

THE GUANTANAMO DETAINEES

The first prisoners from Afghanistan arrived at the U.S. naval base at Guantanamo Bay, Cuba on January 11, 2002. Today there are some 650 detainees being held at Guantanamo, from at least 43 countries. Most were captured in or near battlefields in Afghanistan. Some have come from other places, including six Algerians who were transferred from Bosnia in January 2002, after a local court there ordered their release for lack of evidence.

In late October 2002, the United States released four of the Guantanamo detainees, three Afghans and a Pakistani, explaining that the four no longer posed a threat to U.S. security. Though one of the men was 60 years old and two others upwards of 70 years old, the Defense Department insisted that “at the time of their detention, these enemy combatants posed a threat to U.S. security.”¹

Within days of the October releases, 30 new detainees were shipped to Guantanamo, bringing the total at that time to 625. On February 7, 2003, approximately 25 additional men were brought to Guantanamo, raising the total to about 650.² Defense Department officials continue to say that many of the detainees held in Guantanamo can expect to be held there until the end of the war against terrorism, a war that shows no signs of ending. To date, there have been 20 suicide attempts by 16 detainees, mostly attempts to hang themselves with cloth. According to one prison mental health expert, these cases represent “an extraordinarily high number compared to other prison populations.”³ The names of the detainees continue to be withheld, although the International Committee of the Red Cross (ICRC) has been allowed to visit detainees at Guantanamo and to communicate with families. Lawyers representing some of the detainees held at Guantanamo have filed habeas corpus petitions, asking U.S. courts to assert jurisdiction over their cases. At least two federal courts have ruled that they lack such jurisdiction.⁴

THE RASUL AND ODAH CASES

On December 2, 2002, the U.S. Court of Appeals for the District of Columbia heard arguments from the government and attorneys representing the families of Australian, British, and Kuwaiti detainees on Guantanamo, who were apprehended in Afghanistan or Pakistan. The families maintain that the detainees were either innocent victims of bounty hunters or unfortunates mistakenly identified to U.S. forces as

¹ “Transfer of Detainees Completed,” *Department of Defense News Release*, October 28, 2002, available at http://www.dod.mil/news/Oct2002/b10282002_bt550-02.html (accessed March 2, 2004); “Three Afghans Home from Guantanamo,” *Associated Press*, October 28, 2002; Todd Pittman, “Former Detainees Recount Life at Guantanamo,” *Associated Press*, October 29, 2002.

² Paisley Dodds, “New Suspects Arrive at Guantanamo Bay,” *Associated Press*, February 7, 2003; “U.S. Adds 30 Detainees to GITMO,” *Reuters*, October 28, 2002.

³ Don van Natta Jr., “Questioning Terror Suspects in a Dark and Surreal World,” *New York Times*, March 9, 2003. Authorities will be opening a special ward for detainees with mental problems. “U.S. Plans Mental Ward for Detainees,” *Associated Press*, March 7, 2003.

⁴ Neil A. Lewis, “Judge Rebuffs Detainees at Guantanamo,” *New York Times*, August 1, 2002.

combatants. While conceding that the U.S. government was entitled to hold battlefield detainees in Guantanamo, the detainees' lawyers insisted that there must be some kind of adjudicative proceeding, if not in a federal court, then at least in a "competent tribunal" as provided for in article 5 of the Third Geneva Convention.⁵ A decision may be expected within the first half of 2003.⁶

THE ABASSI CASE

International concern about the indeterminate status of the detainees has continued to grow. A striking example of such concern was expressed in a November 6, 2002 British Court of Appeal opinion, *Abassi v. Secretary of State*, a case respecting a British detainee at Guantanamo, Feroz Abassi. Though the three-judge panel declined to grant Abassi's mother the remedy she sought – an order to the British Foreign and Commonwealth Office to intercede on behalf of her son – the court used exceptionally blunt language to express its frustration at the "legal black hole" Abassi was in. In its opinion, the court said:

