

which concluded that there was no scientific evidence <<http://www.washingtonpost.com/wp-dyn/content/article/2007/01/15/AR2007011501204.html>> that coercive techniques produced good intelligence. Congress should also consider the requirements of international law and develop a single standard that will apply equally to all agencies.

Second, Congress should repeal the provisions that stripped detainees at Guantanamo Bay and elsewhere of the right of habeas corpus and that instead gave them an extremely limited right to challenge their detentions. A federal appeals court, interpreting lawmakers' last effort, ruled Tuesday that detainees do not have the right <<http://www.washingtonpost.com/wp-dyn/content/article/2007/02/20/AR2007022000490.html>> to use a habeas petition to challenge the basis of their detention. The case will surely be appealed to the Supreme Court because detainees must have the right to argue to a federal judge -- not a military officer, as in the current law -- that the factual basis on which they are being held indefinitely and without criminal charges is not accurate. Detainees' right to habeas corpus could be limited, as was suggested by Sens. Arlen Specter and Patrick Leahy, to prevent frivolous lawsuits over conditions at Guantanamo. But detaining men with no hope of a fair hearing ensures that, if they weren't terrorists when they were detained, they probably will be when they are finally released.

Third, Congress should also examine the practice of "rendition," or sending detainees to countries for trial or detention where, it is alleged, they can be mistreated or tortured. Before the attacks of Sept. 11, 2001, rendition was a valuable but selectively used tool of U.S. law enforcement and intelligence agencies. Since Sept. 11 it has been used extensively, and its continued viability has been questioned. Congress should establish a solid legal footing for renditions, including measures to ensure that anyone sent to another country is not mistreated.

The administration should listen, really listen, to the American people and to those in Congress and the military who understand that adhering to international law and our core values will help us win the war on terrorism. It will take years to get out of the hole we're in, but if Congress leads and the president understands, we can begin climbing out.

The writer is a former general counsel of the CIA and a partner at Arnold & Porter, a Washington law firm that represents the International Counsel Bureau. The bureau provides Kuwaiti counsel for the families of the Kuwaiti detainees at Guantanamo.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/02/21/AR2007022101583.html>

Human Rights News

Ten Steps to Restore the United States' Moral Authority A Common Sense Agenda for the 110th Congress

(1) Restore Habeas Corpus

Perhaps the most important protection against the arbitrary exercise of executive power, the writ of habeas corpus ensures that all persons can challenge the legality of their detention before an independent court. The Military Commissions Act of 2006, as interpreted by the current administration, would deprive any non-citizen labeled "enemy combatant" of this centuries-old right. A vote to protect the habeas rights of detainees in US military custody lost in the Senate by just three votes in September. Restoring habeas corpus to ensure judicial review of detentions and provide an important independent check on executive power should be a first order of business for the new Congress.

(2) Stop Renditions to Torture

The United States made great strides when, in 2005, it enacted the McCain Amendment prohibiting the use of torture or cruel, inhuman, and degrading treatment by any US official acting anywhere in the world. Now the United States needs to get out of the business of outsourcing torture and ill-treatment to other countries. Congress should pass legislation to protect detainees in US custody from being transferred to abuse.

(3) Abolish Secret Prisons

Although the US has long criticized other nations for engaging in forced disappearances - imprisoning people in secret - the Bush administration continues to assert the right to do so. While the administration claims to have emptied its secret CIA prisons for the time being, it has not ruled out their future use nor accounted for all the prisoners who are believed to have been secretly detained. Congress should pass legislation to ensure that the secret detention centers are shut down permanently and that no one in US custody is forcibly disappeared or otherwise held incommunicado. Congress should also demand an accounting of the whereabouts of all those formerly held in secret locations.

(4) Hold Abusers Accountable

Although more than six hundred US military and civilian personnel have been implicated in hundreds of known instances of detainee abuse, including 25 cases where the detainee ultimately died, very few have been prosecuted. Only eleven service members have been sentenced for more than a year - all low-ranking; no one has been convicted on the basis of command responsibility; and only one civilian - a contractor to the CIA - has been prosecuted. Congress should demand that the Pentagon and Department of Justice vigorously prosecute those responsible for engaging in, authorizing or condoning detainee mistreatment, including those up the chain of command. This would deter future abuse and demonstrate to the world the US's condemnation of such ill-treatment.

(5) Hold Fair Trials

In October, the Congress authorized the use of military commissions to try non-citizen detainees in US military custody. The rules for these commissions raise serious concerns about the integrity and fairness of such trials. Of particular concern, the rules allow the use of coerced evidence and evidence obtained through cruel, inhuman, and degrading treatment if obtained before January 2006 and found "reliable" by a military judge, also allow the government to withhold from defense lawyers information about how the evidence was obtained. As a result of these provisions, defendants could be convicted based on the wide array of so-called "enhanced" interrogation techniques allegedly employed by the CIA - techniques including extended exposure to extreme cold, prolonged sleep deprivation, and "waterboarding" (mock drowning). Congress should amend these rules to ensure that detainees are not convicted - and possibly executed - based on evidence obtained through torture or other abusive treatment, are provided a fair opportunity to confront their accusers and are given a meaningful chance to gather and present evidence and witnesses.

(6) Prohibit Abusive Interrogations

In the Military Commissions Act, Congress amended the War Crimes Act of 1996, specifying a list of eight "grave breaches" of the humane treatment requirements of the Geneva Conventions that constitute war crimes. Two of the primary authors of the Military Commissions Act, Senators John Warner and John McCain, have publicly stated that they intended to criminalize the abusive interrogation techniques allegedly used by the CIA in the past. But the administration continues to imply that it could continue the CIA secret detention program - and presumably the abusive interrogations that go with it. Congress should clarify that the full range of abusive interrogation techniques that have been prohibited for use by the military's new field manual on interrogations are similar prohibited - and criminalized - if used by the CIA.

(7) Close Guantánamo Bay

The US continues to hold close to 400 detainees in Guantánamo Bay, many of whom have been held for five years without charge and without access to court to challenge the legality of their detention. Those detainees who have engaged in terrorism-related crimes should be

charged and held accountable; those who are not charged with criminal acts should be released. The administration should work with its allies to develop appropriate procedures in accordance with U.S. and international human rights and humanitarian obligations to ensure that detainees are not returned to countries where they face torture or abuse. Congress should hold oversight hearings about the future of Guantanamo, and push the administration to put forth a plan for its closure.

(8) Respect the Laws of War

The US's unilateral reinterpretation of the Geneva Conventions to support its questionable detention policies undermines respect for the rule of law around the world and puts US service members and civilians at risk if US's policies and practices are adopted by others. Of particular concern, the US Congress in October enacted (in the Military Commissions Act) an overbroad definition of "unlawful enemy combatant" that turns a civilian munitions worker, a mother who provides food to her combatant son, and a US resident accused of giving money to a banned group into "combatants" who can be detained without charge in military custody or tried by a military court. The new Congress should strike this definition of "unlawful enemy combatant" and reaffirm the US's longstanding commitment to the civilian - rather than military - courts to prosecute civilians who violate the law.

(9) Protect Victims of Persecution From Being Defined As Terrorists

The United States will never be able to effectively fight terrorism if it cannot distinguish between terrorists and victims. Yet, overbroad terrorism-related bars in US immigration law are now being used to define innocent victims as terrorists - and denying them entry to the United States. Hmong and Montagnards are being labeled as terrorists solely because they took up arms alongside the United States during the Vietnam War. Rape victims who were forced into sexual slavery by West African rebel groups are being labeled "material supporters" of terrorism because they performed household chores while enslaved. Congress should adopt a reasonable definition of terrorism that does not equate victims with terrorists and define any armed group as terrorist, even if it does not target civilians.

(10) End Indefinite Detention Without Charge

Ever since 9/11, the Bush administration has relied on a variety of means to detain individuals indefinitely and without charge. The material witness warrant law - a law that allows the government to temporarily detain key witnesses who pose credible flight risks - has been misused to detain dozens of terrorism-related suspects, some of whom were held for months without charge. Now, the administration is improperly invoking the "enemy combatant" label to justify the indefinite detention without charge of Ali Saleh Kahlah al-Marri, a lawful US resident who since the eve of his trial for credit card fraud in 2003 has been held in a military brig in South Carolina. Congress should use its oversight authority and pass legislation that will prevent the administration from evading basic due process protections, and, in so doing, undermine respect for fundamental human rights and the rule of law.

<http://hrw.org/english/docs/2007/02/22/usdom15384.htm>

Sydney Morning Herald

PM pledges shorter jail term for Hicks if convicted

THE Prime Minister will deduct the time David Hicks has already spent in captivity if he is convicted by a US military commission and sent to Australia to serve any sentence.

