

and the Military Commissions Act. Whether the detainees are at Guantanamo or elsewhere, then, will not affect how they are treated going forward. I certainly hope that by treating them properly we will both repair our reputation for compliance with the laws of war generally and, most importantly, increase the chances that our servicemen will be treated properly when they are captured in combat. The capture of a number of British servicemen by Iranian forces earlier this week reminds us that the United States is not the only state that can revise or reinterpret the rules under which its forces operate in war. We created a dangerous precedent when we set out on that road in February, 2002. Even if it will take some time to repair our reputation, we are right to have begun that work.

Regarding the impression that we established the facility in Guantanamo in order to deprive the persons held there of access to the courts and other rights they would enjoy if they were in custody in the United States, I would make two points.

First, it was not clear at the time the decision to use Guantanamo was made that the persons held there would be treated any differently from the way they would have been treated if they were in custody in the United States. At the time, it was U.S. policy to treat all captured persons in accordance with the Geneva Conventions and the Army Field Manual. Those were the rules of engagement for our forces operating in Afghanistan. Guantanamo had many features that made it a natural choice for us: security, size, ability to obtain intelligence from detainees gathered in one place, no issues with governors or members of congress, etc. What was not a factor at that time was the idea that detainees would be treated differently in Guantanamo than if they were held in the United States. True, many thought that, consistent with the precedent of the Eisenstrager case, the detainees would not have access to U.S. courts to review the issue, under habeas corpus, whether they were being lawfully detained at all. I believed the Eisenstrager decision would prevent this. The point, however, did not appear to be significant in light of our policy to comply with the Geneva Conventions and our undoubted ability to detain persons captured in combat who posed a threat to us. Those of us who had experience with military law enforcement procedures had confidence, at the time, that the absence of judicial review of our

forces' conduct in Guantanamo was not likely to result in the abuse of detainees there. It had not done so in Korea or Vietnam or other theaters of war over which the courts have no jurisdiction. It would not, we thought, affect the way the detainees were treated in Guantanamo.

Second, persons captured in the conflict with al Qaeda and the Taliban should not be treated differently because they are in custody in Guantanamo from the way they would be treated if they were in custody in the United States. That is to say, the decision about whether the facility is to be closed should not, in my judgment, be based on how this may affect the legal rights of the detainees. Political and logistical factors should determine our course. Logistically, I imagine, Guantanamo still has a number of advantages over other options. It seems doubtful, however, that these outweigh the political costs of continuing its operation. At some point a brand becomes so toxic that no amount of Madison Avenue talent can rehabilitate its image. What the Reverend Jim Jones did for KoolAid and the British penal system did for Van Diemen's Land, abuse of the detainees seems to have done for Guantanamo. My recommendation would be to cut our losses. Relocation in the United States should not affect the legal rights of the persons held in Guantanamo for the simple reason that they should not be being deprived of any rights because they are there rather than in the United States.

Regarding the Military Commissions Act, I will limit my remarks to just three points.

First, I think it was a mistake for Congress to preclude judicial review of the lawfulness of detaining the persons we have captured in the conflict with al Qaeda and the Taliban. As I understand it, convicted detainees may obtain such review after their criminal cases are concluded, but persons who are not charged with crimes do not have access to the courts to challenge their detention. The benefits of this approach escape me.

It should be recalled that the Supreme Court has on two occasions affirmed the lawfulness of detaining persons captured in the conflict with al Qaeda and the Taliban as long as they pose a threat to the United States. This is black letter law of war. Prior to the enactment of the Military Commissions Act, consistent with this principle, no court had ordered the release of any of the detainees. Nor, will they do so as long as it is shown that the detainee poses a threat.

Currently, this determination is made by the military. Having it endorsed by a court would greatly enhance its credibility and be consistent with our legal tradition.

Beyond that, providing habeas corpus review of these cases will impose only a very modest burden on the courts. As I say, the cases are comparatively straightforward. My understanding is that many detainees freely state that they would try to harm the United States if they are released. The records of military determinations should make judicial review uncomplicated when compared with the voluminous trial and appellate records involved in most habeas cases. And there are not that many detainees.

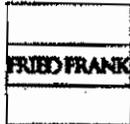
My two other points relating to the Military Commissioners Act concern the rules of evidence in the trials before the commissions. I do not think either hearsay evidence or coerced testimony should be used in these trials.

I understand that hearsay evidence is admitted in several international criminal tribunals and in other national courts. But our system and traditions are different. The Sixth Amendment establishes a defendant's right to confront witnesses in criminal trials. The use of hearsay evidence is inconsistent with this right. The hearsay "witness" is not under oath, on the record or available for cross-examination, so his testimony is presumed automatically to be unreliable. Coerced testimony is likewise inherently unreliable. Courts normally exclude such testimony not only because it is unreliable but also in order to discourage the use of coercion by the authorities. Both rationales are relevant to the proceedings of the military commissions.

In proposing these changes in the rules of evidence I recognize that they may make it harder to obtain convictions. If I thought for a moment that Khalid Sheik Muhammed or other detainees like him might be released as a result of such changes, I might hesitate to recommend them. What Khalid Sheik Muhammed says he has done to Daniel Pearl and in planning the 9/11 attacks naturally enrages all Americans. But because he is being held consistent with the law of war he will not be released and, most importantly, it is when we are enraged - when our blood boils - that we most need to adhere to the rule of law as we have established it, not change it to suit our convenience. In this sense, Senator McCain is right when he says that how we treat the

detainees is not about them but about us. It is in this spirit that I make these proposals for changes in the rules of evidence set out in the Military Commissions Act.

Mr. Chairman, thank you for this opportunity to appear before your committee. This concludes my testimony. I look forward to answering your questions.

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William H. Taft, IV

William H. Taft, IV is of counsel resident in Fried Frank's Washington, DC office. He joined the firm in 1992. In 2001, Mr. Taft was appointed by President George W. Bush as Legal Adviser to the Department of State. After four years of service at the State Department, he rejoined the firm and became of counsel.

Mr. Taft concentrates his practice in government contracts counseling, international trade, and international litigation and arbitration.

Prior to joining Fried Frank, Mr. Taft was U.S. Permanent Representative to NATO from 1989 to 1992. Before that, he served as Deputy Secretary of Defense from January 1984 to April 1989 and as Acting Secretary of Defense from January to March 1989. From 1981 to 1984, Mr. Taft was General Counsel for the Department of Defense.

Prior to his initial appointment to the Department of Defense, Mr. Taft was in private law practice in Washington, DC, from 1977 to 1981. Before entering private practice, he served in various positions at the Federal Trade Commission, the Office of Management and Budget and the Department of Health, Education and Welfare, where he was appointed by President Ford in 1976 to serve as General Counsel.

Mr. Taft received his JD in 1969 from Harvard Law School and his BA in 1966 from Yale University. He is admitted to the bar in the District of Columbia.

[Alphabetical Attorney Listing](#)[Attorney Database](#)

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CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION**

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 110th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: WILLIAM H. TAFT, IV

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: _____

FISCAL YEAR 2007

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			

FISCAL YEAR 2006

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			

FISCAL YEAR 2005

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			

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Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2007): _____;
 Fiscal year 2006: _____;
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Federal agencies with which federal contracts are held:

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List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2007): _____;
 Fiscal year 2006: _____;
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Aggregate dollar value of federal contracts held:

Current fiscal year (2007): _____;
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Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2007): _____;
Fiscal year 2006: _____;
Fiscal year 2005: _____.

Federal agencies with which federal grants are held:

Current fiscal year (2007): _____;
Fiscal year 2006: _____;
Fiscal year 2005: _____.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2007): _____;
Fiscal year 2006: _____;
Fiscal year 2005: _____.

Aggregate dollar value of federal grants held:

Current fiscal year (2007): _____;
Fiscal year 2006: _____;
Fiscal year 2005: _____.

