

Guantanamo are intolerable," according to declassified notes from their conversation, which the lawyer also released on Saturday.

Defense lawyers allege that al-Dossary, who has not been charged, has been in isolation for much of the last two years. The military has said he has regular contact with other prisoners.

Officials at Guantanamo, where the U.S. holds some 500 men described as terror suspects, did not immediately respond Saturday to an e-mail request for an update on the al-Dossary's condition. No one answered the phones at the base's press office.

Al-Dossary had attempted suicide at least nine times before this week, according to medical officials at the detention center on the U.S. Navy base in eastern Cuba.

The chief medical official at Guantanamo, Dr. John Edmondson, said in an affidavit filed last month in federal court in Washington said al-Dossary has undisclosed "mental health issues" and often has refused to take medicine or cooperate with therapists.

In October, Al-Dossary slashed his arm and tried to commit suicide by hanging himself in an empty cell during a break in a meeting with his lawyer. He attempted to kill himself again by pulling out the stitches in November, the government has said.

<http://www.forbes.com/business/feeds/ap/2005/12/17/ap2399477.html>

#### Suicidal Guantanamo Inmate Moved Out of Isolation

Bahraini Detainee Who Complained of 'Intolerable' Conditions Is Shifted Before Court Hearing  
By Josh White Washington Post Staff Writer

Saturday, December 17, 2005; Page A11

Military officials at the U.S. detention facility at Guantanamo Bay, Cuba, have moved a suicidal detainee out of his isolation cell after he said he was trying to kill himself because of the "intolerable" conditions of his incarceration.

Jumah Dossari, 32, a Bahraini detainee who attempted to kill himself during a visit from his attorney in October, was moved from a segregation cell at the prison's Camp Five to a steel-mesh cell in Camp One, where he can interact with other detainees, government lawyers said. They informed Dossari's attorneys of the move on Thursday afternoon, a day before a hearing in U.S. District Court in Washington that was scheduled to address Dossari's case.

Dossari's attorneys have been asking the court to order Guantanamo Bay officials to improve his living conditions, which they argue have led him to attempt suicide at least nine times. In a letter to the lawyers Thursday, Edward H. White, a Justice Department lawyer, described what appeared to be a 10th suicide attempt Monday, when Dossari tried to open an existing gash on his right arm.

Joshua Colangelo-Bryan, one of Dossari's attorneys, said in court yesterday that his client is in imminent danger because of the extreme stress caused by captivity in a tiny isolation cell.

"The purpose of Guantanamo is to create a sense of hopelessness in detainees," Colangelo-Bryan said. "That appears to have worked on Mr. al-Dossari."

In declassified notes from a meeting with the lawyer last month, Dossari said that he "wanted to kill himself so that he could send a message to the world that the conditions at Guantanamo are intolerable" and said he tried to do it in a public way "so that the military could not cover it up and his death would not be anonymous."

Dossari slashed his arm and tried to hang himself during a bathroom break while he was meeting with Colangelo-Bryan, who found him. The suicide attempt left him with a fractured spine and 14 stitches in his arm.

Dossari reported that he felt on the "brink of collapse" and "destroyed" and said all he wanted was to interact with other detainees.

White said Dossari has been diagnosed with four different psychological disorders, including depression, and has been receiving regular treatment from a psychiatrist and a psychologist.

He said it is unclear whether Dossari arrived at Guantanamo Bay with the psychological problems.

"Despite the fact that petitioner has repeatedly attempted suicide, he is getting extensive medical treatment," White said, adding that the move to Camp One allows Dossari adequate human interaction. "If anything they're being very diligent about monitoring the petitioner and treating him."

Camp One is a group of cell blocks that hold approximately 150 -- about 30 percent -- of the detainees at Guantanamo. Detainees live in their own cells, which are constructed of steel mesh, and can see and speak to others on the block. They also share an exercise yard. By moving Dossari out of Camp Five -- the equivalent of a U.S. maximum-security prison -- the government effectively sought to remedy the problem before a federal judge stepped in. Judge Reggie B. Walton is still considering an order that would force the prison to put fewer restrictions on Dossari.

But Walton said yesterday that if judges begin issuing such orders, "we become the warden." Human rights groups and lawyers are watching a proposal under discussion on Capitol Hill that would strip detainees of the ability to file habeas corpus claims and other cases with U.S. federal courts.

The proposed legislation, sponsored by Sens. Lindsey O. Graham (R-S.C.) and Carl M. Levin (D-Mich.), would instead direct a federal appeals court in Washington to review the decisions of Guantanamo Bay military panels that determine whether a detainee is "an enemy combatant." The measure would, however, allow those panels to use evidence against enemy combatants that was obtained by coercion.

Detainees also could appeal the verdicts of Guantanamo Bay military trials in the same court. No detainee has yet been tried before those "military commissions," whose authority is being challenged in a case that has gone to the Supreme Court.

"We're not going to turn the war on terror over to the judges," Graham said in a conference call with reporters yesterday. He has advocated, instead, for congressional oversight. The legislation would effectively dismiss pending federal habeas cases on behalf of more than 300 Guantanamo Bay detainees.

<http://www.washingtonpost.com/wp-dyn/content/article/2005/12/16/AR2005121601784.html>

Mullin speaks out for Guantanamo pair

The government has a moral obligation to assist two British residents being held in Guantanamo Bay, a former minister has said.

British agents helped the Americans seize the two men and incarcerate them in Guantanamo Bay where they are still detained, Chris Mullin claims.

The former minister for Africa told the Guardian that Britain is therefore morally obliged to help them.

Bisher al-Rawi and Jamil el-Banna were seized in Gambia in 2002 while on a business trip. They were held by British security and intelligence officers for three days before being released but the officers then tipped off the Americans about their whereabouts, Mullin said. And he says the British government should take responsibility for the men's fate.

"It may not have a legal obligation but it has a moral obligation given that we played a part in putting them into Guantanamo Bay. They will rot there until someone pulls their finger out."

The two businessmen have always maintained that British agents were complicit in their abduction in the Gambian capital Banjul.

Mullin, who was sacked from his post as foreign minister after the general election in May, is now backing up the claim.

The two men say they were flying to Gambia to help set up a peanut processing plant.

They are among five British residents held in Cuba who the government says it cannot help because they are not actually British citizens

<http://www.epolitix.com/EN/News/200512/91eccf63-a7a3-45b1-8579-28bb8feb3623.htm>

Report: MI5 colluded with CIA on rendition

LONDON, Dec. 17 (UPI) -- Lawyers in London have accused the government of colluding with the CIA to send a British man to a series of prisons where he was abused.

The lawyers represent Bisher al-Rawi, described as a former student at a top British school currently being held at a detainee center at Guantanamo, Cuba. The allegation raises fresh

questions about British involvement in the U.S. practice of "extraordinary rendition," the Sunday Times of London reported.

Under rendition, prisoners are secretly taken to countries where they may face torture during interrogation.

The British government has come under increasing criticism from human rights groups and political rivals since it was disclosed that CIA-operated planes had landed at British airports dozens of times.

Al-Rawi, 37, is an Iraqi who has lived in England since 1985. He was detained in Gambia three years ago with Jamil al-Banna, a Jordanian who was granted refugee status in England in 2000 -- and both were flown by the CIA to Afghanistan and then to Cuba in March 2003, the newspaper reported.

The two are accused of being associated with al-Qaida and a radical Muslim cleric who has been described as Osama bin Laden's European ambassador, said the Times.

<http://www.sciencedaily.com/upi/?feed=TopNews&article=UPI-1-20051217-21553400-bc-britain-rendition.xml>

Pakistan seeks Guantanamo releases

From correspondents in Islamabad

20dec05

PAKISTAN is seeking the release of seven Pakistani prisoners who are still detained at the US Guantanamo Bay detention centre.

"The latest estimates are that we have around six or seven (Pakistani) prisoners in Guantanamo Bay," foreign ministry spokeswoman Tasnim Aslam said.

"This is a talking point we have with the governments of both United States and Afghanistan and our efforts will continue for their early release," Ms Aslam said.

She did not give an updated figure for Pakistani prisoners in Afghanistan, saying that number kept changing.

Hundreds of Pakistanis were arrested in Afghanistan after the collapse of Taliban regime and nearly 600 have returned home since 2003.

The US Government has also released the bulk of some 60 Pakistanis who were kept as "enemy combatants" at the Guantanamo Bay detention centre in Cuba after the 2001 invasion of Afghanistan by US-led forces.

[http://www.heraldsun.news.com.au/common/story\\_page/0,5478,17618652%255E1702,00.html](http://www.heraldsun.news.com.au/common/story_page/0,5478,17618652%255E1702,00.html)

Terror Suspect's Ordeal in U.S. Custody

The New York Times

December 18, 2005 Sunday

BYLINE: By RAYMOND BONNER; Donald Greenlees contributed reporting from Jakarta for this article, Salman Masood from Islamabad and Lahore, Pakistan, and Muhammad Rusmadi from Lampung, Indonesia.

When Muhammad Saad Iqbal finally got a chance to plead his case to a panel of military officers at the American prison at Guantanamo Bay, Cuba, he insisted that he had nothing to hide.

"If I have committed any crime, I am ready for the punishment," Mr. Iqbal told the officers a year ago, according to a transcript of the hearing. "But I know that I am innocent. That is why I am here."

When he finished his tale of having fallen in with Muslim radicals during a brief visit to Indonesia in late 2001, and having bragged to them about exploding chewing gum, shoe bombs and Osama bin Laden, one member of the tribunal praised him for being "very cooperative, very truthful." Another member told Mr. Iqbal he seemed to have "a very big ego."

United States officials who dealt with his case in Indonesia said they thought that Mr. Iqbal could well be a braggart rather than a terrorist. He had not trained in a camp run by Al Qaeda in Afghanistan, they said.

But nearly four years after he was picked up here in the dead of night and flown to Egypt, Mr. Iqbal remains in American custody at Guantanamo. According to his own testimony and that of former detainees, he has become so desperate during his imprisonment that he has tried at least once to commit suicide.

"He's gone crazy," said Sher Ali Khan, a friend of Mr. Iqbal's in Pakistan who said he was told this by an envoy from the International Committee of the Red Cross after the representatives visited Mr. Iqbal at Guantanamo Bay.

Mr. Iqbal told the military tribunal that he tried to commit suicide on his 191st day at Guantanamo. This followed 92 days of detention in Egypt and a year at the American detention center at Bagram Air Base in Afghanistan, he said.

Mr. Iqbal's experiences shed some light on the plight of terrorism suspects who are arrested and thrown into the shadowy world of secret prisons and no legal rights and held there -- even those who, like Mr. Iqbal, are not considered serious threats.