John Howard made the pledge yesterday as he sought to portray the Labor leader, Kevin Rudd, as too indecisive to be prime minister because Mr Rudd had been reluctant to say what he would do with Mr Hicks.

Despite repeated representations by the Government, the US has refused to guarantee deducting the more than five years Mr Hicks has spent at Guantanamo Bay from any sentence he might receive.

In one of the few concessions granted three years ago, the US agreed Mr Hicks would be able to serve any sentence in an Australian jail.

Mr Howard said that if he were still prime minister then, he would grant the deduction if the Americans did not. "If he is convicted before the military commission, our view is that whatever sentence he received should be offset by the amount of time he has served in Guantanamo Bay and the residue should be served in an Australian prison," he said.

Unlike Mr Howard, Mr Rudd does not believe the military commissions will afford a fair trial. Mr Rudd was asked several times on the ABC's Lateline on Wednesday whether he would pardon Mr Hicks altogether, given he would have been convicted by an unfair process.

Mr Rudd said he would take advice from the attorney-general's department. "That's the proper thing to do and that is precisely how I would act," he said.

Mr Howard said the response was not good enough.

"I'm expected to know the answer to every single thing, which is fair enough," he said.

"But he is asked what would happen in relation to a pardon if [Mr Hicks] came back, well surely Mr Rudd's got a view on that. You don't need the advice of the attorney-general's department to know whether you should think somebody should have a pardon."

The Prime Minister also upbraided Mr Rudd for saying the military commissions lacked the presumption of innocence.

The military commissions do allow this presumption. Mr Howard also said the use of hearsay evidence allowed by the military commissions was no different to that which applied to the war crimes trial of the former Serbian leader Slobodan Milosevic.

"Mr Rudd should cease misleading the Australian public about the military commission process," Mr Howard said.

The overwhelming weight of legal opinion believes the military commissions are flawed, partly because they allow hearsay evidence, including that obtained under duress and coercion of the accused and of witnesses.

<http://www.smh.com.au/news/world/pm-pledges-shorter-jail-term-for-hicks-if-he-is-convicted/2007/02/22/1171733953324.html#>

NewsDesk.Org

Lawsuits Target Military Prisons Abu Ghraib, Guantanamo spur civil rights fears

Graphic descriptions of abuse in U.S. military prisons around the world -- and questions about civil rights, national security and presidential privilege -- have prompted a growing number of lawsuits against the government and the Bush administration.

The plaintiffs include current and former prisoners in Guantanamo Bay, Abu Ghraib and elsewhere, along with activist groups such as the American Civil Liberties Union and Physicians for Human Rights.

In some cases, the lawsuits seek the whereabouts of people being held in secrecy; in others, prisoners, some held for months or years without being charged, are seeking hearings on their status, or are trying to win rights normally granted in U.S. courtrooms, or by the Geneva Conventions.

Michael Ratner, president of the Center for Constitutional Rights in New York City, said that the United States previously supported the conventions, and that its denial of legal rights to military prisoners will erode humanitarian standards in other countries, and civil rights at home.

"What applies to noncitizens now will be applied to citizens later," he said.

Based in New York City, the CCR has been at the center of some of the most important legal actions involving prisoners in Cuba and Iraq, including more than 60 habeas corpus suits on behalf of families of inmates at Guantanamo seeking an explanation as to why they are being held as "enemy combatants" without specific charges being filed by the government. Between 500 and 600 prisoners have been held there since shortly after Sept. 11, 2001. Most were captured in Afghanistan, although their nationalities vary widely.

"Although people are being released from [Guantanamo] periodically, the number of detainees seems to remain pretty constant, so others are being brought in," said Dr. Lisa Lynch, an assistant professor of English and media studies at the Catholic University of America in Washington, D.C. "[United Press International] developed the most exhaustive list of prisoners <<http://www.upi.com/view.cfm?StoryID=20040204-051623-5923r>> more than a year ago ... but there may be many people there no one knows about."

The Washington Post has also published <http://www.washingtonpost.com/wp-srv/nation/guantanamo_nationalities.html> a list of prisoners on its Web site, and in December reported <<http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2004/12/17/MNG9DAD66D1.DTL>> on a secret prisons for "high value" terrorists at Guantanamo and around the world.

The government has not acknowledged that the prisons exist, and will not name any inmates. "Unless we can get access to information about who these people are and where they are being held, they will remain completely vulnerable to abuse and even torture," said Rachel Meeropol, a CCR lawyer. "We must not be a country that condones disappearances."

In the Federal District Court in the Southern District of New York, the ACLU, CCR <[\[ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=5oxhfEGmEG&Content=381\]\(http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=5oxhfEGmEG&Content=381\)> , Physicians for Human Rights, Veterans for Common Sense and Veterans for Peace filed suit in June 2004 demanding the release of information on military prisoner treatment.](http://www.ccr-</p></div><div data-bbox=)

In mid-December, the government began providing that information, which the ACLU says shows abuse of prisoners to be systematic

<<http://www.aclu.org/International/International.cfm?ID=13962&c=36>> , not an aberration.

The abuse brought to light by the infamous pictures from Abu Ghraib have also generated lawsuits filed in federal district courts, including one <http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=8tzsXQmAh2&Content=423> in the Southern District of California that names as defendants civilian employees of two private security technology firms, CACI International <<http://www.caci.com/>> , and Titan Corporation <<http://www.titan.com/>> .

Another suit seeking \$10 million in damages has been filed in the Federal District Court in the District of Columbia, seeking to hold Defense Secretary Donald Rumsfeld and other senior officers in violation of national and international law for the treatment of detainees at Guantanamo.

The filing is by four British citizens <http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=1VSk0OGX7D&Content=455> who were held in the Guantanamo prison, and then returned to their home country without being charged with any crimes.

In another court battle, four Iraqi citizens, with the assistance of CCR, filed suit in the German Federal Prosecutor's Office <[\[ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=1xiADJ00Qx&Content=472\]\(http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=1xiADJ00Qx&Content=472\)> against United States officials for abuses at Abu Ghraib.](http://www.ccr-</p></div><div data-bbox=)

The complaint was filed under the doctrine of universal jurisdiction under the German Code of Crimes Against International Law, which requires the prosecutor to investigate, no matter where the crime occurred or what the nationality of the victim or defendant is.

Three of the plaintiffs are in Germany, which provides additional grounds for filing, Ratner said. His group is trying to generate public support in the United States and abroad to pressure the German prosecutor to investigate.

In Canada, an organization called Lawyers Against the War <<http://www.lawyersagainsthewar.org/press.html>> filed suit in November charging President Bush with torture under the Canadian Criminal Code for torture of prisoners. The basis of the suit is the United Nations Torture Convention, which was ratified by both the United States and Canada.

Some key court decisions have favored the plaintiffs.

This past summer, a pair of U.S. Supreme Court rulings established that prisoners have a right to access to civilian courts, and the right to an attorney with whom they can have unmonitored conversations.

The government subsequently set up military tribunals in Guantanamo to establish prisoners' legal status.

In November, the court found that the tribunals did not adhere to the judicial requirements established by the Geneva Conventions, and that the Bush administration had set them up illegally, without Congressional approval.

The administration has appealed this and other decisions, arguing that the president is entitled to unusual powers to fight terrorism, and that since the detainees are not fighting for a particular country, they are not entitled to the protections of prisoners of war.

According to Ratner, this puts the United States in the position of violating rules and moral standards it previously championed around the world.

"What moral authority will we have to demand that others adhere to human rights, if we do not? What happens to our soldiers when they are captured? What is happening now is a slide into the Middle Ages," he said.