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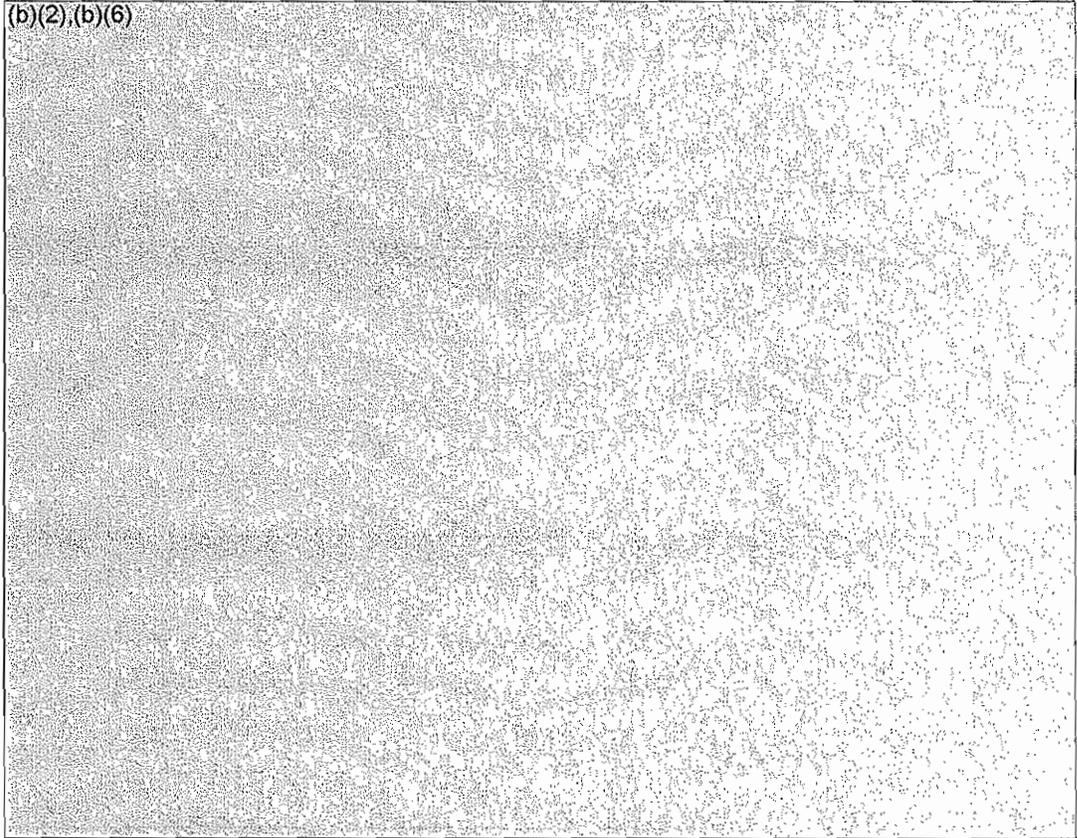
From:
Sent:
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(b)(6) DoD OGC
Tuesday, April 24, 2007 4:03 PM
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Cc:

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



Subject: GTMO Bird: Charges referred against Khadr; Kurnaz; GTMO Isolation; Fascist America

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

Office of General Counsel, Legal Counsel
Department of Defense

(b)(2) (DSN (b)(6))
(fax)

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Military Commission Charges Referred

The Department of Defense announced today that charges were referred to a military commission in the case of Omar Ahmed Khadr by the Convening Authority, Office of Military Commissions, Susan J. Crawford.

The convening authority referred charges of murder in violation of the law of war; attempted murder in violation of the law of war; conspiracy; providing material support for terrorism; and spying against Khadr, a non-capital case.

Khadr and his defense counsel will be served a copy of the charges. In accordance with the Military Commissions Act of 2006 and the Manual for Military Commissions, Khadr will be arraigned within 30 days of the service of charges. Within 120 days of charges, the military judge will assemble the military commission. Assembly is the procedural step that usually occurs when all parties, including the members, are present and sworn, and the judge announces on the record that the commission is now assembled. The military judge will contact attorneys in the case to set an initial trial schedule.

Khadr is presumed innocent of any criminal charges unless proven guilty beyond a reasonable doubt at a military commission.

Military commissions are regularly constituted courts, affording all the necessary judicial guarantees which are recognized as indispensable by civilized peoples for purposes of Common Article 3 of the Geneva Conventions.

A copy of the charge sheet is available at the following Web site:
<http://www.defenselink.mil/news/Apr2007/KhadrReferral.pdf>
<<http://www.defenselink.mil/Apr2007/Khadrreferral.pdf>>

<http://www.defenselink.mil/releases/release.aspx?releaseid=10779>

Khadr charged with murder

Apr 24, 2007 03:08 PM
Michelle Shephard
Staff Reporter

The Pentagon charged Canadian Omar Khadr with murder today, starting a process that will put the former Toronto resident on trial in Guantanamo Bay for war crimes.

Khadr is accused of throwing a grenade that killed U.S. Delta soldier Sgt. Christopher Speer during a firefight in Afghanistan July 27, 2002.

He was 15 at the time and was held for three months in Afghanistan before being transferred to Guantanamo Bay, where he remains today.

In addition to the charge of murder, Khadr will also stand trial on attempted murder, providing material support for terrorism, conspiracy and spying.

Guantanamo's Chief Prosecutor Moe Davis first listed those charges against Khadr in February, but the process could not begin until the military commission's convening authority reviewed and referred the charges.

Khadr will now be required to appear before a Guantanamo court in 30 days. A jury for his trial will be selected within four months.

But what will happen at that hearing, where Khadr's expected to enter a plea, is unknown. Khadr vowed to boycott the trial and stopped cooperating with his American attorneys, his mother Maha Elsamnah said last month. In the first phone call Khadr has been allowed since his capture almost five years ago, he reportedly told his family he wanted nothing to do with the hearings.

That leaves his American legal team led by Marine Lt. Col. Colby Vokey, in a tough position. They too have reservations about participating in a process that they've publicly condemned as unfair.

The now 20-year-old told his mother he would meet with his family's Canadian lawyers - Edmonton-based Dennis Edney and Nate Whitling - but up until now they have been refused access to Guantanamo Bay.

Edney said that he received a letter today from Canada's Department of Foreign Affairs saying they had been cleared for travel and are now awaiting a "diplomatic note" affirming their position as foreign attorney consultants.

The U.S. Supreme Court already overturned the Bush administration's first attempt at military commissions last year. The new Congress-endorsed Military Commissions Act, signed into law last October, has not yet been tested by the high court.

The court refused to hear an application brought earlier this month challenging the law that bars Guantanamo detainees from challenging their detentions in U.S. courts – leaving intact a lower court's ruling that said since they were not American citizens or held on U.S. soil, they had no constitutional right to that legal option.

On Friday a conference is scheduled for the high court to now decide on an application brought forward by Khadr and detainee Salim Hamdan, the 36-year-old Yemeni-born one-time driver for Osama bin Laden who is also expected to stand trial.

Australian David Hicks has already gone before a new military tribunal and – in a deal orchestrated between his government and the U.S. – the 31-year-old admitted to providing military support for terrorism in exchange for a nine-month jail sentence served at home. A U.S. Department of Defence spokesperson said it was "premature" to speculate whether a similar deal would be offered to Khadr. The possibility seems unlikely, since Hicks' deal is largely credited to the intense public and political pressure to gain his release – something not seen in Canada where the Khadr family is largely reviled due to their past association with bin Laden.

Khadr is also facing more serious charges than Hicks and, since his arrest, the Pentagon has made it clear that they will show little leniency, other than agreeing to remove the death penalty as an option if he's convicted.

Once Hicks leaves Guantanamo next month, Khadr will be the only detainee from a Western country remaining at the U.S. Navy camp in Cuba.

