

harmful to law enforcement efforts. They also said that agents of the Defense Humint Service, the Defense Department's human intelligence spy agency, "blatantly misled" Pentagon officials by claiming that the FBI endorsed these coercive methods.

The next day, Nov. 23, the military interrogators began using their techniques on al-Qahtani, according to the Army investigation, although written approval had not yet been received. While some aggressive treatment of al-Qahtani had begun months earlier - on Oct. 1, 2002, a military police dog was used to scare the Saudi, an Army investigation found - now it began in earnest.

He was interrogated for 18 to 20 hours per day, for 48 of the next 54 days, according to an Army investigative report. On Dec. 7, 2002, he had to be revived at the detainee hospital when his heart rate fell to 35 beats per minute, according to a log of the interrogation published by Time magazine. Then the interrogation continued.

FBI agents at Guantanamo joined the opposition. A Nov. 27 FBI "legal analysis," since reported by Newsweek, labeled several parts of the plan as "coercive interrogation techniques which are not permitted by the U.S. Constitution." It also warned that several of the proposed tactics could constitute torture, depending on how a judge viewed the intent of the interrogator.

Justice Department spokeswoman Kathleen Blomquist declined to say last week whether the department communicated the FBI objections to the Pentagon or the White House.

'Why is standing limited to 4 hours?'

On Dec. 2, Secretary of Defense Donald H. Rumsfeld signed off, approving most of the tactics for use on al-Qahtani and others, including all of categories 1 and 2, but only one item in category 3: mild, non-injurious physical contact. Mock assassinations and water-boarding were out.

Rumsfeld added an asterisk, a note scrawled on the bottom of the approval memo, asking why stress positions were limited. "I stand for 8-10 hours a day," the secretary of defense wrote. "Why is standing limited to 4 hours?"

The approval wasn't announced, not even to the law enforcement investigators at Guantanamo. "We continued to push the issue," said Fallon, the chief investigator. "Basically the responses started to come back, 'We're authorized to do this.'"

The Qahtani interrogation was a success, the Pentagon has said. Al-Qahtani admitted he had been sent to the United States by Sept. 11 plotter Khalid Sheik Mohamed, that he had met Osama bin Laden several times, that he had been trained at two al-Qaida camps, that he knew the shoe bomber Richard Reid, and that 30 other detainees he identified had been bodyguards for bin Laden.

The law enforcement investigators, however, say the interrogation produced little new. "I will just say that most of what we knew, we knew before," Col. Mallow said. "A lot of the intelligence 'successes' that have been touted were a result of much earlier disclosures made by detainees to our agents."

Al-Qahtani's lawyer says her client repudiates his statements. "He adamantly denies all of that," said Gitanjali S. Gutierrez, of the Center for Constitutional Rights.

She said al-Qahtani, now in his late 20s, is physically and psychologically broken. In addition to the degrading treatment, she said, al-Qahtani was subjected to a "fake rendition," in which he was tranquilized, flown off the island of Cuba, revived, flown back to Cuba, and told he was in a country that allows torture.

"The government," she said, "has never come forward with any evidence that wasn't obtained by torture."

### Remembering Nuremberg

Soon other detainees were in line for SERE techniques, under the new leader at Guantanamo. Maj. Gen. Miller, a former artillery officer, had replaced Dunlavey in November. On Dec. 14, according to the law enforcement agents and Pentagon e-mails, the general gave them a proposed "standard operating procedure" for use of SERE techniques.

Here the law enforcement agents had their only internal disagreement. Col. Mallow, the commander, initially took the position that they could watch the intelligence interrogations, to collect information, and perhaps to deter abuses. After all, the secretary of defense had authorized these tactics. Fallon, his deputy and chief investigator, said he would resign from the law enforcement task force - and the Navy if necessary.

"You're talking illegal acts here," Fallon said. "The secretary of defense can't change the law. One of the things that we told all our personnel was the fact that during Nuremberg, Nazi war criminals were actually tried for acts that were perpetrated by them under orders of their superiors."

Col. Mallow said Fallon quickly persuaded him and, on Dec. 16, the colonel ordered his agents to disengage from any inhumane interrogation, to document what they saw, and to report it.

Gen. Miller was displeased, Col. Mallow recalls, saying, "You either are with us or you and your guys are out."

The general does not deny saying this. He said he inherited a situation where the two teams of interrogators "weren't even speaking to one another, and it was unproductive," with two teams duplicating each other.

Still the investigators were unwilling to observe the aggressive interrogations. David L. Brant, the boss of Fallon and Gelles as the director of the Naval Criminal Investigative Service, said he told the Army, "if there's anything that's beyond the boards, we'll just pull our people out." Air Force cops on the task force, from the Office of Special Investigations, said they would go along with a Navy walkout. Finally everyone agreed that the law enforcement investigators would not be forced to watch the intelligence interrogations.

Although they had built a wall separating themselves from the intelligence side, the law enforcement agents knew they had failed to persuade the Pentagon that rapport-building would be more effective than abusive interrogations.

'Put on the same uniform'

They turned back to the Navy for help. On Dec. 17, director Brant from the Naval Criminal Investigative service took the concerns to Alberto J. Mora, the chief lawyer for the Navy.

Mora, whose family had escaped Cuba under Castro, says the interrogation tactics shocked him, reminding him of the internment of Japanese citizens during World War II. While he worked on Pentagon lawyers, he recommended that the investigators take one more shot at persuading the leadership at Guantanamo.

So Fallon, the cop, and Gelles, the psychologist, flew down to see Gen. Miller. They took along a Secret Service expert on threat assessment. In Miller's office, the three cops described the rapport-building approach, how it had worked in terrorism cases, the USS Cole

bombing, the embassy bombings in East Africa, even in preventing assassination attempts. The general was unmoved.

"If you want to be on the team," Fallon and Gelles said Gen. Miller told them, "you've got to put on the same uniform." The general says that's a fair description of his reply.

Back in Washington, Mora, the Navy lawyer, resorted to an ultimatum. On Jan. 15, 2003, he prepared a draft memorandum opposing the techniques as clearly illegal, addressed to his boss, general counsel Haynes, as well as to the legal adviser to the Joint Chiefs of Staff. Mora said he would be signing the memo at the end of the day. Before he could sign, Haynes told him that Rumsfeld would stop the aggressive interrogations.

It was true, to a point. Rumsfeld rescinded his blanket approval of the harshest techniques. Rumsfeld then asked a group of lawyers at Justice and the Pentagon to come up with new limits. According to Mora, this group relied heavily on a Justice Department memo, later withdrawn, justifying cruel, inhuman and degrading treatment. In March 2003, Rumsfeld secretly re-authorized 24 techniques, mostly confined to those in the Army Field Manual but also allowing isolation, "environmental manipulation," "sleep adjustment," and threats to send the detainee to a country allowing torture. The new policy required "humane treatment," but did not define it.

#### 'Unanswered questions'

Mora, now the vice president and general counsel for international operations for Wal-Mart, found out about Rumsfeld's reauthorization a year later, watching a congressional hearing on C-SPAN about Abu Ghraib.

"We may have stopped some abuse on the Department of Defense side," Mora said, "but it's clear we had no effect on the national policy, meaning the White House policy, to inflict cruelty on some individuals."

Although the Pentagon has looked at specific allegations made by FBI agents of abusive interrogations, no investigation has untangled how the policy of aggressive interrogation was set, or who influenced it.

"The unanswered questions," Mora said, "are, how much of this was actually applied, what the level of abuse was, who the victims were, and who is responsible for the application of abuse, the cruel treatment? I think the historical record will indicate shifting responsibility for these abuses. ... You've got some abuse that was inflicted as a result of authorizations by the command authority, some from a lack of leadership, suggesting that unlawful combatants could be treated more harshly than POWs, and some from rogue soldiers who have sadistic streaks."

The Bush administration has said that there was no policy to abuse detainees, although some detainees were abused in individual cases, and that those responsible have been held accountable.

"What took place at Guantanamo," Rumsfeld said in January, "is a matter of public record today, and the investigations turned up nothing that suggested that there was any policy in the department other than humane treatment. And it is also clear, by the very fact that some 250 people have been punished in one way or another, that there was behavior that was inappropriate."

#### 'An honest mistake'

The Army's internal Furlow-Schmidt investigation of FBI allegations of detainee mistreatment found in April 2005 that Gen. Miller failed to monitor the interrogation of al-Qahtani, whose

interrogation "resulted in degrading and abusive treatment but did not rise to the level of being inhumane treatment."

The general told Army investigators that he was unaware of the extent of the techniques used on al-Qahtani, but they found that statement "inconsistent" with a letter he sent to his superiors on Jan. 21, 2003, saying that he approved the interrogation plan and that it was followed "relentlessly." "It is clear," the Army found, that the al-Qahtani intelligence interrogation team "believed they were acting within existing guidance."

In that letter, later unclassified in part, Miller wrote that the new techniques approved by Rumsfeld "are within the spirit and intent of humane detention. ... These techniques are not intended to cause gratuitous, severe physical pain or suffering or prolonged mental harm, but are instead intended to induce cooperation over a period of time by weakening the detainee's mental and physical ability to resist."