<http://www.newsdesk.org/archives/003275.html>

(b)(6)

From:
Sent:
To:

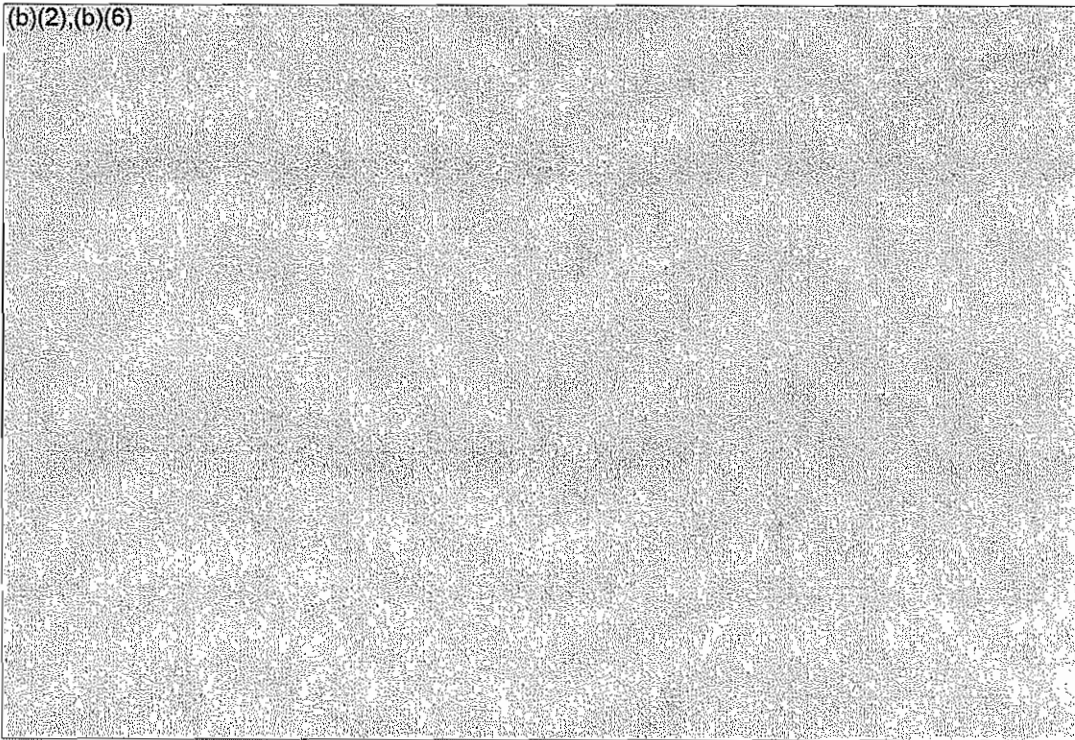
(b)(6) DoD OGC
Friday, February 23, 2007 3:30 PM

(b)(2), (b)(6)

Cc:

Cc:

(b)(2),(b)(6)



Subject: GTMO Bird; Padilla; Hicks; al-Hajj; Navy's secret brig; Torture in Iraq; Fordham law;

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

Office of the DoD General Counsel (Legal Counsel) (b)(2)

(b)(2) (DSN (b)(1))

(fax)

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

BBC World News

Padilla 'not fit to stand trial'

A US citizen suspected of being an al-Qaeda conspirator is mentally unfit to stand trial, a psychiatrist for his defence has said.

Speaking at a hearing to determine Jose Padilla's competence, Angela Hegarty said he lacked the capacity to assist his counsel in the case.

He is due to be tried in April along with two co-defendants.

Mr Padilla faces life in jail if convicted of plotting to murder, kidnap and maim persons in a foreign country.

Other charges against him allege he was part of a North American terror cell that provided support to radical Islamists around the world.

Dr Hegarty said after a 22-hour examination of the suspect that Mr Padilla had suffered from intense stress and anxiety following three-and-a-half years in custody as an "enemy combatant".

Mr Padilla claims he was tortured while being held on a brig at Charleston, South Carolina, a charge that officials deny.

The psychiatrist said Mr Padilla suffered from a facial tic, problems with social contact, lack of concentration and a form of Stockholm Syndrome, by which people in captivity sympathise with their captors.

His trial is scheduled to begin on 16 April with co-defendants Adham Amin Hassoun and Kifah Wael Jayyousi.

The co-defendants also face charges of providing material support to terrorists and conspiring to do so.

ABC New Online

Govt will pay for Hicks 'unfairness': lawyer The US military lawyer for Guantanamo Bay detainee David Hicks says the Federal Government will be held accountable for letting his client go through an unfair trial process.

Hicks, who is from Adelaide, has been detained at Guantanamo Bay for five years and is in the process of being charged with attempted murder and providing material support for terrorism. Major Michael Mori says people will watch the trial when it is eventually held and know it is unfair.

Major Mori says he saw Hicks last month and told the terrorism suspect he had a lot of support in Australia.

He says there are no Americans or Britons at Guantanamo Bay and Prime Minister John Howard's determination to make Hicks go through the US military commission has condemned him to at least another year at the facility.

"An Australian is not somehow less valuable than an American and that's why I'm so shocked," Major Mori said.

"I knew that the creators of the commission system in America, the chief prosecutor of the commissions don't want to give an Australian the same rights as an American.

"I just never thought Australian ministers would be supporting that."

Hicks, a convert to Islam, was captured in Afghanistan where he allegedly fought alongside the ruling Taliban against US-led forces who invaded after the September 11, 2001, terrorist attacks in New York.

The US charged him with conspiracy, attempted murder by an unprivileged belligerent and aiding the enemy.

But the charges were dropped after the US Supreme Court ruled it was unlawful for the US military commission to try him.

<http://www.abc.net.au/news/newsitems/200702/s1855410.htm>

Mercury News

Al-Jazeera cameraman still at Guantanamo BEN FOX and ALFRED de MONTESQUIOU Associated Press GUANTANAMO BAY NAVAL BASE, Cuba - A TV cameraman is getting an inside view of life at Guantanamo Bay prison - only he is unable to get out and tell the story.

Sami al-Hajj, of the Al-Jazeera TV network, was stopped at the Afghanistan border by Pakistani authorities in December 2001, turned over to U.S. forces and hauled in chains six months later to Guantanamo, where about 390 men are held on suspicion of links to al-Qaida or the Taliban.

Al-Hajj, a 38-year-old native of Sudan, has been held in this U.S. military prison ever since.

He is believed to be the only journalist from a major international news organization held at Guantanamo.

Colleagues from al-Hajj's Qatar-based network and the Sudanese government want to know why he is being held, but the U.S. government is saying little. The military did not even publicly acknowledge holding al-Hajj until last April, when it released a list of Guantanamo detainees in response to a Freedom of Information Act request filed by The Associated Press.

But military documents sketch at least a partial outline of al-Hajj's experiences at Guantanamo and the U.S. grounds for holding him - that he transported money between 1996 and 2000 for a defunct charity that allegedly provided money to militant groups, and that he met a "senior al-Qaida lieutenant."

When he appeared before a military review panel at this remote U.S. military base in August 2005, al-Hajj, citing the advice of his attorney, declined to respond to questions. But he denied any connection to terrorism.

"With all due respect, a mistake has been made because I have never been a member of any terrorist group," he said, according to a transcript released the following year. "I can say without hesitation that I am not a threat to the United States."

During the hearing, aimed at determining whether al-Hajj posed a threat to the United States or possessed intelligence value, al-Hajj wore a white jumpsuit reserved for the "most compliant" detainees. An officer told the tribunal that al-Hajj was leading Islamic prayer sessions and teaching other prisoners English.

His colleagues at Al-Jazeera claim his detention is American harassment of an Arabic TV network whose coverage has long angered U.S. officials. Near the entrance to the network's Khartoum bureau a banner saying "Free Sami al-Hajj" hangs alongside his photo.

"He's our colleague, so we're very worried," Nassef Salah Eldin, an Al-Jazeera producer in the Sudanese capital. "We feel it could happen to any of us."

Lamis Andoni, a Middle East analyst for the network who helped organize a campaign for al-Hajj's release, noted the network's sour relationship with the American government. In April 2003, an Al-Jazeera journalist was killed when the network's Baghdad bureau was struck during a U.S. bombing campaign. In November 2001, a U.S. missile destroyed Al-Jazeera's office in Kabul, Afghanistan. The U.S. claims both attacks were mistakes.

"When you are targeted once, it could be a mistake," Andoni said in an interview from Amman, Jordan. "But when you are bombed twice, it's something else."

In an interview in Khartoum, Sudanese Justice Minister Mohamed Ali al-Mardi said the holding of the cameraman without charge "is repugnant to all the conventions and principles of international law."

Washington has given Sudan no information about al-Hajj, al-Mardi said. U.S. relations with Sudan are strained over the Darfur conflict.

Al-Hajj has been interrogated at the Guantanamo Bay prison complex, which sits on an arid corner of southeast Cuba overlooking the Caribbean.

"I consider the information that we obtained from him to be useful," Paul Rester, director of the Joint Intelligence Group at the prison, said in an interview at Guantanamo Bay. Rester refused to elaborate or even to comment on the allegations aired at the 2005 hearing.

International human rights and press freedom groups condemn al-Hajj's imprisonment. Reporters Without Borders cited his case when it dropped the United States nine places to 53rd in its 2006 Worldwide Press Freedom Index. The group also noted the case of AP photographer Bilal Hussein, detained by U.S. forces on April 12 in Ramadi, Iraq, and held without charge ever since.

