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Subject: RE: GTMO Bird: Interrogation Specifics; Gitmo; Judicial View of Detainees; Detainee Fights Transfer Home; Moran on Gitmo; Yemeni's to be Freed; The Baghdad Bar; Taguba and Abu Ghraib;

Good afternoon

Here is today's GTMO Bird.

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Paralegal, GySgt, USMC (Ret.)
Department of Defense
Office of the General Counsel (Legal Counsel)
1600 Defense Pentagon
Washington, D.C. 20301-1600
Comm: (b)(2),(b)(6)
DSN:
NIPR:
SIPR:

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Administration Struggles With Interrogation Specifics
By Karen DeYoung, Washington Post Staff Writer
Eight months after President Bush signed a bill authorizing the CIA to resume using "enhanced interrogation techniques" on terrorism suspects, the administration has been unable to agree on what constitutes "humiliating and degrading treatment" of detainees. The CIA program remains in limbo, awaiting an executive order about the techniques that has become the subject of tense discussions within the administration and between the White House and the Senate Select Committee on Intelligence. The issue is expected to receive a rare public airing today as the committee holds a confirmation hearing for John A. Rizzo, nominated by Bush in March 2006 as the CIA's legal counsel. Senators plan to ask Rizzo, a 30-year CIA veteran who is serving as acting counsel, about his involvement in past interrogation policymaking as well as the pending guidelines. The CIA months ago promulgated a proposed list of interrogation guidelines, reportedly jettisoning some of the more controversial techniques authorized in the past such as

simulated drowning, a practice known as "waterboarding." CIA Director Michael V. Hayden has provided lawmakers with a detailed briefing on the guidelines.

Under a provision of the Military Commissions Act he signed last October, Bush must provide an interpretation of a key provision of the international Geneva Conventions and certify that the CIA, while given wider latitude than military interrogators, does not use methods that constitute what the provision calls "outrages upon personal dignity, in particular humiliating and degrading treatment."

"It is all still under review," said one senior administration official, who called the issue "hard, complicated and controversial." The official, who declined to speak on the record about an intelligence matter, said that "everybody recognizes that we're writing against, far from a blank slate, a very dirty slate. The administration would like to try to get it right."

In a further complication, the Senate panel demanded that Bush obtain a Justice Department review of the interpretation and guidelines, and provide a copy of the review to the committee. The administration is believed to have already obtained the review but is unlikely to turn it over to Congress, the administration official said. Lawmakers will be asked to accept Bush's assurance in the executive order that the program has been deemed lawful. The committee, in its version of the fiscal 2008 intelligence authorization bill, said a copy of the review was needed "as part of its ongoing oversight" of the program. "The committee is saying that it's meaningless to us until you provide the legal justification for it," one Senate source said.

Although the committee said the earlier CIA program produced "valuable information that has led to the identification of terrorists and the disruption of terrorist plots," it questioned whether it was the "best means to obtain a full and reliable intelligence debriefing of a detainee." It also advised that the program be "weighed against" the complications it caused in prosecuting suspected terrorists, some of whom have said they were tortured, and "the damage the program does to the image of the United States abroad."

Rizzo's hearing was repeatedly postponed as senators requested additional information from the CIA and the Justice Department related to the history of the detention and interrogation program since the Sept. 11, 2001, attacks. Many, but not all, of the requested documents have been provided over the past several months, a Senate source said.

The Justice Department so far has refused to turn over earlier legal opinions justifying interrogation techniques that human rights organizations and some members of Congress have said constituted torture.

Hayden replaced much of the senior CIA leadership after taking over last summer. His decision to leave Rizzo's nomination in place led opponents of the CIA program to question Hayden's commitment to ensuring its legality.

Sen. Russell Feingold (D-Wis.), an intelligence committee member who has advocated ending all enhanced interrogations, said that "given this administration's willingness to violate the law and keep Congress in the dark . . . it is particularly important for Mr. Rizzo to provide assurances . . . that he will ensure that CIA respects the laws that Congress writes and will not rely on the administration's theory of inherent constitutional authority to violate the law."

Another committee member, Sen. John W. Warner (R-Va.), said in an interview that it is essential that the CIA "have a sort of parallel framework that can stand alongside" military regulations and allow the agency "to continually confirm to the Congress that they are operating within the framework of the law."

Bush acknowledged the existence of secret CIA detention centers last September and said the last 14 prisoners being held had been transferred to the U.S. military prison at Guantanamo Bay, Cuba. The administration at the same time left open the possibility that new prisoners could be detained under the program, which Bush called a crucial national security tool. Last summer, the Supreme Court ruled that all U.S. detainees were covered by provisions of the Geneva Conventions. The Military Commissions Act specified Geneva prohibitions against "inhumane" treatment, such as rape and murder, but left it to the president to interpret what a provision known as Common Article 3 meant by "humiliating" and "degrading."

The CIA is free to interrogate prisoners within existing military guidelines and believes that the enhanced techniques it has presented to the administration and to Congress fall

within a legal definition. But it has been reluctant to authorize use of the techniques until the White House endorses its proposal.

Although the White House said in March that it expected to issue the executive order in "the next few weeks," a spokesman said last week that officials "can't anticipate when the deliberations will be completed."

Noting that the "Military Commissions Act sets forth no timing requirement for its issuance," the spokesman added that since the order "would be authoritative in its interpretation of the Geneva Conventions, it is important that the administration takes time to consider fully all legal and administrative aspects."

<http://ebird.afis.mil/ebfiles/e20070619523334.html>

How To Handle Guantanamo Bay Puzzles Candidates

Detention center emerges as key campaign issue as security concerns and legal challenges mount

By Martha T. Moore, USA Today

Promising to close the prison holding terrorism suspects at Guantanamo Bay, Cuba, is a big applause line for Democratic presidential candidates. Just how to do it is a thorny thicket they haven't thoroughly explored.

For Republicans, who view fighting terrorism as a top issue in their presidential nomination fight, the divide is over whether to close the prison and how to extract information from detainees. Among the 10 announced Republican candidates, only Arizona Sen. John McCain and Texas Rep. Ron Paul favor closing the prison.

Guantanamo, a symbol of U.S. efforts to fight terrorism, is a critical part of what both political parties see as a defining issue facing the next president: how to repair international relations while battling terrorist plots.

Polls show that voters are evenly split on whether the government should be allowed to keep terrorism suspects at Guantanamo indefinitely without charging them - 44%-43% in a Pew Research Center poll last year. Republicans support the policy (63%), and most Democrats (57%) are opposed.

"This is a highly partisan issue, like so much of things that relate to the war on terrorism and the war in Iraq," says Andrew Kohut, director of the Pew Research Center.

Foreigners picked up by the U.S. military in searches for al-Qaeda suspects began arriving at Guantanamo in February 2002. Today, there are more than 380 foreigners held there on suspicion of terrorism and awaiting trials.

Senate legislation to close Guantanamo has won support from three of the eight Democratic candidates: New York Sen. Hillary Rodham Clinton, Connecticut Sen. Chris Dodd and Delaware Sen. Joseph Biden. Clinton and Dodd are co-sponsors of a bill by Sen. Dianne Feinstein, D-Calif.

"In the eyes of the world, Guantanamo is ammunition for our enemies, and it is time to close Guantanamo and to deal with both the security and the legal challenges," Clinton said at a Senate Armed Services Committee hearing in April.

Biden supports competing legislation from Sen. Tom Harkin, D-Iowa, which would require release of detainees who are not charged. Harkin's bill also would close Guantanamo more quickly, Biden spokeswoman Marion Steinfelds says.

Illinois Sen. Barack Obama has not backed either bill though he repeatedly calls for closing Guantanamo and restoring the right of prisoners to challenge their detention. "Ultimately, he supports Guantanamo closing and is still working to find the best possible solution for the prisoners who are there right now," said Bill Burton, Obama's campaign spokesman.

None of the Democrats have specific plans on how to shut down the prison. McCain and Biden advocate moving the prisoners to the military's only maximum-security prison, Fort Leavenworth in Kansas. That might run into a space crunch: The military prison there can hold 500 prisoners and currently has 450 inmates, according to Janet Wray, Fort Leavenworth spokeswoman.

McCain wants to close Guantanamo, he says, because its existence is damaging U.S. credibility abroad. He also wants to speed up trials. "He would want to speed up the tribunal process for

prisoners, because he doesn't support indefinite detentions," McCain spokesman Danny Diaz says.

Last week, former secretary of State Colin Powell said in an ABC interview that he believes the prison should be closed and detainees moved into the federal legal system.

"I'm not inclined to agree right now that we should necessarily close Guantanamo," former New York City mayor Rudy Giuliani said in New Hampshire, a few days after Powell's interview.

"I'd have to go look and see what are the conditions today."