Beyond al-Qahtani, the investigators found that intelligence interrogators at Guantanamo had impersonated FBI agents and State Department investigators; played loud music with strobe lights (Metallica, Britney Spears and rap were often used); moved the detainees every few hours to disrupt sleep (called the "frequent flyer program"); wrapped a detainee's head in duct tape to stop him from chanting passages from the Koran; and a female interrogator rubbed red ink on a detainee, and said, "By the way, I am menstruating." ("The detainee threw himself on the floor and started banging his head.")

Gen. Miller was recommended for administrative "admonishment" for failing to supervise the al-Qahtani investigation, but the Pentagon declined to impose the penalty. He was allowed to retire. As a condition of that retirement, he agreed to testify before the Senate Armed Services Committee, which is investigating the interrogations, but he has not yet been called.

"There were mistakes made," Miller told MSNBC.com. "I'll be honest with you."

He said that many of the odd tactics tried on al-Qahtani were "authorized within the guidance" from Rumsfeld of Dec. 2, "but not within the plan" of specifics laid out by his staff at Guantanamo. In other words, individual interrogators were using techniques that he had not anticipated.

"One young, very young interrogator who put ladies' panties on al-Qahtani's head, that wasn't authorized," Gen. Miller said. "We relieved that kid the next morning. It was a youngster who made an honest mistake."

'Unprosecutable'

Will Mohammed al-Qahtani, the suspected 20th hijacker, ever face trial?

The cops who directed the investigation, Col. Mallow and Fallon, said they were told several times by prosecutors in the Pentagon's Office of Military Commissions, as the military trials are known, not to keep bringing forward a case against al-Qahtani, that there would be no case.

"The techniques made some detainees unprosecutable," Fallon said. "It would provide the defense counsel a tremendous advantage at trial to sway the presiding officer and members, as well as it would have disclosed those techniques to the public."

A Pentagon spokesman last week dismissed this as "speculation," but wouldn't say whether al-Qahtani would face a military trial, known as a commission. "The detainee you reference," Cmdr. Gordon said, "is not among those 10 already referred to military commissions." (See sidebar, In limbo: Cases are few against Gitmo detainees.)

Under the Military Commissions Act signed last week by President Bush, statements made under torture would not be admissible in a military trial.

But the law says a military judge could accept statements made under coercion. A court may have to decide which category, torture or coercion, encompasses such techniques as a fake trip to Egypt, sleep deprivation, and being forced to do dog tricks. The new law also extends legal protection from prosecution for war crimes to any U.S. personnel who used coercive tactics, if they believed in good faith that what they were doing was lawful.

Al-Qahtani's lawyer says she believes he'll never face trial, that eventually the government will have to transfer him back to Saudi Arabia.

"They can't just leave him in Guantanamo to rot and die," Gutierrez said.

\*\*\*\*\*

In February 2004, just before the Abu Ghraib photos were released, Mark Fallon saw Gen. Geoff Miller one last time, on the tarmac at the Guantanamo airfield. Miller would soon go to Iraq full time, and Fallon was returning to the Naval Criminal Investigative service, where he directs the training academy.

"I frankly was rather surprised because General Miller gave me a hug," Fallon said: "It was the first hug that I received from General Miller.

"And he actually had told me that we were right."

That's true, Miller says.

"To be frank with you," the general says, "I got down there and saw that the rapport-building was more effective. We made significant progress as we moved along. I found the law enforcement techniques to be an effective way to go about doing business.

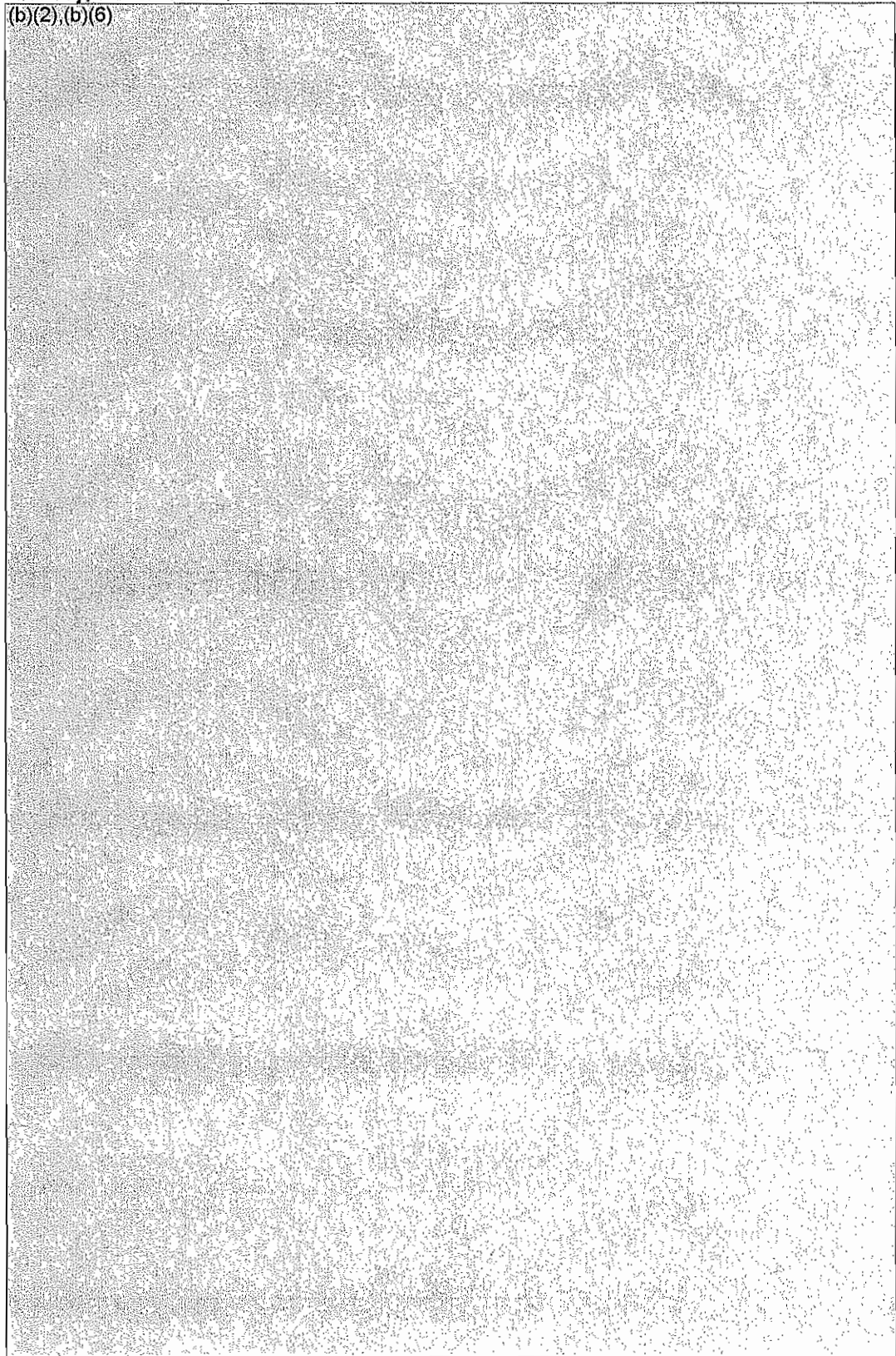
"But not the only way."

(b)(6)

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

(b)(6) DoD OGC  
Monday, November 27, 2006 4:54 PM

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



**Cc:**

Cc:

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

Subject:

RE: RE GTMO Bird: Paracha recent decision and background; Military commissions chief resigns; Detainees released to Albania; Compound built for GTMO; Hicks; Sailor gets axe; Detainee denied witnesses

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

---

#### Legal Affairs

Tapes Provide First Glimpse of Secret Gitmo Panels

[you can listen to a copy of the tapes at

<http://www.npr.org/templates/story/story.php?storyId=6514923>]

November 21, 2006 · Audio recordings obtained by NPR provide the outside world with its first window into the secret world of military tribunals at the U.S. prison camp for terrorism suspects at Guantanamo Bay, Cuba.

The recordings, made by the U.S. military, are of tribunals held in the fall of 2004 to review the "enemy combatant" status of six detainees who were arrested in Bosnia in late 2001. Lawyers for the men obtained the tapes under the Freedom of Information Act and provided NPR with copies of the recordings.

The Combatant Status Review Tribunals are held in small, low-ceiling trailers at Guantanamo Bay. The Pentagon describes the proceedings as an administrative process, so the detainees are not allowed lawyers. There's a court reporter, a translator and a panel of three military officers to whom detainees tell their story, ask why they are being held, and appeal for release.

The audio recordings of the Combatant Status Review Tribunals are scratchy, of poor quality and don't pick up much of what's happening in the small room: You can't sense facial expressions or body language, or that the detainee's arms and legs are shackled. However, you can hear the tribunal president inquire after the health and comfort of Mustafa Ait Idir, one of several men whose tribunal tapes were reviewed for this story.

"Are those on too tight?" the panel president asks, referring to the shackles on Ait Idir's hands and feet.

