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Why the Bush Administration Defends Guantanamo

Island Mentality

Spencer Ackerman (op-ed)
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The detainee, by all appearances, is resigned to his fate. Throughout his hearing, he remains stoic, not once even shifting in his chair, let alone jostling the restraints that bind his wrists and ankles. His tan jumpsuit indicates his compliance with the camp guards. (The infamous orange jumpsuits are reserved for "problem" detainees.) When the panel of American military officers asks if he wants to submit additional statements on his behalf, he declines. Despite a statistical glimmer of hope--of over 160 detainees who've gone through this process, four have been designated for release--he seems to know what's in store for him: another year in Guantanamo Bay.

Maybe that's the right outcome. According to a briefing I was given, the detainee earned a grisly nickname--suitable for a comic-book villain--fighting with Taliban affiliates in his native Afghanistan. (In order to learn that, I had to sign a contract preventing me from reporting what that nickname is.) Yet the counts against him fall decidedly short of meriting the "worst of the worst" designation that Donald Rumsfeld once gave Guantanamo's inmate population. The military, citing information from "many agencies," says that he is suspected of "involvement in rocket attacks" on U.S. forces in Afghanistan, as well as the manufacture of false visas; he was in charge of investigation and interrogations for the Taliban's Eighth Division in a section of the eastern Paktia province; and he has been affiliated with the Osama bin Laden-connected jihadist organization run by warlord Gulbuddin Hekmatyar. A bad guy he may be. Khalid Shaikh Mohammed he isn't.

"I admit it," he says through a civilian interpreter. "I worked for the Taliban, but for a construction project. I wasn't the boss or foreman, just a simple worker." For the first time, the detainee starts to get agitated. He doesn't think the officer advising him has clearly instructed the three-officer panel about seemingly exculpatory information. After several minutes of questioning from the panel--did he know anyone who attacked U.S. forces? (No.) Did he receive weapons training at a refugee camp in Pakistan? (No.)--he begins to plead. "You didn't tell me what kind of scars I have. If you think they're war injuries, no," he says, in an apparent attempt to convince the panel that he was not wounded while trying to kill Americans. An officer assures him, "We understand the injuries you have are not from war." By the time the unclassified portion of the hearing closes, the detainee is silent and still, once again acquiescent to another year of probable detention--either at Guantanamo or, under a deal announced last week to send detainees to prisons in their own countries, in Afghanistan.

The outcome of the hearing was probably not in question--in large part because it was not a legal proceeding. The officer advising the detainee is not a lawyer. His job is not to challenge the government's case for continued detention, but rather to help the detainee "understand" the proceedings. The hearing doesn't ascertain the detainee's guilt or innocence, but rather the threat he poses to the United States, as well as what intelligence value he possesses. (That consideration is undertaken in a classified hearing.) What I saw, however, made it difficult to escape the conclusion that the detainee's guilt is largely taken for granted. Justice, conventionally understood, is not a priority at Guantanamo. But that doesn't seem to bother the officers in charge--after all, they say, the process, known as an Administrative Review Board, has been created on the fly. "Quite frankly," shrugs Captain Eric Kaniut, a Pentagon official involved with the review process, "it's unprecedented."

That's a common sentiment among Kaniut's colleagues. "We freely admit we're learning this as we go along," Paul W. Butler, a Rumsfeld adviser and an architect of Guantánamo detentions, told The Washington Post last year. Indeed, that rationale is used to justify the perpetuation of numerous contradictory stances. For example, the Bush administration has contended simultaneously that Guantanamo Bay is foreign soil (in order to deprive its inmates of access to U.S. courts) and that it "is included within the definition of the special maritime and territorial jurisdiction of the United States" (in order to circumvent the federal Torture Statute, which governs overseas conduct). And, as described in a recent Pentagon report on interrogations at Guantanamo Bay, "degrading and abusive treatment" did not, as General Bantz Craddock of Southern Command put it in congressional testimony last month, "violat[e] U.S. law or policy"--despite relentless assurances from the White House that policy dictates that enemy combatants at Guantanamo be treated humanely.

Little wonder, then, that American liberals have joined the outcry against Guantanamo previously reserved largely for foreigners. New York Times columnist Thomas L. Friedman has implored the administration to "just shut it down." But Friedman's call for shuttering Guantanamo was based on neither the "deeply immoral" abuse at the prison nor the policies that drove it--but instead on "how corrosive Guantanamo has become for America's standing abroad," undermining U.S. efforts to win Muslim hearts and minds. Likewise, Senator Joseph Biden, one of the leading Democratic foreign policy voices, told ABC's George Stephanopoulos in June, "[T]his has become the greatest propaganda tool that exists for the recruiting of terrorists around the world. I think more Americans are in jeopardy as a consequence of the perception that exists worldwide with [Guantanamo's] existence than if there were no Gitmo."

