to bring the J.S.O.C.'s "strategic interrogation" techniques to Abu Ghraib. In special cases, the task forces could bypass the chain of command and deal directly with Rumsfeld's office. A former senior intelligence official told me that the White House was also briefed on task-force operations.

The former senior intelligence official said that when the images of Abu Ghraib were published, there were some in the Pentagon and the White House who "didn't think the photographs were that bad"—in that they put the focus on enlisted soldiers, rather than on

secret task-force operations. Referring to the task-force members, he said, "Guys on the inside ask me, 'What's the difference between shooting a guy on the street, or in his bed, or in a prison?' " A Pentagon consultant on the war on terror also said that the "basic strategy was 'prosecute the kids in the photographs but protect the big picture.' "

A recently retired C.I.A. officer, who served more than fifteen years in the clandestine service, told me that the task-force teams "had full authority to whack—to go in and conduct 'executive action,' " the phrase for political assassination. "It was surrealistic what these guys were doing," the retired operative added. "They were running around the world without clearing their operations with the ambassador or the chief of station."

J.S.O.C.'s special status undermined military discipline. Richard Armitage, the former Deputy Secretary of State, told me that, on his visits to Iraq, he increasingly found that "the commanders would say one thing and the guys in the field would say, 'I don't care what he says. I'm going to do what I want.' We've sacrificed the chain of command to the notion of Special Operations and GWOT"—the global war on terrorism. "You're painting on a canvas so big that it's hard to comprehend," Armitage said.

Thomas W. O'Connell, who resigned this spring after nearly four years as the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, defended the task forces. He blamed the criticisms on the resentment of the rest of the military: "From my observation, the operations run by Special Ops units are extraordinarily open in terms of interagency visibility to embassies and C.I.A. stations—even to the point where there's been a question of security." O'Connell said that he dropped in unannounced to Special Operations interrogation centers in Iraq, "and the treatment of detainees was aboveboard." He added, "If people want to say we've got a serious problem with Special Operations, let them say it on the record."

Representative Obey told me that he had been troubled, before the Iraq war, by the Administration's decision to run clandestine operations from the Pentagon, saying that he "found some of the things they were doing to be disquieting." At the time, his Republican colleagues blocked his attempts to have the House Appropriations Committee investigate these activities. "One of the things that bugs me is that Congress has failed in its oversight abilities," Obey said. Early last year, at his urging, his subcommittee began demanding a classified quarterly report on the operations, but Obey said that he has no reason to believe that the reports are complete.

A former high-level Defense Department official said that, when the Abu Ghraib scandal broke, Senator John Warner, then the chairman of the Armed Services Committee, was warned "to back off" on the investigation, because "it would spill over to more important things." A spokesman for Warner acknowledged that there had been pressure on the Senator, but said that Warner had stood up to it—insisting on putting Rumsfeld under oath for his May 7th testimony, for example, to the Secretary's great displeasure.

An aggressive congressional inquiry into Abu Ghraib could have provoked unwanted questions about what the Pentagon was doing, in Iraq and elsewhere, and under what authority. By law, the President must make a formal finding authorizing a C.I.A. covert operation, and inform the senior leadership of the House and the Senate Intelligence Committees. However, the Bush Administration unilaterally determined after 9/11 that intelligence operations conducted by the military—including the Pentagon's covert task forces—for the purposes of "preparing the battlefield" could be authorized by the President, as Commander-in-Chief, without telling Congress.

There was coördination between the C.I.A. and the task forces, but also tension. The C.I.A. officers, who were under pressure to produce better intelligence in the field, wanted explicit legal authority before aggressively interrogating high-value targets. A finding would give operatives some legal protection for questionable actions, but the White House was reluctant to put what it wanted in writing.

A recently retired high-level C.I.A. official, who served during this period and was involved in the drafting of findings, described to me the bitter disagreements between the White House and the agency over the issue. "The problem is what constituted approval," the retired C.I.A. official said. "My people fought about this all the time. Why should we put our people on the firing line somewhere down the road? If you want me to kill Joe Smith, just *tell* me to kill Joe Smith. If I was the Vice-President or the President, I'd say, 'This guy Smith is a bad guy and it's in the interest of the United States for this guy to be killed.' They don't say that. Instead, George"—George Tenet, the director of the C.I.A. until mid-2004—"goes to the White House and is told, 'You guys are professionals. You know how important it is. We know you'll get the intelligence.' George would come back and say to us, 'Do what you gotta do.' "

Bill Harlow, a spokesman for Tenet, depicted as "absurd" the notion that the C.I.A. director told his agents to operate outside official guidelines. He added, in an e-mailed statement, "The intelligence community insists that its officers not exceed the very explicit authorities granted." In his recently published memoir, however, Tenet acknowledged that there had been a struggle "to get clear guidance" in terms of how far to go during high-value-detainee interrogations.

The Pentagon consultant said in an interview late last year that "the C.I.A. never got the exact language it wanted." The findings, when promulgated by the White House, were "very calibrated" to minimize political risk, and limited to a few countries; later, they were expanded, turning several nations in North Africa, the Middle East, and Asia into free-fire zones with regard to high-value targets. I was told by the former senior intelligence official and a government consultant that after the existence of secret C.I.A. prisons in Europe was revealed, in the Washington *Post*, in late 2005, the Administration responded with a new detainee center in Mauritania. After a new government friendly to the U.S. took power, in a bloodless coup d'état in August, 2005, they said, it was much easier for the intelligence community to mask secret flights there.

"The dirt and secrets are in the back channel," the former senior intelligence officer noted. "All this open business—sitting in staff meetings, etc., etc.—is the Potemkin Village stuff. And the good guys—like Taguba—are gone."

In some cases, the secret operations remained unaccountable. In an April, 2005, memorandum, a C.I.D. officer—his name was redacted—complained to C.I.D. headquarters, at Fort Belvoir, Virginia, about the impossibility of investigating military members of a Special Access Program suspected of prisoner abuse:

> [C.I.D.] has been unable to thoroughly investigate . . . due to the suspects and witnesses involvement in Special Access Programs (SAP) and/or the security classification of the unit they were assigned to during the offense under investigation. Attempts by Special Agents . . . to be "read on" to these programs has [sic] been unsuccessful.

The C.I.D. officer wrote that "fake names were used" by members of the task force; he also told investigators that the unit had a "major computer malfunction which resulted in them losing 70 per cent of their files; therefore, they can't find the cases we need to review."

The officer concluded that the investigation "does not need to be reopened. Hell, even if we reopened it we wouldn't get any more information than we already have."

CONSEQUENCES

Rumsfeld was vague, in his appearances before Congress, about when he had informed the President about Abu Ghraib, saying that it could have been late January or early February. He explained that he routinely met with the President "once or twice a week . . . and I don't keep notes about what I do." He did remember that in mid-March he and General Myers were "meeting with the President and discussed the reports that we had obviously heard" about Abu Ghraib.

Whether the President was told about Abu Ghraib in January (when e-mails informed the Pentagon of the seriousness of the abuses and of the existence of photographs) or in March (when Taguba filed his report), Bush made no known effort to forcefully address the treatment of prisoners before the scandal became public, or to reëvaluate the training of military police and interrogators, or the practices of the task forces that he had authorized. Instead, Bush acquiesced in the prosecution of a few lower-level soldiers. The President's failure to act decisively resonated through the military chain of command: aggressive prosecution of crimes against detainees was not conducive to a successful career.

In January of 2006, Taguba received a telephone call from General Richard Cody, the Army's Vice-Chief of Staff. "This is your Vice," he told Taguba. "I need you to retire by January of 2007." No pleasantries were exchanged, although the two generals had known each other for years, and, Taguba said, "He offered no reason." (A spokesperson for

Cody said, "Conversations regarding general officer management are considered private personnel discussions. General Cody has great respect for Major General Taguba as an officer, leader, and American patriot.")

"They always shoot the messenger," Taguba told me. "To be accused of being overzealous and disloyal—that cuts deep into me. I was being ostracized for doing what I was asked to do."

Taguba went on, "There was no doubt in my mind that this stuff"—the explicit images—"was gravitating upward. It was standard operating procedure to assume that this had to go higher. The President had to be aware of this." He said that Rumsfeld, his senior aides, and the high-ranking generals and admirals who stood with him as he misrepresented what he knew about Abu Ghraib had failed the nation.

"From the moment a soldier enlists, we inculcate loyalty, duty, honor, integrity, and selfless service," Taguba said. "And yet when we get to the senior-officer level we forget those values. I know that my peers in the Army will be mad at me for speaking out, but the fact is that we violated the laws of land warfare in Abu Ghraib. We violated the tenets of the Geneva Convention. We violated our own principles and we violated the core of our military values. The stress of combat is not an excuse, and I believe, even today, that those civilian and military leaders responsible should be held accountable."

Citation: http://www.newyorker.com/reporting/2007/06/25/070625fa_fact_hersh (accessed 20 June 2007)

Friday, June 22, 2007

WASHINGTON POST

Guantanamo Splits Administration

Arguments Center on How to Handle Remaining Detainees

By Josh White and Robin Wright
Washington Post Staff Writers
Friday, June 22, 2007; A03

Senior Bush administration officials are engaged in active discussions about closing the U.S. military detention facility at Guantanamo Bay, Cuba, but deep divisions remain regarding the fate of the approximately 375 foreign detainees currently held there should the prison close, according to numerous officials familiar with the ongoing dialogue.

President Bush has stated publicly his desire to shut down the facility, which has drawn significant criticism and damaged the United States' reputation internationally. But debates over the legal implications and logistical hurdles to closing Guantanamo have highlighted the difficulties of such a move. Despite rising interest among the highest

who created the terrible mistake that is Guantanamo -- and who missed his chance to fix it.

NEW YORK TIMES

LETTERS TO THE EDITOR:

New York Times
June 27, 2007
Pg. 22

All Is Not Well At Guantanamo

To the Editor:

Col. Morris D. Davis ("The Guantánamo I Know," Op-Ed, June 26) describes a pristine prison where detainees are given three meals a day. What he ignores is that Guantánamo's new prison facilities subject detainees to virtually total and continuous isolation in tiny windowless cells.

Particularly galling is Colonel Davis's assertion that David Hicks, the only person to be convicted by military commissions, stipulated that he had been "treated properly." In fact, this carefully worded statement, which Mr. Hicks had to make as a condition of his plea agreement, said only that he had not been "illegally treated." This concession means little for a government that has interpreted waterboarding as compliant with United States law.

In a previous court filing, Mr. Hicks alleged being beaten repeatedly, sodomized and forced into painful stress positions while in United States custody. If one of Colonel Davis's soldiers were picked up by Iran or North Korea and held for years in solitary confinement in a small, windowless room, do you think he would be praising the detention as "clean, safe, and humane"?

Jennifer Daskal, Senior Counterterrorism Counsel, Human Rights Watch, Washington, June 26, 2007

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To the Editor:

Col. Morris D. Davis paints Guantánamo as a model, humane prison in which the rule of law reigns. If only it were so.

My clients are enduring their sixth year of detention at Gitmo. None have even been charged with a crime. Because they are unlikely to ever face trial, they will never have

the opportunity to see the secret evidence against them. They will never have a chance to refute the coerced, hearsay statements that have so far justified their detention.

The government claims that it can hold them in this legal limbo for the duration of our war on terror. The extreme isolation and conditions my clients face are unbearable.

Many have been punished for disciplinary infractions by having their beards shaved. Most have been stripped of their trousers so that they cannot pray while modestly dressed. Some have been interrogated at gunpoint and threatened with rendition.

One of my clients recently tried to slit his wrists, explaining to me afterward that death would be more merciful than life here.

There is nothing "contrived" about these facts.

Marc Falkoff, Chicago, June 26, 2007

The writer, an assistant professor of law at Northern Illinois University, represents 16 Yemeni detainees at Guantánamo.

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To the Editor:

The Guantánamo that Col. Morris D. Davis knows is obviously not the same prison where our clients have been held without charge or trial for more than five years.

Majid Khan and Mohammed Al Qahtani have been tortured so badly that any evidence against them would be inadmissible under any legal standard.

Hundreds of men waste away in isolation in small metal cells that any regularly constituted court would reject as a violation of United States and international law. None have received a fair hearing. The results are predictable: four detainees are dead, nearly a hundred suffer from mental illness, and countless others continue to suffer abuse daily.

Guantánamo Bay is a failure. Its existence demeans and threatens our nation. It must be closed now.

J. Wells Dixon and Gitanjali S. Gutierrez, New York, June 26, 2007

The writers are staff attorneys at the Center for Constitutional Rights.

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To the Editor:

Col. Morris D. Davis paints a rosy picture of Guantánamo Bay and the military commissions. I traveled there three weeks ago; the Guantánamo I came to know is starkly different from the place he describes.

The commissions fall well short of international standards, including by permitting the use of evidence obtained under coercion. The likelihood is high that someone on trial before the military commissions will have been coerced during his detention.

The Defense Department's own investigations document that detainees have been kept awake all night, subjected to loud music and extreme hot and cold temperatures, and beaten.

Regardless of actual conditions, the arbitrary deprivation of liberty is inherently inhumane. When people can be held without being charged, and denied real opportunities to challenge their detention, America's image and authority in the world are undermined.

Guantánamo and the military commissions are unworthy of a nation that prizes justice and aspires to lead the world.

Priti Patel, Associate Attorney, Law and Security Program, Human Rights First, New York, June 26, 2007

Editor's Note: The op-ed referred to appeared in yesterday's *Current News Early Bird.*

Friday, June 29, 2007

NEW YORK TIMES

LETTER TO THE EDITOR:

New York Times
June 29, 2007
Pg. 28

Reality At Guantanamo

To the Editor:

It's an astonishingly surrealistic world that Col. Morris D. Davis evokes in his elegy to the Guantánamo Bay prison ("The Guantánamo I Know," Op-Ed, June 26), and his praise of the brand of justice dispensed by the Defense Department's Office of Military Commissions.

Colonel Davis finds fault with critics who compare Guantánamo to totalitarian gulags, and responds by extolling the prison's culturally appropriate meals and available Korans.

http://www.chicagotribune.com/news/nationworld/chi-abu_omar_nujul08,1,5523863.story?coll=chi-newsnationworld-hed

'Only thing left ... is to kill me'

The Egyptian cleric whose abduction, allegedly by the CIA, caused a furor is speaking out about torture, renditions and what he would like to do next—if he's not arrested

By Liz Sly
Tribune foreign correspondent

July 8, 2007

ALEXANDRIA, Egypt — Abu Omar, the Egyptian cleric allegedly abducted by the CIA from a Milan street in 2003, is talking again, despite the trouble that has caused him in the past.

"I have decided to speak out because what else are they going to do to me? They've tried everything—torture, imprisonment, no visitation rights, everything. The only thing left for them to do is to kill me," he said as he ushered visiting journalists into the salon of his sister's apartment, decorated in pious shades of Islamic green and adorned with sayings from the Quran.

There, in an interview with the Tribune that was his first with a U.S. publication since he was freed in February, he proceeded to defy the conditions of his release by speaking about his case and the 14 months of torture he says he endured under interrogation. He described repeated efforts by the authorities to persuade him not to talk, including one offer that he says was made on the eve of his release: $2 million and U.S. citizenship for him and his two children if he agreed to remain silent.

Abu Omar is not inclined toward silence, however.

The first time he defied instructions not to talk was after he was briefly released from Egyptian custody in 2004. He telephoned his wife and a friend in Milan, who were still baffled by his disappearance, and told them he had been kidnapped. He was promptly locked up again.

But the phone call alerted Italian authorities, who were listening in. An investigation ensued, and soon an extraordinary saga of how a band of CIA operatives bundled a man off the street in broad daylight in the heart of a European city, leaving a trail of circumstantial evidence behind them, was blazoned in newspapers throughout the world.

Some details of Abu Omar's story, such as his torture claims and the offer of citizenship, cannot be independently verified. The CIA declined to comment for this story.

But human-rights groups and the European Union say at least 100 people have been similarly abducted by the CIA and ferried to third countries since the Sept. 11 attacks, in a process known as "rendition." Egypt, where Abu Omar was held, is routinely criticized for the widespread use of torture. Abu Omar says he met about 30 men in prison who said they had been abducted overseas and brought to Egypt.

CIA embarrassment

Abu Omar's telephone call, however, ensured that his would become the best-known case, provoking a furor in Italy and providing the CIA one of its biggest embarrassments since the Sept. 11 attacks. In Italy, 25 CIA operatives have been put on trial in absentia in the abduction, though the trial was recently suspended.

Late last year, Abu Omar smuggled a widely published letter from prison in which he detailed the torture he said he had suffered, and months later he was freed on condition he remain in Egypt and not talk to reporters.

He believes the publicity helped secure his release, and now he is hoping for compensation too.

"I really think it would be difficult for them to take me back to jail, not to say impossible. I've been to jail, I've seen everything in jail, there's nothing left to show me," he said. "But I have a packed bag ready in case."

Abu Omar's résumé reads like that of many Islamic radicals of his generation. Born Osama Moustafa Hassan Nasr in 1963 in Alexandria, he dabbled in Islamist politics, was briefly imprisoned and then in 1989 joined the exodus of young Arab Muslims to Peshawar, Pakistan, to help the jihad against the Soviet Union in neighboring Afghanistan. He worked for an Islamic charity and then moved to Tirana, Albania, in 1991.

By 2001, when the Sept. 11 attacks focused attention on people with his kind of past, he was delivering fiery anti-U.S. sermons at a radical mosque in Milan, the Islamic Cultural Center.

On the morning of Feb. 17, 2003, he was bundled into a white van as he walked toward the mosque after being stopped by a man "with reddish-white skin" who asked to see his identity papers.

From Milan, according to Italian court documents, he was driven to the U.S. air base at Aviano, flown to the U.S. base at Ramstein, Germany, and transferred to another plane to Cairo. Throughout the process, Abu Omar said, he neither saw his captors' faces nor heard their voices, and it did not occur to him at the time that his kidnappers might be American.

In Cairo, he said, he refused an offer to be allowed to go back to Milan in return for

informing on Islamists there. Then he was led away to a basement cell.

For the next 14 months, he said, he was kept blindfolded in solitary confinement. He was allowed out only to use the bathroom and for twice-daily torture sessions, one starting shortly before noon and continuing until late in the afternoon, the second from 11 p.m. until dawn. He could hear the screams of others nearby, he said. He showed scars he said were caused by electric shocks on his legs and circular marks he said were left by shackles on his ankles.

"I could have dealt with everything except the rape," he said. "They did it two or three times. ... For Islamists, it's the worst torture of all."

'You'll say anything'

In any case, Abu Omar said, he did talk, about everything and everyone he knew.

"Nobody can withstand electricity and not give in. It's part of the point of being electrocuted," he said. "You can be tortured into testifying about things that haven't happened to stop the pain. Under torture, you'll say anything, just to get rid of the pain."

Whether he said anything useful may never be known. No charges have been filed against him or anyone else as a result of the interrogations. The CIA does not acknowledge that this rendition, or any other, even occurred. Italian law-enforcement officials say no information has ever been passed to them from any interrogations, even though Abu Omar said most of the questioning concerned the activities of the Milan mosque.

There is an arrest warrant pending for him in Italy, on charges of providing illegal documentation to foreign fighters to travel to Iraq in the months before the U.S. invasion and of associating with terrorist groups. Two others have been convicted in the same case.

Abu Omar insisted he was innocent of the charges against him. He said his health is failing, his eyesight has deteriorated because of the months spent in darkness, he wakes screaming with nightmares and he lacks the will to perform simple daily tasks. "I've lost all my innocence, all what I call the white face of life," he said.

Yet he says he has no regrets. Rather, he feels proud that his refusal to keep quiet shone a light on the practice of rendition. The European Union is demanding a full investigation of all renditions in Europe and compensation for the victims.

"Thanks be to God, I spoke, and although I went back to prison, I did stop this rendition thing. A lot of cases started to come out in the open, and now everything's coming out in the open," he said.

Abu Omar said he plans to keep talking. He is seeking compensation for his suffering. He

said he is writing a book about his ordeal. He hopes to run for parliament in Egypt.

He would like to return to Italy, despite the charge against him, and says he is willing to testify in the CIA trial. But he says the Italian government has refused a visa and the Egyptians won't issue a passport.

The one thing he says he doesn't want is revenge.

"Nobody would blame me if I wanted to take revenge against the Americans, but killing and violence is not the solution," he said. "Talking is my way of getting back at them."

lsly@tribune.com

Sunday, July 08, 2007

LOS ANGELES TIMES

EDITORIAL:

Justice and Gitmo

The high court's decision to weigh habeas corpus for detainees is a step toward restoring trampled freedoms.

July 8, 2007

ACCORDING TO Finley Peter Dunne's Mr. Dooley, "The Supreme Court follows th' ilection returns." The court may also follow the proceedings of Congress, which has yet to enact legislation restoring habeas corpus rights to detainees at Guantanamo Bay. There, Congress' indolence appears to have roused the court to action, a welcome development in a complex struggle among the branches of our federal government to safeguard the rights we trumpet to the world. The fates of the detainees hang on that debate, but the outcome also will determine whether America's most basic freedoms withstand the combined pressures of the war on terror and the neglect of the president responsible for protecting them.

The Bush administration long ago established its place in this struggle: It took the view that foreign terrorism suspects are not entitled to basic American rights, and it tacked sharply away from history in order to abridge civil liberties. As a result, debate on these issues has moved to Congress and the high court, as each attempts to right the administration's wrongs.

On the day after the last official day of its term, the high court reversed itself and agreed

Wednesday, July 18, 2007

WASHINGTON POST

WORLD IN BRIEF

Wednesday, July 18, 2007; A14

Officers Upset With Rumsfeld Aided Probe of CIA Prisons

BRUSSELS -- U.S. intelligence officers angry at former defense secretary Donald H. Rumsfeld helped a European probe uncover details of secret CIA prisons in Europe, the top investigator said Tuesday.

Swiss Sen. Dick Marty, author of a Council of Europe report on the jails, said that senior CIA officials disapproved of Rumsfeld's methods in hunting down terrorism suspects and that they had agreed to talk to him on condition of anonymity. Marty was defending his work against complaints that it was based on unnamed sources.

The report, issued last month, said the CIA ran secret jails in Poland and Romania, with the complicity of those governments, and transported terrorism suspects across Europe on secret flights. Poland and Romania have repeatedly denied the claims.

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WASHINGTON POST

EDITORIAL:

Justice at Guantanamo

Congress has another chance to repair the rules for handling detainees in the war on terrorism.

Wednesday, July 18, 2007; A18

THE SENSE of deja vu is overwhelming. Once again, lawmakers are promising to introduce legislation allowing prisoners at Guantanamo Bay to challenge their detentions. Once again, congressional Republicans are vowing to defeat it, as they have before. The deja vu should stop here.

By denying hundreds of detainees the most basic of legal rights, that of challenging their detention, the Bush administration has continued to damage the country's image and moral authority abroad. No government should be allowed to hold people indefinitely without affording them a chance to challenge that detention. Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), ranking minority member Arlen Specter (R-Pa.) and

others planned to introduce the Habeas Corpus Restoration Act of 2007 this week to recognize such due-process rights for detainees. The Senate debate over the Iraq war may force a postponement, but it should be a short one. The measure would modify a law passed by the GOP-controlled Congress on the eve of the 2006 midterm elections curtailing legal challenges to detention and would hold that the long-established principle of habeas corpus applies to detainees at Guantanamo. This would allow them access to federal courts to appeal their indefinite detention without charge as "enemy combatants." Such suits, filed before the 2006 law went into effect, had forced the administration to make substantial -- if insufficient -- improvements in procedures for holding, interrogating and trying detainees.

Lawmakers should resist the temptation to punt the matter to the Supreme Court for a decision. The court late last month agreed to hear a challenge to the administration's detainee policy; if lawmakers adopt the Leahy-Specter provision, the Supreme Court case is likely to become moot. Neither side in this debate can be certain how the court will rule, and too many detainees have already been held for too long with too little process for Congress to sit idly by.

The reforms should not stop there. The administration should begin the process of shutting down the Guantanamo prison, as Secretary of State Condoleezza Rice and Defense Secretary Robert M. Gates have urged. Sen. Dianne Feinstein (D-Calif.) last week introduced such legislation, although we believe it would be better for the president to take the initiative. In exchange for recognizing detainees' habeas rights and winding down Guantanamo detentions, the president should ask for Congress's authorization to hold a small number of foreign-born detainees as enemy combatants in the United States and to try a limited number of detainees, such as top al-Qaeda leaders, in special courts that depart in carefully limited ways from conventional criminal or military rules.

Saturday, July 21, 2007

WASHINGTON POST

Bush Approves New CIA Methods

Interrogations Of Detainees To Resume

By Karen DeYoung
Washington Post Staff Writer
Saturday, July 21, 2007; A01

President Bush set broad legal boundaries for the CIA's harsh interrogation of terrorism suspects yesterday, allowing the intelligence agency to resume a program that was suspended last year after criticism that it violated U.S. and international law.

In an executive order lacking any details about actual interrogation techniques, Bush said the CIA program will now comply with a Geneva Conventions prohibition against

"outrages upon personal dignity, in particular humiliating and degrading treatment." His order, required by legislation signed in October, was delayed for months amid tense debate inside the administration.

"We can now focus on our vital work, confident that our mission and authorities are clearly defined," CIA Director Michael V. Hayden said in a statement to agency employees. Although human rights groups have alleged that CIA interrogators used torturous and illegal methods, Hayden said the program had gleaned "irreplaceable" information from terrorism detainees.

Two administration officials said that suspects now in U.S. custody could be moved immediately into the "enhanced interrogation" program and subjected to techniques that go beyond those allowed by the U.S. military.

Rights activists criticized Bush's order for failing to spell out which techniques are now approved or prohibited. It said instead that CIA interrogators cannot undertake prohibited acts such as torture and murder, and it barred religious denigration and humiliating or degrading treatment "so serious that any reasonable person, considering the circumstances, would deem" it "beyond the bounds of human decency." Detainees, it said, must be provided with "the basic necessities of life," including adequate food and water, clothing, essential medical care, and "protection from extremes of heat and cold."

"All the order really does is to have the president say, 'Everything in that other document that I'm not showing you is legal -- trust me,' " said Tom Malinowski of Human Rights Watch.

The CIA interrogation guidelines are contained in a classified document. A senior intelligence official, asked whether this list includes such widely criticized methods as the simulated drowning known as "waterboarding," declined to discuss specifics but said "it would be very wrong to assume that the program of the past would move into the future unchanged."

CIA detainees have also alleged they were left naked in cells for prolonged periods, subjected to sensory and sleep deprivation and extreme heat and cold, and sexually taunted. A senior administration officials briefing reporters yesterday said that any future use of "extremes of heat and cold" would be subject to a "reasonable interpretation . . . we're not talking about forcibly induced hypothermia."

Congressional reaction to the order was muted, as key lawmakers said they were only informed of its contents yesterday. Republican Sens. John McCain (Ariz.), Lindsey O. Graham (S.C.) and John W. Warner (Va.), who helped draft legislation last year requiring the executive order, issued a joint statement that they needed more information before making a judgment. They said the administration has not responded to the questions they asked during a recent briefing on the new order and the detainee program.

Sen. John D. Rockefeller IV (D-W.Va.), chairman of the Senate intelligence committee, said it was unclear what the order "really means and how it will translate into actual conduct by the CIA." In a statement, Rockefeller repeated a committee demand made last spring that the White House turn over a copy of the Justice Department's legal analysis of the new guidelines.

Similar demands for internal documents related to the Bush administration's warrantless surveillance program have been rebuffed by the White House.

The steps leading to yesterday's order began with Bush's determination in January 2002 that members of al-Qaeda and the Taliban, as well as other allegedly terrorist captives, were "enemy combatants" rather than prisoners of war covered by the 1949 Geneva Conventions.

Criticism of the U.S. military's treatment of detainees -- first in Afghanistan and at the military prison at Guantanamo Bay, Cuba, and later at the Abu Ghraib prison in Iraq -- eventually provoked the Pentagon to rewrite its interrogation guidebook and explicitly ban many of the techniques endorsed and used by the CIA. But a new law enforced those limits only for detainees in military custody.

Criticism of the CIA began with revelations in late 2005 that the agency had imprisoned and interrogated "high-value" suspects in secret prisons in third countries. But after the Supreme Court ruled last summer, in *Hamdan v. Rumsfeld*, that all U.S. prisoners -- of any nationality, being held in any country -- were covered by Geneva protections against degrading treatment, Bush publicly confirmed the existence of the CIA prisons and announced that 14 remaining CIA prisoners had been transferred to military custody at Guantanamo.

Bush maintained the CIA interrogation program had always been legal, but the White House said the Geneva provision, Common Article 3, was vague and undefined. After the CIA suspended its "enhanced interrogations" to ensure its officers could not be charged with crimes, Congress ordered the administration to ensure, via executive order, that any further such interrogations complied with both domestic and international law.

Bush's statement said the techniques could be used against any "alien detainee" determined by the CIA director to be a member or supporter of al-Qaeda, the Taliban or associated organizations likely to have information about attacks against the United States or its allies.

Over the past several months, the secret list of CIA techniques has been the subject of interagency debate at the highest levels, with the State Department anxious to avoid offending allied governments, and the Department of Defense concerned that any CIA excesses could cause U.S. soldiers captured in the future to be subject to abuses.

The intelligence official said the agency itself had studied the effectiveness of past techniques and retained or jettisoned them on a "sliding scale." The criteria, he said, were

what was "appropriate, effective, lawful and sustainable." While Hayden did not get "everything [he] might have wanted" in the guidelines, the official said, they contained everything the CIA needed and "more than was asked for."

To help allay concerns, new safeguards were added, the official said. Every use of an "enhanced" technique must be personally approved by Hayden in every instance, he said. "There will be no lone wolves, interrogations will always be conducted by a team, and anybody on the team can knock it off at any time."

A senior administration official said that the new rules do not require that the International Committee of the Red Cross have access to CIA prisoners. Many other nations interpret international treaties as requiring such access for all detainees everywhere.

Staff writer Josh White contributed to this report.

WASHINGTON POST

Government Must Share All Evidence On Detainees

By Josh White
Washington Post Staff Writer
Saturday, July 21, 2007; A02

A federal appeals court charged with reviewing the enemy combatant status of detainees at the U.S. detention facility in Guantanamo Bay, Cuba, ruled yesterday that the government must provide the court and defense lawyers with classified evidence gathered against the detainees. The ruling indicates that the court wants to conduct full reviews of the Bush administration's decisions about the suspected terrorists.

Judges on the U.S. Court of Appeals for the District of Columbia Circuit wrote that the court "must have access to all the information available" to the military's Combatant Status Review Tribunals to determine whether the tribunals were fair to Guantanamo detainees and whether the individuals should in fact be considered enemy combatants. Government lawyers had argued that the court should review only what was in the official record of the tribunals, not all the evidence they had gathered to support the hearings.

The court was ruling on motions filed in two cases arising out of the Detainee Treatment Act, which was passed in late 2005 and gives detainees the right to appeal tribunal decisions to the court of appeals -- currently their only legal option for challenging their detention. Although the detainees had their ability to file habeas corpus petitions stripped by Congress last year, the Supreme Court has agreed to hear a case that could reinstate such legal actions.

said, "we are left to rely on the government to produce all of the information that it says exists."

NEW YORK TIMES

July 21, 2007

Rules Lay Out C.I.A.'s Tactics in Questioning

By MARK MAZZETTI

Page 1

WASHINGTON, July 20 — The White House said Friday that it had given the Central Intelligence Agency approval to resume its use of some severe interrogation methods for questioning terrorism suspects in secret prisons overseas.

With the new authority, administration officials said the C.I.A. could proceed with an interrogation program that had been in limbo since the Supreme Court ruled last year that all prisoners in American captivity be treated in accordance with Geneva Convention prohibitions against humiliating and degrading treatment.

A new executive order signed by President Bush does not authorize the full set of harsh interrogation methods used by the C.I.A. since the program began in 2002. But government officials said the rules would still allow some techniques more severe than those used in interrogations by military personnel in places like the detention center in Guantánamo Bay, Cuba.

Several officials said the permitted techniques did not include some of the most controversial past techniques, among them "waterboarding," which induces a feeling of drowning, and exposure to extremes of heat and cold.

The basic outcome had been expected, but it was preceded by months of intense disagreement within the administration about where to draw the line on C.I.A. interrogations. The new list of techniques has been approved by the Justice Department as not violating the Geneva strictures, a step that Congress insisted on last October when it passed the Military Commissions Act, which formally authorized the C.I.A. program.

