

Q: Just our [REDACTED] I came on late. This is Jeff. What's our rules of engagement here? Are we on background?

(b)(6) We're on background.

Q: Where are we?

(b)(6) Yes, sir, we're on background.

Q: Background, okay.

(b)(6) Any one else have questions for the general? All right, well thanks gentlemen for joining us. General, thanks so much for your time.

Q: Great, thanks a lot, sir.

Barbero: Thanks. Sergeant major, good hearing you again.

Q: Hooah, sir, cool.

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Wednesday, July 19, 2006 3:49 PM
To: Ruff, Eric, SES, OSD
Cc: Barber, Allison SES OSD PA (b)(6) CIV, OASD-PA
Subject: RE: Conference call TODAY

hi. just got a call from dawn cutler. they are running late and want to push the call to 1630... i convinced them to do it from ab's office...

am calling the rsvp list now.
thanks

(b)(6)

From: Ruff, Eric, SES, OSD
Sent: Wednesday, July 19, 2006 3:35 PM
To: (b)(6) CIV, OASD-PA
Subject: RE: Conference call TODAY

how many do you have and where is he making the call from? thanks

From: (b)(6) CIV, OASD-PA
Sent: Wednesday, July 19, 2006 2:29 PM
To: (b)(6) CIV, OASD-PA
Subject: Conference call TODAY



MEMORANDUM

To: Retired Military Analysts
From: Dallas Lawrence
Director, Community Relations and Public Liaison
Office of the Secretary of Defense
Date: July 19, 2006
Re: Conference Call with Senior DoD Officials

We invite you to participate in a conference call, **TODAY, July 19, 2006, from 4:00-4:30.**

4/9/2008

Brigadier General Michael Barbero, Deputy Director for Regional Operations, Joint Chiefs of Staff, J-3, will brief you on the efforts to assist American citizens leaving Lebanon. His biography is attached for your review. This call will be On Background.

To participate in this conference call, please dial (b)(2) and ask the operator to connect you to the Analysts conference call.

Please R.S.V.P. to (b)(6) at (b)(6) or call her at (b)(2)

We hope you are able to participate.

(b)(6)

OSD Public Affairs
Community Relations and Public Liaison
(b)(2) The Pentagon
Washington, D.C. 20301

(b)(2)

4/9/2008

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Wednesday, July 19, 2006 3:39 PM
To: Ruff, Eric, SES, OSD
Cc: Barber, Allison SES OSD PA, (b)(6) CIV, OASD-PA
Subject: RE: Conference call TODAY

so far, we have:

Colonel Ken Allard	(USA, Retired) MSNBC
Mr. Jed Babbin	(USAF, JAG) American Spectator
Lieutenant Colonel Rick Francona	(USAF, Retired) MSNBC
Colonel John Garrett	(USMC, Retired)
Brigadier General David L. Grange	(USA, Retired) CNN
Command Sergeant Major Steven Greer	(USA, Retired) Fox News
Major General James "Spider" Marks	(USA, Retired)
Colonel Jeff McCausland	(USA, Retired)
Major General Robert H. Scales, Jr.	(USA, Retired)
Captain Martin L. Strong	(USN, Retired)

still making phone calls....

barbero is making the call from his office (couldn't talk them into coaxing him upstairs).

lhx

(b)(6)

From: Ruff, Eric, SES, OSD
Sent: Wednesday, July 19, 2006 3:35 PM
To: (b)(6) CIV, OASD-PA
Subject: RE: Conference call TODAY

how many do you have and where is he making the call from? thanks

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4/9/2008

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Date: July 19, 2006

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(b)(6)
OSD Public Affairs
Community Relations and Public Liaison
(b)(2) The Pentagon
Washington, D.C. 20301
(b)(2)

4/9/2008

BIOGRAPHY

BRIGADIER GENERAL MICHAEL D. BARBERO

BG Barbero assumed his duties as Commanding General, Joint Readiness Center (JRTC) and Fort Polk on 23 April 2004.

BG Barbero was commissioned in the infantry upon graduation from the United States Military Academy in 1976. He holds a Bachelor of Science degree from USMA, a Master of Military Arts and Sciences degree from the Command and General Staff College (SAMS), and a Master of Science degree from the National War College. His military education includes the Infantry Officer Basic Course, the Armor Officer Advanced Course, the Command and General Staff College, the Advanced Military Studies Program and the National War College.

BG Barbero's first assignment was at Fort Hood with the 2d Battalion, 7th Cavalry, 1st Cavalry Division, where he served as a Rifle Platoon Leader, Company Executive Officer, Battalion S3, and Commander, Combat Support Company. He also served as Aide-de-camp to the Commanding General of the 1st Cavalry Division.



Following graduation from the Armor Officer's Advanced Course at Fort Knox, he served in Korea with the 2nd Infantry Division as 3d Brigade Adjutant and Secretary of the General Staff. From Korea, BG Barbero was assigned to Fort Campbell where he served as S3 of 3d Battalion, 327th Infantry. Following graduation from the Command and General Staff College and the School of Advanced Military Studies, BG Barbero was assigned to the 7th Infantry Division where he served as the Chief of Current Operations in the G3 section and deployed to Panama for OPERATION JUST CAUSE. While at Fort Ord, he also served as the S3 for the 9th Infantry Regiment (Manchu). Next, BG Barbero served as an Observer/Controller with the Battle Command Training Program at Fort Leavenworth, Kansas.

From July 1993 to June 1995, BG Barbero commanded 3d Battalion, 187th Infantry (Rakkasans), 101st Airborne Division at Fort Campbell, Kentucky. Following Battalion Command, he served in the office of the Chief of Staff of the Army and attended the National War College. From July 1997 to June 1999, he commanded the 2d Brigade, 10th Mountain Division.

From August 1999 to July 2002, BG Barbero served as the Executive Assistant to CINC Joint Forces Command/Supreme Allied Commander Atlantic in Norfolk, Virginia. BG Barbero returned to Fort Hood in July 2002 to serve as the III Corps Chief of Staff. In May 2003 BG Barbero joined the 4th Infantry Division in Iraq, serving in OPERATION IRAQI FREEDOM as the Assistant Division Commander (Maneuver) until the division redeployed in March 2004.

His awards and decorations include the Defense Superior Service Medal, the Legion of Merit (with 1 Oak Leaf Cluster), the Bronze Star Medal, the Meritorious Service Medal (with 6 Oak Leaf Clusters), the Air Assault Badge, the Parachutist Badge, and Ranger Tab.

(b)(6)

From: JedBabbin@^{(b)(6)}
Sent: Tuesday, July 18, 2006 11:19 AM
To: Ruff, Eric, SES, OSD
Subject: Re: Conway

Great; will do. Thanks.

Jed Babbin

(b)(6)

(home office)
(home fax)
(mobile)

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Tuesday, July 18, 2006 11:05 AM
To: 'dorsej9@'(b)(6)
Cc: Barber, Allison Ms OSD PA

LT,

Thanks so much for your time today, I know you are extremely busy.

To recap, we would like to see if the General is available today for a 20 minute conference call with our retired military television analysts - the retired GO's who now serve as on air military analysts for all of the networks and cable entities. With one call, the General will be able to reach a very large echo chamber of folks looking for on the ground information to add to their commentary and analysis. We have taken these folks to Iraq, GITMO and to several one on one meetings with the SECDEF and the CJCS in the past year.

We could turn this call on today with a minimum of 90 minutes notice. The call could be on background or on the record, at the General's discretion.

I have enclosed a sampling of some of the more prolific analysts that we would invite to the call. Please let me know your thoughts.

SAMPLE OF PROPOSED INVITEES (30 TOTAL):

Mr. Jed Babbin (AF, Former JAG) American Spectator, national radio Dr. Jeff McCausland (Colonel, USA, Retired) - CBS General Wayne A. Downing (USA, Retired) MSNBC Lieutenant Colonel Robert L. Maginnis (USA, Retired) CBN, CNN Int'l, Fox, NPR Major General James "Spider" Marks (USA, Retired) CNN Lieutenant General Thomas McInerney (USAF, Retired) - Fox News Major General Robert H. Scales, Jr. (USA, Retired) - Fox News Major General Donald W. Sheppard (USAF, Retired) CNN

Dallas B. Lawrence
Director, Office of Community Relations & Public Liaison United States Department of
Defense

(b)(2)

(b)(6)

From: JedBabbin@^{(b)(6)}
Sent: Tuesday, July 18, 2006 9:42 AM
To: Ruff, Eric, SES, OSD
Subject: Conway

Eric: Just checking in. Any response on Conway for today? Best, Jed.

Jed Babbin

(b)(6) (home office)
(b)(6) (home fax)
(b)(6) (mobile)

(b)(6)

From: JedBabbin@^{(b)(6)}
Sent: Tuesday, July 18, 2006 8:20 AM
To: tmcinemev@^{(b)(6)}; paulvalley@^{(b)(6)}; nashct@^{(b)(6)}; Glenstrae77@^{(b)(6)}; BURM41516@^{(b)(6)}; USAGirl1957@^{(b)(6)}; WSSInter@^{(b)(6)}; roberthscales@^{(b)(6)}; wheeler@^{(b)(6)}; twilkerson@^{(b)(6)}; ShepDonald@^{(b)(6)}; mgroot@^{(b)(6)}
Subject: Today's RealClearPolitics: Lessons

This couldn't wait for Thursday, so my long-suffering editor agreed to run it today. The last thing we, and Israel, need is a cease fire or a UN "peacekeeping" force.

RealClearPolitics - Articles - Lessons Learned

Jed Babbin
(b)(6) (Home office)
(b)(6) (Mobile)

(b)(6)

From: Whitman, Bryan Mr OSD PA
Sent: Monday, July 17, 2006 6:04 PM
To: Ruff, Eric, SES, OSD; Haddock, Ellen (Katie), Col, OCJCS/PA; (b)(6) CAPT
OVCJCS/PA; Smith, Dorrance HON OSD PA
Subject: Re: Hewitt Show

I'll see what I can do.

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

From: Ruff, Eric, SES, OSD
To: Haddock, Ellen (Katie), Col, OCJCS/PA; (b)(6) CAPT OVCJCS/PA; Whitman, Bryan
Mr OSD PA; Smith, Dorrance HON OSD PA
Sent: Mon Jul 17 17:58:03 2006
Subject: FW: Hewitt Show

just spoke to jed. he isn't looking for guests but is offering to make room for somebody to talk about the situation in lebanon from dod's perspective. if the plan is still to have someone brief this from the theater tomorrow, might be worth having that person or someone at dod available for jed's program. his contact info is below if somebody wants to take him up on his offer. thanks.

From: JedBabbin (b)(6) [mailto:JedBabbin@ (b)(6)]
Sent: Monday, July 17, 2006 2:02 PM
To: Ruff, Eric, SES, OSD
Subject: Hewitt Show

Eric: I'm guest-hosting for Hugh again tomorrow (6-9 pm, Salem Radio nationally). Is there anything hot you want one of your guys to get on to talk about? Best, Jed.

Jed Babbin
(b)(6) (home office)
(b)(6) (home fax)
(b)(6) (mobile)

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Monday, July 17, 2006 2:39 PM
To: (b)(6) Maj OSD PA
Cc: Barber, Allison Ms OSD PA; Lawrence, Dallas Mr OSD PA
Subject: RE: Contacts

hi. here are phone numbers and emails. the two i don't have are vern clark and gary luck. i bet i could track them down pretty easily, tho, if you'd like me to... these guys all know each other. :)

thanks

(b)(6)

Colonel Ken Allard (USA, Retired) MSNBC

Home: (b)(6)

Cell: (b)(6)

Email: allardck@ (b)(6)

Lieutenant General Michael P. DeLong (USMC, Retired) Fox News

Telephone: (b)(6)

Cellular: (b)(6)

Email: mike.delong@ (b)(6)

General Jack Keane (USA, Retired) ABC

Telephone: (b)(6)

Cellular: (b)(6)

Email: jkeane@ (b)(6)

Lieutenant Colonel Robert L. Maginnis (USA, Retired) national radio networks

Telephone: (b)(6)

Pentagon: (b)(6)

Cellular: (b)(6)

Email: robertmag73@ (b)(6)

Major General James "Spider" Marks (USA, Retired) CNN

Telephone: (b)(6)

Cellular: (b)(6)

Email: jmarks@ (b)(6)

Captain Chuck Nash (USN, Retired) Fox News

Telephone: (b)(6)

Cellular: (b)(6)

Email: nashct@ (b)(6)

Major General Robert H. Scales, Jr. (USA, Retired) Fox News

Telephone: (b)(6)

Cellular: (b)(6)

Email: roberthscales@ (b)(6)

Major General Donald W. Shepperd (USAF, Retired) CNN

Telephone: (b)(6)
Cellular: (b)(6)
Email: shepdonald@ (b)(6)

From: (b)(6) Maj OSD PA
Sent: Monday, July 17, 2006 1:54 PM
To: (b)(6) CIV, OASD-PA
Subject: Contacts

Hi -

Wondering if you might be able to help me out w/ a few phone numbers and email addresses. I think you folks regularly work with:

- Gen. Jack Keane
- Gen. Gary Luck
- Adm. Vern Clark
- LtGen. Mike DeLong
- MG Sheppard
- MG Spider Marks
- MG Robert Scales
- Col. Ken Allard
- Capt. Chuck Nash
- LTC Robert Magginnis

I really appreciate it.

(b)(6)

Semper Fidelis
Major (b)(6)
Military Assistant to the Assistant Secretary
of Defense for Public Affairs
1400 Defense Pentagon (b)(2)
Washington, DC 20301-1400
(b)(2)

(b)(6)

From: JedBabbin@
Sent: Monday, July 17, 2006 8:14 AM
To: tmcinerney@; paulvalley@; nashct@; Glenstrae77@
BURM41516@; USAGin1957@; WSSinter@
roberthscates@; wheeler@; wilkerson@
mgroot@
Subject: Endgame Conservatives (Chapter 2) Today's Spectator

This is very unpleasant for me to have to write. Mr. Bush has apparently given up the idea of fighting the war on terror, and Ms. Rice is a principal architect of our policy morass. We didn't vote for this in 2004.

The American Spectator

Jed Babbin

(b)(6) (home office)
(b)(6) (home fax)
(b)(6) (mobile)

(b)(6)

From: Barber, Allison Ms OSD PA
Sent: Sunday, July 16, 2006 3:29 PM
To: Lawrence, Dallas Mr OSD PA
Subject: Re: Marines landing in lebanon

Let me see what we can do.
Ab

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

From: Lawrence, Dallas Mr OSD PA
To: Barber, Allison Ms OSD PA; Ruff, Eric, SES, OSD
Sent: Sun Jul 16 14:55:59 2006
Subject: Marines landing in lebanon

I just got off the phone with chuck nash, one of our analysts who had a planning role in the beirut evac years ago. Fox is all over the potential neo, and the planning team that arrived in lebanon. He will be doing hannity and colmes and others this week. As will several other analysts that are being asked to provide context.

I'm sure we probably don't want to talk about specifics, however the world is already talking and we may want to do an analyst call monday to lay out parameters or policy or at leas provide some of our points to help get them into the mix.

Hope you both had a good weekend.

(b)(6)

From: (b)(6) CIV, OSD-POLICY
Sent: Friday, July 14, 2006 3:38 PM
To: 'Dan Senor'; Lawrence, Dallas Mr OSD PA; (b)(6) (b)(6) CIV, WSO-DRSO;
(b)(6)
(b)(6) (b)(6)
(b)(6) CIV OSD LA; (b)(6) CIV, OSD-POLICY; Goodwin Robert SES SAF/MRM
Subject: RE:

I hope you got what you needed, sorry I couldn't get any material from our ISA office.

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

From: Dan Senor [mailto:dan@isa.dia.mil] (b)(6)
Sent: Friday, July 14, 2006 10:14 AM
To: Lawrence, Dallas, OASD-PA; (b)(6) (b)(6) CIV, WSO-DRSO; (b)(6)
(b)(6)
(b)(6) (b)(6) CIV, OSD-LA; (b)(6) CIV, OSD-POLICY; Goodwin Robert SES
SAF/MRM
Subject:

Folks -- hope you all are well. I've got to go on Fox in a couple hours to talk about what the status is of all of Saddam's palaces (quite a random topic, I might add).

Outside of the one in Tikrit, have turned any others over to the Iraqis?

Thanks,

-Dan

(b)(6)

From: (b)(6) CIV, OSD-POLICY
Sent: Friday, July 14, 2006 10:41 AM
To: 'Dan Senor'; Lawrence, Dallas Mr OSD PA (b)(6) (b)(6) CIV, WSO-DRSO;
(b)(6)
Subject: (b)(6) CIV OSD LA; (b)(6) CIV, OSD-POLICY; Goodwin Robert SES SAF/MRM
RE:

I'll check with the Intl Security Affairs Desk Officer for Iraq and see if they can come up with anything.

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

From: Dan Senor [mailto:dans@...] (b)(6)
Sent: Friday, July 14, 2006 10:14 AM
To: Lawrence, Dallas, OASD-PA; (b)(6) CIV, WSO-DRSO; (b)(6)
(b)(6)
(b)(6) (b)(6) CIV, OSD-LA; (b)(6) CIV, OSD-POLICY; Goodwin Robert SES
SAF/MRM
Subject:

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Outside of the one in Tikrit, have turned any others over to the Iraqis?

Thanks.

-Dan

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Friday, July 14, 2006 10:35 AM
To: Dan Senor; (b)(6) CIV. WSO-DRSO; (b)(6)
(b)(6)
(b)(6) CIV OSD LA; (b)(6)
(b)(6) CIV, OSD-POLICY; Goodwin Robert SES SAF/MRM
Subject: RE:

Just got off the phone with Iraq. They are working the quarry now, will have an answer within the hour. Of note, the Tikrit turn over involved over a dozen properties I believe.

Hopefully we can get you something within the hour. They also believe state may have some info with specific focus on cultural sites returned.

Hope all are well!

Dallas B. Lawrence

Director, Office of Community Relations & Public Liaison

United States Department of Defense

(b)(2)

From: Dan Senor [mailto:dans@oasdasg.mil]; (b)(6)
Sent: Friday, July 14, 2006 10:14 AM
To: Lawrence, Dallas Mr OSD PA; (b)(6) CIV, WSO-DRSO; (b)(6)
(b)(6)
(b)(6) CIV OSD LA; (b)(6) CIV, OSD-POLICY; Goodwin Robert SES SAF/MRM
Subject:

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Thanks,

(b)(6)

From: JedBabbin (b)(6)
Sent: Thursday, July 13, 2006 7:23 AM
To: tmcinerney (b)(6); paulvalley (b)(6); hashct (b)(6); Glenstrae77 (b)(6); BURM41516 (b)(6); USAGirl1957 (b)(6); WSSinter (b)(6); robertscales (b)(6); wheelerc (b)(6); twilkerson (b)(6); mgroot (b)(6)
Subject: Inside the Times - Today's RealClearPolitics

There's more of a story inside the New York Times than people know. And this is just the beginning.

[RealClearPolitics - Articles - Tumultuous Times](#)

Jed Babbin

(b)(6) (home office)
(b)(6) (home fax)
(b)(6) (mobile)

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Wednesday, July 12, 2006 2:10 PM
To: Lawrence, Dallas Mr OSD PA
Subject: RE: Conference call tomorrow

nope. bummer.

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

From: Lawrence, Dallas Mr OSD PA
Sent: Wednesday, July 12, 2006 1:32 PM
To: (b)(6) CIV, OASD-PA
Subject: Re: Conference call tomorrow

How is our call with secdef going?

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

From: (b)(6) CIV, OASD-PA
To: (b)(6) CIV, OASD-PA
Sent: Wed Jul 12 12:29:26 2006
Subject: Conference call tomorrow

MEMORANDUM

To: Retired Military Analysts

From: Dallas Lawrence
Director, Community Relations and Public Liaison
Office of the Secretary of Defense

Date: July 12, 2006

Re: Conference Call with Senior DoD Officials

We invite you to participate in a conference call, THURSDAY, July 13, 2006, from 2:45-3:15 p.m.

Major General Durbin, Commander, Combined Security Transition Command-Afghanistan will update you on the status of training Afghan security forces. (His Biography is attached

for your review). This call will be On Background.

To participate in this conference call, please dial (b)(2) and ask the operator to connect you to the Analysts conference call.

Please R.S.V.P. to (b)(6) at (b)(6) or call her at (b)(2)

We hope you are able to participate.

(b)(6)

OSD Public Affairs
Community Relations and Public Liaison
(b)(2) The Pentagon
Washington, D.C. 20301

(b)(2)

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Wednesday, July 12, 2006 12:29 PM
To: (b)(6) CIV, OASD-PA
Subject: Conference call tomorrow
Attachments: MG Durbin.pdf



MEMORANDUM

To: Retired Military Analysts
From: Dallas Lawrence
Director, Community Relations and Public Liaison
Office of the Secretary of Defense
Date: July 12, 2006
Re: Conference Call with Senior DoD Officials

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Please R.S.V.P. to (b)(6) at (b)(6) or call her at (b)(2)

We hope you are able to participate.

(b)(6)
OSD Public Affairs
Community Relations and Public Liaison
(b)(2) The Pentagon
Washington, D.C. 20301

4/9/2008

(b)(2)

4/9/2008



United States Army

Major General ROBERT E. DURBIN

**Commander, Combined Security Transition Command-
Afghanistan
Combined Forces Command-Afghanistan
United States Central Command
APO AE 09356**

since April 2006



SOURCE OF COMMISSIONED SERVICE USMA

MILITARY SCHOOLS ATTENDED

Armor Officer Basic Course
Field Artillery Officer Advanced Course
United States Army Command and General Staff College
Senior Service College Fellow – Massachusetts Institute of Technology

EDUCATIONAL DEGREES

United States Military Academy – BS – No Major
Pennsylvania State University – MS – Mechanical Engineering

FOREIGN LANGUAGE(S) Portuguese

PROMOTIONS

DATES OF APPOINTMENT

2LT	4 Jun 75
1LT	4 Jun 77
CPT	18 Nov 79
MAJ	1 Jun 86
LTC	1 Jun 92
COL	1 Jan 98
BG	1 Jan 03
MG	Frooked

MAJOR DUTY ASSIGNMENTS

FROM

TO

ASSIGNMENT

Dec 75	Jan 78	Platoon Leader, later Executive Officer, F Troop, 2d Squadron, 1st Cavalry, 2d Armored Division, Fort Hood, Texas
Jan 78	Jul 78	Commander, B Troop, 2d Squadron, 1st Cavalry, 1st Armored Division, Germany
Jul 78	Jun 79	Commander, B Troop, later Assistant S-3 (Operations), 2d Squadron, 1st Cavalry, 2d Armored Division, Fort Hood, Texas

Major General ROBERT E. DURBIN

Jun 79	Feb 80	Student, Field Artillery Officer Advance Course, United States Army Field Artillery School, Fort Sill, Oklahoma
Feb 80	Mar 82	Student, Pennsylvania State University, University Park, Pennsylvania
Mar 82	Jan 85	Instructor, later Assistant Professor, Department of Mechanics, United States Military Academy, West Point, New York
Jan 85	Jul 87	Company Tactical Officer, United States Corps of Cadets, later Evaluation Officer, United States Military Academy, West Point, New York
Jul 87	Apr 88	Exercises Officer (REFORGER), later Chief, Training Branch, G-3 (Operations), 1st Armored Division, VII Corps, Germany
May 88	Jun 90	Executive Officer, later S-3 (Operations), 1st Battalion, 37th Armor, 1st Armored Division, VII Corps, Germany
Jun 90	Jun 91	Student, United States Army Command and General Staff College, Fort Leavenworth, Kansas
Jun 91	Apr 92	Instructor and Author, Center for Army Tactics, United States Army Command and General Staff College, Fort Leavenworth, Kansas
Apr 92	Apr 93	Executive Officer, 1st Brigade, 5th Infantry Division, Fort Polk, later redesignated, 1st Brigade, 2d Armored Division, Fort Hood, Texas
Apr 93	May 95	Commander, 1st Battalion, 67th Armor, 2d Armored Division, Fort Hood, Texas
May 95	May 96	Student, Senior Service College Fellow, Center of International Studies, Massachusetts Institute of Technology, Cambridge, Massachusetts
May 96	Jun 98	G-3 (Operations), later Chief of Staff, 4th Infantry Division, Fort Hood, Texas
Jun 98	Jun 00	Commander, 1st Brigade, 1st Infantry Division (Mechanized), Fort Riley, Kansas
Jul 00	Jun 02	Special Advisor to the Commander-in-Chief, later Assistant Deputy Chief of Staff, United Nations Command/Combined Forces Command, United States Forces Korea, Korea
Jun 02	Jun 03	Assistant Division Commander (Support), 1st Cavalry Division, Fort Hood, Texas
Jun 03	Feb 05	Deputy Director, Program Analysis and Evaluation, later Deputy Director, Program Analysis and Evaluation/Director, Army Quadrennial Defense Review, Office of the Deputy Chief of Staff, G-8, United States Army Washington, DC
Feb 05	Dec 05	Director, Army Quadrennial Defense Review, Office of the Deputy Chief of Staff, G-8, United States Army Washington, DC

SUMMARY OF JOINT ASSIGNMENTS

	<u>Dates</u>	<u>Grade</u>
Special Advisor to the Commander-in-Chief, later Assistant Deputy Chief of Staff, United Nations Command/Combined Command, United States Forces Korea, Korea	Jul 00 - Jun 02	Colonel
Commander, Combined Security Transition Command -Afghanistan, Combined Forces Command-Afghanistan, Kabul, Afghanistan	Jan 06 - Present	Major General

US DECORATIONS AND BADGES

Distinguished Service Medal
 Defense Superior Service Medal
 Legion of Merit (with 3 Oak Leaf Clusters)
 Meritorious Service Medal (with 4 Oak Leaf Clusters)
 Army Commendation Medal
 Army Achievement Medal (with Oak Leaf Cluster)
 Parachutist Badge
 Army Staff Identification Badge

As of 17 April 2006

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Tuesday, July 11, 2006 11:54 AM
To: Barber, Allison Ms OSD PA
Subject: Fw: Simmons - Enemy combatants....no more.

Analysts are in a fully tizzy about this. I have more than half a dozen emails like the two below already. I'm sure you're already all over this but I did want to share just in case...