Al-Hajj himself has protested by joining the hunger strike at Guantanamo, according to letters released by his lawyer, Clive Stafford Smith.

"If justice is to be achieved, due sacrifice must be made," al-Hajj wrote.

It was not known whether al-Hajj was among the 11 prisoners that the military said were on hunger strike as of Thursday.

The U.S. military says that in the 1990s, al-Hajj was an executive assistant at a Qatar-based beverage company that provided support to Muslim fighters in Bosnia and Chechnya. The U.S. says he also traveled to Azerbaijan at least eight times to carry money on behalf of his employer to the Al-Haramain Islamic Foundation, a now defunct charity that authorities say funded militant groups.

It was also during this period that he allegedly "met" Mamdouh Mahmud Salim, a senior lieutenant to Osama bin Laden who was arrested in Germany in 1998 and extradited to the United States.

Stafford Smith said al-Hajj did not routinely transport money but that he and his wife once carried \$220,000 from Qatar to Azerbaijan for his boss at the beverage company - and that he even declared the cash to customs.

"Sami was only doing what he was told by his boss," Stafford Smith said.

He said al-Hajj, while working for the beverage company, met Salim only once, when he was sent to pick him up at the airport in Qatar in 1998. During the drive, the two discussed schools and housing, the attorney said.

Al-Hajj, who has a wife and son in Qatar, will mark his fifth anniversary in Guantanamo in June. The military informed him in December that it had reviewed his case and determined he was not among the more than 80 detainees at Guantanamo Bay deemed eligible for release or transfer.

"You will continue to be kept at Guantanamo Bay for at least one more year," the military told al-Hajj in the formal notice.

<http://www.mercurynews.com/mld/mercurynews/news/world/16768503.htm>

Inside Navy's secret brig

Report: Hanahan facility geared to dodge scrutiny, keep inmates apart By TONY BARTELME The Post and Courier

Officials at the Navy's brig in Hanahan developed elaborate plans to dodge public scrutiny of its operations to detain enemy combatants, plans that include destroying "critical info," scrubbing public Web sites, and warning brig staff about the temptations of "high priced offers from news agencies," a Navy report shows.

The 17-page document also describes how, with relatively short notice, the Naval Consolidated Brig created an expensive prison-within-a-prison, in part to prevent regular inmates from retaliating against the detainees. In this separate facility, a brig official said detainees are accorded protections under the U.S. Constitution, "except where curtailed by higher guidance."

The document provides a rare insider's glimpse into what has emerged as one of the most secretive installations in the government's anti-terrorism effort. It reveals new details about the challenges of housing high-profile terrorism suspects. It also comes amid a backdrop of lawsuits alleging that the solitary confinement of detainees constitutes torture, and that the administration's policy of holding terrorism suspects without charges is unconstitutional.

Brig officials prepared the paper "Preparing for Enemy Combatant Detainment" for a presentation last summer in Charlotte at a national conference organized by the American Correctional Association. The Navy supplied the document to The Post and Courier in response to a request under the Freedom of Information Act.

The presentation begins with an introduction by Sandy Seymour, technical director of the brig. He declined to comment for this story. In the presentation paper, Seymour describes how the brig's mission evolved after 9/11. Before, it was a medium-level security prison capable of holding 364 inmates, and that its main focus was on rehabilitating inmates. He touted the institution's low recidivism rates.

After 9/11, the Bush administration declared that certain terrorism suspects were "enemy combatants," more akin to prisoners of war than criminals. As such, the administration argued, enemy combatants could be held without criminal charges until the war was over. Seymour said that brig officials were given five months to prepare to confine enemy combatants.

The first, Jose Padilla, arrived in June 2002, under heavy guard. Two others followed: Yaser Hamdi, an American citizen by birth picked up on a battlefield in Afghanistan; and Ali Saleh al-Marri, who authorities say was an al-Qaida sleeper agent.

Seymour said in the report that security became the brig's overriding concern. "The enemy combatant concept of operations mean establishing two separate facilities on the same real estate," he said, adding later: "There is no rehabilitation mission in detainment." He said one of the brig's challenges was to make sure other inmates didn't come into contact with the detainees.

"Emotional responses by the prisoner population to the events of September 11th made it clear that criminals can be patriots, too," his report said. "We concluded that it was likely, given the opportunity, an inmate might attempt to harm an enemy combatant out of patriotic sentiment." Brig officials paid close attention to such "crossover" contact, making sure, for instance, that staff, instead of regular inmates, prepare and serve detainees' meals.

Seymour said brig officials also had to learn about the detainees' cultural traditions. "Be prepared to explain what some of the basic tools are and the expectation for their use: For

example a flushing toilet ... Even which hand is used to deliver food or religious material to a person from a Muslim culture can have great significance."

While the Pentagon has allowed more than 1,100 visits by reporters and others to detention facilities in Guantanamo, Cuba, military officials have denied media requests to tour the Hanahan brig. In fact, much of the brig's presentation was devoted to how officials sealed the facility from public scrutiny.

"Taking on a nationally newsworthy mission brings its own pitfalls," the report said. "High-priced offers from news agencies for information or pictures can be very tempting to staff." (Like most daily newspapers, The Post and Courier does not pay for such information.) The report said brig officials scrubbed public access documents and Web sites and destroyed "critical info," including information about rosters and internal operations. "Staff training to counter media probes paid dividends on several occasions," Seymour said without further explanation.

The presentation eventually took on the tone of a primer for corrections colleagues on how to dodge reporters and prepare their institutions for enemy combatant missions.

"Defeat surprise queries by preparing standard answers and keep them near common phone access points and available to all staff ... Focus on where the vulnerabilities are for camera footage by interested parties and look for unconventional access to your operation." Doing so will "starve the query."

Cmdr. Flex Plexico, a Navy spokesman, said Thursday the report "shows the amount of effort and care taken in preparing for the enemy combatant detainment mission supporting the ongoing war on terror." He pointed out that the document stresses "the requirement to treat all detainees humanely, and summarizes the extraordinary steps taken to provide for the safe confinement of enemy combatants while at the same time protecting those responsible for carrying out the detention mission."

Seymour also touched on the legal netherworld the enemy combatants inhabit. "In detaining American citizens, full constitutional rights are afforded except where curtailed by higher guidance or accepted prison practice," the report said.

Jonathan Hafetz, an attorney for the lone detainee in the facility, Ali Saleh al-Marri, said the document shows how the Bush administration is trying to build a separate detention system unbound by the Constitution. "They're saying, 'We'll follow the Constitution, unless the president tells us not to.' That's very significant."

Jacob Hornberger, president of The Future of Freedom, a libertarian think tank near Washington, D.C., added that "the brig officer has it all wrong. The rights enumerated in the Constitution are not privileges bestowed by federal officials subject to discretionary curtailment. Instead, they are inherent, fundamental rights and guarantees that the Constitution expressly prohibits federal officials, including those in the military, from infringing."

Plexico said the term "higher guidance" refers to "guidance higher in the military chain of command than the brig and alludes to rights" that are commonly restricted in detention facilities to ensure order. He added that "even active duty military members in good standing do not have the full benefit of the Constitution, i.e., the First Amendment."

The report also touched on the financial burdens of holding the detainees.

The report doesn't specify how much has been spent to accommodate enemy combatants but did say an entire wing was set aside for one detainee. (The Post and Courier has requested information about costs under the Freedom of Information Act. The military has denied these requests, citing national security concerns.) In the report, Seymour concluded that "the enemy combatant mission is a fluid task without full definition." One thing was clear, he added, "this mission costs money," urging his colleagues, "get access to the money!"