"He says, 'I've had them on for a very long time,'" a translator responds for the detainee. No Set Pattern for Proceedings

Testimony at the tribunals doesn't appear to follow any set pattern. Some start with questioning from the military officers. At others, the detainee will launch into a speech about how they were arrested and sent to Guantanamo, and how they're being treated at the detention camp. Ait Idir speaks through a translator for almost an hour before the tribunal president interrupts him to inquire further about an incident of alleged abuse.

"Are you saying a soldier in Guantanamo Bay, Cuba, broke your fingers?" the tribunal president asks.

"Soldiers took me and they placed me on the ground in the rocks outside. They bound my hands and my feet," Ait Idir responds through a translator. He goes on to describe brutal treatment allegedly at the hands of U.S. soldiers.

Ait Idir is one of six Algerians who lived in Bosnia for about a decade before being arrested shortly after the terrorist attacks of Sept. 11, 2001, on suspicion of plotting to bomb the American and British embassies in Sarajevo.

The men were held for three months, until Bosnia's Supreme Court acquitted all of them. Ait Idir and the others tell the tribunal that when they walked out of the police station as free men, they were quickly arrested again by Bosnian and U.S. officials, put on a plane and sent to Guantanamo.

#### Learning of the Accusations Against Them

Hadj Boudella, one of the other detainees, tells the military panel at his tribunal that this is the first time he's heard some of the accusations against him.

"I've been here for three years, and these accusations were just told to me," Boudella says. "Nobody or any interrogator ever mentioned any of these accusations you are talking to me about now."

What's striking is that, despite not knowing fully why they're being held, enduring open-ended detentions and sometimes harsh interrogations, the detainees on these audio tapes express faith that truth will prevail. Boudella tells the panel that his lawyers -- at the Boston firm Wilmerhale -- sent him a letter telling him not to participate in the tribunal for fear of incriminating himself.

"I want to show you that I am really innocent; and I want you to see I can defend myself," Boudella says on the recording. "If you're innocent, no matter how people try to cover your innocence, it will come out."

#### Unclassified Evidence Is Slim

The detainees question the panel about the evidence against them and ask for proof, rather than just allegations. The audio recordings and transcripts show that the unclassified evidence is slim; for example, just a rundown of allegations, petitions for habeas corpus, which challenges the prisoners' detention, and affidavits attached to those petitions; one has a letter from Ait Idir's wife. At one point, Ait Idir expresses disbelief over the lack of proof and tells the panel he hoped it had more evidence it could give him.

"If I was in your place, but if a supervisor came to me and showed me accusations like these, I would take these accusations and I would hit him in the face with them," he tells the panel, apologizing for being so blunt.

Ait Idir, Boudella and the others on the recordings all ask that they be allowed to provide the tribunal with additional evidence, such as a copy of the decision by Bosnia's Supreme Court, showing their acquittal.

One detainee asked that his supervisor at the Red Crescent Society in Bosnia testify at the proceeding. He is told that a request was made twice to the U.S. State Department, which handles the matter; each time, the date of the tribunal was emphasized. The tribunal president says there was no response from the State Department to either request.

In some cases, the detainees' representatives don't know what efforts have or are being made to locate requested evidence. The only witnesses available to Ait Idir and Boudella are the other men they were arrested with. Boudella asks one witness the most pertinent question: "Do you know if I belong to any terrorist organization or if I am a terrorist?"



In a simple, almost naïve answer, the witness tells the tribunal that Boudella is not a terrorist. "All I know about this person is that he is a very nice and very good person. He takes good care of his family," the other detainee says.

#### Critics Call Process Deeply Flawed

The military panel asks the detainees many questions during each tribunal: Where they grew up, where they worked, if they'd ever been to Afghanistan, if they belonged to any terrorist organizations. Then, the panel wraps up the unclassified session of the tribunal.

"Mustafa, you shall be notified of the tribunal decision upon completion of the review of these proceedings by the convening authority in Washington, D.C.," the tribunal president tells Ait Idir.

That was two years ago. Ait Idir and Boudella were both found to be enemy combatants and remain at Guantanamo Bay. In January, they will have spent five years in the prison camp. They have yet to be charged with any crimes.

Critics have always said that the Guantanamo tribunals are deeply flawed. Among other things, they point to the fact that detainees are only allowed to sit in for the unclassified session of the tribunal. They are banned from seeing or hearing the classified information against them.

Lawyers at Seton Hall University recently evaluated the records and transcripts for nearly 400 similar military hearings at Guantanamo. In most cases, they found, the government did not produce any witnesses at the tribunals, and detainees were only allowed to use other detainees as witnesses.

"Ninety-six percent of the time, [the government] produced no evidence of any sort," Seton Hall law professor Mark Denbeaux told NPR's Robert Siegel. Denbeaux represents two detainees and co-authored the report.

"They relied instead on secret evidence that was classified," Denbeaux says. "And the government's procedure was, anything in that secret evidence was presumed to be valuable and valid. And then the detainee was given the opportunity to rebut the secret evidence. But he was never told what the secret evidence was."

The Pentagon dismisses such criticisms, arguing that the tribunals are fair, and that the detainees are allowed to state their case, and produce witnesses and evidence of their own.

\*\*\*\*\*

NPR

November 21, 2006 · Since 2004, the U.S. military has been holding tribunals to determine whether the suspected terrorists held at the U.S. prison camp in Guantanamo Bay, Cuba, are enemy combatants. The hearings are closed to the public and have been widely criticized as flawed and unfair.

NPR has obtained audio recordings of some of the tribunals from lawyers for six of the detainees. Some of the detainees' voices were heard earlier in a story on Morning Edition. Now, we listen in on the hearing for another detainee, Mohamed Nechla.

Nechla's hearing took place on the afternoon of Oct. 19, 2004. An Algerian by birth, Nechla had been held at the military detention camp for almost three years. He had been interrogated but never charged. The tribunal was his opportunity to hear and address some of the accusations against him.

In the recordings, Nechla is heard telling the military panel that in the fall of 2001, he and five other Algerians were arrested in Bosnia on suspicion of plotting to blow up the U.S. and British embassies in Sarajevo. The six men had lived in Bosnia for about a decade, were married and had children. Nechla says the men spent three months in prison, until Bosnia's Supreme Court acquitted them and ordered their release from jail.

"When we came out of prison, we were surprised that we were handed over to the American forces that are present in Bosnia," Nechla said. "We were bound by our hands and our feet, and we were treated the worst treatment. For 36 hours without food, sleep, water or anything."

At his tribunal, Nechla heard the accusations against him: that he is a suspected terrorist with ties to an Algerian armed Islamic group, and that he is suspected of having links to al-Qaida. Other allegations against Nechla include having an alias.

Nechla asks for four witnesses to appear at his hearing. Three are other Guantanamo detainees with whom he was arrested. The fourth is his supervisor at the Red Crescent Society in

Bosnia. The tribunal president says there's been a problem locating the supervisor in Sarajevo.

The military panel questions Nechla about his schooling, his friends, work and the organizations he belonged to. The panel asks him if he was associated with al-Qaida or had ever traveled to Afghanistan. Nechla professes his innocence regularly to the military officers, and he challenges them on the tribunal process. Only a small fraction of the detainees who went before the tribunal have been found not to be enemy combatants. "So I just want to ask, have you found anyone innocent yet?" Nechla asks through a translator. "And if you haven't, there's no need for these tribunals. Just say everyone is an enemy combatant."

<http://www.npr.org>

\*\*\*\*\*

The Washington Times  
ASSOCIATED PRESS

The U.S. military is not required to send a Guantanamo Bay detainee to a civilian hospital for medical treatment, a federal judge said yesterday, leaving the prisoner to choose between having a heart procedure performed at the military base or not at all.

Saifullah A. Paracha, a 59-year-old multimillionaire Pakistani businessman and television producer, argued that the procedure was too risky to be handled anywhere but in a cardiac unit. He asked to be transferred to a hospital in the United States or Pakistan.

The procedure, called cardiac catheterization, is used to detect heart problems such as blockages. A doctor inserts a plastic tube into a vein and slides it into the heart or nearby coronary arteries to measure blood pressure or oxygen levels.

If something goes wrong, Mr. Paracha's attorney said, doctors could need to perform emergency heart surgery.

Doctors successfully completed an identical procedure in 2003 at Guantanamo Bay, Cuba, the Justice Department said. Special medical equipment and personnel were available, attorneys said, making transferring Mr. Paracha an unnecessary security risk.

U.S. District Judge Paul L. Friedman agreed, noting that the government regularly decides how best to treat civilian prisoners inside the United States and that judges rarely intervene.

Mr. Paracha twice met with Osama bin Laden, but his attorney said it was in hopes of landing a television interview. Mr. Paracha, who lived in the United States for 16 years, denies making investments for al Qaeda, translating statements for bin Laden, joining in explosives smuggling or recommending that nuclear weapons be used against U.S. troops.

Doctors will not perform the procedure without Mr. Paracha's consent. Attorney Gaillard Hunt said Mr. Paracha, who has a history of heart problems, may decide not to be treated if the procedure is done at the base.

