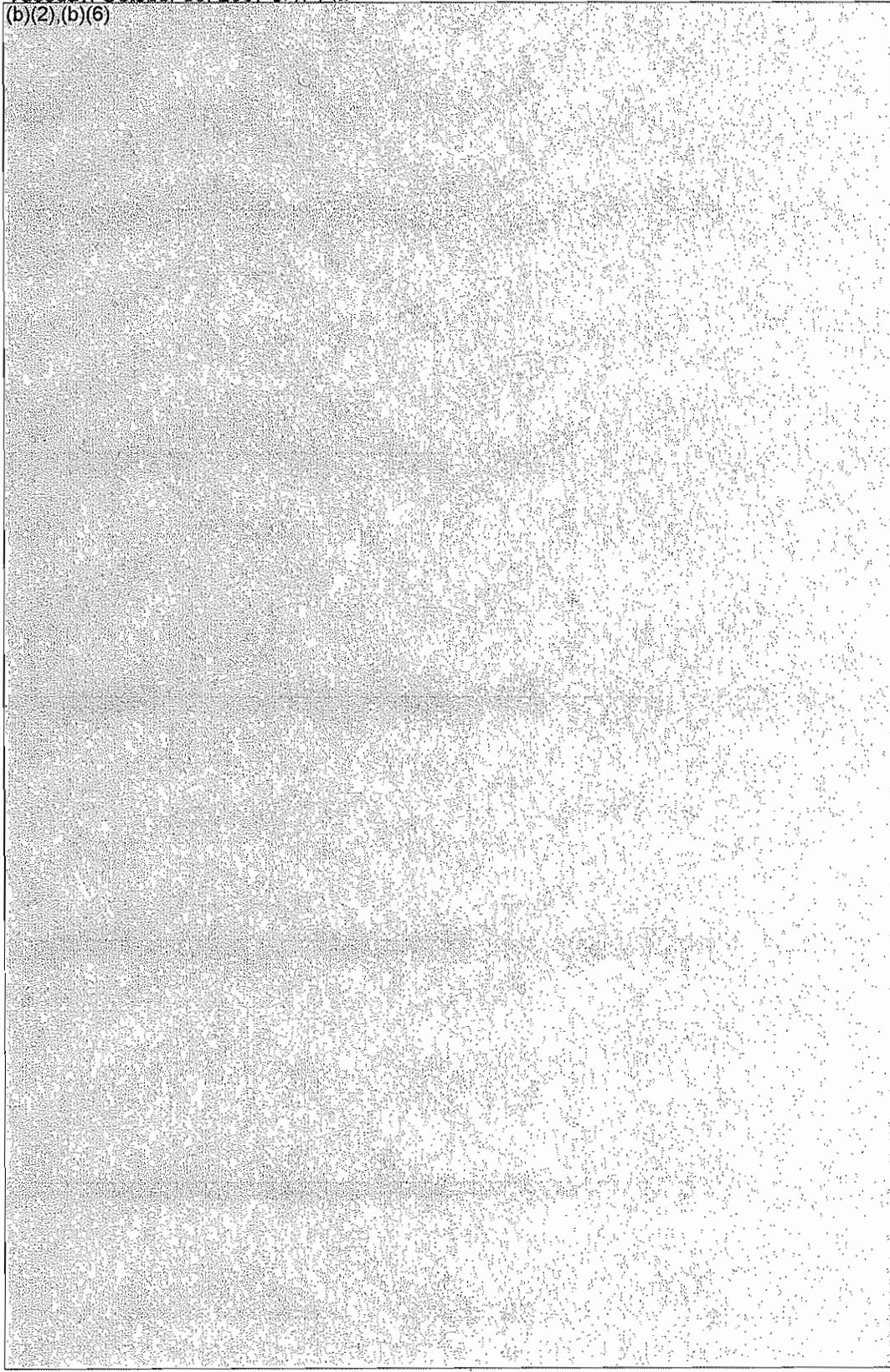


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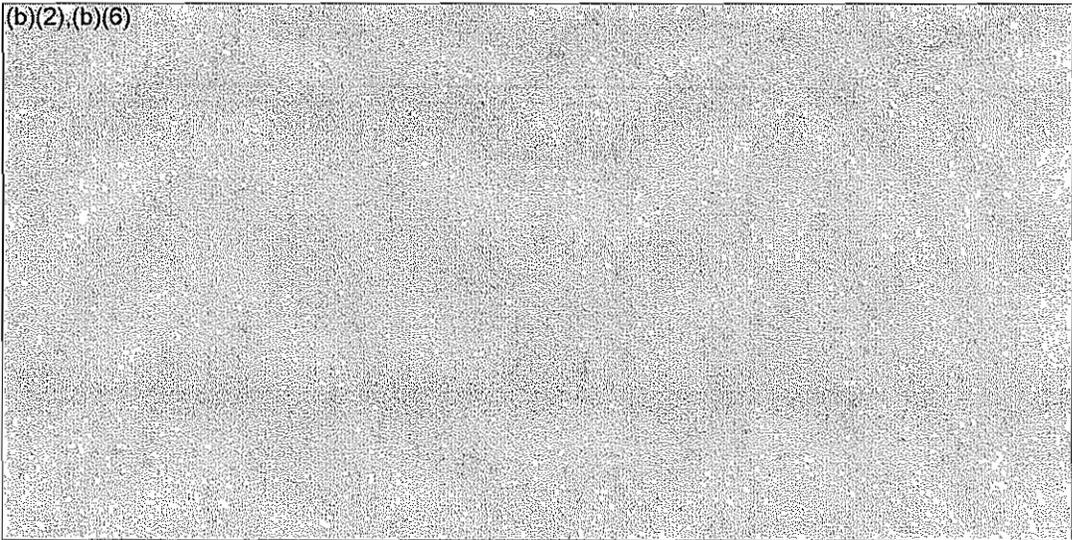
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Subject: GTMO BIRD: Dutch Offended by Lantos; NATO Countries Refuse Detainees; Gitmo Lawyer Breaks Ranks; CIA Jails and Ghost Prisoners; Torture Complaint Filed; UN Special Rapporteur Accuses US of Torture; Shutting Gitmo Down; Restoring Habeas Corpus;
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>Paralegal, GySgt, USMC (Ret.)
>Department of Defense
>Office of the General Counsel (Legal Counsel)
>1099 14th Street, NW (Franklin Court)
>(b)(2)
>Washington, DC
>Comm: (b)(2),(b)(6)
>NIPR: [redacted]

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Dutch Lawmakers Offended by Rep. Lantos
By DESMOND BUTLER - 1 day ago

WASHINGTON (AP) - Dutch lawmakers who recently visited the Guantanamo Bay military prison said they were offended by a testy exchange in Washington with a senior congressional Democrat.

The lawmakers said that Rep. Tom Lantos, D-Calif., chairman of the House Foreign Affairs Committee, told them that "Europe was not as outraged by Auschwitz as by Guantanamo Bay." Lantos, a Holocaust survivor, was responding to arguments that the United States should shut down the prison, located on a U.S. naval base in Cuba, the lawmakers said. Mariko Peters, a member of the Dutch Green Party, who began the exchange with Lantos, said she took notes of the remarks.

A Lantos aide said the lawmaker realizes the Guantanamo facility does harm to the reputation of the United States and has praised judges who ruled in favor of extending legal rights to prisoners. Lantos has not suggested that the prison be closed.

Before the Guantanamo exchange, the lawmakers had discussed a debate in the Netherlands about whether the country should maintain its 1,600 troops serving in NATO's Afghanistan operations.

"You have to help us, because if it was not for us you would now be a province of Nazi Germany," Lantos said, according to the Dutch lawmakers.

"The comments killed the debate," said Harry van Bommel, a member of the Socialist Party. "It was insulting and counterproductive."

A Lantos spokeswoman said Lantos was not available and had no comment.

The Dutch government soon will announce whether its troops will stay in the southern Afghan province of Uruzgan, where they recently have begun an anti-Taliban offensive backed by British and Afghan forces. Lantos has praised the Netherlands' contribution to the Afghan mission.

"It was a diplomatically strange situation," Peters said. "The mere suggestion that the United States could be compared with Nazi Germany is so flawed."

It was not the first time that Lantos had offended European political circles. In May, he lashed out at the former leaders of France and Germany. His comments, which included calling former German Chancellor Gerhard Schroeder a "political prostitute," provoked a rebuke from German Foreign Minister Frank-Walter Steinmeier.

The lawmakers, from the Dutch House of Representatives' Foreign Affairs Committee, were invited to visit Guantanamo and Washington by the U.S. ambassador to the Netherlands, Roland Arnall. The lawmakers also met senior Bush administration officials, including Deputy Secretary of State John Negroponte and Deputy Defense Secretary Gordon England.

Members of the delegation said they were given an extensive tour this past week of the Guantanamo Bay prison, which has been heavily criticized by human rights groups.

Some of the lawmakers said that while they found the physical conditions of the prison acceptable, they remain concerned that prisoners were not being given proper legal treatment. Most of the delegation called for the closing of Guantanamo.

"We have to close Guantanamo because it symbolizes for me everything that is wrong with this war on terror," Peters said.

But at least one member disagreed.

"Let's not forget we are in a state of war - not only the United States but also my country - with Islamic terrorists," said the far right Freedom Party leader, Geert Wilders. "I think we could only learn from Guantanamo."

A number of the members said that the United States should consult international institutions and other countries to answer some of the difficult quandaries about closing the facility.

"We need to work out an international deal on the future of Guantanamo Bay," said Hans van Baalen, of the Liberals, who led the delegation

<http://ap.google.com/article/ALeqM5hzN-Cjx7Ky5gjZbhBu-gFo5vR2YwD8SI36002>

MPs oppose US Guantanamo request
29-10-2007

Suggestions that the Netherlands and other NATO countries should take in prisoners from the US prison camp at Guantanamo Bay have been rejected by a majority of MPs, news agency ANP reports.

The Christian Democrats, Labour party (PvdA) and SP, which control a majority of seats in parliament, dismissed the idea. It is 'absurd,' said Martijn van Dam (PvdA). 'Why should the Netherlands take in people that the US refuses to deal with?'

On Friday, the Parool reported that the US wanted NATO countries to take in ex Guantanamo Bay prisoners who could not return to their country of origin.

The US has not made a formal request to the Netherlands to take in former prisoners but has sounded out officials behind the scenes, ANP said.

http://www.dutchnews.nl/news/archives/2007/10/mps_oppose_us_guantanamo_reque.php

Guantanamo military lawyer breaks ranks to condemn 'unconscionable' detention

By Leonard Doyle in Washington

Published: 27 October 2007

An American military lawyer and veteran of dozens of secret Guantanamo tribunals has made a devastating attack on the legal process for determining whether Guantanamo prisoners are "enemy combatants".

The whistleblower, an army major inside the military court system which the United States has established at Guantanamo Bay, has described the detention of one prisoner, a hospital administrator from Sudan, as "unconscionable".