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

From: Paul Vallely
To: WSSInter (b)(6); alan.colmes (b)(6); brian.kilmeade (b)(6); brian.wilson (b)(6); bruce (b)(6); donovan.grannum (b)(6); Elizabeth.Rhodes (b)(6); nate.fredman (b)(6); gavin.gibbons (b)(6); Hannity (b)(6); mikejerrick (b)(6); kim.bell-simensky (b)(6); lauren.clabby (b)(6); Mary.Ragsdale (b)(6); michael.skrzenski (b)(6); rob.monaco (b)(6); rsmith (b)(6); Tara.New (b)(6); Tom (b)(6); Bill.cowan (b)(6); tmcinerney (b)(6); JedBabbin (b)(6); gordon (b)(6); DHunt12348 (b)(6); Lawrence, Dallas Mr OSD PA; timmerman.road (b)(6); nashct (b)(6); gresham.striegel (b)(6); CIV, OASD-PA; ShepDonald (b)(6); sean.mcgrane (b)(6)
Sent: Tue Jul 11 10:51:21 2006
Subject: RE: Simmons - Enemy combatants...no more.

Incredible.....The Administration seems to give in at every opportunity The appeasers.....Wayne....you are right on the mark. I have been saying this for the past two years. We are our own worst enemy in fighting the Islamic Radicals and they know it.

Paul E Vallely
paulvallely (b)(6)
www.soldiersmemorialfund.org

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

From: WSSInter (b)(6) [mailto:WSSInter (b)(6)]
Sent: Tuesday, July 11, 2006 8:39 AM
To: alan.colmes (b)(6); brian.kilmeade (b)(6); brian.wilson (b)(6); bruce (b)(6); donovan.grannum (b)(6); Elizabeth.Rhodes (b)(6); nate.fredman (b)(6); gavin.gibbons (b)(6); Hannity (b)(6); mikejerrick (b)(6); kim.bell-simensky (b)(6); lauren.clabby (b)(6); Mary.Ragsdale (b)(6); michael.skrzenski (b)(6); rob.monaco (b)(6); rsmith (b)(6); Tara.New (b)(6); Tom (b)(6); Bill.cowan (b)(6); PAULVALLELY (b)(6); tmcinerney (b)(6); JedBabbin (b)(6); gordon (b)(6); DHunt12348 (b)(6); dallas.lawrence (b)(6); timmerman.road (b)(6); nashct (b)(6); gresham.striegel (b)(6); ShepDonald (b)(6); sean.mcgrane (b)(6)
Subject: Simmons - Enemy combatants....no more.

All:
How can this be? Now, the Bush administration is giving POW status and Geneva protection to every two bit Muslim extremist thug who murders anyone, anywhere in the world. By the way, who signed the Geneva Conventions for the terrorist's? Osama? Al Zawahiri? Perhaps the late Al Zargawi? The Bush Administration is imploding. Every hear of castration of an administration?
Where are the nuts shown after 9-11? No fight left? The terrorist's must be reveling in glee having achieved such recognition from the most powerful country in the world. Take care.
Wayne
PS- Thanks to the Brian and the Judge for giving me the heads up on this backbreaking news.

(b)(6)

From: JedBabbin@ (b)(6)

Sent: Tuesday, July 11, 2006 11:45 AM

To: WSSInter@ (b)(6); alan.colmes@ (b)(6); brian.kilmeade@ (b)(6);
 brian.wilson@ (b)(6); bruce@ (b)(6); donovan.grannum@ (b)(6);
 Elizabeth.Rhodes@ (b)(6); nate.fredman@ (b)(6); gavin.gibbons@ (b)(6);
 Hannity@ (b)(6); mikelerrick@ (b)(6); kim.bell-simensky@ (b)(6);
 lauren.clabby@ (b)(6); Mary.Ragsdale@ (b)(6);
 michael.skrzenski@ (b)(6); rob.monaco@ (b)(6); rsmith@ (b)(6);
 Tara.New@ (b)(6); Tom@ (b)(6); Bill.cowan@ (b)(6);
 PAULVALLELY@ (b)(6); tmcinerney@ (b)(6); gordon@ (b)(6);
 DHunt12348@ (b)(6); Lawrence, Dallas Mr OSD PA; timmerman.road@ (b)(6);
 nashct@ (b)(6); gresham.striegel@ (b)(6); CIV, OASD-PA;
 ShepDonald@ (b)(6); sean.mcgrane@ (b)(6)

Subject: Re: Simmons - Enemy combatants....no more.

Wayne: I agree that Tony could have used more precise language. But this memo - and you have it now, I trust - just doesn't say what the press says it does. BBC is crazed by the memo, saying we've declared these guys POWs. It just ain't so. Best, Jed.

Jed Babbin

(b)(6) (home office)
 (b)(6) (home fax)
 (b)(6) (mobile)

4/9/2008

(b)(6)

From: JedBabbin@ (b)(6)

Sent: Tuesday, July 11, 2006 11:19 AM

To: WSSinter@ (b)(6); alan.colmes@ (b)(6); brian.kilmeade@ (b)(6);
 brian.wilson@ (b)(6); bruce@ (b)(6); donovan.orannum@ (b)(6);
 Elizabeth.Rhodes@ (b)(6); nate.fredman@ (b)(6);
 gavin.gibbons@ (b)(6); Hannity@ (b)(6); mikejerrick@ (b)(6); kim.bell-
 simensky@ (b)(6); Lauren.clabby@ (b)(6);
 Mary.Ragsdale@ (b)(6); michael.skrzenski@ (b)(6);
 rob.monaco@ (b)(6); rsmith@ (b)(6); Tara.New@ (b)(6);
 Tom@ (b)(6); Bill.cowan@ (b)(6); PAULVALLELY@ (b)(6);
 tmcinerney@ (b)(6); gordon@ (b)(6); DHunt12348@ (b)(6); Lawrence,
 Dallas Mr OSD PA; timmerman.road@ (b)(6); nashct@ (b)(6);
 gresham.striegel@ (b)(6); CIV, OASD-PA; ShepDonald@ (b)(6);
 sean.mcgrane@ (b)(6)

Subject: Re: Simmons - Enemy combatants....no more.

Attachments: RCPblog Geneva memo.doc

Please see the attached which is embargoed until posted on the RealClearPolitics.com blog. The memo isn't at all what we're hearing from the press. Let's cool down a bit, boys and girls.

Jed Babbin

(b)(6) (home office)
 (b)(6) (home fax)
 (b)(6) (mobile)

4/9/2008

The new memorandum about the status of terrorist detainees held at Guantanamo Bay, Cuba and elsewhere -- signed by Deputy Defense Secretary Gordon England on Friday -- is being widely misreported. The memo, which is reproduced in full below, doesn't say that the terrorists are now POWs under the Geneva Conventions or that they will be afforded the full rights and protections of the Geneva Conventions.

What it does say is that with the exception of the military tribunals tossed out by the Supreme Court's decision in *Hamdan*, the treatment of the terrorist enemy combatants -- under the cited Defense Department and Army manuals -- is believed to be consistent with Geneva standards. The media hype of this is entirely wrong.

There is no torture or humiliating or degrading treatment (ask Sen. McCain) of prisoners, and the International Committee of the Red Cross already has access to the prisoners at Gitmo. The only change that this memo may -- and I stress may, not shall -- force is the revealing of secret locations at which terrorists are held, or closing these locations and moving all not there already to Gitmo. That, in itself, would be a huge change and a very destructive one. But the new memo doesn't decide that question. The press should quiet down a bit until we know more.



OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301

JUL 7 2006

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Application of Common Article 3 of the Geneva Conventions to the
Treatment of Detainees in the Department of Defense

The Supreme Court has determined that Common Article 3 to the Geneva Conventions of 1949 applies as a matter of law to the conflict with Al Qaeda. The Court found that the military commissions as constituted by the Department of Defense are not consistent with Common Article 3.

It is my understanding that, aside from the military commission procedures, existing DoD orders, policies, directives, execute orders, and doctrine comply with the standards of Common Article 3 and, therefore, actions by DoD personnel that comply with such issuances would comply with the standards of Common Article 3. For example, the following are consistent with the standards of Common Article 3: U.S. Army Field Manual 34-52, "Intelligence Interrogation," September 28, 1992; DoD Directive 3115.09, "DoD Intelligence Interrogation, Detainee Debriefings and Tactical Questioning," November 3, 2005; DoD Directive 2311.01E, "DoD Law of War Program," May 9, 2006; and DoD Instruction 2310.08E, "Medical Program Support for Detainee Operations," June 6, 2006. In addition, you will recall the President's prior directive that "the United States Armed Forces shall continue to treat detainees humanely," humane treatment being the overarching requirement of Common Article 3.

You will ensure that all DoD personnel adhere to these standards. In this regard, I request that you promptly review all relevant directives, regulations, policies, practices, and procedures under your purview to ensure that they comply with the standards of Common Article 3.



OSD 10735-06

7/7/2006 4:37:08 PM

Your reply confirming completion of this review should be submitted by a Component Head, General/Flag Officer, or SES member, including a reply of "reviewed and no effect" where applicable, to the Deputy Assistant Secretary of Defense (DASD) for Detainee Affairs, Office of the Under Secretary of Defense for Policy, no later than three weeks from the date of this memorandum. The DASD for Detainee Affairs may be reached at (703) 697-4602.

The text of Common Article 3 follows:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

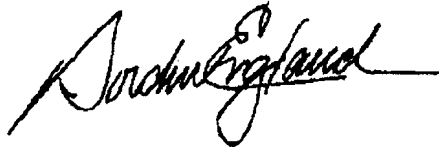
- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.



(b)(6)

From: JedBabbin@ (b)(6)

Sent: Tuesday, July 11, 2006 10:50 AM

To: WSSInter@ (b)(6); alan.colmes@ (b)(6); brian.kilmeade@ (b)(6);
 brian.wilson@ (b)(6); bruce@ (b)(6); donovan.granum@ (b)(6);
 Elizabeth.Rhodes@ (b)(6); nate.fredman@ (b)(6); gavin.gibbons@ (b)(6);
 Hannity@ (b)(6); mikeierrick@ (b)(6); kim.bell-simensky@ (b)(6);
 lauren.clabby@ (b)(6); Mary.Ragsdale@ (b)(6);
 michael.skrzenski@ (b)(6); rob.monaco@ (b)(6); rsmith@ (b)(6);
 Tara.New@ (b)(6); Tom@ (b)(6); Bill.cowan@ (b)(6);
 PAULVALLELY@ (b)(6); tmcinerney@ (b)(6); gordon@ (b)(6);
 DHunt12348@ (b)(6); Lawrence, Dallas Mr OSD PA; timmerman.road@ (b)(6);
 nashct@ (b)(6); gresham.striegel@ (b)(6); CIV, OASD-PA;
 ShepDonald@ (b)(6); sean.mcgrane@ (b)(6)

Subject: Re: Simmons - Enemy combatants....no more.

Bizarre. No other word for it.

Jed Babbin

(b)(6) (home office)
 (b)(6) (home fax)
 (b)(6) (mobile)

4/9/2008

(b)(6)

From: Gordon, Jeffrey D LCDR OSD PA
Sent: Monday, July 10, 2006 4:29 PM
To: Lawrence, Dallas Mr OSD PA; (b)(6) CIV, OASD-PA
Subject: FW: America As Jailer

Dallas (b)(6)

Greetings. Bing has some interesting insights about Guantanamo in his below column. Since he is highly critical of our Iraq detention policy, I wouldn't pass around the article too much, however some excerpts about GTMO are worth keeping.

V/R,

JDG

From: Gordon, Jeffrey D LCDR OSD PA
Sent: Monday, July 10, 2006 4:24 PM
To: (b)(6) CIV, OSD-POLICY
Subject: America As Jailer

America As Jailer

Jul 17, 2006

National Review

We could be doing a better job, particularly in Iraq

By Bing West

America lacks a consistent policy regarding battlefield detainees. In Guantanamo Bay, constant outside criticism has sprung relatively few prisoners from captivity. Yet in Iraq, thousands of prisoners are periodically set free in sweeping conciliatory gestures. Condoleezza Rice told a European audience in March that the U.S. has "no desire to be the world's jailer." And indeed, while the administration has not quite given up its firm stance in the War on Terror, it has been years since a new prisoner was sent to Gitmo.

What are we to make of this? In game theory, the "Prisoner's Dilemma" refers to the rational incentives for two accused criminals to implicate each other when offered reduced sentences. The warden uses his cunning to turn the prisoners against each other. In the War on Terror, however, the prisoners are united and it is the warden

who is susceptible to manipulation. In confronting terror, we have not reached a consensus on the proper handling of captured terrorists. Our tradition of self-criticism, due process, and respect for human rights has created vulnerabilities for our enemies to exploit. How to develop an approach to enemy detainees that is both confident and consistent? This is our warden's dilemma.

When the Taliban fell in November 2001, our troops captured Afghan soldiers along with terrorists from a dozen other countries. The worst of these, as determined by rapid interrogations, were sent to Gitmo. Many of them could not be convicted in an American courtroom, because they were captured on battlefields without physical evidence or witnesses to a crime. Others were identified by classified means that could not be revealed in court. Regardless, in our nation's post-9/11 mood, pictures of these blindfolded, chained men in orange jumpsuits evoked grim public satisfaction.

By mid-2004, however, instances of prisoner abuse — snarling dogs, the mockery of naked prisoners — provided graphic illustrations to be used by war critics. Civil libertarians, Europeans, and many in the mainstream press used this opportunity to attack an administration whose policies and personalities they already loathed. The public image of terrorist detainees gradually morphed from sinister figures into naïve sad sacks who had been deprived of a fair trial. In obsequious atonement, many lawmakers and pundits uttered harsh condemnations of our policies. Sen. Dick Durbin even claimed moral equivalence between Americans and Nazis.

As a morally conscious liberal democracy, America became uneasy when criticized for denying trials to foreign combatants captured in civilian clothes. But rather than resolving the amorphous status of captured terrorists, we threw resources at the problem to make life more comfortable for the prisoners. Guantanamo became one of the finest state-of-the-art prisons in the world, far superior to European or American civilian prisons. Every prisoner at Gitmo chooses among 4,200 calories of food selections a day, including specially cooked Muslim dishes. Every inmate in Gitmo is provided with a Koran, and the inmates choose their imams from among themselves. Time is even set aside each week for hate-filled group sermons.

When these measures failed to quell criticisms of our detention policy, the Bush administration gradually began releasing prisoners — some of whom were later killed fighting American troops on faraway battlefields. The original Gitmo population hovered around 800, but it is now down below 500. Thanks to years of questioning and thousands of inquiries with intelligence services around the globe, a record several inches thick has been accumulated on each prisoner. The interrogators are convinced that 85 percent of Gitmo inmates are terrorists who are intent on continuing their jihad even during imprisonment. Killing a guard is their highest goal, followed by suicide — as a political weapon, not an act of despair. Of 44 suicide attempts, only three have succeeded. The rest have been thwarted because guards have intervened, often at the risk of their lives.

In Guantanamo's relatively small population, the huge expenditure of American energy has garnered intelligence dossiers that are deep in detail but narrow in scope. In Iraq, where the U.S. holds 14,000 prisoners, the problem is the opposite: Too many are set free because there are not enough resources to closely analyze each prisoner. In Guantanamo, the focus is on extracting information about terror networks through tedious, uncoerced interrogations. In Iraq, the focus is on distinguishing between al-Qaeda-type extremists and nationalist resisters. This requires skilled interrogators, and there aren't enough of them.

The revolving door

Iraq's prime minister, Nouri al-Maliki, recently took the risk of releasing 10 percent of the estimated 25,000 prisoners in his country. The intent was to wean "mainstream Sunni resisters" away from the al-Qaeda types by releasing the former and keeping the latter in prison. While courageous and well-

intentioned, this reconciliation gesture had a stark downside: After being set free, many insurgents have only had their status enhanced in the eyes of their peers. We don't know the recidivism rate in Iraq, but in the U.S. it is over 60 percent. It is telling that some of our soldiers have begun referring to Abu Ghraib as "Osama U."

The policy of releasing Sunni insurgents has the tragic consequence of attenuating deterrence. What do insurgents have to lose from being arrested for fighting if they know they will soon be released by authorities? By not wearing uniforms, they can take advantage of rights comparable to those afforded to criminal suspects in a liberal democracy.

The data on Iraq's revolving door are revealing. In May, for instance, one American battalion in Ramadi detained 178 suspects — 35 percent for possession of explosive devices that kill Americans, 45 percent for illegal weapons or inciting to riot, and 20 percent for outstanding arrest warrants. Every arrest required an enormous amount of hard work under a blistering sun. Each detainee was questioned by an experienced team of interrogators, supervised by a military lawyer who had been an assistant district attorney in the U.S. Within 18 hours, 100 of these arrestees were released with mere warnings. Most had been illegally carrying weapons in their cars.

The remaining 78 were charged with serious offenses. Most refused to answer questions. The arresting American soldiers filed two sworn statements for each arrest, together with photos from the crime scene. The detainees were sent to the brigade level, where 50 were released and 30 were sent to Abu Ghraib Prison to await an Iraqi hearing. Once at Abu Ghraib, still more of these detainees were released by a Combined Review & Release Board, consisting of American and Iraqi officials. The battalion was notified of each release via a convoluted Internet system. To protest any release, American troops had to secure the signature of a colonel.

Of the original 178 arrestees, the 20 prisoners still being held at Abu Ghraib were scheduled to appear individually before an Iraqi judge, in most cases four to six months later. The American soldiers who had made the arrest were required to appear at that trial. In the majority of cases, this has not been possible. Iraqi judges, often intimidated and openly suspicious of written testimony from American soldiers, tend to free the accused. Net result: Over 85 percent of all those detained are released within six months.

Senior American officials believe the battalions are indiscriminate in making arrests. The battalions believe the senior officials are under political pressure to release hard-core killers who know how to lie. Either way, the system is broken: In the U.S., one male in 75 is in jail. In Iraq, it is one in 500. So either Iraqis are seven times more law-abiding than Americans, or the judicial system in Iraq is a mess.

Abu Musab al-Zarqawi's death, while a major achievement, does not affect the motivations of the foot soldiers in the Iraqi insurgency. We have not created jobs for a million angry Sunni youths. Nor have we created an effective deterrent against their working for the insurgency. In Ramadi, for instance, an unemployed youth is paid \$40 to emplace a roadside bomb. It is unlikely that he will be caught in the act, and, if he is caught, he knows the odds greatly favor his release. Our soldiers mock the arrest of insurgents as a "catch and release" fishing tournament.

At best, our current operating procedure shows a failure to communicate between our senior and junior military leaders. Either the lawyers and interrogation teams at the battalion level are incompetent, or the senior reviewers have become timorous because of adverse publicity, and are now determined to close all American-run prisons.

At worst, our porous anti-insurgency effort is undercutting the larger reconciliation strategy. The lack of a justice system inspires vigilantes and fuels sectarian violence, which is compounded by Shiites with militia ties who are hired as prison guards. Reconciliation is a mockery if there is no punishment for rebellion or murder. Prime Minister Maliki has justified the release of 2,500 prisoners as "a chance for those who want to rethink their strategy." But if these freed prisoners persist with their violent attacks, more Americans and Iraqis will die.

Crime & punishment

So what should be done? First, stand firm on life imprisonment for terrorists. In Guantanamo, the physical evidence justifying detention is weak, but knowledge of the prisoners has led the reviewers to conclude that they remain a danger to society. In Iraq, the physical evidence is much stronger, but knowledge of terrorists' states of mind is usually nonexistent, owing to a lack of interrogators.

In Guantanamo, a three-member military commission annually reviews the record of each detainee, who is provided a lawyer to argue his case for freedom. This year, the commissions recommended that ten prisoners be released and 450 kept behind bars or returned in shackles to their home countries. The Supreme Court will rule shortly on the legitimacy of these military commissions. That ruling will define a means of determining the legitimacy, if not the length, of incarceration during the War on Terror. If the Court approves the commission system, we should institute it in Iraq.

Second, advertise and showcase Guantanamo as the last stop for terrorists. The Pentagon's program of inviting reporters to see for themselves is the correct course. The United States has nothing to hide at Gitmo. The prisoners are well treated and the guards are a credit to their country. The more reporters who visit, the better.

Third, get tough on the killers. Most Americans and civilians in Iraq are killed by improvised explosive devices, yet the administration has refused to say whether it is a war crime for a man in civilian clothes to plant such a device. Stop this shilly-shallying. Declare the emplacement of IEDs to be a war crime. Those caught with IEDs by American soldiers should not be turned over to the broken Iraqi system.

Fourth, repair the disconnect between the U.S. battalions in Iraq making the arrests and the senior officials who keep releasing detainees. The frequency of releases is breeding cynicism, and we must come up with a single system that enables arresting soldiers to be a part of the review-and-release program.

As the warden in the War on Terror, it is time for us to get serious about setting the rules for dealing with terrorists. The president should declare that the inmates at Guantanamo will remain in prison as long as they constitute a danger to society. Anti-Americanism in Europe and the Middle East will not be alleviated by closing Guantanamo. Instead, the harshest critics of America will consider its closure a victory, even if it means terrorists going free to wreak more havoc. Gitmo's reputation strikes fear among terrorists because it symbolizes banishment and oblivion, not martyrdom and fame. Guantanamo should stand as a deterrent to terror — a global reminder of the relationship between crime and punishment.

Mr. West, an assistant secretary of defense in the Reagan administration, is the author of two books about the Iraq War: *The March Up: Taking Baghdad with the U.S. Marines*, and *No True Glory: A Frontline Account of the Battle for Fallujah*.

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Monday, July 10, 2006 12:24 PM
To: Lawrence, Dallas Mr OSD PA
Subject: RE: analysts phone call

i agree with you on the mcinerney/scales call... but who would you drop instead?? then we'd have two from fox and only one from any of the others... downing v. jacobs... i thought about that, too, not sure that it makes a huge difference, but if you think so, happy to suggest jacobs instead.

thx

(b)(6)

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

From: Lawrence, Dallas Mr OSD PA
Sent: Monday, July 10, 2006 12:17 PM
To: (b)(6) CIV, OASD-PA
Subject: Re: analysts phone call

I'd not drop mcinerney or scales. And I'd probably suggest jacobs over downing don't you think?

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

From: (b)(6) CIV, OASD-PA
To: Johnson, Hollen Ms OSD PA
CC: Barber, Allison Ms OSD PA; Lawrence, Dallas Mr OSD PA
Sent: Mon Jul 10 12:13:28 2006
Subject: RE: analysts phone call

ok. can we make it 8?? :)
here is who i would suggest:

Mr. Jed Babbin (AF, Former JAG) American Spectator, national radio

Dr. Jeff McCausland (Colonel, USA, Retired) - CBS

General Wayne A. Downing (USA, Retired) MSNBC

Lieutenant Colonel Robert L. Maginnis (USA, Retired) CBN, CNN Int'l, Fox, NPR

Major General James "Spider" Marks (USA, Retired) CNN

Lieutenant General Thomas McInerney (USAF, Retired) - Fox News

Major General Robert H. Scales, Jr. (USA, Retired) - Fox News

Major General Donald W. Shepperd (USAF, Retired) CNN

if we must trim off two, i think spider marks and either scales or mcinerney... so we'd have at least one from each network??

thanks

(b)(6)

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

From: (b)(6) OSD PA
Sent: Monday, July 10, 2006 12:03 PM
To: (b)(6) CIV, OASD-PA
Cc: Barber, Allison Ms OSD PA; Lawrence, Dallas Mr OSD PA
Subject: RE: analysts phone call

This a lot for 20 minutes. Could I say "6 of the following analysts?"

(b)(6)
Director, OSD Advance
The Pentagon, (b)(2)
Washington, DC 20301

Office: (b)(2)
Cell:
(b)(6)

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

From: (b)(6) CIV, OASD-PA
Sent: Monday, July 10, 2006 11:57 AM
To: (b)(6) OSD PA
Cc: Barber, Allison Ms OSD PA; Lawrence, Dallas Mr OSD PA
Subject: RE: analysts phone call

hi. here you go...

thx

(b)(6)

Colonel Ken Allard (USA, Retired) MSNBC
Mr. Jed Babbin (AF, Former JAG) American Spectator, national radio General Wayne A. Downing (USA, Retired) MSNBC Lieutenant Colonel Rick Francona (USAF, Retired) NBC Colonel John Garrett (USMC, Retired) Fox News
Brigadier General David L. Grange (USA, Retired) CNN
Command Sergeant Major Steven Greer (USA, Retired) Fox News Colonel Jack Jacobs (USA, Retired) MSNBC General Jack Keane (USA, Retired) ABC Lieutenant Colonel Robert L. Maginnis (USA, Retired) CBN, CNN Int'l, Fox, NPR Major General James "Spider" Marks (USA, Retired) CNN Dr. Jeff McCausland (Colonel, USA, Retired) - CBS Lieutenant General Thomas McInerney (USAF, Retired) - Fox News Captain Chuck Nash (USN, Retired) - Fox News Major General Robert H. Scales, Jr. (USA, Retired) - Fox News Major General Donald W. Shepperd (USAF, Retired) CNN Mr. Wayne Simmons (USN, Retired) - Fox News Major General Paul E. Vallely (USA, Retired) - Fox News

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

From: Barber, Allison Ms OSD PA
Sent: Monday, July 10, 2006 11:38 AM
To: (b)(6) OSD PA; Lawrence, Dallas Mr OSD PA; (b)(6) CIV, OASD-PA
Subject: Re: analysts phone call

Hi

If we could do 20 min, that would be great. I will ask (b)(6) to send you a list of our a team

Thx

Ab

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

From: (b)(6) OSD PA
To: Barber, Allison Ms OSD PA
Sent: Mon Jul 10 11:08:01 2006
Subject: analysts phone call

I am putting together a proposal for analyst call and radio interviews on Wed. Please advise on who you think would be on the call and how much time you need.

Thx

(b)(6)
Director, OSD Advance
The Pentagon, (b)(2)
Washington, DC 20301

Office: (b)(2)
Cell:
(b)(6)

(b)(6)

From: JedBabbin@^{(b)(6)}
Sent: Monday, July 10, 2006 8:07 AM
To: tmcinerney@^{(b)(6)} paulvalley@^{(b)(6)} nashct@^{(b)(6)} Glenstrae77@^{(b)(6)}
BURM41516@^{(b)(6)} USAGirl1957@^{(b)(6)} WSSInter@^{(b)(6)}
roberthscates@^{(b)(6)} wheeler@^{(b)(6)} twilkerson@^{(b)(6)}
mgroot@^{(b)(6)}

Subject: Where are the BMD Advocates? Today's Spectator

Where are the Republicans shouting for a renewed BMD initiative? Are they silent because they're afraid of the cost? Pusillanimity, again.

