

# Torture As Official US Policy

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Post-9/11, torture has been official US policy under George Bush – authorized at the highest levels of government. Evidence of its systematic practice continues to surface. First some background.

On September 17, 2001, George Bush signed a secret finding empowering CIA to “Capture, Kill, or Interrogate Al-Queda Leaders.” It also authorized establishing a secret global network of facilities to detain and interrogate them without guidelines on proper treatment. Around the same time, Bush approved a secret “high-value target list” of about two dozen names. He also gave CIA free reign to capture, kill and interrogate terrorists not on the list. It was the beginning of events that followed.

On November 13, 2001, the White House issued a Military Order regarding the “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.” It “determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest and that issuance of this order is necessary to meet the emergency.”

It defined targeted individuals as Al Queda and others for aiding or abetting acts of international terrorism or harboring them. These individuals shall be denied access to US or other courts and instead tried by “military commission” with the power to convict by “concurrence of two-thirds of the members.”

On December 28, 2001, Deputy Assistant Attorney Generals, Patrick Philbin and John Yoo, sent a Memorandum to General Counsel, Department of Defense, William Haynes II titled: “Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba.” It said federal courts have no jurisdiction and cannot review Guantanamo detainee mistreatment or mistaken arrest cases. It further stated that international laws don’t apply in the “war on terror.” This laid the groundwork for abuses in all US torture prisons.

On January 18, 2002, Bush issued a “finding” stating that prisoners suspected of being Al Queda or Taliban members are “enemy combatants” and unprotected by the Third Geneva Convention. They were to be denied all rights and treated “to the extent....consistent with military necessity.” Torture was thus authorized. The 2006 Military Commissions Act (aka the “torture authorization act”) later created the Geneva-superseded category of “unlawful enemy combatant” to deny them any chance for judicial fairness.

International law expert Francis Boyle spoke out about this lawless designation: “this quasi-category (created a) universe of legal nihilism where human beings (including US citizens) can be disappeared, detained incommunicado, denied access to attorneys and regular courts, tried by kangaroo courts, executed, tortured, assassinated and subjected to

numerous other manifestations of State Terrorism” on the pretext of as protecting national security.

The January 18 memo was preceded by a January 9 one to William Haynes II – co-authored by John Yoo, and Special Council Robert Delahunty. It read in part:

Regarding “international treaties and federal laws on the treatment of individuals detained by the US Armed Forces (in) Afghanistan....the laws of armed conflict (don’t) apply to the conditions of detention and the procedures for trial of members of al Queda and the Taliban militia.” These treaties “do not protect members of the al Queda organization (or) the Taliban militia.”

On January 19, 2002 Donald Rumsfeld sent a memo to the Joint Chiefs titled: “Status of Taliban and al Queda.” It stated that these detainees “are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949.” It gave commanders enormous latitude to treat prisoners “to the extent appropriate with military necessity” or essentially as they saw fit.

On January 22, 2002, Assistant Attorney General for the Office of Legal Counsel, Jay Bybee (now a federal judge), issued a Memorandum to Counsel to the President, Alberto Gonzales and William Haynes II. It was titled: “Application of Treaties and Laws to al Queda and Taliban Detainees.” It covered the same ground as the Yoo/Delahunty memo plus added misinterpretations of international law with regard to war.

On January 25, 2002, Alberto Gonzales, then issued a sweeping memo to George Bush. In it he called the Geneva Conventions “quaint” and “obsolete” and said the administration could ignore Geneva law in interrogating prisoners henceforth. He also outlined plans to try prisoners in “military commissions” and deny them all protections under international law, including due process, habeas rights, and the right to appeal. In December 2002, Donald Rumsfeld concurred by approving a menu of banned interrogation practices allowing anything short of what would cause organ failure.

On February 7, 2002, the White House issued an Order “outlining treatment of al-Qaida and Taliban detainees.” It stated that “none of the provisions of Geneva apply to our conflict with al-Qaida (or Taliban detainees) in Afghanistan ‘or elsewhere throughout the world...’ ” It meant they’d be afforded no protection under international law and could be treated any way authorities wished, including use of torture as was later learned.