Centre for Research on Globalization
Routine Practices of Torture by US Forces in Iraq: Testimony of Abbas Z. Abid to the Kuala Lumpur War Crimes Commission Global Research <<http://www.globalresearch.ca>> , February 23, 2007 Perdana Global Peace Organisation - 2007-02-07

STATUTORY DECLARATION

I, Abbas Z. Abid (Iraqi Passport No: 5379532) of full age and an Iraqi citizen do hereby solemnly and sincerely declare as follows:

1. I am 43 years old.
2. I live in Fallujah, a city in Iraq.
3. I am an Electrical Engineer. Prior to my arrest and detention, I was the Chief Engineer in the Science and Technology Ministry in Baghdad.
4. The purpose of making this statutory declaration is to put on record my torture experience when I was detained in the "Al-Jadiria" prison.
5. This was originally an underground shelter, but was converted into a secret prison.
6. On the evening of 28th of August 2005, about 10pm, a combined force of American forces and National Guards launched a raid on my brother's house. The force consisted of four American Humvees filled with American soldiers and twelve trucks loaded with Iraqi soldiers. More than 15 American and Iraqi soldiers entered the house in a terrifying manner.
7. My nephews came to my house crying for my help as my brother was not at home that night. I stay nearby my brother.
8. I went to my brother's house and welcomed the soldiers and introduced my self as the chief engineer in the Science and Technology Ministry, and told them that my brother is not available for the time being and that I'm ready to answer any questions. They told me that they're searching the house for incriminating evidence. And when not finding anything illegal in the house, the Commander turned to a table in the living room that was used for studying by my nephews.
9. He began to search the table and asked, "Why so many holy books? It's just too many!" I told him that every one in the family has his own holy book. He then examined some papers on the table which were articles downloaded from the internet from various sites - some referred to the violence in Iraq, the future of Iraq and some referred to political figures like Ahmed Al-Jalaby. The Commander asked, "What is this?" and since I didn't know the contents of those papers, I took a quick look at them and told him that they are various articles concerning the situation in Iraq. He said, "I'll take them and show them to my superiors." He took the articles and the five holy books on the table and left the house.
10. At the front door one of his soldiers whispered something in his ears so he came back and asked me, "What kind of a car is your brother driving?" "Where is it now?" I told him that it is an Opel Omega and it's in our father's garage. The Commander then told me that he wanted to check my father's house.
11. They searched and found nothing in my father's house. The soldiers then told me that I was to follow them for further questioning.
12. I was first brought to the Al-Muthanna Brigade Head-Quarters for questioning. They beat me up and demanded to know the names of "terrorists" in my neighbourhood. I told them that I did not know any terrorists. But they did not believe me and continue to beat me. They even electrocuted me and threatened to shoot me. The American took part in the torture and would provide beer to the investigators and guards. I know this because I can hear and understand English.
13. Soon after my detention, the son of my cousin was also detained and he was tortured in order to get a testimony against me. He was released after 18 days of torture and after he had made a false statement against me.
14. I was detained at the Al-Muthana Brigade HQ for four weeks and then transferred to the Al-Jadiria prison. The following detainees were transferred with me:
 - Hameed Kameel Shared
 - Taha Hussein
 - Readh Mustafa
 - Rabah Mahmoud
 - Basim Hamed Khalaf
 - Fauzi Kareem
 - Muhanned Eesaa
15. There, I was again tortured. My torture consisted of the following:
 - a. Hitting with various tools (thick cudgels, cables, metal pipes, metal ribbons);
 - b. Electric shocks in various parts of the body and especially the penis;
 - c. Forcing me to drink allot of water mixed with a diuretic solution, and my penis then tied with a rubber band to

prevent me from urinating; d. Hanging me from the wall while hanging weights from my penis for long hours; e. Threaten to sexually assault me; f. Play with my sexual organs; g. Frightening me by shooting a gun around, near and above my head; h. Threaten to sexually abuse my wife and my mother after bringing them to the prison; i. Cut off all food or drinks (except the water I was forced to drink with the diuretic solution) during the investigation period; j. Forcefully extracting my finger nails; k. Hanging me from the wall for long hours until I fainted - the hanging method is by handcuffing my hands to the back and then hang me up from the handcuffed hands so that my shoulder get dislocated; l. Hanging me from the wall and then hitting me with several tools of torture until the hand-cuffs breaks. That happened many times; 16. Other detainees suffered from the following tortures:

a. Forcing detainees to have sex with other inmates; b. Their bodies being drilled with a "Black & Decker" drill; c. Cutting pieces of flesh from the body with a grinding machine; d. Burning various parts of the bodies with cigarettes and melted nylon; e. Inserting solid objects in the rectum with wooden sticks, pipes and a vacuum cleaner hose pipe; f. Make to stand for long hours.

17. I was forced to sign a statement without reading or knowing what's in it because they put a bag over my head. This they do to all prisoners.

18. I was then thrown in the corridor with the bag over my head for long hours. I was then moved to a small room (2.5m by 2.5m) together with 30 other detainees; then after three days I was moved to another nearby room (7m by 3.5m) and there were about 70 detainees there. The numbers increased afterwards and reached about 115 in that room.

19. They put the bag over my head for over two months and only remove it when I am given food. Some prisoners would have the bag over their head for over five months. I've seen many unbelievable things in that room such as follows:

a. There was not enough room for everybody, so the detainees were sitting and sleeping over each other and most of them suffered from burns and frictions and severe wounds, some of them were infected with contagious diseases like TB and scabies.

b. Everybody used to urinate in plastic bottles placed near the door. Visits to the toilet are made once every 4 days.

c. We were separated in groups of 15 detainees. A detainee is allowed only 1 minute in the WC and then he had to leave to let another one in. On any other occasion during the four days intervals, we have to discharge our human waste in the plastic bags given to us and right in front of everybody. These bags were used to bring food and we kept them for this purpose. These toilet bags were placed near the plastic bottles at the door. Because it is so crowded, the bottles and bags get knocked over and the waste would be spread all over the room. Those bottles and bags were emptied once every four days when we went to the WC. Whenever we went to the WC and on our return, we would be beaten by the guards.

d. The guards would offer inducements to convince some of the detainees to report on other detainees about what they know or hear or think and they would sometimes make up stories about their fellow detainees to avoid the torture.

e. Detainees who have names like "Omar", "Baker", "Marwan" which indicate that they are Sunnis, would receive particular attention from the guards who would yell at them and calling them "son of a bitch", "bastard" and other humiliating terms.

f. No medical care was available at all, and detainees were left to die from their injuries caused by torture. While I was at the prison, the following detainees died, namely:

Alaa Khareeb Hassan

Mohammed Khadim

Husham Abbas

Omar Ali Mohammed

Khalid Younis Muhseen

Ali Farhan Mohamed

Waheed Mahmoud Abdullah

Haitham Radhi

20. Each group of five detainees was given a 2ltr bottle of water once every 2-3 days; When thirst became unbearable, some of the detainees drunk from the urine bottles in the room.

21. Some of the guards in this prison have mobile phones with tones and songs in the Iranian language and they would talk in a language which I do not understand.

22. Even though the Al-Jadiria prison is under the control of the Minister of Interior, American troops have visited the prison many times and therefore cannot deny the existence of such a prison. Yet in the media, they deny knowing it and deliberately try to give the impression that in this prison, only Iraqis soldiers are torturing fellow Iraqis to distract attention from the tortures in Abu Ghraib.

23. On the 5th of September 2006 I was brought to a court, and the judge ruled that I should be set free for the lack of evidence.

24. I was released on the 2nd of October 2006 with three of my inmates, one of them was Syrian. At the prison's gate my brother was waiting for me in his car and he hired a group of police officers to secure me and to ensure that I reached home safely. I asked my inmates to come with us but they refused. Two cars followed us, a BMW and a Toyota Crown both with black windows. But we were able to evade them.

25. Later, I found out that the inmates who were released with me were killed and buried in (Al-Najaf) cemetery and their parents had to pay huge sums of money to reclaim their bodies from Najaf for re-burial in Baghdad.

26. I stayed about an hour in my house and then moved to another house to stay for a few days. I then left my beloved country.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1960 Subscribed and solemnly declared by the)
above named Abbas Z. Abid)
at Kuala Lumpur on the day of February)
2006 at a.m./p.m.)
Before me,
Commissioner for Oaths
Kuala Lumpur, Malaysia

Fordham Law Students Work To Seek Justice For Guantanamo Detainees February 22, 2007

Students at Fordham Law School are learning a lesson in how the law can leave some people in limbo, not convicted of any crime but held as prisoners nonetheless. As Criminal Justice reporter Solana Pyne explains, these would-be attorneys are part of one of the only student law clinics in the country representing Guantanamo detainees.

A computer lab on Manhattan's Upper West Side is very far from the Guantanamo Bay detention center. And yet, some Fordham law school students are among the very few to have any contact at all with those held there.

"We can write them letters trying to explain to them what's going on with the courts and with the legislation," said law student Deborah Mantell. "And also, sort of, checking in with them to see how they're doing."

Mantell is one of more than a dozen students in Fordham's International Law Clinic, representing prisoners held at Guantanamo as enemy combatants. Much of what they study in school just does not apply.

"Things that we would never anticipate be rejected in normal litigation, asking for what is called a factual return, just to get basic information back about our client, can be rejected in the course of this litigation," said Amber Lewis, also part of the clinic.

The government says that as foreign enemy combatants, the prisoners have no right to challenge their detention in court. The U.S. Justice Department says habeas corpus -- the

constitutional right to ask a judge to decide if they're being improperly held -- does not apply to them.

"A lot of what we're doing is just taking the baby steps and trying to get us to that place where we can get a fair trial," said law student Nick Mitchell.