His critique will be the centrepiece of a hearing on 5 December before the US Supreme Court when another attempt is made to shut the prison down. So nervous is the Bush administration of the latest attack - and another Supreme Court ruling against it - that it is preparing a whole new system of military courts to deal with those still imprisoned.

The whistleblower's testimony is the most serious attack to date on the military panels, which were meant to give a fig-leaf of legitimacy to the interrogation and detention policies at Naval Base at Guantanamo Bay. The major has taken part in 49 status review panels.

"It's a kangaroo court system and completely corrupt," said Michael Ratner, the president of the Centre for Constitutional Rights, which is co-ordinating investigations and appeals lawsuits against the government by some 1,000 lawyers. "Stalin had show trials, but at Guantanamo they are not even show trials because it all takes place in secret."

Combatant Status Review Tribunals were held for 558 detainees at the Guantanamo in 2004 and 2005. All but 38 detainees were determined to be "enemy combatants" who could be held indefinitely without charges. Detainees were not represented by a lawyer and had no access to evidence. The only witnesses they could call were other so-called "enemy combatants".

The army major has said that in the rare circumstances in which it was decided that the detainees were no longer enemy combatants, senior commanders ordered another panel to reverse the decision. The major also described "acrimony" during a "heated conference" call from Admiral McGarragh, who reports to the Secretary of the US Navy, when a the panel refused to describe several Uighur detainees as enemy combatants. Senior military commanders wanted to know why some panels considering the same evidence would come to different findings on the Uighurs, members of a Muslim minority in China.

When the whistleblower suggested over the phone that inconsistent results were "good for the system ... and would show that the system was working correctly", Admiral McGarragh, he said, had no response. The latest criticism emerged when lawyers investigating the case of a Sudanese hospital administrator, Adel Hamad, who has been held for five years, came across a "stunning" sworn statement from a member of the military panel. The officer they interviewed was so frightened of retaliation from the military that they would not allow their name to be used in the statement, nor to reveal whether the person was a man or woman.

Two other military lawyers have also gone public. In June, Army Lt-Col Stephen Abraham, a 26-year veteran in US military intelligence, became the first insider to publicly fault the proceedings. In May last year, Lt-Com Matthew Diaz was sentenced to six months in prison and dismissed from the military after he sent the names of all 551 men at the prison to a human rights group.

William Teesdale, a British-born lawyer investigating Mr Hadad's case, said he was certain of his client's innocence, having tracked down doctors who worked with him at an Afghan hospital. "Mr Hamad is an innocent man, and he is not the only one in Guantanamo."

<http://news.independent.co.uk/world/americas/article3101949.ece>

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 <<http://www.washingtonpost.com/wp-srv/world/countries/pakistan.html?nav=el>> -- On Sept. 6, 2006, President Bush <<http://www.washingtonpost.com/ac2/related/topic/George+W.+Bush?tid=informline>> announced that the CIA <<http://www.washingtonpost.com/ac2/related/topic/Central+Intelligence+Agency?tid=informline>> 's overseas secret prisons had been temporarily emptied and 14 al-Qaeda <<http://www.washingtonpost.com/ac2/related/topic/Al+Qaeda?tid=informline>> leaders taken to Guantanamo Bay, Cuba <<http://www.washingtonpost.com/wp-srv/world/countries/cuba.html?nav=el>> . But since then, there has been no official accounting of what happened to about 30 other "ghost prisoners" who spent extended time in the custody of the CIA. Some have been secretly transferred to their home countries, where they remain in detention and out of public view, according to interviews in Pakistan <<http://www.washingtonpost.com/ac2/related/topic/Pakistan?tid=informline>> and Europe <<http://www.washingtonpost.com/ac2/related/topic/Europe?tid=informline>> with government officials, human rights groups and lawyers for the detainees. Others have disappeared without a trace and may or may not still be under CIA control. The bulk of the ghost prisoners were captured in Pakistan, where they scattered after the U.S. invasion of Afghanistan <<http://www.washingtonpost.com/wp-srv/world/countries/afghanistan.html?nav=el>> in 2001. Among them is Mustafa Setmariam Nasar, a dual citizen of Syria <<http://www.washingtonpost.com/ac2/related/topic/Syria?tid=informline>> and Spain <<http://www.washingtonpost.com/ac2/related/topic/Spain?tid=informline>> and an influential al-Qaeda ideologue who was last seen two years ago. On Oct. 31, 2005, the red-bearded radical with a \$5 million U.S. bounty on his head arrived in the Pakistani border city of Quetta, unaware he was being followed. Nasar was cornered by police as he and a small group of followers stopped for dinner. Soon after, according to Pakistani officials, he was handed over to U.S. spies and vanished into the CIA's prison network. Since then, various reports have placed him in Syria, Afghanistan and India <<http://www.washingtonpost.com/wp-srv/world/countries/india.html?nav=el>> , though nobody has been able to confirm his whereabouts. Nearly all the Arab members of al-Qaeda caught in Pakistan were given to the CIA, Pakistani security officials said. But the fate of several Pakistani al-Qaeda operatives who were also captured remains murky; the Pakistani government has ignored a number of lawsuits filed by relatives seeking information. "You just don't know -- either these people are in the custody of the Pakistanis or the Americans," said Zafarullah Khan, human rights coordinator for the Pakistan Muslim League, an opposition political party. Others have been handed over to governments that have kept their presence a secret. Since 2004, for example, the CIA has handed five Libyan fighters to authorities in Tripoli <<http://www.washingtonpost.com/ac2/related/topic/Tripoli?tid=informline>> . Two had been covertly nabbed by the CIA in China <<http://www.washingtonpost.com/wp-srv/world/countries/china.html?nav=el>> and Thailand <<http://www.washingtonpost.com/ac2/related/topic/Thailand?tid=informline>> , while the others were caught in Pakistan and held in CIA prisons in Afghanistan, Eastern Europe <<http://www.washingtonpost.com/ac2/related/topic/Eastern+Europe?tid=informline>> and other locations, according to Libyan sources. The Libyan government has kept silent about the cases. But Libyan political exiles said the men are kept in isolation with no prospect of an open trial. Other ghost prisoners are believed to remain in U.S. custody after passing into and out of the CIA's hands, according to human rights groups. Relatives of a Tunisian al-Qaeda suspect known as Retha al-Tunisi, captured in Karachi <<http://www.washingtonpost.com/ac2/related/topic/Karachi?tid=informline>> , Pakistan, in 2002, received notice recently from the International Committee of the Red Cross <<http://www.icrc.org/>> that he is detained at a U.S. military <<http://www.washingtonpost.com/ac2/related/topic/U.S.+Armed+Forces?tid=informline>> prison in Afghanistan, said Clara Gutteridge, an investigator for Reprieve <<http://www.reprieve.org.uk/>> , a London

<http://www.washingtonpost.com/ac2/related/topic/London?tid=informline> -based legal rights group that represents many inmates at the U.S. prison at Guantanamo Bay. Other prisoners, since released, had previously reported seeing Tunisi at a secret CIA "black site" in Afghanistan.

At least one former CIA prisoner has been quietly freed. Ahmad Khalil Ibrahim Samir al-Ani, an Iraqi intelligence agent captured after the invasion of Iraq

<http://www.washingtonpost.com/wp-srv/world/countries/iraq.html?nav=el> in 2003, was detained at a secret location until he was released last year.

Ani gained notoriety before the Iraq war when Bush administration officials said he had met in Prague <http://www.washingtonpost.com/ac2/related/topic/Prague?tid=informline> with Sept. 11, 2001, hijacker Mohamed Atta. Some officials, including Vice President Cheney <http://www.washingtonpost.com/ac2/related/topic/Dick+Cheney?tid=informline>, cited the rendezvous as evidence of an alliance between al-Qaeda and Saddam Hussein <http://www.washingtonpost.com/ac2/related/topic/Saddam+Hussein?tid=informline>. The theory was later debunked by U.S. intelligence agencies and the Sept. 11 commission, which revealed in 2004 that Ani was in U.S. custody.

The Iraqi spy resurfaced two months ago when Czech officials revealed that he had filed a multimillion-dollar compensation claim. His complaint: that unfounded Czech intelligence reports had prompted his imprisonment by the CIA.

Guantanamo Newcomers

When Bush confirmed the existence of the CIA's prisons in September 2006, he said they had been vacated for the time being. But he said the U.S. government would use them again, if necessary.

The CIA has resumed its detention program: Since March, five new terrorism suspects have been transferred to Guantanamo. Although the Pentagon

<http://www.washingtonpost.com/ac2/related/topic/The+Pentagon?tid=informline> has not disclosed details about how or precisely when they were captured, officials have said one of the prisoners, Abd al-Hadi al-Iraqi, had spent months in CIA custody overseas.

Details of the secret detention program remain classified. U.S. officials have offered only vague descriptions of its reach and scope.

Last month, in a speech in New York <http://www.cfr.org/publication/14158/>, CIA Director Michael V. Hayden

<http://www.washingtonpost.com/ac2/related/topic/Michael+Hayden?tid=informline> said "fewer than 100 people" had been detained in the CIA's overseas prison network since the program's inception in early 2002.

In June, a coalition of human rights groups <http://hrw.org/backgrounder/usa/ct0607/> identified 39 people who may have been in CIA custody but are still missing. Many of those on the list, however, were identified by partial names or noms de guerre, such as one man described only as Mohammed the Afghan.

Joanne Mariner, director of terrorism and counterterrorism research for Human Rights Watch <http://www.washingtonpost.com/ac2/related/topic/Human+Rights+Watch?tid=informline>, said the CIA has moved many prisoners from country to country and relied on other spy services to take custody of suspects, sometimes temporarily and sometimes for good.

"The large majority have gone to their countries of origin," she said. "But that doesn't mean all of them. There could be some that are still in proxy detention."

In a footnote to its 2004 report <http://www.9-11commission.gov/report/index.htm>, the Sept. 11 commission named nine al-Qaeda suspects who were in U.S. custody at black sites. Seven were later transferred to Guantanamo.

Still missing is Hassan Ghul, a Pakistani national captured in northern Iraq in January 2004. U.S. officials have described him as a high-level emissary between al-Qaeda's core command in Pakistan and its affiliates in Iraq.

Another prisoner on the commission's list was Ali Abd al-Rahman al-Faqasi al-Ghamdi, a Saudi accused of planning attacks in the Arabian Peninsula

<http://www.washingtonpost.com/ac2/related/topic/Arabian+Peninsula?tid=informline>. He surrendered to Saudi authorities in June 2003.

Although the Sept. 11 commission reported that Ghamdi was in U.S. custody, Saudi officials said that was not the case. They said he remains in prison in Saudi Arabia

<http://www.washingtonpost.com/wp-srv/world/countries/saudi-arabia.html?nav=el> and has never left the country.

"He was never, under no condition, in U.S. custody," said a Saudi security source who spoke on condition of anonymity.