What appears to us to be objectionable is that Mr. Abassi is subject to indefinite detention in territory over which the United States has exclusive control, with no opportunity to challenge the legitimacy of his detention before any court or tribunal....It may be that the anxiety we have expressed will be drawn to their attention.⁷

INTERROGATIONS AT GUANTANAMO

There continues to be a debate about the treatment of the Guantanamo detainees. On October 9, 2002, the Pentagon removed the Guantanamo base commander, Brig. Gen. Rick Baccus. Neither Baccus nor the military would confirm press reports that Baccus was relieved of his command for "being too nice" to those in detention. But, according to press reports, Baccus had come under criticism for addressing the detainees with words such as "peace be with you," and "may God be with you"; promising the prisoners they would be "treated humanely"; and authorizing placement in the camp of ICRC posters specifying certain rights that prisoners have under the Geneva Conventions.⁸

⁵ See Neil A. Lewis, "Guantanamo Prisoners Seek to See Families and Lawyers," *New York Times*, December 3, 2002.

⁶ The cases are *Rasul, et al. v. George Walker Bush, et al.*, and *Odah, et al. v. United States of America, et al.* Some of the filings in the *Rasul* case are available at <http://www.campxray.net/page2.html> (accessed March 7, 2003).

⁷ *Abassi v. Secretary of State*, entire opinion available on the website of the National Institute of Military Justice, <http://nimj.com> (accessed January 27, 2003). See Neil A. Lewis, "British Judges Criticize U.S. on the Prisoners Held at Guantanamo," *New York Times*, November 8, 2002.

⁸ See Bill Gertz and Rowan Scarborough, "Notes from the Pentagon: GITMO Dispute," *Washington Times*, October 4, 2002, available at <http://www.washtimes.com/national/20021004-92332157.htm> (accessed January 27, 2003); "GITMO Camp Commander Relieved," *Washington Post*, October 14, 2002. Article 41 of the Third Geneva Convention provides that "[i]n every [prisoner of war] camp the text of the [Third Geneva] Convention...shall be posted, in the prisoners' own language, in places where all may read them."

Some press reports also have speculated that most of the detainees in Guantanamo constitute neither significant intelligence sources nor material danger to the United States and its allies, one reason why the interrogations were producing so little intelligence information.⁹

As more information began to seep out of Guantanamo through press reports, news articles reported that “[a]t least 59 detainees – nearly 10% of the prison population at the ...base – ...were deemed to be of no intelligence value after repeated interrogations in Afghanistan. All were placed on ‘recommended for repatriation’ lists well before they were transferred to Guantanamo....” These “farmers, taxi drivers, cobblers and laborers,” a number of whom were low-level conscripts, were transferred to Guantanamo even though they did not meet the official screening criteria. There were so many “‘Mickey Mouse’ detainees” being ordered sent to Cuba by commanders far from the battlefield, in Kuwait or the United States, that interrogators in the field in Afghanistan became “dismayed” and began “circulating [to senior intelligence officers] lists of prisoners they believed were being improperly placed on Guantanamo.” One officer summed up the problem: “No one wanted to be the guy who released the 21st hijacker.”¹⁰

ALLEGATIONS OF MISTREATMENT BY U.S. INTERROGATORS

U.S. military and intelligence services also continue to carry out interrogations outside of Guantanamo, including at the U.S. base at Bagram, Afghanistan, where, according to news sources, “[i]nterrogators...are sometimes able to use more aggressive and creative tactics in questioning detainees than their counterparts at Guantanamo Bay can employ.”¹¹

In recent months, there have been an increasing number of news articles describing physical and psychological mistreatment of those who are being interrogated. If true, these reports raise serious questions about the administration’s assurances that, issues of technical legal status aside, all detainees are being treated humanely. In December 2002, a *Washington Post* report described direct involvement by United States forces in abusive practices:

In contrast to the detention center at Guantanamo Bay, where military lawyers, news reporters and the Red Cross received occasional access to monitor prisoner conditions and treatment, the CIA’s overseas

⁹ Greg Miller, “Many Held at Guantanamo Not likely Terrorists,” *Los Angeles Times*, December 22, 2002; John Mintz, “Detainees at Base in Cuba Yield Little Valuable Information,” *Washington Post*, October 29, 2002.