Born in Pakistan in 1977 and considered by friends and relatives to be a moderate Muslim, Mr. Iqbal was one of the first suspects to be seized by the Central Intelligence Agency overseas after Sept. 11, 2001 and transferred to another country for questioning -- a process known as "rendition" that human rights groups say has led to the use of coercion and torture against detainees. According to the transcript and American officials, he was seized in Jakarta in January 2002 and subsequently transferred to Egypt, where he underwent interrogation.

Mr. Iqbal's story, from honored Koran reader to terrorism suspect, was pieced together from the transcript of his hearing, interviews in Pakistan and Indonesia and the accounts of four American officials who worked on the Iqbal case and agreed to talk about it only on condition of anonymity, because information in the case is classified.

The Pentagon declined to answer any questions about Mr. Iqbal, in line with its policy on detainees.

The basis for Mr. Iqbal's continued detention remains largely secret. United States officials would say only that as with 520 of 558 prisoners that passed through the so-called Combatant Status Review Tribunals at Guantanamo, his designation as an "enemy combatant" had been upheld. And Mr. Iqbal, like countless others here, remains in a legal netherworld that lawyers and human rights advocates say is increasingly leading to suicide attempts and hunger strikes among inmates.

Military officials contend that the detainees are treated humanely and that hunger strikes and suicide attempts are largely theatrical events staged to draw attention to their complaints. The officials discount the idea that the inmates are reacting to the harsh conditions or the open-ended nature of the men's detention.

In January, for example, after 23 Guantanamo detainees tried to hang or strangle themselves, the Pentagon said that only two were "suicide attempts." It called the others "self-injurious behavior incidents." Military officials said there were only four suicide attempts this year, though they did not say how many "self-injurious" incidents had occurred.

But lawyers for some of the detainees say their clients are driven to suicide and hunger strikes by the very conditions the prison has sought to create to force them to talk.

"It's an environment that subjects the prisoner to overwhelming levels of psychological anxiety, isolation, abandonment, terror, despair," said Joseph Margulies, a lawyer who has represented several Guantanamo detainees, but not Mr. Iqbal, who has no lawyer. "That sense of gnawing uncertainty, either it drives the prisoner mad, or it robs him of the most precious commodity, and that is hope."

[On Saturday, The Washington Post quoted government lawyers as saying that the military had moved a prisoner out of his isolation cell at Guantanamo after he said he was trying to kill himself because of "intolerable" conditions. A lawyer for the prisoner, Jumah Dossari, 32, of Bahrain, said Mr. Dossari had tried to kill himself nine times, including an incident in October in which he deeply slashed his arm and tried to hang himself.]

Friends and family members describe Mr. Iqbal as a friendly, somewhat insecure man who had little interest in politics and a habit of making up stories. "He had a childish habit of trying to portray himself as important," said an uncle in Lahore, Pakistan, Muhammad Farooq Said. American intelligence officers who interviewed Mr. Iqbal in Indonesia after his detention concluded that he was a "blowhard," as one senior American official put it. Another said, "He wanted us to believe he was more important than he was."

The oldest son of an Islamic scholar who was an adherent of the severe, ultraconservative Wahhabi branch of Islam, Mr. Iqbal spent his earliest years in Saudi Arabia where his father studied and taught. The family moved to Indonesia where, by the age of 7, one of his boyhood friends said, Mr. Iqbal had memorized the entire Koran.

As a teenager back in Pakistan, he won many awards for reciting the Koran. But he regularly went to Western movies, wore blue jeans and other Western clothes and did not think women should have to cover themselves, said Mr. Khan, who was one of Mr. Iqbal's closest friends. Mr. Khan said his friend condemned the Sept. 11 attacks. "He said that the prophet would not approve," Mr. Khan said.

More than a year before the Sept. 11 attacks, Mr. Iqbal began planning to go to Indonesia, Mr. Farooq said. After his father's death in Pakistan, he wanted to travel to Jakarta to inform his stepmother in person that her husband had died. Mr. Farooq gave him \$1,000 and a return ticket.

What happened next is known from United States officials who dealt with Mr. Iqbal and from his own statements to the tribunal at Guantanamo.

In Jakarta, he fell in with "some people who were not good," Mr. Iqbal told the tribunal. "Maybe I can say they were terrorists." They were members of the Islamic Defender Front, he said, and he gave the tribunal their names, including that of the organization's president.

He said the men talked about plans to blow up the American Embassy and other terrorist acts. The organization is not banned in Indonesia, nor is it connected to any terrorist attacks. What got Mr. Iqbal into trouble, American officials said, was that he told the Indonesian radicals that bombs could be hidden in shoes. His comments were picked up by Indonesian intelligence, which shared them with the Central Intelligence Agency here.

At first, the C.I.A. did not take Mr. Iqbal's comments seriously enough to ask the Indonesians to pick him up. Then, on Dec. 22, 2001, Richard C. Reid tried to blow up a jetliner with a bomb hidden in his shoes. With that, American officials concluded, "Maybe we ought to talk to this guy," as one of them put it in an interview. It would still be three weeks before he was picked up.

After questioning Mr. Iqbal, the intelligence officers were still not convinced he posed a threat. They thought he would be held for a few days, "then booted out of jail," said an American official. The official said they did not even think it would be necessary to deport him. But the Indonesians did not want him, the official said, so he was sent to Egypt.

At Guantanamo, Mr. Iqbal appears to have been unusually isolated. Other inmates distrusted him because he had not trained in Afghanistan, said Mamdouh Habib, a fellow inmate. Mr. Habib said that at Guantanamo, Mr. Iqbal pleaded, "'Talk to me, please talk to me.'"

"'I feel depressed,'" Mr. Habib, who was in Egypt with Mr. Iqbal, said he recalled him saying. "'I want to talk to somebody. Nobody trusts me.'"

"He was fully crazy," Mr. Habib said. "He doesn't know where he is anymore."

**Alleged Al Qaeda Suspect Is Arrested**  
Ties to N.E. unclear; extradition possible  
Boston Globe  
December 19, 2005

By Raja Mishra, Globe Staff

Canadian national Abdullah Khadr allegedly armed Al Qaeda with bullets, rocket-propelled grenades, mortars, and explosive chemicals that were used against US troops fighting in Afghanistan, according to a criminal complaint filed by Boston-based federal prosecutors. The US attorney's office in Boston yesterday announced that the Royal Canadian Mounted Police had arrested Khadr, 24, Saturday in Toronto, at the request of the US government.



Prosecutors refused to disclose what connection, if any, Khadr had to the New England area. Typically, criminal charges are linked in some fashion to the jurisdictions where they are filed.

"It was a proper filing," said Samantha Martin, a spokeswoman for Michael J. Sullivan, the US attorney in Boston. "That's all I can say."

The US attorney's office will request that Canadian authorities extradite Khadr to Boston to face trial in US District Court here, Martin said.

The charges add to a lengthy and complex string of investigations, charges, and incidents linking Khadr's family to Islamic terrorism.

His father -- Ahmed Khadr, a suspected Al Qaeda financier -- was killed in a shoot-out with Pakistani authorities in 2003. His brother Omar, 19, is being held prisoner at the US naval base in Guantanamo Bay, Cuba, because US authorities say he killed a US soldier in Afghanistan. Canadian authorities are investigating his mother, Maha, and older sister Zaynab, on suspicion that they worked as Al Qaeda couriers.

Khadr himself had recently returned to Toronto from Pakistan, where US and Pakistani authorities had held and questioned him for more than a year. Upon his return earlier this month, he told Canadian reporters that he had been tortured in Pakistan. He also denied any connection to Al Qaeda.

His Canadian attorney, Dennis Edney, said yesterday that Khadr's arrest was unwarranted.

"US authorities, having participated in the detention and abuse of Mr. Khadr for the past 18 months in a Pakistani prison and having failed to persuade him to assist the US in giving evidence against persons of interest to the US, people whom he didn't know, now wish to extradite him," Edney said.

Though Khadr has publicly maintained his innocence, the charges filed by the federal prosecutors in Boston appear based in significant part on his confessions.

According to an affidavit filed in US District Court, during a six-month period in 2003, Khadr allegedly purchased \$20,000 worth of AK-47 ammunition, rounds for Russian-made machine guns, rocket-propelled grenades, and 82-millimeter and 120-millimeter mortar rounds. The complaint states that Khadr told FBI Joint Terrorism Task Force agents that he was ordered to buy the weapons by his father, who was working with fugitive Al Qaeda leader Osama bin Laden. Khadr told the FBI agents that he took the weapons to a high-level Al Qaeda operative, according to prosecutors. Khadr estimated that half the equipment was used for training, the rest to fight US forces in Afghanistan.

The complaint also alleges that Khadr handed over two shipments of hydrogen peroxide, a chemical used in land mines, to the same Al Qaeda operative. Khadr allegedly told FBI agents that the mines would be deployed against US troops in the Burmil region of Afghanistan.

Khadr is charged with possessing a destructive device in furtherance of a crime of violence and conspiracy to possess a destructive device in furtherance of a crime of violence. Each charge carries a sentence of up to life in prison and a \$250,000 fine upon conviction.

Khadr has been front-page news in Canadian papers in recent weeks. On Dec. 8, he gave a press conference accusing US, Canadian, and Pakistani authorities of torturing him while he was held in Pakistan.

"I was never in Al Qaeda. And I do not support some of their doings," he told Canadian reporters. "I support that they want a Muslim country . . . I do not agree with their way of killing civilians."

And he proclaimed his patriotism, saying: "I would defend Canada probably more than most Canadians would themselves. It is my country."

But, the complaint filed against Khadr said, he had been primed for violence by Al Qaeda beginning in his teenage years.

During four months in the mid-1990s, prosecutors say, he underwent specialized explosives training at an Al Qaeda training camp in Afghanistan. And in 2000, he sought to procure AK-47s, C-4 explosives, surface-to-air missiles, and antitank missiles for use against the Northern Alliance, the Afghan rebel group then fighting the Taliban regime in Afghanistan.

U.S. moves to trial of 2 more detainees

(b)(6)

**From:** (b)(6) DoD OGC  
**Sent:** Tuesday, April 11, 2006 6:38 PM  
**To:** (b)(6)

**Subject:** GTMO Bird - Errachidi; Trial of Kuwaiti ex-detainees; Hicks moved; Khadr move; VT lawyers represent GTMO detainees; DOD letter to ACLU on Abu G photos; Bahraini detainees; al Dossari; Commissions; Cully Stimson, DASD-DA; al-Marri

All:

Below is today's GTMO Bird.