A virtual blizzard of similar memos followed covering much the same ground to allow all measures banned under international and US law (including the 1996 War Crimes Act, 1994 Torture Statute and the Torture Act of 2000). The War Crimes Act is especially harsh. It provides up to life in prison or the death penalty for persons convicted of committing war crimes within or outside the US. Torture is a high war crime, the highest after genocide.

Two other memos particularly deserve mention – written by John Yoo, Alberto Gonzales, Jay Bybee and David Addington (Cheney’s legal counsel). One was for the CIA on August 2, 2002. It argued for letting interrogators use harsh measures amounting to torture. It said federal laws prohibiting these practices don’t apply when dealing with Al Queda because of presidential authorization during wartime. It also denied US or international law applies in overseas interrogations. It essentially “legalized” anything in the “war on terror” and authorized lawlessness and supreme presidential power.

On March 14, 2003, the same quartet issued another memo – this one for the military titled: “Military Interrogation of Alien Unlawful Combatants Held Outside the United States.” It became known as “the Torture Memo” because it swept away all legal restraints and authorized military interrogators to use extreme measures amounting to torture. It also gave the President as Commander-in-Chief “the fullest range of power....to protect the nation.” It stated he “enjoys complete discretion in the exercise of his authority in conducting operations against hostile forces.”

Military law expert and Yale University lecturer, Eugene Fidell, called it “a monument to executive supremacy and the imperial presidency....(and) a road map for the Pentagon (to avoid) any prosecutions.” It denied due process is applicable and virtually all other constitutional protections. It argued against any prohibition banning “cruel and unusual treatment.” It was a document that would make any despot proud. So much so that in late 2004, Office of Legal Counsel head, Jack Goldsmith, rescinded the Memorandum saying it showed an “unusual lack of care and sobriety in (its) legal analysis (and it) seemed more an exercise of sheer power than reasoned analysis.”

Nonetheless, other administration documents authorized continued use of practices generally reflecting John Yoo’s views. They may inflict “intense pain or suffering” short of what would cause “serious physical injury so severe that death, organ failure, (loss of significant body functions), or permanent damage” may result.

The President’s July 20, 2006 Executive Order (EO) was one such document, titled: “Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency.” It pertained to “a member or part of or supporting al Qaeda, the Taliban, or associated organizations (who might have) information that could assist in detecting, mitigating, or preventing terrorist attacks....within the United States or against its Armed Forces or other personnel, citizens, or facilities, or against allies or other countries cooperating in the war on terror....”

It authorized the Director of CIA to determine interrogation practices. Based on what’s now known, they include sleep deprivation, waterboarding or simulated drowning, stress positions (including painfully extreme ones), prolonged isolation, sensory deprivation and/or overload, beatings (at times severe and life-threatening), electric shocks, induced hypothermia, and other measures that can cause irreversible physical and psychological harm, including psychoses.

#### International Committee of the Red Cross (ICRC) on Bush Administration Use of Torture

In a secret 2007 report, the ICRC concluded that CIA interrogators tortured high-level Al Qaeda prisoners. Abu Zubaydah was one, a reputed close associate of Osama bin Laden and Guantanamo detainee. He was confined in a box “so small (that) he had to double up his limbs in the fetal position” and stay that way. He and others were also “slammed against the walls,” waterboarded to simulate drowning, and given other harsh and abusive treatment.

The report also said Khalid Shaikh Mohammed, the supposed chief 9/11 planner, was kept naked for over a month – “alternately in suffocating heat and in a painfully cold room.” Most excruciating was a practice of shackling prisoners to the ceiling and forcing them to stand for as long as eight hours. Other techniques included prolonged sleep deprivation, “bright lights and eardrum-shattering sounds 24 hours a day.”

