

consistent with the overriding need to protect the public from terrorist threats," the report said.

Nine British nationals held at the detention facility had been released by January 2005, but the committee said it believed another nine former British residents remained held at Guantánamo, which was set up by the United States in 2002.

Human rights lawyers previously had said they were aware of eight ex-British residents being detained at the camp.

The committee said it believed Britain had acted correctly in choosing not to accept responsibility for the men -- a decision lawyers are seeking to challenge in appeal courts -- noting concern that returned suspects would require intensive surveillance by security and intelligence agencies.

"Those detained at Guantánamo must be dealt with transparently and in full conformity with all applicable national and international law," the report said, adding that the committee recognized that "many of those detained present a real threat to public safety."

Following their visit to the prison camp, the lawmakers concluded that facilities were comparable to Belmarsh Prison -- a high security prison complex in south London used to house terrorism suspects -- but that conditions were not, the report said.

Though the image of inmates "kneeling in the dirt, shackled and hooded" was no longer accurate, the report said Guantánamo failed to achieve minimum British standards "on access to exercise and recreation, to lawyers and to the outside world through educational facilities and the media."

\*\*\*\*\*

British gov't knew of CIA prisons

LONDON (AP) - The British foreign secretary admitted Friday her government was aware of a secret CIA prison network before President George W. Bush acknowledged its existence in September.

Foreign Secretary Margaret Beckett made the admission in a written response to a parliamentary question. In a recent speech, Bush included a reference to the "existence of a detention program operated by the CIA."

Bush said 14 "high-value detainees" - including the suspected mastermind of the Sept. 11, 2001 attacks on the United States, Khalid Sheik Mohammed - had been transferred from clandestine centres to the U.S. prison camp at Guantanamo Bay, Cuba.

"Prior to this speech, we were aware of the existence of a secret U.S. detention program only in general terms," Beckett said in response to a question.

A Foreign Office spokesman, speaking on customary condition of anonymity, said the statement was the first confirmation Britain had prior knowledge of the secret prisons.

An Intelligence and Security Committee report quoted an unnamed agent for the British spy agency MI5, who said the United States was "holding some al-Qaida members in detention, other than at Guantanamo but we do not know the locations or terms of their detention and do not have access to them."

The agent told the committee, a panel which meets in secret to scrutinize spy agency work, Britain had received high-value intelligence from the detainees, "some of which has led to the frustration of terrorist attacks" in Britain.

A draft European Parliament report released Nov. 28 concluded 11 European Union governments - including Britain, Poland and Germany - knew about secret CIA prisons operating in Europe.

[http://cnews.canoe.ca/CNEWS/War\\_Terror/2007/01/19/3412466-ap.html](http://cnews.canoe.ca/CNEWS/War_Terror/2007/01/19/3412466-ap.html)  
<[http://cnews.canoe.ca/CNEWS/War\\_Terror/2007/01/19/3412466-ap.html](http://cnews.canoe.ca/CNEWS/War_Terror/2007/01/19/3412466-ap.html)>

\*\*\*\*\*

The Boston Globe

SCOTT ALLEN AND STEPHEN XENAKIS

Our duty to war detainees

By Scott Allen and Stephen Xenakis | January 22, 2007 AT LEAST 112 detainees have died in US custody in Iraq and Afghanistan between 2002 and 2005, according to military documents and press reports. Many of these deaths appear to have been preventable. Given the public record of detainee abuses and history of weakened administration support of detainee rights, the possibility of preventable deaths in US custody warrants careful review.

Defense Secretary Robert Gates should promptly authorize an independent investigation of possible military negligence and take action to ensure that the United States is living up to its obligations under the Geneva Conventions.

No such wide-ranging and independent inquiry has occurred. Recently, one of us published the most comprehensive, peer-reviewed study of the reported causes of these fatalities in *Medscape General Medicine*, finding that the leading causes of detainee death were homicide (43 cases) and enemy mortar attacks (36 cases).

According to the study, at least 11 of the 43 homicide cases involved blunt trauma or asphyxiation. At least three of the homicides reported have resulted in murder charges. Another three have resulted in charges of voluntary manslaughter. The 36 deaths caused by enemy mortar attacks, many of which occurred at Abu Ghraib, suggest clear violations of Geneva prohibitions against placing detainees in range of enemy attack.

Also, the study identified 20 deaths that were attributed to natural causes, and nine were listed as having an unknown cause of death. A group of eight deaths due to natural causes occurred in Iraq in August 2003, raising urgent questions about the conditions of confinement and the adequacy and availability of medical care. Given the difficulty in getting information on the deaths of detainees in US custody, and given the sensitivity of the subject, we believe this review is incomplete.

As physicians, we believe that these findings cast doubt on whether our colleagues in the US military caring for detainees are receiving the direction and resources they need to do their job effectively. Health professionals have professional ethical obligations to preserve and protect the lives of their patients. Congress must ensure that our military medical professionals are equipped and supported to accomplish their mission honorably.

America's military medical corps has long been regarded as the most professional and ethical military medical service in the world. As of five years ago, military regulations instructed all uniformed medical personnel to provide medical care to detainees of an equal standard as that received by US soldiers.

After Sept. 11, however, the Pentagon detached the standard of detainee medical care from the standard of care for US personnel deployed in combat theaters. Also, planning for the security and provision of healthcare for detainees taken into custody early on in the Afghanistan and Iraq conflicts was grossly inadequate, as is tragically evident from incidents at Abu Ghraib, Sheberghan prison in Afghanistan, and other US detention centers.

The responsibility for the conduct of the medics at Guantanamo Bay and Abu Ghraib rests with the senior leadership of the medical departments and the Pentagon. Since the onset of combat in both Afghanistan and Iraq, the leadership has faced difficult challenges regarding the

appropriate conduct of medics in the treatment of detainees, the way medics handle casualties and deaths of prisoners, and the response to hunger strikes and other medical emergencies in the detention facilities.

The duty and authority for the relevant policies and practices can be neither deferred nor sidestepped. An independent inquiry into detainee deaths is the first step toward ensuring that commanders and policy makers are held accountable for how they treat detainees.

Dr. Scott Allen is a Medicine as Profession Fellow at Physicians for Human Rights. Dr. Stephen Xenakis, a practicing psychiatrist and retired brigadier general, is the former commander of the US Army's Southeast Medical Command. <<...OLE\_Obj...>>

[http://www.boston.com/news/globe/editorial\\_opinion/oped/articles/2007/01/22/our\\_duty\\_to\\_war\\_detainees?mode=PF](http://www.boston.com/news/globe/editorial_opinion/oped/articles/2007/01/22/our_duty_to_war_detainees?mode=PF)

<[http://www.boston.com/news/globe/editorial\\_opinion/oped/articles/2007/01/22/our\\_duty\\_to\\_war\\_detainees?mode=PF](http://www.boston.com/news/globe/editorial_opinion/oped/articles/2007/01/22/our_duty_to_war_detainees?mode=PF)>

\*\*\*\*\*

Yemen Times

Imprisoned without a cause:

Former Guantanamo detainee's voice finally heard Nisreen Shaddad

<<mailto:editorial@yementimes.com?subject=Attn:%20Nisreen%20Shaddad>>

SANA'A, Jan. 21 - A group defending human rights presented on Thursday a program which detailed the plight of a released prisoner, detained for five years in the American prison Guantanamo, where he was abused physically and mentally, denied medical attention, and held without any hope for a trial. Mohammed Al-Asadi, with a crestfallen demeanor, detailed his despair with strong words at The National Organization for Defending Rights and Freedom, or HOOD headquarters in Sana'a.

Families of other detainees were also present at the program. Many of the detainees being held at the American prison in Cuba, have absolutely no evidence against them of having committed hostile acts against the United States. The United States opened the prison in 2002, rounding up many of the men in Pakistan and Afghanistan, and labeling them enemy combatants and terrorists.

"My son went to Pakistan to study but never came back. He was arrested without a definite case ... those are the documents that prove the purpose of his going to Pakistan," said Hail's mother.

Umm Abdullah's says her husband, Ismael Al-Raimi, traveled to the United Arab Emirates to secure work and had been there for two years when he called his wife saying he was returning to Yemen. After that phone call, Al-Raimi disappeared, and his family didn't hear from him for months. The family painstakingly found his name on a list of Guantanamo detainees. However, according to Umm Abdullah, she has been trying to find out more information on her husband through the Red Cross, but has been told he is not in Guantanamo. She fears her husband is in one of America's secret jails, Umm Abdullah said.

