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Another View: New statute gives detainees fair review

By Rep. Dan Lungren -

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As one who worked on the Military Commissions Act of 2006, it is necessary to comment on some of the misinformation surrounding this legislation that is so critical to our nation's security. As a result of the decision of the U.S. Supreme Court in Hamdan v. Rumsfeld, Congress was required to codify language relating to military commissions before Khalid Sheikh Mohammed, the principal architect of the 9/11 attacks, and other terrorists associated with al-Qaida and the Taliban can be prosecuted. Although The Bee acknowledged that the new law may be a "vital tool" against terrorists, I do not share the editor's skepticism concerning its constitutionality.

Much has been made of the restrictions on federal habeas petitions in the Military Commissions Act. Such confusion stems from a failure to distinguish the "Great Writ" of habeas corpus found in the U.S. Constitution and the habeas corpus procedures adopted by Congress as a statute. The latter provisions found in the U.S. Code are what were changed by the Military Commissions Act. The argument that a constitutional issue is raised because Congress has sought to revise a statute which it enacted in the first place is puzzling to say the least. Congress has the constitutional authority to alter procedures that it created and has done so on different occasions.

The habeas language in the Military Commissions Act became necessary because in Rasul v. Bush, the Supreme Court interpreted the federal habeas corpus statutory scheme to allow those detained at Guantánamo Bay, Cuba, to file habeas petitions for relief in the federal courts. The language in the new law was merely a clarification of the rule recognized by our nation's highest court for more than 50 years in Johnson v. Eisenstrager, that "there is no instance where a court, in this or any other country where the writ is known ... issued it on behalf of an alien enemy."

It is also important to note that the new statute retains the existing protections of the Detainee Treatment Act, to ensure that detainees will receive a full and fair consideration of their claims before the United States Court of Appeals for the D.C. Circuit. Detainees in Guantánamo Bay can also file a writ of certiorari with the Supreme Court.

Finally, in regard to the specific issue of detention, it should be observed that in Hamdi v. Rumsfeld, Justice Sandra Day O'Connor dispelled the notion that the detention of unlawful combatants for the duration of the conflict would give rise to a constitutional claim. Nevertheless, under the procedures adopted relating to the Guantánamo Bay military commissions, every detainee will be entitled to a hearing before a Combatant Status Review Tribunal.

Thus, although the new law does not contain the full panoply of "Miranda-like" rights accorded to American citizens, it certainly provides detainees with a full and fair review of their cases.

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Miami Herald

October 29, 2006

Southcom Chief: Prison Is Compliant

The Southern Command chief checked out the U.S. detention center at Guantánamo Bay, Cuba, and declared conditions and treatment of captives 'appropriate' to Geneva Convention standards.

By Carol Rosenberg

Just days into the job, the Pentagon's new Southern Command chief made an overnight weekend visit to the U.S. Navy base at Guantánamo Bay -- and declared captive conditions compatible with the Geneva Conventions.

Navy Adm. James Stavridis said Saturday that he met with about 300 U.S. military personnel and saw about 50 of the 435 captives held at the base, including the so-called high-value terrorist suspects who had recently been moved there from secret CIA custody.

''I went and saw their facility,'' the admiral told The Miami Herald in a telephone interview after a visit to the remote Navy base in southeast Cuba.

He declined to give specifics on where the latest arrivals are being kept and under what circumstances. But he declared them ``in appropriate conditions commensurate with Common Article 3 of the Geneva Conventions. I laid eyes on it; they're in good shape in that regard.''

After being stung by a U.S. Supreme Court decision this year, the Bush administration reversed course and declared that -- although enemy combatants, not prisoners of war -- alleged al Qaeda and Taliban captives were entitled to the protections.

They were just this month granted their first visits with the International Committee of the Red Cross, after up to four years in secret U.S. captivity and so-called CIA black sites.

In the course of the site inspection, the admiral said, he saw detainees in a range of locations -- being interrogated, playing soccer and exercising individually -- and found them ``a hearty bunch.''

Interrogations, he said, struck him as ``amicable conversations between two people.''

Referring to the 14 high-value detainees in particular, he said they were in ``very good shape.''

Mastermind jailed

President Bush ordered the men sent to the detention camps for possible trial around Labor Day. Among those in custody is suspected Sept. 11 mastermind Khalid Sheik Mohammed -- who published reports allege was subjected to ''water-boarding,'' a rough interrogation technique that simulates drowning, and at one point purportedly confessed to wielding the knife that beheaded Wall Street Journal correspondent Daniel Pearl, in January 2002 in Pakistan.

Stavridis, the first Navy admiral to oversee military operations in Latin America and the Caribbean, also met with about 300 sailors and soldiers at the base -- from senior commanders to camp guards -- and declared himself impressed with their professionalism in what he called ``a stressful environment down there.''

U.S. forces at Guantánamo, he said, are ''interacting daily with very, very dangerous terrorists'' in typical one-year tours that he described as ''hardship duty'' that separates them from their families.

Improvements sought

He said his Miami-based staff would propose improvements in housing and other activities for them.

As he took the job Oct. 19, Stavridis said he would visit the controversial camps first, and then follow up later with trips to Colombia and Central America, where U.S. forces work with those host countries. Cuba has virtually no engagement with the U.S. military under 4-decade-old U.S. policy.

Stavridis said he met senior detention camp staff, ``looked every one of them in the eye and said we're going to run this camp in a transparent and legal fashion.''

Separately, he said, he also toured the portion of the base where the U.S. military might house migrants found at sea during a rafter crisis similar to the huge numbers of Haitians and Cubans who were interdicted by the United States in the mid-1990s.

He declared the base suitable for ''very bare bones'' humanitarian relief and would develop contingency plans -- although he said he didn't foresee any crisis.

During the 1990s, the U.S. Navy base threw up tent camps around the 45-square-mile base to house a migrant population that swelled at one point to about 40,000.

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Washington Times
October 30, 2006
Pg. 19

Eroding Detainees Rights

Administration shows disregard for prisoners' attorneys

By Nat Hentoff, The Washington Times

Because of the determined dedication to the highest standards of our rule of law by a military lawyer, Lt. Cmdr. Charles Swift, the case of Hamdan v. Rumsfeld reached, and was decided by, the Supreme Court in June -- instructing the president to remedy the illegality of his military commissions, and the conditions of detainee confinement, at Guantanamo. That military lawyer, two weeks after his victory in this case, was forced by the Pentagon to retire.

Lt. Cmdr. Swift had been assigned to the case of Salim Hamdan, a former driver for Osama bin Laden, in May 2003. This year, in May, speaking at the libertarian, free-market (including of ideas) Cato Institute in Washington, Lt. Cmdr. Swift said he had been commanded by Pentagon superiors to negotiate a guilty plea by Hamdan in 2003. If that failed, his client would no longer be available to Lt. Cmdr. Swift.

Hamdan's unsurprised reaction was: "The guards say there is no law here." And looking at his assigned defender, Hamdan asked: 'What are you even doing here?'" Lt. Cmdr. Swift replied: "I think there is Law. We're going to have to go to the Supreme Court of the United States," adding that even if he were to be forbidden to see his client again, Lt. Cmdr. Swift would still file on his behalf. He did keep seeing his client.

"I had a client," Lt. Cmdr. Swift told National Public Radio on Oct. 12, "who was sitting in solitary confinement, going slowly insane, and every request I had made for relief (from his despair) had fallen on deaf ears."

Lt. Cmdr. Swift and Hamdan's civilian lawyer, constitutional law professor Neal Katyal of Georgetown University, did prove there is law in America, but their victory has been largely skewered by Congress' passage of the Military Commissions Act of 2006 -- signed by the president on Oct. 17 -- which essentially overrules significant sections of the Supreme Court's Hamdan v. Rumsfeld June decision. Lt. Cmdr. Swift told the Los Angeles Times (Oct. 15) that this legislation, giving the president most of what he wanted -- and more -- prevents defendants from getting a fair trial before the military commissions.