The American Spectator

Jed Babbin

(b)(6) (home office)
(b)(6) (home fax)
(b)(6) (mobile)

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Sunday, July 09, 2006 12:42 PM
To: (b)(6) CIV, OASD-PA
Subject: Re: mil analysts

After 11am you time. We have events all day. Morning breakfast etc. Ugh. :). Noonish is probably best or anytime today.

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

From: (b)(6) CIV, OASD-PA
To: Lawrence, Dallas Mr OSD PA
Sent: Sun Jul 09 12:40:42 2006
Subject: Re: mil analysts

Ok, I'll call you in the morning. How early is too early?? :)

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

From: Lawrence, Dallas Mr OSD PA
To: (b)(6) CIV, OASD-PA
Sent: Sun Jul 09 12:39:14 2006
Subject: Re: mil analysts

Call me when you want to go through these. Today or tomorrow any time is fine.

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

From: (b)(6) CIV, OASD-PA
To: Lawrence, Dallas Mr OSD PA
Sent: Sun Jul 09 12:38:36 2006
Subject: Re: mil analysts

Ok, sounds good. Didn't you have natwick do a dvd or something for you?? I'll also check with (b)(6) I'm sure they have those reports somewhere in their archives.....at least I hope!! :) Thx (b)(6)

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

From: Lawrence, Dallas Mr OSD PA
To: (b)(6) CIV, OASD-PA
Sent: Sun Jul 09 12:32:58 2006
Subject: Re: mil analysts

Hmm. As for after actions, they would be in memo format on the s drive. Likely from ab to dorrance or larry. Though I don't think we did them. (b)(6) did reports, which I just forwarded. Let chat tomorrow and we will wak through the questions raised. (b)(6) has info from legal as well with regard to dedicated exec aircraft. Not god but not horrible.

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

From: (b)(6) CIV, OASD-PA
To: Lawrence, Dallas Mr OSD PA
Sent: Sun Jul 09 09:06:24 2006
Subject: RE: mil analysts

hi. i know you did an after action on the trips you've taken with some of the clips, transcripts, etc. right?? please tell me you saved them to the s:drive. altho, i'm pretty sure i know better... ;) if they're not on the s:drive, would you happen to know where you saved them?? they'd really help in putting this stuff together for ab. if you know where they are on your hard drive, would you mind sending me your password and telling me where to find them so that i can add them to the memo?? if not, any ideas how i can get the info quickly??

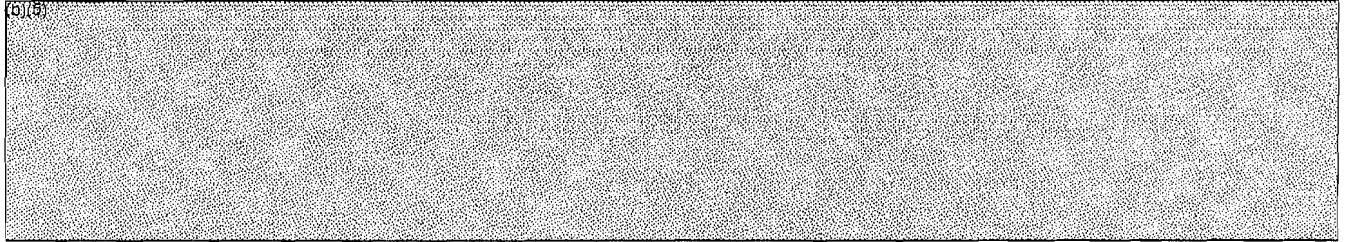
thanks

(b)(6)

From: Barber, Allison Ms OSD PA
Sent: Saturday, July 08, 2006 2:46 PM
To: (b)(6) CIV, OASD-PA
Cc: Lawrence, Dallas Mr OSD PA
Subject: FW: mil analysts

Hi there

(b)(6)

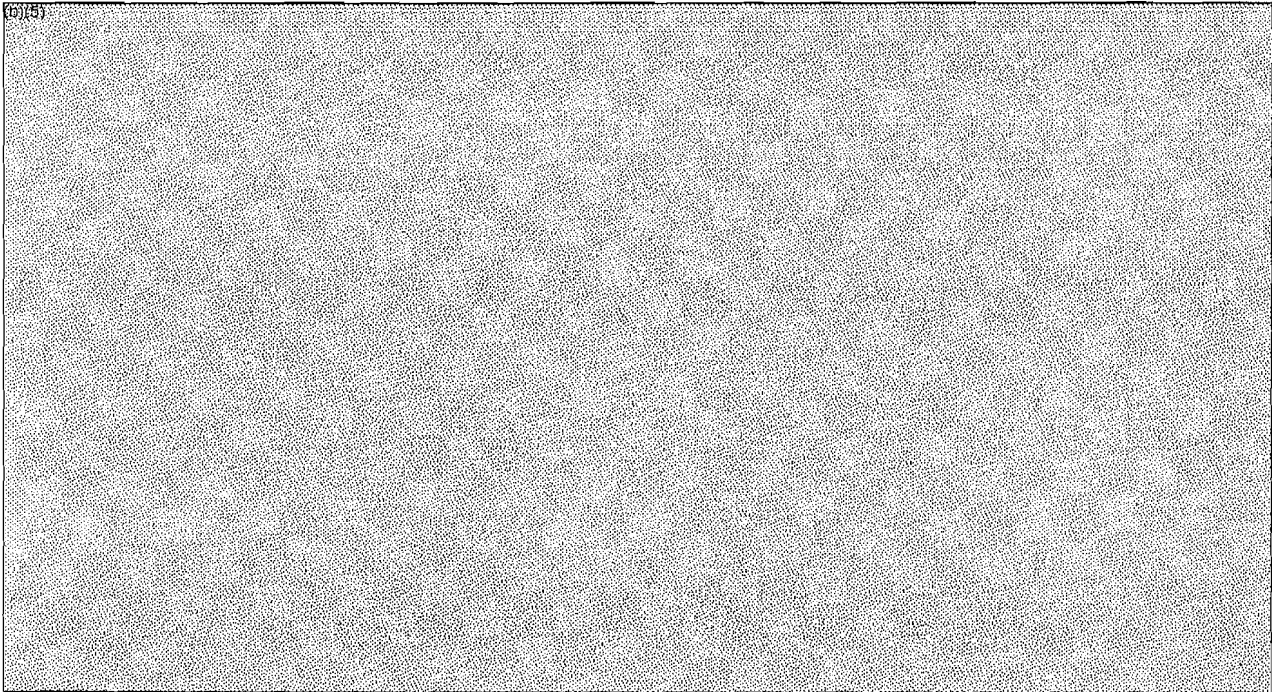
A large rectangular area of the document is completely redacted with a dense, grey, stippled pattern. The redaction covers the majority of the page's content.

Thanks

ab

From: Smith, Dorrance HON OSD PA
Sent: Thursday, June 29, 2006 2:34 PM
To: Barber, Allison Ms OSD PA; Whitman, Bryan Mr OSD PA
Cc: (b)(6) Maj OSD PA
Subject: RE: mil analysts

(b)(5)

A large rectangular area of the document is completely redacted with a dense, grey, stippled pattern. The redaction covers the majority of the page's content.

(b)(5)



From: Barber, Allison Ms OSD PA
Sent: Thursday, June 29, 2006 10:45 AM
To: Smith, Dorrance HON OSD PA
Subject: mil analysts
Importance: High

Hi

(b)(5)



Thanks

ab

(b)(6)

From: Gordon, Jeffrey D LCDR OSD PA
Sent: Friday, July 07, 2006 4:00 PM
To: Lawrence, Dallas Mr OSD PA; (b)(6) CIV, OASD-PA
Subject: FW: articles on detainees
Attachments: GUANTANAMO THOUGHTFUL CLIPS.doc

Dallas (b)(6)

Greetings. Please feel free to use the columns in attached document with military analysts as appropriate. Have a good weekend.

Best,

JDG

From: Gordon, Jeffrey D LCDR OSD PA
Sent: Friday, July 07, 2006 1:00 PM
To: Ruff, Eric, SES, OSD; Whitman, Bryan Mr OSD PA; Keck, Gary L Col OSD PA; (b)(6) AFIS-HQ/PIA
Subject: RE: articles on detainees

Gentlemen,

Attached is an updated version of the thoughtful column/article file regarding detention operations at Guantanamo. I've added pieces by David Rivkin & Lee Casey, William F. Buckley and John Yoo to yesterday's version.

V/R,

JDG

From: Ruff, Eric, SES, OSD
Sent: Thursday, July 06, 2006 6:50 PM
To: Gordon, Jeffrey D LCDR OSD PA; Whitman, Bryan Mr OSD PA; Keck, Gary L Col OSD PA; (b)(6) AFIS-HQ/PIA
Subject: RE: articles on detainees

nice work, j.d. thank you.

From: Gordon, Jeffrey D LCDR OSD PA
Sent: Thursday, July 06, 2006 6:38 PM
To: Ruff, Eric, SES, OSD; Whitman, Bryan Mr OSD PA; Keck, Gary L Col OSD PA; (b)(6) AFIS-HQ/PIA
Subject: RE: articles on detainees

Gentlemen,

As requested, attached document contains four thoughtful articles/columns about Guantanamo, from Charles Krauthammer, Bill O'Reilly and Michelle Malkin. I have a call out to OGC and DoJ to provide some inputs as well. Envision that I will have more material tomorrow a.m.

V/R,

4/9/2008

JDG

From: Ruff, Eric, SES, OSD
Sent: Thursday, July 06, 2006 12:38 PM
To: Gordon, Jeffrey D LCDR OSD PA
Cc: Whitman, Bryan Mr OSD PA
Subject: articles on detainees

j.d., at the detainees meeting with the secdef, et.al., this a.m., there was discussion about pulling together some of the more thoughtful articles that have been written about gtmo and american detainee policy. two articles were specifically mentioned (authors were yoo and krauthammer), and i'm getting those. can you work with haynes' office and see if the lawyers down there can come up with any others? can you also ask your doj counterpart if he has any articles that he would recommend. i'm sure we'll be circulating the articles to various folks, so we're looking for substantive columns or articles from journals, etc. doable? thank you.

4/9/2008

Washington Post

Gitmo Grovel: Enough Already

June 3, 2005

By Charles Krauthammer

The self-flagellation over reports of abuse at Guantanamo Bay has turned into a full-scale panic. There are calls for the United States, with all this worldwide publicity, to simply shut the place down.

A terrible idea. One does not run and hide simply because allegations have been made. If the charges are unverified, as they overwhelmingly are in this case, then they need to be challenged. The United States ought to say what it has and has not done, and not simply surrender to rumor.

Moreover, shutting down Guantanamo will solve nothing. We will capture more terrorists, and we will have to interrogate them, if not at Guantanamo then somewhere else. There will then be reports from that somewhere else that will precisely mirror the charges coming out of Guantanamo. What will we do then? Keep shutting down one detention center after another?

The self-flagellation has gone far enough. We know that al Qaeda operatives are trained to charge torture when they are in detention, and specifically to charge abuse of the Koran to inflame fellow prisoners on the inside and potential sympathizers on the outside.

In March the Navy inspector general reported that, out of about 24,000 interrogations at Guantanamo, there were seven confirmed cases of abuse, "all of which were relatively minor." In the eyes of history, compared to any other camp in any other war, this is an astonishingly small number. Two of the documented offenses involved "female interrogators who, on their own initiative, touched and spoke to detainees in a sexually suggestive manner." Not exactly the gulag.

The most inflammatory allegations have been not about people but about mishandling the Koran. What do we know here? The Pentagon reports (Brig. Gen. Jay Hood, May 26) -- all these breathless "scoops" come from the U.S. government's own investigations of itself -- that of 13 allegations of Koran abuse, five were substantiated, of which two were most likely accidental.

Let's understand what mishandling means. Under the rules the Pentagon later instituted at Guantanamo, proper handling of the Koran means using two hands and wearing gloves when touching it. Which means that if any guard held the Koran with one hand or had neglected to put on gloves, this would be considered mishandling.

On the scale of human crimes, where, say, 10 is the killing of 2,973 innocent people in one day and 0 is jaywalking, this ranks as perhaps a 0.01.

Moreover, what were the Korans doing there in the first place? The very possibility of mishandling Korans arose because we gave them to each prisoner. What kind of crazy tolerance is this? Is there any other country that would give a prisoner precisely the religious text that that prisoner and those affiliated with him invoke to justify the slaughter of innocents? If the prisoners had to have reading material, I would have given them the book "Portraits 9/11/01" -- vignettes of the lives of those massacred on Sept. 11.

Why this abjectness on our part? On the very day the braying mob in Pakistan demonstrated over the false Koran report in Newsweek, a suicide bomber blew up an Islamic shrine in Islamabad, destroying not just innocent men, women and children, but undoubtedly many Korans as well. Not a word of condemnation. No demonstrations.

Even greater hypocrisy is to be found here at home. Civil libertarians, who have been dogged in making sure that FBI-collected Guantanamo allegations are released to the world, seem exquisitely sensitive to mistreatment of the Koran. A rather selective scrupulousness. When an American puts a crucifix in a jar of urine and places it in a museum, civil libertarians rise immediately to defend it as free speech. And when someone makes a painting of the Virgin Mary, smears it with elephant dung and adorns it with porn, not only is that free speech, it is art -- deserving of taxpayer funding and an ACLU brief supporting the Brooklyn Museum when the mayor freezes its taxpayer subsidy.

Does the Koran deserve special respect? Of course it does. As do the Bibles destroyed by the religious police in Saudi Arabia and the Torahs blown up in various synagogues from Tunisia to Turkey.

Should the United States apologize? If there were mishandlings of the Koran, we should say so and express regret. And that should be in the context of our remarkably humane and tolerant treatment of the Guantanamo prisoners, and in the context of a global war on terrorism (for example, the campaign in Afghanistan) conducted with a discrimination and a concern for civilian safety rarely seen in the annals of warfare.

Then we should get over it, stop whimpering and start defending ourselves.

<http://www.washingtonpost.com/wp-dyn/content/article/2005/06/02/AR2005060201750.html>

letters@charleskrauthammer.com

National Review

High court didn't repudiate Guantanamo Bay policy.

Vote was actually very close since the chief justice had to recuse himself.

July 5, 2006

By William F. Buckley

These are vexing days for those who (a) want to press the war against terrorism, and (b) want to maintain the usual protections against unnecessary accretions of state power. The recent headliner in this carnival is the Supreme Court ruling on Osama bin Laden's bodyguard. What was challenged was the legality of the "military commission" that put him on trial at Guantanamo, denying him access to his accusers or to the evidence presented to the judges (military) by the prosecution.

The first rule is to reason calmly about what happened. And best to begin by reflecting on the vote within the Supreme Court. It was posted as 5 (illegitimizing the military commissions) to 3. But the chief justice had recused himself because he had voted on the same issue, while a member of the lower court, affirming the legality of the commissions. This means that the vote was de facto 5-4. What's more, the majority on the court invited Congress to write a fresh law correcting the weaknesses of present arrangements while satisfying the security objectives of the Guantanamo enterprise.

The elation of those who welcomed the decision isn't very directly related to concern for bin Laden's bodyguard. *The New York Times* is waging a crusade of its own against what it deems excesses by the executive branch. Conservative Americans are temperamentally disposed to welcome sensible abridgments of state power, executive, legislative -- and judicial. The court's ruling is being viewed against the swelling of the executive branch at a time of increased surveillances of individuals and of special arrangements with bankers aimed at sniffing out smelly financial transactions.

The motive of the Bush administration is to harness technology for our nation's defense. To do this with sophistication is to acknowledge that the jihadists are not bound by conventional military strategy. In Switzerland, tunnels and bridges are wonderfully provided with means for stopping a tank attack in its tracks. Such technology doesn't work against airplanes zooming in on skyscrapers, and the possibility that bin Laden's bodyguard can provide a key to a missing link must be weighed.

The question is whether the president can handle the current problem by improvising what he deems suitable makeshift procedures. Nobody, in the chorus of approval that greeted the Supreme Court ruling, went on to say that the bodyguard should be freed. The president is putatively correct in holding him in detention -- the court is not ruling on that point. But what transactions in the order of justice are appropriate? If we wish to establish his "guilt," by what protocols are we bound?

Something more, the Supreme Court's narrow majority holds, than that the executive branch has found it convenient to proceed as it has. It becomes a question of legislative ingenuity to devise the means to keep suspects from returning to the ranks of terrorists while we attempt to counter the great terrorist offensive.

We do have a huge psychological burden. It is that the war we're engaged in has no realistic terminus. Assume that the Iraqi insurgency were overwhelmed by the end of the year. That would not mean, in the engagement we are pressing, an end to the jihadists.

Bin Laden is a soldier with international appetites. It is by no means safe to conclude that a statute of limitations will clock in after any specified historical development, when what is left to do amounts to a kind of de-nazification.

And this means that the prospect of years in Guantanamo faces the bodyguard protected by the Supreme Court. But faces us also, and the American public doesn't go in for indefinite detention.

William F. Buckley Jr. is the founder of *National Review* magazine.

<http://www.dailybreeze.com/opinion/articles/3277606.html>

Fox News

Cutting Through the Fog About Military Tribunals...

June 30, 2006

By Bill O'Reilly

The **Supreme Court** ruled 5-3 that President Bush cannot try prisoners at **Guantanamo Bay** using the military justice tribunal system.

The four liberal justices, plus Justice Kennedy, said the president has overstepped his authority and must get congressional approval for military tribunals. The rulings contain much bloviating and mumbo-jumbo. It's what those people do. But bottom line: the liberal Supremes believe President Bush is commanding too much power. The three conservative judges say the president is within his authority.

Chief Justice John Roberts recused himself, but it wouldn't have mattered.

So what does this mean to you? Well, the president could seek congressional approval to use military tribunals and I hope he does. But either way, Gitmo stays open. The court says the detainees can pretty much be held there indefinitely.

The disturbing thing about today's Supreme Court ruling is that it demonstrates how America is divided on the terror war. As "Talking Points" has stated, the left believes the current administration is the enemy and doesn't trust it to wage a legal war. The right believes the Bush administration's policies have prevented attacks on American soil and is willing to give the president the benefit of the doubt.

So the battle lines at home are drawn.

Now the folks seem to be behind the Bush administration. All the polls say most Americans trust the president more than any Democrat to protect them from terror.

Finally, today's ruling is a political one, but not a disaster. If Mr. Bush wants military justice at Gitmo, the Republican controlled House and Senate would most likely OK it. All he has to do is ask.

And that's "The Memo."

http://www.foxnews.com/printer_friendly_story/0,3566,201700,00.html

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Fox News

The Truth About Guantanamo Bay...

June 07, 2005

By Bill O'Reilly

The truth about Guantanamo Bay: that is the subject of this evening's "Talking Points Memo".

As we told you last week, the detainee abuse story is being used to undermine the war on terror, at least the way the Bush administration is fighting it. Check out my column posted on billoreilly.com for details on that.

Now over the weekend, Senator Joseph Biden joined the abuse chorus and called for the shutting down of **Guantanamo Bay** ([search](#)).

(BEGIN VIDEO CLIP)

SEN. JOSEPH BIDEN (D), DELAWARE: [It]...has become the greatest propaganda tool that exists for recruiting of terrorists around the world. And it is unnecessary to be in that position, but the end result is I think we should end up shutting it down, moving those prisoners. Those that we have reason to keep, keep. And those we don't, let go.

(END VIDEO CLIP)

We asked the senator to appear this evening, but as always, Biden turned us down. He does not like close questioning.

But it's amazing to me that he and others actually believe that closing Gitmo would accomplish anything. The entire Gitmo situation has been driven by the anti-Bush press and the far left human rights organizations.

As "Talking Points" mentioned a week ago, there *have been abuses* by U.S. interrogators down there, but not many. And now we have some stats to back that up.

The Pentagon report found that there have been more than 28,000 Gitmo interrogations over the past three years, and only *five* cases of Koran abuse, two of which were accidental.

And the chief critic from inside Gitmo, former Army translator **Eric Saar** ([search](#)), said this on "The Factor" a few days ago.

(BEGIN VIDEO CLIP)

O'REILLY: What was the worst thing you ever saw?

ERIC SAAR: You know, sir, I would have to say the worst thing I saw was actually some of the sexual tactics that were used in the interrogation booth. And I would have to say the reason for that is because it really defied the values we stand for as a country.

(END VIDEO CLIP)

And those techniques were unbuttoning blouses, women interrogators, things like that, but no touching or anything like that.

So what are we talking about here? Some minor cases of abuse, that's what. And we should shut down Gitmo because the anti-Bush press doesn't like it? Come on.

The truth is that any closing of Gitmo would send a signal that the USA did indeed abuse Gitmo prisoners on a mass scale. That's not true, but it is a perception the anti-Bush people want out there.

Once again, you can't fight a war on terror when every small mistake is magnified into a page one scandal or a book! Also once again, the Bush administration should set up an independent commission to investigate American detainee policy across the board. The president must take the offensive on this, or else the country's image will continue to suffer and the jihadists and their enablers will win another victory.

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Washington Times

Guantanamo fog . . .

June 3, 2005

By *Michelle Malkin*

The mainstream media and international human-rights organizations have relentlessly portrayed the Guantanamo Bay detention facility as a depraved torture chamber operated by sadistic American military officials defiling Islam at every turn. It's the "gulag of our time," wails Amnesty International. It's the "anti-Statue of Liberty," bemoans New York Times columnist Tom Friedman.

Have there been abuses? Yes. But here is the rest of the story -- the story the Islamists and their sympathizers don't want you to hear. According to recently released FBI documents, inaccurately heralded by civil liberties activists and military-bashers as irrefutable evidence of widespread "atrocities" at Gitmo:

A significant number of detainee complaints were either exaggerated or fabricated (no surprise given al Qaeda's explicit instructions to trainees to lie). One detainee who claimed to have been "beaten, spit upon and treated worse than a dog" could provide not a single detail pertaining to mistreatment by U.S. military personnel. Another detainee claimed guards were physically abusive, but admitted he hadn't seen it.

Another detainee disputed one of the now globally infamous claims that American guards had mistreated the Koran. The detainee said riots resulted from claims a guard dropped the Koran. In actuality, the detainee said, a detainee dropped the Koran then blamed a guard. Other detainees who complained about abuse of the Koran admitted they never personally witnessed any such thing, but one said he heard non-Muslim soldiers touched the Koran when searching it for contraband.

In one case, Gitmo interrogators apologized to a detainee for interviewing him prior to the end of Ramadan.

Several detainees indicated they had not experienced any mistreatment. Others complained about lack of privacy, lack of bedsheets, being unwillingly photographed, guards' use of profanity and bad food. If this is unacceptable, "gulag"-style "torture," then every inmate in America is a victim of human-rights violations. (Oh, never mind, there are civil liberties Chicken Littles who actually believe that.)

Erik Saar, an army sergeant at Gitmo for six months and co-author of a negative, tell-all book titled "Inside the Wire," inadvertently provides us more firsthand details showing just how restrained, and sensitive to Islam -- to a fault, I believe -- detention facility officials have been.

Each detainee's cell has a sink installed low to the ground, "to make it easier for the detainees to wash their feet" before Muslim prayer, Mr. Saar reports. Detainees get "two hot halal, or religiously correct, meals" a day in addition to an MRE (meal ready to eat). Loudspeakers broadcast the Muslims' call to prayer five times daily.

Every detainee gets a prayer mat, cap and Koran. Every cell has a stenciled arrow pointing toward Mecca. Moreover, Gitmo's library -- yes, library -- is stocked with Jihadi books. "I was surprised that we'd be making that concession to the religious zealotry of the terrorists," Mr. Saar admits. "It seemed to me that the camp command was helping to facilitate the terrorists' religious devotion." Mr. Saar notes one FBI special agent involved in interrogations even grew a beard like the detainees "as a sort of show of respect for their faith."

Unreality-based liberals would have us believe America is spitefully and systematically torturing innocent Muslims at Guantanamo Bay. Meanwhile, our own MPs have endured little-publicized abuse at the hands of manipulative, hatemongering enemy combatants. Detainees have spit on and hurled water, urine and feces on the MPs. Causing disturbances is a source of entertainment for detainees who, as Gen. Richard Myers notes, "would turn right around and try to slit our throats, slit our children's throats" if released.

The same unreality-based liberals whine about the Bush administration's failure to gather intelligence and prevent terrorism. Yet, these hysterical critics have no viable alternative to detention and interrogation -- and there is no doubt they would be the first to lambaste the White House and Pentagon if a released detainee went on to commit an act of mass terrorism on American soil.

Guantanamo Bay will not be the death of this country. The unseriousness and hypocrisy of the terrorist-abetting left is a far greater threat.

Michelle Malkin is a nationally syndicated columnist and the author of "Invasion: How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores"

<http://www.washtimes.com/commentary/20050602-085745-2130r.htm>

National Review

The Gitmo Club

June 15, 2006

By The Editors

News that three Guantanamo Bay detainees had hanged themselves quickly became propaganda. "It was the inevitable result of creating a netherworld of despair beyond the laws of civilized nations," thundered a *New York Times* editorial. Critics of the Bush administration pointed to the suicides as though they were proof positive that Guantanamo must be closed. This response is predictable and should be resisted.

Is Guantanamo too awful to tolerate? Scores of politicians, journalists, lawyers, and activists—over 1,000 people—have visited the camp and attested that the detainees are treated well. They are given culturally sensitive diets, freedom to worship, exercise opportunities, and the best available medical care. Guantanamo certainly compares favorably with most foreign facilities, even in Western countries. Reuters quoted the deputy head of the Brussels antiterrorism unit as saying, "At the level of the detention facilities, [Guantanamo] is a model prison, where people are better treated than in Belgian prisons."

Nor do the suicides show that the guards at Guantanamo weren't diligent in performing their duties. They have succeeded in stopping over 40 suicide attempts by 23 separate detainees. That things worked out differently last Sunday only demonstrates that even the most diligent and watchful guards will not always succeed. This is particularly the case when, as at Guantanamo, the authorities attempt to strike a balance between the imperatives of security and the provision of privacy.