The other five Yemeni detainees who were recently released from Guantanamo are still being held in the Central Prison in Sana'a, while the government runs a background investigation.

"Al-Asadi wasn't held with the five other detainees as America released him without requesting further interrogations," said Khalid Al-Anisi, executive director of HOOD.

Although Al-Asadi was tortured for five years, his talk exuded confidence, strength, and faith, and he said he hopes in the future to be able to do more to become a defender of detainee rights.

"In this conference I call on all people to stand tall to shut down Guantanamo and end the trail of human tragedy at all secret detentions ... America must be aware of the danger the U.S. government is leading them to. Such treatment creates rancor and spite and brings evil to the whole world," Al-Asadi said.

He added, "I will use all my efforts and energy to clarify the sorrow and pain the rest of the detainees suffer from. I will struggle to present their issues to the public and work with the organizations that defend human rights."

Shadi Mokhter, an American lawyer pursuing her doctorate in human rights, and an attendee at Thursday's event, agreed that Guantanamo is an illegal prison, "Release the detainees or give them a fair trial," she said.

Another attendee, Riyadh Al-Ghaili, who was once a detainee at the political security prison in Yemen said, "My coming to this conference is to support all detainees around the world whether they are being held at Guantanamo or Guantanamoian systems used in Arabic or Islamic countries. There is no difference between Guantanamo and a political security prison as they are both violations of one of the greatest blessings God gives man, which is freedom."

Others present at the event agreed that before fighting terrorism as security centers claim, they need to heal the tendency of terrorism in their hearts and understand the concept of human rights.

"The issue we need to face today is not only the existence of Guantanamo, but also the upside-down concepts and principles of human rights ... such as a pre-emptive war and a war against terrorism. Such concepts changed the aggressive war against Iraq into a war of liberation, and legalizes arresting innocent men under the banner of 'War Against Terrorism,'" said Tawfeeq Al-Bathi, from the Human Rights Information and Training Center.

Al-Ghaili also explained the cause of terrorism.

"The treatment while being arrested is enough to create terrorists. They snoop on our private affairs, rush into our homes, and illegally detain us for months or years while using torture and depriving us of the necessities of daily life," Al-Ghaili said.

During his statement, Al-Asadi asserted: "It is a war against Islam, because while being in the prison they punished us while we were praying. They stomped on the Holy Quran and threw it in deserted places and toilets. They frisked our private organs. They forced us to shave our beard. And when we asked them for rights, they told us we are neither humans nor animals to deserve rights. We are devils, and devils have no rights."

There were about 759 men, all Muslim, initially held at Guantanamo. The number of detainees fell to 400 in 2006. 100 of the current prisoners are Yemenis, 70 are Saudis, and 230 are other nationalities.

[http://yementimes.com/print\\_article.shtml?i=1018&p=front&a=2](http://yementimes.com/print_article.shtml?i=1018&p=front&a=2)  
<[http://yementimes.com/print\\_article.shtml?i=1018%26p=front%26a=2](http://yementimes.com/print_article.shtml?i=1018%26p=front%26a=2)>  
\*\*\*\*\*

5,000 sail to Cuba to Close Guantánamo  
Press release, 01/22/2007

Just over a week on from the 5th anniversary of the first transfers to the US prison camp at Guantánamo, over 5,000 people from more than 90 countries have set off on a virtual voyage to the US detention centre.

The travellers are taking part in AI's latest online campaign to persuade the US government to close Guantánamo. The campaign will run until 26 June, International Day for the Protection of Victims of Torture.

Each person who signs up to join the flotilla can design their own outfit, redo their hair and choose from a range of flotation devices from pirate ships and dinghies to dolphins and dragons. People can also choose a message about Guantánamo in a selection of languages. As people progress towards Cuba, they will be invited to sign petitions on behalf of those detained in Guantánamo.

"The protests which took place less than a fortnight ago showed that people across the world want to see Guantánamo closed. We are now taking that struggle from the streets to cyber space," said Denise Searle, Senior Director of Communications at Amnesty International.

"This campaign is also a response to the US government's continuous disregard of international outrage at Guantánamo detentions and to AI's numerous unanswered requests to visit the detainees who are held there virtually incommunicado."

You can visit AI's online flotilla at: <http://www.amnesty.org/guantanamoflotilla/>  
<<http://www.amnesty.org/guantanamoflotilla/>>

To download a banner to AI's flotilla (in English or Spanish), please go to:  
<http://web.amnesty.org/pages/stoptorture-bannersflotilla-eng>  
<<http://web.amnesty.org/pages/stoptorture-bannersflotilla-eng>>

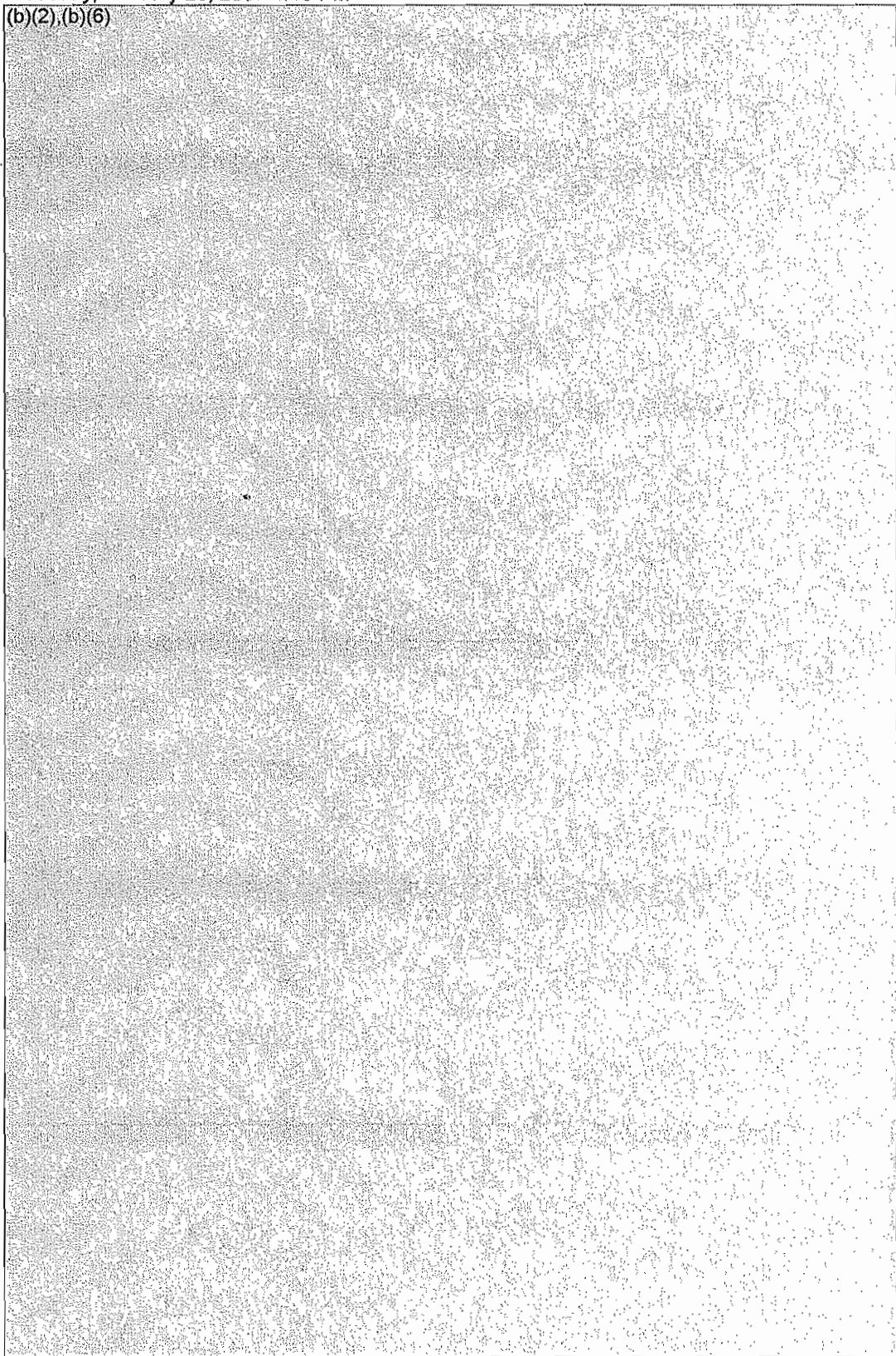
\*\*\*\*\*

(b)(6)

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

(b)(6) DoD OGC  
Tuesday, January 23, 2007 4:16 PM

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



**Cc:**

Cc:

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

Subject:

GTMO Bird: New deputy commander for JTF; World dislikes GTMO; Kurnaz; DNA; CIA investigation; Legislation

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

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

(b)(2) (DSN (b)(6))  
(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.