Hamdan, still in a Guantanamo cell as an "enemy combatant," will have to wait and see if the Supreme Court agrees to hear appeals to the Military Commissions Act of 2006. If the Court does, Lt. Cmdr. Swift told me, he will again defend Hamdan -- as a civilian lawyer. (Failing to be promoted to commander, Lt. Cmdr. Swift under the Pentagon's up-or-out policy, had to resign.)

"Swift was a no-brainer for promotion," says Eugene Fidell, president of the National Institute of Military Justice. "He brought real credit to the Navy. It's too bad," Mr. Fidell told the Miami Herald (Oct. 8), "that it's unrequited love."

Former Navy General Counsel Alberto Mora told Nina Totenberg of National Public Radio: "You hate to see a guy like this go; it sends a mixed message."

The message seems clear to me -- all the more so when the Los Angeles Times reported on Oct. 15 that "The U.S. Marine Corps had threatened to punish two members of the military legal team representing a terrorism suspect being held at Guantanamo Bay if they continued to speak publicly about reported prisoner abuse ...The order has heightened fears among the military defense lawyers at Guantanamo that their careers will suffer for exposing flaws and injustices in the system ? [They] point to the Navy's failure to promote [Lt. Cmdr.] Charles Swift after he successfully challenged the legitimacy of the Pentagon's war-crimes commissions."

To further highlight Defense Secretary Donald Rumsfeld's devotion to due process in dealing with detainees -- as twice defined by the Supreme Court (Rasul v. Bush and Hamdan v. Rumsfeld) -- the Los Angeles Times adds that "at least three other military defense lawyers for... 10 charged terrorism suspects have also been passed over for promotion in what some consider a subtle reprimand of their vigorous defense of their clients."

Subtle? That's not Mr. Rumsfeld's way. Said Lt. Cmdr. Swift about the Military Commissions Act of 2006 -- celebrated by the president three weeks before the midterm elections -- "A zealous defense is essential to any process that works. What has given the commissions any integrity so far is the ability of defense counsel to raise the case and concerns in all federal forums ... and, when necessary, the media."

But now, since the new Military Commissions Act shuts off habeas-corpus petitions in our federal courts by lawyers for detainees on their conditions of confinement -- where coerced interrogations (that could include torture, but we'll never know) are permitted -- Hamdan was right: There is no law for these detainees.

As for those military lawyers who, like Lt. Cmdr. Swift, feel impelled by the Constitution to go to the media if necessary, they would be wise to write out their resignations as military lawyers before talking to reporters.

President Bush alone cannot be blamed for this desecration of what used to be American values. A majority of Congress, fearful of appearing soft on terrorism, also betrayed the Constitution in the Military Commissions Act of 2006.

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UN expert: New U.S. terror law violates international treaties

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GENEVA, Oct. 27 (Xinhua) -- The new anti-terrorism law approved by the United States earlier this month contains provisions that violate international treaties and GENEVA, Oct. 27 (Xinhua) -- The new anti-terrorism law approved by the United States earlier this month contains provisions that violate international treaties and contradict the principles of fair trial, a key UN human rights expert said Friday.

The Military Commissions Act signed into law on Oct. 17 by President George W. Bush "contains a number of provisions that are incompatible with the international obligations of the United States under human rights law and humanitarian law," said Martin Scheinin, the UN's expert on protecting human rights in combating terrorism, in a statement.

A number of provisions of the law appear to contradict the universal and fundamental principles of fair trial standards and due process enshrined in the Geneva Conventions, said Scheinin, a legal expert from Finland.

He said one of the most serious aspects of the legislation "is the power of the president to declare anyone, including U.S. citizens, without charge as an "unlawful enemy combatant" - a term unknown in international humanitarian law."

As a result, he said, those detainees are subject to the jurisdiction of a military commission composed of commissioned military officers - rather than a court of law.

Several national and international non-governmental organizations have been critical of many aspects of the legislation, Scheinin noted.

"I believe it is important in my capacity to publicly express my concerns on this law as the United States has taken a lead role on countering terrorism," he said.

The expert added that there was an added concern about the law,given the fact that some governments "may view certain aspects of this legislation as an example that could be followed in respect of their national counter-terrorism legislation."

Scheinin also indicated that in July he formally requested a visit to the U.S. in order to assess counter terrorism measures taken in the country and how they were related to human rights.

He urged the U.S. government to extend to him an invitation in the very near future.

http://news.xinhuanet.com

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US MILITARY COURTS BREACH INTERNATIONAL OBLIGATIONS, UN RIGHTS EXPERT WARNS

New York, Oct 27 2006 10:00AM

The Military Commissions Act (MCA) signed into law by President George Bush earlier this month violates the international obligations of the United States under human rights laws in several areas, including the right to challenge detention and to see exculpatory evidence, a United Nations expert on terrorism <"http://www.unhchr.ch/huricane/huricane.nsf/view01/13A2242628618D12C12572140030A8D9?opendocument">said <http://www.unhchr.ch/huricane/huricane.nsf/view01/13A2242628618D12C12572140030A8D9?opendocument> today.

"A number of provisions of the MCA appear to contradict the universal and fundamental principles of fair trial standards and due process enshrined in Common Article 3 of the Geneva Conventions," the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, said in a statement issued in Geneva.

Special Rapporteurs are unpaid and serve in a personal capacity, reporting to the <"http://www.un.org/apps/news/infocusRel.asp?infocusID=114&Body=human%20rights%20council&Body1=">UN <http://www.un.org/apps/news/infocusRel.asp?infocusID=114%26Body=human%20rights%20council%26Body1=> Human Rights Council. Mr. Scheinin requested that the US Government invite him for a visit "in the very near future" to discuss his concerns.

"One of the most serious aspects of this legislation is the power of the President to declare anyone, including US citizens, without charge as an 'unlawful enemy combatant' - a term unknown in international humanitarian law - resulting in these detainees being subject to the jurisdiction of a military commission composed of commissioned military officers," he said.

At the same time, the material scope of crimes to be tried by these commissions is much broader than war crimes in the meaning of the Geneva Conventions, he noted.

"Further, in manifest contradiction with article 9, paragraph 4 of the International Covenant on Civil and Political Rights, the MCA denies non US citizens (including legal permanent residents) in US custody the right to challenge the legality of their detention by filing a writ of habeas corpus, with retroactive effect," he added.

"Another concern is the denial of the right to see exculpatory evidence if it is deemed classified information which severely impedes the right to a fair trial."

An added concern is that some Governments may view certain aspects of this legislation as an example to be followed in respect of their national counter-terrorism legislation, since the US has taken a lead role on countering terrorism since the 11 September 2001 terrorist attacks on New York and Washington, he stressed.

Mr. Scheinin said that during a visit he would also like to discuss other rights concerns such as the Patriot Act, immigration laws and policies, secret detention centres, rendition flights (to countries where detainees might face torture), breaches of non-refoulement (deportation) and the Government's denial of extra-territorial human rights obligations.

Last month, five other UN human rights rapporteurs rejected US denials that people were tortured at the Guantánamo detention centre and reiterated calls that it be closed down.
2006-10-27 00:00:00.000

For more details go to UN News Centre at http://www.un.org/news <http://www.un.org/news>

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Cheney Defends 'Dunk In The Water' Remark

Addressing Alarm Over the Comment, Vice President Says He Was Not Referring to Waterboarding

By Dan Eggen, Washington Post Staff Writer

Vice President Cheney said yesterday that he was not referring to an interrogation technique known as "waterboarding" when he told an interviewer this week that dunking terrorism suspects in water was a "no-brainer."

Cheney told reporters aboard Air Force Two last night that he did not talk about any specific interrogation technique during his interview Tuesday with a conservative radio host.

"I didn't say anything about waterboarding. . . . He didn't even use that phrase," Cheney said on a flight to Washington from South Carolina.