In asking why the suicides happened, we should acknowledge the simple reality that incarcerated individuals sometimes get depressed, no matter how humane the conditions of their confinement. This is not unique to Guantanamo or military detention facilities in general, but is endemic to all prisons, whether civilian or military, and occurs in every country in the world. The recent suicides don't prove that practices at Guantanamo are unjustified any more than suicides in other prisons prove that practices there are unjustified.

There are, of course, procedural differences between the treatment of detainees at Guantanamo and the treatment of civilian criminals. The Left frequently deplores the detainees' uncertainty about how long they will remain confined, and their inability to get a day in civilian courts. But it has long been standard — and has not been considered inhumane — for a country at war to detain enemy combatants for the duration of hostilities, primarily to ensure that they don't pick up arms and return to the battlefield. Wars often last a long time; running a revolving-door detention operation is a sure way to make them even longer. The Guantanamo detainees don't know how long they will be held, but neither did POWs in World Wars I and II, Korea, Vietnam, and dozens of other conflicts. The main difference between those wars and this one is that hundreds of

Guantanamo detainees *have* been released before the cessation of hostilities.

As for due process, the detainees have received opportunity aplenty to challenge their classification as unlawful enemy combatants. Between the combatant-status review tribunals, annual review boards, and habeas petitions, they have gotten more due process, and more legal assistance, than any captured enemy combatants in history.

When the Guantanamo commander, Rear Adm. Harry Harris, referred to the suicides as an act of "asymmetric warfare," he was savaged by the media. But he may well be right. The detainees who committed suicide had previously been involved in hunger strikes and other disruptive activities. And there is evidence that a number of habeas lawyers have abused their status by providing the detainees with reports on how their hunger strikes and suicide attempts were strengthening the efforts to get Guantanamo closed. Islamist terrorists have never been reluctant to kill themselves for the good of the jihad, and the detainees may have decided that a coordinated set of suicides would intensify pressure on the U.S.

If so, they probably calculated correctly. But the pressure should be resisted. Closing Guantanamo would be a psychological victory for al Qaeda. It would harm America's ability to win in the War on Terror. It would represent a departure from the standard treatment of enemy combatants. All of these considerations might be outweighed by compelling moral reasons to close the detention center, if such existed. But they don't. Many on the Left no doubt feel compassion for the detainees. But the peculiar exhibitionism of their compassion is probably motivated by a simple desire to club the Bush administration, as usual.

<http://article.nationalreview.com/print/?q=YTdmZDE5YzYxMjA2MzAxMTMwZDUyNDdiOTI3ODcyY2Y=>

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Wall Street Journal

Hamdan

June 30, 2006

By David B. Rivkin Jr. and Lee A. Casey

The Supreme Court's decision in *Hamdan v. Rumsfeld*, invalidating for now the use of military commissions to try al Qaeda and associated detainees, may be a setback for U.S. policy in the war on terror. But it is a setback with a sterling silver lining. All eight of the justices participating in this case agreed that military commissions are a legitimate part of the American legal tradition that can, in appropriate circumstances, be used to try and

punish individuals captured in the war on terror. Moreover, nothing in the decision suggests that the detention facility at Guantanamo Bay must, or should, be closed.

Indeed, none of the justices questioned the government's right to detain Salim Ahmed Hamdan (once Osama bin Laden's driver), or other Guantanamo prisoners, while hostilities continue. Nor did any of them suggest that Mr. Hamdan, or any other Guantanamo detainee, must be treated as civilians and accorded a speedy trial in the civilian courts. Precisely because opponents of the Bush administration's detention policies have advanced these, or substantially similar claims, *Hamdan* has dealt them a decisive defeat. Together with the Supreme Court's 2004 decision in *Hamdi v. Rumsfeld* -- directly affirming the government's right to capture and detain, without criminal charge or trial, al Qaeda and allied operatives until hostilities are concluded -- *Hamdan* vindicates the basic legal architecture relied upon by the administration in prosecuting this war.

However, what *Hamdan* also means is that, if the administration wishes to pursue military-commission trials, the procedures -- including evidentiary rules -- to be followed by those bodies will have to be revised so as to conform to the procedures applicable in ordinary courts-martial under the Uniform Code of Military Justice (UCMJ) -- or additional legislation must be obtained from Congress. This is because the Supreme Court based its ruling on language Congress included in UCMJ Article 36(b), which requires rules and regulations made for both military commissions and courts-martial to "be uniform insofar as practicable." As an alternative, the administration could also try the detainees in courts-martial.

Of course, military commissions were initially established because the rules applicable in courts-martial are not consistent with either the practical realities of the war on terror, or the fundamentally illegitimate status, under the laws and customs of war, of captured al Qaeda members. That being the case, the administration has two options. First, the president could make a determination pursuant to the UCMJ that it would be impracticable to apply courts-martial rules in the context of military commissions in this conflict. Although the court was skeptical of whether using these rules really is impracticable here, it also noted that the president had not made such a determination, and that insufficient justification had been presented in the *Hamdan* case to support such a finding. The clear implication is that, if the president does act, and there is sufficient justification articulated, then departures from courts-martial rules are permissible.

Second, the president could seek additional action by Congress. Indeed, Justices Kennedy, Breyer, Souter and Ginsburg, all critical votes for the majority in this case, effectively invited him to do precisely this. Justice Kennedy noted that "[b]ecause Congress has prescribed these limits, Congress can change them." Similarly, Justice Breyer -- responding to the entirely reasonable observation of dissenting Justices Scalia, Thomas and Alito that the majority's decision interferes with the president's ability to protect the U.S. from a "new and deadly enemy" -- noted that "[n]othing prevents the President from returning to Congress to seek the authority he believes necessary." The administration's answer should be, "OK, fine."

Congress should revise the UCMJ to make clear that the rules applicable in military commissions need not be identical to those in courts-martial -- so long as the basic elements of a fair trial are maintained. Alternatively, Congress could adopt the military-commission rules already established. In either case, the Supreme Court would be hard-pressed to reject rules established by Congress, since it was the apparent lack of legislative authority it considered to be the key defect in the current system.

At the same time, the *Hamdan* decision gives the Bush administration an opportunity to articulate a clear vision for dealing with the future of Guantanamo Bay and the entire set of related legal and policy issues. The president's critics, at home and abroad, have succeeded in making that facility a symbol around which both opponents of the war on terror, and al Qaeda's own supporters, can rally. The existence of Guantanamo, however, is not their real complaint. The true issue here is whether the U.S. will continue to treat al Qaeda and its allies as enemy combatants in a war that it means to win, ending the threat to American lives and interests around the world, or whether it will accept the threat as more or less permanent, seeking merely to "manage" it as a criminal-law matter.

This latter option is widely favored in Europe, which generally adopted this strategy in response to its own, homegrown terrorists of the 1970s and '80s. Plainly stated, however, adopting this approach today would amount to a cynical choice *not* to use all available means to protect Americans from future attacks on the scale of 9/11, but simply to keep civilian casualties to some "acceptable" level, while indulging the quixotic hope that militant Islamists will eventually learn to love us. In addition, treating al Qaeda and its allies as civilians entitled to trial in the civilian courts, or even in the regular courts-martial, would effectively legitimize the illegal and barbaric type of asymmetric warfare they practice.

Opponents of the administration's policies often note that how a society deals with a particular kind of offense or offender says much about its own values. This is true, but any such assessment must involve more than simple questions of procedure. The choice of venue for adjudicating particular conduct also reflects key aspects of a body politic -- and how it views the conduct at issue. Just as it is symbolically important to prosecute juveniles in a special court system, it is important to treat unlawful combatants as something other than ordinary criminal defendants. Such individuals have not merely deviated from society's norms, they have openly and proudly rejected those norms -- in al Qaeda's case to a truly savage level. Treating such men as common criminals trivializes the threat they pose, and the actions they take.

Overall, the administration should immediately respond to *Hamdan* by revising its military -commission rules, conforming them to courts-martial practice where possible (and properly justifying such departures as may be necessary), or by seeking congressional action to make clear that military-commission rules need not be the same as those applicable in courts-martial. Indeed, as these are not mutually exclusive remedies, the pursuit of both options would make very good sense. More fundamentally, however, the administration should stick to its guns on the fundamental question whether

the U.S. is fighting a war with al Qaeda secure in the knowledge that the Supreme Court has, and continues, to validate the legal basis of this conflict.

Messrs. Rivkin and Casey, lawyers in Washington, served in the Justice Department under Presidents Reagan and George H.W. Bush.

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San Jose Mercury News

Behind the 'torture memos'

Jan. 4, 2005

By John Yoo

This commentary was written by Boalt Law School Professor John Yoo, who is also a visiting scholar at the American Enterprise Institute. Yoo was deputy assistant attorney general in the Office of Legal Counsel of the Justice Department from 2001 to 2003. He wrote this article for the San Jose Mercury News.

This week, the Senate Judiciary Committee will hold hearings on the nomination of Alberto Gonzales to be attorney general. It comes as no surprise that he is likely to face hard questions.

As counsel to the president for the past four years, Gonzales helped develop the United States' policies in the war on terror. He demonstrated leadership and, as is often the case in perilous times, generated controversy.

He will encounter questions about the decision to deny prisoner-of-war status under the Geneva Conventions to Al-Qaida and Taliban fighters and about his role in what have come to be known as "torture memos." As a Justice Department lawyer, I dealt with both issues – I worked on and signed the department's memo on the Geneva Conventions and helped draft the main memo defining torture. I can explain why the administration decided that aggressive measures, though sometimes unpopular, are necessary to protect America from another terrorist attack.

Sept. 11, 2001, proved that the war against Al-Qaida cannot be won solely within the framework of the criminal law. The attacks were more than crimes – they were acts of war. Responding to the attacks and protecting the United States from another requires a military approach to the conflict. But Al-Qaida, without regular armed forces, territory or citizens to defend, also presents unprecedented military challenges.

One of the first policy decisions in this new war concerned the Geneva Conventions – four 1949 treaties ratified by the United States that codify many of the rules for war. After seeking the views of the Justice, State, and Defense departments, Gonzales concluded in a draft January 2002 memo to the president that Al-Qaida and the Taliban were not legally entitled to POW status. He also advised that following every provision of the conventions could hurt the United States' ability to protect itself against ruthless enemies.

Gonzales' memo agreed with the Justice Department and disagreed with the State Department, which felt the Taliban (though not Al-Qaida) qualified as POWs.

The Justice Department's Office of Legal Counsel – where I worked at the time – determined that the Geneva Conventions legally do not apply to the war on terrorism because Al-Qaida is not a nation-state and has not signed the treaties. Al-Qaida members also do not qualify as legal combatants because they hide among peaceful populations and launch surprise attacks on civilians – violating the fundamental principle that war is waged only against combatants. Consistent American policy since at least the Reagan administration has denied terrorists the legal privileges reserved for regular armed forces. The Taliban raised different questions because Afghanistan is a party to the Geneva Conventions, and the Taliban arguably operated as its de facto government. But the Justice Department found that the president had reasonable grounds to deny Taliban members POW status because they did not meet the conventions' requirements that lawful combatants operate under responsible command, wear distinctive insignia, and obey the laws of war. The Taliban flagrantly violated those rules, at times deliberately using civilians as human shields.

According to Gonzales' memo, the State Department argued that denying POW status to the Taliban would damage U.S. standing in the world and could undermine the standards of treatment for captured American soldiers. Gonzales also passed on the department's worry that denying POW status "could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries."

The press has consistently misrepresented Gonzales' views and latched onto a sexy sound bite used out of context. When Gonzales said in the memo that this new war made some provisions of the Geneva Conventions "quaint," he referred to the requirement that POWs be given commissary privileges, monthly pay, athletic uniforms and scientific instruments. Many stories cut the quotation short, making it seem as if he had deemed the conventions themselves "quaint."

'Obsolete' limitations

Gonzales' memo did, however, say that the terrorist threat rendered "obsolete Geneva's strict limitations on questioning of enemy prisoners." Why? Because the United States needed to be able "to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians." Information remains the primary weapon to prevent a future Al-Qaida attack on the United States. Gonzales also observed that denying POW status would limit the prosecution of U.S. officials under a federal law criminalizing a grave breach of the Geneva Conventions. He was concerned that some of the conventions' terms were so vague (prohibiting, for example, "outrages upon personal dignity") that officials would be wary of taking actions necessary to respond to unpredictable developments in this new war.

The president took Gonzales' advice and denied POW status to suspected Al-Qaida and Taliban members.

Gonzales' advice raised legal and policy questions. Legally, could the president determine by himself that Al-Qaida or the Taliban were not entitled to POW status? No one doubted that he had the constitutional authority. Presidents have long been the primary interpreters of treaties on behalf of the United States, especially in the area of warfare. Federal judges have since split on the POW issue.

The other question was what standards the United States should follow as a matter of policy if the Geneva Conventions did not legally apply. Gonzales recommended that the United States should continue "its commitment to treat the detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles" of the Geneva Conventions. Prisoners would receive adequate food, housing and medical care, and could practice their religion. Gonzales advised that as long as the president ordered humane treatment, the military would follow his orders. Gonzales has also received criticism for a memo he requested from the Justice Department to provide the legal definition of torture. According to press reports, Gonzales made the request after the CIA had captured high-level Al-Qaida leaders and wanted clarification of the standards for interrogation under U.S. law.

Congress' role

While the definition of torture in the August 2002 memo is narrow, that was Congress' choice. When the Senate approved the U.N. Convention Against Torture in 1994, it stated its understanding of torture as an act "specifically intended to inflict severe physical or mental pain or suffering." The Senate defined mental pain and suffering as "prolonged mental harm" caused by threats of severe physical harm or death to a detainee or third person, the administration of mind-altering drugs or other procedures "calculated to disrupt profoundly the senses or the personality." Congress adopted this definition in a 1994 law criminalizing torture committed abroad.

The Senate also made clear that it believed the treaty's requirement that nations undertake to prevent "cruel, inhuman or degrading treatment or punishment" was too vague. The Senate declared its understanding that the United States would follow only the Constitution's prohibition of cruel and unusual punishment.

The Senate and Congress' decisions provided the basis for the Justice Department's definition of torture:

"Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture (under U.S. law), it must result in significant psychological harm of significant duration, e.g., lasting for months or even years. . . . We conclude that the statute, taken as a whole, makes plain that it prohibits only extreme acts."

Under this definition, interrogation methods that go beyond polite questioning but fall short of torture could include shouted questions, reduced sleep, stress positions (like standing for long periods of time), and isolation from other prisoners. The purpose of these techniques is not to inflict pain or harm, but simply to disorient.

On Thursday, the Justice Department responded to criticism from the summer, when the opinion leaked to the press. The department issued a new memo that superseded the August 2002 memo. Among other things, the new memo withdrew the statement that only pain equivalent to such harm as serious physical injury or organ failure constitutes torture and said, instead, that torture may consist of acts that fall short of provoking excruciating and agonizing pain.

Although some have called this a repudiation, the Justice Department's new opinion still generally relies on Congress' restrictive reasoning on what constitutes torture. Among other things, it reiterates that there is a difference between "cruel, inhuman and degrading

treatment" and torture – a distinction that many critics of the administration have ignored or misunderstood.

For example, according to press reports, the International Committee for the Red Cross has charged that interrogations at Guantánamo Bay, which included solitary confinement and exposing prisoners to temperature extremes and loud music, were "tantamount to torture." This expands torture beyond the United States' understanding when it ratified the U.N. Convention Against Torture and enacted the 1994 statute. Not only does the very text of the convention recognize the difference between cruel, inhuman and degrading treatment and torture, but the United States clearly chose to criminalize only torture.

Abu Ghraib abuses

Criticism of the Bush administration's legal approach to interrogation first arose in the summer after the Abu Ghurayb prison scandal, and has continued with more recent stories of FBI memos showing concern about abuse of prisoners in Iraq and Guantánamo Bay. No one condones the abuses witnessed in the Abu Ghurayb photos that are being properly handled through the military justice system. But those abuses had nothing to do with the memos defining torture – which did not discuss the pros and cons of any interrogation tactic – nor the decision to deny POW protections to Al-Qaida and the Taliban. Gonzales, among others, has made clear that the administration never ordered the torture of any prisoner. And as multiple investigatory commissions have now found, these incidents did not result from any official orders.

At the urging of human rights groups and other opponents of the administration's policies in the war on terrorism, Senate Democrats have promised to closely question Gonzales on these issues. I believe the hearings will show that Gonzales, who never sought to pressure or influence the Justice Department's work, appropriately sought answers to ensure compliance with the applicable law.

Asking those questions is important because we are in the midst of an unconventional war. Our only means for preventing future terrorist attacks, which could someday involve weapons of mass destruction, is to rely on intelligence that permits pre-emptive action. An American leader would be derelict if he did not seek to understand all available options in such perilous circumstances.

Riverside Press Enterprise

Embrace the Need for Decisive Leadership

March 21, 2006

By John Yoo

Critics of the war on terrorism and the war in Iraq charge that President Bush has infringed on the Constitution. They say it's up to Congress to approve the course of the Iraq War, the interrogation policies at the Guantanamo Bay base and the wiretap surveillance by the National Security Agency.

Yet this view misreads the Constitution's allocation of war-making powers between the executive and legislative branches. As commander-in-chief and chief executive, the

president has broad constitutional authority--indeed, a duty to protect the nation from foreign attack. He requires no approval to take the nation to war if it's attacked.

The framers of the Constitution designed the presidency to wield power quickly and decisively. As they understood it, Congress could counter presidential decisions in foreign affairs through its powers over funding or domestic legislation.

A state of war doesn't mean that checks and balances don't exist, only that Congress usually allows the president to act alone because it agrees with executive policy or lacks the political will to use its own constitutional powers.

Much of the confusion concerns the provision in Article I, Section 8 of the Constitution, which says that Congress alone has the power to declare war. In fact, a comprehensive reading of the text and structure of the Constitution demonstrates that it doesn't mandate a specific process for waging war.

James Madison insisted on the phrase "declare war" versus "make war" because he wanted presidents to have the flexibility to repel sudden attacks. In fact, the Constitution distinguishes between "declaring war," "engaging in war" (Article I, Section 10, Clause 3) and "levying war" (Article III, Section 3, Clause 1).

In short, to declare war isn't the same as to start fighting a war. Congress has declared war just five times in its history. And only one of them, the War of 1812, constituted an affirmative declaration of war. The other four--the Mexican-American War, the Spanish-American War, World War I and World War II--merely declared the prior existence of a state of war.

Earlier in American history, a declaration of war had the practical effect of getting Congress on board to fund the building of an army to prosecute the war. Today, we have a large fighting force at the ready, and the main effect of declaring war would be to alter legal relationships between subjects of warring nations and to trigger certain rights, privileges and protections under the laws of war.

Declarations provide the legal grounds for war and the opportunity for enemy nations to make amends and, thereby, avoid the scourge of war.

The power to declare war is not a check on executive power to engage in hostilities. It's designed to address these legal issues and others in times of conflict.

It serves notice to the enemy's allies that they could be viewed as co-belligerents and that their shipping is subject to capture. It means our citizens could be prosecuted for dealing with the enemy, that internment or expulsion of enemy aliens is possible and that diplomatic relations have been cut off.

Once we're at war, the Constitution leaves the means of how the war is prosecuted almost entirely in the president's hands. Still, this power isn't absolute, and Congress retains a critical check on it--the power to defund initiatives with which it doesn't agree.

As for the question of the NSA's wiretapping program, Richard Posner, a federal judge, says that, of course, a president's inherent wartime authority as commander-in-chief encompasses using a range of intelligence-gathering techniques.

In an era of terrorism, rogue nations and weapons of mass destruction, it's imperative to get correct answers to questions concerning foreign-policy authority.

But we should look skeptically at claims that radical changes in the way we make or declare war would solve our problems--even those stemming from poor judgment, unforeseen circumstances and bad luck

"The Powers of War and Peace--the Constitution and Foreign Affairs after 9/11"

Press release about the book

The war on terror raises legal issues that are both complex and unprecedented. They range from the use of force and targeting, to the detention and interrogation of enemy combatants who do not fight on behalf of a nation and participate in a conflict that knows no borders. In *The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11* (University of Chicago Press, October 2005), AEI visiting scholar John Yoo--a former deputy assistant attorney general in the U.S. Department of Justice's Office of Legal Counsel--answers critics who question whether the present administration has discarded the constitutional framework for making foreign affairs decisions, and makes the case for a completely new approach to understanding what the Constitution says about foreign affairs, particularly the powers of war and peace. Yoo urges us to understand the Constitution's allocation of foreign affairs powers to permit a flexible decision-making system that can respond to sweeping changes in the international system and in America's national security posture. In particular, he explores the Constitution's distribution of foreign affairs powers between the president, Congress, the courts, and the states.

Yoo demonstrates that the legality of the Afghanistan and Iraq invasions cannot be discussed without first identifying both the scope of the president's commander-in-chief power to use force unilaterally and the tools at Congress's disposal to restrain him. Similarly, Yoo contends that arguing about whether the Geneva Conventions apply to terrorists will prove fruitless without first unpacking the Constitution's distribution of the power to interpret treaties among the president, the Senate, the House, and the courts. For Yoo, debating these issues without understanding their constitutional context is akin to arguing over government policy toward speech without first knowing the standards established by the First Amendment.

In *The Powers of War and Peace*, Yoo proposes a constitutional theory of foreign affairs powers that dissents--at times sharply--from conventional academic wisdom. He reconstructs the Framers' historical understanding of the Constitution's text and structure by exploring the document's eighteenth-century British roots, the first state constitutions and the Articles of Confederation, and the drafting and ratification of the Constitution in 1787 and 1788. Yoo concludes that the Constitution depends less on fixed legal processes for decision-making, and more on the political interaction of the executive and legislative branches. The author explains that the Constitution allocates different powers to the president, Senate, and Congress, which in turn allow them to create different decision-making processes depending on their relative political positions and the contemporary demands of the international system. There is no single, correct method, Yoo argues, for making war or peace; for making international agreements or breaking them; or for interpreting and enforcing international law in the Constitution. Rather, the Constitution allows the branches of government to cooperate or compete in the foreign affairs field by relying on their unique powers.

Yoo reminds us that war has traditionally been conceived of as occurring solely between nation-states. The old international system allowed the United States to choose a war-making system that placed a premium on consensus, time for deliberation, and the approval of multiple institutions. But, as the September 11 attacks made clear, the world is now very different. Rather than disappearing from the world, the nature and the level

of threats are increasing, and the magnitude of expected harm has risen dramatically—from the easy availability of the knowledge and technology to create weapons of mass destruction, to the emergence of rogue nations and the rise of international terrorist networks. Yoo argues that because military force unfortunately remains the most effective means of responding to such threats, it makes little sense to commit our political system to a single method for making war or to adopt a war-making process that contains a built-in presumption against using force abroad. In addition, the emergence of direct threats to the United States that are more difficult to detect and prevent may demand that the United States undertake preemptive military action. Now more than ever, the costs of inaction—caused, for example, by allowing the vetoes of multiple decision-makers—could be much higher than we imagine, including the possibility of a direct attack on the United States and the deaths of thousands of civilians.

Practically, *The Powers of War and Peace* argues that:

- The president can initiate military hostilities without a declaration of war or other authorization by Congress. Congress's primary method for controlling presidential decisions lies in the power over appropriations. The federal courts have no constitutional role in interfering with the struggle between the president and Congress for control over war making.
 - Presidents can violate international law when they decide whether to use force abroad. Thus, even if critics are correct that the invasion of Iraq was illegal under the United Nations Charter, the president still had the constitutional authority to begin hostilities. Congress's authorization for the war, while unnecessary, only underscored the President's constitutional power. Similarly, the war in Kosovo was constitutional, even though it clearly violated international law.
 - The president has the authority to interpret and apply treaties on behalf of the United States. He need not consult with the Senate or the courts before interpreting a treaty. The president also has the discretion under the Constitution to unilaterally terminate or suspend treaties. President George W. Bush was well within his powers to interpret the Geneva Conventions as excluding the war with al Qaeda and to hold that the Taliban was never entitled to the benefits of POW status.
- In making treaties, the president and the Senate must cooperate with Congress to implement treaties that rest within the enumerated powers of the federal government. Treaties, on their own, cannot directly regulate the rights and duties of private citizens without implementation by Congress. Simple statutes can perform much of the function of treaties, when combined with an international agreement made by the president, by establishing certain standards of conduct on private citizens.

Interview with the author about the book:

Question: Your book, *The Powers of War and Peace*, is an examination of what the Constitution says about the authority that the president and the Congress have to wage wars and enter into international treaties. One thing the Constitution clearly says is that Congress has the power to declare war. But we haven't declared a war since 1941. Why doesn't this country declare war anymore?

John Yoo: The United States has often engaged in military hostilities without any declaration of war. In the first few years of the nation, for example, the United States went to one major war *without* a declaration (with France in 1798), and to another *with* a declaration (Great Britain in 1812). Since World War II, the practice has been to go to war without a declaration. None of the major wars in this period—Korea, Vietnam, Grenada, Panama, the Persian Gulf War, Kosovo, Afghanistan, and Iraq—have witnessed a declaration.

Why not? Declarations of war do not serve a purpose in the balance of powers between the president and Congress in wartime. They can play a role, under international law, in defining the nation's legal status vis-à-vis an enemy, but this purpose has faded with the rise of wars of self-defense or those under international approval (where no declaration would be needed). War declarations do not play an important role in the domestic process of deciding on war. Instead, Congress has at its disposal many other powers to balance presidential power in warmaking. Congress has complete control over the raising, funding, and size of the military. It can block a president's warmaking simply by refusing to allocate funds for a conflict. Declarations of war have disappeared in part because the president and Congress interact along many other dimensions when war is involved.

Question: Doesn't a declaration of war allow certain suspensions of civil liberties? If there is no declaration of war is there any constitutional foundation for any suspension of the rights of citizens? Or in general, absent a declaration of war, are there any limitations on the executive branch's prosecution of the war?

Yoo: One important area where a declaration of war remains significant is domestic civil liberties. The Supreme Court has held as constitutional certain deprivations of liberties in wartime only because a declaration of war has been issued; in fact, one of the rights in the Bill of Rights can only be suspended during wartime. The declaration of war plays an important role in limiting the power of the federal government as it affects citizens, but it does not perform that function with regard to the executive branch. Congress has a number of other methods for controlling and influencing executive prosecution of a war.