Officials with the International Committee of the Red Cross said they have failed to find dozens of people once believed to have been in CIA custody, despite repeated queries to the U.S. government and other countries.

"The ICRC remains gravely concerned by the fate of the persons previously held in the CIA detention program who remain unaccounted for," said Simon Schorno, a Red Cross spokesman in Washington. "The ICRC is concerned about any type of secret detention."

The CIA declined to comment on whether certain individuals were ever in its custody.

"Apart from detainees transferred to Guantanamo, the CIA does not, as a rule, comment publicly on lists of people alleged to have been in its custody -- even though those lists are often flawed," said Paul Gimigliano, a CIA spokesman.

Out in the Cold

When the Bush administration disclosed last year that 14 senior al-Qaeda leaders had been transferred to Guantanamo -- leaving the CIA prisons temporarily vacant -- some conspicuous names were missing from the list.

One was an al-Qaeda training camp leader known as Ibn al-Sheikh al-Libi. He was arrested in the Pakistani border town of Kohat in late 2001 and eventually taken to Cairo

<http://www.washingtonpost.com/ac2/related/topic/Cairo?tid=informline>, where the CIA enlisted Egyptian intelligence agents to help with the interrogation.

Libi began to talk. Among his claims: that the Iraqi regime had provided training in poisons and mustard gas to al-Qaeda operatives.

His statements were cited by the Bush administration as part of the rationale for invading Iraq in 2003. He recanted after the war began, however, and his continued detention became a political liability for the CIA.

Although the CIA has since acknowledged that Libi was one of its prisoners, U.S. officials have not disclosed what happened to him. In interviews, however, political exiles from Libya <http://www.washingtonpost.com/ac2/related/topic/Libya?tid=informline> said he was flown by the CIA to Tripoli in early 2006 and imprisoned by the Libyan government.

Libi reported that the CIA had taken him from Egypt <http://www.washingtonpost.com/wp-srv/world/countries/egypt.html?nav=el> to several other covert sites, including in Jordan, Morocco <http://www.washingtonpost.com/ac2/related/topic/Morocco?tid=informline> and Afghanistan, according to a Libyan security source.

He also claimed that he had been kept someplace very cold and that his CIA captors had told him he was in Alaska <http://www.washingtonpost.com/ac2/related/topic/Alaska?tid=informline>, the source said. Human rights groups have suggested that Libi was part of a small group of senior al-Qaeda figures held in a CIA prison in northern Poland

<http://www.washingtonpost.com/ac2/related/topic/Poland?tid=informline>.

In Tripoli, Libi joined several other Libyans who had spent time in the CIA's penal system. All were members of the Libyan Islamic Fighting Group, a network that had plotted for years from exile to overthrow Moammar Gaddafi.

After the U.S. invasion of Afghanistan in 2001, members of the Libyan network who had been staying there dispersed. The CIA helped Libya's spy agencies track down some of the leaders. One of them, Abdallah al-Sadeq, was apprehended in a covert CIA operation in Thailand in the spring of 2004, according to Noman Benotman, a former member of the Libyan militant network. Another, Abu Munder al-Saadi, the group's spiritual leader, was caught in the Hong Kong <http://www.washingtonpost.com/ac2/related/topic/Hong+Kong?tid=informline> airport. In both cases, Benotman said, the Libyans were held briefly by the CIA before U.S. agents flew them to Tripoli.

"They realized very quickly that these guys had nothing to do with al-Qaeda," Benotman said in an interview in London. "They kept them for a few weeks, and that's it."

Benotman said he confirmed details of the CIA operations when he was allowed to see the men during a visit to a Tripoli prison this year. The trip was arranged by the Libyan government as part of an effort to persuade the Libyan prisoners to reconcile with the Gaddafi regime.

The CIA has transferred at least two other Libyans to Tripoli, Benotman said. Khaled al-Sharif and another Libyan known only as Rabai were captured in Peshawar <<http://www.washingtonpost.com/ac2/related/topic/Peshawar?tid=informline>> , Pakistan, in 2003 and spent time in a CIA prison in Afghanistan, he said.

The Libyan Embassy in Washington did not respond to a faxed letter seeking comment.
A Missing 'Gold Mine'

In Spain, prosecutors have been searching for Nasar, the redheaded al-Qaeda ideologue, for four years.

In 2003, he was indicted by an investigative magistrate in Madrid <<http://www.washingtonpost.com/ac2/related/topic/Madrid?tid=informline>> , accused of helping to build sleeper cells in Spain. A prolific writer and theoretician in the jihadi movement, Nasar had lived in several European countries as well as Afghanistan <<http://www.washingtonpost.com/wp-dyn/content/article/2006/05/22/AR2006052201627.html>> . Spain has filed requests for information about Nasar with the Pakistani government, to no avail. Spanish Foreign Minister Miguel Angel Moratinos also raised the issue during a visit to Islamabad <<http://www.washingtonpost.com/ac2/related/topic/Islamabad?tid=informline>> last year.

"We don't have any indication of where he is," said a source in the Spanish Foreign Ministry, who spoke on condition of anonymity.

Brynjar Lia, a Norwegian terrorism analyst and the author of a new book on Nasar, "Architect of Global Jihad," said the radical would know valuable details about the inner workings of al-Qaeda.

"The Americans are probably the ones who want him the most because he was prominently involved in al-Qaeda in the 1990s," said Lia, a senior researcher at the Norwegian Defense Research Establishment

<http://www.mil.no/felles/ffi/english/start/research/Analysis_Division/_TERRA/> . "He must be a gold mine of information."

Some Spanish media have speculated that Nasar is being held in Syria, his place of birth. The CIA has transferred other terrorism suspects to Syria despite tense diplomatic relations between Washington and Damascus

<<http://www.washingtonpost.com/ac2/related/topic/Damascus?tid=informline>> .

Other Spanish press reports have claimed that Nasar remains in U.S. custody. Another rumor is that he's being held in a CIA-run prison in India, said Manuel Tuero, a Madrid lawyer who represents Nasar's wife.

Though Nasar would go on trial if he was brought back to Spain, that would be preferable to indefinite detention in a secret prison, Tuero said.

"He's in a legal limbo," he said. "The Americans would never give him a fair trial. Spain would."

Special correspondents Munir Ladaa in Berlin and Cristina Mateo-Yanguas in Madrid contributed to this report.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/10/26/AR2007102602326.html>

Torture Complaint Filed Against Rumsfeld

By PIERRE-ANTOINE SOUCHARD

The Associated Press

Friday, October 26, 2007; 2:57 PM

PARIS -- American and European rights groups filed a legal complaint in France <<http://www.washingtonpost.com/wp-srv/world/countries/france.html?nav=el>> accusing former U.S. Defense Secretary Donald Rumsfeld of responsibility for torture in Iraq <<http://www.washingtonpost.com/wp-srv/world/countries/iraq.html?nav=el>> and at Guantanamo Bay.

The complaint was filed with the Paris prosecutor's office as Rumsfeld arrived in France for a visit, according to the New York-based Center for Constitutional Rights, the Berlin-based European Center for Constitutional and Human Rights and two Paris-based groups, the International Federation of Human Rights and the League of Human Rights.

Lawrence Di Rita, former Pentagon spokesman under Rumsfeld, said: "These assertions have no merit, and they have been completely dismissed when made in other jurisdictions."

"Complaints such as this have zero foundation in the truth or the facts as presented in countless investigations," he said.

The rights groups say their complaint could go forward because people suspected of torture can be prosecuted in France if they are on French soil.

The complaint will now be examined by French prosecutors, who will decide whether it is well-founded and should be pursued or whether it should be rejected. The Paris prosecutor's office said on Friday night that it was checking whether Rumsfeld is protected by any sort of diplomatic immunity and whether he was still in France.

The complaint says Rumsfeld, in his former position as defense secretary, "authorized and ordered crimes of torture to be carried out ... as well as other war crimes."

Filed Thursday, the complaint cites various documents, including memos from Rumsfeld, internal reports and testimony from former U.S. Army Brig. Gen. Janis Karpinski _ the one-time commander of U.S. military prisons in Iraq _ to bolster its claims. It asks the prosecutor to open an inquiry and take Rumsfeld into custody.

"We know that we can't get him into prison right now, but it would be great to make sure that he couldn't safely leave the U.S. anymore," said Michael Ratner, president of the Center for Constitutional Rights.

Ratner's group already filed a formal request in Germany <<http://www.washingtonpost.com/wp-srv/world/countries/germany.html?nav=el>> to try to bring an investigation against Rumsfeld and other current and former Bush administration officials for either ordering, aiding or failing to prevent torture.

German federal prosecutors rejected that request in April, saying it was up to the U.S. to hold any inquiry.

http://www.washingtonpost.com/wp-dyn/content/article/2007/10/26/AR2007102601461_pf.html

UN rights expert urges US to prosecute or release Guantanamo prisoners
Jaime Jansen <http://jurist.law.pitt.edu/jurist_search.php?q=Jaime%20Jansen> at 7:52 AM ET

[JURIST] UN Special Rapporteur on human rights and counterterrorism Martin Scheinin <<http://www.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm>> [official website] called on the US in a report <http://www.un.org/News/briefings/docs/2007/071029_Scheinin.doc.htm> [press release] released Monday to quickly prosecute or release terror suspects detained at Guantanamo Bay <<http://jurist.law.pitt.edu/currentawareness/guantanamo.php>> [JURIST news archive] so that the US can close the detention center. Scheinin paid an official visit to the United States in May after receiving permission from US officials <<http://jurist.law.pitt.edu/paperchase/2007/01/un-rights-investigator-visiting-us-to.php>> [JURIST report] to examine US detention practices, although he was not allowed to interview Guantanamo detainees in private. In Monday's report, Scheinin also recommended:

- * that legislative amendments be made to remove the denial of habeas corpus rights under the Military Commissions Act 2006 and the restrictions upon the ability of Guantánamo Bay detainees to seek full judicial review of their combatant status, with the authority of the reviewing court to order release...;
- * that other States be willing to receive persons currently detained at Guantánamo Bay. The United States and the United Nations High Commissioner for Refugees should work together to establish a joint process by which detainees can be resettled in accordance with international law, including refugee law and the principle of non-refoulement...;
- * that [military commissions] be disestablished. Wherever possible, ordinary civilian courts should be used to try terrorist suspects...;
- * [that the United States] ensure that all its officials and agencies comply with international standards, including the article 7 of ICCPR, the Convention against Torture and, in the context of an armed conflict, common article 3 of the Geneva Conventions...;

* [that the US government] take transparent steps to ensure that the CIA practice of "extraordinary rendition" is discontinued and is not conducted in the future...;

* that all detainees are held in accordance with international human rights standards, including the requirement that all detainees be held in regularized facilities, that they be registered, that they be allowed contact with the outside world (lawyers, International Committee of the Red Cross, where applicable, and family), and that any form of detention is subject to accessible and effective court review, which entails the possibility of release...;

* [that the US government] restrict definitions of "international terrorism", "domestic terrorism" and "material support to terrorist organizations" in a way that is precise and restricted to the type of conduct identified by the Security Council as conduct to be suppressed in the fight against terrorism...[and ensure] that it does not participate in the extrajudicial execution of any person, including terrorist suspects.