NewsReview.Info

Oregon officer selected to oversee Guantanamo Bay PORTLAND, Ore. (AP) – An Oregon Army National Guard officer will be the next man to oversee the lives of detainees at Guantanamo Bay.

Brig. Gen. Cameron A. Crawford, 50, deployed Sunday for training and a yearlong assignment as deputy commander of the Joint Task Force-Guantanamo Bay. The Forest Grove native and West Point graduate will help oversee 2,000 service members and 400 detainees. He will handle day-to-day operations under the command of Navy Rear Admiral Harry B. Harris.

Crawford is on military leave from the Weyerhaeuser paper mill in Albany. He is a decorated Army and Guard officer who specialized in military police, corrections and intelligence, called the job "a perfect fit for my 30-plus years of background and experience."

But he acknowledged that media scrutiny, legal battles and stakes make the job "unique."

About 400 people – including alleged Taliban members and senior al-Qaida members alleged to have known of the Sept. 11 terrorist attacks – are at Guantanamo. Many of the conditions condemned worldwide, including use of hoods and outdoor enclosures, ended in 2003.

Crawford and others say the facility now most resembles a standard federal prison such as the one at Sheridan where Crawford interned while earning a master's degree in correctional administration.

"At the end of the day it's about leadership," Crawford said, "and making sure service members there are doing the right thing executing their mission to legally and humanely detain enemy combatants and secondarily collecting intelligence on the war on terror."

Still, Portland attorneys who represent several detainees say that while physical conditions have improved, treatment is variable. They said the conditions are unlike any other prison, with ever-changing rules and no clear path to trial.

The Federal Defender Office in Oregon represents seven detainees. Steven Wax, Oregon's federal public defender, volunteered the office to take cases in 2005 when a federal court sought assistance from public defenders. In addition, private attorneys at Perkins Coie; Garvey Shubert Barer; and Schwabe, Williamson and Wyatt represent other detainees.

Congress twice passed laws purporting to strip federal courts of the ability to hear prisoners' habeas corpus claims, and the U.S. Supreme Court has twice said federal courts do have jurisdiction. The question is before the D.C. Court of Appeals.

Wax said that in three trips to the base he found detainees face "a psychological torture."

"It creates despair when you hold people without charge, without evidence, without rules, depriving them of access to the courts and not providing them any meaningful review mechanism," Wax said. "You strip them of hope, and in doing so, you are depriving them of their humanity."

Crawford's assignment makes him the second Oregon Guard officer thrust onto the worldwide stage since last January, when Brig. Gen. Douglas A. Pritt took command of Joint Task Force Phoenix, overseeing nearly 4,500 soldiers training the Afghan National Army. When Pritt deployed with more than 850 members of the Oregon Guard's 41st Brigade Combat Team, headquartered in Tigard, Crawford was named its commander.

Col. Crawford was promoted to brigadier general in a ceremony in Salem Friday attended by his wife, Karen; daughters, Sara and Melissa; and parents, Doug and Jeannie Crawford; and Gov. Ted Kulongoski.

Crawford, a high school athlete, entered West Point at 17. He served 14 years' active duty, including in intelligence during the Persian Gulf War, and as an assistant professor of military science at Oregon State University. When he left active duty in 1993, Crawford joined the Oregon Guard and took full-time civilian jobs, one of which was in 1997 as the training manager at the Albany mill.

He took extended military leave in 2003 to serve as deputy brigade commander for the 41st Combat Brigade and was commanding 3,500 soldiers when he was tapped for the Guantanamo job.  
<http://www.oregonnews.com/article/20070122/NEWS/70122004>

\*\*\*\*\*

Miami Herald

British poll: World dislikes Guantánamo camp BY CAROL ROSENBERG [crosenberg@MiamiHerald.com](mailto:crosenberg@MiamiHerald.com) A new poll by the British Broadcasting Corp. portrays both the war on Iraq and the detention center at Guantánamo Bay, Cuba, as major international liabilities in terms of American esteem abroad.



The BBC World Service, an independent media entity in the nation seen as the staunchest U.S. ally, ordered the poll, which was conducted by the Program on International Policy Attitudes at the University of Maryland.

It surveyed 26,381 people in 25 countries on attitudes toward the United States and President Bush.

"According to world public opinion, these days the U.S. government hardly seems to be able to do anything right," Steven Kull, PIPA director, said with a release of the poll.

Specifically, the poll showed 73 percent disapprove of the Iraq war while 67 percent disapprove of the way the United States has treated terror suspects detained at Guantánamo Bay.

Britain's Tony Blair has been a staunch ally and supporter of Bush's war in Iraq, but his government has separately negotiated the release of all British citizens who were taken from Bagram, Afghanistan, to Guantánamo.

The U.S. presently holds fewer than 400 foreign men and teens -- none of them U.S. citizens -- as enemy combatants at the U.S. Navy base in remote southeast Cuba.

They include fewer than a dozen former British residents -- not citizens -- whose detention has become a cause célèbre in some human rights advocacy circles in London.

Pentagon briefers argue captives there receive medical services similar to that given to U.S. service members. They also say their treatment of prisoners meets the highest of U.S. standards.

In contrast, FBI memos have described early episodes of humiliating interrogations of captives and former Guantánamo detainees have alleged they were tortured in U.S. custody.

Broadly, the BBC poll found "that world citizens disapprove of the way the U.S. government has handled all six of the foreign policy areas explored."

Other areas of inquiry included:

- U.S. handling of the Israeli-Hezbollah war this summer -- 65 percent of those polled disapproved;
- Iran policy -- 60 percent disapproved;
- Global warming policies -- 56 percent disapproved;
- The U.S. approach to the North Korea's nuclear crisis -- 54 percent disagreed.

"Interestingly," it also noted, "the American public also seems to have serious doubts about U.S. policy."

Specifically it found 57 percent of Americans disapproved of how the United States is handling the Iraq war and half of Americans "disprove of U.S. treatment of detainees in Guantánamo and other prisons."

The poll was taken between Nov. 3 and Jan. 9, and had a margin of error of 3 percent. It was released on the eve of President Bush's State of the Union address.

Countries included in the survey were: Argentina, Australia, Brazil, Chile, China, Egypt, France, Germany, Great Britain, Hungary, India, Indonesia, Italy, Kenya, Lebanon, Mexico, Nigeria, Philippines, Poland, Portugal, Russia, South Korea, Turkey, United Arab Emirates and the United States.

The Guantánamo question specifically asked people surveyed whether they approved or disapproved of "U.S. treatment of detainees in Guantánamo and other prisons."

Germany was the nation with the highest disapproval rate of Guantánamo prisoner treatment, with 89 percent disapproval, followed by Egypt (87 percent), Turkey (85 percent), Portugal (84 percent), France and Italy (82 percent).

Nations less troubled by the U.S. treatment of prisoners at Guantánamo and elsewhere include the Philippines, with 36 percent disapproval, Kenya (38 percent) and India (39 percent).

<http://www.miami.com/mld/miamiherald/16526422.htm>

\*\*\*\*\*

DW-World.Com

EU: Germany Refused US Offer to Release Guantanamo Inmate

A German-born Turk ended up imprisoned in Guantanamo Bay for three years longer than necessary after the former German government refused him entry to the country, an EU parliamentary committee said Tuesday.

An investigation by the European Parliament into alleged CIA activities in Europe found that "according to confidential institutional information, the German government did not accept the US offer, made in 2002, to release Murat Kurnaz from Guantanamo."

The former government of then-chancellor Gerhard Schröder was accused of abandoning Kurnaz even after "US and German intelligence concluded, as early as 2002, that Murat Kurnaz had no connection to al Qaeda or the Taliban and that he posed no terrorist threat."

US forces seized Kurnaz in Pakistan shortly after the Sept. 11, 2001 attacks in the United States and he was later sent to a US prison in Afghanistan before being incarcerated at Guantanamo Bay in 2002.

He was released last August because of a lack of proof that he had belonged to a terrorist organization, following repeated appeals by current Chancellor Angela Merkel to the US government after she took power in November 2005.

A German parliamentary committee is also investigating the former government's alleged role in Kurnaz' imprisonment and Thursday made similar allegations against the Schröder administration, a coalition of Social Democrats and Greens, which included current Foreign Minister Frank-Walter Steinmeier, of refusing Kurnaz entry into Germany. At the time, Steinmeier was Schröder's chief of staff and responsible for secret service activities.