But Guantanamo is more than just an image problem; it is a moral, legal, and strategic one as well. Indefinite detention and the embrace of torture as policy are betrayals of fundamental American principles. Sometimes in war, moral tradeoffs are necessary, but that's not the case at Gitmo, which yields intelligence of little value and where suspect interrogation techniques threaten the legal prosecution of terrorist suspects--an increasing problem as the war on terrorism morphs into more of a law-enforcement struggle. Simply shutting down the facility would do nothing to address these issues. After all, Guantanamo may be the flagship of the post-September 11 enemy-combatant detention apparatus, but the system extends to Bagram Air Base in Afghanistan, the Indian Ocean island of Diego Garcia, and other far-flung corners of the globe that the administration doesn't disclose. The only way to "solve" Guantanamo is to introduce human rights protections and due process for its inmates--and, more importantly, to abandon the principle that underlies the Bush administration's entire post- September 11 U.S. detention system: that the only way to win the war on terrorism is to grant nearly limitless authority to the president.

The interrogation chamber in Camp Five, Guantanamo's recently constructed high-tech prison facility--Camp Six is due next year--is as austere as it is intimidating. Inside a triangular cinderblock room with its frosted-glass window blocked off by a translucent sheet of paper is a small, gray table with two folding chairs on one side. Across the table, as the room converges to its point, is a third chair, which is handcuffed to a metal bar in a dug-out section of the floor. The detainee sits there. On the wall, behind where the interrogators sit, is a red button marked duress to alert guards of an emergency.

How much "duress" a detainee endures in the interrogation room is a matter of both confusion and controversy. FBI interrogators who visited Guantanamo in 2003 and 2004 informed their superiors that, "on a couple of occasions," they found detainees "chained hand and foot in a fetal position to the floor"--that is, secured to the small bar I saw--"with no chair, food or water. Most times they had urinated or defecated on themselves, and had been left there for 18-24 hours or more." The air conditioning was set to make interrogation rooms so cold that the detainee was violently shaking or so "unbearably hot" that the detainee, who endured the temperature for hours, was practically unconscious and had "apparently been literally pulling his own hair out throughout the night." Detainees had been blasted with "extremely loud" songs by Lil' Kim and

Eminem, as well as a Meow Mix cat food commercial, for extended periods. In June, Time magazine published excerpts from the interrogation log of the suspected would-be twentieth September 11 hijacker, Mohammed Al Qatani, which states, among other things, that Qatani's questioners injected him with massive amounts of fluids and forced him to urinate on himself.

In response to the public disclosure of the FBI accounts --not the accounts themselves--the Pentagon assigned Generals Randall Schmidt and John Furlow to investigate Guantánamo interrogations. Their report, released last month, is euphemistic and disingenuous. Schmidt and Furlow maintain that they found "no evidence of torture or inhumane treatment," while simultaneously confirming many of the FBI descriptions. Their most startling conclusion is that nearly every incident they investigated was "authorized" by Pentagon guidelines--guidelines Donald Rumsfeld approved between October 2002 and April 2003. Sometimes, to reach this conclusion, Schmidt and Furlow shoehorn in new definitions to the Army's field manual on interrogations, which complies with the Geneva Conventions. For instance, Schmidt and Furlow consider sexual coercion by female interrogators--including the smearing of fake menstrual blood on a detainee, who subsequently "threw himself on the floor and started banging his head"--to fall within the boundaries of the manual's "Futility" technique. (One veteran of an Army intelligence unit fighting the war on terrorism told me sexual manipulation is decidedly not "Futility.") Qatani, Schmidt and Furlow found, was the subject of a "Special Interrogation Plan." That meant he endured, among other things, high-blast air conditioning that slowed his heartbeat until he required medical attention; was interrogated for 18 to 20 hours daily for 48 days out of a 54-day stretch; was straddled by a female interrogator; and was led on a leash and forced "to perform a series of dog tricks." As their report states: "[E]very technique employed against [Qatani] was legally permissible under the existing guidance."