"That's true of any prisoner anywhere," Judge Friedman replied. "There are lots of people who aren't detainees anywhere who choose not to have procedures done that their doctors believe should be done. If that's his choice, that's his choice."

Judge Friedman said he was troubled by Mr. Hunt's accusations that military officials shackled Mr. Paracha's hands and feet to his hospital bed during previous medical tests and did not release him even to eat.

In legal documents, Mr. Paracha's attorneys said there would be diplomatic consequences in Pakistan if he died.

"His death in U.S. captivity would be a blow to American prestige in that area, even under the best of circumstances," attorneys wrote. "If anything happened to him while he was being treated in an irregular or inadequate facility, the reaction would be unpredictable."

Paracha's attorneys can appeal Judge Friedman's ruling.

In July, his son, Uzair Paracha, was convicted of agreeing to help an al Qaeda operative sneak into the United States. A U.S. District Court judge in New York sentenced the son to 30 years in federal prison.

<http://washingtontimes.com/national>

\*\*\*\*\*

Sky Valley Journal  
Gitmo prisoner says procedures botched

Staff and agencies  
22 November, 2006

By ANDREW O. SELSKY, Associated Press

SAN JUAN, Puerto Rico - A detainee at Guantanamo Bay who needs a medical procedure on his heart said Tuesday he doesn't want it performed there because operations on other detainees have been botched - an accusation the base commander denied.

Hunt said in an e-mail to The Associated Press that Paracha made these allegations Tuesday in a phone call that was monitored by the military. It is rare for attorneys to be permitted to speak with Guantanamo Bay detainees by phone, but a U.S. Department of Justice attorney has said Paracha should be encouraged to undergo a cardiac catheterization.

"The medical staff is dedicated to saving the lives and improving the health of the detainees," Harris said.

Such a procedure would enable Guantanamo Bay medical personnel to determine the treatment regimen for the prisoner's coronary disease. But Paracha, 59, has insisted he be transferred to a hospital in the United States or Pakistan for the procedure, saying he didn't believe medical center at the U.S. Navy U.S. Navy base in southeast Cuba was capable.

But the prisoner on Tuesday rejected the procedure.

U.S. District Judge Paul L. Friedman ruled Monday in Washington that the U.S. military is not required to send Paracha to a civilian hospital. Friedman said the government regularly decides how best to treat civilian prisoners inside the United States and judges rarely intervene.

Paracha suffered his first heart attack in 1995 and had a second one in 2003 while in U.S. military custody at Bagram Air Base in Afghanistan .

Paracha has acknowledged meeting Osama bin Laden twice, but denied making investments for al-Qaida members, translating statements for bin Laden, joining in a plot to smuggle explosives into the United States or recommending that nuclear weapons be used against U.S. soldiers

<http://www.localnewswatch.com>

\*\*\*\*\*

The Seattle Times

8 former officials in Justice Dept. slam detainee law

By MATT APUZZO

The Associated Press

WASHINGTON - Former Attorney General Janet Reno and seven other former Justice Department officials filed court papers Monday arguing that the Bush administration is setting a dangerous precedent by trying a suspected terrorist outside the court system.

It was the first time Reno, attorney general in the Clinton administration, has spoken out against the administration's policies on terrorism detainees.

Suspected al-Qaida sleeper agent Ali Saleh Kahliah al-Marri is the only detainee being held in the United States. The former prosecutors challenged the Justice Department's right to bring al-Marri before a military commission.

Al-Marri, a citizen of Qatar, was arrested in 2001 while studying in the United States. He had faced criminal charges until authorities designated him an enemy combatant and ordered him held at a naval base in South Carolina.

The Justice Department said in court papers last week that a new anti-terrorism law strips detainees such as al-Marri of the right to challenge their imprisonment in court.

"The government is essentially asserting the right to hold putative enemy combatants arrested in the United States indefinitely whenever it decides not to prosecute those people criminally - perhaps because it would be too difficult to obtain a conviction, [or] perhaps because a motion to suppress evidence would raise embarrassing facts about the government's conduct," the former Justice Department officials said.

Some of the eight attorneys named in the document represent detainees at Guantánamo Bay, Cuba. Most served under President Clinton, though the list includes former U.S. Attorneys W. Thomas Dillard and Anton Valukas, who served under President Reagan.

<http://seattletimes.nwsourc.com>

Reno, Former U.S. Officials Challenge Military Trials (Update1)

By Jeff St.Onge

Nov. 21 (Bloomberg) -- Former U.S. Attorney General Janet Reno and seven other former Justice Department officials challenged the Bush administration's bid to try suspected terrorist Ali Saleh Kahlah al-Marri, a foreign national living in the U.S. when he was arrested, before a military commission.

Reno and the others said the Bush administration is trying to set a dangerous precedent that would let the government indefinitely imprison any non-U.S. citizen considered an enemy. The former U.S. officials were joined by at least four human rights groups making similar arguments.

The administration is "asserting the right to hold putative enemy combatants arrested in the United States indefinitely whenever it decides not to prosecute them criminally," Reno, six former U.S. attorneys and a former deputy solicitor general said in a "friend-of-the-court" brief.

Al-Marri, 41, was the first defendant removed from the U.S. criminal justice system and deemed an illegal enemy combatant. He was studying in the U.S. and living in Illinois when he was arrested in late 2001. The Justice Department unsealed the indictment in December 2002, and he was declared an enemy combatant about six months later. A citizen of Qatar, al-Marri has been held at a U.S. Navy Prison in South Carolina since June 2003.

The Justice Department said it stands by its decision to try al-Marri as a suspected terrorist outside the criminal court system.

#### Complex Issues

"These are complex and difficult legal issues," said Justice Department spokeswoman Kathleen Blomquist in an e-mailed statement today. "While we respect the right of other legal minds to be heard on these issues, we believe we are on firm legal footing."

The Justice Department said a new anti-terrorism law, the Military Commissions Act, gives terrorism suspects such as al-Marri no right to challenge their imprisonment.

Jonathan Hafetz, one of al-Marri's lawyers, said a hearing on the government's request to have al-Marri's challenge to his detention thrown out is scheduled for late January or early February in the 4th U.S. Circuit Court of Appeals in Richmond.

"This is an unprecedented, unlawful and un-American attempt to deprive an individual living in this country of basic constitutional rights," said Hafetz, from New York University's Brennan Center Justice, in a phone interview.

Reno was attorney general in President Bill Clinton's administration. The other officials who joined her on the legal brief served under Clinton and President Ronald Reagan, such as former U.S. Attorney Anton Valukas, who is now a partner at the Jenner & Block law firm in Chicago. Some represent detainees held at the U.S. military prison in Guantanamo Bay in Cuba, according to Hafetz.

The case is Al-Marri v. Wright, 06-7427 in the 4th U.S. Circuit Court of Appeals in Richmond, Virginia.

<http://www.bloomberg.com>

\*\*\*\*\*

#### Kuwait News Agency

Negotiations with Kuwaiti gov't ongoing over Guantanamo detainees -- US

POL-KUWAIT-US-GUANTANAMO

Negotiations with Kuwaiti gov't ongoing over Guantanamo detainees -- US

official By Eman Al-Awadhi

KUWAIT, Nov 20 (KUNA) -- Negotiations are ongoing with the Kuwaiti government over detainees in Guantanamo Naval Base and whether or not they would be transferred to the authority of their government, US Department of State Legal Advisor and expert on Guantanamo detainee issues John Bellinger said on Monday.

"We have worked with almost all the governments who have nationals in Guantanamo, including the Kuwaiti government," he told reporters at a digital video conference set up at the US Embassy.

He said discussions with these governments, which he did not name, focused on "the terms of possible transfers (of detainees) but there is not a specific time that any of these individuals would be released." Bellinger explained that the conditions of detainee transfer

depended upon "whether we (the US) will try them for war crimes" and "whether we believe that if they were transferred or released they would continue to pose a threat or return to acts of terrorism." Two Kuwaiti detainees had been transferred to Kuwait in September of this year, and four others reportedly remain at Guantanamo out of 12 who had been there.

The advisor explained that the Military Commission Act (MCA) passed by the US Congress last month would allow for moving forward with military trials of detainees, who did not fall under the jurisdiction of US federal courts because they had been detained outside the US.

He added that during these trials, detainees would have the right to be present in the courtroom, the right to counsel, and the right to appeal to a special Military Commission Review Panel, then to a federal civil circuit court, and then the US Supreme Court.

Moreover, Bellinger said evidence extracted by torture would not be admitted into the military trial, adding that "if the accused alleges that a statement was derived from coercion, then it cannot be admitted into the trial unless the judge determines that it would be in the interest of justice and fairness to introduce that information." He underscored that torture was not exercised in Guantanamo.

On the basis of the MCA, the advisor said there were between 40 and 80 detainees lined up for a military trial.

Asked about the negative image of the US that Guantanamo reflected, he said, "President (George W.) Bush understands that Guantanamo is very bad for the image of the US, particularly in the Arab and Muslim world." Bellinger said that because of the images released of the abusive acts of US soldiers in Abu Ghraib, people suspected the same acts were taking place in Guantanamo.