Question: In discussing the roles of the president and of Congress in declaring war, you devote several chapters to discussion of the history surrounding the writing of Article I, Section 8, Clause 11, which gives Congress the power to declare war. What is illuminating about that history?

Yoo: Many scholars have argued that the declare war clause is the root of Congress's control over war; they argue that military hostilities cannot begin without Congress's *ex ante* authorization. But the history of the clause gives no indication that this was its original purpose. Many critics of the Constitution claimed that it vested too much power in the executive over the military; not a single defender of the Constitution responded that the declare war clause would give Congress any power to prevent this. Rather, James Madison in the Virginia ratifying convention argued that it would be Congress's power of the purse that would control the executive sword.

Question: In 1973 Congress passed the War Powers Resolution, which was supposed to limit the power of the president of the United States to wage war without the approval of the Congress. Is the WPR constitutional? Is it relevant?

Yoo: I believe that the War Powers Resolution—which places a sixty-day time limit on the deployment of troops into combat situations abroad—is irrelevant. Presidents have consistently claimed it to be unconstitutional. President Bush in the first Gulf War and

President Clinton in Kosovo clearly violated its terms. No court has ever enforced it, and Congress has never cut off funds or successfully opposed a conflict because of the War Powers Resolution. The three branches almost seem to agree that the WPR is either unconstitutional or irrelevant. In my view, Congress cannot limit presidential use of the military in hostilities simply by declaring a clock to have stopped ticking, but must take some other action under its own authority, such as cutting off funds for a conflict.

Question: Presidents have often sought a legislative stamp of approval for engaging in wars—for instance, the current war with Iraq and the 1991 Gulf War. Do you think the reasons for that are entirely political, or is there a legal reason for seeking that approval?

Yoo: I do not think that the president is constitutionally required to get legislative authorization for launching military hostilities, and presidents from Truman through Clinton have not done so. But I think that there are complicated political reasons why presidents have gone to Congress recently for support. The wars in Iraq and Afghanistan were approved by Congress, and President Bush sought that support while at the same time claiming he had the constitutional power to launch the wars anyway. Presidents seek such support for two reasons: first, to send a signal to the enemy that the United States is serious about its intentions to go to war, and second, to maintain political unity by getting members of Congress on the record before the war starts, so that they cannot claim after the war that they did not agree with it.

Question: What about the role of international law in war? Is it against our Constitution for this country to engage in wars—or certain ways of waging war—that may violate international law?

Yoo: I make the case that the Constitution permits the president and/or Congress to violate international law when it engages in war. They may place the United States in violation of its international law obligations, but that does not constrain their discretion under domestic law. The formal reason for this is that the Constitution does not recognize international law as being a form of federal law—federal law is limited to the Constitution, treaties, and statutes. Treaties are the only exception, although the United States can choose to terminate a treaty, and it then has no force as domestic law.

As a matter of practice, the United States has violated international law in engaging in war in the past. In the case of U.S. covert action against Nicaragua in the 1980s, the International Court of Justice even found that the United States had violated international law. Nonetheless, the United States continued its efforts, and the courts never held that President Reagan had violated the Constitution.

Kosovo is another good example. The United States did not receive permission from the U.N. Security Council, nor could it (or did it) claim self-defense in using force against Serbia, which are the only two grounds for using force recognized under the U.N. Charter. Nonetheless, President Clinton had full constitutional authority to launch the air war in Kosovo, and no court attempted to stop him—in fact, the U.S. Court of Appeals for the D.C. Circuit heard a case brought by congressman Tom Campbell and refused to decide whether the war was unconstitutional.

Question: When you were at the Justice Department you authored a number of memoranda that have since become controversial, for instance, a 2002 memo which argued that the Geneva Conventions did not place constraints on how al Qaeda and Taliban detainees were treated at the Guantanamo facility. As a signatory to the Geneva

Conventions, why is the U.S. not obligated to treat those combatants according to the treaty?

Yoo: This is a complicated question. In the book, I argue that the president has the sole authority to interpret the Geneva Conventions on behalf of the United States, rather than the courts or Congress, because treaty interpretation is a key feature of the conduct of foreign affairs. Our conflict with the al Qaeda terrorist organization is not governed by the Geneva Conventions at all. The Geneva Conventions govern the laws of war but extend rights only to its signatories. Al Qaeda is not a nation and has never signed the Geneva Conventions, and they violate the laws of war at every turn. Afghanistan, however, is a party to the Geneva Conventions. While the Taliban fighters had an initial claim to protection under the Conventions, they lost POW status by failing to obey the standards of conduct for legal combatants: standards that include wearing uniforms, having a responsible command structure, and obeying the laws of war. But the Geneva Conventions themselves apply to the conflict in Afghanistan.

Question: What has had a greater effect on how we enter into war and conclude a peace: September 11 or globalization? What will have a greater effect in the long run?

Yoo: Both will have a significant effect on the making of war and peace. At the end of the cold war, war was still thought of as occurring solely between nation-states. The 1991 Persian Gulf War was a traditional war over territory fought by the regular armed forces of nation-states. Nation-states are usually presumed to be both rational and susceptible to various levels of coercion, with force often being used only as a last resort. Warfare, if it were to come, would take predictable forms with clearly identified armed forces seeking to take control over territory and civilian populations.

In 1993, the military strength and economic size of the United States had begun to so outdistance its nearest competitors that American thinkers may well have assumed that there were no significant military threats on the horizon. The Soviet Union's dissolution seemed to render hypothetical what had been the most compelling case against a requirement of *ex ante* congressional approval for military hostilities: the need for swift presidential action to respond to a Soviet nuclear first strike. The disappearance of the threat of a war that could directly harm American national security allowed policymakers and intellectuals the luxury to envision a future in which they could reduce the overall level of international armed conflict. In such an environment, a constitutional model that required the approval of multiple institutions before the United States could use force may have made some sense.

The world after September 11, 2001, however, is very different. It is no longer clear that the United States must seek to reduce the amount of warfare, and it certainly is no longer clear that the constitutional system ought to be fixed so as to make it difficult to use force. Rather than war disappearing from the world, the threat of war may well be increasing. Threats now come from at least three primary sources: the easy availability of the knowledge and technology to create weapons of mass destruction (WMD), the emergence of rogue nations, and the rise of international terrorism of the kind represented by the al Qaeda terrorist organization. Because of these developments, the optimal level of war for the United States may no longer be zero, but may actually be dramatically higher than before.

The emergence of direct threats to the United States that are more difficult to detect and prevent may demand that the United States undertake preemptive military action to

prevent these threats from coming to fruition. The costs of inaction, for example, by allowing the vetoes of multiple decision-makers to block warmaking, could entail much higher costs than scholars in the 1990s envisioned. At the time of the cold war, the costs to American national security of refraining from the use of force in places like Haiti, Somalia, or Kosovo would have appeared negligible. The September 11, 2001, terrorist attacks, however, demonstrate that the costs of inaction in a world of terrorist organizations, rogue nations, and more easily available WMD are extremely high—the possibility of a direct attack on the United States and the deaths of thousands of civilians. These new threats to American national security, driven by changes in the international environment, should change the way we think about the relationship between the process and substance of the warmaking system. The international system allowed the United States to choose a warmaking system that placed a premium on consensus, time for deliberation, and the approval of multiple institutions. If, however, the nature and the level of threats are increasing, the magnitude of expected harm has risen dramatically, and military force unfortunately remains the most effective means for responding to those threats, then it makes little sense to commit our political system to a single method for making war. Given the threats posed by WMD proliferation, rogue nations, and international terrorism, we should not, at the very least, adopt a warmaking process that contains a built-in presumption *against* using force abroad. Earlier scholarly approaches assumed that in the absence of government action peace would generally be the default state. September 11 demonstrated that this assumption has become unrealistic in light of the new threats to American national security. These developments in the international system may demand that the United States have the ability to use force earlier and more quickly than in the past.

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Friday, July 07, 2006 9:18 AM
To: (b)(6) CIV, OASD-PA
Subject: RE: Military analyst travel

(b)(5)

Dallas B. Lawrence
Director, Office of Community Relations & Public Liaison
United States Department of Defense

(b)(2)

From: (b)(6) CIV, OASD-PA
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To: Lawrence, Dallas Mr OSD PA
Subject: Military analyst travel

Dallas

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(b)(6)

From: Barber, Allison Ms OSD PA
Sent: Thursday, July 06, 2006 12:41 PM
To: Ruff, Eric, SES, OSD
Subject: RE: Early Bird

Got it.

From: Ruff, Eric, SES, OSD
Sent: Thursday, July 06, 2006 12:33 PM
To: Barber, Allison Ms OSD PA
Subject: FW: Early Bird

good idea. can you make this happen? thanks.

From: (b)(6) CIV, OSD-POLICY
Sent: Thursday, July 06, 2006 9:18 AM
To: Ruff, Eric, SES, OSD
Subject: Early Bird

Eric.

I didn't see this article in the Early Bird. You might want to run it. Thanks,

(b)(6)

NATIONAL REVIEW

America as Jailer

By Bing West

(Mr. West, an assistant secretary of defense in the Reagan administration, is the author of two books about the Iraq War: *The March Up: Taking Baghdad with the U.S. Marines*, and *No True Glory: A Frontline Account of the Battle for Fallujah*.)

America lacks a consistent policy regarding battlefield detainees. In Guantanamo Bay, constant outside criticism has sprung relatively few prisoners from captivity. Yet in Iraq, thousands of prisoners are periodically set free in sweeping conciliatory gestures. Condoleezza Rice told a European audience in March that the U.S. has "no desire to be the world's jailer." And indeed, while the administration has not quite given up its firm stance in the War on Terror, it has been years since a new prisoner was sent to Gitmo.

What are we to make of this? In game theory, the "Prisoner's Dilemma" refers to the rational incentives for two accused criminals to implicate each other when offered reduced sentences. The warden uses his cunning to turn the prisoners against each other. In the War on Terror, however, the prisoners are united and it is the warden who is susceptible to manipulation. In confronting terror, we have not reached a consensus on the proper handling of captured terrorists. Our tradition of self-criticism, due process, and respect for human rights has created vulnerabilities for our enemies to exploit. How to develop an approach to enemy detainees that is both confident and consistent? This is our warden's dilemma.

When the Taliban fell in November 2001, our troops captured Afghan soldiers along with terrorists from a dozen other countries. The worst of these, as determined by

rapid interrogations, were sent to Gitmo. Many of them could not be convicted in an American courtroom, because they were captured on battlefields without physical evidence or witnesses to a crime. Others were identified by classified means that could not be revealed in court. Regardless, in our nation's post-9/11 mood, pictures of these blindfolded, chained men in orange jumpsuits evoked grim public satisfaction.

By mid-2004, however, instances of prisoner abuse—snarling dogs, the mockery of naked prisoners—provided graphic illustrations to be used by war critics. Civil libertarians, Europeans, and many in the mainstream press used this opportunity to attack an administration whose policies and personalities they already loathed. The public image of terrorist detainees gradually morphed from sinister figures into naïve sad sacks who had been deprived of a fair trial. In obsequious atonement, many lawmakers and pundits uttered harsh condemnations of our policies. Sen. Dick Durbin even claimed moral equivalence between Americans and Nazis.

As a morally conscious liberal democracy, America became uneasy when criticized for denying trials to foreign combatants captured in civilian clothes. But rather than resolving the amorphous status of captured terrorists, we threw resources at the problem to make life more comfortable for the prisoners. Guantanamo became one of the finest state-of-the-art prisons in the world, far superior to European or American civilian prisons. Every prisoner at Gitmo chooses among 4,200 calories of food selections a day, including specially cooked Muslim dishes. Every inmate in Gitmo is provided with a Koran, and the inmates choose their imams from among themselves. Time is even set aside each week for hate-filled group sermons.

When these measures failed to quell criticisms of our detention policy, the Bush administration gradually began releasing prisoners—some of whom were later killed fighting American troops on faraway battlefields. The original Gitmo population hovered around 800, but it is now down below 500. Thanks to years of questioning and thousands of inquiries with intelligence services around the globe, a record several inches thick has been accumulated on each prisoner. The interrogators are convinced that 85 percent of Gitmo inmates are terrorists who are intent on continuing their jihad even during imprisonment. Killing a guard is their highest goal, followed by suicide—as a political weapon, not an act of despair. Of 44 suicide attempts, only three have succeeded. The rest have been thwarted because guards have intervened, often at the risk of their lives.

In Guantanamo's relatively small population, the huge expenditure of American

energy has garnered intelligence dossiers that are deep in detail but narrow in scope. In Iraq, where the U.S. holds 14,000 prisoners, the problem is the opposite: Too many are set free because there are not enough resources to closely analyze each prisoner. In Guantanamo, the focus is on extracting information about terror networks through tedious, uncoerced interrogations. In Iraq, the focus is on distinguishing between al-Qaeda-type extremists and nationalist resisters. This requires skilled interrogators, and there aren't enough of them.

THE REVOLVING DOOR

Iraq's prime minister, Nouri al-Maliki, recently took the risk of releasing 10 percent of the estimated 25,000 prisoners in his country. The intent was to wean "mainstream Sunni resisters" away from the al-Qaeda types by releasing the former and keeping the latter in prison. While courageous and well-intentioned, this reconciliation gesture had a stark downside: After being set free, many insurgents have only had their status enhanced in the eyes of their peers. We don't know the recidivism rate in Iraq, but in the U.S. it is over 60 percent. It is telling that some of our soldiers have begun referring to Abu Ghraib as "Osama U."

The policy of releasing Sunni insurgents has the tragic consequence of attenuating deterrence. What do insurgents have to lose from being arrested for fighting if they know they will soon be released by authorities? By not wearing uniforms, they can take advantage of rights comparable to those afforded to criminal suspects in a liberal democracy.

The data on Iraq's revolving door are revealing. In May, for instance, one American battalion in Ramadi detained 178 suspects—35 percent for possession of explosive devices that kill Americans, 45 percent for illegal weapons or inciting to riot, and 20 percent for outstanding arrest warrants. Every arrest required an enormous amount of hard work under a blistering sun. Each detainee was questioned by an experienced team of interrogators, supervised by a military lawyer who had been an assistant district attorney in the U.S. Within 18 hours, 100 of these arrestees were released with mere warnings. Most had been illegally carrying weapons in their cars.

The remaining 78 were charged with serious offenses. Most refused to answer questions. The arresting American soldiers filed two sworn statements for each arrest, together with photos from the crime scene. The detainees were sent to the brigade

level, where 50 were released and 30 were sent to Abu Ghraib Prison to await an Iraqi hearing. Once at Abu Ghraib, still more of these detainees were released by a Combined Review & Release Board, consisting of American and Iraqi officials. The battalion was notified of each release via a convoluted Internet system. To protest any release, American troops had to secure the signature of a colonel.

Of the original 178 arrestees, the 20 prisoners still being held at Abu Ghraib were scheduled to appear individually before an Iraqi judge, in most cases four to six months later. The American soldiers who had made the arrest were required to appear at that trial. In the majority of cases, this has not been possible. Iraqi judges, often intimidated and openly suspicious of written testimony from American soldiers, tend to free the accused. Net result: Over 85 percent of all those detained are released within six months.

Senior American officials believe the battalions are indiscriminate in making arrests. The battalions believe the senior officials are under political pressure to release hard-core killers who know how to lie. Either way, the system is broken: In the U.S., one male in 75 is in jail. In Iraq, it is one in 500. So either Iraqis are seven times more law-abiding than Americans, or the judicial system in Iraq is a mess.

Abu Musab al-Zarqawi's death, while a major achievement, does not affect the motivations of the foot soldiers in the Iraqi insurgency. We have not created jobs for a million angry Sunni youths. Nor have we created an effective deterrent against their working for the insurgency. In Ramadi, for instance, an unemployed youth is paid \$40 to emplace a roadside bomb. It is unlikely that he will be caught in the act, and, if he is caught, he knows the odds greatly favor his release. Our soldiers mock the arrest of insurgents as a "catch and release" fishing tournament.

At best, our current operating procedure shows a failure to communicate between our senior and junior military leaders. Either the lawyers and interrogation teams at the battalion level are incompetent, or the senior reviewers have become timorous because of adverse publicity, and are now determined to close all American-run prisons.

At worst, our porous anti-insurgency effort is undercutting the larger reconciliation strategy. The lack of a justice system inspires vigilantes and fuels sectarian violence, which is compounded by Shiites with militia ties who are hired as prison guards.

Reconciliation is a mockery if there is no punishment for rebellion or murder. Prime Minister Maliki has justified the release of 2,500 prisoners as "a chance for those who want to rethink their strategy." But if these freed prisoners persist with their violent attacks, more Americans and Iraqis will die.

CRIME & PUNISHMENT

So what should be done? First, stand firm on life imprisonment for terrorists. In Guantanamo, the physical evidence justifying detention is weak, but knowledge of the prisoners has led the reviewers to conclude that they remain a danger to society. In Iraq, the physical evidence is much stronger, but knowledge of terrorists' states of mind is usually nonexistent, owing to a lack of interrogators.

In Guantanamo, a three-member military commission annually reviews the record of each detainee, who is provided a lawyer to argue his case for freedom. This year, the commissions recommended that ten prisoners be released and 450 kept behind bars or returned in shackles to their home countries - that do not want them back. The Supreme Court has ruled the commissions cannot substitute for trials for the terrorists. But many would be freed for lack of evidence, if tried in a civilian court: What statute prevents being a "tourist" on a battlefield? Yet not even Justice Breyer wants Gitmo's finest moving in next door to him. The terrorists must remain imprisoned because they are a danger to society. The Court is forcing the nation to spend an enormous amount of money and political effort to arrive at a foregone conclusion.

Second, advertise and showcase Guantanamo as the last stop for terrorists. The Pentagon's program of inviting reporters to see for themselves is the correct course. The United States has nothing to hide at Gitmo. The prisoners are well treated and the guards are a credit to their country. The more reporters who visit, the better.

Third, get tough on the killers. Most Americans and civilians in Iraq are killed by improvised explosive devices, yet the administration has refused to say whether it is a war crime for a man in civilian clothes to plant such a device. Stop this shilly-shallying. Declare the emplacement of IEDs to be a war crime. Those caught with IEDs by American soldiers should not be turned over to the broken Iraqi system.

Fourth, repair the disconnect between the U.S. battalions in Iraq making the arrests and the senior officials who keep releasing detainees. The frequency of releases is brewing cynicism, and we must come up with a single system that enables arresting soldiers to be a part of the review-and-release program.

As the warden in the War on Terror, it is time for us to get serious about setting the rules for dealing with terrorists. The president should declare that the inmates at Guantanamo will remain in prison as long as they constitute a danger to society. Anti-Americanism in Europe and the Middle East will not be alleviated by closing Guantanamo. Instead, the harshest critics of America will consider its closure a victory, even if it means terrorists going free to wreak more havoc. Gitmo's reputation strikes fear among terrorists because it symbolizes banishment and oblivion, not martyrdom and fame. Guantanamo should stand as a deterrent to terror—a global reminder of the relationship between crime and punishment.

(b)(6)

From: JedBabbin@
Sent: Thursday, July 06, 2006 7:52 AM
To: tmcinarnev@; paulvalley@; nashct@; Gienstrae77@
BURM41516@; USAGirl1957@; WSSInter@
roberthscates@; wheelerc@; wilkerson@
mgroot@

Subject: Reviving the Generals' Revolt - Today's RCP

The "revolt of the generals" last April may have been spontaneous, and it may not have. But the coming revival clearly isn't.

[RealClearPolitics - Articles - Reviving the Generals' Revolt](#)

Jed Babbin

(b)(6) (home office)
(b)(6) (home fax)
(b)(6) (mobile)

(b)(6)

From: Steven J. Greer CSM (Ret) [steven@(b)(6)]
Sent: Wednesday, July 05, 2006 5:45 PM
To: Lawrence, Dallas Mr OSD PA
Cc: (b)(6) CIV, OASD-PA
Subject: FW: Gitmo for SOF
Attachments: Cuba SOF Mag.doc

Dallas, believe this piece on Gitmo might be in Soldier of Fortune magazine in the near future. I'll keep you posted.

Thx again for the trip!

V/r
Steve

From: Major F. Andy Messing, Jr. (Ret)/ NDCF [mailto:NDCF@erols.com]
Sent: Wednesday, July 05, 2006 10:21 AM
To: rkb@(b)(6)
Cc: steven@(b)(6)
Subject: Fw: Gitmo for SOF

Dear Bob...

CSM Steven Greer, USA (Ret.), a NDCF Senior Fellow for was on the DOD sponsored trip to GITMO ... wrote this article for your excellent Magazine on the detainee issue there (see above at attachments)....initially it was gonna be a joint piece, but his rendition/ draft to me hit all the nails on the head, so...accordingly, it is a single piece by just him. I am forwarding another picture of him addressing a crowd on Memorial day on the U.S. Capitol steps at invitation of the Republicans...

Should you have any questions ... please E-Mail Steve directly, and resolve the payment issue with him there at that E-Mail address too.

As Always,
Thank You,
Best Regards,
ANDY

P.S. Next time you are in D.C. ...I hope you stop by the Foundation in Alexandria before I sail off to Mexico end of October.

4/9/2008

Camp Delta at Guantanamo Bay, Cuba

Criticism of the Bush administration's policies toward the military detention facility at Guantanamo Bay, Cuba has become a popular sport of late. Much of it levied by those influenced by skewed media coverage rather than first-hand accounts. For sure, there is no shortage of so-called experts when it comes to the way ahead in the global war on terror. Perhaps Rush Limbaugh had a crystal ball when he compared the Guantanamo Bay to luxurious Club Med resorts. For most sensible Americans, his assessment may not be far off the mark. Truth be told, Guantanamo is neither a resort nor gulag.

"We conduct confinement operations and interrogation of the worst of the worst terrorist operatives," remarked Rear Admiral Harris, Commander, JTF-Guantanamo. Harris and his professional task force of soldiers, sailors, coastguardsman, and contractors operate under constant scrutiny. They spend an enormous amount of time responding to international pressures, uninformed criticisms, and irresponsible journalism. Camp Delta is tied up 2-3 times a week conducting "dog & pony" shows for VIP's and international media. Nonetheless, Harris and company remain stoic, focused, and unwavering.

Since September 11, 2001, more than 70,000 enemy combatants have been captured in Afghanistan and Iraq. The majority released or confined in facilities abroad. Only a fraction of suspected Taliban or Al Qaeda associates have "checked-in," reaping the pleasures and comforts associated with Camp Delta. Perks such as ice cream, air-conditioned cells, prayer rugs, checker board games, volleyball, and state of the art medical care. Detainees – political correctness for extremists who wish to kill us – eat three meals a day totaling in excess of 4200 calories. During our recent visit, astro-turf was being installed on a new out-door soccer facility. Not quite the symbol of torture one would expect.

So what do reasonable people make of reports of wide spread abuse? One recent delegation of military analysts learned first hand – abuse is pervasive and indiscriminate! Individuals are being spit on, head butted, peppered with feces and urine on a weekly basis. Unfortunately for mainstream media critics like the New York Times and former President Jimmy Carter, the recipients of such vulgar treatment are not detainees; they are guards – American Soldiers.

Americans shouldn't be at all surprised. Camp Delta isn't home to alter boys – there are bomb makers, terrorist facilitators, Usama bin Laden body-guards, and would-be suicide bombers. Some 800 total unlawful enemy combatants have been detained at Guantanamo. All are Taliban or Al Qaeda associates. Several hundred have been released or transferred pursuant to the Combatant Status Review Tribunal and Administrative Review Board process. Cumbersome processes akin to working a rubrics cube blindfolded.

Approximately 450 detainees remain at Camp Delta. Of these, 120 are suspected of possessing high-value intelligence information and are interrogated routinely. About 35% are compliant, the balance combative, hostile, and uncooperative. Detainees are also well cared for and Doctors have gone to great lengths to cure ailments, heal battlefield wounds, and provide medical care better than what most American's receive. Detainees have been cured of diseases that would have killed them, received operations, eye glasses, and artificial legs.

Interrogation is a cat and mouse game. "It's a chess match; both interrogator and detainee are hanging on every word," remarked one senior interrogator. Analysts at Camp Delta continue to receive information that saves lives and unravels Al Qaeda networks. Every detainee has a story to tell and is a potential treasure trove of information.

So what makes a detainee want to talk? "Rapport building...that's the strategy that we employ and it's effective," said one senior interrogator. For example, detainees are free to practice their

Muslim faith. Officials ordered small, black arrows painted on each bunk and in all common areas...the arrow points toward Mecca. Moreover, camp loudspeakers sound "call to prayer" in Arabic five times per day and guards are alerted by orange traffic cones to be respectful of prayer.

The result of such pampered care is undeniable. More than 4,400 reports capture information provided by detainees, much of it corroborated by other intelligence reporting. This unprecedented body of knowledge has expanded our understanding of Al Qaeda and other associated networks. Many detainees have admitted close relationships to senior Al Qaeda leadership – providing valuable insights into the structure, training, goals, and financial mechanisms. Guantanamo Bay is our only strategic interrogation center and is imperative to prosecuting the war on terrorism.

Lessons learned are advancing the operational art of intelligence and development of strategic interrogations doctrine. Moreover, they speak to the professionalism exhibited by hundreds of men and women deployed to Cuba to protect our freedoms. Not quite a resort and certainly not a gulag, camp Delta is a class act. The sign reads, "Vacancy at Guantanamo Bay, Cuba," and Admiral Harris and crew are gracious hosts.

Author(s): Major (ret) Andy Messing is the Executive Director of the National Defense Council Foundation, a think-tank in Alexandria, VA. Command Sergeant Major (ret) Steve Greer is a senior fellow at the foundation. Both are Special Forces combat veterans and frequent FOX News Channel pundits.