That is exactly what military lawyers, known as judge advocates general (JAGs), feared would happen when the Bush administration relaxed interrogation guidelines for the Guantanamo facility. When they learned, in 2003, what Rumsfeld was considering for detainees, they worried about high-level authorization of war crimes. "Approving exceptional interrogation techniques may be seen as giving official approval and legal sanction to the application of interrogation techniques that U.S. Armed Forces have heretofore been trained are unlawful," Deputy Air Force JAG Jack L. Rives warned that February, according to a memo declassified two weeks ago. The Navy JAG, Rear Admiral Michael F. Lohr, bluntly called the techniques "inconsistent with our most fundamental values."

But the problem of Guantanamo is not simply a problem of values--it's also a problem of the camp's actual utility in fighting terrorism. The biggest evasion in Schmidt and Furlow's report--and the most significant for the administration's prosecution of the war on terrorism--is their face-value acceptance of the claim that Qatani's "degrading and abusive" interrogation "ultimately provided extremely valuable intelligence." They do not elaborate. Indeed, no Pentagon investigation has challenged this central contention of the administration: that Guantanamo detainees provide invaluable intelligence about Al Qaeda--intelligence that requires, in many cases, the brutal techniques approved by Rumsfeld--despite how dubious it is.

Guantanamo Bay officials didn't grant my repeated requests for interviews with either the Joint Task Force commander, Brigadier General Jay Hood, or his deputy for intelligence operations, Steve Rodriguez, a civilian Pentagon official. Nor was I permitted to speak with any Guantanamo interrogator. As a result, it's difficult to ascertain exactly what intelligence value Guantanamo inmates possess. But there are several reasons not to believe the Pentagon's claims. For one, despite the intimations of some on the right--namely Senator Jeff Sessions of Alabama--professional American interrogators don't consider abuse a useful tool for extracting trustworthy information. It's difficult to take seriously the idea that a detainee exposed to suffocating heat nearly to the point of unconsciousness or smeared with what he believed was menstrual blood produced information of any merit. Not surprisingly, FBI interrogators don't take it seriously. One Bureau official caustically e-mailed his superior in December 2003, "These tactics have produced no intelligence of a threat neutralization nature to date." In fact, an unconventional-war expert at

the Naval Postgraduate School told the Post that the "best actionable intelligence in the whole war" came not from Guantanamo interrogations but from captured e-mails sent by Khalid Shaikh Mohammed.

Then there's the fact that there may not be very much useful intelligence among the camp's inmates to obtain. Despite the mantra that Guantanamo houses "the worst of the worst," Qatani, the thwarted hijacker, is the highest-ranking Al Qaeda detainee acknowledged to be at Camp Delta. Senior Al Qaeda captives--such as Khalid Shaikh Mohammed, the mastermind of September 11, or terrorist-recruiting chief Abu Zubaydah--are held at undisclosed locations across the U.S. detention apparatus. What's left are largely what one former White House counterterrorism official dubs "the ash-and-trash jihadi picked up in Afghanistan," as opposed to the "honest-to-God, cardcarrying members of Al Qaeda--operatives who are worth a shit." Many detainees picked up in Afghanistan in the first year after September 11, 2001, and taken to Guantanamo were initially captured by Northern Alliance fighters looking to settle scores and collect rewards. Indeed, Rodriguez told The New Yorker's Jane Mayer that only about one-quarter of Guantanamo's approximately 520 detainees possess any intelligence value for him.

What those 130 or so inmates have to offer, however, is still questionable. Most of Guantanamo's population has been in the camp for its entire three-and-a-half-year existence, and, according to Kaniut, only about ten detainees have arrived in the past year. "Obviously," says a recently retired senior intelligence official with counterterrorism experience, "the longer he's there, the less he has to tell you in terms of fresh actionable stuff. After a certain time, it becomes historic research data." That's not to say that information can't be useful. As the former White House official explains, the detainees might still be able to reveal "how do people interact, how do they communicate, what ethnic group will work with another ethnic group, where are the fault lines within the organization ... pieces of the jihadi and Sunni extremism jigsaw puzzle."

But, as the former official cautions, even those pieces lose their worth after awhile. And that's because the jigsaw puzzle is changing. Simply put, Al Qaeda in 2005--as both a terrorist network and a broader jihadist movement--looks very little like Al Qaeda in 2002. Most Guantanamo detainees were captured on the Afghan battlefield. Yet Al Qaeda's center of gravity is increasingly moving out of Afghanistan and Central Asia: In a series of classified reports this year, the CIA has warned that the next wave of the global jihadist movement lies with new recruits who travel to Iraq to gain on-the-job training killing U.S. forces and Iraqi civilians before returning to their homes in the Middle East, North Africa, and, increasingly, Europe--to say nothing of those who, as is likely with some of the culprits of last month's thwarted London attacks, taught themselves terrorism in the relative isolation of the British midlands. And Pentagon officials have testified to Congress that jihadists captured in Iraq can't be sent to Guantanamo Bay, because Iraqis must be treated in compliance with the Geneva Conventions. Guantanamo's population, in other words, can tell us next to nothing about this "Class of '05" problem--the future of Al Qaeda.