Steinmeier rejected the European report's conclusion that the German government prolonged Kurnaz' detention.

"I do not know of any such offer," he said Tuesday in Brussels.

"Mr. Kurnaz' long story of suffering in Guantanamo is harrowing," Steinmeier said before adding that the EU's accusations against him were "first of all false and also simply disgraceful."

Under pressure to clarify his knowledge of Kurnaz' case, Steinmeier said Monday he would testify when called on by the German inquiry into the issue.

In an interview with RBB radio, the committee's head, Siegfried Kauder, said March was the earliest the panel would call on Steinmeier. Other committee members, however, said they could imagine hearing his testimony sooner.

The Social Democratic leader in the European investigation, Wolfgang Kreissl-Dörfler, said Steinmeier should not wait until being called before the parliamentary committee.

"You can always tell the truth," he said.

#### EU report condemns extraordinary renditions

In its final report after a year-long investigation, the European parliamentary committee also scrutinized charges that EU countries helped the US with secret CIA flights and the alleged abductions of terror suspects in Europe. The report was adopted with 28 in favor, 17 against and three abstentions.

The document said Britain, Poland, Italy, Germany and seven other EU countries were aware of the secret flights and the US detention program and slammed them for failing to fulfill "the European obligations, such as the respect of human rights."

There were "at least 1,245 CIA flight in European airspace" between the end of 2001 and the end of 2005, including 336 cases of planes making stops in Germany, according to the report.

The committee's final conclusions also charged the EU's foreign policy and security chief Javier Solana with not cooperating in the investigation and failing to reveal his knowledge about the US detention program.

<http://www.dw-world.de/dw/article/0,2144,2324100,00.html>

\*\*\*\*\*

Detainee DNA may be put in database; ACLU says plan violates privacy USA TODAY January 19, 2007 Friday

Copyright 2007 Gannett Company, Inc.

All Rights Reserved

USA TODAY

WASHINGTON -- The federal government could add DNA from tens of thousands of immigration violators, captives in the war on terrorism and others accused but not convicted of federal offenses to the FBI's crime-fighting database under a plan being finalized by the Justice Department.

Erik Ablin, a Justice Department spokesman, confirmed the plan, which hasn't been publicly disclosed, and said details are expected to be completed soon.

Proponents of the plan, including U.S. Sen. Jon Kyl, R-Ariz., and Maricopa County, Ariz., Sheriff Joe Arpaio, say taking DNA from federal detainees would solve many crimes committed by illegal immigrants and make it easier to identify and track potential terrorists.

Opponents, such as Caroline Fredrickson, director of the American Civil Liberties Union's Washington office, say such mass seizures of DNA violate privacy and do little to improve law enforcement.

Fredrickson says the law that defines federal detainees is so broad that it could apply to hikers stopped by park rangers or airline passengers selected for screening. Authorization for taking the DNA was included in a bill reauthorizing the Violence Against Women Act that President Bush signed last year.

The DNA samples, which contain an individual's unique genetic code, would be compared against genetic profiles from 3.9 million criminals and 157,000 unsolved crimes held by the system of federal and state DNA databases that the FBI administers. The FBI says its system has aided more than 41,000 criminal investigations since 1990.

DNA from federal arrestees and detainees would be held on a computer index, enabling law enforcement to track illegal immigrants who return after being expelled from the USA or who commit crimes after being released. War-on-terrorism detainees, who often use aliases, could be positively identified by DNA and linked to evidence seized at suspected terrorist sites.

"We know from real-life examples that a database of arrestees can prevent many future offenses," Kyl said in a statement.

The plan would greatly increase the pool of DNA profiles available to law enforcement. In most states, a person must be convicted of a crime before his DNA is added to the national system, which the FBI calls CODIS. In seven states, DNA can be taken from suspects after they are arrested and formally charged.

The new plan would apply to "any person arrested under federal authority and from any non-U.S. person who is detained," according to the Violence Against Women law. Each year, the greatest number of those are illegal immigrants caught at the border or rounded up after entering the country.

DNA from immigration violators would remain on file permanently. Genetic profiles from people arrested for federal crimes could be removed from the database if they are not convicted.

Law enforcement authorities say illegal immigrants commit crimes out of proportion to their numbers. A Justice Department study of 100 illegal immigrants arrested and released by local authorities in 2004 found that 73 were later rearrested. "To me, it's a no-brainer," Arpaio says. "Regardless of how you feel (about illegal immigration), nobody wants criminals to get a free pass to come in here." Fredrickson says collecting DNA from anyone detained by a federal officer would clog the system to "where it becomes useless."

Hundreds of thousands

Federal detainees could have samples of their DNA taken. Many detainees are immigration violators:

\*More than 400,000 illegal immigrants were detained and removed from the USA from October 2003 to June 2006.

\*More than 270,000 spent time in state or local custody in 2005.

\*\*\*\*\*

Expatica

MPs defend US criticism in year-long CIA investigation

23 January 2007

Brussels (dpa) - European Union lawmakers on Tuesday ended a year-long investigation into alleged CIA activities in Europe, rejecting attempts by conservative EU deputies to soften criticism of the United States and senior European officials.

A special European Parliament committee scrutinizing charges that EU countries helped the US with secret CIA flights and the alleged abductions of terror suspects in Europe adopted its final report with 28 in favour, 17 against and 3 abstentions.

The document says that Britain, Poland, Italy, Germany and seven other EU countries were aware of the secret flights and the US detention programme and slams them for failing to fulfil "the European obligations, such as the respect of human rights."

Euro MPs rejected attempts by conservative deputies to water down some of that criticism. Centre-right Euro MPs had argued that although the CIA flights have been secret, evidence gathered was not sufficient to prove that EU human rights laws have been violated.

They were also unsuccessful in trying to soften charges against EU top officials, including the bloc's foreign policy and security chief Javier Solana. The report says that Solana did not cooperate with the investigation and did not reveal his knowledge about the detention programme.

Singling out Poland, which is suspected of having hosted secret CIA camps, EU deputies stressed that European countries are also breaching human rights laws if they fail to carry out independent investigations into the allegations of such violations.

In addition, Euro MPs called on the bloc to monitor more strictly data transfer to non-EU countries and the use of European airspace. They also demanded more EU competencies in the area of combating international terrorism.

Human Rights Watch criticized the report for a weak criticism of so-called "diplomatic assurances," the practice of returning terrorism suspects to risky places on promises of humane treatment.

"European governments have used these empty promises as a fig leaf to justify sending people to places where they risk being tortured," said HRW's Europe director Holly Cartner.

The committee's final conclusions also accuse the former German Socialist-Green government of a failure to work for the release of a Turkish-German former Guantanamo prisoner.

Murat Kurnaz spent four-and-a-half years in the US prison camp Guantanamo on Cuba after his arrest as a suspected al-Qaeda supporter in Pakistan, shortly after the September 11, 2001 attacks on the US.

"According to confidential institutional information, the German government did not accept the US offer, made in 2002, to release Murat Kurnaz from Guantanamo," EU lawmakers pointed out.

German Foreign Minister Frank-Walter Steinmeier is under growing pressure to explain his role in the prolonged detention of Kurnaz.

Kurnaz was not freed until August 2006 on the intervention of the present government led by Chancellor Angela Merkel.

At least 1,245 CIA-operated flights flew over European airspace or stopped over at airports in Europe, the report stressed.

EU lawmakers bashed European governments' denials of involvement in so-called extraordinary renditions of terrorism suspects, which would be illegal under EU law.

US President George W Bush last September for the first time acknowledged that the CIA was running secret prisons for holding and interrogating high-level al-Qaeda figures that had been captured since the September 11, 2001 attacks.

However, Bush did not give in to European calls to make the location of the camps public.

Clandestine detention centres, secret flights via or from Europe to countries where suspects could face torture, or extraordinary renditions would all breach the continent's human-rights conventions.

Allegations that CIA agents shipped prisoners through European airports to secret detention centres, including compounds in Eastern Europe, were first reported in November 2005.

The special European Parliament committee started its probe in January 2006. Its final report will be voted on by the 785-member plenary next month.

[http://www.expatica.com/actual/article.asp?subchannel\\_id=52&story\\_id=35755](http://www.expatica.com/actual/article.asp?subchannel_id=52&story_id=35755)

\*\*\*\*\*

#### The Hill

A submarine commander's daughter ensures safe waters for detainees By Roxana Tiron <<mailto:rtiron@thehill.com>> Elisa Massimino's line of work requires a flexible definition of victory, and determination to fix problems she may not see solved in her own lifetime. "A journey of 1,000 miles begins with a single step," the Washington director of Human Rights First said. "You have to have a long timeline to see progress and keep things moving in the right direction."