ICRC's Bernard Barrett declined to comment but confirmed that Red Cross personnel regularly visit Guantanamo detainees, including high-level ones. They also "have an ongoing confidential dialogue with members of the US intelligence community, and we would share any observations or recommendations with them."

In her new book just out, "The Dark Side," Jane Mayer went further using sources familiar with ICRC's report. She wrote it "warned that the abuse (at torture prisons) constituted war crimes, placing the highest officials in the US government in jeopardy of being prosecuted." She also explained that Red Cross investigators based their report largely on prisoner interviews. However, CIA officers she spoke to confirmed what ICRC disclosed. More on Mayer's book below.

Presidential July 20, 2007 Executive Order (EO) 13440: Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency

The EO is noteworthy for what it doesn't say, not what it does. Its language is reassuring but avoids stopping short of the administration's official policy of torture. Or real compliance with Geneva's Common Article 3 that states in part:

(1) Noncombatants, including "members of armed forces who laid down their arms....shall in all circumstances be treated humanely...."

..."the following acts are prohibited at any time and in any place....:

- violence to life and person (including) murder, mutilation, cruel treatment and torture;
- taking of hostages;
- ....humiliating and degrading treatment;"
- sentencing or executing detainees "without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees....recognized as indispensable by civilized peoples;" and
- assuring wounded and sick are cared for.

Various human rights organizations weighed in on the EO. Washington Director of Human Rights First, Elisa Massimino, said: The Order "fails to make clear whether (CIA authorized) interrogation techniques are still permitted." If CIA interprets the Order "as authorization to (continue using) techniques such as waterboarding, stress positions, hypothermia, sensory deprivation (and overload), sleep deprivation and isolation, it sends a powerful - and dangerous - message" that these and other banned practices are permissible. Bush's EO avoided clarity and left considerable leeway for abuse.

New Yorker Writer Jane Mayer's New Book: "The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals"

Mayer's book reflects what the ICRC reported and is now common knowledge except for more grim details and personal accounts. Prior to its release, the publisher's promotion commented:

“The Dark Side is a dramatic, riveting, and definitive narrative account of how the United States made terrible decisions in the pursuit of terrorists around the world – decisions that not only violated the Constitution to which White House officials took an oath to uphold, but also hampered the pursuit of Al Queda. In gripping detail...Jane Mayer relates the impact of these decisions – US-held prisoners, some of them completely innocent, were subjected to treatment more reminiscent of the Spanish Inquisition than the twenty-first century.”

“The Dark Side” recounts the fallout from the above administration documents and more. It reveals high-level contempt for the law to advance an imperial project. The story is gripping and comprehensive. It’s about an American gulag throughout the world where mostly innocent detainees are held secretly outside the law and subjected to ritual abuse, humiliation and excruciating torture – day after day repeatedly. Some don’t survive. All who do remain scarred for life.

Mayer states that decisions were taken at the highest levels – to make “torture the official law of the land in all but name,” and it’s no longer secret. Her evidence is compelling and comes from military officers, intelligence professionals and other conservative Bush appointees – “hard-line law-and-order stalwarts in the criminal justice system” who came forward nonetheless, and apparently for good reason.

Unlike past lawless periods, this time is different given the menu of what occurred post-9/11: an array of

- illegal aggressive wars and the possibility of others;
- police state laws enacted;
- extremist Executive Orders;
- similar National and Homeland Security Presidential Directives; military orders and signing statements;
- “unitary executive” authority assumption granting unlimited presidential powers;
- lawless and pervasive spying on Americans;
- turning elections into shams;
- gutting the Constitution, article by article, including the Bill of Rights;
- ending any sense of checks and balances;
- ignoring international laws and norms;
- establishing an official policy of secrecy;
- silencing dissent and free speech;
- conducting massive sweeps against Muslims, Latino immigrants and other designated targets;
- convicting innocent people (mostly Muslim men) in US courts and holding them as

political prisoners;

— constructing US-based concentration camps for declared enemies of the state to be used if martial law is declared;

— using NORTHCOM, DHS, CIA, FBI, NSA and private paramilitary security forces to militarize the continent; and

— ending the rule of law, crushing any sense of democracy, and heading the country for tyranny.

