

NATIONAL SECURITY COUNCIL

ID 0304952

REFERRAL

DATE: 12 JUN 03

MEMORANDUM FOR: MARRIOTT, W

EXECSEC

DOCUMENT DESCRIPTION: TO: PRESIDENT

SOURCE: BARNITZ, LAURA

DATE: 08 MAY 03

SUBJ: LTR FM YAP INTL RE DETAINEES IN GTMO

REQUIRED ACTION: DIRECT REPLY FURNISH INFO COPY

DUE DATE:

COMMENT: NSC POC: JOHN BELLINGER

(b)(2)

(b)(6)

FOR

NSC RECORDS MANAGEMENT OFFICE

SecDef

W00713-03
ACLU (DP) 1303



564540

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Stone Holey

George W. Bush
The President
The White House
1600 Pennsylvania Avenue
Washington DC 20500
USA

May 8, 2003

Dear Mr. President:

I am writing on behalf of Youth Advocate Program International to express deep concern that children are among the more than 600 detainees being held at the U.S. Naval Base in Guantánamo Bay. Although we are heartened by reports that at least some children will be released in the near future, we urgently request your assurances that the United States will abide by its international obligations in relation to these detained children, including their right to legal representation.

Reports indicate that a "handful" of children, described as being between the ages of 13 and 15 years old, are being held in Guantánamo Bay as enemy combatants. We further note that a 16-year-old Canadian national, Omar Khadr, was transferred in late 2002 from Afghanistan to the Naval Base. We are concerned by reports indicating that it took six months for even the Canadian government to have access to him. Along with all the other detainees, he remains without access to legal counsel or his family.

International law and standards recognize the particular vulnerability of children and require, among other things, that children be detained only as a last resort and for the shortest time possible. When in detention, children must be fully protected according to their general and special needs. We note reports that at least some of the children are being held in facilities with other youth and not kept in isolation. However, we would emphasize that the definition of a "child", according to U.S. law and most international legal standards, is anyone under age 18, and we have no idea how many 16- and 17-year-old youth are being held in Guantánamo Bay.

Despite the fact that the U.S. Senate ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts last summer and your administration completed the process in December to make it legally binding, it appears that high-ranking members of the U.S. government are unfamiliar with these standards. We are shocked and dismayed by Secretary of Defense Donald Rumsfeld's statement that the detained children under 16 are "not children." It is imperative that representatives of the U.S. government respect the protections international law and U.S. law affords to all children under age 18. All necessary protections and safeguards must be extended to all children, including any 16 and 17 year olds who may be held at the Naval Base.

It is unconscionable that the United States--one of the first countries to ratify the Optional Protocol on the Involvement of Children in Armed Conflicts--is now treating these children

(page 1 of 2)

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11 81 7 2003 ACLU(DP) 1304

in a way that makes a mockery of the Protocol itself. Article 6 of the Protocol provides that "States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration."

In addition to the Optional Protocol, it is a fundamental principle of international human rights law that anyone deprived of his or her liberty be allowed to challenge the lawfulness of his or her detention in a court of law. We further point out that in December 2002, the United Nations Working Group on Arbitrary Detention noted that where prisoner of war status is not recognized, "the situation of detainees would be governed by the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) and in particular by Articles 9 and 14 thereof, the first of which guarantees that the lawfulness of a detention shall be reviewed by a competent court, and the second of which guarantees the right to a fair trial."

Article 9.4 of the ICCPR states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". The Human Rights Committee has stressed that this "important guarantee... applies to all persons deprived of their liberty by arrest or detention".

We recall that Secretary of State Colin Powell recently released the State Department's report on human rights practices in other countries and referred to "the steadfast commitment of the United States to advance internationally agreed human rights principles worldwide". We urge that our government acts on such sentiments in relation to the youth detained in Guantánamo Bay.

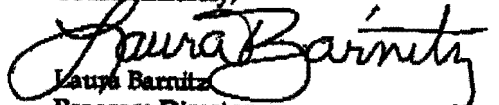
We would be grateful to learn how many children under age 18 at the time of their detention are currently held at Bagram Air Base and of the circumstances and conditions under which all of them are held.

We call for all under-18-year-olds held in Guantánamo Bay to have immediate access to lawyers and their families. They should be promptly charged and tried within a reasonable time in accordance with fair trial standards, or released into appropriate and safe circumstances.

Finally, I would like to take this opportunity to request that Youth Advocate Program International delegates have access to Guantánamo Bay and Bagram Air Base to visit officials and youth detainees there.

Thank you for your serious consideration of this letter. We await your response.

Yours Sincerely,


Laura Barnitz
Program Director
Youth Advocate Program International

CC: Secretary of Defense Donald Rumsfeld
Secretary of State Colin Powell

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FAX TRANSMITTAL

To: President George W. Bush, the White House
Fax: (b)(2)
From: Laura Barnitz, program director
Date: 5/8/03
Total pages: 3 pages

Re: Children Detained in Guantanamo Bay at U.S. Naval Base

PLEASE SEE FOLLOWING LETTER

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

ID# 564540

PAGE 1

DATE RECEIVED: 05/19/2003

NAME OF CORRESPONDENT: MS. LAURA BARNITZ

SUBJECT: EXPRESSES CONCERN THAT CHILDREN ARE AMONG THE MORE THAN 600 DETAINEES BEING HELD AT THE UNITED STATES NAVAL BASE IN GUANTANAMO BAY

		<u>ACTION</u>		<u>DISPOSITION</u>		
<u>ROUTE TO:</u>		<u>ACTION</u>	<u>DATE</u>	<u>TYPE</u>	<u>C</u>	<u>COMPLETED</u>
<u>OFFICE/AGENCY</u>	<u>(STAFF NAME)</u>	<u>CODE</u>	<u>YY/MM/DD</u>	<u>RESP</u>	<u>D</u>	<u>YY/MM/DD</u>
NATIONAL SECURITY COUNCIL	STEVE HADLEY	ORG	2003/05/19			

ACTION COMMENTS: _____

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COMMENTS:

ADDITIONAL CORRESPONDENTS: 0

MEDIA: FAX

INDIVIDUAL CODES:

REPORT CODE:

USER CODE:

**SCANNED
BY
ORM**

ACTION CODES:
A - APPROPRIATE ACTION
C - COMMENT/RECOMMENDATION
D - DRAFT RESPONSE
F - FURNISH FACT SHEET
I - INFO COPY/NO ACT NECESSARY
R - DIRECTORY W/ COPY
S - FOR SIGNATURE
X - INTERIM REPLY

DISPOSITION CODES:
A - ANSWERED
B - NON-SPEC-REFERRAL
C - COMPLETED
S - SUSPENDED

OUTGOING CORRESPONDENCE:
TYPE RESP = INITIALS OF SIGNER
CODE = A
COMPLETED = DATE OF OUTGOING

REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OEOB) EXT-62590 KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

