

# FOIA Marker

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Speechwriting, White House Office of  
Michel, Christopher - Chron Files

Thursday, October 16, 2014

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W	17	6	5	2	8963	21826	8061	8127

Folder Title:

Hamdan Policy [Folder 3]

OA Number:

8061

8127

# Withdrawn/Redacted Material

## The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	RE: Speech on al-Qaeda - To: Marc A. Theissen, et al - From: Juan C. Zarate	5	07/15/2006	P5;
002	Email	RE: Speech on al-Qaeda - To: Marc A. Theissen - From: Juan Zarate	4	07/12/2006	P5;
003	Email	RE: Hamdan speech - international section - To: Stephen B. Slick, et al - From: Juan Zarate	2	07/20/2006	P5;
004	Email	RE: Hamdan etc - To: Juan C. Zarate, et al - From: Peter D. Feaver	3	07/11/2006	P5;

**COLLECTION TITLE:**

Speechwriting, White House Office of

**SERIES:**

Michel, Christopher - Chron Files

**FOLDER TITLE:**

Hamdan Policy [Folder 3]

**FRC ID:**

8963

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

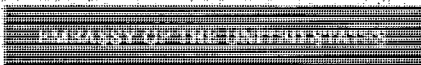
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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## Facts about Guantanamo Bay

Dealing with captured terrorists is a difficult challenge. They are not soldiers. They do not adhere to the rules of war. They do not represent any state or government. Al Qaida is not a party to international treaties or conventions.

United States personnel are required to comply with all U.S. laws and treaty obligations in their treatment of detainees. These include a prohibition on torture and a prohibition on cruel, inhuman, or degrading treatment. Instructions from the President and the Secretary of Defense communicated throughout the chain of command make these requirements clear. General Peter Pace, Chairman of The Joint Chiefs of Staff, has stated, "I can tell you categorically that any maltreatment of any detainees by U.S. Forces or Coalition forces is totally unacceptable. That our orders have and will continue to be that we will treat everyone in our charge humanely and with respect."

The first priority of any government is to protect its citizens. These combatants have not surrendered. Some may never renounce their devotion to terrorism and are fanatical in their commitment to kill innocent people and cause global instability.

The United States does not wish to hold anyone longer than absolutely necessary. Detainees held by the Department of Defense are screened thoroughly, beginning at the point of capture, and later at the theater detention facilities, and their individual cases are reviewed periodically thereafter. These processes are designed to ensure we only hold those who pose a continuing threat. Once at Guantanamo Bay, each detainee has his status regularly reviewed by a military panel.

### Who is being held at Guantanamo Bay?

Of the more than 10,000 combatants who have been in Coalition custody or control, only a small number have been sent to Guantanamo Bay.

Approximately 490 detainees remain at Guantanamo, and more than 267 have been released or transferred.

The detainees brought to Guantanamo Bay were captured waging war against us or actively supporting Al Qaida or the Taliban or both. More than 700 of these men were so dangerous that they could not be safely detained in Afghanistan. These combatants included terrorist trainers, bomb makers, recruiters and facilitators, terrorist financiers, bodyguards for Usama Bin Laden, and potential suicide bombers.

Specific examples include:

- An Al-Qaida explosives trainer who gave information on the assassination of northern alliance leader Masood and on Al-Qaida's use of mines.
- A member of a terrorist cell in Afghanistan that targeted civilians, especially journalists and foreign aid workers, and was responsible for a grenade attack on a foreign journalist's car.
- An Al-Qaida member who designed a prototype shoe bomb for destroying airplanes and a magnetic mine for attacking ships.
- A trainer in the use of explosives who worked on a plan to use cell phones to detonate bombs.

### What has been learned from their interrogations?

Through interrogations of detainees, the coalition has learned about Al Qaida and Taliban recruitment and how they form terrorist cells. We have learned how they communicate, train, raise funds, and travel.

Ultimately, the coalition will win the global war on terror through information. Information allows us to prevent future attacks and protect innocent lives. Intelligence operations have saved the lives of coalition forces and innocent civilians.

*info/intel*

### What are their conditions?

All detainees are provided:

- Food: three meals per day that meet cultural dietary Requirements
- Shelter: camps range from restrictive with 30 minutes of exercise twice a week to less restrictive with outside recreation several hours a day. Plans are underway for expanded communal living quarters and increased opportunities for exercise and team activities including soccer, volleyball and ping pong.
- The Opportunity to Worship: a copy of the Koran is given to the

detainees printed as appropriate in one of five languages. (Arabic, Dari, Pashtu, Russian, and Farsi.) They also receive prayer beads, prayer rugs, and other reading materials. The Muslim call to prayer is played over camp loudspeakers five times a day, generally at 5:30am, 1pm, 2:30pm, 7:30pm and 9:30pm. Once the call to prayer sounds, detainees receive 20 minutes of uninterrupted time to practice their faith. The guards strive to ensure detainees are not interrupted during this period. Stenciled arrows pointing in the direction of Mecca are displayed throughout the camp to assist the detainees in knowing in what direction to pray.

- Reading Materials (increased access to foreign language materials is planned)
- Excellent Medical Care: detainees receive medical treatment that is comparable to what us service men and women receive. The lives of dozens, if not hundreds, of insurgents and detainees have been saved by superior medical treatment provided by us military personnel.
- Mail: detainees can receive and send mail. Over a six-month period in 2004-2005, more than 14,000 pieces of mail were sent or received by detainees.

### **Legal Processes Afforded Detainees at Guantanamo**

In addition to the screening procedures in place at the point of capture, the department of defense has created three avenues for detainees at Guantanamo to challenge their status: (1) combatant status review tribunals; (2) administrative review boards; and (3) military commissions (for those charged with violations of the law of war).

The Combatant Status Review Tribunal (CSRT) is a one-time process that provides the detainee with the opportunity to have his status reviewed and considered by a neutral decision-making panel composed of three commissioned military officers sworn to execute their duties faithfully and impartially.

These procedures are modeled after army regulation 190-8, which govern tribunals that determine the status of enemy detainees who assert POW (Prisoner-of-War) status under the Geneva Convention. U.S. Supreme Court Justice Sandra Day O'Connor cited army regulation 190-8 as an example of a tribunal that could provide appropriate process for American citizens who are detained by the military.

In fact, the combatant status review tribunals provide greater process and protections than army regulation 190-8. In addition to the opportunity to be heard in person and present additional evidence that

might benefit him, a detainee can receive assistance from a military officer to prepare for his hearing and to ensure he understands the process. He is also assisted by a CSRT recorder, who is obligated to search government files for evidence, suggesting the detainee is not an enemy combatant. Moreover, in advance of the hearing, the detainee is provided with an unclassified summary of the evidence supporting his enemy combatant classification.

Every decision by this tribunal is subject to an automatic review by a higher authority that is empowered to return the record to the tribunal for further proceedings.

In addition, pursuant to the detainee treatment act of 2005, a CSRT decision can be directly appealed to an American domestic civilian court—the United States Court of Appeals for the District of Columbia circuit.

To our knowledge, these procedural protections are more extensive than those used by any other nation in any previous conflict to determine a combatant's status.

Each of the 490 detainees who are currently at Guantanamo have had a combatant status review tribunal. As a result of this process, 38 detainees were determined no longer to meet the criteria for designation as enemy combatants. Twenty-nine of those have been released, and the Department of Defense is working closely with the State department to effect the release of the remaining nine.

In addition to the CSRT, an Administrative Review Board (ARB) reviews a detainee's status annually to determine the extent to which an enemy combatant at Guantanamo may continue to pose a threat to the United States or its allies, or whether there are other factors that would support the need for continued detention. An Administrative Review Board consists of a neutral panel of three commissioned military officers sworn to execute their duties faithfully and impartially. The home governments of each detainee are invited to submit information to the panel concerning whether the detainee should continue to be detained.

Based on this assessment, the ARB panel can recommend to a designated civilian official that the individual be released, continued to be detained, or transferred with conditions to their country of nationality.

The ARB process is not required by the Geneva Conventions, or by international or domestic law. The United States created this process to ensure that we detain individuals no longer than necessary.

The first round of administrative review board decisions was

*extra  
segments  
of  
6/11/06  
LeComber or one of the*

completed last month. More than 267 detainees have been transferred out of Guantanamo Bay. Some are in prison or under surveillance in their own country - some were released.

☆

Unfortunately, despite assurances from those released, it is believed that at least a dozen, and possibly more, went back to fighting. One, Abdullah Mahsud, claimed he was an office clerk and driver for the Taliban and consistently denied any affiliation with Al Qaida. He said he was forced into the Taliban military and had not received any weapons or military training. After his release, it was reported that he ordered the kidnapping by Al Qaida-linked militants of two Chinese engineers. Another released detainee assassinated an Afghan judge. Several others were killed after going back to fighting.

EX. |

The third layer of process that we afford to detainees is military commissions. Although the law of war does not require us to bring criminal charges against an enemy combatant in order to detain him, some detainees are suspected of war crimes, and it is appropriate for us to use military commissions to try them.

Since the Revolutionary War, the United States has used military commissions to prosecute enemy combatants for law of war violations. Many other countries throughout history have employed military commissions as well, including European nations.

Each accused tried by a military commission at Guantanamo has the following procedural safeguards: the presumption of innocence; proof of guilt must be beyond a reasonable doubt; the right to call and cross-examine witnesses (subject to the rules regarding production of witnesses and protection of information); nothing said by an accused to his attorney, or anything derived there from, may be used against him at trial; no adverse inference for remaining silent; right to appeal; overall requirement that any military commission proceeding be full and fair. Finally, to assist him in preparing a defense, each accused has a military defense counsel provided at no cost. Alternatively, the accused may also hire a civilian defense counsel.

The rules of evidence and procedure established for trials by military commission compare favorably to those being used in the international criminal tribunal for Rwanda and the international criminal tribunal for the Former Yugoslavia.

The detainee treatment act of 2005 permits an American domestic civilian court—the United States Court of Appeals for the District of Columbia circuit—to hear a direct appeal of a military commission decision.

To date, the President has determined that there are reasons to believe that seventeen detainees may have committed war crimes. The

appointing authority for military commissions has approved charges against ten individuals and referred these charges to military commissions for trial. Preliminary proceedings have begun in six cases.

[back to top](#) ^

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**Michel, Christopher G.**

**From:** Green, Anneke E.  
**Sent:** Thursday, July 13, 2006 5:22 PM  
**To:** Michel, Christopher G.  
**Cc:** Fahy, Brian D.  
**Subject:** RE: research

GITMO

### **Al Qaeda Manual Drives Detainee Behavior at Guantanamo Bay**

By Donna Miles

American Forces Press Service

I haven't seen anything recent on this. How much are you needing?

WASHINGTON, June 29, 2005 – If you're a Muslim extremist captured while fighting your holy war against "infidels," avoid revealing information at all costs, don't give your real name and claim that you were mistreated or tortured during your detention.

This instruction comes straight from the pages of an official al Qaeda training manual, and officials at the detention facility at Naval Station Guantanamo Bay, Cuba, say they see clear evidence that detainees are well-versed in its contents.

Police in Manchester, England, discovered the manual, which has come to be known as the "Manchester document," in 2000 while searching computer files found in the home of a known al Qaeda member. The contents were introduced as evidence into the 2001 trial of terrorists who bombed the U.S. embassies in Tanzania and Kenya in 1998.

The FBI translated the document into English, and it is posted on the Justice Department's Web site.

The 18-chapter manual provides a detailed window into al Qaeda's network and its procedures for waging jihad - from conducting surveillance operations to carrying out assassinations to working with forged documents.

The closing chapter teaches al Qaeda operatives how to operate in a prison or detention center. It directs detainees to "insist on proving that torture was inflicted" and to "complain of mistreatment while in prison."

Chapter 17 instructs them to "be careful not to give the enemy any vital information" during interrogations.

Another section of the manual directs commanders to teach their operatives what to say if they're captured, and to explain it "more than once to ensure that they have assimilated it." To reinforce the message, it tells commanders to have operatives "explain it back to the commander."

And at the Guantanamo Bay detention center, detainees take this instruction to heart. Many of the more than 500 detainees are "uncooperative" in providing intelligence, Army Brig. Gen. Jay Hood, commander of Joint Task Force Guantanamo, told military analysts who traveled to the facility June 24 and reiterated today during a hearing before the House Armed Services Committee.

Some detainees have never uttered a single word during more than three years of interrogation. Others give false names or refuse to offer their real names.

This can prove challenging for interrogators at the facility, because many detainees "follow the al Qaeda SOP (standard operating procedures) to the T," according to Army Col. John Hadjis, chief of staff for Joint Task Force Guantanamo.

Officials say they see evidence of the al Qaeda-directed misinformation campaign in allegations of detainee abuse and mishandling of the Koran at Guantanamo Bay.

Defense Secretary Donald H. Rumsfeld expressed frustration over this effort during a June 21 interview on the "Tony Snow Show."

"These detainees are trained to lie, they're trained to say they were tortured, and the minute we release them or the minute they get a lawyer, very frequently they'll go out and they will announce that they've been tortured," Rumsfeld said.

The media jumps on these claims, reporting them as "another example of torture," the secretary said, "when in fact, (terrorists have) been trained to do that, and their training manual says so."

During a February 2004 Pentagon news conference, a DoD official said new information provided by detainees during questioning is analyzed to determine its reliability.

"Unfortunately, many detainees are deceptive and prefer to conceal their identities and their actions," said Paul Butler, principal deputy assistant secretary for special operations and low-intensity conflict.

Butler said the Manchester document includes "a large section which teaches al Qaeda operatives counterinterrogation techniques: how to lie, how to minimize your role."

The document, he said, has surfaced in various locations, including Afghanistan.

The manual's preface offers a chilling reminder of the mentality that drives al Qaeda disciples and the lengths they will go to for their cause.

"The confrontation that we are calling for ... does not know Socratic debates, ... Platonic ideals ... nor Aristotelian diplomacy," its opening pages read. "But it knows the dialogue of bullets, the ideals of assassination, bombing and destruction, and the diplomacy of the cannon and machine gun."