The White House order brought condemnation on Friday from human rights groups, which argued that it helped systematize a program of indefinite, incommunicado detention and used methods that violated international law. But in a message to agency employees on Friday, Gen. Michael V. Hayden, the C.I.A. director, defended the program as having been "irreplaceable," though he said extraordinary techniques had been used on fewer than half of about 100 terrorism suspects.

General Hayden said the White House order would allow the agency to "focus on our vital work, confident that our mission and authorities are clearly defined." The C.I.A. said it had suspended its use of harsh interrogation procedures during the debate over the new rules, even as the White House argued that the agency should be given extra latitude to carry out effective interrogations of terrorism suspects.

Senator John D. Rockefeller IV of West Virginia, the Democratic chairman of the Senate Intelligence Committee, said he would wait to review the Justice Department's legal reasoning before he passed judgment. General Hayden briefed the intelligence committees earlier in the year about the agency's own review.

The specific interrogation methods now approved for C.I.A. use remain classified, but several officials said they did not include waterboarding, which human rights organizations and some members of Congress have said are equal to torture. The C.I.A. acted on its own beginning in 2004 to prohibit some of these measures after their use became publicly known.

In a conference call with reporters on Friday, a senior administration official indicated that another technique now forbidden would be exposure to temperature extremes, and the executive order itself states that detainees must be protected "from extremes of heat and cold." It is unclear whether sleep deprivation, another technique used in past C.I.A. interrogations, is authorized.

The order uses a definition of "humiliating and degrading treatment" that conforms to standards set by international case law, a victory for State Department officials.

According to the senior administration official, the C.I.A. will bar the International Committee of the Red Cross from visiting detainees in agency hands, a prohibition it has enforced in the past.

Earlier this year, State Department officials rejected a draft of the executive order because they believed that the language was too permissive and could open the Bush administration to challenges from American allies that the White House was legalizing methods that approach torture. Some Bush administration officials, including members of Vice President Dick Cheney's staff, pushed for a more expansive interpretation of Geneva Convention language and for interrogation methods that the C.I.A. had not even requested.

According to one senior intelligence official, nearly half of the source material used in the recent National Intelligence Estimate on the terrorism threat to the United States came from C.I.A. interrogations of detainees.

Some human rights groups said they feared that the Bush administration was using creative legal reasoning to justify practices that close American allies have banned.

"This is an administration that won't even publicly denounce waterboarding," said John Sifton, a lawyer at Human Rights Watch. "It's hard to believe that they will be interpreting these standards in a way that is true to the spirit of the Military Commissions Act."

But other critics of the harsh C.I.A. interrogation practices of the past, including former top Bush administration officials, said that the executive order was a step in the right direction. "The U.S. government is continuing to move toward an approach to this vital area of human intelligence collection that is more sustainable — morally, politically, and legally," said Philip D. Zelikow, who served as counselor to Secretary of State Condoleezza Rice until last year and who delivered a blistering lecture earlier this year denouncing the C.I.A.'s interrogation program as it was used in the past.

The executive order applies only to detainees in C.I.A. hands, not to those in military custody. Last September, all 14 prisoners in C.I.A. custody were transferred to the island prison and put under Pentagon control, including two senior operatives of Al Qaeda, Abu Zubaydah and Khalid Shaikh Mohammed, who has confessed to being the mastermind of the Sept. 11 attacks. It is unclear how many suspects have passed through the program since then, or if the C.I.A has anyone in its prisons. The only prisoner that the C.I.A. has acknowledged holding since last fall is Abd al-Hadi al-Iraqi, an Iraqi Kurd who is believed to have been one of Osama bin Laden's closest advisers.

C.I.A. officials said that Mr. Iraqi produced valuable intelligence, despite the fact that C.I.A. interrogators at the time were only authorized to use the techniques approved for Pentagon interrogators.

Sunday, July 22, 2007

WASHINGTON POST

LETTERS TO THE EDITOR:

Attack on a Fundamental Right

Sunday, July 22, 2007; B06

The Bush administration's denial of habeas corpus to prisoners held at Guantanamo Bay does more than damage the United States' "image and moral authority abroad" ["Justice at Guantanamo," editorial, July 18]. It is a direct attack on American values and history.

"This was it," Mr. MacLean said last week, "the first evidence of how these tribunals operated from the inside."

Mr. MacLean called Colonel Abraham for the first time on June 8. The detainees' lawyers filed his seven-page affidavit in court on June 22. It was sharply critical of the hearings and the evidence they used, saying "what purported to be specific statements of fact lacked even the most fundamental earmarks of objectively credible evidence." On June 29, the Supreme Court announced that it would hear the detainees' case.

One of the tribunals the lawyers have learned more about since then was the one on which Colonel Abraham sat. Documents they have gathered show that he was assigned to the panel in November 2004. The detainee was a Libyan, captured in Afghanistan, who was said to have visited terrorist training camps and belonged to a Libyan terrorist organization.

By a vote of 3 to 0, the panel found that "the detainee is not properly classified as an enemy combatant and is not associated with Al Qaeda or Taliban."

Two months later, apparently after Pentagon officials rejected the first decision, the detainee's case was heard by a second panel. The conclusion, again by a vote of 3 to 0, was quite different: "The detainee is properly classified as an enemy combatant and is a member of or associated with Al Qaeda."

Colonel Abraham was never assigned to another panel.

Margot Williams contributed reporting from New York.

Wednesday, July 25, 2007

WASHINGTON POST

EDITORIAL:

A Return to Abuse

President Bush authorizes secret -- and harsh -- interrogation methods for the CIA.

Wednesday, July 25, 2007; A14

FOR MOST of the past two years, a CIA interrogation program that once subjected foreign detainees to abuses that most of the world regards as torture has been inactive. During much of that time, al-Qaeda militants have been held in secret CIA prisons, but the agency stopped using techniques such as simulated drowning, sleep deprivation and painful stress positions because of congressional legislation banning "cruel, inhuman and degrading" treatment and a subsequent Supreme Court decision applying certain protections of the Geneva Conventions to all detainees.

Last week, after a prolonged debate among his advisers, President Bush issued an executive order that nominally reaffirms that CIA detainees will be covered by Geneva's Common Article 3 and thus be protected from torture or "humiliating and degrading" treatment. But the result may be the return by the CIA to methods that most people, including most of the world's democracies, regard as improper and illegal under international law -- and to a new threat to Americans captured by hostile governments.

The turnabout comes because of Mr. Bush's success in winning Congress's election-eve approval last year of legislation governing the detention and trial of prisoners at Guantanamo Bay and elsewhere abroad. The bill gave the president the authority to determine how the United States will interpret the Geneva protections. The Defense Department -- where most uniformed officers have long opposed the Bush administration's "enhanced" interrogation techniques -- had already adopted and made public a code of conduct for military interrogators that has won praise from human rights advocates, in part because it expressly bans a number of abusive practices.

Mr. Bush's order authorizes the CIA to adopt a separate and secret set of methods. In theory, the agency's methods will also conform to Geneva; in practice, administration lawyers, who have used loopholes and far-fetched reasoning to justify torture in the past, will have the leeway to justify abuses again. While Mr. Bush's order outlaws sexual humiliation and denigration of religion, and administration officials privately say simulated drowning, or "waterboarding," is now out of bounds, the presidential order is silent about sleep deprivation, stress positions and other methods used by the CIA in the past.

Administration officials argue -- without offering evidence -- that harsh methods are needed to gain intelligence from hardened al-Qaeda operatives. In fact, studies of interrogations and the military's experience show the opposite -- that torture does not produce reliable information. Officials also claim that the CIA's methods, unlike the Army's interrogation manual, must be kept secret so that detainees will not know what they might face. Yet any abusive technique that U.S. interrogators use is likely to become publicly known, as was the case with waterboarding. When that happens, hostile governments will acquire a valuable weapon: cruel treatment they will be able to use on captured Americans, treatment that they will claim conforms to the Geneva Conventions -- on the authority of Mr. Bush.

Thursday, July 26, 2007

WASHINGTON POST

OPINION:

War Crimes and the White House

The Dishonor in a Tortured New 'Interpretation' of the Geneva Conventions

"enhanced" technique can be so vital as to justify a departure from standards imposed on military interrogators and yet not so aggressive as to raise concerns about torture. It's not surprising that both critics and supporters of the order seem to assume that the CIA will be skirting the ban on torture.

David Cole, a Georgetown University law professor, points to the qualifiers and ambiguities in the order's prohibition on "willful and outrageous acts of personal abuse done for the purpose of humiliation or degrading the individuals in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency." Cole correctly concludes: "Whatever else one might say, these are hardly 'clear rules.' "

They're clear enough for Republican presidential hopeful Mitt Romney, who said in Iowa that, while he was against torture, "I support tough interrogation techniques, enhanced interrogation techniques, in circumstances where there is a ticking time bomb." But Romney must know that the "ticking time bomb" is the scenario of choice for those who argue that in some circumstances torture might be permissible to serve the greater good.

The Senate Intelligence Committee in a recent report raised questions about whether special interrogation rules for the CIA were "necessary, lawful and in the best interests of the United States." If Bush's executive order doesn't calm those doubts, Congress should say so -- and insist on a single standard for interrogation that will remove the "but" from "we do not torture."

Citation: http://www.latimes.com/news/opinion/la-ed-executive26jul26,0,5566156.story?coll=la-opinion-center

Friday, July 27, 2007

LOS ANGELES TIMES

OPINION:

Dark powers, the sequel

The president's recent executive order allows the CIA to detain anyone the agency thinks is a terrorist -- or a terrorist's kid.

By Rosa Brooks

July 27, 2007

'We ... have to work

the dark side, if you will," Vice President Dick Cheney told NBC's Tim Russert, five

days after the 9/11 terrorist attacks. "We've got to spend time in the shadows

using sources and methods that are available to our intelligence agencies

That's the world [terrorists] operate in, and so it's going to be vital for us to use any means at our disposal

"

It was an odd thing to say. Throughout our history -- from John Winthrop's 1630 "City Upon a Hill" sermon to President Clinton's foreign policy speeches -- our leaders have been quick to assure us of the opposite premise: We will prevail against our enemies because (and only if) we're on the side of light, rather than the side of darkness. We will prevail not through spending "time in the shadows" but through our commitment to freedom, democracy, justice and the rule of law.

Granted, previous rhetorical commitments to the side of light were at times accompanied by some pretty dark episodes. But if we didn't always manage to live up to the values we publicly embraced, our public commitments at least gave us a yardstick for measuring ourselves -- and declared to the world our willingness to be held to account when we fell short.

But in keeping with Cheney's admonition to "work

the dark side," this administration has openly embraced tactics that no previous administration would have formally condoned. In prior wars, for instance, we granted the protections of the Geneva Convention to our enemies as a matter of policy, even when those enemies -- like the Viet Cong -- lacked any legal claim to the convention's protections. Yes, some U.S. soldiers abused Viet Cong prisoners anyway -- but when they did so, they violated the clear written laws and policies of the United States.

Contrast that with the Bush administration, which refused to recognize any Geneva Convention rights for the "unlawful enemy combatants" captured in the war on terror until finally ordered to do so by the Supreme Court.

Within months of Cheney's "dark side" comments, Guantanamo filled up with hooded, shackled prisoners kept in open-air cages. The Justice Department developed legal defenses of torture, we opened secret prisons in former Soviet bloc countries and the president authorized secret "enhanced" interrogation methods for "high-value" detainees.

And despite the best efforts of human rights groups, the courts and a growing number of congressional critics from both parties, Cheney's still getting his way. On July 20, President Bush issued an executive order "interpreting" Common Article 3 of the Geneva Convention, as applied to secret CIA detention facilities. On its face, the order bans torture -- but as an editorial in this paper noted Thursday, it does so using language so vague it appears designed to create loopholes for the CIA.

Just as bad, though barely noted by the media, last week's executive order breaks new ground by outlining the category of people who can be detained secretly and indefinitely by the CIA -- in a way that's broad enough to include a hefty chunk of the global population. Under its terms, a non-U.S. citizen may be secretly detained and interrogated by the CIA -- with no access to counsel and no independent monitoring -- as long as the CIA director believes the person "to be a member or part of or supporting Al Qaeda, the Taliban or associated organizations; and likely to be in possession of information that could assist in detecting, mitigating or preventing terrorist attacks [or] in locating the senior leadership of Al Qaeda, the Taliban or associated forces."

Got that? The president of the United States just issued a public pronouncement declaring, as a matter of U.S. policy, that a single man has the authority to detain any person anyplace in the world and subject him or her to secret interrogation techniques that aren't torture but that nonetheless can't be revealed, as long as that person is thought to be a "supporter" of an organization "associated" in some unspecified way with the Taliban or Al Qaeda, and as long he thinks that person might know something that could "assist" us.

But "supporter" isn't defined, nor is "associated organization." That leaves the definition broad enough to permit the secret detention of, say, a man who sympathizes ideologically with the Taliban and might have overheard something useful in a neighborhood cafe, or of a 10-year-old girl whose older brother once trained with Al Qaeda.

This isn't just hypothetical. The U.S. has already detained people based on little more. According to media reports, the CIA has even held children, including the 7- and 9-year-old sons of Khalid Sheikh Mohammed. In 2006, Mohammed was transferred from a secret CIA facility to Guantanamo, but the whereabouts of his children are unknown.

It's dark out there, all right.

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Saturday, July 28, 2007

NEW YORK TIMES

July 28, 2007

British Report Criticizes U.S. Treatment of Terror Suspects

By RAYMOND BONNER and JANE PERLEZ

LONDON, July 27 — On the eve of the first visit to Washington by the new British prime minister, Gordon Brown, a report by a high-level parliamentary committee sharply criticized the Bush administration's practice of seizing terrorism suspects for interrogation in other countries, and found that in one case the Americans showed a lack of concern for the position of the British, their closest ally.

The practice, known as rendition, presented "some ethical dilemmas" for the British and led them to conclude that they had different approaches from the Americans, the report by the Intelligence and Security Committee said.

One British official told the panel that he had not believed the early reports of American torture against terrorism suspects in mid-2003. But after the abuses at Abu Ghraib prison emerged, the British government was "fully aware of the risk of mistreatment associated with any operations that may result in U.S. custody of detainees," the report found.

"When you are talking about sharing secret intelligence, we still trust them, but we have a better recognition that their standards, their approaches, are different, and therefore we still have to work with them, but we work with them in a rather different fashion," an official of one of the security services told the committee in March, the report said. The report did not identify the official, nor did it mention what that "different fashion" of collaboration was.

The report became public as Mr. Brown is to meet President Bush at Camp David on Sunday. At a news conference this week, Mr. Brown said he wanted to be a steward of the close American-British alliance. But he has also indicated he wants to set a different tone from that of his predecessor, Tony Blair, who maintained a personal bond with the American president. By scheduling a visit to the United Nations on Monday immediately after Camp David, Mr. Brown was already showing a little distance, an official in London said.

An American official said the meeting at Camp David would be "soup to nuts." Iraq and Afghanistan will be high on the agenda, he said.

On the positive side, the parliamentary report found that some of the information the Americans obtained during interrogations of suspected members of Al Qaeda and passed to the British helped thwart some terrorist attacks in Britain.

Britain pulled out of some planned covert operations with the Central Intelligence Agency, including a major one in 2005, when it was unable to obtain assurances that the actions would not result in rendition and inhumane treatment, the report said. Parts of the report dealing with these operations were redacted. When asked about the report, David Johnson, the deputy chief of mission at the American Embassy in London, said, "We have in all cases with respect to those issues operated with full respect of the sovereignty of our partners and allies."

The Intelligence and Security Committee Report on Rendition was completed and sent to Mr. Brown during his first days in office in late June. On Wednesday, he sent it to Parliament and it became a public document. (The report is available at www.cabinetoffice.gov.uk/intelligence.)

The report looks at America's rendition policy and the degree to which the British and intelligence agencies cooperated with it. It examines in more depth the case of Jamil el-Banna and Bisher al-Rawi. The two were arrested by the C.I.A. in Gambia, in 2002, on the basis of information provided by the British intelligence service, even though the British said clearly that they should not be arrested. "The case shows a lack of regard, on the part of the U.S., for U.K. concerns," the committee said.

After the two men were taken to Guantánamo Bay, Cuba, the British government did not push for their release. Both men were longtime British residents, but they were not British citizens, and therefore, the government said, it had no obligation to help them.

Mr. Rawi was released this year. Mr. Banna has been cleared for release by the Pentagon but remains at Guantánamo because the British will not allow him to return to Britain. The government says he should be sent to his native Jordan.

The report criticizes the British intelligence agencies for not having obtained assurances from the United States that detainees would be treated humanely, and for being slow to recognize that the rendition policy had changed since the Clinton administration. At that time, criminal suspects seized abroad were either brought to the United States for trial, or taken to a country where they were wanted on criminal charges. Under Mr. Bush, suspects seized abroad have been taken to third countries, not for trial, but for interrogation, raising the possibility of torture.

British intelligence agencies began having concerns about the rendition program and the use of C.I.A. prisons in mid-2003, following the case of Khalid Shaikh Mohammed, the alleged mastermind of the Sept. 11 attacks. He had been seized in Pakistan, and was being held by the C.I.A. at an unknown location. There were news reports that he was being subjected to "waterboarding," which involves putting a person under water, blindfolded, and making him think he is going to drown.

At first, the British did not believe that torture was being employed. "It never crossed my mind," a senior British intelligence official, who is not identified in the report, told the committee. "We are talking about the Americans, our closest ally. This now, with hindsight, may look naïve, but all I can say is that is what we thought at the time."

The concerns of the British intelligence agencies grew in early 2004, the report said, after the reports of the abuses at Abu Ghraib. The British intelligence agencies then began to seek "assurances on humane treatment" for any operation that might result in rendition.

The committee said it had "strong concerns" about a planned operation in early 2005. The operation had been approved by the British cabinet, but "subject to assurances on humane treatment and a time limit on detention," according to the report.

When these were not forthcoming, the operation was dropped, the report said. It is not clear whether the operation was dropped completely, or only the British participation.

Mark Mazzetti contributed reporting from Washington.

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Monday, July 30, 2007

LOS ANGELES TIMES

OPINION:

The erotic undertones of the administration's words on enhanced interrogations.

Why is it the more the White House refines the rules, the pervier things get?

By By A.S. Hamrah

July 30, 2007

When a group of 50 high school students visiting the White House in June handed President Bush a letter urging him to stop the torture of suspected terrorists, the president took their letter, read it, then told the students that "the United States does not torture."

By the time a president has alienated even high school overachievers, the cat is out of the bag; it is now general knowledge that the United States of America tortures people. We know that torture rarely if ever works. So what are government officials getting out of it?

Right before his recent colonoscopy, Bush announced that he had issued an executive order banning cruel and inhumane treatment in interrogations of suspected terrorists. This clarified interrogation guidelines he had issued last fall banning techniques that "shock the conscience." While the guidelines appear to be a step toward more concrete protection of human rights, the administration's constant rejiggering of the border between interrogation and torture reveals something else: a Sadean interest in the refinement of torture, a desire to define what is and is not "beyond the bounds of human decency," as the order puts it.

The claim that there is an element of sexual perversity in the government's interest in prisoner abuse may seem broad, but consider how officials discuss it. And when it comes

detainees because the court previously requested that cases be presented individually, Kadidal said.

Sunday, August 05, 2007

WASHINGTON POST

Report: Harsh Methods Used On 9/11 Suspect

Article Details Torture That Mastermind Said He Endured

By Josh White, Julie Tate and Joby Warrick
Washington Post Staff Writers
Sunday, August 5, 2007; A16

Khalid Sheik Mohammed, the alleged mastermind of the terrorist attacks of Sept. 11, 2001, was subjected to the CIA's harshest interrogation methods while he was held in secret prisons around the world for more than three years, part of an interrogation regimen that the International Committee of the Red Cross has called "tantamount to torture," according to a New Yorker article to be published on the magazine's Web site today.

In a 12-page article released yesterday, reporter Jane Mayer analyzes the development of the CIA's secret interrogation techniques and writes that a confidential ICRC report to the U.S. government details Mohammed's assertions that he was tortured by the CIA. Unnamed Washington sources told Mayer that Mohammed said he was held naked in his cell, questioned by female interrogators to humiliate him, attached to a dog leash and made to run into walls, and put in painful positions while chained to the floor. Mohammed also said he was "waterboarded" -- a simulated drowning -- in addition to being held in suffocating heat and painfully cold conditions. Mohammed's captors also told him shortly after his arrest in March 2003: "We're not going to kill you. But we're going to take you to the very brink of your death and back," the article said.

The CIA techniques have come under harsh criticism from human rights groups who argue that they are abusive and torturous, especially when used in combination over long periods of time. President Bush last month signed an executive order that requires the CIA to treat detainees humanely, but a classified list of techniques that are approved for the agency's use has been kept from public view.

The U.S. military services' Judges Advocate General have said in written responses to Congress that techniques such as waterboarding, forced removal of clothing and stress positions would be illegal and against international standards. The JAGs were not consulted before the CIA's development of its new rules.

Asked about the interrogation methods described in the article, CIA spokesman George Little responded, "The program is about more than specific methods of questioning. It's

about the use of the CIA's collected knowledge of al-Qaeda and its affiliates to elicit additional information from detainees, and to do so in accord with U.S. law."

Simon Schorno, an ICRC spokesman in Washington, declined to comment yesterday, citing the organization's confidentiality agreements.

Mohammed and 13 other detainees were transferred to the U.S. military detention facility in Guantanamo Bay, Cuba, from the CIA's secret detention program and its "black sites" last year. That transfer was the first time that the Bush administration acknowledged it had custody of the detainees and allowed ICRC representatives to be the first outsiders to interview them in years.

The ICRC report, which was given to CIA Director Gen. Michael V. Hayden and has had limited distribution within the administration's highest ranks, details interviews with the 14 detainees and assesses the CIA program. Sources familiar with the document have told The Washington Post that the report shows amazing similarities in terms of how the detainees were treated even though they were kept isolated from one another.

Sources also have told The Post that the detainees almost universally told the ICRC that they made up stories to get the harsh interrogations to stop, possibly leading U.S. officials astray with bad intelligence. Mohammed confessed to taking part in 31 of the world's most dramatic terrorist attacks when he appeared at a Combatant Status Review Tribunal hearing at Guantanamo, and he presented officers at the hearing with a document detailing his alleged torture at the hands of the CIA. That document has been classified.

"The United States of America should not be in the business of 'disappearing' people," said Rep. Jan Schakowsky (D-Ill.) , a member of the House Select Committee on Intelligence, referring to the use of secret prisons. "The notion is against what we stand for as Americans."

Wednesday, August 08, 2007

WASHINGTON POST

Britain Asks U.S. To Free 5 Detainees

U.K. Alters Policy on Foreign Residents

By Karla Adam
Special to The Washington Post
Wednesday, August 8, 2007; A10

LONDON, Aug. 7 -- The British government on Tuesday asked the Bush administration to release from the prison at Guantanamo Bay, Cuba, five foreign men who were longtime residents of Britain before being taken to the U.S. detention facility.

"This change of policy is extremely welcome especially if it signals a bigger change of approach on both sides of the Atlantic," James Welch, legal director of the human rights group Liberty, said in a statement. "Surely U.S. and U.K. governments need no further evidence that internment, kidnap and torture have been completely counterproductive in the struggle against terrorism."

Staff writer Josh White in Washington contributed to this report.

NEW YORK TIMES

August 8, 2007

Britain Asks to Take Back 5 Guantánamo Detainees

By RAYMOND BONNER

Page A3

LONDON, Aug. 7 — In a shift in policy, Britain on Tuesday asked the United States to release five detainees at Guantánamo Bay, Cuba, who have resided in Britain but are not citizens.

The Bush administration has said it has been looking for ways to reduce the Guantánamo population, and ultimately close the detention center there, which the request by the British might advance.

"We saw this as an opportunity to achieve ultimately the closure of Guantánamo," a British official said, speaking on the customary condition of anonymity.

Under former Prime Minister Tony Blair, the government had insisted that it had no obligation to assist the men because they were not British citizens, though all had legal residence status here.

A senior American official said the impetus for the policy shift had come from a lawsuit in Britain in which some of the remaining British detainees sought to force the government to intervene on their behalf.

The State Department appeared to welcome the move, which American and British officials said had been under discussion for several months, including during talks in July between the British foreign secretary, David Miliband, and Secretary of State Condoleezza Rice. The Bush administration has been working with other countries to reduce the detainee population at Guantánamo, the State Department spokesman, Sean McCormack, said in Washington on Tuesday. The base at Guantánamo now holds about 385 detainees.

At the same time, Mr. McCormack flagged a potentially contentious issue: what restrictions, if any, will be placed on the detainees if they are returned to Britain. Before

Asked why, then, the U.S. was not seeking to try them at President Bush's specially designed war-on-terror Military Commissions, the newly assigned Pentagon official replied:

``There is a difference many times between criminal evidence gathered on the battlefield and information gathered through intelligence sources."

Friday, August 10, 2007

WASHINGTON POST

Detainees Ruled Enemy Combatants

By Josh White
Washington Post Staff Writer
Friday, August 10, 2007; A02

All 14 high-value detainees who were transferred out of the CIA's secret prisons and into the U.S. detention facility in Guantanamo Bay, Cuba, last September have been deemed "enemy combatants" after their status tribunal hearings held earlier this year, Pentagon officials said yesterday.

While mostly a formality for this group of detainees -- which includes Khalid Sheik Mohammed, the alleged mastermind of the Sept. 11, 2001, attacks -- the official status could now give them access to civilian lawyers. Current law gives the detainees the opportunity to challenge the tribunal findings in U.S. federal court, as other Guantanamo detainees have begun to do.

To date, the only outsiders who have met with the 14 detainees since they were captured are members of the International Committee of the Red Cross, who have interviewed the men and have passed a report to top U.S. officials criticizing their harsh treatment while in the CIA facilities. The men are now held in a secure facility at Guantanamo, which is part of a U.S. military base.

The "enemy combatant" term has come under legal scrutiny in recent months as military judges have determined that only "unlawful enemy combatants" can go to trial before military commissions. Because the Combatant Status Review Tribunals that determine the status only have two choices -- "enemy combatant" or "no longer enemy combatant" -- it is unclear if these men can be tried at military commissions without a change in the law or a newly designed review.

Military prosecutors have indicated they would like to try at least some of the high-value detainees, but so far only one detainee has gone through the military commissions process, and he entered a plea before the trial started.

Also yesterday, Pentagon officials announced the transfer of six detainees out of Guantanamo Bay to the custody of their home countries. Five detainees were returned to Afghanistan and one to Bahrain -- the final Bahraini detainee at Guantanamo. There are approximately 355 detainees who remain at the facility, 80 of whom have been cleared for release or transfer. The Bush administration has been working to reduce the population at Guantanamo as it seeks options for closing the facility.

Wednesday, August 15, 2007

CHRISTIAN SCIENCE MONITOR

Christian Science Monitor
August 15, 2007
Pg. 1

Last of 3 parts

Beyond Padilla Terror Case, Huge Legal Issues

His detention and interrogation in the US raises basic constitutional questions.

By Warren Richey, Staff writer of The Christian Science Monitor

Miami -- Jose Padilla is known worldwide as the man who plotted with Al Qaeda to detonate a radiological "dirty bomb" in a major US city.

He allegedly presented his plan to top Al Qaeda leaders Abu Zubaydah and 9/11 mastermind Khalid Sheikh Mohammed. But according to US intelligence reports, both men doubted Mr. Padilla could pull off the attack.

For his part, Padilla told military interrogators that he never intended to carry it out. The former Taco Bell employee made the proposal in early 2002 as a way to justify fleeing Pakistan to avoid being sent to combat US forces in Afghanistan, says a government account.

So is Padilla – whose terror conspiracy case could go to a Miami jury Wednesday – a committed Al Qaeda operative, or merely a big-talking mujahideen wannabe who ultimately wanted to go home?

The answer to that question is important. Padilla isn't a run-of-the-mill enemy combatant apprehended on a foreign battlefield. He is a United States citizen, arrested on US soil, who was held in a military prison for 43 months and subjected to harsh interrogation techniques until he confessed.

Padilla was given due process to file a lawsuit challenging his treatment by the government. But as an enemy combatant, he was stripped of every other constitutional protection and right, including the right to know that a constitutional challenge had been filed on his behalf.

Many legal scholars and intelligence experts say Padilla's ordeal highlights the danger of a government that obtains information through secret, coercive means and then selectively releases some of it to justify its actions.

"This is the hallmark of an authoritarian state," says Larry Johnson, a former State Department counterterrorism official and former analyst at the Central Intelligence Agency.

"At many of the points at which the government said 'dirty bomb,' there was no opportunity to respond for the reason that Mr. Padilla was in solitary confinement and no lawyer had been able to talk to him about the charges," says Diane Amann, visiting law professor at the University of California, Berkeley.

The release of some details about Padilla and the dirty-bomb plot was justified by administration officials as supporting the public interest. But some information about Padilla and his interrogation must remain secret, officials say, to prevent revealing US intelligence sources and methods to Al Qaeda.

In the court of public opinion, Padilla stands convicted. His name is almost synonymous with dirty bomber. Yet, when it came time to put Padilla on trial, the government's case in Miami included no mention of a dirty bomb.

In his trial, Padilla is accused of providing material support to a terror group by attending an Al Qaeda training camp in Afghanistan. Federal prosecutors are using a broad conspiracy charge to allege that Padilla was a willing participant in a global terror campaign to wage violent jihad by murdering, kidnapping, and maiming people. Padilla denies it.

Although they seek a life sentence, prosecutors introduced no evidence of personal involvement by Padilla in planning or carrying out any specific terrorist plot or violent act.

There is a reason the government's case is so thin, legal analysts say.

If prosecutors brought the dirty-bomb plot or other alleged illegal actions by Padilla into the Miami case, it would open the door for courtroom scrutiny of the government's use of coercive interrogation techniques against Al Qaeda suspects, including Padilla. And that would have taken jurors deep into the shadowy underside of America's war on terror – a journey in Padilla's case that wends its way from his cell on an isolated wing of the US Naval Consolidated Brig in Charleston, S.C., through covert CIA interrogation sites overseas to an alleged torture chamber in Morocco.

This is a part of the war on terror the Bush administration would rather keep quiet. But details are emerging.

What they reveal is the aggressive – and at times, ruthless – pursuit of intelligence information, and the selective public release of some of that intelligence when it serves the administration's goals.

Plot hit airwaves in 2002

The Padilla story burst into the national consciousness in June 2002 when then-Attorney General John Ashcroft interrupted a trip to Moscow to make a dramatic televised announcement.

"We have disrupted an unfolding terrorist plot to attack the United States by exploding a radioactive 'dirty bomb,' " he said. Padilla was a "known terrorist" who had trained with Al Qaeda, studied how to wire explosives, and researched radiological dispersion devices, he told the world.

What he didn't say was that Padilla had been locked in a solitary confinement cell in New York City for the past month and that Padilla was only now being taken into military custody on the eve of a scheduled court hearing that would have required the government to legally justify Padilla's continued detention.

Instead, President Bush declared Padilla an "enemy combatant" who posed a "continuing, present, and grave danger" to US national security. The president said Padilla possessed intelligence information that could help prevent Al Qaeda attacks on the US.

Some officials offered a less dramatic take on the dirty-bomb plot than Mr. Ashcroft's. Then-Deputy Defense Secretary Paul Wolfowitz told the CBS "Early Show" that Padilla was "in the very early stages of his planning." He added, "I don't think there was actually a plot beyond some fairly loose talk."

Nonetheless, the dirty-bomb announcement sent shock waves across the country and immediately helped justify the use of coercive interrogation techniques against Padilla, analysts say. And it gave news reporters an irresistible tag line to link to Padilla's name – "dirty bomber."

The dirty-bomb stigma would later help the government battle constitutional challenges to Padilla's military detention, according to many legal scholars. And it helped rally public support for an array of tough counter-terror policies by feeding national anxiety about possible terrorist use of weapons of mass destruction.

Perhaps most important, these analysts say, the Padilla case presented US officials with a situation that resembled the often discussed "ticking time bomb" scenario. Under this hypothetical plot, a terrorist has been captured after planting a ticking time bomb in a busy public location. Officials face the moral dilemma of either using traditional

noncoercive interrogation methods that can take hours, days, or weeks and risk the deaths of thousands of innocent people or resort to brutal tactics to quickly obtain information to discover and defuse the bomb. Under the scenario, saving thousands of lives is viewed as the greater good that justifies using torture against the terrorist.

Mr. Bush has repeatedly stated that his administration does not use torture. But he has also acknowledged that in certain instances harsh interrogation methods have been authorized and used to help protect the nation.

Although civil libertarians protested Padilla's detention without charge, there was no significant public outcry.