Amnesty International and other human rights groups have criticized the U.S. military's early treatment of prisoners, who were shackled and kept in open-air cages. Adil al-Zamil, a former Kuwaiti government clerk, told the Associated Press he was without food for two days and menaced by dogs. The Supreme Court ruled last June that the detainees are covered by the Geneva Conventions, which forbid degrading treatment.

McCain, who endured torture as a prisoner of war in Vietnam, clashed with President Bush last year as Congress debated a plan for military tribunals and interrogations to comply with the Supreme Court ruling. McCain insisted that interrogation rules need to comply with the Geneva Conventions.

Former governors Mitt Romney of Massachusetts and Mike Huckabee of Arkansas, who says he hasn't taken a position on closing the prison, have both said conditions at Guantanamo are acceptable. "The food down there is unbelievable. This is not this gulag; this is a modern prison which treats people with dignity," Romney said this month.

Romney said in a June 5 Republican debate that "we ought to double Guantanamo" but didn't mean it literally, spokesman Kevin Madden says. His remark was "recognition that the governor wants to go out and catch more terrorists and doesn't want to import them once they're captured," Madden says. "The legal rationale for keeping them there is that they ought not to be afforded all the legal rights of a U.S. citizen."

One divide among Republican candidates concerns how to get information from suspects. McCain has rejected "waterboarding," a practice in which prisoners are held under water, which he says is tantamount to torture. Giuliani and Romney have not ruled out waterboarding specifically; they support "enhanced" techniques.

"I would tell the people who had to do the interrogation to use every method they could think of," Giuliani said at the June 5 New Hampshire debate. "It shouldn't be torture, but every method they can think of."

How quickly military commission trials, authorized by Congress last year, will occur was thrown into doubt by a court ruling this month. A military judge at Guantanamo said that two detainees headed for trial had not been classified as "unlawful enemy combatants," as required by the law authorizing military commission trials.

Contributing: Tali Yahalom, Associated Press

Views on Gitmo

Where presidential contenders stand on the U.S. military's detention center at Guantanamo Bay, Cuba:

Close it

Democrats -- Joseph Biden, Hillary Rodham Clinton, Chris Dodd, John Edwards, Mike Gravel, Dennis Kucinich, Barack Obama, Bill Richardson. Republicans -- John McCain, Ron Paul

Keep it open

Republicans -- Sam Brownback, Jim Gilmore, Rudy Giuliani, Duncan Hunter, Mitt Romney, Tom Tancredo, Tommy Thompson

No position

Republican -- Mike Huckabee

<http://ebird.afis.mil/ebfiles/e20070619523359.html>

News Analysis

Judicial View Of Detainees Still Evolving

Are terrorists warriors or criminals? Nearly six years after the 9/11 attacks, the courts are still grappling with the issue.

By Carol Rosenberg

It's approaching six years since the 9/11 attacks but, as two recent sets of judicial rulings illustrate, America is still at odds with itself over its war on terrorism -- and how to treat captives.

Is the globe America's battlefield? Is al Qaeda ideology and the war on terrorism like Soviet communism and the Cold War, meaning an American president can someday declare victory? Or, in the view of U.S. law, is it more like the drug war -- with no end in sight -- picking off alleged criminals one by one?

And, most critically, there is still no consensus about whether to treat U.S.-held captives as alleged criminals afforded a presumption of innocence or as enemy combatants allowed no recourse in federal court.

In other words, when does the Bush administration get to treat those it brands as ''terrorists'' as criminals? When are they warriors?

Legal scholars say the federal judiciary has traditionally deferred to presidential authority in time of war. And that has more or less been the case since the Sept. 11 attacks. But the latest rulings suggest that the pendulum may be swinging back to the courts.

Last week, a conservative federal appeals court in Richmond, Va., decided 2-1 that the clock ran out on the president's designation of Ali al Marri, 42, as an enemy combatant. He has been in a military brig in South Carolina since June 2003.

Marri and his family arrived in the United States Sept. 10, 2001, ostensibly to attend graduate school in Peoria, Ill. But the Bush administration claims he is an al Qaeda ''sleeper agent'' who met Osama bin Laden and 9/11 mastermind Khalid Sheik Mohammed.

'Put simply, the Constitution does not allow the President to order the military to seize civilians residing in the United States and detain them indefinitely without criminal process, and this is so even if he calls them 'enemy combatants,' '' wrote Judge Diana Gribbon Motz in a 77-page decision.

The Justice Department said it would appeal to the full U.S. Court of Appeals for the Fourth Circuit, one of the most conservative circuits in the country. Unless the U.S. transfers him to a civilian proceeding, releases him or deports him, one side or the other is likely to appeal to the U.S. Supreme Court.

Former Bush administration deputy assistant attorney general John Yoo, an architect of the policy, said the matter of how to handle detainees designated enemy combatants should have been already settled.

Twice the Supreme Court sought to give certain rights to detainees held at Guantánamo Bay, Cuba as a result of the war on terror. And twice, Yoo said, Congress and President Bush overruled them, with the Detainee Treatment Act and the Military Commissions Act, which stripped non-U.S. citizens designated by Bush as enemy combatants of the right to challenge their detention in federal court through habeas corpus.

'Bizarre' opinion

He called the appellate court decision an ''outlier'' by judges who don't agree that America is engaged in a global war on terrorism. He expects the full Fourth Circuit to overrule them. The judiciary defers to the executive and Congress in a time of war, he said, and as he sees it, America is at war with al Qaeda, not battling a criminal enterprise.

'It's completely bizarre. Under this opinion, none of the 9/11 hijackers were enemy combatants,' Yoo said by phone from Berkeley Law School in California, where he is a professor.

Suppose the passengers aboard the fourth airliner that crashed in a Pennsylvania field in 2001 had wrestled control of the plane from the hijackers and landed it safely? he asked.

'According to this opinion, the hijackers on that plane could not be enemy combatants. They would have to be given lawyers, Miranda warnings and a jury trial.'

Precisely, say opponents of enemy combatant policy who argue the executive branch got it wrong by assuming the power to have the military detain -- indefinitely, without charge or trial. In the instance of Marri, in fact, without any review.

A Defense Department spokesman said as long as the court appeal was under way, the Pentagon would not be staging a so-called Combatant Status Review Tribunal in which U.S. military officers, not judges, simulate a battlefield status hearing to determine if there is reason to hold him.

That very process was at the heart of a dispute that saw not one, but two, U.S. military judges dismiss charges against a Canadian and Yemeni at Guantánamo. Neither Navy Capt. Keith Allred nor Army Col. Peter Brownback III, the judges, dispute that they are at war. In fact, their roles presiding at the military commissions are conditioned on the assumption. But they said the Pentagon's own processes had -- so far -- failed to distinguish between captives who were legitimately on the battlefield, and therefore "lawful enemy combatants," and those who either fought unfairly or didn't have the right to be there -- "unlawful enemy combatants."

The overarching issue reflects an evolving process across the years on how to categorize and hold captives, and a continuing debate on whether they are to be treated as criminals or combatants, said constitutional law scholar Douglas Kmiec of Pepperdine University.

Law taking shape

Before 9/11, he said, there was no law that would govern a war on terrorism that ranged across the globe. "It was largely undeveloped and unstructured before we confronted it, and it's only beginning to take shape now," he said.

That's why it's no coincidence, he said, that the Supreme Court this year left to lower courts to grapple with the latest challenges to the war tribunals and habeas corpus stripping provisions.

Tradition and precedent has allowed the president vast powers in times of war.

During the Civil War, Abraham Lincoln suspended habeas corpus and used military tribunals -- only drawing a Supreme Court rebuke in 1866, once the war was over. During World War II, the justices upheld Franklin Roosevelt's executive order authorizing the internment of tens of thousands of Japanese and Japanese Americans -- and it took until 1988 for Congress and a president, Ronald Reagan, to apologize.

"They're letting the lower courts bat this around in part because they don't have any answers, either," said Kmiec, who sees the recent decisions as part of an emerging if halting mosaic. "After the fact, the scholarly judges can speak."

<http://ebird.afis.mil/ebfiles/e20070617522704.html>

Guantanamo Under A Steady Hammering

Experts foresee more legal obstacles ahead for the detention camp, although others think the system is salvageable.

By Carol J. Williams, Times Staff Writer

GUANTANAMO BAY, CUBA -- Inside of a week, a U.S. federal court, retired Gen. Colin L. Powell and two military judges assigned to the war-crimes tribunals here dealt serious blows to the Bush administration's efforts to detain and prosecute terrorism suspects.

Some legal scholars and analysts predict more obstacles to trials for any of the 385 foreign prisoners at the U.S. military detention compound.

But others believe that the system could be salvaged with repairs to its rules and procedures and with reduction of the prisoner population to only those likely to face charges.

Authorities have no plans to prosecute an estimated 300 of the prisoners.