<http://www.guardian.co.uk/usa/story/0,,2064157,00.html?gusrc=rss&feed=1>

German-Born Ex-Guantanamo Inmate Publishes Memoir

Former Guantanamo inmate and German-born Turkish citizen Murat Kurnaz has published a harrowing account of the time he spent in the notorious US prison.

Beatings, amputations and torture were parts of the excruciating daily routine with which Murat Kurnaz claims to have lived for almost 5 years. The 24-year old German-born Turk was a prisoner in Guantanamo Bay and the subject of a legal battle with the German government of the time, who, according to Kurnaz, failed to secure his release when they had the chance.

His memoir, entitled "Five Years of My Life," which hit German bookstands on Tuesday, paints a disturbing picture of Kurnaz' ordeal.

"I understood a long time ago what this prison was about," Kurnaz said. "They could do with us whatever they wanted."

Kurnaz was arrested in Pakistan shortly after the Sept. 11 attacks on the United States. Kurnaz insists he didn't travel to Pakistan to fight alongside al Qaeda, but rather to work for an Islamic "Salvation Army" to help the homeless, among others. Kurnaz claims he was "sold" to US soldiers by unscrupulous bounty hunters. He was then taken to Afghanistan, where he faced torturous interrogations.

No help from Germany

According to his own account, Kurnaz was left for days to hang by his hands that were tied behind his back and that were attached to electrodes. He hoped in vain that the German authorities would help him out.

"One of the German soldiers came, pulled my head up and asked if I knew who they were," Kurnaz said. "He said they were the elite force, the KSK, and slammed my head on the floor. Later another one came up and kicked me and the group of soldiers started laughing."

Kurnaz was subsequently transported to Guantanamo. In the book, he accuses the US soldiers there of gross maltreatment. He describes how doctors would make unnecessary amputations and how guards would hand out regular beatings. Kurnaz himself spent over a year in solitary confinement, suffering from extreme cold, heat, darkness and oxygen deprivation.

"I never imagined I would come out of it alive," Kurnaz said. "I presumed I could die at any minute. I was often unconscious due to the pain and the cold. My body couldn't take any more."

Personal intervention

It wasn't until August 2006 that the newly elected Chancellor Angela Merkel intervened personally to secure Kurnaz' release from Guantanamo. The US was reportedly prepared to release him as early as 2002, but the Germans were allegedly reluctant to allow him to return to Germany at the time -- a fact that sparked uproar and prompted a parliamentary inquiry.

The question whether Kurnaz did represent a terror threat and whether the government of the time should have done more to free him is the subject of an ongoing investigation. According to former Interior Minister Otto Schily, however, the Social Democratic-Green party government coalition headed by Gerhard Schröder responded adequately to the situation.

"We have a responsibility for the safety of our citizens," Schily said. "And that includes keeping people out of our country who represent a danger to our security. And that was the case with Murat Kurnaz."

Now back in his home city of Bremen, Kurnaz says he just wants to get on with his life. He says the book is not intended to settle any scores, but rather to tell the world how his co-prisoners lost their legs, hands and lives in Guantanamo Bay.

<http://www.dw-world.de/dw/article/0,2144,2455819,00.html>

Guantanamo Detainees in Isolation, Diplomatic Limbo

By William Fisher

truthout | Report

Saturday 21 April 2007

A top human rights advocate is characterizing as "a self-inflicted wound" the failure of the Bush administration to find countries willing to grant asylum to Guantanamo prisoners it has cleared for release.

"The administration created this problem by repeatedly describing all Guantanamo detainees as 'the worst of the worst'. A lot of people are working very hard to find countries to take these people," says Jumana Musa of Amnesty International USA in an exclusive interview with Truthout. But, she adds, "Given the misleading rhetoric our government has used to describe these prisoners, we shouldn't be surprised that no one wants to take them."

Musa, who is Amnesty's director of domestic human rights and international justice programs, told Truthout that the Bush administration has also failed to seek help in relocation from groups such as the United Nations High Commission for Refugees (UNHCR).

"In fact," she says, "these groups have largely been shut out of any involvement in the relocation issue, despite their years of experience."

In 2002, former Defense Secretary Donald Rumsfeld referred to Guantanamo prisoners as "the worst of the worst." In June 2005, he said, "If you think of the people down there, these are people, all of whom were captured on a battlefield. They're terrorists, trainers, bomb makers, recruiters, financiers, (Osama bin Laden's) bodyguards, would-be suicide bombers, probably the 20th 9/11 hijacker."

Other Bush administration officials have been equally certain. For example, retired Air Force Gen. Richard Myers, said when he was chairman of the Joint Chiefs of Staff, "They were so vicious, if given the chance they would gnaw through the hydraulic lines of a C-17 while they were being flown to Cuba."

Nevertheless, of the approximately 760 prisoners brought to Guantanamo since 2002, the Pentagon reports that the military has now released all but approximately 385. Reliable evidence shows that, of the original number, many were not captured on the battlefields of Afghanistan, but kidnapped off the streets of Europe and various locations in the Middle East, and many others were "sold" to US authorities in Afghanistan and Pakistan for bounties. It has also become clear that others were simply in the wrong place at the wrong time. The fiercely nonpartisan National Journal magazine reported, "Notwithstanding Rumsfeld's description, the majority of (Guantanamo prisoners) were not caught by American soldiers on the battlefield. They came into American custody from third parties, mostly from Pakistan, some after targeted raids there, most after a dragnet for Arabs after 9/11."

And a February 2006 report by Seton Hall law professor Mark Denbeaux and attorney Joshua Denbeaux found that 55 percent of the detainees were determined by the government to have committed no hostile acts against the United States or its coalition allies. Their report also asserted that only eight percent of the detainees were classified by the government as al-Qaeda fighters.

Not even the CIA bought into Rumsfeld's "worst of the worst" characterization. Michael Scheuer, who headed the agency's bin Laden unit through 1999 and resigned in 2004, said, "By the fall of 2002, it was common knowledge around CIA circles that fewer than 10 percent of Guantanamo's prisoners were high-value terrorist operatives.... Most of the men were probably foot soldiers at best" who were "going to know absolutely nothing about terrorism."

The Center for Constitutional Rights, whose lawyers represent many of the Guantanamo detainees, characterizes as "myth" the notion that "The US wants to transfer detainees to the custody of other countries, but no country will take them." The CCR says the fact is that countries are willing to accept detainees but many are not willing to unlawfully detain them, as the US is requesting they do."

Of the prisoners who have been released, some have been jailed by their new host countries "pending investigations," while others have simply been freed. In all cases, US authorities have sought "diplomatic assurances" that the released prisoners will not be subjected to torture in custody. But many have been released to countries repeatedly cited by the US State Department for their long histories of prisoner abuse.

The bottom line, Musa says, is that 385 people are still in detention, many having been held for years, designated as enemy combatants, but without charges or trials. "Many of these have long been approved for release, but they are still incarcerated," she declares.

Musa also asserts that the Military Commissions Act of 2006 (MCA) "fails to provide any credible legal framework for assessing the status of these detainees, much less providing them with a fair trial."

The Act was hurriedly passed by Congress after the Supreme Court struck down the administration's detention and adjudication policies because they lacked Congressional authorization. It allows the use of hearsay testimony and evidence obtained through coercion and cruel, inhuman and degrading treatment, and bars detainees from filing habeas corpus petitions to challenge their detention in federal court. But not everyone agrees with the positions taken by Amnesty and by other human rights and legal organizations such as Human Rights Watch, Human Rights First, and the Center for Constitutional Rights. For example, James Carafano, a senior research fellow at the Center for Foreign Policy Studies at the conservative Heritage Foundation, stated that he had heard the same kind of criticisms about US policy during the Cold War.

"They were vacuous then and they are vacuous now," he told Cybercast News Service. "It is criticism without context or content. Carping from the sidelines by those who have no responsibility to do the job and have no respect for the magnitude of the challenge is not productive," Carafano added. "The challenge in any long war is to provide for security, promote economic growth, protect the liberties of your citizens, respect those of your allies and promote human rights for all - and win the war of ideas. Accomplishing all those tasks

well is no easy challenge, but vital," he said. "US policies are trying hard to do all these equally."