Bettering the human condition is a lofty goal, and Massimino knows it can't be done without pragmatism and the help of others – sometimes unexpected allies, such as the U.S. military. The daughter of a submarine commander, Massimino grew up with an affinity for and understanding of the armed forces. She said the human-rights community and the military share many values: Both believe in a system of rules and accountability.

It was, in part, Massimino's success at assembling a coalition of retired military officers and human-rights advocates that gave momentum to the legislation known as the "McCain amendment." The amendment addressed the treatment of military prisoners in the Middle East and at Guantánamo Bay, Cuba.

"A lot of my time has been spent helping to build and organize a coalition of retired general officers who were very concerned about the deviation from the Geneva Conventions, the rejection of the Geneva Conventions and the risk that it posed to our own military," Massimino said.

The legislation set new limits on interrogating military detainees in Iraq and elsewhere, despite opposition from the White House.

Her firm grasp of military hierarchy allowed Massimino to realize that incidents of torture at Iraq's Abu Ghraib prison indicated a breakdown of the military command structure. She also knew that speaking publicly about it does not come easily to military officers.

"It's not a role the military is accustomed to playing, but there were people inside the Pentagon who were trying to make progress and they needed some help," she said.

Those who know Massimino say her approach leads to success. She's passionate, but not emotional, and she understands the policy and the legal framework within which she's working.

"She has great judgment, great passion, drive and knowledge," the chief counsel and staff director of the Senate Judiciary Committee, Bruce Cohen, said. "She has everything you would like in an advocate. Her humanity comes through, [but] she is not lecturing us on human rights; she is trying to get Congress to do the right thing."

Massimino, who has never worked on the Hill, is known by reputation for the many hours she has spent as a witness in hearings and at key meetings with staff and lawmakers.

"She speaks truth to power and she does it eloquently and self-effacing[ly]," Rep. Chris Smith (R-N.J.) said. "She is in this for the victims, not for Elisa Massimino. I have always counted on her to be a real beacon of truth and hope."

Yet her uphill battles grow steep at times.

Despite the passage of the McCain amendment, last year's debate on military tribunals was tough for Massimino. President Bush signed into law the Military Commissions Act late last year, drawing criticism from Democrats and human-rights activists who called the law unconstitutional. The tribunal bill suspends the writ of habeas corpus, among other issues.

"The fallout from that piece of legislation ... we have not even begun to see all of it," Massimino said.

But last week the military issued its new military commissions rules - raising the ire of both Congress and the human-rights community.

"No civilized nation permits convictions to rest on coerced evidence, and reliance on such evidence has never been acceptable in military or civilian courts in this country," Massimino said.

According to Massimino, such "tainted" evidence is "inherently unreliable," and permitting its use "debases" the military justice system and "dangerously undermines the prohibition on torture and abusive treatment."

Despite the military commissions setback, Massimino plows ahead. Several proposals that could draw bipartisan support are in the works to overhaul the Military Commissions Act.

There are issues that Congress has not even touched yet, such as "secret detention and rendition" - transporting people to other countries, without judicial supervision, for interrogation or detention, Massimino said.

She hopes oversight will be a first priority for the new congressional leadership in trying to address some of the fallout.

"There is so much that Congress has not examined yet. Congress has never looked at who is at Guantánamo Bay and how we got those people," she said. "What we have here is mistake upon mistake. We keep trying to fix past mistakes, but until you understand the first one you are never going to be able to back out of that maze."

The soft-spoken but assertive Massimino has a unique background that contributes to her approach toward human rights, ethics and the government.

"I liked solving problems," she said, sitting in her office minutes away from the Capitol. She studied philosophy in graduate school at Johns Hopkins University because she was interested in ethics and public policy.

But the abstract nature of the subject left her frustrated. So Massimino leaped into law. "Unlike many people, I absolutely loved law school because it was so practical and it appealed to my desire to help people," she said.

Although she now teaches a course in human-rights advocacy at Georgetown University's law school, during her time as a student at the University of Michigan she took just a single course in human rights.

"I did not know that there [was] human-rights law that would bring my interest and study of philosophy and ethics and the practical aspect of legal training together," she said.

Shortly after graduating, she joined Hogan & Hartson because the firm had a commitment to pro-bono work. One of the organizations she volunteered with was the Lawyers Committee for Human Rights, since renamed Human Rights First, a non-profit, non-partisan international human-rights organization. She later was offered an opportunity to help establish the organization's Washington office and became director in 1996.

Much of the work she did early on, and still does, focused on protecting refugees seeking asylum in the United States. She started out helping Salvadoran teenagers who had fled forced recruitment during the 1980-1992 civil war.

Her work made her think about the policy issues implicated in those situations, along with the role the U.S. government was playing. "Coming to Human Rights First really opened the door for me to be able to devote all of my time and energy to that," she said.

Refugee protection has remained a challenge for Massimino's organization, complicated even more after September 11, 2001.

"We found that the U.S. response to the attacks was starting to put a strain on human-rights standards and U.S. commitment to upholding those standards, and so in fairly short order we realized it is not going to be a short-term problem," she said. "Counter-terrorism policy of the U.S. government and other governments really touches all of the issues that we work on." Massimino believes that the United States remains a beacon of hope to other countries when it comes to human rights. But that light has been obscured in the past few years, she said. She has spent time working on issues such as military detainees, she said, "not because they are the worst human-rights issues on the face of the globe, but because U.S. leadership can make a difference around the world."

"The inability of the United States to be that beacon is a huge loss and the cost comes to my friends" around the world, she said. "When I talk to them and ask them how I can help them, invariably their response is, 'Get your own house in order. We need the United States.'"

(b)(6)

**From:** (b)(6) DoD OGC  
**Sent:** Thursday, February 15, 2007 4:42 PM  
**Subject:** GTMO Bird; CCR; CIA investigation; Mustafa; Hicks; Choke off funds for GTMO; Bush executive order for trials; Lehnert and GTMO  
**Attachments:** Picture (Metafile)

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.

This link is to the Guantanamo Global Injustice Initiative from the Center of Constitutional Rights. It has some interesting material, reports about the MCA and videos.

<http://www.ccr-ny.org/v2/gac/>

\*\*\*\*\*

EU Investigation Into CIA Rendition Only One Of Many Investigations Due To CIA Fallout

February 15, 2007 11:41 a.m. EST

Linda Young - All Headline News Staff Writer Luxembourg, Luxembourg (AHN) - The European Parliament on Wednesday adapted its final report investigating the U.S. Central Intelligence Agency's illegal practice of rendition of suspected terrorists in Europe. The CIA had used air flights originating in European countries, as well as going through them. The report found some EU member nations turned a "blind eye" to what was going on even when the CIA told them it realized an innocent civilian was mistaken for a terrorist and had been kidnapped. Between 2001 and 2005, the CIA operated over 1,000 flights in European airspace. In addition, "temporary secret detention facilities 'may have been located at U.S. military bases'" or hotel rooms in Europe, says the European Parliament's final report.

The report also states that while some of the illegally kidnapped people were merely transported through EU countries that others were citizens of EU nations.

Along with the EU investigation, there are many individual legal investigations continuing within the European nations in question- including Germany, Spain, Portugal and Switzerland, BBC news reported Thursday.

One example: A German citizen was kidnapped by the CIA, held and tortured and then the CIA discovered it had the wrong man. It turns out the CIA asked the German government to take Murat Kurnaz back, in 2002. Germany refused and the CIA kept Kurnaz until 2006 when it dumped him on a road in another nation.

The BBC reported that it was Germany's former intelligence coordinator who made that decision, now he is Germany's foreign minister and the disclosure of his past actions is expected to result in his forced resignation.

Similar fallout is expected elsewhere in Europe, especially in countries such as Austria, Italy, Poland, Portugal and the U.K. that refused to cooperate with the parliament in its report.



In Italy, for example, the case of an Egyptian imam kidnapped on the streets of Milan in 2003 is going to court on Friday.

The court will decide whether to prosecute 35 people, including 25 CIA agents and the former head of the Italian military intelligence service, Gen Nicolo Pollari, whose lawyers have announced they will call present and former Italian prime ministers to testify, BBC news reported. His lawyer has warned that he will call as witnesses the present and former Italian prime ministers.