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(b)(6)

DoD Office of General Counsel (Legal Counsel)

(b)(2)

(fax)

London chef in Guantanamo hunger strike

Evening Standard (London)

April 10, 2006 Monday

BYLINE: LEE GLENDINNING

A LONDON chef being held at Guantanamo Bay is on hunger strike in protest at his detention. Ahmed Errachidi - who is accused of being an al Qaeda militant by the US authorities - claims he is being tortured by being force-fed.

The 38-year-old has begun starving himself in protest at his treatment and the British Government's refusal to intervene on his behalf.

In a statement through his lawyer he says: "Four years ago, the British came to see me in Bagram (Afghanistan) and promised they would investigate my situation and I would be free within weeks. I co-operated with them fully.

"Now, four years later, I am being tortured in Guantanamo.

The Americans say I was in Afghanistan in July 2001 - when I was cooking eggs at the Westbury Hotel.

"Enough is enough. I have the right to protest, peacefully. I am not harming them [the Americans]. I must be allowed to demonstrate peacefully. I do not want to die. I want to live and I am not living here."

Errachidi was born in Morocco but had been living in London for 18 years. He is accused of attending al Qaeda training courses at the Al Farouq camp near Kandahar. It was at this camp that four of the 9/11 hijackers are alleged to have trained. Employment records show Errachidi was working in Mayfair as a chef at the time.

Of his decision to go on a hunger strike, he writes: "I will not die, I will only strike until I can no longer stand under my own strength. But I will do it for 40, 50, 60, perhaps 70 days.

"I forbid the US military from forced 'torture feeding' on me. I urge them to leave me alone until I can no longer stand."

He describes the indignities and ordeal of being force-fed and adds: "Will the US military, and the world, allow me to protest peacefully, or will I be subjected to torture feeding?"

"All I ask is for justice. This is a hunger strike to protect life, a struggle for the truth."

Former Kuwaiti Gitmo detainees on trial

UPI

April 11, 2006 Tuesday 8:54 AM EST

DATELINE: KUWAIT CITY, April 11

Lawyers for five former Guantanamo defendants propose that transcripts of their interrogations should not be admissible evidence in a trial underway in Kuwait. Defense lawyer Ayedh al-Azemi told the court, "The transcripts do not bear signatures of the U.S. officers nor the defendants and thus should not be admissible as legal evidence by the court."

The five men stand accused of fighting against U.S. forces in Afghanistan for the former Taliban regime.

If convicted, the quintet faces a minimum of three years in jail.

The Arab Times reported Monday that defense lawyers argued that the men had not committed or been convicted of any crime in Kuwait and had not transgressed laws.

Azemi told journalists that the interrogation transcripts underpinning the Kuwaiti case were "not a proper investigation," but rather, "simple reports that included neither questions nor answers" against Abdulaziz al-Shimmari, Adel al-Zamel, Mohammad al-Deehani, Saad al-Azemi and Abdullah al-Ajmi.

Kuwaiti Judge Hmoud al-Mutawa abstained from ruling during the April 9 session and observers believe that he will make his opinions public only when delivering his verdict.

The five men were repatriated to Kuwait Nov. 4 after nearly four years in the U.S. holding facility in Camp Delta in Guantanamo Bay, Cuba.

Hicks in solitary 'to break his will'

By PHILLIP COOREY

12apr06

DAVID Hicks has been thrown back into solitary confinement in what his lawyer says is an attempt by his captors to break his will.

Major Michael Mori said the move was aimed at pressuring Hicks to end his resistance to being tried by the controversial U.S. military commission process.

"It's not a disciplinary thing," he said. "There's no logical reason other than to break him."

Attorney-General Philip Ruddock became aware of the claims yesterday and his spokeswoman said an "urgent cable" had been sent to Washington seeking confirmation and an explanation.

Major Mori, who is in Adelaide with Hicks's U.S. civilian lawyer, Joshua Dratel, said he only learned of the development two days ago.



Hicks, who has been transferred to an enclosed cell, is allowed out for just 30 minutes at night every 24 hours, and has no access to sunlight. The terrorist suspect is fighting his impending trial by military commission through the U.S. civilian courts.

His trial has been put on hold pending a U.S. Supreme Court decision due in June. But it is likely the delay could last until 2007.

Hicks is also waiting for the outcome of a British Government appeal against a UK court decision to grant him British citizenship.

If successful, Hicks hopes the British Government would secure his release from Guantanamo Bay, as it did other British inmates.

Captured in Afghanistan in late 2001 and sent to Guantanamo Bay, Hicks spent 16 months during 2003 and 2004 in solitary confinement. During this period, he spent eight months with no access to sunlight.

Major Mori said the first stint in solitary confinement reduced Hicks to "a broken man".

Hicks's father, Terry, shared Major Mori's suspicions and called the tactic disgusting.

"Maybe the Americans are under a bit of pressure with what the defence team is doing with the process, so they're taking it out on David," Mr Hicks said.

The Pentagon could not be contacted yesterday.

[http://www.theadvertiser.news.com.au/common/story\\_page/0,5936,18791529%255E911,00.html](http://www.theadvertiser.news.com.au/common/story_page/0,5936,18791529%255E911,00.html)

Attorneys satisfied with teen's new accommodations at Guantanamo

BY CAROL ROSENBERG

Knight Ridder Newspapers

GUANTANAMO BAY NAVY BASE, Cuba - In an about-face, defense attorneys on Friday withdrew a request to have a war-court judge examine prison-camp conditions of an alleged teenage terrorist from Toronto.

Omar Khadr, 19, had complained in his Military Commission that he was punitively moved to isolation from a barracks-style communal prison camp.

By Friday, the youth sat smiling as his civilian and military defense attorneys told Marine Col. Robert Chester that the issue was resolved through private talks.

"We are satisfied with his accommodations now," Marine Lt. Col. Colby Vokey said after the hearing. "We are going to closely monitor how Omar is being treated."

Chester's willingness, as presiding officer, to hear evidence on the Canadian teen's conditions raised the possibility of a first-ever war-court exploration of operations at the Pentagon's detention center - located up the road, on a bluff overlooking the Caribbean. Instead, it led the prison camp to declare that Khadr's move to a single-occupancy cell was routine procedure. Unclear Friday was whether or when the teen would rejoin the less restrictive prison facilities.

Khadr allegedly threw a grenade during a July 2002 firefight in Afghanistan that fatally wounded a Special Forces medic.

Separately Friday, a Yemeni captive who allegedly made propaganda films for Osama bin Laden once again boycotted his pretrial hearings, during which an Army major made a plea to let the man represent himself.

Even "Slobodan Milosevic, may he rest in peace, had the right of self-representation," Army Maj. Tom Fleener argued at Ali Hamza Bahlul's Military Commission.

Milosevic, the former Serbian strongman, died last month of a heart attack at The Hague while awaiting his international war-crimes trial but not before he lost the right to act as his own attorney for health reasons.

Bahlul, 37, is the first of several captives seeking to serve as his own attorney at the first U.S. war-crimes tribunals since World War II. They are arguing, essentially, that it's unfair to expect a U.S. officer to assist an enemy with a free, full and fair trial.

Pentagon rules so far prohibit self-representation, but Bahlul's presiding officer, Army Col. Peter Brownback, agreed to consider a plea on behalf of the man who has already admitted that he is a member of al-Qaida.

In a new twist at the evolving war-crimes court, some private attorneys in Wyoming and a civilian group called the National Institute of Military Justice filed briefs in Bahlul's

behalf, arguing that so-called prose representation is a bedrock U.S. constitutional right and also fundamental to international law.

It was the first filing of so-called amicus briefs at the war court President Bush ordered created in late 2002.

"Don't let this place become Star Chamber-esque," said Fleener, who was mobilized from a federal public defender's office in Wyoming.

Brownback will rule later.

At issue is whether and how the Pentagon can compel a captive at Guantanamo to accept a U.S. military defense lawyer, whose role will be required as the government is shielding some evidence from the accused.

Fleener said at his hearing Thursday morning that another captive - Saudi Ghassan al-Sharbi, in his 20s - is also refusing the services of his defense counsel. Sharbi, a 2000 graduate of Embry-Riddle Aeronautical University, makes his war-court debut later this month.

On Thursday, Ethiopian exile Binyam Muhammad, who lived in London for seven years, insisted that he is competent to run his own defense - with military and civilian lawyers guiding him. He claims through a British-American civilian lawyer that the United States sent him to Morocco for interrogation on his way to Guantanamo, where interrogators got him to confess to anything they asked because they cut his genitals with a scalpel.

"I have the answers," the 27-year-old declared dramatically at his court hearing, pointing to his Pentagon-approved defense team. "You can't get the answers about me from them ... even if you take them to Morocco and razor-blade them."

<http://www.grandforks.com/mld/grandforks/news/world/14292930.htm>

Vt. lawyers represent Guantanamo detainees

April 10, 2006

BURLINGTON, Vt. --Bob Rachlin first heard from Djamel Ameziane when he got a postcard in early 2005. The note from the 38-year-old Algerian was in French, which Rachlin speaks. Ameziane said he wanted a lawyer.

Ameziane is one of 490 people deemed enemy combatants whom the U.S. government is holding in a military prison at Guantanamo Bay, Cuba.

Rachlin, 69, senior director at Vermont's largest law firm, has spent much of his career representing business clients. His firm's offices in downtown Burlington have spectacular views of Lake Champlain.

Rachlin and two St. Johnsbury lawyers -- David Sleight and Robert Gensburg -- joined a national group of lawyers who have volunteered to represent people the Bush administration has labeled "the worst of the worst."

"This is not a question of whether they deserve a lawyer," he said. "This is a question of whether the system should be allowed to function." By protecting the integrity of the justice system, "We're protecting our fellow citizens, as well as these people."

Court papers filed by the government say Ameziane stayed with Taliban fighters in Kabul, Afghanistan and illegally traveled with them into Pakistan. But he has not been formally charged with any crime.

Rachlin has replied in his own court filings that his client does not belong to al-Qaida or the Taliban, and was swept up as he tried to leave a country torn by war.

The U.S. Supreme Court ruled in 2004 that the Guantanamo detainees are entitled to legal representation and can challenge their detention.

The New York-based Center for Constitutional Rights began recruiting volunteer lawyers.

Rachlin said he got an e-mail about the effort in late 2004 and agreed to participate.

Sleight said he joined the effort because of what he saw as an affront to the due process guaranteed under the U.S. Constitution.

"It's fundamentally contrary to what we aspire to be as a country," Sleight said. "This is one of the reasons I'm a lawyer."