[http://www.defenselink.mil/news/Jun2005/20050629\\_1901.html](http://www.defenselink.mil/news/Jun2005/20050629_1901.html)

**UK/BM-176 TO UK/BM-  
180 TRANSLATION  
Lesson Eighteen**

**PRISONS AND DETENTION CENTERS**

**IF AN INDICTMENT IS ISSUED AND THE TRIAL, BEGINS, THE BROTHER HAS TO PAY ATTENTION TO THE FOLLOWING:**

1. 1. At the beginning of the trial, once more the brothers must insist on proving that torture was inflicted on them by State Security [investigators] before the **judge**.
2. 2. Complain [to the court] of mistreatment while in prison.
3. 3. Make arrangements for the brother's defense with the attorney, whether he was retained by the brother's family or court-appointed.
4. 4. The brother has to do his best to know the names of the state security officers, who participated in his torture and mention their names to the judge. [These names may be obtained from brothers who had to deal with those officers in previous cases.]
5. 5. Some brothers may tell and may be lured by the state security investigators to testify against the brothers [i.e. affirmation witness], either by not keeping them together in the same prison during the trials, or by letting them talk to the media. In this *case*, they have to be treated gently, and should be offered good advice, good treatment, and pray that God may guide them.
6. 6. During the trial, the court has to be notified of any mistreatment of the brothers inside the prison.
7. 7. It is possible to resort to a hunger strike, but it is a tactic that *can* neither succeed or fail.
8. 8. Take advantage of visits to communicate with brothers outside prison and exchange information that may be helpful to them in their work outside prison [according to what occurred during the investigations]. The importance of mastering the art of hiding messages is self evident here.

-When the brothers are transported from and to the prison [on their way to the court] they

1. should shout Islamic slogans out loud from inside the prison *cars* to impress upon the people and their family the need to support Islam.
  2. - Inside the prison, the brother should not accept any work that may belittle or demean him or his brothers, such as the cleaning of the prison bathrooms or hallways.
  3. - The brothers should create an Islamic program for themselves inside the prison, as well as recreational and educational ones, etc.
  4. -The brother **in** prison should be a role model in selflessness. Brothers should also pay attention to each others needs and should help each other and unite **vis a vis** the prison officers.
1. - The brothers must take advantage of their presence in prison **for** obeying and worshipping [God] and memorizing the Qora'an, etc. This is in addition to **all** guidelines and procedures that were contained in the lesson on interrogation and

investigation. Lastly, each of us has to understand that we don't achieve victory against our enemies **through** these actions and security procedures. Rather, victory is achieved by obeying Almighty and Glorious God and because of their many sins. Every brother has to be careful **so as** not to commit sins and everyone of us has to do his best in obeying Almighty God, **Who** said in his Holy **Book**: "We

will, without doubt, help Our messengers and those who believe (both) in this world's life and the one Day when the Witnesses will stand forth." May God guide us.

[Dedication)

To this pure Muslim youth, the believer, the mujahid (fighter) for God's sake. I present this modest effort as a contribution from me to pave the way that will lead to Almighty God and to establish a caliphate along the lines of the prophet.

The prophet, peace be upon him, said according to what was related by **Imam** Ahmed: "Let the prophecy that God wants be in you, yet God may remove it if He so wills, and then there will be a Caliphate according to the prophet's path [instruction], if God so wills it. He will also remove that [the Caliphate] if He so wills, and you will have a disobedient king **if** God **so** wills it. Once again, if God so wills, He will remove him [the disobedient king], and you will have an oppressive **king**. [Finally], if God so wills, He will remove him [the oppressive king], and you will have a Caliphate according to the prophet's path [instruction]. He then became silent."

[http://www.usdoj.gov/ag/manualpart1\\_4.pdf](http://www.usdoj.gov/ag/manualpart1_4.pdf)

**From:** Michel, Christopher G.  
**Sent:** Thursday, July 13, 2006 4:06 PM  
**To:** Fahy, Brian D.; Green, Anneke E.  
**Subject:** research

can you look for examples of the terrorists instructing their operatives to claim they are tortured when they are detained, etc. i think there was a terrorist manual found a few years ago that included something like this. could you poke around a bit? thx.

7/13/2006

# Withdrawal Marker

## The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	RE: Speech on al-Qaeda - To: Marc A. Theissen, et al - From: Juan C. Zarate	5	07/15/2006	P5;

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**SERIES:**

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**Michel, Christopher G.**

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**From:** Green, Anneke E.  
**Sent:** Thursday, July 13, 2006 5:24 PM  
**To:** Michel, Christopher G.  
**Subject:** article

This makes our point pretty logically -- see underlined.

July 9, 2005 Saturday

Gitmo treats prisoners with all due respect

Demands to close Guantanamo Bay prison in Cuba and the seeming lack of dissemination of significant information about the U.S. prison for suspected terrorists are both puzzling and disturbing.

Let's look at the facts regarding the cries to close down Guantanamo and/or release the detainees "who have had no trial for several years":

In the mid-1990s, Osama bin Laden, on behalf of al-Qaida, expressly declared war on America. Since then, he, his subordinates and associates and his fellow travelers have repeated many times some form of this declaration.

They exhort all Muslims to kill Americans wherever, whenever and however they can indeed, sometimes saying this was permitted by Allah and then expanding the statement to say it was the duty of every Muslim.

Highly respected New York Times columnist Tom Friedman has termed the overall terror conflict the third great totalitarian challenge to free societies in the last 100 years namely, the Nazi effort to establish in domination of the world the "perfect race," the USSR attempt to establish as the dominant force the "perfect class," and now, the attempt of Islamic fundamentalists to achieve world dominance of the "perfect faith."

The forces arrayed against us throughout the world, particularly in Afghanistan and then Iraq, have proclaimed themselves to be soldiers and warriors for their cause the destruction of America and of democracy.

They, and those who decry Guantanamo, demand that they receive all of the rights given to soldiers by the Geneva Convention.

Prisoners of war are not given trials and always remain imprisoned until the end of the war. Most of the Guantanamo prisoners were taken on the battlefields in Afghanistan. To suggest they should be released, knowing it has been and will be their sworn duty to kill Americans again and again, is absurd.

Indeed, a dozen of those who have been released under the mistaken belief that they posed no further danger are now known to have returned to the killing of Americans and Iraqis.

True, this war may last for many years, leaving these men to languish indefinitely. The indefiniteness has been true of all wars. This one may be longer because of its unusual nature.

But if Osama bin Laden and other terrorist leaders should have a sudden epiphany, renounce their war against America and call the faithful to return to a peaceful Islam, consideration could be given to the release of the prisoners. Until that time, the lives of American soldiers and civilians should not be bartered for the convenience and freedom of those who have sworn to kill again.

If the detainees are not prisoners of war because they were not in uniform, they are murderers or conspirators in murder. If found with a gun in the company of others shooting or blowing up Americans, Afghans or Iraqis, prosecution of their trial should be simple and the death penalty imposed.

The detainees cannot have their cake and eat it, too. They cannot be POWs for the purposes they choose, but not for others.

Finally, does anyone think it is Gitmo itself that was responsible for mistreatment of the Quran? [Because, after all, to accommodate copies of the Quran, Gitmo contains some kind of industrial-size mega-toilets heretofore unknown to man.] The reaction against the complex is rather like the small child's banging his fist against the school building because of something the teacher did that day.

Why have we received, over and over again, the stories of complaints of different forms of abuse and of the "American policy" of torture, of abuse of Muslim traditions and the Quran as a method of interrogation, but seldom if ever such contextual information as the following:

Under Section 18 of the Al-Qaida Manual, members are instructed and ordered to claim they were tortured, whether true or not.

More than two years ago, the U.S. military forces distributed to personnel at Guantanamo its written policy of treatment of prisoners and of the Quran, specifying in detail that Muslim prisoners were to be treated with respect and each prisoner, or at least each who so requested, be given a copy of the Quran.

It further detailed how American forces were to distribute and handle the Quran at all times that it should never be allowed to touch the ground; that whenever Americans [because they were considered "infidels"] handled the Quran, including when delivering it to prisoners, they should wear clean white gloves and allow it to touch nothing else.

Somehow, talk of "American policy" never seems to cite or quote the actual policy.

Each unsubstantiated allegation is repeated by al-Jazeera again and again, day after day, as though it were not only an American admission, but a trumpeted declaration of torture policy.

Such irresponsible statements are the equivalent of the shipment of thousands of weapons to al-Qaida for use against Americans, and Iraqis.

*-- Edgar C. Keller, a retired attorney who lives in Redlands, is a reader member of The Sun's editorial board. Point of View is an occasional column of commentary by local citizens. Send material to Point of View, The Sun, 399 N. D St., San Bernardino, CA 92401. Or fax [909] 885-8741.*

**LOAD-DATE:** July 9, 2005



# JOHN CORNYN

United States Senator - Texas

CONTACT: DON STEWART

(202) 224-0704 office

(202) 365-6702 cell

FOR IMMEDIATE RELEASE

March 10, 2005

## **CORNYN: DETAINEES HAVE PROVIDED CRITICAL INFORMATION, STILL POSE A THREAT TO TROOPS, U.S.**

*Pentagon report shows success of detainee policy in gaining information, bolstering homeland security*

WASHINGTON—In response to a request from U.S. Sen. John Cornyn (R-Texas), a member of the Senate Armed Services Committee, the Pentagon provided the following information on the critical intelligence provided by detainees in military custody, as well as the threat posed by the enemy to our troops and our homeland security:

“This information makes clear that our military has been successful in gaining needed information from the terrorists in their custody, and is a stark reminder of the enemy we are fighting around the world,” Cornyn said.

### **Information obtained from detainees has:**

- Provided information about al-Qaeda operatives and the identities of seven explosives trainers who remain at large
- Identified 11 fellow detainees as bin Laden bodyguards who may have information as to his whereabouts
- Identified the locations of terrorist training compounds and safe houses and routes used for smuggling terrorists and equipment
- Provided information on al-Qaeda training techniques used to build improvised explosive devices (IEDs) threatening our troops as well as training on the use of poisons.
- Helped decode widespread financial networks used to fund terrorist activities
- Explained the al-Qaeda recruitment process and how terrorist travel is facilitated
- Provided insights into the type of individuals sought out for terrorist recruitment

MORE

## **Detainees at Guantanamo Bay continue to pose a threat to Americans:**

- At least ten former detainees have rejoined the fight against coalition forces.
- One released detainee assassinated an Afghan judge.

### **The following statements were made by detainees there:**

- “The people who died on 9/11/2001 were not innocent.”
- “Their day is coming. One day I will enjoy sucking their blood...”
- “I will arrange for the kidnapping and execution of US citizens living in Saudi Arabia. Small groups of four or five U.S. citizens will be kidnapped, held, and executed. They will have their heads cut off.”
- “Not only am I thinking about threatening the American public, but the whole world.”
- “There is no need to ask for forgiveness for killing a Jew.”

Within the Armed Services Committee, Cornyn chairs the Emerging Threats and Capabilities, and serves on the Readiness and Management Support and Strategic Forces subcommittees. He has visited every active duty military installation in Texas and meets regularly with community groups from military areas in his Washington office.

**Guantanamo Detainee Processes****Detainee Administrative Review**

**Definition/purpose:** Annual review to determine the need to continue the detention of an enemy combatant. The review includes an assessment of whether the enemy combatant poses a threat to the United States or its allies in the ongoing armed conflict against terrorist such as al Qaeda and its affiliates and supporters and whether there are other factors bearing on the need for continued detention (e.g., intelligence value). Based on that assessment, a review board will recommend whether an individual should be released, transferred or continue to be detained. This process will help ensure no one is detained any longer than is warranted, and that no one is released who remains a threat to our nation's security.

**Applies to:** All GTMO detainees **Link to fact sheet:** <http://www.defenselink.mil/releases/2004/mr20040623-0932.html>

**Responsibility:** Designated Civilian Official **PA Point of Contact:** OARDEC PAO, Lt. Cmdr. Chito Pepler  
703-695-3895

*OARDEC = Office for the Administrative Review of the Detention of Enemy Combatant*

**Combatant Status Review**

**Definition/purpose:** A formal review of all the information related to a detainee to determine whether each person meets the criteria to be designated as an enemy combatant. (Enemy combatant is defined as an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.)

**Applies to:** All GTMO detainees **Link to website:** [http://www.defenselink.mil/news/Combatant\\_Tribunals.html](http://www.defenselink.mil/news/Combatant_Tribunals.html)

**Responsibility:** Designated Civilian Official **PA Point of Contact:** OARDEC PAO, Lt. Cmdr. Chito Pepler  
703-695-3895

**Commissions**

**Definition/purpose:** Prosecute enemy combatants who violate the laws of war. Provides a fair and full trial, while protecting national security and the safety of all those involved, including the accused.

**Applies to:** Non-U.S. citizens, found to be subject to the President's military order of Nov. 13, 2001; primarily based upon the individual's participation in al Qaeda and acts of international terrorism.

**Link to website:** <http://www.defenselink.mil/news/commissions.html>

**Responsibility:** Office of Military Commissions **PA Point of Contact:** OMC PAO, Maj. Jane Boomer  
703-602-4173

**Detainee Operations**

**Definition/purpose:** - Detain enemy combatants to prevent combatants from continuing to fight against the U.S. and its allies. Includes a process to identify enemy combatants' threat and intelligence value.

**Applies to:** All GTMO detainees **Link to website:** <http://www.defenselink.mil/news/detainees.html>

**Responsibility:** JTF GTMO **PA Point of Contact:** JTF GTMO Public Affairs and SouthCom Public Affairs  
011-53-99-3021 305-437-1202

Process	Definition/purpose	Applies to	Responsibility	Public Affairs lead
<b><u>Admin Review</u></b>	Annual review to assess whether an individual should be released, transferred or should continue to be detained, based on threat or continued intelligence value.	All GTMO detainees.	Designated Civilian Official (Secretary of the Navy)	OARDEC PAO, Lt. Cmdr. Chito Pepler 703-695-3895 <i>OARDEC = Office for the Administrative Review of the Detention of Enemy Combatants</i>
<b><u>Combatant Status Review</u></b>	Determine whether a person meets the criteria to be designated as an enemy combatant.*	All GTMO detainees.	Designated Civilian Official (Secretary of the Navy)	OARDEC PAO, Lt. Cmdr. Chito Pepler 703-695-3895
<b><u>Commissions</u></b>	Prosecute enemy combatants who violate the laws of war.	Non-U.S. citizens based upon the individual's participation in al Qaeda and acts of international terrorism.	Office of Military Commissions	OMC PAO, Maj. Jane Boomer 703-602-4173
<b><u>Detainee Operations</u></b>	Detain enemy combatants to prevent them from continuing to fight against the U.S. and its allies.	All GTMO detainees.	JTF GTMO	JTF GTMO Public Affairs 011-53-99-3021  SouthCom Public Affairs 305-437-1202

\* Enemy combatant is defined as an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.