Last year, Scheinin said US officials have been stonewalling investigations

<<http://jurist.law.pitt.edu/paperchase/2006/05/un-rights-official-says-us.php>> [JURIST report] into allegations that the Central Intelligence Agency (CIA) flew terrorism suspects through Europe to countries where they could be tortured. He also expressed concern <<http://jurist.law.pitt.edu/paperchase/2006/10/un-rights-investigator-fears-us.php>> [JURIST report] that the US Military Commissions Act of 2006 <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930enr.txt.pdf> (MCA) [text; JURIST news archive <http://www.jurist.law.pitt.edu/jurist_search.php?q=military+commissions+act>] would lead to lower worldwide standards regarding interrogation techniques and trial procedures for noncitizen detainees. AP has more <<http://apnews.myway.com/article/20071030/D8SJAE501.html>> .

<http://jurist.law.pitt.edu/paperchase/2007/10/un-rights-expert-urges-us-to-prosecute.php>

US accused of torture

Ian Munro Herald Correspondent in New York

October 31, 2007

THE United States's willingness to resort to harsh interrogation techniques in its so-called war on terror undermined human rights and the international ban on torture, a United Nations spokesman says.

Manfred Nowak, UN Special Rapporteur on torture, said the US's standing and importance meant it was a model to other countries which queried why they were subject to scrutiny when the US resorted to measures witnessed at Guantanamo Bay and Abu Ghraib prison.

Mr Nowak was speaking after releasing his finding that the use of torture was routine and widespread in Sri Lanka ,despite laws against it.

"I am very concerned about the undermining of the absolute prohibition of torture by interrogation methods themselves in Abu Grahb, in Guantanamo Bay and others, but also by rendition and the whole CIA secret places of detention. All that is really undermining the international rule of law in general and human rights but also the prohibition of torture," said Mr Nowak.

"(Other countries) say why are you criticising us if the US, the most democratic country with the oldest history of human rights, if they are torturing you should first go there. It has a negative effect because the US is a very powerful and important country and many other countries take the US as a model."

His comments come amid continuing controversy over whether the use of waterboarding - which simulates drowning - is torture. US senators are threatening to stop the appointment of Michael Mukasey, President Bush's new nominee for Attorney-General, following Mr Mukasey's refusal to condemn waterboarding at judiciary committee hearings recently.

Reports have linked CIA interrogations of al-Qaeda suspects, including alleged 9/11 planner Khalid Sheikh Mohammed, to the technique.

President Bush has said the US does not resort to torture, but his administration has refused to say if waterboarding has been used. During waterboarding a cloth is used to cover a prisoner's mouth and water poured over it, triggering the gag reflex.

Commenting on his investigation into Sri Lanka, Mr Nowak said that the use of torture in counter-terrorism operations was prone to become routine. During his visit there this month he received many "consistent and credible" allegations from detainees who claimed they were ill-treated by police.

He said that he was alerted to a new form of torture which his medical aide had initially thought was impossible. It involved individuals being suspended only by their thumbs which were bound together so they could be hoisted into the air.

He said he had received two independent accounts of its use in Army camps. The effects were verified by medical examination. Six months after the alleged incidents the individuals had not regained use of their thumbs.

Mr Nowak said that Italy and Germany had shown in the 1970s and 1980s that terrorism could be beaten within the rule of law.

"Certain human rights such as the prohibition on torture are absolute. It doesn't matter how dangerous a person is, governments have an absolute obligation never to resort to torture or other forms of cruel, inhuman or degrading punishment," said Mr Nowak.

"In my opinion, this ill-conceived, security oriented counter terrorism strategy is having a very, very negative effect, not only on human rights in the USA, but for the first time I would say in a long period of time, the US is really engaging in systematic violation of human rights, but also a very negative effect on many other countries."

Mr Nowak is next month to investigate complaints of torture in Indonesia. He said that he expected the use of torture to have diminished following action by the Indonesian government but would not discuss the nature of the allegations until after his inquiries.

<http://www.smh.com.au/news/world/us-accused-of-torture/2007/10/30/1193618879492.html>

October 30, 2007

News Analysis

On Torture, 2 Messages and a High Political Cost

By SCOTT SHANE

<http://topics.nytimes.com/top/reference/timestopics/people/s/scott_shane/index.html?inline=nyt-per>

WASHINGTON, Oct. 29 – Six years after the Bush administration embraced harsh physical tactics for interrogating terrorism suspects, and two years after it reportedly dropped the most extreme of those techniques, the taint of torture clings to American counterterrorism efforts.

The administration has a standard answer to queries about its interrogation practices: 1) We do not torture, and 2) we will not say what we do, for fear of tipping off future prisoners. In effect, officials want Al Qaeda

<http://topics.nytimes.com/top/reference/timestopics/organizations/a/al_qaeda/index.html?inline=nyt-org> to believe that the United States does torture, while convincing the rest of the world that it does not.

But that contradictory catechism is not holding up well under the battering that American interrogation policies have received from human rights organizations, European allies and increasingly skeptical members of Congress.

The administration does not acknowledge scaling back the Central Intelligence Agency <http://topics.nytimes.com/top/reference/timestopics/organizations/c/central_intelligence_agency/index.html?inline=nyt-org> 's secret detention program, perhaps to avoid implying that earlier methods were immoral or illegal. President Bush has repeatedly defended what the administration calls "enhanced" interrogation methods, saying they have produced invaluable information on Al Qaeda. But the administration's strategy has exacted an extraordinary political cost.

The nomination of Michael B. Mukasey <http://topics.nytimes.com/top/reference/timestopics/people/m/michael_b_mukasey/index.html?inline=nyt-per> as attorney general, once expected to sail through the Senate, has run into trouble as a result of his equivocation about waterboarding, or simulated drowning. Mr. Mukasey has refused to characterize the technique as torture, which would put him at odds

with secret Justice Department legal opinions and could put intelligence officers in legal jeopardy.

At a House hearing last week, Secretary of State Condoleezza Rice

http://topics.nytimes.com/top/reference/timestopics/people/r/condoleezza_rice/index.html?inline=nyt-per admitted that the United States had mishandled the case of Maher Arar

http://topics.nytimes.com/top/reference/timestopics/people/a/maher_arar/index.html?inline=nyt-per, a Canadian engineer who was seized in New York in 2002 on suspicion of terrorism and shipped to Syria, where he was imprisoned and severely beaten.

But Ms. Rice refused to acknowledge the torture or to apologize to Mr. Arar, perhaps to avoid exposing to attack the policy of extraordinary rendition, in which the United States delivers suspects to other countries, including some that routinely use torture.

C.I.A. officers have been criminally charged in Italy and Germany in connection with rendition cases. The torture issue has complicated Americans' standing in criticizing other countries.

At a House hearing on the crackdown on dissent in Myanmar, formerly known as Burma, where protest leaders have reportedly endured waterboarding, Jeremy Woodrum, a director of the United States Campaign for Burma, said American conduct was thrown back at him, testifying: "People say, 'Why are you guys talking to us about this when you have the mess in your own backyard?'"

Even inside the government, there are tensions. At the C.I.A., the director, Gen. Michael V. Hayden

http://topics.nytimes.com/top/reference/timestopics/people/h/michael_v_hayden/index.html?inline=nyt-per, has come under fire from Congress for ordering a review of the agency's own inspector general, whose aggressive investigations of secret detention programs have raised hackles.

The moral debate over torture has seeped deeply into popular culture, from the black comedy of "The Daily Show" and its "senior interrogation correspondent" to the new movie "Rendition," based loosely on Mr. Arar's case. Candidates for president have repeatedly faced questions and exchanged barbs on the proper limits of interrogation.

Meanwhile, key members of Congress are raising questions about the future of the C.I.A.'s detention operation. Senator John D. Rockefeller IV

http://topics.nytimes.com/top/reference/timestopics/people/r/john_d_iv_rockefeller/index.html?inline=nyt-per, chairman of the Senate Intelligence Committee, said in response to a question from The New York Times that it "has produced valuable intelligence, but the question is at what cost?"

Mr. Rockefeller, Democrat of West Virginia, whose committee has recently heard classified testimony about the noncoercive interrogation methods of the F.B.I.

http://topics.nytimes.com/top/reference/timestopics/organizations/f/federal_bureau_of_investigation/index.html?inline=nyt-org and the military, said he was not sure the C.I.A.'s harsher approach was justified.

"Unfortunately, the intelligence community has not yet made a convincing argument that a separate, secret program is indeed necessary," he said. "The committee is engaged in answering these fundamental questions and fully intends to take action on the future of this program."

Even as the administration has maintained in secret Justice Department legal opinions that its harshest methods are legal, it has quietly but steadily backed away from them in practice.

Since last year, military interrogators have been bound by the new Army Field Manual, which prohibits all physical coercion.

The C.I.A. stopped using waterboarding by the end of 2005, former agency officials have said. Mike McConnell

http://topics.nytimes.com/top/reference/timestopics/people/m/john_michael_mcconnell/index.html?inline=nyt-per, the director of national intelligence, said in July that prisoners were also now "not exposed to heat and cold," another technique previously used at the C.I.A.'s secret jails.

But administration officials seem loath to let potential prisoners know they have softened their interrogations. In his July remarks, Mr. McConnell suggested that Qaeda operatives had

talked in part "because they believe these techniques might involve torture." At the same time, "the United States does not engage in torture," he said. "The president has been very clear about that."

In a PBS

http://topics.nytimes.com/top/reference/timestopics/organizations/p/public_broadcasting_service/index.html?inline=nyt-org interview with Charlie Rose

http://topics.nytimes.com/top/reference/timestopics/people/r/charlie_rose/index.html?inline=nyt-per last week, General Hayden, the C.I.A. director, complained about negative press coverage of the agency's interrogation practices. "What puzzles me is to why there seems to be this temptation, almost irresistible temptation, to take any story about us and move it into the darkest corner of the room," General Hayden said.

Yet, illustrating the administration's predicament, General Hayden did nothing to dispel the mystery about the agency's "enhanced" interrogation tactics.

"What is 'enhanced technique'?" Mr. Rose asked. "Is it something close to torture?"

The C.I.A. director said, "No," adding, "I'm not going to talk about any specific techniques."

Whether Congress will act remains uncertain. Congressional Democrats have cited interrogation policies in blocking the confirmations of John A. Rizzo

http://topics.nytimes.com/top/reference/timestopics/people/r/john_a_rizzo/index.html?inline=nyt-per as general counsel of the C.I.A. and Steven G. Bradbury, author of secret legal opinions on interrogation, as head of the Office of Legal Counsel at the Justice Department. Now Mr. Mukasey's confirmation hangs in the balance.