Instituting the above fell to a small group of lawyers known as the “War Council.” Also other select high-level officials reporting to Dick Cheney and George Bush as head co-conspirators. They seized on 9/11 to establish what David Addington called a “new paradigm” authorizing vast new executive powers in the “war on terror.” They believe the US legal system is “a burden” to be countered by “error-prone legal decisions whose preordained conclusions were dictated by Addington” as Dick Cheney’s legal counsel following Lewis Libby’s resignation.

Their view is hard-line and simple. On matters of national security (meaning anything), presidential authority isn’t “limited by any laws.” It’s empowered “to override existing laws that Congress had specifically designated to curb him” and thus render checks and balances and the Constitution null and void.

For these men, everything changed post-9/11. The gloves came off. Conventional law enforcement methods were inappropriate, and only global conflict without end can keep us safe. It sounds bizarre and like the ravings of madmen, and maybe to a degree they are. But very smart and cunning ones who’ve led us to the current brink.

In 2001, Max Waxman served as special assistant to then national security adviser Condoleezza Rice. He told Mayer that the decision to go to war (post-9/11) was made with “little or no detailed deliberation about long-term consequences” because none were thought necessary. But it set us on “a course not only for our international response, but also in our domestic constitutional relations.”

It also worked for the executive as a wartime commander-in-chief with considerable help from Congress, the courts, and the media. It left him free from accountability after what Mayer calls “the worst intelligence failure in the nation’s history.” Others see it differently – in “deep state” terms as Peter Dale Scott defines it. He refers to facts in every society and culture “which tend to be suppressed because of the social and psychological costs of not doing so.” In other words, covert criminal policies, unaccountable, lawless and self-serving that hide disturbing truths like both Kennedy and King assassinations, the Korean and Vietnam wars, and the more recent 9/11 event.

The War Council wasn’t concerned if extremist policies were banned. Only security matters and supreme presidential power. A discussion of policy was missing, according to Mayer, “not just (about) what was legal, but what was moral, ethical, right, and smart to do.” These were peripheral matters because “fundamentally, the drive for expanded presidential authority was about (unlimited) power” outside of the law.

Prior to her book’s release, she wrote articles for The New Yorker on torture, and her book is largely based on them. One on November 14, 2005 was titled “A Deadly Interrogation – Can

the CIA legally kill a prisoner?" It was about CIA officer Mark Swanner who "performed interrogations and polygraph tests for the Agency...." In 2003, an Iraqi Abu Ghraib prisoner in his custody, Manadel al-Jamadi, died during an interrogation. His head was covered with a plastic bag. It inhibited his breathing, and according to forensic pathologists, he suffocated. Subsequently US authorities "classified Jamadi's death as a 'homocide.' " Yet Swanner wasn't charged and continued to work for the Agency.

Post-9/11, the DOJ "fashioned secret legal guidelines that appear to indemnify CIA officials who perform aggressive, even violent interrogations outside the United States" - to win the "war on terror." In 2001, Dick Cheney condoned it in a Meet the Press interview saying: We may have to go to "the dark side" in handling terrorist suspects. "It's going to be vital....to use any means at our disposal."

Subsequently, administration officials sought to turn the CIA loose and protect its "classified interrogation protocol." The idea was to give the Agency "flexibility" to make "cruel, inhuman and degrading" treatment permissible. It means anything goes regardless of US and international laws and norms.

Another Mayer article appeared on August 13, 2007 titled: "The Black Sites - A rare look inside the CIA's secret interrogation program." In military terminology, such sites are locations where "black" projects are conducted. Post-9/11, they refer to secret CIA or military prisons outside the country with no oversight, accountability, detainee rights, and where torture and abuse are freely practiced.