Contact:

F. Andy Messing
NDCF

1220 King Street, Suite 230

Alexandria, VA 22314

www.ndcf.org

ndcf@(b)(6)

(b)(6)

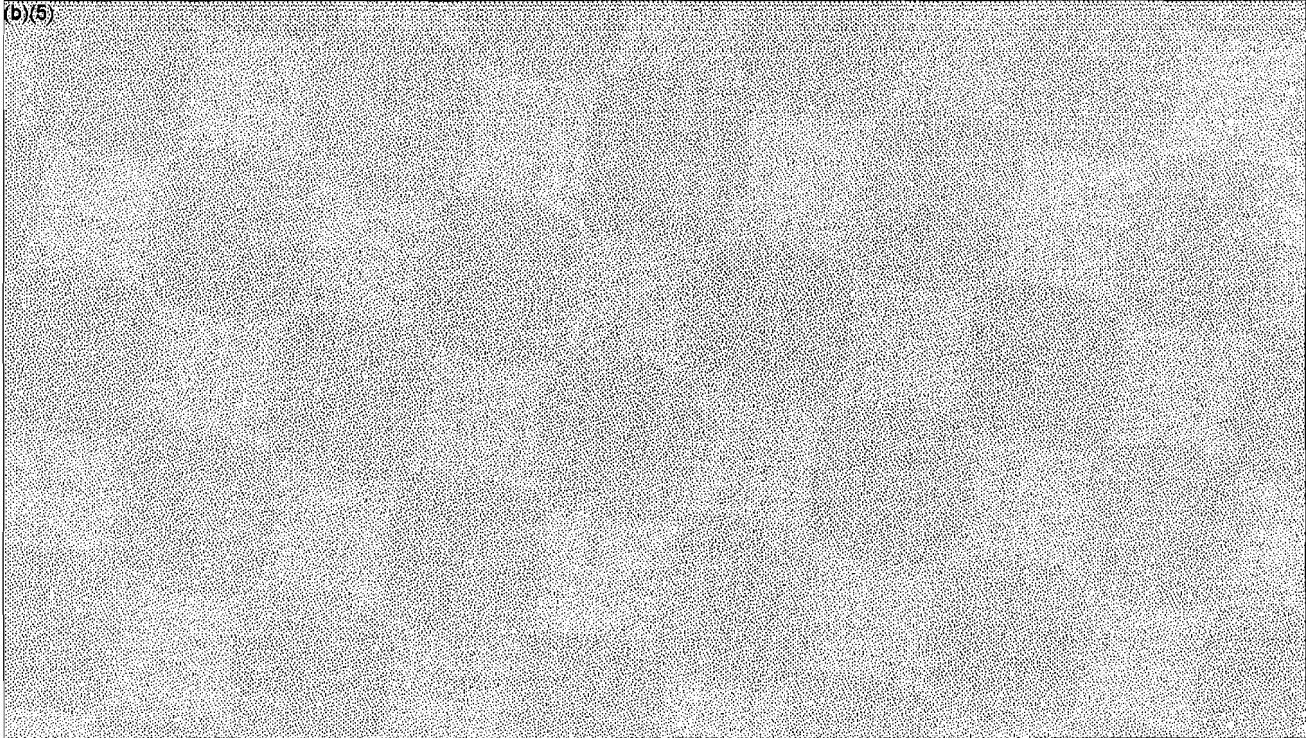
Cell
Office

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Wednesday, July 05, 2006 12:23 PM
To: (b)(6) CIV, OASD-PA
Cc: Barber, Allison Ms OSD PA
Subject: policy memo for legal

(b)(6)

(b)(5)



Thanks!

Dallas B. Lawrence

Director, Office of Community Relations & Public Liaison

United States Department of Defense

(b)(2)

(b)(6)

From: JedBabbin@
Sent: Wednesday, July 05, 2006 11:03 AM
To: Lawrence, Dallas Mr OSD PA
Subject: Re: The Horses' Rump Congress - today's Spectator

D: Thanks. Hope you had a great 4th. We sure did. As to Congress, they're hopeless. I wish they'd just go away. Best, Jed.

Jed Babbin

(b)(6)

(home office)
(home fax)
(mobile)

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Wednesday, July 05, 2006 11:01 AM
To: 'JedBabbin@'(b)(6)
Subject: RE: The Horses' Rump Congress - today's Spectator

Im not quiet sure if you have any strong feelings about this? ☺

Great piece. It is really a very funny thing, I have a number of friends who work on the Hill, they are all disgusted about the spending, but they blame potus for not vetoing bills or for submitting too much in budgets. Am I the only one that recalls from grade school that all appropriations originate in the House? And when you call them on it, they say things like "well, we cant stop ourselves, that's not our job, the President is the leader" etc etc. It is a really shocking collapse of leadership. I think Newt must be about ready to explode.

Hope you had a great 4th.

Dallas B. Lawrence

Director, Office of Community Relations & Public Liaison

United States Department of Defense

(b)(2)

From: JedBabbin@'(b)(6) [mailto:JedBabbin@'(b)(6)]
Sent: Wednesday, July 05, 2006 8:35 AM
To: tmcinerney@'(b)(6); paulvalley@'(b)(6); nashct@'(b)(6); Glenstrae77@'(b)(6); BURM41516
(b)(6); USAGIRI1957@'(b)(6); WSSInter@'(b)(6); roberthscales@'(b)(6); wheelercc@'(b)(6);
twilkerson@'(b)(6); mgroot@'(b)(6)
Subject: The Horses' Rump Congress - today's Spectator

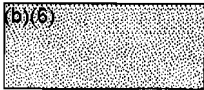
I hate to Cromwell from the Brits (and, yes, I know the historical context of him saying this while grabbing dictator-like powers) but I'm as fed up with Congress as I am with the *New York Times's* leakathon. Best, Jed.

The American Spectator

Jed Babbin

(b)(6) (home office)
(b)(6) (home fax)

(b)(6)



(mobile)

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Monday, July 03, 2006 5:12 PM
To: Smith, Dorrance HON OSD PA; Barber, Allison Ms OSD PA
Subject: Fw: Request

Dorrance,

Hope you are having a great 4th of July extended weekend. I know you have been personally working this sesno cnn issue and I wanted to bring this to your attention. Don sheppard is one of our best analysts, he is cnn's guy and tried valiantly to keep them honest. If you would like me to follow up with him on his request below I am happy to oir I can connect him to you or bryan and be hands off

Happy 4th!

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

From: ShepDonald (b)(6)
To: Lawrence, Dallas Mr OSD PA
Sent: Mon Jul 03 16:51:39 2006
Subject: Request

CNN is planning a special on Rumsfeld. It is to be done by Frank Sesno - I trust him - fair, smart.

Frank has found many Army guys who are PO'd at SECDEF - Shinseki, war strategy, force size/shape/funding. I am trying to help him get some balance into the story. Can you help me get e-mails for the following:

Gen. USAF (Ret.) John Jumper
Gen. USAF (Ret.) Lance Lord
Gen. USAF (Ret.) John Handy

Adm. USN (Ret.) Vern Clark
Gen. USA (Ret.) Jack Keane Don Shepperd

(b)(6)

From: JedBabbin@
Sent: Monday, July 03, 2006 9:41 AM
To: Ruff, Eric, SES, OSD
Subject: NK

Eric: Sorry to bother you on the holiday. Would very much like to talk briefly before 5 EDT when I'll be on with Gibson. Please call if you get a minute. Best, Jed.

Jed Babbin

(b)(6) (Home office)
(b)(6) (Mobile)

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Friday, June 30, 2006 4:23 PM
To: Barber, Allison Ms OSD PA
Cc: Lawrence, Dallas Mr OSD PA
Subject: FW: MG Durbin's Media Event (UNCLASSIFIED)

hi. I think the analysts will clamor all over this. if ok with you, I will set up.
thanks

(b)(6)

From: Vician, Todd M LtCol OSD PA
Sent: Friday, June 30, 2006 8:30 AM
To: (b)(6) CIV, OASD-PA
Subject: FW: MG Durbin's Media Event (UNCLASSIFIED)

(b)(6)

Maj Gen Robert Durbin, commander of the Combined Security Transition Command-Afghanistan, will be in DC on 13 July. He's in charge of the operations to train and equip the Afghan National Army and Police. He's offered to do a phonecon with the military analysts in addition to his media activities.

Do you think there would be interest in this from the military analysts? If so, would it be in Ms Barber's office?

Tentative schedule is:

13 July

1330 – press brief with Pentagon Press Corps in DoD Briefing Room

1400 – radio interviews from DoD Small Studio

1430 – phone conference with military analysts (done from office in Pentagon)

1500 – interview with Arab TV or Pentagon Channel or Times Publication in DoD Small Studio

Thanks,

Todd

Lt Col Todd Vician, USAF

Defense Press Officer
Office of Assistant Secretary of Defense (Public Affairs)

(b)(2)

From: (b)(6) USA CSTC-A Public Affairs [mailto:(b)(6)]
Sent: Friday, June 30, 2006 5:27 AM
To: Vician, Todd M LtCol OSD PA
Subject: RE: MG Durbin's Media Event (UNCLASSIFIED)

Sir-

I know you have sent me this information before but would you be so kind as to send an up to date list of Pentagon Press.

Can I get the room numbers for the events? Where should MG Durbin meet you?

Please let me know soonest when you get faces to places.

Thanks again for your assistance.

R/

(b)(6)

Major

(b)(6)

Combined Security Transition Command- Afghanistan

OSC-A, Public Affairs Officer

DSN

(b)(6)

Cell-

NIPR:

(b)(6)

SIPR:

Web: <http://www.cfc-a.centcom.mil>

From: Vician, Todd M LtCol OSD PA [mailto:todd.vician@^{(b)(6)}]
Sent: Wednesday, June 28, 2006 7:08 PM
To: ^{(b)(6)} USA CSTC-A Public Affairs
Cc: ^{(b)(6)} LtCol USAF CFC-A PAO; ^{(b)(6)} OSD PA; Carpenter, Joseph LCDR OSD PA; Ballesteros, Mark J, LTC, OASD-PA; Turner, James, CIV, OASD-PA
Subject: RE: MG Durbin's Media Event (UNCLASSIFIED)

^{(b)(6)}

Good to hear your boss is willing to do events when he gets back to DC next month. It will be much easier on all if we can arrange things prior to his arrival.

We can set up a press brief, follow-on radio interviews, etc. In place of the separate interview with CNN, you may want to consider one with an Arab TV station (Al Hurra or Al Jazeera). We can also arrange a phone conference with military analysts. They're retired or separated officers/NCOs who get time on FOX, CNN, etc.

Unfortunately, I'll be on leave at a Boy Scout camp that week, so my colleagues will have to cover. Also, in speaking with LTC ^{(b)(6)} I learned LTG Eikenberry will be doing events in country at around that time, so we'll need you to deconflict w/ CFC-A as necessary.

How does this straw-man schedule sound?

13 July

1330 – press brief with Pentagon Press Corps in DoD Briefing Room

1400 – radio interviews from DoD Small Studio

1430 – phone conference with military analysts (done from office in Pentagon)

1500 – interview with Arab TV or Pentagon Channel or Times Publication in DoD Small Studio

Note: the DoD studio is already booked from 1430-1545 on the 13th.

Thanks,

TV

Lt Col Todd Vician, USAF
Defense Press Officer
Office of Assistant Secretary of Defense (Public Affairs)

(b)(2)

From: (b)(6) USA CSTC-A Public Affairs [mailto:(b)(6)]
Sent: Wednesday, June 28, 2006 7:57 AM
To: (b)(6) LTC, OCPA; Vician, Todd M LtCol OSD PA
Subject: RE: MG Durbin's Media Event (UNCLASSIFIED)

(b)(6)

(b)(6)

Non Responsive

Sir

How much longer are you at OCPA? There is where I am heading after Afghanistan. Well, that is the current truth.

V/r

(b)(6)

Major

(b)(6)

Combined Security Transition Command- Afghanistan

OSC-A, Public Affairs Officer

DSN

(b)(6)

Cell-

NIPR

(b)(6)

SIPR

Web: <http://www.cfc-a.centcom.mil>

From: (b)(6) LTC OCPA [mailto:Carl.Ey@ (b)(6)]
Sent: Wednesday, June 28, 2006 4:20 PM
To: Vician, Todd Maj OASD-PA; (b)(6) USA CSTC-A Public Affairs
Subject: MG Durbin's Media Event (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

MAJ (b)(6) I wanted to make sure that LTC Todd Vician at DoD's press office had your notes as DoD will assist in conducting this interview for your boss, MG Durbin.

If there is anything else I can do to help, I will be glad to do so.

"Can Do, Huah!"

LTC (b)(6)
OCPA - Media Relations Division

(b)(6)
(FAX)

(b)(6)

From: (b)(6) USA CSTC-A Public Affairs [mailto:(b)(6)]
Sent: Tuesday, June 27, 2006 12:54 PM
To: (b)(6) LTC OCPA
Cc: Boyce, Paul Mr OCPA; Oatmeyer, Sean P LTC USA CSTC-A CIG; (b)(6) COL USA CSTC-A CoS
Subject: RE: MG Durbin's Media Event (UNCLASSIFIED)

Sir-

Great. Thanks. He'll do a Pentagon Press Corps event. I assume it will be the 1330-1530 slot??

Would you kindly ask Barbara Starr if she wants to follow-up with the CG? She did a stand-up with him last time she was here but it was rushed. Who is the Army Times Pentagon rep these days?

Here is his bio.

I will provide focus, TP's etc. as the time get's closer.

Thanks very much for all your help Sir.

(b)(6)

Major

(b)(6)

Combined Security Transition Command- Afghanistan

OSC-A, Public Affairs Officer

DSN

(b)(2)

Cell-

NIPR:

(b)(6)

SIPR:

Web: <http://www.cfc-a.centcom.mil>

From: (b)(6) LTC OCPA [mailto:(b)(6)]
Sent: Tuesday, June 27, 2006 8:01 PM
To: (b)(6) USA CSTC-A Public Affairs
Cc: (b)(6) OCPA
Subject: RE: MG Durbin's Media Event (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

(b)(6) OK. We can help you. Please provide some additional info i.e. does he want to do this on background? Does he want to do a press conf in the DoD press room? Is he interested in a round table event?

I see you noted that he wanted a one-on-one - which press outlet? I am happy to contact them.

"Can Do. Huah!"

LTC

(b)(6)
OCPA - Media Relations Division

(b)(2)

(FAX)

(b)(6)

From: (b)(6) USA CSTC-A Public Affairs (mailto:(b)(6))
Sent: Monday, June 26, 2006 2:35 PM
To: (b)(6) LTC OCPA
Cc: (b)(6) LTC USA CSTC-A CIG
Subject: MG Durbin's Media Event

Sir-

It now looks like MG Durbin will be available on 13 July. There are two time slots currently open.

0900-1100

OR

1330-1530

My CG would be willing to conduct a backgrounder but would prefer one-on-one's if practicable.

Thanks again for your all your support.

V/r

(b)(6)

Major (b)(6)

Combined Security Transition Command- Afghanistan

OSC-A, Public Affairs Officer

DSN: (b)(6)

Cell-

NIPR: (b)(6)

SIPR: (b)(6)

Web: <http://www.cfc-a.centcom.mil>

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED

Caveats: NONE

(b)(6)

From: (b)(6) AFIS-HQ/PIA
Sent: Friday, June 30, 2006 3:35 PM
To: Smith, Dorrance HON OSD PA
Cc: Barber, Allison Ms OSD PA; Whitman, Bryan Mr OSD PA; Ruff, Eric, SES, OSD; (b)(6)
(b)(6) Maj OSD PA; Lawrence, Dallas Mr OSD PA; Thorp, Frank
Subject: Corrected Version - Media coverage of two military analyst trips to Guantanamo
Attachments: MilitaryAnalysts_Gitmo_BothTrips_6.30.06.doc

Note: After our memo on the first trip, there was some additional coverage, so that is now included.

Yesterday's Supreme Court decision undoubtedly pre-empted some of the coverage from the second trip, but two of the analysts were on FoxTV.



MilitaryAnalysts_Gitmo_BothTrl...

**MILITARY ANALYSTS ON GUANTANAMO:
COVERAGE FROM ANALYSTS ON THE
JUNE 28 AND THE JUNE 21 TRIPS**

FROM THE JUNE 28th TRIP:

Military analysts who visited Guantanamo on June 28th have discussed their trip on the following stations, as of 3:00 PM on June 30th. They include:

- Former Army Undersecretary Joe Reeder:
 - Fox News Live (June 29)
 - “The detention center is absolutely valid and legal. It was authorized by Congress”
 - Fox News Dayside (June 29)
 - “There are 100 (detainees) now, approximately, out of the 450 that are slated to be transferred. This is how bad some of them are. 50 of them, their home countries won't receive them, won't take them back. We're not dealing with paragons of citizenship here”
- Retired Major General Robert Scales
 - Two appearances on Fox News Live (June 29)
 - “These prisoners, who are intending to kill Americans, get 4200 calories a day. They have four detainees for each medical aid professional who will take care of them and they're living in a prison, which, by American standards, is at the top of the scale. What bothers me is the inequity I saw down there yesterday as juxtaposed against the Supreme Court ruling, which in my mind at least, doesn't really accept the fact that this is a nation that's fighting in a war”
 - “I think the young men and women who are guarding these people down there are doing a marvelous job”

Coverage from the following analysts who also attended the trip has not been found using the tools available to us:

- Captain Chuck Nash, USN, Retired
- Captain Martin Strong, USN, Retired
- Major Andy Messing, USAR, Retired
- Command Sergeant Major Steve Greer, USA, Retired

FROM THE JUNE 21st TRIP:

Military analysts who visited Guantanamo on June 21st have conducted interviews on the following stations:

- Judge Andrew Napolitano:
 - One appearance on Fox News: O'Reilly Factor (June 29)
 - Three Fox News Radio interviews/clips on “Brian and the Judge”– one was live (June 21, 22)

- Two appearances on the Big Story with John Gibson (6/29 and 6/22, 5:00 PM – listed below in two parts)
- Two segments on Fox and Friends (6/23, 6:30 AM and 8:00 AM)
- Robert Maginnis:
 - While at Guantanamo, conducted three “live to tape” interviews for national broadcast
- Wayne Simmons:
 - One appearance on The Big Story w/ John Gibson (6/22, 5:51:58 PM)

Coverage from the following analysts who also attended the trip has not been found using the tools available to us:

- Mr. Bing West (Fmr ASD, USMC, Retired)
- Lieutenant Colonel Robert L. Maginnis (USA, Retired)

COVERAGE FROM ANALYSTS ATTENDING THE JUNE 28 TRIP

Joe Reeder

Fox News Live 06/29/06 12:32:57

Host: I'm going to talk to Joe Reeder, former Under Secretary of the Army. Just back from Guantanamo. Were you talking about this (the decision) last night at Guantanamo?

Reeder: We didn't talk about the decision a whole lot. We knew it was coming out. Mainly yesterday was just about being at the detention center at Guantanamo Bay.

Host: From a legal standpoint, do you have an opinion about what to do with them?

Reeder: Now or at the outset?

Host: Why don't we take the present?

Reeder: At present I think we're doing everything we can do right now. Approximately there are 450 down there right now – over 100 slated for transfer. Frankly, these are fundamentally bad customers. There are a lot of them. Upwards of 50 of them that their own countries won't take back.

Host: If 100 are going to be sent back, that leaves roughly about 360. 14 were sent back to Saudi Arabia. When they are sent back to their country, are they jailed or set free?

Reeder: The whole gammit – everything you said... it depends on the country. But my point is that their host countries won't even take them back. Tells you something about who you're dealing with. They are very dangerous people.

Host: Will Gitmo be forced to close or do you keep it open as you look for some sort of legislative agreement?

Reeder: I don't think this decision has any impact at all -- the detention center is absolutely valid and legal. It was authorized by Congress. The problem with the Supreme Court decision today, you have a lot of fault to share. You have fault with the President and with Congress. Fundamentally the President should have asked for legislation. He is supposed to be the leader. We need leadership. He is now going to ask for that legislation. It is high time, overtime. It was struck down by a court favorable to him 5-3. He should have asked for the legislation before instead of forging ahead....

We need different rules on the battlefield. You can't parachute F. Lee Bailey to give rights... You don't have chain of custody. You need fundamental fairness. All of this can be solved with legislation.

Host: Thank you, Joe. Just back from Guantanamo last night.

Fox News Dayside 06/29/06 13:04:56

Part II

Host: Let's have the third member of the panel – Joe Reeder, former Undersecretary of the Army joins us from DC. Joe – when were you at Gitmo?

Reeder: I was there yesterday.

Host: And certainly not as a prisoner... you were down there yesterday. Thank you for joining us. Who has a question for this panel of three here?...

Juliet: Real quickly, General Scales... came in this morning. He was talking and said, he's really concerned about this ruling because he says the enemy will be using now our confusion, the U.S.'s could be fusion over -- confusion over who these people are and how to define them. They'll be using that to our disadvantage. What do you do about that?

Reeder: Well, I think General Scales is absolutely right. It is incumbent on the President to work with congress. It is a two-way street now. There have been bills pending. Loretta Sanchez, hr-3044. Same bill, same language. Senator Graham for over a year, pending. the concurring opinion of Justice Kennedy is crystal clear. Congress can solve this problem. It was struck down because the President barged ahead without Congressional authority. It needs to get solved. It needs to get solved right now. And you need different rules. Not unfair rules. But on the battlefield, you have a complete different scenario – you're on the ragged edge of combat. You can't jump in, and parachute F. Lee Bailey in and give rights on the field... when you get evidence, you throw it in the Humvee, you don't have a chain of custody. The question really is, is it fundamentally fair? We tried Milosevic in Europe under these same rules. The Nuremberg trials were under these rules. We just need legislation...

Juliet: Secretary, if these people are let back out into the world, what is that going to do in the minds of our military men and women who are serving in places like Iraq and Afghanistan?

Reeder: They won't be let back out, they're detainees, they're not prisoners of war. They don't deserve to be treated as prisoners of war. And they don't adhere to the old rules that makes them prisoners of war. They won't be released. We've already released 250. There's 100 now, approximately, out of the 450 that are slated to be transferred. This is how bad some of them are. 50 of them, their home countries won't receive them, won't take them back. We're not dealing with paragons of citizenship here.

Audience member: If the detainees are released, should we consider there might be another terrorist attack in the U.S.?

Reeder: Well, certainly some of them, that's true as to some of them. That's what we're trying to come up with. A process that everyone agreed to that is constitutional that sorts those things out.

Bob Scales

Fox News Live 06/29/06 14:03:52

Host: Joining us now, Bob Scales. A Fox news military analyst, welcome. General Scales let me start with you, and ask you - the Democratic Majority Leader, Nancy Pelosi, is calling this a triumph for the law, saying that everyone is entitled to the basic guarantees of the of the American justice system. Do you agree?

Scales: Well, I think to some degree. This is the United States. We are a nation that's ruled by laws. But we're not talking about crime on the streets here. We're talking about 330 hard-core... 85% of whom have openly said to their guards and their interrogators, when released, they will immediately begin to kill Americans. 95% of them are Sunnis. These are not just your common criminals. These are men, who when released, should they ever be released, and God forbid they will have be released, will immediately go back on the terrorist network and begin the process of doing what they were doing before they were captured. To me, sure. Here's the deal. What's important is the American people have to decide, is this a nation at war? Or is this a nation at peace? If we're at war, we can use the police and the courts to clean up the terrorist problem. If we're a nation at war, we have to take extraordinary efforts in order to protect the American people. It is just that simple...

Host: Let me just get General Scales in here while I have a little time. You were there yesterday. You had a chance to observe how things were run there. How difficult will it be to make these changes, particularly for those who are capturing these detainees on the front lines, to incorporate something they're asking for - something like Miranda Rights.

Scales: That's a great question. The only advantage our young men and women have there who are guarding these guys is time. They have the ability to use time as a weapon against these guys. These young men and women have been assaulted. They've been beaten. They've been treated in ways that I can't talk about on the air. And you turn around, the other side, and these prisoners, who are intending to kill Americans, get 4200 calories a day. They have four detainees for each medical aid professional who will take care of them and they're living in a prison which by American standards, is at the top of the scale. What bothers me is the inequity I saw down there yesterday as juxtaposed against the Supreme Court ruling, which in my mind might be, at least, doesn't really accept the fact that this is a nation that's fighting in a war.

Host: General Scales, thank you very much. Appreciate your time.

Fox News Live 06/29/06 10:29:12

Host: Let's get reaction from someone that was at Guantanamo Bay yesterday, Retired Major General Bob Scales. General, give us your quick take on what our military personnel retired and otherwise, around the world are thinking about this?

Scales: I think we're all a little bit amazed by this, Jon. After all, to try to invoke the tenets of the Geneva Convention, for non-state actors, for people who are essentially - for lack of a better term, international murderers - to me is absolutely unbelievable. One of the things our veterans need to understand is that this ruling, bad as it is, does not affect the status of the detainees. Even if they're prisoners of war, they're still going to be detained in Guantanamo and not be loose to go back and kill Americans again.

Host: I don't know whether to be proud of my country for extending the rights and freedoms that we sort of take for granted here to a bunch of people who, you know, in my view, don't deserve it or whether to be appalled that, you know, the Supreme Court is throwing this blanket of protections over people who, you know, clearly are -- don't follow the rules of war themselves.

Scales: I think I would go with appalled. Frankly, I think this is amazing. It comes down to this, Jon. What the American people and the Supreme Court and the rest of the people of the enlightened states of the world have to understand or have to decide for themselves - are we in a state of war or are we not in a state of war? Are we in a condition where we can apply the rules of law and the works of police forces to stop global terrorism or are we going to have to rely on the tenets of war and our military to do it? This is a very important consideration... We have to get together and decide this. The enemy is using our confusion about the conditions in the world today to their advantage and ultimately it's going to wind up with innocent dead in Europe and the US and elsewhere in the world.

Host: When the camel courier or the donkey gets word to Osama bin Laden in his cave somewhere that this is the decision of the US Supreme Court, he's going to be chuckling, don't you think?

Scales: I think so. One of the things the enemy really enjoys is the confusion and the legal twists and turns that Western societies go through in trying to deal with their acts of barbarity. The little bit of solace here though is that this doesn't affect events in Guantanamo. These guys are still detained. I think the young men and women who are guarding these people down there are doing a marvelous job and they'll remain in Guantanamo because even -- remember, the prisoner of war status is not a punishment for crime. It's the status to take those guys off the battlefield and for now they're still off the battlefield.

Host: General Scales, we'll be talking more with you about this incredible decision from the US Supreme Court.

COVERAGE FROM ANALYSTS ATTENDING THE JUNE 21 TRIP

JUDGE ANDREW NAPOLITANO

Fox News: The Big Story With John Gibson - 06/29/06 17:04:15

GIBSON: Joining us now to break down this big decision, FOX News senior judicial analyst Judge Andrew Napolitano. He recently visited Gitmo. He is also the author of "The New York Times" best-seller "The Constitution in Exile." Just on the point the president raised right there, does this decision put, as he said, killers out on the street?

