

The following text may be printed, copy/pasted, or downloaded and emailed.

## Palliatives for Prisoners

Editorial  
Washington Post  
January 5, 2005

THOUGH IT has yet to acknowledge any error, the Bush administration appears to understand that its handling of foreign detainees has caused enormous damage to America's standing around the world, and even to relations with close allies. In the past week, two measures it has devised to alleviate the problem have become public. The Justice Department has repudiated a 2002 legal opinion that authorized the use of torture, and it has issued a brief that returns U.S. policy closer to international standards. The Defense Department, in turn, has developed plans for new facilities and procedures at the Guantanamo Bay prison that will allow long-term detainees to be held in more humane conditions. Both steps are welcome. However, by themselves they are not sufficient to end the systematic violations of domestic and international human rights laws that the administration has committed since 2001.

The new torture opinion appeared just a week before tomorrow's scheduled opening of Senate hearings on President Bush's nomination of White House Counsel Alberto R. Gonzales to be attorney general. That's probably not a coincidence, since Mr. Gonzales was deeply involved in the legal review that led to the drafting of the original memo. Significantly, the new policy sets aside the earlier finding that Mr. Bush was empowered as commander in chief to override U.S. laws and international treaties prohibiting torture. It also revises what was an extremely narrow definition of torture; the Justice Department now concedes that some practices that cause pain short of death or organ failure could be considered illegal. The new standard, however, is vague. So while the extreme and embarrassing previous policy is disposed of, it's unclear that the new one requires any change in the actual treatment of prisoners.

The evolving plans for Guantanamo could provide better conditions for those detainees -- more than half the total prisoner population -- who are no longer being interrogated but whom the administration is not prepared to release. Officials say they intend to expand the privileges of those detainees in part by constructing a new, penitentiary-like facility that would allow for group exercise and other facilities normally provided to prisoners of war. Those prisoners would not be charged with crimes or tried before military tribunals, but -- thanks to last year's Supreme Court ruling -- they could challenge their detentions in federal court and will receive an annual review of their status. The administration still lacks a mechanism for determining, in the likely absence of a battlefield surrender or peace treaty, when the war on terrorism will be over and when these prisoners will be subject to general release.

The more serious problem, however, lies not with the detainees at Guantanamo Bay but with the "ghost" prisoners of the CIA, who have disappeared into secret detention centers where they are held without any legal process, public accounting or inspection by the International Red Cross. As Sen. Richard G. Lugar (R-Ind.), chairman of the Foreign Relations Committee, said on Sunday, the administration's apparent intention to hold these prisoners indefinitely without due process is simply "a bad idea." So is the continued use of interrogation techniques at Guantanamo and elsewhere that the Red Cross has called "tantamount to torture," such as prolonged shackling and sensory deprivation -- which the new ruling on torture does not address. Until these illegal and counterproductive practices are explicitly renounced, the administration's attempt at damage control will fall short.