Mayer discussed the case of Khalid Sheikh Mohammed, an Al Qaeda leader, supposed lead architect of the 9/11 attacks, and the CIA's claim that he confessed to killing Wall Street Journal reporter Daniel Pearl. No evidence supported it, and Mayer called his confession "perplexing." He had no lawyer, was detained at black sites for over two years, and in 2006 was sent to Guantanamo. No one witnessed his confession, and it was certain he was tortured. It was also at the time of the US Attorney scandal when critics called for Gonzales' resignation. Further, in 2002, a Pakistani named Ahmed Omar Saeed Sheikh had already been convicted of Pearl's abduction and murder, but that hardly mattered to US authorities.

They continued to interrogate Mohammed. It was part of a secret CIA program in which detainees were held in "black sites" outside the country - out of sight, out of mind, and subject to "unusually harsh treatment." In 2006, the program was supposedly suspended when George Bush said CIA detainees were being sent to Guantanamo. It followed the June 2006 Hamdan v. Rumsfeld Supreme Court ruling granting habeas rights to Guantanamo prisoners. It also acknowledged that Geneva's Common Article 3 was violated. The October 2006 Military Commissions Act followed. It overrode the High Court to allow "alternative interrogations methods" to continue.

Secrecy and unlimited presidential authority are the hallmarks of this administration so everything in the "war on terror" is classified and permissible. Even few congressional members know much, and those who do won't say, let alone act to uphold the law.

Mayer notes how since the 1949 Geneva Conventions, the ICRC "played a special role in safeguarding" prisoner rights. "For decades, governments allowed (their) officials (access to) detainees, to insure that (proper treatment was) being maintained." However, Red Cross personnel were denied permission to interview US prisoners for five years. When they finally saw Mohammed, a spokesman declined to comment because ICRC's work is confidential.

Nonetheless, information leaked out to confirm what's now known. CIA interrogation methods are "tantamount to torture, and (responsible) American officials...could have committed serious crimes." Other Geneva breaches also along with violations of US law. Mayer characterized ICRC's revelations as having "potentially devastating legal ramifications." She also mentions an unnamed CIA officer, supportive of current policy, but worried that "if the full story of the CIA program ever surfaced, Agency personnel could face criminal prosecution." Within CIA, he said, there's a "high level of anxiety about political retribution" regarding the interrogation program. Some CIA operatives even took out liability insurance to help defray potential legal bills. Others saw the operation as a "can of worms (that might) become an atrocious mess."

Based on Mayer's account, it's far more than that - a systematic scheme to rewrite laws and norms; to make any practice permissible; to break and destroy human beings through intense coercion and psychological stress - without letup; and to avoid all accountability. Regarding torture: "It's one of the most sophisticated, refined programs ever," one expert explained. "At every stage, there was a rigid attention to detail....It was almost automated. People were utterly dehumanized. (They) fell apart. It was the intentional and systematic infliction of great suffering masquerading as a legal process. It is just chilling."

Mohammed's case is typical and shows what he was put through when accounts of his ordeal leaked out. Initially he was told: "We're not going to kill you. But we're going to take you to the brink of your death and back." He was first taken to a secret Afghanistan prison near Kabul International Airport - distinctive for its absolute lack of light and known by detainees as the "Dark Prison." Another one north of Kabul was called the "Salt Pit." An infamous 2002 death occurred there when a detainee was stripped naked and left chained to the floor in freezing temperatures until he died.

Mohammed endured some of these abusive practices. He was taken to Afghanistan by a team of "black-masked commandos attached to the CIA's paramilitary Special Activities Division." According to a report titled "Secret Detentions and Illegal Transfers of Detainees," he and others were "taken to their cells by strong people (in) black outfits, masks that covered their whole faces and dark visors over their eyes." It was a carefully choreographed 20 minute routine during which detainees are "hog-tied, stripped naked, photographed, hooded, sedated with anal suppositories (amounting to sodomy), placed in diapers, and transported by plane to a secret location."