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**SHOW: THE O'REILLY FACTOR 8:00 PM EST**

June 12, 2006 Monday

**TRANSCRIPT:** 061201cb.256

**SECTION:** NEWS; Domestic

**LENGTH:** 3007 words

**HEADLINE:** Inside **Guantanamo**

**BYLINE:** Bill O'Reilly

**GUESTS:** Harry Harris

**BODY:**

**BILL O'REILLY, HOST:** "The **O'Reilly** Factor" is on. Tonight, a "Factor" world exclusive. Inside **Guantanamo** Bay, the most controversial prison in the world.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: If that button is pressed, within three to five seconds all available MP's will respond to the situation.

(END VIDEO CLIP)

**O'REILLY:** For the first time, you will hear from the American interrogators who sit across from the al **Qaeda** terrorists.

(BEGIN VIDEO CLIP)

**O'REILLY:** When you hear and read in the press that this place is a torture chamber, what runs through your mind?

(END VIDEO CLIP)

**O'REILLY:** And we'll take a look at the charges of torture.

Caution, you are about to enter a no spin zone. "The Factor" begins right now.

Hi, I'm **Bill O'Reilly**. Thanks for watching us tonight. Inside **Guantanamo** Bay, that's the subject of this

evening's "Talking Points" memo and most of "The Factor".

Just hours after I left the prison at Gitmo last Friday, three detainees committed suicide, the first fatalities at the camp since it was set up shortly after 9/11.

The Joint Army/Navy Task Force granted "The Factor" almost total access to the prison. And ironically, I asked the colonel in charge of the cells why some of the detainees had covered the small windows that allowed guards to observe them.

The colonel replied that the International Red Cross wants as much privacy for the prisoners as possible. That privacy may have allowed the suicides.

The **Guantanamo** controversy is easy to define. The Bush administration sees the 460 detainees as prisoners of war. The liberal press and some human rights groups believe they are criminals entitled to due process.

War v. Crime — EXPLAIN

The Joint Task Force in Gitmo, more than 1,000 military people, do not make policy. They institute it. So the bulk of my reporting tonight is not about the political controversy. It's about the prison itself.

Although some have called Gitmo a place where torture is practiced, there is no proof of that on the record. It is true that Mohammed al Gatani, thought to be directly involved with the 9/11 attack, was treated harshly. Secretary of Defense Rumsfeld ordered that Gatani could be subjected to coerced interrogation, including loud noise, the presence of a dog, and sleep deprivation.

But outside of that, the detainees at Gitmo have been treated humanely the military says. They have access to the International Red Cross and civilian lawyers.

Many live in air conditioned cells. The average detainee has gained 18 pounds since entering Gitmo. And the USA spends three times as much on their food as on military food.

"The Factor" was given rare access to the prison camp. We were just yards away from some of the prisoners, who noted our presence.

(YELLING)

**O'REILLY:** That prisoner screaming in Arabic. Obviously, the military showed us what they wanted us to see. But again, there's absolutely no evidence that I've seen that says any abuse is taking place at **Guantanamo Bay**.

Nevertheless, the left continues to call for the prison to be closed. People like Congresswoman Nancy Pelosi are adamant about it.

But where do we send these people? They'd be executed inside civilian prisons. And why shift them to a military prison inside the USA? There's no reason to do that.

So at this point, 10 detainees have been charged with war crimes. More than 300 are deemed dangerous to the USA. And about 140 have been designated for release, but few countries want to take them.

279 Gitmo prisoners have already been set free. Few of them went on to commit murder. For example, the Gitmo jihadists blew up a Marriott hotel in Pakistan shortly after the USA repatriated him back to that country.

So "Talking Points" is convinced **Guantanamo** Bay is being run correctly and that it is necessary for the security of this nation. And that's the Memo.

Now for the top story tonight, reaction to the Gitmo suicides. Today The New York Times once again called for the prison to be shut down. The paper also criticized Gitmo Commander Admiral Harry Harris, who I talked with on the phone.

(BEGIN VIDEOTAPE)

**O'REILLY:** Did it go down the way I said that there was a blockage of view and these guys just hung themselves behind some laundry?

**ADMIRAL HARRY HARRIS, JR., JOINT TASK FORCE COMMANDER:** Sir, I'm not going to get into the specifics right now. As you might know, if not, I'm going to tell you, there's an ongoing investigation. It's an independent autonomous investigation. It's run by the naval criminal and investigative service, but it is not a criminal investigation. It's a death investigation.

**O'REILLY:** But your name, and I'm sure you know this, was bantered around by The New York Times today. And I want to read you the quote and you can react to it.

"Admirable Harris's response to the suicides was appalling," says The New York Times. "I believe this was not an act of desperation but an act of asymmetrical warfare waged against us. (The inmates) have no regard for life, neither ours nor their own."

And then The New York Times says in their editorial, "These comments reveal a profound disassociation from humanity. They say more about why **Guantanamo** Bay should be closed than any United Nations report ever could."

How do you respond? Do you want to, first of all explain, what asymmetrical warfare is?

**HARRIS:** Sure, Mr. **O'Reilly**. Asymmetrical warfare is the idea that in a war between two entities, the lesser entity will use completely unorthodox and perhaps illegal means to try to gain an upper hand or the upper hand.

And that's clearly what I believe that we're seeing today in Iraq, Afghanistan, and here at **Guantanamo**.

**O'REILLY:** Now you believe that these guys committed suicide because they felt that their suicide would help the jihad and hurt the USA?

**HARRIS:** That's what I believe. You know, I can't get into the mind of the individual detainee here, especially those that unfortunately are dead.

But I believe in the broad picture. You are absolutely correct. I have said before that I believe that this is not an act of desperation and it's not an act of despair. It's a determined, committed, purposeful act in order for them to gain what they believe is the upper hand, not only in **Guantanamo**, but in the greater global war on terror.

**O'REILLY:** OK.

**HARRIS:** Now if you want, I'll comment on your question about The New York Times editorial.

**O'REILLY:** OK.

**HARRIS:** I believe that The Times is trying to have it both ways. First, you know, they criticize us for not allowing hunger strikers to strike until they're dead. And then they criticize us because three enemy combatants did manage to kill themselves by hanging.

Secondly, I think their comment that I'm somehow disassociated, you know, from humanity, I find that comment interesting, but entirely wrong. This editorial reveals to me a profound disassociation with the reality of what is happening in Iraq and Afghanistan.

You know, out there suicide is an acceptable and even encouraged weapon in al Qaeda's extremist jihadist arsenal. You know, out there, the suicide bombers are praised. They're praised for killing themselves, along with unarmed women and children and normal Iraqis who are trying to improve the conditions of their homeland. And we see that here as well.

**O'REILLY:** All right. So this is, in your opinion, just another act of war?

**HARRIS:** That's what I believe. You're correct.

(END VIDEOTAPE)

**O'REILLY:** That's an exclusive interview with the commander of **Guantanamo** Bay.

And when we come back, "The Factor" world exclusive. The first time a U.S. military interrogator, who sits across from al Qaeda killers, will explain exactly what he does. That report, moments away.

(NEWSBREAK)

**O'REILLY:** "Impact" segment tonight, a "Factor" world exclusive. Interrogating the interrogators. The Joint Task Force at **Guantanamo** Bay has a number of skilled interrogators, whose task is to break hardened terrorists and get as much information as possible.

The military says about 35 percent of the detainees have given up solid information. 65 percent remain defiant.

Tonight, for the first time on TV, two military interrogators talk. We obviously have to protect their identities.

(BEGIN VIDEOTAPE)

**O'REILLY:** All right, take me through, top to bottom. You walk into an interrogation, OK? The guy comes in. You sit down with the guy. What happens?

**UNIDENTIFIED MALE:** Well, there's a lot of prep work that goes into it before the interrogation starts, sir. I usually do two or three hours of research in the morning, reading the guy's file from start to finish.

He may be -- he may be restrained. Or he may be unrestrained depending on his level of cooperation. Some of these guys are very dangerous individuals. And don't want them coming out of the chair at me.

**O'REILLY:** Is there a time when it's better to interrogate, when they're tired, when they're distracted?

Something like that?

UNIDENTIFIED MALE: I don't find any difference as far as the time of day that I interrogate, sir. If a person's using a cover story, I'm going to eventually get it out of them because it's hard to remember a lie over a period of years.

**O'REILLY:** So you catch them in a lie. They go, so I lied. So what? Then what do you say?

UNIDENTIFIED MALE: I think you got a chink in the armor, sir. And it's easy to pull on that string and start to unravel the whole story.

**O'REILLY:** Is that right?

UNIDENTIFIED MALE: Yes, sir.

**O'REILLY:** So what is it, a macho thing if you catch them in a little lie? They you just have to back up? Because he doesn't really have to tell you anything. If you're not using coerced interrogation, and you say you're not, if you're not torturing the guy. I mean, he doesn't have to tell you anything. He goes back to his cell and he - and what, 65 percent of these people are not going to tell you anything, right?

UNIDENTIFIED MALE: That's true, sir. That's true. I think for some of them, it's actually a challenge. I've heard.

**O'REILLY:** It's a game.

UNIDENTIFIED MALE: Yes, sir. Yes, sir. And if you've read their file, and you know their lie better than they do, it becomes a very easy thing to start picking it apart.

**O'REILLY:** Do you ever yell at them?

UNIDENTIFIED MALE: Negative, sir.

**O'REILLY:** Never raise your voice?

UNIDENTIFIED MALE: I take that as a sign that I've lost the chess match. If I raise my voice, then at that point, you're showing that you've lost. And that's.

**O'REILLY:** Do they raise their voice to you?

UNIDENTIFIED MALE: Yes, sir.

**O'REILLY:** Say hateful things to you?

UNIDENTIFIED MALE: Yes, sir.

**O'REILLY:** Give me an example.

UNIDENTIFIED MALE: I told -- I brought a meal in, broke bread with a detainee, talked with him at length. And then at the end of the interrogation, stood up, shook his hand, and said, "I like you a lot and I respect you a lot, but when I get out of here I'm going to hunt you down and try to kill you."

And that's a pretty common thing, that a lot of individuals that will try to play mind games with the guard force and the interrogators. And they're very good at it. And you just have to be a professional.

**O'REILLY:** Why do they want to kill you?

UNIDENTIFIED MALE: They view you as not only the enemy, but as a non-Muslim. They view you as an infidel. And I'm not saying all the detainees are like that, but there is a certain hardcore element in here that would like nothing better than to get personal information about me, about my family, and do bad things once they get out of here.

**O'REILLY:** Just because you don't believe in Allah?

UNIDENTIFIED MALE: There's probably a gamut of reasons, sir, but that's the one that seems to come up quite a bit.

**O'REILLY:** People say, look, they've been here for four years. You've only been here for a year. You're not going to get anything out of him. If they haven't given it up after years, they're not going to give it up. What say you?

UNIDENTIFIED MALE: I say that's absolutely incorrect, sir. If you're telling me a lie, I can go back and I can research it. You're going to eventually forget that lie.

Over a four-year period, you're going to change slight details of your story. You're going to get confused. You're going to get mixed up. And it doesn't take anything extravagant to get you to trip yourself up on that lie.

And once you get a person to trip up on one thing, it's pretty easy to keep pulling on that string and unravel the whole story. And it can all be done with patience, with a good analyst, and without even coming close to violating any kind of law of armed conflict or Geneva Convention.

**O'REILLY:** Have you gotten a big score out of any of these guys?

UNIDENTIFIED MALE: Yes, sir.

**O'REILLY:** Can you tell me how that score translated into the safety for the country?

UNIDENTIFIED MALE: I can't get into any details on it, sir. But what I can tell you is that there are a number of individuals here who have information that has the -- still has the potential to catch bad guys around the globe, guys that would love to kill yourself, myself, innocent civilians.

(END VIDEOTAPE)

**O'REILLY:** In a moment, another interrogator will join us. And later, another "factor" first. An attorney for a Marine involved in the alleged Haditha war crime will be here, upcoming.

**O'REILLY:** Continuing now with "The Factor" world exclusive -- interrogating the interrogators at **Guantanamo** Bay. For the first time, the Defense Department has allowed two of them to talk to the media, us, providing we protect their identities.

We begin the second segment with how the suspected terrorists see the Americans who quiz them.

(BEGIN VIDEOTAPE)

UNIDENTIFIED MALE: It's not important that they like me. As a matter of fact, I talk to some on occasion that have sworn to kill me after they're released from here.

But if they - they feel that giving me some information might help them out in the future in some way, then they talk to me.

**O'REILLY:** Do you do that bribe thing that, look, if you tell me information and it pans out, then you get a better meal or you get a better exercise or a better bunk? Because there's -- obviously you're breaking the camp down into three areas. And there's an area that's better than the other two. Do you use that?

UNIDENTIFIED MALE: The only thing we bribe them with, per se, is an ice cream bar, or something that -- or a pizza, or something that they don't get normally.

**O'REILLY:** Does that work? I mean, ice cream and pizza?

UNIDENTIFIED MALE: It doesn't work distinctly for the exchange of information. It does work, however -- you and I sitting here talking is one thing. You and I sitting at a restaurant and having a couple drinks or the equivalent, which is an ice cream bar here, let's you and I form a better relationship.

**O'REILLY:** But these guys, they want to kill infidels or Americans or Jews or whoever it is. I mean, why are they going to give up information? Why? Why would they do it?

UNIDENTIFIED MALE: One line of questioning that we talk to them about is how they got into the terrorism business in the first place. Many of these men have children like myself. And I use that particular aspect quite often.

I relate to them as a father, instead of an interrogator. And they give me information on how the United States can end terrorism at the very young age. And they don't want to see their kids get into the same mess they did. So.

**O'REILLY:** Have you ever turned anybody around from hating you and America into an ally, convinced them that the jihad wasn't the way?

UNIDENTIFIED MALE: Personally, I have had successes that lean towards that, but I have heard of successes in this business like that quite often.

**O'REILLY:** A lot of these guys have been here four and a half years. Does that make a difference in breaking them down, the hopelessness of their situation?