Rachlin said he had been to Guantanamo four times and expects to return this month. He had to have an extensive FBI background check before being allowed on the base. When he wants to view his client's file, he has to travel to a secure government site near Washington.

During visits with his lawyer at Guantanamo, Ameziane's hands were free but his legs were chained to the floor, Rachlin said.

"He would describe incidents of maltreatment he had received," Rachlin said. "Incidents of beatings. He's talked about having the Quran thrown around, or being kept in cold conditions or with lights on so he couldn't sleep, or being punished for meeting with his lawyer -- me." [http://www.boston.com/news/local/vermont/articles/2006/04/10/vt\\_lawyers\\_represent\\_guantanamo\\_detainees/](http://www.boston.com/news/local/vermont/articles/2006/04/10/vt_lawyers_represent_guantanamo_detainees/)

ACLU: US authenticates Abu Ghraib images

RAW STORY <<http://rawstory.com>>

Published: Tuesday April 11, 2006

The American Civil Liberties Union and the New York Civil Liberties Union today released the first official U.S. government authentication of images of detainee abuse by U.S. forces at Abu Ghraib prison in Iraq. The Department of Defense was forced to turn over the information as well as one additional image as a result of a Freedom of Information Act lawsuit filed by the ACLU in 2004.

From their release to RAW STORY <<http://rawstory.com>> .

Significantly, in agreeing to the release and authentication of the notorious images, the Department of Defense did not contest a district court ruling that the release of these images is crucial to understanding the command failures that led to the abuse. The ACLU said that this ruling would therefore apply to other images of detainee abuse withheld on the same legal grounds as the Abu Ghraib images.

"This is a moral victory in every sense, but the battle is not over until the top-ranking officials who are truly responsible for these abuses are held accountable," said Anthony D. Romero, Executive Director of the ACLU. "These images convey on a visceral level the impact of the government's policies. Now that the government has released these images, it should focus on the real issue, which is how and why these abuses were allowed to happen in the first place."

The government also informed the court today that it is withholding an additional 29 photos and two videos relating to detainee treatment and that it will file declarations in support of its withholding of these images by April 25, 2006. Details regarding the specific content of these additional images are unknown.

The authentication released today identifies 73 photographs and three videotapes depicting detainee abuse, provided by Sergeant Joseph Darby to the Army's Criminal Investigation Command. Seventy-three of the images are available from the online magazine Salon.com. One additional image from the Darby trove, with individually identifying details deleted, was also released. It depicts two men in orange jumpsuits standing side by side.

"Instead of continuing to shield wrongdoers from public scrutiny, the government now must also disclose other detainee abuse images and policy documents in its possession," said Amrit Singh, an attorney with the ACLU. "The public has an undeniable right to examine these documents especially because they shed light on who is ultimately responsible for the widespread abuse of detainees."

Attorneys for the government had argued that turning over visual evidence of abuse would violate the United States' obligations under the Geneva Conventions, but the ACLU, supported by experts in international law, said that obscuring the faces and identifiable features of the detainees would address any potential privacy concerns.

In ordering the release of the images, Judge Alvin K. Hellerstein held that "Publication of the photographs is central to the purposes of FOIA because they initiate debate, not only about the improper and unlawful conduct of American soldiers, 'rogue' soldiers, as they have been characterized, but also about other important questions as well -- for example, the command structure whose failures in exercising supervision may make them culpable along with the soldiers who were court-martialed for perpetrating the wrongs."

The images released by the Department of Defense come in response to a lawsuit filed by the ACLU to force government compliance with a Freedom of Information Act request filed by the ACLU, the Center for Constitutional Rights, Physicians for Human Rights, Veterans for Common Sense and Veterans for Peace. The New York Civil Liberties Union is co-counsel in the case. Additional documents continue to be turned over by the government in adherence to a court order entered by Judge Hellerstein of the U.S. District Court for the Southern District of New York. Portions of the documents are redacted and the ACLU continues to aggressively push

for the release of much of the withheld information, including documents from the Central Intelligence Agency, which to date has steadfastly refused to disclose even the existence of certain documents.

To date, more than 100,000 pages of government documents have been released in response to the ACLU's FOIA lawsuit. The ACLU has been posting these documents online at [www.aclu.org/torturefoia](http://www.aclu.org/torturefoia). The documents reveal that harsh interrogation techniques were used indiscriminately in Iraq, Afghanistan and Guantánamo Bay, and ultimately led to cases of abuse and torture.

In March 2005, the ACLU and Human Rights First filed a lawsuit charging Defense Secretary Donald Rumsfeld and other top officials with direct responsibility for the torture and abuse of detainees. Many of the claims in the Rumsfeld lawsuit were based on information disclosed through the ACLU's FOIA litigation. Further information about the case, *Ali v. Rumsfeld*, is online at [www.aclu.org/rumsfeld](http://www.aclu.org/rumsfeld)

The government's letter authenticating the Abu Ghraib images posted on Salon.com is at: [www.aclu.org/safefree/torture/249801gl20060411.html](http://www.aclu.org/safefree/torture/249801gl20060411.html).

The text of the proposed order relating to the 29 photos and two videos to be signed by Judge Hellerstein is available at: [www.aclu.org/safefree/torture/249811gl20060411.html](http://www.aclu.org/safefree/torture/249811gl20060411.html).

The additional image not currently at Salon.com is available at: [www.aclu.org/safefree/torture/24982res20060411.html](http://www.aclu.org/safefree/torture/24982res20060411.html).

[http://www.rawstory.com/news/2006/ACLU\\_US\\_authenticates\\_Abu\\_Ghraib\\_images\\_0411.html](http://www.rawstory.com/news/2006/ACLU_US_authenticates_Abu_Ghraib_images_0411.html)

#### Government Authenticates Photos From Abu Ghraib

By Josh White <<http://projects.washingtonpost.com/staff/email/josh+white/>> Washington Post Staff Writer

Tuesday, April 11, 2006; Page A16

Nearly two years after graphic photographs of detainee abuse at the Abu Ghraib prison in Iraq were published worldwide, the U.S. government yesterday for the first time authenticated 74 of the images as being part of the original compact disc that was turned over to Army investigators in January 2004.

Responding to a federal court order as part of a Freedom of Information Act lawsuit filed by the American Civil Liberties Union in New York, Justice Department lawyers wrote in court papers that the previously published images "are identical" to those that investigators have used to look into abuse at the prison. Included among the images are such photos as Pvt. Lynndie R. England holding a leash attached to a naked detainee's neck, a detainee with female underwear placed on his head, detainees shackled to cell doors and beds in painful positions, and others piled in a naked pyramid. The iconic photograph of a detainee standing on a cardboard box, cloaked and hooded with wires coming from his hands, is also among the pictures.

The government, however, did not authenticate numerous photographs of soldiers using dogs to intimidate detainees, though military prosecutors have used such images in open court while pursuing cases against the soldiers.

Many of the photos, or representative samples of them, have been published in The Washington Post and on [washingtonpost.com](http://washingtonpost.com) over the past two years. Salon.com, an Internet magazine, recently published the photographs on its Web site after obtaining what appeared to be the Army's compilation of abuse photos used to prosecute low-ranking soldiers. The government also authenticated three short video clips. The original disc was given to Army investigators by a soldier concerned by the abuse that he saw in photos.

Avoiding an actual government release of the images, Justice Department lawyers instead authenticated photographs that were already up on the Salon Web site, using court papers to refer to the images by number. ACLU lawyers were also provided with one additional photograph -- which appears to be two detainees with their arms around each other and their faces edited out of the image -- and the government declined to provide an additional 29 photographs that ACLU lawyers said they are going to fight to see.

None of the photographs the government authenticated indicates any unknown instances of abuse. Hundreds of other photos -- seized from soldiers' computers in Iraq -- appear to show abuse but have not been authenticated by U.S. officials.

"Our aim was to get this information into the public domain, and the government's attempts at withholding this information have proved futile," said Amrit Singh, an ACLU lawyer pursuing the lawsuit. "This is a victory for us because information to which the public is entitled has been released into the public domain. The government has fought this tooth and nail." Defense Department officials, including top generals, have opposed releasing the images, arguing that they could set off major unrest in Muslim nations. The images a federal judge in New York ordered the government to release, it turns out, largely were the same images that already have been published.

<http://www.washingtonpost.com/wp-dyn/content/article/2006/04/10/AR2006041001392.html>

Bahrainis still being tortured in Guantanamo  
From Hemu Gorde (Our correspondent)

11 April 2006

MANAMA - The three Bahraini detainees at Guantanamo Bay are still being tortured, and with the fate and the date of the verdict on the Detainee Treatment Act is not clear and since the legal battle may take years considering the slow legal process in the US, diplomatic dialogue would be the best possible way for a comparatively early release, lawyers representing the detainees said here yesterday.

In November 2005, the US authorities released only three Bahraini detainees - Shaikh Sulman bin Ibrahim Al Khalifa, Adel Kamel Haji and Abdulla Majid Al Nuaimi - as free men after a series of negotiations by the kingdom's government with the concerned US authorities, while holding the other three Bahrainis at Bay prison in Cuba.

Addressing a Press conference organised by the Amnesty International (Bahrain) in the presence of its representative Nabeel Rajab, the US lawyers also noted that the remaining three Bahraini detainees - Juma Mohammed Al Dossary, Isa Al Murbati and Salah Abdulrasool Al Balooshi - are undergoing extreme mental and physical torture, so much so that Al Dossary has attempted suicide attempts several times while Isa had been forced to end his hunger strike to avoid further unbearable physical torture.

The three lawyers - Joshua Colangelo-Bryan, Mark Sullivan and Christopher G. Karagheuzoff - from the New York-based Dorsey and Whitney law firm, who are fighting the cases of the three Bahraini detainees said that the US government is putting strong obstacles in the process of the release of their clients while the military is continuing with its torture of the prisoners there.

They said that the "recent changes in the law prevent the detainees from fighting their cases in the court of law in the US, and that they would only be tried by the military.

However, none of the detainees has ever been tried and the charges against them are not released by the military.

At this point, the lawyers are left only with fighting to establish whether the changes are legal or not. And it will probably take a long time."

[http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/middleeast/2006/April/middleeast\\_April280.xml&section=middleeast&col=](http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/middleeast/2006/April/middleeast_April280.xml&section=middleeast&col=)

Bay three face long struggle

By Kanwal Tariq Hameed

MANAMA

THE only way for Bahraini detainees at Guantanamo Bay to be freed soon is by diplomatic measures, the closing down of the camp or mass releases of prisoners, their lawyers said yesterday. It would take years to secure their rights and argue their cases at US federal courts, said New York-based Dorsey and Whitney lawyers Mark Sullivan, Joshua Colangelo-Bryan and Christopher Karagheuzoff.