¹⁰ Greg Miller, “Many Held at Guantanamo Not Likely Terrorists,” *Los Angeles Times*, December 22, 2002. As an example of the inflexibility of the screening procedures, Miller quotes one interrogator in Afghanistan describing a restaurant worker picked up near the Pakistani border who “had the mental capacity to put flatbread in an oven and that was the extent of the intellect....He never got trained on a rifle, never got pressed into service. But he was Arab by birth so he was picked up and sent away.”

¹¹ John Mintz, “Detainees at Base in Cuba Yield Little Valuable Information,” *Washington Post*, October 29, 2002.

interrogation facilities are off-limits to outsiders, and often even to other government agencies. In addition to Bagram [Afghanistan] and Diego Garcia [an Indian Ocean island leased by the United States from Britain], the CIA has other secret detention centers overseas, and often uses the facilities of foreign intelligence services. Free from the scrutiny of military lawyers steeped in the international laws of war, the CIA and its intelligence service allies have the leeway to exert physically and psychologically aggressive techniques, said national security officials and U.S. and European intelligence officers.¹²

“Stress and duress” techniques reportedly described by U.S. national security officers include keeping prisoners standing or kneeling for hours in black hoods; binding them in awkward, painful positions; depriving them of sleep with 24-hour lights; subjecting them to loud noises; “softening up” by beating; throwing them blindfolded into walls; and depriving wounded prisoners of adequate pain control medicines.¹³ These are practices the United States has regularly condemned when carried out by other governments, particularly if they have been continued for lengthy periods of time and/or combined with other abuses.¹⁴

Following the capture in Pakistan of alleged senior al Qaeda operations planner Khalid Shaikh Mohammed, at the end of February 2003, reporters asked White House spokesman Ari Fleischer about U.S. interrogation practices. He insisted that U.S. interrogations have been and would continue to be “humane and to follow all international laws and accords dealing with this type of subject.” Yet other unnamed U.S. officials have told reporters that “[t]here are a lot of ways short of torturing someone to

¹² Dana Priest and Barton Gellman, “U.S. Decries Abuse but Defends Interrogations,” *Washington Post*, December 26, 2002.

¹³ Dana Priest and Barton Gellman, “U.S. Decries Abuse but Defends Interrogations,” *Washington Post*, December 26, 2002. One U.S. official told reporters “in a deadpan voice, that ‘pain control [in wounded patients] is a very subjective thing.’” In March, 2003, U.S. officials acknowledged to a reporter manipulating access to pain medication while interrogating Abu Zubaydah, a senior al Qaeda leader who was shot in the chest, groin and thigh when he was captured in March 2002 in Pakistan. “American questioners teased him with occasional painkillers to try to cull information.” Erich Lichtblau and Adam Liptak, “Questioning of Accused Expected to Be Humane, Legal and Aggressive,” *New York Times*, March 4, 2003.

“American Taliban” John Lindh has alleged that he was stripped naked, blindfolded and bound to a stretcher “with heavy duct tape wrapped tightly around his chest, upper arms, ankles and the stretcher itself,” and kept in this condition in a windowless metal shipping container for two days. Lindh also asserted that after being handed over to U.S. custody, he was interrogated while wounded with a bullet in his leg, and denied surgery for two weeks despite repeated requests to the U.S. agents questioning him.” See Proffer of Facts in Support of Defendant’s Suppression Motions, in the case of *United States v. John Phillip Walker Lindh* (E.D. Va., June 13, 2002).