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ACLU (DP) 1307

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

ID# 483228
PAGE 1

DATE RECEIVED: 12/19/2001

NAME OF CORRESPONDENT: MR. J. GORDON FORESTER JR. 001 070 21 14 10: 16

SUBJECT: EXPRESSES CONCERN REGARDING THE PRESIDENT'S MILITARY ADDRESSING "DETENTION, TREATMENT, AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM"
WHITE HOUSE SECTION

ACTION DISPOSITION

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
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DJ MILITARY OFFICE		ORG	2001/12/19			
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ACTION COMMENTS: _____

COMMENTS

ADDITIONAL CORRESPONDENTS:

MEDIA: FAX

INDIVIDUAL CODES:

REPORT CODES:

USER CODE:

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- ACTION CODES:**
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- OUTGOING CORRESPONDENCE:**
TYPE RESP = INITIALS OF SIGNER
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REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OE0B) EXT-62590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

SecDef

W01586 /01
ACLU (DP) 1314

196939



The BAR ASSOCIATION of the DISTRICT OF COLUMBIA

"The Voluntary Bar Association" Established 1871 Chartered 1874
1819 H Street, N.W. - Suite 1250 Washington, D.C. 20006 (202) 223-6600 FAX (202) 293-3388

military

483228

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December 13, 2001

The Hon. George W. Bush, President
The White House
1600 Pennsylvania Avenue
Washington D.C. 20500

Dear Mr. President:

On November 13, 2001, the President of the United States issued a military order addressing "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism." This order authorizes trial, exclusively by military commission, of "individuals subject to this order." An individual becomes subject to the order if that individual is not a United States citizen, and the President personally makes two determinations concerning the person's involvement in terrorism.

The Bar Association of the District of Columbia (BADC), like many other persons and organizations, has been concerned with the implications of the President's military order. After careful study, BADC has concluded that the military order can be supported, but only if certain modifications are implemented. Accordingly, BADC is today making three recommendations to the President and the Congress:

— that the order should be revised, and the regulations to be issued by the Secretary of Defense to implement the order should be crafted, to insure that such military commissions are structured and implemented in a manner that meets the requirements of fundamental fairness as that concept is generally recognized both in the United States and among our principal allies in the fight against terrorism;

— that to accomplish fundamental fairness, the principles of law, and the rules of procedure and evidence employed by these commissions, should conform to those established for general courts-martial conducted pursuant to the Uniform Code of Military Justice; and

— that the judgments of such commissions should be made subject to some sort of meaningful judicial review, and we suggest that such review be by an appropriate independent civilian reviewing authority designated by the President, with authority to approve, disapprove, or modify findings and sentence.

BADC believes that implementing these recommendations will provide for public safety, and for the protection of national security interests, while at the same time allowing the commissions to be and be seen as fundamentally fair. As


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ACLU (DP) 23154

Americans we believe that no nation better upholds the principles of freedom and justice than does ours. The proposed military commissions have been challenged by loyal Americans as well as our friends abroad for failing to meet those standards and principles. Our national credibility, and our continued position as a nation that stands on the world's legal and moral high ground are now at risk. We can retain military commissions and all their benefits if we but modify them to meet our own and world standards of fundamental fairness. BADC believes that if we are to continue to hold our high moral and legal position, implementing these recommendations is mandatory.

The text of the Recommendation, and a Report further explaining and supporting the Recommendation, are attached.

Very truly yours,



J. Gordon Forester, Jr.
President

The Bar Association of the District of Columbia

Resolution

RESOLVED, That The Bar Association of the District of Columbia supports the President's November 13, 2001 military order authorizing trial of non-US citizens accused of acts of terrorism before military commissions, provided:

- (a) that all proceedings pursuant to the military order be undertaken and conducted with a view to ensuring that they meet the requirements of fundamental fairness as generally recognized both in the United States and among our principal allies in the fight against terrorism;
- (b) that rules adopted to implement the military order conform to the rules and procedures applicable to trials by general court-martial conducted pursuant to the Uniform Code of Military Justice; and
- (c) that trials conducted pursuant to the order be made subject to review by an appropriate independent civilian reviewing authority designated by the President, with authority to approve, disapprove, or modify findings and sentence.

Adopted: December 10, 2001

The Bar Association of the District of Columbia

REPORT

To Accompany Resolution Adopted December 10, 2001

Introduction

On November 13, 2001, the President of the United States issued a military order addressing "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism." This order authorizes trial, exclusively by military commission, of "individuals subject to this order." An individual becomes subject to the order if that individual is not a United States citizen, and the President personally determines, in writing, that

(1) there is "reason to believe" that such individual, at the relevant times

- (i) is or was a member of the organization known as al Qaida;
- (ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- (iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) [above] and

(2) it is in the interest of the United States that such individual be subject to this order.

The order has raised great controversy. By its terms, it authorizes trials with substantially fewer protections for those accused than would apply were such individuals tried in federal district court, an option available for all terrorists prior to the issuance of the order on November 13th, and which remains available for all terrorists except for those made subject to this order.

This Resolution by The Bar Association of the District of Columbia (BADC) urges—by modification to the military order, and by the issuance of appropriate implementing regulations by the Secretary of Defense—that the protections to be afforded to an accused in any military tribunal be raised to the level that would satisfy the requirements of fundamental fairness.

In adopting this Resolution, BADC takes no position on any of the issues raised by the military order except as stated in the Resolution. That is to say, we assume that the President has authority to order military commissions for the trial of terrorists, but we submit that such commissions nevertheless must be conducted in such a manner as to meet standards generally recognized as fundamentally fair in the United States and by civilized nations of the world. Thus for purposes of this Resolution, BADC recognizes that military commissions have been used in the past in this country in certain times and under certain circumstances, and that the Manual for Courts-Martial (MCM), the regulation promulgated by the President to implement the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 801-846), states in its Preamble that military commissions constitute one of the agencies of military jurisdiction under United States law. BADC further recognizes that a number of legal scholars believe that the full panoply of constitutional due process rights do not apply to trials of non-citizen war criminal terrorists brought to trial before military commissions.

Having said this, BADC is greatly concerned that the use of military commissions, in the terms authorized in the military order, stands to undermine the stature of the United States as the leader of the free world both in ensuring fair and just tribunals for trials conducted in our own country, and in calling for other nations around the world to respect civil liberties and ensure independent and impartial tribunals and fair processes in their own justice systems.