Stripping demonstrates the captors' omnipotence and debilitates detainees. Interrogators were advised to "tear clothing from (them) by firmly pulling downward against buttons and seams....pulling detainees off balance." Techniques also include the "Shoulder Slap, Stomach Slap, Hooding, Manhandling, Walling," and a variety of "Stress Positions."

Mohammed said he was placed in his own cell, kept naked for several days, and questioned by female interrogators for added humiliation. He was also attached to a dog leash and yanked to propel him into walls in his cell. In addition, he was suspended from the ceiling by his arms so that his toes barely touched the ground and he was unable to sleep. It caused intense pain and swelling to his legs. He may have also been beaten with electric cables, commonly used against other detainees. Some also got repeated electric shocks.

Mohammed further described being chained naked to a metal ring in his cell in a painful crouch - for prolonged periods in alternating intense heat and extreme cold when he was doused with ice water, a banned practice that can cause hypothermia. Other detainees were



bombarded with deafening sounds round the clock for weeks or even months. This and other practices went on endlessly, and its effect was shattering. Detainees “lost their minds.” You could “hear people knocking their heads against walls and doors, screaming their heads off.” Attempted suicides were common, and some succeeded.

Mohammed was later secretly taken to a “specially designated (Polish) prison for high-value detainees.” Up to a dozen others like him were there, but no first-hand accounts emerged of what happened. However, “well-informed sources” said it was far more high-tech than in Afghanistan – including hydraulic doors, video surveillance and more.

From what’s known from others who were there, Mohammed was kept in a prolonged state of sensory deprivation, perhaps as long as four months. He was also waterboarded multiple times. There was no exposure to natural light, and the only human contact was with silent masked guards. The ICRC report seemed to confirm that he was kept shackled and naked, except for a pair of goggles and earmuffs. Meals came sporadically to keep prisoners disoriented. It was largely tasteless and barely enough to sustain him.

Under this type treatment, virtually everyone breaks down, and Mohammed was no exception. He ended up confessing to so many crimes, he was barely credible. In addition to the Pearl murder, he said he planned to assassinate Presidents Clinton and Carter, Pope John Paul II and a great deal more, including plots to blow up New York suspension bridges and the Panama Canal – anything to end the pain. Later on, like many other detainees, he said he lied “to please his captors.”

As for taking blame for Daniel Pearl’s killing, one of Pearl’s friends said: “I’m not interested in unfair justice, even for bad people. Danny was such a person of conscience. I don’t think he would have wanted all of this dirty business. I don’t think he would have wanted someone being tortured. He would have been repulsed.” So are all people of conscience at a grim time in our history.

Mayer recounts Mohammed’s ordeal as well as Abu Zubaydah’s and others in her book. She also notes that Dick Cheney “saw to it that some of the sharpest and best-trained lawyers in the country, working in secret in the White House and US Department of Justice, came up with legal justifications for a vast expansion of the government’s power in waging war on terror. As part of the process, for the first time in history, the United States sanctioned government officials to physically and psychologically torment US-held captives, making torture the official law of the land in all but name.” This “extralegal counterterrorism program presented the most dramatic, sustained, and radical challenge to the rule of law in American history.”

The Bush White House adopted a “doctrine of presidential prerogative.” It functions in secret and allows no challenge to its authority. In the “war on terror,” everything is permissible even against innocent victims. And Mayer found there are many. She revealed a classified 2002 CIA report stating that one-third of Guantanamo’s 600 prisoners (at the time) have no connection to terrorism. In fact, the number was far higher as most sent there were snatched randomly for bounty and victimized by being in the wrong place at the wrong time. Major General Michael Dunlavey agreed and suggested up to half of Guantanamo detainees were innocent of any crime. A Seton Hall University Law School study put the number even higher.