The students meet weekly, where, in groups, they represent individual detainees. They also work on more general issues, like getting their clients permission to talk on the phone with their families.

The Supreme Court could soon decide if their clients deserve a day in court. But Congress could also legislate it. And the students see part of their job as letting the public know who exactly is at Guantanamo.

Department of Defense documents reportedly say many were handed over as the U.S. was offering hefty bounties.

"The fact is that the government doesn't allow us to review the evidence against our clients, so we have no way of knowing," said James Schmitz, a Fordham Law student also working on the project. "There's just this terrible suspicion that these people were just in the wrong place at the wrong time."

"I think our students are really actors in history in the making," said Fordham University Law Professor Martha Rayner. "They're really able to see how one can impact, or in some cases not impact at all, on what our courts do, what politicians do."

This is something that just cannot be learned in the classroom.

<http://www.ny1.com/ny1/content/index.jsp?stid=6&aid=67048#>

A Saudi and an Ethiopian are the latest to have U.S. military officers assigned to convene panels for war-crimes trials at Guantánamo Bay, Cuba.

The Miami Herald
December 17, 2005 Saturday

BYLINE: CAROL ROSENBERG, crosenberg@herald.com

The Pentagon on Friday named two more senior officers to convene military commissions at Guantánamo Bay, Cuba -- one for a former flight school student from Saudi Arabia, another for an Ethiopian captive accused of "dirty bomb" plot-making.

Neither Binyam Muhammad, an Ethiopian who sought asylum in Britain, nor Ghassan al Sharbi faces execution if convicted of war crimes, according to documents released Friday.

JAN. 10 COMMISSION

The Pentagon plans to convene its next commission at Guantánamo Jan. 10 -- coinciding with the Islamic holy day, Eid al Adha -- for pretrial proceedings against a Canadian teen accused of killing a U.S. soldier in a grenade attack in Afghanistan and a Yemeni captive accused of being an al Qaeda filmmaker.

The Pentagon named Marine Col. Ralph Kohlmann, with 18 years in military justice, to preside over the trial of Muhammad, who is alleged to have trained at al Qaeda camps in Afghanistan and heard a lecture by Osama bin Laden in 2001.

Later, at a religious school guest house in Pakistan, the charge sheets allege, he and Jose Padilla, a former Broward resident and one-time Chicago gang member, reviewed instructions "on how to make an improvised 'dirty bomb.'"

Sharbi then allegedly translated the instructions into Arabic and read them aloud.

Sharbi, a Saudi, is believed to be in his late 20s. He is alleged to have trained in military tactics at al Qaeda camps in the 10 weeks prior to the Sept. 11 attacks. He also is alleged to have graduated from Embry-Riddle Aeronautical University in 2000.

In a habeas corpus petition filed last week in U.S. District Court in Washington, the Saudi denied "any criminal or terrorist conduct. Nor did he kill, injure, fire upon or direct fire upon any U.S. or coalition forces" before his capture in Pakistan in March 2002.

Vermont attorney Robert Rachlin said Friday that he filed the petition, pro bono, at the request of Sharbi's father in Saudi Arabia. He has never met the captive -- and does not know if he wants an attorney at Guantánamo.

Just in case, Rachlin has Pentagon clearance to help defend Sharbi with Navy Lt. William Kuebler. He also filed the petition, in case Congress and President Bush successfully stop habeas filings for the detainees who are considered enemy combatants.

"It's like chicken soup," he said in an interview. "It may not help but it can't hurt."

Both military and civilian defense lawyers are challenging the constitutionality of the first U.S. war crimes trials, called commissions, since World War II.

The Supreme Court hears arguments in March on whether military officers can act as judge and jury for the captives, who are held at the Navy base as enemy combatants, not prisoners of war, and allegedly conspired as foot soldiers of a terror group.

"If the laws of war don't apply to these people, what are the war crimes?" Rachlin asked.

"There's a real issue here about whether acts that were done before there were any military actions either in Afghanistan or Iraq fall under the purview of a military commission."

PRESUMED INNOCENT

Pentagon officials describe the process as fair, with a presumption of innocence. So far, nine prisoners have been charged among the 500 or so captives at Guantánamo.

Little is known about Sharbi's presiding officer, Navy Capt. Daniel O'Toole.

Kohlmann recently presided at the military trial of a Marine gunnery sergeant who enlisted dozens of illegal immigrants in the Marine Corps from 2002 to 2004 while serving a stint as a military recruiter in Fort Lauderdale.

Let me talk with my kids;
Hicks asks for Xmas phone call

SUNDAY MAIL (SA)
December 18, 2005 Sunday

BYLINE: Elissa Doherty

TERROR suspect David Hicks is longing to speak to his estranged children this Christmas. The father of two - a girl and a boy both under 15 - has requested through his lawyer a telephone hook-up with the Adelaide-based children he has not spoken to for more than four years.

The children's maternal grandfather, Dennis Sparrow, has also revealed the difficulties the children have faced coping with the fallout of their father being captured allegedly fighting alongside Taliban forces in Afghanistan.

Mr Sparrow, 55, said the youngsters had experienced periods of being unsettled and had been hassled at school.

He said his daughter Jodie, who declined to speak to the Sunday Mail, would not allow the phone reunion to go ahead.

He said Hicks has not seen the children since some time in the 1990s after the romance soured.

'She wants nothing to do with him and the kids (to have nothing to do with him) at this time,' Mr Sparrow said.

'She asked me what I think she should do. I told her that, for me, I would want to wait until they are old enough to make up their own minds, but that it's her decision to make.'

The comments come after the High Court in London during the week granted Hicks British citizenship in his attempt to leave the US military base in Cuba.

But the Guantanamo Bay inmate's release to the UK is far from secure because the British Government has signalled its intention to appeal.

Hicks has been charged with conspiracy to commit war crimes, attempted murder by an unprivileged belligerent and aiding the enemy - but is yet to face trial after more than four years in US detention.

Hicks' father Terry said a Christmas day phone call with his young children, which he would attend, would be 'the ultimate'.

'He misses them,' he said. 'I think it would be a great morale boost for David. He writes to them . . . he does keep in touch with them in some way.'

Mr Sparrow said he was worried about the impact on the children of speaking to their father after more than four years.

'I don't want the kids to get their hopes up, or get upset any more,' he said.

He did not know if the time languishing in legal limbo in Guantanamo Bay had changed the rodeo lover from Adelaide's northern suburbs.

'I would have to listen to him talk myself; have to wait and see myself,' he said. 'Maybe after four years he's more mature; he was always immature to me.'

He said the children rarely discussed their father but found it difficult seeing the images of him on TV.

'The kids don't really talk about it,' Mr Sparrow said.

'They were unsettled when it was first happening.'

Jodie met Hicks in Adelaide in 1992 after he returned from the Gulf of Carpentaria where he had worked as a jackaroo.

Mr Sparrow said he remembered the moment when Hicks first revealed he was moving to Afghanistan, where he would later be captured.

'I remember sitting here having a few beers with Dave and he said he was going to Afghanistan,' he said, pointing to the chair next to him in his northern suburbs lounge room.

'It was after he had broken up with Jodie. He said it was for a life change. He said he knew a few people there or something. He didn't mention names or say anything about fighting.

'When I saw a few years later on the news an Australian caught fighting for the Taliban, I said, 'I bet that's Dave'.'

Hicks' Adelaide lawyer David McLeod said it would be a convoluted process to orchestrate a telephone conference in the lead-up to Christmas.

'He (David) has made the request but the request is currently unanswered,' he said. 'It's very convoluted, like everything to do with David Hicks.'

(b)(6)

From: (b)(6) AFIS-HQ/GC
Sent: Tuesday, March 27, 2007 4:22 PM
To: Barber, Allison Ms OSD PA
Subject: FW: GTMO Bird: Hicks; New detainee; GTMO

(b)(5)

(b)(6)
General Counsel
American Forces Information Service
601 N. Fairfax, (b)(2)
Alexandria, Virginia 22314-2082

Office (b)(2)
Fax
BB

(b)(2);(b)(6)

-----Original Message-----

From: (b)(6) DoD OGC (b)(2),(b)(6)
Sent: Tuesday, March 27, 2007 5:17 PM
Subject: GTMO Bird: Hicks; New detainee; GTMO

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)
Office of General Counsel, Legal Counsel Department of Defense
(b)(2) (DSN (b)(2))
(b)(2) (fax)

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

(b)(2) (fax)

New York Times
March 27, 2007
Pg. 1

Plea Of Guilty From Detainee In Guantanamo By William Glaberson GUANTÁNAMO BAY, Cuba, March 26 - In the first conviction of a Guantánamo detainee before a military commission, an Australian who was trained by Al Qaeda pleaded guilty here Monday to providing material support to a terrorist organization.