Earlier in the day, White House press secretary Tony Snow told reporters that the vice president was talking literally about "a dunk in the water," though neither Snow nor Cheney explained what that meant or whether such a tactic had been used against U.S. detainees.

"A dunk in the water is a dunk in the water," Snow said.

The comments were aimed at calming a growing furor over Cheney's comments, which were taken by many human rights advocates and legal experts as an endorsement of waterboarding as a method of questioning.

Coming shortly before the midterm elections, the remarks prompted a wide range of political figures -- from Sen. John F. Kerry (D-Mass.) to Cheney's wife, Lynne -- to weigh in on the issue, providing another unexpected controversy for Republicans as they fight to keep control of Congress. Reporters peppered Snow with questions about the interview during Snow's two daily news briefings.

Waterboarding, in which a prisoner is secured with his feet above his head and has water poured on a cloth over his face, is one of several methods of simulating drowning that date at least to the Spanish Inquisition. It has been specifically prohibited by the U.S. Army and widely condemned as torture by human rights groups and international courts.

"Would you agree a dunk in water is a no-brainer if it can save lives?" Scott Hennen of WDAY in Fargo, N.D., asked Cheney on Tuesday. "Well, it's a no-brainer for me," Cheney responded.

Cheney also said he agreed with Hennen that the debate over interrogation techniques was "a little silly," and he praised the information obtained from U.S. terrorism suspects during questioning.

Hennen said in an interview yesterday that he did not know precisely which technique Cheney was referring to and was only passing along a question he had heard from a listener.

"It's impossible for me to say 'Did the listener mean waterboarding?' and 'Is waterboarding torture?' and that sort of thing," Hennen said. "I can't get in the vice president's head, and I can't get in the listener's head."

Many legal experts said it was reasonable to conclude that Cheney was referring to waterboarding, since it has been a widely debated U.S. interrogation technique that uses water to subject a suspect to the fear of drowning.

U.S. interrogation methods have been the focus of fierce debate since revelations of detainee abuse in Iraq and Afghanistan and the disclosure that the CIA ran a network of secret prisons outside the United States. Numerous sources have confirmed that the CIA used waterboarding in its interrogation of alleged Sept. 11 mastermind Khalid Sheik Mohammed and other "high-value" prisoners.

Some lawmakers have said that they believe waterboarding is illegal under detainee legislation approved last month, but the Bush administration has declined to say what techniques it considers off-limits.

Asked yesterday about Cheney's Tuesday remarks, President Bush did not specifically address them. But he said: "This country doesn't torture. We're not going to torture. We will interrogate people we pick up off the battlefield to determine whether or not they've got information that will be helpful to protect the country."

Human rights and legal experts said yesterday that even if Snow's version of Cheney's remarks is correct, Cheney's comments are troubling because dunking a terrorism suspect in water as part of an interrogation would actually be more physically dangerous than waterboarding. The tactic also would be illegal under U.S. and international laws, they said.

Tom Malinowski, Washington advocacy director for Human Rights Watch, noted that in the 1980s, Chadian forces led by military ruler Hissene Habre allegedly hung people upside down and dunked them in water during questioning. Habre was indicted by a Belgian court for torture and crimes against humanity and faces prosecution in Senegal.

Former CIA general counsel Jeffrey H. Smith said Cheney's comments were "irresponsible" and send a signal to U.S. interrogators that "the people at the top want you to get rough."

"It's clear that the vice president didn't mean a friendly swim at the country club," Smith said. "It would be designed to somehow frighten a prisoner and elicit information from them. Whatever it means, a dunk in the water is not harmless or innocent."

Kerry, the 2004 Democratic presidential nominee, issued a statement saying the comments provided another reason that voters should "change course" by voting for Democrats. "This administration's determination to assert the right to torture has undermined our moral authority, put our troops at greater risk and made our country less safe," Kerry said.

Snow and other Republicans pushed back strongly, arguing that Cheney's remarks had been misinterpreted and that the vice president had been talking about the value of interrogations in preventing terrorist attacks.

"That is a mighty house you are building on top of that molehill," Lynne Cheney said during an appearance on CNN's "The Situation Room." "A mighty mountain. This is complete distortion. He didn't say anything of the kind."

The ambiguities in the waterboarding debate were most evident during two contentious news briefings yesterday as Snow was repeatedly questioned by reporters who did not accept his explanations of Cheney's remarks. Snow repeatedly insisted that Cheney was not referring to waterboarding or any other technique, although he was at a loss to explain how being dunked in water would not also qualify as a method of interrogation.

Snow joked at several points about needing to avoid water-related metaphors in his comments, as when he accused reporters of "fishing" for answers. He declined to say what Cheney meant by dunking terrorism suspects in water but said he would get back to reporters with a fuller explanation, which did not materialize yesterday.

At one point during the first briefing, a frustrated reporter asked: "So the detainees go swimming?"

"I don't know," Snow responded. "We'll have to find out."

Staff writer Peter Baker and staff researcher Julie Tate contributed to this report.

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The Journal News

Piermont lawyer represents Guantanamo detainees

By STEVE LIEBERMAN <MAILTO:SLIEBERM@LOHUD.COM>
THE JOURNAL NEWS

PIERMONT - Marjorie Smith doesn't expect one of her clients to ever see the inside of a courtroom or have a judge hear evidence against him.

The Piermont lawyer's client, Fawaz Hamoud, is being held by the U.S. government at U.S. Naval Base Guantanamo Bay, Cuba, on unspecified charges after being detained several years ago in Afghanistan.

Hamoud is one of several hundred foreign nationals designated as enemy combatants being held at the military prison at Guantanamo Bay. The recent arrivals include 12 accused of being high-ranking terrorists.

Court battles in the U.S. continue to be fought concerning what legal rights the detainees have. The Bush administration argues they are not U.S. citizens and are not subject to the country's legal protections, a position the courts have partially overruled.

Hamoud is the second detainee represented by Smith, 61, a volunteer with the Center for Constitutional Rights in New York City.

Lawyers from the center and elsewhere successfully argued before the U.S. Supreme Court in 2004 that the detainees could not be held indefinitely without hearings, at which the government would have to show a legal basis for holding them.

An appeals court in Washington has yet to decide the level of rights the detainees do have. That issue may become moot.

This month, the Military Commissions Act adopted by Congress and signed by President Bush stripped military prisoners of the right to challenge their imprisonment in federal courts. The process, called "habeas corpus," Latin for "you have the body," is a proceeding at which the prisoner must be produced in court.

The new law voids the U.S. Supreme Court decision, and also establishes military tribunals for those held. Its constitutionality is being challenged.

Until the courts rule on various legal issues, people such as Hamoud remain in limbo at Guantanamo Bay, held without formal charges or the ability to review evidence against them.

"I have no basis to believe he will ever get a habeas hearing," Smith said.

Even so, she said she didn't think Hamoud would spend the rest of his life there. What's more likely, she said, is that he at some point will be released by the government, having never had a court hearing.

Records at Guantanamo, Smith said, accuse the 25-year-old Yemenite of fighting with the Taliban against the Northern Alliance in Afghanistan. He apparently surrendered, she said.

"He was taken into U.S. custody," she said. "We don't know the full details of what happened."

That's an issue that frustrates lawyers representing the designated enemy combatants held at Guantanamo: the lack of information, access to evidence and formal charges against their clients.

At one point more than 700 people were being held at Guantanamo.

More than 200 detainees have been released to their home nations in Europe, where they are subject to legal proceedings, jailed or released. The Center for Constitutional Rights claims the government already has cleared 140 men for release.

Smith's first client, Khaled Ben Mustapha, 25, was transferred last year back to his adopted homeland of France, where he was the subject of a hearing. Smith said she didn't know the outcome. Mustapha, who is married with two small children, had been captured in Afghanistan.

"The exact circumstances of how and why he was picked up has not been determined," she said.