Commentators questioning the military order have raised several concerns. Some have particularly questioned the breadth of the order, asserting that it encompasses millions of persons, including millions of resident aliens with green cards, people heretofore undoubtedly protected by the Constitution. *See e.g.*, Anthony Lewis, "Right and Wrong," *New York Times*, Nov. 24, 2001. Many, including Senator Patrick J. Leahy, have questioned the military tribunals because the structure of the tribunals does not present the appearance of an independent and unbiased tribunal, or because the procedures are so favorable to the government as to raise doubts that trials before such commissions would be deemed fundamentally fair. Senator Leahy particularly questioned how the United States would be able in the future to challenge the use of secret military courts by other countries against U.S. citizens, and voiced fears that these tribunals "could become a model for use by foreign governments against Americans overseas." *See, e.g.*, George Lardner, Jr., "Democrats Blast Order on Tribunals," *Washington Post*, Nov. 29, 2001, at A22. At least one noted commentator has labeled military commissions as "kangaroo courts." William Safire, "Kangaroo Courts," *New York Times*, Nov. 26, 2001. Others have written that meaningful judicial review of the commissions is "the most important change needed in the President's military order," and that "it cannot be constitutional to exclude the courts altogether." Walter Dellinger & Christopher H. Schroeder, "The Case for Judicial Review," *Washington Post*, Dec. 6, 2001, at A39.

With due regard to the fact that the United States is now involved in an armed conflict, and that public safety and national security concerns are of unquestioned priority and importance, BADC believes that the interests of public safety and national security can well be protected by the use of military commissions which do not so depart from accepted norms of due process in this country, or of fundamental fairness overseas. There are several particulars addressed in the Resolution.

Resolution

The Resolution seeks to balance practical and legal concerns regarding trials of terrorist war criminals, and to preserve traditional core values of the American justice system. It recognizes the very real need to protect a variety of national security interests, including the protection of sources of intelligence and evidence, but believes that the provisions of federal law currently applied in courts-martial, which parallel provisions for protection of classified information applicable in federal district court, including authorizing closing portions of proceedings, already strike a fair and workable balance between a fair process and the protection of national security. These recommendations are not intended or envisioned to require the disclosure of information which would compromise national security. Should there be instances where compliance with the principles enumerated herein would inadequately protect national security interests, such non-compliance should be documented in the record to facilitate appropriate review.

Part (a)

In the first section of the Resolution, BADC recommends that in all aspects of these commissions, care be taken to ensure that the proceedings are conducted in a manner which meets a standard of

fundamental fairness. Issues raised that fall into this category include the composition of the military commissions and the independence of individuals sitting on these commissions, as well as the procedures and rules of evidence addressed primarily in Part (b) of the Resolution. The perception of lack of independence and impartiality of military officers, who are dependent on their superiors for promotion, sitting on the commissions, has been raised in the United States. See, e.g., Lewis, *supra*.

This perception is particularly troublesome abroad, due to the provision that the Commander-in-Chief will personally determine who will be subject to these trials, and that the commissions are convened and reviewed by only two persons—the Secretary of Defense and finally the President. The following exemplifies our allies' concern.

In *Findlay v. United Kingdom*,¹ the European Court of Human Rights considered the propriety of the United Kingdom's court-martial process which (at the time) was quite similar in many respects to the U.S. court-martial system, with strong parallels to the military commissions at issue, in that the same officer (the "convening officer") who exercised prosecutorial discretion and decided who goes to trial and for what charges, also appointed the members, (as well as appointing the prosecutor and defense counsel). The same officer thereafter served as "confirming officer" to approve the court, a step necessary before the decision of the court-martial could have any effect.

The European Court determined that this organizational structure violated Mr. Findlay's right to a fair hearing before an independent and impartial tribunal, under Article 6 § 1 of the "Convention for the Protection of Human Rights and Fundamental Freedoms," and that under the above scenario, "Mr. Findlay's doubts about the tribunal's independence and impartiality could be objectively justified."²

The military commissions envisioned in the President's military order raise the very same issues regarding the "independent and impartial tribunal" as did the case of *Findlay*. Our allies who are signatory to the European Convention on Human Rights are only too aware of cases such as *Findlay* and their implications. They look at the order for these military commissions and they do not see a tribunal with adequate independence or structural integrity.

If the world is to deem these military commissions as "independent and unbiased tribunals," and if these trials are to be viewed as the "full and fair trial" required by the military order, some serious attention needs to be paid to these concerns in particular. Similar attention needs to be paid to all other aspects of these trials which might be deemed to render them less than fundamentally fair.

Part (b)

¹ *Findlay v. United Kingdom*, 24 EUR. CT. H.R. 221 (1997)

² *Id.* at Pre- ¶1 and ¶ 76.

In Part (b) of the Resolution we call for the application of principles of law and rules of procedure and evidence which comport with the principles and rules applied in courts-martial conducted pursuant to the UCMJ. For more than 150 years, military commissions have been conducted in this country, and at all times they have been guided in their operation by the rules applicable to courts-martial.³ In the current Manual for Courts-Martial, the President has required—consistent with MCM regulations ever since the UCMJ was adopted more than 50 years ago—that military commissions “shall be guided by the appropriate principles of law and rules of procedure and evidence prescribed for courts-martial.”⁴ This provision is consistent with Article 36 of the UCMJ, which requires that “pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions, and other military tribunals, . . . may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.” Article 36(a), UCMJ, 10 U.S.C. § 836(a).

The November 13th order is a clear departure from those longstanding regulatory requirements, and carves out for these military commissions a blanket exception to the presumptive statutory requirement. The President specifically exempted these military commissions, finding that compliance with the usual statutory requirement was impracticable: “I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.” This is a crucial finding, allowing the abandonment of those principles of law and rules of procedure and evidence that generally apply in district court, and that underlie the provisions of the MCM for trials by courts-martial. BADC notes the absence of any specific reasons supporting this finding. If there are reasons to support a complete withdrawal from the district court model, rather than more tailored and specific departures, they are not specified in the military order.

The rules set out in this military order may possibly be consistent with rules applied by military commissions (and by courts-martial) during World War II or earlier. But courts-martial in World War II were found to raise questions of fairness, and to be overly subject to unlawful command influence, and in 1950 Congress replaced the Articles of War with the UCMJ. The UCMJ implemented a variety of protections, often derived from civilian practice, many based on the Bill of Rights, and established for the first time a civilian court to oversee the military justice system and to review court-martial convictions. The protections deemed appropriate for courts-martial have further evolved and expanded since 1950, and now include the requirement for military judges to preside at general courts-martial, and provide in many cases the opportunity to petition for a writ of certiorari to the United States Supreme Court.

By establishing and authorizing commission rules which—subject to further regulations to be prepared by the Secretary of Defense—differ markedly from the principles and rules currently prescribed for courts-martial, and which afford far less protection to those accused before such commissions than would have been the case under the previously required court-martial principles and rules, the military order has raised worldwide concerns that the United States is operating an unjust system. Spain has already indicated it may not extradite suspected terrorists unless the U.S. agrees to an alternative forum. Such international impressions detract from our national image, and are avoidable. By returning to the

³ “In the absence of any statute or regulation governing the proceedings of military commissions, the same are commonly conducted according to the rules and forms governing courts-martial. William Winthrop, *Military Law and Precedents*, 841 (1886, 1920 Reprint).

⁴ Manual for Courts-Martial, 2000 Edition, Part I, ¶ 2.(b)(2).

longstanding rule, and requiring that military tribunals follow recognized and established military court martial procedures, much of the concern of the critics will be allayed, and the commissions can be the type of forum that all are seeking: namely independent and impartial tribunals providing full and fair trials.