Terror war innovation: long detention

The dirty-bomb allegation emerged from information obtained through a Bush administration innovation in the war on terror. That innovation called for the open-ended detention of terror suspects to facilitate aggressive, prolonged interrogations. The questioning was often accompanied by specially authorized harsh interrogation techniques, including isolation, sensory deprivation, and stress positions, among others, according to former interrogators.

No judge in an American courtroom could permit the introduction of information gathered under such coercive techniques, in part because they carry a high risk of producing unreliable results. If the technique is coercive enough, a subject will say whatever it takes to make it stop, former interrogators say. In addition, the rules of procedure and long-established constitutional protections forbid the use of coerced statements as evidence in a trial.

But the rules of the courtroom are not necessarily the rules of the interrogation room. Senior Bush administration officials made clear that once an individual is classified as an enemy combatant, he is no longer entitled to the protections of the Geneva Conventions and the US Constitution.

Because Padilla was held in solitary confinement under secret conditions, no one was aware of what was happening to him. The initial constitutional debate revolved around whether Padilla had a right to consult a lawyer or whether the government could hold him in isolation indefinitely.

In February 2004, then White House Counsel Alberto Gonzales told a meeting of the American Bar Association that citizens who take up arms against America don't deserve legal counsel. Any individual rights, he said, "must give way to the national security needs of this country to gather intelligence from captured enemy combatants."

Mr. Gonzales added, "The stream of intelligence would quickly dry up if the enemy combatants were allowed contact with outsiders during the course of an ongoing debriefing. The result would be the failure to uncover information that could prevent

attacks," he said. "This is an intolerable cost, and we do not believe it is one required by the Constitution."

Two months later, lawyers were arguing Padilla's case before the US Supreme Court. Justice Ruth Bader Ginsburg wanted to know if there was any check on the powers being claimed by the executive branch to collect intelligence through coercive interrogations. "Suppose the executive says, 'Mild torture, we think, will help get this information'?" she asked. "Some systems do that to get information."

"Well, our executive doesn't," said then-Deputy Solicitor General Paul Clement.

A few minutes later, Justice Antonin Scalia, an anchor on the court's conservative wing, said he found nothing in his research to support Bush's assertion of unchecked authority to wage the war on terror. "It doesn't say you can do whatever it takes to win the war," he said.

His comment raised a huge red flag for the administration. That evening, coincidentally, the CBS program "Sixty Minutes II" broadcast the first images of detainee abuses at Abu Ghraib in Iraq.

A month later, at the height of the Abu Ghraib scandal and with Padilla's case pending at the Supreme Court, the Justice Department held a highly unusual press conference. Officials announced that after two years of interrogation, Padilla had confessed to involvement in the dirty-bomb plot and other activities with Al Qaeda.

"We now know much of what Jose Padilla knows. And what we have learned confirms that the president of the United States made the right call," said James Comey, then deputy attorney general at the Justice Department.

Padilla's Supreme Court case was dismissed by a 5-to-4 vote on a technicality. The justices said Padilla's lawyers should have filed their suit in South Carolina rather than New York. Scalia provided the key fifth vote in a decision that effectively allowed the administration to continue to hold and question Padilla in the brig.

Padilla's lawyers filed a new suit in South Carolina and, by 2005, were again at the steps of the Supreme Court. But rather than allow an airing of the issue at a high court that many analysts believe to be sympathetic to Padilla, the administration transferred him from military custody into the criminal-justice system.

With jury deliberations about to begin in Miami, legal scholars expect more major twists and turns in the Padilla saga. Among moves to watch:

•If Padilla is acquitted, will the government try to return him to the brig?

•If Padilla's lawyers file a civil suit to try to get his military detention case before the Supreme Court again, will the government argue that such a suit must be immediately dismissed to avoid revealing state secrets?

When Federal Bureau of Investigation agents first took Padilla into custody, administration officials thought they had nabbed an intelligence prize. Five years later, legal and intelligence analysts say, these claims look increasingly hollow as the administration maneuvers to keep Padilla from having a meaningful day in court. Its tactics are also keeping the public from knowing the truth about Padilla and the dirty-bomb plot, they say.

"You don't go on the Internet and spend a day reading and become an expert on how to put together a dirty bomb," says Mr. Johnson, the counterterrorism expert. "I'm not knocking folks who work at Taco Bell, but that's not a place you'd go to ramp up your skills" as a nuclear jihadist.

Do presidents have the right to hold citizens indefinitely?

When Jose Padilla's case came before the US Supreme Court in 2004, the issue was whether the president had constitutional authority to hold without charge an American citizen arrested on US soil. The case was tossed out on a technicality. But on the same day that the Padilla outcome was announced, the court released its decision in a similar case of a US citizen captured on an Afghanistan battlefield.

In Hamdi v. Rumsfeld, a four-justice plurality ruled that the president could hold American citizens as enemy combatants in the US provided they were given a fair hearing to challenge the government's actions.

Justice Antonin Scalia believed this approach was deeply flawed. Although he voted with the majority to dismiss Mr. Padilla's case, Justice Scalia wrote a 27-page dissent in the Hamdi case.

If a citizen takes up arms against the US in a time of war, he or she should be tried for treason, the justice wrote. If fast-developing events prevent such a prosecution, Congress has the power to suspend habeas corpus and other protections of the Constitution temporarily. But the commander in chief's authority alone is not enough to accomplish this, Scalia wrote.

The Founding Fathers distrusted military power permanently at the president's disposal, Scalia said. The Founders wrote a series of safeguards into the Constitution, dividing the power over the military between the executive and legislative branches.

"A view of the Constitution that gives the executive authority to use military force rather than the force of law against citizens on American soil flies in the face of the mistrust that engendered these provisions," Scalia wrote.

Although Scalia's view has not carried the day at the high court, it has sparked intense speculation about what might happen should the justices once again consider Padilla's case. Many high court analysts believe five or more justices would be sympathetic to arguments raised by Padilla's lawyers. But no similar case has arrived at the court.

Should the court address the issue in a definitive way, the answer would produce a constitutional landmark.

The evidence for Padilla's dirty bomb plot

The underlying information about Jose Padilla's alleged dirty-bomb plot came primarily from three individuals, according to a Federal Bureau of Investigation affidavit on file in Mr. Padilla's Miami case. All three were subject to harsh interrogation techniques, and all three have subsequently charged that they were tortured at secret Central Intelligence Agency interrogation sites overseas. They include two of the highest-profile terror suspects in US custody at the US Naval Base at Guantánamo Bay, Cuba – Khalid Sheikh Mohammed and Abu Zubaydah.

• Mr. Mohammed made a public statement at Guantánamo earlier this year claiming to be in charge of "dirty-bomb operations on American soil."

• Mr. Zubaydah reportedly talked about the plot early on in his interrogation.

• The third individual, an Ethiopian refugee to Britain named Binyam Mohammed, does not deny making statements about Padilla and a dirty-bomb plot, according to his lawyer, Clive Stafford Smith. But Mr. Mohammed says the statements were made to get interrogators in Pakistan, Morocco, and Afghanistan to leave him alone. In Morocco, he claims interrogators used a scalpel to make 20 to 30 small cuts on his genitals every three to four weeks for months, Mr. Smith says. "Binyam says he never met Padilla and doesn't know who he is."

• Padilla's statements in the brig are another source of evidence. He admitted making the statements about proposing the plot, but US intelligence reports say he insisted that he never intended to carry out an attack.

• Padilla also provided information about an alleged plot to blow up apartment building by leaving gas stoves on. Unlike the dirty-bomb plot, this kind of crude attack could be within Padilla's capabilities, analysts say. In addition, Padilla is said to have admitted to having contact with senior Al Qaeda leaders, suggesting that even if he wasn't a member of the terror group he was perhaps a trusted associate.

Analysts say that given the interrogation methods used against Padilla and the others, even if US intelligence officials believe the information is reliable, it is unlikely to ever be admissible in an American court.

WASHINGTON POST

APA Rules on Interrogation Abuse

Psychologists' Group Bars Member Participation in Certain Techniques

By Shankar Vedantam
Washington Post Staff Writer
Monday, August 20, 2007; A03

SAN FRANCISCO, Aug. 19 -- The American Psychological Association ruled Sunday that psychologists can no longer be associated with several interrogation techniques that have been used against terrorism detainees at U.S. facilities because the methods are immoral, psychologically damaging and counterproductive in eliciting useful information.

Psychologists who witness interrogators using mock executions, simulated drowning, sexual and religious humiliation, stress positions or sleep deprivation are required to intervene to stop such abuse, to report the activities to superiors and to report the involvement of any other psychologists in such activities to the association. It could then strip those professionals of their membership.

The move by the APA, the nation's largest association of behavioral experts, is a rebuke of the Bush administration's anti-terrorism policies. Many of the techniques deemed unacceptable have been widely reported to be used at military facilities at Guantanamo Bay, Cuba, as well as in Iraq and at various CIA detention centers.

But it also has practical effects. Psychologists who have their membership revoked can lose their license, since many state licensing boards require psychologists to be in good standing with the national association.

Also ruled out of bounds are the exploitation of prisoners' phobias, the use of mind-altering drugs, hooding, forced nakedness, the use of dogs to frighten detainees, exposing prisoners to extreme heat and cold, physical assault and threatening the use of such techniques against a prisoner or a prisoner's family.

Several psychologists declared that these methods are not only physically and psychologically damaging to both inmates and captors but also counterproductive for obtaining useful intelligence. Data from several wars and from a range of criminal justice settings show that once prisoners start to fear for their lives and safety, they start trying to guess what their captors want to hear, and the resulting bad information is often worse than having no information at all, several psychologists said.

The move follows similar decisions by other professional associations, such as the American Medical Association and the American Psychiatric Association. But psychologists play an unusual role in that they widely serve both in a clinical role --

involving the treatment of sick prisoners -- and as researchers of human behavior. The decision came after days of heated protests at the 115th annual meeting of the APA. Protesters, some wearing orange jumpsuits, urged the experts to disassociate themselves entirely from the Bush administration's detention facilities.

The association decided against a blanket measure that would have kept psychologists from working in interrogation facilities altogether. Many critics of that measure, including several government experts, said that psychologists play an essential role in these settings, both in terms of safeguarding detainees and in helping to debunk the belief that coercion and humiliation are effective interrogation tactics.

"If we lose psychologists from these facilities, people are going to die," said U.S. Army Col. Larry James, chief of the department of psychology at the Tripler Army Medical Center in Honolulu, just before the APA's Council of Representatives took a vote.

There were several references to the hit television show "24" in the psychologists' debate. It routinely depicts abusive techniques used to elicit information from prisoners, usually in "ticking time bomb" scenarios.

"I find the interrogation scenes in the television show '24' repulsive, absurd and even idiotic," said Katherine Sherwood, a civilian interrogator for the Department of Defense who spoke at the convention. "If I am talking to a bombmaker, I am not trying to get him to tell me he is a bombmaker. I want him to tell me what students he trained, what their nationalities are, what materials he used and who was funding the project."

Such Hollywood scenarios, Sherwood said, fail to recognize that the central utility of interrogations is in building a lattice of interconnections that can inform military and civilian policymakers.

"Interrogations are about gathering breadth or depth of information," Sherwood said. "It is not about getting to a single moment of a confession."

Several other experts at the psychologists' convention, including Stephen Behnke, director of the APA's ethics office, said successful interrogations are almost always about building a relationship with a prisoner -- a relationship that is impossible to build when the prisoner is being subjected to stress, humiliation or abuse.

Interrogation policies at U.S. detention facilities went astray when officials decided to apply techniques developed to train U.S. troops to deal with torture if they were captured, said Air Force Reserve Col. Steven Kleinman.

Such techniques, developed under a military program known as SERE (Survival, Evasion, Resistance and Escape), were meant to toughen soldiers against abuse. The techniques were never designed to help interrogators elicit useful information from prisoners, added Eric Anders, a psychoanalyst at the convention who is a graduate of the SERE program.

Neil Altman, a clinical psychologist at New York University, who had pushed to get psychologists out of detention facilities altogether, praised the APA for laying out what was prohibited. But he said the measure still allows psychologists to remain in facilities that are inherently "cruel, inhumane and degrading."

Leonard S. Rubenstein, executive director of the group Physicians for Human Rights, said the psychologists had fooled themselves into thinking their continued presence at detention facilities would make a difference when they were actually playing only a support role.

"It is unfortunate the APA did not recognize you cannot practice ethical psychology in interrogation settings in the context of pervasive violation of human rights," he said.

NEW YORK TIMES

August 25, 2007

Military Says It Can Repair Guantánamo Trial Defects

By WILLIAM GLABERSON

Page A9

WASHINGTON, Aug. 24 — In an effort to revive the war crimes trials at Guantánamo, military prosecutors argued on Friday in a special appeals court that defects in their cases identified by two military judges in June could be repaired and that the prosecutions could proceed.

"We're attempting to start the trials," said a military prosecutor, Francis Gilligan, a retired Army colonel. "We've sort of had a judicial stall."

The entire system at Guantánamo was halted in June when the two military judges ruled that terrorism detainees there had not been properly declared unlawful enemy combatants. The judges said that was a requirement of the 2006 law that set up the system to try detainees.

The standstill has been a frustration for Bush administration officials who have struggled to establish a functioning war crimes system. It has also been a boon to critics who have described the legal system at the United States naval base at Guantánamo Bay, Cuba, as a patchwork of invented procedures intended to strip detainees of fundamental rights.

"This is about the credibility of the United States and the perception around the world of our commitment to the rule of law," a military defense lawyer, Lt. Cmdr. William C. Kuebler, told reporters after the hearing. "This is a lawless process."

1984 Convention Against Torture -- from forcibly sending anyone back to a country where there are substantial grounds for believing they would be tortured.

Haphazardly shipping detainees such as Hajji and Lagha to countries with widely known records of torture is hardly the way to go about closing Guantanamo Bay. The administration could shut down the camp responsibly by alerting the detainees and their lawyers about pending home-country returns and giving them an opportunity to challenge such transfers, including the reliability of any diplomatic assurances of humane treatment, before a federal court. Most Guantanamo detainees won't want to do anything to slow their return home, but such a process would add an invaluable protection for those who can demonstrate a credible fear of torture or abuse back home.

Guantanamo Bay needs to be emptied, but it must be done justly and humanely. Otherwise, Washington could end up condemning the detainees to a fate worse than Guantanamo. This would only further fray the tattered global reputation that the United States so desperately needs to repair.

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NEW YORK TIMES

September 2, 2007

Legal Battle Resuming on Guantánamo Detainees

By LINDA GREENHOUSE

Page A11

WASHINGTON, Sept. 1 — The legal battle over the rights of the hundreds of men held as enemy combatants at Guantánamo Bay has lasted more than five years, including two rounds in the Supreme Court. Now, as the parties prepare for their next Supreme Court confrontation later this fall, the arguments have come full circle to where they began: over the role of the federal courts.

The Military Commissions Act of 2006, which Congress passed in its final weeks under Republican control in order to negate the Supreme Court's most recent ruling on behalf of a Guantánamo detainee, stripped all courts of jurisdiction "to hear or consider" challenges to any alien detainee's continued detention. In a surprising about-face the day after it concluded its term in June, the Supreme Court accepted renewed appeals on behalf of two groups of detainees and agreed to decide whether the measure is constitutional.

The ruling was rendered by a three-judge panel of the appeals court, and the government is asking the full 10-member court to reconsider that decision. To do otherwise, Justice Department attorneys wrote, would "severely restrict" the government's ability to collect intelligence and detect plots.

Each of the officials' declarations alleges that providing such classified information to detainees' lawyers is likely to lead to inadvertent disclosure of secrets, and harm the country's ability to gather intelligence.

Thursday, September 13, 2007

WASHINGTON POST

Senate Intelligence Panel Seeks CIA Nominee's Withdrawal

By Joby Warrick
Washington Post Staff Writer
Thursday, September 13, 2007; A11

Members of the Senate intelligence committee have requested the withdrawal of the Bush administration's choice for CIA general counsel, acknowledging that John Rizzo's nomination has stalled because of concerns about his views on the treatment of terrorism suspects.

The decision followed a private meeting this week in which committee leaders concluded that the troubled nomination could not overcome opposition among Democratic members. It comes less than a month after a key member, Sen. Ron Wyden (D-Ore.), announced his intention to block the nomination indefinitely.

Rizzo, a career CIA lawyer, has drawn fire from Democrats and human rights groups because of his support for Bush administration legal doctrines permitting "enhanced interrogation" of terrorism detainees in CIA custody.

Two U.S. officials familiar with the committee's decision said the request for Rizzo's withdrawal has been conveyed to Gen. Michael Hayden, the CIA's director. The officials, who insisted on anonymity because of the sensitive nature of the committee's discussions, said lawmakers had hoped to avoid the formality of a negative vote on Rizzo's nomination out of respect for his long service at the intelligence agency. Rizzo has served with the CIA since 1976 and acted as interim general counsel from 2001 to 2002 and from August 2004 to the present.

CIA officials declined comment on whether a formal request had been received, but a spokesman said Hayden continues to support Rizzo's nomination. "Director Hayden

believes Mr. Rizzo is a fine lawyer and is well-qualified for the post," agency spokesman Mark Mansfield said. "This has been, and continues to be, his view."

The White House also signaled its continued support for Rizzo. "We continue to support Mr. Rizzo's nomination and believe he is well-qualified to serve in this important position," spokeswoman Emily Lawrimore said.

Wyden declined yesterday to discuss the status of Rizzo's nomination but said he remains strongly opposed to it. "It is clearly not in the interest of the country and not in the interest of the many hardworking professionals at the CIA," Wyden said in a phone interview. He said Rizzo's views on interrogation are "light-years from what we need."

During his confirmation hearing in June, Rizzo testified that he did not object to an administration memo in 2002 that deemed legal some extremely harsh interrogation techniques for CIA detainees. According to the memo, a technique was not considered to be torture unless it inflicted pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of body function, or even death." Rizzo testified that the legal opinion "on the whole was a reasonable one."

Rizzo also said the CIA does not condone torture, and stressed that the agency's actions must remain "in full compliance with the Constitution, U.S. law and U.S. obligations under international treaties."

Rizzo's positions and his support for harsh interrogations conducted by the CIA at secret prisons have made him a target of human rights and civil liberties groups. On Tuesday, a coalition of organizations issued a statement urging the Senate to reject Rizzo's nomination. "When Mr. Rizzo failed to object to legal arguments that defended torture, he failed to protect his clients -- the president, his CIA colleagues and the American people," said the statement signed by Human Rights Watch, Physicians for Human Rights and three other groups.

Researcher Julie Tate contributed to this report.

Tuesday, September 18, 2007

WASHINGTON POST

EDITORIAL:

Justice for Detainees

Congress can right a wrong in the war on terrorism.

Tuesday, September 18, 2007; A18

Prosecutors say that making a deal with Mr. Hamdan would be a blow to the government's credibility. "Think of our only other 'success' in this -- David Hicks," one prosecutor says. "How is that a success for the United States government? How does that justify Guantanamo?"

Col. Davis's separate complaint with the Pentagon inspector general is still pending, officials say.

Friday, September 28, 2007

WASHINGTON POST

U.S. to Allow Key Detainees to Request Lawyers

14 Terrorism Suspects Given Legal Forms at Guantanamo

By Josh White and Joby Warrick
Washington Post Staff Writers
Friday, September 28, 2007; A01

Fourteen "high-value" terrorism suspects who were transferred to Guantanamo Bay, Cuba, from secret CIA prisons last year have been formally offered the right to request lawyers, a move that could allow them to join other detainees in challenging their status as enemy combatants in a U.S. appellate court.

The move, confirmed by Defense Department officials, will allow the suspects their first contact with anyone other than their captors and representatives of the International Committee of the Red Cross since they were taken into custody.

The prisoners, who include Khalid Sheikh Mohammed, the alleged mastermind of the Sept. 11, 2001, attacks, have not had access to lawyers during their year at Guantanamo Bay or while they were held, for varying lengths of time, at the secret CIA sites abroad. They were entitled to military "personal representatives" to assist them during the administrative process that determined whether they are enemy combatants.

U.S. officials have argued in court papers against granting lawyers access to the high-value detainees without special security rules, fearing that attorney-client conversations could reveal classified elements of the CIA's secret detention program and its controversial interrogation tactics.

Defense officials gave the detainees "Legal Representation Request" forms during the last week of August and the first week of September, and sources familiar with the process said at least four detainees have requested attorneys.

The form, referring to the Combatant Status Review Tribunal, allows the detainees to say whether they "wish to have a civilian lawyer represent me and assist me with filing a

petition to challenge the CSRT determination that I am an Enemy Combatant." The Detainee Treatment Act, enacted in late 2005, gives Guantanamo Bay captives the right to challenge their enemy-combatant designations in the U.S. Court of Appeals for the District of Columbia Circuit.

The form distributed to the high-value suspects also allows them to request that the American Bar Association "find a lawyer who will represent my best interests, without charge."

William H. Neukom, the association's president, criticized the use of the organization's name on the form, telling government lawyers yesterday that his organization does not want to "lend support and credibility to such an inadequate review scheme."

A Pentagon spokesman said this week that the detainees, like all others at Guantanamo, are provided information on how to request counsel.

"These counsel will be permitted to visit the detainee and engage in confidential written communications with the detainee once the counsel has obtained the necessary security clearance" and agrees to certain special court rules, said Navy Cmdr. J.D. Gordon. One Pentagon official warned that those lawyers will have to undergo especially thorough background checks before they are allowed to see the high-value captives.

Defense and intelligence officials said the decision to allow legal representation does not represent a shift in policy.

"It was the intent and the plan all along that they would have a right to counsel," said a senior intelligence official, who insisted on anonymity because many details of the detention program remain classified. The official said the concerns about protecting sensitive government information apply equally to the 14 men and the approximately 325 other detainees at Guantanamo Bay.

"The goal here is to have the trials open and public to the greatest extent consistent with protecting classified information," the official said.

But lawyers and advocacy groups pressing for legal rights for the detainees contend that there has been a change in tone since last fall, when Justice Department lawyers argued that the detainees might reveal details about their captivity that may "reasonably be expected to cause extremely grave damage" to national security, according to an Oct. 26 court filing.

One of the 14 special detainees, Majid Khan, 27, who went to high school in the Baltimore area, filled out his form on Sept. 5. He signed the document and added a short handwritten note at the bottom of the page. That note and the fact that the U.S. military had him sign the document have riled defense lawyers who have been attempting to represent Khan for more than a year at the request of his family but who have been denied access to him.

In the note, Khan said that he believes he already has an attorney at the Center for Constitutional Rights but that he has never received any official correspondence from that lawyer. The lawyer, Gitanjali Gutierrez, said yesterday that she has written Khan letters over the past year that clearly did not reach him.

"Please send me a lawyer or representative who can brief me with my options," Khan wrote, according to a copy of the form provided to The Washington Post by the Center for Constitutional Rights. "Also please, if you can send me basic introduction criminal law books with all law terms, etc. Also I would like to know what has media said about me and full copy of tribunal CSRT about me, which was available on the Internet. (Thanks in advance)."

The government alleges that Khan took orders from Mohammed, and was asked to research how to poison U.S. reservoirs and how to blow up U.S. gas stations.

Gutierrez said she thinks the effort to connect detainees with lawyers is the Defense Department "trying to put some gloss on the idea that this review process is legitimate and the high-value detainees are being given access to the courts."

"Now it's their opportunity to turn it from a gloss to a reality," Gutierrez said. "But we'll see if they come through."

Staff researcher Julie Tate contributed to this report.

NEW YORK TIMES

September 29, 2007

A New Threat at Guantánamo: Smuggled Speedos and Briefs

By RAYMOND BONNER

Page A5

LONDON, Sept. 28 — Clive Stafford Smith is accustomed to prison bureaucracies and their censorship, having represented men on death row for many years. As one of the leading lawyers for the inmates at Guantánamo Bay, Cuba, he has been prohibited from giving his clients a range of reading material, from Runner's World to Arabic translations of "Cinderella."

But Mr. Stafford Smith, who lives in England, was not prepared for a letter he received a few weeks ago. A commander at Guantánamo advised him that authorities were investigating "contraband being surreptitiously being brought into the camp."

Important to note are the tactical differences between criminal investigations and arrests as opposed to counterterrorist operations.

Our military and intelligence agency personnel should not be required when prosecuting an operation to provide foreign terrorists the same protections expected in a civil court. Capturing a terrorist during a dynamic and high-risk operation overseas does not lend itself to the same evidence handling procedures consistent with arresting a suspect who is subject to the civilian legal process.

This past July the Court of Appeals for the D.C. Circuit Court issued an opinion with respect to Combatant Status Review Tribunals that demonstrated the existing process provides detainees in Guantanamo with an unprecedented, robust review of their status as enemy combatants. The Bismullah case is just the latest example of the courts upholding the congressionally mandated detainee policy. We should not be going down this path of granting additional rights to foreign terrorist detainees. We need to give this current system a chance to work.

Jim Saxton, New Jersey Republican, is a member of the U.S. House of Representatives.

NEW YORK TIMES

October 4, 2007

Secret U.S. Endorsement of Severe Interrogations

By SCOTT SHANE, DAVID JOHNSTON and JAMES RISEN

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WASHINGTON, Oct. 3 — When the Justice Department publicly declared torture "abhorrent" in a legal opinion in December 2004, the Bush administration appeared to have abandoned its assertion of nearly unlimited presidential authority to order brutal interrogations.

But soon after Alberto R. Gonzales's arrival as attorney general in February 2005, the Justice Department issued another opinion, this one in secret. It was a very different document, according to officials briefed on it, an expansive endorsement of the harshest interrogation techniques ever used by the Central Intelligence Agency.

The new opinion, the officials said, for the first time provided explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures.

Mr. Gonzales approved the legal memorandum on "combined effects" over the objections of James B. Comey, the deputy attorney general, who was leaving his job after bruising clashes with the White House. Disagreeing with what he viewed as the opinion's

overreaching legal reasoning, Mr. Comey told colleagues at the department that they would all be "ashamed" when the world eventually learned of it.

Later that year, as Congress moved toward outlawing "cruel, inhuman and degrading" treatment, the Justice Department issued another secret opinion, one most lawmakers did not know existed, current and former officials said. The Justice Department document declared that none of the C.I.A. interrogation methods violated that standard.

The classified opinions, never previously disclosed, are a hidden legacy of President Bush's second term and Mr. Gonzales's tenure at the Justice Department, where he moved quickly to align it with the White House after a 2004 rebellion by staff lawyers that had thrown policies on surveillance and detention into turmoil.

Congress and the Supreme Court have intervened repeatedly in the last two years to impose limits on interrogations, and the administration has responded as a policy matter by dropping the most extreme techniques. But the 2005 Justice Department opinions remain in effect, and their legal conclusions have been confirmed by several more recent memorandums, officials said. They show how the White House has succeeded in preserving the broadest possible legal latitude for harsh tactics.

A White House spokesman, Tony Fratto, said Wednesday that he would not comment on any legal opinion related to interrogations. Mr. Fratto added, "We have gone to great lengths, including statutory efforts and the recent executive order, to make it clear that the intelligence community and our practices fall within U.S. law" and international agreements.

More than two dozen current and former officials involved in counterterrorism were interviewed over the past three months about the opinions and the deliberations on interrogation policy. Most officials would speak only on the condition of anonymity because of the secrecy of the documents and the C.I.A. detention operations they govern.

When he stepped down as attorney general in September after widespread criticism of the firing of federal prosecutors and withering attacks on his credibility, Mr. Gonzales talked proudly in a farewell speech of how his department was "a place of inspiration" that had balanced the necessary flexibility to conduct the war on terrorism with the need to uphold the law.

Associates at the Justice Department said Mr. Gonzales seldom resisted pressure from Vice President Dick Cheney and David S. Addington, Mr. Cheney's counsel, to endorse policies that they saw as effective in safeguarding Americans, even though the practices brought the condemnation of other governments, human rights groups and Democrats in Congress. Critics say Mr. Gonzales turned his agency into an arm of the Bush White House, undermining the department's independence.

The interrogation opinions were signed by Steven G. Bradbury, who since 2005 has headed the elite Office of Legal Counsel at the Justice Department. He has become a

frequent public defender of the National Security Agency's domestic surveillance program and detention policies at Congressional hearings and press briefings, a role that some legal scholars say is at odds with the office's tradition of avoiding political advocacy.

Mr. Bradbury defended the work of his office as the government's most authoritative interpreter of the law. "In my experience, the White House has not told me how an opinion should come out," he said in an interview. "The White House has accepted and respected our opinions, even when they didn't like the advice being given."

The debate over how terrorism suspects should be held and questioned began shortly after the Sept. 11, 2001, attacks, when the Bush administration adopted secret detention and coercive interrogation, both practices the United States had previously denounced when used by other countries. It adopted the new measures without public debate or Congressional vote, choosing to rely instead on the confidential legal advice of a handful of appointees.

The policies set off bruising internal battles, pitting administration moderates against hard-liners, military lawyers against Pentagon chiefs and, most surprising, a handful of conservative lawyers at the Justice Department against the White House in the stunning mutiny of 2004. But under Mr. Gonzales and Mr. Bradbury, the Justice Department was wrenched back into line with the White House.

After the Supreme Court ruled in 2006 that the Geneva Conventions applied to prisoners who belonged to Al Qaeda, President Bush for the first time acknowledged the C.I.A.'s secret jails and ordered their inmates moved to Guantánamo Bay, Cuba. The C.I.A. halted its use of waterboarding, or pouring water over a bound prisoner's cloth-covered face to induce fear of suffocation.

But in July, after a monthlong debate inside the administration, President Bush signed a new executive order authorizing the use of what the administration calls "enhanced" interrogation techniques — the details remain secret — and officials say the C.I.A. again is holding prisoners in "black sites" overseas. The executive order was reviewed and approved by Mr. Bradbury and the Office of Legal Counsel.

Douglas W. Kmiec, who headed that office under President Ronald Reagan and the first President George Bush and wrote a book about it, said he believed the intense pressures of the campaign against terrorism have warped the office's proper role.

"The office was designed to insulate against any need to be an advocate," said Mr. Kmiec, now a conservative scholar at Pepperdine University law school. But at times in recent years, Mr. Kmiec said, the office, headed by William H. Rehnquist and Antonin Scalia before they served on the Supreme Court, "lost its ability to say no."

"The approach changed dramatically with opinions on the war on terror," Mr. Kmiec said. "The office became an advocate for the president's policies."

From the secret sites in Afghanistan, Thailand and Eastern Europe where C.I.A. teams held Qaeda terrorists, questions for the lawyers at C.I.A. headquarters arrived daily. Nervous interrogators wanted to know: Are we breaking the laws against torture?

The Bush administration had entered uncharted legal territory beginning in 2002, holding prisoners outside the scrutiny of the International Red Cross and subjecting them to harrowing pressure tactics. They included slaps to the head; hours held naked in a frigid cell; days and nights without sleep while battered by thundering rock music; long periods manacled in stress positions; or the ultimate, waterboarding.

Never in history had the United States authorized such tactics. While President Bush and C.I.A. officials would later insist that the harsh measures produced crucial intelligence, many veteran interrogators, psychologists and other experts say that less coercive methods are equally or more effective.

With virtually no experience in interrogations, the C.I.A. had constructed its program in a few harried months by consulting Egyptian and Saudi intelligence officials and copying Soviet interrogation methods long used in training American servicemen to withstand capture. The agency officers questioning prisoners constantly sought advice from lawyers thousands of miles away.

"We were getting asked about combinations — 'Can we do this and this at the same time?'" recalled Paul C. Kelbaugh, a veteran intelligence lawyer who was deputy legal counsel at the C.I.A.'s Counterterrorist Center from 2001 to 2003.

Interrogators were worried that even approved techniques had such a painful, multiplying effect when combined that they might cross the legal line, Mr. Kelbaugh said. He recalled agency officers asking: "These approved techniques, say, withholding food, and 50-degree temperature — can they be combined?" Or "Do I have to do the less extreme before the more extreme?"

The questions came more frequently, Mr. Kelbaugh said, as word spread about a C.I.A. inspector general inquiry unrelated to the war on terrorism. Some veteran C.I.A. officers came under scrutiny because they were advisers to Peruvian officers who in early 2001 shot down a missionary flight they had mistaken for a drug-running aircraft. The Americans were not charged with crimes, but they endured three years of investigation, saw their careers derailed and ran up big legal bills.

That experience shook the Qaeda interrogation team, Mr. Kelbaugh said. "You think you're making a difference and maybe saving 3,000 American lives from the next attack. And someone tells you, 'Well, that guidance was a little vague, and the inspector general wants to talk to you,'" he recalled. "We couldn't tell them, 'Do the best you can,' because the people who did the best they could in Peru were looking at a grand jury."