Smith sees her role as preserving her clients' constitutional rights, even though some challenge the notion that non-Americans being held in places like Guantanamo have such rights.

"I got involved because it is wrong to hold people and not allow them an attorney or the opportunity to challenge being held before a neutral party, a judge," Smith said. "I tell people if one of their family members was being held, would they like them to be treated this way?"

Smith, a 1971 Columbia Law School graduate, worked for years with Legal Aid in New York City. She also worked with the Second Chance Project, which represented inmates believed to have been improperly or falsely convicted of crimes.

She traveled Guantanamo to meet with Hamoud. Smith got clearance from the FBI first.

Cuba lies 90 miles off Florida, but the trip took more than three hours by private plane. The plane flies to the southern side of the island nation to land at the base, which the U.S. operates under a long-term lease signed with the pre-Fidel Castro government.

"They can't fly over Cuban airspace, so they have to fly around Cuba," she said.

At Guantanamo, the lawyers don't go to the military prison. The detainees are brought, shackled, to a holding area, she said. The legal process in Guantanamo doesn't permit the accused to bring witnesses to counter government accusations.

"It's a complete misnomer to refer to what goes on there as a court process," Smith said.

Smith said she believed the U.S. government eventually would release most of the people being held at Guantanamo.

"The U.S. doesn't want to keep these people forever," she said. "It's become somewhat of a complicated situation. They don't want to be seen as being forced to release them."

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Allies at odds over release of detainees

Guantanamo suspects might join terrorist groups if freed, U.S. fears

By Carol J. Williams, Rich Connell and Robert J. Lopez

Originally published October 29, 2006

Guantanamo Bay, Cuba // U.S. officials, apparently caught off guard by the Saudi government's recent release of more than two dozen former Guantanamo Bay prisoners, are voicing fears that the men will join the camp of violent extremist groups.

The Saudis released the 29 men so they could take part in the Islamic observance of Ramadan, with instructions to return to jail by the end of this month.

Saudi officials said that although the men were still under investigation for possible ties to terrorism, they were not considered a serious threat. "Throwing people in jail and letting them rot is not the answer," said Nail Al-Jubier, a spokesman for the Saudi Embassy in Washington.

But Guantanamo's commander expressed skepticism.

"I'm interested in if they go back to the fight," said Rear Adm. Harry B. Harris, noting U.S. estimates that about 50 of 300 men released since the detention facility opened in 2002 have resumed plotting against U.S. interests.

The temporary release of the Saudis illustrates the limits of U.S. influence as the Bush administration seeks to shrink the population of Guantanamo by transferring prisoners to other nations. And it underscores how differently the United States and other countries perceive the danger posed by former detainees.

Of the 437 captives at the U.S. base in Cuba, 110 have been cleared for release to their home countries, and more are being added to the list. Officials have said that fewer than 100 prisoners will face military tribunals, leaving 300 or more to be repatriated.

Guantanamo has come under increasing international criticism and continues to be dogged by allegations of abuse. Administration officials say the ultimate goal is to shut it down.

Some nations have refused to accept Guantanamo detainees, either denying responsibility for them or balking at U.S. demands for elaborate security measures.

Critics say the problem has been worsened by U.S. failure to make plans earlier for releasing prisoners. Lawrence B. Wilkerson, who was chief of staff to then-Secretary of State Colin L. Powell, recalled high-level meetings in which State Department officials pressed the Pentagon to explain its plans for releasing captives.

Wilkerson, who has become a critic of Bush administration policy, said Defense Secretary Donald H. Rumsfeld and Vice President Dick Cheney "refused to deal with it. For these guys, there was never any idea of final disposition."

In the cases of several British citizens, Wilkerson said, Rumsfeld wanted extensive security measures that the British government refused to accept. The British citizens were transferred anyway, and all were released.

Spokesmen for Rumsfeld and Cheney say the Bush administration has worked steadily, in cooperation with U.S. allies, to release or repatriate detainees while trying to ensure that they are treated humanely and won't become future threats.

"The U.S. government has no desire to hold detainees any longer than necessary," a Defense Department spokesman said.

More recently, the United States and Britain have clashed over nine men at Guantanamo who had lived in Britain but were not citizens. This year, according to British court records, U.S. and British officials began discussing the possible release of the men. British officials said the United States expected assurances of extensive, open-ended surveillance before they would consider returning the men.

Even if British officials conducted surveillance, used covert agents and intercepted phone conversations, the measures would not have satisfied U.S. officials, according to William Nye, head of Britain's counterterrorism and intelligence directorate.

"None of these techniques, individually or collectively, would have been able to provide the sort of guarantees sought by the U.S.," Nye said.

The nine men, Nye told the court, were not considered enough of a danger to warrant diverting intelligence resources "from those who pose a greater threat to national security."

An appeals court in London backed the British government, which also argued that it could not advocate on behalf of the nine detainees because they are not British citizens. The men remain at Guantanamo.

Critics say the ruling served the interests of U.S. and British officials by creating the appearance that the countries have tried to hammer out a transfer agreement but were thwarted by legal and security constraints.

"This represents a convenient cover for both parties," said Brent Mickum, a Washington lawyer who represents two of the men.

In another case, that of Murat Kurnaz, a Turkish-born German resident, officials in Berlin initially balked at taking him back after U.S. officials approved his transfer in 2002. His case languished until this year when the new German chancellor, Angela Merkel, raised the issue with President Bush.

But the transfer was delayed for months, in part because of U.S. demands for surveillance and other security measures to keep tabs on Kurnaz.

The measures were rejected by German authorities because they would have created "a collision with German law," said Bernhard Docke, the attorney handling Kurnaz's case in Germany.

Kurnaz finally returned to his hometown of Bremen in August and was briefly placed under investigation for possible ties to Islamic extremists. The Germans dropped the case and released him last week.

Detainees from Saudi Arabia make up one of the largest groups at Guantanamo. Saudi prisoners have come under particular scrutiny, in part because of the nation's fundamentalist strain of Islam and that most of the 19 men who hijacked airliners in the Sept. 11 attacks were Saudi nationals.

So, it was not surprising that the mass release for Ramadan raised eyebrows among U.S. officials.

"We're certainly hoping they don't come back and haunt us," said a senior State Department official, who requested anonymity.

http://www.baltimoresun.com <http://www.baltimoresun.com>

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Guantanamo may be final home for many detainees

By Kristin Roberts
Reuters
Sunday, October 29, 2006; 7:41 AM

GUANTANAMO BAY, Cuba <http://www.washingtonpost.com/wp-srv/world/countries/cuba.html?nav=el> (Reuters) - Many of the 435 suspected terrorists held in concrete and metal prisons on a U.S. military base in Cuba might never go home.

Detained but not charged in one of five camps along the cactus and palm tree-lined shore, they were captured in the U.S. war on terrorism -- a conflict with few borders, hard-to-identify enemies and no foreseeable end.

The U.S. military has freed hundreds of men, mostly captured in Afghanistan <http://www.washingtonpost.com/wp-srv/world/countries/afghanistan.html?nav=el> . Of those still here, the Pentagon decided some 120, and perhaps more, could be sent home, although that process has been slowed by reluctance from receiving nations.

But more than 300 others, including 14 transferred in September to Guantanamo from secret overseas prisons, could remain in U.S. military detention until they die.

"Yes, they could be held for the duration of their lives," said Cully Stimson, the Defense Department's assistant secretary of defense for detainee affairs, on one of his regular trips to the base last week.

Some, including Stimson, say that as far as detention goes, life inside Guantanamo isn't so bad.

"If U.S. prisoners saw the detention regime these people are in, they'd be knocking down the door to get into Gitmo," he said, using the nickname for the U.S. naval base on land leased from Communist Cuba.

After criticism for early detention practices, Guantanamo has been praised this year by some European officials as a facility comparable to the best European prisons. Many also still say the prison should close, and Britain's <http://www.washingtonpost.com/wp-srv/world/countries/greatbritain.html?nav=el> foreign secretary recently called it ineffective and damaging.