¹⁴ See Country Reports on Human Rights Practices – 2001, Released by the Bureau of Democracy, Human Rights, and Labor, Department of State, March 4, 2002 (“DOS Human Rights Report”), available at <http://www.state.gov/g/drl/hr/c1470.htm> (accessed January 27, 2003). The DOS Human Rights Report characterizes as “abuses” prolonged standing (Palestinian Authority); shackling in contorted positions (Israel; Palestinian Authority); sleep deprivation (Israel; Palestinian Authority); and beatings (Israel; Palestinian Authority). The report characterizes as “torture” prolonged standing (Turkey); sleep deprivation (Jordan; Turkey); loud music (Turkey); and beatings (Egypt; Syria; Turkey).

get information from a subject,” and that they “expected the Central Intelligence Agency to use every means at its disposal short of what it considers outright torture, to try to crack [Mohammed].”¹⁵ U.S. officials told the *New York Times* that purportedly lawful techniques used in the past have included “depriv[ing] suspects of sleep and light, ke[eping] them in awkward physical positions for hours and us[ing] psychological intimidation or deception to confuse and disorient them.”¹⁶

One U.S. law-enforcement official reportedly explained his understanding that as long as the pain and suffering are not “severe,” it is permissible to use physical force and to cause “discomfort.”¹⁷

The U.S. interrogation center at Bagram has come under increasing scrutiny. Military authorities are reportedly conducting a criminal investigation into the December 2002 deaths, in Bagram, of two Afghan detainees, deaths officially reported by a military pathologist as “homicide[s],” resulting in part from “blunt force trauma.”¹⁸

Lt. Gen. Daniel K. McNeill, the U.S. commander of the coalition forces in Afghanistan, acknowledged that prisoners at Bagram were being made to stand for long periods, though he denied accusations that prisoners had been chained to the ceiling or held in chains attached to the ceiling, and he insisted that prisoners are being properly treated in the center.¹⁹

¹⁵ Eric Lichtblau and Adam Liptak, “Questioning of Accused Expected to Be Humane, Legal and Aggressive,” *New York Times*, March 4, 2003.

¹⁶ Ibid. Military interrogators told the *Wall Street Journal*: “Interrogators can also play on their prisoners’ phobias, such as fear of rats or dogs, or disguise themselves as interrogators from a country known to use torture or threaten to send the prisoners to such a place. Prisoners can be stripped, forcibly shaved and deprived of religious items and toiletries.” Jess Bravin and Gary Fields, “How do Interrogators Make A Captured Terrorist Talk?,” *Wall Street Journal*, March 4, 2003.

¹⁷ Jess Bravin and Gary Fields, “How do Interrogators Make A Captured Terrorist Talk?,” *Wall Street Journal*, March 4, 2003. One U.S. intelligence officer told the *Journal*: “U.S. officials overseeing interrogations of captured al Qaeda forces at Bagram and Guantanamo Bay Naval Base in Cuba can even authorize ‘a little bit of smack-face.’” Ibid.

¹⁸ Carlotta Gall, “U.S. Military Investigating Death of Afghan in Custody,” *New York Times*, March 4, 2003; “Prisoners ‘Killed’ at US Base,” BBC News World Edition (March 6, 2003), available at http://news.bbc.co.uk/2/hi/south_asia/2825575.stm (accessed March 6, 2003). A U.S. spokesman denied mistreatment at the camp, and attributed the “homicide” determinations to “a limited choice when filling the military death certificate.” Ibid. Two other Afghan former prisoners told the *New York Times* that while they were held in Bagram they were:

[M]ade to stand hooded, their arms raised and chained to the ceiling, their feet shackled, unable to move for hours at a time, day and night....The prisoners... were freed from their standing position only to eat, pray and go to the bathroom. [One of them] said he had spent 16 days in the upstairs rooms, standing for 10 of them until his legs became so swollen that the shackles around his ankles tightened and stopped the blood flow. He said he was naked the entire time and allowed to dress only when he was taken for interrogation or to the bathroom. [He] said the cold kept him awake, as did the American guards, who kicked and shouted at him to stop him falling asleep.