The first legal action under the MCA was the "trial" of David Hicks, an Australian originally alleged to have conspired with the Taliban in Afghanistan to murder American soldiers. Hicks pled guilty to providing material support to terrorists and was given a given a seven-year sentence with all but nine months suspended because of the plea agreement. His sentence will be served in an Australian prison. He also agreed to refrain from describing his detention to the media for a year.

Amnesty and many other human rights groups point out that because of his guilty plea, Hicks never had a trial.

And Amnesty's Musa also questions the timing of the Hicks case. She told Truthout that it's "curious" that Hicks "will be sitting in an Australian jail, barred from talking to the media, until well after the election of the next Australian prime minister."

The case has become an election issue for Australian Prime Minister John Howard, a stalwart ally of President George W. Bush. He has been criticized for not doing more to secure Hicks's release from Guantanamo.

Meanwhile, the MCA remains a contentious political issue in the US. A number of legislators have drafted measures to repeal the Military Commissions Act and to restore habeas corpus rights to detainees. The effort is being led by the Democratic chairman of the Senate Judiciary Committee, Sen. Patrick Leahy of Vermont, and the committee's top Republican, Sen. Arlen Specter of Pennsylvania. Similar legislation has also been introduced by Sen. Chris Dodd of Connecticut, who is a candidate for the Democratic presidential nomination.

Amnesty's Musa declined to predict the outcome of this proposed legislation. She told Truthout, "We see politicians acting like politicians, and the degree of resolve of the full Congress remains unclear."

Musa's comments came on the heels of Amnesty's release of a new report on detainee conditions at Guantanamo.

The report charges that many detainees who remain at Guantanamo Bay are "held in cruel conditions of isolation."

"Most detainees have suffered harsh treatment throughout their detention, confined to mesh cages or maximum security cells. Moreover, a new facility that opened in December 2006, known as Camp 6, has created even harsher and apparently more permanent conditions of extreme isolation and sensory deprivation," the report alleges.

Guantanamo Bay "is the festering symbol of the Bush administration's continued contempt for international law and disregard for human rights - further diminishing our country's moral standing," says Larry Cox, Amnesty International USA executive director.

"The administration continues to think that it can justify ongoing human rights violations in the name of national security. Perhaps President Bush needs to think again, because the voices calling for the closure of this disgrace to American values are only getting louder," Cox adds.

According to the Amnesty report, "Detainees are reportedly confined for 22 hours a day to individual, enclosed, steel cells where they are almost completely cut off from human contact. The cells have no windows to the outside or access to natural light or fresh air. No activities are provided, and detainees are subjected to 24-hour lighting and constant observation by guards through the narrow windows in the cell doors. They exercise alone in a high-walled yard where little sunlight filters through; detainees are often only offered exercise at night and may not see daylight for days at a time.

US authorities have described Camp 6 as a "state of the art modern facility" that is safer for guards and "more comfortable" for the detainees, Amnesty says. But the advocacy group believes that the conditions, as shown in photographs and described by detainees and their attorneys, "contravene international standards for humane treatment. In some respects, they appear more severe than the most restrictive levels of 'super-maximum' custody on the US mainland, which have been criticized by international bodies as incompatible with human rights treaties and standards."

Amnesty's report says, "It appears that around 80 percent of the approximately 385 men currently held at Guantanamo are in isolation - a reversal of earlier moves to ease conditions and allow more socializing among detainees."

According to the Pentagon, 165 detainees had been transferred to Camp 6 from other facilities on the base by mid-January 2007. A further 100 detainees are held in solitary confinement in Camp 5, another maximum-security facility, the report asserts.

"As many as 20 detainees are also believed to be held in solitary confinement in Camp Echo, a facility set apart from others on the base, where conditions have been described by the International Committee of the Red Cross as "extremely harsh."

The report concludes, "While the United States has an obligation to protect its citizens and those living within its borders from attacks by armed groups, that does not relieve the United States from its responsibilities to comply with human rights and the rule of law. By rounding up men from all over the world and transporting them to an isolated penal colony, holding them without charge or trial, the United States has violated several US and international laws and treaties."

Statements by the Bush administration that these men are "enemy combatants," "terrorists" or "very bad people" do not justify the complete lack of due process rights," Amnesty says.

Says Jumana Musa, "It seems that detainees are being placed in extreme lockdown conditions not because of their individual behavior, but because of harsher camp operating procedures. Even men who have been cleared for release are being held in isolation."

Amnesty is urging the Bush administration to close the facility and either charge and try detainees under international fair-trial norms or else release them. "US authorities must take immediate steps to ensure that no detainee is subjected to prolonged isolation in conditions of reduced sensory stimulation, and allow detainees more association and activities as well as regular contact with their families, with opportunities for phone calls and visits," the organization declares. It is also calling for independent health care professionals and human rights experts to be able to examine and visit detainees in private. "Secretary of Defense Robert Gates is the latest US official, including President Bush, to say that Guantanamo should be closed. There's no reason to dawdle ... there's no reason to delay ... but there are many reasons to end one of the worst blemishes on the United States's human rights record," says Amnesty's Larry Cox.

Asked by Truthout if closing Guantanamo might lead to its current detainees being transferred to 'secret prisons', Amnesty's Musa says, "It's hard to 'disappear' people whose names we already know. Now that the existence of the CIA's 'black sites' has been acknowledged by President Bush, it is unlikely that any Guantanamo prisoner could be spirited away without public scrutiny."

http://www.truthout.org/docs_2006/042107A.shtml

Fascist America, in 10 easy steps

From Hitler to Pinochet and beyond, history shows there are certain steps that any would-be dictator must take to destroy constitutional freedoms. And, argues Naomi Wolf, George Bush and his administration seem to be taking them all

Tuesday April 24, 2007

The Guardian <<http://www.guardian.co.uk>>

Last autumn, there was a military coup in Thailand. The leaders of the coup took a number of steps, rather systematically, as if they had a shopping list. In a sense, they did. Within a matter of days, democracy had been closed down: the coup leaders declared martial law, sent armed soldiers into residential areas, took over radio and TV stations, issued restrictions on the press, tightened some limits on travel, and took certain activists into custody.

They were not figuring these things out as they went along. If you look at history, you can see that there is essentially a blueprint for turning an open society into a dictatorship. That blueprint has been used again and again in more and less bloody, more and less terrifying ways. But it is always effective. It is very difficult and arduous to create and sustain a democracy - but history shows that closing one down is much simpler. You simply have to be willing to take the 10 steps.

As difficult as this is to contemplate, it is clear, if you are willing to look, that each of these 10 steps has already been initiated today in the United States by the Bush administration.

Because Americans like me were born in freedom, we have a hard time even considering that it is possible for us to become as unfree - domestically - as many other nations. Because we no longer learn much about our rights or our system of government - the task of being aware of the constitution has been outsourced from citizens' ownership to being the domain of professionals such as lawyers and professors - we scarcely recognise the checks and balances that the founders put in place, even as they are being systematically dismantled. Because we don't learn much about European history, the setting up of a department of "homeland" security - remember who else was keen on the word "homeland" - didn't raise the alarm bells it might have.

It is my argument that, beneath our very noses, George Bush and his administration are using time-tested tactics to close down an open society. It is time for us to be willing to think the unthinkable - as the author and political journalist Joe Conason, has put it, that it can happen here. And that we are further along than we realise.

Conason eloquently warned of the danger of American authoritarianism. I am arguing that we need also to look at the lessons of European and other kinds of fascism to understand the potential seriousness of the events we see unfolding in the US.