Guantanamo has changed dramatically from the early days of the infamous "Camp X-Ray" -- exposed, chain-link-fenced cells where detainees were kept when the Pentagon first began shipping prisoners from Afghanistan in 2002. Camp X-Ray is closed, overtaken by tall grasses, snakes and spider webs.

SEGREGATED BY COMPLIANCE

Gitmo's detention buildings hide behind multiple rows of 12-foot chain-link fences covered in green tarpaulins and topped with tight spirals of barbed wire. Old wooden and newer steel watchtowers dot the perimeter.

Detainees are segregated by their level of "compliance," and most are considered not fully compliant.

That label determines what color uniform they wear -- from white for fully compliant to tan and orange for different levels of noncompliance. It determines whether a man lives alone or with nine others, as well as what kind of toothbrush he gets and whether the mat on top of his concrete or metal bed is 1-inch thick or four.

One of the few things not affected by compliance level is the daily "voluntary" interrogation.

A detainee last week sat on a blue couch, his forearms on his knees, staring at the rug on the floor. He spoke little to his interrogator and civilian translator.

Others, according to a lead interrogator, are more talkative. Some sit in reclining chairs. Interrogators frequently offer cooperative detainees coffee or fast food as an incentive to open up.

But even those who cooperate and are compliant are chained to the floor by at least one ankle shackle.

Guards always wear protective vests and remove their names from their uniforms. They say they have grown accustomed to receiving insults and having urine and feces thrown at them.

Many live by a simple rule of thumb. "There are no medium-security terrorists."

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Friday, October 27, 2006 · Last updated 3:04 p.m. PT

Judge sets schedule on detainee lawsuits

THE ASSOCIATED PRESS

WASHINGTON -- A federal judge Friday set the stage for the next push by the Bush administration to get all the lawsuits by detainees at Guantanamo Bay thrown out of U.S. courts.

U.S. District Judge James Robertson laid out a five-week schedule for the Justice Department and lawyers for Salim Ahmed Hamdan to file written arguments in the detainee's challenge to his confinement.

Hundreds of other detainees also are challenging their detentions in lawsuits.

It was a challenge by lawyers for Hamdan, Osama bin-Laden's former driver, that led to the Supreme Court ruling in June striking down the Bush administration's plan for military commission trials.

The new Military Commissions Act, which President Bush signed on Oct. 17, strips U.S. courts of jurisdiction to hear the detainees' challenges to their indefinite detentions. Hamdan's lawyers say the new provision is "of doubtful constitutionality."

Ten days ago, the Justice Department filed a copy of the new law with the court in Hamdan's case. Robertson said in a one-page order the Justice Department filing "is deemed to be a motion to dismiss" Hamdan's case.

Patrick Leahy, the ranking Democrat on the Senate Judiciary Committee, has said the provision to strip detainees of access to U.S. courts would "take our civilized society back some 900 years to King John at Runnymede which led to the adoption of the Magna Carta."

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Australia bars ex-Gitmo prisoner

CANBERRA, Australia, Oct. 30 (UPI) -- A British national once held, but not charged, at the U.S. terrorist detention facility at Guantanamo Bay has been denied entry to Australia.

Ruhal Ahmed, who wanted to promote a docu-drama about his experiences, was forbidden from coming to Australia based on an assessment by the Australian Intelligence Security Organization, The Australian newspaper on Monday quoted a spokesman for Attorney General Philip Ruddock as saying.

Additional details, however, were not immediately available.

Ahmed, then 19, was captured by Northern Alliance forces in Afghanistan in 2001 during the campaign to oust the al-Qaida connected Taliban government.

According to the report, Ahmed had said he and two friends went to Afghanistan following a wedding in Pakistan to help people.

He was detained at Guantanamo, in Cuba, for more than two years after Northern Alliance forces handed him over to U.S. authorities.

Ahmed has promoted the British-made docu-drama in at least a dozen countries, the report said.

http://www.upi.com <http://www.upi.com>

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Guantanamo interrogators try soft touch with detainees
Web posted at: 10/29/2006 2:52:38
Source ::: AFP

GUANTANAMO BAY * Except for the manacles, the scene could have been mistaken for a visit to a therapist.

The young bearded man hunched forward in a plush blue easy chair, apparently rapt in thought as he watched his toes curl and uncurl in his flip-flops.

Two other sets of feet, these clad in shoes, were visible on the edge of the television monitor - the man's interrogator and a linguist. For several long minutes, the prisoner sat without any sign of words being exchanged between them.

Observing the interaction earlier this week on a muted television monitor in another room was a small group of journalists and analysts on a tour of the US Guantanamo Bay, Cuba detention center that holds some 454 "war on terror" detainees. "This has not been staged. This is an actual interrogation that was scheduled today," said the officer in charge of the interrogation center, a complex of cells called the Interrogation Control Element, or ICE.

US military officials here appeared eager to show that whatever one may have heard about Guantanamo - and there have been a stream of allegations of abuse of detainees - the interrogations are closely supervised, hands-off affairs that follow plans that have been

approved up the chain of command. The guiding standard is the Geneva Conventions, said Brigadier General Ed Leacock. "We follow it to the letter." Abuse scandals at US detention centers in Iraq, Afghanistan and Guantanamo have prompted new laws adopting Geneva Convention bans on "cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment."

The laws leave an out for Central Intelligence Agency interrogations, which can be conducted under an undisclosed set of rules that allow harsher tactics. But the military and anyone else questioning detainees at military-run facilities must now abide by a set of army rules designed to comply with the Geneva Conventions.

It follows a swing of the pendulum from late 2002 when US Defense Secretary Donald Rumsfeld authorised harsh procedures not in the army manual to be used on Mohammad Al Qahtani, the so-called twentieth September 11, 2001 hijacker.

The interrogations spawned practices - nudity, sleep deprivation, the use of growling dogs to intimidate, and sexual humiliation - that surfaced in similar form at the Abu Ghraib prison in Iraq in the wake of the US-led invasion. Officials at Guantanamo now emphasise slowly developing rapport between interrogator and detainee, helped along with rewards rather than punishment. Whether that approach will be applied to 14 top Al-Qaeda captives transferred to Guantanamo from secret CIA prisons September 5, including Khalid Sheikh Mohammed, the reputed mastermind of the September 11 attacks, is still unclear.

"That's being determined now by high levels of the Department of Defense," said Leacock. "They're such special detainees we're still working through the modalities."

"We've just had them over a month. We're going through all the procedures of what we want to do and not do," he said. But other detainees can opt out of interrogations altogether, said the military official in charge of the interrogation center. "If they don't want to see an interrogator, they don't have to."

The interrogation cells themselves have been given the homey look of a den or a small living room to foster rapport. The detainee is shown to the deeply cushioned easy chair while the interrogator and translator sit across a coffee table from him in two simpler seats. A television set, a coffee maker and a small refrigerator complete the welcoming image. Not all traces of prison life have been erased. Padding covers portions of the cell wall to absorb sound, and a steel ring is set in the floor in front of the detainees' seat to which he is always cuffed.

http://www.thepeninsulaqatar.com <http://www.thepeninsulaqatar.com>

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Amnesty chief calls for Hicks' return

THE international head of Amnesty International has pleaded for the federal Government to bring home terror suspect David Hicks in an open letter to the Prime Minister.

Amnesty Secretary-General Irene Khan urged the Government to return Hicks to Australia and try him under Australian law.

She described the US detention facility at Guantanamo Bay in Cuba where he is held as a prison camp and a legal black hole.

"Prime Minister, as a leader of the democratic world that is challenged with addressing the threat of terrorism while also upholding the rule of law and respect for human rights, you

have a duty to end this travesty of justice," Ms Khan said in her letter published in the Adelaide Advertiser.

"Bring Hicks home. Try him here, in Australia.