"The government talks about [the Guantanamo prisoners] being the worst of the worst, but obviously not all of them are like that," said Amos N. Guiora, a Case Western Reserve University law professor and director of the Institute for Global Security Law and Policy. Guiora proposed that the U.S. government create a domestic court to try terrorism cases, one that would give defendants most of the U.S. constitutional protections of federal criminal courts, along with rights due prisoners of war as recognized by the Geneva Convention.

"Part of this process would imply the release of individuals who need not be there," Guiora said. "At the end of the day, we should be left with just those who do pose a threat to national security."

Guiora and others have argued that the Bush administration's insistence that it has the right and responsibility to detain any foreigner it designates an enemy combatant for the duration of its open-ended war on terrorism has damaged the image of the United States abroad.

"The international community is very upset with the fact we've said we can hold a citizen of the world indefinitely without charges or trial," said Scott Silliman, a retired Air Force

colonel and judge advocate now heading Duke University Law School's Center on Law, Ethics and National Security.

Silliman added that ignoring the international chorus of criticism could dissuade allies from contributing troops or support for the wars in Iraq and Afghanistan.

Jeff Addicott, another former military judge now heading the Center for Terrorism Law at St. Mary's University in San Antonio, agrees that the number of detainees poses a public relations problem for the U.S. government that complicates efforts to prosecute the biggest security threats.

But he believes some of the blame lies with countries that have refused to take responsibility for their citizens here.

"We've got 80 people we've cleared for release and want to move out, but their governments won't take them back," Addicott said. Those detainees were made eligible for release or transfer during annual Administrative Review Boards.

Many of the others unlikely to be prosecuted may be rehabilitated and released once Guantanamo detention authorities judge them to pose no further threat to U.S. security, he said.

The main obstacle to bringing terrorism suspects to justice, Addicott said, was the disagreement between the United States and most other countries as to whether the war on terrorism should be governed by the laws of war defined by the Geneva Convention, which never envisioned nonstate combatants like those in Al Qaeda.

"We're trying to fit a square peg into a round hole. We never used the laws of war in this kind of a situation," Addicott said.

The commissions were put on indefinite hold this month when two military judges exposed a technical glitch in the jurisdictional rules that would require the Pentagon to reevaluate any potential defendant to determine whether he was an "unlawful alien enemy combatant" or a soldier in his national armed forces entitled to defend himself.

A Pentagon spokesman confirmed that the jurisdiction rulings and dismissal of charges against Salim Ahmed Hamdan, a former driver for Osama bin Laden, and Canadian Omar Khadr were being appealed.

The commissions' appellate body has yet to be seated, though. Meanwhile, Defense Secretary Robert M. Gates has said nothing about how or whether he wants the commissions to proceed. Powell, former Secretary of State and head of the Joint Chiefs of Staff during the Persian Gulf War, delivered damning criticism of Guantanamo when he told NBC's "Meet the Press" last week that he would close the operations "not tomorrow, but this afternoon."

In another blast at the administration's handling of terrorism suspects, a panel of the U.S. 4th Circuit Court of Appeals ruled Monday that a foreign suspect arrested on U.S. soil has constitutional protections. The court ruled that Ali Saleh Kahlah al-Marri, a citizen of Qatar and Saudi Arabia and a legal U.S. resident, must be released from military custody, where he has been held without charges for four years.

The al-Marri decision was "a bombshell," said Rebecca Dick, whose Washington firm represents several Guantanamo prisoners in habeas corpus appeals made after a 2004 Supreme Court ruling. Those at Guantanamo aren't U.S. residents, "but the same principles of justice apply," she said.

Even if detainees eventually recover the habeas corpus rights stripped by the Military Commissions Act - the Senate Judiciary Committee this month voted to restore that recourse - "much of [the government's] evidence was obtained under circumstances that preclude its use in any fair proceeding," Dick said.

Several prisoners were being released each month late last year at a pace that would have emptied the detention center in about five years. But "the releases have nearly stopped" since the first of this year, Dick said.

Habeas attorneys believe the halt is due to the U.S. government's insistence that the home countries detain their nationals to validate U.S. claims that it had grounds to jail them for the last five years.

Officials at the Pentagon and in the Joint Task Force that supervises the detention facility and interrogation operations contend they need to hold the prisoners to keep them from rejoining terrorist groups and attacking the United States again. They insist, though, that they don't want to hold anyone longer than necessary.

Addicott noted that the Saudi government had spent millions to reeducate and settle about 65 citizens repatriated from Guantanamo - a model, he said, for dissuading released detainees from rejoining Al Qaeda.

"If we see signs that these guys are abandoning their jihadist worldview, we would certainly want to move them to the status for release or transfer and start processing them out. Nobody wants to keep these people longer than we have to," he said.

<http://ebird.afis.mil/ebfiles/e20070617522712.html>

Libyan Detainee, Fearing Torture, Fights Transfer Home

Abuse Concerns Slow U.S. Effort To Empty Prison

By Josh White, Washington Post Staff Writer

Abdul Ra'ouf Omar Mohammed Abu al-Qassim has been held at the U.S. detention facility at Guantanamo Bay, Cuba, for more than five years, and he longs to leave it. But the one place the U.S. government is willing to send the "enemy combatant" -- his native Libya is the country Qassim fears most.

Having exhausted all possible legal remedies in U.S. courts -- including a petition to the Supreme Court in April -- Qassim is facing possibly imminent transfer to Libya, a country that the State Department deems a regular abuser and torturer of its captives. Qassim, accused by U.S. officials of being part of a terrorist group that aims to overthrow Libya's leader, expects that returning there means torture and perhaps death.

Qassim is one of the first detainees deemed an "alien enemy combatant" who is publicly fighting his departure from Guantanamo. His attorneys and at least one member of Congress have pleaded with U.S. officials to spare him from transfer to a country known for its human rights transgressions.

Qassim is among about 80 detainees at Guantanamo who have been cleared for release or transfer, and he represents a problem that could recur many times as the United States tries to clear out the facility: sending the men into the custody of nations known to employ torture.

Human rights groups estimate that there are more than a dozen men at Guantanamo slated to go to countries with spotty rights records. Absent court intervention, the men have no choice but to go where the United States sends them.

"It's a huge problem," said Shayana Kadidal, a lawyer with the Center for Constitutional Rights who represents Qassim. "It's the number one crisis we're dealing with. A large number of people who are cleared for release are cleared to go to countries where they likely will be tortured. They will be suspect just for the fact that the U.S. has detained them for such a long period of time."

State Department officials said they will not return detainees to their home countries unless the nations guarantee them humane treatment. However, such negotiations occur in private and are hard to enforce.

Numerous detainees at Guantanamo have not been returned to their home countries for fear of torture, but so far no third country has been willing to accept a detainee whom the United States has deemed an enemy combatant, a senior State Department official said.

"We take very seriously our commitments under international law and our policy obligations, and we want to ensure everyone is treated humanely upon return to their home country," the official said. In cases where detainees cannot be sent home, the official said, the United States is seeking other options: "We will continue to pound the pavement and look for countries who will be willing to take them as a humanitarian gesture."

The relationship between Washington and Tripoli has improved dramatically over the past year, and the Bush administration considers Libya a close ally in fighting terrorism. Libya was pulled from a U.S. list of states that sponsor terrorism in June 2006, though it is unclear what assurances the United States has regarding abuse.

Libyan Embassy officials in Washington did not return calls this week. U.S. officials declined to discuss Qassim's case but said several Libyan nationals could be transferred from Guantanamo as soon as next week.

Rep. Edward J. Markey (D-Mass.) has urged the State Department not to send Qassim to Libya and to consider other options. Qassim, now in his early 40s, is married to an Afghan woman. They have a daughter, entitling him to apply for citizenship in Afghanistan. Markey, in a letter to the State Department this week, said it would be a "grave injustice" to send Qassim to Libya, because the State Department has reported that the country engages in torture, including electric shocks and suffocation. Markey said in an interview that Qassim -- by virtue of his alleged connection to a group that opposes the Libyan government - - is at particular risk for abuse.

"The State Department doesn't have a leg to stand on if they're going to contradict their own analysis," Markey said.

Qassim contends that he was never a terrorist or a member of the Libyan Islamic Fighting Group (LIFG), as U.S. and Libyan officials allege. He wrote in a sworn statement that he was trained in weaponry while a conscript in the Libyan army, deserted in 1989 and went to Afghanistan in 1993. He and his pregnant wife fled Kabul for Pakistan when the U.S. bombing raids began in the fall of 2001.

"I did not participate in any hostilities against the Americans," Qassim said. "I especially did not endorse the September 11th attack."

"For all these years, I have been fleeing persecution, arrest and torture or death at the hands of the Libyan government," Qassim said. "I cannot go back to Libya because the risk is too great."

Human Rights Watch representatives believe there must be an open process that addresses detainees' fears of torture. So far, only five ethnic Chinese Uighurs have succeeded in avoiding transfer to China amid torture worries, but they were considered "no longer enemy combatants." The five went to Albania last year.