Among the specific concerns that have been raised are that the trials would be able to be held in secret, the accused could be barred from seeing evidence against him, only a two-thirds vote would be needed to impose the death penalty, that the presumption of innocence would not apply, that the standard for conviction would be something less than the "beyond a reasonable doubt" standard that applies for a criminal trial under U.S. civilian law or under the UCMJ, and that the rules of evidence and privilege would not apply, but would be replaced by a lesser standard of "probative value to a reasonable person." All these issues may be addressed with reference to principles and rules now contained in the MCM for trials by courts-martial. Writing rules for military commissions which complied with Article 36 would resolve many of the concerns now being expressed.

Part (c)

In the final section of the Resolution, BADC calls for the President to establish an independent civilian review tribunal, which BADC suggests might appropriately be comprised of civilian jurists, to review all trials by military commission, and to have power to approve, disapprove, or modify (but not to increase) findings or sentence. When commissions were used during World War II, it appears that some sort of review mechanism, in addition to the review by the convening authority, was employed—initially based on the review function established for courts-martial in the 1920 Articles of War, and set forth in the then applicable Manual for Courts-Martial (1928). A variety of later review bodies were also used. However, the World War II review mechanisms were found insufficient, and in 1950 a distinct appellate review structure for courts-martial was put in place, capped with the civilian Article I Court of Military Appeals (now the United States Court of Appeals for the Armed Forces (CAAF)). No serious court-martial sentence, including death, can today be carried out without extensive judicial review, including the opportunity for petition for certiorari to the United States Supreme Court for cases reviewed by CAAF, and including as well, where appropriate, the opportunity for habeas corpus petitions in federal civilian courts, including the Supreme Court.

In contrast, the military order issued by The President purports to preclude any judicial review:

the individual [subject to this order] shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in

- (i) any court of the United States, or any State thereof,
- (ii) any court of any foreign nation, or
- (iii) any international tribunal.

Thus, the order not only does not allow judicial review of the conviction, but it may also amount to a suspension of the writ of habeas corpus for these individuals. As such it purports to leave the authority to execute sentences, even to death, to the President alone, after review by the Secretary of Defense, without any review by anyone not involved in the decision to prosecute. This cannot be considered fundamental fairness and it will not be accepted worldwide as a fair or just process.

While military commissions are not subject to direct review in Article III courts, or in the military

appellate courts established in the UCMJ, if the President has inherent power to authorize such commissions, then it follows that the President has inherent authority to establish a review function clothed with sufficient power and sufficient indicia of independence to be accepted as meaningful judicial review of these convictions and sentences. BADC urges that he do so.

Conclusion

BADC has noted, but does not accept uncritically, the assertion by those who defend the military commissions as currently structured that practical concerns regarding the difficulty of trying terrorists override traditional American (and world) principles of justice. To sacrifice one's principles as a justification for preserving those same principles is a logical contradiction.

The United States is a great nation, proclaiming "truth, justice, and the American way" to the world. We believe that no nation better upholds the principles of freedom and justice than does ours. The proposed military commissions have been challenged by our friends abroad as failing to meet those standards and principles. It is our national credibility, and our continued position as a nation that believes it stands on the world's legal and moral high ground, that are now at risk. We can, with reasoned argument, retain military commissions, and all their benefits, if we but modify them to meet our own and world standards of fundamental fairness. If we are to continue to hold the high moral and legal position, implementing these recommendations is mandatory.

It is also important that these issues be addressed prior to the promulgation of rules by the Defense Department implementing the President's military order. Much can be done in those rules themselves to alleviate current concerns, and to make appropriate principles of law and rules of procedure and evidence applicable. In addition, modest modifications of the President's military order are also appropriate. With such action, these commissions will be able to be viewed as independent tribunals providing full and fair trials, and to quickly and with reasonable safety adjudicate the charges against these war criminal terrorists in consonance with our nation's traditional principles of justice and fundamental fairness.

National Security Council

Case Number: 0803618

Referral

Action Date: 07/18/2008

Memorandum For:
~~WILLIAM MARIOTT~~

Document Description: To: PRESIDENT
 From: HEINRICH. RON
 Document Date: 3/17/2008

Subject: CALL FOR CLOSURE OF THE DETENTION FACILITY AT GUANTANAMO BAY

Action Required: DIRECT REPLY FURNISH INFO COPY

Due Date: 8/4/2008

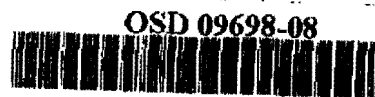
Comments: (b)(5) [Redacted]

(b)(6) [Redacted]

For:

NSC Records Management Office

SecDef



ACLU (DP) 1448



NSO

President
May 316:45
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Vice President
Ron Heinrich - Australia

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Colin Nicholls QC - England & Wales
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Hugh Robertson QC - Canada

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Soli Sorabjee - India

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Dr Peter Slinn

Commonwealth Lawyer

Dr Venkat Iyer - Editor

Clarion

Secretary General

Claire Martin

Hon. George W. Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue NW
Washington DC
20500
United States of America

17 March 2008

Dear Sir,

Re: Call for closure of the detention facility at Guantanamo Bay

I note the call for the closure of the detention facility at Guantanamo Bay made by the Canadian Bar Association, the Paris Bar Association and the Law Society of England and Wales in their letter to you of 25th February 2008.

As President of the Commonwealth Lawyers' Association (CLA), I too support that call.

The CLA is an international organisation which exists to promote and maintain the rule of law throughout the Commonwealth and ensure that an independent and efficient legal profession, with the highest standards of ethics and integrity, serves the people of the Commonwealth. In the pursuit of these objectives, the CLA participates in a wide range of activities including advocacy, undertaking research projects, organising the biannual Commonwealth Law Conference and providing services to our members.

The CLA has submitted a number of amicus briefs to the United States Supreme Court on important issues in relation to the detainees at Guantanamo Bay. Copies of these are available at www.commonwealthlawyers.com

In 2002, the English Court of Appeal described the detentions at Guantanamo Bay as contravening "fundamental principles recognised by both [the United States and English] jurisdictions and by international law" and as involving detention in a "legal black hole".

In February 2006, a joint report published by five United Nations Special Rapporteurs reached a similar conclusion and recommended that "the United States Government should either expeditiously bring all Guantanamo Bay detainees to trial or should release them without further delay" and that "The United States Government should close the Guantanamo Bay detention facility without further delay".

In February of last year the Supreme Court of Canada itself held that: "It is an ancient and venerable principle that no person shall lose his or her liberty without due process according to the law... This principle emerged in the era of feudal monarchy, in the form of the right to be brought before a judge on a motion of habeas corpus. It remains as fundamental to our modern conception of liberty as it was in the days of King John".