Mr. Kelbaugh said the questions were sometimes close calls that required consultation with the Justice Department. But in August 2002, the department provided a sweeping legal justification for even the harshest tactics.

That opinion, which would become infamous as "the torture memo" after it was leaked, was written largely by John Yoo, a young Berkeley law professor serving in the Office of Legal Counsel. His broad views of presidential power were shared by Mr. Addington, the vice president's adviser. Their close alliance provoked John Ashcroft, then the attorney general, to refer privately to Mr. Yoo as Dr. Yes for his seeming eagerness to give the White House whatever legal justifications it desired, a Justice Department official recalled.

Mr. Yoo's memorandum said no interrogation practices were illegal unless they produced pain equivalent to organ failure or "even death." A second memo produced at the same time spelled out the approved practices and how often or how long they could be used.

Despite that guidance, in March 2003, when the C.I.A. caught Khalid Sheikh Mohammed, the chief planner of the Sept. 11 attacks, interrogators were again haunted by uncertainty. Former intelligence officials, for the first time, disclosed that a variety of tough interrogation tactics were used about 100 times over two weeks on Mr. Mohammed. Agency officials then ordered a halt, fearing the combined assault might have amounted to illegal torture. A C.I.A. spokesman, George Little, declined to discuss the handling of Mr. Mohammed. Mr. Little said the program "has been conducted lawfully, with great care and close review" and "has helped our country disrupt terrorist plots and save innocent lives."

"The agency has always sought a clear legal framework, conducting the program in strict accord with U.S. law, and protecting the officers who go face-to-face with ruthless terrorists," Mr. Little added.

Some intelligence officers say that many of Mr. Mohammed's statements proved exaggerated or false. One problem, a former senior agency official said, was that the C.I.A.'s initial interrogators were not experts on Mr. Mohammed's background or Al Qaeda, and it took about a month to get such an expert to the secret prison. The former official said many C.I.A. professionals now believe patient, repeated questioning by well-informed experts is more effective than harsh physical pressure.

Other intelligence officers, including Mr. Kelbaugh, insist that the harsh treatment produced invaluable insights into Al Qaeda's structure and plans.

"We leaned in pretty hard on K.S.M.," Mr. Kelbaugh said, referring to Mr. Mohammed. "We were getting good information, and then they were told: 'Slow it down. It may not be correct. Wait for some legal clarification.'"

The doubts at the C.I.A. proved prophetic. In late 2003, after Mr. Yoo left the Justice Department, the new head of the Office of Legal Counsel, Jack Goldsmith, began

reviewing his work, which he found deeply flawed. Mr. Goldsmith infuriated White House officials, first by rejecting part of the National Security Agency's surveillance program, prompting the threat of mass resignations by top Justice Department officials, including Mr. Ashcroft and Mr. Comey, and a showdown at the attorney general's hospital bedside.

Then, in June 2004, Mr. Goldsmith formally withdrew the August 2002 Yoo memorandum on interrogation, which he found overreaching and poorly reasoned. Mr. Goldsmith left the Justice Department soon afterward. He first spoke at length about his dissenting views to The New York Times last month, and testified before the Senate Judiciary Committee on Tuesday.

Six months later, the Justice Department quietly posted on its Web site a new legal opinion that appeared to end any flirtation with torture, starting with its clarionlike opening: "Torture is abhorrent both to American law and values and to international norms."

A single footnote — added to reassure the C.I.A. — suggested that the Justice Department was not declaring the agency's previous actions illegal. But the opinion was unmistakably a retreat. Some White House officials had opposed publicizing the document, but acquiesced to Justice Department officials who argued that doing so would help clear the way for Mr. Gonzales's confirmation as attorney general.

If President Bush wanted to make sure the Justice Department did not rebel again, Mr. Gonzales was the ideal choice. As White House counsel, he had been a fierce protector of the president's prerogatives. Deeply loyal to Mr. Bush for championing his career from their days in Texas, Mr. Gonzales would sometimes tell colleagues that he had just one regret about becoming attorney general: He did not see nearly as much of the president as he had in his previous post.

Among his first tasks at the Justice Department was to find a trusted chief for the Office of Legal Counsel. First he informed Daniel Levin, the acting head who had backed Mr. Goldsmith's dissents and signed the new opinion renouncing torture, that he would not get the job. He encouraged Mr. Levin to take a position at the National Security Council, in effect sidelining him.

Mr. Bradbury soon emerged as the presumed favorite. But White House officials, still smarting from Mr. Goldsmith's rebuffs, chose to delay his nomination. Harriet E. Miers, the new White House counsel, "decided to watch Bradbury for a month or two. He was sort of on trial," one Justice Department official recalled.

Mr. Bradbury's biography had a Horatio Alger element that appealed to a succession of bosses, including Justice Clarence Thomas of the Supreme Court and Mr. Gonzales, the son of poor immigrants. Mr. Bradbury's father had died when he was an infant, and his mother took in laundry to support her children. The first in his family to go to college, he attended Stanford and the University of Michigan Law School. He joined the law firm of

Kirkland & Ellis, where he came under the tutelage of Kenneth W. Starr, the Whitewater independent prosecutor.

Mr. Bradbury belonged to the same circle as his predecessors: young, conservative lawyers with sterling credentials, often with clerkships for prominent conservative judges and ties to the Federalist Society, a powerhouse of the legal right. Mr. Yoo, in fact, had proposed his old friend Mr. Goldsmith for the Office of Legal Counsel job; Mr. Goldsmith had hired Mr. Bradbury as his top deputy.

"We all grew up together," said Viet D. Dinh, an assistant attorney general from 2001 to 2003 and very much a member of the club. "You start with a small universe of Supreme Court clerks, and you narrow it down from there."

But what might have been subtle differences in quieter times now cleaved them into warring camps.

Justice Department colleagues say Mr. Gonzales was soon meeting frequently with Mr. Bradbury on national security issues, a White House priority. Admirers describe Mr. Bradbury as low-key but highly skilled, a conciliator who brought from 10 years of corporate practice a more pragmatic approach to the job than Mr. Yoo and Mr. Goldsmith, both from the academic world.

"As a practicing lawyer, you know how to address real problems," said Noel J. Francisco, who worked at the Justice Department from 2003 to 2005. "At O.L.C., you're not writing law review articles and you're not theorizing. You're giving a client practical advice on a real problem."

As he had at the White House, Mr. Gonzales usually said little in meetings with other officials, often deferring to the hard-driving Mr. Addington. Mr. Bradbury also often appeared in accord with the vice president's lawyer.

Mr. Bradbury appeared to be "fundamentally sympathetic to what the White House and the C.I.A. wanted to do," recalled Philip Zelikow, a former top State Department official. At interagency meetings on detention and interrogation, Mr. Addington was at times "vituperative," said Mr. Zelikow, but Mr. Bradbury, while taking similar positions, was "professional and collegial."

While waiting to learn whether he would be nominated to head the Office of Legal Counsel, Mr. Bradbury was in an awkward position, knowing that a decision contrary to White House wishes could kill his chances.

Charles J. Cooper, who headed the Office of Legal Counsel under President Reagan, said he was "very troubled" at the notion of a probationary period.

"If the purpose of the delay was a tryout, I think they should have avoided it," Mr. Cooper said. "You're implying that the acting official is molding his or her legal analysis to win the job."

Mr. Bradbury said he made no such concessions. "No one ever suggested to me that my nomination depended on how I ruled on any opinion," he said. "Every opinion I've signed at the Office of Legal Counsel represents my best judgment of what the law requires."

Scott Horton, an attorney affiliated with Human Rights First who has closely followed the interrogation debate, said any official offering legal advice on the campaign against terror was on treacherous ground.

"For government lawyers, the national security issues they were deciding were like working with nuclear waste — extremely hazardous to their health," Mr. Horton said.

"If you give the administration what it wants, you'll lose credibility in the academic community," he said. "But if you hold back, you'll be vilified by conservatives and the administration."

In any case, the White House grew comfortable with Mr. Bradbury's approach. He helped block the appointment of a liberal Ivy League law professor to a career post in the Office of Legal Counsel. And he signed the opinion approving combined interrogation techniques.

Mr. Comey strongly objected and told associates that he advised Mr. Gonzales not to endorse the opinion. But the attorney general made clear that the White House was adamant about it, and that he would do nothing to resist.

Under Mr. Ashcroft, Mr. Comey's opposition might have killed the opinion. An imposing former prosecutor and self-described conservative who stands 6-foot-8, he was the rare administration official who was willing to confront Mr. Addington. At one testy 2004 White House meeting, when Mr. Comey stated that "no lawyer" would endorse Mr. Yoo's justification for the N.S.A. program, Mr. Addington demurred, saying he was a lawyer and found it convincing. Mr. Comey shot back: "No good lawyer," according to someone present.

But under Mr. Gonzales, and after the departure of Mr. Goldsmith and other allies, the deputy attorney general found himself isolated. His troublemaking on N.S.A. and on interrogation, and in appointing his friend Patrick J. Fitzgerald as special prosecutor in the C.I.A. leak case, which would lead to the perjury conviction of I. Lewis Libby, Mr. Cheney's chief of staff, had irreparably offended the White House.

"On national security matters generally, there was a sense that Comey was a wimp and that Comey was disloyal," said one Justice Department official who heard the White House talk, expressed with particular force by Mr. Addington.

Mr. Comey provided some hints of his thinking about interrogation and related issues in a speech that spring. Speaking at the N.S.A.'s Fort Meade campus on Law Day — a noteworthy setting for the man who had helped lead the dissent a year earlier that forced some changes in the N.S.A. program — Mr. Comey spoke of the "agonizing collisions" of the law and the desire to protect Americans.

"We are likely to hear the words: 'If we don't do this, people will die,'" Mr. Comey said. But he argued that government lawyers must uphold the principles of their great institutions.

"It takes far more than a sharp legal mind to say 'no' when it matters most," he said. "It takes moral character. It takes an understanding that in the long run, intelligence under law is the only sustainable intelligence in this country."

Mr. Gonzales's aides were happy to see Mr. Comey depart in the summer of 2005. That June, President Bush nominated Mr. Bradbury to head the Office of Legal Counsel, which some colleagues viewed as a sign that he had passed a loyalty test.

Soon Mr. Bradbury applied his practical approach to a new challenge to the C.I.A.'s methods.

The administration had always asserted that the C.I.A.'s pressure tactics did not amount to torture, which is banned by federal law and international treaty. But officials had privately decided the agency did not have to comply with another provision in the Convention Against Torture — the prohibition on "cruel, inhuman, or degrading" treatment.

Now that loophole was about to be closed. First Senator Richard J. Durbin, Democrat of Illinois, and then Senator John McCain, the Arizona Republican who had been tortured as a prisoner in North Vietnam, proposed legislation to ban such treatment.

At the administration's request, Mr. Bradbury assessed whether the proposed legislation would outlaw any C.I.A. methods, a legal question that had never before been answered by the Justice Department.

At least a few administration officials argued that no reasonable interpretation of "cruel, inhuman or degrading" would permit the most extreme C.I.A. methods, like waterboarding. Mr. Bradbury was placed in a tough spot, said Mr. Zelikow, the State Department counselor, who was working at the time to rein in interrogation policy.

"If Justice says some practices are in violation of the C.I.D. standard," Mr. Zelikow said, referring to cruel, inhuman or degrading, "then they are now saying that officials broke current law."

In the end, Mr. Bradbury's opinion delivered what the White House wanted: a statement that the standard imposed by Mr. McCain's Detainee Treatment Act would not force any change in the C.I.A.'s practices, according to officials familiar with the memo.

Relying on a Supreme Court finding that only conduct that "shocks the conscience" was unconstitutional, the opinion found that in some circumstances not even waterboarding was necessarily cruel, inhuman or degrading, if, for example, a suspect was believed to possess crucial intelligence about a planned terrorist attack, the officials familiar with the legal finding said.

In a frequent practice, Mr. Bush attached a statement to the new law when he signed it, declaring his authority to set aside the restrictions if they interfered with his constitutional powers. At the same time, though, the administration responded to pressure from Mr. McCain and other lawmakers by reviewing interrogation policy and giving up several C.I.A. techniques.

Since late 2005, Mr. Bradbury has become a linchpin of the administration's defense of counterterrorism programs, helping to negotiate the Military Commissions Act last year and frequently testifying about the N.S.A. surveillance program. Once he answered questions about administration detention policies for an "Ask the White House" feature on a Web site.

Mr. Kmiec, the former Office of Legal Counsel head now at Pepperdine, called Mr. Bradbury's public activities a departure for an office that traditionally has shunned any advocacy role.

A senior administration official called Mr. Bradbury's active role in shaping legislation and speaking to Congress and the press "entirely appropriate" and consistent with past practice. The official, who spoke on the condition of anonymity, said Mr. Bradbury "has played a critical role in achieving greater transparency" on the legal basis for detention and surveillance programs.

Though President Bush repeatedly nominated Mr. Bradbury as the Office of Legal Counsel's assistant attorney general, Democratic senators have blocked the nomination. Senator Durbin said the Justice Department would not turn over copies of his opinions or other evidence of Mr. Bradbury's role in interrogation policy.

"There are fundamental questions about whether Mr. Bradbury approved interrogation methods that are clearly unacceptable," Mr. Durbin said.

John D. Hutson, who served as the Navy's top lawyer from 1997 to 2000, said he believed that the existence of legal opinions justifying abusive treatment is pernicious, potentially blurring the rules for Americans handling prisoners.

"I know from the military that if you tell someone they can do a little of this for the country's good, some people will do a lot of it for the country's better," Mr. Hutson said.

Like other military lawyers, he also fears that official American acceptance of such treatment could endanger Americans in the future.

"The problem is, once you've got a legal opinion that says such a technique is O.K., what happens when one of our people is captured and they do it to him? How do we protest then?" he asked.

Friday, October 05, 2007

WASHINGTON POST

Congress Seeks Secret Memos On Interrogation

By Dan Eggen and Michael Abramowitz
Washington Post Staff Writers
Friday, October 5, 2007; A01

Democratic lawmakers assailed the Justice Department yesterday for issuing secret memos that authorized harsh CIA interrogation techniques, demanding that the Bush administration turn over the documents. But officials refused and said the tactics did not violate anti-torture laws.

One opinion issued by the Justice Department's Office of Legal Counsel in May 2005 authorized a combination of painful physical and psychological interrogation tactics, including head slapping, frigid temperatures and simulated drowning, according to current and former officials familiar with the issue.

A second document issued by the same Justice Department office in the summer of 2005 asserted that the interrogation practices approved for the CIA did not violate pending legislation to prohibit "cruel, inhuman and degrading" treatment, current and former officials said. The existence of the two classified memos was reported yesterday by the New York Times.

White House and Justice officials said the legal opinion on interrogation techniques did not conflict with administration promises not to torture suspects, including a memo released publicly in December 2004 that declared torture "abhorrent." They said the newly revealed memo focused on "specific applications" under the parameters of the earlier document.

"It is a policy of the United States that we do not torture, and we do not," said White House spokeswoman Dana Perino.

The memos create an unwelcome complication for the Bush administration as it tries to win confirmation of former federal judge Michael B. Mukasey as the next attorney general. He would replace Alberto R. Gonzales, who resigned last month after months of

conflict with Congress over his credibility and management abilities. Gonzales led the Justice Department at the time that the newly disclosed memos were written.

Sen. Patrick J. Leahy (D-Vt.), chairman of the Senate Judiciary Committee, vowed to question Mukasey closely about his views on interrogation policies during confirmation hearings this month.

"After telling us and the world that torture is abhorrent . . . it appears that under Attorney General Gonzales they reversed themselves and reinstated a secret regime by, in essence, reinterpreting the law in secret," Leahy said, referring to administration officials.

The House Judiciary Committee demanded copies of the documents from the Justice Department and vowed to hold hearings on the issue. "Both the alleged content of these opinions and the fact that they have been kept secret from Congress are extremely troubling," Chairman John Conyers Jr. (D-Mich.) and Rep. Jerrold Nadler (D-N.Y.) said in a letter to acting Attorney General Peter D. Keisler.

President Bush and his aides regularly denounce torture and deny that it has been condoned as part of the aggressive antiterrorism campaign after the Sept. 11, 2001, attacks. But administration officials have repeatedly refused to specify which tactics are allowed, and both the military and the CIA have operated under varying standards and guidelines over the past six years.

White House, Justice and CIA officials refused to discuss the specific tactics authorized in the 2005 Justice memos. Both documents were signed by the Office of Legal Counsel's acting chief, Steven G. Bradbury, who declined requests for comment. Justice spokesman Brian Roehrkasse said Bradbury "has worked diligently to ensure that the authority of the office is employed in a careful and prudent manner."

The secret opinion followed an analysis by the office that was released publicly in December 2004, and that declared "torture is abhorrent both to American law and values and international norms" and endorsed a legal definition of torture as acts "intended to inflict severe physical or mental pain or suffering." That analysis explicitly rejected a previous Justice opinion that had declared that only causing pain equivalent to "organ failure, impairment of bodily function, or even death" constituted torture punishable by law.

Paul Gimigliano, a CIA spokesman, said the agency's interrogation program "has been implemented carefully and lawfully" and has "produced vital information" to disrupt terrorist operations. "The CIA itself has sought the legal clarity on which this program rests," he said.

The CIA approached the Justice Department in mid-2004 seeking specific guidelines on interrogation methods in anticipation of legislation that sought to limit allowable techniques, according to a senior U.S. official.

The official said that, at the time of the request, the CIA wanted to ensure that its detention of terrorism suspects in secret sites overseas was sustainable, legally and politically. But the official maintained that the opinions did not "lead to anything harsher being done" to the suspects in CIA custody.

White House homeland security adviser Frances Fragos Townsend also dismissed objections to the CIA program yesterday, saying during an appearance on CNN that al-Qaeda members are trained to resist harsh interrogations. She said that "we start with the least harsh measures first" and stop the progression "if someone becomes cooperative."

"If Americans are killed because we failed to do the hard things, the American people would have the absolute right to ask us why," Townsend said.

Several current and former administration officials familiar with the detainee debate also said they believe that, to some extent, the 2005 Justice memos have been overtaken by events.

After the Supreme Court ruled in 2006 that U.S. prisoners are covered by Geneva Conventions prohibitions against degrading treatment, Bush publicly confirmed the existence of the secret CIA prisons and announced the transfer of 14 CIA prisoners to military custody at Guantanamo Bay, Cuba. That same year, Congress approved changes in the interrogation and prosecution of terrorism suspects.

Bush followed up several months ago with an executive order, required by the legislation, making it clear that the CIA would comply with Geneva Conventions prohibitions. The administration did not spell out exactly what techniques are now approved or prohibited, but officials suggested that the CIA's program had been changed. Officials also said that Justice lawyers conducted a legal review of the executive order, as demanded by Congress.

"We have significantly changed what we are actually doing, and we have also changed the surrounding process," said Philip D. Zelikow, a former State Department counselor who was involved in some of the debates over interrogation policy.

Sen. John McCain (Ariz.), a Republican presidential hopeful, said he had been assured by administration officials that the technique known as waterboarding, which simulates drowning, is no longer being used. "I have been emphatic that techniques like waterboarding are inconsistent with America's international obligations and incompatible with our deepest values," McCain said in a statement.

Sen. Christopher J. Dodd (Conn.), a Democratic presidential candidate, advocated cutting off funding for Bradbury's office if the Justice Department does not release the memos.

Civil liberties and human rights advocates argue that the Bush administration's secretive and shifting definitions of torture have created an uncertain legal climate that encourages prisoner mistreatment, like the abuse that occurred at the Abu Ghraib prison in Iraq.

"Instead of abiding by the law, the administration stocks the Justice Department with lawyers who will say that black is white and wrong is right and waterboarding is not torture," said Elisa Massimino, Washington director of Human Rights First.

Staff writers Dafna Linzer and Joby Warrick and staff researcher Julie Tate contributed to this report.

NEW YORK TIMES

October 5, 2007

Debate Erupts on Techniques Used by C.I.A.

By DAVID JOHNSTON and SCOTT SHANE

Page 1

WASHINGTON, Oct. 4 — The disclosure of secret Justice Department legal opinions on interrogation on Thursday set off a bitter round of debate over the treatment of terrorism suspects in American custody and whether Congress has been adequately informed of legal policies.

Democrats on Capitol Hill demanded to see the classified memorandums, disclosed Thursday by The New York Times, that gave the Central Intelligence Agency expansive approval in 2005 for harsh interrogation techniques.

Senator John D. Rockefeller IV, the West Virginia Democrat who is chairman of the Senate Intelligence Committee, wrote to the acting attorney general, Peter D. Keisler, asking for copies of all opinions on interrogation since 2004.

"I find it unfathomable that the committee tasked with oversight of the C.I.A.'s detention and interrogation program would be provided more information by The New York Times than by the Department of Justice," Mr. Rockefeller wrote.

The ranking Republican on the panel, Senator Christopher S. Bond of Missouri, said Thursday night in a statement that the committee had been briefed on the administration's "legal justifications" for interrogation.

Mr. Bond said he understood that the administration did not want to turn over the opinions themselves because they had confidential legal advice.

Administration officials confirmed the existence of the classified opinions but said they did not condone torture. The White House press secretary, Dana Perino, said she could not discuss C.I.A. methods but added, "What I can tell you is that any procedures that they use are tough, safe, necessary and lawful."

One 2005 opinion gave the Justice Department's most authoritative legal approval to the harshest agency techniques, including head slapping, exposure to cold and simulated drowning, even when used in combination.

The second opinion declared that under some circumstances, such techniques were not "cruel, inhuman or degrading," a category of treatment that Congress banned in December 2005.

Administration officials said Thursday that there was no contradiction between the still-secret rulings and an opinion made public by the Justice Department in December 2004 that declared torture "abhorrent" and appeared to retreat from the administration's earlier assertion of broad presidential authority to conduct harsh interrogations.

At a briefing, Ms. Perino said that it was "quite a testament to this country" that six years after the Sept. 11 attacks "we are still having a debate" about treating prisoners, but that "we don't torture them."

President Bush, she added, "has done everything within the corners of the law to make sure that we prevent another attack on this country."

Senator Patrick J. Leahy, the Vermont Democrat who is chairman of the Judiciary Committee, said the 2005 opinions had "reinstated a secret regime by, in essence, reinterpreting the law in secret." Mr. Leahy said his panel had sought information on the opinions on interrogation for two years without success.

Mr. Leahy also said his panel would hold confirmation hearings on Oct. 17 on Michael B. Mukasey's nomination as attorney general. Several senators said they would closely question Mr. Mukasey, a retired federal judge, at the hearing about his views on interrogation.

Mr. Leahy and Representative John Conyers Jr., a Michigan Democrat who is chairman of the House Judiciary Committee, also demanded that the administration turn over the 2005 opinions.

Mr. Conyers wrote a letter to Mr. Keisler saying, "The alleged content of the opinions and the fact that they have been kept secret from Congress are extremely troubling."

The letter, also signed by Representative Jerrold Nadler, Democrat of New York, asked the Justice Department to make available for a hearing Steven G. Bradbury, acting head of the Office of Legal Counsel, who signed the opinions.

In an interview, Senator Arlen Specter of Pennsylvania, the top Republican on the Judiciary Committee, said that in light of the administration's apparent retreat from its legal embrace of the harshest tactics in 2004, the 2005 opinions "are more than surprising."

"I think they're shocking," Mr. Specter said.

He added members of Congress voted to ban "cruel, inhuman and degrading treatment" in December 2005 without knowing that the Justice Department had already decided that the C.I.A.'s methods did not violate that standard. "I think the administration had a duty to inform Congress about these opinions," Mr. Specter said.

Intelligence officials have said the agency has dropped some of its harshest practices, including the simulated drowning called waterboarding. But the 2005 memorandums show that the administration has secretly continued to maintain that their use would be lawful.

A senior administration official who insisted on anonymity said the opinion on the "combined effects" of different techniques was approved in May 2005.

The opinion that the methods were not cruel or inhuman was approved later in 2005, the official said. Officials have said both opinions remain in effect.

Both documents were written by the Office of Legal Counsel after Alberto R. Gonzales became attorney general. Mr. Gonzales's arrival effectively ended a rebellion in the department in 2004 by lawyers who had found fault with the legal justifications for interrogation and surveillance.

In a statement, a spokesman for the department, Brian Roehrkasse, said he could not comment on classified legal advice, but said any department opinions were consistent with the administration's "strong opposition to torture."

Mr. Roehrkasse also expressed the department's support for Mr. Bradbury, whose nomination to be permanent head of the Legal Counsel office has been blocked by Senate Democrats since June 2005. Mr. Roehrkasse said Mr. Bradbury had "worked diligently to ensure that the authority of the office is employed in a careful and prudent manner."

LOS ANGELES TIMES

OPINION:

Gitmo: America's black hole

A lawyer for prison detainees is struck by how the immoral mistreatment of inmates has become so mundade.

By Clive Stafford Smith

October 5, 2007

GUANTANAMO BAY, CUBA —

rights, take greater root around the world. Efforts to advance the rule of law, including those by the US government, are undermined when America is seen as not living up to the values it promotes elsewhere.

Four retired commanding officers of the US Judge Advocate General Corps recently warned Congress that the Military Commissions Act actually increases the risk that US personnel and tourists overseas will be imprisoned without legal review.

Some argue that military necessity makes normal court review for detainees an unaffordable luxury, but they should consider this: Even Israel, which lives in constant threat of deadly attack, ensures a prompt court review of all suspected terrorists. It has found that protecting its values and liberties is key to protecting its safety. In one 1980 case, Kawasme v. the Minister of Defense, Israel's Supreme Court went so far as to say: "There is no more potent weapon than the rule of law."

In our own time of anxiety, that is a powerful example to consider and follow.

If there is one positive to be taken from last month's Senate vote, it is that a majority voted to restore habeas – although still short of the 60 needed to clear a procedural hurdle. Another is that the Supreme Court has affirmed the importance of this issue, deciding that it will review whether the Military Commissions Act's habeas provision is constitutional.

By holding governments accountable, and by preventing wrongful imprisonment, habeas corpus has expanded human safety and freedom for nearly 800 years. Even in risky times – indeed, especially in risky times – that is a value worth preserving, for friends and enemies alike.

WALL STREET JOURNAL

Wall Street Journal
October 5, 2007
Pg. 4

New Setback For Guantanamo Trials

By Jess Bravin and Evan Perez

WASHINGTON -- Trials at Guantanamo Bay suffered another setback as the Pentagon's chief war-crimes prosecutor resigned after losing control of the Bush administration's plan to try suspected terrorists before an offshore military commission.

Col. Morris Davis's resignation comes amid renewed attention to detention policies, following revelations that, despite the administration's public repudiations of torture,

secret Justice Department memorandums concluded that intelligence officers were authorized to employ extreme interrogation methods.

President Bush announced plans in late 2001 to try foreign terror suspects before military commissions that could reach convictions unburdened by traditional due process or rules of evidence. The effort has stumbled over internal disputes and court rulings, and it has yet to result in a trial.

Col. Davis headed the effort to prosecute Guantanamo prisoners suspected of war crimes, including the 14 "high-value" prisoners transferred there from Central Intelligence Agency custody last year. Since July, he has been in conflict with Brig. Gen. Thomas Hartmann over the direction of the prosecutions. Gen. Hartmann is a fellow Air Force officer and legal adviser to the convening authority, which runs the trials.

Under Pentagon regulations, the legal adviser has more authority than the title suggests, including supervision of the chief prosecutor. Col. Davis argued that language in the Military Commissions Act was intended to insulate the prosecutor from outside influence, including that of the legal adviser. An internal review by an Army judge sided with Gen. Hartmann. Informed of those conclusions yesterday, Col. Davis resigned, officials said. Col. Davis declined to comment, saying he had been ordered not to discuss "any facet of military commissions" with the media.

Gen. Hartmann couldn't be reached for comment, and military officials said the entire prosecution office had been ordered not to speak to reporters.

Details of the disagreements are unclear, but officials have cited differences over which prisoners to try, what evidence to introduce and the pace of the prosecution effort.

The latest revelations on interrogation methods, reported by the New York Times, seemed certain to affect forthcoming confirmation hearings for Michael Mukasey, the nominee for attorney general. The administration sought to play down the report, which said the Justice Department's Office of Legal Counsel had issued classified legal opinions in 2005 authorizing the CIA to use severe interrogation techniques on suspected terror detainees.

White House spokeswoman Dana Perino confirmed that the Justice Department issued a memo in February 2005 on interrogation techniques, but she denied that it sought to reinterpret a memo issued the previous year that rejected the use of torture. The 2004 memo replaced the so-called torture memo of 2002, which authorized interrogation methods as long as they stopped short of causing organ failure or death. Ms. Perino said the 2005 memo "was different in that it was focusing on specifics."

Senate Judiciary Committee Chairman Patrick Leahy (D., Vt.) said he would proceed with Mr. Mukasey's confirmation hearing as early as Oct. 17, but he suggested the latest developments could influence proceedings.

By gathering at Fort Hunt yesterday, the quiet men could be saluted for the work they did so long ago.

WASHINGTON POST

Bush Defends Interrogations

Democrats Demand Documents Justifying Tactics' Legality

By Michael Abramowitz and Joby Warrick
Washington Post Staff Writers
Saturday, October 6, 2007; A07

President Bush yesterday vigorously defended the government's efforts to detain and interrogate terrorism suspects, and he clashed with Democratic lawmakers over whether he has properly disclosed information about the classified program.

Bush used a brief photo opportunity in the Oval Office yesterday morning to renew his assertions that the United States "does not torture people" and sticks to U.S. law and its international obligations. The comments followed the disclosure by the New York Times of secret Justice Department memos authorizing harsh CIA interrogation techniques, such as head slapping, frigid temperatures and simulated drowning. The memos said such tactics do not violate U.S. or international law.

"The techniques that we use have been fully disclosed to appropriate members of the United States Congress," Bush told reporters. "The American people expect their government to take action to protect them from further attack. And that's exactly what this government is doing, and that's exactly what we'll continue to do."

CIA Director Michael V. Hayden, responding to the Times article in a memo to agency employees yesterday, disputed the suggestion that the Justice Department opinion opened the door to harsher interrogation practices. He described the CIA's interrogation program as "small, carefully run and highly productive."

"Fewer than 100 hardened terrorists have gone through the program since it began in 2002, and, of those, less than a third have required any special methods of questioning," Hayden wrote. A copy of the memo was obtained by The Washington Post.

The agency took custody of only terrorism suspects who were believed to have potential information about future attacks or inside knowledge of al-Qaeda's inner workings, and agency officials stayed well within U.S. and international guidelines in their interrogation practices, Hayden said. "We do not torture," he said. "The American people expect us to meet threats to their safety and security, but to do so in keeping with the laws of our nation."

Bush's statement that Congress has been briefed on the interrogation tactics drew a swift and angry reaction from Sen. John D. Rockefeller IV (D-W.Va.), chairman of the Senate intelligence committee.

"The administration can't have it both ways," Rockefeller said in a statement. "I'm tired of these games. They can't say that Congress has been fully briefed while refusing to turn over key documents used to justify the legality of the program."

Rockefeller sent a letter Thursday to acting Attorney General Peter D. Keisler demanding copies of all Justice Department opinions analyzing the legality of the CIA's interrogation program. Another Senate leader, Armed Services Committee Chairman Carl M. Levin (D-Mich.), demanded a copy of a separate Justice Department memo, a 2003 document offering a legal justification for the military interrogation of unlawful combatants outside the United States.

The Bush administration has refused to turn over the documents, contending that their disclosure would give terrorist groups too much information about U.S. interrogation tactics. One exception came in December 2004, when the Justice Department released a memo decrying torture as "abhorrent" and defining it as acts that "inflict severe physical or mental pain or suffering."

Staff writer Dan Eggen contributed to this report.

NEW YORK TIMES

October 6, 2007

Bush Says Interrogation Methods Aren't Torture

By SHERYL GAY STOLBERG

Page 1

WASHINGTON, Oct. 5 — President Bush, reacting to a Congressional uproar over the disclosure of secret Justice Department legal opinions permitting the harsh interrogation of terrorism suspects, defended the methods on Friday, declaring, "This government does not torture people."

The remarks, Mr. Bush's first public comments on the memorandums, came at a hastily arranged Oval Office appearance before reporters. It was billed as a talk on the economy, but after heralding new job statistics, Mr. Bush shifted course to a subject he does not often publicly discuss: a once-secret Central Intelligence Agency program to detain and interrogate high-profile terror suspects.

"I have put this program in place for a reason, and that is to better protect the American people," the president said, without mentioning the C.I.A. by name. "And when we find somebody who may have information regarding a potential attack on America, you bet we're going to detain them, and you bet we're going to question them, because the American people expect us to find out information — actionable intelligence so we can help protect them. That's our job."