He denied this, saying, "Guantanamo is really a maximum-security prison ... detainees have access to exercise facilities, excellent health care, good food, and are able to exercise their religion." Religions, he said, were respected.

Furthermore, he explained the dilemma the US faced with transferring detainees, saying it had been trying to relocate them for many years but many countries refused to take them back.

President Bush, he said, did not want the facility to be open longer than necessary.

There are over 400 detainees in Guantanamo from some 40 countries, according to the US Defense Department. Of these, about 110 of them have been "determined eligible" by the US Government for transfer or release through a comprehensive series of review processes.

\*\*\*\*\*

Washington Post

Top-Secret Torture

The Bush administration claims detainees can't disclose how they were treated.

Tuesday, November 21, 2006; Page A26

BURIED WITHIN a recent government brief in the case of Guantanamo Bay inmate Majid Khan is one of the more disturbing arguments the Bush administration has advanced in the legal struggles surrounding the war on terrorism. Mr. Khan was one of the al-Qaeda suspects who was detained in a secret prison of the CIA and subjected to "alternative" interrogation tactics -- the administration's chilling phrase for methods most people regard as torture. Now the government is arguing that by subjecting detainees to such treatment, the CIA gives them "top secret" classified information -- and the government can then take extraordinary measures to keep them quiet about it. If this argument carries the day, it will make virtually impossible any accountability for the administration's treatment of top al-Qaeda detainees. And it will also ensure that key parts of any military trials get litigated in secrecy.

Mr. Khan is one of 14 people transferred to Guantanamo earlier this year from the CIA's secret prison program. After his transfer, lawyers seeking to represent him asked for an

order granting them access on the same terms as lawyers representing other detainees. The government objected on two main grounds. It contended that the court lacks jurisdiction because of two new laws that strip federal courts of authority over detainee matters. That may well be correct, and Judge Reggie B. Walton agreed last week that any consideration of counsel access should wait until the court of appeals rules on the jurisdictional question. But the government also argues that Mr. Khan is different from previous Guantanamo inmates; their lawyers are cleared to see information classified at the "secret" level. The CIA program, however, involves top-secret information, so lawyers for Mr. Khan would have to be cleared at a higher level -- and access would have to take place under more restrictive circumstances.

The trouble is that at least some of the secrets the government is trying to protect are the very techniques used against people such as Mr. Khan -- and its means of protecting them is to muzzle him about what the CIA did to him. CIA official Marilyn A. Dorn said in an affidavit that Mr. Khan might reveal "the conditions of detention and specific alternative interrogation procedures." In other words, grossly mistreating a detainee now justifies keeping him quiet.

The problem with this argument is not just its Kafkaesque sheen. If the courts accept it, it would have vast practical implications. The integrity of any military trials of the high-value detainees will depend on their excluding evidence obtained by unduly coercive means. By the logic of the government's argument, however, all of that litigation will have to take place in secret. Detainees are also supposed to be able to appeal their status as enemy combatants to the federal appeals court here in Washington. The government's logic would all but assure that the bulk of any such appeal would be secret as well. So accepting this theory would mean that no claim of torture could be resolved in a transparent and accountable fashion. Given the importance of open trials for the high-value detainees, it's hard to imagine a principle that would more thwart the effort to bring them credibly to justice.

<http://www.washingtonpost.com>

\*\*\*\*\*

#### FindLaw

#### Four Good Reasons Why Guantanamo Should Be Closed

The U.S. detention center at Guantanamo Bay, Cuba, should be closed. Its continued existence is unfair to the individuals held there, and of negative benefit to the United States.

Why exactly should it be closed? Here are four good reasons.

First, Guantanamo is a symbol of lawlessness. It was chosen as a detention site because it is located offshore, on foreign territory, and the Bush Administration therefore believed it was safely beyond the jurisdiction of any court. It was, as a British court pointed out in a 2002 decision, a "legal black hole."

Second, detainees at Guantanamo have been arbitrarily detained, physically abused, and even tortured. They have spent years without any fair legal process, held on the basis of secret evidence.

Third, Guantanamo has harmed the fight against terrorism. It has undermined international cooperation and alienated Muslim communities. And fourth, the moral authority of the United States has been severely compromised by Guantanamo's existence, with disastrous results for the U.S. government's ability to promote human rights abroad.

#### Four and a Half Years of Detention Without Charge

We'll start by briefly reviewing the facts. The first detainees were brought to Guantanamo on January 11, 2002, more than four and a half years ago. Since then, none of the roughly 775 detainees who have been held there has ever seen a judge. For the first two-and-a-half years that detainees were held on Guantanamo, none of them were even allowed to see lawyers.

Because the Bush Administration has deemed them unlawful enemy combatants, it has claimed the right to hold them without charge until the "war on terror" ends.

From the information that is known, it appears that only a minority of the detainees were captured on the battlefield in Afghanistan. Many detainees were picked up in Pakistan, often being sold to American troops for a bounty; others were arrested in countries ranging from Bosnia to Indonesia to Egypt.

Since Guantanamo opened, 38 detainees have been declared "no longer enemy combatants" -- a status that's the official equivalent of "oops" -- and hundreds more have been returned home

because the U.S. had decided they were no longer a threat. The vast majority of these ex-detainees are now free, even though the U.S. has put pressure on many of their home countries to detain them.

A few detainees have sought a different way of escaping Guantanamo. Three detainees committed suicide this year; dozens more have tried to. Hunger strikes are common.

#### A Legal Black Hole

Even were one to believe that the Guantanamo detainees have been correctly deemed enemy combatants, there's no good reason to keep them in Cuba.

During World War II, the United States held hundreds of thousands of German and Italian POWs on U.S. territory -- in Texas, Arizona, and elsewhere. At present, we have more than two million prisoners in U.S. prisons and jails, including a number of convicted terrorists. It is obvious we could have easily incarcerated a few hundred more on U.S. soil.

So why the choice of Guantanamo? Guantanamo was attractive as a place of detention for one reason alone: it was thought to be a legal black hole. More specifically, because of a series of court rulings in the 1990s involving Haitian and Cuban refugees, Guantanamo was believed to be beyond the reach of the Constitution and the courts.

The Supreme Court's 2004 decision in *Rasul v. Bush*

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=542&invol=466> , which held that the courts had habeas corpus jurisdiction over Guantanamo, changed this picture dramatically. Detainees got access to counsel, and information about Guantanamo began to reach the public.

The impact of *Rasul* has been put into question, however, by the jurisdiction-stripping provisions of the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=f:s3930enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930enr.txt.pdf) . Whether the courts will continue to monitor abuses at Guantanamo may hinge on a constitutional challenge.

#### Arbitrary Detention and Abuse

Detainees at Guantanamo have been subject to arbitrary detention. The combatant status review tribunals that are supposed to assess whether the detainees are enemy combatants base their decisions on secret evidence that the detainees have no opportunity to confront. The decision-making process is quick, efficient, and nearly worthless in terms of reaching a reliable result.

Moreover, the U.S. war with Afghanistan is long over, and thus the only legitimate justification for these men's detention is gone. As of June 19, 2002, when Hamid Karzai was elected to the presidency of Afghanistan, the international armed conflict in that country was at an end. Detainees from that conflict should either be tried for war crimes or other criminal offenses, if there's evidence against them, or they should be returned to Afghanistan.

With arbitrary detention, has come physical abuse. The President said in his February 7, 2002, Executive Order that the detainees at Guantanamo should be treated in accordance with the Geneva Conventions, "to the extent appropriate and consistent with military necessity." In adding this caveat to the rule of humane treatment, he opened the door to a whole series of abuses.

Ex-detainees have reported beatings and cruel treatment, but it may be that the worst abuses at Guantanamo were endured by a prisoner who remains detained. Muhammed al-Qahtani, a Saudi citizen who is alleged to have been implicated in the September 11 plot, was physically and mentally mistreated from mid-November 2002 to early January 2003. For six weeks, he was intentionally deprived of sleep, put into painful stress positions, forced to stand for long periods, and subject to sexual and other physical humiliation. He was refused trips to a latrine, so that he urinated on himself at least twice. He was also threatened with forced enemas, and on one occasion was subjected to one.

Human Rights Watch has obtained an unredacted copy of al-Qahtani's interrogation log, and believes that the techniques used during al-Qahtani's interrogation were so abusive that they amounted to torture.

Weakening the Counterterrorism Effort and Undermining U.S. Leadership on Human Rights

Another reason to close Guantanamo is that abuses committed in the name of counterterrorism have aggravated the terrorist threat. International counterterrorism cooperation has

weakened, as courts in places as varied as Spain, France and Kuwait have condemned Guantanamo and refused to accept information obtained there. Worse, the use of torture and arbitrary detention against Muslim detainees has alienated Muslim communities whose good will and cooperation is needed, both in reporting suspicious activity and in bolstering shared norms against terrorism.

A final reason to oppose Guantanamo is that its existence has severely weakened the U.S. government's moral standing, and therefore its ability to press for human rights improvements abroad. Worse, abusive governments now claim that Guantanamo gives them license to engage in similar practices.