It is this core principle which has been flouted by the Guantanamo Bay detentions and the merit of these views remains as strong today as when they were first expressed. The whole purpose of the remedy of habeas corpus considered by each of the Courts referred to above and by the Special Rapporteurs is to provide a swift means of testing the legality of detention by the Executive. As the Guantanamo Bay facility enters its sixth year of existence

that purpose has manifestly not been satisfied. It is long past the time that those held there should have been charged and tried before an independent tribunal respecting full fair trial rights or should have been released. The detention facility does little credit to a country with the proud traditions of the United States and should be closed now.

In view of the recent publicity given to the Military Commission process now underway for a small number of individuals at Guantanamo Bay I should also like to raise a number of specific concerns in respect of this process. Taken together they give rise to a very serious doubt as to whether the process is compatible with international law, particularly in circumstances where it is capable of leading to the imposition of the death penalty. My principal concerns are the following: first, the absence of any explanation as to why it is necessary for the trials to be presided over by military rather than civilian judges and the concern that this in turn gives rise to in relation to the independence of the Commissions from the Executive; secondly, the absence of any bar on the admission of evidence obtained by torture; and thirdly the potential under the system for the admission of secret evidence and the denial of access to potentially exculpatory evidence.

As to the second of these matters, the concern is particularly acute given the recent admissions made by United States authorities as to the use of "waterboarding". You may be aware that the Judicial Committee of the House of Lords recently considered the use of evidence obtained by torture. Lord Hope had this to say: "The law will not lend its support to the use of torture for any purpose whatever. It has no place in the defence of freedom and democracy, whose very existence depends on the denial of the use of such methods to the executive. Once torture has become acclimatised in a legal system it spreads like an infectious disease, hardening and brutalising those who have become accustomed to its use".

I am confident that you too would endorse this view.

Yours sincerely



Ron Heinrich
President
Commonwealth Lawyers' Association

National Security Council

Case Number: 0404286

Referral

OFFICE OF THE SECRETARY OF DEFENSE
Action Date: 09/03/2004

2004 SEP -7 PM 2: 47

Memorandum For:
WILLIAM MARRIOTT

Document Description: To: RICE
From: AL-DAHAN, SHADAD
Document Date: 6/14/2004

Subject: LTR FM IRAOI CITIZEN RE DETENTION OF BROTHER

Action Required: ~~DEFECT~~ REPLY FURNISH INFO COPY

Due Date: 9/14/2004

Comments: (b)(2), (b)(6)

(b)(6)

For: NSC SECRETARIAT

OSD 13375-04

SecDef

ACLU (DP) 1497

Please Staff @Legal 4200

Mrs. Condalisa Rise, consultant of the national security of the United State of America

Her Excellency

I am the Iraqi citizen, Retired colonel Shadad Hussam Al-Deen Mohammed, son of the lieutenant General Engineer, [Retired, currently Dead] Hussam Al-Deen Al-Dahan, In specter General of the Iraqi Armed Forces till the year 1977. From a family, in which most of the members are military officers, where as their number exceeded (10) officers.

Dear Madam

I present this letter asking for your kindness, to reconsider my application, attached here with, being presented to his Excellency Mr. President G. W. Bush during December 2003, and received no reply in that connection, concerning the arrest of my brother retired staff Brigadier (Special Forces) Thair Hussam Al-Deen Mohammed by the coalition forces, since 2/5/2003.

The reason for submitting this request to you, is in respect of being gained access to through my following up to your activity, as being circulated by the information media in this stage, which indicate of such a wisdom in speak and act especially that is related with your interest in the subject of Iraq. That thing made me hopeful that you will assist me and my family, regarding the matter of releasing my brother, and to be aware of that we knew from the released prisoners, that the American Military Court, concerning the captured, has sentenced upon him with confinement in conformity with the Article (78), Gene va convention, in addition to our contentment, that he committed nothing wrong during the period of his service, and that is certified by his record and all the individuals, he worked with them.

Honorable Madam

I am so grateful of your favor to be presented to us and thank you for services to humanity.

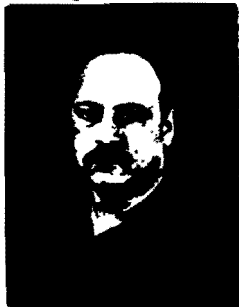
Information concerning my brother

Rank: staff Brigadier (Special Forces), Retired.

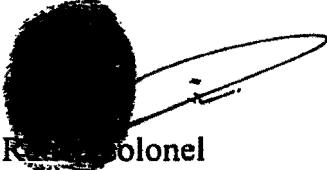
Name: Thair Hussam Mohammed Al-Dahan

Redcross No.: IQ 2002087

Detention place: CROPPER



JUN 14 13:42


Retired Colonel

Shadad Hussam Al-Deen Mohammed Al-Dahan

Baghdad, Al-Dubat city - Zayona

Tel: 7747911

Fax: 004685663042

E-mail: Aldhaan@yahoo.com



SecDef

ACLU (DP) 1498

His Excellency, the president of the United States of America
Mr. George W. Bush esquire

Honest greeting of love and appreciation

Subject/ Appealing for help & request of Assistant

1- Introduction

- a- I am a citizen from Iraq (Retired L. T. Colonel Shadad Hussam Al-Deen Al-Dahan- Baghdad- Officers City). The means to solve my case which I shall explain, later, became very distressed, and I found Mr. President that you are my only hope.
- b- Before starting my subject, I ask you sir, that I kindly request each one through whom this letter shall pass from the staff of the white house (first of them the employee of the E-Mail) who are known by their integrity and believing in applying justice and I adjure them (by their Christian Religion) having for peace and with our Lord Jesus Christ (peace be on him), to facilitate the delivery of my letter without veiling any thing from it to submit it to you Mr. President, as soon as possible.
- c- The thing that encouraged me to write this letter to you my honorable president esquire is your international reputation in persisting in the principles of freedom, justice, democracy and you institute in spreading it through all the modern world and calling for it and for the Humanitarian Principles which you had embodied in your courageous decision by sending the warrior, struggling and heroic American Forces to carry out the historical duty that is the liberation of Iraq from the previous regime in a battle of a mythological historical battles which they shall perpetuate it and register your name, the American soldiers, and the Government of the United states of American in history, I degree you my sir (by your Christian Religion) who is loving for good and with our Lord Jesus (Christ) (peace be on him), to take into consideration to my letter with earnestly.

2- Subject of the Request

- a- We are an Iraqi Moslem family of Baghdad origin, my father was an Officer in the Iraqi Army with the rank of L. T. General Engineer, was occupying the position of the General Inspector of the Iraqi Armed Forces for the year 1977, as he was placed on retirement. Our family was and still is and shall remain not connected by any extreme religious roots or political and this pursuance is the one that my father had planned for us. We, Mr. President, believe by the western civilization, culture and religion and we live with it inform, the spiritual and practical way.