"While the vast majority of detainees want to go home and don't want there to be any more hurdles to slow down that process, there are a small number of individuals who have a credible fear of torture and who should not be sent home, based on no-torture promises from known torturers," said Jennifer Daskal, of Human Rights Watch.

Staff researcher Julie Tate contributed to this report.

<http://ebird.afis.mil/ebfiles/e20070615522032.html>

Five Yemeni's to be freed from Gitmo
Mon, 18 Jun 2007 12:12:59

US forces are to free five Yemeni citizens detained at the US military prison in Guantanamo Bay in Cuba, according to Yemen's Defense Ministry.

"Yemen would receive soon five of its citizens detained at the Guantanamo prison," the ministry said in a statement posted on its website.

It did not give any further details on the detainees or the exact date or their handover.

Some 384 men from several countries are still imprisoned at Guantanamo, over one quarter of them Yemenis. Of the more than 100 Yemeni detainees, only 10 have been sent home.

Five of the returning detainees were released by Yemeni authorities while the rest were charged with falsifying identification documents. None were charged with terrorism-related activities.

Last year, Yemen called for an investigation into the death of a Yemeni detainee at Guantanamo Bay who the US military said had committed suicide.

A team of US lawyers representing Yemeni nationals imprisoned at Guantanamo appealed to the Yemeni government last month to take visible steps to secure the release of its citizens.

President George W. Bush is under intense pressure to shut down the prison, where 385 detainees are being held. Many human rights watchdogs say the prison is illegal because detainees are being held there without charge.

Washington started sending suspected al-Qaeda and Taliban captives there in 2002.

Yemen, the ancestral homeland of al-Qaeda leader Osama bin Laden, joined the so-called US-led 'war on terror' after the September 11 attacks.

FF/BGH

<http://www.presstv.ir/detail.aspx?id=13527§ionid=351020206>

JOSHUA COLANGELO-BRYAN AND RACHAEL KRUEGER: REPEAL LAW SO DETAINEES CAN RECEIVE FAIR HEARINGS
BY JOSHUA COLANGELO-BRYAN AND RACHAEL KRUEGER

We have heard the Guantanamo Bay detainees described in terms that are rarely applied even to convicted mass murderers in the United States. Former Defense Secretary Donald Rumsfeld once said that the detainees are "among the most dangerous, best-trained vicious killers on the face of the Earth."

Such statements are chilling but simply untrue, as military officers have readily admitted. Maj. Gen. Jay Hood, a former commander at Guantanamo, told the Wall Street Journal, "Sometimes we just didn't get the right folks." His deputy, Brig. Gen. Martin Lucenti, stated, "Most of these guys weren't fighting." Erik Saar, former Army interpreter at Guantanamo, wrote that "the fact that some of our captives had no business being at Guantanamo was plain to anyone who paid a visit."

In fact, the government does not actually accuse a majority of the detainees of any involvement in violence.

Why have so many innocent people been detained? When the United States went to war in Afghanistan in 2001, the White House ordered U.S. forces not to hold the hearings that the military has used for 50 years to determine the status of those captured on or near the battlefield. Such hearings should have been seen as essential in Afghanistan -- former Secretary of State Colin Powell argued that they were -- because the vast majority of prisoners were picked up by Afghan warlords or Pakistani forces and sold to us for bounties. In fact, of the Guantanamo detainees, only 5 percent were captured by the United States. Now that these men are at Guantanamo, the government asserts that they have no enforceable rights at all. Rather, they can be detained forever without charge simply because we call them "enemy combatants."

Does this make America safer? Defense Secretary Robert Gates and Secretary of State Condoleezza Rice don't think so and have argued that Guantanamo should be closed. Of course, we can't effectively close Guantanamo unless we distinguish between those who have no business being there and those who actually are dangerous.

Attorneys for the detainees tried to bring sense to this situation by filing petitions for habeas corpus. At its core, habeas means that if the government intends to imprison someone indefinitely, it must present evidence against the person in a court hearing.

In 2004, the U.S. Supreme Court found that the detainees were entitled to bring habeas cases. Then last year Congress passed the Military Commissions Act, mandating that the courts dismiss all habeas cases brought by detainees in favor of an alternative process. According to the government, the alternative process does not examine whether a detainee is actually an enemy combatant, but only examines whether certain procedures were followed in applying the enemy combatant label to detainees. For that reason, detainees cannot present evidence of their innocence that wasn't considered by the military, or challenge evidence obtained through torture.

Plainly, this alternative process will not separate the wheat from the chaff. Thus, it is time for Americans to demand that Congress repeal the Military Commissions Act, which would allow detainees fair hearings through habeas. Not only would such a step be consistent with American values, it would be in our national security interest. Joshua Colangelo-Bryan is a New York City attorney who has represented Guantanamo detainees. Rachael Krueger is a legal analyst in New York City and an Emporia native.

<http://www.kansas.com/205/story/100302.html>

The Al-Marri Decision: A Victory for One Man, and for a Principle, But One With Limited or Nonexistent Practical Consequence
By JESSELYN RADACK

<http://writ.news.findlaw.com/scripts/printer_friendly.pl?page=/commentary/20070618_radack.html>

Monday, Jun. 18, 2007

On Monday, June 11, the U.S. Court of Appeals for the Fourth Circuit issued its decision <<http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/almarri/almarriwright61107opn.pdf>> in the case of Ali Saleh Kahlah al-Marri. The ruling was a blow to the Bush Administration. The Fourth Circuit is one the most conservative federal appeals courts in the country. Yet the decision - written by Judge Diana Gribbon Motz - not only rejected the Administration's arguments, but suggested in its first paragraph that they went directly contrary to the Constitution, as interpreted through "two centuries of growth and struggle, peace and war...."

This strong language had been foreshadowed by Judge Motz's stinging dissent to the Fourth Circuit's denial of rehearing en banc order <<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=4th&navby=case&no=027338R1P>> , following its since-vacated 2003 decision in Hamdi v. Rumsfeld. In her dissent, Judge Motz wrote: "I fear that [this court] may also have opened the door to the indefinite detention, without access to a lawyer or the courts, of any American citizen, even one captured on American soil, who the Executive designates an 'enemy combatant,' as long as the Executive asserts that the area in which the citizen was detained was an 'active combat zone,' and the detainee, deprived of access to the courts and counsel, cannot dispute this fact."

In this week's decision, the three-judge panel was unanimous that the jurisdiction-stripping section of the Military Commissions Act of 2006 (MCA) did not apply to al-Marri. Therefore, the court could properly entertain his petition.

In addition, the panel voted 2-1 in favor of al-Marri on the merits of his petition, holding that while the government is free to try al-Marri, it is not free to continue to detain him indefinitely without charge.

For civil libertarians, this should all be cause for celebration. But what will the practical effect of the decision be? The answer is: virtually nil. That's because it benefits only those who are both under the direction of an enemy nation and living legally in the U.S. - a class of persons one would hope, if Homeland Security is at all effective, would be a tiny one.

The Factual Background: One of Three U.S.-Held "Enemy Combatants".

Thus far, only three people have been held in the United States as "enemy combatants." One is al-Marri. Another is U.S. citizen Jose Padilla - initially touted as a "dirty bomb" conspirator, but currently on trial for a different charge. The third is Yaser Esam Hamdi, the Louisiana native whom the government first declared a serious threat to national security, and then set free on the condition that he move to Saudi Arabia and renounce his U.S. citizenship.

All three men were held for long periods of time in a South Carolina military brig, without charge and with spotty or no access to counsel. Al-Marri is still being held there, as he has been for the past four years. Padilla's case

<<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=426>> and Hamdi's

case <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=507>> ended up in the Supreme Court. Al-Marri's, too, is likely to be heard by the Court.

Before his arrest, al-Marri, a Qatari national, was attending graduate school at Bradley University in Illinois. He was legally in the United States when he was detained. Originally, the government held him on a "material witness" warrant. Then it charged him with making false statements. Less than a month before his trial was scheduled to begin, however, the government dropped its charges against him and declared him an "enemy combatant."

Who Counts as an "Enemy Combatant" Under the MCA?

But who counts as an "enemy combatant" under the MCA? Both military judges and the recent Fourth Circuit decision have been careful about parsing the statute's language.

Last week, two military judges - Navy Capt. Keith Allred and Army Col. Peter Brownback - dismissed charges against two Guantánamo detainees, Omar Khadr of Canada, and Salim Hamdan of Yemen, who had been set to be tried before military commissions. The reasoning was that the men were just garden-variety "enemy combatants," not "alien unlawful enemy combatants" as required by the MCA.

(Readers may remember Hamdan as the victor in a Supreme Court decision issued last June <<http://laws.findlaw.com/us/000/05-184.html>> , and wonder why he was before a military commission in the first place. The answer is that while the Court held that the President could not try detainees by military commission without Congressional approval, Congress gave that very approval in the MCA.)