UNIDENTIFIED MALE: It does in several cases, yes.

**O'REILLY:** So you're just now getting information you wouldn't have gotten two years ago?

UNIDENTIFIED MALE: Absolutely.

**O'REILLY:** What's the psychology there?

UNIDENTIFIED MALE: They're tired of being here. And they might somehow think that cooperating

with us will help them get out a little earlier.

**O'REILLY:** You don't tell them that though, right?

UNIDENTIFIED MALE: No, absolutely not. A lot of times, they're convinced of this by their fellow detainees.

**O'REILLY:** Can you lie to them? Can you say hey, if you tell me something, maybe I'll get to you Miami or some place like that?

UNIDENTIFIED MALE: You know what, sir, I can. But as an almost absolute rule, we don't. Because if we're caught in that lie, then we lose credibility. And we've wasted years of rapport building, and that we can't do that. We can't afford that.

**O'REILLY:** It seems to me that this is a very methodical, painstaking process to have a conversation with these people. And nine out of 10 of them don't lead anywhere. And then once in a while, you get a nugget. Is that what it is?

UNIDENTIFIED MALE: That's exactly right.

**O'REILLY:** I had a human rights guy tell me on "The Factor" that a lot of these guys are barbers. And they just made a wrong turn at Kandahar. And they shouldn't be here at all.

UNIDENTIFIED MALE: It might be true for just a few of them. But the fact of the matter is that's their story. And nine times out of ten, we have a tremendous amount of information, sometimes given to us by other detainees that they weren't barbers. So.

**O'REILLY:** Is it 90 percent of the time?

UNIDENTIFIED MALE: I can't place an exact percentage on it, but it's very high, very high.

**O'REILLY:** So this story about these guys being just innocent bellboys is just a bunch of garbage?

UNIDENTIFIED MALE: Yes, sir.

**O'REILLY:** How did you feel being interrogated? Oh, you're the interrogator, how does it feel being interrogated?

UNIDENTIFIED MALE: I'm usually not the nervous one in the room, but it's fine. It's fine. It's easy to tell the truth.

(END VIDEOTAPE)

**O'REILLY:** Now tomorrow, we'll talk with the head jailer at **Guantanamo** Bay about the violence, hunger strikes, and suicide tactics of the detainees.

Plenty more ahead as "The Factor" moves along this evening. A lawyer for a Marine caught up in the horrific Haditha situation will join us.

Also, Michelle Malkin and Kirsten Powers on the power of Ann Coulter. We hope you will stay tuned for those reports.

**LOAD-DATE:** June 13, 2006

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# CHICAGO

- waiting for decision
- new kind of contestant → right to take off battlefield
  - ↳ new ground / different
  - ↳ different appeal
  - ↳ did not use
  - ↳ new challenge
- <sup>6000</sup> about 600 / about 200 sent back  
the
- upheld by Court - what was not objected to.



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SHOW: THE O'REILLY FACTOR 8:00 PM EST

June 9, 2006 Friday

TRANSCRIPT: 060901cb.256

SECTION: NEWS; Domestic

LENGTH: 2588 words

HEADLINE: Bill Gets Inside View of **Guantanamo** Bay; Why the Second Guessing on Zarqawi?

BYLINE: John Kasich, Bill **O'Reilly**, Dan Senor

GUESTS: Nancy Soderberg

**BODY:**

JOHN KASICH, HOST: "The **O'Reilly** Factor" is on.

Tonight, you won't believe how the far left is spinning the Zarqawi situation and what they're saying about President Bush. We're going to have a full report.

New revelations in the Duke lacrosse rape scandal. Will the latest court documents sink the prosecution's case?

And a cautionary tale for all parents. A teenage girl meets an older guy on the Internet and travels halfway around the world to hook up with him.

Caution, you're about to enter a no spin zone. I'm John Kasich, in for Bill **O'Reilly**. "The Factor" begins right now.

Hi, I'm John Kasich reporting tonight for Bill **O'Reilly**. We'll actually talk live with Bill in moments about an exclusive "Factor" investigation he just completed at **Guantanamo** Bay.

We'll also tell you about a new terror tape from the top al **Qaeda** guy surfacing today.

Plus, a story parents can't afford to miss. A Michigan girl ends up in the Middle East to meet an older man she met on the Internet.

But first, our top story tonight, Bill's exclusive investigation into **Guantanamo** Bay. Let's go right to Bill, reporting by phone from Fort Lauderdale.

Well, Bill, what did you see down there and what was it like in one of those cells?

**BILL O'REILLY, HOST:** Well, we just landed about an hour ago, John. We went down very early this morning, and we had amazing access. In fact, nobody, I don't think, has ever had the kind of access that the military, the joint task force, gave us in **Guantanamo Bay**.

We were actually today, John, inside the cells with the al **Qaeda**. I mean, they were yards away from us. One of them was yelling and screaming at us. We have it on tape. It was amazing.

So we went through the whole prison. And then I got to interview, and this will be another first on Monday night on "The Factor", I got to interview two of the interrogators. The guys who interview these people every day, the al **Qaedas** every day. They've never before been interviewed by a press person.

We have to shade them. We have to put them in silhouette so you can't see their faces, but it was fascinating to hear what they do, why they do it, why these guys are being kept there for four years and all of that.

**KASICH:** Bill, did they -- did you ask them the question, I'm sure you did, but did you ask the question about their techniques that they use, the interrogation techniques? What did they say about what they -- what the press in particular has to say about what they do?

**O'REILLY:** Well, we got into a lot of the accusations that are made by the press against **Guantanamo Bay**. And I walked through it with the commander down there and with the head interrogator. We got into that. And you'll be surprised what they have to say.

But I think that the most interesting thing to me was actually being, I would say, John, 10 yards away from these al **Qaeda** guys.

**KASICH:** Yes, that's interesting, Bill.

What's their cells like? How big are they? Did you feel that when you looked at where they were and how they were being held, you know, you're an honest guy -- did you think, you know, this is not very humane? What was your reaction?

**O'REILLY:** I'll give you two interesting things we learned today. No. 1, the average detainee in Guantanamo has gained 18 pounds since his arrival. No. 2, it costs the government, and that's us, three times as much to feed these people every day as to feed our soldiers in **Guantanamo**.

Now, as far as their accommodations are concerned, if they cooperate with the United States, they are put into places that are, you know, like a dormitory setting. If they don't cooperate and they cause trouble, then they're put into lockdown like a super max prison.

**KASICH:** Sure.

**O'REILLY:** Like the -- like Moussaoui went to in Colorado. We got access to both the lockdown, super max and the dorms. So you'll see, we shot it.

**KASICH:** That's going to be...

**O'REILLY:** You'll see it on Monday.

KASICH: Bill, anything else before we let you go? Anything else that just sort of jumped out at you that we ought to hear about before -- before what's going to be very interesting Monday night?

O'REILLY: Well, I think that the propaganda against **Guantanamo**, I think the government, the Bush administration has said enough. And they chose us to go in to tell the folks and show the folks exactly what's there.

And then, you know, when you see what I -- what we shot and you hear these guys, then you can make your own mind up whether this is inhumane or not. And that -- I'm looking forward to the report on Monday night, John.

KASICH: So are we. All right. Bill, thanks for being with us.

O'REILLY: Yes, and thanks for filling in for me. You do a great job. I appreciate it.

KASICH: Thanks, Bill.

Turning to the Zarqawi situation now, word today that Abu Musab al- Zarqawi, the terror leader in Iraq, was still alive and mumbling when Iraqi police first arrived on the scene. Zarqawi didn't go down without a fight, trying to escape from a stretcher when he became aware of U.S. troops at the scene. He died soon after.

Now some Democrats are saying Zarqawi's death really wasn't such a big deal, and it's being used to divert attention from an unpopular war. President Bush had this to say today.

(BEGIN VIDEO CLIP)

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES: Removing Zarqawi is a major blow to al **Qaeda**. It's not going to end the war. It's certainly not going to end the violence, but it's going to help a lot.

(END VIDEO CLIP)

KASICH: Joining us now from Jacksonville, Florida, Nancy Soderberg, the author of the book "The Superpower Myth". And here in the studio, Dan Senior, the former spokesman for the Coalition Provisional Authority in Iraq and a **FOX** News contributor.

Nancy, why the second guessing now?

NANCY SODERBERG, AUTHOR, "THE SUPERPOWER MYTH": Well, I think a large part of the left in this country has lost total faith in the competence of this administration. So you're going to hear harping from that continually, this mismanaged war.

But I think everyone has to give credit to the administration and the Iraqis, as well. This is a major blow to terrorism. It won't end the war, as he said, but I think that everyone, all Americans should certainly be congratulating the administration and our military on the death of Zarqawi. It is a big deal and a major blow, no question about it.

KASICH: Dan, you've been reading some of the left-wing postings. Why is it that people can't just celebrate something that's obviously a significant gain for us, for the troops, for the people of Iraq? What's at the heart of this?

DAN SENOR, FOX NEWS CONTRIBUTOR: You know, that's a good question, John. It's striking to me that the same critics who are saying that it's not a big deal that we got Zarqawi weren't saying that when Zarqawi was alive and at large.

People were saying look how weak this administration, our military looks, that we have all this might based in Iraq and we can't capture or kill one guy. Well, we captured or killed one guy. And now they're sort of like, well, he wasn't that significant to begin with.

KASICH: I mean, let's look at a couple things that are, you know, maybe semi-legitimate criticisms. We build him up. We made him big time. I think that's nuts. I mean, after somebody beheads somebody, blows up the mosque and everyone else.

SENOR: And he was going -- he was putting himself on television. He was sending videos to Al Jazeera.

KASICH: Right.

SENOR: It's not like we were.

SODERBERG: But in fairness, the criticism there -- the criticism there is that, had we not invaded Iraq, he would not have had the platform to do much of this. That's where the criticism of the administration comes up.

KASICH: But Nancy -- but wait a minute. I don't know how we can say that. This guy was not just involved in Iraq. I mean, this is a guy that attacked a wedding party in Jordan, who blew up hotels. He wasn't limiting himself to Iraq. He was...

SODERBERG: This is a Jordanian -- this is a -- right. No, no, now, he was in Jordan before he had the wild west of Iraq...

KASICH: Right.

SODERBERG: ... where he could get Americans and start beheading Americans. Had we not invaded him, the argument is he would have stayed more limited in Jordan.

I think the larger question here, though, is the American people, and it's not just the left here, are really questioning the reasons that we're in war, the high casualties, the high cost. And it's interesting. I think it's great that Bill O'Reilly got into **Guantanamo**, but...

KASICH: But Nancy, that may be right, but that's not the issue here. The issue here is you have a major terrorist. And he is a guy that we take down, we track him down, and we send a message to all these guys...

SODERBERG: That's a big deal.

KASICH: Yes, it's a big deal, so why not...

SODERBERG: Because the whole -- the American people are losing faith in this president and in this war. Take **Guantanamo**. It's great that Bill O'Reilly's there, but where's the Red Cross? The Red Cross has been denied access there. We shouldn't have to go to **FOX News**, informative as it is, but the Red

Cross should have access there. We shouldn't have tortured at Abu Ghraib. The whole history of things - and the mistake that was made there. They have lost the confidence.

KASICH: Again, wait a min nut. I hear you, but for one day, you say it's a significant victory because it's good for the people fighting over there.

SENOR: And one important data point -- one important data point...

SODERBERG: And the person...

KASICH: Wait a minute, Nancy. Hold on.

SENOR: One important data point, in April of 2005, we got 400 tips from Iraqi intelligence tips. In April 2006, we got 4,000. There's been a tenfold increase in Iraqis turning over information to us. And that's the kind of stuff that helped contribute to nabbing Zarqawi.

KASICH: Maybe a little bit -- maybe a little bit of a tipping point. We're going to explore that in a second.

We'll have more with the ambassador and Mr. Senor in a moment.

Then a new terror tape from al Qaeda leader. What does it mean for war on terror?

And later, new developments in the Duke rape case. Could the prosecution be in trouble? We'll be right back.

(NEWSBREAK)

KASICH: Continuing now with Nancy Soderberg, the author of the book "The Superpower Myth", and Dan Senor, the former spokesman for the Coalition Provisional Authority in Iraq and a FOX News contributor.

Let's talk about the message to the bad guys. First of all, the message to the bad guys in Iraq, and the message to the bad guys around the world. I get the sense now they're going to be looking over their shoulder, wondering who's going to turn on them.

SENOR: Particularly because there was this intelligence tip that helped with the targeting of Zarqawi. So now the leadership is sort of the next layer down of Zarqawi is looking over their shoulders, wondering how easily they can maneuver around the country. Can they continue to do so with sort of impunity. Probably not. Life is much more difficult for them. That's important.

And secondly, to your point, the message across the region, there was a sense that Zarqawi was emboldened. There was this sense that this sort of cloud of Zarqawi hung over Iraq, and there was nothing anybody could do about it.

And now the message is, that not America is cutting and running, not America doesn't have a stomach to stick something out that they started, but not only that America is there and they're going to take down and stay committed to finding these guys. And so they get a little bit of momentum. It's an important message.

I don't want to overstate the military significance, the strategic significance of this, but it is important to

recognize that this is an important moment.

KASICH: Nancy, isn't this a big boost to the new government in Iraq? I thought it was a very big deal when -- when we got this new prime minister in there. And, you know, at this point, this kind of announcement has got to give confidence to the Iraqis themselves, because that's a way out of this mess, obviously.

Doesn't this really give them the sense of that they can control their own destiny to some degree?

SODERBERG: It was no doubt a banner day, not only because of the death of the leading al Qaeda terrorist in Iraq, Zarqawi, but also they completed their government, picking the tough posts of interior and defense.

KASICH: Right.

SODERBERG: That was a big day. I think as far as what the actual death of Zarqawi means for the future, it's certainly a blow to them.

As you noticed, President Bush is not commenting on, or very cautious to gloat about this. Very different language than you see from the administration. And that's because we don't know who's going to take al-Zarqawi's place. I think it will take some time before someone can replace him. Hopefully, no one will replace him.

But I think the big unanswered question here is when are they going to get bin Laden? If they can get Zarqawi, what is it going to get bin Laden?

KASICH: Well, there's a difference there, Nancy. They were able to get this guy. They tracked him. They had an ability to move aircraft right over the spot where he was.