- b- My elder brother (Tha'er Hussam Al-Deen Al-Dahan) is a Retired Officer since three years ago (with the rank of staff brigadier general), and after the war of Iraq Liberation by one year) he was called to work in the Olympic Athletic Committee which was chaired by the son of the deposed president Saddam Hussein as my brother was assigned to work in the committee in the positions (Deputy Chairman of the Federation of Football- Chairman of the Federation of Billiards- Supervision on the Arabic horses- pursuing miscellaneous administrative affairs.
- c- On light of what it had mentioned in Para (b) above and after the day of 1/5/2003 the announcement of stopping the operations of Iraq's Liberation, a group from the American Armed Forces at (4:00) am on the day of 2/5/2003 (and with a wild manner not suitable with the reputation of these forces and specially this situation was at the beginning of entering Baghdad, had attached my brother's home where he was with his wife and four children only. This is registered with them and they arrested him without any (legal or logical) reason, it destroyed the doors, furniture, glasses of his house in complete, as he is as I had mentioned to you sir, a retired officer and not requested among the circular (55) and neither in the lists of names which were issued later from the required for investigation, and he has no political connection in the Baath Party, as he is a retired and he does not believe in it previously, and the order of his arrest was sure due to a false information through giving a false and not real picture about him acknowledging Mr. President, even on 2/5/2003 the day of arresting my brother and after of two months there were no terrorist works there which are presently carried by group of gangsters which shall be exterminated because they are rejected from the intellectual and religions point of view and this is Sir, which shall prove my brother's safety situation.
- d- The order of his arrest from 2/5/2003 and remaining under retention but not investigation which exceeded (8) months and due our sure of his innocence and safety of his situation and our being sure of the dignity of the American Investigators who are known by their justness and humanity, but this remaining until this period for from his wife and four children, his mother, brothers and relations from a hard psychological cause on us.
- e- My brother who is arrested at present had an offer to work in the athletic field in Qatar Olymoic Athletic Committee before the war, but due to the circumstances he was not been able to do so, and his family now (his wife and sons) are in Qatar waiting for him. And this is what proves the safety of his position.

3- The Suggestion

I, myself with this family and all relations hope from your honor waiting for a positive reply through instructing the investigation bureau in Baghdad to finish his case and set him free as possible, acknowledging that my arrested brother's number IQZ- 002087-01 and he is among those who are in the airport prison in Baghdad.

4- Finally

I, myself, my family, relatives and our friends Mr. President Bush Esquire, shall call for love and peace and specially for your great honor and the Government of the United States of America, and request from Al-Mighty God to protect you and your honorable family from each disliked and to progress you for the work of good and to open the door of success to you and precisely in the coming presidency election in which you shall obviously win with God's will for your brave positions, and humanity which God shall patronize and I am from now Sir, pray to God for your victory and I shall congratulate you at its time.

Finally Mr. President, I congratulate you in advance for a Merry Christmas and a Happy New Year, and God bless you.



Retired Col. Colonel

Shadad Hussam Al-Deen Al-Dahan

Baghdad- Iraq

Officers City

20/12/2003



National Security Council

Case Number: 0807809

Referral

Action Date: 11/14/2008

Memorandum For:
WILLIAM MARRIOTT

Document Description: **To:** **PRESIDENT**
 From: **KAZDIN, ALAN**
 Document Date: **10/2/2008**

Subject: LTR TO POTUS FM AMERICAN PSYCHOLOGICAL ASSOCIATION RE INTERROGATION

Action Required: DIRECT REPLY FURNISH INFO COPY

Due Date:

Comments: PLEASE ROUTE TO DOD-OSD-DETAINEE AFFAIRS



NSC Records Management Office

SecDef



OSD 14487-08

ACLU (DP) 1781

NBC



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

October 2, 2008

President George W. Bush
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

On behalf of the American Psychological Association (APA), I am writing to inform you and your administration of a significant change in our association's policy that limits the roles of psychologists in certain unlawful detention settings where the human rights of detainees are being violated, such as has occurred at the naval base at Guantanamo Bay, Cuba, and at so-called CIA black sites around the world. This new policy, which pertains to detention settings that operate outside of, or in violation of, international law or the U.S. Constitution, was voted on by APA members and is in the process of being implemented.

The effect of this new policy is to *prohibit psychologists from any involvement in interrogations or any other operational procedures at detention sites that are in violation of the U.S. Constitution or international law* (e.g., the Geneva Conventions and the U.N. Convention Against Torture). In such unlawful detention settings, persons are deprived of basic human rights and legal protections, including the right to independent judicial review of their detention. The roles of psychologists at such sites would now be limited to working directly for the persons being detained or for an independent third party working to protect human rights, or to providing treatment to military personnel.

For the past 20 years, APA policy has unequivocally condemned torture and cruel, inhuman, or degrading treatment or punishment, which can arise from interrogation procedures or conditions of confinement. Unlike our previous policies, which had expressed grave concerns about settings where persons are deprived of human rights and had offered support to psychologists who refused to work in such settings, APA's new policy now prohibits psychologists from working in such settings, save for the exceptions cited above. To be clear, our policy limits psychologists to working directly for the persons being detained or for an independent third party working to protect human rights unless they are offering therapeutic services to other military personnel.

There have been many reports, from credible sources, of torture and cruel, inhuman, or degrading treatment of detainees during your term in office. Therefore, the American Psychological Association strongly calls on you and your administration to safeguard the

750 First Street, NE
Washington, DC 20002-4242
(202) 336-5500
(202) 336-6123 TDD

Alan E. Kazdin, PhD
President 2008

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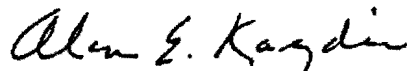
Web: www.apa.org



ACLU (DP) 1782

physical and psychological welfare and human rights of individuals incarcerated by the U.S. government in such detention centers and to investigate their treatment to ensure that the highest ethical standards are being upheld. We further call on you to establish policies and procedures to ensure the independent judicial review of these detentions and to afford the persons being detained all rights guaranteed to them under the Geneva Conventions and the U.N. Convention Against Torture.

Best wishes,



Alan E. Kazdin, Ph.D., ABPP
President



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THE WHITE HOUSE
WASHINGTON

OFFICE OF THE
SECRETARY OF DEFENSE
2005 NOV 22 PM 6:26

November 20, 2005

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Transfer of Detainee to Control of the Attorney General

Based on the information available to me, (b)(5)

(b)(5)

(b)(5) I hereby determine that it is in the interest of the United States that Jose Padilla be released from detention by the Secretary of Defense and transferred to the control of the Attorney General for the purpose of criminal proceedings against him.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States, I hereby direct you to transfer Mr. Padilla to the control of the Attorney General upon the Attorney General's request. This memorandum supersedes my directive to you of June 9, 2002, and, upon such transfer, your authority to detain Mr. Padilla provided in that order shall cease.