Meanwhile, the Fourth Circuit panel held - as noted above - that al-Marri did not fall within the section of the MCA that purports to strip courts of jurisdiction to hear habeas corpus petitions from "an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant, or who is awaiting such determination."

The Fourth Circuit held that for a detainee to fit this description, a two-step process must occur. First, an initial decision must be made to detain the alien. That occurred in al-Marri's case when President Bush issued a 2003 order placing him in military custody. Second, there must be a determination "by the United States" that the designation was proper - for example, a determination by the Combatant Status Review Tribunals (CSRTs) used on Guantánamo Bay.

There was no CSRT determination in al-Marri's case, since he was detained in the U.S. Moreover, the Fourth Circuit noted, the MCA's legislative history makes plain that it is a CSRT decision that is required, and that the MCA was not intended to apply to persons captured in the U.S.

Who else might benefit from this holding? Potentially, no one - as I will explain in the next section. While there may well be other persons captured in the U.S. in war-on-terror-related investigations, those persons will likely not come within this precedent.

Why No One Else Is Likely to Benefit

The question of who can be deemed an "enemy combatant" remains a troubled and troubling one. The Supreme Court's Hamdi decision <<http://laws.findlaw.com/us/000/03-6696.html>> and Padilla decision <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=426>> both looked to law-of-war principles, resting "enemy combatant" status upon affiliation with the military arm of an enemy nation. Thus, both upheld the President's authority pursuant to his 2001 Authorization for Use of Military Force (AUMF) to detain as enemy combatants individuals who affiliated with and fought on behalf of Taliban government forces, against the armed forces of the United States and its allies, on the battlefield in Afghanistan.

But the Fourth Circuit's al-Marri decision

<<http://f11.findlaw.com/news.findlaw.com/hdocs/docs/almarri/almarriwright61107opn.pdf>> looks not only to law-of-war principles, but also to treaty obligations under the Hague and Geneva Conventions and related principles of customary international law. The opinion thus draws a line between "combatants" (members of a nation's military, militia, or other armed forces, and those who fight alongside them) and "civilians" (all other persons). And it notes that al-Marri's detention was neither the "classic wartime detention" the government claimed had rendered Hamdi an enemy combatant, nor the "classic battlefield detention" the government claimed had rendered Padilla an enemy combatant.

Indeed, unlike Hamdi and Padilla, the court explained "al-Marri is not alleged to have been part of a Taliban unit, not alleged to have stood alongside the Taliban or the armed forces of any other enemy nation, not alleged to have been on the battlefield during the war in Afghanistan, not alleged to have been in Afghanistan during the armed conflict there, and not alleged to have engaged in combat with United States forces anywhere in the world."

Hamdi was claimed to have fought with the Taliban in Afghanistan, and was first detained at Guantánamo before his transfer to military prison. In al-Marri, the government argued that Padilla was an enemy combatant because he, like Hamdi, "engaged in armed conflict" alongside the Taliban "against our forces in Afghanistan."

This point, however, may leave readers scratching their heads - if they recall that the government's allegations against Padilla in earlier stages of that case mirrored its allegations against al-Marri here: that Padilla had associated with al Qaeda and engaged in conduct in preparation for acts of terrorism. Indeed, the Fourth Circuit's own Judge Wilkinson, in his concurrence to the denial of rehearing en banc in the Hamdi case, argued that "[t]o compare [Hamdi's] battlefield capture to the domestic arrest in Padilla . . . is to compare apples and oranges."

The government's response is that Judge Wilkinson's observation came before the Government had proffered any evidence that Padilla had carried arms alongside the Taliban against U.S. armed forces during the conflict in Afghanistan. And in al-Marri, the Fourth Circuit panel apparently accepted the government's argument - perhaps because it allowed the panel to bring principled reasoning to the question of who receives the "enemy combatant" designation: only those who take up arms against the U.S. on the battlefield.

It's too bad the government will appeal the decision, first by requesting en banc review in the Fourth Circuit, and if the Fourth Circuit does not reverse, then to the Supreme Court. Luckily, the Supreme Court has ruled against the Administration in all enemy combatant cases. Jesselyn Radack is the author of *The Canary in the Coalmine: Blowing the Whistle in the Case of "American Taliban" John Walker Lindh*, available at www.patriotictruthteller.net
http://writ.news.findlaw.com/commentary/20070618_radack.html

Guantanamo Bay puzzles candidates

By Martha T. Moore, USA TODAY

Promising to close the prison holding terrorism suspects at Guantanamo Bay, Cuba, is a big applause line for Democratic presidential candidates. Just how to do it is a thorny thicket they haven't thoroughly explored.

For Republicans, who view fighting terrorism as a top issue in their presidential nomination fight, the divide is over whether to close the prison and how to extract information from detainees. Among the 10 announced Republican candidates, only Arizona Sen. John McCain <<http://www.usatoday.com/news/politics/election2008/john-mccain.htm>> and Texas Rep. Ron Paul <<http://www.usatoday.com/news/politics/election2008/ron-paul.htm>> favor closing the prison. Guantanamo, a symbol of U.S. efforts to combat terrorism, is a critical part of what both political parties see as a defining issue facing the next president: how to repair international relations while continuing to battle terrorist plots.

Polls show that voters are evenly split on whether the government should be allowed to keep terrorism suspects at Guantanamo indefinitely without charging them, 44%-43%. Republicans support the policy (63%), and most Democrats (57%) are opposed.

"This is a highly partisan issue, like so much of things that relate to the war on terrorism and the war in Iraq," says Andrew Kohut, director of the Pew Research Center.

Foreigners picked up by U.S. military in searches for al-Qaeda terrorism suspects began arriving at Guantanamo in February 2002. Today, there are more than 380 foreigners being held there on suspicion of terrorism and awaiting trials.

Legislation in the Senate to close Guantanamo has won support from three of the eight Democratic candidates: New York Sen. Hillary Rodham Clinton <<http://www.usatoday.com/news/politics/election2008/hillary-rodham-clinton.htm>>, Connecticut Sen. Chris Dodd <<http://www.usatoday.com/news/politics/election2008/chris-dodd.htm>> and

Delaware Sen. Joseph Biden <<http://www.usatoday.com/news/politics/election2008/joseph-biden.htm>> . Clinton and Dodd are co-sponsors of a bill by Sen. Dianne Feinstein, D-Calif. "In the eyes of the world, Guantanamo is ammunition for our enemies, and it is time to close Guantanamo and to deal with both the security and the legal challenges," Clinton said at a Senate Armed Services Committee hearing in April.

Biden supports competing legislation from Sen. Tom Harkin, D-Iowa, which would require release of detainees who are not charged. Harkin's bill also would close Guantanamo more quickly, Biden spokeswoman Marion Steinfelds says.

Illinois Sen. Barack Obama <<http://www.usatoday.com/news/politics/election2008/barack-obama.htm>> has not backed either bill though he repeatedly calls for closing Guantanamo and restoring the right of prisoners to challenge their detention. "Ultimately, he supports Guantanamo closing and is still working to find the best possible solution for the prisoners who are there right now," said spokesman Bill Burton, Obama's campaign spokesman.

None of the Democrats have specific plans on how to shut down the prison. McCain and Biden advocate moving the Guantanamo prisoners to the military's only maximum-security prison, Fort Leavenworth in Kansas. That might run into a space crunch: The military prison there can hold 500 prisoners and currently has 450 inmates, according to Janet Wray, Fort Leavenworth spokeswoman.

McCain wants to close Guantanamo, he says, because its existence is damaging U.S. credibility abroad. He also wants to speed up trials. "He would want to speed up the tribunal process for prisoners, because he doesn't support indefinite detentions," McCain spokesman Danny Diaz says.

Last week, former secretary of State Colin Powell said in an ABC interview that he believes the prison should be closed and detainees moved into the federal legal system.

"I'm not inclined to agree right now that we should necessarily close Guantanamo," former New York City mayor Rudy Giuliani <<http://www.usatoday.com/news/politics/election2008/rudy-giuliani.htm>> said in New Hampshire, a few days after Powell's interview. "I'd have to go look and see what are the conditions today."

Amnesty International and other human rights groups have criticized the U.S. military's early treatment of prisoners, who were shackled and kept in open-air cages. Adil al-Zamil, a former Kuwaiti government clerk, told the Associated Press he was without food for two days and menaced by dogs. The Supreme Court ruled last June that the detainees are covered by the Geneva Conventions, which forbid degrading treatment.

McCain, who endured torture as a prisoner of war in Vietnam, clashed with President Bush last year as Congress debated a plan for military tribunals and interrogations to comply with the Supreme Court ruling. McCain insisted that interrogation rules need to comply with the Geneva Conventions.