CIA, however, later lowered their estimate to 50 unjustifiably detained. But either way it

contradicted the administration's claim that Guantanamo held "the worst of the worst" even though most never were charged with a crime and none so far have been tried. They continue being held at black holes sites, totally outside the law, and for most without any hope again for a normal life. After what they've endured, that's impossible. It's America's darkest hour, and Mayer powerfully recounts it.

#### Late News on Torture Victims

Salim Hamdan was captured during the Afghanistan invasion, held at Guantanamo, and accused of being Osama bin Laden's personal driver. After US District Court judge James Robertson's July 17 ruling (that may be appealed in light of the Boumediene decision), he'll be the first detainee tried by a military commission (possibly beginning July 21) in which he'll receive no due process and no hope for judicial fairness. On July 15, he testified at a pretrial hearing and described everyday life at Guantanamo - a six year ordeal of interrogation, torture, isolation, sexual humiliation and more. A snapshot follows:

- his "confessions" were made under extreme duress - torture; his lawyer is trying to exclude them from trial; there's practically no chance he'll succeed;

- "Camp Echo," where was held, "is like a graveyard where you place a dead person in a tomb;"

- according to prosecutors, he was disciplined 84 times; his counsel said 15 were for trying to speak to other detainees - "through walls, through vents and in the recreation yard;"

- he described an interrogation by a woman who touched his thigh and groin area; "She behaved in an improper way; She came very close with her whole body towards me. I couldn't do anything;"

- he described months in isolation, multiple episodes of sleep deprivation, including Operation Sandman for 50 days in 2003, and being force-fed - by military personnel in white coats; they strapped him down and snaked a tube through his nose to his stomach; "Doctors, butchers, I couldn't tell the difference;" it's a very painful procedure;

- during one month of FBI interrogation, guards rapped on his cell door every five to ten minutes all night to wake him;

- a tape of his first interrogation was revealed; he said he was a Muslim charity worker, not a bin Laden employee; nonetheless he underwent harsh battlefield questioning with his arms and legs bound, a soldier's boot on his shoulder to keep his head bowed, and a "bag over my head;"

- he described persistent back pain and no medical treatment;

- he's charged with transporting weapons for Al Queda and helping bin Laden escape after 9/11; he calls himself a Muslim charity worker, not a terrorist; a judge in Washington will shortly rule on whether he should be tried in federal court; on July 14, several hundred current and former European officials asked the judge to block the military tribunal saying it was "clearly at odds with the most basic norms of fair trial and due process."

In another July 15 development, the Fourth US Circuit Court of Appeals made two rulings, both 5 - 4. One (reversing a June 2007 three-judge panel decision) allows the Bush

administration to order indefinite military detentions of civilians captured in the US. A second held that Ali al-Marri, a Qatar citizen held at the Charleston, SC naval brig, may challenge his detention in federal court but will remain imprisoned without charge. The decision is disturbing because the court was vague about about what type new proceeding is allowed. The Bush administration may also appeal to the Supreme Court so al-Marri and others like him remain in limbo.

He's the only known person in mainland custody held as an "unlawful enemy combatant." Defense intelligence official, Jeffrey Rapp, calls him (without evidence) an Al Qaeda "sleeper agent" sent to America to commit mass murder and disrupt the banking system. He was arrested in Peoria, IL where he lived with his family.

His lawyer, Jonathan Hafetz, called the court's decision disturbing. It means "the president can pick up any person in the country - citizen or legal resident - and lock them up for years without the most basic safeguard in the Constitution, the right to a (fair and speedy) criminal trial."

#### Final Comments

On February 17, 2008 in a New York Times Op-Ed, Air Force Colonel Morris Davis, former chief Guantanamo military commissions prosecutor, went public. He resigned last year because political operatives and military superiors pushed prosecutors to file charges before trial rules were written. He also called the tribunals tainted by political influence and by evidence obtained through torture. He further accused Pentagon general counsel, William Haynes II, of saying detainee acquittals would make the US look bad. "We can't have acquittals, we've got to have convictions." In 2004, three other prosecutors also quit, calling the process rigged.