But, you know, with bin Laden, he's in Pakistan. We're very limited. I mean, we got -- we had good intelligence here. We had the Jordanian intelligence agency working with us. You were able to target him, track him and then destroy the target. You can't do that in Pakistan.

SODERBERG: Yes, you can. And he's probably actually in Afghanistan along the border there. And you can do that if we get the right kind of intelligence. He's much more isolated in the mountainous regions, we believe.

I'd, for instance, like to know who's going to get the \$25 million bounty on al-Zarqawi's head. Someone is going to get that money. Obviously, that tip there. Maybe it will encourage those around bin Laden to do the same thing. But I think that this -- all of this good news coming out of the death of Zarqawi does, I think, encourage those who think there might actually be a solution in Iraq.

KASICH: That's -- I mean, it starts to give a sense...

SODERBERG: And I think it raises again the question of how are we're going to get out. What does it mean for...

KASICH: Yes, maybe. Look, OK, I don't want to overstate it either. But look, we took out this charismatic.

And I'll tell you something, this whole business of putting him in a framed photograph and everything.

This guy was a monster, and we cannot permit him to be built into something other than that he was a monster. He beheads a guy on a tape, right?

But the bottom line is it looks like we're making progress. Take Canada and Zarqawi, the arrest of these 17 people in Canada. You start to get the sense that maybe the world is aggressive and that we are having some major victories now.

SENOR: We've had some wins.

SODERBERG: And it gives hope.

SENOR: And I think it allows -- it allows the American people to now step back. It's sort of an inflection point. It's not to say we've won. It's not about popping out champagne corks. But it is an inflection point we can look now, and perhaps people are a little more receptive to being a little more imaginative about what we do now for the next couple years.

KASICH: And it shows the world, perhaps, cooperating a little bit more. There's reasons here to be optimistic. It's not over.

SENOR: Cautiously optimistic.

KASICH: Exactly right. Ambassador, thank you for being with us.

Mr. Senor, thanks.

Up next, terror and the 21st Century technology. How did Zarqawi exploit the Internet to whip up terror? And coming up, bombshell, new information in the Duke rape case. We'll tell you what it is. Stay with us.

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**Michel, Christopher G.**

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**From:** White House News Update [News.Update@WhiteHouse.Gov]  
**Sent:** Thursday, July 13, 2006 4:17 AM  
**To:** Michel, Christopher G.  
**Subject:** LAT - Senate Insider on Military Justice

### **Senate Insider on Military Justice**

**Lindsey Graham of South Carolina is also part of the Air Force's judicial system, which gives him credibility in hearings on detainees.**

By Maura Reynolds, Los Angeles Times

WASHINGTON — The U.S. Senate may be one of the most exclusive clubs in America, but Lindsey Graham is a member of another that in some ways is even more elite: the United States Air Force Court of Criminal Appeals.

Sen. Graham, who holds the rank of colonel in the Air Force Reserve, is one of just 13 judges on the court, which hears appeals of court-martial rulings from the Air Force. The job is his latest in a 24-year military career; he is the only member of the Senate serving in the military.

These days, Graham is better-known as a Republican congressional critic of the Bush administration's policies for handling detainees at Guantanamo Bay, Cuba, and elsewhere, as lawmakers begin work to draw up a new legal system. But as a result of his military career, the first-term senator from South Carolina also has become his party's unassailable authority on military justice.

"We need to not only adhere to treaties that we've been a part of for 60 years for the protection of our own troops, we need to let people know that we can win this war without becoming our enemy," Graham said in an interview.

Besides his military law expertise, Graham also is known as something of a maverick within the Republican Party. Both traits are likely to be on display today — as they were earlier in the week — as senators grill administration officials over the military commissions at Guantanamo, a system ruled illegal last month in a landmark Supreme Court decision.

The court wants Congress to approve a new system for prosecuting detainees. Administration officials have made it clear that they want Congress to approve the system of military commissions the White House designed.

Graham has said no.

"I would suggest to the administration that the best way to work with Congress to solve this problem is to take the [military justice code] as your basic guide," Graham said at a contentious Senate Judiciary Committee hearing Tuesday. "If you fight that approach, it's going to be a long, hot summer."

Graham has spoken frequently with White House officials, and met this week with national security advisor Stephen J. Hadley. He said he was convinced the administration was coming around to his view that revamping the military commissions to provide detainees with more rights was the proper thing to do.

"I have nothing but good things to say about the administration's attempt to reach out and fix this problem," Graham said.

At least some of his colleagues believe that Graham's views may hold sway with the administration and Congress.

"Lindsey is very persuasive and very articulate," said Sen. John McCain (R-Ariz.), who counted Graham as a staunch ally when he challenged the administration last year over the treatment of detainees. "He is the only guy in the Senate who has practiced the Uniform Code of Military Justice, so he has a pretty good idea what it's all about."

Graham's willingness to challenge the Bush administration on the issue has earned plaudits from Democrats, who once considered him an enemy. Before becoming a senator, Graham served four terms in the House of Representatives, where he is perhaps best remembered as a lead prosecutor during President Clinton's impeachment proceedings.

But these days, even Sen. Hillary Rodham Clinton (D-N.Y.) appears forgiving. "He has demonstrated a grasp of the issues and a commitment to the values of our military justice system, and an understanding of how what we do with enemy combatants affects our own troops. So I hope people listen to him," Clinton said.

It remains to be seen, however, whether Graham can become a spokesman for his party on the issue. Like McCain, Graham has not been the most obedient of Republican foot soldiers, often charting his own course. On the Judiciary Committee, for instance, Graham is seen as a moderate who occasionally votes with Democrats on issues like immigration.

But Graham works hard to preserve his reputation as a conservative, especially on social and fiscal issues.

"I like being a conservative," Graham said in an interview. "I'm comfortable with my conservative credentials." But, he added, "I believe in listening. I believe in trying to find common ground" with the other side.

Lindsey Olin Graham was raised in the back room of a restaurant and bar in Central, S.C. His parents put him in charge of the pool hall downstairs, where he racked balls for textile mill workers when they got off work.

"Everything I needed to know about politics, I learned there," he has joked.

His parents died when he was in college, and Graham adopted his 13-year-old sister, becoming her legal guardian.

Graham had been in the Air Force ROTC, but in part for family reasons, the Air Force permitted him to attend law school before going on active duty as a judge advocate.

Law school was his second choice. He would have preferred to become a pilot, but his hearing was imperfect.

"It's probably good I didn't get to fly. I probably would have killed myself," Graham said.

As a military lawyer, he soon worked on a case involving a controversy over drug testing, eventually forcing the Air Force to abandon a urinalysis program that he proved was flawed. He was promoted to prosecutor, and spent the next four years arguing court-martial cases across Europe.

Since 1989, he has served in the National Guard and the reserves, and was called up to serve during the 1991 Persian Gulf War.

Graham's joint duties as a military judge and a senator have raised eyebrows in some quarters. His first case as judge, in which he ruled against an airman who was dismissed from the service for using cocaine, is still under appeal, with attorneys for the defendant charging that Graham should not serve as a military judge and senator at the same time.

The U.S. Court of Appeals for the Armed Forces has yet to rule in the case.

"Can I be a member of the Senate and a military judge at the same time?" Graham asked. "I think so."

As a former prosecutor, defender and judge, he has served on all sides of the military justice system. He says he liked being a defender the best.

Graham said he did not doubt that some detainees at Guantanamo were innocent, and he took it as a personal responsibility to develop a system that would separate the innocent from the guilty and dangerous.

"I don't doubt that there have been people caught in the net that weren't who we thought they were," he said. "The dilemma facing this country is: How can you have a system that makes sure that those swept up are not given life sentences, and how do you make sure that those intent on harming our country aren't let back on the battlefield?"

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**From:** White House News Update [News.Update@WhiteHouse.Gov]  
**Sent:** Thursday, July 13, 2006 1:01 AM  
**To:** Michel, Christopher G.  
**Subject:** NYT - Administration Prods Congress to Curb the Rights of Detainees

## **Administration Prods Congress to Curb the Rights of Detainees**

By KATE ZERNIKE, The New York Times

WASHINGTON, July 12 — A day after saying that terror suspects had a right to protections under the Geneva Conventions, the Bush administration said Wednesday that it wanted Congress to pass legislation that would limit the rights granted to detainees.

The earlier statement had been widely interpreted as a retreat, but testimony to Congress by administration lawyers on Wednesday made clear that the picture was more complicated.

The administration has now abandoned its four-year-old claim that members of Al Qaeda are not protected under the Geneva Conventions, acknowledging that a Supreme Court ruling two weeks ago established as a matter of law that they are. Still, administration lawyers urged Congress to pass legislation that would narrowly define the rights granted to detainees under a provision of the Geneva Conventions known as Common Article Three, which guarantees legal rights “recognized as indispensable by civilized peoples.”

The maneuvering now under way was prompted by that Supreme Court decision, which struck down the tribunals the administration had established for terror suspects at Guantánamo Bay, Cuba.

The court left it to Congress to decide what kind of trials to set up for detainees and what protections they should be granted in interrogations and handling before trial.

Administration lawyers have argued that the “most desirable” solution would be for Congress to pass a law approving the tribunals that the court said the president could not establish on his own, proceedings that would grant minimum rights to detainees.

But some leading senators said they believed that the White House stance might still be evolving, despite the public pronouncements by the lawyers who appeared before Congress. In particular, they thought the White House might be open to a solution that would abandon the tribunal approach in favor of one that would modify court-martial procedures to reflect the realities of putting terror suspects on trial.

“I wouldn’t say that that testimony would set the final parameters of where the administration will go on this,” said Senator John Warner of Virginia, the chairman of the Armed Services Committee.

As President Bush headed to Europe on Wednesday, his spokesman, Tony Snow, said, “The White House is now working with Congress to try to come up with a means of providing justice for detainees at Guantánamo in a manner that’s consistent with the Supreme Court’s ruling” in the case, Hamdan v. Rumsfeld.

In addition to guaranteeing legal rights, Common Article Three prohibits “outrages upon personal dignity, in particular, humiliating and degrading treatment.” In testimony, administration lawyers said that the article was too vague, and that because failure to comply with Common Article Three was a violation of the War Crimes Act, applying the article to detainees could lead to American troops being charged with felony crimes for interrogation tactics that might be argued to be too harsh.

“Congress needs to do something to bring clarity and certainty to Common Article Three,” Steven G. Bradbury, an acting assistant attorney general, told the House Armed Services Committee on Wednesday.

Administration lawyers argued that the White House’s statement Tuesday night was not a shift, but an announcement and an interpretation of the court’s decision. In an interview, Senator Lindsey Graham, Republican of South Carolina, said he agreed.

“I think what they’re saying is, Until we get further direction we’re going to do the following,” Mr. Graham said. “That doesn’t preclude them or us from giving definition.”

The outcome of the debate could affect detainees around the world. The Pentagon holds about 1,000 Qaeda and Taliban detainees at Guantánamo and at bases in Afghanistan. An estimated three dozen terror suspects are believed to be held by the C.I.A. at secret sites abroad.

In a week of hearings on Capitol Hill, administration lawyers have argued that the best way to bring detainees to trial after the court’s ruling would be for Congress to ratify the military commissions the court struck down, with what Daniel J. Dell’Orto, a Pentagon deputy general counsel, described as “minor tweaking.”

But several scholars and military lawyers have said that the best way to meet the court’s requirements on providing legal and human rights to detainees would be to start with the court-martial procedure set up in the Uniform Code of Military Justice and modify that.

Several lawmakers have said that only a solution that extended Geneva protections to detainees would survive another court challenge.

“It’s got to be dealt with so that we do not face a future court challenge, and also so that the international community recognizes our credibility in dealing with these things,” said Senator Warner, whose Armed Services Committee will hold hearings on the issue on Thursday.

Military lawyers, human rights groups and some lawmakers have warned that an effort by Congress to limit the rights granted to terror suspects under the Geneva Conventions would blacken the United States’ reputation internationally, by effectively announcing to the world that it was reneging on a fundamental and commonly held notion of human rights.

“We should embrace Common Article Three and sing its praises from the rooftops,” Rear Adm. John D. Hutson, a former judge advocate general of the Navy who is retired, told the Armed Services Committee. “To avoid it or try to draft our way out of it is unbecoming the United States.”

But administration lawyers argue that the vagueness of the language in the provision — including the right to “judicial guarantees which are recognized as indispensable by civilized peoples” — opened the way to problems.

“We just think as you approach these issues, you should give definition and certainty to these issues,” Mr. Bradbury told the Senate Judiciary Committee on Wednesday.

Even some Republicans who are fighting the administration’s approach on establishing trials for the terror suspects agree on the need to limit the application of Article Three.

Senator Graham, who pointedly warned administration lawyers that the president would not win by fighting for his approach on trials, said in interviews that Common Article Three must be “reined in.” He said it would make death penalty crimes of current interrogation techniques, including keeping detainees awake and forcing them to sit in extremely hot or cold cells — methods he referred to as “things that are not torture but are aggressive.”

“What we need to do is take the ruling of Hamdan and define it so that people will not be unfairly prosecuted because they didn’t know what was in bounds or not,” Mr. Graham said.

Mr. Graham said defining Article Three would be “the hardest part” of the debate on how to bring detainees to trial. He suggested that Congress could limit it in a way that resembled the language of the measure setting standards for the treatment of detainees that was written by Senator John McCain, Republican of Arizona, and signed into law last year.

“It says that every detainee will be treated humanely and that cruel, inhumane treatment will not be allowed against detainees,” Mr. Graham said. “Common Article Three with its language goes well beyond the McCain standard.”

Mr. Bradbury and Mr. Dell’Orto, too, expressed a preference for Mr. McCain’s language.

Legal experts agree that the White House’s announcement that it would give Article Three rights to detainees puts future cases of detainee abuse, like those at the Abu Ghraib prison in Iraq in 2004, into the category of war crimes. It raises the stakes, they said, for how American troops treat detainees in military custody.

“This isn’t a ‘trust me’ kind of undertaking anymore,” said Diane Orentlicher, a professor of law at American University in Washington. “It’s now a legal obligation.”

Mark Mazzetti and Sheryl Gay Stolberg contributed reporting for this article.

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8061

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## International humanitarian law: the essential rules

These rules, drawn up by the ICRC, summarize the essence of international humanitarian law. They do not have the authority of a legal instrument and in no way seek to replace the treaties in force. They were drafted with a view to facilitating the promotion of the law.