Without confirming the existence of the memorandums or discussing the explicit techniques they authorized, Mr. Bush said the interrogation methods had been "fully disclosed to appropriate members of Congress."

But his comments only provoked another round of recriminations on Capitol Hill, as Democrats ratcheted up their demands to see the classified memorandums, first reported Thursday by The New York Times.

"The administration can't have it both ways," Senator John D. Rockefeller IV, the West Virginia Democrat who is chairman of the Senate Intelligence Committee, said in a statement after the president's remarks. "I'm tired of these games. They can't say that Congress has been fully briefed while refusing to turn over key documents used to justify the legality of the program."

In two separate legal opinions written in 2005, the Justice Department authorized the C.I.A. to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures.

The memorandums were written just months after a Justice Department opinion in December 2004 declared torture "abhorrent."

Administration officials have confirmed the existence of the classified opinions, but will not make them public, saying only that they approved techniques that were "tough, safe, necessary and lawful."

On Friday, the deputy White House press secretary, Tony Fratto, took The Times to task for publishing the information, saying the newspaper had compromised America's security.

"I've had the awful responsibility to have to work with The New York Times and other news organizations on stories that involve the release of classified information," Mr. Fratto said. "And I could tell you that every time I've dealt with any of these stories, I have felt that we have chipped away at the safety and security of America with the publication of this kind of information."

The memorandums, and the ensuing debate over them, go to the core of a central theme of the Bush administration: the expansive use of executive power in pursuit of terror suspects.

That theme has been a running controversy on Capitol Hill, where Democrats, and some Republicans, have been furious at the way the administration has kept them out of the loop.

The clash colored Congressional relations with Alberto R. Gonzales, the former attorney general. And by Friday, it was clear that the controversy would now spill over into the confirmation hearings for Michael B. Mukasey, the retired federal judge whom Mr. Bush has nominated to succeed Mr. Gonzales in running the Justice Department.

Senator Carl Levin, the Michigan Democrat who is chairman of the Senate Armed Services Committee, sent a letter to Mr. Mukasey asking him whether, if confirmed, he would provide lawmakers with the Justice Department memorandums.

And Senator Charles E. Schumer, the New York Democrat and Judiciary Committee member, said he expected the memorandums would become a central point in the Mukasey confirmation debate.

"When the president says the Justice Department says it's O.K., he means Alberto Gonzales said it was O.K.," Mr. Schumer, who has been a vocal backer of Mr. Mukasey, said in an interview.

"Very few people are going to have much faith in that, and we do need to explore that."

The administration has been extremely careful with information about the C.I.A. program, which had been reported in the news media but was, officially at least, a secret until Mr. Bush himself publicly disclosed its existence in September 2006.

At the time, the president confirmed that the C.I.A. had held 14 high-profile terrorism suspects — including the man thought to be the mastermind of the Sept. 11 terrorist attacks — in secret prisons, but said the detainees had been transferred to Guantánamo Bay, Cuba.

The 2005 Justice Department opinions form the legal underpinning for the program. On Friday, the director of the C.I.A., Gen. Michael V. Hayden also defended the program, in an e-mail message to agency employees.

"The story has sparked considerable comment," General Hayden wrote, referring to the account in The Times, "including claims that the opinion opened the door to more harsh interrogation tactics and that information about the interrogation methods we actually have used has been withheld from our oversight committees in Congress. Neither assertion is true."

NEW YORK TIMES

October 6, 2007

War-Crimes Prosecutor Quits in Pentagon Clash

By WILLIAM GLABERSON

Page A13

In the latest disruption of the Bush administration's plan to try detainees at Guantánamo Bay, Cuba, for war crimes, the chief military prosecutor on the project stepped down yesterday after a dispute with a Pentagon official.

It was not clear what effect the departure would have on the problem-plagued effort to charge and try detainees.

The prosecutor, Col. Morris D. Davis of the Air Force, was to leave his position immediately, a Defense Department spokeswoman said. But the spokeswoman, Cynthia O. Smith, said officials were working to minimize interruption in the work of the prosecution office, which includes military lawyers supplemented by civilian federal prosecutors.

"The department is taking measures to ensure a prompt and orderly transition to another chief prosecutor without interrupting the key mission of prosecuting war crimes via military commissions," Ms. Smith said.

The Wall Street Journal reported yesterday that Colonel Davis would resign.

The Pentagon's system of prosecuting suspects has been beset by practical problems and legal disputes that have reached the Supreme Court. As a result, more than five years after the first terror suspects arrived at Guantánamo Bay, only one detainee's war-crimes case has been completed, and that was through a plea agreement.

Prosecutors have said they might eventually file charges against as many as 80 of the 330 detainees being held at Guantánamo. Those include so-called high value detainees, 14 men the administration has said include dangerous terrorists who had previously been held in secret C.I.A. prisons.

Officials have said the prosecutors are working on charges against some of those men, including Khalid Shaikh Mohammed, who has said he was the mastermind of the terrorist attacks of Sept. 11, 2001.

Colonel Davis, a career military lawyer, had been in a bitter dispute with Brig. Gen. Thomas W. Hartmann, who was appointed this summer to a top post in the Pentagon Office of Military Commissions, which supervises the war crimes trial system.

General Hartmann, an Air Force reserve officer who worked as a corporate lawyer until recently, was appointed this summer as the legal adviser to Susan J. Crawford, a former military appeals judge who is the convening authority, a military official who has extensive powers under the military commission law passed by Congress in 2006.

Among other powers, under the law, the convening authority can approve or reject war-crimes charges, make plea deals with detainees and reduce sentences.

People involved in the prosecutions, who spoke on condition of anonymity, have said that General Hartmann challenged Colonel Davis's authority in August and pressed the prosecutors who worked for Colonel Davis to produce new charges against detainees quickly.

They said he also pushed the prosecutors to frame cases with bold terrorism accusations that would draw public attention to the military commission process, which has been one of the central legal strategies of the Bush administration. In some cases the prosecutors are expected to seek the death penalty.

Through a spokeswoman, General Hartmann declined comment yesterday.

Colonel Davis filed a complaint against General Hartmann with Pentagon officials this fall saying that the general had exceeded his authority and created a conflict of interest by asserting control over the prosecutor's office. Colonel Davis said it would be improper for General Hartmann to assess the adequacy of cases filed by prosecutors if the general had been involved in the decision to file those cases.

In a statement last week, Colonel Davis said the issue posed a threat to the integrity of the war-crimes process. "For the greater good, Brigadier General Hartmann and I should both resign and walk away or higher authority should relieve us of our duties," the statement said.

A military official said yesterday that Pentagon officials had sided with General Hartmann in the dispute.

Yesterday, Colonel Davis said he could not discuss the developments. "I'm under direct orders," he said, "not to comment with the media about the reasons for my resignation or military commissions."

Gregory S. McNeal, an assistant professor at the Dickinson School of Law at Pennsylvania State University, said the effort to begin war-crimes trials would probably continue. But Mr. McNeal, who has been a consultant to the military prosecutors, said the questions Colonel Davis raised would be exploited by defense lawyers.

"The last thing the prosecution needs is officials influencing the prosecutions," he said.

Critics of the administration have argued that the effort to design a military commission system for foreign terror suspects is intended to circumvent the legal protections that detainees would receive if they were charged in civilian courts. Some of those critics said yesterday that the dispute underscored their concerns.

"This is further evidence that the military commission process is completely unraveling," said J. Wells Dixon, a detainees' lawyer at the Center for Constitutional Rights in New York.

"That is endemic," Mr. Dixon added, "to any system that is made up as you go along."

CHICAGO TRIBUNE

Second Army Officer Faults Gitmo Panels

By BEN FOX

Associated Press Writer

11:06 PM CDT, October 5, 2007

SAN JUAN, Puerto Rico

A second Army officer who sat on the "enemy combatant" tribunals at Guantanamo has come forward to criticize the panels, saying in court papers released Friday the proceedings favored the government and commanders reversed some decisions.

The criticism, in an affidavit filed by attorneys for a Sudanese detainee, echo some charges made in June by Army Lt. Col. Stephen Abraham, the first insider to publicly fault the proceedings.

At issue are the Combatant Status Review Tribunals, which the military held for 558 detainees at the U.S. Naval Base at Guantanamo Bay in 2004 and 2005, with handcuffed detainees appearing before panels made up of three officers.

Detainees had a military "personal representative" instead of a defense attorney, and all but 38 were determined to be "enemy combatants" who could be held indefinitely without charges.

In the new affidavit, an Army officer whose name is redacted from a version provided to The Associated Press, says panels relied on insufficient evidence.

He also said in six cases the panels unanimously declared the detainee was not an enemy combatant -- but commanders ordered new hearings and the finding was reversed without sufficient new evidence.

at the camp. There was no exculpatory evidence presented separately, as required by the rules, but some times it emerged accidentally because contradictory evidence would be presented.

He said there was "acrimony" at a meeting in which commanders discussed why some panels, considering the same evidence, would come to different findings on the Uighurs, members of a Muslim minority in China who want an independent homeland.

The officer said he suggested that inconsistent results were "good for the system ... and would show that the system was working correctly." The admiral in charge, he said, had no response.

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LOS ANGELES TIMES

Bush denies CIA torture of suspects

Interrogation methods are legal, he says amid controversy over Justice Department memos sanctioning disputed techniques such as simulated drowning.

By Greg Miller and Richard B. Schmitt
Los Angeles Times Staff Writers

October 6, 2007

WASHINGTON — President Bush on Friday defended the CIA's harsh interrogation of terrorism suspects, saying its methods do not constitute torture and are necessary to protect America from attack.

But Bush's declaration that the United States "does not torture people" did little to dampen the fallout from fresh evidence that his administration has used secret legal memos to sanction tactics that stretch, if not circumvent, the law.

The president's comments came amid disclosures this week of classified opinions issued by the Justice Department in 2005 that endorsed the legality of an array of interrogation tactics, ranging from sleep deprivation to simulated drowning.

Bush's decision to comment again on what once was among the most highly classified U.S. intelligence programs underscores the political peril surrounding the issue for the White House, which has had to retreat from earlier, aggressive assertions of executive power.

It also reflects the extent to which the debate over tactics in the war on terrorism remains unresolved, six years after the Sept. 11 attacks. The limits on CIA interrogators have been particularly fluid, shifting repeatedly under a succession of legal opinions, court rulings

and executive orders.

In a brief appearance at the White House, Bush stressed the legality of the CIA program -- even while making the case for continued use of coercive methods.

"We stick to U.S. law and our international obligations," Bush said. But when the United States locates a terrorism suspect, he added: "You bet we're going to detain them, and you bet we're going to question them -- because the American people expect us to find out information, actionable intelligence so we can help protect them. That's our job."

The president's comments were met with outrage from key Democrats in Congress.

"The administration can't have it both ways. I'm tired of these games," said Sen. John D. Rockefeller IV (D-W.Va.), chairman of the Senate Intelligence Committee. "They can't say that Congress has been fully briefed while refusing to turn over key documents used to justify the legality of the program."

The issue is expected to confront Michael B. Mukasey, Bush's nominee to be the next attorney general, at a Senate confirmation hearing later this month.

The two memos that surfaced publicly this week are among a collection of documents the White House has refused to turn over to congressional committees examining the CIA detention and interrogation program.

The newly uncovered memos, which were described for the first time Thursday by the New York Times, were drafted by the Justice Department shortly after Alberto R. Gonzales took over as attorney general in February 2005. They appear to show that the Bush administration continued to condone harsh interrogation techniques by the CIA even as Congress was moving to outlaw them.

One of the memos, written by the department's Office of Legal Counsel, authorized the CIA to use a combination of painful interrogation tactics, including head-slapping, extreme temperatures and simulated drowning, known as water-boarding.

A later opinion declared that none of the controversial methods violated a congressional ban on "cruel, inhuman and degrading" treatment of prisoners that lawmakers enacted in late 2005.

The secret memos were issued at a time when the administration appeared to be signaling publicly that it was backing off from the most aggressive forms of coercive interrogation.

In December 2004, the Justice Department published an analysis by the Office of Legal Counsel that declared torture to be "abhorrent," and rejected an earlier opinion finding that methods short of causing "organ failure, impairment of bodily function or even death" were legally permissible.

The memos since have been superseded by an executive order Bush issued in July, establishing stricter limits on CIA interrogation methods and requiring the agency to comply with the Geneva Convention on treatment of prisoners.

The order bans "torture, cruel or inhuman treatment, mutilation or maiming" as well as sexual humiliation or the denigration of religious objects or beliefs. But it contains loopholes that appear to allow certain coercive methods to continue.

One provision lists the "basic necessities of life" that are to be provided any prisoner, including adequate food, water and shelter. But the section makes no mention of sleep, and experts said the order appears to permit the use of stress positions as well as rough physical treatment.

Water-boarding is probably no longer allowed, said Tom Malinowski, the Washington advocacy director for Human Rights Watch.

But even under the newest rules, Malinowski said, "they could keep someone in an air-conditioned room, hands tied to the ceiling, music blaring and bright lights for four days."

A companion document spelling out in more detail the techniques that the CIA is allowed to employ remains classified. The White House on Friday reiterated its long-standing refusal to discuss individual techniques, saying their disclosure would benefit U.S. foes.

Some lawmakers and military officials have expressed concern that the Bush administration has established a confusing system in which the CIA is free to go far beyond strict interrogation limits adopted by the military in September 2006, in the aftermath of the Abu Ghraib prison scandal.

Some also worry that in sanctioning harsh methods, the United States is inviting other countries to employ similar techniques on U.S. personnel.

At a Senate Intelligence Committee hearing last month, retired Army Lt. Gen. Charley Otstott said "any techniques used by the CIA under this program are essentially those which our soldiers could expect to be used against them if they fall into enemy hands."

The debate has focused fresh scrutiny on the influential Office of Legal Counsel, which advises the president on the limits of executive power and has come under stiff criticism for approving broad claims by Bush in his response to Sept. 11.

Historically, the Justice Department office has been a training ground for elite lawyers, including Supreme Court Justices Antonin Scalia and Samuel A. Alito Jr. But critics have expressed concern that in the Bush administration, it has become politicized.

Jack L. Goldsmith, a Harvard law professor who headed the office between October 2003 and June 2004, published a book last month detailing battles within the administration over terrorism policies and steps he took to disavow and rewrite opinions on torture and

other subjects that he considered legally indefensible. He testified about his findings this week before the Senate Judiciary Committee.

The acting head of the office, Steven G. Bradbury, who signed both of the newly disclosed opinions, has been singled out by Democrats as an administration rubber stamp. The congressional majority has refused to confirm his nomination, which has been pending for two years.

Bradbury previously wrote a legal justification that the administration used to publicly defend the National Security Agency's use of warrantless electronic surveillance after Sept. 11. Given congressional opposition, there would be pressure on Mukasey, as attorney general, to replace Bradbury.

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Sunday, October 07, 2007

WASHINGTON POST

EDITORIAL:

More Torture Memos

The Bush administration's secret legal decisions defy Congress and the courts.

Sunday, October 7, 2007; B06

PRESIDENT BUSH said Friday, as he has many times before, that "this government does not torture people." But presidential declarations can't change the facts. The record shows that Mr. Bush and a compliant Justice Department have repeatedly authorized the CIA to use interrogation methods that the rest of the world -- and every U.S. administration before this one -- have regarded as torture: techniques such as simulated drowning, induced hypothermia, sleep deprivation and prolonged standing.

The New York Times reported last week that the Justice Department's Office of Legal Counsel issued two classified memos in 2005 to justify techniques that the Central Intelligence Agency had used when interrogating terrorism suspects abroad -- and to undercut a law passed by Congress that outlawed "cruel, inhuman and degrading treatment." Those opinions form part of a continuing pattern, beginning in 2002 and extending until this past summer, of secret -- and highly questionable -- legal judgments by Bush-appointed lawyers intended to circumvent U.S. law, treaty commitments, legislation passed by Congress and Supreme Court decisions -- all of which should have prevented the abuse of prisoners.

The administration has essentially been operating its own clandestine legal system, unaccountable to Congress or the courts. The resulting violations of basic human rights have cost the country incalculable prestige abroad and put its own citizens in danger of being subjected to similarly harsh treatment. That is particularly true since July, when Mr. Bush signed an executive order that allowed the CIA to resume using "enhanced interrogation techniques" on prisoners after a hiatus of more than 18 months.

For nearly six years, Congress has failed to take effective action against these abuses. Predictably, lawmakers are now calling for the administration to release the two Justice Department memos from 2005. Fair enough, but the relevance of those documents has been diminished by last year's passage of the Military Commissions Act, which contained new, if inadequate, strictures on prisoner treatment. Mr. Bush's executive order of July was tailored to that law; while some techniques, such as simulated drowning, have been dropped, others are again in use.

The president said Friday that congressional leaders have been briefed on those techniques. Those legislators should be raising objections to any that appear to violate the Geneva Conventions' prohibition of "humiliating" or "degrading" treatment and demanding to see the latest legal memos. Even better would be for Congress to curtail further abuses by mandating that the Army's interrogation manual, which now covers treatment of all prisoners in the Pentagon's custody, cover all other foreign detainees.

Torture will probably be a prime topic at the confirmation hearing of attorney general nominee Michael B. Mukasey -- and rightly so. Mr. Mukasey should be pressed for a commitment that the Justice Department's guidance about current CIA interrogation techniques will strictly apply U.S. statutes and Supreme Court rulings -- and that he will share that guidance with Congress. He also needs to be asked about how, if confirmed, he plans to rehabilitate the Office of Legal Counsel. Once valued for its ability to give independent and unfiltered legal advice to the executive, the office has deteriorated under Mr. Bush's leadership to become the equivalent of a legal yes man. This dishonors its proud tradition and removes a desperately needed internal check on executive excesses -- especially in an administration that so eagerly shuns the Constitution's checks and balances.

NEW YORK TIMES

EDITORIAL:
October 7, 2007
EDITORIAL

On Torture and American Values

Once upon a time, it was the United States that urged all nations to obey the letter and the spirit of international treaties and protect human rights and liberties. American leaders denounced secret prisons where people were held without charges, tortured and killed.

And the people in much of the world, if not their governments, respected the United States for its values.

The Bush administration has dishonored that history and squandered that respect. As an article on this newspaper's front page last week laid out in disturbing detail, President Bush and his aides have not only condoned torture and abuse at secret prisons, but they have conducted a systematic campaign to mislead Congress, the American people and the world about those policies.

After the attacks of 9/11, Mr. Bush authorized the creation of extralegal detention camps where Central Intelligence Agency operatives were told to extract information from prisoners who were captured and held in secret. Some of their methods — simulated drownings, extreme ranges of heat and cold, prolonged stress positions and isolation — had been classified as torture for decades by civilized nations. The administration clearly knew this; the C.I.A. modeled its techniques on the dungeons of Egypt, Saudi Arabia and the Soviet Union.

The White House could never acknowledge that. So its lawyers concocted documents that redefined "torture" to neatly exclude the things American jailers were doing and hid the papers from Congress and the American people. Under Attorney General Alberto Gonzales, Mr. Bush's loyal enabler, the Justice Department even declared that those acts did not violate the lower standard of "cruel, inhuman or degrading treatment."

That allowed the White House to claim that it did not condone torture, and to stampede Congress into passing laws that shielded the interrogators who abused prisoners, and the men who ordered them to do it, from any kind of legal accountability.

Mr. Bush and his aides were still clinging to their rationalizations at the end of last week. The president declared that Americans do not torture prisoners and that Congress had been fully briefed on his detention policies.

Neither statement was true — at least in what the White House once scorned as the "reality-based community" — and Senator John Rockefeller, chairman of the Intelligence Committee, was right to be furious. He demanded all of the "opinions of the Justice Department analyzing the legality" of detention and interrogation policies. Lawmakers, who for too long have been bullied and intimidated by the White House, should rewrite the Detainee Treatment Act and the Military Commissions Act to conform with actual American laws and values.

For the rest of the nation, there is an immediate question: Is this really who we are?

Is this the country whose president declared, "Mr. Gorbachev, tear down this wall," and then managed the collapse of Communism with minimum bloodshed and maximum dignity in the twilight of the 20th century? Or is this a nation that tortures human beings and then concocts legal sophistries to confuse the world and avoid accountability before American voters?

Truly banning the use of torture would not jeopardize American lives; experts in these matters generally agree that torture produces false confessions. Restoring the rule of law to Guantánamo Bay would not set terrorists free; the truly guilty could be tried for their crimes in a way that does not mock American values.

Clinging to the administration's policies will only cause further harm to America's global image and to our legal system. It also will add immeasurably to the risk facing any man or woman captured while wearing America's uniform or serving in its intelligence forces.

This is an easy choice.

Citation: http://www.nytimes.com/2007/10/07/opinion/07sun1.html

MSNBC

Tuesday, October 09, 2007

Court nixes suit claiming CIA torture

Justices throw out German's challenge to alleged abduction by U.S. agents

The Associated Press
Updated: 9:22 a.m. CT Oct 9, 2007

WASHINGTON - The Supreme Court on Tuesday terminated a lawsuit from a man who claims he was abducted and tortured by the CIA, effectively endorsing Bush administration arguments that state secrets would be revealed if the case were allowed to proceed.

Khaled el-Masri, 44, alleged that he was kidnapped by CIA agents in Europe and held in an Afghan prison for four months in a case of mistaken identity.

The administration has not publicly acknowledged that el-Masri was detained, and lower courts dismissed his suit after the administration asserted that state secrets would be revealed if the lawsuit were not blocked. The justices rejected his appeal without comment.

The case had been seen as a test of the administration's legal strategy to stop it and several other national security lawsuits by invoking the doctrine of state secrets. Another lawsuit over the administration's warrantless wiretapping program, also dismissed on state secrets grounds, still is pending before the justices.

A coalition of groups favoring greater openness in government says the Bush administration has used the state secrets privilege much more often than its predecessors.

At the height of Cold War tensions between the United States and the former Soviet Union, U.S. presidents used the state secrets privilege six times from 1953 to 1976,

according to OpenTheGovernment.org. Since 2001, it has been used 39 times, enabling the government to unilaterally withhold documents from the court system, the group said.

El-Masri's case centers on the CIA's "extraordinary rendition" program, in which terrorism suspects are captured and taken to foreign countries for interrogation. Human rights groups have heavily criticized the program.

President Bush has repeatedly defended the policies in the war on terror, saying as recently as last week that the U.S. does not engage in torture.

El-Masri, a German citizen of Lebanese descent, says he was mistakenly identified as an associate of the Sept. 11 hijackers and was detained while attempting to enter Macedonia on New Year's Eve 2003.

He claims that CIA agents stripped, beat, shackled, diapered, drugged and chained him to the floor of a plane for a flight to Afghanistan. He says he was held for four months in a CIA-run prison known as the "salt pit" in the Afghan capital of Kabul. The lawsuit sought damages of at least $75,000.

'I don't believe what he says'

The U.S. government has neither confirmed nor denied el-Masri's account. But German Chancellor Angela Merkel has said that U.S. officials acknowledged that El-Masri's detention was a mistake.

El-Masri's account also has been bolstered by European investigations and U.S. news reports. In January, German prosecutors issued arrest warrants for 13 suspected CIA agents who allegedly took part in the operation against him.

El-Masri's lawyers also tried to use a comment by former CIA director George Tenet to show that both the program and el-Masri's case are well-known to the public.

Rather than refuse to comment when asked about El-Masri's claims, Tenet told CNN in May, "I don't believe what he says is true."

The state secrets privilege arose from a 1953 Supreme Court ruling that allowed the executive branch to keep secret, even from the court, details about a military plane's fatal crash.

Three widows sued to get the accident report after their husbands died aboard a B-29 bomber, but the Air Force refused to release it claiming that the plane was on a secret mission to test new equipment. The high court accepted the argument, but when the report was released decades later there was nothing in it about a secret mission or equipment.

The case is El-Masri v. U.S., 06-1613.

URL: http://www.msnbc.msn.com/id/21205942/

Wednesday, October 10, 2007

WASHINGTON POST

Supreme Court Won't Review Alleged CIA Abduction

By Robert Barnes
Washington Post Staff Writer
Wednesday, October 10, 2007; A04

The Supreme Court declined yesterday to open U.S. courts to a German citizen who said he was abducted, imprisoned and tortured by the CIA because he was mistakenly identified as a terrorist.

The government had invoked its "state secrets" privilege and said there was no way for Khaled el-Masri to bring his lawsuit, or for the government to defend itself, without the disclosure of information that would endanger national security.

A federal district judge and the U.S. Court of Appeals for the 4th Circuit had dismissed Masri's suit, and the Supreme Court's denial of review of those actions came without comment or dissent.

Masri, who is of Lebanese descent, has said he was detained by Macedonian police while on vacation on Dec. 31, 2003, and handed over to the CIA a few weeks later under a secret program that transfers terrorism suspects to other countries for interrogation. He said he was taken to a secret CIA-run prison in Afghanistan and physically abused before he was flown back to the Balkans without explanation in May 2004 and dumped on a hillside in Albania.

German officials said they were later informed privately by their U.S. counterparts that Masri was detained in a case of mistaken identity, apparently confused with a terrorism suspect of a similar name. The case has drawn wide attention in Europe, although U.S. officials have not publicly admitted any guilt or responsibility in the case.

The American Civil Liberties Union had taken up Masri's case, and lawyer Ben Wizner said the Supreme Court's decision not to hear it "has provided the government with complete immunity for its shameful human rights and due-process violations."

ACLU lawyers that "the entire world already knows" the information the government said it is seeking to protect. But government lawyers said comments from officials are different from the specific details the administration would need to expose in order to litigate the case. Solicitor General Paul D. Clement called Masri's lawsuit an "extravagant

request" that would overturn the precedent set by the court more than 50 years ago in denying a lawsuit brought during the Cold War about a downed warplane.

German authorities had tried to extradite 13 CIA agents they claimed were involved in Masri's abduction, but they dropped the effort last month.

Masri was committed to a psychiatric institution in May after he was arrested in the southern German city of Neu-Ulm on suspicion of arson. His attorney in Germany blamed his troubles on the CIA, saying the kidnapping and detention had left Masri a "psychological wreck."

WASHINGTON POST

Judge Orders U.S. Not to Transfer Tunisian Detainee

By Josh White
Washington Post Staff Writer
Wednesday, October 10, 2007; A11

A federal district judge has ordered the government not to transfer a Tunisian detainee held at Guantanamo Bay, Cuba, to his home country, over fears that he would be tortured or killed. The move marks the first time a court has prevented U.S. officials from making such a transfer and is the first ruling in favor of an individual detainee's rights at the detention facility since Congress restricted court oversight of the detainees.

Judge Gladys Kessler of the U.S. District Court for the District of Columbia ruled last week that Mohammed Abdul Rahman cannot be sent to Tunisia because he could suffer "irreparable harm" before the Supreme Court rules in a landmark case that could give him access to U.S. courts. Her decision was unsealed yesterday.

Rahman's case underscores the challenges facing the Bush administration as it seeks to transfer alleged enemy combatants out of Guantanamo Bay and to the custody of their home nations as part of an effort to close the facility. Acknowledging the tainted reputation that Guantanamo has gained internationally, U.S. officials have long been seeking to send detainees elsewhere, relying on diplomatic agreements that the recipient countries will not mistreat them.

While President Bush and other officials have publicly stated their desire to close the facility, the administration has engaged in heated internal debates and has not come to a consensus on how to do so, as well as on the fate of the detainees who would need to remain in custody. Guantanamo's population has been slowly dwindling as U.S. officials have negotiated the transfer of hundreds of detainees to their home nations.

But some detainees would rather remain at Guantanamo than face possible torture or death at home and have begun to challenge their departures in U.S. courts. Rahman is the

If the Supreme Court rejects the appeals court's analysis and rules that Guantánamo detainees have an underlying right to habeas corpus, the precise nature of the review tribunals and the appeals process could become important. The question will be whether the stripping of federal court jurisdiction amounted to an unconstitutional "suspension" of habeas corpus.

The Supreme Court has ruled that habeas corpus can be eliminated if an adequate alternative process is provided. The detainees' lawyers argue that the alternative process is severely deficient.

The administration argues in its new brief that it is both "adequate and effective."

Friday, October 12, 2007

Detainee's Lawyers Fear That Mail Is Uselessly Slow at Guantanamo

By Josh White
Washington Post Staff Writer
Friday, October 12, 2007; A15

Majid Khan -- also known as Detainee No. 010020 at the U.S. detention facility in Guantanamo Bay, Cuba -- has been in U.S. custody for more than four years. First, it was in secret prisons run by the CIA, and now, for more than a year, in Cuba, where he has had contact only with his captors and with representatives from the International Committee of the Red Cross.

Last month, U.S. officials asked Khan whether he wanted a lawyer to represent him in federal court, part of a process that allows detainees to challenge the military's determination that they are enemy combatants. For Khan, now 27 and one of 14 "high-value" detainees transferred into Guantanamo in September 2006, it is the first time he has had real hope of meeting his attorneys at the Center for Constitutional Rights.

Defense Department officials have said that the detainees -- including Khan, who is accused of researching how to poison U.S. reservoirs and bomb U.S. gas stations -- will be able to meet with lawyers if they so choose. Lawyers for Khan have said that they have received high-level security clearance in an effort to meet with him and that they have been told they will see him soon. But they worry that Khan has not received correspondence they have sent him, as they just received two postcards Khan sent them in May and June.

In the postcards, Khan pleads with CCR to help him. He alternately thanks them for "fighting for me" and calls his situation an "emergency matter." In careful English script, Khan, a Saudi who went to high school in Baltimore, expressed futility, saying he has "no idea what's going on out there" because "I have no access to outside world." He also expressed hope, telling his lawyers: "Keep trying, don't give up."

The postcards are adorned with a U.S. stamp showing a serene beach with palm trees, and the address area shows that they come from "GTMO," the military's shorthand for the detention facility.

"I just wanted to send thank you note for fighting for me and doing your best to get me out from here," Khan wrote in a May postcard CCR provided to The Post. "Please! Don't give up. Keep trying. I hope, we will meet some day. I will have justice if not here then hereafter."

In a June postcard, Khan wrote that he has tried to contact "DoD, CIA, FBI and even President" to allow him to meet with his lawyers. "I've gone on strikes, protests, cooperation, non-cooperation but still no response. Please do your best to reach out to me. I need to talk to you, it is an emergency matter."

NEW YORK TIMES

October 11, 2007

Watchdog of C.I.A. Is Subject of C.I.A. Inquiry

By MARK MAZZETTI and SCOTT SHANE

Page 1

WASHINGTON, Oct. 11 — The director of the Central Intelligence Agency, Gen. Michael V. Hayden, has ordered an unusual internal inquiry into the work of the agency's inspector general, whose aggressive investigations of the C.I.A.'s detention and interrogation programs and other matters have created resentment among agency operatives.

A small team working for General Hayden is looking into the conduct of the agency's watchdog office, which is led by Inspector General John L. Helgerson. Current and former government officials said the review had caused anxiety and anger in Mr. Helgerson's office and aroused concern on Capitol Hill that it posed a conflict of interest.

The review is particularly focused on complaints that Mr. Helgerson's office has not acted as a fair and impartial judge of agency operations but instead has begun a crusade against those who have participated in controversial detention programs.

Any move by the agency's director to examine the work of the inspector general would be unusual, if not unprecedented, and would threaten to undermine the independence of the office, some current and former officials say.

Frederick P. Hitz, who served as C.I.A. inspector general from 1990 to 1998, said he had no first-hand information about current conflicts inside the agency. But Mr. Hitz said any move by the agency's director to examine the work of the inspector general would "not be proper."

"I think it's a terrible idea," said Mr. Hitz, who now teaches at the University of Virginia. "Under the statute, the inspector general has the right to investigate the director. How can you do that and have the director turn around and investigate the I.G.?"

A C.I.A. spokesman strongly defended the inquiry on Thursday, saying General Hayden supported the work of the inspector general's office and had "accepted the vast majority of its findings."

"His only goal is to help this office, like any office at the agency, do its vital work even better," said Paul Gimigliano, the spokesman.

Current and former intelligence officials said the inquiry had involved formal interviews with at least some of the inspector general's staff and was perceived by some agency employees as an "investigation," a label Mr. Gimigliano rejected.

Several current and former officials interviewed for this article spoke on condition of anonymity because of the sensitivity of the inquiry.

The officials said the inquiry was being overseen by Robert L. Deitz, a trusted aide to the C.I.A. director and a lawyer who served as general counsel at the National Security Agency when General Hayden ran it. Michael Morrell, the agency's associate deputy director, is another member of the group, officials said.

Reached by phone Thursday, both Mr. Helgerson and Mr. Dietz declined to comment.