Davis explained his prosecutorial standard - "that evidence derived through waterboarding was off limits. That should still be our policy. To do otherwise is not only an affront to American justice, it will potentially put prosecutors at risk for using illegally obtained evidence."

"Unfortunately, I was overruled....and I resigned my position to call attention to the issue - efforts that were hampered by my being placed under a gag rule and ordered not to testify at a Senate hearing. While some high-level military and civilian officials have rightly expressed indignation on the issue, the current state can be described generally as indifference and inaction....Military justice has a proud history; this was not one of its finer moments."

Guantanamo convictions are only justifiable "after trials we can truthfully call full, fair and open. In that service, we must declare that evidence obtained by waterboarding be banned in every American system of justice." Hopefully he means all evidence gotten through torture and abuse.

On another matter following the Supreme Court's important June 12 Boumediene v. Bush decision, the administration is reportedly preparing to transfer Guantanamo's remaining 265 detainees to mainland locations. Boumediene overrode the 2006 Military Commissions Act by ruling Guantanamo prisoners have habeas rights and can challenge their detention in civil courts. The administration has several choices. It can stall, ignore the Court, act as reportedly rumored, or ask Congress to pass new supportive legislation.

Currently around 80 detainees are to be tried in military commissions. Another 65 can be repatriated home, leaving 120 others. According to Boumediene, they all have habeas rights unless Bush administration officials obstruct justice to prevent it. Given what they've done, a smooth road to justice is far from certain. George Bush was noncommittal about Boumediene saying only that the ruling was being analyzed. Both presidential candidates favor closing Guantanamo, then transferring prisoners to US military prisons. Fort Leavenworth, Kansas is a likely possibility.

Another issues involves "prison ships," and in 2005, the UN's Special Rapporteur on Human Rights and Counter-Terrorism took note. He spoke of "very, very serious" allegations that the US was secretly detaining terrorist suspects aboard special ships at various locations around the world, notably in the Indian Ocean.

The UK legal action charity, Reprieve, believes up to 17 floating prisons are involved where detainees are held under torturous conditions and subjected to harsh and brutal treatment, in some cases worse than Guantanamo. Details have emerged from US administration and military sources as well as the Council of Europe, various parliamentary bodies, journalists, and former prisoner testimonies.

The USS Bataan is one ship mentioned, and a former Guantanamo detainee described his treatment on board. About 50 in total were there. They were closed off in the ship's bottom area and beaten more severely than at Camp X-Ray. Reprieve's Director, Clive Stafford Smith, said: "The US administration chooses ships to try to keep their misconduct as far as possible from the prying eyes of the media and lawyers. We will eventually reunite these ghost prisoners with their human rights."

"By its own admission, the US government is currently detaining at least 26,000 people without trial in secret prisons, and information suggests up to 80,000 have been 'through the system' since 2001. The US government must show a commitment to rights and basic humanity by immediately revealing who these people are, where they are, and what has been done to them." The Bush administration's response so far: silence.

Leaving aside other countries, America, to some degree, has practiced torture for many decades, and especially since the CIA's establishment in 1947. During the Vietnam War, Paul Blackstock wrote an essay titled the "Moral Implications of Torture and Exemplary Assassination" for the Carnegie Council On Ethics and International Affairs. He described widespread CIA and special forces torture saying this policy created a situation wherein "for the majority of private individuals (the) intolerable (became) tolerable." That's the situation today in the Middle East, Central Asia, Guantanamo, on prison ships, and at all secret US black sites worldwide.

Unless exposed, denounced and stopped, it's heading to mainland America and maybe a neighborhood near you. It's no idle threat given that, on July 14, the ACLU revealed that the nation's terrorist watch list hit one million names - based on the government's own reported numbers. It's also symbolic of what's wrong with "this administration's approach to security - unfair, out-of-control, a waste of resources, (treating) the rights of the innocent as an afterthought," and recklessly endangering what little freedom remains. Even worse, by Bush administration standards, there is none.

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