ANDREW NAPOLITANO, FOX NEWS JUDICIAL ANALYST: No. The president is quite correct. It does not. It basically says the only two ways you can try them, Mr. President, are in a federal district court in the mainland of the United States, a most undesirable choice, or in a regular traditional court-martial, which you can establish right there at Guantanamo Bay. But it does force him to empty the jails.

GIBSON: OK, well, then, what was this issue about, because he wanted to run them through a military commission or a court-martial, right?

NAPOLITANO: Well, he -- there's a difference between a military commission and court-martial. And that's what the whole case comes down to. The Supreme Court said, first, the Geneva Conventions apply to the whole war on terror, what's going on at Guantanamo Bay and everywhere around the world. And the Geneva Convention says the following. You can't set up a temporary penal tribunal, as they call it, just to try one set of problems. You have to use a regular, preexisting court system, like the U.S. district courts or regular court-martials. It then said the other reason you have to use regular court-martials or a U.S. district court is because they provide the protections against hearsay and use of secret evidence that the commissions permit, but the U.S. Constitution and Geneva Conventions won't allow.

GIBSON: OK. So, explain what it is they wanted to do. They wanted to say, look, we have got this evidence against you. We will show it to the judge, but we are not going to show you.

NAPOLITANO: Right, or they wanted to say, so and so told us, when they arrested Mr. Mohammed, that had a gun in his hand, even though the so and so is now dead, so, he obviously can't testify. And the Supreme Court said the Uniform Code of Military Justice, the federal military rules, the U.S. Constitution, and the Geneva Conventions prohibit those things. They prohibit hearsay and they prohibit the use of secret evidence. So, now the president is left with this very, very difficult choice. He must decide between revealing -- declassifying classified evidence and revealing its source, and using it in a courtroom to convict someone. or not trying that person and letting them go. He has to decide which of those awful choices is less painful to the country.

GIBSON: OK, explain this, if you can. Apparently, Justice Breyer writing in a concurring opinion -- that is, he agreed with the majority opinion -- said the ruling only applies to Hamdan, and not others, and that there's nothing to stop the president from approaching Congress to seek the authority he thinks is necessary to do what he wants.

NAPOLITANO: I -- I can't explain it, because the majority opinion, which he signed, disagrees with that. The majority opinion says it applies to everybody at Guantanamo Bay. And the majority opinion says, because the Constitution and the Geneva Convention require that you can't use secret evidence and you have to use a regular court-martial, and Congress can't change the Constitution or the Geneva Convention, no legislation that the Congress can write can accommodate this decision.

GIBSON: OK, if you have -- you were there. You -- and the general that was guiding you around was anticipating this result, this -- this decision, right?

NAPOLITANO: Yes, he was, as was the State Department.

GIBSON: And the general was going to appear on the air...

NAPOLITANO: Yes.

GIBSON: ... with you.

NAPOLITANO: Yes.

GIBSON: He promised to do that.

NAPOLITANO: Yes.

GIBSON: And he wouldn't do it. Why?

NAPOLITANO: Well, he's mad.

(CROSSTALK)

NAPOLITANO: He's probably angry, because, to be honest with you, the court went farther than it had to, by declaring that the Geneva Conventions apply to the entire war on

terror, not just Guantanamo, which was the only issue before them. They have basically said to the president, you got special-ops in a back alley in Baghdad, Geneva Convention applies. You got the CIA in the basement of a safe house in Afghanistan, the Geneva Convention applies. The government, the Justice Department has been arguing before every federal court that wants to hear this in the country for the past four years that the Geneva Convention does not apply. And the Supreme Court has rejected that. That adds to the president's burdens in prosecuting the war on terror.

GIBSON: Judge Andrew Napolitano -- Judge, thank you very much. Of course, the judge just visited Gitmo.

Fox News: The O'Reilly Factor - 06/29/06 20:05:10

O'REILLY: (Regarding the Supreme Court decision on Guantanamo): What do you think's going to happen, Judge?

ANDREW NAPOLITANO, FOX NEWS SENIOR JUDICIAL ANALYST: I think the President's going to be faced with a very, very difficult choice of how to prosecute these people, because the Geneva Conventions say you can't use temporary penal tribunals. You can only use...

O'REILLY: Well, what was the Nuremberg trial like?

NAPOLITANO: Nuremberg preexisted the Geneva Conventions, Bill. The Geneva Conventions are 47 to 49. Nuremberg is 45 to 46.

O'REILLY: So right now, you're saying Nuremberg would be outlawed?

NAPOLITANO: Yes.

O'REILLY: War crimes trials would be outlawed?

NAPOLITANO: Yes.

O'REILLY: Really?

NAPOLITANO: Because the Geneva Conventions say you have to use a preexisting judicial mechanism, meaning either a federal...

O'REILLY: Military tribunals pre-exist. They try people all the time.

NAPOLITANO: No. The President established military tribunals just for Guantanamo Bay. That's what the Supreme Court said he can't do.

O'REILLY: Well, move them to Fort Leavenworth and have a military tribunal to do that.

NAPOLITANO: It doesn't matter where they are, you can't set them up for one problem. You have to use either a federal district court, which no one wants them to do.

O'REILLY: Right.

NAPOLITANO: Or court martials.

O'REILLY: What if we bail from the Geneva Convention?

NAPOLITANO: That would have other repercussions, be very difficult to do.

O'REILLY: Yes.

NAPOLITANO: But that would relieve the country of the burden of complying with the Geneva Conventions.

O'REILLY: All right, so what the Supreme Court has done is it's constrained the war on terror.

NAPOLITANO: Yes.

O'REILLY: Handcuffed the commander in chief.

NAPOLITANO: One way to look at it. The other way to look at it is it's required him to follow the rule of law. The military commissions that he wanted allowed secret evidence and hearsay. Supreme Court said secret evidence, the government can see it and the judges can see it, but the defendant and his lawyer can't, violates the Geneva Convention. It is the Geneva Convention that mandates full due process.

O'REILLY: I've got a headache. I've got a headache right now.

NAPOLITANO: I'm sorry you have a headache, Bill.

O'REILLY: I mean, it's just...

NAPOLITANO: But that's what the Supreme Court said.

O'REILLY: All right.

NAPOLITANO: You know, you may think they're political, but they are the final word on what the law of the land is.

O'REILLY: I know they're the final word. I mean, unless we move to Costa Rica, because we won't get attacked by terrorists there probably...

NAPOLITANO: Well, you won't have the rule of law there either.

O'REILLY: You know, Costa Rica's OK. It's not chaos there. So give me a prediction. Give me a prediction. What's going to happen?

NAPOLITANO: The president has to decide whether or not to use classified evidence against them or whether to free them. My prediction from having interviewed the FBI agents who gather the evidence is they do not want to declassify this evidence. Therefore, he's going to be forced to let some of them go. Now they're not going to walk the streets. They'll go to a prison in Afghanistan where they were arrested. And the Karzai government will deal with them.

O'REILLY: OK. Megyn, good job. We appreciate you reporting for us all throughout the week. Judge, you know.

NAPOLITANO: Did I make sense tonight?

O'REILLY: A little bit. More than usual. Next..

NAPOLITANO: Happy Fourth of July, Bill.

O'REILLY: Thank you, judge.

Fox News Radio: Brian & The Judge – Call-in from Judge Andrew Napolitano from Guantanamo Bay – June 21

** (Note – highlights from the clip, not a word for word account)*

The "Live from Gitmo" segment on "Brian & The Judge" was roughly two and a half minutes long. Judge Andrew Napolitano phoned in live from a building across from the U.S Terrorist Detention Facility at Guantanamo Bay Wednesday morning. He had not yet toured the facility or witnessed any interrogations. He wanted to learn about the "fairness of the process of how prisoners are transferred in and out of the prison," and was most interested in sharing the numbers that he had already received.

➤ "800 in so far, 139 sent home as a result of the hearings"

Both the Judge and the host, Brian Kilmeade, were very surprised that they had not known about those numbers previously. The Judge elaborated further on numbers:

➤ "790 brought to Guantanamo, 290 transferred to their home countries or a third country if their home countries wouldn't take them, 130 are awaiting transfer, which is a matter of logistics..."

The Judge sounded eager to tour the prison and said, "Everyone's been very open. I've been amazed and thrilled with the openness with which they've answered my questions."

Fox News Radio: Brian and the Judge – Live interview with Deputy Assistant Secretary of Defense Cully Stimson on Guantanamo Bay Detainee Policy – 6/22, 0930

Judge Andrew P. Napolitano conducted a 10-minute interview with Deputy Assistant Secretary of Defense for Detainee Affairs Cully Stimson on Guantanamo Bay detainee policy after Napolitano returned from a trip to the detention center yesterday. Napolitano was impressed by the condition of the facilities and questioned the lack of reporting on the positive aspects of the center. He was also convinced of the guilt of the detainees and discussed the difficult legality issues in trying the detainees.

Impression of Guantanamo

Host: The military is almost delicate in the manner in which it treats these detainees; the treatment of the detainees far exceeds minimum requirements of the Geneva Convention. I'm shocked that I hadn't seen anywhere in the media that 797 detainees had been there and 230 have been released and 238 are ready to be released... no one reported... The facilities that are being built are as modern, sophisticated and as comfortable as any prisons that I have seen.

Stimson: I'm delighted you were able to go, and I'm not surprised by your observations. I'm happy to think that you think...that we far exceed the mandatory minimums required by Geneva. And everyone who goes down there believes the same thing... Over 1000 media have been down there from a very broad spectrum across the world, we've had 145 Congress members, 145 staffers go there, I took two European delegates down there to talk about how humane the conditions are.

Detainee Policy and Legality Issues

Host: Why was I surprised? Why were the media not reporting on the things that I saw? Is there an ideological bias because we are incarcerating people without trying them?

Stimson: Well, I'm not going to answer that...

Host: I apologize, that's a political question.

Stimson: Look, you know that any nation at war is entitled to detain its enemy, the Nazis who we were fortunate enough to detain. we detained them without charges...they didn't know when the war was going to end. There are some groups you can characterize one way or another that believe these people deserve more rights than the Nazis. That's just absurd.

Host: There's no legal basis for that. The legal conundrum that you guys are in. There's no question that the guys still there are the bad guys. There's no question that the military is convinced of it, I'm convinced of it. [After being briefed by FBI investigators of the evidence against the detainees,] the tracing of their behavior, even some who were in the United States, was the most terrifying. The problem is that not all this evidence would be [uphold... as evidence of the federal evidence either in federal court or in a traditional court marshal.]... So what do we do with them? We cannot send them back. They will kill the guards, their families, they will cause enormous damage and havoc to innocent Americans.

Stimson: [There are two concepts here,] one, is that the system you and I have lived in: criminal law. [Where there are defense lawyers, prosecutors, and evidence.] On the other

side is history and the law of war. If you are lucky enough to detain your enemy, and there is no doubt that that is our enemy, and during the time of war, you can detain your enemy as long as you decide them as an enemy combatant.

Host: And here's where you've exceeded Geneva's wildest [expectations, for] the worst of the worst, you've given them lawyers!

Fox News Radio: Brian and the Judge - Account of Guantanamo Bay - June 22nd (time unknown)

Judge: We visited jail cells, we saw detainees, we saw them in their cells, we saw them in their exercise yard, we examined evidence, I actually had an opportunity...to look at the evidence that they have obtained from these guys which will be used in the military commissions...we received briefings from FBI agents about the activities of these detainees, in the United States, before they were arrested! Nothing was off grounds. No questions went unanswered. The military is extremely courteous, kind and forthcoming. Big picture: Guantanamo Bay is an enormous naval base, it's 46 square miles...Since Castro came to power, he refuses to accept the lease payments but he knows we are there forever.

The prison at Guantanamo Bay is just one square mile of the 46 square mile, it is a very small portion of the naval base. The prison itself consists of six camps, with different levels of constraint depending the prisoners' behavior. Every prisoner receives truly top flight medical and dental attention. Every prisoner has his religious rights respected. The call to prayer occurs several times a day. The prison stops while those who wish to pray do pray. Obviously, one can work his way to a camp with more freedom with cooperation.

There is a surprising number of these prisoners who have cooperated. Cooperation consists of evidence information about what they know about other prisoners and what they know... (clip ends).

PART I: Fox News: The Big Story w/ John Gibson - 6/22/2006 5:00:27 PM

JOHN GIBSON, HOST: Hi, everybody. I'm John Gibson. A "Big Story" exclusive for you tonight -- our judge, just back from a visit to Guantanamo Bay, home to some of the world's most dangerous terrorists. The government invited Judge Andrew Napolitano and a select few others -- there's his snapshots -- to check out our prison in Cuba. He was allowed to personally examine evidence against the detainees, and he watched in an interrogation. The FOX News senior judicial analyst joins us now to break down the trip for us. So, judge, one of the most interesting facts I have heard about your trip already is, there are 100 guys there, bad guys, that they know have been in the United States casing this country. What, 37 trips?

ANDREW NAPOLITANO, FOX NEWS JUDICIAL ANALYST: Oh, John, it was terrifying.

We -- we received about eight or nine briefings, starting on the flight down and concluding with as we were leaving Guantanamo Bay. Clearly, the most compelling -- and, from my point of view, the most terrifying -- was from the FBI agents. There's a full team of FBI agents down there.

And they tracked the behavior of many of the detainees and showed that nearly 100 of them, collectively, had visited 38 states in the United States, legal, lawful entry into the

United States, some for as long as two years to -- to attend junior colleges, some for as short as two days, many to visit traditional American tourist sites. But they had all been -- but that many of them have been there.

GIBSON: Bad guys. They don't have the evidence to -- to put them on trial, and they don't want to let them go.

NAPOLITANO: This is the government's legal, not military or political -- this is the government's legal conundrum.

The government's chief lawyer and those working for him conceded to me that they do not have enough evidence to get a conviction before a military commission, which is the easiest, before a court-martial, which is the next most difficult, before a federal district court jury, which is the most difficult.

But they are satisfied, and they persuaded me from the evidence that they showed me, that these are such bad, evil human beings that to release them into society, whether in the United States or outside the United States, would be suicidal, because these guys would for sure return to kill their captors, to attack the families of the captors, or to wage war against us again in the Middle East.

GIBSON: You have been an opponent of what is going on in Gitmo. You have spoken out against it. And I think you have even written about it.

NAPOLITANO: I have written extensively about it.

GIBSON: In both your books.

You saw interrogations. Did you see anything objectionable?

NAPOLITANO: Oh, no, no, not at all. The people conducting the interrogations freely admit that the procedures that they used before 2004 were more aggressive than now.

When the Supreme Court came down with its 8-1 decision, saying the Constitution applies, the treaties apply, and the law applies, and the federal courts of jurisdiction, they stopped using the methods that about five FBI agents had complained about.

So, the interrogations that we saw, John, were about as mild as you and I conversing now. It's one interrogator. It's -- excuse me. It's one detainee. It's three interrogators, one of whom is a translator.

The whole thing is taped. Four people are watching the entire interrogation as it goes on. In my case, they allowed us to watch it through closed-circuit. So we weren't in the same room, and we couldn't hear the words being used. We watched the guy being interrogated, who is the number-two person there.

The government has ranked them, all 400 of them, in the order of their influence over the others. This is the number-two person. And they interrogate him about every two weeks, just to see what information he wants to share with them or what lies he wants to give them, which allows them to compare what he said with what others are saying.

GIBSON: What has happened since the recent suicide of detainees?

NAPOLITANO: Well, since the recent suicide of detainees, the administrative tribunals have stopped. So, we thought we could see an administrative tribunal or a commission. This is the interrogation of a -- of a detainee, formally and on the record and before a panel of three judges. Those stopped. Security has tightened considerably. And people who were about to get moved up to an area of the camp which is not as -- as aggressive were put back at the bottom of the line.

GIBSON: Judge Napolitano has opposed Gitmo for some time. A little later in the show, we are going to have him back, after he has seen this thing, to explain to us, what are we supposed to do about it?

Judge, we will see you in a little bit.

NAPOLITANO: OK, John.

PART II: Fox News: The Big Story w/ John Gibson - 6/22/2006 5:34:48 PM

GIBSON: President Bush saying he would like to shut down Gitmo. He's been under pressure from the international community about this prison for some time now. So should we? Our Fox News senior judicial analyst judge Andrew Napolitano just got back from an exclusive trip to Gitmo. That's him in his golf shirt looking around at the facility. Should we close it?

NAPOLITANO: No, I don't think we should close it.

GIBSON: Haven't you called for it to be closed?

NAPOLITANO: No, have never called for it to be closed. I have called for the people there to be put on trial. Because never in American history, I shouldn't say never because Abraham Lincoln did it during the Civil War and Woodrow Wilson did it in during World War rMD+IT_rMD-IT_1. But F.D.R., to his credit, tried the German saboteurs before they were executed. We've not since the Geneva conventions, which didn't exist until after World War II, held people without a trial.

The president must know that he has spent over \$30 million in the past year there, expanding the size of it, building a truly high-tech, first- rate building. I've been in a lot of prisons in my prior life as a judge and I walked through this one. This is about as good as they get in terms of facilities for the inmate, as prisons go, comfort for the inmate and high-tech ability to do what you have to do in a prison. They spent a lot of money on it. They spent \$2.5 million last week on a fence to keep out local people that were wandering on to the property.

GIBSON: You know, we hear from the human rights community that one of the reasons that Gitmo should be closed is the sense of hopelessness that detainees have because they don't know how they would ever get out if they're going, are they entitled to hope?

NAPOLITANO: Well, it depends who you ask. That's a great question, John. In my view on the American constitution and the treaties we've signed, they are entitled to a trial. And if the government cannot prove their guilt, they shouldn't be there. The government knows this. How do I know this? Because they haven't sent any detainees there since the Supreme Court ruled 8-1 that the constitution applies. Where are all the detainees from Iraq? They stayed in Iraq. They're under the custody of the Iraqi authorities. There's no new people coming to Guantanamo Bay.

GIBSON: And the supreme court is going to decide something soon?

NAPOLITANO: Yes, the case is very complicated but boiled down, 400 detainees filed applications for habeas corpus, meaning they want the government to justify to a federal judge why they're incarcerated without a charge. After that was filed the Congress enacted a statute saying they can't do it. The government now wants to argue that that statute is retroactive, which would wipe out the 400 applications. That's what the Supreme Court will decide. Are these 400 cases still alive? If they are, John, there will be 400 trials before federal judges in Washington, D.C. If they're not, there will just be military commissions with the right to appeal only after the commission rules.

GIBSON: One way or another there will be trials.

NAPOLITANO: One way or another there will be trials even though the top guys I spoke to yesterday said to me we can't prove cases against a lot of these guys. We just don't have the evidence.

GIBSON: Every day we see this, people say we don't have the evidence against these guys, we can't prove a case, we have to let them go. They don't want to say that?

NAPOLITANO: They don't want to say that. They don't want to let them go because they don't trust the governments to which they might go and the 15 of the 230 that they did let go came back and fought against us.

GIBSON: And they actually believe these people are terrorists who have taken a vow to fight the United States?

NAPOLITANO: The vast majority of the 400 detainees that are still there have made threats of such magnitude and severity that anybody who heard what I heard yesterday would believe that they are terrorists sworn to attack the United States. But under the laws and the treaties, they're still persons entitled to trials.

GIBSON: There have been, as you know, many accusations that detainees are tortured at Gitmo.

NAPOLITANO: Until the Supreme Court ruled 8-1 that the constitution applies and the federal courts have jurisdiction, there were some aggressive means used and all of those were outlined by FBI agents who objected to them. They were things like great heat, great cold, sleep and food deprivation. None of that, I'm told, has happened in the past two years since the Supreme Court's ruling. And the interrogation I witnessed, as I said earlier, was a conversation like you and me are having.

GIBSON: Who is their best interrogator?

NAPOLITANO: Their best interrogator is a New York City homicide detective, who volunteered to become an ensign in the Navy so he could go down there and show them how to interrogate and he's a terrific guy.

GIBSON: So law and order prevails at Gitmo. Judge, thank you very much.

Fox News: Fox and Friends 6/23/2006 6:34:20 AM

Fox News: Fox and Friends - 6/23/2006 8:05:59 AM

Steve: Judge Napolitano not exactly in to this zip code for a couple of days. he went to Gitmo.

Andrew: there I am in a jail cell.

Steve: About time.

Andrew: you know what, they love to play checkers and they love to play chess. I asked about that.

E.D.: you know its interesting, on my way into work today I was listening to National Public Radio and there is a movie coming out -- I think its called the "Road Gitmo"-- it starts today, but they were interviewing a person and it's based on the recollections of some people who have been imprisoned at Gitmo and they were saying that they -- I guess with no independent confirmation, the claim is that they were kept in cells and where they sleep, they have no roofs over their head and when it rains, it rains down on them and I asked you about that. In their living quarters, do they have rooms?

Andrew: they clearly have roofs, and the cells are so positioned so that the rain can't get in on them. They could get wet he if they were out in an exercise yard and it started to rain and they decided to stay

E.D.: they said their blankets --

Andrew: the Geneva Conventions and I should say the military's treatment of these detainees, exceeds the minimum that the Geneva Conventions requires. The Geneva Conventions requires a roof over their head, even though there's no heat or air conditioning -- the average temperature is in the 90's, there's a roof over their head in the cells.

Steve: I'm glad you went down there and saw it with your own two eyes. Remember those very famous early pictures of what it was like at Gitmo, somebody squeezed off some shots and you saw those prisoners in the orange jumpsuits and their hands were bound behind them, they were blindfolded. Any of that stuff? Are they still wearing the blindfolds down there?

Andrew: the military has asked all the media to stop using that. When the Supreme Court ruled in June of '04 that the constitution, the treaties, and the laws of the United States apply, the military's treatment of the detainees changed dramatically. It is now gentle, almost child-like the way they treat the detainees. It was not that way before, but the tape you're talking about is the old way that they were treated, which hasn't happened in two of that years.

E.D.: now, compared to how American prisoners are treated at American jails, here in the United States, are these people being treated equally, better, worse?

Andrew: Far better, far better, far better. Not even close in terms of the quality of the food, in terms of the medical treatment, education, and recreation available. I mean, one of those pictures shows me using exercise equipment in the prison yard. That was just one of the many pieces, there it is Steve -- it was 110. There was no roof over that exercise.

Steve: Judge, Valley Fitness is about a block away. If you need to workout, I wouldn't go to Gitmo. The facilities there are excellent.

E.D.: People claim people are treated so horrendously, it needs to be closed, is better than what we keep our own prisoners in America in?

Andrew: No question about it. The administration has just spent \$30 million to build indoor cells and that facility, which will be known as Camp Number Six. They each have numbers, depending upon the degree of security and lock down and that facility will be the most modern, high tech facility with the best creature comforts for prisoners. It's a jail. It's not too many creature comforts but the best for prisoners anywhere in the country.

Steve: It was great you were able to make the trip. Judge, thank you for sharing that --

Andrew: It was a one day trip, down in the morning, five hours there, back to Andrews Air Force base.

Steve: it's not like you wanted to spend the night.

Andrew: No way, O-Reilly said to me make sure you leave

WAYNE SIMMONS

Fox News: The Big Story w/ John Gibson - 6/22/2006 5:51:58 PM

JOHN GIBSON: Back now to our "Big Story" Guantanamo Bay exclusive. We've heard from our judge earlier about what he saw on his trip yesterday to that infamous detention facility. Former CIA operative Wayne Simmons was also on that trip. He joins us now with his thoughts.

So, Wayne, the judge, you know, has always said that these guys should get some sort of trial. Isn't quite sure about whether you should close it. But he also described a situation where it seems like the interrogation techniques are so watered down, you wonder if they're getting anything out of these people at all. I mean, he described an interrogation technique that looked a little like Tony Soprano talking to his shrink. What do you get out of that?

WAYNE SIMMONS, FORMER CIA OPERATIVE: Listen, and the judge is absolutely correct. I had the very good fortune and the honor of being on the first contingent to go to Guantanamo Bay a year ago, and when I came back, I wrote some pretty scathing things about the interrogation methods, which I found much, much too soft. I thought we should use much harsher methods to get the time sensitive intel. I can tell you now, after a year I've changed in my position, and I'll tell you why. What is happening is the command and control face on the battlefield is changing, and what we now see happening, John, is that we're able to go back to some of these detainees and secure information about who we believe is now the new face of the command and control in the battlefield, and get a description of these individuals and where they are and where their families are.

So would I like to see harsher conditions -- not torture but stronger conditions in interrogation? Absolutely. But...

GIBSON: But I mean, you know, the judge described it as three people in there, a guy sits on a couch, they talk to him. Nobody else. There's no sleep deprivation, no food deprivation. It's not too hot. It's not too cold. He's not being water boarded. He doesn't have snarling dogs. He's just chatting with them. What do they get out of that?

SIMMONS: Well, they're using a technique whereby they build a bond and whereby they hope that as time passes, that bond will yield verifiable intel. And it appears that is working.

But I will tell you, one of the most amazing things that I saw, and one of the things that made me very, very happy, and as the judge said, it was a scary time, was that we're finding out that a lot of the intel we're getting from these detainees is being used by our FBI, and these men and women of the FBI are doing one incredible job of hunting down the cells inside the United States.

And unfortunately, we're not allowed to stand up on the mountain and scream at the top of our lungs, look what we did or look what they've done, and that's unfortunate because the American people would be proud of what they see the FBI having done.

GIBSON: Wayne, you won't mind if I needle you just a little bit. The judge says the best interrogator they got was a New York City cop.

SIMMONS: Well, listen, I don't know if that's the case. But I can tell you...

GIBSON: I mean, where are the CIA guys, where are the FBI guys? How come they're behind a New York City cop?

SIMMONS: Listen, all of these men and women that are doing those interrogations are outstanding. So I'll let the judge make his assessment, but I will tell you they are -- and I'd love to mention names, but I can't for obvious reasons, but they are doing an incredible job, outstanding job. And I want to show you one thing quickly if I can. I don't know if you can pan in on this medal that was given to me by the commander of JTF Guantanamo, Admiral Harris. And on this, if you can see this, it says, it says "honor bound." And these fine young men and women that are guarding these animals -- and that's what they are, the nastiest people on the planet -- they are shouting "honor bound" at every opportunity.

GIBSON: All right, Wayne Simmons, thanks a lot. Appreciate it.