<http://www.allheadlinenews.com/articles/7006475067>

\*\*\*\*\*

Spain furious as US blocks access to Madrid bombing 'chief'

Exclusive: on the first day of the Madrid bombing trial, the splits that have emerged between Spain and the US over the War on Terror, which have their roots in the Iraq conflict, are laid bare. The al-Qaeda leader who created, trained and directed the terrorist cell that carried out the Madrid train bombings has been held in a CIA "ghost prison" for more than a year.

Spanish officials told The Times last night that they are furious to have been denied access to Mustafa Setmariam Nasar, a Syrian-born terrorist who has been part of the al-Qaeda leadership since the late 1980s.

"This is Spain's most wanted man in the terrorist world - it is galling to know that he is in the hands of an ally and they will not help us," a Spanish official said.

Madrid's anger became known on the day that 29 men went on trial in the Spanish capital <<http://www.timesonline.co.uk/tol/news/world/europe/article1388832.ece>> in connection with the bomb attacks which killed 191 people in March 2004.

Setmariam, 49, who lived in Madrid, married a Spanish woman and holds Spanish citizenship, inspired and established Spain's first Islamist terror cells.

Searches after the March 2004 bombings uncovered documents which appeared to link the terrorists to Setmariam and he has thought to have issued a coded order giving the go-ahead for the attack.

Setmariam was in Afghanistan in late 2001 when the Taliban regime fell and moved with his family to Pakistan where he continued to be active in al-Qaeda.

A tall man with a pale complexion and flame red hair, Setmariam travelled widely and was often mistaken for a Westerner. He was frequently described as having "Irish looks".

During the mid-1990s he lived in London where he associated with Abu Hamza al-Masri and succeeded the radical cleric as editor of al-Ansar, a propaganda magazine for Algerian terror groups. He also associated with Abu Qatada, the extremist Jordanian cleric currently in prison in Britain.

His suspected role in the Madrid attacks and his knowledge of London meant that he was initially suspected of having played a part in the planning of the 7/7 suicide bomb attacks in 2005.

At the time of those attacks he was still at large in Pakistan where two of the London bombers are known to have received military and explosives training.

Setmariam, who pledged lifelong allegiance to bin Laden and the global jihad, has boasted on al-Qaeda websites of training thousands of foreign recruits at camps where he specialised in bombmaking and the use of poisons.

He was detained in October 2005 as he shopped for breakfast in Quetta, close to the Pakistan-Afghanistan border. Pakistani intelligence agents shot Setmariam's Saudi bodyguard dead but were under specific instructions to take Setmariam alive.

The FBI had offered a \$5 million reward for his capture and President Pervez Musharraf of Pakistan stated in his recent memoirs that his country has received substantial sums in bounties from the US authorities.

Within a month of his capture Setmariam was handed over to the United States authorities and spirited away for interrogation at one of their secret prisons. His first stop was probably Bagram airbase, near Kabul, but his current whereabouts are unknown.

Setmarian's wife and three children moved from Pakistan following his detention and are now believed to be living in Qatar where she is reported to be an English teacher at a private school.

Spanish intelligence agents were said to have been allowed to question inmates of Guantanamo Bay about Setmarian in 2002. But access to suspects in US custody was blocked after Spain withdrew its troops from Iraq following the Madrid bombs.

Spain has made repeated requests to both Pakistan and the US to locate and speak to Setmarian about the train bombings but to no avail. The Spanish courts have discovered that they cannot issue <http://www.timesonline.co.uk/tol/news/world/europe/article1391123.ece> an extradition request because the man they want to talk to has not been officially arrested.

\*\*\*\*\*

Official tells Senate Australia could not send psychiatrist to Guantanamo Bay

CANBERRA, Australia: Australia was refused permission to send an independent psychiatrist to Guantanamo Bay to assess the lone Australian prisoner at the U.S. military base in Cuba, an official said Thursday.

Rod Smith, a senior Foreign Department official, told a Senate committee inquiry that Australia's embassy in Washington wrote to the Pentagon on Dec. 5 last year to request a psychiatric assessment of David Hicks on behalf of his lawyers and family.

Smith said the letter requested a visit by "an independent health professional employed by his legal defense team."

Failing that, Australia wanted an assessment carried out by Guantanamo medical staff.

Australia acted when Hicks' Pentagon-appointed lawyer Maj. Michael Mori raised concerns in the media about the alleged Taliban fighter's mental state after five years in custody.

The office of the U.S. Assistant Secretary of Defense replied on Jan. 26 in a letter that said: "The Department generally does not allow independent medical professionals to meet with detainees at Guantanamo."

"Should Mr. Hicks require additional medical evaluation, it generally will be conducted by the professional medical staff at Guantanamo," Smith said, quoting the letter.

A Guantanamo Bay psychiatrist conducted a 20-minute assessment of Hicks on Jan. 31. She concluded that the 31-year-old did not display symptoms of anxiety or depression and that "his general health was pretty good," Smith said.

Opposition lawmakers used the committee - which is holding a regular and wide-ranging inquiry into the Department of Foreign Affairs and Trade - to ask a range of questions of bureaucrats about Hicks' treatment at Guantanamo.

Asked why the government had not pressed the Americans to allow an independent assessment by a profession Hicks' could trust, Smith said it was the Pentagon's prerogative and "we have no reason to doubt the competence" of the medical staff at Guantanamo.

Smith confirmed that Hicks spent 22 hours a day alone in his cell, had his toilet paper rationed and had had his comb confiscated.

Smith said the Americans had explained that toilet paper was rationed as "a security measure" because some detainees had used it clog toilets and create flooding.

"Toilet paper is rationed 30 sheets at a time, but additional supplies can be provided as requested," Smith said.

Questioned by a lawmaker, Smith denied a claim by Australian lawyer David McLeod had Hicks had been unable to comb his hair since he was moved to Guantanamo's Camp Six on Dec. 16.

"The advice we have is that a comb is available to Mr. Hicks in the shower room," Smith said, adding that combs had been confiscated to prevent their use as weapons.

Hicks is one of three high-profile prisoners at Guantanamo who were selected this month to become the first suspects to be tried by military commissions for alleged terrorist crimes. He will be charged with attempted murder in violation of the law of war and providing material support for terrorism.

The charges must still be approved by the U.S. Department of Defense legal adviser and another official who oversees the tribunals.

Prime Minister John Howard, a staunch ally in the U.S.-led war on terror, is under growing pressure from within his own government to bring Hicks home because of the duration of his stay at Cuba without conviction.

<http://www.iht.com/articles/ap/2007/02/15/asia/AS-GEN-Australia-Guantanamo-Inmate.php>

\*\*\*\*\*

Jeremy Rabkin: Gitmo detainees are not ordinary felons David Hicks should not be returned to Australia for trial before a regular criminal court  
16feb07

JOHN Howard has raised some eyebrows in the US. He warned this week that electoral success for one of our Democratic presidential hopefuls - one who urged the rapid withdrawal of US forces from Iraq - would be pleasing to al-Qa'ida. He then explained that he felt entitled to comment on US domestic politics because the US is Australia's major ally in the fight against terror.

Now that the Prime Minister has broken the ice, let me return the favour by voicing some exasperation at what some of your Opposition Labor politicians, such as shadow attorney-general Kelvin Thomson, and even federal Liberal backbenchers such as Michael Johnson and Don Randall, are saying about the case of David Hicks.

Hicks was captured in Afghanistan in 2001, fighting alongside Taliban forces. He has been held at the Guantanamo detention centre since 2002. After many delays, Hicks is scheduled for trial before a US military commission in the coming weeks. Critics in Australia say the trial won't be fair. Therefore, they urge, Hicks should be returned to Australia for trial before a regular criminal court.

The case presents a great many technical questions deserving the attention of legal specialists. But the idea that there is some monstrous injustice here is a fantasy of demagogues who always depict US policy in the worst possible light. To quote our mate Howard, that sort of talk must be pleasing to al-Qa'ida.

If Hicks had been treated as an ordinary prisoner of war under the Geneva Conventions, he would still be in a prisoner-of-war camp. Taliban insurgents are still fighting the new Government in Afghanistan, despite the efforts of Australian, British and US troops to suppress them. There's no novelty or injustice in continuing to hold POWs while the war continues.

True, the US Government doesn't now acknowledge that the full protections of the Geneva Conventions apply in this setting. By its own express terms, the Geneva Conventions cover regular armed forces and other organised combatants who openly identify themselves as such, remain subject to military discipline and honour the laws of war in their own operation. No one seriously claims that these criteria apply to the Taliban guerillas.