"If the Australian justice system, based on the rule of law and international human rights principles, can find no ground or evidence on the basis of which to prosecute him, then David Hicks must be released.

"It is that simple."

Adelaide-born Hicks, 31, has been detained by the US since his capture among Taliban forces in Afghanistan in December 2001.

He had previously pleaded not guilty to charges of attempted murder, aiding the enemy and conspiracy, and was earmarked to appear before a US military commission.

His case was put on hold when the US Supreme Court in June ruled it was unlawful for the commission to try Hicks and other Guantanamo Bay detainees.

But US President George W Bush has since signed controversial new legislation into law allowing revamped military commissions to proceed.

http://www.news.com.au/adelaidenow <http://www.news.com.au/adelaidenow>

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Sept. 11 Plotter Asks Court for Lawyer, Trial

Case Embodies Debate Over Habeas Rights

By Carol D. Leonnig and Julie Tate
<http://projects.washingtonpost.com/staff/email/carol+d.+leonnig++and+julie+tate/>

Washington Post Staff Writers
Thursday, October 26, 2006; Page A03

Ramzi Binalshibh, an admitted al-Qaeda planner of the Sept. 11 attacks, tried four times to join the terrorist hijackers who flew planes into the World Trade Center and the Pentagon in 2001 and has acknowledged his goal of killing as many Americans as possible.

Now the Yemeni man is seeking the help of the U.S. court system to address his complaint that he has been wrongfully imprisoned and treated unfairly by the U.S. government. He filed a legal challenge in federal court in Washington on Oct. 10, asserting his rights to contest his detention and requesting that a court-appointed lawyer represent him free of charge.

In so doing, Binalshibh brought to life the two arguments at the heart of the recent, furious debate over stripping such habeas corpus rights from so-called enemy combatants: the administration's position that alleged terrorists like him do not deserve access to U.S. courts, and his opponents' assertion that the American justice system is a model for the world precisely because it accords such basic rights to all.

One of the most bitterly fought provisions of the legislation President Bush signed Oct. 17 to establish a system of military trials, or "commissions," for accused enemy combatants eliminated those rights for the captives at the U.S. prison in Guantanamo Bay, Cuba. Suspending habeas rights is a step that has been taken only four times previously in U.S. history, and its legality this time will almost certainly be decided by the Supreme Court.

Because of Binalshibh's alleged admission that he was a key player in the Hamburg cell that carried out the attacks, his legal suit may provide the starkest test yet of America's justice system, legal experts said.

"It is how our system treats the worst of the worst, the most reviled of the reviled, that shows how true we are to our principles, " said David H. Remes, who has represented 17 detainees, mostly from Yemen, and coordinated defense arguments to the Supreme Court in the successful Hamdan case.

Binalshibh may never get the hearing he is seeking. His is one of hundreds of cases the government asked the courts to dismiss immediately after Bush signed the new law. For his part, Binalshibh did little more than assert his habeas rights and ask for a lawyer.

Binalshibh is part of a select group of detainees that even defense lawyers acknowledge may be guilty -- 14 suspected terrorists the government deemed "high-value detainees," some of whom have allegedly admitted high-level roles in the al-Qaeda attacks. President Bush cited the 14 men, selected from more than 100 terrorist suspects who had been held for years in secret CIA-run prisons, when he successfully lobbied for the military commission law.

Bush sought Congress's approval after the Supreme Court ruled in Hamdan v. Rumsfeld in June that the administration lacked the authority to establish the military trials on its own. He pressed for the legislation as the government transferred the 14 men to a unit of the military prison in Guantanamo Bay and singled out Binalshibh -- along with Sept. 11 mastermind Khalid Sheik Mohammed.

Binalshibh's family's decision to seek help in a U.S. court also highlights a growing tension within the defense bar about the ethical and practical dilemmas of representing detainees who likely played a role in slaughtering thousands of Americans.

Binalshibh's brother filed a petition on his behalf and asked the federal court to appoint a public defender to represent him. The Center for Constitutional Rights, a civil liberties group that sued last year to represent the remaining detainees in Guantanamo Bay who lack representation, is not currently representing him. A group official said he could not comment on the reason because of potential attorney-client privilege.

Tina Foster, a civil liberties lawyer who previously helped coordinate the work of dozens of law firms representing hundreds of Guantanamo detainees, said it would be a "challenge" to find a pro bono lawyer for Binalshibh because he has been virtually convicted in media reports as a Sept. 11 plotter. Remes said there is an "understandable reluctance" among large commercial law firms to champion Binalshibh's cause.

"You wouldn't be rushing to file a habeas claim for Ramzi Binalshibh," Foster said. "Most of the folks down there are "no-value" detainees -- they shouldn't even be there -- and those are the ones you'd want to push in the court."

Binalshibh was captured by the United States in Pakistan in 2002 and taken to secret detention facilities. According to the Sept. 11 commission, he told interrogators that he was supposed to pilot another hijacked airliner on the day of the attacks but was repeatedly refused a visa to enter the United States.

His transformation to a terrorist began in 1997 when he became friends with future hijackers Mohamed Atta, Marwan al-Shehhi and Ziad Jarrah while living in Germany on a student visa. He later pledged allegiance to Osama bin Laden while training with his friends in Afghanistan in 1999.

Instead of participating in the attack, Binalshibh relayed messages between the hijackers and Mohammed, met with Atta for briefings on attack planning and allegedly helped transfer money to the hijackers.

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Gun-run trio face Guantanamo

By Ian McPhedran

October 30, 2006 12:00

THREE Australian terror suspects face possible extradition to the American military prison at Guantanamo Bay in Cuba after being arrested in Yemen.

The three, who are aged in their 20s and from NSW, were picked up two weeks ago during a CIA-led operation as they crossed back into Yemen from Somalia following a weapons smuggling run.

They were part of an eight-man group of al-Qaeda-linked gun runners that included a Briton, a Dane, a German and a Somali.

Two of the Australians were born in Australia and one in Poland. He became an Australian citizen in the 1980s.

Foreign Minister Alexander Downer said his department was in close contact with their next of kin in Australia and Yemen.

"We don't have any confirmation of the official charges but we understand the men were detained on terrorist charges including attempting to smuggle arms to Somalia.

"These are very serious charges and the government, of course, would be deeply concerned if they turned out to be true.''

American intelligence agencies provide blanket coverage of the border region between Yemen and Somalia which is a well-known stronghold of al-Qaeda and its affiliates.

US spy satellites and unmanned spy planes conduct round-the-clock surveillance of the area.

Australian officials, including agents from ASIO and the foreign spy service ASIS, will travel from Riyadh to the Yemeni capital Sanaa to visit the detained men once access in granted.

Foreign Affairs will provide consular assistance, including legal support, through the British embassy in Sanaa.

The British intelligence service MI6 works closely with the CIA and other foreign intelligence agencies in the volatile Horn of Africa region.

According to security sources the three Australians converted to Islam earlier this year and travelled to Yemen for religious and Arabic language study.

A number of al-Qaeda suspects have been flown out of Yemen to interrogation facilities in other countries including Egypt and Pakistan or to Cuba.

The three Australians will be dealt with under Yemeni law and will almost certainly be handed over to the Americans.

http://www.news.com.au/dailytelegraph <http://www.news.com.au/dailytelegraph>

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FORBES

Man's Transfer to Iraq Death Row Delayed
Associated Press 10.27.06, 6:58 PM ET

A federal appeals court said Friday that the military may not turn an American citizen over to Iraqi officials to face the death penalty until the Supreme Court can hear his case.

The Supreme Court's decision in the case will help decide what rights American citizens have when detained by U.S. military forces overseas.

Mohammad Munaf was convicted and sentenced to death by an Iraqi judge this month on charges he helped in the 2005 kidnapping of three Romanian journalists in Baghdad.

Munaf, who was born in Iraq and became an American citizen in 2000, asked a U.S. judge not to let the military transfer him. He claimed his trial was flawed and his confession was coerced.