In his role as the agency's inspector general since 2002, Mr. Helgerson has investigated some of the most controversial programs the C.I.A. has begun since the Sept. 11 attacks, including its secret program to detain and interrogate high value terrorist suspects.

Under federal procedures, agency heads who are unhappy with the conduct of their inspectors general have at least two places to file complaints. One is the Integrity Committee of the President's Council on Integrity and Efficiency, which oversees all the inspectors general. The aggrieved agency head can also go directly to the White House.

If serious accusations against an inspector general are sustained by evidence, the president can dismiss him.

Both those routes avoid the awkward situation officials describe at the C.I.A. and preserve the independence of the inspector general.

But one intelligence official who supports General Hayden's decision to begin an internal inquiry said that going outside the agency would "blow things way out of proportion."

A report by Mr. Helgerson's office completed in the spring of 2004 warned that some C.I.A.-approved interrogation procedures appeared to constitute cruel, inhuman and degrading treatment, as defined by the international Convention Against Torture.

Some of the inspector general's work on detention issues was conducted by Mary O. McCarthy, who was fired from the agency last year after being accused of leaking classified information. Officials said Mr. Helgerson's office was nearing completion on a number of inquiries into C.I.A. detention, interrogation, and "renditions" — the practice of seizing suspects and delivering them to the authorities in other nations.

The inspector general's office also rankled agency officials when it completed a withering report about the C.I.A's missteps before the Sept. 11 attack — a report that recommended "accountability boards" to consider disciplinary action against a handful of senior officials.

When the report was made public in August, General Hayden took the rare step of pointing up criticisms of the report by the former intelligence director, George J. Tenet and his senior aides, saying many officials "took strong exception to its focus, methodology and conclusions."

Some agency officers believe the aggressive investigations by Mr. Helgerson amount to unfair second guessing of intelligence officers who are often risking their lives in the field.

"These are good people who thought they were doing the right thing," said one former agency official. "And now they are getting beat up pretty bad and they have to go out an hire a lawyer."

Agency officials have also criticized the length of the inspector general's investigations, some lasting more than five years, which have derailed careers and generated steep legal bills for officers under scrutiny.

The former agency official called General Hayden's review of the inspector general "a smart move."

Since taking over at the C.I.A. in 2006, General Hayden has taken several steps to soothe anger within the agency's clandestine service, which has been buffeted in recent years by a string of prolonged investigations.

He has brought back two veteran agency operatives, Steven R. Kappes and Michael J. Sulick, both of whom angrily left during the tenure of Porter J. Goss, the C.I.A. director, to assume top posts at the spy agency. He also supported the president's nomination of John A. Rizzo, a career agency lawyer and someone well-respected by covert operatives, to become the C.I.A's general counsel.

Mr. Rizzo withdrew his nomination to the post last month in the midst of intense opposition from Senate Democrats.

"Director Hayden has done a lot of things to convince the operators that he's looking out for them, and putting the I.G. back in its place is part of this," said John Radsan, who

worked as a C.I.A. lawyer from 2002 to 2004 and is now a professor at William Mitchell College of Law.

Mr. Hitz and other former C.I.A. officials said tensions between the inspector general and the rest of the agency were natural. Conflicts most often arise when the inspector general reviews the actions of the agency's directorate of operations, now known as the National Clandestine Service, which recruits agents and hunts terrorists overseas.

"The perception is like in a police department between street cops and internal affairs," said A. B. Krongard, the agency's executive director from 2001 to 2004.

Resentment of the inspector general's work has also at times extended to the agency's general counsel's office, whose legal judgment is sometimes second-guessed by after-the-fact investigations. "In some of our reports, we were quite critical of the advice given by the general counsel," Mr. Hitz said.

The C.I.A., created in 1947, had an in-house inspector general selected by the director starting in 1952 who investigated failed operations like the Bay of Pigs invasion against Cuba in 1961.

But that position was viewed as lacking clout and independence, and in 1989, partly in response to the Iran-contra affair, Congress created an independent inspector general at the agency, appointed by the president and reporting to both the director and to Congress.

NEW YORK TIMES

October 12, 2007

Guantánamo Detainee Is Charged in '02 Attack

By WILLIAM GLABERSON

Page A23

Military prosecutors filed charges of attempted murder against a Guantánamo detainee this week, saying he threw a hand grenade at a jeep carrying two American servicemen and an Afghan translator, documents released yesterday show.

All three men were seriously injured in an attack in Kabul on Dec. 17, 2002.

The case was the fourth filed under the military commissions law Congress enacted last year for trials of war-crimes cases at the naval station at Guantánamo Bay, Cuba.

The detainee, Mohammed Jawad, has told Guantánamo hearing panels that he had been caught with another grenade, but he denied that he was responsible for the Kabul attack, undated transcripts show. At the hearings, to determine if he was properly held as an

Monday, October 15, 2007

WASHINGTON POST

OPINION:

Going to See a Ghost

Majid Khan and the Abuses of the 'War on Terror'

By Gitanjali S. Gutierrez
Monday, October 15, 2007; A15

Today at Guantanamo Bay, I am supposed to meet a ghost.

Actually, Majid Khan -- whom I represent in my work as a lawyer at the Center for Constitutional Rights-- is still very much alive. Yet his legal status as a person entitled to basic rights is under grave assault. You see, Majid is one of dozens of people who have been held in secret CIA detention centers around the world. They are known as "ghost detainees" because our government hid them away from everyone, even the Red Cross. Their existence is an enduring reminder of the shocking abuse of power taking place in this nation.

Majid's story has become fairly well known. He was born in Pakistan; his family immigrated to the United States in 1996, when Majid was 16, and received asylum in our country. Majid went to Owings Mills High School, outside of Baltimore, where he learned about checks and balances and due process. He was an amateur DJ. And he was deeply attached to his Muslim faith.

In 2002, Majid went to Pakistan to marry. On March 5, 2003, he was kidnapped by Pakistani police, who turned him over to the CIA. Our government held him incommunicado at a secret CIA facility for more than three years. According to news reports, former CIA interrogators, government memos and admissions by President Bush, techniques such as simulated drowning, sleep deprivation, extreme temperature fluctuations, sexual humiliation and extended solitary confinement in cramped quarters -- practices that amount to torture under any reasonable definition -- were used at these facilities repeatedly, brutally and systematically. But during this entire period our government denied that Majid even existed. He was a ghost. His family did not know whether he was alive or dead.

Then, as abruptly as he disappeared, Majid reappeared. In September 2006, President Bush announced that Majid, along with 13 other "ghosts," would be transferred to Guantanamo Bay to face a military tribunal. The tribunals are meant to legitimize their detention but accomplish nothing of the sort. Any military commission Majid is to face will follow rules specifically designed to ensure that the government gets the outcome it seeks.

Moreover, the proceedings will be tainted with secrecy. A transparent trial would risk revealing the events surrounding Majid's detention and treatment while in CIA custody. The government's need for secrecy has nothing to do with Majid's alleged wrongdoing -- only the circumstances under which he was captured, hidden away and interrogated. He will continue to be held behind a shroud of secrecy to protect the CIA program under which he was originally detained. He is a prisoner being punished in order to protect his jailers. The logic is terrifying. And it is being done in the name of the American people.

At least Majid's family now knows he is alive. When I see him, it will be the first time he has been afforded the basic right of meeting with a lawyer. I am writing this column now because once I meet with my client, military regulations will restrict my ability to speak publicly about the case.

Over the past few years, while serving hundreds of Guantanamo detainees, lawyers at the Center for Constitutional Rights have wrestled with such gag orders. Obviously, we abhor the infringement of our clients' right to a fair and transparent process -- and of the public's right to hold government officials accountable for their acts. While we are prohibited from discussing details of our cases, nothing will stop us from denouncing this abuse of power and challenging the government's attempts to use secrecy to hide its criminal conduct. From the violation of habeas corpus to the use of torture to sham trials that mock the most basic rules of law, the executive branch under President Bush has assaulted the very foundations of our system of justice. This must end.

In the coming months, the Supreme Court will have the opportunity to reject these abuses and restore the rights envisioned by the Founders. I hope that at this critical time, the American people will make it known that while our president may have disdain for our Constitution, we the people still cherish it.

In literature, ghosts are symbols not only of mortality but also of accountability. Ghosts render judgment upon actions and compel us to mend our ways. For three years, Majid Khan was a ghost. Now he has reappeared. Let his terrifying experiences serve to remind us of the danger posed when power goes unchecked -- and of our duty not to be silent but to stand and fight for the fundamental rights that protect us all.

Gitanjali S. Gutierrez, a lawyer at the Center for Constitutional Rights, represents numerous detainees held at Guantanamo Bay. She was a member of the legal team in Rasul v. Bush and was the first habeas corpus lawyer to travel to Guantanamo, in 2004.

NEW YORK TIMES

October 15, 2007

U.S. Mulls New Status Hearings for Guantánamo Inmates

By WILLIAM GLABERSON

In a decision on Oct. 3, the federal appeals panel declined a government request to reconsider its order to turn over the information on the detainees. But the panel added that the government had an alternative. The Pentagon could "convene a new C.S.R.T., taking care this time to retain all the government information."

Erik Ablin, a Justice Department spokesman, said the filing on Friday indicated only "that we are considering our options."

Wednesday, October 17, 2007

WASHINGTON POST

After Guantanamo, An Empty Freedom

Ethnic Uighurs Frustrated in Albania

By Jonathan Finer
Washington Post Foreign Service
Wednesday, October 17, 2007; A13

TIRANA, Albania -- For 16 months, they have shared a clutch of tidy rooms in a small refugee camp in this city, living alongside a few dozen others whose lives were unraveled by war or persecution or both.

But apart from their new home, the five men from the Uighur ethnic group of western China, whose most recent address was the U.S. detention facility at Guantanamo Bay, Cuba, have little in common with the camp's other residents, most of whom come from one of Albania's neighbors and blend easily into the crowd on Tirana's busy streets.

The Uighurs, all Muslims, said in recent interviews that for a while they embraced their new life in Albania. A majority-Muslim country, it was the only one willing to accept them when U.S. officials ruled that, after three years of incarceration, they posed no security risk.

But the desire to start new lives here has been thwarted by what they described as a string of broken promises. They say they are unable to work or reunite with family members, whom they haven't seen since before they were seized in 2001.

"We have requested an independent life here, to bring our families here, to be trained and have some work to do, to live in our own apartments," said Abu Qadder Basim, who at 38 is the oldest of the five. "Obviously you can't compare this life to Guantanamo, which is a prison."

He spoke in his spartan room, adorned only with a wall calendar, a few worn Korans, a small fan and a paperback copy of "Albanian for Foreigners."

times, the translation is done by an Algerian refugee who speaks French and Arabic, which the Uighurs can speak conversationally.

"They are the best guys in this place. They have never given us one minute's problem," Cera said. "We try to do what we can for them. We offer them a special menu. We have a van and a driver at their disposal if they want to go into town. It is hard because if you look at Albanian society, the way they live, they are not at the bottom."

Basim, who has a round face, a trimmed goatee and a slight paunch, said the men go to a Tirana mosque every Friday to pray, but otherwise have more or less stopped venturing out of the camp.

"It is frustrating not to be able to speak with anyone. So we basically spend the whole day here, praying and going on the Internet. It's a very simple life," he added. "Outside of the camp, you see people with their families, and it makes us think of our families and our kids."

Friday, October 19, 2007

WASHINGTON IN BRIEF

Friday, October 19, 2007; A08

Lawmakers Apologize to Former Detainee

Lawmakers apologized yesterday to a Canadian engineer for his seizure by U.S. officials who took him to Syria, where the man says he was tortured in what he called an "immoral" American anti-terrorism program called rendition.

Maher Arar, 37, appeared before a joint hearing of House subcommittees by video, because he is still on a U.S. government watch list.

"Let me personally give you what our government has not: an apology," said Rep. Bill Delahunt (D-Mass.) as he opened the hearing. "Let me apologize to you and the Canadian people for our government's role in a mistake."

Arar said he was grateful for the lawmakers' apologies but hoped the U.S. government would eventually apologize to him officially.

"Let me be clear: I am not a terrorist, I am not a member of al-Qaeda or any terror group. I am a father, a husband and an engineer. I am also a victim of the immoral practice of extraordinary rendition," he said.

The Canadian government has apologized to Arar for its role in the case and agreed to pay him almost $10 million in compensation. The Bush administration has not apologized.

NEW YORK TIMES

October 19, 2007

Senators Clash With Nominee About Torture

By PHILIP SHENON

Page 1

WASHINGTON, Oct. 18 — President Bush's nominee for attorney general, Michael B. Mukasey, declined Thursday to say if he considered harsh interrogation techniques like waterboarding, which simulates drowning, to constitute torture or to be illegal if used on terrorism suspects.

On the second day of confirmation hearings before the Senate Judiciary Committee, Mr. Mukasey went further than he had the day before in arguing that the White House had constitutional authority to act beyond the limits of laws enacted by Congress, especially when it came to national defense.

He suggested that both the administration's program of eavesdropping without warrants and its use of "enhanced" interrogation techniques for terrorism suspects, including waterboarding, might be acceptable under the Constitution even if they went beyond what the law technically allowed. Mr. Mukasey said the president's authority as commander in chief might allow him to supersede laws written by Congress.

The tone of questioning was far more aggressive than on Wednesday, the first day of the hearings, as Mr. Mukasey, a retired federal judge, was challenged by Democrats who pressed him for his views on President Bush's disputed antiterrorism policies.

In the case of the eavesdropping program, Mr. Mukasey suggested that the president might have acted appropriately under his constitutional powers in ordering the surveillance without court approval even if federal law would appear to require a warrant.

"The president is not putting somebody above the law; the president is putting somebody within the law," said Mr. Mukasey, who seemed uncomfortable with the aggressive tone, occasionally stumbling in his responses. "The president doesn't stand above the law. But the law emphatically includes the Constitution."

The remarks about the eavesdropping program drew criticism from the committee's chairman, Senator Patrick J. Leahy, Democrat of Vermont, who told Mr. Mukasey that he was troubled by his answer, adding, "I see a loophole big enough to drive a truck through."

The questioning by the Democrats was tougher still regarding Mr. Mukasey's views on presidential authority to order harsh interrogation techniques on terrorist suspects,

including waterboarding, which was used by the C.I.A. on some of those who were captured and held in the agency's secret prisons after the Sept. 11 terror attacks.

"Is waterboarding constitutional?" Mr. Mukasey was asked by Senator Sheldon Whitehouse, Democrat of Rhode Island, in one of the sharpest exchanges.

"I don't know what is involved in the technique," Mr. Mukasey replied. "If waterboarding is torture, torture is not constitutional."

Mr. Whitehouse described Mr. Mukasey's response as a "massive hedge" since the nominee refused to be drawn into a conversation about whether waterboarding amounted to torture; many lawmakers from both parties, as well as civil liberties and human rights groups, have said it is clearly a form of torture. The administration has suggested that it ended the practice after protests from Capitol Hill and elsewhere, although it has never said so explicitly.

"I mean, either it is or it isn't," Mr. Whitehouse continued.

Waterboarding, he said, "is the practice of putting somebody in a reclining position, strapping them down, putting cloth over their faces and pouring water over the cloth to simulate the feeling of drowning. Is that constitutional?"

Mr. Mukasey again demurred, saying, "If it amounts to torture, it is not constitutional."

Mr. Whitehouse said he was "very disappointed in that answer; I think it is purely semantic."

"I'm sorry," Mr. Mukasey replied.

While Mr. Mukasey still seemed almost certain to win Senate confirmation, a vote in the Judiciary Committee could be delayed until he provides written answers to questions raised Thursday by Mr. Leahy. The senator said he did not intend to hold the vote until after the responses were received and reviewed.

The committee's ranking Republican, Senator Arlen Specter of Pennsylvania, said that while he shared some of Democrats' concerns about Mr. Mukasey's views on the limits of presidential authority, "I think you are virtually certain to be confirmed, and we're glad to see the appointment and glad to see somebody who is strong, with a strong record, take over this department."

Other Republicans joined in the praise. "I've listened to your testimony here, and it seems to me that you are extraordinarily well-suited for this position, pretty much as well as anybody who hasn't served in the position before could be," said Senator Jon Kyl of Arizona.

Among the Democrats, Mr. Leahy was especially critical of Mr. Mukasey, wondering aloud whether he had been pressured overnight by the White House to defend the administration's view of its expanded powers in dealing with terrorist threats.

"In your answers yesterday, there was a very bright line on questions of torture and the ability of an executive, or inability of an executive, to ignore the law," Mr. Leahy said. "That seems nowhere near as bright a line today, and maybe I just don't understand."

"I don't know whether you received some criticism from anybody in the administration last night after your testimony," he said, "but I sensed a difference, and a number of people here, Republican and Democratic alike, have sensed a difference."

Mr. Mukasey insisted there had been no pressure from the White House on Wednesday, saying, "I received no criticism."

WASHINGTON POST

Pressure Alleged in Detainees' Hearings

Ex-Prosecutor Says Pentagon Pushing 'Sexy' Cases in '08

By Josh White
Washington Post Staff Writer
Sunday, October 21, 2007; A15

Reprinted from Saturday's late edition

Politically motivated officials at the Pentagon have pushed for convictions of high-profile detainees ahead of the 2008 elections, the former lead prosecutor for terrorism trials at Guantanamo Bay said last night, adding that the pressure played a part in his decision to resign earlier this month.

Senior defense officials discussed in a September 2006 meeting the "strategic political value" of putting some prominent detainees on trial, said Air Force Col. Morris Davis. He said that he felt pressure to pursue cases that were deemed "sexy" over those that prosecutors believed were the most solid or were ready to go.

Davis said his resignation was also prompted by newly appointed senior officials seeking to use classified evidence in what would be closed sessions of court, and by almost all elements of the military commissions process being put under the Defense Department general counsel's command, something he believes could present serious conflicts of interest.

"He said, the way we were going to validate the system was by getting convictions and good sentences," Davis said. "I felt I was being pressured to do something less than full, fair and open."

WALL STREET JOURNAL

OPINION:

Wall Street Journal
October 22, 2007
Pg. 19

Getting Serious About 'Torture'

By David B. Rivkin Jr. and Lee A. Casey

The question of "torture" is again front and center in the ongoing debate over how to fight the war on terror. Judge Michael Mukasey, President Bush's well-qualified pick for the next attorney general, was questioned closely at his confirmation hearings last week on whether torture is illegal -- it is -- and what constitutes torture.

He rightly would not commit to answering that question, especially with respect to the controversial practice of "waterboarding" (that is, simulated drowning) without more information, and got attacked for his candor. Yet, defining torture raises complex legal, policy and moral issues, and cannot be done without taking into account all of the facts and circumstances surrounding the use of any particular interrogation technique. It is time for a national debate that involves those facts and circumstances.

The Bush administration's critics invariably portray all coercive interrogation methods, from forced standing to waterboarding, as torture. This obviously gives them an advantage in the debate, since torture is reprehensible and fundamentally inconsistent with United States policy. They also act as if the mere asking of what constitutes the permissible levels of coercion is immoral, at best, and unlawful at worst. Their arguments, however, are flawed both as a matter of law and policy.

The law defines torture as the intentional infliction of "severe pain or suffering." The intentional infliction of pain or suffering that is not severe is not torture, although depending upon the circumstances it may constitute forbidden "cruel, inhuman or degrading" (CID) treatment.

These terms, of course, are no less difficult to interpret than "severe" pain or suffering. Congress attempted to give them some meaning in the 2005 Detainee Treatment Act (DTA). This law effectively excluded the U.S. military from terrorist interrogations because it limits the Pentagon to techniques approved in the U.S. Army field manual, a

any service, for any reason -- should be allowed to engage in water-boarding. The only acceptable answer is no.

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NEW YORK TIMES

October 26, 2007

McCain Rebukes Giuliani on Waterboarding Remark

By MICHAEL COOPER and MARC SANTORA

Page A23

Rudolph W. Giuliani's statement on Wednesday that he was uncertain whether waterboarding, a simulated drowning technique, was torture drew a sharp rebuke yesterday from Senator John McCain, who said that his failure to call it torture reflected his inexperience.

"All I can say is that it was used in the Spanish Inquisition, it was used in Pol Pot's genocide in Cambodia, and there are reports that it is being used against Buddhist monks today," Mr. McCain, who spent more than five years in a North Vietnamese prison camp, said in a telephone interview.

Of presidential candidates like Mr. Giuliani, who say that they are unsure whether waterboarding is torture, Mr. McCain said: "They should know what it is. It is not a complicated procedure. It is torture."

Mr. Giuliani said on Wednesday night at a forum in Davenport, Iowa, that he favored "aggressive questioning" of terrorism suspects and using "means that are a little tougher" with terrorists but that the United States should not torture people. On the question of whether waterboarding is torture, however, Mr. Giuliani said he was unsure.

"It depends on how it's done," he said, adding that he was unsure whether descriptions of the practice by the "liberal media" were accurate. "It depends on the circumstances. It depends on who does it."

Dr. Allen S. Keller, the director of the Bellevue/N.Y.U. Program for Survivors of Torture, said waterboarding involved tipping a person back, covering his mouth with a cloth and repeatedly pouring water over the cloth to make him gag and experience a drowning sensation. If it is done long enough, Dr. Keller said, there is a risk that the person may drown or have a heart attack.

Sarah Wheaton contributed reporting.

WASHINGTON POST

From CIA Jails, Inmates Fade Into Obscurity

Dozens of 'Ghost Prisoners' Not Publicly Accounted For

By Craig Whitlock
Washington Post Foreign Service
Saturday, October 27, 2007; A01

ISLAMABAD, Pakistan -- On Sept. 6, 2006, President Bush announced that the CIA's overseas secret prisons had been temporarily emptied and 14 al-Qaeda leaders taken to Guantanamo Bay, Cuba. But since then, there has been no official accounting of what happened to about 30 other "ghost prisoners" who spent extended time in the custody of the CIA.

Some have been secretly transferred to their home countries, where they remain in detention and out of public view, according to interviews in Pakistan and Europe with government officials, human rights groups and lawyers for the detainees. Others have disappeared without a trace and may or may not still be under CIA control.

The bulk of the ghost prisoners were captured in Pakistan, where they scattered after the U.S. invasion of Afghanistan in 2001.

Among them is Mustafa Setmariam Nasar, a dual citizen of Syria and Spain and an influential al-Qaeda ideologue who was last seen two years ago. On Oct. 31, 2005, the red-bearded radical with a $5 million U.S. bounty on his head arrived in the Pakistani border city of Quetta, unaware he was being followed.

Nasar was cornered by police as he and a small group of followers stopped for dinner. Soon after, according to Pakistani officials, he was handed over to U.S. spies and vanished into the CIA's prison network. Since then, various reports have placed him in Syria, Afghanistan and India, though nobody has been able to confirm his whereabouts.

Nearly all the Arab members of al-Qaeda caught in Pakistan were given to the CIA, Pakistani security officials said. But the fate of several Pakistani al-Qaeda operatives who were also captured remains murky; the Pakistani government has ignored a number of lawsuits filed by relatives seeking information.

"You just don't know -- either these people are in the custody of the Pakistanis or the Americans," said Zafarullah Khan, human rights coordinator for the Pakistan Muslim League, an opposition political party.

Others have been handed over to governments that have kept their presence a secret.

Since 2004, for example, the CIA has handed five Libyan fighters to authorities in Tripoli. Two had been covertly nabbed by the CIA in China and Thailand, while the others were caught in Pakistan and held in CIA prisons in Afghanistan, Eastern Europe and other locations, according to Libyan sources.

The Libyan government has kept silent about the cases. But Libyan political exiles said the men are kept in isolation with no prospect of an open trial.

Other ghost prisoners are believed to remain in U.S. custody after passing into and out of the CIA's hands, according to human rights groups.

Relatives of a Tunisian al-Qaeda suspect known as Retha al-Tunisi, captured in Karachi, Pakistan, in 2002, received notice recently from the International Committee of the Red Cross that he is detained at a U.S. military prison in Afghanistan, said Clara Gutteridge, an investigator for Reprieve, a London-based legal rights group that represents many inmates at the U.S. prison at Guantanamo Bay. Other prisoners, since released, had previously reported seeing Tunisi at a secret CIA "black site" in Afghanistan.

At least one former CIA prisoner has been quietly freed. Ahmad Khalil Ibrahim Samir al-Ani, an Iraqi intelligence agent captured after the invasion of Iraq in 2003, was detained at a secret location until he was released last year.

Ani gained notoriety before the Iraq war when Bush administration officials said he had met in Prague with Sept. 11, 2001, hijacker Mohamed Atta. Some officials, including Vice President Cheney, cited the rendezvous as evidence of an alliance between al-Qaeda and Saddam Hussein. The theory was later debunked by U.S. intelligence agencies and the Sept. 11 commission, which revealed in 2004 that Ani was in U.S. custody.

The Iraqi spy resurfaced two months ago when Czech officials revealed that he had filed a multimillion-dollar compensation claim. His complaint: that unfounded Czech intelligence reports had prompted his imprisonment by the CIA.

Guantanamo Newcomers

When Bush confirmed the existence of the CIA's prisons in September 2006, he said they had been vacated for the time being. But he said the U.S. government would use them again, if necessary.

The CIA has resumed its detention program. Since March, five new terrorism suspects have been transferred to Guantanamo. Although the Pentagon has not disclosed details about how or precisely when they were captured, officials have said one of the prisoners, Abd al-Hadi al-Iraqi, had spent months in CIA custody overseas.

Details of the secret detention program remain classified. U.S. officials have offered only vague descriptions of its reach and scope.

Last month, in a speech in New York, CIA Director Michael V. Hayden said "fewer than 100 people" had been detained in the CIA's overseas prison network since the program's inception in early 2002.

In June, a coalition of human rights groups identified 39 people who may have been in CIA custody but are still missing. Many of those on the list, however, were identified by partial names or noms de guerre, such as one man described only as Mohammed the Afghan.

Joanne Mariner, director of terrorism and counterterrorism research for Human Rights Watch, said the CIA has moved many prisoners from country to country and relied on other spy services to take custody of suspects, sometimes temporarily and sometimes for good.

"The large majority have gone to their countries of origin," she said. "But that doesn't mean all of them. There could be some that are still in proxy detention."

In a footnote to its 2004 report, the Sept. 11 commission named nine al-Qaeda suspects who were in U.S. custody at black sites. Seven were later transferred to Guantanamo.

Still missing is Hassan Ghul, a Pakistani national captured in northern Iraq in January 2004. U.S. officials have described him as a high-level emissary between al-Qaeda's core command in Pakistan and its affiliates in Iraq.

Another prisoner on the commission's list was Ali Abd al-Rahman al-Faqasi al-Ghamdi, a Saudi accused of planning attacks in the Arabian Peninsula. He surrendered to Saudi authorities in June 2003.

Although the Sept. 11 commission reported that Ghamdi was in U.S. custody, Saudi officials said that was not the case. They said he remains in prison in Saudi Arabia and has never left the country.

"He was never, under no condition, in U.S. custody," said a Saudi security source who spoke on condition of anonymity.

Officials with the International Committee of the Red Cross said they have failed to find dozens of people once believed to have been in CIA custody, despite repeated queries to the U.S. government and other countries.

"The ICRC remains gravely concerned by the fate of the persons previously held in the CIA detention program who remain unaccounted for," said Simon Schorno, a Red Cross spokesman in Washington. "The ICRC is concerned about any type of secret detention."

The CIA declined to comment on whether certain individuals were ever in its custody.

"Apart from detainees transferred to Guantanamo, the CIA does not, as a rule, comment publicly on lists of people alleged to have been in its custody -- even though those lists are often flawed," said Paul Gimigliano, a CIA spokesman.

Out in the Cold

When the Bush administration disclosed last year that 14 senior al-Qaeda leaders had been transferred to Guantanamo -- leaving the CIA prisons temporarily vacant -- some conspicuous names were missing from the list.

One was an al-Qaeda training camp leader known as Ibn al-Sheikh al-Libi. He was arrested in the Pakistani border town of Kohat in late 2001 and eventually taken to Cairo, where the CIA enlisted Egyptian intelligence agents to help with the interrogation.

Libi began to talk. Among his claims: that the Iraqi regime had provided training in poisons and mustard gas to al-Qaeda operatives.

His statements were cited by the Bush administration as part of the rationale for invading Iraq in 2003. He recanted after the war began, however, and his continued detention became a political liability for the CIA.

Although the CIA has since acknowledged that Libi was one of its prisoners, U.S. officials have not disclosed what happened to him. In interviews, however, political exiles from Libya said he was flown by the CIA to Tripoli in early 2006 and imprisoned by the Libyan government.

Libi reported that the CIA had taken him from Egypt to several other covert sites, including in Jordan, Morocco and Afghanistan, according to a Libyan security source.

He also claimed that he had been kept someplace very cold and that his CIA captors had told him he was in Alaska, the source said. Human rights groups have suggested that Libi was part of a small group of senior al-Qaeda figures held in a CIA prison in northern Poland.

In Tripoli, Libi joined several other Libyans who had spent time in the CIA's penal system. All were members of the Libyan Islamic Fighting Group, a network that had plotted for years from exile to overthrow Moammar Gaddafi.

After the U.S. invasion of Afghanistan in 2001, members of the Libyan network who had been staying there dispersed. The CIA helped Libya's spy agencies track down some of the leaders.

One of them, Abdallah al-Sadeq, was apprehended in a covert CIA operation in Thailand in the spring of 2004, according to Noman Benotman, a former member of the Libyan militant network.

Another, Abu Munder al-Saadi, the group's spiritual leader, was caught in the Hong Kong airport. In both cases, Benotman said, the Libyans were held briefly by the CIA before U.S. agents flew them to Tripoli.

"They realized very quickly that these guys had nothing to do with al-Qaeda," Benotman said in an interview in London. "They kept them for a few weeks, and that's it."

Benotman said he confirmed details of the CIA operations when he was allowed to see the men during a visit to a Tripoli prison this year. The trip was arranged by the Libyan government as part of an effort to persuade the Libyan prisoners to reconcile with the Gaddafi regime.

The CIA has transferred at least two other Libyans to Tripoli, Benotman said. Khaled al-Sharif and another Libyan known only as Rabai were captured in Peshawar, Pakistan, in 2003 and spent time in a CIA prison in Afghanistan, he said.

The Libyan Embassy in Washington did not respond to a faxed letter seeking comment.

A Missing 'Gold Mine'

In Spain, prosecutors have been searching for Nasar, the redheaded al-Qaeda ideologue, for four years.

In 2003, he was indicted by an investigative magistrate in Madrid, accused of helping to build sleeper cells in Spain. A prolific writer and theoretician in the jihadi movement, Nasar had lived in several European countries as well as Afghanistan.

Spain has filed requests for information about Nasar with the Pakistani government, to no avail. Spanish Foreign Minister Miguel Angel Moratinos also raised the issue during a visit to Islamabad last year.

"We don't have any indication of where he is," said a source in the Spanish Foreign Ministry, who spoke on condition of anonymity.

Brynjar Lia, a Norwegian terrorism analyst and the author of a new book on Nasar, "Architect of Global Jihad," said the radical would know valuable details about the inner workings of al-Qaeda.

"The Americans are probably the ones who want him the most because he was prominently involved in al-Qaeda in the 1990s," said Lia, a senior researcher at the Norwegian Defense Research Establishment. "He must be a gold mine of information."

Some Spanish media have speculated that Nasar is being held in Syria, his place of birth. The CIA has transferred other terrorism suspects to Syria despite tense diplomatic relations between Washington and Damascus.

Other Spanish press reports have claimed that Nasar remains in U.S. custody. Another rumor is that he's being held in a CIA-run prison in India, said Manuel Tuero, a Madrid lawyer who represents Nasar's wife.

Though Nasar would go on trial if he was brought back to Spain, that would be preferable to indefinite detention in a secret prison, Tuero said.

"He's in a legal limbo," he said. "The Americans would never give him a fair trial. Spain would."

Special correspondents Munir Ladaa in Berlin and Cristina Mateo-Yanguas in Madrid contributed to this report.

WALL STREET JOURNAL

OPINION:

Wall Street Journal
October 27, 2007
Pg. 4

Political Sway At Guantanamo?

Former Prosecutor Says Pressure Began With Australian's Case

By Jess Bravin

WASHINGTON -- In March, a plea bargain guaranteed Australian David Hicks, an inmate at the U.S. military prison in Guantanamo Bay, his freedom by year's end. The deal helped Australian Prime Minister John Howard, a U.S. ally, avoid a bruising domestic controversy.

Now, the former chief prosecutor at the Guantanamo military commission in Cuba for suspected terrorists says in an interview that the Hicks case was the beginning of political interference in the offshore justice system. Col. Morris Davis resigned earlier this month to protest new rules he says will ensure that political officials have similar control over future war-crimes prosecutions.