Former Massachusetts governor Mitt Romney <<http://www.usatoday.com/news/politics/election2008/mitt-romney.htm>> and former Arkansas governor Mike Huckabee <<http://www.usatoday.com/news/politics/election2008/mike-huckabee.htm>> have both said conditions at Guantanamo are acceptable.

"The food down there is unbelievable. This is not this gulag; this is a modern prison which treats people with dignity and respect," Romney said this month.

Romney said in a June 5 Republican debate that "we ought to double Guantanamo" but didn't mean it literally, spokesman Kevin Madden says. His remark was "recognition that the governor wants to go out and catch more terrorists and doesn't want to import them once they're captured," Madden says. "The legal rationale for keeping them there is that they ought not to be afforded all the legal rights of a U.S. citizen."

One divide among Republican candidates concerns how to get information from suspects. McCain has rejected "waterboarding," a practice in which prisoners are held under water, which he says is tantamount to torture. Giuliani and Romney have not ruled out waterboarding specifically; they support "enhanced" techniques.

"I would tell the people who had to do the interrogation to use every method they could think of," Giuliani said at the June 5 New Hampshire debate. "It shouldn't be torture, but every method they can think of."

How quickly military commission trials, authorized by Congress last year, will occur was thrown into doubt by a court ruling this month. A military judge at Guantanamo said that two

detainees headed for trial had not been classified as "unlawful enemy combatants," as required by the law authorizing military commission trials.

Contributing: Tali Yahalom, Associated Press

http://www.usatoday.com/news/politics/2007-06-18-gitmo-candidates_N.htm

Britain's Highest Court Upholds Detainees' Rights

The ruling in the case involving the death of an Iraqi recognizes that people in British custody anywhere are protected.

By Alicia Lozano, Times Staff Writer

LONDON — Britain's highest court sent a stern message to the country's military Wednesday, ruling that detainees held in British facilities throughout the world are protected under both the European Convention on Human Rights and British laws.

The Law Lords upheld an appeal by the father of Baha Mousa, a 26-year-old detainee in Iraq who died in British custody. Mousa sustained 93 injuries, including broken ribs and a broken nose, lawyers for his family said.

But the Law Lords, the nation's highest judicial authority, dismissed the cases of five other Iraqi civilians killed by British troops because the deaths occurred in the streets of Basra and not on British-owned or occupied territory. Lawyers for the five families said they would take their cases to the European Court of Human Rights in Strasbourg, France.

Human rights activists applauded the Mousa ruling, saying the government must be held accountable for conditions for its detainees not just on British soil but also throughout the world.

Shami Chakrabarti of Liberty, a human rights organization that helped bring the case to court, said at a news conference: "There could now never be a British Guantanamo. The British will never be able to build a prison anywhere in the world and say it is a legal black hole." Although there is no immediate impact from the ruling outside Mousa's case, human rights activists hope to use it to force government officials to clarify their policies on harsh treatment of detainees and to hold senior military leaders, not just lower-ranking jailers, accountable when standards are breached.

British troops detained Mousa in 2003 while he was working as a receptionist at a Basra hotel. He was taken to a military base where he was "brutally beaten by British troops," according to court documents.

He later died of injuries sustained during "conditioning," during which troops tortured him to make interrogation more effective, Mousa's lawyers said.

The decision by the Law Lords to recognize the rights of detainees in British custody comes after a three-year legal battle between Mousa's father, Daoud, and the British government, which appealed a lower court decision.

In 2005, the Court of Appeals ruled that Britain's Human Rights Act, established in 1998, protects people detained by British officials throughout the world. The government appealed, arguing that the Defense Ministry had accomplished its duty to take action against torture by court-martialing a soldier who pleaded guilty to the brutalization of Mousa.

"We want the public to understand that British troops have always worked under English law and the Geneva Convention, both of which make torture an offense," said Defense Ministry spokesman Nick Manning. "The court-martial was an open proceeding, and it was that investigation which led to [a] conviction." Human rights activists argue that the court-martial, which resulted in the dismissal and imprisonment of Cpl. Donald Payne, was insufficient because the military used the accused as a scapegoat and let other guilty soldiers escape punishment.

"The rulings recognize that the UK has an obligation to conduct an effective investigation set out in the European Convention," said Carla Ferstman, director of Redress, a human rights organization involved in the case. "You can't have a superfluous investigation," she said. "There is a need for those in government to investigate with a view to holding all people responsible."

Human rights groups pledged to continue investigating detainee abuse and said they would take their case back to the lower courts in hopes of conducting an independent public inquiry.

The Defense Ministry, however, says troop conduct is unlikely to change despite the decision because torture has been long banned under the European Convention on Human Rights. "We are looking at the things we could do better," Manning said. "Steps taken today are fully compliant with UK law and the Geneva Convention."

Moran on Guantanamo

Michael Shank | June 14, 2007

Editor: John Feffer

James Moran (D-VA) has been in the House of Representatives since 1991. In 2002, he was one of 133 House members to vote against authorizing the invasion of Iraq. Most recently, he has proposed holding hearings in July on closing the detention facilities at Guantanamo Bay, Cuba, that currently holds several hundred detainees. FPIF contributor Michael Shank interviews him on the implications of his position on Guantanamo.

Michael Shank: You have said that Guantanamo is a stain on our reputation as a nation. You and others, including former U.S. Secretary of State Colin Powell, have called for it to be closed immediately. Is shutting it down, and moving prisoners to military prisons in the United States as you've suggested, sufficient to restore U.S. reputation? What else needs to be done?

Rep. James Moran: If we were to shut it down it might signal that there are new decision-makers in charge, that there's a new attitude. This is one of the most egregious examples of un-American actions taken by this administration. Closing down Guantanamo in and of itself is not going to convince the world that we've gotten our bearings again as a nation. But I think it sends a very positive signal. And every day that we leave it open we lose ground in the global war on terrorism.

Shank: Why do you think the president has been so reluctant to move forward constructively on Guantanamo?

Moran: For the same reason he's been reluctant to take constructive action with regard to the Iraq War. One, he wants to save face. And two, he's surrounded by the very same people that resulted in our establishment of a detainee policy of indefinite detention without charges and without the ability to defend yourself. These are close-minded people who have little respect for the Constitution or the Bill of Rights or why America has become the greatest nation on the planet. It was for reasons that are really the antithesis of what this administration's policy has been.

I'm not surprised that he's reluctant to do the right thing. I can't think of where he has used his presidency to do the right thing, frankly, in any area of policy. The one possible exception might be the immigration bill, and he didn't have sufficient commitment to get it passed. Apparently it was a half-hearted commitment on his part.

Shank: If you and other members are successful in shutting down Guantanamo, will [the closing] ultimately and fundamentally change the way the U.S. government treats its enemy combatants in the so-called war on terrorism? Guantanamo has become highly symbolic, but will the system change?

Moran: The system is kind of a patchwork policy. In Afghanistan we're detaining thousands of people. We're going to defer to the Afghan government to prosecute them. In Iraq we have about 30,000 people detained, half of them by the Iraqi government, half of them by the U.S. military. Again, if there's a conclusion to the war we'll leave it to the Iraqi government to decide what they want to do with them. In Guantanamo it's a legal black hole, and that's the kind of situation this administration likes. But I don't think there's any coherent policy, so I don't expect any particular policy change.

If Guantanamo closes it's not going to be because the administration decided to do the right thing. It will be because they decided the political downside is too much or they had to compromise in order to achieve some other objective.

Shank: In The New York Times on Sunday there was an article on the Chinese Uighurs, former Guantanamo detainees, who have been in Albania for a year since their release. They remain in limbo. What responsibility does the U.S. have to detainees once they're released?

Moran: We should put them in a country where they're not going to be executed when they step off the plane. Albania was an unusual place to put them. We created a Uighur community in Albania which didn't exist before. They're still trying to figure out how to ask for a glass of water. They don't know any Albanian and the Albanians don't have any way to communicate with them. Now that we've established this Uighur community I think that's probably where we're going to place the rest of the Uighur [detainees].

But when you think about it, these are people that had no animosity towards the United States. What are they doing in an American detention facility for five years? There should've been another way to resolve this. If they were looking for refuge, we could've given them refuge here in some other place. But to send them into a legal black hole for five years because they were opposed to an authoritarian communist regime that we oppose as well, because they didn't have any rights to represent themselves politically, because they couldn't practice their own religion or express their individual beliefs. We should detain them for five years because the Chinese government considers them terrorists? Whose side are we on?

Shank: A federal appeals court recently decided that the president cannot indefinitely imprison a U.S. resident on suspicion alone and that constitutional protection, including the rights of habeas corpus must be afforded to all U.S. citizens regardless of criminal status. What are the implications of this decision?