Still, the International Red Cross has been allowed ready access to the Guantanamo detention camp, along with many other outside observers. Despite rumours and slogans, no patterns of serious abuse there have been documented. Compromises with full Geneva protections seem to involve rather special policy questions, such as the extent to which prisoners can be separated from each other to facilitate effective interrogations.

The trial now proposed for Hicks is not to determine whether he can be treated as a POW but whether he should be separately punished as a war criminal. It's true the military commission won't be bound by all the safeguards observed in domestic criminal trials. That does not mean the trial by military commission is improper.

Trials by military commissions were not invented from whole cloth by the Bush administration. They were used in the aftermath of World WarII to try war criminals such as General Tomoyuki Yamashita for Japanese atrocities in The Philippines. Military commissions were used in the American Civil War, among other things for the trial of Abraham Lincoln's (civilian) assassins. Even the Geneva Conventions, in provisions applicable to prisoners covered by all its protections, authorise trial of prisoners by military tribunals when they are accused of special offences. They do not impose many definite procedural requirements for such trials. In its ruling last year in Hamdan v Rumsfeld, the US Supreme Court held that trials at Guantanamo should conform to the general provision in the Geneva Conventions applying to

"armed conflict not of an international character": to conflicts where the rest of the conventions' protections do not apply.

That provision (in Article 3) prohibits "passing of sentences ... without ... affording all the judicial guarantees which are recognised as indispensable by civilised peoples". Quite a few aspects of ordinary criminal procedure might be judged as less than indispensable, as all the justices agreed.

The serious questions here are inevitably rather technical. Would it be improper, for example, to judge Hicks based on evidence that might not be allowed in a civilian court, because it came from a witness whose identity was not fully disclosed to the defendant, or it consisted of a witness describing what he had been told by an eyewitness rather than what he had seen himself? Security considerations and distance make it impractical to honour all the safeguards of normal trials. The question is which compromises may go too far.

A reasonable answer is that we ought to see how an actual trial works out under the proposed rules rather than harping on speculative objections based on hypothetical possibilities of abuse. The military commission is not meant to be a model for all times but an accommodation to special circumstances.

Before critics get too worked up, they might recall that the problems here are not unique to US military trials. Compromises with normal procedure have characterised international war crimes trials, too, starting with the Nuremberg and Tokyo tribunals in 1946, where, among other things, defendants were made to answer for some crimes only defined as such in retrospect. The International Criminal Tribunal for the former Yugoslavia has, on several occasions, protected witnesses by shielding their identities from defendants.

Whatever happens to Hicks, we are not likely to see the end of the terror threat any time soon. If critics insist that justice and security point in entirely opposite directions, they shouldn't be confident that governments - and voters - will always give priority to their notions of perfect justice.

Ordinary courts are not well designed to cope with the special challenge posed by terrorists and war criminals. Whatever else one wants to conclude about Hicks, he is not an ordinary felon.

Jeremy Rabkin is a professor of constitutional law at Cornell University in New York state.

\*\*\*\*\*

Lawmakers seeking method to choke off funds for Guantanamo By Carol Rosenberg and Lesley Clark WASHINGTON - Two key Democrats in Congress disclosed Wednesday that they are digging through Defense Department funding mechanisms to find a method to choke off funding for the Guantanamo Bay detention facilities.

"We're looking at a schedule - a reasonable schedule - to close it down in stages," Rep. John Murtha, D-Pa., said in a broadcast on National Public Radio. "We can limit the funds for it and that would shut it down."

The Pentagon declined to respond to a query on Murtha's plan - how feasible the proposal was and whether there is in fact Guantanamo-specific funding that Congress could cut from future appropriations.

"I don't have anything for you on this," said Navy Cmdr. Jeffrey Gordon, the Pentagon's spokesman for Guantanamo.

Murtha, who retired after 37 years' service as a Marine Corps colonel, has been one of the most outspoken critics of the Bush administration's prosecution of the war on terror. He has taken aim at the Guantanamo prison camps for suspected terrorists through his powerful perch as chair of the House Appropriations subcommittee on defense.

House Speaker Nancy Pelosi shares Murtha's "concern about the damage done to the standing of the United States in the eyes of the world by the lengthy detention of so many people at Guantanamo without resolution of their cases," said Pelosi spokesman Drew Hammill, adding that she "looks forward to reviewing how it is addressed by the Appropriations Committee." So far, Murtha's proposal to cut off funding has not gained traction in the Senate.

But just 10 days ago, he dispatched fellow committee member Rep. James P. Moran, D-Va., and staffers to tour the base with an eye to how to choke off funding for the sprawling, five-year-old detention center, which now holds about 395 foreign captives.

"They're still working on the proposal for how they would deal with the detainees, but the plan is to shut down the detention part of Guantanamo," said Moran spokesman Austin Durrer in

Washington, who added that Moran had been "concerned about the situation for a couple of years."

Now, staffers, he said, are "working behind the scenes to figure out how to put language in there that gets at it."

There are several mechanisms for choking off funding, said Mackenzie Eaglen, senior policy analyst at the Heritage Foundation think-tank in Washington.

One would be to write legislative language that specifically prohibits the Pentagon from spending funds on the detention center at Guantanamo.

And there is precedent.

Congress earlier legislated that the Pentagon could not build permanent bases in Iraq, she said.

But it may be more difficult to delete the specific project itself because "it's probably spread out over several pots of money - the people, the lights on, the meals and the transportation."

Moreover, she said, "even if you did stop the meals and the lights, I imagine it would be very difficult for Congress to get into the weeds to take away the billets that staff Guantanamo."

At the Brookings Institution, senior fellow Michael O'Hanlon said there may not be an analogous example of Congress closing a facility like Guantanamo.

"Congress cut off money for certain weapons - the B-2 bomber in the early '90s, certain domestic military-related activities - nuclear testing at about the same time, aid to the Contras in Latin America, and certain operations - Vietnam, Somalia," he said. "I'm not sure I can recall a case like this, though."

At the White House, meantime, President Bush signed an executive order on Wednesday empowering the Pentagon to go forward with plans to hold war-crimes trials at Guantanamo. Under the current formula for the Military Commissions, written into law by the GOP-led Congress, Susan J. Crawford, a former military appeals court judge, will review an Air Force colonel's plans to prosecute three Guantanamo captives - Salim Hamdan of Yemen, David Hicks of Australia and Omar Khadr of Canada.

"Military prosecutors thus far have sworn charges against three individuals," said White House spokesman Blair Jones. "Now those charges can be reviewed and, as appropriate, trials will be able to proceed."

The president issued the order two days after the top legal authority in key British ally Tony Blair's government condemned the would-be tribunals in an address to the American Bar Association.

Guantanamo is "a symbol of injustice that the long tradition of American justice and liberty ought to see removed at the earliest moment," said Lord Goldsmith, long a critic of the U.S. detention center there, who called the latest war court format "too little and too late."

Pentagon spokesmen in the past have defended the project as a necessity of the war on terrorism. They have repeatedly said that, if the "enemy combatants" aren't held at the remote U.S. Navy base in southeast Cuba, they would need to be held elsewhere.

The Miami Herald query on Wednesday asked if there were no funding, how quickly the Defense Department could relocate the captives - and where they might be sent. The Pentagon declined to respond.

<http://www.mercurynews.com/mld/mercurynews/news/politics/16699745.htm>

\*\*\*\*\*

Bush order allows Guantanamo trials to move ahead Reuters Wednesday, February 14, 2007; 8:26 PM WASHINGTON (Reuters) - President George W. Bush on Wednesday issued an executive order that will allow cases against prisoners at Guantanamo Bay to move forward and be considered by military tribunals, the White House said.

The executive order authorizes the establishment of military commissions, fulfilling a technical step required by the Military Commissions Act of 2006, which Bush signed into law last October.

Military prosecutors have filed charges against an Australian, a Yemeni, and a Canadian held at the U.S. detention facility at Guantanamo Bay, where foreign terrorism suspects are being held.

"Now those charges can be reviewed and, as appropriate, trials will be able to proceed before the military commissions established by this executive order," said Gordon Johndroe, a spokesman for the White House National Security Council.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/02/14/AR2007021401517.html>

\*\*\*\*\*

Lehnert calls for decision on Guantanamo detainees' fate

By: JOE BECK - Staff Writer

SAN MARCOS -- The United States needs to resolve the legal status of suspected al-Qaida and Taliban terrorists held at the American naval base in Guantanamo Bay, Cuba, the commanding general of seven Marine bases in the western United States said Wednesday.