#### A \$125 Million Mistake

The good news is that the detainee population at Guantanamo has been steadily shrinking since late 2004. There are currently 430 detainees at Guantanamo, and over 100 more are slated for release.

The bad news, however, is that Guantanamo shows little sign of readying for closure. Right now, in fact, it's expanding. The U.S. military announced last week that it plans to spend \$125 million to build a new compound at Guantanamo, including a new high-security detention facility.

Congress, which will soon be debating legislative proposals to correct the worst aspects of the Military Commissions Act, should also consider ways of blocking this unnecessary new mistake.

<http://writ.news.findlaw.com>

\*\*\*\*\*

Pentagon terror trial plans are premature

McClatchy-Tribune News Service

(MCT)

The following editorial appeared in the Miami Herald on Friday, Nov. 24:

Building a massive compound for terror trials at Guantanamo Bay would be like erecting a house without a foundation. The Pentagon should have a court-approved legal foundation for trying terror suspects before Congress even considers authorizing a Guantanamo courthouse complex that could cost as much as \$125 million.

Miami Herald reporter Carol Rosenberg discovered the Pentagon's construction plans last week. An obscure notice posted on the Internet for contractors called for building a courthouse and accommodations for up to 1,200 people. The plan includes residential, dining and work facilities as well as a high-security area for handling top-secret materials. The Pentagon wants to have the first two courtrooms ready by July; and possibly build two more courtrooms before 2008.

The estimated price tag runs \$75 million to \$125 million. The Pentagon has no money or permission for the courthouse project yet, but may ask for congressional authorization and funds before the end of the year. That would be foolhardy. Money shouldn't be approved, much less ground broken, unless court-approved procedures for military tribunals are established first - if, indeed, the Bush administration can craft a proposal that passes constitutional muster in the next two years.

The Supreme court struck down the Pentagon's original military-commission process for Guantanamo. Democrats, the majority in Congress come January, have signaled dissatisfaction with recent legislation setting new rules for the commissions. The Pentagon has yet to complete the new process, which surely will face lengthy court challenges.

Five years after the Guantanamo terror facility opened, hundreds of its 430 captives have pending habeas-corpus petitions in U.S. District Court in Washington that challenge the detentions. Lawyers also are challenging a review process that the Pentagon thinks justifies the indefinite detention of captives held without charges.

Given the legal uncertainties, the lame-duck Congress shouldn't bless the Pentagon's wishful courthouse plan. Indeed, next year's new Congress would do well to reexamine all current policies governing the treatment of "enemy combatants."

For years the U.S. government has tried to create a parallel legal universe for terrorism suspects - a place where the rules need not conform to the U.S. Constitution or international legal standards. U.S. moral authority has been eroded by the questionable interrogations,



detentions and judicial practices at Guantanamo Bay - and U.S. allies in the war on terror have been alienated. Yes, it is time to change course.

\*\*\*\*\*

Denver Post

Terror detainees still face legal limbo

Justice for the 9/11 victims requires that high-level detainees be charged and prosecuted. And, Congress should restore the right of habeas corpus.

A few months back, when President Bush was pushing Congress for the authority to try suspected terrorists before military commissions, he made a surprise announcement confirming the existence of secret overseas prisons.

Among those behind bars were 14 al-Qaeda terror suspects who were relocated to the military prison at Guantanamo Bay.

President Bush said then that the legislation was necessary to bring these people and others to justice. Among them was Khalid Shaikh Mohammed, considered the mastermind of the Sept. 11, 2001, terror attacks.

The president was asking Congress for powers the U.S. Supreme Court had ruled unconstitutional, and he cast it as a time-sensitive situation.

"As soon as Congress acts to authorize the military commissions I have proposed, the men our intelligence officials believe orchestrated the deaths of nearly 3,000 Americans on Sept. 11, 2001, can face justice," Bush said in September. "To start the process for bringing them to trial, we must bring them out into the open."

But what seemed so urgent at the time is now taking on a different tenor.

U.S. Attorney General Alberto Gonzales told The Denver Post editorial board Monday that the administration can hold Guantanamo Bay detainees indefinitely, without any judicial proceeding through the "period of hostilities." Which is to say, indefinitely.

The administration has categorized an untold number of detainees as "unlawful enemy combatants," saying they are members of a non-state terrorist group. It's a different class of detainee than POWs, typically uniformed combatants captured during battlefield-style warfare. The U.S. in previous wars has held enemy combatants. But the Military Commissions Act of 2006 broadened the definition of illegal enemy combatant to include those providing support to terrorists. As such, they have no right to a real day in court. "We have no obligation to bring people to justice," Gonzales said.

And even when military commission proceedings begin, Gonzales predicted slow going due to defendants' legal maneuverings.

"At every opportunity they're going to bring challenges," he said. But these opportunities have shrunk considerably.

In fact, Congress gave the president the authority to use military commissions in a bill that included one particularly controversial provision - denying the detainees a procedure known as habeas corpus, a right that obligates the government to justify imprisonment before a federal judge.

With the removal of habeas rights, the detainees have no way of challenging their status in federal court. That alone has spawned litigation that seems sure to make its way to the U.S. Supreme Court.

Meanwhile, the wheels of makeshift justice are grinding slowly. Government officials told The New York Times earlier this month that the first military commission trials at Gitmo could begin this summer, but those will not involve any of the 14 senior al-Qaeda members recently moved to the prison in Cuba. Along with Shaikh Mohammed, they include Ramzi Binalshibh, an alleged would-be Sept. 11 hijacker, and Abu Zubaydah, who is said to have served as a link between al-Qaeda leader Osama bin Laden and cells in his organization.

It could be well into 2008 before those high in the command structure of al-Qaeda would be tried, or never. We believe that egregious crimes should be prosecuted as quickly as practical, as the president suggested in his September remarks. Victims of Sept. 11 have already waited five years for justice.

As for those who are in detention at the military prison in Guantanamo Bay, the denial of habeas corpus is unnecessary and un-American. While the U.S. Supreme Court almost certainly will get a crack at this questionable law, members of Congress shouldn't wait. They should review the military commissions act as an early order of business in 2007 and at the very least restore the right of habeas corpus to those imprisoned at Guantanamo. It is a step that will bring the U.S. back into line with our own traditions and rights.

<http://www.denverpost.com>

\*\*\*\*\*

The Crimson

Prof. Praises Guantanamo Case

Published On 11/21/2006 3:04:43 AM

By PARAS D. BHAYANI <<http://www.thecrimson.com/writer.aspx?ID=1202272>>

Crimson Staff Writer

The professor who litigated this summer's landmark U.S. Supreme Court case ruling that military commissions for Guantanamo Bay detainees violate Geneva Convention prohibitions lauded that decision at the Harvard Law Review's annual Supreme Court Forum yesterday.

Georgetown University law professor Neal K. Katyal, a former Justice Department official, said in his address yesterday that the central issue in the case was whether presidents must follow the laws that govern warfare.

"This case is not just on military commissions alone," Katyal said. "The central premise is that if Congress says, 'Mr. President, you can't do this,' he must try to get the law changed and can't just ignore that law in a series of secret memorandums."

Katyal added that while courts historically defer to the president during wartime, this deference exists for two reasons: the expertise of the military and diplomatic bureaucracy and the fact that the president is accountable to the electorate.

"The case for deference is weakened when bureaucratic expertise is ignored," Katyal said, noting that former U.S. Secretary of State Colin Powell and many military lawyers had been "cut out of the picture" during the creation of the military commissions.

Katyal thanked several Harvard Law School professors who helped him prepare for the case, including Loeb University Professor Laurence H. Tribe '62, who co-wrote an influential 2002 piece with Katyal questioning the legality of the commissions; Story Professor of Law Daniel J. Meltzer '72, who answered questions about federal jurisdiction; and Hauser Professor of Human Rights and Humanitarian Law Ryan Goodman, whose arguments on Common Article III of the Geneva Convention were ultimately adopted by the Court.

Katyal said that Tribe and Meltzer helped him practice before the actual oral arguments. After one session in which Tribe told him that his case was strong substantively but his performance a bit weak, Katyal hired a former "Cheers" actor for stage training.

"The guy came in and said, 'Practice your oral argument in front of me, but do it holding my hand,'" Katyal recalled to loud laughs. "I was like, 'Whatever.'"

"The key was to have a conversation with the justices instead of doing a formal, stiff presentation," he added.

Joining Katyal at yesterday's event was the Kennedy School's Stanton Professor of the First Amendment Frederick Schauer, who spoke about the judiciary's agenda relative to that of the public—the topic of the 60-page foreword he wrote for the current issue of the Law Review.

Noting that Medicare, Social Security, fuel costs, taxes, and the war in Iraq are among the most salient political issues today, Schauer said that these "are all issues on which the Supreme Court has been largely invisible."

He noted that at the time of *Brown v. Board of Education*, the nation was preoccupied with communism and that at the time of *Roe v. Wade*, the nation was preoccupied with Vietnam and the Watergate scandal.

"I am not claiming that the Supreme Court is not important," Schauer said, pointing out the difference between "salience" and "importance."