OSD 22857-05

SecDef

ACLU (DP) 1801

National Security Council

Case Number: 0405911

Referral

Action Date: 08/13/2004

Memorandum For:
WILLIAM MARRIOTT

Document Description: To: PRESIDENT
From: SHAFIO RASUL
Document Date: 5/13/2004

Subject: LTR FM CENTER FOR CONSTITUTIONAL RIGHTS RE DETAINEES

Action Required: DIRECT REPLY FURNISH INFO COPY

Due Date: 8/19/2004

Comments: (b)(5)

(b)(6)
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OSD 12195-04

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ACLU (DP) 1849

National Security Council

Date: 13-August-2004

Distribution Receipt

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Page 1 of 1

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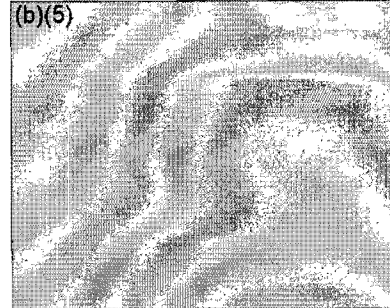
ACLU (DP) 1850

5911

 centerforconstitutionalrights

May 13, 2004

George W. Bush
President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500



Dear President Bush:

We were kept captive, unlawfully, by U.S. Forces in Guantánamo Bay for more than two years until the 8th March of this year. We are now back in the United Kingdom.

The legality of our detention was due to be considered by the Supreme Court when we were suddenly pulled out of Guantánamo Bay and taken to England, where we were released within 24 hours.

During the past week, we have seen with disgust the photographs of men detained and tortured in Iraq. At the same time we are reading with astonishment in the newspapers here, official statements made by the United States Government about "interrogation techniques" used at Guantánamo Bay that are completely untrue.

For instance, we read that these techniques "are meant to wear down detainees but the rules forbid the kind of tortures coming to light in Iraq". The techniques, it is said, are "designed to cause disorientation, fatigue and stress", "but there is no stripping detainees naked"; There is "no physical contacts at all...our procedures prohibit us from disturbing a prisoner for any reason at all" (Army Colonel David McWilliams). It is said that "more extreme methods such as near-dry lang interrogations require superior authorisation and medical monitoring" and that there is "no stripping or humiliation or physical abuse at Camp Delta."

Our own experience, and our close knowledge of the experience of other men detained beside us, demonstrates that each of these claims is completely untrue.

From the moment of our arrival in Guantánamo Bay (and indeed from long before) we were deliberately humiliated and degraded by the use of methods that we now read U.S. officials denying.

At Kandahar, we were questioned by U.S. soldiers on our knees, in chains, with guns held to our heads, and we were kicked and beaten. They kept us in "three-piece suits" made up of a body belt with a chain down to leg irons and hand shackles attached. Before we boarded the plane to Guantánamo, they dressed us in earmuffs, paintball goggles and surgical masks so we were completely disoriented. On the plane, they chained us to the floor without access to a toilet for the 22-hour flight.

Our interrogations in Guantánamo, too, were conducted with us chained to the floor for hours on end in circumstances so prolonged that it was practice to have plastic chairs for the interrogators that could be easily hosed off because prisoners would be forced to urinate during the course of them and were not allowed to go to the toilet. One practice that was introduced specifically under the regime of General Miller was "short-shackling" where we were forced to squat without a chair with our hands chained between our legs and chained to the floor. If we fell over, the chains would cut into our hands. We would be left in this position for hours before an interrogation, during the interrogations (which could last as long as 12 hours), and sometimes for hours while the interrogators left the room. The air conditioning was turned up so high that within minutes we would be freezing. There was strobe lighting and loud music played that was itself a form of torture. Sometimes dogs were brought in to frighten us.

We were not fed all the time that we were there, and when we were returned to our cells, we would not be fed that day.

We should point out that there were and no doubt still are cameras everywhere in the interrogation areas. We are aware that evidence that could contradict what is being said officially is in existence. We know that CCTV cameras, videotapes and photographs exist since we were regularly filmed and photographed during interrogations and at other times, as well.

They recorded the interrogations in which we were driven to make false confessions; they insisted we were the other men in a video they showed us from August 2000 with Osama bin Laden and Mohamed Aka, but we had been in England at that time. After three months in solitary confinement under harsh conditions and repeated interrogations, we finally agreed to confess. Last September an agent from MLI came to Guantánamo with documentary evidence that proved we could not have been in Afghanistan at the time the video was made. In the end we could prove our alibis, but we worry about people from countries where records are not as available.

Soldiers told us personally of going into cells and conducting beatings with metal bars which they did not report. Soldiers told us "we can do anything we want." We ourselves witnessed a number of brutal assaults upon prisoners. One, in April 2002, was of Jumamah Al-Dousari from Bahrain, a man who had become psychiatrically disturbed, who was lying on the floor of his cage immediately near to us when a group of eight or nine guards known as the ERF Team (Extreme Reaction Force) entered his cage. We saw them severely assault him. They stamped on his neck, kicked him in the stomach even though he had metal rods there as a result of an operation, and they picked up his head and smashed his face into the floor. One female officer was ordered to go into the cell and kick him and beat him which she did, in his stomach. This is known as "ERFing". Another detainee, from Yemen, was beaten up so badly that we understand he is still in hospital eighteen months later. It was suggested that he was trying to commit suicide. This was not the case.

We wish to make it clear that all of these and other incidents and all of the brutality, humiliation and degradation were clearly taking place as a result of official policies and orders.

Under the regime of General Miller, it was regular practice for detainees to have all of their hair including their beards shaved off. We were told that it was for failure to cooperate in interrogation (including if they said that you had failed a polygraph test). All of this would be filmed on video camera while it was happening. We understand that even in the face of representatives from the Red Cross having witnessed at least one such instance for themselves, the administration of the camp denied to the Red Cross that this practice existed.

Sometimes detainees would be taken to the interrogation room day after day and kept short-shackled without interrogation ever happening, sometimes for weeks on end. We received distressed reports from other detainees of their being taken to the interrogation room, left naked and chained to the floor, and of women being brought into the room who would inappropriately provoke and indeed molest them. It was completely clear to all the detainees that this was happening to particularly vulnerable prisoners, especially those who had come from the strictest of Islamic backgrounds.

Shortly before we left, a new practice was started. People would be taken to what was called the "Romeo" block where they would be stripped completely. After three days they would be given underwear. After another three days they would be given a top, and then after another three days given trouser bottoms. Some people only ever got underwear. This was said to be for "misbehaving". (Punishment within Guantánamo Bay was constantly imposed for the breaking of any camp "rule" including, for instance, having two plastic cups in your cage when you were only allowed to have one or having an extra prayer bead or too much toilet paper or excess salt). So far as leaving detainees naked is concerned, it is our understanding that the Red Cross complained to the Colonel and then the General and after that to the U.S Administration itself about the practice.

We are completely sure that the International Red Cross has all of these complaints recorded and must undoubtedly have drawn all of them to the attention of the Administration. We therefore find it extraordinary that such lies are being told publicly today by senior officials as to the conditions and methods used at Quantanamo Bay. We are confident that records and pictures must exist and that these should all now be provided to the public in your country as well as ours at the earliest opportunity so that they can form their own judgement.