Both the Senate and House Intelligence Committees have held closed hearings on the program. The only public glimpse - unclassified testimony recently released from a Sept. 25 Senate hearing - was a series of fierce attacks by human rights advocates, legal experts and a veteran interrogator on the effectiveness and morality of harsh interrogation.

Most Republicans, for now, are offering the administration conditional support. Senator Christopher S. Bond

http://topics.nytimes.com/top/reference/timestopics/people/b/christopher_s_bond/index.html?inline=nyt-per of Missouri, the vice chairman of the Intelligence Committee, said that he was concerned about the international reputation of the United States and that Congress "should continue to look at what other methods are effective."

But Mr. Bond said conversations with C.I.A. interrogators had convinced him that some legal but tough tactics could work on recalcitrant suspects. "Coercion has opened the dialogue," he said.

http://www.nytimes.com/2007/10/30/washington/30torture.html?_r=1&oref=slogin

The Smart Way to Shut Gitmo Down

By Matthew Waxman

Sunday, October 28, 2007; B04

In July 2005, I joined a group of senior policymakers at the White House for a review of administration policies on the U.S. military prison at Guantanamo Bay, Cuba. As we shuffled into the national security adviser's West Wing office, televisions nearby flashed with the ghastly news of a massive London subway attack that had the hallmarks -- coordination, skill and murderous imagination -- of an al-Qaeda

<http://www.washingtonpost.com/ac2/related/topic/Al+Qaeda?tid=informline> strike. As the news sank in, one senior White House

<http://www.washingtonpost.com/ac2/related/topic/The+White+House?tid=informline> official spoke up. "It seems to me," he declared, to my astonishment, "this meeting is now irrelevant."

Yes, the ongoing threat of terrorism is very real, but it does not follow that we must keep Guantanamo Bay

<http://www.washingtonpost.com/ac2/related/topic/Guantanamo+Bay?tid=informline> open -- or even that the prison helps our fight against al-Qaeda. It did not occur to that official that

the previous four years' worth of experience might offer lessons that would help us revise the U.S. approach to detaining suspected foreign terrorists. But they do.

President Bush

<http://www.washingtonpost.com/ac2/related/topic/George+W.+Bush?tid=informline> has said publicly that he would like to see Guantanamo Bay closed, if he could do so without putting Americans in greater danger. He can, and he should. My experience advising former defense secretary Donald H. Rumsfeld

<http://www.washingtonpost.com/ac2/related/topic/Donald+H.+Rumsfeld?tid=informline> and Secretary of State Condoleezza Rice

<http://www.washingtonpost.com/ac2/related/topic/Condoleezza+Rice?tid=informline> on these issues has convinced me that there's a way out, but it will take some painful truth-telling to get there. For even if Guantanamo Bay could be defended in legal or moral terms, it still hurts us more than it helps us in battling al-Qaeda.

I'm not trying to challenge the improvised decision to create Guantanamo Bay's detention site in 2002. Rather, I want to challenge its continued operation in 2007. Fair-minded people can differ over whether the Bush administration was justified in sending suspected al-Qaeda fighters there immediately after Sept. 11, 2001, but as time wears on, it's almost impossible to argue that the prison is keeping us safer.

To solve our Gitmo problem, we need to understand it better. Unfortunately, amid all the rhetorical heat, Guantanamo Bay's defenders and detractors have gotten carried away. For example, the soothing notion among some critics that everyone at the prison is an innocent bystander erroneously swept up in post-9/11 dragnets is a fantasy. But so is the Bush administration's dogged insistence that all the detainees there are the "worst of the worst." Some of them should never have been there (including several supposed jihadists turned over for bounty based on assertions that later proved flimsy), and such imprisonments have had tragic and dangerous consequences.

Likewise, the administration's critics are wrong to assert that we no longer gain valuable intelligence at Guantanamo Bay. But we should not exaggerate the value of the current information-gathering there either, which often comes from detainees who haven't been involved in terrorist plotting for years now. And while the improved general conditions I repeatedly saw are humane by the standards of U.S. and European prisons, Guantanamo Bay's defenders hurt their own credibility when they refuse to acknowledge the well-documented abuse that has occurred there.

Yes, Guantanamo Bay has incapacitated many al-Qaeda plotters and has given the U.S. government a better picture of the enemy. But those benefits came at a serious cost. On balance, the prison -- and the widespread perception that it exists simply to keep detainees forever beyond the reach of the law -- has become a drag on America's moral credibility and, more to the point, its global counterterrorism efforts, too.

For example, the continued controversy over Guantanamo Bay has hampered cooperation with our friends on such critical counterterrorism tasks as information sharing, joint military operations and law enforcement. I know: As a State Department

<http://www.washingtonpost.com/ac2/related/topic/U.S.+Department+of+State?tid=informline> official, I often spent valuable time and diplomatic capital fruitlessly defending our detention practices rather than fostering counterterrorism teamwork. Guantanamo Bay leaves us playing defense and hinders our ability to play effective offense.

What to do? It's easy to demand that the prison be closed, but it's hard to figure out what to do with the most dangerous detainees there, such as Khalid Sheik Mohammed

<http://www.washingtonpost.com/ac2/related/topic/Khalid+Shaikh+Mohammed?tid=informline>, the mastermind of the 9/11 plot. And even if we agree that we shouldn't use Guantanamo Bay as a long-term detention site, we still need to work out what sort of system could hold large numbers of terrorist operatives rolled up in ongoing or future campaigns against al-Qaeda.

Simply returning all the detainees to their home countries (such as Yemen

<http://www.washingtonpost.com/ac2/related/topic/Yemen?tid=informline>, Syria

<http://www.washingtonpost.com/ac2/related/topic/Syria?tid=informline>, Egypt

<http://www.washingtonpost.com/ac2/related/topic/Egypt?tid=informline> and Pakistan

<http://www.washingtonpost.com/ac2/related/topic/Pakistan?tid=informline>) is no answer.

Some of these nations won't take them; some would probably mistreat them; others might even release dangerous militants.

Prosecuting the Gitmo detainees for crimes in U.S. courts isn't a panacea either. Criminal prosecutions should be carried out whenever possible, but the evidence against a particular suspect often can't be presented in open civilian court without compromising intelligence sources and methods. Or the evidence may not be admissible under U.S. criminal law rules. So the best way to close Guantanamo Bay lies somewhere in between: transferring many of the detainees to their home countries, sending some to third countries and bringing the remainder -- including those who would be prosecuted for war crimes -- to secure facilities in the United States. They would be held in military facilities, like those that already kept suspected American terrorists such as Jose Padilla

<http://www.washingtonpost.com/ac2/related/topic/Jose+Padilla?tid=informline> , or in ultra-secure federal prisons such as the one that holds Ramzi Yousef, the architect of the 1993 World Trade Center

<http://www.washingtonpost.com/ac2/related/topic/World+Trade+Center?tid=informline> bombing. The White House needs to take the lead, but don't look only at it. Unless Congress and our allies step up, closing Guantanamo Bay this way can't happen. To be sure, the administration has done far too little to work with Capitol Hill

<http://www.washingtonpost.com/ac2/related/topic/Capitol+Hill?tid=informline> . But Congress should ensure safe and effective detention -- both by narrowly defining a category of terrorism suspects whom the executive branch can legally detain, and by mandating sensible oversight and review of those detentions by the courts.

Our allies, too, need to do more: They must seriously lessen the threat that some former detainees will pose, not just call from the sidelines for shuttering Guantanamo Bay. Washington should make it clear that the pace of the prison's closure depends directly on our partners' willingness and ability to take custody of some of the detainees and to help pressure other countries to follow suit -- all with protections against further abuse of the type that has so weakened America's standing.

Still, Guantanamo Bay is only the immediate manifestation of a much larger problem. For the foreseeable future, the United States and its partners will continue to capture suspected operatives of al-Qaeda and other terrorist groups. We need a durable, long-term framework for handling detainees -- one that lets us hold the most dangerous individuals and collect intelligence from them (including through lawful interrogation), but also (unlike Guantanamo Bay) has rules and procedures that are politically, legally and diplomatically sustainable. Neither U.S. criminal law nor the international laws of war were built to deal with networks of terrorists stretching across continents and bent on appalling carnage. So the United States, along with its closest democratic allies, ought to craft rules that are.

To get there, we should move beyond the debate between those who say that only traditional habeas corpus rights to a fair hearing can sort out these cases and those who say that noncitizen enemy fighters captured abroad in wartime have never been entitled to their day in court. We'd all be better off forging a broad agreement about the minimum acceptable conditions for any long-term detention process, firmly within the rule of law. These should include periodic reviews by an independent judge of the factual bases for a detention, under clearly legislated standards, and meaningful chances to challenge those premises with the assistance of lawyers. It's almost impossible to perform judicial review in combat zones, so we may have to make careful exemptions there. But any system without these features will lack legitimacy at home and abroad.

Both of these proposals -- shutting Guantanamo Bay and establishing robust judicial review of detentions -- carry risks. But those risks should kick-start the discussion, not end it. Detention policy is not about eliminating dangers, but about balancing and managing competing dangers. And keeping Gitmo open -- sapping U.S. prestige, alienating our allies and handing al-Qaeda a propaganda tool -- carries downsides, too.

Civil libertarians and security-minded hawks will both no doubt criticize these suggestions. But it's past time to close Guantanamo Bay. Rumsfeld, my former boss, famously described the prison in 2002 as the "least bad option." Whatever the validity of his assessment then, my plan for shutting Gitmo is less bad now.

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<http://www.washingtonpost.com/wp-dyn/content/article/2007/10/26/AR2007102601761.html>

Restoring habeas corpus
October 30, 2007

Bruce Fein - In confronting international terrorism, President George W. Bush and Congress have abandoned the Founding Fathers' suspicion of unchecked power in favor of the French Revolution's Jacobins.

Their creed, voiced by Louis de Saint Just, proclaimed, "No liberty for the enemies of liberty." Accordingly, suspected enemies were routinely imprisoned without trial based on edicts of the French Terror. President Bush has echoed the militant Jacobins: "We must not let foreign enemies use the forums of liberty to destroy liberty itself." He has similarly detained suspected unlawful enemy combatants at Guantanamo Bay indefinitely on his say-so alone. In so doing, President Bush has suspended the Great Writ of habeas corpus, with the consent of Congress in the Military Commissions Act of 2006, by denying enemy combatant suspects an opportunity to challenge the factual or legal foundations for their detentions before an independent and impartial federal judiciary.

Congress should restore habeas corpus at Guantanamo Bay and renounce the Jacobins' creed. An attempt in the Senate recently failed, but should be renewed.