Maj. Gen. Michael Lehnert, who commanded a task force assigned to construct and operate Guantanamo Bay's detention facilities in 2002, said a high priority should be placed on ensuring innocent prisoners do not remain jailed, even if it means risking the release of some of the guilty.

"The bottom line is the administration is going to have resolve this," Lehnert told an audience of about 60 business students during an appearance as a guest speaker in their class on executive leadership at Cal State San Marcos.

Later, in a written statement to the North County Times, Lehnert said that "as a nation, we need to have a serious discussion about the future of Guantanamo."

Lehnert's speech on leadership was part of a series of guest speaker appearances scheduled for the class under the Center for Leadership Innovation and Mentorship Building, part of the College of Business Administration.

Lehnert, who is headquartered at Camp Pendleton, said his remarks should not be interpreted as disapproval of the Bush administration, which has taken harsh criticism from civil libertarians, some legal scholars and human rights activists for treatment of prisoners at Guantanamo Bay. Members of Congress from both political parties have called for closing of the detention facilities, arguing that they are damaging the image of the U.S. overseas.

Guantanamo Bay once held almost 800 prisoners, a number that had fallen to less than 400 by the middle of January as some of original population has been gradually released or transferred.

Of the remaining prisoners captured by U.S. forces during conflicts in Afghanistan and other parts of the world, only a few have been charged with crimes. The chief prosecutor, Air Force Col. Morris Davis, told the Associated Press in January that preparations are under way to put 60 or 80 prisoners on trial before military tribunals.

Lehnert said he believed in applying the centuries-old American legal principle that accepts the risk of allowing a guilty individual to go free to prevent the jailing of innocent people.

He said he adhered to that belief, despite the release of some prisoners from Guantanamo who have rejoined the ranks of terrorists and resumed fighting against the U.S. and its allies.

"I think we have to err on the side of justice," Lehnert said. "That's my personal belief."

Lehnert spoke for more than an hour, delivering wide-ranging remarks on topics that included Marine training, recruiting and values, women in the Marines and the military's budding partnership in California with the state's public universities. He also took questions from several panels of students.

On Iraq, Lehnert, who served as commander of Marine Logistics Command in the early stages of the conflict, said he could not guarantee a victory. He said much depended on the ability of Iraqis to set aside religious and political rivalries that have festered in a culture unfamiliar with the traditions of democracy.

Lehnert said Marines returning from Iraq have told him of continued progress in fighting the insurgency, despite increasing pessimism on Iraq reflected in public opinion polls and political debate.

"I don't think it's a hopeless cause," Lehnert said.

[http://www.nctimes.com/articles/2007/02/15/news/top\\_stories/1\\_02\\_292\\_14\\_07.txt](http://www.nctimes.com/articles/2007/02/15/news/top_stories/1_02_292_14_07.txt)

\*\*\*\*\*

(b)(6)

**From:** (b)(6) DoD OGC  
**Sent:** Thursday, February 22, 2007 3:18 PM  
**Subject:** GTMO Bird: Swift article; Appeals decision; Human rights news; Hicks; Lawsuits

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

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

(b)(2) (DSN (b)(2))  
(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.

The below link is to an article written by LCDR Swift.

The American Way of Justice

By Lt. Cmdr. Charles Swift

<http://www.esquire.com/features/ESQ0307swift>

\*\*\*\*\*

Time.Com

A federal appeals court in Washington has teed up yet another Guantanamo Bay decision for the U.S. Supreme Court, and if the justices review the case, they probably won't like what they see.

In upholding a law that stops foreign combatants from seeking their freedom through the courts, the appeals court highlighted what has always seemed off about the Bush Administration's approach to incarcerating suspected enemy combatants. Most of those held at Guantanamo Bay were captured in Afghanistan, then hauled halfway around the world to our vicinity. Instead of being placed within the continental United States, however, they were put just offshore at the U.S. military base in Cuba. Sort of America., but foreign enough for the Administration to insist that they are beyond the reach of U.S. courts.

The legal implications are almost nonsensical. To see why, consider Tuesday's decision. After meandering through a bunch of dusty British precedents, the court decided that the Constitution only protects habeas corpus – the right to ask a judge for release from illegal imprisonment – for foreigners when they are held in sovereign territory: areas over which the U.S. has absolute control. That means a foreigner captured by U.S. officials abroad and held by them in, say, Florida, can sue for his release. One held in Mexico – or, apparently, Guantanamo Bay – cannot.

Why should rights as fundamentally important as habeas corpus depend solely on a difference of a few hundred miles? In the days of dusty precedents, when issues of time and distance were important, there were practical obstacles to getting foreigners before a faraway judge, as the appeals court notes. But we're talking about a 21st century military operation, camped out just off the coast specifically to keep prisoners away from U.S. courts. As a basis for denying constitutional rights, this seems a bit arbitrary, if not sneaky, and I suspect that the Supreme Court knows it.

Three years ago, the Bush Administration pulled the same argument on the court in another case involving Guantanamo Bay detainees, Rasul v. Bush. Government lawyers argued that American courts had no habeas jurisdiction over the military base because the U.S. only leases it, and Cuba retains "ultimate sovereignty." The justices dismissed the argument as



form over substance: "What matters is the unchallenged and indefinite control that the United States has long exercised over Guantanamo Bay," wrote Justice Anthony Kennedy in concurring with the decision to grant the detainees relief.

So what's changed in three years? Well, the Rasul case involved a statute protecting habeas corpus, while the one decided Tuesday involves constitutional protections as well, a technical difference that shouldn't matter to the Supreme Court. There's also been a change in court personnel: Justice O'Connor and Chief Justice Rehnquist have departed, Justice Alito and Chief Justice Roberts have arrived. O'Connor and Rehnquist were on either side of the Rasul decision, and while Roberts has upheld limits on detainee rights as an appeals court judge, there's no way to know how he and Alito would come out in the current case. Even if they end up supporting the Administration, it's hard to believe they would do so because of Guantanamo Bay's territorial status. To win this case, the White House will probably have to persuade the high court that the new, streamlined process for hearing detainee grievances is an adequate substitute for habeas. If Rasul and common sense are any measure, the justices won't let the Administration duck constitutional protections by simply sneaking detainees off shore.

<http://www.time.com/time/nation/article/0,8599,1592560,00.html>

\*\*\*\*\*

Washington Post

#### A War Under Law

Congress Must Address U.S. Detainee Policies By Jeffrey H. Smith Thursday, February 22, 2007; Page A19 In November, Americans voiced their frustration with the war in Iraq and gave control of Congress to the Democrats. The voters rejected the president's swaggering, go-it-alone approach and the administration's contemptuous attitude toward the Geneva Conventions, which led to the abuses at Abu Ghraib, actions that so damaged our credibility that other nations are much less willing to cooperate in the war on terrorism. Secretary of State Condoleezza Rice, and her able legal adviser, John Bellinger, have pushed for reforms that have begun to reverse this trend -- but much more must be done.

Sens. Christopher J. Dodd and Patrick J. Leahy introduced legislation

<<http://www.washingtonpost.com/wp-dyn/content/article/2007/02/13/AR2007021301163.html>> last week that will move us further in the right direction. But there are three things Congress should do.

First, Congress should reconsider the detainee legislation passed last fall. Last-minute changes rammed through by the White House watered down many of the bill's key provisions. On the treatment of detainees and interrogation techniques it created two standards -- one for the military and another for the CIA. The standards for the military are in an Army Field Manual, but the CIA standards are to be enumerated in a presidential executive order. Rumors suggest that the White House is struggling to develop those rules. Congress should relieve the president of that task before he makes a bad situation worse.

If Vice President Cheney has his way, a good dunking may be among the approved CIA techniques, even though "waterboarding" is prohibited by the Army Field Manual. Cheney's October remarks <<http://www.washingtonpost.com/wp-dyn/content/article/2006/10/26/AR2006102601521.html>> that dunking a detainee was " a no-brainer <<http://www.washingtonpost.com/wp-dyn/content/article/2006/10/26/AR2006102601517.html>> " were irresponsible and added to the confusion in the field (and around the world) about the rules for treatment of detainees. It is not clear why the military and the CIA should have different standards for the treatment and interrogation of detainees. All U.S. agencies should use the techniques best able to elicit information that is vital to our security. And why should the CIA once again be asked to take risks not knowing whether, when the political winds change in Washington, its officers will be left facing charges that they violated the law?

Hearings should be held to determine which interrogation techniques have produced useful intelligence. Lawmakers should review the recent report

<<http://www.fas.org/irp/dni/educing.pdf>> of the government's Intelligence Science Board,