Until recently, there was a dispute over who had control over prosecutions at the commission. Under the new structure approved by the Defense Department early this month, the chief prosecutor will report ultimately to the Pentagon general counsel, who is appointed by the Bush administration.

The system "takes the 'military' out of military commissions and makes them political commissions," says Col. Davis, a career Air Force lawyer.

premises with the assistance of lawyers. It's almost impossible to perform judicial review in combat zones, so we may have to make careful exemptions there. But any system without these features will lack legitimacy at home and abroad.

Both of these proposals -- shutting Guantanamo Bay and establishing robust judicial review of detentions -- carry risks. But those risks should kick-start the discussion, not end it. Detention policy is not about eliminating dangers, but about balancing and managing competing dangers. And keeping Gitmo open -- sapping U.S. prestige, alienating our allies and handing al-Qaeda a propaganda tool -- carries downsides, too.

Civil libertarians and security-minded hawks will both no doubt criticize these suggestions. But it's past time to close Guantanamo Bay. Rumsfeld, my former boss, famously described the prison in 2002 as the "least bad option." Whatever the validity of his assessment then, my plan for shutting Gitmo is less bad now.

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WASHINGTON POST

EDITORIAL:

The Waterboarding Dodge

Who's really to blame for Mr. Mukasey's evasions on torture?

Tuesday, October 30, 2007; A14

IT'S A SAD day in America when the nominee for attorney general cannot flatly declare that waterboarding is unconstitutional. The interrogation technique simulates drowning and can cause excruciating mental and physical pain; it has been prosecuted in U.S. courts since the late 1800s and was regarded by every U.S. administration before this one as torture. Yet, when asked during his confirmation hearing whether waterboarding is unconstitutional, the best that former judge Michael B. Mukasey could muster was "if waterboarding is torture, torture is not constitutional."

The fault for this evasion lies as much, if not more, with President Bush and Congress as it does with Mr. Mukasey. Mr. Bush authorized waterboarding in the past, most notably against al-Qaeda leader Khalid Sheikh Mohammed. If Mr. Mukasey now condemns the interrogation method as unconstitutional, he would probably be in conflict with Justice Department memoranda that implicitly endorse such techniques and that have been used by CIA interrogators and others to cloak their actions in legal legitimacy. The president could also be legally implicated for approving the method.

Democratic senators are demanding that Mr. Mukasey declare waterboarding illegal before they will vote to confirm him. But Congress has failed to pass laws that explicitly ban waterboarding and other acts that constitute either torture or cruel, inhuman and degrading treatment, a lesser category of abuse also banned by international treaty. Instead, legislators have repeatedly agreed to definitions of inhumane treatment that have allowed the abuse of foreign detainees to continue.

If Democratic senators are serious about eliminating the use of waterboarding and other abusive interrogation techniques, they should seek to mandate that all questioning of foreign detainees be governed by the Army's interrogation field manual, which was recently updated. Top military officials, who have repeatedly argued that torture yields unreliable information and could expose U.S. soldiers to mistreatment, say the techniques contained in the field manual provide all the tools needed to obtain intelligence even from difficult subjects.

Mr. Mukasey may have a way out of his predicament. He could respond to the Senate's questions by saying that waterboarding should be judged as unacceptable under statutes passed by Congress since 2005, despite the loopholes those laws contain. Though the administration has sought to preserve its prerogative to use waterboarding, the technique reportedly has not been employed since then. He also could renew his promise to review all Justice Department memos regarding detainee treatment and correct or eliminate those that don't comport with the law. Then the animus swirling around Capitol Hill and throughout the blogosphere toward the attorney general nominee could be redirected more properly: at an administration that condoned torture and a Congress that did too little to stop it.

NEW YORK TIMES

New York Times
October 30, 2007

News Analysis

On Torture, 2 Messages And A High Political Cost

By Scott Shane

Page A18

WASHINGTON, Oct. 29 — Six years after the Bush administration embraced harsh physical tactics for interrogating terrorism suspects, and two years after it reportedly dropped the most extreme of those techniques, the taint of torture clings to American counterterrorism efforts.

The administration has a standard answer to queries about its interrogation practices: 1) We do not torture, and 2) we will not say what we do, for fear of tipping off future prisoners. In effect, officials want Al Qaeda to believe that the United States does torture, while convincing the rest of the world that it does not.

But that contradictory catechism is not holding up well under the battering that American interrogation policies have received from human rights organizations, European allies and increasingly skeptical members of Congress.

The administration does not acknowledge scaling back the Central Intelligence Agency's secret detention program, perhaps to avoid implying that earlier methods were immoral or illegal. President Bush has repeatedly defended what the administration calls "enhanced" interrogation methods, saying they have produced invaluable information on Al Qaeda. But the administration's strategy has exacted an extraordinary political cost.

The nomination of Michael B. Mukasey as attorney general, once expected to sail through the Senate, has run into trouble as a result of his equivocation about waterboarding, or simulated drowning. Mr. Mukasey has refused to characterize the technique as torture, which would put him at odds with secret Justice Department legal opinions and could put intelligence officers in legal jeopardy.

At a House hearing last week, Secretary of State Condoleezza Rice admitted that the United States had mishandled the case of Maher Arar, a Canadian engineer who was seized in New York in 2002 on suspicion of terrorism and shipped to Syria, where he was imprisoned and severely beaten.

But Ms. Rice refused to acknowledge the torture or to apologize to Mr. Arar, perhaps to avoid exposing to attack the policy of extraordinary rendition, in which the United States delivers suspects to other countries, including some that routinely use torture.

C.I.A. officers have been criminally charged in Italy and Germany in connection with rendition cases. The torture issue has complicated Americans' standing in criticizing other countries.

At a House hearing on the crackdown on dissent in Myanmar, formerly known as Burma, where protest leaders have reportedly endured waterboarding, Jeremy Woodrum, a director of the United States Campaign for Burma, said American conduct was thrown back at him, testifying: "People say, 'Why are you guys talking to us about this when you have the mess in your own backyard?' "

Even inside the government, there are tensions. At the C.I.A., the director, Gen. Michael V. Hayden, has come under fire from Congress for ordering a review of the agency's own inspector general, whose aggressive investigations of secret detention programs have raised hackles.

The moral debate over torture has seeped deeply into popular culture, from the black comedy of "The Daily Show" and its "senior interrogation correspondent" to the new movie "Rendition," based loosely on Mr. Arar's case. Candidates for president have repeatedly faced questions and exchanged barbs on the proper limits of interrogation.

Meanwhile, key members of Congress are raising questions about the future of the C.I.A.'s detention operation. Senator John D. Rockefeller IV, chairman of the Senate Intelligence Committee, said in response to a question from The New York Times that it "has produced valuable intelligence, but the question is at what cost?"

Mr. Rockefeller, Democrat of West Virginia, whose committee has recently heard classified testimony about the noncoercive interrogation methods of the F.B.I. and the military, said he was not sure the C.I.A's harsher approach was justified.

"Unfortunately, the intelligence community has not yet made a convincing argument that a separate, secret program is indeed necessary," he said. "The committee is engaged in answering these fundamental questions and fully intends to take action on the future of this program."

Even as the administration has maintained in secret Justice Department legal opinions that its harshest methods are legal, it has quietly but steadily backed away from them in practice.

Since last year, military interrogators have been bound by the new Army Field Manual, which prohibits all physical coercion.

The C.I.A. stopped using waterboarding by the end of 2005, former agency officials have said. Mike McConnell, the director of national intelligence, said in July that prisoners were also now "not exposed to heat and cold," another technique previously used at the C.I.A.'s secret jails.

But administration officials seem loath to let potential prisoners know they have softened their interrogations. In his July remarks, Mr. McConnell suggested that Qaeda operatives had talked in part "because they believe these techniques might involve torture." At the same time, "the United States does not engage in torture," he said. "The president has been very clear about that."

In a PBS interview with Charlie Rose last week, General Hayden, the C.I.A. director, complained about negative press coverage of the agency's interrogation practices. "What puzzles me is to why there seems to be this temptation, almost irresistible temptation, to take any story about us and move it into the darkest corner of the room," General Hayden said.

Yet, illustrating the administration's predicament, General Hayden did nothing to dispel the mystery about the agency's "enhanced" interrogation tactics.

"What is 'enhanced technique'?" Mr. Rose asked. "Is it something close to torture?"

The C.I.A. director said, "No," adding, "I'm not going to talk about any specific techniques."

Whether Congress will act remains uncertain. Congressional Democrats have cited interrogation policies in blocking the confirmations of John A. Rizzo as general counsel of the C.I.A. and Steven G. Bradbury, author of secret legal opinions on interrogation, as head of the Office of Legal Counsel at the Justice Department. Now Mr. Mukasey's confirmation hangs in the balance.

Both the Senate and House Intelligence Committees have held closed hearings on the program. The only public glimpse — unclassified testimony recently released from a Sept. 25 Senate hearing — was a series of fierce attacks by human rights advocates, legal experts and a veteran interrogator on the effectiveness and morality of harsh interrogation.

Most Republicans, for now, are offering the administration conditional support. Senator Christopher S. Bond of Missouri, the vice chairman of the Intelligence Committee, said that he was concerned about the international reputation of the United States and that Congress "should continue to look at what other methods are effective."

But Mr. Bond said conversations with C.I.A. interrogators had convinced him that some legal but tough tactics could work on recalcitrant suspects. "Coercion has opened the dialogue," he said.

CHICAGO TRIBUNE

CIA Head Defends Interrogation Practices

By SOPHIA TAREEN

Associated Press Writer

10:01 PM CDT, October 30, 2007

CHICAGO

CIA Director Michael Hayden defended his agency's interrogation practices Tuesday as political pressure mounted on President Bush's attorney general nominee to reject a technique that allegedly was part of the CIA's interrogation program.

"Our programs are as lawful as they are valuable," Hayden said to the Chicago Council on Global Affairs. "The best sources of information on terrorists and their plans are the

Mukasey Calls Harsh Interrogation 'Repugnant'

By SCOTT SHANE

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WASHINGTON, Oct. 30 — In an effort to quell growing doubts in the Senate about his nomination as attorney general, Michael B. Mukasey declared Tuesday that waterboarding and other harsh interrogation techniques "seem over the line or, on a personal basis, repugnant to me" and promised to review the legality of such methods if confirmed.

But Mr. Mukasey told Senate Democrats he could not say whether waterboarding, which simulates drowning, was illegal torture because he had not been briefed on the details of the classified technique and did not want to suggest that Central Intelligence Agency officers who had used such techniques might be in "personal legal jeopardy."

It was unclear whether the answers would be enough to win endorsement from the Senate Judiciary Committee, where the torture issue has threatened to block the confirmation of Mr. Mukasey, who served for 18 years as a federal judge in New York.

Mr. Mukasey gave his answer in a four-page letter delivered Tuesday afternoon to Senator Patrick J. Leahy, chairman of the committee, and the other nine Democrats on it.

Mr. Mukasey noted that Congress has not explicitly banned waterboarding by the C.I.A., though it was outlawed for use by the military in the Detainee Treatment Act of 2005. That left room for interpretation as to whether waterboarding or any other technique is prohibited as "cruel, inhuman or degrading" treatment, he wrote.

"Legal questions must be answered based solely on the actual facts, circumstances and legal standards presented," he wrote.

In the absence of knowing exactly how specific classified interrogation techniques have been used, Mr. Mukasey continued, he did not want to offer legal opinions on "hypotheticals."

All 10 Democrats on the committee wrote to Mr. Mukasey last week asking that he clarify his position on waterboarding. "Your unwillingness to state that waterboarding is illegal may place Americans at risk of being subject to this abusive technique," they wrote.

The initial response from committee Democrats on Tuesday night suggested that Mr. Mukasey had not assuaged their concerns.

"I remain very concerned that Judge Mukasey finds himself unable to state unequivocally that waterboarding is illegal and below the standards and values of the United States," Mr. Leahy, of Vermont, said in a statement.

He said he would consider Mr. Mukasey's written answers to other questions and consult other committee members before scheduling a vote on the nomination.

Another Democrat, Senator Richard J. Durbin of Illinois, said Mr. Mukasey had "spent four pages responding and still didn't provide an answer" to the question, "Is waterboarding illegal?"

"Judge Mukasey makes the point that in the law, precision matters," Mr. Durbin said. "So do honesty and openness. And on those counts, he falls far short."

A Republican on the committee, Senator Lindsey Graham of South Carolina, praised Mr. Mukasey's response, saying: "I think Judge Mukasey did himself some good with this letter. He helped his cause with me."

But Mr. Graham, a former military lawyer who has said he believes that waterboarding is unquestionably torture, said he had "a couple of areas that I want to flesh out" before committing to vote in favor of confirmation.

The committee is scheduled to meet Thursday, but a vote at that time looked unlikely Tuesday night. An aide to Mr. Leahy said the committee was still waiting for what were expected to be Mr. Mukasey's voluminous written replies on a variety of subjects, including things like civil rights and antitrust law.

Mr. Mukasey, named by President Bush on Sept. 17 as his choice to succeed the much-criticized Alberto R. Gonzales as attorney general, was initially expected to face an easy confirmation. His name had been suggested by a Democrat, Senator Charles E. Schumer of New York.

But his equivocation at his Senate confirmation hearing on the question of whether waterboarding is torture, and his assertion that the president's constitutional powers can sometimes trump a particular law, drew sharp criticism from Democrats and human rights groups.

Waterboarding involves strapping a prisoner to a board, covering his face with cloth and pouring water over the cloth to produce a feeling of suffocation. Variations of the technique, designed to give a prisoner a feeling of imminent drowning, have been used for centuries.

The C.I.A. used waterboarding against some high-level operatives of Al Qaeda at secret overseas sites, and it emerged as a symbol of the Bush administration's embrace of harsh physical pressure in interrogation.

Gen. Michael V. Hayden, the C.I.A. director, has said in recent speeches that of about 100 Qaeda suspects held since 2002 at the agency's secret jails, harsh interrogation techniques were used on fewer than one-third. A knowledgeable official said on Tuesday that waterboarding was used on three prisoners, the last time in 2003.

In still-secret legal opinions in 2005, the Justice Department ruled that even the toughest C.I.A. techniques, including waterboarding, were legal.

Pressed about waterboarding by Senator Sheldon Whitehouse, Democrat of Rhode Island, on the second day of his confirmation hearing, Mr. Mukasey replied, "I don't know what is involved in the technique."

That reply did not satisfy some senators, who noted that the technique had been widely described in the press. Four Democratic senators who are running for president, Hillary Rodham Clinton, Barack Obama, Joseph R. Biden Jr. and Christopher J. Dodd, said this week that they would not support Mr. Mukasey based on his initial testimony on waterboarding.

Waterboarding has also been a flash point among Republican presidential candidates. Last week, after Rudolph W. Giuliani, the former New York mayor, said he was not sure about waterboarding because he thought "the liberal media" might not have described it properly, Senator John McCain of Arizona, who was tortured as a prisoner in North Vietnam, shot back, saying it was a torture method used since the Spanish Inquisition.

WASHINGTON POST

Mukasey Losing Democrats' Backing

Nominee Unsure If Waterboarding Breaks Torture Law

By Dan Eggen
Washington Post Staff Writer
Wednesday, October 31, 2007; A01

Attorney general nominee Michael B. Mukasey told Senate Democrats yesterday that a kind of simulated drowning known as waterboarding is "repugnant to me," but he said he does not know whether the interrogation tactic violates U.S. laws against torture.

Mukasey's uncertainty about the method's legality has raised new questions about the success of his nomination. It seemed a sure thing just two weeks ago, as Democrats joined Republicans in predicting his easy confirmation to succeed the embattled Alberto R. Gonzales.

Mukasey raised alarms among Democrats and human rights groups during testimony on Oct. 18. He declined to say whether waterboarding is torture, prompting key Democrats to press the point and say their vote will hinge on his answer to that question.

The chairman of the Senate Judiciary Committee has so far refused to schedule a vote on Mukasey's nomination. All four Democratic senators running for president said before the release of Mukasey's letter yesterday evening that they will vote against him because of his handling of the waterboarding issue.

Sen. Hillary Rodham Clinton (N.Y.), the Democratic front-runner, said yesterday that "we cannot send a signal that the next attorney general in any way condones torture or believes that the president is unconstrained by law." Sen. Barack Obama (Ill.) and Sen. Joseph R. Biden Jr. (Del.), a member of the Judiciary panel, issued similar statements.

By seizing on the waterboarding issue, Democrats hope to force Mukasey to disavow a controversial technique that top Bush administration officials have deemed legal. If he were to say the tactic is illegal, he would effectively deem earlier Justice Department opinions unlawful.

In a four-page letter to the Judiciary Committee, Mukasey walked a tightrope by outlining the laws and treaties forbidding torture and other cruel treatment, and explaining the legal analysis he would undertake of "coercive" techniques, while generally declining to render judgments.

Mukasey said that techniques described as waterboarding by lawmakers "seem over the line or, on a personal basis, repugnant to me, and would probably seem the same to many Americans." But, he continued, "hypotheticals are different from real life, and in any legal opinion the actual facts and circumstances are critical."

Mukasey also said he is reluctant to offer opinions on interrogation techniques because he does not want to place U.S. officials "in personal legal jeopardy" and is concerned that such remarks might "provide our enemies with a window into the limits or contours of any interrogation program." His arguments are similar to those advanced by the Bush administration in its refusal to discuss waterboarding or other interrogation techniques.

Reiterating a promise made during his testimony, Mukasey said that he "will not hesitate" to "rescind or correct any legal opinion of the Department of Justice that supports" illegal interrogation techniques. Since September 2001, the CIA has repeatedly used harsh methods that the Justice Department ruled were legal but that independent experts have said violate domestic and international law.

Sen. Patrick J. Leahy (D-Vt.), the Judiciary panel's chairman, reacted with blunt dissatisfaction, saying in a statement yesterday that he will continue to delay any vote on Mukasey until the nominee answers more questions from lawmakers. "I remain very concerned that Judge Mukasey finds himself unable to state unequivocally that waterboarding is illegal and below the standards and values of the United States," he said.

But Leahy, who said last week that "my vote would depend on him answering that question," stopped short of declaring he will oppose the nomination. Majority Whip Richard J. Durbin (D-Ill.), also issued a statement criticizing Mukasey but did not say whether he would vote no.

"We asked Judge Mukasey a simple and straightforward question: Is waterboarding illegal?" Durbin said. "While this question has been answered clearly by many others . . . Judge Mukasey spent four pages responding and still didn't provide an answer."

The committee's ranking Republican, Sen. Arlen Specter (Pa.), has also demanded answers from Mukasey about waterboarding and other issues. Other Republicans have supported the White House's position that Mukasey had no connection to or knowledge of waterboarding and should not have to answer questions about it.

Nine Republicans on the House Judiciary Committee yesterday issued a news release urging the Senate to "stop playing politics with the Justice Department."

Lindsey O. Graham (R-S.C.), a Senate Judiciary Committee member and military lawyer who has frequently criticized the administration's interrogation policies, said he was heartened by Mukasey's letter, including his view that the Detainee Treatment Act, passed by Congress last year, bars waterboarding in military interrogations. The act does not cover CIA interrogations.

"The letter shows that he understands mainstream legal reasoning. There's nothing off base here," Graham said in an interview.

White House spokesman Tony Fratto said Mukasey's response was "very thorough" but was necessarily limited by his lack of a security clearance. "I think it gives a clear path to how he would tackle this particular question and questions like it," Fratto said. "It's what you would want to see as an attorney general."

Waterboarding generally involves strapping a prisoner to a board, covering his face or mouth with a cloth, and pouring water over his face to create the sensation of drowning, human rights groups say. The practice dates at least to the Spanish Inquisition and has been prosecuted as torture in U.S. military courts since the Spanish-American War. The State Department has condemned its use in other countries.

Officials have said the Bush administration authorized the use of waterboarding on at least three prisoners kept in secret detention by the CIA after the Justice Department said it was legal, including alleged Sept. 11 mastermind Khalid Sheik Mohammed. The practice was halted in 2005, sources have said.

Caroline Fredrickson, Washington legislative director for the American Civil Liberties Union, said Mukasey does not need a classified briefing to answer the question. "He seems like he's just an artful hairsplitter," Fredrickson said.

be left with an acting attorney general who will lead the department without the consent of the Senate. After all, there are worse things than being denied confirmation. You could be water-boarded, for example.

Jonathan Turley is a law professor at George Washington University.

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NEW YORK DAILY NEWS

OPINION:

New York Daily News
October 31, 2007

I Know Waterboarding Is Torture - Because I Did It Myself

By Malcolm Nance

Last week, attorney general nominee Judge Michael Mukasey dodged the question of whether waterboarding terror suspects is necessarily torture. Americans can disagree as to whether or not this should disqualify him for the top job in the Justice Department. But they should be under no illusions about what waterboarding is.

As a former master instructor and chief of training at the U.S. Navy Survival, Evasion, Resistance and Escape School (SERE) in San Diego, I know the waterboard personally and intimately. Our staff was required to undergo the waterboard at its fullest. I was no exception.

I have personally led, witnessed and supervised waterboarding of hundreds of people. It has been reported that both the Army and Navy SERE school's interrogation manuals were used to form the interrogation techniques employed by the Army and the CIA for its terror suspects. What is less frequently reported is that our training was designed to show how an evil totalitarian enemy would use torture at the slightest whim.

Having been subjected to this technique, I can say: It is risky but not entirely dangerous when applied in training for a very short period. However, when performed on an unsuspecting prisoner, waterboarding is a torture technique - without a doubt. There is no way to sugarcoat it.

brilliant lawyer, because of the torture question. "I don't think anyone intended this nomination to turn on this issue," Mr. Whitehouse said.

Three Republicans who have denounced waterboarding wrote to Mr. Mukasey on Wednesday, suggesting that they would support him but urging him to declare waterboarding illegal after he is confirmed.

The senators, John McCain of Arizona, John W. Warner of Virginia and Lindsey Graham of South Carolina, said anyone who engaged in waterboarding "puts himself at risk of prosecution, including under the War Crimes Act, and opens himself to civil liability as well."

Carl Hulse and Steven Lee Myers contributed reporting.

NEW YORK TIMES

EDITORIAL:

November 1, 2007
Editorial

Torture and the Attorneys General

Page A26

Consider how President Bush has degraded the office of attorney general.

His first choice, John Ashcroft, helped railroad undue restrictions of civil liberties through Congress after the 9/11 attacks. Mr. Ashcroft apparently had some red lines and later rebuffed the White House when it pushed him to endorse illegal wiretapping. Then came Alberto Gonzales who, while he was White House counsel, helped to redefine torture, repudiate the Geneva Conventions and create illegal detention camps. As attorney general, Mr. Gonzales helped cover up the administration's lawless behavior in anti-terrorist operations, helped revoke fundamental human rights for foreigners and turned the Justice Department into a branch of the Republican National Committee.

Mr. Gonzales resigned after his extraordinary incompetence became too much for even loyal Republicans. Now Mr. Bush wants the Senate to confirm Michael Mukasey, a well-respected trial judge in New York who has stunned us during the confirmation process by saying he believes the president has the power to negate laws and by not committing himself to enforcing Congressional subpoenas. He also has suggested that he will not uphold standards of decency during wartime recognized by the civilized world for generations.

After a Senate Judiciary Committee hearing in which Mr. Mukasey refused to detail his views on torture, he submitted written answers to senators' questions that were worse

As we said this week, it is a shame for America to be led by a president who has countenanced waterboarding and other interrogation methods that most Americans would understand as torture. Mr. Mukasey got it right when he called waterboarding "repugnant"; like many senators, we wish he had also clearly stated that it is illegal. But to do so would have been likely to bring him into conflict with existing Justice Department memorandums that have been used by CIA interrogators and others to legitimize their actions. Mr. Mukasey has promised a careful review of each of those memorandums; if he is rejected, no nominee is likely to promise more in advance of confirmation.

Those senators who truly want to bring the nation back from the disgrace of Mr. Bush's interrogation policies should do two things. They should confirm Mr. Mukasey, who is far more independent and qualified than either of Mr. Bush's previous two nominees. And they should do something which, for all the rhetoric, they have so far declined to do: ban torture, by passing the National Security with Justice Act sponsored by Sen. Joseph R. Biden (D-Del.). The act would limit all United States personnel -- military and civilian -- to using only interrogation techniques authorized by the U.S. Army Field Manual on Intelligence Interrogation, which expressly prohibits waterboarding and which military leaders have said gives them the tools they need to get reliable information from difficult subjects.

NEW YORK TIMES

November 3, 2007

3 Top Republican Candidates Take a Hard Line on the Interrogation of Detainees

By MARC SANTORA

Page A17

A central tenet of every leading Republican candidate's campaign for president is one simple and powerful idea: I alone can best defend the United States from the threat of terrorism.

And in recent weeks, three candidates, Rudolph W. Giuliani, Mitt Romney and Fred D. Thompson, have embraced some of the more controversial policies on the treatment of those suspected of supporting terrorism, backing harsh interrogation methods and refusing to rule out the use of waterboarding, a simulated drowning technique, on detainees.

Their public statements came as the debate over whether waterboarding is torture had threatened to derail the nomination of Michael B. Mukasey as attorney general after he refused to call the technique illegal.

Not only do the three candidates refuse to rule out waterboarding and other techniques that have been condemned, but they also believe the American prison at Guantánamo Bay, Cuba, needs to remain open, and they back the practice of extraordinary rendition, in which terrorism suspects are sent for questioning to other countries, including some accused of torture.

The only leading Republican candidate to condemn each of the practices outright has been Senator John McCain, a former prisoner of war who was tortured in a North Vietnamese prison. On Friday, Mr. McCain, of Arizona, strongly criticized his rivals and cited their lack of wartime experience, saying they "chose to do other things when this nation was fighting its wars."

Mr. Giuliani shot back, saying Mr. McCain "has never run a city, never run a state, never run a government."

The often-unbending statements of Mr. Giuliani, Mr. Thompson and Mr. Romney on detainee treatment have put them at odds even with the Bush administration, which, under intense pressure at home and abroad, has moved to curb some of the practices, and called in general terms for closing the prison at Guantánamo.

While the three candidates all condemn torture, they have been purposefully vague about what constitutes cruel and inhumane treatment.

Mr. Giuliani often frames the threat of terrorism in graphically personal terms, telling crowds that Islamic extremists "hate you" and want to come to the United States and "kill you." In that vein, he has been perhaps the most forceful in suggesting that the president must be able to take extraordinary steps to combat terrorist threats.

"I think the president has to retain ultimate authority to be able to deal with terrorism in a way that's different than dealing with an armed combatant from a nation state," Mr. Giuliani said in a recent interview.

Their positions have come under fire from leading Democrats who say they unconditionally oppose torture, want Guantánamo closed and oppose rendition.

The leading Republican candidates, including Mr. McCain, have largely supported the enhanced powers granted to law enforcement authorities under the USA Patriot Act.

But it is on treatment of prisoners that the divisions emerge. Mr. McCain is alone among the top Republican candidates in condemning waterboarding, which has become the litmus test in gauging an openness to interrogation techniques that are widely considered torture.

Mr. Giuliani also joked about another interrogation technique, sustained sleep deprivation.

"They talk about sleep deprivation," he said. "I mean, on that theory, I'm getting tortured running for president of the United States. That's plain silly."

Sustained sleep-deprivation is described in the United States Army Field Manual on Interrogation as a form of mental torture, and the practice has been ruled inhumane by the Supreme Court of Israel and the European Court of Human Rights.

In an interview yesterday with Albert R. Hunt on Bloomberg TV, Mr. Giuliani said: "Now, intensive questioning works. If I didn't use intensive questioning, there would be a lot of Mafia guys running around New York right now and crime would be a lot higher in New York than it is. Intensive questioning has to be used. Torture should not be used. The line between the two is a difficult one."

The differences between the leading Republicans on interrogation and the handling of detainees first arose in May at a debate in South Carolina, when Mr. McCain was the only candidate to condemn torture outright.

As Mr. Romney was preparing for his presidential bid, he visited Guantánamo Bay in the spring of 2006 and said he "came away with no concerns with regards to the fair and appropriate treating of these individuals." In the May debate, Mr. Romney said he would "double Guantánamo."

Mr. Romney has also said that in the event of an extreme terrorist threat, he would not rule out even the harshest interrogation techniques, echoing comments made by his national security adviser, Maj. Gen. James Marks, who is retired.

When the general was asked, in a 2005 interview on CNN, how far he would go if he thought he could elicit information that would save the lives of either American soldiers or civilians, he replied, "I'd stick a knife in somebody's thigh in a heartbeat."

Mr. Thompson has argued that there are circumstances where "you have to do what is necessary to get the information that you need."

The stances of Mr. Thompson, Mr. Giuliani and Mr. Romney have drawn fire not only from leading Democrats but also from human rights groups.

"At a time when the U.S. military has denounced torture and is working hard to restore U.S. moral authority, it's irresponsible that some presidential candidates are still suggesting that torture is O.K.," said Jennifer Daskal, a counterterrorism expert at Human Rights Watch. "Candidates appear to be pandering to peoples' fears in a reckless attempt to win the label 'toughest.'"

Mr. Giuliani's views on detainee treatment seem to have hardened in recent months. For instance, last spring he said waterboarding crossed the line of what was acceptable. Last week, he pulled back from that stance.

In St. Petersburg, Fla., seven months ago, he said: "I haven't been to Guantánamo. I can't judge Guantánamo."

Now, although he has still not visited Guantánamo, Mr. Giuliani says that he thinks the prison there is a critical tool. Like Mr. Romney, he focuses on the physical condition the prisoners are kept in rather than their still-undefined legal status.

Critics, however, not only condemn the conditions at Guantánamo but also find it unacceptable that the majority of detainees have been in legal limbo for more than five years, with only a handful facing formal charges.

Mr. Thompson was dismissive of such concerns when asked for his opinion at a recent campaign stop in Tampa, Fla. "I think that Guantánamo Bay is necessary," he said. "Those who have criticized Guantánamo Bay do not come with any alternative."

Mr. McCain said that was simply false, noting he has pushed to have the prisoners moved to the military base at Fort Leavenworth, Kan. He said they should not be treated with the same rights as American citizens, but should be afforded trials.

WASHINGTON POST

OPINION:

Waterboarding Used to Be a Crime

By Evan Wallach
Sunday, November 4, 2007; B01

As a JAG in the Nevada National Guard, I used to lecture the soldiers of the 72nd Military Police Company every year about their legal obligations when they guarded prisoners. I'd always conclude by saying, "I know you won't remember everything I told you today, but just remember what your mom told you: Do unto others as you would have others do unto you." That's a pretty good standard for life and for the law, and even though I left the unit in 1995, I like to think that some of my teaching had carried over when the 72nd refused to participate in misconduct at Iraq's Abu Ghraib prison.

Sometimes, though, the questions we face about detainees and interrogation get more specific. One such set of questions relates to "waterboarding."

That term is used to describe several interrogation techniques. The victim may be immersed in water, have water forced into the nose and mouth, or have water poured onto material placed over the face so that the liquid is inhaled or swallowed. The media usually characterize the practice as "simulated drowning." That's incorrect. To be effective, waterboarding is usually *real* drowning that simulates death. That is,

A group of 11 detainees who had been held at the U.S. military detention facility in Guantanamo Bay, Cuba, have been transferred to the custody of their home countries in recent days, according to the Defense Department.

Department officials said yesterday that eight detainees were transferred to Afghanistan and three to Jordan, decreasing Guantanamo's detainee population to about 320.

More than 450 detainees have been transferred or released since the facility opened in 2002. There are about 80 other detainees who have been cleared for release or transfer to other countries, but U.S. officials are still negotiating with other nations to do so.

Defense officials have said they hope to try approximately 80 additional detainees at military commissions. It is unclear what would happen to the roughly 160 remaining detainees who the United States deems too dangerous to release but who will not go to trial.

-- **Josh White**

GUARDIAN

Top US legal adviser refuses to rule out 'torture' technique

Aide to Rice declines to denounce waterboarding during Guardian America debate

Ed Pilkington in New York
Monday November 5, 2007

Guardian

The top legal adviser within the US state department, who counsels the secretary of state, Condoleezza Rice, on international law, has declined to rule out the use of the interrogation technique known as waterboarding even if it were applied by foreign intelligence services on US citizens. John Bellinger refused to denounce the technique, which has been condemned by human rights groups as a form of torture, during a debate on the Bush administration's stance on international law held by Guardian America, the Guardian's US website. He said he would not include or exclude any technique without first considering whether it violated the convention on torture.