The Founding Fathers enshrined the Great Writ in the Constitution to prevent the president from judging the lawfulness of his own detentions. Making proper deductions for the ordinary depravity of human nature, they worried that the president would be tempted to cast political or personal enemies into dungeons or to detain in furtherance of a political agenda absent checking by independent judges. A narrow exception was made "in Cases of Rebellion or Invasion [when] the public Safety may require it," neither of which fits September 11, 2001, or the threat of international terrorism.

Proponents of suspending habeas corpus for Guantanamo detainees proclaim their faith in the inerrancy of the United States military in capturing enemy combatants. They contend that habeas corpus would be superfluous because only vile terrorists apprehended on the battlefield are being detained. In support, they summon former secretary of defense Donald Rumsfeld and Rear Adm. John D. Stufflebeem, deputy director of operations for the Joint Chiefs of Staff. Mr. Rumsfeld characterized the detainees as "the worst of the worst." Rear Adm. Stufflebeem chorused: "They are the bad guys. They are the worst of the worst, and if let out on the street, they will go back to the proclivity of trying to kill Americans and others." Members of Congress have scoffed at habeas corpus premised on their trust in President Bush - like the Queen of Hearts in "Alice in Wonderland" - to target only the guilty for detention.

But based on the government's own enemy combatant status determinations compiled by Combatant Status Review Tribunals (CSRTs), the probability of error is great. Restoring habeas corpus is necessary to avert unjust life sentences and the corresponding creation of poster children for al Qaeda's recruiters.

Seton Hall law professor Mark Denbeaux and lawyer Joshua Denbeaux examined the CSRT records for 517 detainees released in 2005. They revealed that 55 percent of the detainees had not committed a hostile act against the United States or its coalition allies. That finding discredits the idea that the detainees are "the worst of the worst." Moreover, "hostile act"

was defined to include the following loosely incriminating circumstances: "The detainee fled, along with others, when the United States forces bombed their camp. The detainee was captured in Pakistan, along with other Uighur fighters."

Only 8 percent of detainees were characterized by the CSRTs as "fighters for" al Qaeda. Of the remainder, 40 percent had no connection to al Qaeda and 18 percent were unaffiliated with either al Qaeda or Taliban.

The definition of "enemy combatant" was elusive: "[A]n individual who was part of or supporting the Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners." Definitional vagueness invites error, a hazard compounded by the routine blending of terrorists into civilian populations. Former Secretary Rumsfeld acknowledged: "The circumstances in which individuals are apprehended on the battlefield can be ambiguous. . . . This ambiguity is not only the result of the inevitable disorder of the battlefield; it is an ambiguity created by enemies who violate the laws of war by fighting in civilian clothes."

Only 5 percent of the detainees were apprehended by the United States. The overwhelming percentage was captured by either Pakistan or the Northern Alliance, neither of which fields highly trained military units or other safeguards against mistaken identification. The probability of wrongful detentions rocketed when the United States distributed flyers in impoverished Afghanistan wracked by ethnic, tribal and clan rivalries promising rich bounties for the capture of persons identified as enemy combatants. One flyer, smacking of a Donald Trump infomercial, made economizing on the truth by Afghans irresistible: "Get wealth and power beyond your dreams. . . . You can receive millions of dollars helping the anti-Taliban forces catch al Qaeda and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people."

CSRTs are no substitutes for review of enemy combatant determinations by federal courts. The military tribunals rely on secret evidence that cannot be rebutted by the detainee; and, the CSRTs are biased instruments of the executive branch. Lt. Col. Stephen Abraham testified before the House Armed Services Committee: "When we found no evidence to support an enemy-combatant determination, we were told to leave the hearing open. When we unanimously held the detainee not to be an enemy combatant, we were told to reconsider. And ultimately when we did not alter our course . . . a new panel was selected that reached a different result."

Contrary to President Bush and Congress, the Great Writ of habeas corpus has a major mission at Guantanamo Bay: averting life imprisonments for the innocent unworthy of a civilized people. Congress should restore the Writ forthwith.

Bruce Fein is a constitutional lawyer at Bruce Fein & Associates and chairman of the American Freedom Agenda.

<http://washingtontimes.com/article/20071030/COMMENTARY01/110300009/1012/commentary>

Bringing Judaism to Guantanamo Bay Entails Doing Whatever's Necessary

By Dovid Zaklikowski <<http://www.chabad.org/search/keyword.htm/kid/4685>>

Oct 25, 2007

Last month, Chabad-Lubavitch Rabbi Jacob Goldstein planted the seeds of a Jewish infrastructure in a location most people don't think of a home to Jews: the U.S. military installation at Guantanamo Bay, Cuba. The expectation, said the Army colonel and chaplain, is that Jewish life there will only expand.

The Army asked Goldstein to spend the Hebrew month of Tishrei at the base - which provides support to naval and Coast Guard operations in the Caribbean, houses the Joint Task Force-Guantanamo, which is the military's detention center for suspected terrorists - to do all he could in assisting the installation's Jewish personnel to provide Jewish services for the High Holidays.

"The military does a lot to support the needs of its soldiers," said Goldstein, who at the Army's behest has deployed and led services and counseled Jewish personnel in South Korea, Iraq, Afghanistan, and Bosnia. He was also the military's chief chaplain at Ground Zero, where he spent many months.

While at Gitmo, as the military refers to Guantanamo, the colonel assisted the Joint Task Force chaplain there to provide religious services for the Jewish High Holidays. But Goldstein, a native New Yorker and Chasid of the Lubavitcher Rebbe, Rabbi Menachem Mendel Schneerson, of righteous memory, didn't stop spreading Jewish pride anyway he could. He took no time in helping Karen Einhorn, principal of the Defense Department's school at Gitmo, affix a mezuzah to the front door of her home. It was reportedly the first time a mezuzah graced a Guantanamo doorway. Using extra pairs of tefillin he also helped soldiers don the phylacteries.

Goldstein arrived before Rosh Hashanah and stayed through the duration of Sukkot, bringing a Torah with him from New York. He utilized every possible moment to teach about Judaism. While on a tour of the bay's pristine waters, he used fish caught from the sea to lecture chaplains and chaplain's assistants about the differences kosher and non-kosher species.

For Sukkot, he supervised the construction of a sukkah at the island base's hilltop chapel, which was lit at night with the help of some engineers from the Navy. During the holiday, the structure shone through the night, becoming in Goldstein's words; a "beacon on the hill."

The 60-year-old Goldstein is the only member of the armed services who sports a full-length beard. He joined the New York Army National Guard in 1977 and credits the Rebbe, whose worldwide tefillin campaign began 10 years earlier, for his enlistment every being possible. "It was before the Six Day War when the Rebbe came out with the tefillin campaign," said the rabbi, who in those days was a student at Lubavitch World Headquarters in Brooklyn, N.Y., and went with other students on visits to Army bases to encourage Jewish soldiers to put on tefillin. "I never stopped, even after I was married."

Although he was asked many times to sign up and join the military, one event in particular spurred him to action.

"You're doing such a good job," he remembered one chaplain telling him before asking who he reported to. "We need you in the army. I want to ask him to send you to us."

When the proposal was brought before the Rebbe, he wholeheartedly agreed. He then encouraged Goldstein to remain in the Army with a full-grown beard.

Citing military grooming policies, "the Army gave me 30 days to either leave or shave," said Goldstein.

He fought fiercely to keep his beard, but was constantly denied dispensations by military brass. Nearly at wit's end, he wrote to the Rebbe, who told him to stay. Soon after, he finally got the official exception allowing him to keep the beard.

Goldstein, who was recently awarded the Joint Forces Commendation Medal for his contributions to chaplaincy operations at Gitmo, stressed that his family has supported him every step of the way.

"I have a great family of Lubavitch Chasidim, who believe in the shlichus," said Goldstein, using the term - loosely translated as mission - that Chabad adherents use to refer to the task of spreading Judaism wherever Jews may be found.

Referring to the fact that he spent the High Holidays away from his family, he added: "You have emissaries that have a tough Rosh Hashanah and Yom Kippur. My mission's a little different."

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March 10, 2005 Thursday

SECTION: PRESS CONFERENCE OR SPEECH**LENGTH:** 17310 words**HEADLINE:** HEARING OF THE SENATE ARMED SERVICE COMMITTEE**SUBJECT:** DETAINEE INTERROGATION**CHAIRER BY:** SENATOR JOHN WARNER (R-VA)**WITNESSES:** VICE ADMIRAL ALBERT CHURCH**LOCATION:** 216 HART SENATE OFFICE BUILDING, WASHINGTON, D.C.**BODY:**

SEN. JAMES INHOFE (R-OK): (Audio fed in progress) — classified briefings. The Church Report was initiated to provide a comprehensive evaluation of DOD Detention Operations, and the role interrogation procedures may or may not have played in the abusive treatment of detainees. Admiral Church has conducted what appears to be a thorough review analyzing all previous reports, and conducting over 800 new interviews, including uniform personnel of all ranks and levels of command, and senior policy officials.

I now cite two conclusions of this report, and I'm quoting now: "Number one, we found no link between approved interrogation techniques and detainee abuse. Number two" — still quoting — "we note, therefore, that our conclusion is consistent with the findings of the independent panel that is the Schlesinger panel, which in its August 2004 report determined that" — and quoting from that report — "no approved procedures called for or allowed the kind of abuse that, in fact, occurred. There is no evidence of that policy of abuse promulgated by senior officials or military authority."

In my judgment, these findings are consistent with the findings of all previous reports. According to the Church Report, the 70 incidents of substantiated abuse were, quoting from the Church Report, "perpetrated by a variety of active duty, reserve, and national guard personnel from three different services, on different dates, and in different locations throughout Afghanistan and Iraq, as well as a small number of cases at GITMO." Admiral Church concludes that there is not a single overarching reason for abuse, but that the stressful combat situation, particularly at the point of capture and as Admiral Church characterized it, "a breakdown of good order and discipline in some units could account for some incidents of abuse." This does not excuse the abuses that did occur, but I believe it is important to put this discussion in context.

As we meet this morning, a large number of trials by courts martial have been completed, and sentences have been rendered. In a great many of these cases, the military defendants pled guilty. Additional criminal procedures are ongoing. We have shown the world we are a nation of laws, and that we will not tolerate abusive, inhumane behavior by members of our armed forces. We will investigate wrongdoing and hold accountable those responsible for misconduct. To date, over a million U.S. servicemen and women have served in Iraq and Afghanistan, and have served with distinction. As of the date of this report, 36 service personnel have been convicted of criminal misconduct, and a few more trials are pending. As Admiral Church noted "the vast majority of detainees held by U.S. forces during the global war on terrorism have been treated humanely."

The Church Report found that no policy promulgated by the Department either advocates or encouraged abusive or inhumane treatment of detainees. The report also found that approved interrogation policies did not lead to illegal or abusive interrogation techniques being used. The Church Report candidly pointed out "dissemination of interrogation policy in Iraq and Afghanistan was generally poor, and interrogators fell back on their training and next hand experience, often relying on a broad interpretation of Army Field Manual FM 34-52." The Church Report continues "while these

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problems of policy dissemination and compliance was certainly cause for concern, we found that they did not lead to the employment of illegal or abusive interrogation techniques."