SIMMONS: Thank you, John.

(b)(6)

From: Merritt, Roxie, AFIS-HQ
Sent: Friday, June 30, 2006 2:35 PM
To: Lawrence, Dallas Mr OSD PA; vze279gy((b)(6) Merritt, Roxie, AFIS-HQ
Cc: Barber, Allison Ms OSD PA
Subject: RE: nbc/msnbc

Hi Jack,

This is a great opportunity to highlight our great people who serve our country. Let's talk when you get a chance and flesh out the concept. Hope you have a great 4th of July.
Roxie

Roxie T. Merritt
Office of the Deputy Assistant Secretary of Defense for Public Affairs (Internal Communications) U.S. Department of Defense
601 North Fairfax Street - Rm (b)(6)
Alexandria, Virginia 22314-2007
Phone: (b)(6)
Fax: (b)(6)
email: roxie.merritt((b)(6)

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

From: Lawrence, Dallas Mr OSD PA [mailto:Dallas.Lawrence((b)(6)
Sent: Friday, June 30, 2006 2:09 PM
To: vze279gy((b)(6) Merritt, Roxie, AFIS-HQ
Cc: Barber, Allison Ms OSD PA
Subject: RE: nbc/msnbc

Jack,

Great news! Thanks for your steering this through. Roxie Merritt, whom I believe you know, will be the poc for this project. We are all very thrilled to help make this an extremely good partnership highlighting the heroism of our military men and women.

Roxie is cc'd and standing by!

Happy 4th of july my friend,
dl

Dallas B. Lawrence
Director, Office of Community Relations & Public Liaison United States Department of Defense

(b)(6)

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

From: vze279gy((b)(6) [mailto:vze279gy((b)(6)
Sent: Friday, June 30, 2006 1:52 PM
To: Lawrence, Dallas Mr OSD PA
Subject: nbc/msnbc

Dallas:

Good to talk to you today. To reiterate, we'd like to produce a number of short packages on the heroic exploits of our soldiers, sailors, airmen and marines. Subjects would include SFC Paul Smith, the female soldier who was recently awarded the Silver Star, etc, etc.

You suggested that a single point of contact, Mr Strube (?), would make the whole thing easy and efficient.

Please put me in contact with the right person, and I'll run with it.

All the best, and happy 230th!

Jack Jacobs

(b)(6)

(b)(6)

From: Gordon Cucullu [gordon@
Sent: Friday, June 30, 2006 11:03 AM
To: Gordon Cucullu
Subject: Gordon's Article on SCOTUS-GTMO

Here is a piece I wrote quickly on Thursday's Supreme Court decision regarding Guantanamo detainees. Front Page Mag link is here: <http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=23184>

Article pasted here:

Geneva Convention Rights for Al-Qaeda
By Lt. Col. Gordon Cucullu
FrontPageMagazine.com | June 30, 2006

The Supreme Court decided Thursday by a 5-3 vote that in effect granted al-Qaeda terrorists the same rights as American soldiers. (Chief Justice Roberts recused himself because of a previous decision on the case while at the appellate court level; Thursday's ruling overturned his decision.) Judge Clarence Thomas, reading a dissent from the bench for the first time in more than 15 years on the Court, scathingly criticized the majority for a decision that he said would sorely hamper the president's ability to confront and defeat a new and deadly enemy.

In a stark reflection of the Left's inability to comprehend the core facts of this war, including even the simplest grasp of the nature of the enemy, House Minority Leader Nancy Pelosi said vacuously that today's decision is a rebuke of the Bush administration's detainee policies and a reminder of our responsibility to protect both the American people and our Constitutional rights. Can the woman who may be the next Speaker of the House really think that extending Constitutional safeguards for imprisoned Guantanamo terrorists somehow protects the American people? Or is she simply so blinded by leftist ideology and a pathological hatred for George Bush that she is willing to support Constitutional protections for enemy combatants in order to defeat him?

Conversations with senior Department of Justice and Department of Defense officials later on Thursday afternoon revealed concern but by no means panic. This decision deals more with process, a senior Justice official explained. It does not in any way affect the president's ability to confine these enemy combatants to Guantanamo and in no manner does the decision imply or state that closure of the facility is necessary or desirable. Nor, the point was made, does the decision necessarily have an impact on most of the detainees. Only those who are being charged with war crimes, capital offenses, or offenses that could result in lengthy confinement beyond the conclusion of the war are affected by the decision.

Are the government's attorneys upset by the SCOTUS decision? You bet. They stand strongly on the position that foreign terrorists do not deserve the same levels of protection that American citizens do, especially American soldiers – or even foreign saints. We were told by the Court to make the protections for the detainees in question more like a military court martial, a senior Defense official explained. Others at the meeting bitingly criticized the Court for being more concerned with terrorists than with our own soldiers, a sentiment clearly reflected in Pelosi's empty-headed remarks, gushing over Constitution protection for those who are sworn to destroy it.

The positive part of the decision came from Judge Stephen Breyer remarks that said nothing prevents the president from returning to Congress to seek the authority he believes necessary to carry out the military commissions. Was the Court intrusive on Executive Branch privileges? It would appear so to many, although

the decision was far from the nail in the coffin for the idea that the president can set up these trials, that Barbara Olshansky claimed it to be. Olshansky is legal director of the hard-Left, New York-based Center for Constitutional Rights, an organization that represents about 300 Guantanamo detainees.

Funding for the CCR allowing them to give *pro bono* representation to Guantanamo terrorists such as Salim Ahmed Hamden, the plaintiff in this case, is derived from a number of suspect sources. Analysts claim that CCR funding includes large amounts from Gulf and Saudi sheiks as well as governments known to sponsor terrorism. Hamden was Osama bin Laden's driver and bodyguard, a position in a terrorist organization that is given only to highly reliable and totally committed jihadists, not someone seeking work to feed his family, as Hamden claimed. Nonetheless, Hamden is hailed as a victim of American fascist imperialism by the CCR and the Legal Left, cited as an example of the many innocents confined at Guantanamo.

So what does the Court decision mean for Americans, practically speaking? It does *not* mean that any of these terrorists now held at Guantanamo will be arbitrarily released or brought before a left-wing judge and set out on bail anytime soon. It does mean that military commissions, being conducted on ten detainees charged with war crimes, including Australian David Hicks and Hamden himself, will be once more placed on hold. The irony is that defense attorneys for these men decry that they have been held without trial and yet these same attorneys spent years and millions of dollars upsetting the process that the president put into place to give them a fair hearing in the first place.

Thankfully Guantanamo, an essential node in the War on Terror because of its confinement and interrogation capabilities, is to stay intact and fully functioning. In fact the Court did not challenge either the justification for existence of the facility or the notion that interrogations are conducted on the detainees, both issues that defense attorneys sought to get a judgment in their favor. On the Hill, Arizona Senator Kyl and other like-minded, national security Senators are rushing to work with the administration to formulate a bill that would give the president sufficient latitude to deal with our enemies without constant interference from those who would do us harm, including home-grown threats.

Meanwhile, in the field American soldiers consider that they have once again been slapped in the face by American leftists. They have endured the constant pressure of harsh criticism from the left including hysterical allegations of out-of-control brutality, incompetence, and poor morale. Repeatedly they have watched major news media casually release information to the public which, were they to release it, would merit them courts-martial. The Court decision is yet another nail, not in Bush coffin, as the Left wishes it to be, but in the heart of American resolve.

Almost five years past 9/11 and Americans, particularly our soldiers, are as Hugh Hewitt and Mark Steyn succinctly put it - still dealing with a 9/10 judiciary, Congress, and Democratic Party. We won't lose on the battlefield but have yet to recognize that the real fight is in the media, in public opinion polls, and against slack-minded, overly ambitious politicians that their primary job is protecting America, not winning reelection. We can only hope that the Court can be fixed before it gives away all of our protections.

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(b) (6)

From: (b) (6) CIV, OASD-PA
Sent: Friday, June 30, 2006 8:18 AM
To: Barber, Allison Ms OSD PA
Cc: Lawrence, Dallas Mr OSD PA; (b) (6) CIV, OASD-PA
Subject: trip
Attachments: roster memo for analyst trip.doc

attached is a memo on where we stand on the trip.

jack keane is unable to make it.

jeff mccausland wants to go, but he has not yet booked his tickets. i hesitate to put him in the "confirmed" category since his message to me was that he assumed osd would cover the flights again. i sent him a note (he's in australia) letting him know that wasn't the case. i won't hear from him until 11:00. he's on the "checking" list.

i also sent a note to gen mcinerney, he was unable to make it b/c he was cutting it so close to a commitment he had on the 12th. i let him know that the latest we would be back would be the night of the 11th. will try to connect with him asap this morning (he's in alaska). right now, he's on the "declined" list.

jack jacobs wanted to go but will be in london next week. left him a message to see if he'd be interested/willing to fly directly from london and meet us in kuwait. will connect with him this morning on that. right now, he's also on the "declined" list... let me know if you want me to include him in the "checking" list.

mnf-i, centcom and jvb in kuwait are breathing down my neck for the final lists NLT today. not sure what names to send them. i hesitate to give them the names we have and then change/add to them yet again. dave and i discussed and we will wait until after your meeting with dorrance to start greasing the wheels for a new country clearance msg., etc.

i talked to m.j. and capt citino (the pa trip coordinator in baghdad) this morning and made friends with them again.

;))

will keep you posted.

thanks

(b) (6)

(b) (6)

OSD Public Affairs
Community Relations and Public Liaison

(b) (7) (C) The Pentagon
Washington, D.C. 20301

(b) (7) (C)

4/9/2008

MEMORANDUM

TO: Dorrance Smith
FROM: Allison Barber
DATE: Friday, June 30, 2006
RE: Analyst Trip to Iraq

The following retired military analysts have accepted our invitation and confirmed that they will travel with us to Iraq, July 7-11.

Brigadier General David Grange (USA, Retired) CNN
Major General James "Spider" Marks, USA, Ret. with CNN
Major General Don Shepperd, USAF, Ret. with CNN

The following analysts are checking their financing and flight options to see if they can make it work:

Colonel Ken Allard (USA, Retired) MSNBC
Lieutenant Colonel Robert Maginnis, USA, Ret. Freelance national radio and TV
Dr. Jeff McCausland, Colonel, USA, Ret. with CBS

The following analysts have declined our invitation:

General Wayne Downing, USA, Ret. with MSNBC
Lieutenant Colonel Rick Francona (USAF, Retired) NBC
Colonel John Garrett (USMC, Retired)
Colonel Jack Jacobs (USA, Retired) MSNBC
General Jack Keane (USA, Retired) ABC
Lieutenant General Thomas McInerney, USAF, Ret. with Fox News
Captain Chuck Nash, USN, Ret. with Fox News
Major General Robert Scales, USA, Ret. with Fox News
Mr. Wayne Simmons, CIA, Ret. with Fox News

(b) [Redacted]

From: (b) [Redacted] CIV, OASD-PA
Sent: Thursday, June 29, 2006 6:14 PM
To: Barber, Allison Ms OSD PA
Cc: Lawrence, Dallas Mr OSD PA
Subject: RE: Iraq analysts

hi.... just forgot to put jed babbin on the decline list. added him on that last email i sent you!
thanks

(b) [Redacted]

-----Original Message-----
From: Lawrence, Dallas Mr OSD PA
Sent: Thursday, June 29, 2006 5:59 PM
To: Barber, Allison Ms OSD PA
Cc: (b) [Redacted] CIV, OASD-PA
Subject: Iraq analysts

Allison here is the list you requested...

CONFIRMED:
Don Shepperd, CNN
Spider Marks, CNN
Dave Grange, CNN

TENTATIVE/CHECKING
Ken Allard, MSNBC
Bob Maginnis, freelance radio, regular FOX TV Jack Jacobs, MSNBC Jack Keane, ABC

DECLINE
General Wayne Downing, USA, Ret. with MSNBC Lieutenant Colonel Rick Francona (USAF, Retired) NBC Colonel John Garrett (USMC, Retired) Lieutenant General Thomas McInerney, USAF, Ret. with Fox News Major General Robert Scales, USA, Ret. with Fox News Mr. Wayne Simmons, CIA, Ret. with Fox News

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Thursday, June 29, 2006 5:54 PM
To: Barber, Allison Ms OSD PA; Lawrence, Dallas Mr OSD PA
Subject: FW: Travel

here is where we stand:
we have a definite yes from:
don shepperd, CNN (booked his refundable travel) spider marks, CNN (was going to get his staff to work his ticket) dave grange, CNN (was going to get his staff to work his ticket)

we have a maybe from:
ken allard, MSNBC (waiting to hear if msnbc will pay for it) bob maginnis (just heard from him that he might be able to get some of his networks to pitch in a little. if so, he's in) jack jacobs, MSNBC (if he can go directly from london -- haven't gotten a response from him on that proposal) jack keane, ABC (will get back to me)

some suggestions of who we could still invite:
cdr peter brookes, fox and heritage (national security fellow) jim carafano, fox and heritage (international studies fellow) ltc gordon cucullu, fox

here are the ones that have said no:
General Wayne Downing, USA, Ret. with MSNBC Lieutenant Colonel Rick Francona (USAF, Retired) NBC Colonel John Garrett (USMC, Retired) Lieutenant General Thomas McInerney, USAF, Ret. with Fox News Major General Robert Scales, USA, Ret. with Fox News Mr. Wayne Simmons, CIA, Ret. with Fox News

and the ones i didn't ask b/c they already told me they'd be out of town:
Dr. Jeff McCausland, Colonel, USA, Ret. with CBS (i will ask to see if he wants to re-route his return trip) Captain Chuck Nash, USN, Ret. with Fox News

allison -- would you want to invite john molino??? that thought just occurred to me.
that's all i've got...
thanks

(b)(6)

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

From: robertmag73@ (b)(6) [mailto:robertmag73@ (b)(6)]
Sent: Thursday, June 29, 2006 5:39 PM
To: (b)(6) CIV, OASD-PA
Subject: Re: Travel

(b)(6)

just did a cnn program on gitmo from london. i thought it went well.

this is the first time i have been able to check email. i gather from this email that we are expected to pay for our air fare. i don't know whether my networks will help but i'll try to check and let you know by saturday morning.

bob

--
Robert L. Maginnis

(b)(6)

robertmag73@ (b)(6)
[http://home.comcast.net/\(b\)\(6\)](http://home.comcast.net/(b)(6))

-----Original message-----
From: (b)(6) CIV, OASD-PA" (b)(6)

> Gentlemen,
>
> The details for our trip are coming together. I wanted to update you
> on the status so that you can book your travel. There has been another
> slight change -- we appreciate your flexibility on this. You should
> book your tickets into KWI arriving the morning of the 8th -- no later
> than 10 am. We will not overnight in Kuwait, but will board a milair
> flight early that afternoon. If you need to arrive the evening
> before, please let me know and we will try to work out accomodations for you.

>
> If you are able, book the following flight. It is on sale for \$1,800
> right now on Orbitz.

> BA Flight 224 departing IAD at 8:05 AM in July 7, connecting through
> London to BA 157 arriving into KWI at 6:30 am on July 8. This is the
> ideal flight. The sooner you book, the better!

>
> We will spend the remainder of the day the 8th in country and remain
> overnight. The following day will be a full day of visits and
> briefings, as will the day of the 10th. We will be departing the
> country the night of the 10th, and will overnight in Kuwait. You
> should book a ticket returning to the U.S. the morning of the 11th.

>
> Please let me know ASAP today if you are able to make the trip as we
> are limited in the number of people we can take on this trip. If you
> are unable to join us, we will have to extend the invitation to
> someone else and we are looking at a very tight timeframe as is.

>
> Again, this invitation is not transferable and we appreciate your
> discretion. Please do not share with anyone that you have been
> invited to join us.

>
> I look forward to hearing from you and we are looking forward to a
> great trip!

> Thanks again for your flexibility...

> More soon,

> (b)(6)

> (b)(6)
> OSD Public Affairs
> Community Relations and Public Liaison (b)(6) The Pentagon Washington,
> D.C. 20301

> (b)(6)

(b)(6)

From: (b)(6) CIV, OASD-PA
Sent: Thursday, June 29, 2006 4:57 PM
To: Lawrence, Dallas Mr OSD PA
Subject: FW: Trip

should i invite bing west???

From: WSSInter@ (b)(6) [mailto:WSSInter@ (b)(6)]
Sent: Thursday, June 29, 2006 4:45 PM
To: Lawrence, Dallas Mr OSD PA
Cc: (b)(6) CIV, OASD-PA
Subject: Trip

Dallas:
I sincerely regret that I will not be able to attend this trip. Keeping my airline up makes it financially difficult at this time. Have a safe trip.
Wayne

(b)(6)

From: Lawrence, Dallas Mr OSD PA
Sent: Thursday, June 29, 2006 3:05 PM
To: (b)(6) Maj OSD PA
Cc: Barber, Allison Ms OSD PA
Subject: RE: Sheppard Trip Report

Actually, it might be better to just send it around undoctored...please delete my info from the email chain. Thanks.

From: shepdonald@ [mailto:shepdonald@]
Sent: Friday, June 23, 2006 1:29 PM
To: Lawrence, Dallas Mr OSD PA
Subject: Gitmo trip report

Gitmo Trip Report

It was my second trip to Guantanamo, the last being a year ago. A collection of media analysts, (CNN and Fox), radio contributors, lawyers, writers, DoD deputy assistant secretaries, it was another whirlwind adventure - out of the chocks at Andrews AFB as a guest of DoD on Navy mil-air at 7:30 AM; 3:15 en route to Cuba; land at Gitmo Airfield, Navy launch to the windward side, visit the detention facility all day; receive briefs, long water-taxi back to the airfield, wheels up at 5:00 PM and back to Andrews by 8:15 - whew!

I wish all of America, in fact all of the concerned world, would go because they could draw their own conclusions and stop asking me. The world, at least America, would be proud of Rear Admiral Harry Harris, the Joint Task Force Commander-GTMO and his troops. Thoughtful, articulate, professional, concerned, serious, but with panache, a '78 USNA grad, Harris stayed with us all day giving and participating in the briefings and answering questions, some very hard ones. Army Col. Mike Bumgarner, in charge of detainee operations and 35 years as an MP, was the host of our tour through all the facilities, including individual cells, cellblocks, recreation areas, medical facilities and interrogation ops where we viewed an HVT (high value target) interrogation...and then there were other participants - briefs from the "other" agencies, law enforcement and intelligence. Bumgarner could be a popular county sheriff - he is hometown America - he could get elected anywhere - may happen as he is nearing the end of his career - he cares about his troops and the detainees - even the ones that have threatened to kill him and his family.

We started with briefings over a halal meal at the Camp Delta mess hall. The meal was tasty and one of three composing the 4200 daily calories offered each detainee. Special meals are also offered for vegetarians, diabetics, etc. The food is good.

A professional medical staff with a fully-equipped hospital, including major surgical capabilities, mental health and dental looks after the detainees. The docs and nurses wear "stab vests" as they provide care...hmmm.

The facilities are modern, resembling any modern high security U.S. prison - and expensive - and getting more expensive, new ones being constructed to reduce manpower requirements and provide for an extended stay, or an expanded GWOT.

Some important questions:

Did we drink the government kool-aid? - of course - that was the purpose of the trip, to hear the U.S. government side of the story, the other side is provided daily in the media, some informed, most by those who have never been to Gitmo. A visitor is at the mercy of local officials, but one also has lots of time to argue, inquire, question, disagree, exchange ideas, provide alternate views, suggestions. It is a healthy environment for

an intellectual exchange. One has free access to talk to any of the staff.

Did you see any evidence of mistreatment? – of course not, nor would one expect to on an arranged visit, but there is another important reason – no mistreatment is going on. There may have been some missteps and policy confusions at the old Camp X-ray (long closed), but GITMO has known for a long time that the eyes of the world are on them. There is simply too much supervision, too much professionalism, too much pride to make anything bad intentionally happen. Additionally, all interrogators will tell you that mistreatment is counter-productive. The only thing that works, they insist, is to establish rapport over a long period of time and eventually almost everyone talks, providing small pieces of big puzzles that can eventually amalgamate into a useful portrait.

Why don't we avoid all this controversy and simply declare the detainees as POWs and comply with the Geneva Conventions? – because it isn't that simple – the detainees are not soldiers of a nation state, are not an organized army and are not signatories to international conventions, nor do they comply with the Laws of Armed Conflict. This may require some new legislation. This is a different sort of war in which the old rules and laws are not adequate, many do not apply; thus, we are creating new processes and trying to insure justice and human rights in the process – it is hard, real hard...and incidentally we comply with most of the provisions of the Geneva Convention, the ones that make sense, especially humane treatment. In all previous wars we have detained POWs and released them at the end of the war, and tried those suspected of heinous crimes – the same thing is being attempted in this war.

But you must admit that the prisoners have no "due process" – wrong. One may not like the process (and the Supreme Court will likely rule imminently on its legality), but there is a well-ordered due process, one that was suggested by Supreme Court Justice Sandra Day O'Connor who encouraged the U.S. to design mechanisms that comply with Article V of the Geneva Convention. Article V states if there is plausible doubt of a detainee's status – are they, or are they not, enemy combatants – a process must be established to determine that fact. Thus, the administration established the Combat Status Review Tribunals (CSRTs) and Administrative Review Boards (ARBs – yearly case re-examinations) that review all available facts and information to determine: is the detainee an enemy combatant, deserving detention, or not?

Why don't we just apply the U.S. justice system – lawyers, grand juries, charges, trials? – sounds great, but it does not work in war and that has been long recognized. There are about 1,000 foreign terrorists incarcerated in the U.S. justice system. Those people have been arrested and tried for individual acts of terrorism deemed criminal acts, mostly in the U.S. – it fits the way we do business – daily police work in an organized infrastructure. War simply does not fit that mold. The normal investigative processes used in U.S. criminal trials – Miranda rights, chain of custody of evidence, etc. is simply impractical when applied to a combat situation. Crime is from Mars, warfare is from Venus – the two simply don't mate. Those who cry for criminal prosecution under the U.S. justice system should read about the nature of war and how justice has been applied over the years – the two systems are simply designed for entirely different scenarios.

So, why don't we use the military Court Martial system? – the military justice system is the equivalent of the U.S. civil justice system modified for military use. It is an extremely fair system with rights to free counsel, juries of true peers and automatic review; however, the same rules apply to evidence, testimony, etc. as apply in the U.S. civilian justice system – the system is simply inadequate for warfare during which POWs are detained and released after a war, or tried for war crimes under international statutes covering the Laws of Armed Conflict. This is what the U.S. is attempting to do with Gitmo detainees.

Aren't many of the Gitmo detainees just low-level foot soldiers that got swept-up in battle? – some are, some aren't. 759 detainees have been sent to Gitmo. Almost all were detained in Afghanistan or Pakistan. Most were suspected of being high-level or important Al-Qaeda or Taliban, or a significant threat as terrorists, thus their transfer to Gitmo. None have been sent from Iraq. About 460 remain. The remainder have been released (13

have been captured or killed again in the GWOT after release) or transferred back to their home countries or to a third country that has agreed to abide by the international agreements against torture. All detainees have received CSRTs to determine their status and all will receive yearly ARBs (not required by Geneva Conventions) to determine if they should continue to be detained or released.

Many detainees have been there since 2002. Surely we have exhausted their intelligence value? – not so, according to intelligence officials and interrogators. Interrogations continue and important information on national and international cells continue to emerge that have uncovered and prevented significant attacks and taken down dangerous networks, especially in foreign countries. Additionally, many detainees are cooperating. The main weapon of U.S. interrogators is time. The detainees all want to get out. Most figure if they cooperate, they will eventually be released - it is a good guess. As new characters emerge when others are killed or detained in the GWOT (Khalid Sheik Mohammed, al-Zarqawi et.al.) detainees have important information on new emerging leaders – their locations, contacts, funding mechanisms, travel patterns, history – this information is extremely valuable and increasing pressure is being put on the worldwide networks – their bench is not deep. Further, in the fight against IEDs some of the detainees are providing extremely valuable information on designs, trigger mechanisms and tactics – several of the detainees were MAJOR IED and explosive players.

So, what is going to happen to the remaining detainees? – it depends – the Supreme Court must rule. If the administration has its way there will continue to be CSRTs and ARBs. Just like POWs at the end of previous wars, some detainees will be released to go home at the end of the GWOT. Others will be referred to “military commissions” for heinous crimes just as they were in previous wars. And, when will the GWOT end? – beats me, but certainly not yet and the thought of releasing dangerous terrorists dedicated to doing us harm should be chilling.

What about the NYT full-page in yesterday’s paper by Amnesty International claiming that detainees have been incarcerated for four years without access to justice, lawyers, due process? – only some of that is true. Some detainees have been in Gitmo for four years, but none have been without justice – the CSRTs and ARBs and military commissions (some started, none completed due to lawyers filing for court-directed stays), if the Supreme Court approves them, serve as justice and the equivalent of grand juries – reasons to believe the detainees are or are not enemy combatants and they will either be referred to and prosecuted by military commissions, or released – watch for the Supreme Court decisions. Some detainees are involved with lawyers and they are provided lawyer-client privileges.

What about the suicides? – we saw where the suicides took place, talked to those who found the victims and those (medical staff) who attempted to revive them. This was a devastating experience for all involved. The staff was truly saddened by the event. There have been over 40 previous attempts prevented. It should be no surprise that amongst a group of people who regularly see suicide as martyrdom (daily events in Iraq, Afghanistan and Israel) there will be more attempts, some likely successful. The Gitmo staff characterizes the suicides as a defiant act of asymmetric warfare, not one of depressed prisoners who have come to the end of their rope. Incidentally, there will also likely be attempts by detainees to kill guards – the detainees regularly threaten the guards and tell them they will kill them and their families when they get out. Expect other bad thing to happen at Gitmo. This is not your run-of-the-mill collection of compliant prisoners.

But what about the prisoner who was being force-fed? – when detainees perform hunger strikes and those actions become dangerous to health, the decision has been made to insert feeding tubes to preserve life – this is the same procedure that has been approved and is used by the U.S. Bureau of Prisons and the same standard equipment used in U.S. hospitals. A small 1/8th inch tube is inserted through the nasal cavity, down the throat – the area is lubricated and anesthetized, the procedure not painful. Adm. Harris had the procedure performed on him to test the system.

What about the Red Cross views of Gitmo? – the Red Cross views are confidential and closely-held, but the Red