Al Qaeda's increasing European profile suggests that Guantanamo is providing little useful intelligence. But Guantanamo and the rest of the U.S. detention apparatus are also actually undermining prosecution of the war on terrorism, because Europe won't accept evidence procured via torture or duress. In January, for example, British officials arrested Moazzam Begg, Feroz Abbasi, Martin Mubanga, and Richard Belmar--British nationals who had been recently released after being detained for three years at Guantanamo--immediately after they stepped off a plane at Heathrow Airport. As London's then-police chief, Sir John Stevens, explained, information American officials had shared with their British counterparts indicated that the men were truly dangerous. "There was no other course of action--we would not have been doing our duty--if we had not arrested them and questioned them," Stevens said. There was only one problem: No information from Guantanamo Bay was admissible in British court, because it had been obtained under dubious legal circumstances. Despite the palpable worries British authorities had about them, all four walked out of a police station the next day, free men.

The issue is not one of European weakness in fighting terrorism, as conservatives often suggest: Investigating judges like Spain's Baltasar Garzón and France's Jean-Louis Bruguière have been relentless in hunting down Al Qaeda affiliates in their countries. Rather, European counterterrorist officials, politicians, and publics simply will not accept the Bush administration's legal contentions about abusive interrogation and indefinite detention, and they won't change their judicial systems to accommodate Washington. And, since Al Qaeda's evolution means that it is European officials who will increasingly have to combat the jihadists, this transatlantic disconnect runs the risk of allowing probable terrorists like the London four to go free.

In some cases, as with the recent trials in Spain of Al Qaeda suspects, the United States has resisted turning over information that could assist European prosecutions for fear of revealing sources and methods. In others, even when the United States has cooperated, the detention apparatus it has set up has undermined the usability of its evidence. Consider the case of Mounir Motassadeq. Motassadeq, who signed Mohammed Atta's will and had power of attorney over hijacker Marwan Al Shehhi's bank account, was convicted in Germany in 2003 of 3,000 counts of accessory to murder for his complicity in the September 11 plot. But an appeals court overturned his conviction in 2004, and the case is now snarled, in large part because of seemingly endless challenges over the admissibility of evidence obtained under probable duress and torture.

In short, Guantanamo opens the door for terrorists to go free amid the legal crossfire over the admissibility of the information they provide--a growing problem as the law enforcement side of the war on terrorism becomes increasingly important. Yet the Bush administration shows no sign of jettisoning abusive interrogation or indefinite detention in recognition. And that's because the administration has elevated these policies to the level of principle.

Guantanamo officials eagerly told me about a conversation they had with another journalist who recently visited Camp Delta, Al Jazeera correspondent Mohammed Yamlahi Alami. Alami was prepared to entertain the premise that there are indeed terrorists at Guantanamo, something the officials considered a p.r. coup. But Alami then said the detainees need to "have their day in court"--which would be a tremendous departure from current policy, under which only four out of 520 detainees at Guantanamo are facing charges before the administration's legally controversial military commissions and under which the administration reserves the right to detain the rest in perpetuity. "Bottom line," Alami told an on-base publication, "is try these guys, show me the evidence, and hang them if they deserve to die. If not, let them go." It's hard to argue with that. But the administration does. Furiously.

For nearly four years, the White House has claimed the ability to hold enemy combatants indefinitely, without any guaranteed trial. It has argued both that the Guantanamo detentions are justifiable given that the fight against terrorism is a war, and that the war on terrorism is "a different kind of war" that requires, as Bush said in 2002, "new thinking in the law of war." Unfortunately, that "new thinking" has been a euphemism for the replacement of law with policy: policy that, among other things, made application of the Geneva Conventions contingent on "military necessity"; allowed for abusive interrogation; and claimed the right to hold enemy combatants in perpetuity. And, even more unfortunately, the White House has held to those policies even as it has become clear that, as in the case of Guantanamo, they are woefully counterproductive.