The parties to a conflict must at all times **distinguish between the civilian population and combatants** in order to spare the civilian population and civilian property. Neither the civilian population as a whole nor individual civilians may be attacked.

- Attacks may be made solely against military objectives. People who do not or can **no longer take part in the hostilities** are entitled to respect for their lives and for their physical and mental integrity. Such people must in all circumstances be protected and treated with humanity, without any unfavorable distinction whatever.
- It is **forbidden to kill or wound an adversary who surrenders** or who can no longer take part in the fighting.
- Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare. It is forbidden to use **weapons or methods of warfare that are likely to cause unnecessary losses** or excessive suffering.
- The **wounded and sick must be collected and cared for** by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared.
- The **red cross or red crescent on a white background** is the distinctive sign indicating that such persons and objects must be respected.
- **Captured combatants and civilians** who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They **must be protected against all acts of violence** or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.

### Other documents in this section:

[Humanitarian law > Treaties and customary law](#)





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**HEADLINE:** CIA Holds Terror Suspects in Secret Prisons;  
Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11

**BYLINE:** Dana Priest, Washington Post Staff Writer

**BODY:**

The CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe, according to U.S. and foreign officials familiar with the arrangement.

The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small center at the Guantanamo Bay prison in Cuba, according to current and former intelligence officials and diplomats from three continents.

The hidden global internment network is a central element in the CIA's unconventional war on terrorism. It depends on the cooperation of foreign intelligence services, and on keeping even basic information about the system secret from the public, foreign officials and nearly all members of Congress charged with overseeing the CIA's covert actions.

The existence and locations of the facilities -- referred to as "black sites" in classified White House, CIA, Justice Department and congressional documents -- are known to only a handful of officials in the United States and, usually, only to the president and a few top intelligence officers in each host country.

The CIA and the White House, citing national security concerns and the value of the program, have dissuaded Congress from demanding that the agency answer questions in open testimony about the conditions under which captives are held. Virtually nothing is known about who is kept in the facilities, what interrogation methods are employed with them, or how decisions are made about whether they should be detained or for how long.

While the Defense Department has produced volumes of public reports and testimony about its detention practices and rules after the abuse scandals at Iraq's Abu Ghraib prison and at Guantanamo

Bay, the CIA has not even acknowledged the existence of its black sites. To do so, say officials familiar with the program, could open the U.S. government to legal challenges, particularly in foreign courts, and increase the risk of political condemnation at home and abroad.

But the revelations of widespread prisoner abuse in Afghanistan and Iraq by the U.S. military -- which operates under published rules and transparent oversight of Congress -- have increased concern among lawmakers, foreign governments and human rights groups about the opaque CIA system. Those concerns escalated last month, when Vice President Cheney and CIA Director Porter J. Goss asked Congress to exempt CIA employees from legislation already endorsed by 90 senators that would bar cruel and degrading treatment of any prisoner in U.S. custody.

Although the CIA will not acknowledge details of its system, intelligence officials defend the agency's approach, arguing that the successful defense of the country requires that the agency be empowered to hold and interrogate suspected terrorists for as long as necessary and without restrictions imposed by the U.S. legal system or even by the military tribunals established for prisoners held at Guantanamo Bay.

The Washington Post is not publishing the names of the Eastern European countries involved in the covert program, at the request of senior U.S. officials. They argued that the disclosure might disrupt counterterrorism efforts in those countries and elsewhere and could make them targets of possible terrorist retaliation.

The secret detention system was conceived in the chaotic and anxious first months after the Sept. 11, 2001, attacks, when the working assumption was that a second strike was imminent.

Since then, the arrangement has been increasingly debated within the CIA, where considerable concern lingers about the legality, morality and practicality of holding even unrepentant terrorists in such isolation and secrecy, perhaps for the duration of their lives. Mid-level and senior CIA officers began arguing two years ago that the system was unsustainable and diverted the agency from its unique espionage mission.

"We never sat down, as far as I know, and came up with a grand strategy," said one former senior intelligence officer who is familiar with the program but not the location of the prisons. "Everything was very reactive. That's how you get to a situation where you pick people up, send them into a netherworld and don't say, 'What are we going to do with them afterwards?'"

It is illegal for the government to hold prisoners in such isolation in **secret prisons** in the United States, which is why the CIA placed them overseas, according to several former and current intelligence officials and other U.S. government officials. Legal experts and intelligence officials said that the CIA's internment practices also would be considered illegal under the laws of several host countries, where detainees have rights to have a lawyer or to mount a defense against allegations of wrongdoing.

Host countries have signed the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as has the United States. Yet CIA interrogators in the overseas sites are permitted to use the CIA's approved "Enhanced Interrogation Techniques," some of which are prohibited by the U.N. convention and by U.S. military law. They include tactics such as "waterboarding," in which a prisoner is made to believe he or she is drowning.

Some detainees apprehended by the CIA and transferred to foreign intelligence agencies have alleged after their release that they were tortured, although it is unclear whether CIA personnel played a role in the alleged abuse. Given the secrecy surrounding CIA detentions, such accusations have heightened concerns among foreign governments and human rights groups about CIA detention and interrogation

practices.

The contours of the CIA's detention program have emerged in bits and pieces over the past two years. Parliaments in Canada, Italy, France, Sweden and the Netherlands have opened inquiries into alleged CIA operations that secretly captured their citizens or legal residents and transferred them to the agency's prisons.

More than 100 suspected terrorists have been sent by the CIA into the covert system, according to current and former U.S. intelligence officials and foreign sources. This figure, a rough estimate based on information from sources who said their knowledge of the numbers was incomplete, does not include prisoners picked up in Iraq.

The detainees break down roughly into two classes, the sources said.

About 30 are considered major terrorism suspects and have been held under the highest level of secrecy at black sites financed by the CIA and managed by agency personnel, including those in Eastern Europe and elsewhere, according to current and former intelligence officers and two other U.S. government officials. Two locations in this category -- in Thailand and on the grounds of the military prison at Guantanamo Bay -- were closed in 2003 and 2004, respectively.

A second tier -- which these sources believe includes more than 70 detainees -- is a group considered less important, with less direct involvement in terrorism and having limited intelligence value. These prisoners, some of whom were originally taken to black sites, are delivered to intelligence services in Egypt, Jordan, Morocco, Afghanistan and other countries, a process sometimes known as "rendition." While the first-tier black sites are run by CIA officers, the jails in these countries are operated by the host nations, with CIA financial assistance and, sometimes, direction.

Morocco, Egypt and Jordan have said that they do not torture detainees, although years of State Department human rights reports accuse all three of chronic prisoner abuse.

The top 30 al Qaeda prisoners exist in complete isolation from the outside world. Kept in dark, sometimes underground cells, they have no recognized legal rights, and no one outside the CIA is allowed to talk with or even see them, or to otherwise verify their well-being, said current and former U.S. and foreign government and intelligence officials.

Most of the facilities were built and are maintained with congressionally appropriated funds, but the White House has refused to allow the CIA to brief anyone except the House and Senate intelligence committees' chairmen and vice chairmen on the program's generalities.

The Eastern European countries that the CIA has persuaded to hide al Qaeda captives are democracies that have embraced the rule of law and individual rights after decades of Soviet domination. Each has been trying to cleanse its intelligence services of operatives who have worked on behalf of others -- mainly Russia and organized crime.

The idea of holding terrorists outside the U.S. legal system was not under consideration before Sept. 11, 2001, not even for Osama bin Laden, according to former government officials. The plan was to bring bin Laden and his top associates into the U.S. justice system for trial or to send them to foreign countries where they would be tried.

"The issue of detaining and interrogating people was never, ever discussed," said a former senior intelligence officer who worked in the CIA's Counterterrorist Center, or CTC, during that period. "It was

against the culture and they believed information was best gleaned by other means."

On the day of the attacks, the CIA already had a list of what it called High-Value Targets from the al Qaeda structure, and as the World Trade Center and Pentagon attack plots were unraveled, more names were added to the list. The question of what to do with these people surfaced quickly.

The CTC's chief of operations argued for creating hit teams of case officers and CIA paramilitaries that would covertly infiltrate countries in the Middle East, Africa and even Europe to assassinate people on the list, one by one.

But many CIA officers believed that the al Qaeda leaders would be worth keeping alive to interrogate about their network and other plots. Some officers worried that the CIA would not be very adept at assassination.

"We'd probably shoot ourselves," another former senior CIA official said.

The agency set up prisons under its covert action authority. Under U.S. law, only the president can authorize a covert action, by signing a document called a presidential finding. Findings must not break U.S. law and are reviewed and approved by CIA, Justice Department and White House legal advisers.

Six days after the Sept. 11 attacks, President Bush signed a sweeping finding that gave the CIA broad authorization to disrupt terrorist activity, including permission to kill, capture and detain members of al Qaeda anywhere in the world.

It could not be determined whether Bush approved a separate finding for the black-sites program, but the consensus among current and former intelligence and other government officials interviewed for this article is that he did not have to.

Rather, they believe that the CIA general counsel's office acted within the parameters of the Sept. 17 finding. The black-site program was approved by a small circle of White House and Justice Department lawyers and officials, according to several former and current U.S. government and intelligence officials.

Among the first steps was to figure out where the CIA could secretly hold the captives. One early idea was to keep them on ships in international waters, but that was discarded for security and logistics reasons.

CIA officers also searched for a setting like Alcatraz Island. They considered the virtually unvisited islands in Lake Kariba in Zambia, which were edged with craggy cliffs and covered in woods. But poor sanitary conditions could easily lead to fatal diseases, they decided, and besides, they wondered, could the Zambians be trusted with such a secret?

Still without a long-term solution, the CIA began sending suspects it captured in the first month or so after Sept. 11 to its longtime partners, the intelligence services of Egypt and Jordan.

A month later, the CIA found itself with hundreds of prisoners who were captured on battlefields in Afghanistan. A short-term solution was improvised. The agency shoved its highest-value prisoners into metal shipping containers set up on a corner of the Bagram Air Base, which was surrounded with a triple perimeter of concertina-wire fencing. Most prisoners were left in the hands of the Northern Alliance, U.S.-supported opposition forces who were fighting the Taliban.

"I remember asking: What are we going to do with these people?" said a senior CIA officer. "I kept saying, where's the help? We've got to bring in some help. We can't be jailers -- our job is to find Osama."

Then came grisly reports, in the winter of 2001, that prisoners kept by allied Afghan generals in cargo containers had died of asphyxiation. The CIA asked Congress for, and was quickly granted, tens of millions of dollars to establish a larger, long-term system in Afghanistan, parts of which would be used for CIA prisoners.

The largest CIA prison in Afghanistan was code-named the Salt Pit. It was also the CIA's substation and was first housed in an old brick factory outside Kabul. In November 2002, an inexperienced CIA case officer allegedly ordered guards to strip naked an uncooperative young detainee, chain him to the concrete floor and leave him there overnight without blankets. He froze to death, according to four U.S. government officials. The CIA officer has not been charged in the death.

The Salt Pit was protected by surveillance cameras and tough Afghan guards, but the road leading to it was not safe to travel and the jail was eventually moved inside Bagram Air Base. It has since been relocated off the base.

By mid-2002, the CIA had worked out secret black-site deals with two countries, including Thailand and one Eastern European nation, current and former officials said. An estimated \$100 million was tucked inside the classified annex of the first supplemental Afghanistan appropriation.

Then the CIA captured its first big detainee, in March 28, 2002. Pakistani forces took Abu Zubaida, al Qaeda's operations chief, into custody and the CIA whisked him to the new black site in Thailand, which included underground interrogation cells, said several former and current intelligence officials. Six months later, Sept. 11 planner Ramzi Binalshibh was also captured in Pakistan and flown to Thailand.

But after published reports revealed the existence of the site in June 2003, Thai officials insisted the CIA shut it down, and the two terrorists were moved elsewhere, according to former government officials involved in the matter. Work between the two countries on counterterrorism has been lukewarm ever since.

In late 2002 or early 2003, the CIA brokered deals with other countries to establish black-site prisons. One of these sites -- which sources said they believed to be the CIA's biggest facility now -- became particularly important when the agency realized it would have a growing number of prisoners and a shrinking number of prisons.

Thailand was closed, and sometime in 2004 the CIA decided it had to give up its small site at Guantanamo Bay. The CIA had planned to convert that into a state-of-the-art facility, operated independently of the military. The CIA pulled out when U.S. courts began to exercise greater control over the military detainees, and agency officials feared judges would soon extend the same type of supervision over their detainees.

In hindsight, say some former and current intelligence officials, the CIA's problems were exacerbated by another decision made within the Counterterrorist Center at Langley.

The CIA program's original scope was to hide and interrogate the two dozen or so al Qaeda leaders believed to be directly responsible for the Sept. 11 attacks, or who posed an imminent threat, or had knowledge of the larger al Qaeda network. But as the volume of leads pouring into the CTC from abroad increased, and the capacity of its paramilitary group to seize suspects grew, the CIA began apprehending

more people whose intelligence value and links to terrorism were less certain, according to four current and former officials.

The original standard for consigning suspects to the invisible universe was lowered or ignored, they said. "They've got many, many more who don't reach any threshold," one intelligence official said.

Several former and current intelligence officials, as well as several other U.S. government officials with knowledge of the program, express frustration that the White House and the leaders of the intelligence community have not made it a priority to decide whether the secret internment program should continue in its current form, or be replaced by some other approach.

Meanwhile, the debate over the wisdom of the program continues among CIA officers, some of whom also argue that the secrecy surrounding the program is not sustainable.

"It's just a horrible burden," said the intelligence official.

Researcher Julie Tate contributed to this report.

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**HEADLINE:** The Debate Over Torture;  
Right after 9/11, Cheney said, 'we have to work...the dark side if you will.'

**BYLINE:** By Evan Thomas and Michael Hirsh; With Richard Wolffe, Mark Hosenball, Michael Isikoff, Daniel Klaidman, John Barry, Stuart Taylor Jr. and Steve Tuttle in Washington and Dan Efron in Jerusalem; Graphic by Andrew Romano

**BODY:**

Interrogators have pondered the uses of torture for centuries. During the Spanish Inquisition 500 years ago, **priests** obtained the desired results by placing infidels on the rack but had less success with sleep deprivation, which, after three or four days, seemed only to induce hallucinations. Torture still works to extract the truth in the movies and on TV shows like the popular '24,' but not in real life, say the experts. A prisoner who has his fingernails pulled out or his genitals shocked will say (and make up) anything to make the pain stop.