Those would normally be grounds for American citizens to challenge their imprisonment. But U.S. District Judge Royce Lamberth said this month that he had no authority to intervene because Munaf was being held by coalition military forces, not by the U.S. military alone.

The U.S. Appeals Court for the District of Columbia Circuit also declined to step in but said Friday that the military must give Munaf 10 days to appeal to the Supreme Court and wait for the court to rule before transferring him.

http://www.forbes.com <http://www.forbes.com>

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The Jurist

Saturday October 28, 2006
Appeals court blocks US handover of American to Iraqis before high court ruling
Ryan Olden <http://jurist.law.pitt.edu/jurist_search.php?q=Ryan%20Olden> at 3:14 PM ET

[JURIST] The US DC Circuit Court of Appeals <http://www.cadc.uscourts.gov/internet/internet.nsf> [official website] ruled Friday that Iraqi-American Mohammed Munaf had to be given ten days to appeal his case to the US Supreme Court and then the high court had to be accorded time to rule on that before the US military can legally transfer him to Iraqi custody and likely execution. In early October, an Iraqi judge sentenced Munaf to death for his alleged role <http://jurist.law.pitt.edu/paperchase/2005/05/romania-charges-translator-businessman.php> [JURIST report] in the kidnapping of three Romanian journalists in 2005. Munaf, who is married to a Romanian woman, was born in Iraq but became a US citizen in 2000.

On October 13 lawyers for Munaf filed an emergency motion <http://natseclaw.typepad.com/natseclaw/files/Munaf.v.Harvey.Emergency.Motion.pdf> [PDF text; declaration <http://natseclaw.typepad.com/natseclaw/files/Munaf.v.Harvey.Emergency.Declaration.pdf> , PDF] in federal court to prevent the military from transferring him <http://jurist.law.pitt.edu/paperchase/2006/10/us-citizen-facing-iraqi-death-penalty.php> [JURIST report] to Iraqi authorities. Munaf claims his confession was coerced, authorities

did not confront him with the evidence brought against him, and he was not allowed to present his own exculpatory evidence. Ordinarily, these allegations, if proven, would be sufficient for American courts to intervene on Munaf's behalf. US District Judge Royce Lamberth <http://www.dcd.uscourts.gov/lamberth-bio.html> [official profile] ruled October 19 that the federal courts had no power to intervene <http://www.dcd.uscourts.gov/opinions/2006/Lamberth/2006-CV-1455~10:57:31~10-19-2006-b.pdf> [opinion] in the case because Munaf was in Coalition, not American, custody. Jonathan Hafertz, counsel for Munaf, told <http://jurist.law.pitt.edu/hotline/2006/10/habeas-denial-creates-blank-check-for.php> JURIST Hotline afterwards that:

The decision is unprecedented and unjustified, flouting more than a half-century of Supreme Court precedent establishing that US citizens detained overseas have a constitutional right to challenge their detention by the United States as well as their transfer to a foreign sovereign....More is at stake than the life of an American citizen. The decision threatens to create a blank check for executive imprisonment wherever the United States claims it is holding an American citizen under the guise of a multinational operation

http://jurist.law.pitt.edu

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Can '20th hijacker' ever stand trial? MSNBC.com October 26, 2006 Thursday

MSNBC.com

October 26, 2006 Thursday 9:34 PM GMT

Mohammed al-Qahtani, detainee No. 063, was forced to wear a bra. He had a thong placed on his head. He was massaged by a female interrogator who straddled him like a lap dancer. He was told that his mother and sisters were whores. He was told that other detainees knew he was gay. He was forced to dance with a male interrogator. He was strip-searched in front of women. He was led on a leash and forced to perform dog tricks. He was doused with water. He was prevented from praying. He was forced to watch as an interrogator squatted over his Koran.

That much is known. These details were among the findings of the U.S. Army's investigation of al-Qahtani's aggressive interrogation at Guantanamo Bay, Cuba.

But only now is a picture emerging of how the interrogation policy developed, and the battle that law enforcement agents waged, inside Guantanamo and in the offices of the Pentagon, against harsh treatment of al-Qahtani and other detainees by military intelligence interrogators.

In interviews with MSNBC.com - the first time they have spoken publicly - former senior law enforcement agents described their attempts to stop the abusive interrogations. The agents of the Pentagon's Criminal Investigation Task Force, working to build legal cases against suspected terrorists, said they objected to coercive tactics used by a separate team of intelligence interrogators soon after Guantanamo's prison camp opened in early 2002. They ultimately carried their battle up to the office of Secretary of Defense Donald H. Rumsfeld, who approved the more aggressive techniques to be used on al-Qahtani and others.

Although they believed the abusive techniques were probably illegal, the Pentagon cops said their objection was practical. They argued that abusive interrogations were not likely to produce truthful information, either for preventing more al-Qaida attacks or prosecuting terrorists.

And they described their disappointment when military prosecutors told them not to worry about making a criminal case against al-Qahtani, the suspected "20th hijacker" of Sept. 11, because what had been done to him would prevent him from ever being put on trial.

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When Gen. Geoffrey D. Miller, the U.S. Army general in charge of detainees at Guantanamo Bay, flew to Iraq on Aug. 31, 2003, to advise on operation of a little-known prison called Abu Ghraib, his plane also carried something of a stowaway.

An agent of the Pentagon's Criminal Investigation Task Force went along to warn U.S. prison officials in Iraq that Gen. Miller's aggressive interrogation techniques were not the only way, that there were legal and effective ways of building rapport with detainees to get them to talk.

The task force's top cop, Mark Fallon, had sent the agent. Fallon said he feared that the Guantanamo techniques would spread.

"I wanted to tackle the general, anything to stop him from getting on that plane," Fallon said. "The best I could do was to send along a chaperone."

Gen. Miller resisted the agent, Blaine Thomas, joining his team, according to Fallon and his commander, Col. Brittain P. Mallow. He eventually relented, they said, but in Iraq he told the agent three times that he wasn't needed in meetings. So the agent made the best of his time in Iraq, meeting with the FBI.

The general, now retired, says the cops have it backward. "I'm the one who asked their guy to come" on the Abu Ghraib trip, Gen. Miller said, "and when they sent him, he was the one who decided to work with the FBI and other agencies instead of coming to the briefings. He had free and open access like everyone else."

In early April 2004, Gen. Miller left Guantanamo for a new role, running all U.S. prisons in Iraq, a few weeks before the name Abu Ghraib became well known. An Army investigation found later that Miller on his first visit had urged that military police with dogs "set the conditions" for interrogations, and that interrogators adopt "emerging strategic interrogation strategies and techniques" being used at Guantanamo.

"When the Abu Ghraib photos were released," Fallon said, "I felt a great disappointment."

"I wasn't there for the meetings with General Miller. I do not know what he told those folks over there, what techniques to employ. ... But I felt a great sense of disappointment that I was not able to effectively influence behaviors that could have contributed to Abu Ghraib."

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At Orlando International Airport on Aug. 4, 2001, a Saudi traveler caught the eye of a Customs agent.

The young man had no return ticket, $2,800 in cash, and wouldn't identify the friend he said would pick him up at the airport. The Customs agent decided this was a potential illegal immigrant. Before being sent on a flight back to the Middle East, Mohammed al-Qahtani turned to the agent and said, "I'll be back."

The Pentagon has said that his friend at the airport was the Sept. 11 ringleader, Mohammed Atta, and that al-Qahtani was apparently intended to be the fifth hijacker on United Airlines Flight 93, which crashed in Pennsylvania when passengers were able to overpower the other four. Al-Qahtani, through his attorney, says he was not involved.

Al-Qahtani was captured in December 2001 on the Afghanistan-Pakistan border and shipped to the U.S. prison camp at Guantanamo Bay.

For awhile he cooperated with FBI interrogators, but by the fall of 2002, he had mostly stopped talking.