1. Invoke a terrifying internal and external enemy

After we were hit on September 11 2001, we were in a state of national shock. Less than six weeks later, on October 26 2001, the USA Patriot Act was passed by a Congress that had little chance to debate it; many said that they scarcely had time to read it. We were told we were now on a "war footing"; we were in a "global war" against a "global caliphate" intending to "wipe out civilisation". There have been other times of crisis in which the US accepted limits on civil liberties, such as during the civil war, when Lincoln declared martial law, and the second world war, when thousands of Japanese-American citizens were interned. But this situation, as Bruce Fein of the American Freedom Agenda notes, is unprecedented: all our other wars had an endpoint, so the pendulum was able to swing back toward freedom; this war is defined as open-ended in time and without national boundaries in space - the globe itself is the battlefield. "This time," Fein says, "there will be no defined end."

Creating a terrifying threat - hydra-like, secretive, evil - is an old trick. It can, like Hitler's invocation of a communist threat to the nation's security, be based on actual events (one Wisconsin academic has faced calls for his dismissal because he noted, among other things, that the alleged communist arson, the Reichstag fire of February 1933, was swiftly followed in Nazi Germany by passage of the Enabling Act, which replaced constitutional law with an open-ended state of emergency). Or the terrifying threat can be based, like the National Socialist evocation of the "global conspiracy of world Jewry", on myth.

It is not that global Islamist terrorism is not a severe danger; of course it is. I am arguing rather that the language used to convey the nature of the threat is different in a country such as Spain - which has also suffered violent terrorist attacks - than it is in America. Spanish citizens know that they face a grave security threat; what we as American citizens believe is that we are potentially threatened with the end of civilisation as we know it. Of course, this makes us more willing to accept restrictions on our freedoms.

2. Create a gulag

Once you have got everyone scared, the next step is to create a prison system outside the rule of law (as Bush put it, he wanted the American detention centre at Guantánamo Bay to be situated in legal "outer space") - where torture takes place.

At first, the people who are sent there are seen by citizens as outsiders: troublemakers, spies, "enemies of the people" or "criminals". Initially, citizens tend to support the secret prison system; it makes them feel safer and they do not identify with the prisoners. But soon enough, civil society leaders - opposition members, labour activists, clergy and journalists - are arrested and sent there as well.

This process took place in fascist shifts or anti-democracy crackdowns ranging from Italy and Germany in the 1920s and 1930s to the Latin American coups of the 1970s and beyond. It is standard practice for closing down an open society or crushing a pro-democracy uprising.

With its jails in Iraq and Afghanistan, and, of course, Guantánamo in Cuba, where detainees are abused, and kept indefinitely without trial and without access to the due process of the law, America certainly has its gulag now. Bush and his allies in Congress recently announced they would issue no information about the secret CIA "black site" prisons throughout the world, which are used to incarcerate people who have been seized off the street.

Gulags in history tend to metastasise, becoming ever larger and more secretive, ever more deadly and formalised. We know from first-hand accounts, photographs, videos and government documents that people, innocent and guilty, have been tortured in the US-run prisons we are aware of and those we can't investigate adequately.

But Americans still assume this system and detainee abuses involve only scary brown people with whom they don't generally identify. It was brave of the conservative pundit William Safire to quote the anti-Nazi pastor Martin Niemöller, who had been seized as a political prisoner: "First they came for the Jews." Most Americans don't understand yet that the destruction of the rule of law at Guantánamo set a dangerous precedent for them, too.

By the way, the establishment of military tribunals that deny prisoners due process tends to come early on in a fascist shift. Mussolini and Stalin set up such tribunals. On April 24 1934, the Nazis, too, set up the People's Court, which also bypassed the judicial system: prisoners were held indefinitely, often in isolation, and tortured, without being charged with offences, and were subjected to show trials. Eventually, the Special Courts became a parallel system that put pressure on the regular courts to abandon the rule of law in favour of Nazi ideology when making decisions.

3. Develop a thug caste

When leaders who seek what I call a "fascist shift" want to close down an open society, they send paramilitary groups of scary young men out to terrorise citizens. The Blackshirts roamed the Italian countryside beating up communists; the Brownshirts staged violent rallies throughout Germany. This paramilitary force is especially important in a democracy: you need citizens to fear thug violence and so you need thugs who are free from prosecution.

The years following 9/11 have proved a bonanza for America's security contractors, with the Bush administration outsourcing areas of work that traditionally fell to the US military. In the process, contracts worth hundreds of millions of dollars have been issued for security work by mercenaries at home and abroad. In Iraq, some of these contract operatives have been accused of involvement in torturing prisoners, harassing journalists and firing on Iraqi civilians. Under Order 17, issued to regulate contractors in Iraq by the one-time US administrator in Baghdad, Paul Bremer, these contractors are immune from prosecution. Yes, but that is in Iraq, you could argue; however, after Hurricane Katrina, the Department of Homeland Security hired and deployed hundreds of armed private security guards in New Orleans. The investigative journalist Jeremy Scahill interviewed one unnamed guard who reported having fired on unarmed civilians in the city. It was a natural disaster that underlay that episode - but the administration's endless war on terror means ongoing scope for what are in effect privately contracted armies to take on crisis and emergency management at home in US cities.

Thugs in America? Groups of angry young Republican men, dressed in identical shirts and trousers, menaced poll workers counting the votes in Florida in 2000. If you are reading history, you can imagine that there can be a need for "public order" on the next election day. Say there are protests, or a threat, on the day of an election; history would not rule out the presence of a private security firm at a polling station "to restore public order".

4. Set up an internal surveillance system

In Mussolini's Italy, in Nazi Germany, in communist East Germany, in communist China - in every closed society - secret police spy on ordinary people and encourage neighbours to spy on neighbours. The Stasi needed to keep only a minority of East Germans under surveillance to convince a majority that they themselves were being watched.

In 2005 and 2006, when James Risen and Eric Lichtblau wrote in the New York Times about a secret state programme to wiretap citizens' phones, read their emails and follow international financial transactions, it became clear to ordinary Americans that they, too, could be under state scrutiny.

In closed societies, this surveillance is cast as being about "national security"; the true function is to keep citizens docile and inhibit their activism and dissent.

5. Harass citizens' groups

The fifth thing you do is related to step four - you infiltrate and harass citizens' groups. It can be trivial: a church in Pasadena, whose minister preached that Jesus was in favour of peace, found itself being investigated by the Internal Revenue Service, while churches that got Republicans out to vote, which is equally illegal under US tax law, have been left alone. Other harassment is more serious: the American Civil Liberties Union reports that thousands of ordinary American anti-war, environmental and other groups have been infiltrated by agents: a secret Pentagon database includes more than four dozen peaceful anti-war meetings, rallies or marches by American citizens in its category of 1,500 "suspicious incidents". The equally secret Counterintelligence Field Activity (Cifa) agency of the Department of Defense has been gathering information about domestic organisations engaged in peaceful political activities: Cifa is supposed to track "potential terrorist threats" as it watches ordinary US citizen activists. A little-noticed new law has redefined activism such as animal rights protests as "terrorism". So the definition of "terrorist" slowly expands to include the opposition.

6. Engage in arbitrary detention and release

This scares people. It is a kind of cat-and-mouse game. Nicholas D Kristof and Sheryl WuDunn, the investigative reporters who wrote *China Wakes: the Struggle for the Soul of a Rising Power*, describe pro-democracy activists in China, such as Wei Jingsheng, being arrested and released many times. In a closing or closed society there is a "list" of dissidents and opposition leaders: you are targeted in this way once you are on the list, and it is hard to get off the list.

In 2004, America's Transportation Security Administration confirmed that it had a list of passengers who were targeted for security searches or worse if they tried to fly. People who have found themselves on the list? Two middle-aged women peace activists in San Francisco; liberal Senator Edward Kennedy; a member of Venezuela's government - after Venezuela's president had criticised Bush; and thousands of ordinary US citizens.