The inability of a senior US official to rule out such an interrogation method even in the case of it being used against Americans underlines the legal knots in which the administration has tied itself. The dispute over alleged US involvement in torture has threatened to derail the confirmation of Michael Mukasey as President George Bush's nominee for attorney general. Mr Mukasey, a retired federal judge, faces a confirmation vote from the Senate judiciary committee tomorrow and is facing opposition from

Democratic members over his stance on waterboarding. In earlier hearings, Mr Mukasey said he found the method repugnant, but refused to declare it illegal. There has been speculation that he refrained from doing so out of fear that such a declaration would expose US interrogators, as well as their chain of command, possibly up to the level of the president, to possible criminal prosecution.

Waterboarding is a technique in which a prisoner is made to believe he is drowning by placing a cloth over his face and pouring water over it. The procedure is banned by the US military, but has been used in an unknown number of interrogations of terrorist suspects by the CIA. Reports have suggested the CIA outlawed the method last year, but the Bush administration has yet to confirm this.

Mr Bellinger made his remarks during a Guardian debate with Philippe Sands QC, professor of international law at University College London. Mr Sands asked whether he could imagine any circumstances in which waterboarding could be justified on an American national by a foreign intelligence service. "One would have to apply the facts to the law to determine whether any technique, whatever happened, would cause severe physical pain or suffering," Mr Bellinger said.

When Mr Sands said he found Mr Bellinger's inability to exclude waterboarding on Americans very curious, the US official replied: "Well, I'm not willing to include it or exclude it. Our justice department has concluded that we just don't want to get involved in abstract discussions."

Citation: http://www.guardian.co.uk/usa/story/0,,2205187,00.html

GUARDIAN

'A decision was made not to talk about these things'

Transcript: A state department lawyer is questioned on the Bush administration's position on torture

Monday November 5, 2007

Guardian Unlimited

The Guardian organised a debate between John Bellinger, the senior adviser on international law to the US secretary of state, Condoleezza Rice, and Philippe Sands, professor of law at University College London.

In this part of the discussion they turned to the current controversy over whether water boarding - the technique of simulated drowning - ranks as torture and should be prohibited.

Philippe Sands: Let's take the subject of interrogation techniques. I have no doubt that water boarding is plainly prohibited by international law in relation to any person, at any time, in any place. Why is it that the administration has not been able to articulate that view? And why is it that even the latest nominee for attorney general [Michael Mukasey] was unable to articulate the view that water boarding was prohibited by international law? That's the kind of reluctance that people elsewhere focus in on and which gives rise to concerns about the engagement with international rules.

John Bellinger: Well, the administration all along has felt that with respect to publicly talking about specific techniques used by an intelligence agency, alleged to be used or could be used, that one simply does not talk about intelligence activities. And there are many things that our CIA has been accused of doing that are simply not true.

If you read the newspapers you would think they have this idea of a spider's web of renditions and secret sites all across Europe and you would think they were operating secret prisons and rendering people off the streets in every European capital. A lot of this stuff is just not true - but it's been decided we cannot talk specifically about any intelligence techniques.

Now, with respect to any technique even in the abstract, it actually is more difficult to apply the law to the facts. The convention against torture says that torture is the intentional infliction of severe physical pain or suffering.

Philippe Sands: Or mental...

John Bellinger: ... or mental pain and suffering, and so then you have to analyse whether something is, in fact, severe - the infliction of intentional physical or mental pain and suffering. Critics tend to say, well, you shouldn't even have to ask, if you have to ask, then you're already in the quick sand, in deep waters. But one does have to go through the legal analysis with respect to each technique. But a decision was made as I said not to talk about these things. Many of the allegations that are made against the United States relate to things that may have been done a number of years ago and I think this gets to your point about change, and self-correcting mechanisms.

I think there's only so long that people can keep beating up on the United States about actions that were taken in the immediate aftermath of September 11. Nobody has made any allegations about any renditions off the streets of Europe in years and yet they keep beating up on things that may have happened three, four or five years ago. With respect to interrogation techniques, there has been change in that area as well. The interrogations that may be done today are not the same techniques that may have been used a number of years back.

So there are new laws that have been passed by our Congress, applied by our courts and new policies adopted by our executive branch. So there has been evolution in our laws and policies.

Philippe Sands: Are there any circumstances in which you could imagine the use of water boarding to be consistent with international law?

John Bellinger: Again, we've decided that we just don't want to get engaged in hypotheticals and applying the law to the facts of these particular cases.

Philippe Sands: Let me put it in yet another way. Could you imagine any circumstances in which the use of water boarding on an American national by a foreign intelligence service could be justified?

John Bellinger: One would have to apply the facts to the law, the law to the facts, to determine whether any technique, whatever it happened to be, would cause severe physical pain or suffering.

Philippe Sands: So you're willing to exclude any American going to the international criminal court under any circumstances, but you're not able to exclude the possibility of water boarding being used on a United States national by foreign intelligence service? I mean, that just strikes me as very curious.

John Bellinger: Well, I'm not willing to include it or exclude it, I mean, these are issues that our justice department as a matter of interpreting both the domestic law on torture and international law, has concluded that just don't want to get involved in abstract discussions of applying the law to any set of facts.

I can certainly tell you as a State Department official that it makes it very difficult to explain to the world and to provide the important assurance of what we're doing or not doing if we can't talk about intelligence activities or we can't even talk about hypotheticals.

But the decision has been made at least so far and maybe Judge Mukasey, if he's confirmed as attorney general, will make a different decision, that he would talk more about techniques. But at least, so far, the conclusion that we should not talk about specific techniques even in terms of hypotheticals.

Philippe Sands: But I picked up a hint of recognition that issues like this and a lack of clarity will fuel those who wish for whatever reason to have a go at the United States, and for other reasons, that's generally not a helpful situation to be in.

John Bellinger: Certainly, this whole set of issues has made it difficult for the United States to emphasise our compliance with the law if we can't talk about some of the details, but there are other areas, for example, our defence department, which had been accused of using different techniques around the world, in Iraq or Afghanistan or Guantánamo, has issued last year a new field manual that now applies to every military person everywhere in the world and sets all of the techniques out in unclassified form so that they can be read by anybody.

And of course, critics will say, well, what about the CIA? But remember as far as the change - and I think we've been talking about change in tone and change in policy - where we were a few years ago was that there were not clear rules that anybody could point to and that they might have been applied differently in different places. And now there are clear rules applicable to all of our military in any place in the world and you can just go and read them.

So there has been evolution in our law and in our policies across the board.

· John Bellinger began working for Condoleezza Rice in 2001 when she was National Security Adviser. In 2005 he followed her to the State Department as principal adviser on all domestic and international law matters.

· Philippe Sands QC is Professor of law at University College London and a barrister at Matrix Chambers. His new book, Torture Team, will be published in April.

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MIAMI HERALD

Miami Herald
November 5, 2007

Terror Suspects' Beards Are Safe Now

By Carol Rosenberg

GUANTANAMO BAY NAVY BASE, Cuba -- Guards earlier this year stopped cutting the beards off unruly war-on-terror detainees, according to the military, confirming for the first time a practice that enraged Muslim captives and their American advocates.

Prison commanders withdrew the policy of "beard trimming" in May, said Army Col. Bill Costello, a spokesman for the U.S. Southern Command in Miami.

From 2005, he said, it had been an approved ``disciplinary action for severe physical assaults against the guard force, to include the throwing of feces, urine, semen, vomit, blood and/or saliva."

But, he said, beard trimming ``was not designed as a religious punitive measure, nor was it ever carried out by interrogation personnel."

The issue cast a spotlight on religious tensions behind the razor wire at the Pentagon's showcase detention and interrogation center: Detainees and attorneys have long protested policies they said were designed to humiliate Muslim captives. The U.S. says its respects

Islam while providing safe and humane detention to allegedly dangerous al-Qaeda members and sympathizers.

'Beard shortening'

"Some of the beards are long -- you can hide a bazooka in there," Navy Capt. Patrick McCarthy told reporters during an October visit by reporters in which he defended what he called an earlier policy of ``beard shortening."

Countered New York attorney Martha Rayner, who represents a Yemeni client named Sanad al Kazimi, 37, whose beard was cut in October 2006, allegedly for throwing urine and feces at the guards: ``They do it to humiliate. As punishment. It is how they truly can humiliate a Muslim man -- shave his beard."

Beard-cutting has long been controversial at the Guantánamo prison camps, which opened in January 2002 to detain and interrogate war-on-terror captives scooped up around the globe and airlifted to Cuba from Afghanistan. Captives arrived at Camp X-Ray clean-shaven and their hair shorn from their heads for health reasons, according to commanders.

Soon, tours for reporters and visiting business leaders pointed to captives' long, flowing beards as proof of respect for their religious identities. The tours also showcase a range of Muslim amenities -- *halal* food, prayer beads and rugs -- as well as Korans in a variety of languages.

Captives countered, through their lawyers, that they so feared their guards would defile their Korans that some returned them to commanders rather than leave them behind in their cells when they went to recreation or attorney meetings.

During a recent media tour, the military said that about 90 of the roughly 330 detainees had returned their Korans.

Meanwhile, the military denies that the guards ever shaved off a captive's beard entirely as part of its disciplinary measures for "non-compliant detainees who assaulted the guard force" and ``may have had their beards trimmed because it represented a threat to the operation of a safe and humane detention facility."

Added Costello: ``Beards were trimmed to within inches, not clean-shaven."

Detainees can shave

But he said detainees can shave themselves entirely, if they want, during their shower periods.

Veteran Guantánamo attorney Clive Stafford Smith said one of his youngest clients -- Mohammed Gharani, 18, of Chad -- was punished by having his first beard completely shaved off in February.

High-value captive Majid Khan protested that Guantánamo guards shackled him and shaved off his beard for refusing to return his breakfast tray on Nov. 15, 2006.

Khan is a 1999 suburban Baltimore high school graduate who was seized in Pakistan and held for years in secret CIA detention. Although the U.S. alleges he plotted unrealized attacks on U.S. gas stations and water reservoirs, he has not been charged with a crime.

He told the panel he was so upset by his treatment at Guantánamo that he twice tried to commit suicide by gnawing through arteries in his arm.

"They just came in with eight guards and took me to main rec and forcibly shaved my beard to humiliate me and offend my religion," he told a panel of military officers April 15. ``While they were shaving my beard, the female Navy head psychiatrist was watching the whole thing."

Navy Adm. James Stavridis, commander of the U.S. Southern Command, ended the policy in May in consultation with detention center commanders, Costello said.

He declined to say why, and whether the admiral received a specific protest.

Nazi comparison

Earlier this year, Washington attorney David Remes circulated a Holocaust-era photo of a Nazi cutting a Jew's beard, and likened it to the Guantánamo policy.

"I don't think that anyone who is doing this [at Guantánamo] understands the historical association," he said.

Captives claim the military magnified their humiliation by videotaping the beard-cutting. The military declined a Herald request for a copy, and would not allow a Herald reporter to view one.

Detainees' lawyers said the policy had waned for a while and then saw a resurgence after the command staff was rattled by clashes between detainees and guards in the most lenient camp on the base, which the military cast as a foiled uprising.

WASHINGTON POST

Egyptian Police Sentenced In Landmark Torture Case

expect if they are captured. "The SERE community was designed over 50 years ago to show that, as a torture instrument, waterboarding is a terrifying, painful and humiliating tool that leaves no physical scars, and which can be repeatedly used as an intimidation tool," he said.

A detainee, on the other hand, "has no idea what is about to happen to them," Nance said, and could legitimately fear death. "It's far worse," he said.

NEW YORK TIMES

OPINION:

November 10, 2007
OP-ED CONTRIBUTORS

Guantánamo by the Numbers

By DAVID BOWKER and DAVID KAYE

Page A15

SIX years ago this Tuesday, President Bush granted American armed forces sweeping authority to detain and interrogate foreign members of Al Qaeda and their supporters and to use military commissions to try them. By doing so, the president set in motion the creation of military commissions and the detention camp in Guantánamo Bay, Cuba.

The Bush administration may legitimately claim certain benefits from the Guantánamo system. Some dangerous men are held there, and valuable intelligence has probably been gathered, perhaps even some that has enabled the government to disrupt terrorist activities.

But the costs have been high. Guantánamo has come to be seen worldwide as a stain on America's reputation. The military commissions have failed to deliver justice, stymied by the federal courts' refusal to permit the president to create a system at odds with United States courts-martial and the international law of war.

Meanwhile, the number of detainees at Guantánamo has steadily dropped to a little over 300, from its peak of more than 700, no more than 80 of whom are likely to face any kind of American prosecution. Not a single defendant has gone to trial, and only one has pleaded guilty.

Today, most American leaders acknowledge the need for a new approach. The president himself has expressed a desire to see the detention camp closed. But he has only a little more than a year to do so before the next president takes office. It's time to take a close look at this system of detention and prosecution and move quickly to establish viable

alternatives. With apologies to the Harper's Index, the following data provide a historical snapshot.

A Denim Jacket for Your Time

Number of "high-value detainees" now at Guantánamo: 15

Approximate percentage of detainees found to have committed "hostile acts" against the United States or coalition forces before detention: 53

Approximate number of countries of which detainees are citizens: 40

Most represented countries at Guantánamo: Saudi Arabia, Afghanistan, Yemen

Cost of building Guantánamo high-security detention facilities: about $54 million

Estimated annual cost of operating Guantánamo: $90 million to $118 million

Cost of "expeditionary legal complex" for the military commission (under construction): $10 million to $12 million

Number of books in the Guantánamo detention library: 5,143

Number of Korans issued to detainees from January 2002 to June 2005: more than 1,600

Number of daily calories per detainee: Up to 4,200, including halal meat

Average weight gain per detainee: 20 pounds

Number of pills dispensed per day: 1,000, to 200-300 detainees

Number of apparent suicides: 4

Number of apparent suicide attempts: 41, by 25 detainees (as of May 2006)

Number of detainee assaults on guards using "bodily fluids": more than 400

Date of first visit to Guantánamo by the International Committee of the Red Cross: Jan. 18, 2002

Approximate number of visits by lawyers to Guantánamo detainees so far this year: 1,100

Month of first habeas corpus petition filed to challenge detention at Guantánamo: January 2002

Number of habeas corpus petitions filed in federal courts on behalf of detainees: roughly 300

Number of detainees designated by the president as "eligible" for trial by military commission: 14

Number actually charged with crimes (for example, murder and material support for terrorism): 10

Number of pending cases: 3

Number of convictions: 1 (an Australian who pleaded guilty to material support of terrorism and was sentenced to nine months of confinement in his home country)

Estimated number of detainees who may be charged in the future: 80

Month of first release of a detainee: May 2002 (one detainee repatriated to Afghanistan because of an "emotional breakdown")

Approximate number of detainees released: 445

Approximate number of current detainees found eligible for transfer or release: 70

Countries to which Guantánamo detainees have been transferred: Albania, Afghanistan, Australia, Bangladesh, Bahrain, Belgium, Britain, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kuwait, Libya, Maldives, Mauritania, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, Sudan, Tajikistan, Turkey, Uganda, Yemen

Most recent announced transfer of detainees from Guantánamo: Nov. 4 (eight to Afghanistan, three to Jordan)

Personal items provided to detainees upon departure: a Koran, a denim jacket, a white T-shirt, a pair of blue jeans, high-top sneakers, a gym bag of toiletries and a pillow and blanket for the flight home

Number of detainees said by Pentagon to have resumed hostile activities against the United States after release: at least 30

Number of United States senators who voted in favor of a nonbinding resolution that Guantánamo detainees "should not be released into American society, nor should they be transferred stateside into facilities in American communities and neighborhoods": 94

Number of bills in Congress calling for the closing of Guantánamo: 3

Number of members of the House of Representatives who signed a letter to President Bush in June 2007 urging him to close Guantánamo and move the detainees to military prisons in the United States: 145

Number of Republicans who signed the letter: 1

Democratic presidential candidates who are on record supporting closing Guantánamo: 8

Republican presidential candidates who are: 2 (John McCain and Ron Paul)

Closest American allies that have called for Guantánamo's closing: Britain, France, Germany

Next scheduled legal test of the Guantánamo system: Boumediene v. Bush, a challenge to the denial of habeas corpus, set for argument before the Supreme Court on Dec. 5

David Bowker, a lawyer in New York, and David Kaye, the acting director of the Program on International Human Rights Law at the University of California, Los Angeles, were staff lawyers at the State Department during the Clinton and Bush administrations.

CHRISTIAN SCIENCE MONITOR

OPINION:

from the November 14, 2007 edition - http://www.csmonitor.com/2007/1114/p09s01-coop.html

Torture doesn't work

It erodes national security and democracy.

By Alison Brysk

San Diego

A morally bankrupt foreign policy. A degeneration of democratic checks and balances.

Those are just a few of the disturbing facets of the state of the US government revealed by the debates over the confirmation of Attorney General Michael Mukasey and his views on whether waterboarding constitutes torture.

But the deepest irony of the Bush administration's ambivalent stance on such medieval tactics – practiced in the name of defending national security – is that torture is not only wrong, it's also a stupid strategy that undermines the defense of democratic societies against terror.

US leaders must correct their profoundly mistaken analysis and ignorance of the lessons of history about torture.

Torture is an ineffective counterinsurgency strategy. One defense of torture is the "ticking bomb" scenario – the idea that an imminent, massive threat to civilians might be stopped by a single detainee who possesses crucial information and will yield actionable intelligence under physical coercion. But this is mostly a law-school legend, not a frequent occurrence in a complex conflict with multiple levels of planning and diffuse local support.

Despite fearful anecdotal claims, the effectiveness of torture in generating intelligence is questionable at best. But we do know that torture produces many false confessions and new enemies, and distracts from more effective, legitimate techniques of interrogation and intelligence-gathering. We also know that democracies that have turned to torture in counterinsurgency – for example, the French in Algeria – have lost, while the British found a solution in Northern Ireland after they gave up abusive tactics.

Torture escalates conflict. The use of torture by targeted societies is strongly associated with an increase in the severity of terror used against them. In interviews with imprisoned terror leaders from the Palestinian territories to India, they state that they adopted and were supported in bloodier tactics when democratic enemies resorted to torture and attacks on civilians.

The "torture-terror nexus" can be seen in Israel. The first intifada was militant but largely peaceful, while the second intifada was characterized by suicide bombings. The tough Israeli response to the first, which an Israeli inquiry showed involved the mistreatment of about 85 percent of Palestinian prisoners, appears to have temporarily suppressed one uprising while planting the seeds of greater violence in the next.

Torture blocks international cooperation against terror among valuable democratic allies. America's adoption of illicit tactics has undermined the legal cooperation that is our best weapon against transnational terror. In Germany, an important prosecution of a terror suspect was handicapped because US evidence gathered in Guantánamo was legally inadmissible.

A Spanish prosecutor has stated that he is unable to order extraditions to the US, as a country that violates Spanish legal guarantees.

In Afghanistan, Canadian and Dutch forces holding critical contested areas are not permitted to release Afghan captives to US facilities where they might be mistreated, deported to Guantánamo, or "rendered" to abusive countries. This policy came into effect after pressure from the Dutch parliament and Canadian courts, on behalf of outraged democratic publics.

Torture drives out legitimate policing. Preventing terrorism is a question of good police work, built on strong ties with the communities that host insurgents, sophisticated

knowledge of criminal networks, and swift cooperation among agencies and allies. But current US tactics alienate global publics and local communities, while the secrecy torture requires fosters bureaucratic bungling. Frustrated FBI and military intelligence professionals have resigned, citing sloppy and illegal coercive interrogations by an unaccountable collection of reservists, military police, CIA agents, and private contractors.

Torture undermines the rule of law and corrupts democratic institutions. Democracy is the system the US is fighting to defend. It is also the best defense of US national security – like the rule-of-law strategy that has enabled the United Kingdom to forestall some attacks.

Similarly, America's credibility in promoting democratic reform among unstable front-line allies such as Pakistan depends on honoring its international commitments such as the Convention Against Torture. US commanders believe that adherence to the Geneva Conventions helps ensure the safety of the troops. Democracies that use torture become less democratic, as illicit interrogations are hidden from public view, outsourced to unaccountable special services, diverted to parallel legal systems such as special tribunals, and removed from congressional checks on executive power.

The authorization of, or acquiescence to torture, by US senators is a betrayal of the Constitution they have sworn to defend. It defies the wishes of the majority of Americans of conscience, and it compromises US national security. We must demand that our elected leaders not pander to the politics of fear, but rather meet their responsibility to provide an intelligent, sustainable, and humane national defense.

NEW YORK TIMES

November 16, 2007

Red Cross Monitors Barred From Guantánamo

By WILLIAM GLABERSON

Page A20

A confidential 2003 manual for operating the Guantánamo detention center shows that military officials had a policy of denying detainees access to independent monitors from the International Committee of the Red Cross.

The manual said one goal was to "exploit the disorientation and disorganization felt by a newly arrived detainee," by denying access to the Koran and by preventing visits with Red Cross representatives, who have a long history of monitoring the conditions under which prisoners in international conflicts are held. The document said that even after their initial weeks at Guantánamo, some detainees would not be permitted to see representatives of the International Red Cross, known as the I.C.R.C.

It was permissible, the document said, for some long-term detainees to have "No access. No contact of any kind with the I.C.R.C."

Some legal experts and advocates for detainees said yesterday that the policy might have violated international law, which provides for such monitoring to assure humanitarian treatment and to limit the ability of governments to hold detainees secretly.

The document, a two-inch-thick operations manual, was first posted on Wikileaks, a Web site that encourages posting of leaked materials. Military officials said that the manual appeared genuine but described outdated policies and that all Guantánamo detainees could now see Red Cross monitors. In response to critics' assertions that the detention camp in Guantánamo Bay, Cuba, may have violated international law, a spokesman, Lt. Col. Edward M. Bush III, said, "I am in no position to speculate about what happened in 2003."

Simon Schorno, a spokesman for the International Committee of the Red Cross, said the organization was aware that it was not seeing all Guantánamo detainees from 2002, when the detention camp was opened, to 2004. He said the policies outlined in the manual "run counter to the manner in which the I.C.R.C. conducts its detention visits at Guantánamo Bay and around the world."

He added that Red Cross officials worked with American officials "to resolve this issue confidentially, since gaining access to all detainees in full accordance with its standard practice was paramount."

The Red Cross has been critical of Guantánamo, saying publicly in 2003 that keeping detainees indefinitely without allowing them to know their fate was unacceptable and, in confidential reports, that the physical and psychological treatment of detainees amounted to torture.

The manual is a detailed directive of standard operating procedures at Guantánamo intended for use by the hundreds of people involved in running the detention camp. It provides one of the most complete portraits of the rules of the camp in its early days, when it was a largely closed place where detainees were not publicly identified.

In some instances, the manual echoed the arguments then being advanced by Washington officials as they fended off criticism of Guantánamo. The manual described point-by-point instructions for many camp procedures, including feeding and restraining detainees, and forced extraction of inmates from their cells by military troops. It said a major goal was to foster detainees' dependence on their interrogators, in part by isolating them. In a section labeled "psychological deterrence," the manual said military working dogs should be walked in the camp "to demonstrate physical presence to detainees."

The spokesman, Colonel Bush, said yesterday that dogs were no longer used at the detention camp.

Some international law experts said yesterday that they were startled that military officials had put in writing a policy of denying the Red Cross access to prisoners.

"The world recognizes that the I.C.R.C. should get access" to prison camps, said Richard J. Wilson, a law professor at American University who was until recently a lawyer for a Guantánamo detainee.

Deborah N. Pearlstein, a visiting scholar at the Woodrow Wilson School of Public and International Affairs at Princeton University, said international principles were aimed at preventing governments from "disappearing" opponents. "I.C.R.C. access and the obligation to record and account for detainees is very clear under international law," Ms. Pearlstein said.

The military spokesman, Colonel Bush, said: "All I can tell you is what we do today. And the absolute policy now, today, is that the I.C.R.C. is granted access to everything."

NEW YORK TIMES

November 16, 2007

McCain Finds Sympathy on Torture Issue

By MARC SANTORA

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On a bitterly cold morning last week, diners at the Whistle Stop Cafe in Boone, Iowa, were just sitting down for their morning coffee when Senator John McCain entered. Within minutes, Mr. McCain turned to a hot-button topic for which he literally serves as the living embodiment: the subject of torture.

"One of the things that kept us going when I was in prison in North Vietnam was that we knew that if the situation were reversed, that we would not be doing to our captors what they were doing to us," he said.

When Mr. McCain brings up the issue of torture, he is often met by a complex response. Many of the Republican voters he courts do not agree with his opposition to aggressive interrogation techniques that many have condemned as torture. But they are often captivated by his discussion of the issue, in some cases even moved to tears, as was the case in Boone.

On the campaign trail, Mr. McCain does not dwell on the personal details of his five and a half years as a prisoner of war, the "torture ropes" in which he was bound day and night, or the beatings he endured. But as he speaks, the physical reminders of his wounds are there for all to see, from the stiffness of his arms, which to this day he can only painfully raise above his head, to the shortness of his stride, a result of injury and subsequent beatings.

Mr. McCain has been speaking out more forcefully about the issue as it has bubbled up recently on the campaign trail and in debates.

Democrats are largely opposed to torture, and while the Bush administration has said it does not engage in torture, it had previously reserved the right to use aggressive interrogation techniques in questioning terrorism suspects. And the leading Republican candidates, with the exception of Mr. McCain, are refusing to rule out certain techniques that others would deem as torture.

"I want to tell you. Rudy Giuliani, Fred Thompson and Mitt Romney all think it is O.K.," Mr. McCain told the diners in Boone. "They have one thing in common. They don't understand the military and the culture of this nation. If they did, they could never condone such behavior."

The issue has taken on particular resonance over the last few weeks as lawmakers argued over the nomination of Michael B. Mukasey for attorney general, with Democrats angered over his refusal to call waterboarding torture and therefore illegal. And it has led to some of the most pointed exchanges of the Republican campaign so far. When Mr. McCain faulted his Republican opponents' lack of wartime experience, Mr. Giuliani shot back against his old political ally, Mr. McCain, saying he "has never run a city, never run a state, never run a government."

From public forums in Iowa to the living rooms of New Hampshire and the military towns in South Carolina, Mr. McCain's message is simple: what America does to its enemies defines America itself.

Sometimes, he does not even have to say anything himself, leaving the task to those who introduce him.

At a Veterans Day ceremony at Beaufort National Cemetery in South Carolina, Mayor William Rauch of Beaufort introduced Mr. McCain by recalling how as a prisoner, Mr. McCain had once refused to be filmed for propaganda purposes, "uplifting his center finger" when the guard entered his cell and uttering "the oath that is commonly associated with that gesture."

The act of defiance, Mr. Rauch said, led to another month or so of beatings.

At many events, the campaign often shows grainy black-and-white film of a young Mr. McCain soon after his capture in North Vietnam, obviously in pain and confined to a bed, telling his captors his name and rank as he smokes a cigarette.

Senator Hillary Rodham Clinton, Democrat of New York, will often point to Mr. McCain's opposition to torture to support her own stance. All of the leading Democratic candidates have made it clear that if the Republican nominee is not Mr. McCain, they will make torture a subject of any general election campaign.

While Mr. McCain refrains from discussing his own experiences, he lets others address the issue. At a celebration Saturday of the 232nd birthday of the Marine Corps, in Bedford, N.H., as veterans from five wars over the last century looked on, Mr. McCain said that any candidate who joked about sleep deprivation, as Mr. Giuliani had done several days earlier, should talk to his fellow prisoner of war and supporter, Orson G. Swindle.

Mr. McCain described how Mr. Swindle was "chained to a stool for 10 days, then let off that stool for one day, and then chained to that stool again for 10 more days."

Mr. McCain believes that the United States' war on terrorism has been defined for much of the world by its failure to forthrightly reject torture, as well as its continuing the practice of rendition, in which terrorism suspects are spirited off to countries that may engage in torture, and the continued detention of prisoners at Guantánamo Bay, Cuba, without trials. He portrays his Republican opponents' position on the torture issue as reflective of "macho" or "tough-guy" poses.

After a public forum at a restaurant in Allison, Iowa, where he once again took on his Republican opponents by name, Mr. McCain told reporters that, because of his efforts in the Senate, he was confident that the United States was no longer engaging in cruel and inhumane treatment.

"After we passed the Detainee Treatment Act, the Military Commissions Act, then obviously anybody who violated any law of the United States would have to be held responsible," he said.

A few days later, in New Hampshire, Mr. McCain was asked about reports that Khalid Shaikh Mohammed, the mastermind of the Sept. 11 attacks, was made to give up vital information only after being waterboarded.

Mr. McCain said he did not believe that to be the case. While the C.I.A. might have left that impression, he said, the F.B.I. disagreed.

It has also been reported that Mr. Mohammed "confessed" to plotting to kill former Presidents Bill Clinton and Jimmy Carter as well as Pope John Paul II, leading interrogators to believe he was telling them whatever he thought they wanted to hear.

Mr. McCain said he had no idea how the issue of torture would affect the primaries and caucuses. As he traveled across Iowa one day last week, he reviewed a new CNN poll that found 69 percent of Americans believed waterboarding was torture. But only 58 percent thought it should not be used on terrorism suspects.

Aware that many people might not even know what the technique involves, Mr. McCain often outlines its details.

"You incline someone's head and stuff a rag in their mouth and pour water and give one the total sensation of drowning," he told the breakfast diners in Boone. "It was invented in the Spanish inquisition and was used by Pol Pot. It is now being used on Burmese monks by this military junta in Burma."

"I know how evil this enemy is," Mr. McCain told the Boone audience. But the issue is about more than one technique, he said. "This is really fundamentally about what kind of nation the United States of America is."

But Milt Mattson, standing outside the cafe after Mr. McCain left, said he thought the United States needed to take any measure it deemed necessary.

"This is a war for our life," Mr. Mattson said. "These are people that chop heads off. I don't care what we have to do to stop them."

NEW YORK TIMES

EDITORIAL:
November 19, 2007
Editorial

Rendition, Torture and Accountability

Page A22

Maher Arar, a Syrian-born Canadian, was stopped at Kennedy Airport in 2002 while returning from a family vacation. After being held in solitary confinement in a Brooklyn detention center and interrogated without proper access to a lawyer, he was spirited off to Syria. He was tortured there for months before officials decided that their suspicions that he was a member of Al Qaeda were mistaken and let him go.

Mr. Arar was a victim of extraordinary rendition, America's notorious program of outsourcing interrogations to governments known to use torture. He has sued the United States for denying him his civil rights. Now, a three-judge panel of the United States Court of Appeals for the Second Circuit has to decide whether to compound the mistreatment, by agreeing to throw out Mr. Arar's lawsuit, as the Bush administration is asking.

The government won the last round. In February 2006, a lower-court judge in Brooklyn, David Trager, blocked Mr. Arar's suit entirely, ruling that rendition cases like this one raise foreign policy questions inappropriate for court review. Judge Trager also accepted groundless, and by now familiar, administration claims of secrecy and national security. Among its other defects, the ruling runs counter to a pair of 2004 Supreme Court

decisions that made clear that the war on terror does not exempt government actions from court review.

At a court hearing this month, a Justice Department lawyer argued against reinstating Mr. Arar's lawsuit. The government contends that he should have appealed his order of removal to Syria, and claims that the Constitution does not apply to noncitizens who suffer injury abroad. This is a particularly nervy tack, given the ample precedent to the contrary and the fact that the administration first denied Mr. Arar's access to a lawyer and then sent him to the country where he was tortured.

Canada's response to Mr. Arar's nightmare has been very different. After conducting an extensive investigation, the government offered him millions of dollars in compensation and an apology for having told United States agents that Mr. Arar was suspected, wrongly, of being an extremist. Pressed at a recent Congressional hearing, Secretary of State Condoleezza Rice conceded that the United States had mishandled the case but refused to apologize.

Mr. Arar deserves justice in this case. Much more is at stake, however, than fairness for one individual. By allowing Mr. Arar to pursue his claims, and rejecting the administration's attempt to put them beyond the reach of American law, the appeals court can provide a vital measure of justice and accountability for torture.

BOSTON GLOBE

Some cleared Guantanamo inmates stay in custody

Lawyers call US system of hearings a sham

By Farah Stockman, Globe Staff | November 19, 2007

Page 1

GUANTANAMO BAY - About a quarter of detainees who were cleared to leave Guantanamo Bay prison after hearings in 2005 and 2006 remain in custody, raising questions among inmates and their lawyers about the legitimacy of the system of hearings to review evidence against the prisoners.

The military's failure to release all of those who were cleared to leave - combined with the fact that dozens of other inmates who were not cleared have nonetheless been released - has led many inmates and their lawyers to contend that the system is a sham, and that the real decisions are being made elsewhere.

The military says most of the cleared inmates remain in custody because of difficulties in negotiating terms of their release to their home countries. But officials also acknowledge that the hearings are not the final decision on an inmate's fate, and that the Pentagon