They were speaking at a Press conference organised by Amnesty International Bahrain, held at the Bahrain Bar Society in Adliya yesterday.

The lawyers said Bahrain's government, which secured the release of three detainees, should call for the closure of the camp to ensure the remaining three do not have to wait longer.



Bahrainis Salah Abdulrasool Al Blooshi, 24, Isa Abdulla Al Murbati, 41, and Juma Mohammed Al Dossary, 32, are approaching their fifth year of incarceration without trial at the infamous prison camp in Cuba.

They spent seven hours trying to convince Mr Al Dossary not to make another suicide attempt as a result of indefinite detention and his confinement conditions during their last visit to the prison, said Mr Colangelo-Bryan.

Legal proceedings in the US are tied up in court battles over "whether Guantanamo detainees have rights", including their right to a trial in US federal courts.

The potential outcome in US courts looks favourable for detainees, but the wait for court proceedings could be a matter of years - which is "intolerable," said Mr Sullivan.

They are hoping the Bahrain government will echo the call of other close US allies for the ultimate closure of the prison camp.

The lawyers will be meeting with Interior, Justice and Foreign Affairs ministry officials as well as the families of those still detained and released detainees.

"The reason for our visit is to impart to the Bahraini people a sense of urgency for the release of the remaining three detainees at Guantanamo Bay," said legal team head Mr Colangelo-Bryan.

"We know the government of Bahrain knows how serious the issue is," he said.

The lawyers hope to convey a greater sense of urgency by sharing with government information about their visits with the Bahraini detainees.

"While we might (eventually) prevail in the courts, it is a high price for Juma, Salah and Isa to pay, waiting for the courts," said Mr Sullivan.

The Supreme Court decision regarding whether detainees can have their cases heard in US district courts is expected to be made in June this year, said Mr Sullivan.

Even if the US Supreme Court rules in favour of the detainees' right to have their cases tried in US federal district courts, "it's a very long road", Mr Karagheuzoff added.

After four years of court battles, the question of detainees' right is still pending, said Mr Colangelo-Bryan.

"Realistically, it could be years before the courts decide whether the human beings at Guantanamo have any rights at all," he said.

The most promising avenues for the release of remaining detainees at Guantanamo Bay are through diplomatic measures, the closing down of the camp or mass releases of prisoners, said Mr Colangelo-Bryan.

"Certainly all of the lawyers for Guantanamo detainees would hope that it closes and those detainees would be released to their home countries.

"We would hope that the government of Bahrain and any other country closely allied to the US would continue to call for the closure of Guantanamo.

"It is politically untenable to maintain Guantanamo and (for other countries) to have good relations with the US," he added.

The lawyers wrote a letter to the Bahrain Foreign Affairs Ministry informing them of Mr Al Dossary's suicide attempts and feelings of hopelessness, and were assured that it was intent on securing the detainees release, Mr Colangelo-Bryan said.

"We are grateful for the work it did on behalf of our three clients that are at home and hope for a similar agreement between the two very close allies."

Mr Al Dossary has tried to kill himself 12 times, according to the US military and is thought to have attempted to slit his own throat as recently as last month.

Mr Al Murbati has come off his hunger strike after he was strapped to a restraint chair and force-fed a nutritional mixture including a laxative twice a day for four days earlier this year, said Mr Karagheuzoff.

Mr Al Blooshi, "a gentle soccer fan who wants to be a teacher", should have been the first person to leave for Bahrain, said Mr Sullivan.

"He is a classic case of an innocent person being in the wrong place at the wrong time."

The three Bahrainis released from Guantanamo Bay on November 5 last year are Shaikh Salman bin Ebrahim Al Khalifa, 27, Abdulla Majid Al Nuaimi, 24, and Adel Kamel Hajee, 41.

<http://www.gulf-daily-news.com/Story.asp?Article=140539&Sn=BNEW&IssueID=29022>

Suicidal Detainee's Condition A Mystery

By Josh White <<http://projects.washingtonpost.com/staff/email/josh+white/>> Washington Post Staff Writer

Saturday, April 8, 2006; Page A15

Lawyers for a suicidal detainee held at Guantanamo Bay, Cuba, believe that their client tried to kill himself again by slashing his throat sometime over the past few weeks but say U.S. government officials have refused to answer any questions about his condition.

Jumah al-Dossari, a Bahraini national captured in 2001, has tried to take his own life at least 10 times in his four years at the U.S. detention facility, according to military officials. One of the attempts came during a visit by an attorney, who found him hanging from a noose in a bathroom with a deep gash in his arm.

Dossari and his attorneys have said the attempts are a statement that the conditions and indefinite detention have left him desperate.

The attorneys say other lawyers visiting clients at Guantanamo Bay in late March heard that Dossari had slit his throat and nearly died. Declassified notes obtained by Dossari attorney Joshua Colangelo-Bryan also record the suicide attempt.

Despite weeks of trying to determine Dossari's condition, Colangelo-Bryan said yesterday, he has not heard from the Justice Department, which represents the Pentagon in detainee matters. A Justice spokesman referred questions to the Defense Department.

"I'd like to know if he's alive," Colangelo-Bryan said. "I think it underscores the fact that the government does not believe that it has to play by any rules at all."

Navy Cmdr. Robert Durand, a spokesman for Joint Task Force Guantanamo, said yesterday that there has been one suicide attempt at the facility so far this year -- on March 11 -- and that the detainee is "clinically stable." But Durand would not identify him.

Apparently referring to Dossari, Durand noted that a single detainee accounts for 12 of the 39 suicide attempts at Guantanamo Bay since it opened in 2002. No detainee has died in custody there.

Lawyers blame the Detainee Treatment Act, enacted a few months ago, for their lack of information about clients. The government has argued that the law severely limits access to federal courts for Guantanamo detainees, and hundreds of habeas corpus cases in U.S. courts have been held up while federal judges weigh the law's impact.

Dossari, who speaks some English, has long claimed he is innocent and is being held improperly, though a military tribunal -- relying on classified evidence -- has determined he is an enemy combatant. According to recently released documents from Guantanamo Bay, government officials believe he was helping al-Qaeda and the Taliban in Afghanistan in late 2001, shortly before he was arrested at the Pakistani border.

Before his trip to Afghanistan, Dossari lived in the United States on a visa and was an imam at a mosque in Bloomington, Ind., according to military records. Federal agents allege that Dossari was recruiting for al-Qaeda and left shortly after the Sept. 11 terrorist attacks. The only charges levied by the military relate to his allegedly being a cook for enemy forces at Tora Bora in Afghanistan, where U.S. troops fought a fierce battle with al-Qaeda and the Taliban in 2001. Dossari denies being there or being an al-Qaeda member.

<http://www.washingtonpost.com/wp-dyn/content/article/2006/04/07/AR2006040701723.html>

Miami Herald

April 11, 2006

Reporter's Notebook

War-Crimes Proceedings Open With Lawyer's 'Sorry'

A prosecutor apologized to a Supreme Court justice, military judges differed on culturally appropriate attire and artists' sketches had a few surprises.

By Carol Rosenberg

GUANTANAMO BAY NAVY BASE, Cuba -- Oops. The Pentagon's chief prosecutor opened the latest installment of the military commissions for alleged war criminals here by misquoting a U.S. Supreme Court justice -- and used the closing news conference to issue an apology.

On April 4, Air Force Col. Moe Davis built his remarks around the statement "this is not a war, at least not an ordinary war" and five times pointedly attributed the quote to Justice Steven G. Breyer during Supreme Court arguments on March 28.

The Pentagon's prosecutor went so far as to chastise the Clinton appointee with this: "When al Qaeda attacked on Sept. 11 and murdered 3,000 of our fellow citizens on our soil, that was an act of war."

In fact, Breyer was characterizing a challenge brought by detainee lawyers -- who argue that the format for the first U.S. war-crimes tribunals since World War II skirted both Congress and international treaty obligations.

What Breyer said was this:

"I take their argument as saying, 'Look, you want to try a war crime. You want to say this is a war-crimes tribunal. One, this is not a war, at least not an ordinary war. Two, it's not a war crime, because that doesn't fall under international law. . . .'"

By April 7, Davis used another news conference to apologize to the justice.

"I didn't intend it as an insult to Mr. Breyer," he said, then blamed the news media.

Davis said he "didn't rate" a seat at the Supreme Court arguments, so he read a news agency account -- not the rush transcript issued soon after the 90-minute session on March 28.

Count Dracula

The Guantánamo captive named Binyam Muhammad reads news reports, too.

Muhammad, who allegedly discussed dirty bombs with José Padilla, a one-time Broward County resident, in Pakistan, argued he is a victim of mistaken identity.

"Call me Count Dracula," the 27-year-old British-educated Ethiopian exile suggested to the Marine colonel presiding at his case, who addressed him as "Mr. Muhammad."

In February, Davis likened Guantánamo captives and their attorneys to vampires hiding from the harsh glare of Pentagon justice.

"Remember if you dragged Dracula out into the sunlight he melted?" the chief prosecutor told reporters. "Well, that's kind of the way it is trying to drag a detainee into the courtroom."

Muhammad's lawyers said they included commission news articles in his case reading material.

Fashion flap

The latest commissions also illustrated how one captive's clothing may be culturally appropriate -- and another's an insult.

Marine Col. Ralph Kohlmann, the presiding officer, cautioned Muhammad's lawyers that commissions, or quasi-jurors, may be prejudiced by Ethiopian attire:

The man who alleges he was brutalized with a scalpel during interrogation in Morocco walked into his hearing last week in a traditional Pakistani Muslim tunic -- dyed fluorescent orange, like captive jumpsuits.

Commission rules require "business casual attire or, if an accused desires, culturally equivalent attire."

Lawyers for Muhammad said he considers his clothing "culturally appropriate."

On Jan. 11, however, another presiding officer, Marine Col. Robert Chester, told lawyers for a Canadian captive to lose the T-shirt. Omar Khadr, 19, turned up at his war court debut in a trademark red, gray and blue Canadian "Roots" jersey for the early stages of what the Pentagon intends to be a conspiracy-murder trial in the Afghanistan firefight death of a U.S. Army medic.

Veil of secrecy

The issue of anonymity and pseudonymity came up several times during the hearings.

For starters, prosecutors are still shielding their names from publication, a discretion given them under Pentagon ground rules.

But when Associated Press sketch artist Janet Hamlin showed up for the hearings, several prosecutors agreed to have their features included.

An earlier sketch artist was required to show both captives and prosecutors as ghostly faceless people.