We look forward to an immediate response in view of the misinformation that is being put into the public domain worldwide and which we know to be untrue.

Yours sincerely,

Shafiq Rasul and Asif Iqbal

We are represented by the Center for Constitutional Rights in the United States and our solicitor, Gareth Peirce, in the United Kingdom. Please address all inquiries to:

Michael Kemer, President
Barbara Olshansky, Deputy Legal Director
Steven Watt, Fellow
Centre for Constitutional Rights
666 Broadway
New York, NY 10012



SPECIAL OPERATIONS/
LOW-INTENSITY CONFLICT

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-2500

JUL 14 2003

Laura Barnitz
Program Director
Youth Advocate Program International
4545 42nd Street, NW, Suite 209
Washington DC 20500

Dear Ms. Barnitz,

Thank you for your recent letter to President George W. Bush expressing concern with reports of younger detainees at Guantanamo Bay and your request to visit Guantanamo Bay and Bagram Air Force Base.

We cannot agree to your request for access to Guantanamo Bay or the Bagram Air Base. Access to detainees is provided to the International Committee of the Red Cross, and on a case by case basis to government officials for legitimate governmental purposes.

The United States is engaged in an armed conflict with al Qaida and its supporters. In this war, as in every war, captured enemy combatants have no right to counsel or right of access to courts for the purpose of challenging their detention. Should a detainee be charged with a crime, he would have access to counsel and other fundamental rights recognized by the international law of armed conflict.

All enemy combatants under the control of U.S. Armed Forces continue to be treated humanely, and in accordance with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949. They are provided with proper shelter and excellent medical care. Each is allowed to exercise their religious beliefs, and all are provided food consistent with their religious requirements.

As a matter of policy, and for operational reasons, DoD does not discuss specifics pertaining to detainees – to include their ages or nationalities. That said, there are a very small number of detainees whom we have assessed to be under the age of 16. It is difficult to determine the exact age for detainees, as birth records are not readily available.

As with other detainees, these individuals were transferred to Guantanamo because they are enemy combatants who pose a threat to our forces. These particular individuals were captured while actively participating in hostilities. The U.S. must detain enemy combatants who take up arms against our forces and remove them from the battlefield to prevent their participation in further hostilities. Age is not a determining

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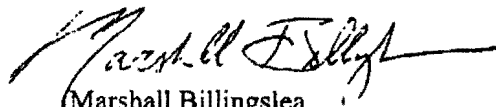
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factor. As with all detainees their release is contingent upon the determination that they are not a threat to our nation.

Additionally, we recognize the special needs of younger detainees and the difficult or unfortunate circumstances surrounding their situation. Their needs are being addressed by medical professionals and others who are experienced in dealing with issues involving juveniles. In short, every effort is made to provide them a secure environment, segregated from the older detainee population, as well as the special physical, psychological and related care they may require. We are, in fact, treating young enemy combatants in a manner appropriate to their status and age.

Our preference would be to detain none of these younger combatants. But as long as terrorists and others continue to abuse young men and turn them into fighters against U.S. forces, we will continue to detain those who fight against us.

Sincerely,



Marshall Billingslea
Principal Deputy



THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

POLICY

AUG - 7 2007

The Honorable Norman Dicks
United States House of Representatives
Washington, DC 20515

Dear Representative Dicks:

Thank you for the letter to President Bush you co-signed with 143 Members of Congress regarding the detention facility at Guantanamo Bay. I appreciate your views on this important subject.

As you know, the Secretary of Defense has made clear that he would like at some point to close the detention facility at Guantanamo Bay, but that there are important reasons why establishing a timeline for or mandating such closure would currently be unwise. A significant problem is that there are numbers of detainees there who, often by their own admission, would come back to attack the United States if released.

We continue to work towards a solution that may allow us to close Guantanamo. The Departments of State and Defense have negotiated successfully in a number of cases to transfer detainees to their home countries or other appropriate countries when the risks posed by those detainees to U.S. national security can be effectively mitigated. In addition, we remain committed to obtaining assurances that detainees will continue to receive humane treatment. Finally, the Department is working with the Department of Justice to conduct trials of certain detainees through the Military Commission process.

Establishing a timeline for the closure of Guantanamo Bay would likely not provide sufficient flexibility for negotiating the transfer of detainees back to their home countries, or third countries. For those individuals who cannot be appropriately charged or transferred by a set deadline, there would be a risk they could be set free.

I appreciate your continuing efforts regarding these issues. Ultimately, as the President has stated, our goal remains the same: to work towards the day when we are able to close Guantanamo. However, any solution must preserve the President's

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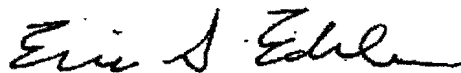
(31 June 07)



R 12371-07

flexibility under the law of war to detain enemy combatants as necessary in the security interests of the United States. I look forward to working with the Congress on this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric S. Edelman".

Eric S. Edelman

cc:
Attached List



PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE

2000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2500

1001 11 11 12 17 52
SECRET
DEFENSE

383.6

POLICY

AUG 26 2004

Mr. Michael Ratner, President
Ms. Barbara Olshansky, Deputy Legal Director
Mr. Steven Watt, Fellow
Center for Constitutional Rights
666 Broadway Avenue
New York, NY 10012

Dear Mr. Ratner, Ms. Olshansky, and Mr. Watt:

Thank you for your May 13, 2004 letter to President Bush on behalf of Messrs. Shafiq Rasul and Asif Iqbal. I assure you that the Department of Defense takes allegations of abuse seriously, corrects problems as they are identified, and takes appropriate action against those who have engaged in misconduct.

These individuals were captured in Afghanistan, fighting illegally for al-Qaeda. They were treated humanely while in Department custody. Messrs. Rasul and Iqbal were provided food, shelter, medical care, mail service, reading materials, and clothing, and they were afforded opportunities to practice their faith.

The Initial Response Force (IRF) is a trained guard force that handles life-threatening and other critical situations including suicide attempts and hostage situations. Many prison systems around the world, including those in the United States, have an IRF-like capability. The existence of the IRF and other support personnel with specialized skills and training at Guantanamo exemplify that the detention facility is operated professionally and reflect the importance of ensuring the security and safety of the detainees.

It is also important to recognize that there are legitimate reasons for restraining detainees. Restraints are permissible and help keep detention facility personnel and other detainees safe, despite the fact that they may cause discomfort.

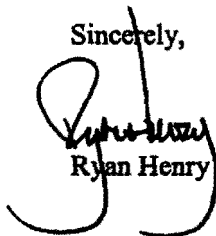
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The Department has improved detention operations through extensive internal reviews and dialogue with the International Committee of the Red Cross (ICRC).

Your interest in this complex and important subject is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Henry", written over the printed name.

Ryan Henry