The guilty plea by the detainee, David Hicks, was the first under a new military commission law passed by Congress in the fall after the Supreme Court struck down the Bush administration's first system for trying inmates at Guantánamo.

The guilty plea is sure to be seen by administration supporters as an affirmation of its efforts to detain and try terrorism suspects here, although the government's detention policies still face significant legal and political challenges.

The plea by Mr. Hicks came after an extraordinary day in a pristine red, white and blue courtroom here. Earlier the military judge had surprised the courtroom with unexpected rulings that two of Mr. Hicks's three lawyers would not be permitted to participate in the proceedings, leaving only Maj. Michael D. Mori of the Marine Corps at the defense table. After several acrimonious sessions in which Major Mori claimed that the judge, Colonel Ralph H. Kohlmann of the Marines, was biased, the judge insisted that he was impartial and the hearings came to a close.

But in the evening Judge Kohlmann called the court back into session, saying he had been approached by lawyers who said Mr. Hicks was now prepared to enter a plea.

Mr. Hicks, a stocky 31-year-old former kangaroo skinner who has been held at the prison for five years, was accompanied by guards to a defense table, and Major Mori said he was now prepared to plead guilty to one of two specifications in the charges against him.

That charge described Mr. Hicks's stay in a Qaeda training camp where, it said, he learned kidnapping techniques and was trained in how to fight in an urban environment. Prosecutors have said that Mr. Hicks, who was captured in Afghanistan in late 2001, had never shot at Americans there but that he had taken part in other activities, including collecting intelligence on the American embassy there.

Australia officials, who have described Mr. Hicks as a "lost soul" and "soldier wannabe," had been pressing the United States to resolve the case, and a prosecutor said Mr. Hicks would probably be back there within a year. Major Mori had waged an unusual campaign to rally support for Mr. Hicks in Australia.

During the plea, Judge Kohlmann led Mr. Hicks through a brief session in which he asked whether the earlier dispute about whether his lawyers were authorized to participate in the proceedings had influenced his decision to plead guilty.

"No, sir," Mr. Hicks, dressed in a tan prison uniform, answered calmly several times.

The road to Mr. Hicks's guilty plea was long and fraught with legal and diplomatic strife. The Pentagon had originally hoped to begin trying detainees in the spring of 2002, but the Bush administration's system for military tribunals has been the subject of lengthy legal challenges. The Supreme Court struck down the administration's first plan for tribunals last June, ruling that a principal flaw was that the president had established them without Congressional authorization.

In October, Congress enacted a new law providing for military tribunals, but lawyers for detainees and other critics have challenged it as establishing a trial system that does not afford defendants the same protections as civilian courts. Critics note, for example, that the rules allow for the use of evidence obtained by coercion.

In addition to the legal challenges, the policy of holding "enemy combatants" without charges for as long as five years has drawn international protest, including from allies of the United States.

The Hicks case has drawn particular criticism in Australia, where Mr. Hicks, a high school dropout, turned to Islam after unsuccessfully trying to join the army and then joining an evangelical church.

On Monday, after Mr. Hicks's guilty plea, the judge adjourned the case for further proceedings this week, evidently so that the lawyers could settle on what specific acts he may acknowledge. The sentence will be decided by a five-member military commission.

Lawyers have suggested that he might serve out the remainder of any sentence in Australia. Asked whether Mr. Hicks might be back in Australia by the end of the year, a military prosecutor said, "The odds are pretty good."

Mr. Hicks's arraignment Monday was the first public proceeding under the new tribunal rules. The hearing quickly turned fractious, especially after the judge disqualified the two lawyers.

Mr. Hicks appeared startled as his long-awaited day before the tribunal turned into something a free-for-all, rather than the orderly arraignment that had been anticipated.

"I am shocked because I just lost another lawyer," Mr. Hicks said, after the judge said that one of his two civilian defense lawyers, Joshua L. Dratel, had not complied with the judge's

rules for handling a military commission case. Mr. Dratel, a well-known lawyer in Manhattan, has been a central player in the Hicks case.

"Right now you do not represent Mr. Hicks," said Judge Kohlmann, the presiding judge of the new military commission organization, who assigned himself to the Hicks case.

Referring to the Bush administration's previous plan for military commission trials struck down by the Supreme Court, Mr. Dratel said in the courtroom before he left that Monday's events showed that the new commission process was as problem-plagued as the old one.

"You cannot predict from one day to the next what the rules are," Mr. Dratel said.

The judge rejected each assertion that he was acting arbitrarily or was biased. In an even tone, but with a flushed face that suggested irritation, he methodically moved through the day's events, turning aside each defense complaint. The defense claims, he said "do not raise matters that would cause a reasonable person to question my impartiality."

Even before Monday's hearing, the case against Mr. Hicks had been marked by an unusual public dispute between Mr. Hicks's military lawyer, who has openly attacked the tribunals, and the military prosecutor.

And Monday, Major Mori was also critical of the judge, saying that some of his rulings seemed aimed at helping the government prove its case against Mr. Hicks. Major Mori said some rulings appeared to be "fixing the rules to fix their mistakes."

Judge Kohlmann said his rulings had been impartial, aimed only at assuring that the case moved ahead professionally and quickly.

Washington Post

March 27, 2007

Pg. 1

Australian's Guilty Plea Is First At Guantanamo By Josh White, Washington Post Staff Writer
GUANTANAMO BAY, Cuba, March 26 -- Australian David M. Hicks pleaded guilty to one charge of material support for terrorism during a brief military hearing Monday night, becoming the first Guantanamo prisoner to officially accept criminal responsibility for aiding terrorists since the detention facility opened more than five years ago.

The plea during the first day of hearings under the Military Commissions Act of 2006 marks a victory for the Bush administration, which is now likely to secure a conviction in the first case it pursues under Congress's new rules.

Col. Ralph H. Kohlmann, the military commission's presiding officer, has not accepted the plea but is expected to do so in hearings this week.

Military commission officials here said Kohlmann and lawyers for both sides will work out details of Hicks's plea. Then a full military commissions jury panel will meet to decide on a sentence. Hicks faces a possible life term, but prosecutors said in recent days that they probably will not seek a term longer than 20 years.

Defense lawyers for Hicks said late Monday night that they could not discuss details of the guilty plea or whether there is an agreement with prosecutors about a sentence, although they said the case will probably be disposed of by the end of the week. Australian officials were planning for Hicks's possible return within days so he could serve his sentence.

Hicks, 31, entered a plea of guilty to one specification of providing material support for terrorism and pleaded not guilty to one specification of supporting terrorist acts.

Prosecutors alleged that Hicks trained with al-Qaeda in Afghanistan and met Osama bin Laden, but they were not prepared to present evidence that Hicks attempted to kill anyone.

Maj. Michael D. Mori, Hicks's military defense attorney, entered the pleas at a late hearing on Monday after a three-hour session in the afternoon that dealt primarily with legal issues. Hicks became the first detainee out of hundreds who have gone through Guantanamo Bay to have his case adjudicated. If his plea is accepted, he will be the first detainee from Guantanamo Bay to be convicted of a crime.

Congress wrote new rules for the commissions after the Supreme Court overruled the administration's earlier version of the trials, calling them unconstitutional. Attorneys for Guantanamo detainees have challenged the new law, and members of Congress have vowed to push legislation giving more rights to the detainees. Hicks's guilty plea could give the government a conviction that will not be challenged.

"I don't look at it as a victory," said Air Force Col. Morris Davis, the chief prosecutor, who said he is pleased the military commissions are underway. "We are satisfied where we stand at this moment."

David H.B. McLeod, a civilian lawyer from Australia who is on Hicks's defense team, said Monday night that he would not comment on the guilty plea other than to say it was "the first step toward David returning to Australia."

Hicks was among the first detainees to arrive at Guantanamo in January 2002 and has spent more than five years incarcerated here.

U.S. military prosecutors allege that he has been involved in militant extremism since the late 1990s, when he joined liberation fighters in Kosovo. Hicks later traveled to Afghanistan and trained with al-Qaeda forces, met bin Laden and secured a tank at an airport in Kandahar, according to the U.S. government. He later allegedly supported the Taliban.

Australian officials have been pressuring President Bush to try Hicks swiftly and have been negotiating to have Hicks returned to Australia to serve out any prison term.

Lawyers from Australia and a delegation representing the Australian government were in the courtroom on Monday, and Hicks, in a tan tunic and pants, at one point looked back, nodded and smiled to people in the front row.

