

**Farris, Bette**

**From:** Loeb, Robert (CIV)  
**Sent:** Thursday, February 07, 2008 8:41 AM  
**To:** Engel, Steve  
**Subject:** FW: FW: Khan 07-1324 (01-07-08) Classified

**From:** (b)(6)  
**Sent:** Thursday, February 07, 2008 8:39 AM  
**To:** Loeb, Robert (CIV); (b)(3):50 USC §403(g) Section 6  
**Cc:** (b)(6) Castle, Scott, Mr, DoD OGC; Davidson, Ellana, Ms, DoD OGC;  
 (b)(3):50 USC §403(g) Section 6 Hodgkinson, Sandra L CIV OSD POLICY; Henry, Terry (CIV); Katsas,  
 Gregory; Letter, Douglas (CIV); Cohn, Jonathan (CIV)  
**Subject:** Re: FW: Khan 07-1324 (01-07-08) Classified

Wednesday, Feb. 06, 2008

New Charges of Gitmo Torture

By Adam Zagorin

In 2005, CIA officials ordered the destruction of videotapes depicting the harsh interrogation of prisoners in the agency's secret overseas prisons. CIA Director Michael Hayden admitted that in December 2007 amid a public debate over the use of "waterboarding" on detainees and whether or not the technique — which simulates drowning — constituted torture. At that time, Hayden said that only a few prisoners were ever subjected to "special interrogation techniques," which can include waterboarding, and that nothing was recorded on video after 2002. That claim is now coming under additional scrutiny, in part due to a classified briefing that will be delivered to the Senate Select Committee on Intelligence this Friday. Lawyers representing one current Guantanamo detainee tell TIME that they plan to present evidence that he was subjected to videotaped interrogation, in addition to unspecified "systematic torture" when he was held in secret CIA prisons. The lawyers, from the Center for Constitutional Rights, a New York-based legal non-profit with a long record of advocacy for prisoners at Guantanamo, note that their client has said the videotaping occurred after his arrest in 2003.

Majid Khan, 27, a former suburban Baltimore high school student, was first seized by authorities in Pakistan, where he said he was visiting his brother. Khan then spent more than three years in a secret overseas CIA "black site" before President Bush ordered his transfer to Guantanamo along with 13 other high-value detainees. Also transferred was alleged 9/11 mastermind Khaled Sheik Mohammed, who had allegedly ordered Khan to research attacks on American water reservoirs and gas stations.

Khan's lawyers are armed with more than 500 pages of top-secret notes taken during recent sessions with their client at Guantanamo; they will use the material to describe his interrogation and detention to the Intelligence Committee. Though details are highly classified, his lawyers claim that he and others were tortured and videotaped, charges that Hayden and other CIA officials deny. On Feb. 5, Hayden admitted to Congress that the CIA had used waterboarding on Khaled Sheik Mohammed and two others. The CIA continues to assert that it does not engage in torture.

Rising to Hayden's defense, the White House this week made clear its view that waterboarding has saved American lives, is legal — and does not constitute torture, as critics insist. A spokesman for Bush said the President would authorize waterboarding for use on future terror suspects if certain standards are met, a spokesman said. Hayden himself banned the technique in 2006 for use in CIA interrogations, and the Pentagon and FBI have done likewise.

A White House spokesman said the CIA could use waterboarding again if it had specific approval from the President. That authorization would depend on a variety of factors, such as the "belief that an attack might be imminent" the spokesman explained. "The President will listen to the considered judgment of the professionals in the intelligence community and the judgment of the attorney general in terms of the legal consequences of employing a particular technique," he said.

Khan is one of very few Guantanamo prisoners whose claim to U.S. residency has been legally established. He has close relatives in the Baltimore area who are American citizens; Khan's lawyers have appealed to members of Congress on his behalf, including Sen. Barbara Mikulski of Maryland, who sits on the Intelligence Committee. After years of isolation in prison, Khan was recently allowed to mix with at least one other prisoner at Guantanamo, Abu Zubaydah, a top alleged terrorist who, Hayden has said, was one of those prisoners to be waterboarded.

Khan's lawyers have said their client has gone on a hunger strike to protest the conditions of his confinement, and appears pale and gaunt. In the course of meetings with counsel and the Red Cross, Khan also handed over neatly penned, handwritten letters. Several have been made public, after heavy redactions imposed by U.S. military censors. One of Khan's messages begins: "In this letter I am going to mention some of the things I have been through." Then the next 19 lines of text are blacked out.

But Khan's private declarations to his lawyers cannot be censored, and it is those that the Intelligence Committee will hear on Friday. His allegations come at a time when Congress is considering passage of a new intelligence bill that would effectively outlaw many of the CIA's interrogation methods by forcing the Agency to use only those techniques permitted in the U.S. Army Field Manual.

The bipartisan ban in the intelligence bill, put forward by Senators Dianne Feinstein of California and Chuck Hagel of Nebraska, still faces Republican opposition, while the intelligence bill as a whole could face a presidential veto because if it does not grant amnesty to telephone companies who participated in possibly illegal wiretapping of Americans, as requested by the Bush Administration.