The pressure on interrogators to produce information was intense. Less than a year after the Sept. 11 attacks, al-Qaida attacks were continuing: the firebombing of a synagogue in Tunisia in April, a bomb outside the U.S. Consulate in Karachi in June.

In early September 2002, the FBI suggested another option for obtaining information from al-Qahtani, according to the leaders of the law enforcement task force, who shared an office at Guantanamo with the FBI. The plan, they said, was to send al-Qahtani temporarily or permanently to another country, such as Egypt or Jordan, where he could be interrogated with techniques that the FBI could not legally use.

The commander of the law enforcement task force, Col. Britt Mallow, and his chief investigator, Mark Fallon, say they learned of the plan from the Pentagon's Office of General Counsel, which urged them to reach a consensus with the FBI and intelligence interrogators on how to handle al-Qahtani. The cops opposed the plan, which was scrapped. A later FBI legal analysis warned that even discussing such a plan, known as "rendition," could be a crime, conspiracy to commit torture.

The FBI and Justice Department will not comment on any plan for rendition of al-Qahtani. A Pentagon spokesman, Cmdr. Jeffrey D. Gordon, said only, "There is continuous dialogue among interagency staffs about a wide variety of topics of national importance, although we do not typically discuss those talks."

If al-Qahtani wasn't going to talk with the law enforcement agents, then the military intelligence interrogators wanted their shot. By September 2002, they were developing their own interrogation plans for al-Qahtani.

By this time, law enforcement interrogators said, they had seen signs of coercive or abusive techniques being tried by the young, mostly inexperienced, military intelligence personnel: a cinder block left in the interrogation box, apparently used to hold a detainee in a stress position, called short shackling; a detainee wrapped from head to toe in duct tape. These techniques were not in the interrogation bible, the Army Field Manual.

The al-Qahtani plan went much further. The law enforcement agents began to hear a new term, SERE, an acronym for Survival, Evasion, Resistance and Escape. SERE training is provided to U.S. Special Forces and other military personnel to prepare them to withstand torture if they become prisoners of war. It includes mocking of their religious beliefs, sexual taunting, and a technique called water-boarding, which induces water through the nose to make a prisoner feel like he's drowning.

Intelligence interrogators had the idea to "reverse-engineer" SERE, to use its techniques to pry information out of the suspected al-Qaida and Taliban terrorists. Pentagon e-mails seen by MSNBC.com show that at least a half dozen military intelligence personnel from Guantanamo, including at least one medical adviser, went to Fort Bragg, N.C., on Sept. 16-20, 2002, for SERE training. It was an experiment, apparently not unlike what the CIA had been trying on the few high-value detainees kept at secret locations.

The law enforcement agents, who were collecting intelligence information but primarily focused on developing cases for Pentagon prosecutors, say they questioned whether SERE tactics would produce useful information.

"It was the latest gimmick," said Michael Gelles, the chief psychologist for the Naval Criminal Investigative Service and an adviser to the law enforcement agents at Guantanamo. "The problem was these techniques were taught to harden you against interrogation."

Gelles said he called Col. Morgan Banks, the director of the Psychological Applications Directorate at Fort Bragg. "I said it was nuts," Gelles recalls, "and told him we were concerned about this. He said it was used to train for resistance, and would not work as an interrogation approach. But they still teach it." That September of 2002, Col. Mallow and Fallon ordered their agents in writing not to engage in coercive interrogations, particularly using SERE techniques.

They also said they and their agents raised these concerns several times with the commander at Guantanamo, Gen. Michael E. Dunlavey, and his staff, but he "wouldn't listen at all," Col. Mallow said.

Gen. Dunlavey, a lawyer and reserve officer, now a state judge in Erie, Pa., says the law enforcement agents "are absolutely wrong."Â They didn't speak up to him about any coercive interrogations, he said. Any use of the SERE techniques must have begun after he left. "Whatever happened after Gen. Miller took over, I can't tell you."

Dunlavey said he always believed that "torture is wrong," and that his views were right in line with the law enforcement views. He said couldn't comment further because he is a defendant in two lawsuits brought by detainees.

Back in the states, Col. Mallow and Fallon said, they raised the issue almost weekly in August and September 2002 with lawyers from the office of the Pentagon general counsel, William J. Haynes III, as well as senior Army officials. Mallow said he recalls clearly that one meeting was on Sept. 11, the anniversary of the attacks, because his father died that night.

The cops argued that the al-Qahtani plan not only was illegal and unreliable, but also unnecessary. Mohammed al-Qahtani was not alleged to be a leader of the Sept. 11 plot. He was not trained as a pilot. If he was involved, he was one of the "muscle" hijackers. Everything known about al-Qaida, they said, suggests that information is compartmentalized.

Mallow said the senior Pentagon lawyers were sympathetic, but had limited influence on policy areas handled by the office of the secretary of defense.

A VIP tour

Into the interrogation debate flew a group of legal VIPs from the White House, the Justice Department and the Pentagon.

Defense Department e-mails seen by MSNBC.com show that a delegation visiting Guantanamo on Sept. 25, 2002, included Alberto R. Gonzales, then the White House counsel and now attorney general; David S. Addington, legal counsel to Vice President Dick Cheney, now his chief of staff; Timothy E. Flanigan, the deputy White House counsel; William Haynes III, the Pentagon general counsel; Larry Thompson, then deputy attorney general; Christopher A. Wray, the principal associate deputy attorney general, now head of Criminal Division at the Justice Department; and John Yoo, a lawyer in the Justice Department's Office of Legal Counsel, who reportedly had just helped write an Aug. 1, 2002, "torture memo" to Gonzales, defining torture narrowly as causing pain equivalent to organ failure or death.

The visiting VIPs met with Gen. Dunlavey and his staff, but not with any of the law enforcement investigators who opposed the aggressive interrogations. The White House and the Pentagon will not comment on the visit, other than to say that delegations frequently visited Guantanamo to discuss detainee matters.

Yoo has expressed the administration's position on the balance between anti-terrorist operations and law enforcement in the war on terror.

"You know, the point of the war is not to collect evidence and solve crimes; it's to fight and defeat the enemy," Yoo, now a law professor at the University of California, said in an NPR interview this month. "So I think this sort of flexible process reflects the demands and the nature of warfare."

The Pentagon's law enforcement investigators bristle at the idea that defeating al-Qaida was solely the mission of the intelligence interrogators.

"It was our job to prevent the next attack," Fallon said. "Anyone in the United States government's job, particularly someone who is a federal agent, law enforcement officer, is to prevent the next attack against the United States. ... The question we raised, rather vigorously: Will you really accomplish that objective by using aggressive technique?"

A menu of tactics

On Oct. 11, 2002, Gen. Dunlavey sent a formal plan for al-Qahtani's interrogation up the chain of command. He sought approval for a menu of 19 "counter-resistance techniques" not in the Army Field Manual:

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Category 1: Yelling, deception, use of multiple interrogators, misrepresenting identity of the interrogator (as from a country with a reputation for harsh treatment of prisoners).

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Category 2: Stress positions (such as standing for up to four hours), use of falsified documents or reports, isolation for 30 days or longer, interrogation in places other than the interrogation booth, deprivation of light and sound, hooding, interrogation for up to 20 hours straight, removal of all comfort items (including religious items), switching from hot food to military meals ready to eat, removal of clothing, forced grooming and shaving of facial hair, use of phobias (such as fear of dogs) to induce stress.

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Category 3: Use of scenarios to persuade the detainee that death or pain is imminent for him or his family, exposure to cold or water, use of mild non-injurious physical contact, use of a wet towel or water-boarding to simulate drowning or suffocation.

When preliminary approval of these techniques came from the Army's Southern Command in Miami in early November, the law enforcement agents at Guantanamo offered an alternative plan to the intelligence side. In writing, they described successes they had seen with rapport-building, and criticized the proposed aggressive techniques asÂ "possibly illegal" and