Professor Walter F Murphy is emeritus of Princeton University; he is one of the foremost constitutional scholars in the nation and author of the classic *Constitutional Democracy*. Murphy is also a decorated former marine, and he is not even especially politically liberal. But on March 1 this year, he was denied a boarding pass at Newark, "because I was on the Terrorist Watch list".

"Have you been in any peace marches? We ban a lot of people from flying because of that," asked the airline employee.

"I explained," said Murphy, "that I had not so marched but had, in September 2006, given a lecture at Princeton, televised and put on the web, highly critical of George Bush for his many violations of the constitution."

"That'll do it," the man said.

Anti-war marcher? Potential terrorist. Support the constitution? Potential terrorist. History shows that the categories of "enemy of the people" tend to expand ever deeper into civil life.

James Yee, a US citizen, was the Muslim chaplain at Guantánamo who was accused of mishandling classified documents. He was harassed by the US military before the charges against him were dropped. Yee has been detained and released several times. He is still of interest.

Brandon Mayfield, a US citizen and lawyer in Oregon, was mistakenly identified as a possible terrorist. His house was secretly broken into and his computer seized. Though he is innocent of the accusation against him, he is still on the list.

It is a standard practice of fascist societies that once you are on the list, you can't get off.

7. Target key individuals

Threaten civil servants, artists and academics with job loss if they don't toe the line. Mussolini went after the rectors of state universities who did not conform to the fascist line; so did Joseph Goebbels, who purged academics who were not pro-Nazi; so did Chile's Augusto Pinochet; so does the Chinese communist Politburo in punishing pro-democracy students and professors.

Academe is a tinderbox of activism, so those seeking a fascist shift punish academics and students with professional loss if they do not "coordinate", in Goebbels' term,

ideologically. Since civil servants are the sector of society most vulnerable to being fired by a given regime, they are also a group that fascists typically "coordinate" early on: the Reich Law for the Re-establishment of a Professional Civil Service was passed on April 7 1933.

Bush supporters in state legislatures in several states put pressure on regents at state universities to penalise or fire academics who have been critical of the administration. As for civil servants, the Bush administration has derailed the career of one military lawyer who spoke up for fair trials for detainees, while an administration official publicly intimidated the law firms that represent detainees pro bono by threatening to call for their major corporate clients to boycott them.

Elsewhere, a CIA contract worker who said in a closed blog that "waterboarding is torture" was stripped of the security clearance she needed in order to do her job.

Most recently, the administration purged eight US attorneys for what looks like insufficient political loyalty. When Goebbels purged the civil service in April 1933, attorneys were "coordinated" too, a step that eased the way of the increasingly brutal laws to follow.

8. Control the press

Italy in the 1920s, Germany in the 30s, East Germany in the 50s, Czechoslovakia in the 60s, the Latin American dictatorships in the 70s, China in the 80s and 90s - all dictatorships and would-be dictators target newspapers and journalists. They threaten and harass them in more open societies that they are seeking to close, and they arrest them and worse in societies that have been closed already.

The Committee to Protect Journalists says arrests of US journalists are at an all-time high: Josh Wolf (no relation), a blogger in San Francisco, has been put in jail for a year for refusing to turn over video of an anti-war demonstration; Homeland Security brought a criminal complaint against reporter Greg Palast, claiming he threatened "critical infrastructure" when he and a TV producer were filming victims of Hurricane Katrina in Louisiana. Palast had written a bestseller critical of the Bush administration.

Other reporters and writers have been punished in other ways. Joseph C Wilson accused Bush, in a New York Times op-ed, of leading the country to war on the basis of a false charge that Saddam Hussein had acquired yellowcake uranium in Niger. His wife, Valerie Plame, was outed as a CIA spy - a form of retaliation that ended her career.

Prosecution and job loss are nothing, though, compared with how the US is treating journalists seeking to cover the conflict in Iraq in an unbiased way. The Committee to Protect Journalists has documented multiple accounts of the US military in Iraq firing upon or threatening to fire upon unembedded (meaning independent) reporters and camera operators from organisations ranging from al-Jazeera to the BBC. While westerners may question the accounts by al-Jazeera, they should pay attention to the accounts of reporters such as the BBC's Kate Adie. In some cases reporters have been wounded or killed, including ITN's Terry Lloyd in 2003. Both CBS and the Associated Press in Iraq had staff members seized by the US military and taken to violent prisons; the news organisations were unable to see the evidence against their staffers.

Over time in closing societies, real news is supplanted by fake news and false documents. Pinochet showed Chilean citizens falsified documents to back up his claim that terrorists had been about to attack the nation. The yellowcake charge, too, was based on forged papers. You won't have a shutdown of news in modern America - it is not possible. But you can have, as Frank Rich and Sidney Blumenthal have pointed out, a steady stream of lies polluting the news well. What you already have is a White House directing a stream of false information that is so relentless that it is increasingly hard to sort out truth from untruth. In a fascist system, it's not the lies that count but the muddying. When citizens can't tell real news from fake, they give up their demands for accountability bit by bit.

9. Dissent equals treason

Cast dissent as "treason" and criticism as "espionage". Every closing society does this, just as it elaborates laws that increasingly criminalise certain kinds of speech and expand the definition of "spy" and "traitor". When Bill Keller, the publisher of the New York Times, ran the Lichtblau/Risen stories, Bush called the Times' leaking of classified information "disgraceful", while Republicans in Congress called for Keller to be charged with treason, and rightwing commentators and news outlets kept up the "treason" drumbeat. Some

commentators, as Conason noted, reminded readers smugly that one penalty for violating the Espionage Act is execution.

Conason is right to note how serious a threat that attack represented. It is also important to recall that the 1938 Moscow show trial accused the editor of Izvestia, Nikolai Bukharin, of treason; Bukharin was, in fact, executed. And it is important to remind Americans that when the 1917 Espionage Act was last widely invoked, during the infamous 1919 Palmer Raids, leftist activists were arrested without warrants in sweeping roundups, kept in jail for up to five months, and "beaten, starved, suffocated, tortured and threatened with death", according to the historian Myra MacPherson. After that, dissent was muted in America for a decade. In Stalin's Soviet Union, dissidents were "enemies of the people". National Socialists called those who supported Weimar democracy "November traitors".

And here is where the circle closes: most Americans do not realise that since September of last year - when Congress wrongly, foolishly, passed the Military Commissions Act of 2006 - the president has the power to call any US citizen an "enemy combatant". He has the power to define what "enemy combatant" means. The president can also delegate to anyone he chooses in the executive branch the right to define "enemy combatant" any way he or she wants and then seize Americans accordingly.

Even if you or I are American citizens, even if we turn out to be completely innocent of what he has accused us of doing, he has the power to have us seized as we are changing planes at Newark tomorrow, or have us taken with a knock on the door; ship you or me to a navy brig; and keep you or me in isolation, possibly for months, while awaiting trial. (Prolonged isolation, as psychiatrists know, triggers psychosis in otherwise mentally healthy prisoners. That is why Stalin's gulag had an isolation cell, like Guantánamo's, in every satellite prison. Camp 6, the newest, most brutal facility at Guantánamo, is all isolation cells.) We US citizens will get a trial eventually - for now. But legal rights activists at the Center for Constitutional Rights say that the Bush administration is trying increasingly aggressively to find ways to get around giving even US citizens fair trials. "Enemy combatant" is a status offence - it is not even something you have to have done. "We have absolutely moved over into a preventive detention model - you look like you could do something bad, you might do something bad, so we're going to hold you," says a spokeswoman of the CCR.

Most Americans surely do not get this yet. No wonder: it is hard to believe, even though it is true. In every closing society, at a certain point there are some high-profile arrests - usually of opposition leaders, clergy and journalists. Then everything goes quiet. After those arrests, there are still newspapers, courts, TV and radio, and the facades of a civil society. There just isn't real dissent. There just isn't freedom. If you look at history, just before those arrests is where we are now.