Now, the Muhammad case prosecutor has announced plans for more secrecy.

The Navy lieutenant, whose name cannot be published here, put the presiding officer and defense on notice that all U.S. government and agency witnesses will be "testifying under pseudonyms."

The Marine colonel, Kohlmann, told the Navy lieutenant to file a motion.

Gitmo Detainee Wants to Represent Self

Friday April 7, 2006 9:16 PM

AP Photo XBL102

By ANDREW SELSKY

Associated Press Writer

GUANTANAMO BAY NAVAL BASE, Cuba (AP) - An alleged bodyguard of Osama bin Laden, who says his U.S. military counsel is the enemy, should be allowed to represent himself at his trial here, the lawyer argued Friday.

The judge has said commission rules require defendants to have a military lawyer. But Army Maj. Tom Fleener said the judge has the power to grant Ali Hamza Ahmad Sulayman al-Bahlul the authority to represent himself because it is a fundamental right.

Pretrial hearings this week for al-Bahlul and three other Guantanamo Bay detainees captured in the Bush administration's war on terror have been encumbered by procedural ambiguities, foreshadowing lengthy trials when they finally get under way.

Al-Bahlul was absent from the courtroom during the exchange.

Only 10 of the nearly 500 prisoners at Guantanamo Bay have been charged with crimes under President Bush's Nov. 13, 2001, order calling for military commissions to try suspected members of al-Qaida or other international terrorist groups.

Al-Bahlul, a Yemeni, has refused to attend the hearings, saying he didn't want a U.S. military lawyer representing him because he regards Americans as enemies. For Friday's session, he was brought to a side room, military officials said, but was not present in the courtroom in the yellow cinderblock building, perched on a hilltop overlooking the Caribbean on this isolated military base.

All defendants get a civilian lawyer in addition to a military lawyer. Last month, al-Bahlul asked for a Yemeni lawyer, but the judge said rules require that detainees must have a military lawyer and can be assisted by a civilian who is a U.S. citizen with a license to practice law in the United States.

Fleener cited numerous cases in which judges have determined self-representation to be a fundamental right.

"It's clear to everybody that the right of self-representation must be recognized," the major said, standing alone at the defense table. The presiding officer, Col. Peter E. Brownback, took the motion under advisement.

Al-Bahlul is charged with conspiring with bin Laden and other al-Qaida leaders to attack civilians and commit other crimes. The charge sheet says al-Bahlul created instructional and motivational videos for al-Qaida, including one glorifying the attack on the destroyer USS Cole in a Yemeni harbor in 2000.

In a separate hearing, a military defense attorney for a Canadian teenager accused of killing a U.S. soldier in Afghanistan withdrew a motion he filed Wednesday complaining his client had been put in solitary confinement.

The defense attorney, Marine Lt. Col. Colby Vokey, had complained about treatment of his client, Omar Khadr, but Navy Cmdr. Robert Durand issued a statement saying no detainees at Guantanamo Bay are put in solitary confinement. Durand said detainees are separated from the general population before their hearings begin but that Khadr could still see and talk to other inmates.

"We determined the move was not for punishment and will not affect defense access to the client," Vokey told the judge, Marine Col. Robert S. Chester.

Khadr has been charged with murder and other crimes for allegedly throwing a grenade that killed a U.S. Special Forces soldier while Khadr was fighting with the Taliban in Afghanistan and for planting mines targeted at American convoys.

The next round of military commission sessions will be held at Guantanamo Bay from April 24-28, the military said.

<http://www.guardian.co.uk/worldlatest/story/0,-5741191,00.html>

Lawyer says Rumsfeld 'messed up' Guantanamo trials

07 Apr 2006 17:23:45 GMT

Source: Reuters

By Jane Sutton

GUANTANAMO BAY U.S. NAVAL BASE, Cuba, April 7 (Reuters) - Defense Secretary Donald Rumsfeld and his appointees set rules that violate President George W. Bush's order to hold fair trials for prisoners charged with terrorism in the Guantanamo tribunals, a military defense lawyer said on Friday.

"We can't help it that the secretary of defense and his delegees (sic) have messed this thing up, but they have," military lawyer Army Maj. Tom Fleener told the presiding officer at one of the hearings.

"If the rules don't provide for a full and fair trial, then they violate the president's order."

Fleener was trying to persuade the presiding officer, Col. Peter Brownback, to let a Yemeni defendant act as his own attorney on charges of conspiring to attack civilians and destroy property.

Tribunal rules set by the Pentagon require the defendants to have U.S. military lawyers who are authorized to see secret evidence that the accused may not be allowed to view. Pentagon officials have refused defense requests to allow self-representation, which Fleener called a fundamental right in nearly every court on Earth.

Fleener was appointed to defend Ali Hamza al Bahlul, an acknowledged al Qaeda member charged with conspiring to commit terrorism by acting as Osama bin Laden's bodyguard and making al Qaeda recruiting videos.

Bahlul has refused to cooperate with any lawyer appointed by the U.S. military. He asked to act as his own attorney or to have a Yemeni lawyer, and declared a boycott when the request was denied during a March hearing. He did not attend his hearing on Friday at the U.S. naval base in Guantanamo Bay, Cuba.

Fleener said Bahlul cannot get a fair trial unless the rules change. "As the world looks at this system, it's going to have no legitimacy whatsoever," he said.

Bush created them to try foreign terrorist suspects after the Sept. 11 attacks, and directed Rumsfeld and his appointees to draft rules that ensure full and fair trials while protecting national security.

#### RULES QUESTIONED

Defense lawyers have questioned whether another rule violated Bush's order by changing the role of the presiding officer. The president's order said tribunal members would all serve as triers of law and fact, giving each of the four to seven panel members a dual role as judge and juror.

Subsequent Pentagon rules gave only the presiding officer the authority to decide legal issues, making him essentially the judge. The presiding officers have conducted three rounds of pretrial hearings at Guantanamo since January without the other tribunal members present. Defense lawyers questioned whether that constituted a proper hearing.

The Guantanamo tribunals are the first war crimes trials held by the U.S. military since World War Two.

Military defense lawyers and human rights groups have called the tribunals fundamentally unfair and stacked to ensure convictions. The U.S. Supreme Court heard a challenge to their legitimacy last month and is expected to rule by the end of June on whether the trials can proceed.

Ten of the 490 Guantanamo detainees have been charged with conspiring to commit terrorism and four had pretrial hearings this week at the base. The defendants would face life in prison if convicted.

<http://www.alertnet.org/thenews/newsdesk/N07271476.htm>

Tribunal Lawyers Trade Shots  
Guantanamo Commissions Are Plagued by Legal Infighting  
By JESS BRAVIN  
April 10, 2006; Page A6



GUANTANAMO BAY, Cuba -- In the weeks after the Sept. 11, 2001, terror attacks, President Bush conceived of military commissions as a way to provide swift and severe punishment to foreign terrorists.

But last week's proceedings here, four years after the first prisoners arrived, showed the commissions mired in legal infighting. At the same time, defense attorneys have waged a concerted assault on the system's legitimacy, ranging from the heavily secured hearing room here to the Supreme Court.

"You don't have to go to London to attend a theatrical production. We had that right here," chief prosecutor, Air Force Col. Moe Davis, said about defense tactics.

Col. Davis said critics of the process made "ethical allegations the way Saddam Hussein lobbed Scud missiles" -- an apparent reference to, among other things, claims by Clive Stafford Smith, a British attorney for defendant Binyam Mohamed, that Col. Davis improperly read privileged correspondence between him and his client. "If you can't beat the facts, you can't defeat the process, you attack the participants," Col. Davis said.

He then listed anti-American comments, pulled from Web sites, that he said were made by Mr. Stafford Smith, who obtained U.S. citizenship "because that was the only way he could keep his wife from being deported."

Mr. Stafford Smith, who was educated in the U.S. and spent decades there fighting the death penalty, called Col. Davis's comments "pathetic." "When people at Guantanamo say that we are the enemy, they really don't understand what America is all about," Mr. Stafford Smith said. Ten Guantanamo detainees captured after the U.S. invasion to topple the Taliban stand accused of conspiracy to commit terrorism and, in some cases, of attacking civilians or soldiers. They are represented by both U.S. military attorneys and lawyers from universities, left-leaning activist groups and some major law firms.

Federal courts have enjoined commission proceedings against some defendants, and the legality of the system is under review by the Supreme Court, which is expected to rule in June. In pretrial hearings last week, attorneys for three defendants disputed Mr. Bush's Nov. 13, 2001, military order stating that commission defendants had no rights other than those he gave them and denying the prisoners access to state, federal, foreign or international courts.

Conflicting visions of the law came into focus at Wednesday's hearing for Omar Khadr, a Canadian teenager accused of throwing a grenade that killed a U.S. soldier. A defense lawyer argued that the commission should follow traditional legal practice, and a military prosecutor responded by trying to introduce a video he said showed the defendant taking part in a firefight, rendering him a military combatant for whom such conventional rules didn't apply.

Muneer Ahmad, an American University law professor helping to represent Mr. Khadr, invoked familiar legal doctrines to argue that regardless of President Bush's order, the government was bound to afford his client the protections of the Fifth Amendment's Due Process clause. In parallel litigation involving Mr. Khadr's detention as an "enemy combatant" -- although not the specific war-crimes charges before the commission -- U.S. District Judge Joyce Hens Green found that a 2004 Supreme Court opinion extended the Due Process clause to Guantanamo. Mr. Ahmad said under normal legal practice, when a higher court has decided an issue involving the same parties and facts, the loser may not reargue the matter. Thus, he contended, the military commission was bound to grant those protections to Mr. Khadr. The trial prosecutor, a Marine major whose name can't be disclosed under Pentagon rules, hadn't cited Judge Green's opinion in his brief. The prosecutor said he ignored the ruling because he considered it wrong and expected it to be overruled in the government's pending appeal.

"Alien enemy combatants have no rights under the Constitution," the prosecutor said, and tried to get the presiding officer, Marine Col. Robert Chester, to watch a video described as showing Mr. Khadr committing "law of war violations." Col. Chester declined to watch the video, saying it was irrelevant to the legal question at hand. He put off a ruling.

On Friday, Army Maj. Thomas Fleener, appointed to represent accused al Qaeda propagandist Ali Hamza Ahmed Suleiman al-Bahlul, invoked federal and international court decisions to attack a rule of the military commissions: that defendants must have a military lawyer, whether they

want one or not. Defense Secretary Donald Rumsfeld and his aides, who approved the requirement, "messed this thing up," Maj. Fleener said.