Admiral Church found that interrogators knew that abusive behavior was prohibited. There are very few allegations of abuse by trained interrogators at established detention centers. Many of the allegations of interrogation related abuse originated at the point of capture in the immediate aftermath of the heat of battle. In the period of time since these allegations of abuse first surfaced, the Department has been steadfast in examining its procedures and implementing constructive changes as appropriate. The Department of the Army in particular, which has principal responsibility for the conduct of detention and interrogation operations, has updated training procedures and doctrine to ensure the proper treatment of detainees and the effective conduct of interrogators.

These steps taken by the Department and the military services as well as the continuing reviews of issues of individual accountability throughout the chain of command will be the subject of a future hearing by this committee. The members of the U.S. Armed Forces have been tarnished by these isolated incidents of abuse by a few within their ranks, but they have shown their typical honor and resilience by the manner in which they have responded. We must remember that the vast majority of our brave men and women in uniform are performing remarkable tasks on a daily basis in austere, stressful environments, and in some cases making the ultimate sacrifice of life and limb to win the war on terror.

We honor their service, and that of their families. Our efforts to get this information and openly discussing it with the American people and with the world are intended to strengthen our Armed Forces. I thank our witness and his team for this report, and I thank you for coming and continuing to serve our nation, Admiral Church.

Senator Levin.

SEN. LEVIN: Thank you, Mr. Chairman.

And we welcome Admiral Church. Today we hear from Admiral Church on his investigation into the detention operations and interrogation techniques in Iraq, Afghanistan, and Guantanamo. Vice Admiral Church's investigative team has done extensive work collecting hundreds of statements and reviewing thousands of documents, and I would like to thank you, Admiral, and your team for that service.

The Church Report is not and does not purport to be a comprehensive report. It doesn't fill many of the significant gaps left by earlier investigations regarding the nature and causes of detainee abuse in Iraq, Afghanistan, Guantanamo and elsewhere. One gap in the investigation to date is what was the role of "other government agencies," primarily the CIA, in detainee abuse.

General Faye's report found the CIA practices "led to a loss of accountability, abuse, and an unhealthy mystique that further poisons the atmosphere at Abu Ghraib." However, General Faye was unable to fully investigate the CIA's role in detainee abuse because the CIA denied his request for documents. Both the Taguba and Faye Reports highlighted the problem of unaccounted for CIA ghost detainees. The Schlesinger panel was also aware of this issue. They had limited access to information on the CIA's role in detention operations. Vice Admiral Church's report states his team received limited cooperation from the CIA. The report also makes clear he was not tasked to investigate the existence of or policies in effect for detention facilities controlled by the CIA rather than by the DOD.

A second major gap in the Department of Defense led investigations which the Church Report fails to address is the issue of senior leadership responsible for creating an environment which he has contributed to abusive behavior, or which condoned or tolerated, or appears to condone or tolerate such behavior. The Schlesinger Panel report found that abuses were widespread, and that there was both "institutional and personal responsibility at higher levels." Matters of personal accountability were explicitly outside the scope of Schlesinger Panel's tasking from the Department of Defense. So, there's been no assessment of accountability of any senior official either within or outside of the Department of Defense for the policies that may have contributed to abuses of prisoners.

Numerous other gaps remain unaddressed by Admiral Church's report. For example, the Army Inspector General and his assessment of detention operations, doctrine and training looked only at Iraq and Afghanistan, not Guantanamo. The Formica Report looked into allegations of abuse by special operations forces only in Iraq, not Afghanistan or elsewhere. As a result, significant abuse allegations have fallen between the cracks.

In addition, previous reports containing conflicting conclusions, make it difficult to get a clear picture of the nature and cause of the abuses. These conflicting findings are not addressed in the Church Report. For example, reports are in

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conflict with whether detainee abuse was systemic. General Taguba found "systemic and illegal" abuse of detainees by military police at Abu Ghraib. General Faye in his report found "systemic problems and abuses also contributed to the volatile environment in which abuses occurred," and included two dozen findings relating to systemic failures, including doctrine and policy concerns, leadership, and command and control issues, resources and training issues.

On the other hand, beyond the Inspector General reporting in July 2004 was "unable to identify system failures that resulted in incidents of abuse." Vice Admiral Church's report notes that despite that statement of the Inspector General of the Army, that the Army Inspector General at another point "recounted numerous system failures in his detailed findings which contributed to detainee abuse." I hope that the Admiral will clarify for this committee whether he agrees with General Taguba and General Faye that systemic problems contributed to detainee abuse.

Earlier reports found policies and guidance at least indirectly contributed to abuses. The Schlesinger Panel report says that interrogation policies were, "inadequate or deficient at three levels, the Department of Defense, CENTCOM combined joint task force, and Abu Ghraib prison. That report, the Schlesinger report adds that changes in DOD interrogation policy, approved by the Secretary of Defense contributed to confusion in the field about what methods were authorized. And perhaps most significantly, the Schlesinger panel found, "both institutional and personal responsibility at higher levels," for widespread abuses, not just at lower levels.

Similarly, General Faye found that multiple, "national policy"; the DOD directives, were inconsistent with Army doctrine and resulted in interrogation policies that contributed to the confusion at Abu Ghraib. But, the Church Report concludes that approved interrogation techniques were not a "causal" factor of detainee abuse. These are simply "missed opportunities" in the process of developing policies on detainee operations. There isn't even a determination that we can find in the church report as to whether or not detainee abuse would have been reduced or avoided had those missed opportunities been acted upon.

In addition, the Church Report's assessment that there were simply "missed opportunities" is difficult to reconcile with the facts set forth in the report itself. Simply concluding that there were missed opportunities does not adequately explain why Secretary Rumsfeld approved aggressive interrogation techniques for use at Guantanamo in December 2002, including stress positions, 20-hour interrogations, nudity, and the use of dogs in interrogation. And he approved those in the face of serious concerns about such techniques, which had been forwarded by military lawyers from all four services to the joint staff.

Simply saying that there were missed opportunities does not explain why the Office of Secretary of Defense failed to promulgate an interrogation policy for Afghanistan consistent with the amended policy approved for Guantanamo in April 2003, even though, even though according to the Vice Chairman of the Joint Chiefs of Staff, General Pace, and the Chairman of the Joint Chiefs had set up a recommendation that the same interrogation guidelines apply in both places. The bland label of missed opportunities does not explain the absence of policy governing the conduct of CIA interrogators to DOD facilities, which contributed to abuses at Abu Ghraib and elsewhere. Those are all failures of command at high levels.

It is also difficult to reconcile the notion of missed opportunities with policies that have come to light since Admiral Church apparently ended his investigation in September of 2004. A few months ago the Justice Department confirmed the existence of a memo relating to the authority to use specified interrogation techniques, a memo produced by their Office of Legal Counsel, concurrently with the August 1, 2002, torture memo, that was so flawed the administration disavowed it in mid-2004.

Just in the past few months we have learned of FBI agent's strong objection to aggressive and coercive interrogation techniques at Guantanamo, which FBI agents in one e-mail labeled torture, and in a number of e-mails deemed so disturbing that agents had guidance to, "step out of the picture," when the military were carrying out interrogations. The Guantanamo commanders defended these methods by saying that the Department of Defense has their "marching orders" from the Secretary of Defense. Nor does the Church report explain the recent revelations that the administration reportedly authorized the CIA to engage in the handing over of detainees to foreign countries, including ones with a track record of torture.

This failure of accountability of senior leaders sends the wrong signal to our troops, and to the American people. It harms the United States' standing as a nation of laws, and it undermines the high standards of our armed forces. It places our brave and honorable military men and women in jeopardy when they become prisoners. In the end, I conclude that the Defense Department is not able to assess accountability at senior levels, particularly when investigators are in the

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chain of command of the officials whose policies and actions they are investigating. Only an independent review can fully and objectively assess both the institutional and personal accountability towards the abuse of detainees.

I thank you, Mr. Chairman.

SEN. WARNER: Thank you, Senator.

I apologize for my tardiness, and I appreciate you taking my statement. As Senator Inhofe said on my behalf, this committee will have at least one more hearing on this subject, on the issues of accountability. And as I listened to your final comments, I say most respectfully to my colleague, there has not been a finality in terms of the assessment of accountability of either senior policy people, or senior officers. They remain open, as you are probably aware, the Army review of its senior officers. So more work has to be done by this committee.

We welcome you Admiral, and thank you very much for undertaking this very prodigious and challenging effort.

ADM. CHURCH: Thank you, Senator Warner, Senator Levin, and thank you to the members of the committee for the opportunity to be here today.

I have a short opening statement, sir, if I may. Approximately 10 months ago the Secretary of Defense tasked me with some very specific things that he wanted done. The first of that was to look at all the interrogation techniques that had ever been considered, authorized, employed, or prohibited in any theater at any time. He asked me to specifically look at the issue of migration, and the techniques migrated where and when. He specifically tasked me to analyze and review DOD support to or participation in the interrogation activities, as non-DOD activities. He asked me to work in direct support of the independent panel, chaired by the honorable James Schlesinger, which we did, and I would add that the data that they had in their report came from our group, and we supported their findings, and reviewed their work, as well.

Implicit in that task was to determine whether, and to what extent the nature and migration of all of these interrogation techniques, directly or indirectly, resulted in the detainee abuse that we've all become familiar with. As has been mentioned earlier, he asked me to look at gaps and seams. We did that. We expanded our tasking to look at ICRC issues, medical issues, and contract interrogators, as an example.

I believe my investigation was thorough and exhaustive. We conducted over 800 interviews, the majority of which resulted in sworn statements. We took interviews or written statements from senior civilian and military leaders in the Pentagon. We reviewed thousands of pages of documents based on data calls from the Pentagon, from the combatant commanders.

We did leverage all of the other ongoing investigations, so as not to reinvestigate that which has already been investigated. We looked very carefully at the 70 completed cases of abuse, criminal cases, to see if there is anything in those that relates to interrogation, or interrogation techniques.

Finally, I'd like to give you, as has been mentioned earlier, a backdrop on some of my findings. It was clear during the investigation that if we're going to win the global war on terror, we have to have intelligence, and embodied in that is we need human intelligence. As has been mentioned also, the overwhelming majority of our service members have served honorably under very difficult and challenging conditions. And the vast majority of detainees have been treated humanely and appropriately. When that was not the case, that's been investigated.

My key findings said clearly there was no policy, written or otherwise, at any level that directed or condoned torture or abuse. There was no link between the authorized interrogation techniques, and the abuses that, in fact, occurred. Nevertheless, we did identify a problem with dissemination and development, migration of the interrogation techniques, both in Afghanistan and in Iraq. And we documented another problem which is the lack of field level guidance for the interaction of DOD and other government agency personnel.