10. Suspend the rule of law

The John Warner Defense Authorization Act of 2007 gave the president new powers over the national guard. This means that in a national emergency - which the president now has enhanced powers to declare - he can send Michigan's militia to enforce a state of emergency that he has declared in Oregon, over the objections of the state's governor and its citizens. Even as Americans were focused on Britney Spears's meltdown and the question of who fathered Anna Nicole's baby, the New York Times editorialised about this shift: "A disturbing recent phenomenon in Washington is that laws that strike to the heart of American democracy have been passed in the dead of night ... Beyond actual insurrection, the president may now use military troops as a domestic police force in response to a natural disaster, a disease outbreak, terrorist attack or any 'other condition'."

Critics see this as a clear violation of the Posse Comitatus Act - which was meant to restrain the federal government from using the military for domestic law enforcement. The Democratic senator Patrick Leahy says the bill encourages a president to declare federal martial law. It also violates the very reason the founders set up our system of government as they did: having seen citizens bullied by a monarch's soldiers, the founders were terrified of exactly this kind of concentration of militias' power over American people in the hands of an oppressive executive or faction.

Of course, the United States is not vulnerable to the violent, total closing-down of the system that followed Mussolini's march on Rome or Hitler's roundup of political prisoners.

Our democratic habits are too resilient, and our military and judiciary too independent, for any kind of scenario like that.

Rather, as other critics are noting, our experiment in democracy could be closed down by a process of erosion.

It is a mistake to think that early in a fascist shift you see the profile of barbed wire against the sky. In the early days, things look normal on the surface; peasants were celebrating harvest festivals in Calabria in 1922; people were shopping and going to the movies in Berlin in 1931. Early on, as WH Auden put it, the horror is always elsewhere - while someone is being tortured, children are skating, ships are sailing: "dogs go on with their doggy life ... How everything turns away/ Quite leisurely from the disaster."

As Americans turn away quite leisurely, keeping tuned to internet shopping and American Idol, the foundations of democracy are being fatally corroded. Something has changed profoundly that weakens us unprecedentedly: our democratic traditions, independent judiciary and free press do their work today in a context in which we are "at war" in a "long war" - a war without end, on a battlefield described as the globe, in a context that gives the president - without US citizens realising it yet - the power over US citizens of freedom or long solitary incarceration, on his say-so alone.

That means a hollowness has been expanding under the foundation of all these still- free-looking institutions - and this foundation can give way under certain kinds of pressure. To prevent such an outcome, we have to think about the "what ifs".

What if, in a year and a half, there is another attack - say, God forbid, a dirty bomb? The executive can declare a state of emergency. History shows that any leader, of any party, will be tempted to maintain emergency powers after the crisis has passed. With the gutting of traditional checks and balances, we are no less endangered by a President Hillary than by a President Giuliani - because any executive will be tempted to enforce his or her will through edict rather than the arduous, uncertain process of democratic negotiation and compromise.

What if the publisher of a major US newspaper were charged with treason or espionage, as a rightwing effort seemed to threaten Keller with last year? What if he or she got 10 years in jail? What would the newspapers look like the next day? Judging from history, they would not cease publishing; but they would suddenly be very polite.

Right now, only a handful of patriots are trying to hold back the tide of tyranny for the rest of us - staff at the Center for Constitutional Rights, who faced death threats for representing the detainees yet persisted all the way to the Supreme Court; activists at the American Civil Liberties Union; and prominent conservatives trying to roll back the corrosive new laws, under the banner of a new group called the American Freedom Agenda. This small, disparate collection of people needs everybody's help, including that of Europeans and others internationally who are willing to put pressure on the administration because they can see what a US unrestrained by real democracy at home can mean for the rest of the world.

We need to look at history and face the "what ifs". For if we keep going down this road, the "end of America" could come for each of us in a different way, at a different moment; each of us might have a different moment when we feel forced to look back and think: that is how it was before - and this is the way it is now.

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands ... is the definition of tyranny," wrote James Madison. We still have the choice to stop going down this road; we can stand our ground and fight for our nation, and take up the banner the founders asked us to carry.

• Naomi Wolf's *The End of America: A Letter of Warning to a Young Patriot* will be published by Chelsea Green in September

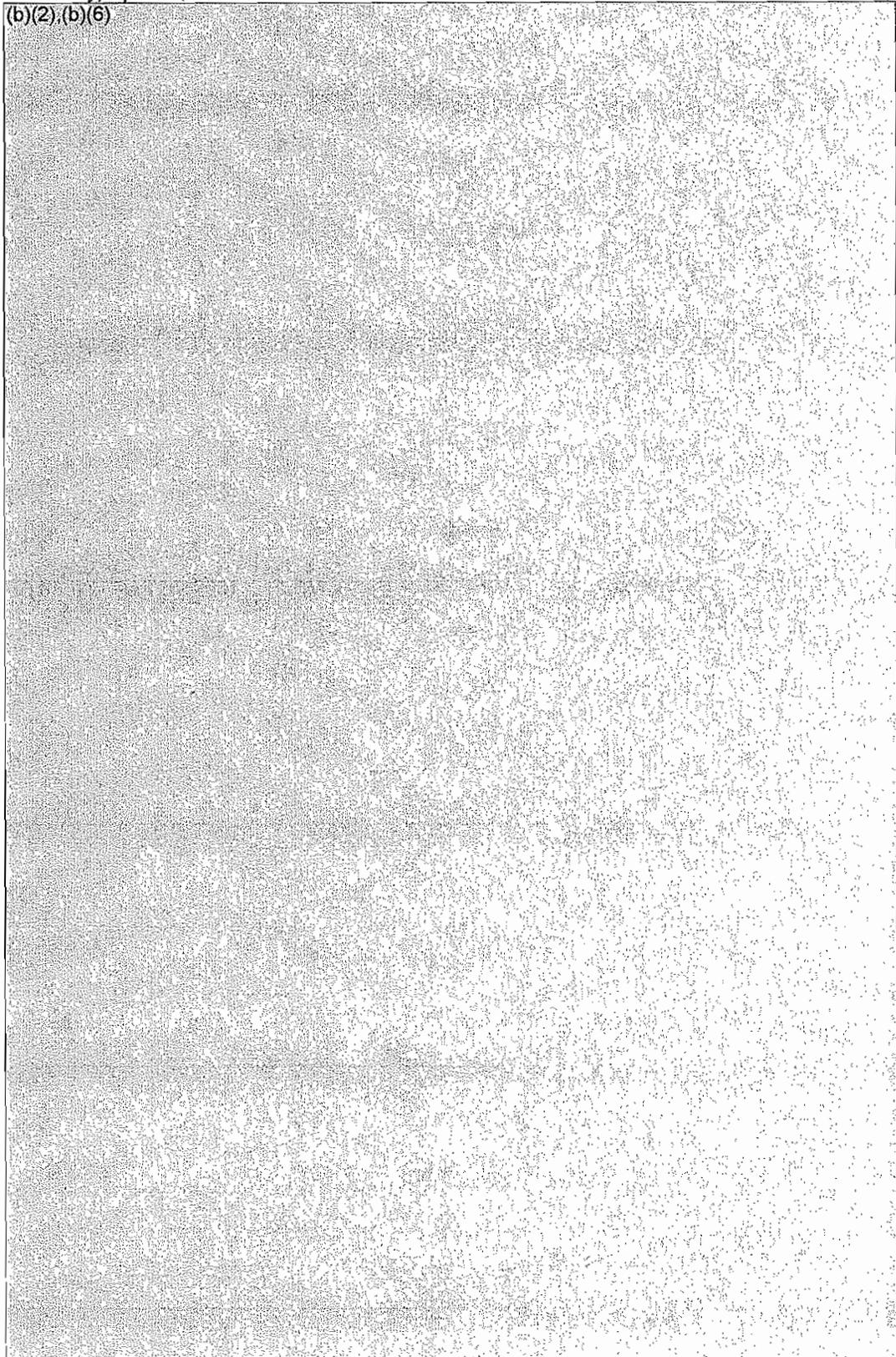
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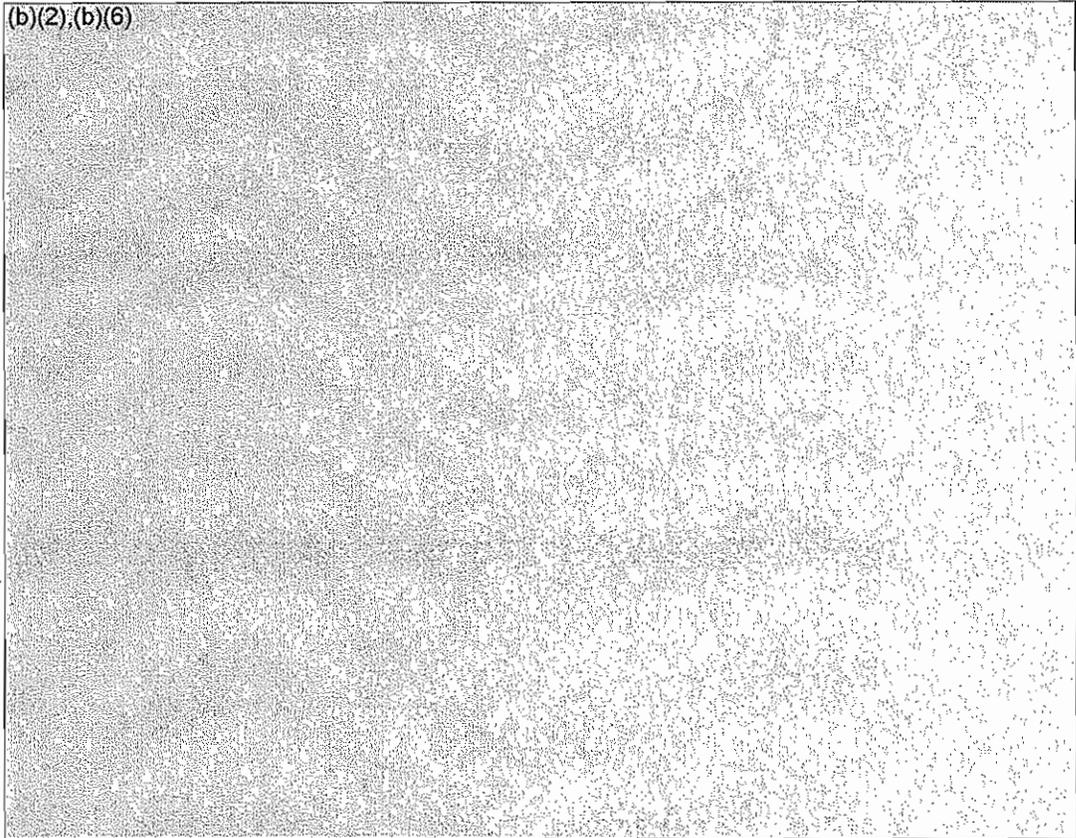
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Subject: GTMO Bird: SASC hearing; Limiting access to GTMO; Khadr; Released detainees; MOAC director reports on GTMO visit