Mr. Bahlul, a Yemeni, has said he is a member of al Qaeda and demanded the right to represent himself or employ a Yemeni attorney rather than a U.S. military officer, whom he considers an enemy. Maj. Fleener cited the Supreme Court's 1975 ruling that defendants had a right to decline counsel and said the late Slobodan Milosevic, facing genocide and other charges, was allowed to represent himself before the United Nations war-crimes tribunal.

Maj. Fleener said the military prosecutors agreed with his position. But the head of the commission system, retired Army Maj. Gen. John Altenburg, has denied such requests, he said. In 2005, Gen. Altenburg found self-representation "impracticable," because Guantanamo prisoners lack security clearances needed to review evidence, rarely have legal training and may not have a good command of English.

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Los Angeles Times

April 7, 2006

Terror Suspect's Lawyer Risks Contempt Citation

The attorney's tactics seem designed to test the authority of the Guantanamo tribunals.

By Carol J. Williams, Times Staff Writer

GUANTANAMO BAY NAVAL BASE, Cuba — In a courtroom drama that reflected grave doubts even from within the U.S. armed forces about the legitimacy of military tribunals, a lawyer fought Thursday to the brink of a contempt citation to protect her client's rights.

Maj. Yvonne Bradley, an Air Force defense lawyer for a 27-year-old Ethiopian terrorism suspect, three times invoked her right to avoid self-incrimination on the grounds she would be breaching legal ethics by continuing to represent her client. Defense lawyers said his right to attorney-counsel privilege has been repeatedly violated because their communications can be monitored by the government and overheard by lawyers for other defendants.

Bradley's face-off with Marine Col. Ralph Kohlmann, the military commission's presiding officer, elicited admonitions about her "unprofessional attitude," "inappropriate grinning" and failure to observe the customary courtesy of appending "sir" to all answers.

Like defense lawyers who have appeared in the handful of pre-trial proceedings, she appeared to be testing the tribunal's vaguely defined authority with tactics that would be out of order in civilian courts or military courts-martial.

Bradley's client, Binyam Ahmed Muhammad, has told his lawyers of harrowing torture at the hands of U.S. and Moroccan security forces, which he alleges occurred over the two years after his April 2002 arrest in Pakistan. He said the torture compelled him to confess to scenarios suggested by his interrogators, including collaborating with "dirty bomb" suspect Jose Padilla and plotting to blow up U.S. high-rises by booby-trapping their power systems. Muhammad's civilian lawyer, Clive Stafford Smith, has said his client told interrogators whatever they wanted after Moroccan agents used razor blades on his genitals to compel the confessions, including meetings with other terrorism suspects already in custody when the purported contacts occurred.

The presiding officer rejected the appeal by Bradley and Stafford Smith that he conduct a hearing on the conflict-of-interest claim made by Bradley. Kohlmann also refused to allow Bradley to seek the advice of a private lawyer when it became clear she was courting a contempt citation and an indefinite term in the Navy base brig.

Kohlmann called a recess and later returned with requests for Bradley, Stafford Smith and University of Chicago law professor Joseph Margulies to submit briefs outlining their numerous concerns about what they see as fundamental flaws in the proceedings.

One of the most contentious issues has been whether defendants may represent themselves, as Muhammad has insisted on doing.

The presiding officer warned that the conflict-of-interest issues would have to be resolved or the lawyers would have to remove themselves from the case, warning that "we're not just going to be stuck in Never-Never Land."

Before calling for legal briefs, Kohlmann had attempted to advance the proceedings by entering a "not guilty" plea on Muhammad's behalf. When Muhammad's lawyers declined to

question Kohlmann on his fitness to preside over the trial, Kohlmann pronounced himself competent. Muhammad observed in a droll voice: "I don't think so."

From the first minutes of his tribunal debut, Muhammad mocked the military commission, the irony of being assigned a defense lawyer who is an American soldier under orders to consider him an enemy and the efficacy of a process that after four years didn't even get his name right. He says his name should be spelled Mohamed, not Muhammad.

"How can you get this wrong, man? Four years of – what do you call it, 'enhanced-technique torture'? – and you have the wrong person," he said, shaking his head as if disappointed. "I'm innocent. I'm not supposed to be here."

Muhammad, who hasn't made clear whether he is arguing a case of mistaken identity or simply that his surname of Mohamed was misspelled, came to court in an orange Pakistani tunic his lawyer bought on a street in London and had dyed the same color of prison jumpsuits. He had also asked, and been denied, the right to be brought in fully shackled, claiming that is how prisoners are kept in the detention camps, and to walk unhindered into the proceedings would be "dishonest."

When Kohlmann politely observed that he didn't know what to call him so he would stick with "Mr. Muhammad," the defendant stated dryly: "You can call me Count Dracula."

Although Muhammad seemed respectful of lawyer Bradley, a 43-year-old reservist from the Philadelphia area, he asked Kohlmann why he was supposed to trust her.

"If you were arrested in Saudi Arabia and Osama bin Laden said, 'I'm going to force you to have a military lawyer,' and gave you some bearded, turbaned person, I don't think you would agree with that."

Muhammad is charged with conspiracy and accused of meeting with various alleged Al Qaeda kingpins to train in the use of weapons, prepare attacks on Americans and learn how to make a dirty bomb.

He is among 10 Guantanamo detainees – of the 490 being held – facing war crimes charges.

National Journal

April 8, 2006

Issues & Ideas

The Pentagon's Prisoner JAG

By Corine Hegland

Charles (Cully) Stimson doesn't seem the type to cut class. A wiry judge advocate general in the Naval Reserve and, until recently, an assistant U.S. attorney for the District of Columbia, he has a litigator's fondness for precision and an officer's penchant for rigor: He brings a law journal article to an interview for an exact reference, and he gently asks a reporter to ensure that his name is spelled correctly.

Nevertheless, in early December 2005, Stimson, 42, cut the final day of class at the Naval Justice School, where he was teaching Effective Courtroom Communications. He did, however, have a good excuse: a job interview with Defense Secretary Donald Rumsfeld. He got the job, and on January 23, Stimson became the Pentagon's new point man for detainee policy as the deputy assistant secretary for detainee affairs.

It's an odd position, established in the summer of 2004 in the wake of the Abu Ghraib scandal, and it's subject to tugs from every direction. The Army is nominally in charge of the military's prisoners from the war on terrorism, but the mammoth operation, which has involved more than 90,000 detainees since 9/11, reverberates throughout the Defense Department and beyond, touching the combatant commands; public and legislative affairs; the Joint Chiefs of Staff; the general counsel; intelligence; the individual services, especially the Army; and other parts of the executive branch, including Justice, State, and the White House. "I can't think of many aspects of the department that don't have some connection with detainees," Stimson said, in his first public interview since taking the job.

Stimson, who grew up in rural Maryland and graduated from Kenyon College before getting his J.D. from George Mason, is accustomed to tug-of-war. He's a prosecutor with a passion for domestic-violence cases, but his best-known prosecution is one in which he recommended leniency for a quadriplegic, Jonathan Magbie, who subsequently died while in the custody of the District of Columbia after a judge ignored Stimson's prescient warning about the city jail's inability to handle Magbie's medical needs. Stimson is still an adjunct law professor

at George Mason; as a reserve commander, he teaches at the Naval Justice School in Rhode Island; and he serves on the executive committee of a family business based in Seattle. On top of all that, he has a wife and two children. "Family first," he said of trying to balance it all. But that priority is easier stated than achieved. His goal was to treat his first 100 days at the Pentagon like deployment on a ship, and then return to a more normal schedule.

Home port, however, might be harder to reach than he'd like. Two major policy documents on detainees are immersed in high-level interagency debates. They're scheduled for release this spring, and advocates -- and Congress -- are impatient.

Stimson's predecessor, Matthew Waxman, decamped to the State Department in December amid battles over one of the documents, Directive 2310, which governs the Pentagon's overall care and custody of detainees. Waxman fought to insert language drawn from the Geneva Conventions barring cruel, humiliating, and degrading treatment. He ran into overwhelming opposition from the Pentagon's general counsel, the undersecretary for intelligence, and the White House, according to The New Yorker's account of the fight. After Waxman's departure, though, President Bush reluctantly signed the McCain amendment into law, forbidding U.S. personnel from inflicting "cruel, inhuman, or degrading treatment or punishment."

The second policy document, the Army field manual, spells out the specific tactics that military interrogators can and can't use. It's been revised to incorporate lessons learned from the past few years and the requirements of the McCain amendment, but nobody outside the government knows yet exactly what the revision will allow and forbid.

The two documents are important, explained Elisa Massimino, the Washington director for Human Rights First, because together they provide the new baseline for detainee treatment. None of the dozen-odd formal investigations that the military has conducted into detainee abuse has found that Pentagon policy condones it. But they haven't exactly found the policy that prevents it, either: Instead, they reported widespread confusion over the rules.

The problem is that for most of the past century, detainees were simply prisoners of war and policy was, by and large, the Geneva Conventions, which undergirded the Pentagon's labyrinthine system of directives, training, and manuals. Article 3 of the Third Geneva Convention explicitly barred cruel treatment, torture, and "outrages upon personal dignity," including "humiliating and degrading treatment," and that was virtually all of the policy guidance needed.

But when President Bush issued a February 2002 order declaring that prisoners from the Afghanistan conflict were not entitled to the Geneva Conventions, he replaced the conventions' well-established baseline, barring humiliating and degrading treatment, with a more vague and qualified one. The new standard declared that the U.S. would treat detainees "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." Later, prisoners in Iraq were declared to be entitled to Geneva protections, but communications about what that meant, exactly, weren't clear. Tactics devised under the "humane" standard used for detainees at Guantanamo migrated to Iraq, where there was less oversight, and the resulting photographs of prisoner treatment at Abu Ghraib angered the world in April 2004.

The broadest investigation into the abuses, led by former Defense Secretary James Schlesinger, called on the government to better define policy on the status, care, and treatment of detainees "in a way consistent with U.S. jurisprudence and military doctrine and with U.S. interpretation of the Geneva Conventions."

Stimson declined to comment on the pending documents. He did, however, say he perceived an enormous gap between the diligence with which the Pentagon has sought to improve its detainee operations and the media portrayal of those operations, which often looks "as if we're not really giving it a lot of thought." As the head of the detainee affairs office, Stimson handles the department's communications with the International Committee of the Red Cross -- the only group allowed frequent and unfettered contact with detainees -- and he co-chairs a department-wide joint committee that meets quarterly to review the implementation of more than 400 recommendations that have come out of the detainee investigations.