¹⁹ Carlotta Gall, “U.S. Military Investigating Death of Afghan in Custody,” *New York Times*, March 4, 2003.

In a related development, recent news reports also suggest that a number of detainees have been “rendered” – or transported for questioning – to foreign intelligence services, in countries where torture and other mistreatment are common police practices. One U.S. official explained to a reporter, “We don’t kick the [expletive] out of them. We send them to other countries so *they* can kick the [expletive] out of them.”²⁰ Favored destinations include Jordan, Egypt and Morocco.²¹ In at least one case, U.S. operatives managed the apprehension and transfer of a German citizen al Qaeda suspect to Syria (where he had been born), provoking strong protest from Germany.²²

While “U.S. officials deny that they condone torture by allies in the campaign against terrorism,”²³ the Pentagon has refused either to confirm or deny that any “renderings” from Guantanamo have occurred. On February 6, 2003, however, *Newsday* reported claims by Vincent Cannistraro, “former director of the CIA’s counterterrorism center,” that intelligence regarding possible links between Saddam Hussein and Islamic terrorism had been obtained “from a senior al-Qaida detainee who had been held in the U.S. base at Guantanamo, Cuba, and was ‘rendered’ to Egypt after refusing to cooperate. ‘They promptly tore his fingernails out and he started to tell things,’ [Cannistraro] said.”²⁴

²⁰ John Mintz, “Detainees at Base in Cuba Yield Little Valuable Information,” *Washington Post*, October 29, 2002; Dana Priest and Barton Gellman, “U.S. Decries Abuse but Defends Interrogations,” *Washington Post*, December 25, 2002.

²¹ The DOS Human Rights Report recounts allegations of torture in Jordan, including “sleep deprivation, beatings on the soles of the feet, prolonged suspension with ropes in contorted positions, and extended solitary confinement.” With regard to Egypt, the DOS Human Rights Report states that “there were numerous, credible reports that security forces tortured and mistreated citizens,” with victims reporting such “methods of torture...[as b]eing stripped and blindfolded; suspended from a ceiling or doorframe with feet just touching the floor, beaten with fists, whips, metal rods, or other objects; subjected to electrical shocks; and doused with cold water....Some victims, male and female detainees, reported that they were sexually assaulted or threatened with the rape of themselves or family members.” As for Morocco, while noting some improvement over the years, the DOS Human Rights Report relates that “some members of the security forces still tortured or otherwise abused detainees,” and cited “concerns regarding the Government’s commitment to resolving the problem.” See also Eric Lichtblau and Adam Liptak, “Questioning of Accused Expected to Be Humane, Legal and Aggressive,” *New York Times*, March 4, 2003, quoting a senior Moroccan intelligence official: “I am allowed to use all means in my possession [in interrogating a prisoner]....You have to fight all his resistance at all levels and show him that he is wrong, that his ideology is wrong and is not connected to religion. We break them, yes. And when they are weakened, they realize that they are wrong.”

²² Peter Finn, “Case of Al Qaeda Suspect Shows Underside of War on Terrorism,” *Wall Street Journal*, January 30, 2003. See also Dana Priest and Barton Gellman, “U.S. Decries Abuse but Defends Interrogations,” *Washington Post*, December 26, 2002; Faye Bowers and Philip Smucker, “US Ships Al Qaeda Suspects to Arab States,” *Christian Science Monitor*, July 26, 2002. The United States has long considered Syria one of the world leaders in human rights violations and support for terrorism. The DOS Human Rights Report reports “credible evidence that security forces continued to use torture, although to a lesser extent than in previous years. Former prisoners and detainees report that torture methods include administering electrical shocks; pulling out of fingernails; forcing objects into the rectum; beating, sometimes while the victim is suspended from the ceiling; hyperextending the spine; and using a chair that bends backwards to asphyxiate the victim or fracture the victim’s spine.”

²³ Knut Royce, “Mixed Reviews From Experts,” *Newday*, February 6, 2003.

²⁴ Ibid.