The Bush administration has adopted this radical approach because it is defending the idea that the Constitution empowers the president to conduct war exclusively on his terms. A series of memos written by the Justice Department's Office of Legal Counsel in 2002 effectively maintained that any law restricting the president's commander-in-chief authority is presumptively unconstitutional. (When GOP Senator Lindsey Graham recently quoted to Pentagon lawyer Daniel Dell'Orto the inconvenient section of Article I, Section 8, granting Congress the authority to "make rules concerning captures on land and water," he farcically replied, "I'd have to take a look at that particular constitutional provision.") Last month, when some GOP senators tried to bar "cruel, inhuman, or degrading treatment" of detainees in an amendment to the 2006 defense bill,

the White House sent them a letter threatening to veto any attempt to "restrict the President's authority to protect Americans effectively from terrorist attack and bring terrorists to justice," and Vice President Dick Cheney warned senators against usurping executive power. For good measure, the White House instructed the Senate leadership to pull the entire half-trillion-dollar bill from the floor, lest the offending language within it pass.

It would not be difficult to solve the indefinite-detention problem: Pass a law allowing for a circumscribed period in which officials interrogate the detainee and accumulate evidence before bringing charges against him. This is how it works in countries like Great Britain and Israel, both mature democracies that have fought terrorist threats militarily and legally for decades. But the administration has strongly resisted any move to introduce legal protections to Guantanamo Bay. When the Supreme Court ruled last year that Guantanamo inmates could bring habeas corpus challenges to their detentions in federal court--settling the question of whether detainees had recourse to the U.S. legal system--the Justice Department adopted the bewildering position that, once detainees file their claims, they possess no further procedural or substantive legal rights at all, an absurdity to which the administration is sticking.

That's not all. Before a Senate panel last month, Dell'Orto argued that Congress shouldn't create a statutory definition of the term "enemy combatant," since the administration needs "flexibility in the terminology in order to ... address the changing circumstances of the type of conflicts in which we are engaged and will be engaged." The very next week, before an appellate court panel, Solicitor General Paul Clement, arguing for the continued detention without charge of American citizen and suspected Al Qaeda terrorist José Padilla, explained what the administration has in mind for its "flexible" definition. Federal appellate Judge J. Michael Luttig, a Bush appointee, noted that, since Padilla was arrested not on an Afghan battlefield but at a Chicago airport, the administration's discretion to detain an American citizen ought to be fettered, "unless you're prepared to boldly say the United States is a battlefield in the war on terror." Clement immediately replied, "I can say that, and I can say it boldly." In essence, the administration is claiming authority to detain anyone, captured anywhere, based not on any criteria enacted by law but rather at the discretion of policy, and to hold that individual indefinitely.

That position--that the war on terrorism requires executive latitude at odds with hundreds of years of law--has animated every single step of the administration's approach to the war. It's why Bush has kept nato allies at arm's length while simultaneously trumpeting their absolute necessity to the defeat of Al Qaeda. It's why he didn't just oppose the creation of an independent 9/11 Commission to investigate the history of counterterrorism policy, he also argued it would be an unacceptable burden on his prosecution of the war. And it's why he's blasted any move by the courts to exercise oversight of the war as a dangerous judicial overreach: When a district court judge last year challenged the constitutionality of the administration's military commissions for the trial of enemy combatants, the Justice Department "vigorously disagree[d]," as a spokesman put it, and contested the ruling until the commissions were reinstated on appeal last month. For the administration, its expansion of executive power is synonymous with victory in the war--regardless of the real-world costs to the war effort.

The appeal of jettisoning established law in favor of broad executive prerogative during wartime, and especially during asymmetric or unconventional wars, is nothing new. "There is a very strong temptation in dealing both with terrorism and with guerrilla actions for government forces to act outside the law, the excuses being that the processes of law are too cumbersome, that the normal safeguards in the law for the individual are not designed for an insurgency, and that a terrorist deserves to be treated as an outlaw anyway," Sir Robert G. K. Thompson, the architect of the successful British counterinsurgency in Malaya and adviser to the U.S. command in Vietnam, warned in the mid-'60s. "Not only is this morally wrong, but, over a period, it will create more practical difficulties for a government than it solves."

Indeed, the real danger--to the war on terrorism, American values, and the rule of law--is unchecked executive authority. There would be nothing wrong with keeping detainees at Camp

Delta and elsewhere if they were provided legal protection and their interrogations were restricted to the Geneva Conventions-compliant Army Field Manual on interrogations. Nor would there be any harm to national security. Senator Graham, a former Air Force JAG, stated two weeks ago that, when he recently visited Guantánamo, he asked "all the interrogators there: Is there anything lacking in the Army Field Manual that would inhibit your ability to get good intelligence? And they said no. I asked: Could you live with the Army Field Manual as your guide and do your job? They said yes." Whether the Bush administration can live within those rules is another matter.

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