Moran: They're most encouraging because the most conservative court in the country recognizes that the Constitution should still be the referential document for their decisions, the foundational document for their decisions. This administration hasn't believed that. To have the fourth circuit, particularly, say that legal precedence -- and the obvious interpretation of the Constitution that [administration] policy is wrong -- that has implications beyond the specifics of this situation. The specific situation doesn't necessarily apply to the people at Guantanamo, but I think it sends a signal that the credibility of the administration in these areas is lacking. Hopefully it will give some greater confidence to other courts around the country to look first at the Constitution rather than to political signals from Karl Rove and Alberto Gonzales.

Shank: On Guantanamo, what can we expect from your office and from Congress in the coming weeks?

Moran: I've given Jack Murtha the language that I would recommend be put in the bill and he has indicated that he's leaving it to my recommendation on how to handle Guantanamo in the regular defense appropriations bill. Obviously nobody in the Congress acts unilaterally. And as strong a relationship as I have with Jack Murtha, the leadership is going to make that decision and they'll have to look not just at the policy but at the politics of the issue. I'm sure there are people within our party who will not want [Guantanamo closed]. I know there are because we had a vote on the House floor. I won on my amendment to require the administration to come up with a plan to close Guantanamo, but I won just barely. Hopefully I'll be able to keep it in the bill through the Senate and through conference.

But there are some Democrats who don't want us to close it. I hope that I can persuade them to change their minds when they see the evidence. I think in the regular defense appropriations bill the language that I recommended to Mr. Murtha will be included, which closes down Guantanamo. Not tomorrow, but it will do so in an orderly and determinate manner. And I suspect it will relocate the detainees to military brigades within this country, at least in terms of those who can be charged. Those for whom we have no charges would be relocated to their country of origin.

There are a considerable number of detainees from Saudi Arabia, for example. The administration says that the Saudis don't want them. I've talked with the Saudi ambassador, that's not true. They will accept anybody who is a Saudi citizen. And then the administration says they're going to release them. They will release them if they have no charges that can be established. They're not going to have the kinds of legal protections that we should be giving people in the United States, but they will look at the charges and make a determination, hopefully an objective determination. But then when they release them, they follow them.

That's what's happened with those they've released in the past. They follow them, they watch their contacts. If you want to gain information from these people because you believe they

have contacts with Muslim fundamentalists groups -- and that's the primary reason 95% of them are there because they have some affiliation or contact, or knowledge of, or friendship with somebody who belongs to an Al-Qaeda-type related group, which means basically any fundamentalist Muslim organization -- then you follow them, that's how you get information. The Saudis contact their parents. They let them know they're being monitored and they monitor them. It seems to me a more intelligent way of collecting information than keeping someone outside any communication with anybody for five years. You've isolated these people to such an extent that even anything they knew five years ago is not particularly helpful today. It's bizarre to think that there's anything they're going to get from these people. Then for most of the five years, all they've given them to read is the Quran. So if they weren't radicalized when we put them in, undoubtedly they are now. But even if they are radicalized, our system of justice says that you punish people for what they do, not for what they believe.

Shank: The Saudis are receiving positive press for their reintegration programs that help de-brainwash potential extremists or fanatics and bring them back into the community. Is this how you undermine fanaticism and extremism?

Moran: You do. If these stone heads that established and continue to carry out this Guantanamo detainee policy had thought about it, this is an opportunity to de-brainwash them. How about exposing them to some of the great works of literature of philosophy or theology? They've got all the time in the world. Let them read other points of view that they haven't been exposed to. These are not people who were born with a criminal mind. They have become radicalized because of the environment in which they have lived and the people that have had influence over them. If you've got them for five years, how about developing the kind of empathy that naturally is created through contact with the sources of our value system, whether it be in religion or philosophy or even economics.

There's a reason why the founding fathers established a Constitution and a Bill of Rights that has had such sustainable value not just to the United States but to the whole world and it's because of the value of ideas, ideas that we believe in. If we believe in them, how about letting these detainees for five years read something beyond the Quran? Let them read the Quran all they want, but here's something else you might be interested in reading to get a broader perspective perhaps.

It's so disappointing that the military, who should have a system of discipline and adherence to a mission independent of the administration, couldn't have come up with a more thoughtful policy. But I don't see that, I don't see any evidence of that at Guantanamo. You know, there's a phrase at the gate to the prison, "In Defense of Liberty" or "Always Defending Liberty" or something. It's so inconsistent with what has happened at Guantanamo.

I don't expect anything out of this administration at this point. But the military is an organization that should rise above politics and we should have enough people in there that would come up with a more thoughtful policy, particular in regard to Guantanamo. Is Colin Powell the only one who realizes how wrongheaded this Guantanamo policy is? I shouldn't be too harsh on the military but when President Bush declared that Iraq was part of the global war on terrorism, there wasn't one military officer who could see any link to the war on terrorism. Not a one. But only one resigned. Where were the rest of them? Unfortunately I think they're just too easily intimidated by people in political power and it's disappointing.

Shank: For those of you in favor of shutting down Guantanamo and providing habeas corpus to criminal detainees, how do you respond to critics like Mitt Romney who think that in the global war on terrorism these individuals should not be afforded any special privileges, constitutional rights and protections, access to an attorney, etc.?

Moran: I saw Mitt Romney's response with regard to Guantanamo. He is either utterly ignorant or a pure political panderer to his audience. I suspect that it's more political pandering than it is ignorance because he has been pandering on any number of other issues that are quite inconsistent with policies that he implemented as governor of Massachusetts. This is a different constituency. He assumes that Republicans are very conservative, are narrow-minded and mean-spirited. So that's what he is appealing to. I think he's wrong. I think the Republican base is going to reject most of these people, including Giuliani, because the

Republican base is a lot more thoughtful and has a lot more respect for our fundamental principles as a nation than these candidates are exhibiting.

Shank: If correlations are being drawn abroad between terrorist attacks and U.S. policy in Iraq, Israel-Palestine, and Guantanamo, where do you think Guantanamo ranks as a motivating factor?

Moran: I think it's a contributing factor. They are all contributing factors. Unfortunately none of these things is an aberration. They're all consistent. And that's what's most troubling. And if we can close down Guantanamo hopefully it will establish some momentum for doing the right thing in other areas, including Iraq, including showing some leadership with regard to the Israeli-Palestinian struggle. Because if this is about our security, we are doing just the opposite of what common sense would indicate.

Michael Shank is a doctoral student at the Institute for Conflict Analysis and Resolution at George Mason University and a frequent contributor to Foreign Policy In Focus (www.fpif.org)

The Baghdad Bar

By MELANIE KIRKPATRICK

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At last count, 46 lawyers have been assassinated in Iraq since the summer of 2003, according to a grim tally compiled by the Iraqi Bar Association. Some of the victims were kidnapped before being murdered; others were gunned down in the street or caught in crossfire. A recent casualty is Abdul-Sahib Abdulla al-Kanani, who was killed on his way to the grocery store in Baghdad on May 20. He leaves behind a wife and five children.

Aswad al-Minshidi, president of the Iraqi Bar Association, recounted this story in a phone call from Baghdad the other day. He is anguished at his association's scant ability to help the murdered lawyers' families, who often have no means of support. "Dear Miss Melanie," he says, "I know when a journalist is killed in Iraq, his or her colleagues around the world provide support and raise their voices in outrage. But where are the voices of outrage of lawyers in other countries when a lawyer is killed for doing his job?"

Where, indeed? Here in the U.S., it would be nice to think that part of the answer is that the lawyers, law firms and legal associations that might provide assistance are ignorant of the need. But part of the answer lies, too, in the different priorities many attorneys have set for themselves. Bar associations churn out papers on Guantanamo, Abu Ghraib and the execution of Saddam Hussein. Law firms line up to provide legal services to detainees. Cully Stimson, a deputy assistant secretary of defense, lost his job earlier this year for criticizing American lawyers for such work. The legal establishment's outrage against Mr. Stimson would have been easier to take had it been working even half as hard to help re-establish the rule of law in Iraq.

The legal profession "is the pillar on which any society is built," says Feisal al-Istrabadi, Iraq's deputy permanent representative to the United Nations. "Clearly the insurgents are trying to disrupt our society at every level." The rule of law is a primary target -- and the killings include judges, police officers and recruits, as well as ordinary lawyers. Mr. Minshidi says he and his family have been threatened.

The Iraqi legal system is based on the Napoleonic Code, and in the first half of the 20th century it served as a model for other countries in the region. Mr. Istrabadi, a U.S.-trained attorney who practiced law in Indiana and Illinois from 1988 until 2004, says that after decades of operating under totalitarian rule, the Iraqi legal system is much stronger than he had anticipated. After Saddam's ouster, "we expected to find that judicial system and the legal profession had been politically corrupted by the previous regime ... but that was not the fact."

Saddam created an alternative judicial system, where political crimes were tried. The code of ethics among the Iraqi bar was so strong, Mr. Istrabadi says, that "Saddam was unable to corrupt the judicial system and was therefore forced to create an extra-judicial system." Iraq has a cadre of "world-class" judges and professors educated in the 1950s and 1960s, he says, but "young law professors have been cut off from the world for two decades or more" and younger attorneys need help.