"The national debate over torture will end if this amendment to place the CIA under the Army Field Manual becomes law," Senator Feinstein said. "At that point, all U.S. government interrogations — military and civilian — would be conducted under the same rules and regulations, and eight specific techniques, including waterboarding, would be prohibited." <http://www.time.com/time/nation/article/0,8599,1710491,00.html>

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Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Loeb, Robert (CIV) <Robert.Loeb@usdoj.gov>

To: (b)(6) DoD OGC (b)(6) (b)(3):50 USC §403(g) Section 6

(b)(3):50 USC §403(g) Section 6

CC: (b)(6) DoD OGC (b)(6) Castle, Scott, Mr, DoD OGC (b)(6)

Davidson, Eliana, Ms, DoD OGC (b)(6) (b)(3):50 USC §403(g) Section 6

(b)(3):50 USC §403(g) Hodgkinson, Sandra L CIV OSD POLICY (b)(6) Henry, Terry (CIV)

<Terry.Henry@usdoj.gov>; Katsas, Gregory <Gregory.Katsas@usdoj.gov>; Letter, Douglas (CIV)

<Douglas.Letter@usdoj.gov>; Cohn, Jonathan (CIV) <Jonathan.Cohn@usdoj.gov>

Sent: Thu Feb 07 08:15:22 2008

Subject: RE: FW: Khan 07-1324 (01-07-08) Classified

I haven't heard anything. We did send her the authorization to brief the Committee and staff (if properly cleared). Again, I recommend that the CIA send someone to talk to the committee after she speaks in order to set the record straight.

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From: (b)(6) DoD OGC (b)(6)

Sent: Thursday, February 07, 2008 8:11 AM

To: (b)(3):50 USC §403(g) Section 6

Cc: Loeb, Robert (CIV); (b)(6) DoD OGC; Castle, Scott, Mr, DoD OGC; Davidson, Eliana, Ms, DoD OGC;

(b)(3):50 USC §403(g) Section 6 Hodgkinson, Sandra L CIV OSD POLICY; Henry, Terry (CIV)

Subject: Re: FW: Khan 07-1324 (01-07-08) Classified

8/14/2008

I was having BB problems and am not sure if this made it out...

-----Original Message-----

To: (b)(3):50 USC §403(g) Section 6  
To: [redacted]  
Cc: Robert Loeb  
Cc: (b)(6)  
Cc: Scott Castle  
Cc: Eliana, Ms, DoD OGC Davidson  
Cc: (b)(3):50 USC §403(g) Section 6  
Cc: [redacted]  
Cc: Sandra L CIV OSD POLICY Hodgkinson  
Cc: Terry Henry  
Sent: Feb 6, 2008 5:35 PM  
Subject: Re: FW: Khan 07-1324 (01-07-08) Classified

I saw a press article whre khan's lawyers say they're briefing the SSCI this Friday. Is that accurate?

-----Original Message-----

From: (b)(3):50 USC §403(g) Section 6  
To: (g) Section 6  
Cc: (b)(6) DoD OGC  
Cc: Robert Loeb  
Cc: (b)(6)  
Cc: Scott Castle  
Cc: Eliana, Ms, DoD OGC Davidson  
Cc: (b)(3):50 USC §403(g) Section 6  
Cc: [redacted]  
Sent: Jan 24, 2008 10:34 AM  
Subject: Re: FW: Khan 07-1324 (01-07-08) Classified

I have advised our Office of Congressional Affairs that both DOD and DOJ pose no objection to the briefing.

[redacted] will you be sending [redacted] an email, as we did for the Zalita issue, providing authorization under the PO for her to brief SSCI?

(b)(3):50 USC §403(g) Section 6

[redacted] wrote: -----

(b)(3):50 USC §403(g) Section 6

To: (b)(6) DoD OGC" (b)(6)  
From: (b)(3):50 USC §403  
Date: 01/24/2008 09:57AM  
cc: "Loeb, Robert (CIV)" <Robert.Loeb@usdoj.gov>, (b)(3):50 USC §403 (b)(6) DoD OGC"  
(b)(6) "Castle, Scott, Mr, DoD OGC" (b)(6) "Davidson, Eliana, Ms, DoD OGC"  
(b)(6) (b)(3):50 USC §403(g) Section 6  
Subject: Re: FW: Khan 07-1324 (01-07-08) Classified

Thanks, (b)(6)

(b)(6) DoD OGC wrote:

- > I have run the traps here and DOD does not oppose it. Pls advise on when
- > the event is scheduled!
- >
- > Thanks.
- >
- >
- > (b)(6)
- > DoD Office of General Counsel (Legal Counsel)
- > Room 3B688

>  
> (b)(6)  
>  
>  
>  
>

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>  
> -----Original Message-----  
> From: Loeb,

-----Original Message Truncated-----

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