Also previously mentioned, with benefit of hindsight, we saw two missed opportunities. The lessons acquired from unconventional conflict were never specifically communicated to our troops, as a means of lessons learned. And no guidance or interrogation techniques were promulgated for Afghanistan or Iraq, either to CENTCOM or by CENTCOM.

I'd like to make several quick points on the detainee abuse, there were 70 closed cases, 6 were deaths, 26 were serious, and 38 were minor abuse cases, as we categorized them. Approximately one-third of these cases occurred at the point of capture, where emotions run very high. The majority of these cases, even those considered interrogation related, as we define them, consisted of simple assaults, punching, kicking, and slapping detainees. We looked for any discernible

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pattern of abuse, and we were unable to find it. It varied by unit, active duty, guard, active reserves, guard, in different theaters. As the independent panel stated, "no approved procedures call for or allow the kinds of abuses that, in fact, occurred."

Finally, a quick word about the FBI documents, we were aware of the 14, July, 2004 memo that highlighted three instances, that was sent to us by the Army. Two of those incidents had previously been investigated. The Army CID, Criminal Investigation Division began an investigation on the third one. Last Friday I had a meeting with the current Naval IG, who is, as you know, going over the FOIA requests, and General Furlow from SOUTHCOM who's doing an investigation of the specific incidents. And I'd be happy to answer questions on the progress of those two ongoing investigations later. That concludes my comments, sir and --

SEN. WARNER: Thank you very much, Admiral. We'll proceed to have a six-round initial questions by members.

Admiral, let's go directly to the evidence that the American people, indeed the world, saw by virtue of these pictures. Tragic pictures. I mean, incomprehensible almost to, say, a person like me who's had the privilege of a half-century of association with the men and women of the armed forces. However, apart from those pictures, you've described other types of infractions which do not have a pictorial record. Largely we learned of them through testimony. I think it's important that we lay before the public the full range of tortures with some specificity. The pictures were explicit. Tragic. Were there other types of incidents which you felt resulted in bringing people to trial, which we do not have in mind fully as to what occurred?

ADM. CHURCH: From the work that we did, Senator, I think that everything that has been alleged is being investigated. And --

SEN. WARNER: I'm not suggesting it isn't being investigated. But I think we've got to have a full understanding of the types of wrongdoings that were perpetrated.

ADM. CHURCH: It's --

SEN. WARNER: The pictures captured certainly what went on in that prison. But there are other incidents, for instance, at the point of detention in the heat of battle. Often there's extenuating circumstances in the heat of battle for those who are making that apprehension. But, in other words, I want it here in the record as best we can, a description of other things that were the basis for these trials that we have not seen by virtue of those pictures.

ADM. CHURCH: It's the full range, Senator. We have six deaths of those who were detainees. There were a number of detainee deaths. Most of them were by natural causes. We looked at every single detainee death. There were six of those.

SEN. WARNER: You say by natural causes, the deaths resulted as a result, excuse me, resulted in, because of blows to the system, I suppose.

ADM. CHURCH: No sir, these were --

SEN. WARNER: They weren't?

ADM. CHURCH: Natural causes were --

SEN. WARNER: Oh, natural --

ADM. CHURCH: We looked at all these deaths, all the detainee deaths to ensure that anything that looked problematic was further investigated. There are six of the 70 abuse cases that are closed that involved detainee death. And I'm trying to answer your question on the range of problems. That was the far end. To the low end, you'd probably go to Guantanamo where there were incidents of slapping, there were what we call minor abuse cases. There were a couple of sexual assaults that were in that 70 at the high end, and there was the range all the way in between.

SEN. WARNER: The International Red Cross performed and has throughout contemporary history, I mean, going back many years, a very valuable service of trying to monitor the detainee situations worldwide. And they were active participants in this case. And in the closed session of this hearing this morning, which will follow the open session, we'll ask you to give us further details of their involvement. But on the whole, do you feel their involvement was constructive, and did it provide reasonable early warning to our chains of commands that reviewed these reports?

ADM. CHURCH: I do, Senator. I think it was very positive. I think the reactions to the ICR reports were, in general,

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very good. But in a couple cases, the reaction was not as swift or comprehensive as it could have been. And Abu Ghraib is one example.

SEN. WARNER: The responsibility of individual leaders. In your report, you talk about the deterioration of good order and discipline in some units, and the related failure of unit-level leadership to react to warning signs and stressful conditions, and how this may have contributed to some incidents of abuse. To what do you attribute this breakdown of good order and discipline in the United States military. To what levels did these failures of leadership extend in your judgment? And what recommendations do you make to prevent or reduce such breakdowns of good order and discipline in the future? Because, in a subsequent hearing of this committee, I mean, we will eventually get into exactly what corrective measures the Department of Defense and other agencies and departments to some extent, have taken in that breakdown. But, they will draw on your report. Much has been done already. But I'm sure this report will further refine the steps that have been done. So let's talk about your professional judgment. You're an officer of extraordinary capabilities and distinction in your own career, and to what do you attribute this breakdown of good order and discipline?

ADM. CHURCH: Answer in two parts, Senator. Having come to the conclusion, having looked at the 70 closed cases that the interrogation techniques were not a causal factor in the abuse that happened, I felt it was important to try to offer an opinion as to, if that wasn't and this is my best military judgment having looked at this for 9 months, what did cause the abuse? And as I noted, a third of these happened at the point of capture which is where emotions run high. And then after that, it became —

SEN. WARNER: Let's make it clear to those following this hearing. At the point of capture, you mean in the field —

ADM. CHURCH: In the field.

SEN. WARNER: — where there's active combat in many instances either going on, or there are combat conditions, and an individual is apprehended.

ADM. CHURCH: Yes, sir. And that could be —

SEN. WARNER: You said emotions and not only that but time is measured in microseconds in trying to make a capture and then get back and protect yourselves. So what you are —

ADM. CHURCH: That's exactly right, Senator. And of course, that's when, once a detainee is captured, the rules change, and people have to be aware of that. And that's where a third of this happened. I said about 20 of the incidents involved were interrogation-related, and I used a very expansive definition of that. Anything involved in MI, if an MI, military interrogator, was in the area, if it was an MP, even at debriefing at the point of capture, I called that interrogation-related, frankly, so I wouldn't be challenged on not including that. And very little of this involved interrogation. So you're left, really, with looking at each individual case and saying, what happened? And the events of Abu Ghraib are a shining example where you ask the question, where was the leadership? And not only the NCOs, but the mid-grade officers who, I use the analogy of the ship because that's my background, and you can get an illegal order and it doesn't matter. You're still responsible for the safety of that ship. And to me, that's where the breakdown was, and the remedies are, you know, we can talk about that for a long time. It's accountability at that level.

SEN. WARNER: Thank you, Admiral. Senator Levin?

SEN. LEVIN: Thank you, Mr. Chairman. Admiral, according to your report, in response to a JCS joint staff request for comments on the request for Guantanamo commanders in November of 2002 for authorization to use more aggressive interrogation techniques, military service lawyers expressed "serious reservations" about approving the proposed interrogation techniques without further legal and policy review. What was the nature of their serious reservations?

ADM. CHURCH: They felt that the techniques were too aggressive, that it needed additional legal review to see if they were, in fact, lawful.

SEN. LEVIN: And were those concerns brought to the attention of Secretary Rumsfeld prior to his December 2, 2002 approval of additional aggressive interrogation techniques?

ADM. CHURCH: Nobody was able to succinctly answer that question, because I think — I think not, because it was overcome by events. That was my opinion. The need —

SEN. LEVIN: So you were unable to determine whether or not —

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ADM. CHURCH: With absolute certainty, no sir.

SEN. LEVIN: OK now, there was a Department of Defense working group on interrogation techniques which was initiated in January 2003. And that working group ultimately recommended interrogation techniques for use against enemy combatants. And most of the recommendations were adopted. However, as you note in the body of your report, you show that the working group, in which military lawyers were participating, was stopped from developing its own legal analysis and instead, was required to accept the legal analysis contained in a memorandum from the Justice Department's Office of Legal Counsel, a memorandum in which the working group strongly disagreed. According to your report, that memo, entitled "Military Interrogation of Alien Unlawful Combatants" was prepared by Deputy Assistant Attorney General John Yoo for Department of Defense General Counsel Haines, and that memo had a date of March 14, 2003. This memo was presented, as your report indicates, to the working group as "controlling authority" on all legal issues. And I want to refer that now to the March 14, 2003 memo from now on.

Access of working group members to this memo was apparently restricted, as you noted, and no notes were permitted. You also noted that conclusions of that memo are nearly identical to those of the August 1, 2002 Office of Legal Counsel memo which is known as the Torture Memo, which the administration avowed in the middle of — disavowed in the middle of last year, which among other things concluded that for physical pain to amount to torture, it had to be equivalent to the pain accompanying "organ failure, impairment of bodily functions, or even death." So, basically that working group in the DOD was told they had to follow this March 14 memo from the Deputy Assistant Attorney General Yoo to Mr. Haines. My question is, did you have access to that March memo?

ADM. CHURCH: Yes sir, we did.

SEN. LEVIN: And do you have a copy of it?

ADM. CHURCH: No sir, we did not get a copy. We were — we went and read it and took notes —

SEN. LEVIN: Were you allowed to take a copy of it?

ADM. CHURCH: No sir, we, they didn't — we were not (to ?) take a copy.

SEN. LEVIN: So even in your classified report, there is no copy of that memo. Is that correct?

ADM. CHURCH: That's correct, sir.

SEN. LEVIN: And has that memo been superseded like the Torture Memo on which it was based, do you know?

ADM. CHURCH: I'd have to get back to you, sir. I can't say for certain.

SEN. LEVIN: Alright now, General Pace stated that on May 15, 2003, the chairman sent up a memo, chairman of the Joint Chiefs, sent up a memo recommending that the same interrogation guidelines be issued to CENTCOM as existed for Guantanamo. It was sent to the office of the Secretary of Defense, this request from the chairman, and recommendation. Do you know whether the office of the Secretary of Defense responded to the chairman's May 15, 2003 letter with that recommendation?

ADM. CHURCH: There was no response that I'm aware of, sir.

SEN. LEVIN: And did you find any evidence explaining why the office of the Secretary of Defense failed to act on the recommendation?

ADM. CHURCH: Not specifically, sir.

SEN. LEVIN: You made reference to the FBI memos. In December of last year, the FBI released emails under a FOIA request in which FBI agents describe the DOD interrogation techniques in use at Guantanamo as torture, and stated in their emails the following. I send you — this is one FBI agent talking to another. "When I return to DC, I will bring a copy of the military's interview plan. You won't believe it." Are you familiar with that memo?

ADM. CHURCH: Yes, sir.

SEN. LEVIN: Did you see the plan?

ADM. CHURCH: I believe, if that's the one you're referring to, I believe I did, yes sir.

SEN. LEVIN: And that plan was described as containing coercive techniques in the military's interviewing toolkit.