The annual event marked the publication of the Law Review's first issue of the year, which covers the Supreme Court's previous term.

The format of this year's forum—Schauer and Katyal spoke individually about separate topics—was different from last year's inaugural forum.

Then, Judge Richard A. Posner and two law professors openly debated the role of foreign court rulings in American law.

\*\*\*\*\*

#### MEPs To Hear From Former Guantanamo Prisoner About Torture Claims

European Union lawmakers on Wednesday are expected to hear from a German-born Turkish citizen who claims that German soldiers in Afghanistan mistreated him before he was transferred to the US military prison at Guantanamo Bay, Cuba.

Murat Kurnaz was held for more than four years at Guantanamo Bay, classified by Washington as an "enemy combatant". He was released last August.

Kurnaz was arrested in Pakistan two months after the September 11, 2001 terrorist attacks in the United States and handed over to US authorities who took him to Guantanamo Bay in January 2002.

The US suspected him of supporting Afghanistan's former Taliban rulers.

Kurnaz, 24, has claimed that after his arrest he was initially taken to a US military prison in Afghanistan, where two German soldiers mistreated him while he was interrogated.

The German Defence Ministry is investigating the claims, but has said it had no evidence that German soldiers had interrogated Kurnaz.

A German parliamentary committee is currently studying whether German security agencies breached any German rules while assisting post-2001 US anti-terrorism operations.

Members of the European Parliament (MEPs) earlier this year slammed the former German government for failing to "come clean" over its involvement in the Kurnaz case.

His lawyer claims that Germany refused an US offer to release Kurnaz in October 2002, saying that there was no case against him.

US authorities never issued an arrest warrant and there was no legal procedure against Kurnaz, the lawyer has said.

During his term in Guantanamo, Kurnaz claims he was repeatedly mistreated, psychologically tortured and kept undernourished.

A special European Parliament committee is investigating charges that the CIA ran secret camps on European territory and whether national governments were complicit. The probe started in January.  
<http://www.playfuls.com/>

\*\*\*\*\*

Germany 'tried to paint me as a liar': Kurnaz  
22 November 2006

Brussels (dpa) - A former Guantanamo prisoner on Wednesday accused German and Turkish authorities of failing to help him escape unjustified imprisonment and torture linked to his years-long term in the US military camp on Cuba.

Murat Kurnaz, a German resident with Turkish citizenship, was held for more than four years at Guantanamo Bay, where he was classified by Washington as an "enemy combatant." He was released last August.

Neither the German nor the Turkish authorities tried to release him from Guantanamo but instead shifted their responsibility on to the US government, Kurnaz told a special European Parliament committee investigating charges of illegal US secret service activities in Europe.

Kurnaz was arrested in Pakistan two months after the September 11, 2001 terrorist attacks in the United States. He was handed over to US authorities who took him to Guantanamo in January 2002, saying he was suspected of supporting Afghanistan's former Taliban rulers.

Kurnaz told MEPs that he went to Pakistan to "deepen his (Muslim) faith" but that he had never done anything illegal.

But Germany rejected a US offer to release Kurnaz from Guantanamo in October 2002, with Washington saying that there was no case against him, his lawyer told Euro MPs.

Back in Germany, however, authorities "tried to paint me as a liar though they had decided to leave me in Guantanamo," Kurnaz said.

The Turkish government also "didn't bother at all about me while I was imprisoned (on Guantanamo)," he said. "They thought I was a spy for Germany," Kurnaz added.

Turkish officials interrogating him in the camp had told him that it was up to the US to release him, Kurnaz said. Other Guantanamo inmates with Turkish citizenship, however, were taken back to Turkey, he claimed.

Kurnaz also said that German soldiers in Afghanistan mistreated him before he was transferred to Guantanamo Bay.

US forces had handed him over to two members of the German Special Forces Command, KSK, who had pulled his head back, banged his head on the floor and one stamped on him, Kurnaz said.

"They asked me if I knew who they were and then they said 'We are the KSK'," he told Euro MPs, adding that the men had German flags on their uniforms and spoke German with him.

"I thought they would have some questions and that they could help me, but they told me I had chosen the wrong side," Kurnaz said.

The German Defence Ministry is currently investigating the claims. After saying that it had no evidence that German soldiers had interrogated Kurnaz, the authority last week admitted that KSK forces had been "in contact" with him, German media reported.

"It doesn't take much imagination (to believe) that the KSK soldiers were capable of doing that," Kurnaz said. "They were there to help the Americans, and we know from the Abu Ghraib case what US soldiers were doing there."

Kurnaz also told the European committee that officials from Denmark and Belgium had visited nationals imprisoned in the Guantanamo camp.

A German parliamentary committee is currently studying whether German security agencies breached any German rules while assisting post-2001 US anti-terrorism operations.

Euro MPs earlier this year slammed the former Social Democrat-Green German government for failing to "come clean" over its involvement in the Kurnaz case.

US authorities never issued an arrest warrant and there was no legal procedure against Kurnaz, his lawyer has said.

During his term in Guantanamo, Kurnaz claims he was repeatedly mistreated, psychologically tortured and kept undernourished.

\*\*\*\*\*

2 Pakistanis in Guantanamo Bay should be released, rights group says

ISLAMABAD, Pakistan: A local rights group on Thursday urged Pakistan's government to push for the release of two citizens being held at the U.S. detention facility in Guantanamo Bay. Saifullah Paracha, 61, a multimillionaire Pakistani businessman, disappeared in July 2003 after he left on an overseas business trip. His family later learned he was in U.S. custody after being arrested at Bangkok's airport for allegedly helping finance al-Qaida.

Majid Khan, 26, a Pakistani whose family moved to the United States in 1996, was captured in Pakistan's southern city of Karachi in 2003 for alleged al-Qaida links. It was only in recent weeks that his wife received a letter from him, confirming his detention at Guantanamo Bay. Paracha and Khan's families claim the men are innocent.

<http://www.iht.com>

\*\*\*\*\*

'State secrets privilege' blocks fired translator from suing FBI

By Catherine Rampell, USA TODAY

Sibel Edmonds, who formed the 100-plus member National Security whistle-blowers Coalition in 2002, began working as a linguist for the FBI the week after the Sept. 11, 2001, terrorist attack.

Several months into her contract, she discovered "shoddy" translations relevant to 9/11 created by translators who had "failed the proficiency exams," she says.

A report by the Justice Department's inspector general subsequently confirmed that at least one translator had failed the FBI's language proficiency exams. Edmonds says the translator was sent to Guantanamo Bay to translate "the most sensitive terrorist-related information" from interviews of detainees.

Edmonds also notified her superiors that a co-worker was responsible for translating wiretaps of a company the latter used to work for. The co-worker "was blocking the intelligence coming from her family members and friends," Edmonds says.

Edmonds took a polygraph test and was investigated for typing her allegations - which contained classified information - on her home computer, even though her supervisor had given permission for her to do so, the inspector general's report said.

The Middle Eastern language specialist was fired in March 2002. When Edmonds asked why, she received a letter saying her contract had been "terminated completely for the government's convenience," according to legal briefings her lawyers filed in the lawsuit contesting her firing.

In its final report, the inspector general concluded that "we believe that many of (Edmonds') allegations were supported, that the FBI did not take them seriously enough, and that her allegations were, in fact, the most significant factor in the FBI's decision to terminate her services."

The same month the report was released, Edmonds' lawsuit to contest her firing was dismissed. Legal briefs show the government had invoked the so-called state secrets privilege, arguing that the lawsuit would jeopardize national security.

The state secrets privilege – a series of U.S. legal precedents – has been cited by the federal government at least 18 times since 9/11 and at least 81 times since the privilege was first recognized in 1953, according to the Reporters Committee for Freedom of the Press.

"Instead of protecting and standing up for whistle-blowers, this is just giving the complete green light to retaliate," says Edmonds, who lost her appeal.

FBI spokesperson Bill Carter declined to comment, citing privacy concerns.