Much of Monday's legal wrangling dealt with Hicks's defense team. The presiding officer ruled that his two civilian attorneys were not qualified to represent him in court, in part because one refused to sign a form he felt would compromise his ethical responsibilities. The lawyers, Rebecca Snyder and Joshua Dratel, separately stormed out of the courtroom.

"I'm shocked because I just lost another lawyer," Hicks said when Kohlmann asked if he wanted Dratel to remain at his defense table, even though he could not represent him. "What's the sense of him sitting here if he's not my lawyer and can't represent me?"

Hicks's father and sister traveled to Cuba for the hearing and spent several hours meeting with him in a private room in the morning, getting the opportunity to hug him, pass on family messages and share lunch with him.

Defense Department officials announced Monday that they had transferred a high-value detainee into Guantanamo over the weekend. Abdulmalik Abdul-Jabbar, who allegedly admitted to participating in a 2002 hotel attack in Kenya and to plotting to shoot down an Israeli airliner near Mombasa, was the first direct transfer to the prison since September 2004. He was arrested in Africa in recent days.

Gitmo detainee asks for more attorneys

Staff and agencies

26 March, 2007

By MICHAEL MELIA, Associated Press Writer 1 hour, 45 minutes ago GUANTANAMO BAY NAVAL BASE, Cuba - An Australian who allegedly trained with al-Qaida and fought for the Taliban in Afghanistan said in a courtroom Monday that he needed more lawyers to defend himself against a charge that he provided material support for terrorism.

David Hicks, wearing a khaki prison jumpsuit, was being arraigned Monday - the first suspect to face prosecution under revised military tribunals established after the U.S. Supreme Court U.S. Supreme Court last year found the Pentagon's system for trying Guantanamo detainees was unconstitutional.

The 31-year-old former kangaroo skinner and outback cowboy said he was satisfied with his defense team but would ask later for more defense lawyers.

"I'm hoping to have more lawyers and paralegals to get equality with the prosecution," Hicks told the military court's presiding officer, Marine Corps Col. Ralph Kohlmann.

"All of the options obviously have to be discussed, from not guilty and tough it out, through to 'How do I get out of here at the earliest opportunity,'" McLeod told reporters.

"His support for the al-Qaida organization is what we intend to prove," said Air Force Col. Morris Davis, the chief prosecutor for the tribunals.

Hicks would be eligible for life in prison if convicted, but Davis noted that similar cases - such as that of the American-born Taliban soldier John Walker Lindh - have resulted in 20-year sentences.

A case against Hicks began in 2004 but was put on hold while the Supreme Court considered the legality of the military trial system devised by the Bush administration. The Australian was charged again under new rules established by Congress and signed into law by President Bush in October.

A challenge of the reconstituted system is pending before the Supreme Court. Lawyers for detainees have asked the high court to step in again and guarantee that they can challenge their confinement in U.S. courts.

The military says the new rules address some concerns of defense lawyers by allowing detainees to see all the evidence against them and making other changes.

During their meeting on Sunday morning, McLeod said Hicks had sunken eyes and showed other signs of weariness from his ordeal of living alone in a small cell. While optimistic that he "has a life ahead of him," he said Hicks was nervous about his first court appearance in nearly three years.

"He recognizes the process ... is one that's designed to achieve convictions," McLeod said. Terry Hicks, who last saw his son in August 2004, was scheduled to arrive in Guantanamo on Monday with his daughter, Stephanie, to see David.

"He's not going to be the same person I saw three years ago," Terry Hicks said. "We've got to brace ourselves for that bit."

<http://www.localnewsleader.com/brocktown/stories/index.php?action=fullnews&id=85413>

US: Stop the Guantanamo Circus

Hicks Pleads Guilty; New Detainee Arrives (Guantanamo Bay, March 27, 2007) - Two defense lawyers for Guantanamo detainee David Hicks were barred from representing their client yesterday, highlighting the failure of US military commissions to meet fair trial standards, Human Rights Watch said today. Hicks, the first person to be charged before the military commissions authorized by Congress in 2006, pleaded guilty to a single criminal charge. Hicks' plea came as the Defense Department announced the transfer of a new detainee to Guantanamo. The Kenyan detainee, taken into custody in Kenya, appears to be a criminal suspect who belongs in civilian criminal court.

"The antics at the Hicks hearing underline the illegitimacy of the Guantanamo tribunals," said Jennifer Daskal, advocacy director of the US Program at Human Rights Watch and an observer at the hearing.

Hicks' two civilian defense counsel were prevented from representing him as his hearing got underway on March 26. The presiding judge provisionally dismissed the assistant defense counsel, stating that the government was precluded from assigning civilian government employees to represent defendants, even though military commission rules allow the Department of Justice to assign its civilian lawyers to the prosecution. The judge then removed Joshua Dratel, Hicks' longtime civilian counsel, because he agreed to abide by all "existent" rules, but refused to agree to "all" rules for the tribunal without first knowing what those rules stated. According to the judge, this ran afoul of civilian counsel's obligations to agree to military regulations governing representation - regulations which have not yet been issued.

"Those who doubted these tribunals would be fair have been proved right," said Daskal. "The commission can't even establish basic rules for lawyers representing the defendant. There's little reason to think that if Hicks had gone to trial he would have received a fair hearing."

Hicks' sole remaining lawyer, Major Michael Mori, had recently been threatened by the chief prosecutor of the military commission, Col. Morris Davis, who warned that Mori could be held criminally liable under Article 88 of the Uniform Code of Military Justice because he made public criticisms of President Bush's detainee policies. Mori filed a prosecutorial misconduct motion about this matter, but because Hicks pleaded guilty the motion will likely never be heard.

Originally the US government had charged Hicks with attempted murder, among other offenses. Hicks pleaded guilty yesterday to one count of material support for terrorism - a crime typically prosecuted in civilian courts. Hicks will appear before the military commission for sentencing later this week and could receive a sentence of up to life imprisonment. He is expected to serve most of his term in Australia.

Human Rights Watch called again for the Bush administration to close the Guantanamo Bay detention facility, stating that the remaining detainees should either be charged and tried in federal court, or released. More than 380 detainees at Guantanamo have not been charged with crimes or held in accordance with the laws of war, and have been denied any opportunity for a meaningful review of the basis for their detention in an independent court.

Transfer of New Detainee

Human Rights Watch also raised concerns about the transfer of a criminal suspect to military custody at Guantanamo instead of to US civilian custody. The Department of Defense announced on March 26 that it had transferred Mohammad Abdul Malik to Guantanamo over the weekend.

"The Bush administration is still using the 'war on terror' to hold criminal suspects while denying them their basic rights," said Daskal. "If Abdul Malik committed terrorist acts, I'm sure federal prosecutors would be happy to indict him."

Abdul Malik is a Kenyan citizen. Kenyan authorities detained him in late February, and local human rights groups briefly saw him in detention in Nairobi. He reportedly disappeared from custody soon after. A March 14 Kenyan media article referred to police sources who stated that he had been flown to Guantanamo.

The Pentagon, which did not reveal where Abdul Malik has been held for the past three weeks, reported that he had confessed to participating in a 2002 hotel attack in Mombasa, Kenya, as well as involvement in a plot to shoot down an Israeli civilian airliner near Mombasa.

Human Rights Watch expressed concern that Abdul Malik was held incommunicado for several weeks and interrogated about alleged criminal activities under questionable circumstances.

"Where was Abdul Malik held these last weeks?" said Daskal. "If he was held in secret detention, by the CIA or the military, it raises serious questions about the treatment he experienced and the value of his confession."

Abdul Malik's transfer to Guantanamo comes not long after the extradition of another terrorism suspect from Kenya to Houston, Texas, for prosecution in US federal court. Daniel Joseph Maldonado, a US citizen, was arrested in Kenya in late January for illegally entering the country from Somalia, sent to the United States, and charged with undergoing training in weapons and bomb-making. Abdul Malik was reportedly arrested at a foreign exchange bureau in Mombasa.

"The vastly different treatment of these two terrorism suspects shows the US sees Guantanamo as a parallel criminal justice system for foreigners," said Daskal. "Americans suspected of terrorism rightly go before US courts, while foreigners get sent to Guantanamo for indefinite detention and unfair proceedings."

Human Rights Watch called on the United States to bring Abdul Malik to trial in US federal court, pointing out that discrimination on the basis of nationality in criminal proceedings is prohibited under international law. In an important UK decision in December 2004, the House of Lords struck down a law that permitted the indefinite detention of foreign terrorism suspects, but not UK nationals.

Except for 14 detainees transferred to Guantanamo from CIA custody in September 2006, transfers to Guantanamo had stopped in September 2004.