Real-world choices are less black and white. Less violent but still coercive techniques can sometimes be effective. These "enhanced" interrogation techniques, like placing a smelly hood over a prisoner and making him stand or squat naked for hours in a cold and dark room, are called "torture lite." In modern times, these tactics have been used by British intelligence to unravel the command structure of the IRA and by the Israelis to stop Palestinian suicide bombers.

Since 9/11, torture lite has been used by the Americans in the war on terror. In the immediate aftermath of the 9/11 attacks, fearful that another attack was imminent, Vice President Dick Cheney said, "we have to work... the dark side, if you will." Declared the CIA's then Counterterror chief Cofer Black: "After 9/11, the gloves came off." At one point, the Bush administration formally told the CIA it couldn't be prosecuted for any technique short of inflicting the kind of pain that accompanies "organ failure" or "death."

Torture lite has been a sparingly used but essential tool, says a senior Bush aide who spoke anonymously because of the classified nature of the subject. "We're talking about the most successful intelligence gained in the war on terror coming from these programs," he says. Details are hard to come by, but Sen. Kit Bond, a member of the Senate intelligence committee, told NEWSWEEK that "enhanced interrogation techniques" worked with at least one high-level Qaeda operative, 9/11 mastermind Khalid Shaikh Mohammed, to thwart a plot. Bond would not say which one, but among

foiled plots vaguely described by the White House and linked to "KSM" was a scheme to attack targets on the West Coast of the United States with hijacked airlines. The planning for such a "second wave" attack may have been in the early stages. A career CIA official involved with interrogation policy cautioned NEWSWEEK not to put too much credence in such claims. "Whatever briefing they got was probably not truthful," said the official, who did not wish to be identified discussing sensitive matters. "And there's no way of knowing whether what good information they got could not have been obtained by more traditional means." The White House suggests the intelligence obtained has less to do with people and plots and more to do with the structure of Al Qaeda. Because of "the program," as they somewhat spookily describe the CIA's "aggressive interrogation techniques," White House aides say that the United States has a much better idea how Al Qaeda operates around the world.

But at what cost? While many Americans probably don't wish to know too much about the "dark side" of intelligence gathering, the horrific images of tortured detainees in Iraq and Afghanistan have taken a terrible toll on America's standing in the world. "It's killing us. It's killing us," says Sen. John McCain of Arizona, whose NEWSWEEK essay on the subject follows this article. As a POW in Vietnam who had his arm broken and worse, McCain knows something about torture. His bill to ban "cruel, inhuman or degrading" interrogation techniques passed the Senate last month 90 to 9. But Cheney, with CIA Director Porter Goss in tow, has been lobbying against McCain. As written, the administration argues, the McCain legislation would tie the CIA's hands in the war on terror and potentially expose CIA operatives to prosecution at home and abroad.

Compromises are possible. "There's a common desire to work this out," says the senior Bush aide. Torture lite--and its bastard child, detainee abuse--are coming out of the shadows into the political arena. Cheney sometimes seems like a quieter version of Jack Nicholson in "A Few Good Men" ("You can't handle the truth!"), and last week President George W. Bush in effect attacked the administration's critics as unpatriotic. Yet there is a growing willingness in the courts and body politic to deal with the sometimes unpleasant questions of how to incarcerate and question suspected terrorists, and not just because John McCain is gearing up to run for president. In Britain last week, Parliament rebuffed Prime Minister Tony Blair's bill to hold terror suspects without charging them for 90 days, and the U.S. Supreme Court has signaled that it will rule on the constitutionality of so-called military commissions set up to try terrorists after 9/11.

The American public seems split. According to the latest NEWSWEEK Poll, 44 percent of the public thinks torture is often or sometimes justified as a way to obtain important information, while 51 percent say it is rarely or never justified. A clear majority--58 percent--would support torture to thwart a terrorist attack, but asked if they would still support torture if that made it more likely enemies would use it against Americans, 57 percent said no. Some 73 percent agree that America's image abroad has been hurt by the torture allegations.

Clearly, some sort of rules--some real limits beyond the risk of "organ failure"--are necessary. Otherwise, as McCain warns, America will sink to the level of its worst enemies. A reconstruction of the road to Abu Ghraib shows why: at each step, the Bush administration made understandable decisions to permit the use of harsh interrogation techniques against a few individuals. But the decisions were made in such an atmosphere of secrecy and confusion that the whole process spun out of control and produced atrocities that America may never live down.

The story of the first "High Value Target" captured by U.S. intelligence illustrates some of the dilemmas and pitfalls of interrogating terrorists. When Ibn Al-Shaykhal-Libi, who helped run Qaeda training camps, was picked up in Afghanistan in November 2001, the questioning of detainees was still the province of the FBI. For some years before 9/11, the bureau's "Bin Laden team" had typically handled suspects with a carrots-and-no-sticks approach: grant favors to suspects and their families (one terrorist's

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son even got a heart transplant), and they'll talk. But after 9/11, fighting Al Qaeda was deemed to be war, not law enforcement, and the usual rules went out the window. The CIA took al-Libi, strapped some duct tape over his mouth and put him on a plane to Egypt, where interrogations are a little rougher than down at FBI headquarters. At the airport, according to Jack Cloonan, a retired FBI officer who handled al-Libi, a CIA case officer went up to the suspected terrorist and said, "You're going to Cairo, you know. Before you get there I'm going to find your mother and I'm going to f--- her."

Sending a suspect off to languish (and possibly be abused) in the prison of a foreign country is called a "rendition." The CIA has done numerous renditions over the years, usually not for the purpose of seeing suspected terrorists subjected to torture, but just to get them off the street while the agency follows up leads from captured documents, laptop computers and the like. In the case of al-Libi, however, the Bush administration was only too glad to make use of the "take" from al-Libi's interrogation, helpfully provided by Egyptian intelligence. Under questioning by the Egyptian authorities (techniques unknown, but not hard to imagine), al-Libi confessed that Al Qaeda terrorists, beginning in December 2000, had gone to Iraq to learn about chemical and biological weapons. This was just the evidence the Bush administration needed to make the case for invading Iraq and getting rid of Saddam Hussein. In his famous, now discredited speech to the United Nations in February 2003, the then Secretary of State Colin Powell cited the intelligence extracted from al-Libi, referring to him not by name but as a "senior Al Qaeda terrorist" who ran a training camp in Afghanistan.

There was only one problem with al-Libi's story: after the Powell presentation, he recanted it. Overlooking timely doubts raised by some U.S. intelligence officials, particularly at the Defense Intelligence Agency, the ideologues in the Bush administration had used information obtained by torture to mislead the world.

Better, then, for the CIA to interrogate terror suspects on its terms. In April 2002, Abu Zubaydah, a top Qaeda lieutenant, was captured in Pakistan. At first he talked, but then he clammed up. Frustrated, the CIA went to its political masters in the Bush administration to ask: how far could the agency go in interrogating a crucial but reluctant suspect like Zubaydah?

In July 2002, the president's counsel, Alberto Gonzales, convened his colleagues in his cozy, wood-paneled office in the White House. Present were top Justice Department and Defense Department lawyers. Significantly missing were lawyers from the State Department and uniformed military, whose views on interrogation were known to be a good deal more cautious. (The military worries what will happen to captured American POWs in return.) According to a participant at the meeting who declined to be identified discussing private deliberations, Gonzales emphasized that it would be wrong to go over the line, but that America was at war, and it was necessary to "lean forward." (Gonzales has declined to comment.)

One by one, the lawyers went through five or six pressure techniques proposed by the CIA. They approved "waterboarding," dripping water onto a wet cloth over the suspect's face, which feels like drowning. But they nixed mock burials as too harsh.

yes. It has never been clearly established if their methods worked to sweat useful information out of Zubaydah. But a precedent had been established, and interrogators creatively made the most of it. Toward the end of 2002, there was a spike in intelligence suggesting that Al Qaeda was preparing another major attack. The CIA had in custody Mohammad al-Qatani, the so-called 20th hijacker who had been refused entry to the United States before 9/11. But al-Qatani, trained in resistance (one method is to memorize and recite the Qur'an over and over), was not responding to the usual interrogation techniques.

So his handlers at Guantanamo Bay obtained permission from Secretary of Defense Donald Rumsfeld to try new techniques. According to a Southern Command report that came out earlier this year, al-Qatani was forced to perform dog tricks on a leash, was straddled by a female interrogator, told that his mother and sister were whores, forced to wear a woman's bra and thong on his head during interrogation, forced to dance with a male interrogator and subjected to an unmuzzled dog to scare him. At congressional hearings last July, Southern Command's Gen. Bantz Craddock testified that as a result of the use of some of these techniques, the formerly defiant al-Qatani had "provided insights" into Al Qaeda's planning for 9/11.

The harsh techniques used at Gitmo produced a backlash. The FBI and lawyers for the uniformed military services protested. A behind-the-scenes bureaucratic struggle broke out in Washington and raged and spluttered into the summer of 2003 and beyond, producing a welter of conflicting and confusing rules. The Geneva Conventions, international law requiring humane treatment, applied to some, but maybe not all prisoners--or did they? The answer seemed to depend on--what? No one seemed to know for sure. The international Convention Against Torture, ratified by the United States in 1994, bans the "cruel, inhuman and degrading" treatment of all prisoners. But Justice Department lawyers had obligingly declared that the president could ignore such constraints.

At the same time, the war in Iraq was starting to go badly. American soldiers were being killed by bombs planted by insurgents, and the Army seemed powerless to stop it. In Washington, a furious Rumsfeld was pounding the table for more and better intelligence. Where was Saddam? Where was the WMD? Why couldn't U.S. troops catch the insurgents before they could set off crude roadside bombs?

Here, in retrospect, is where the real trouble began. In the summer of 2003, Rumsfeld sent a get-tough commander from Guantanamo--Lt. Gen. Geoffrey Miller--to "Gitmoize" the interrogation techniques in Iraq. So began an era of "strategic interrogation." Ordinary military policemen were told by intelligence officials to do things like "loosen this guy up for us" and "make sure this guy has a bad night" and "give him the treatment," according to Sgt. Javal Davis, one of the defendants in the Abu Ghraib scandal. Techniques used to ratchet up the pressure on High Value Targets by professional interrogators were being bastardized by poorly supervised, untrained Army MPs like the unfortunate Pvt. Lynndie England, the cavorting guard at Abu Ghraib. The Internet slide shows are still playing across the Muslim world.

There were honorable soldiers in Iraq and Afghanistan who wanted to do the right thing--but couldn't figure out what it was. Even though the administration said the Iraq war was covered by the Geneva Conventions, it never stated clearly how the insurgents should be treated. Capt. Ian Fishback, a West Point graduate deployed with a rifle company in Iraq, has written a heartbreaking chronology of his fruitless efforts to get any kind of clear answer from his superiors or the Pentagon about whether Geneva rules applied to Iraq. The "command climate" cast the insurgency as part of the larger war on terror, suggesting they did not apply, he says. He kept running into men in civilian clothes who, he assumed, were "OGA"--Other Government Agency, the standard military euphemism for the CIA. Hearing "loud noises" coming from the cells where the OGA men were detaining prisoners, Fishback worried about abuse, but assumed such treatment was official policy. "If I had thought that the United States was adhering to the Geneva Conventions I would have immediately investigated," he said, "but I did not." A Pentagon spokesman said Fishback's allegations are being "taken very seriously."

It was Fishback's story that got McCain's attention. On McCain's travels around the world, he heard constant complaints about Abu Ghraib and prisoner abuse. He resolved to do something because "America's position in the world is at an all-time low," he says. McCain's bill outlawing "cruel, inhuman and degrading" treatment of any and all foreign prisoners held overseas would still give interrogators some leeway. The military would be bound by the Army Field Manual, which allows techniques such as "fear up harsh," including "a loud and threatening voice" and "throw[ing] objects across the room to

heighten the source's implanted feelings of fear." "Cruel, inhuman and degrading" treatment in prison cases in the United States has been defined by courts as conduct that "shocks the conscience." Such a standard would presumably allow for a sliding scale. For a very small percentage--those High Value Targets like Khalid Shaikh Mohammed--some pretty rough treatment might not "shock the conscience" if the payoff was averting a terrorist strike on an American city. But the sort of abuse that went on at Abu Ghraib--humiliating innocent detainees--would be way out of bounds.

McCain is inspired by the examples of other countries that have wrestled with the torture issue. The Israeli High Court formally outlawed torture in 1999 after at least 10 Palestinians died in custody. Still, in "ticking time bomb" cases when time is of the essence, Israeli interrogators can seek special permission to use force with a suspect--though they would be subject to prosecution if the suspect was not concealing urgent information.

Even McCain recognizes there could be rare instances when a president disobeys the law and orders a suspect tortured--say, if Al Qaeda had hidden a nuclear bomb in New York and a suspect involved in the plot had been captured. "You do what you have to do," McCain told NEWSWEEK. "But you take responsibility for it. Abraham Lincoln suspended habeas corpus in the Civil War, and FDR violated the Neutrality Acts before World War II."

Taking responsibility would be a new concept for the Bush administration. No high-ranking officer has been prosecuted in connection with the abuses, and no Pentagon official has even been publicly reprimanded. There are a number of senior officials openly pushing for some clear legal standard on detainee interrogations. Lately, Secretary of State Condoleezza Rice has been warning Bush that America's low image in the world requires positive steps to take a stand against prisoner abuse. She is backed by national-security adviser Stephen Hadley and Deputy Secretary of Defense Gordon England. But Rumsfeld's position is unclear (often the case with the blunt but slippery Defense secretary), and Cheney remains adamantly opposed to any check on executive power. His new chief of staff (replacing the recently indicted I. Lewis Libby), the hawkish David Addington, has strongly attacked a draft directive from DoD's England that would require detainees to be treated in accordance with language drawn from Article Three of the Geneva Conventions, which prohibit torture and cruel--"humiliating and degrading"--treatment. "Addington is not happy about the draft," says a Pentagon official who requested anonymity because the discussions are still confidential. He added sarcastically that Addington "would like us to be able to pull fingernails with pliers." Lea Anne McBride, a spokeswoman for the vice president's office, said she had no comment on the debate except "the administration does not authorize or condone torture or cruel, humiliating and degrading treatment."