"When we say umpteen investigations and umpteen recommendations, I don't think people grasp the millions of personnel hours that have gone into investigating, recommending, holding accountable, correcting, and moving forward to make the appropriate changes where necessary,"



he said. There's a "schism, disharmony, almost Alice-in-Wonderland" break between the work and the outside perception of that work.

But outside observers say that piecemeal fixes alone can't do it, and they're waiting for a more coherent policy to prevent abuses. In late February, Human Rights First released a damning report, based largely on Pentagon papers obtained through Freedom of Information Act requests, documenting the deaths of 98 detainees while in U.S. custody, including 34 officially suspected or confirmed homicides and eight to 12 men who were tortured to death. "One such incident would be an isolated transgression; two would be a serious problem; a dozen of them is policy," retired Rear Adm. John Hutson, the Navy's former top lawyer and currently dean of Franklin Pierce Law Center in New Hampshire, wrote in the report's introduction.

"I wish Cully every good wish and hope that he's effective and gets it straightened out," Hutson said, but "I'm not wildly enthusiastic about the job that's being done." The fundamental problem, according to Hutson, is a failure of congressional oversight, without which the Pentagon has little incentive to fix itself. Senate Armed Services Committee Chairman John Warner, R-Va., declared in 2004 that Defense was leaving no stone unturned in its investigation. But "there are lots of stones, and they're still sunny-side up," Hutson said. "They're afraid of what's going to crawl out if they turn them over."

Stimson "seems very competent and very aggressive," said a State Department official who's worked with him, but "he's still getting his arm around some of these issues. There's a lot going on, and he's got some big shoes to fill," he said, referring to Waxman's pitched battles on behalf of a clear-cut standard on detainee treatment.

On the other hand, Stimson has some leverage that Waxman lacked. He's a military JAG himself, and the combination of the McCain amendment, signed at the end of December, and the ongoing Abu Ghraib trials, in which the former commander of military intelligence recently admitted that he should have established "some definitive rules and put out clear guidance," gives the newcomer a stronger platform. "If he's inclined to see this as an opportunity to get the Pentagon's interrogation policies back on track, he has the tools," Massimino said.

Meet the New Padilla

Slate Magazine  
April 10, 2006 Monday

BYLINE: Emily Bazelon

Now that Zacarias Moussaoui is eligible for the death penalty and the Supreme Court has made it clear that Jose Padilla will face regular old federal charges, it's time to start following a new 9/11 case. Ali Saleh Kalah al-Marri is the only person whom the Bush administration has accused of being an enemy combatant who is still being held in the United States. Last week, his case took a turn that demonstrates what's gained from trying accused terrorists in federal court, rather than before a military tribunal.

Al-Marri, a Qatari national, came to the United States on Sept. 10, 2001, with his wife and children and enrolled in a master's program at Bradley University in Peoria, Ill. In December 2001, he was arrested as a material witness in the 9/11 investigation. In January and February 2002, he was charged with several counts of counterfeiting and making false statements to banks and to the FBI. His trial was scheduled for July 2003.

A month before that trial date, President Bush designated al-Marri as an enemy combatant and directed that he be turned over to the Department of Defense, which dumped him in the naval brig in Charleston, S.C. which almost makes al-Marri Padilla's legal mirror image: Both men were arrested in the United States rather than captured anywhere near the battlefield in Afghanistan, as most of the Guantanamo detainees supposedly were. (Padilla is a U.S. citizen; al-Marri is not.) But while Padilla has been downgraded from enemy combatant to humdrum accused criminal, al-Marri has been upgraded from counterfeiter to al-Qaida sleeper agent. Why?

Until last week, it was awfully hard to tell. The government's enemy-combatant allegations against al-Marri are contained in the Rapp Declarations, documents signed by Jeffrey Rapp, director of the Pentagon's Joint Intelligence Task for Combating Terrorism. The declarations



repeat almost verbatim the charges in the 2002 indictments they accuse al-Marri of setting up fake bank accounts and fake e-mail accounts; of stealing credit cards; and of keeping on his computer programs used by hackers, speeches by Osama Bin Laden, and photographs of the World Trade Center. Prosecutors said they'd amassed additional evidence tying al-Marri more directly to the 9/11 plot. But that part of the Rapp Declarations was classified, so al-Marri wasn't allowed to see it.

Al-Marri's lawyers protested. The Rapp Declarations are "triple hearsay," they argued, law-speak for whisper down the lane. Rapp wasn't testifying against al-Marri. He was testifying to what other agents had told him that unnamed other witnesses had testified to. And to withhold much of the substance of these thirdhand allegations from al-Marri violated his constitutional rights, his lawyers claimed in the legal papers they filed. How was he supposed to dispute the evidence if he didn't know what it amounted to?

Legally speaking, this is an easy argument to win. The Supreme Court has long held that defendants have the right to hear the factual basis for the allegations against them. Magistrate Judge Robert C. Carr, appointed in 1975 during the Ford administration, called the government's bluff. "You need to make your choice, because this deals with a man's freedom," he told prosecutors at a teleconference with lawyers from both sides, held at the end of February. The judge's skepticism had swift effect. Prosecutors took another look at the classified parts of the Rapp Declarations and decided to make most of them public after all. When they declassified "substantial portions" last Thursday, they cited "the public interest" otherwise known as, "the judge said we had to."

The declassified allegations aren't revelatory. Most of them have already been made in relation to Padilla's case. They link al-Marri to the 9/11 plotters via Khalid Sheikh Mohammed, an al-Qaida member whom the CIA is holding in a secret prison. And while the government still refuses in the Rapp Declarations to "identify the specific sources" of the allegations, it seems clear that they're relying at least in part on KSM himself. Al-Marri's transfer from federal prison to brig is probably the result of what KSM told interrogators after al-Marri's 2002 indictment.

Which would mean it's also a safe bet that evidence against al-Marri was obtained through torture. A 2004 review by the CIA's inspector general found that Mohammed has been subjected to near-drowning while in custody (the term of art is "waterboarding"). As I discussed here, in a New York Times article last November, an unnamed government official explained that such interrogation methods were causing problems in the case against Padilla. Khalid Sheikh Mohammed and Abu Zubaydah, another al-Qaida man interrogated by the CIA, "could almost certainly not be used as witnesses, because that could expose classified information and could open up charges from defense lawyers that their earlier statements were a result of torture," the official said.

Nonetheless, the government is plowing ahead with its case against al-Marri, arguing that because he's a noncitizen, he doesn't have the right to the procedural protections that are normally available in federal court. Maybe prosecutors have other "specific sources" of evidence against him. But if not, should the basis for al-Marri's detention and eventual sentence be torture testimony, long shunned because it is notoriously unreliable?

This question seems to be at the heart of al-Marri's case. It is also central to the cases of the hundreds of foreign detainees who have been held for more than four years at Guantanamo Bay. It's a question that the federal courts not a military tribunal specially constituted by the Bush administration need to resolve. The courts should also address whether the government can designate a foreign detainee an enemy combatant, with the loss of rights that entails, if he has been arrested on U.S. soil rather than on or near a battlefield.

The government has taken lots of hits for bungling other 9/11 cases. And it's true that these cases sometimes raise tricky questions about how to handle evidence that, if disclosed, could pose a threat to national security. No wonder the Bush administration prefers to do its work before the few-rights-for-all military tribunals it has established. But federal courts have perfectly adequate procedures for dealing with sensitive and classified material. Judge Carr's strong words to al-Marri's prosecutors, and the release of evidence to which they led, exemplify why independent judges should make these calls. They need to keep doing so.

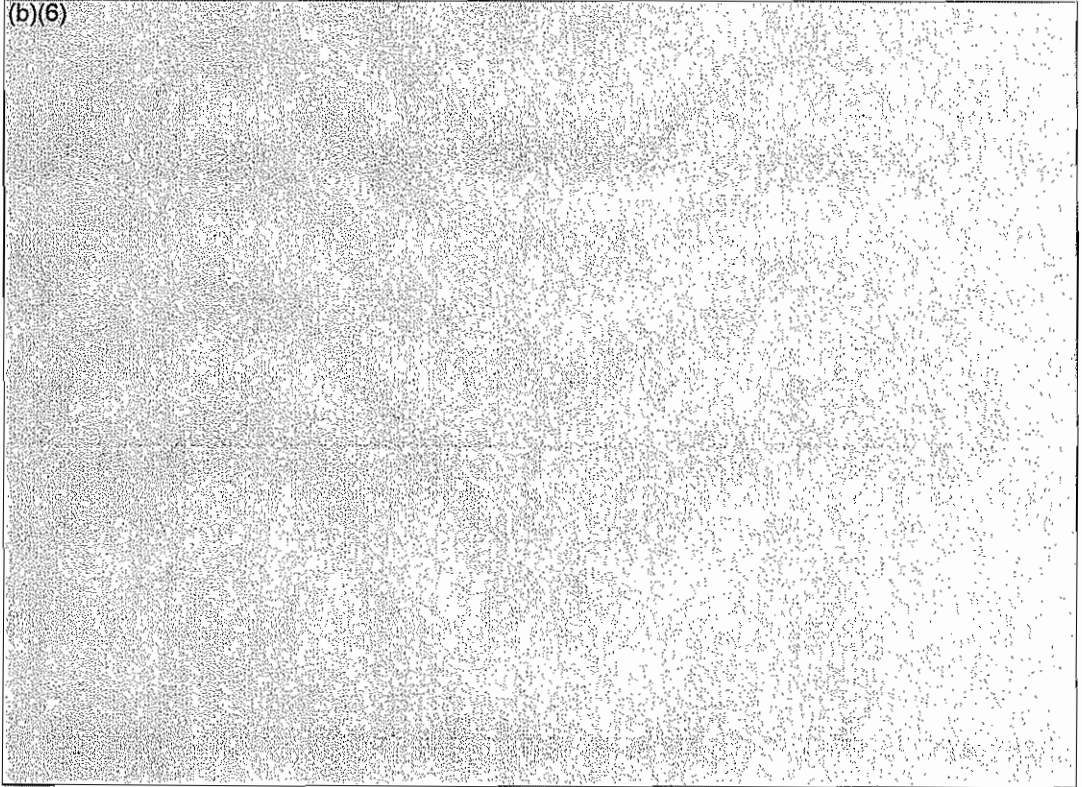
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**From:**  
**Sent:**  
**To:**

(b)(6) DoD OGC (b)(2),(b)(6)

Monday, October 30, 2006 2:56 PM

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**Subject:**

GTMO Bird; MCA; GTMO Compliant; Detainee Rights; Violation of Treaties; Cheney Remark; Return of Detainees

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

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Kellenberger's recent statements and speech regarding MCA of 2006, IHL CA3 and other things

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