\*\*\*\*\*

(b)(6)

Office of the DoD General Counsel (Legal Counsel)

(b)(2)

(DSN (b)(1))

(fax)

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

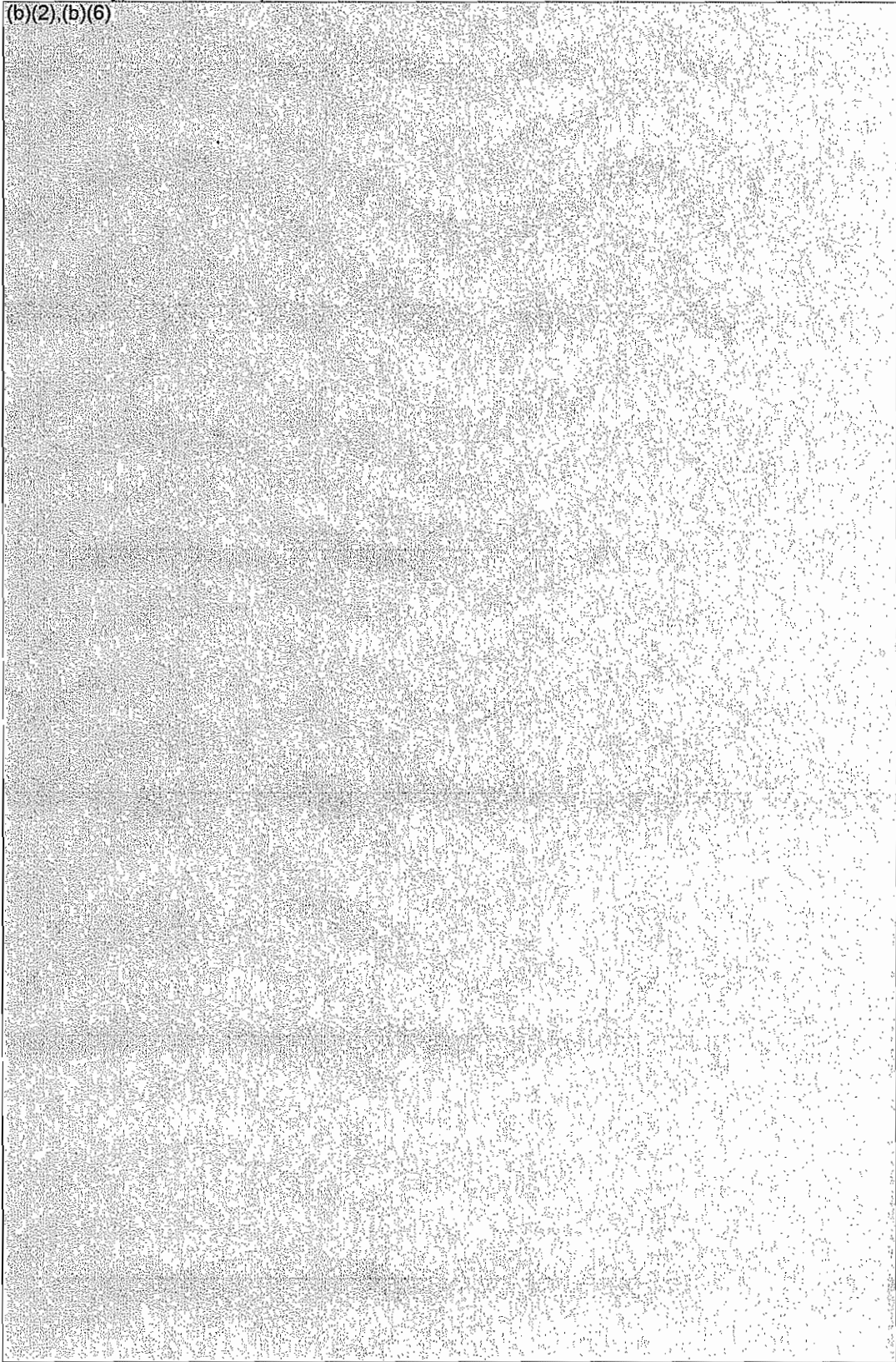
(b)(6)

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

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

Wednesday, November 29, 2006 4:50 PM

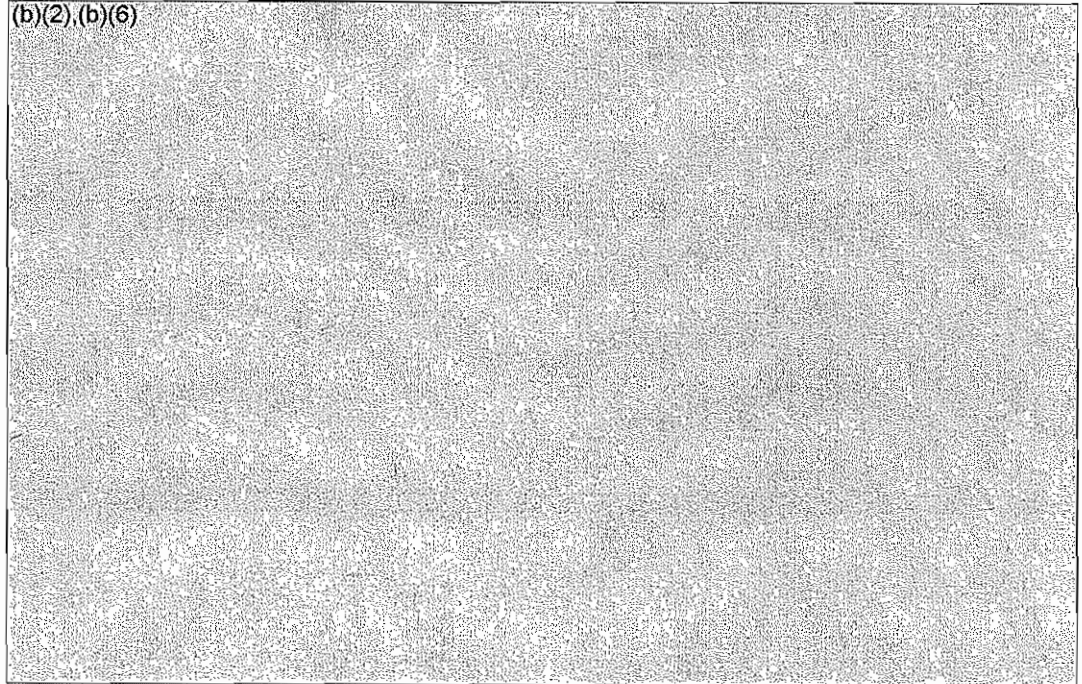
(b)(2),(b)(6)



**Cc:**

Cc:

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



Subject:

GTMO Bird: Terrorist escape pul-i-charki; Saudi detainees claim abuse; Poland and Italy helped with secret detentions; GTMO courthouse; Congress redo on habeas; GTMO atty frustrated; GTMO detainee denied entry into Aus

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

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

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

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

AFP: Officials Say Three 'Terrorists' Escape Afghanistan's Main Prison

JPP20061123067005 Hong Kong AFP in English 0940 GMT 23 Nov 06 KABUL, Nov 23, 2006 (AFP) - Three men held at Afghanistan's main prison on terrorism charges walked out of the high-security facility by pretending to be visitors, while another inmate was found dead, officials said Thursday.

The men who escaped from Pul-i-Charki prison on the outskirts of Kabul on Wednesday were facing sentences ranging from death to 15 years in jail after being convicted of terror offences, officials said on condition of anonymity.

They did not say if the three were linked to the Al-Qaeda or Taliban extremist groups active in Afghanistan or give details of the charges.

The interior ministry refused to comment, saying it was trying to collect details.

The escape echoed one in January in which seven low- to mid-ranking Taliban militants fled the jail by pretending to be visitors. Inside help was alleged in that incident.



Officials identified the three men involved in the latest escape as: Abdul Bari who had been sentenced to death; Abdul Qadir given a 20-year term; and a man identified only as Naqibullah, sentenced to 15 years.

"The trio escaped the prison yesterday at visiting hours pretending to be visitors," an interior ministry official said.

Another police source confirmed the escape and said one prisoner had also been found dead in mysterious circumstances that may have been linked to the escape.

Pul-i-Charkhi holds criminals as well as captured low-ranking Taliban and Al-Qaeda members, including foreign fighters.

Most of the militants rounded up after the US-led invasion that toppled the Taliban regime in 2001 were transferred to the United States' Guantanamo Bay jail or one at a base in Bagram, north of Kabul.

A four-day revolt at the prison in February left around five prisoners dead. Officials said the revolt was instigated by about 300 Taliban and Al-Qaeda prisoners trying to create chaos so they could escape.

The massive and rundown jail is notorious for the detention and torture of thousands of people during the communist rule of the 1980s.

\*\*\*\*\*

#### Arab News

RIYADH, 29 November 2006 - A delegation of lawyers representing Saudi detainees held at Guantanamo Bay has informed Human Rights Watch (HRW) officials here that the detainees are still receiving brutal and inhumane treatment.

The lawyers noted that the detainees had written letters in which they tell of prisoners being shot at and gassed by guards. A letter read out to HRW officials by Abdul Aziz Al-Subayil, a Saudi lawyer who represents some of the detainees, revealed that the Holy Qur'an was also being desecrated by guards.

The letter said: "We saw horrible things going on... Detainees being shot at, the desecration of the Holy Qur'an, as well as guards using gas canisters on detainees. Some of the gases choke prisoners; others make them unconscious. One Afghan was shot 12 times because he wanted to protect the Holy Qur'an in his possession from being desecrated."

The detainee said he did not know when he would be able to write to his lawyer again since the guards were constantly confiscating pens and personal papers and would only give a short time for him to read the lawyer's response.

Nahis Al-Habadri - whose brother's body was returned to the Kingdom after US officials said he had committed suicide in Guantanamo - said that US authorities had not sent his lawyer the necessary papers they had requested. "We asked them for seven things, among which was the death certificate which mentioned the time of death as well as the video tapes from cameras which keep them under surveillance on a 24-hour basis. These have not been sent despite many appeals," he explained.

He said US authorities had sent a death certificate without mentioning the time of death. He also refused to accept that his brother had committed suicide. "When we received his body, we saw several bruises on his head. We all saw that his Adam's apple had been removed and there were indications on his arm that he had had several injections."