So far the assistance has been meager. While the American Bar Association and the International Bar Association have operated programs, the focus has been on training judges and prosecutors, and most or all of their efforts have been funded by the U.S. and other governments. A program to refurbish Iraqi law schools, operated by DePaul University College of Law, lost its U.S. AID funding after one year. Mr. Minshidi of the Iraqi Bar Association says he is unaware of any efforts to date by U.S. bar associations, law schools or other non-governmental organizations to help, though he notes that the ABA has invited him to attend its annual meeting in August and the Federalist Society will host a small conference for Iraqi bar leaders this fall.

"There is much to do to establish the rule of law," he says. "So far it has mostly been training judges and prosecutors. Little has been done for law students and lawyers." (A model here could be the Afghan Women Leaders Connect, founded by American businesswomen to assist Afghan women, including lawyers and judges.)

"Where are the great associations of law we hear about?" asks Mr. Minshidi. "Where are the great law firms? ... Where are the law schools? ... The help we need is not only the help of the government. We need the help of our brothers in the law."

Ms. Kirkpatrick is a deputy editor of the Journal's editorial page.

Annals of National Security

The General's Report

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

<<http://www.newyorker.com/search/query?query=authorName:%22Seymour%20M.%20Hersh%22>> June 25, 2007

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

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

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

Taguba was met at the door of the conference room by an old friend, Lieutenant General Bantz J. Craddock, who was Rumsfeld's senior military assistant. Craddock's daughter had been a babysitter for Taguba's two children when the officers served together years earlier at Fort Stewart, Georgia. But that afternoon, Taguba recalled, "Craddock just said, very coldly, 'Wait here.'" In a series of interviews early this year, the first he has given, Taguba told me that he understood when he began the inquiry that it could damage his career; early on, a senior general in Iraq had pointed out to him that the abused detainees were "only Iraqis." Even so, he was not prepared for the greeting he received when he was finally ushered in. "Here . . . comes . . . that famous General Taguba—of the Taguba report!" Rumsfeld declared, in a mocking voice. The meeting was attended by Paul Wolfowitz, Rumsfeld's deputy; Stephen Cambone, the Under-Secretary of Defense for Intelligence; General Richard Myers, chairman of the Joint Chiefs of Staff (J.C.S.); and General Peter Schoomaker, the Army chief of staff, along with Craddock and other officials. Taguba, describing the moment nearly three years

later, said, sadly, "I thought they wanted to know. I assumed they wanted to know. I was ignorant of the setting."

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

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

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

Taguba also knew that senior officials in Rumsfeld's office and elsewhere in the Pentagon had been given a graphic account of the pictures from Abu Ghraib, and told of their potential strategic significance, within days of the first complaint. On January 13, 2004, a military policeman named Joseph Darby gave the Army's Criminal Investigation Division (C.I.D.) a CD full of images of abuse. Two days later, General Craddock and Vice-Admiral Timothy Keating, the director of the Joint Staff of the J.C.S., were e-mailed a summary of the abuses depicted on the CD. It said that approximately ten soldiers were shown, involved in acts that included:

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

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

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

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

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

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

Rumsfeld told the legislators that, when stories about the Taguba report appeared, "it was not yet in the Pentagon, to my knowledge." As for the photographs, Rumsfeld told the senators, "I say no one in the Pentagon had seen them"; at the House hearing, he said, "I didn't see them until last night at 7:30." Asked specifically when he had been made aware of the photographs, Rumsfeld said:

There were rumors of photographs in a criminal prosecution chain back sometime after January 13th . . . I don't remember precisely when, but sometime in that period of January, February, March. . . . The legal part of it was proceeding along fine. What wasn't proceeding along fine is the fact that the President didn't know, and you didn't know, and I didn't know. "And, as a result, somebody just sent a secret report to the press, and there they are," Rumsfeld said.

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

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

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

During the next two years, Taguba assiduously avoided the press, telling his relatives not to talk about his work. Friends and family had been inundated with telephone calls and visitors, and, Taguba said, "I didn't want them to be involved." Taguba retired in January, 2007, after thirty-four years of active service, and finally agreed to talk to me about his investigation of Abu Ghraib and what he believed were the serious misrepresentations by officials that followed. "From what I knew, troops just don't take it upon themselves to initiate what they did without any form of knowledge of the higher-ups," Taguba told me. His orders were clear, however: he was to investigate only the military police at Abu Ghraib, and not those above them in the chain of command. "These M.P. troops were not that creative," he said. "Somebody was giving them guidance, but I was legally prevented from further investigation into higher authority. I was limited to a box."

General Taguba is a slight man with a friendly demeanor and an unfailingly polite correctness. "I came from a poor family and had to work hard," he said. "It was always shine

the shoes on Saturday morning for church, and wash the car on Saturday for church. And Saturday also for mowing the lawn and doing yard jobs for church."

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

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

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

"I'll talk to you about discrimination," he said one morning, while discussing, without bitterness, his early years as an Army officer. "Let's talk about being refused to be served at a restaurant in public. Let's talk about having to do things two times, and being accused of not speaking English well, and having to pay myself for my three master's degrees because the Army didn't think I was smart enough. So what? Just work your ass off. So what? The hard work paid off."

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

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

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

Taguba got a different message, however, from other officers, among them General John Abizaid, then the head of Central Command. A few weeks after his report became public, Taguba, who was still in Kuwait, was in the back seat of a Mercedes sedan with Abizaid. Abizaid's driver and his interpreter, who also served as a bodyguard, were in front. Abizaid turned to Taguba and issued a quiet warning: "You and your report will be investigated." "I wasn't angry about what he said but disappointed that he would say that to me," Taguba said. "I'd been in the Army thirty-two years by then, and it was the first time that I thought I was in the Mafia."

THE INVESTIGATION

Taguba was given the job of investigating Abu Ghraib because of circumstance: the senior officer of the 800th Military Police Brigade, to which the soldiers in the photographs belonged, was a one-star general; Army regulations required that the head of the inquiry be senior to the commander of the unit being investigated, and Taguba, a two-star general, was available. "It was as simple as that," he said. He vividly remembers his first thought upon seeing the photographs in late January of 2004: "Unbelievable! What were these people doing?" There was an immediate second thought: "This is big."

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

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

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

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

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

"After all Jordan's evasiveness and misleading responses, his rights were read to him," Taguba went on. Jordan subsequently became the only officer facing trial on criminal charges in connection with Abu Ghraib and is scheduled to be court-martialled in late August. (Seven M.P.s were convicted of charges that included dereliction of duty, maltreatment, and assault; one defendant, Specialist Charles Graner, was sentenced to ten years in prison.) Last month,

a military judge ruled that Jordan, who is still assigned to the Army's Intelligence and Security Command, had not been appropriately advised of his rights during his interviews with Taguba, undermining the Army's allegation that he lied during the Taguba inquiry. Six other charges remain, including failure to obey an order or regulation; cruelty and maltreatment; and false swearing and obstruction of justice. (His lawyer said, "The evidence clearly shows that he is innocent.")

Taguba came to believe that Lieutenant General Sanchez, the Army commander in Iraq, and some of the generals assigned to the military headquarters in Baghdad had extensive knowledge of the abuse of prisoners in Abu Ghraib even before Joseph Darby came forward with the CD. Taguba was aware that in the fall of 2003--when much of the abuse took place--Sanchez routinely visited the prison, and witnessed at least one interrogation. According to Taguba, "Sanchez knew exactly what was going on."

Taguba learned that in August, 2003, as the Sunni insurgency in Iraq was gaining force, the Pentagon had ordered Major General Geoffrey Miller, the commander at Guantánamo, to Iraq. His mission was to survey the prison system there and to find ways to improve the flow of intelligence. The core of Miller's recommendations, as summarized in the Taguba report, was that the military police at Abu Ghraib should become part of the interrogation process: they should work closely with interrogators and intelligence officers in "setting the conditions for successful exploitation of the internees."

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

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

Surprisingly, given Taguba's findings, Miller was the officer chosen to restore order at Abu Ghraib. In April, 2004, a month after the report was filed, he was reassigned there as the deputy commander for detainee operations. "Miller called in the spring and asked to meet with me to discuss Abu Ghraib, but I waited for him and we never did meet," Taguba recounted. Miller later told Taguba that he'd been ordered to Washington to meet with Rumsfeld before travelling to Iraq, but he never attempted to reschedule the meeting.

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

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

Later that month, Rumsfeld appeared before a closed hearing of the House Defense Appropriations Subcommittee, which votes on the funds for all secret operations in the military. Representative David Obey, of Wisconsin, the senior Democrat at the hearing, told me that he had been angry when a fellow subcommittee member "made the comment that 'Abu