Bush has floated above the fray, blithely declaring that the "United States doesn't do torture," without getting entangled in debates over torture lite. A White House official who did not wish to be identified because of the sensitivity of the matter claims that Bush has personally reached out to McCain to seek a compromise. McCain told NEWSWEEK that he had briefly spoken with the president by phone.

And what of the interrogators themselves? Top agency officials under Goss are supporting their director, but farther down the chain of command, there is uneasiness, if not downright resistance. As The Washington Post, NEWSWEEK and others have reported, the CIA has at least a score of detainees tucked away in secret places it doesn't know how to dispose of without legal procedures. "Where's the off button?" says one retired CIA official who prefers to stay undercover. In the hands of President Bush--if he is willing to openly face some tough choices.

**GRAPHIC:** At Abu Ghraib, once the site of systemic prisoner abuse, a detainee sits in a 'restraint chair,' a generally accepted form of discipline  
Cheney and McCain, here in prayer at a banquet, are at odds on the torture bill; an Iraqi detainee at Abu

Ghraib is with a trained dog (below)

A detainee standing in a solitary-confinement cage at Abu Ghraib Prison

(text/lists) **HOW TERROR LED AMERICA TOWARD TORTURE:** In September 2002, former CIA Counterterrorism chief Cofer Black testified before Congress that 'there was a before 9/11, and there was an after 9/11. After 9/11 the gloves came off.' Nowhere did the Bush administration make that distinction more sharply than on the topic of torture. Now, with questions about **secret prisons** in the air and major torture legislation looking, a look back at that long road that led from the attacks on America to the abuses at Abu Ghraib (graphic omitted)

(text/lists) **TRACKING DOWN THE GHOST DETAINEES:** The U.S. government has not acknowledged the existence of any 'ghost' detainees, but John Sifton of Human Rights Watch has compiled a list of captured individuals who are not on the rolls at Guantanamo or any other known prison. The group believes these 26 have been stashed at 'black sites.' (graphic omitted)

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**HEADLINE:** Covert CIA Program Withstands New Furor;  
Anti-Terror Effort Continues to Grow

**BYLINE:** Dana Priest, Washington Post Staff Writer

**BODY:**

The effort President Bush authorized shortly after Sept. 11, 2001, to fight al Qaeda has grown into the largest CIA covert action program since the height of the Cold War, expanding in size and ambition despite a growing outcry at home and abroad over its clandestine tactics, according to former and current intelligence officials and congressional and administration sources.

The broad-based effort, known within the agency by the initials GST, is compartmentalized into dozens of highly classified individual programs, details of which are known mainly to those directly involved.

GST includes programs allowing the CIA to capture al Qaeda suspects with help from foreign intelligence services, to maintain secret prisons abroad, to use interrogation techniques that some lawyers say violate international treaties, and to maintain a fleet of aircraft to move detainees around the globe. Other compartments within GST give the CIA enhanced ability to mine international financial records and eavesdrop on suspects anywhere in the world.

Over the past two years, as aspects of this umbrella effort have burst into public view, the revelations have prompted protests and official investigations in countries that work with the United States, as well as condemnation by international human rights activists and criticism by members of Congress.

Still, virtually all the programs continue to operate largely as they were set up, according to current and former officials. These sources say Bush's personal commitment to maintaining the GST program and his belief in its legality have been key to resisting any pressure to change course.

"In the past, presidents set up buffers to distance themselves from covert action," said A. John Radsan, assistant general counsel at the CIA from 2002 to 2004. "But this president, who is breaking down the boundaries between covert action and conventional war, seems to relish the secret findings and the dirty

details of operations."

The administration's decisions to rely on a small circle of lawyers for legal interpretations that justify the CIA's covert programs and not to consult widely with Congress on them have also helped insulate the efforts from the growing furor, said several sources who have been involved.

Bush has never publicly confirmed the existence of a covert program, but he was recently forced to defend the approach in general terms, citing his wartime responsibilities to protect the nation. In November, responding to questions about the CIA's clandestine prisons, he said the nation must defend against an enemy that "lurks and plots and plans and wants to hurt America again."

This month he went into more detail, defending the National Security Agency's warrantless eavesdropping within the United States. That program is separate from the GST program, but three lawyers involved said the legal rationale for the NSA program is essentially the same one used to support GST, which is an abbreviation of a classified code name for the umbrella covert action program.

The administration contends it is still acting in self-defense after the Sept. 11 attacks, that the battlefield is worldwide, and that everything it has approved is consistent with the demands made by Congress on Sept. 14, 2001, when it passed a resolution authorizing "all necessary and appropriate force against those nations, organizations, or persons [the president] determines planned, authorized, committed, or aided the terrorist attacks."

"Everything is done in the name of self-defense, so they can do anything because nothing is forbidden in the war powers act," said one official who was briefed on the CIA's original cover program and who is skeptical of its legal underpinnings. "It's an amazing legal justification that allows them to do anything," said the official, who like others spoke on the condition of anonymity because of the sensitivity of the issues.

The interpretation undergirds the administration's determination not to waver under public protests or the threat of legislative action. For example, after The Washington Post disclosed the existence of **secret prisons** in several Eastern European democracies, the CIA closed them down because of an uproar in Europe. But the detainees were moved elsewhere to similar CIA prisons, referred to as "black sites" in classified documents.

The CIA has stuck with its overall approaches, defending and in some cases refining them. The agency is working to establish procedures in the event a prisoner dies in custody. One proposal circulating among mid-level officers calls for rushing in a CIA pathologist to perform an autopsy and then quickly burning the body, according to two sources.

In June, the CIA temporarily suspended its interrogation program after a controversy over the disclosure of an Aug. 1, 2002, memorandum from the Justice Department's Office of Legal Counsel that defined torture in an unconventional way. The White House withdrew and replaced the memo. But the hold on the CIA's interrogation activities was eventually removed, several intelligence officials said.

The authorized techniques include "waterboarding" and "water dousing," both meant to make prisoners think they are drowning; hard slapping; isolation; sleep deprivation; liquid diets; and stress positions -- often used, intelligence officials say, in combination to enhance the effect.

Behind the scenes, CIA Director Porter J. Goss -- until last year the Republican chairman of the House intelligence committee -- has gathered ammunition to defend the program.

After a CIA inspector general's report in the spring of 2004 stated that some authorized interrogation techniques violated international law, Goss asked two national security experts to study the program's effectiveness.

Gardner Peckham, an adviser to then-House Speaker Newt Gingrich (R-Ga.), concluded that the interrogation techniques had been effective, said an intelligence official familiar with the result. John J. Hamre, deputy defense secretary under President Bill Clinton, offered a more ambiguous conclusion. Both declined to comment.

The only apparent roadblock that could yet prompt significant change in the CIA's approach is a law passed this month prohibiting torture and cruel and inhumane treatment of prisoners in U.S. custody, including in CIA hands.

It is still unclear how the law, sponsored by Sen. John McCain (R-Ariz.), will be implemented. But two intelligence experts said the CIA will be required to draw up clear guidelines and to get all special interrogation techniques approved by a wider range of government lawyers who hold a more conventional interpretation of international treaty obligations.

"The executive branch will not pull back unless it has to," said a former Justice Department lawyer involved in the initial discussions on executive power. "Because if it pulls back unilaterally and another attack occurs, it will get blamed."

The top-secret presidential finding Bush signed six days after the Sept. 11 attacks empowered the intelligence agencies in a way not seen since World War II, and it ordered them to create what would become the GST program.

Written findings are required by the National Security Act of 1947 before the CIA can undertake a covert action. A covert action may not violate the Constitution or any U.S. law. But such actions can, and often do, violate laws of the foreign countries in which they take place, said intelligence experts.

The CIA faced the day after the 2001 attacks with few al Qaeda informants, a tiny paramilitary division and no interrogators, much less a system for transporting terrorism suspects and keeping them hidden for interrogation.

Besides fighting the war in Afghanistan, the agency set about to put in place an intelligence-gathering network that relies heavily on foreign security services and their deeper knowledge of local terrorist groups. With billions of dollars appropriated each year by Congress, the CIA has established joint counterterrorism intelligence centers in more than two dozen countries, and it has enlisted at least eight countries, including several in Eastern Europe, to allow secret prisons on their soil.

Working behind the scenes, the CIA has gained approval from foreign governments to whisk terrorism suspects off the streets or out of police custody into a clandestine prison system that includes the CIA's black sites and facilities run by intelligence agencies in other countries.

The presidential finding also permitted the CIA to create paramilitary teams to hunt and kill designated individuals anywhere in the world, according to a dozen current and former intelligence officials and congressional and executive branch sources.

In four years, the GST has become larger than the CIA's covert action programs in Afghanistan and Central America in the 1980s, according to current and former intelligence officials. Indeed, the CIA,

working with foreign counterparts, has been responsible for virtually all of the success the United States has had in capturing or killing al Qaeda leaders since Sept. 11, 2001.

Bush delegated much of the day-to-day decision-making and the creation of individual components to then-CIA Director George J. Tenet, according to congressional and intelligence officials who were briefed on the finding at the time.

"George could decide, even on killings," one of these officials said, referring to Tenet. "That was pushed down to him. George had the authority on who was going to get it."

Tenet, according to half a dozen former intelligence officials, delegated most of the decision making on lethal action to the CIA's Counterterrorist Center. Killing an al Qaeda leader with a Hellfire missile fired from a remote-controlled drone might have been considered assassination in a prior era and therefore banned by law.

But after Sept. 11, four former government lawyers said, it was classified as an act of self-defense and therefore was not an assassination. "If it was an al Qaeda person, it wouldn't be an assassination," said one lawyer involved.

This month, Pakistani intelligence sources said, Hamza Rabia, a top operational planner for al Qaeda, was killed along with four others by a missile fired by U.S. operatives using an unmanned Predator drone, although there were conflicting reports on whether a missile was used. In May, another al Qaeda member, Haitham Yemeni, was reported killed by a Predator drone missile in northwest Pakistan.

Refining what constitutes an assassination was just one of many legal interpretations made by Bush administration lawyers. Time and again, the administration asked government lawyers to draw up new rules and reinterpret old ones to approve activities once banned or discouraged under the congressional reforms beginning in the 1970s, according to these officials and seven lawyers who once worked on these matters.

Gen. Michael V. Hayden, deputy director of national intelligence, has described the administration's philosophy in public and private meetings, including a session with human rights groups.

"We're going to live on the edge," Hayden told the groups, according to notes taken by Human Rights Watch and confirmed by Hayden's office. "My spikes will have chalk on them. . . . We're pretty aggressive within the law. As a professional, I'm troubled if I'm not using the full authority allowed by law."

Not stopping another attack not only will be a professional failure, he argued, but also "will move the line" again on acceptable legal limits to counterterrorism.

When the CIA wanted new rules for interrogating important terrorism suspects the White House gave the task to a small group of lawyers within the Justice Department's Office of Legal Counsel who believed in an aggressive interpretation of presidential power.

The White House tightened the circle of participants involved in these most sensitive new areas. It initially cut out the State Department's general counsel, most of the judge advocates general of the military services and the Justice Department's criminal division, which traditionally dealt with international terrorism.

"The Bush administration did not seek a broad debate on whether commander-in-chief powers can

trump international conventions and domestic statutes in our struggle against terrorism," said Radsan, the former CIA lawyer, who is a professor at William Mitchell College of Law in St. Paul, Minn. "They could have separated the big question from classified details to operations and had an open debate. Instead, an inner circle of lawyers and advisers worked around the dissenters in the administration and one-upped each other with extreme arguments."

At the CIA, the White House allowed the general counsel's job, traditionally filled from outside the CIA by someone who functioned in a sort of oversight role, to be held by John Rizzo, a career CIA lawyer with a fondness for flashy suits and ties who worked for years in the Directorate of Operations, or D.O.

"John Rizzo is a classic D.O. lawyer. He understands the culture, the intelligence business," Radsan said. "He admires the case officers. And they trust him to work out tough issues in the gray with them. He is like a corporate lawyer who knows how to make the deal happen."

These lawyers have written legal justifications for holding suspects picked up outside Afghanistan without a court order, without granting traditional legal rights and without giving them access to the International Committee of the Red Cross.

CIA and Office of Legal Counsel lawyers also determined that it was legal for suspects to be secretly detained in one country and transferred to another for the purposes of interrogation and detention -- a process known as "rendition."

Lawyers involved in the decision making acknowledge the uncharted nature of their work. "I did what I thought the best reading of the law was," one lawyer said. "These lines are not obvious. It was a judgment."

One way the White House limited debate over its program was to virtually shut out Congress during the early years. Congress, for its part, raised only weak and sporadic protests. The administration sometimes refused to give the committees charged with overseeing intelligence agencies the details they requested. It also cut the number of members of Congress routinely briefed on these matters, usually to four members -- the chairmen and ranking Democratic members of the House and Senate intelligence panels.

John D. Rockefeller IV (W.Va.), ranking Democrat on the Senate Select Committee on Intelligence, complained in a 2003 letter to Vice President Cheney that his briefing on the NSA eavesdropping was unsatisfactory. "Given the security restrictions associated with this information, and my inability to consult staff or counsel on my own, I feel unable to fully evaluate, much less endorse, these activities," he wrote.

Rockefeller made similar complaints about the CIA's refusal to allow the full committee to see the backup material supporting a skeptical report by the CIA inspector general in 2004 on detentions and interrogations that questioned the legal basis for renditions.

Some former CIA officers now worry that the agency alone will be held responsible for actions authorized by Bush and approved by the White House's lawyers.

Attacking the CIA is common when covert programs are exposed and controversial, said Gerald Haines, a former CIA historian who is a scholar in residence at the University of Virginia. "It seems to me the agency is taking the brunt of all the recent criticism."

Duane R. "Dewey" Clarridge, who directed the CIA's covert efforts to support the Nicaraguan contras in

the 1980s, said the nature of CIA work overseas is, and should be, risky and sometimes ugly. "You have a spy agency because the spy agency is going to break laws overseas. If you don't want it to do those dastardly things, don't have it. You can have the State Department."

But a former CIA officer said the agency "lost its way" after Sept. 11, rarely refusing or questioning an administration request. The unorthodox measures "have got to be flushed out of the system," the former officer said. "That's how it works in this country."

Researcher Julie Tate contributed to this report.

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