Attachments: 070426 SASC Detainee Partial Hrng Transcript.doc

All:

Here is today's GTMO Bird.

Thanks,

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Attached below please find a partial transcript from today's SASC hearing.

Panel 1

Honorable Patrick J. Leahy <testimony.cfm?wit_id=6392&id=2674>

Panel 2

Mr. Daniel J. Dell'Orto, <testimony.cfm?wit_id=3387&id=2674> Principal Deputy General Counsel Department of Defense; Rear Admiral John D. Hutson, USN (Ret.), <testimony.cfm?wit_id=6238&id=2674> Former Judge Advocate General of the Navy; Mr. Jeffrey H. Smith, <testimony.cfm?wit_id=6239&id=2674> Former General Counsel of the Central Intelligence Agency; Mr. Neal K. Katyal, <testimony.cfm?wit_id=6240&id=2674> Professor of Law Georgetown University Law Center; Mr. Mark P. Denbeaux, <testimony.cfm?wit_id=6241&id=2674> Professor of Law Seton Hall Law School; Mr. David B. Rivkin, Jr., <testimony.cfm?wit_id=6242&id=2674> Partner Law Firm of Baker Hostetler

New York Times

April 26, 2007

Pg. 1

U.S. Asks Court To Limit Lawyers At Guantanamo By William Glaberson The Justice Department has asked a federal appeals court to impose tighter restrictions on the hundreds of lawyers who represent detainees at Guantánamo Bay, Cuba, and the request has become a central issue in a new legal battle over the administration's detention policies.

Saying that visits by civilian lawyers and attorney-client mail have caused "intractable problems and threats to security at Guantánamo," a Justice Department filing proposes new limits on the lawyers' contact with their clients and access to evidence in their cases that would replace more expansive rules that have governed them since they began visiting Guantánamo detainees in large numbers in 2004.

The filing says the lawyers have caused unrest among the detainees and have improperly served as a conduit to the news media, assertions that have drawn angry responses from some of the lawyers.

The dispute is the latest and perhaps the most significant clash over the role of lawyers for the detainees. "There is no right on the part of counsel to access to detained aliens on a secure military base in a foreign country," the Justice Department filing argued.

Under the proposal, filed this month in the United States Court of Appeals for the District of Columbia Circuit, the government would limit lawyers to three visits with an existing client at Guantánamo; there is now no limit. It would permit only a single visit with a detainee to have him authorize a lawyer to handle his case. And it would permit a team of intelligence officers and military lawyers not involved in a detainee's case to read mail sent to him by his lawyer.

The proposal would also reverse existing rules to permit government officials, on their own, to deny the lawyers access to secret evidence used by military panels to determine that their clients were enemy combatants.

Many of the lawyers say the restrictions would make it impossible to represent their clients, or even to convince wary detainees - in a single visit - that they were really lawyers, rather than interrogators.

Jonathan Hafetz of the Brennan Center for Justice at New York University, a lawyer who has helped to coordinate strategy for the detainees, said the government was trying to disrupt relationships between the lawyers and their clients and to stop the flow of public information about Guantánamo, which he described as a "legal black hole" before the courts permitted access for the lawyers in 2004.

"These rules," Mr. Hafetz said, "are an effort to restore Guantánamo to its prior status as a legal black hole."

The dispute comes in a case in which detainees are challenging decisions by military panels that they were properly held as enemy combatants. The Justice Department's proposed rules could apply to similar cases that lawyers say are likely to eventually involve as many as 300 of the roughly 385 detainees now held at Guantánamo.

Some of the detainees' lawyers say the Justice Department proposal is only the latest indication of a long effort to blunt their effectiveness, which they say was evident in statements of a senior Pentagon official early this year. The official, Charles D. Stimson, deputy assistant secretary for detainee affairs, resigned after he was criticized for suggesting that corporations should consider severing business ties with law firms that represented Guantánamo detainees.

Under the current rules, legal mail is inspected for contraband but is not read. The lawyers, who have security clearances, are presumed to be entitled to review classified evidence used against their clients.

There is no limit on the number of times lawyers can visit their clients. Some say that they have been to Guantánamo 10 or more times and that they have needed the time to work with clients who are often suspicious and withdrawn.

Justice Department officials would not comment on the proposal, which is scheduled to be the subject of a court hearing on May 15.

The filing used combative language, saying lawyers had been able to "cause unrest on the base" and mentioned hunger strikes, protests and disobedience. An affidavit by a Navy lawyer at Guantánamo, Cmdr. Patrick M. McCarthy, that accompanied the filing, said lawyers had gathered information from the detainees for news organizations. Commander McCarthy also said the lawyers had provided detainees with accounts of events outside Guantánamo, like a speech at an Amnesty International conference and details of terrorist attacks.

"Such information," his affidavit said, "threatens the security of the camp, as it could incite violence among the detainees."